

CHINA-AUSTRALIA FREE TRADE AGREEMENT: NEW ICING ON AN OLD CAKE-AN OPPORTUNITY FOR FAIR TRADE?

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The on-going challenge in economic development and globalization, particularly for developing countries, is the issue of development and equality in society. The issue becomes particularly problematic when confronted in matters of international trade. Often misnamed anti-globalization activists and pro-globalization activists fail to take note of the underlying assumptions that lead them to conflict—namely, the actual costs and benefits to society that result from their particular positions. In essence, both activists are searching for ways to improve the lives of people in the domestic context and to minimize the damage to their society and environment. China’s impressive economic record is threatened to some extent by the increasing inequality in Chinese society and the enormous environmental costs of its economic growth. The Fair Trade movement seeks to address these larger and ultimately more important issues by changing the trade concerns from their narrow, traditional and highly questionable economic rationalist presuppositions to the broader societal implications of increased trade. This paper will address these broader issues, crucial for China’s stability, and offer a model for Fair Trade.

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1. INTRODUCTION

On 18 April 2005 Prime Minister John Howard of Australia and Premier Wen Jiabao of China agreed that Australia and China will attempt to negotiate a Free Trade Agreement (FTA). This agreement does not come out of nowhere, as some type of new idea created ex nihilo. Rather, it finds its context in a complex set of histories—the histories of China, Australia, other free trade agreements, and economics, as part of western intellectual history. Each of these histories inform the negotiators and should alert them to the nature of the problems such agreements face, both in the sense of the expectations of the problems that they hope to resolve through the agreement, the types of problems what agreement can cause, and the more general problems facing all the whole world for generations to come.

China's history of international trade with non-Asians is less than positive. As a result, China carries a tradition of scepticism toward trade with foreigners of Anglo-European origins. Officials of the Quing dynasty, agitating for further commercial law in China stated:

... [compared to Anglo-Europeans] Chinese regard investment as a difficult matter and dare not compete with foreign traders. Once disputes between Chinese traders and foreign traders arise, foreign consuls usually shield foreign traders. As a result, Chinese merchants either invest in foreign companies, or set up fake foreign companies and employ rascals to be protectors.¹

From the time of its contact with Europeans at least since the 1500's, its contact with foreigners has been rather negative.² As a result, it may be argued, that one of the achievements of the Communist Party of China has been to restore China's sense of national pride by asserting effectively its independence of the domination by western influence through tough free trade negotiation processes that provide significantly improved market

¹ See L M Li, *The Comparison of Chinese and Japanese Enterprise Systems* (1998) 74-5 quoted in Y Wei 'The historical development of the corporation and corporate law in China' (2002) 14 *Australian Journal of Corporate Law* 2, 10.

² The dictated unequal treaties on the Manchu Dynasty and the occupation of river ports work as examples.

access on a secure basis, including in the agricultural, industrial and services sectors, with in-built provision for growth in access. Its relatively recent opening of its borders to international commerce, including its accession to the World Trade Organisation (WTO) in 2001, marks a new phase in the history of the China's relationships with the rest of the world. It is no less a cultural statement than an economic one, and the impact of this transition will have yet to be revealed impacts on both the people and the economy of China.

Australia's history with international trade may well be the oldest tradition of such trade in the world. It is thought that trade between the Maccasans in the north with Torres Strait Islanders may be the earliest such trade on the planet. Its history of trade changed dramatically with the European invasion of the late eighteenth century which caused international trade to be re-focused on trade with England and its colonies. Despite its location in the southern hemisphere and being close to Asia, Australia has viewed itself as an important outpost of western society, economics and culture, and has struggled fiercely to assert its importance in the western hegemony, as demonstrated most recently in its support of the USA invasion of Iraq. As part of the western ideological world Australia has been involved in and indeed reliant on international trade since it's founding. Most recently, Australia has entered into an FTA with the USA.

Studies indicate that the China-Australia FTA will have strong positive effects on the economies of both parties. As Yinhua Mai, observes:

Australia and China have become important economic partners in the past ten years. Between 1993 and 2003, the share of China in Australia's total merchandise trade (imports plus exports) increased from 4 per cent to 10 per cent. Over the same period, the share of Australia in China's total merchandise trade increased from 1.5 per cent to nearly 2 per cent, making Australia the ninth largest

trading partner of China. Investment flows have also grown strongly between the two countries, albeit from a low level.³

The deepening in the economic partnership between Australia and China is due, in the main, to the complementarity in the dynamics of the two economies. The complementarity, which originates from the respective economic endowments and development paths of Australia and China, is revealed in the evolving patterns of bilateral trade and investment flows.⁴

In terms of complementarity of resources and goods the same author eloquently observes:

Rich in mineral and agricultural resources, Australia has become an increasingly important supplier of energy and material inputs, supporting China's rapid economic growth and industrialisation. This is illustrated by four examples. First, rapid industrialisation in China has resulted in (and continues to cause) rapid urbanisation, reducing the number of people relying on scarce land resource for their livelihood. This is increasing the proportion of the population relying on commercial food, thus increasing China's demand for imports of various agricultural products. Second, as China becomes the world's largest producer of iron and steel, its demand for Australian iron ore has jumped. Third, rapid economic growth has caused China to source increasing amounts of oil and gas from overseas, including Australia. This factor is shaping China's energy imports as well as its investment pattern in Australia. From the perspective of the Australian mineral and energy suppliers, China will continue to be a significant market. Fourth, China's demand for advanced farming and mining technology and management will shape bilateral investment in the near future.⁵

All the benefits of this modelling are on the one hand striking and on the other, obvious. China needs commercial food production, Australia can supply.⁶ China produces steel; Australia can supply ore and coal. China needs energy, Australia has gas reserves.

The FTA model of international trade, which is based on the same model as the WTO, has a number of benefits, but also a number of drawbacks, the seriousness of which is becoming increasingly obvious. The model these trade agreements work on is based on theories of international trade going back to the economists Adam Smith of the eighteenth century and David Ricardo of the nineteenth century. These early thinkers' models survive up to the

³ Yinhua Mai, et al, *Modelling The Potential Benefits of an Australia-China Free Trade Agreement: An Independent Report Prepared for: The Australia-China FTA Feasibility Study* (2005) 2-3 [Copy on file with authors].

⁴ Ibid 2.

⁵ Ibid 2-3.

⁶ Despite the "obviousness" there are serious questions as to whether Australia should be producing much of its agriculture in the first place, and how China ought to be securing its food supply. See ⁶ J Diamond, *Collapse, How Societies Choose to Fail or Survive* (2005) 413; Tim Flannery, 'Beautiful Lies: Population and Environment in Australia', (2003) *Quarterly Essay* No. 9, and for China, see Hong Yang and James Zhang, 'Can China feed itself vs. how should China feed itself' (1998) 5 *China Newsletter* 136, 2-7.

present with only minor modifications, most of which are increasing the subtlety of the model without any fundamental alterations. While plausible and indeed reasonable in the context in which the models were created, those models today are not only hopelessly outdated and discredited,⁷ but indeed harmful fictions based on assumptions proved wrong and conditions which no longer exist.

a) Trade Theory

Modern trade theory, explaining the motivations, directions and goods traded, is usually traced back to Adam Smith. Smith held that nations traded on the basis of “absolute advantage.”⁸ David Ricardo is credited with refining Smith’s theory with a theory known as “comparative advantage.”⁹ Further advances in trade theory were made by Heckscher-Ohlin who took factor proportions into consideration,¹⁰ by Samuelson and Jones whose Specific Factors model took into account the immobility of certain factors,¹¹ and more recently, as advocated by Krugman, The Standard Model, a much more sophisticated model which considers multiple factors including immobility, the “relationship between production possibility frontier and the relative supply curve, the relationship between relative prices and relative demand, determination of world equilibrium, and the effect of terms of trade.”¹² Current international trade indicates that a critical component of understanding trade is market access.¹³

⁷ See studies by Krugman and other works cited in Benedict Sheehy, ‘Un-Fair Trade as Friendly Fire: The USA-Australia Free Trade Agreement’ *Currents: International Trade Law Journal* (forthcoming 2005) [Copy on file with authors].

⁸ P Krugman & M Obstfeld, *International Economics: Theory and Policy* (6th ed, 2003) 20-24.

⁹ *On the Principles of Political Economy and Taxation* (1819)

¹⁰ B Ohlin, *Interregional and International Trade* (1933) modified and expanded by Heckscher

¹¹ Krugman, above n 8, 38-66.

¹² Ibid 94. For criticism, See D R Davis & D E Weinstein, ‘Market Access, Economic Geography and Comparative Advantage: An Empirical Assessment’, National Bureau of Economic Research, April 1998.

¹³ Ibid.

b) Free Trade

All of the foregoing trade theory is premised on a particular notion of free-trade. Free trade as advanced by the trade theorists just noted is the notion that the most beneficial outcomes for the populace will be realized when the supply of goods is permitted to flow freely to meet demand without government intervention via such devices as tariffs, quotas and other non-tariff barriers. Its advocates claim that it offers great promise. Joseph Stiglitz, former chief economist of the World Bank, outlining the arguments for free trade writes that: “opening up to international trade has helped many countries grow far more quickly than they would otherwise have done.... Because of globalization many people in the world now live longer than before and their standard of living is far better.”¹⁴

Accordingly, free trade view appears justified,¹⁵ at least in terms of traditional trade theory. Broader measures used by ecological economists indicate that much trade is in fact an economic negative.¹⁶ Nations, according to theory, should engage in free trade for their own advantage to increase their economies. In political practice, however, trade does not follow the theory.¹⁷

Krugman and Obstfeld, citing a study by economists Baldwin and Magee,¹⁸ observe: “it’s hard to make sense of actual trade policy, if you assume that governments are genuinely trying to

¹⁴ Joseph Stiglitz, *Globalization and its Discontents* (2002) 4.

¹⁵ Krugman above n 8, 21-23.

¹⁶ Herman E Daly, ‘The Perils of Free Trade. (Debate: Does Free Trade Harm the Environment?)’ (1993) 269 *Scientific American* 5, 50-55; Herman E Daly, John B Cobb & W Clifford, *For the Common Good: Redirecting the Economy Toward Community, The Environment, and a Sustainable* (1994).

¹⁷ Some trade theorists appear to ignore the fact that 2/3 of world trade occurs within multinational corporations, and as such is not susceptible to the national trading theories upon which they rely. G Bird & R Rajan, ‘Economics Globalization: How Far and How Much Further?’, Adelaide University: Centre for International Economics Studies, Discussion Paper 0117, 2001, 3.

¹⁸ R Baldwin & Christopher S Magee, ‘From NAFTA Approval to Fast-Track Defeat’ (2000) Washington, D.C.: Institute for International Economics. The work explains congressional voting on trade bills in the 1990’s.

maximize national welfare. On the other hand, actual trade policy does make sense if you assume that special interest groups can buy influence.”¹⁹ In fact, Krugman has concluded that international trade as it is currently structured is not based on economics at all, but on politics.²⁰ Essentially, then, trade is set up for and dominated by special interest groups—the large multi-national corporations, and financial interests,²¹ and for the political purposes of subjugation of other nations.²² At least, this subjugation effort has been the policy of the United States for more than 100 years.²³

Free trade advocates reject any view that does not support their radical individualism, libertarian views, that place private property ahead of all other values. Their view of society is instructive in this regard. Simply put, they believe there is no such thing as “society.” Rather, they claim that there are only individuals with individual preferences, and that matters of justice, equality, fairness, are irrelevant personal preferences. In this free trade or “market fundamentalist” view, people need only goods, or actually, money. Such being the case, there is no need for societal investment in environment, or education, or health care or anything else. If the government is removed, more money will be available and the world will be a better place. There is no discussion about distribution of the benefits, goods or costs.

In a nutshell, this narrow free trade view assumes the following:

- the world has unlimited natural resources,
- natural resources do not need management and care,
- human needs can be ignored because economic considerations are paramount
- trickle down economics works and so inequality does not need to be addressed
- people with wealth and people with power are the only people with legitimate concerns,

¹⁹ Krugman, above n 8, 233.

²⁰ P Krugman, ‘The Narrow and Broad Arguments for Free Trade’ (1996) 83 *The American Economic Review, Papers and Proceedings*, 362-366.

²¹ Stiglitz, above n 14 9-10, 15-20, 63 et passim.

²² Ibid.

²³ See discussion in Sheehy, ‘Un-Fair Trade as Friendly Fire’, above n 7.

In addition, these theories have an exalted view of the market. In particular, it assumes that markets are:

- the most efficient means of determining all aspects of demand including what is to be produced
- the best way to determine quantities of goods and services that should be produced
- the best way to determine inputs
- able to solve all questions of distribution of both goods and social costs, and
- that efficiency in transactions is the main concern.

The world in which some of these assumptions may have been valid has disappeared. The following conditions have changed and accordingly, the assumptions must change as well:

- the natural world has limited resources
- the natural world cannot sustain the current production methods or consumption²⁴
- human interest in a clean environment are superior to the economic interests of accumulating capital
- dramatically increased populations are not willing to accept a few wealthy continuing to increase their wealth and wait for wealth to trickle down

These populations are willing to cause considerable civil unrest in order to share in the wealth and to live in cleaner, safer environments, and work in decent conditions for reasonable wages.

c) Fair Trade

The alternative to Free Trade is Fair Trade. Fair trade advocates do not reject international trade. They acknowledge benefits that may be had from international trade but are concerned about the distribution of the benefits as well as the costs. What fair trade reject is “free trade.” As Stiglitz observes, Fair Trade advocates believe: “The free market ideology should be replaced with analysis based on economic science, with a more balanced view of the role of government drawn from an understanding of both the market and government failure.”²⁵

²⁴ Current consumption patterns cannot be shared around the globe, as to do so would require about four planets’ worth of resources.

²⁵ Ibid 250.

The issue of the distribution of the costs and benefits of trade and indeed business in general is what Fair Trade advocates are concerned about. This concern reveals a fundamental flaw in traditional neo-classical economic analysis. Generally, traditional neo-classical economists focus only on the value created by production and transactions as having a money value attached as measured in the market. As a result of not having a money value attached, neo-classical economists ignore the contribution of non-parties to transactions, such as the government, society, and the environment. The consequence of this structuring is that the benefits are counted and distributed to a very small group, and the costs, especially, the social costs or negative externalities are ignored and distributed widely.²⁶ This distribution of goods and bads, or costs and benefits is quite unfair.²⁷ These costs include environmental damage, work place injury and illness, worker exploitation, harms to family, and more broadly, harm to society.

Thus fair trade examines not only the minutiae of the tariffs and other barriers to trade, but examines also the distribution of the benefits and harms of trade. Fair trade asks why is capital protected but the environment is not? Fair Trade acknowledges the economic conclusion that trade does not follow rational pathways but more often reflects political interests and accordingly, demands that a broader, basis. That basis is concerned with decent jobs, the protection of the environment, and responsible corporate governance—companies taking responsibility for their products. To date, however, governments have largely ignored Fair Trade concerns and focused on negotiating Free Trade Agreements.

2) FREE TRADE AGREEMENTS

²⁶ See discussion in Benedict Sheehy, 'Corporations and Social Costs: The Wal-Mart Case Study' (2004) 24 *Journal of Law & Commerce* 1, 1-55.

²⁷ See generally, A. Keidel, *The Economic Basis for Social Unrest in China*. Carnegie Endowment for International Peace for the Third European-American Dialogue on China, The George Washington University, May 26-27, 2005.

Current Free Trade Agreements (FTA's), including the most recent one between Australia and the USA, have consistently failed to address the distribution realities identified above has the WTO.²⁸ These FTA's deal only with the rights of capital and goods. They have ignored the impact of production on the environment, the costs to workers needed to produce the goods, the realities of increasing disparity between incomes and resulting inequities between people in the countries signatory to the agreements.

In their defence, FTA advocates indicate that the WTO and other FTA regimes are not suited to deal with environmental matters or matters dealing with human rights. There are various responses which undermine such claims by examining their truth. First, FTA's have been instrumental in matters not dealing with trade, namely, the development of property rights, and in particular, intellectual property rights regimes in various countries.²⁹ The other reality is as the old saying goes: "trade is never just trade." In other words, FTA's have been blatantly used as foreign policy instruments.³⁰ In addition, environmental concerns have been included in some trade agreements, albeit with limited success, and certainly could be included in trade agreements. Finally, without some effort to address these realities, it is unlikely that any FTA will gain much popular support. Indeed, citizens in many countries

²⁸ The WTO's Trade Measures Pursuant to Multilateral Environmental Agreements WT/CTE/W/160/Rev.3 TN/TE/S/5/Rev.1 16 February 2005, is an interesting effort to publicize and consolidate the interaction, but it fails to indicate that in practice the economic demands of the international economic actors overrides the interests of the environment. See discussion in D Motaal. 'Multilateral Environmental Agreements (MEAs) and WTO Rules: Why the "Burden of Accommodation" Should Shift to MEAs' (2001) 35 *Journal of World Trade*, 1215–1233.

²⁹ Of course, some scholars do not see this as a "trade and..." matter, but instead as "trade in...". S Cho 'Linkage of Free Trade and Social Regulation: Moving beyond the Entropic Dilemma' (2005) 5 *Chicago Journal of International Law* 625, 637.

³⁰ One long standing UN tactic for enforcing compliance with international law imperatives has been the embargo regime, used to considerable effect by the USA, and most recently in effectively depriving Iraq of the means to create the Weapons of Mass Destruction.

have protested against this FTA model and the WTO, and they continue to cause civil unrest.³¹

China does not subscribe to the extreme free-trade policy of the United States.³² It recognizes the importance of other factors in making agreements with other countries³³ and has entered other agreements, successfully demonstrating the importance of good trade relationships for good political relationships³⁴ and strength in its ties.³⁵ It is important to note China's broader and explicit view of trade and trade agreements as having potential for achieving more than merely enriching a few.

At this point, we have reviewed briefly theories of international trade and how they have been marshalled for the purposes of trade policy. As well, we have seen that the economic rationality behind free trade is faulty as the governing assumptions are no longer valid. Finally, we have considered the more rational Fair Trade approach. We turn now to examine the other part of the puzzle, namely the challenges faced by the parties to the negotiation.

3) CHALLENGES FACING CHINA (& AUSTRALIA)

³¹ Consider, among many examples, P Ala'I, 'Global Trade Issues in the New Millennium: A Human Rights Critique of the WTO: Some Preliminary Observations' (2001) 33 *George Washington International Law Review* 537 and L Wallach & M Sforz, 'Whose Trade Organization? Corporate Globalization and the Erosion of Democracy' *Public Citizen*, 1999.

³² Sheehy, in Sheehy, 'Un-Fair Trade as Friendly Fire', above n 7.

³³ Jiangyu Wang, 'China's Regional Trade Agreements: The Law, Geopolitics, and Impact on the Multilateral Trading System' (2004) 8 *Singapore Yearbook of International Law* (2004) 119, 129.

³⁴ China's expansion of its sphere of influence in the Pacific region has been part of a long term strategy which to date, has not been aggressive. See, for discussion, Owen Harries, *Strategy and the Southwest Pacific* (1989), and more recently, J Henderson & B Reilly, 'Dragon in Paradise: China's Rising Star in Oceania', *The National Interest* (Summer 2003) 95.

³⁵ Wang, 'China's Regional Trade Agreements', above n 33.

Both China and Australia face challenges in terms of environment and to a lesser degree, inequality. China's economic growth is impressive by any standard. Its growth of nearly 10% per year for the last 25 years places it among the outstanding economic success stories of the world. This achievement is particularly significant because of the overall size of the economy and the number of people involved. This growth, however, has had both good and bad consequences.

In terms of good, the amount of capital in the country has obviously increased. Further, China has succeeded in bringing millions of people out of poverty. In terms of bad, this growth has come at high environmental costs, with China's environment showing high levels of degradation. It has become increasingly evident that the growth has not benefited all people. Indeed, the growth model has created increasing inequality among the people of China.³⁶ The promise of "trickle down" economics, where all people will benefit from economic growth, has proved untrue in China as it has elsewhere.³⁷ Indeed, this clash between the interests of average peasant farmer, and the boom of industrial activity with its negative environmental consequences lay behind the recent uprising of 20,000 peasants in Huaxi on April 10, 2005 which was successful against a force of 3,000 armed police.³⁸

The FTA between Australia and China raises a multitude of issues; however, this paper has a modest aim of addressing two of the issues: the environment and inequality. These two are part of a myriad of urgent issues prevalent in the current environment in which economic and trade concerns dominate to the virtual exclusion of other significant issues. The current

³⁶ James Zhang, 'The Increasing Income Inequality in China and its Causes', (1999) 35(2) *China Report*, 163-77.

³⁷ D Yang, 'What has caused regional inequality in China?' (2002) 13 *China Economic Review*, 331-334. More generally, see B Milanovic, *Worlds Apart: Measuring International and Global Inequality* (2005). On the defeat of trickle down economics, see Stiglitz, above n 14, 79-80.

³⁸ Edward Cody, 'For Chinese, Peasant Revolt Is Rare Victory', *Washington Post Foreign Service*, June 13, 2005.

economic climate is exploitative because it encourages reckless harm to the environment and is heedless to the lives of the majority of working people. It encourages the squandering of environmental resources and also encourages substandard working conditions and poor wages on workers in manufacturing factories in developing nations. Trade policies in this climate are specific implementations of this larger economic view. To mitigate these effects of these exploitative economic policies, there has been a call to utilize trade to address some of the issues; however, it has been oft said that trade policy is a blunt and uncertain tool for environmental management because it influences

a) Environment

China's environment is in poor condition. China's environment crisis dates back many decades to the 1950's and 1960's when central planners largely ignored the environment. Small wonder then that, as scholar P. Smith puts it: 'Years of reliance on large scale industries, commonplace in communist planned economies, have resulted in widespread water and air pollution.'³⁹ Indeed, the impact of China's economic development on the environment has been described as "China's environmental suicide."⁴⁰

In the early 1970's China joined the United Nations and became involved in international institutions, including participation in the historic United Nations Conference on the Human Environment held in Stockholm in 1972. It marked a new era of taking environmental issues seriously. However, notwithstanding the government's increasing awareness and recognition of environmental issues, environmental problems still continued to pose a serious threat. One

³⁹ Paul J. Smith, 'Free Trade And The Environment: Will Free Trade Save China's Environment?' (1994) 1 *Buffalo Journal of International Law* 27, 29.

⁴⁰ A Lorenz, 'China's Environmental Suicide: A Government Minister Speaks', 5 April 2005, *Der Spiegel*, translated by Patrick Kessler.

Chinese scholar has noted: “There could be a deadly threat to the survival of the Chinese nation if immediate action is not taken to halt pollution.”⁴¹

In 1979, the Chinese government implemented its first comprehensive environmental protection law which established basic environmental protection objectives, responsibilities and policies.⁴² The environment increasingly became a concern in the 1980’s.⁴³ China introduced environmental standards which are designed to “encourage the proper use of resources, to maintain the ecological balance, ensure the health of human beings and protect public property.”⁴⁴ Despite these initiatives, however, China’s environmental degradation is as breath-taking as its economic growth.

There is no doubt that China’s environment has suffered dramatically as a result of China’s meteoric economic growth.⁴⁵ The context under which the concept was advanced is both obvious and alarming. Put succinctly by journalist Jiang Yu and posted by the Professional Association for China’s Environment, the issue is:

Over the past 25 years, China has enjoyed an average annual growth rate of 8.7 per cent. With this rapid economic growth, materials and energy consumption per unit gross domestic product (GDP) in China has been far higher than that of developed nations.

He continues:

⁴¹ Quoting Zhou Guangzhou, president of the Chinese Academy of Sciences. See Colin Nickerson, ‘The Asian Nightmare, A Hotbed for Illegal Trade in Endangered Species’, *The Gazette* (Montreal), 21 March 1992, at L6, available in LEXIS, Nexis Library, Omni File.

⁴² See Lester Ross & Mitchell A Silk, ‘Post-Mao China and Environmental Protection: The Effects of Legal and Politic Economic Reform’ (1985) 4 *UCLA Pacific Basin Law Journal* 63, 67, 68 (discussing pre-1979 environmental policy).

⁴³ E Economy, *The River Runs Black: The Environmental Challenge to China’s Future* (2005).

⁴⁴ Roda Mushkat, ‘International Environmental Law in the Asia-Pacific Region: Recent Developments’ (1989-90) 20 *California Western International Law Journal* 21, 31 n51.

⁴⁵ It is estimated by Pan Yue, China’s Deputy Environment Minister that China faces a daunting 150 million “environmental refugees.” Lorenz, above n 40.

This not only detracts from the remarkable growth rate, but also places China at a competitive disadvantage with oil imports witnessing a sharp increase, water resources depleting, and mineral resources over-exploited. Despite the tremendous efforts put into environmental protection, the overall situation has not improved significantly and the recent controversy over the results of the Huaihe River clean-up are testimony to the worries on the part of both the general public and environmental professionals.⁴⁶

The environmental issues of concern extend to air pollution and life in China's cities. Various studies of the connection between economics and environment in China have been undertaken, and the recognition exists not only that a direct and dramatic connection between the two exist, but that in part because of the size and complexity of the matter a wide variety of approaches needs to be taken,⁴⁷ including special consideration of the ability of state owned enterprises to avoid strict compliance with environmental regulation.⁴⁸

b) Inequality⁴⁹

China, as a socialist state, had a policy of egalitarianism. This policy was possible because socialism has a different basis than the capitalist basis for the distribution of income, and could, therefore require limitations on income inequality. As Deng Xiaopong stated in 1984 "According to the socialist principle of distribution according to labour, there will not be a large gap between the rich and the poor."⁵⁰ This important objective conflicts to a certain extent with innate human desire to be distinctive and powerful. One means of demonstrating an individual's distinctiveness and power is through material acquisition, or in other words,

⁴⁶ Z Jianyu, 'Approaching circular economy' *China Daily* available at http://www.chinaenvironment.net/pace/articles/more.php?id=46_0_2_0

⁴⁷ See for example, the multi-disciplinary work M. McElroy, C Nielsen & P Lydon, eds, *Energizing China: Reconciling Environmental Protection and Economic Growth*, (1998).

⁴⁸ H Wang, N Mamingi, B Laplante, & S Dasgupta, 'Incomplete Enforcement of Pollution Regulation: Bargaining Power of Chinese Factories', Development Research Group, World Bank, i.

⁴⁹ On income inequality in Australia, see John Wicks, 'The Reality of Income Inequality in Australia' Social Policy Issues Paper 1, (30 May 2005), St Vincent de Paul Society available at http://www.vinnies.org.au/files/OLD.Microsoft_Word_-_SPIP1_doc.pdf. For a critique of this study see Peter Saunders, 'A Headlong Dash into the Chasm of Hyperbole' (8 June 2005) 59 Issue Analysis <http://www.cis.org.au/IssueAnalysis/ia59/IA59.pdf> For a rebuttal of Saunders, see 'CIS should take a BEX and have a good lie down' available at <http://cathnews.com/news/506/doc/9vinnies.pdf>.

⁵⁰ Deng Xiaopong, *Building Socialism with Chinese Characteristics*, (1984) 36.

inequality. Due to its need to reform its economy and other concerns, China explicitly abandoned its egalitarian policy in the early 1990's.⁵¹ For example, the CCP stated "it is necessary to break away from egalitarianism so as to implement the principle of more pay for more work and rationally widen the income gap."⁵² Although China has dramatically reduced the number of people living in poverty,⁵³ inequality in China has proceeded in step with its economic growth.⁵⁴ While urban managerial level workers in coastal areas have greatly improved their incomes, large numbers of rural workers and urban labourers have suffered a significantly lower income increases.⁵⁵ Income inequality in China has increased among the urban dwellers as a group as well as among the rural inhabitants of China in the period of 1985-2001.⁵⁶ In fact, the income inequality in China has reached a level comparable with the Philippines.⁵⁷

As previously noted, unjustifiable inequality can be a source of unrest. Trade increases through liberalization can be a factor in reducing inequality, and indeed, some argue that it has been in certain circumstances in China.⁵⁸ Of course, there are many other important factors that must be addressed to significantly reduce income inequalities including tax and

⁵¹ See M. Blecher, "Sounds of Silence and Distant Thunder: The Crisis of Economic and Political Administration," in *China in the Nineties: Crisis Management and Beyond*, D. Goodman and G. Segal eds., (1991), 35-63.

⁵² CCP "Decision of the CPC Central Committee on some Issues Concerning the Establishment of Socialist Market Economic Structure" *Beijing Review* 22-28 Nov, 1993, at 22, quoted in Leong Liew, "China's Engagement with Neo-liberalism: Path Dependency, Geography and Party Self-Reinvention", 41(2) *J. of Development Studies*, ((2005) 331, 343.

⁵³ The World Bank, *China 2020: Development Challenges in the New Century* (1997).

⁵⁴ D Davis, 'China's "Software Advantages": Winners and Losers in Contemporary China' in *China's Economy: Will the Bubble Burst?* 111 Asia Program Special Report, 9 June 2003, 17 available at <http://wwics.si.edu/topics/pubs/Chinese%20economy.pdf>.

⁵⁵ Ibid 18.

⁵⁶ X Wu & J Perloff, 'China's Income Distribution and Inequality', January 2004. No 316, *Econometric Society* (2004) North American Summer Meetings. Available at <http://repec.org/esNASM04/up.30985.1075445708.pdf>. A study focusing on rural income matters indicates that the inequality has been significant particularly in the period since 1995. D Benjamin & L Brandt & J Giles, 'The Evolution of Income Inequality in Rural China', 23 December 2003 available at <http://www.chass.utoronto.ca/~brandt/BBG1.pdf#search='china%20INEQUALITY'>.

⁵⁷ D Yang, 'What has caused regional inequality in China?', (2002) 13 *China Economic Review* 331-334

⁵⁸ S Wei & Y Wu, 'Globalization and Inequality: Intra-China Evidence' (2003) in a research study funded by the International Monetary Fund available at <http://www.wdi.umich.edu/files/old/events/vietnam/papers/wei.pdf#search='china%20IN'>.

transfer and various other social programs such as education and health care⁵⁹; however, it appears that trade may well have a role in and of itself. That being the case, in reducing inequality, it is important to consider

The ultimate potential costs of failing to address these two costs could be dramatic. At present, Chinese government officials estimate the costs of pollution to be between 8%-15% of its GDP.⁶⁰ In addition, it is estimated that China will have about 150 million “environmental refugees”—people who must be relocated because of environmental problems where they are currently residing.⁶¹ China is well aware of the potential negative impact of environmental degradation as a growing and important cause of civil unrest in China.⁶² Indeed, environmental degradation is among the most significant causes of the collapse of civilizations around the world.⁶³ While China has made efforts to address these issues, it is becoming increasingly apparent that there will need to effective ties between economic growth, including trade, and environmental concerns, including pollution abatement if the country is to remain viable.

Having summarized two of the problems facing both countries, and China in particular, and recognizing the role economic development and trade can play in the environment and inequality, we turn now to see how the Fair Trade model discussed above may provide some guidance as to how a trade agreement between the two countries could serve to benefit the broader long term goals of both countries and their citizens.

⁵⁹ X Zhang & R Kanbur, ‘Spatial Inequality In Education And Health Care In China’, Working Paper Department of Applied Economics and Management Cornell University, WP 2003-35 October 2003 available at <http://aem.cornell.edu/research/researchpdf/wp0335.pdf#search=‘china%20INEQUALITY’>.

⁶⁰ Pan Yue, interview in Lorenz, above n 40, 1.

⁶¹ Ibid 2.

⁶² Ibid 2. See also, A Keidel, ‘The Economic Basis for Social Unrest in China. Carnegie Endowment for International Peace for The Third European-American Dialogue On China’, George Washington University, 26-27 May 2005, 3 [copy on file with authors].

⁶³ J Diamond, *Collapse, How Societies Choose to Fail or Survive* (2005) 11.

4) INNOVATIVE(?) SOLUTIONS

In this paper, we suggest a way to promote the benefits of trade, while protecting the environment to the benefit of all parties (limiting the potentially wide distribution of costs), and ensuring a broader distribution of the benefits. We would suggest doing so through tying the benefits of the proposed trade agreement to internationally recognized standards which limit costs with a particular, non-discriminatory, practical and low cost recommendation as set out below.⁶⁴ Doing so, would make the trade agreement not merely another FTA with the potential to oppress the people while benefiting the wealthy, but it would make the trade agreement the world's first Fair Trade Agreement (FairTA)—an agreement that makes significant practical steps to ensure the benefits are distributed widely and the costs contained, winning the support of the populace, and enhancing the legitimacy of the trade agreement, addressing major concerns of environment and equality and enhancing the value of the leadership of the countries.

There have been numerous calls for and cries against linking trade to environment, and social concerns some for good reasons, others for not so good reasons,⁶⁵ however, the issue continues to be brought up because of the rapid growth in the number of FTA's and the increased harm being done to the environment. In addition, the strong connections between trade and environment are well known.⁶⁶ Further the claims that government attempts to

⁶⁴ The Australian government has identified “burdensome technical regulations and standards and conformity” as a non-tariff barrier to trade with China. Document available at http://www.dfat.gov.au/geo/china/fta/facts/non-tariff_measures.html.

⁶⁵ See summary in S Cho, ‘Linkage of Free Trade and Social Regulation: Moving beyond the Entropic Dilemma’ (2005) 5 *Chicago Journal of International Law* 625, 630-632; J Yoon, ‘The World Trade Organization: Environmental Policy?’ (2001) 9 *Cardozo Journal of International & Comparative Law* 201.

⁶⁶ S Charnovitz, ‘Trade and the Environment: The Environment vs. Trade Rules: Defogging the Debate’ (1992) 23 *Environmental Law* (1992) 475. For a concise, balanced discussion of the arguments, see S Tay, ‘Southeast

impose environmental restrictions tied to trade impair the efficiency gains of trade are not substantiated in economics.⁶⁷ Government involvement in regulating environment has not impaired the trading efficiency of industry.

A further concern stems from the belief is that where industry is required to comply with stricter pollution control regulation its production costs will be higher so prejudicing its ability to compete with similar industries in the less regulated countries. Studies indicate that this belief is not necessarily true—trade between countries at different levels of development do not cause unfair advantages as the countries despite different environmental regulations.⁶⁸

It should be an on-going concern that both FTA's and the WTO have faced trenchant criticisms for their failure to address the concerns of the vast majority of average people whose interests have been ignored in favour of the economic interests of corporations and the political whims of their leaders.⁶⁹ Rejecting these larger interests and ignoring their voices has undermined, at least to a certain extent, the legitimacy of the FTA's and the WTO. Ultimately, ignoring these legitimate concerns undermines the legitimacy of the leadership of the country.

In China's favour on these matters, it has rejected some of the West's significantly problematic assumptions.⁷⁰ China has rejected the West's view of trade as strictly a one-sided economic benefit tool. Further, it has and must reject the West's view of the economic

Asian Fires: The Challenge for International Environmental Law and Sustainable Development' (1999) 11 *Georgetown International Environmental Law Review* 241, 264-266.

⁶⁷ S Gaines, 'Rethinking Environmental Protection, Competitiveness, and International Trade' (1997) *University of Chicago Legal Forum*, 231

⁶⁸ R Hudec, The Melvin C. Steen Lecture, 'Differences in National Environmental Standards: The Level-Playing-Field Dimension' (1996) 5 *Minnesota Journal of Trade*, 1.

⁶⁹ A significant part of anti-globalization movement is based on this concern. A Artner, 'Anti-globalization movements: the developments in Asia' (2004) 10 *Contemporary Politics*, 243.

⁷⁰ See the interesting discussion in L Liew, 'China's Engagement with Neo-liberalism: Path Dependency, Geography and Party Self-Reinvention' (2005) 41 *The Journal of Development Studies* 331.

development and the economy. As Pan Yue, Deputy Minister, State Environmental Protection Administration observed:

China can no longer afford to follow the West's resources-hungry model of development and it should encourage its citizens to avoid adopting the developed world's consumer habits ... It's important to make Chinese people not blatantly imitate Western consumer habits so as not to repeat the mistakes by the industrial development of the west over the past 300 years.⁷¹

This rejection of unsustainable Western lifestyles is in the process being embraced by China through its "Circular Economy" model and its decision to set a "moderately prosperous" level of living as its goal—described as a "xiaokang society."⁷² It is of note that China has not been unsuccessful in making some links between economics and trade.⁷³

a) Addressing Environmental Problems

There are three main approaches to dealing with the environment. The government can address it through sovereign authority, the individual polluters can address the issue voluntarily,⁷⁴ or citizens can have the right to do so.⁷⁵ Traditionally, the government has controlled pollution through laws, both in granting individuals rights through tort nuisance actions, and through purpose specific legislation such as the various pieces of environmental legislation. This approach is often referred to as command-and-control (C&C). This approach has fallen out of favour among regulators as it often fails to effectively diminish pollution for a number of reasons. First and foremost, C&C requires extensive monitoring and enforcement

⁷¹ BBC and New York Times 2004.

⁷² Zhang Jianyu, 'Approaching Circular Economy', (China Daily), available at http://chinaenvironment.net/pace/articles/more.php?id=46_0_2_0.

⁷³ H Wang, et. al, 'Incomplete Enforcement of Pollution Regulation: Bargaining Power of Chinese Factories' Development Research Group, World Bank, i.]

⁷⁴ Through, for example, the EU's Eco-Management and Audit Scheme, the UK's BS7750.

⁷⁵ For the success of this model, see comment of Katherine M Bailey, "Citizen Participation in Environmental Enforcement in Mexico and the United States: A Comparative Study" (2004) 12 *Georgetown International Environmental Law Review*.323.

mechanisms. These activities are costly and particularly so when there are many parties involved in the potentially polluting activity, such as is the case with manufacturing. As well, these pieces of C&C legislation are viewed as intrusive on the business and as a result, they are viewed as standards to avoid or to be complied with only as minimally or technically as possible. Further, as controls designed by parties not involved in the generating activity and hence in the creation of the pollution, the C&C legislation is at times rather blunt. It fails to capture the appropriate activities, harms other incentives to improve environmental control and innovation, and may harm the production activity. Finally, as C&C requires considerable oversight, there is the permanent problem of regulatory capture—i.e. where the polluter and regulator become so involved over time that the polluter is able to change the regulator's view of the situation and weaken the rules.⁷⁶

An alternative, more promising approach is referred to as an incentive based management scheme, or market based incentives. Robert C. Anderson, summarizes the thinking in such schemes:

According to economic theory and modelling exercises, incentive-based instruments such as pollution charges and tradable permits are more cost-effective than traditional forms of regulation. Incentive-based approaches also can address small sources of pollution such as households that are not easily controlled with traditional forms of regulation, as well as provide a reason for polluters to improve performance relative to existing regulatory requirements. Finally, incentive-based forms of regulation can provide a stimulus for technological change and innovation in pollution control.⁷⁷

In other words, well developed incentive based schemes particularly in pollution control should be more effective in dealing with some of the types of pollution China, its

⁷⁶ Some of these problems are discussed in the interesting paper R Hartman, M Huq & D Wheeler, 'Why Paper Mills Clean Up: Determinants of Pollution Abatement in Four Asian Countries', World Bank Policy Research Working Paper #1710 (January 1997)

⁷⁷ Robert C Anderson, 'Incentive-Based Policies for Environmental Management in Developing Countries', Issue Brief 02 – 07, (August 2002) 2 at <http://www.rff.org/Documents/RFF-IB-02-07.pdf>

manufacturers and its people face. The effectiveness of these schemes vary, at the moment, depending on whether the polluter is a state owned enterprise or a private enterprise.⁷⁸

There is a multitude of such schemes and a variety of approaches, suited to the specific industry and situation in question. China has developed its own incentive based schemes with some level of success; however, despite their strengths, there are on-going problems with these schemes, including some of those effecting the C&C approach. Still, the incentive based management scheme are beneficial in that they are not viewed as intrusive, but instead as granting leeway to the polluter to design and manage pollution control programs and systems. Further they are viewed favourably because to the extent possible, they permit the polluter to have the maximum level of self-governance and control.⁷⁹ This element of choice and volition is valuable in itself, as no party is pleased to be at the command of another.

There are instruments available to an Australia-China FTA that could solve some of the traditional enforcement problems, and indeed that may be more suitable in an FTA than in such other trade contexts as the WTO.⁸⁰ One such instrument is the International Standards Organization new standard, the ISO 14000 standard.⁸¹ That standard is unique among environmental regulatory instruments in that it is developed by the producers and individual countries themselves, but does so in accord with internationally accepted criteria. Essentially, the criteria requires the producer to take responsibility for the environmental consequences of

⁷⁸ Wang et al, 'Incomplete Enforcement of Pollution Regulation', above n 48.

⁷⁹ See for example, discussion in R Kerry Turner, Jane Powell & Amelia Craighill, 'Green Taxes, Waste Management And Political Economy', Centre for Social and Economic Research on the Global Environment, University of East Anglia and University College London, (1996) available at http://www.uea.ac.uk/env/cserge/pub/wp/wm/wm_1996_03.pdf.

⁸⁰ P C Murray, 'The International Environmental Management Standard, ISO 14000: A Non-Tariff Barrier or A Step to an Emerging Global Environmental Policy?' Symposium: Managing International Environmental Risk: The Role of Private Parties in Resolving Public Problems', (1997) 18 *University of Pennsylvania Journal of International Economic Law* 577.

⁸¹ See International Standards Organization ISO 14000. Various publications and general introduction available on its website <http://www.iso.org/iso/en/prods-services/otherpubs/iso14000/index.html>.

its products and production from inception to disposal. By not being an internationally imposed standard, it does not create the backlash that standards viewed as foreign or imposed burden. Further, by being locally developed and monitored, it is sensitive to the particular culture and context in which it is being developed. Finally, by being producer based and locally monitored, it offers the highest precision in addressing the problems and the greatest opportunity for effective pollution abatement measures being created, implemented and maintained.

By putting such a standard into an FTA, it need not become, as feared by some, a non-tariff barrier to trade. If it were implemented on a voluntary basis, in other words, taking up the benefit of the incentive based environmental regulatory instrument, it would be most effective. The mechanism by which it could be done in an FTA would be to provide a either a graded or two stream tariff reduction scheme in place. In order to qualify for the fast track declining tariff grades or the tariff free stream, producers would have to demonstrate ISO 14000 compliance. The incentive for would-be traders to obtain ISO 14000 certification is that it would permit them to apply for and receive preferential treatment under the proposed FTA. Those producers demonstrating ISO 14000 compliance could be granted access to the faster reducing tariff rate grade, or the zero tariff stream, available immediately to those producers complying with the ISO 14000.

The particular benefit of including such a mechanism in an FTA is that it allows private parties to challenge other private parties, namely, their competitors, whose actions are being monitored in any event, to ensure strict compliance to the standards the parties have elected to adopt. Such a design permits the traditional expensive, governmental regulators to step back

and permit the regulation to be passed on to those most interested in seeing the regulation enforced—those competitors most negatively effected by trade.

A further remedy could be included to ensure that the standards are being set meaningfully and not corrupted by granting challenge rights to international competitors. Challenge rights would be granted to producers in one country to challenge the ISO 14000 certification of a competitor in the other country. As it would be in the challenger's interest to prevent favourable tariff rates to its foreign competitor, it would create an incentive to monitor carefully those producers carefully. By building in significant cost consequences for failed challenges, frivolous challenges could be avoided. In the proposed FTA, Chinese and Australian producers could be given the right to challenge their foreign competitors' application for preferential treatment based on ISO 14000 compliance. By implementing a significant costs penalty for bringing challenges in bad faith, it should be possible to avoid the actualization of the threat of the ISO standard being used as a non-tariff barrier to trade.⁸²

It would not be much of a leap for Chinese manufacturers as China already has a Total Emission Control (TEC) policy which may be suited to an ISO 14000 type continual improvement model, as TEC requires continually decreasing amount of discharges.⁸³ Australia, as a developed country has sufficient resources to assist and advise its manufacturers and suppliers in achieving that standard. In addition, given the costs of compliance with ISO standards, there is no reason why application cannot be limited to

⁸² The concern of the ISO 14000 standard as a non-tariff barrier is considered in greater detail in P C Murray, 'The International Environmental Management Standard, ISO 14000: A Non-Tariff Barrier or a Step to an Emerging Global Environmental Policy?' Symposium: Managing International Environmental Risk: The Role of Private Parties in Resolving Public Problems' (1997) *University of Pennsylvania Journal of International Economic Law* 577.

⁸³ Zhang Jianyu, 'Approaching Circular Economy', above n 68.

manufacturers in certain highly polluting industries such as automotive parts and production, steel production, and chemical production.

Finally, there is no reason why the China-Australia FTA could not include a special adjudicatory body to adjudicate ISO 14000 disputes, much as has been done elsewhere. The prime example of such a body is the NAFTA dispute resolution body, which despite its less than acclaimed ability to effectively protect the environment, has at least considered and exercised jurisdiction over environmental matters covered by the Environmental Side Agreement to NAFTA.⁸⁴ This recommendation of including the ISO 14000 standard is, of course, but one way of including environmental concerns in the FTA.⁸⁵

b) Addressing Inequality

Neo-liberals and neo-classical economists assume that trade liberalization will in and of itself lead to improvements in working conditions within any given economy. These proponents of globalization argue that liberalization has positive effects around the world, namely equalized trade, expanded economic opportunities, and prosperity. However, sceptics point out that despite the international community's goal of an all-inclusive and mutually beneficial economy, the opposite effect has often resulted. Thus, in recent years, the international community has increasingly focused on one of globalization's negative consequences—economic inequality. The reality is that globalization has created new avenues for

⁸⁴ For early discussion of the model see J. Garvey, 'Trade Law and Quality Of Life—Dispute Resolution under The NAFTA Side Accords on Labour and the Environment' (1995) 89 *American Journal of International Law* 439. S Le Priol-Vrejan, 'The Nafta Environmental Side Agreement And The Power To Investigate Violations Of Environmental Laws' (1994) 23 *Hofstra Law Review* 483.

⁸⁵ Others could include, permitting those technologies which enhance or improve the environmental quality of its processes immediately, without tariffs. The acquisition of such technology would begin to improve the environment immediately. As well, such a move would enhance the environment and improve the transfer of technology to China. Australia has considerable expertise with respect to energy products that Australia supplies, such as coal and gas and competes successfully worldwide in cleaner energy technologies. In the current trade agreement with Australia, China could make such environmental technology transfer a priority.

opportunistic behaviour with many multinational corporations seeking cheaper labour costs and higher profits by establishing outlets in developing nations where labour and working condition regulations can be circumvented, the so-called “race to the bottom.”⁸⁶

Certainly, inequality is a permanent feature of human society, and indeed, although possibly linked to poor overall economic growth,⁸⁷ maybe a desirable feature as it can inspire innovation, hard work, and facilitate respect and order in society. There are two international bodies which potentially contribute international standards which would be informative in this context. One is the ISO’s a new Corporate Social Responsibility standard, ISO 26000.⁸⁸ Although still a work in progress, it is well along in the process and should be available in due course.

Second, the International Labour Organization (ILO) has developed standards for labour, which standards have been adopted by the UN and acceded to by both China and Australia. The ILO is a specialized agency that seeks to “contribute to the establishment of universal and lasting peace through the promotion of social justice.”⁸⁹ It seeks to establish international social standards through the creation of international labour conventions and recommendations. With the help of governments, employers and workers, the ILO seeks to raise basic living and working standards throughout the world.⁹⁰

⁸⁶ Alexis M Taylor, ‘The UN and the Global Compact’ (2001) 17 *New York Law School Journal of Human Rights* 975, 976.

⁸⁷ See discussion in C Cramer, ‘Inequality, Development and Economic Correctness’ available at <http://mercury.soas.ac.uk/economics/workpap/adobe/wp105.pdf>.

⁸⁸ ISO Advisory Group on Social Responsibility, ‘Working Report on Social Responsibility’ for submission to the ISO Technical Management Board, 30 April 2004 available at [http://www.iso.org/iso/en/info/Conferences/SRConference/pdf/Working%20Report%20on%20SR\(Apr30\).pdf](http://www.iso.org/iso/en/info/Conferences/SRConference/pdf/Working%20Report%20on%20SR(Apr30).pdf).

⁸⁹ Edmund Jan Osmanczyk, *The Encyclopedia of the United Nations and International Relations* (Taylor and Francis eds., 1990) 409.

⁹⁰ *Ibid* 410.

The benefits of a linkage of trade and working conditions at a bilateral level was first manifested by the agreement concluded in 2001 between the US and Jordan. In this agreement, labour considerations were expressly included in the body of the main trade agreement as an integral component. Three years later, the US-Australia Free Trade Agreement encapsulated virtually identical language and the philosophy that there would be endeavours to improve standards ‘consistent with high quality and high productivity workplaces.’⁹¹

The mechanism for implementing these standards could be the same as the one proposed for implementing the ISO 14000 standard. Essentially, a two stream, graded, or tiered set of tariff reductions based on certification of compliance with the standards. Where certification is obtained, the certified party is entitled to the lower tariff level. As well, there could be the challenge rights and costs system to ensure appropriate levels of compliance and minimal fraud.

c) Practicalities of Implementation

Given that producers in many countries including China and Australia are not ISO 14000 compliant yet, that the ISO’s CSR standards are yet to be developed and implemented and further, that there is some distance to go before China is in a position to bring its producers into line with its ILO-UN commitments, a phasing in regime would be both reasonable and necessary. It could be that over a 10 year period producers wishing to benefit from the reduced tariff regime of the FTA would need to meet those standards. Failure to meet those standards would subject such producers to the current barriers they face. Such a solution

⁹¹ For the text see [http:// www.ustr.gov/new/fta/Australia/text/text18.pdf](http://www.ustr.gov/new/fta/Australia/text/text18.pdf).

would not prejudice them as they are today, and would be a significant incentive to dramatically improving the methods of production, the quality of the environment, the quality of job and lives of the potentially millions of people involved in the production of goods and services that are traded on the international markets. There is certainly no shortage of creative solutions to such problems as is evident in the number and variety of solutions found in agreements around the globe.

5) CONCLUSION

The premises of a global economy—interdependence and transparency—are proving instrumental in altering the natural tension between states' traditional aristocracy over domestic economic policy and adherence to international norms. Globalization has expanded the interaction between international and domestic law. Particularly in rapidly developing and marketizing economies, international norms have played an unprecedented role in guiding the remodelling of legal systems. International trade law is now involved far more directly in matters that were formerly considered domestic through an agenda of internalization of international norms and externalization of certain aspects of domestic policy. Indeed, this aspect of globalization is creating unprecedented opportunities to develop creative ways to solve some the problems facing the international community.

The inclusion of these standards into a FTA would be a monumental step forward for the citizens of China, Australia and indeed the world. This trade agreement would not merely be another agreement improving capital movement between the wealthy corporations of two nations, adding further harm to their peoples and the environment. Rather, it would become an international standard for making international trade's great potential a reality for the 1.3

billion people effected by it, a model for trade agreements in the future, and a step toward remedying the environmental threat that faces the world.