Recognizing a sustainable relationship between International Human Rights and International Trade Law in a pursuit to have human rights taken more seriously: A case study of the People’s Republic of China and the WTO

by

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A thesis submitted in conformity with the requirements for the degree of Master of Laws (LL M)

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Recognizing a sustainable relationship between international human rights and international trade law in a pursuit to have human rights taken more seriously:

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Master of Laws, 2009

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Abstract

Acknowledging a relationship between international human rights and international trade law adds to the legitimacy of economic, social and cultural rights already enshrined in the Universal Declaration of Human Rights 1948. The World Trade Organization (WTO) is the central institution for international trade law and it has demonstrated a commitment to enhance human rights. This commitment has been realized through WTO efforts to enhance human dignity and eradicate poverty. These WTO efforts ought to be fostered and used to promote human rights.

The purpose of this study was two fold – first, demonstrate that a relationship between international trade law and international human rights exists; and second, that this relationship is useful in promoting economic, social and cultural rights. This relationship will be examined through WTO initiatives, case studies and the Accession of the Republic of China in 2001.
DEDICATION

I dedicate my thesis to my mother who throughout it all has been my strength and my best friend. And to my father who always knew what to say to keep me going.

Anthony, I will miss you always but with God may you be at peace.

Thank you God for your guidance in everything that I do!
ACKNOWLEDGEMENTS

I would like to thank my sponsor, Sir Christopher Ondaatje. It is because of your generosity that a door has been opened in life which will never be closed. Thank you for your trust Dr Mary Welstead and Susan Rush.

I would also like to thank my supervisor Professor Michael Trebilcock for his patience and support throughout this journey. Professor Trebilcock and Cathy Powell have been tremendously helpful, positive and professional throughout the making of this thesis and I am truly grateful for the opportunity to have worked with you both.

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INTRODUCTION

This examination was inspired by a desire to see international human rights taken more seriously through the support of international trade law.

The broad scope of this study is to establish a sustainable relationship between international trade law and international human rights. Due to the wide scope of this topic focus will be placed on whether acknowledging a relationship between international trade law and international human rights would prove useful in identifying a means to support basic international human rights.

The premise for this examination may be interpreted as utopian in its goals because it presupposes that good will follow from integrating human rights norms with international trade law. However, this concern is rooted in a need to find support to promote human rights\(^1\). The goal of this paper is to encourage a human rights mandate within international trade law because of the potential for a mutually beneficial relationship. It is hoped that this examination will demonstrate that human rights and international trade law can work effectively together.

International trade law has the means to provide support for human rights as it crosses borders through voluntary and mandatory means. In addition, the international trade regulation system functions well because of the authority it is given by the members of the World Trade Organization (hereinafter WTO). This authority encourages cooperation

and support among countries which could be used to advance human rights.\textsuperscript{2} Human rights stand to benefit from the support of international trade law because of the latter’s established legal authority. The power of the WTO persists in part because of the consequences of non compliance and mainly for fear of economic injury from trade retaliation. History has proven that where access to trade has been limited or virtually cut off - relationships between governments can be negatively effected.\textsuperscript{3} It is with this power that the current international trade system operates and continues to govern with the ability to effect change in matters which are incidental to trade and tariffs.

It is the potential to effect change which provoked a desire to illustrate a human rights and trade relationship in this study. This paper has been divided into two main sections. Part A will deal with establishing the case for a relationship between human rights and international trade law. Part B will provide a specific case study which evaluates the nature of the relationship established in Part A. The paper will conclude that a human rights and trade relationship exists, and will argue that the WTO is a suitable place to formally recognize human rights in an effort to take these rights more seriously.

It may seem difficult to explain the relationship between human rights and trade because on the surface human rights appear to have been explicitly overlooked within

\textsuperscript{2} Hernandez-Truyol, B.E. and Powell, S.J. Just Trade: A New Covenant Linking Trade and Human Rights New York University Press (2009), pg 1

\textsuperscript{3} The United States of America initiated a trade embargo to discourage trade with Cuba (Cuban Democracy Act 1992), in a move to force the countries leader Castro to make changes to human rights protections despite commercial activity opportunities in commodities such as sugar. The effect of the trade embargo impacted Cuban sugar industry particularly after the collapse of the Soviet Union in 1991 the economically dependence enjoyed by Cuba had ended. See http://www.foreignaffairs.com/articles/51838/pamela-s-falk/eyes-on-cuba-us-business-and-the-embargo.
international trade law and regulation. This portion of the examination will attempt to identify relevant points where human rights and trade meet in an effort to establish the framework which will be employed in part B.

Once a relationship has been established an attempt to demonstrate a clear connection between international trade law and international human rights will take place using the People’s Republic of China in a case study. The case study will serve to solidify the proposal that acknowledging a relationship between international trade law and international human rights could affect the status of human rights in a country and elevate the treatment of that country’s citizens. By the end of this paper it will become clear that the WTO is a suitable place to set in motion changes to the treatment of individuals, improve the citizens’ standard of living and promote the recognition of human dignity.

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A. THE HUMAN RIGHTS AND TRADE RELATIONSHIP

Part A has been sub-divided into five main issues, namely, codification of primary international human rights and international trade law documents; international human rights; international trade law; the concept of globalization; and the general exceptions under GATT article XX and GATS article XIV. These five issues have been selected to highlight important aspects of both international human rights and international trade doctrines in intention and application. By the end of part A, it is hoped that a clear human rights and trade relationship will be evident.

Human rights were not expressly included in international trade law as seen in the General Agreement on Trade and Tariffs (hereinafter GATT) in 1947, yet the doctrine for human rights remains implicit. It will be argued that despite first appearances the decision to exclude human rights from trade law may not have been the result of an oversight because the recognition of international human rights remained implicit in the interpretation of the GATT rules. It will be clear by the end of this examination that human rights remain important to the interpretation and functioning of trade law and more importantly, it will become apparent throughout this examination that human rights are embedded in trade law and in principles of globalization.

The international human rights and international trade law relationship will be established throughout this paper in a pyramid-like manner. To clarify, this relationship will be

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5 The preamble of the GATT states: “Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living.”

established by drawing on connections between the two disciplines which at first will appear broad although parallel in intention. As the paper continues, the explanation of each issue will draw human rights and international trade law closer together to a point of clear convergence and a clear connection will be made by the conclusion.
I. CODIFICATION OF INTERNATIONAL HUMAN RIGHTS AND INTERNATIONAL TRADE LAW

In this segment a brief overview of codification will be used to demonstrate the first link between international human rights and international trade law.

Codification identifies a historic moment for international human rights and international trade law. Although the process of codification for human rights and international trade law appear to be very different there is a similarity in intention which remains essential to identifying the first point in establishing a relationship.

Codification is the process by which rules become promulgated and given effect. This process of collecting rules and promulgating is important because it demonstrates the readiness of governments to recognize the legitimacy of the rules and provide support for them. The enactments of many important documents arise in a response to a disaster or world changing event, such as a revolution after a major war.

Post World War II, two important areas of law evolved and were subsequently codified. The creation of both the Universal Declaration of Human Rights 1948 (hereinafter UDHR) and the GATT 1947 evidenced a shared intent to encourage a positive global future and avoid further conflict. This marked a connection between international human rights and international trade. This connection represented international recognition of the

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7 Two examples are the French Revolution 1789 which led to the Constitution of 1791 and the United States Constitution of 1787 after independence.
need to document the conditions of which all countries could agree to socially and economically keep the peace.
II. INTERNATIONAL HUMAN RIGHTS

An overview of international human rights and the primacy of the Universal Declaration of Human Rights will be used to highlight the significance of international human rights to international trade in an attempt to make the second link.

The UDHR was created in 1948 with the support of over 50 countries and without any votes against it.\(^\text{10}\) This global acceptance of the declaration and the enthusiasm with which it was created made it unnecessary to require a legal element. Although the influence of the UDHR appeared boundless, it was limited to interpretation and national adoption for enforceability. This voluntary requirement is important to any international or national agreement because without a voluntary element there is very little which forces an individual or member state to enter into an agreement.

There was an element of voluntariness in the composition of both the GATT and the UDHR. Although, the GATT 1947 started out with 23 members and the UDHR was created with over 50 contributing countries, the latter remained weaker in support than the former. The powers vested in the GATT 1947 were the result of cooperation among its signatories and a desire to obey the provisions of the document for fear of sanction by retaliation.\(^\text{11}\) It is important to note that the jurisdiction of the GATT extended to countries because of voluntary subjection while the UDHR was meant to unconditionally articulate the goals of the international community, including the twenty-three GATT signatories.

\(^{10}\) Five countries abstained from voting. 
It would appear that in 50 years, the GATT has become increasingly more powerful than the UDHR. However, it must be noted at this point that the UDHR is and remains a declaration and as a result lacks the formal legal authority found in international trade agreements. Although this remains the status of a declaration, the UDHR serves the global community by providing minimum the standards for preserving human rights across the globe.

After the Second World War human rights protection became an important global issue and as a result the Universal Declaration of Human Rights was adopted in December 1948. The importance of this document stated in its Preamble, namely to promote the recognition of equality and respect for the rule of law. Reading the preamble an inference could easily be drawn that the document is to be read in light of the creators’ objectives to promote unity and avoid rebellion or war. It will be suggested here that understanding the purpose behind international human rights is more important than understanding the history of human rights.

Living in accordance with international human rights meant that countries were to take the minimum standards from the declaration and create a national legal commitment. This would require an internal motivation given the declaration had no legal effect. In an attempt to understand why an individual state would follow this international norm could

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13 From the Preamble it reads, “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world… Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.” This taken directly from the Preamble of the UNDR it is clear that in order to understand, interpret and apply the document.
be explained by looking at individual aspirations. For instance, according to social contract theory individuals (or nation states) have concluded that it is best to live in cooperative relationships for self-interested reasons.\textsuperscript{14} In other words the individual becomes the reason for the shift from the natural condition to the social contract. The social contract is useful to help explain the importance of equality and respect for human rights which has led to the international declaration known as the UDHR.

The role of international human rights in individual countries has caused some uncertainty among countries despite global acceptance\textsuperscript{15} which is evident in the variance in national adoption among states.\textsuperscript{16} The variance in adoption of these international norms raises the issue of state motivation and voluntary participation. Sachleben suggests that there could be many reasons and causes for government participation in international agreements such as treaties. Sachleban has divided these reasons into four categories. These include: treaty obligations which are not necessarily important; treaties provide major powers with a way to enforce preferences; treaties reflect domestic pressures; and treaties create an orderly world system based on accepted rules and norms.\textsuperscript{17} Of these categories Sachleben suggests, domestic pressure is very convincing (although the UDHR is a declaration and not a treaty a correlation may be identified). Domestic or internal pressure affects implementation and adherence to any agreement.

\textsuperscript{14} Ed Curtis M. The Great Political Theories Vol 1, New York (1961), pg 335. This view was strongly supported by Locke and Hobbes in the 17\textsuperscript{th} C.

\textsuperscript{15} Shaw, M. International Law 5\textsuperscript{th} ed. Cambridge: The University of Cambridge (2003), pg 247

\textsuperscript{16} Extreme comparisons are illustrated between the United States and China.

Adhering to international norms requires a willingness to abide by the rules of the agreement. State ratification of a human rights declaration does not constrain government behavior per se or put an end to human rights abuses but ratification does suggest that there is a desire to adopt the prescribed rules and norms of the document.\(^{18}\)

In general the rules and norms of international human rights are found in three main documents also known as the International Bill of Rights (IBOR).\(^{19}\) The IBOR includes the United Nations UDHR 1948, the International Covenant of Political and Civil Rights 1966 and the International Covenant on Economic, Social and Cultural rights 1966.\(^{20}\)

The UDHR was the first of the three human rights documents and is of primary importance because it represents the initial intentions of a global collaboration on the matter. Both the civil and political rights mandate and the economic, social and cultural rights mandate have their origin in the UNDHR particularly articles 25 and 26. These articles provide the basic protections for every human being and will be explained in detail below.

Although human rights existed prior to recognition in 1948,\(^{21}\) it was the creation of the UDHR which provided documentation of international human rights. The UDHR contained a cultural range of influences including Marxist, Chinese, Middle Eastern and

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\(^{19}\) See the Office of the United Nations High Commissioner for Human rights website at http://www2.ohchr.org/english/law/

\(^{20}\) The documents did not enter into force until 10 years later in 1976.

\(^{21}\) See Charter of the United Nations Preamble: “To affirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of the nations large and small”
South American.\textsuperscript{22} The declaration was influenced by contributions from all corners of the globe and without dissent which ought to support its legitimacy.\textsuperscript{23}

Since the UDHR had no legal force and effect, the Commission on Human Rights accordingly drafted two treaties to accommodate the split in support for civil and political rights, which western countries favored, and economic, social and cultural rights, which Communist countries favored.\textsuperscript{24} This led to the International Covenants, namely the International Covenant on Civil and Political rights (hereinafter ICCPR) and the International covenant on Economic, Social and Cultural rights (hereinafter ICESCR). Interpretations of the two Covenants by individual countries varied as seen in different national adaptations. For example, the Canadian Constitution places an emphasis on civil and political rights such as the right to life and liberty\textsuperscript{25} compared to China’s Constitution which also appears to be concerned with both civil and political rights but places an emphasis on rights to property.\textsuperscript{26}

According to the Constitution of the Republic of China 1982, the government reserves the right to own property. Individual property rights exist within the Constitution but to a limited extent. This right appears to be more important than other civil and political rights of individuals.\textsuperscript{27} Despite the claim that Communist countries such as China maintain a

\textsuperscript{22} Buitenweg, R. \textit{Human Rights, Human Plights in a Global Village}. Atlanta: Clarity Press Wing, pg 38.
\textsuperscript{23} See Shaw, M. \textit{International Law} 5\textsuperscript{th} ed. Cambridge: Cambridge University Press (2003), at pg 259. Although there was no dissenting vote countries such as Czechoslovakia, Poland Yugoslavia and Saudi Arabia abstained from voting.
\textsuperscript{24} \textit{Ibid.}, pg 41
\textsuperscript{25} Canadian Constitution 1982 Charter of Rights and Freedom, ss 2 through 15
\textsuperscript{27} Article 35 of the Constitution for the Republic of China briefly provides that citizens may enjoy freedom of speech, press, assembly, association, procession and demonstration. And article 36 provides citizens may enjoy freedom of religious belief. However freedom of religion is limited to the freedom not to be compelled to believe in any religion or discriminated against and the state will protect \textit{normal} religious activities but normal is not defined in the Constitution.
polar position to Western countries on which rights were favored, the point which is relevant is that there are varying approaches taken to human rights by individual nations which was inspired by the values set out in the UDHR.\textsuperscript{28} The UDHR provides a minimum standard which countries ought to use to adopt national documents which support the protection of basic human rights.

The system of international trade law under the WTO contains several agreements for multilateral trading. In the next segment the GATT 1947, the GATT 1994 and GATS will be the main documents of concern in an attempt to locate a relationship with human rights.

III. INTERNATIONAL TRADE LAW

An overview of the international trade law system will be used in an attempt to
demonstrate the strength of the system and the potential to provide support for
international human rights. Detail will be paid to the general agreements of 1947 and
1994 and the WTO.

While the members of the United Nations were deliberating on the UDHR, twenty-three
countries were negotiating trade concessions. The goal was economic cooperation
which resulted in the creation of the GATT 1947.

The international trading system began with the General Agreement on Tariffs and Trade
which concerned trade liberalization through mutually beneficial multilateral agreements.
This system was the result of an evolution from a power based system to one governed by
rules. With time and negotiations the GATT 1947 led to the GATT 1994, the GATS
1995 and the WTO.

The GATT 1994 led to the General Agreement on Trade in Services (hereinafter) GATS
agreement and the WTO. The GATS agreement differs from the GATT in that it is
concerned with trade in services. With the growth in services crossing borders the GATS
agreement provided for a removal of constraints likely to occur with the increase in

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29 The “contracting parties” included, Australia, Belgium, Brazil, Canada, Cuba, France, India, Luxemburg,
Union of Myanmar, Netherlands, New Zealand, Northern Ireland, Norway, Pakistan, South Africa, Sri
Lanka, United Kingdom, United States of America and Zimbabwe.

Understanding the WTO: Basics The GATT years: from Havana to Marrakesh.
<http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm>

interactive on-line services, such as banking and on-line education.\textsuperscript{31} The GATS was created to handle an expansion of the trading system from goods to services. The WTO was the result of GATT 1947 was and established in 1995. The creation of the WTO marked a move for the previous GATT signatories to become members of an organization. The WTO is the only global institution which deals with multiple trading documents and trade among members in goods, services and is used to settle trade disputes.\textsuperscript{32} There has been an incremental growth and evolution of the trading system which has led to the WTO’s current legal institutional framework.\textsuperscript{33} More importantly the initial assumption that the GATT 1947 reflected purely economic interests was evolving and as an institution policy issues such as human rights could more easily find support in collaborations with other organizations. In other words, the expansion of the GATT 1947 to a global organization provided the means for a more obvious expansion of the scope for the international trading system.

The system is used by members of the WTO to negotiate bilateral and multilateral trade agreements in an effort to promote the removal of non-trade barriers. In an attempt to strengthen the organization a strengthened dispute resolution process was implemented. The rules for settling a dispute can be found in the Dispute Settlement agreement. Under the agreement known as the Dispute Settlement Understanding (DSU) is article IV which provides that a complaining member must seek consultations with the alleged offending member to resolve the matter. If the consultations are unsuccessful the complaining party

\textsuperscript{31} The General Agreement on Trade in Services (GATS): objectives, coverage and disciplines <http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm>

\textsuperscript{32} What is the WTO? <http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm>

may request a Panel at which time the Dispute Settlement Body may determine whether to establish a Panel.\textsuperscript{34} If the parties are dissatisfied with the Panel’s decision either party has the option for further appeal to the Appellate Body (AB). The final report of the Panel or Appellate Body is referred to the Dispute Settlement Body for implementation of the recommended sanction.\textsuperscript{35} Finally, if after a reasonable amount of time there is a failure to implement the recommendations the complaining party may be permitted to retaliate and lawfully apply trade restrictions.\textsuperscript{36} Member governments are responsible for implementing the recommendations of the Dispute Settlement Body. According to article XX of the DSU the complaint process from the time of establishing a Panel may take between nine and twelve months – it is worth noting here that this process is more expeditious than the complaint process for the United Nations Human Rights Council where establishing a complaint takes one year. This legal structure has given the WTO considerable power which may be used to encourage compliance and support for human rights protection.\textsuperscript{37}

Over the years the WTO as an international trading system has been able to use its power, experience and reputation to gradually move beyond the technicalities of trade and trade concessions to cover more sensitive areas as evidenced with the creation of the TRIPS agreement.\textsuperscript{38} The international system for trade removes economic barriers and brings together former adversaries and allies in a move for global cooperation. However, the system continues to have both supporters and challengers in the effects trade has had on

\textsuperscript{34} Article VI of the Dispute Settlement Understanding (hereinafter DSU)
\textsuperscript{35} Article 21 of the DSU
\textsuperscript{36} Article 22 of the DSU
\textsuperscript{37} See Langen, J “Trade and Human Rights” (2002) 2 Asper Review of International Business and Trade Law 159
human rights. Whether international trade has or may be used to enhance the protection of human rights has attracted various responses.

The first view is that trade may be human rights enhancing as described by Aaronson and Zimmerman.\(^{39}\) The argument is as follows: trade increases a country's economic power which leads to citizens increased purchasing power which raises human welfare. In other words, state organized trade liberalization leads to an increase in individual welfare. In addition, recent scholarship in the area suggests that trade can enhance the quality of life of the countries’ citizens through mechanisms such as market stimulation\(^{40}\) and wealth distribution.

As fair as it may be to suggest trade increases human rights, in many ways the opposite may be argued. The second and opposite view is that trade is human rights inhibiting or degrading. The argument proceeds on the basis that wealth remains in the hands of the few elite, rich or controlling private members of society. In fact, it is industrial competition which has led to what is known as the “race to the bottom” where developing countries and the workers are exploited in the process of trade liberalization. This perspective of international trade suggests that trade liberalization may lead to a failure to protect human rights.\(^{41}\)

Academics such as Delmas-Marty have taken an approach to international trade and human rights which appears to reconcile both the first and second view. Delmas-Marty


\(^{40}\) Ibid., pg 6

\(^{41}\) The situation of Cochahamba Bolivia is the classic example of incorporating a water source for trade. The difficulty arose when the issue became water inaccessibility which meant the citizens were being denied something necessary to life. This is described as Aaronson and Zimmerman as potentially a human rights abuse.
says that the reality is that economic and social rights have a distinct relationship with international trade law and as a result “human rights are becoming enforceable over economic interests.”\textsuperscript{42} What is most relevant to note is that Marty-Delmas acknowledges a close proximity between international trade law and economic and social human rights.\textsuperscript{43} This suggestion can be supported by acknowledging that human rights in developing countries are affected when the country advances in the area of international trade. This paper adopts the view that where state wealth increases as a result of international trade access so does the States ability to provide better healthcare, higher wages and an ability to support human rights.

Other academics such as Alan Sykes acknowledges the possibility that trade liberalization could lead to deepening inequalities in developing countries but he suggests that this possibility does not justify a resistance to trade growth.\textsuperscript{44} Sykes continues to challenge the idea that trade injures more than promotes human rights. He has rejected the suggestion that trade encourages a failure to protect human rights. Rather he has suggested that being open to trade will naturally lead to a promotion of human rights.\textsuperscript{45} But there is more to promoting human rights in trade than the desire to access other markets for economic benefit. Acquiring benefits from the system requires authoritative

\textsuperscript{43} Ibid., pp 27 - 30.
\textsuperscript{45} Ibid., pg 71
and judicial support to promote compliance and in order for the system to function which the WTO already has in place.\textsuperscript{46}

The WTO rules apply to all of the states who are members of the institution. And at the same time it is these 153 countries\textsuperscript{47} to date which are expected to adhere to the minimum standards of the UDHR. Although the UDHR is a declaration it has universal application which includes every WTO member. In other words, there is no line drawn for human rights nor is there any sphere from which it is excluded as its presence does not require admission for membership or permission. It may be suggested here that explicit exclusion was not meant to be of any consequence since human rights did not need to be restated within the GATT because it could be read in.

The different perspectives taken on the effects of trade on human rights may be reconciled on the basis that where sufficient human rights protections are not supported in law or in an institution, trade may be injurious to human rights. However where protections are put in place the concern for human rights abuse diminishes.

As this nexus continues to become closer it ought to become clearer that this relationship is important and has wider implications than has been expressly recognized.\textsuperscript{48} It is because of this exclusion that human rights ought to be written into the WTO. From an economic perspective human rights may serve to encourage further trade and increase


\textsuperscript{47} As of 23 July 2008 there are 153 WTO members <http://www.wto.org/english/ >

\textsuperscript{48} Perhaps an agreement could be drafted between members of the WTO which could be used to declare the importance of international human rights and a commitment to recognize the minimum standards set out in the UDHR 1948.
domestic distribution of wealth. In addition, it may be worth considering the potential to reduce transaction costs where citizens realize the benefits of their countries increased wealth and as a result would prefer to remain in one’s country to work, pay taxes and contribute to the economy rather than emigrating in search of an improved standard of living.
IV. GLOBALIZATION AND INTERNATIONAL HUMAN RIGHTS

An overview of globalization and its relationship with international human rights will be examined.

The current international trading system favors specialization. Specialization encourages a reduction in transaction costs and avoids unfair advantages.\(^{49}\) Globalization may be used to remove concerns for unfair advantage and reduce transaction costs through multilateral trading, cooperation and specialization. Globalization seeks to benefit both human rights and international trade advocates. Reciprocal benefits include the exchange of free flowing ideas and information which prohibit economic corruption. In addition globalization provides an opportunity for individuals to put pressure on the government in the pursuit of higher standards of living for its citizens.\(^{50}\)

Globalization provides a means for consumers to shop worldwide through international markets. The liberalization of trade provided an opportunity to address concerns over a race to the bottom through cooperation, negotiations and a system for dispute resolution. However, this comfort gives rise to a concern of a race to the bottom and therefore a failure to protect citizens in weak economies.\(^{51}\) Dispute resolution ensures that the provisions of the GATT are used to any one member’s advantage there is an option to have disputes impartially resolved. This is central to the WTO’s role in globalization.\(^{52}\)

\(^{49}\) This is based on David Ricardo’s theory of comparative advantage as discussed by Ahmed, K. in “International Labor rights a Categorical Imperative” 35 R.D.U.S. 145 2004 pg 174
In a shift toward globalized trade the GATT was intended to serve as a tool for resolving the varying spectrum of economic policies and motivations among trading members entering into trade agreements and the WTO.\textsuperscript{53} However, this de-politicization meant surrendering a part of a nation’s sovereignty in exchange for benefits from the removal of barriers to trade.

Globalization demonstrates a relationship between trade and human rights exists because increased trade can lead to a rise in the standard of living which can result in governments placing a higher value on human rights.\textsuperscript{54} To further illustrate the point a table is used below to demonstrate that a trade and human rights relationship exists and that trade has the potential to effect change through WTO membership. The rise in GDP indicates the potential to improve human welfare and ultimately provide the government with resources to promote the protection of human rights.

Due to the constraints of this paper the top four exporting countries for 2007 have been graphed for comparison of GDP and time of WTO accession in Table 1.1.\textsuperscript{55}

\begin{footnotesize}
\begin{enumerate}
\item See Fried, J. “Dr. Charles F Galway Lecture: Globalization and International Law some Thoughts for States and Citizens” (Fall 1997) Queens L.J. 259.
\end{enumerate}
\end{footnotesize}
### Table 1.1 Trade Statistics 2007

<table>
<thead>
<tr>
<th>Country</th>
<th>GDP growth rate</th>
<th>Rank in Merchandise Export</th>
<th>Rank in Merchandise Import</th>
<th>Accession to the WTO</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>13%</td>
<td>2</td>
<td>3</td>
<td>2001</td>
</tr>
<tr>
<td>Germany</td>
<td>2.5%</td>
<td>1</td>
<td>2</td>
<td>1995</td>
</tr>
<tr>
<td>Japan</td>
<td>2.4%</td>
<td>4</td>
<td>4</td>
<td>1995</td>
</tr>
<tr>
<td>United States</td>
<td>2%</td>
<td>3</td>
<td>1</td>
<td>1995</td>
</tr>
</tbody>
</table>

Table 1.1 indicates that China is the most recent of the four countries to join the WTO and the most successful in recent GDP growth rate. The economic growth that China experienced was unlike any country before it. For example, only four years into its accession China was responsible for 20% of global production, although in that same year internal trafficking among poor women in Chinese rural areas were recorded. China continued to receive attention for failing to protect human rights in spite of its accession to the WTO while it’s GDP growth rate continued to rise alongside China’s record for human rights support. A clear illustration of this new and improved attitude was evident when the Supreme People’s Court announced a Regulation to provide the poor with access to litigation. As a result of the Regulation, 3,789 criminal convictions and sentences had been overturned. This judicial guarantee of procedural fairness.

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57 Ibid.
59 For example, the access to information has improved, for example the Human Rights in China website created in 2004.
demonstrated progress in the government’s approach to human rights protections. The overall standard of living had begun to change in China with the liberalization of trade. In fact overall disposable income rose 6.4% in 2000 from 1999.

Globalization has led to an overlap of economic, social and cultural rights with international trade. ESC rights were made inseparable from international trade through the ICESC. This is evidenced in the core goals of the ICESC which is to promote dignity and avoid degrading treatment of citizens. According to Delmas-Marty the enjoyment of human rights requires the creation and maintenance of conditions for rights to be realized both theoretically and in practice.

In addition, increased trade leads to an exchange of ideas. The exchange of ideas may lead to an increased awareness of the potential benefits of human rights recognition and the potential to create internal pressure on governments for change. However, this pressure may be internal as well as external. The desire to adhere to human rights stands a better chance for adherence where the motivation is internal, i.e. manifested nationally. This requires some element of voluntariness by the country’s government to be bound to its own human rights rules thereby making legal otherwise non legal norms and values.

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62 Ibid.
64 Ibid.
66 China’s accession to the WTO was permitted with some conditions suggested by the Working Party to be discussed below.
In order to solidify the assertion that human rights may be supported within the WTO the next point in the relationship between international trade law and international human rights will be identified in the General Agreement in Tariffs and Trade and the General Agreement on Trade in Services.
V. GENERAL AGREEMENTS AND INTERNATIONAL HUMAN RIGHTS

The final attempt to pin-point a connection in Part A is important because it will demonstrate that human rights are embedded in the general exceptions of the Agreements.

This part of the examination is important in demonstrating that human rights have not been overlooked but are embedded within international trade law agreements. Although human rights have not been expressed in international trade law this does not preclude a human rights presence in the rules. The drafters of the GATT 1947 included provisions which suggest a need to protect human rights, namely under article XX.67 Human rights may be identified in the exceptions under article XX which include public morals, human health, prison labor and environment conservation to name a few.68 For the purposes of this examination only two examples of reasons for derogation will be discussed below, namely the protection of public morals and the protection of human health.

Article XIV (a) of the GATS and article XX (a) and (b) of the GATT provide general exceptions to the rest of the provisions under the agreements which may permit reading in human rights.69 The foresight to provide derogations from the rules because of public morals and human health may be used by an importing member state when enacting a measure which restricts the exporting member from exporting certain goods into the former country’s market.

68 Ibid., pg 72
The preamble to article XX is known as the chapeau which has been put in place to prevent abuse of these general exceptions. The chapeau provides the conditions for application of article XX and in sum, provides that the inconsistent measure is compliant so long as it has not been applied in an arbitrary or unjustifiably discriminatory manner or is a disguised restriction on trade. The nature and purpose behind the article XX chapeau is to ensure equal treatment among states while providing a means for members to reserve some control over what enters the market. This proportional assessment of rights and duties is a necessary balance of sovereignty and membership in the WTO.

To identify human rights within international trade law an examination of the case law and use of the exceptions (a) through (j) is helpful. As a result it appears there is potential under GATS article XIV paragraph (a), the exception used to protect public morals and public order and GATT article XX paragraphs (a), public morals and (b), the exception which includes protecting human health, to find an opening for human rights.

A) Protecting Public Morals

In a 2006 Geneva speech, Pascal Lamy stated that a WTO member may determine the level of public morals it desires to protect under the general exception so long as the

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70 WTO Analytical Index: GATT 1994 Language and interpretation of article XX <http://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_07_e.htm#article20> at para 583

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


73 Director General of the WTO.
measures it not ‘protectionist or incoherent.’

Although this statement remains incomplete based upon the legal text of the GATT or GATS it is representative of the principle under which the rules ought to operate. In this spirit, the WTO employs a rule based system supplemented by an adjudicative body which is used to resolve legal issues and clarify the law.

Protecting public morals has not been defined in the agreement; rather it is the case law which is useful to illustrate the scope under which the exception may be applied to an inconsistent measure. The legal standard for using a general exception requires a two step process. First, the measure must be enacted for the purpose of protecting public morals and second, the measure must be necessary for the purpose at which it was set out, i.e. result in protecting public morals. This legalistic approach to the protection of morals is important to the community and is necessary to avoid bias or personal interests which may interfere with adjudication.

Protecting public morals has been defined in *US-Gambling.* This dispute was the first to consider the public morals exception under GATS. This trade law dispute resulted from a complaint by the Antiguan government against the United States of America (hereinafter US). The dispute arose because the US government enacted legislation which prohibited internet gambling contrary to its GATS commitments and sought to justify the

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trade restriction using the public morals exception under article XIV(a) of the General Agreement on Trade in Services.

The US attempted to prohibit internet gambling in part on the basis that it was accessible to minors through the internet which stood to injure social morality. The Antiguan government successfully submitted to the Panel that the US was in fact using the ban as a disguised restriction to prevent foreign gambling services including those based in Antigua from entering the American market.

The dispute settlement Panel found in favor of Antigua because the US could not justify the imposition of the legislation on the basis of article XIV (a). The Panel took a broad approach to defining public morals to include behavior which is right or wrong according to the interests of the society in question. Upon appeal the Appellate Body added to the scope of this definition in its determination that if a member is seeking to protect public morals and/or public order it should develop an independent standard based in that society’s interests with support in applicable international rules.

The US-Gambling report serves as an example of the current interpretation of the public morals exception in both general agreements. Although this decision was based on the General Agreement on Trade in Services (hereinafter GATS) article XIV(a), not the GATT article XX(a), both provisions remain the same in character with the exception that one deals with services and the other with traded goods. For clarity, it was noted by

77 Ibid. (Panel) Para 6.465
the Panel that the public morals exception could be understood by using other exceptions applied under article XX, for instance, article XX(d) as understood in *Korea-Various Measures on Beef*.\(^79\) Although in this case, the inconsistency of the measure was not justified under article XX (d) the Panel outlined the importance of the second part of the two tier test under the exceptions, namely, necessity.

The necessity of the measure must be determined using a proportionality test and the exception is permitted where the measure is necessary to combat the genuine concern of injury.\(^80\) It is important to note that in determining the relevance of public morals it is the particular society or community that determines what public morals mean. Morality much like human rights is unique and not distinctive as it is not a legal concept or capable of determination outside of the individual or member asserting its existence.\(^81\) Although universal norms exist, international human rights documents may serve as a reference for universal minimum standards. Ultimately, for effective human rights implementation it is necessary for individual interpretation to be applied so long as consistent with these universal minimum standards.

This is relevant to human rights in so far as it remains a unique and broadly defined concept determined by the individual community through national legislation. This suggests it is society specific although it is sourced in international standards.\(^82\) The Panel’s use of international resources illustrates the recognition of a universal minimum

\(^80\) *Ibid*, para 6.460- 6.469 For example underage gambling was a concern for the United States government.
\(^81\) *Ibid*, para 6.6470
\(^82\) This is an attempt to compare the UDHR and the GATT rules as both an international source for national legislation.
standard for public morality. In seeking an interpretation of public morals it was important for the Panel to recognize international standards and not adhere solely to the interpretation of one Member state. Without established standards members could have a free-for-all in interpretation leading dysfunction in the dispute settlement system.

It has been suggested that if the WTO adopted a regulatory scheme for gambling, member states would actually become empowered because there would be a common reference from which domestic laws and moral concerns would operate. This is relevant because it gives rise to an important point, namely that members of the WTO would be able to govern themselves more efficiently if they knew the parameters within which to enact measures which affect foreign trade and non-trade matters. This analogy would serve well in the area of human rights protection just as well as gambling services. In other words, if there was a clear mandate for human rights protection within the WTO, members of the organization would be forced to adhere to these standards.

Although *US-Gambling* was the first dispute to examine public morals it may not be the last. According to Diebold, the dispute between China and the US over measures limiting the import of audiovisual entertainment and products is likely to follow *US Gambling* if a cause of action is determined. In 2007 the US requested a consultation with China over the limited audiovisual imports and intellectual property rules which may lead to the next

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84 *Ibid*, pg 70
GATS article XIV(a) dispute\(^8\) (and the first GATT XX(a)). China refused the request for a Panel by the US to review its measures affecting distribution services and the importation of publications and audiovisual entertainment products into China.\(^9\)

According to *US-Gambling*, the potential for China to invoke the general exception for protecting public morals and public order would likely result from the freedom to use a wide range of policy objectives ranging from gambling to human rights protections.\(^9\) The Panel did not put a limit on the range of issues which may fall under legitimate policy based measures. In other words it could be argued that any policy objective is subject to individual social values which fall within the interests of protecting public morals and/or public order under the general exceptions clause.

**B) PROTECTING HUMAN HEALTH**

Protecting human health is within the scope of the ESC human rights and concerns the right to dignity.\(^9\) This right is expressed under the protection of health under article XX (b) as a justification for a member to derogate from the other provisions of the agreement. A measure which is inconsistent with the provisions of a general agreement either in goods or services requires the respondent to establish the legitimacy of an exception for the measure to be enforceable. The rules permitting the application of an exception do not include any rules which prevent a member from seeking to protect the interests of another member state provided the necessity of the measure is established.

\(^8\) *Ibid.*


\(^9\) Article 25 of the UDHR
Procedurally, before applying article XX(b) a three tier test must be performed. The first step is to ensure the measure falls within the scope of an exception; second, the inconsistent measure must be necessary to fulfill the policy objective and; third, the measure must satisfy the chapeau. It is the second requirement which is relevant to human rights policy driven initiatives in this context.

The policy objective requirement broadens the scope for measures within the limits of the exception, i.e. human health. This matter was illustrated in *EC-Tariff Preferences* in this case, the aim of the tariff-preferences in question was meant to assist in the fight against poverty and drug trafficking. The *EC Tariff Preference* case permitted duty free access for 12 countries as part of an international objective to assist developing countries combat drug production and trafficking. The tariff preferences extended to developing nations which produced and exported particular items. This program did not extend to developing countries by virtue of having ‘developing’ status and where like products were being produced. This lead to a challenge by the Indian government which led to a finding that the European Communities (hereinafter EC) measure was in violation of Art I:1 *MFN* obligations. The EC failed to justify the measure under both the Enabling Clause and the Art XX (b) exception. The measure failed because the objective was not

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92 Para 7.197
93 WT/DS246/R Panel Report - European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries 2003
94 Most Favored Nation Principle which ensures that all countries are treated equally and without bias or political interference in determining tariff rates.
viewed as indispensably necessary to achieve the EC’s objective.\textsuperscript{95} The Appellate Body’s examination of the measure under challenge failed to be justified under art XX (b).\textsuperscript{96}

The opportunity to permit the use of a general exception for a national measure which has an international purpose marks an opportunity to move towards recognizing international objectives as sufficient to derogate from general WTO obligations. This is relevant in recognizing support for the protection of human rights within the confines of the WTO. Although the EC’s measure failed enacting the measure and accepting the challenge before the Panel and Appellate Body suggests that the WTO may be a suitable place to pursue human rights protection.

International institutions such as Non Governmental Organizations are presently at work with the WTO in creating awareness of basic global human rights obligations. Change is being sought and pressure is being put on governments to recognize a need for change in international support for human rights and how the WTO may be used for this effort.\textsuperscript{97} The WTO is still making changes and seeking to secure a place for a human rights mandate. This necessity is made clear by WTO initiatives currently in place for instance, the Human Rights and Trade Project is in the process of developing a resource centre for the links between human rights and trade.\textsuperscript{98}

It would be essential to complete this inquiry by actually locating human rights within the WTO. Part B of this paper attempts to do this in a detailed case study of China. This case

\textsuperscript{95} Ibid. Para 7.223  
\textsuperscript{96} Ibid. Para 7.209  
\textsuperscript{97} China’s accession to the WTO illustrates this (including the Working Party’s recommendations).  
\textsuperscript{98} See Policy innovations website at <http://www.policyinnovations.org/index.html>
study will be used to illustrate a direct link between international trade law and
international human rights.
B. CHINA’S ACCESSION TO THE WTO

Part B is a case study used to illustrate a relationship between international trade law and international human rights. Here a brief overview of the negotiations, the Accession Protocol and the effect human rights have had on the process of accession for the People’s Republic of China to the World Trade Organization, will be used to support the assertion that international trade law has the means to ensure that basic international human rights are taken more seriously.

An attempt to identify an overlap in a relationship between international human rights and international trade law will further support the assertion that human rights stand a better chance at being taken seriously if supported through international trade law. This segment of the paper will illustrate a direct link between international human rights and international trade law which was made explicit in the accession process for the People’s Republic of China to the World Trade Organization.

Accession to the WTO requires the applicant territory to make commitments to ensure the applicant is or becomes WTO compliant. The rules for becoming a member are found under article XII of the GATT 1994. Article XII provides that any state or territory may apply for accession on terms agreed to by the acceding government and members of the WTO. Once a formal written intention to join the WTO is received the General Council constitutes a Working Party to evaluate the application. Meanwhile trade negotiations take place between the applicant and WTO members. Once completed and the applicant and members are satisfied with the bilateral and multilateral negotiations, the General
Council will issue a protocol for accession and the applicant is free to join upon agreement.

The People’s Republic of China’s accession to the WTO made it the 143rd member of the organization and was the result of a series of bilateral and multilateral negotiations in a pursuit of economic expansion and the protection of human rights in China. The relevance of the negotiations which concern human rights in China will be discussed below.

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I. THE ROLE OF HUMAN RIGHTS IN CHINA’S WTO ACCESSION

This section will highlight in a brief overview concerns over China’s human rights record and progress made following its WTO application and subsequent accession. Particular attention will be paid to economic development and ESC human rights. In addition, a relationship between human dignity and the decline in poverty in China will be examined.

Human rights in the Peoples Republic of China (hereinafter China) has been a matter of international concern particularly after the Democracy Party’s failure in 1989. Around the same time the Cold War had ended and a decline in Communism in Europe and in Asia the awareness of international human rights began to rise. The move away from communism and push towards international human rights met with opposition based in cultural differences between the Eastern and Western countries.

The new concerns around human rights triggered a response known as the Asian debate in the mid to late 1990’s. Eastern countries such as China called for international co-existence based on mutual respect and sovereignty. This claim was linked to the notion that international human rights were interpreted from a Western perspective without considering factors unique to Asian society. However, the foundation of international human rights is found in a universal declaration which was subject to both Eastern and Western contributions. The UDHR provides the basic minimum standards for human rights protections. The minimum standards meant to guide governments are found within

101 Ibid, pg 58 - 60
102 Ibid, pg 59
the UDHR and other subsequently adopted human rights treaties. Adhering to the standards of the UDHR limits the possibilities for inconsistent and contradictory approaches to human rights by domestic governments.

The potential for a national government to avoid responsibility of protecting basic human rights is limited to the economic status of a country. In other words, developing countries are not held to the same standard as developed countries because of the difference in the ability to provide for its citizens. According to the ICESCR,

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

Variance in national adoption would be limited to what is necessary and based in differences in culture and social and economic development because this adherence would still promote harmony between national and international norms. The problem arises when varied interpretation leads governments to disregard their human rights commitments identified in these ratified documents. Of particular importance to this examination are rights economic in nature and the ICESC. The economic development of a country provides an opportunity for variance between governments based on the countries economic ability to commit to international standards.

106 Peerenboom R. China Modernizes Threat to the West or Model for the Rest? Oxford: Oxford University Press (2007) discusses the need for international and national laws to be harmonized in principle. pg 85
Although the established minimum standards for human rights are found in the UDHR and the meaning of “human rights” is universal it is natural to have different interpretations around the world.\textsuperscript{107} The variance in interpretation among individual countries is necessary for human rights to be written into domestic legal form. However, there is a reluctance to accept that variety is essential and acceptable when the people inhabiting these countries are protesting their government’s documented interpretation. This issue raised awareness of human rights abuse in China and led to the emergence of privately organized groups seeking change in China.

An example of a privately organized group seeking change in China is the Democracy Party. The Democracy Party was established in 1989 and its program concerned human rights protections in China.\textsuperscript{108} The political principle of the Democracy Party (hereinafter DP) includes changes in land ownership rules, education, poverty and government accountability.\textsuperscript{109} Although freedom of press, assembly and speech and part of its policy the DP is also seeking changes to rights which relate economic, social and cultural human rights in China. The Democracy Party continues to seek ways to hold the Chinese government accountable for its hypocritical approach to human rights in China and abroad. For example, the Chinese government has participated in international initiatives to hold other governments responsible for human rights abuses, i.e. South Africa apartheid\textsuperscript{110} while human rights abuse and protest continued in China. While the Chinese government was in favor of an end to apartheid in South Africa near its end in 1994, that

\textsuperscript{109} Shaw, M. International Law 5\textsuperscript{th} ed, Cambridge: Cambridge University Press (2003) pg 193-5
\textsuperscript{110} Peerenboom, R. China Modernizes Threat to the West or Model for the Rest? Oxford: Oxford University Press (2007) pg 83
same year, activist Liu Jingsheng, a participant in the Democracy movement was
sentenced to 15 years imprisonment for free expression.\textsuperscript{111} China had again violated a
basic minimum freedom guaranteed in the Chinese Constitution\textsuperscript{112} and derived from the
basic minimum standards for international human rights.

According to the Chinese government China’s human rights record was not an indication
that the government was adverse to upholding international human rights in China.\textsuperscript{113}
However, there did seem to be some concern over the disagreement as to what the
enhancement of human rights in China actually meant. In the past the Chinese
government has declared itself to be open to suggestions in order to make changes to its
human rights record.\textsuperscript{114} Some academics suggest that, China has not denied the claims
that there is a need to make changes in compliance with its commitments nor has it
prevented every attempt to monitor its situation.\textsuperscript{115} The Chinese attitude towards
international law could be described as welcoming but subject to concerns based in
sovereignty.\textsuperscript{116} The government simply appears to be resistant to being forced to make
changes without open dialogue about human rights in an attempt to highlight discernable
differences. At a recent UN Human Rights Council session in Geneva, the 47 state

\textsuperscript{111} See Human Rights in China “Dissident Liu Jingsheng’s Release Imminent” Human Rights in China
website 22 November 2004 at \texttt{<http://hrichina.org>} and Pen American Centre website “Liu Jingsheng” at
\texttt{<www.pen.org>}
\textsuperscript{112} Article 35 of the Constitution of the People’s Republic of China 1982 states: “Citizens of the People's
Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of
demonstration.
\textsuperscript{113} In securing the privilege of hosting the 2008 Olympic Games the Chinese government pledged to make
changes to its human rights record, for example in promising freedom of expression for the media. See
“China is losing the human rights race.” July 13 2008 Human Rights Watch at
\textsuperscript{114} Peerenboom, R. China Modernizes: Threat to the West or Model for the Rest? Oxford University Press:
Oxford University Press (2007) pg 86
\textsuperscript{115} Ibid, pg 86
\textsuperscript{116} Quingjiang, K. China and the World Trade Organization: A Legal Perspective. New Jersey: World
Scientific Publishing, 2002, pg 45
Council examined China’s recent human rights record in accordance with its new system of periodic review.

Overall it has been noted that China has made progress in recent years. This was part of the discussion in Geneva where China was praised for its human rights progress, in particular for rights that are economic in nature. In fact, it was China’s economic expansion which was credited in part at the session for lifting millions of citizens out of poverty. Commendation was given at the Geneva session from United Nations Russian Representative Valery Loshcinin who noted the improvements and continued progress realized after liberalization of China’s markets and the reduction in poverty. Sri Lankan Representative Dinesh Bhattarai noted that the reduction in poverty is of particular significance because it denotes an improvement in the recognition of human dignity which is essential to human rights. Bhattacharai commented at the session, “We consider poverty and deprivation the biggest threat to human rights and human dignity.”

There has therefore been a growing recognition by UN representatives of China’s progress in the area of international human rights which has been directly linked with the expansion of international trade. A move toward linking human rights and international trade is supported by changes made in China since China’s application for WTO accession particularly in the area of economic development and rights linked to it such as poverty. It is difficult to disprove that the continued liberation of Chinese citizens is

118 Representative of the Russian Federation to the United Nations
119 Representative of Nepal to the United Nations
121 Ibid.
related to the increased liberalization of economic trade in China. As economic development increases there is an increasingly clear overlap in shared values and recognition of universally accepted norms. With time, membership in the WTO has influenced China’s attitude towards international behavior and a discernment of what is right and wrong. For instance, China’s attitude towards North Korea’s nuclear testing has changed over the years. China’s position on North Korea’s nuclear testing has shifted from supportive despite international opposition in 2006\textsuperscript{122} to clear condemnation after the 2009 nuclear testing. It will not be determined here what is right or wrong but it is important to make note of China’s shift in position\textsuperscript{123} and adoption of an international standard similar to that of other WTO members.\textsuperscript{124}

The nuclear test in North Korea led to a trade issue response. The response to the 2006 nuclear testing was a Security Council resolution imposing a trade embargo on imports and exports of missile related materials.\textsuperscript{125} The North Korean government responded by handing over nuclear testing information in a move to remove international concerns and the United Sates government promised to lift measures in place prohibiting trade with North Korea.\textsuperscript{126} The battle between North Korea and other members of the international community and China’s shift in position illustrate the potential to influence relationships between individual national governments when values are sourced in a set of minimum standards.

\textsuperscript{122} UN Resolution condemning North Korea’s nuclear testing and development, UN Resolution 1718/2006.  
\textsuperscript{124} These members were also WTO members and included United States, United Kingdom, China, Russia and France.  
\textsuperscript{125} See UN Resolution and BBC report “North Korea claims nuclear test” October 9, 2006 BBC News, at http://news.bbc.co.uk/2/hi/asia-pacific/6032525.stm  
\textsuperscript{126} See s 3 of the United States of America’s federal Trading with the Enemy Act 1917.
China’s approach to international affairs slightly shifted since its application to the WTO. Although China ratified many documents including the ICESC which was enacted to protect human rights\textsuperscript{127} it’s commitment to play an active role in enhancing human rights became more visible after its application to the WTO.\textsuperscript{128}

China’s international human rights contributions extend beyond domestic modifications to global initiatives such as the United Nations Human Rights Council and the Millennium Development Goals initiative (hereinafter MGD). The Human Rights Council was set up in 2006 replacing the Commission on Human Rights. Eligibility for election of members to the Council is based on a country’s human rights record and continued progress. China was an original signatory and member of the Council whose membership will end in 2009. The Human Rights Council has as part of its mandate the eradication of global challenges which are economic, social and cultural in nature and reaffirms values outlined in the UDHR.\textsuperscript{129} However, the Human Rights Council may be described as somewhat weak because of the lengthy process involved in the complaints procedure and the series of steps involved in remedying legitimate complaints. It is clear that in order for a resolution to be effective states need to welcome international agreements and make changes where necessary for compliance. Change requires international cooperation through partnerships, shared values and involvement in human rights discourses which are voluntary.

\textsuperscript{128} This includes China’s role in the move from the Human rights Commission to the Human Rights Council 
\textsuperscript{129} See the Resolution adopted by the General Assembly 60/251 Human Rights Council, 3 April 2006.
The changes in China’s economy and society overall have been the result of increased cooperation and the international mission to promote universal goals, such as protecting international human rights. Economic challenges such as poverty affect human rights which generally speak to the right to a life of dignity. The poverty in China has steadily declined in the years following WTO accession. Prior to joining the WTO from 1990 to 2001 China had ranked 26th in the United Nations human poverty index with nearly half of the population living on less than $2 per day.\textsuperscript{130} Since WTO membership there has been a rise in the number of projects sought to encourage development in China, reduce poverty and increase funding, for example in 2001-2005, a sum of $250 million US dollars was provided for its UNDP program.\textsuperscript{131} In addition, there has been a reduction in poverty from 85 million in 1990 to 26.1 million in 2004 which has had spillover effects evidenced in the drop in the death rate in children five years old and under, from 61 out of 1000 to 25 out of 1000 between 2001 and 2005.\textsuperscript{132} The rise in economic development has led to a decline in poverty in China.

\textsuperscript{130} Peerenboom, R. China Modernizes Threat to the West or Model for the Rest? Oxford: Oxford University Press (2007) pg 45
**POVERTY AND HUMAN DIGNITY**

According to article 25 of the UDHR, everyone has the right to an adequate standard of living specifically with respect to matters such as health, food, housing and social services. An adequate standard of living may be measured by individual or community quality of life through factors such as a better standard for healthcare, education and access to food. These factors are linked to a society’s level of poverty.\(^{133}\) The potential to enjoy quality of life depends on access to resources and is therefore compromised in conditions of poverty.\(^{134}\) The eradication of poverty is necessary for promoting human rights and therefore human dignity\(^{135}\) particularly where governments have the economic means to do so.

Access to the international market has led to a decline in poverty rates. However, a successful international trade system in developing countries which has resulted in a higher GDP rate is not necessarily indicative of a reduction in individual poverty but is subject to\(^{136}\) redistribution by the government. In fact, economic expansion has the potential to be disadvantageous for citizens particularly where expansion is uneven causing the poor to lose out in the command of resources.\(^{137}\) With the expansion of the international trade system there has been a distribution of wealth among countries. And in

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\(^{133}\) Raphael, D. *Poverty and Policy in Canada: Implications for Health and Quality of Life*. Toronto: Canadian Scholars Press (2007), pg 19

\(^{134}\) *Ibid.*, pg 19


the case of China international trade regulation has led to significant economic changes but more importantly an increase in human rights protections to be discussed below.
II. INTERNATIONAL TRADE REGULATION IN CHINA

This segment will highlight in a brief overview the international trading system in China after its accession to the WTO. In addition there will be an examination of the effects of China’s accession on human rights, particularly rights that are economic and social in nature such as poverty in China.\(^\text{138}\)

International trade affects human rights in the area of the economic, social and cultural rights more so than civil and political rights because international trade involves economic development through international cooperation which has the potential to directly affect the individual standard of living and human dignity. The legal obligation for governments to protect their citizens from deprivation of basic needs subject to poverty extends to China as it has ratified the ICESC in 2001. As economies develop so does the opportunity for individual access to resources and more sustainable economic and social development.\(^\text{139}\) It was with the creation of the GATT that a system of peaceful interaction was sought to enhance economic and social development through economic cooperation.\(^\text{140}\)

\(^{138}\) Civil and Political human rights will not be considered because the relationship between economic, social and cultural human rights appears to be a more suitable starting point for this examination – particularly given the constraints on the length of this paper.


With the exception of Czechoslovakia, all of the GATT signatories shared democratic and ‘like-minded’ values making human rights a moot issue at the time.\footnote{Ibid, at pg 17 describe the US’ failed attempt to have Czechoslovakia voted out as a signatory because of the Communist political values in its new government.} However, with the development and expansion of international trade in the World Trade Organization a need arose to make changes to meet a variety of economic and global challenges. As a result each new WTO agreement was a response to the need for updating the international trade system.\footnote{Two examples were the Kennedy Round in 1964 which dealt with anti-dumping and the Uruguay Round which led to the creation of the World Trade Organization.}

Each round illustrated that with the expansion of trade there was a need to make changes to the trading system to ensure that principles of the original agreement remained central to the functioning of the system. So what were these principles? The Preamble of the GATT 1947 states that the initial purpose behind the 23 signatories coming together was economic collaboration. The Preamble of the 1947 agreement clearly states that the purpose of economic cooperation is to ensure adequate living standards around the world while developing and expanding the international trading system. The need to make changes continues to be influenced by concerns raised by WTO members ironed out through negotiations and subsequent agreements. Issues not covered in these agreements which raise specific concerns from WTO members are dealt with in bilateral and multilateral negotiations and may be included in an applicant’s Accession Protocol.

China’s accession to the WTO was the result of many years of negotiation and resulted in a lengthy Protocol agreement.\footnote{Leonard, S. The Dragon Awakens: China’s Long March to Geneva. London: Cameron May (1999), pg 10} In addition to the shared concern among GATT
signatories of the effect that Chinese imports would have on domestic markets other concerns surrounded the application.\textsuperscript{144} For instance China’s initial application to become a GATT signatory was delayed due to negotiations complicated by the Chinese government’s response to protestors at Tiananmen Square a few years earlier.\textsuperscript{145}

Ironically enough it was the record of human rights abuses which played a positive role in the decision to allow China to join the WTO.\textsuperscript{146} WTO members were attempting to use international trade law to enhance human rights in China. It has been suggested by Sykes that there is a reasonable presumption that permitting China to become a member of the WTO would provide exposure to WTO governments and their citizens who enjoy high living standards.\textsuperscript{147} The hope was that with time Chinese citizens would be exposed to ideas and information which would lead to an awareness by individuals of their below average standards. This awareness would cause individuals to put pressure on their government to make changes to improve their standard of living.\textsuperscript{148}

China’s invitation to join the WTO was delayed because of human rights abuses and the attempt by other WTO members to negotiate limited access to benefits which would be extended to China upon accession. The concern over whether international human rights have been used as a tool by Western countries such as the United States for economic

\textsuperscript{144} Ibid, pp. 10-14
\textsuperscript{145} Ibid, Leonard at pg 14 uses the oppression of the protestors at Tiananmen Square in 1989 as an example of the complications which interfered with China’s accession to the WTO.
benefit was apparent during the negotiations. For instance, the US sought to use China’s human rights record as a means to avoid extending Most Favored Nation (MFN) status. But this strategy ended once China agreed to make economically beneficial changes for the US with its intellectual property rules.\textsuperscript{149} In spite of the motivation for the US’s objections during negotiations, the fact that the complaint of human rights abuse was part of the hesitation to accept China’s application illustrates that human rights concern was a legitimate concern for WTO members.

Negotiations and economic cooperation slowly began to affect the Chinese economy. And by the time of China’s accession to the WTO the country’s gross domestic product was largely attributed to international trade both in imports and exports between 50\% and 80\%.\textsuperscript{150} The liberalization of trade in China through accession to the WTO appeared to have tremendous economic value for China\textsuperscript{151} because it opened up the international market for trade and access to particular benefits such as MFN treatment.\textsuperscript{152} The benefits of international trade regulation extended to Chinese producers and arguably made Chinese workers one of the most “valuable natural resources”.\textsuperscript{153} Just a few years into its membership China had experienced the fastest economic growth among its trading partners.\textsuperscript{154} The accession of China affected the perspective of the other WTO members and received both positive and negative responses. On a positive note, there would be an end to the disorganization and arbitrary government interferences in private commercial

\begin{itemize}
\item Peerenboom, R. \emph{China Modernizes: Threat to the West or Model for the Rest?}. Oxford: Oxford University Press 2007, pp 86-89
\item Zhang, X. \emph{International Trade Regulation in China}. Oxford: Oxford: Hart Publishing 2006 pg 3
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\item See DG Pascal Lamy’s speech in Shanghai, 6\textsuperscript{th} September 2006. <http://www.wto.org/english/news>
\end{itemize}
negotiations.\textsuperscript{155} For instance, prior to joining the WTO, Chinese domestic businesses could not freely negotiate foreign agreements without a license or some exemption in law.\textsuperscript{156} Following accession, the government amended its trade rules to comply with its WTO commitments and the previous requirement for a license has changed to a registration system.\textsuperscript{157}

In addition, membership in the WTO meant that China would be subject to the same rules as its trading partners. This meant an increase of transparency in negotiations, trade rules and firm support in dispute settlement for effective multilateral trading. More importantly China’s membership meant exposure to the international community and non-economic global issues such as a universal interpretation and application of human rights.\textsuperscript{158}

Although it is true that China’s accession to the WTO was a decision based largely on the economic interests of China and other WTO members, the accession served an incidental purpose, namely to enhance human rights in China. The WTO has been and promises to be an effective mechanism in effecting change in China’s domestic trade law system\textsuperscript{159} and human rights as seen through a commitment to comply with its Accession commitments.

As part of China’s commitment to comply with the Working Party’s recommendations trade policy reviews were encouraged. These reviews were useful because they provided

\textsuperscript{156} Zhang, X. \textit{International Trade Regulation in China}, pg 23-24
\textsuperscript{157} \textit{Ibid}, pg 25
\textsuperscript{159} China has already made changes to its trading system to ensure it meets accession commitments. Generally see Zhang, X. \textit{International Trade Regulation in China}. Oxford: Hart Publishing (2006)
information on China’s progress, areas in need of change and discussions as to why problems may exist. A May 2008 review pointed out that although China has experienced a growth in its GDP rate in excess of 10% in the past four years and there has been a drop in the poverty rate - challenges still exist. These challenges include the distribution of resources, rising income inequality and domestic consumption.\textsuperscript{160}

Although China’s access to international trade has resulted in increased exports since its accession to the WTO this increase in wealth coupled with China’s high consumer saving rate has contributed to the country’s poor healthcare system.\textsuperscript{161} As international trade becomes more important in the Chinese domestic market, the effects of government spending will become more critical for the Chinese citizen. Government investment in infrastructure to assist in foreign trade diverts funds from individuals. Yet, the rise in foreign trade will result in rising market competition which will lead to increased market production and therefore a need for more investment in health and education.\textsuperscript{162} Whether the distribution of resources improves living standards or improves trading standards the decision is made by the government. This link between foreign trade and human rights is important in identifying a potential misuse of international trade and its link to a persistent disregard for economic human rights.

For instance, engaging in foreign trade has the potential to perpetuate poverty and further oppress the citizens of a country but the desire to eradicate poverty could encourage

\textsuperscript{160} See Trade Policy Review for China, PRESS TPRB/299 21 May 2008 (08-2341) <http://wto.org/eng>
\textsuperscript{161} Mavin, D. “Signs of Recovery in a ‘complicated’ China” (Hong Kong Financial Post) in National Post 4 February 2009 < http://www.nationalpost.com/story.html?id=1251978>
It is estimated that only 1% of Beijing’s spending plan is dedicated to redistribution for individuals.
\textsuperscript{162} Potter, P. B. “The Legal Implications of China’s accession to the WTO” 592 The China Quarterly 2001
trading rules. These rules could be used to liberate the country’s citizens if those in control of trade were encouraged to protect these rights.

It is at the core of these concerns where poverty in a country where GDP growth is the result of international trade raises questions. This is the very place where international trade law and human rights unquestionably meet. This places a responsibility on the parties to the trade negotiations who benefit to consider consequences and seek to prevent the potential dangers incidental to their agreements. It is submitted that WTO members have a responsibility toward the citizens of the trading members’ country to ensure basic human rights are protected particularly where trade has the ability to influence change.

Countries applying for accession to the WTO in recent years where human rights were not well protected have experienced some hesitation and complicated recommendations from the Working Party for accession. In addition to China, Cambodia is a good example of the power of the WTO to support human rights.

Cambodia’s accession to the WTO took nearly two decades\textsuperscript{163} and was the result of a dedication to alleviate poverty through economic growth. However, before Cambodia became the first least developed country to join the WTO\textsuperscript{164} issues concerning the judicial system and trade reform needed to be addressed in light of the country’s poverty. As a result a pilot program was established to assist least developed countries such as Cambodia. The aim of the program was to give least developed countries a chance for

\textsuperscript{163} Cambodia’s application for accession in 1994 was signed by the Cambodian government in 2003.

economic development\textsuperscript{165} which would in turn enhance individual human rights through international trade access. Joining the WTO provided an impetus for Cambodia to improve its international appearance and internal economic governance.\textsuperscript{166} The WTO assisted Cambodia by improving international trade governance and credibility for the country.

Since accession to the WTO, Cambodia has experienced a 10\% rise in economic growth and expansion in its garment industry responsible for 85\% of employment.\textsuperscript{167} The citizens of Cambodia experienced an immediate improvement in the standard of living as poverty levels declined 12\% over the years that the accession application was under negotiation.\textsuperscript{168} The very discussion of WTO membership has been meaningful for Cambodia’s economic growth prospects and the citizen’s ability to enjoy economic freedoms.

The assurance of economic, social and cultural rights have been challenging because these rights impose positive obligations\textsuperscript{169} on the government which varies according to a country’s economic situation. However, with the liberalization of international trade there is economic growth which ought to be used to provide resources including goods and publically accessible information. Access to resources suggests that a government is in a better position to ensure protection of economic and social human rights and redistribute

\textsuperscript{166} See generally Ibid.
\textsuperscript{167} https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html#Econ
\textsuperscript{168} See Cambodia Economic Watch April 2009 <http://www.worldbank.org/>
resources thereby providing citizens with access to a life with dignity, a central principle of universal human rights.\textsuperscript{170}

Poverty in China has become a subject of international concern and as a result was made an issue during its accession.\textsuperscript{171} Poverty denotes a wide range of issues which include access to healthcare, education and food which are identified under the Universal Declaration of Human Rights. These universal rights were extended in the International Convention for Economic, Social and Cultural rights which China ratified in 2001.

China’s accession meant the citizens of China and its trading partners alike should experience an overall rise in health and well-being.\textsuperscript{172} China’s citizens were expected to benefit from an increase in international trade between China and other WTO members. The accession to the WTO may also prove beneficial for service providers in China and small business through travel and tourism. Globally, the perception of China is changing as human rights are promoted, respected and supported through international cooperation in the WTO. The benefits which result from accession stand to have a positive effect on the Chinese government, the citizens of China and individual trading partners. The potential to multiply these benefits could be realized with additional support through the WTO if human rights were made part of its mandate.

\textsuperscript{170} See the Preamble of UDHR
\textsuperscript{171} Commitments of China Report of the Working Party on the Accession of China WT/MIN(01)/3
\textsuperscript{172} Rumbourough, T China: International trade law and WTO Accession: The IMF Project China’s and the WTO, pp 12-13
The protection of economic rights goes beyond the right to trade freely because it concerns economic protections to ensure individual human dignity. Living a dignified life includes the freedom to live in adequate and tolerable conditions free from degradation and poverty. The aspiration to eradicate poverty was evidenced by China’s participation in international initiatives and its commitment made during its accession which will continue in greater detail below.
III. CHINA’S ACCESION PROTOCOL AND HUMAN RIGHTS

This segment will briefly highlight some of the effects China’s human rights record has had on China’s application for accession to the WTO and the subsequent manifestation of these concerns expressed in China’s Accession Protocol.

China’s application for accession engendered years of negotiations which led to a very long and complicated series of commitments. Of these commitments the protection of human rights surfaced through the issue of poverty and equal treatment especially in special economic areas. Although the protection of human rights was not described as human rights protection within the Protocol, it was the concern for human rights protections and human dignity which led to recommendations which sought to enhance individual living standards. It is because the WTO is an economic institution human rights protection would best be sought through economic means through the WTO. In other words, human rights protection within the WTO would be more effective if the support sought would protect human rights which were economic in nature, i.e. taking steps to reduce the negative effects of issues such as poverty.

The Working Party’s protocol of Accession for China was divided into nineteen main categories of commitments.173 This examination will be concerned with only three of the nineteen, namely special economic areas, transparency and rights of judicial review within the trade regime. These commitments illustrate the importance of the changes China was willing to make in order to become a WTO member after years of negotiation.

A) SPECIAL ECONOMIC AREAS

The Working Party made note of special economic areas (hereinafter SEA) in the Republic of China’s Accession Protocol under section 7. The issue of SEA’s were of concern during negotiations because prior to accession the designation of particular areas meant the Chinese government could give special treatment to products imported into these areas and later distributed to other parts of China. These products were subject to special trade rules and restrictions which did not apply to products imported to areas outside of these SEA’s. In addition, before accession foreign trading rights were limited to state-owned enterprises and state manufacturing plants in these areas. This was a form of discriminatory treatment which the Chinese government committed itself to change according to the Accession Protocol.

Of particular significance to this examination is identifying a human rights and international trade overlap in the protocol commitments as this sheds light on the government’s effort to reduce poverty in these special areas. At paragraph 223 of the Accession Protocol a note was made of China’s commitment to pursue uniform trade throughout the country and the promise of adequate assistance for the impoverished citizens of these special areas consistent with WTO obligations. The commitment to reduce poverty was in response to the treatment preferential rules were having on citizens living in these SEAs.

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174 Leonard, S. The Dragon Awakens: China’s Long March to Geneva London: Cameron May (1999), pg 84
176 Domestic firms operating in special economic areas were subject to double the tariff operating rates than foreign firms. See the World Bank Office in Beijing’s Quarterly Update February 2007 pg 11 at,
periodically provide information and notifications to the WTO, participate in trade policy reviews, put an end to discriminatory preferential treatment to foreign enterprises in these special areas and act with transparency.

b) Transparency of China’s Trade System

Transparency in trade was a commitment made by China during accession negotiations in order to ensure WTO compliance. Although transparency is not a human rights concern per se it speaks to the nature of the Protocol and suggests a desire to promote trust and openness with the Chinese government. A lack of transparency in any system may impede full participation between governments and the citizens of the country. In fact lack of full participation is contrary to fundamental basic human rights where it prevents social progress and a respect for human rights according to the UDHR.  

In other words, the lack of transparency suggests a lack of citizen participation in governmental processes.

Since accession to the WTO, China has committed to make significant reforms in the area of transparency. Citizens stand to benefit from transparent systems because it builds confidence in the government and encourages public participation. A commitment by the government to submit draft regulations would mean the draft regulations would be

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177 See the Preamble of the UDHR
published and available on the intranet allowing 30 days for public response.\textsuperscript{179} This measure was meant to keep the public up to date with foreign trade issues and permit the citizens to affect economic decision making.

\textbf{c) Individual Right to Judicial Review within the Trade Regime}

International trade and investment disputes involving China may be resolved through arbitration under the China International Economic and Trade Arbitration Commission (CIETAC). This organization has to date a reputation of falling short of international standards of fairness and transparency. But CIETAC has issued a revised set of regulations, intended to improve a number of aspects of its practice.\textsuperscript{180}

The nature of China’s judicial system posed concern for its trading partners during negotiations when a full application was made in 1996 for accession to the WTO.\textsuperscript{181} In the past China’s judiciary has developed a reputation for being deficient due to corruption, its lack of institutional dependence and a failure to enforce judgments.\textsuperscript{182} However, access to China’s judiciary is important to international trade because it is a mechanism which domestic and foreign companies in China may use to seek resolution for private disputes. This is relevant to international trade because foreign companies need to have access to an institution which will enforce its rights.\textsuperscript{183}

\begin{flushleft}
\textsuperscript{180} “China’s regulations: China’s international arbitration procedures improved.”
\textsuperscript{182} Ibid., pp 97 -107
\end{flushleft}
In addition a fair and impartial judiciary is important for international trade because it may be involved in enforcing WTO decisions in disputes brought against China\textsuperscript{184} and rules among private industry participants in the country. A domestic judiciary is important for WTO participation because it provides another institution working within the member state which will be more efficient than setting up Panels and Appellate Bodies whenever there is a dispute. In addition, a domestic judiciary acts with sensitivity to that nation state’s particular social and cultural factors which may affect the outcome of the dispute.

Article X (3) b of the GATT provides for the establishment of a judiciary capable of handling the review and collection of customs in trade matters. This provision of the GATT clearly delineates the requirement for an impartial judicial system required for the functioning of the WTO as a supplement. In addition this article provides for the transparency of judicial decisions through promulgation and administrative fairness in the domestic decision making process in matters concerning international trade law.

The issues raised in China’s Protocol agreement are important in highlighting the changes that the government was willing to make to become WTO compliant. Negotiating for Accession to the WTO provides an opportunity for international concerns to be raised and taken seriously if the applicant was wanted to become a WTO member. It is the desire to join the international institution which was instrumental in influencing changes in by the Chinese government.

\textsuperscript{184} Ibid.
Whether the adopted changes were incidentally or directly meant to enhance human rights for the citizens residing in the member state the fact remains that changes continue to take place. The application for accession alone caused changes which were instrumental to promoting international human rights in China. Approaching human rights through economic issues such as poverty has demonstrated the potential for international human rights commitments to be taken more seriously.
This study set out to determine whether recognizing a sustainable relationship between international economic, social and cultural human rights and international trade law could serve as a tool to encourage national governments to take international human rights more seriously. The first step in answering this question required a relationship between international human rights and international trade law to be established.

Establishing a relationship between international human rights and international trade law was attempted in Part A of this paper. This task was undertaken by identifying 5 places where the two areas of law met, namely, through codification of primary international human rights and international trade law documents; examining both international human rights and international trade law; looking at the concept of globalization; and considering whether human rights protections were embedded in the general exceptions under GATT article XX and GATS article XIV. By the end of part A, a clear upward and converging pattern had been established and at the very tip of this illustration the potential to recognize a useful relationship became clear.

The next step in this study was to illustrate that a clear connection existed that would be useful in promoting international human rights. Given the potential challenges of enforcing non trade matters in an institution established to manage international trade, it became evident that an implementation of minimum standards for international human rights would be useful. Codifying minimum standards within the WTO would permit a unified, sustainable and potentially justiciable set of standards which could become enforceable through WTO mechanisms. Where a member derogates from the obligation

**C. CONCLUSION**

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to observe these standards, a dispute settlement option would become available. It has been demonstrated that there has been a shift in the WTO adjudication process whereby the opinions of non-governmental organizations have found an opening and are being considered by adjudicators.\textsuperscript{185} This incremental step signifies a significant move for human rights and other non legal policy considerations in an attempt to find support in the WTO for non-trade matters.

Part B of this paper used the Republic of China as a case study to solidify the proposal that acknowledging a relationship between international trade law and international human rights could affect the status of human rights in a country and elevate the treatment of that country’s citizens. The research undertaken in this paper suggests that the liberalization of trade may have positive and or negative effects on a country’s citizens. However, it has been illustrated that the mere discussion of trade liberalization and WTO accession has resulted in better treatment and steps to eradicate poverty in countries such as China and Cambodia. This supports the claim that the WTO is a suitable place to set in motion changes to the treatment of individuals, improve citizens’ standard of living and promote the recognition of human dignity.

The case study suggests that acknowledging a relationship between international human rights and international trade law could be an effective tool in the promotion of human rights. In particular the case study served as an example of how this relationship could be used to enhance human rights through enhancing human dignity. The case study of China was useful because in addition to serving as evidence of a relationship it brought to the

surface the potential level of influence the WTO possesses as an institution for matters not traditionally recognized as related to trade.

Finding support for international human rights through international trade law would lead to consistent standards among trading partners and consistent positive treatment of individuals. This consistency would likely discourage a race to the bottom and unnecessary competition. In addition, enhancing human rights may improve economies and instead of migrating to a more developed country for a better economic opportunity citizens could aspire for a better life in their home country and economically contribute.

Human rights protection within the WTO would be most acceptable and effective if the support sought would protect human rights which were economic in nature, i.e. taking steps to reduce the negative effects of poverty. However, once these rights are promoted in status and taken more seriously, the promotion of other rights which are social, cultural, civil and political would likely follow.

In sum, this study has illustrated that a relationship between international human rights and international trade law exists and that the latter has the means to promote the former by using a venue such the WTO.

This thesis in no way proposes to solve the world’s economic and human rights debate but it does propose to suggest a starting point. Examining the potential of the WTO to enhance international human rights, namely those rights declared in United Nations Declaration of Human Rights in 1948, may serve to provide an impetus for consistency in
the recognition of the basic fundamental freedoms and rights every human being is entitled to by virtue of being human. In other words, economic clout works because it is something that all people regardless of color, race or religion could understand. Economics and international trade are easily understood by anyone and human rights are in principle promised to everyone - so why not use the former to benefit those who lack the latter? International trade law continues to evolve and since the creation of the GATT 1947 has at no time diminished in power, influence or position. The current international trade law system has the ability to encourage national governments to recognize basic international human rights.
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