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# OF CHINESE WALLS, BATTERING RAMS, AND BUILDING PERMITS: FIVE LESSONS ABOUT INTERNATIONAL ECONOMIC LAW FROM SINO-U.S. TRADE AND INVESTMENT RELATIONS

JACQUES DELISLE\*

In one of his more accurate predictions, Karl Marx wrote that international trade would batter down Chinese walls — that a dynamic global capitalism would bring China and other economically less-developed nations firmly into its orbit, on its own terms.<sup>1</sup> Although broadly prescient, Marx's assessment — and a good number of non-Marxist analyses — failed to foresee the protracted and uneven path of international economic integration, and the significant role that international economic law would play in the process.<sup>2</sup> International economic law's prominent

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<sup>1</sup> The idea runs through much of Marx's writings on colonialism and the territorial expansion of capitalism. The pithiest statement for present purposes is the following:

The bourgeoisie, by the rapid improvement of all instruments of production, by the immensely facilitated means of communication, draws all, even the most barbarian, nations into civili[z]ation. The cheap prices of its commodities are the heavy artillery with which it batters down all Chinese walls, with which it forces the barbarians' intensely obstinate hatred of foreigners to capitulate. It compels all nations, on pain of extinction, to adopt the bourgeois mode of production . . . .

Karl Marx & Friedrich Engels, *Manifesto of the Communist Party*, in THE MARX-ENGELS READER 469, 477 (Robert C. Tucker ed., 2d ed. 1978).

<sup>2</sup> In Marx's case, the failure to appreciate these phenomena took the specific forms of assumptions that the integration of non-Western areas into a global economic system, ultimately of a capitalist form, would occur without reversal and with only a passive role for the developing areas, and of a conspicuous lack of significant discussion, even of a critical sort, of law as a part of the colonial impact. See, e.g., Karl Marx, *The German Ideology: Part I*, in THE MARX-ENGELS READER, *supra* note 1, at 146, 185-86; Karl Marx, *The Future Results of British Rule in India*, in The Marx-Engels Reader, *supra* note 1, at 659, 659-64; see also ANTHONY BREWER, MARXIST THEORIES OF

place in international relations, in transnational business ties, and in domestic law and politics can no longer be gainsaid. Yet, its diversity and dynamism — and its fragility — warn us that we have only begun the task of examining that which lies within the field's sprawling and unstable boundaries.

This journal provides a welcome and promising forum for exploring those issues — a role that the journal had already begun to undertake admirably during its previous incarnation.<sup>3</sup> This

IMPERIALISM: A CRITICAL SURVEY (1980) (describing the debate among later Marxists over whether integration of the less developed world into a worldwide capitalist economy had an ultimately progressive — as Marx generally thought — or a destructive dependency-creating impact on “backward” areas).

Non-Marxist perspectives of a broadly liberal persuasion often evince a belief in a similarly certain and irreversible path (albeit to a very different, and certainly not reliably socialist, destination). See, e.g., Francis Fukuyama, *The End of History?*, NAT'L INTEREST, Summer 1989, at 3 (arguing that post-Cold War global triumph of liberal democratic values marked the end of world historical development); cf. ROBERT PACKENHAM, LIBERAL AMERICA AND THE THIRD WORLD 123-30 (1973) (describing the U.S. conviction in the 1950s and 1960s that U.S. aid and influence would foster economic development, social stability and democratic politics in recipient nations). More subtle analyses under the banners of “neo-institutionalism” or “neo-liberalism” — and even “neo-realism” — in the international relations literature are much closer to the mark, but they still pay strikingly little attention to law — and particularly international economic law — as a significant and distinctive category. See generally ROBERT O. KEOHANE, AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY (1984); NEO-REALISM AND ITS CRITICS (Robert O. Keohane ed., 1986); NEOREALISM AND NEOLIBERALISM: THE CONTEMPORARY DEBATE (David A. Baldwin ed., 1993); see also Stephan Haggard & Beth A. Simmons, *Theories of International Regimes*, in 41 INT'L ORG. 491, 491-92 (1987) (contrasting the perspective of political science international relations theory, even of the neo-institutional type, with the traditional perspectives of international law). But see Anne-Marie Slaughter, *Interdisciplinary Approaches to International Economic Law: Liberal International Relations Theory and International Economic Law*, 10 AM. U.J. INT'L L. & POL'Y 717, 724 (1995) (finding close connections between focus of regime theorists in international relations and questions of international law, especially international economic law).

<sup>3</sup> See, e.g., Philip M. Nichols, *Extension of Standing in World Trade Organization Disputes to Nongovernmental Parties*, 17 U. PA. J. INT'L ECON. L. 295 (1996). Among the many earlier articles that are in the same vein and spirit, a few of those that most closely reflect the themes discussed in this essay include: Mark A. Behrens & Daniel H. Raddock, *Japan's New Product Liability Law: The Citadel of Strict Liability Falls, but Access to Recovery is Limited by Formidable Barriers*, 16 U. PA. J. INT'L BUS. L. 669 (1995); Harold Dichter, *Legal Implications of an Asia-Pacific Economic Grouping*, 16 U. PA. J. INT'L BUS. L. 99 (1995); Charles W. Mooney, Jr. & Atsushi Kinami, *Transfer, Pledge, Clearance and Settlement in the Japanese and United States Government Securities Markets*, 12 U. PA. J. INT'L BUS. L. 517 (1991); Barbara Campbell Potter,

essay offers some thoughts on the contours of an ascendant international economic law and the quandaries posed by its on-going transformation. The contemporary encounter between the People's Republic of China ("China" or "P.R.C.") and the United States — between a country that until recently was the most insular of the great powers, boasting one of the world's largest, fastest-growing and most rapidly opening economies, on the one hand, and the nation with the world's largest economy and the largest shares of international trade and investment, on the other — provides some of the most dramatic instances, and constitutes some of the most important pieces, of more general patterns. The Sino-U.S. case thus teaches, and illustrates, five lessons about the importance, scope, and character of contemporary international economic law.

The first lesson is the most obvious: the potential domain of international economic law has become, in the closing decades of this century, both unprecedentedly vast and extraordinarily central to international relations. The range and scale of activities that international economic law, including individual nations' foreign economic laws, might govern has burgeoned in recent years and will continue to do so. As business across borders has boomed, the economic component in international affairs has expanded sharply, largely at the expense of ideological and security concerns. Those who ignore the potential demand for, and the prospective domain of, international economic law thus risk missing a great, and ever greater, portion of what matters.

Perhaps nowhere has this happened more clearly than in the relationship between the P.R.C. and the United States. China's trading relationship with the United States has grown from near-zero levels before 1979 to \$40 billion or more in the mid-1990s. Overall, imports and exports have soared to comprise, by some estimates, well over one-third of China's rapidly growing gross

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*China's Equity Joint Venture Law: A Standing Invitation to the West for Foreign Investment?*, 14 U. PA. J. INT'L BUS. L. 1 (1993); Richard A. Westin, *International Equity and Third World Mining*, 13 U. PA. J. INT'L BUS. L. 181 (1992). As these titles suggest, the "international" law covered by the journal had already come to include, as it had for several of the other leading international law journals, those aspects of "comparative law" — that is, foreign "domestic" or "municipal" law — that are relevant to individuals, firms and governments outside the nation issuing those laws. Also, the term "business" clearly had been extended to include much that lay beyond any narrow construction of the term that took in only private, commercial law.

national product during the last few years. The U.S. share in this trade is substantial, with the United States accounting for around one-fifth of China's foreign trade and, according to some official statements, up to two-fifths of the global market for China's exports.<sup>4</sup> On the U.S. side, the new China trade accounts for a much smaller portion of U.S. imports and exports. Nonetheless, Chinese products have captured a major share in some significant U.S. markets (notably toys and apparel), while the Chinese market is becoming vital to export growth for several key U.S. industries. In addition, a persistent Chinese trade surplus has been a significant contributor to the U.S.'s overall trade deficit.<sup>5</sup>

Developments in U.S. investment in China tell a similar tale. Starting from a baseline of virtually no foreign investment in the late 1970s, China was attracting eighty to 100 billion dollars annually in contracted investment and \$25 billion or more per year in actual investment by the middle 1990s. China has thus become one of the world's top recipients of foreign direct investment, rivaling and in some years surpassing the United States. The United States ranks as one of China's top five sources for this growing investment — higher if the special cases of Hong

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<sup>4</sup> Disparities between U.S. and P.R.C. figures, questions of the appropriate conversion rate between *renminbi* and dollars, disagreements about how to classify trade via Hong Kong, and persisting shortcomings in China's system for collecting statistics make precise and accurate measurements of several of the relationships referred to here nearly impossible. The data relied upon here has been culled from *Foreign Ministry Interview on U.S. Trade*, GATT, BRITISH BROADCASTING CORP., Summary of World Broadcasts [hereinafter BBC-SWB], Mar. 16, 1995, available in LEXIS, Asiapc Library, China File; CENTRAL INTELLIGENCE AGENCY, DIRECTORATE OF INTELLIGENCE, *China's Economy in 1994 and 1995: Overheating Pressures Recede, Tough Choices Remain* 23 (December 1995); *Statistical Bureau Communiqué on China's Economic Development in 1994*, BBC-SWB, Mar. 7, 1995, available in LEXIS, Asiapc Library, China File [hereinafter *Statistical Bureau Communiqué*]; Simon Holberton, *Beijing Protests over U.S. Claims of \$30 Billion Trade Deficit*, FIN. TIMES, Oct. 9, 1995, at 3 (quoting Assistant U.S. Trade Representative Lee Sands on U.S. share of China's exports); *1995 Foreign Trade Up 18 Percent*, XINHUA NEWS AGENCY, Jan. 21, 1996, available in LEXIS, Asiapc Library, China File.

<sup>5</sup> See, e.g., Nai-Ruenn Chen, *U.S.-China Commercial Relations: A Decade After Normalization*, in CHINA'S ECONOMIC DILEMMAS IN THE 1990S 895, 898-905 (U.S. Cong., Jt. Econ. Comm. ed., 1991); Patrick E. Tyler, *Awe-Struck U.S. Executives Survey the China Market*, N.Y. TIMES, Sept. 2, 1994, at D1 (discussing possible roles for U.S. firms in meeting China's vast demand for power plants and other infrastructure projects).

Kong and Macao are excluded.<sup>6</sup> Once largely confined to four special economic zones on China's southeastern coast, the areas in which U.S. and other foreign investment is encouraged grew to include major coastal cities in the middle 1980s and, later, the country as a whole, including economically-backward areas.<sup>7</sup>

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<sup>6</sup> Data on these issues are reported in *Foreign Investment in China on the Rise*, XINHUA NEWS AGENCY, July 28, 1995, available in LEXIS, Asiapc Library, China File; *Statistical Bureau Communiqué*, supra note 4; *China Attracted \$34 Billion in Investment in 1994*, REUTERS, Jan. 26, 1995, available in LEXIS, Asiapc Library, China File; Nicholas R. Lardy, *The Role of Foreign Trade and Investment in China's Economic Transformation*, 144 CHINA Q. 1065, 1065-67 (1995); *Changes Reported in Foreign Investment Structure*, BBC-SWB, May 10, 1995, available in LEXIS, Asiapc Library, China File; YOICHI FUNABASHI ET AL., AN EMERGING CHINA IN A WORLD OF INTERDEPENDENCE 37 (1994).

<sup>7</sup> This course of development is reflected in the sequence and subject matter of several key reform-era laws. See, e.g., Zhonghua Renmin Gongheguo Guangdongsheng Jingji Tequ Tiaoli [Regulations of the P.R.C. on the Special Economic Zones in Guangdong Province] (1980 regulations providing for special, favorable regime for foreign investment in the three SEZs located in Guangdong province); Dalian Jingji Jishu Kaifaju Shewai Jingji Hetong Guanli Banfa [Measures of the Dalian Economic and Technological Open Development Zone for the Administration of Economic Contracts with Foreigners] (1984 regulations governing foreign investment and trade relations for one of the coastal cities then declared "open" to greater foreign investment and authorized to establish special, favorable legal regimes for foreign investment); Tianjin Jingji Jishu Kaifaju Guanli Tiaoli [Regulations for the Administration of the Tianjin Economic and Technological Open Development Zone] (similar but more general 1985 regulations for another of the open coastal cities); Zhonghua Renmin Gongheguo Shewai Jingji Hetong Fa [Foreign Economic Contract Law of the P.R.C.] [hereinafter Foreign Economic Contract Law] (1985 framework statute for foreign economic contracts, including some investment contracts, throughout China); see also China Laws for Foreign Business — Business Regulation (CCH Australia) and China Laws for Foreign Business — Special Zones & Cities (CCH Australia) (translating these and most of the other Chinese laws and regulations cited in this essay); Rowena Tsang, *Beijing to Lure Investors Inland*, S. CHINA MORNING POST, Mar. 21, 1995, at 4 (describing 1994 Provisional Regulations on Directing the Orientation of Foreign Investment as "aimed specifically at encouraging foreign manufacturers to invest" in remote parts of central and western China). While a general national law on Sino-foreign equity joint-ventures dates to 1979, such ventures outside the SEZs were modest compared to the boom in SEZ-based foreign investment, and the law itself was quite sparse until it was supplemented with extensive regulations in 1984. See HARRY HARDING, CHINA'S SECOND REVOLUTION: REFORM AFTER MAO 159-70 (1987) (describing expansion of areas in which foreign investment welcome and of areas with special legal regimes designed to attract foreign investment). The pattern of investment appears to have responded to some degree to the regulatory changes. See *China: Foreign Fund Use Will Hit \$150 Billion*, CHINA DAILY, July 25, 1995, at 1 (stating that Guangdong and Fujian, the coastal provinces home to the initial SEZs,

Once concentrated in tourism and natural resource exploitation and confined to a handful of projects in several other sectors, foreign-invested enterprises were welcomed, or at least tolerated, in almost every major industry and a significant range of services by the middle 1990s.<sup>8</sup> Chinese investments have begun to flow abroad, including to the United States, with total foreign investment by P.R.C. entities now surpassing \$5 billion.<sup>9</sup>

At the same time, the political and strategic concerns that so dominated the U.S.-China relationship, and international relations more generally, have to a significant degree ceded the field to economic affairs. The United States and China had regarded one another, in the 1950s and 1960s, as parts of an intractable and monolithic enemy block to be confronted aggressively in politics and shunned completely in commerce, and, in the 1970s, as another point of a strategic triangle with whom limited security cooperation was desirable and very limited economic entanglements were tolerable. The focus and tone of the relationship changed dramatically with the advent of Post-Mao economic reforms in China and the end of the Cold War internationally. A brief catalogue of the major U.S.-China news stories of recent years reflects the shift. Territorial disputes involving Taiwan and the Spratly Islands and concerns with Chinese exports of military technology point to continuing and volatile strategic tensions, and human rights issues have become an important political factor. Nonetheless, economic and commercial issues now dominate, including: concerns about the bilateral trade imbalance; questions of China's continued enjoyment of Most-Favored Nation ("MFN") status and the prospects for its entry into the General Agreement

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accounted for nearly 70% of foreign-invested projects in 1985 but less than 30% in 1994).

<sup>8</sup> See generally MARGARET M. PEARSON, JOINT VENTURES IN THE PEOPLE'S REPUBLIC OF CHINA 116-20 (1991); Pitman B. Potter, *Foreign Investment Law in the People's Republic of China: Dilemmas of State Control*, 141 CHINA Q. 155, 162, 166-67 (1995); Preston M. Torbert, *New Foreign Investment Regulations Clarify China's Priorities; Existing and Approved Investments Should Not Be Affected*, E. ASIAN EXECUTIVE REP., July 15, 1995, at 7; *Foreign Investment: Construction Industry to Open Wider to Foreign Investment*, BBC-SWB, Nov. 20, 1995, available in LEXIS, Asiapc Library, China File.

<sup>9</sup> See *China's Businesses Investing More Abroad*, XINHUA NEWS AGENCY, Aug. 18, 1995, available in LEXIS, Asiapc Library, China File; *China Increases Overseas Investment*, XINHUA GENERAL OVERSEAS NEWS SERVICE, Apr. 26, 1990, available in LEXIS, Asiapc Library, China File.

on Tariffs and Trade ("GATT") and the World Trade Organization ("WTO"); threats of trade sanctions in retaliation for China's failure to do more to protect U.S.-owned intellectual property; and visits by highly-visible Chinese delegations to the United States and U.S. missions to China to secure Chinese purchases of U.S. products.<sup>10</sup>

These changes in Sino-U.S. ties are but one striking case of a worldwide shift toward openness in what had been more closed and *dirigiste* systems common in the developing world and in socialist states from Southeast Asia to the heart of Europe. The heavy artillery of international economic integration has indeed battered down Chinese walls. The battering rams, however, have been wielded by both sides, have included sophisticated investment devices as well as conventional trade, and have accompanied a decline, both relative and absolute, in the political commitment to maintaining the walls. Not least, their work has opened up a vast space for the construction of an international economic law suited to a new era of openness and integration.

The second lesson suggests a partial answer to a question left unresolved by the first lesson: international economic law has developed dramatically to occupy much of its expanded potential domain, and to provide a framework for a staggering volume and bewildering array of cross-border business arrangements. To be sure, cause and effect are difficult to disentangle. As international trade and investment have grown rapidly through the kinds of decentralized, autonomous decisions by individual enterprises and investors that were, until recently, subject to extensive state planning, discretionary administrative controls, or simple exclusion in much of the world, there have been few conceivable responses other than a turn to law to facilitate such dealings. On the other hand, this proliferation and diversification of economic activity depended on some substantial prior construction of a suitable legal infrastructure. Whatever the sequence of development, the resulting pattern is clear: a richer and more expansive realm of international economic law, including individual

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<sup>10</sup> For overviews of these issues, see Jonathan D. Pollack, *The United States and Asia in 1995: The Case of the Missing President*, 36 *ASIAN SURV.* 1, 3-7 (1996); John B. Starr, *China in 1995: Mounting Problems, Waning Capacity*, 36 *ASIAN SURV.* 13, 22-23 (1996); Richard P. Cronin, *The United States and Asia in 1994*, 35 *ASIAN SURV.* 111, 112-15 (1995); see also discussion *infra* notes 29, 34, and accompanying text.



countries' foreign economic laws, that structures expanded transnational economic activity.

Again, U.S. investment in, and trade with, the P.R.C. provide some striking examples. Some of the major private ventures of the early reform era in China seemed no less dependent on elite political leaders' preferences and interests than were the fates of major domestic state enterprises and the broader economic sectors that they dominated.<sup>11</sup> Additionally, a substantial portion of foreign funds initially flowed through huge projects of a public character, whether government-to-government or multilateral.<sup>12</sup> The spectacular expansion of U.S. and other foreign investment in recent years, by contrast, has made use of a variety of increasingly sophisticated and varied vehicles offered by a rapidly growing legal structure for private investment from abroad. Even a partial catalogue of major legislation gives some flavor of the pace and direction of change: a law on Sino-foreign equity joint-ventures in 1979, a general law on Sino-foreign economic contracts (including trade contracts) in 1985, a law on wholly foreign-owned

<sup>11</sup> See, e.g., JIM MANN, *BEIJING JEEP: THE SHORT, UNHAPPY ROMANCE OF AMERICAN BUSINESS IN CHINA* (1989); Pearson, *supra* note 8, at 74, 137-38. For an account of the mechanisms for, and exercise of, control over production enterprises by government organs and the Communist Party, and of the interventions of political elites in the "pre-reform" system, see generally JANOS KORNAI, *THE SOCIALIST SYSTEM: THE POLITICAL ECONOMY OF COMMUNISM* (1992); Richard M. Pfeffer, *The Institution of Contracts in the Chinese People's Republic; Part I*, 14 *CHINA Q.* 153 (1963); ALEXANDER ECKSTEIN, *CHINA'S ECONOMIC REVOLUTION* 31-65, 120-58 (1977) (discussing impact of politics and elite policy choices on economic sectors); KENNETH LIEBERTHAL & MICHEL OKSENBERG, *POLICY MAKING IN CHINA: LEADERS, STRUCTURES AND PROCESSES* 58-62 (1988) (discussing the impact of elite factionalism on energy sector).

<sup>12</sup> Compare A. DOAK BARNETT, *CHINA'S ECONOMY IN GLOBAL PERSPECTIVE* 237 (1981) (discussing major flow of World Bank funds that would follow China's entry into the organization) and William Feeney, *Chinese Policy in Multilateral Financial Institutions, in CHINA AND THE WORLD: CHINESE FOREIGN POLICY IN THE POST-MAO ERA* 266, 270-82 (Samuel S. Kim ed., 1984) (describing World Bank, International Development Association and United Nations Development projects for infrastructure and technology development in China in early 1980's) with Audrey R. Topping, *Ecological Roulette: Damming the Yangtze*, *FOREIGN AFF.*, Sept.-Oct. 1995, at 132, 144-45 (describing the controversy surrounding, and the reluctance of foreign public and multilateral lenders to become involved with, the most significant public works project of the current period).

enterprises in 1986, and a foreign trade law in 1994.<sup>13</sup> More recent developments in the laws governing corporations and securities have provided legal means for foreigners to engage in greater "passive" or "portfolio" investment in domestic Chinese enterprises.<sup>14</sup>

The U.S.-China case, especially with respect to trade relations, also provides some dramatic instances of pressures for growth in more conventionally "international" economic law as well. Throughout much of the Post-Mao era, China has been seeking to join the GATT. The extension of membership to China, and China's movement toward conformity with international norms and rules that its accession would require,<sup>15</sup> would bring a sudden and dramatic increase in the reach of the international legal order embodied in GATT. Moreover, the recent expansion of the principal global trade regime to encompass new economic sectors and to provide major new institutional infrastructure under the WTO has made the question of Chinese membership all the more significant. The sharpness of the controversy — fueled by U.S. objections to China's non-conforming practices, U.S. concerns about the consequences of extending developing country concessions to such a major trading country, and China's reactions to the U.S.'s positions<sup>16</sup> — is eloquent testimony to the

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<sup>13</sup> See Zhonghua Renmin Gongheguo Zhongwai Hezi Jingying Qiye Fa [Law of the P.R.C. on Chinese-Foreign Joint Ventures] [hereinafter Equity Joint Venture Law]; Foreign Economic Contract Law, *supra* note 7; Zhonghua Renmin Gongheguo Waizi Qiye Fa [Law of the P.R.C. Concerning (Wholly) Foreign-Owned Enterprises]; Zhonghua Renmin Gongheguo Duiwai Maoyi Fa [Foreign Trade Law of the P.R.C.].

<sup>14</sup> For analyses of some of the most significant legal and regulatory changes in this area, see Preston M. Torbert, *China's New Company Law: Foreign Investment Issues*, E. ASIAN EXECUTIVE REP., Aug. 15, 1994, at 7; Yang Zhang, *MOFTEC Regulations Create New Investment Vehicle: Advantages of Foreign Invested Companies Limited by Shares, Consequences of Conversions for FIEs*, E. ASIAN EXECUTIVE REP., Apr. 15, 1995, at 9.

<sup>15</sup> For an overview of these issues, see Donald C. Clarke, *GATT Membership for China?*, 17 U. PUGET SOUND L. REV. 517 (1994).

<sup>16</sup> See James V. Feinerman, *A New World Order, World Trade Organization*, CHINA BUS. REV., Mar. 1995, at 16 (overview of WTO elements relevant to China trade); Anne Phelan, *China: Uncertain Prospects for WTO*, E. ASIAN EXECUTIVE REP., Dec. 15, 1995, at 4 (discussing changes U.S. demands from China as prerequisite to U.S. support for China's entry into WTO); *Li Accuses U.S. on WTO, Warns May Favor Other Traders*, REUTERS, Apr. 12, 1996, available in LEXIS, Asiapc Library, China File (quoting Chinese Premier Li Peng as stating, "The United States demands that China fulfill the conditions

perceived importance of matters affecting the scope and content of this major component of contemporary international economic law.

The third lesson concerns not the scope and scale of international economic law, but the complexity and ambivalence of its content: contemporary international economic law — especially that portion comprised of nations' foreign economic laws — is as much regulatory as it is facilitative. This field of law can be, and is, a tool for controlling and placing conditions on international trade and foreign investment as well as a means of encouraging such activity. To the extent that the term "international business law" evokes only the latter function, it may well be a blow for accuracy to abandon that term in favor of "international economic law," with its likely connotations of a broader field that includes public law and regulation.

Here too, developments in the legal structures for business dealings between China and the United States fit, and help to define, a broader pattern. On one hand, removing impediments and providing an infrastructure of rules conducive to market-regarding and contract-governed economic relationships has been a primary imperative in China's reforms. In a trend echoed throughout the developing and post-socialist world, most of China's recent foreign economic legislation contains, by design, much that U.S. and other foreign businesses find relatively familiar and fairly comfortable. Some key laws provide that Chinese enterprises, including state-owned ones, are "legal persons" with capacity to make their own contracts and management decisions, and that their civil liabilities should be satisfied with property that they own or that is properly entrusted to

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for developed nations. We cannot accept this . . ."); Seth Faison, *U.S. and China Sign Accord to End Piracy of Software, Music Recordings and Film*, N.Y. TIMES, Feb. 27, 1995, at A1 (discussing possible link between intellectual property protection accord and removal of U.S. opposition to China's WTO membership); *China Says WTO Entry Demands Unfair, Unacceptable*, Reuters, Mar. 2, 1996, available in LEXIS, Asiapc Library, China File (quoting Chinese Foreign Ministry spokesman statement that "exorbitant demands" exceeding "the level of development of China" made by "some major parties to the WTO" constituted "the main obstacle" to China's membership, noting that official Chinese press reports accused the U.S. of a strategy of "containment" against China, and listing greater access to Chinese markets and China's admission as a developed — and not a developing — nation as among terms U.S. demanded as condition for accepting China's bid to join the WTO).

them. Other laws assure that Chinese enterprises' autonomy in making a considerable range of business decisions is protected from arbitrary government interference. Still other laws promise access to courts, and permit international arbitration, to address disputes about performance or validity of international commercial contracts.<sup>17</sup> On the U.S. side, repeated renewals of China's MFN trading privileges and the dismantling of a variety of Cold War-era restrictions, especially with respect to technology transfer, reflect moves in the same direction, although of lesser magnitude and from a less-restrictive baseline.<sup>18</sup>

On the other hand, China's newly foreigner-friendly and market-oriented legal regime for trade and investment remains highly regulatory and preserves a substantial sphere for state control and discretion. A few examples suggest a formidable array of administrative levers that are, in general character if not in detail, hardly unique to Chinese law. Foreign trade and investment contracts still depend, directly or indirectly, on approval by various governmental gate-keepers, and can be deemed void where they conflict with China's "public interest." U.S. traders' and

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<sup>17</sup> See, e.g., Zhonghua Renmin Gongheguo Minfa Tongze [General Principles of Civil Law of the P.R.C.] art. 36 (defining legal person); Zhonghua Renmin Gongheguo Quanmin Suoyouzhǐ Gongye Qiyè Fǎ [Law of the P.R.C. on Industrial Enterprises Owned by the Whole People] art. 2 [hereinafter State-Owned Enterprise Law] (describing enterprises' general powers, including "autonomy in management" [*zìzhǔ jīngyíng*] and "bearing civil liability" [*chéngdān mǐnshì zérèn*] with state property under enterprises' management); cf. Zhonghua Renmin Gongheguo Gōngsī Fǎ [Company Law of the P.R.C.] arts. 3, 13 [hereinafter Company Law] (similar); see also State-Owned Enterprise Law art. 33 (enterprise right to resist administrative organ demands that enterprise "share out" or permit reallocation of [*tānpái*] resources); Foreign Economic Contract Law, *supra* note 7, arts. 37, 38 (arbitration agreements permitted; access to people's courts for adjudication of disputes provided, absent arbitration agreement); Zhonghua Renmin Gongheguo Zhōngcái Fǎ [Arbitration Law of the P.R.C.] arts. 65-73; Zhongguo Guójì Jīngjì Mǎoyì Zhōngcái Wēiyuánhùi Zhōngcái Guìzè [Arbitration Rules of the China International Economic and Trade Arbitration Commission]. See generally Jacques L. deLisle, *Foreign Investment: The Foreign Economic Contract Law of the People's Republic of China*, 27 HARV. INT'L L.J. 275, 280-83 (1986).

<sup>18</sup> See, e.g., Thomas L. Friedman, *U.S. Ending Curbs on High-Tech Gear to Cold War Foes*, N.Y. TIMES, Mar. 31, 1994, at A1 (describing the Clinton administration decision to reduce significantly restrictions on exports of high technology goods to China, in the wake of Western nations' decision to terminate the Coordinating Committee on Multilateral Export Controls, an institution established in 1949 to maintain strict limits on technology transfers to Communist countries); see also *infra* note 35.

investors' major prospective Chinese partners are legally restricted to the range activities — including foreign trade and investment activities — specified in government-issued business licenses that typically authorize much less than the all-purpose charters of U.S. corporations. State-owned enterprises — which still loom large in the segments of the Chinese economy most relevant to U.S. traders and investors — operate under the watchful eye and long shadow of government “departments in charge,” bureaucratic licensing and inspection authorities, and, ultimately, the power of the state to exercise its ownership rights in pursuit of non-market-regarding political ends. Foreigners' opportunities to purchase shares in Chinese companies also remain limited, and their rights as shareholders ambiguous.<sup>19</sup> On the U.S. side of the relationship, China — still at least nominally communist and with a checkered human rights record — is subject to a variety of statutes that authorize restrictions on trade and investment tighter than the sometimes-considerable limitations that U.S. laws otherwise impose on U.S. trade and investment partners and the U.S. citizens who do business with them.<sup>20</sup>

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<sup>19</sup> See, e.g., Equity Joint Venture Law, *supra* note 13, art. 3 (government approval requirement); Foreign Economic Contract Law, *supra* note 7, art. 9 (contracts violating the public interest are void); State-Owned Enterprise Law, *supra* note 17, arts. 16, 55 (licensing requirements, inspection and supervision role of government organs, restriction of enterprise's business to specifically authorized scope); Company Law, *supra* note 17, arts. 27, 67, 77, 94-96, 124-28 (similar); Andrew Xuefeng Qian, *Riding Two Horses: Corporatizing Enterprises and the Emerging Securities Regulatory Regime in China*, 12 UCLA PAC. BASIN L.J. 62, 89-91 (1993) (describing still-modest sales of “B” shares to foreigners, a class separate from the “A” shares sold to domestic investors); cf. Robert C. Art & Mingkang Gu, *China Incorporated: The First Corporation Law of the People's Republic of China*, 20 YALE J. INT'L L. 273, 301 (1995) (noting Company Law's curious failure to address whether and how “B” shareholders' rights will be protected). See generally Potter, *supra* note 8, at 167-74 (describing various state mechanisms designed to manage and control foreign investment); Xiangmin Xu & Celina Chew, *Foreign Investment Enterprises in China: A Comprehensive Guide to Approval Issues*, E. ASIAN EXECUTIVE REP., Nov. 15, 1995, at 9.

<sup>20</sup> See, e.g., 19 U.S.C. § 2432 (1995) (denying MFN status, investment guarantees, and commercial agreements to “nonmarket economy countries” that deny or financially burden emigration); 12 U.S.C. § 635(b)(2) (1995) (prohibiting Export-Import Bank credits for trade with China and other countries with “Marxist-Leninist” planned economies, subject to waiver on basis of presidential determination that credits would be in the national interest); 22 U.S.C. §§ 2191a(a)(4), 2199(f), 2199(i), 2200a (1996) (special investigative requirements and restrictions on Overseas Private Investment Corporation extension of guarantees, insurance, or finance for programs for China or countries with poor human rights records).

A fourth lesson addresses a different kind of complexity in contemporary international economic law, one that involves not ambivalence of content but, rather, ambiguity of actors: international economic law is made and administered by an increasingly heterogeneous and intricately overlapping group of participants, interacting in ever more varied arenas. Where nation-states, private corporations, and the occasional global organization once held sway, the field is now shared with sub-national governments, supra-national regional organizations, new species of state corporations, and more elaborate international institutions. The concept of "international" in international economic law thus stands in need of some expansion and unpacking — and more of both than is accomplished by a simple extension of the term to cover national laws governing foreign economic relations.

Once again, examples from trade and investment relations involving the U.S. and China give a sense, and are some of the most significant cases, of a shift that has occurred globally. China's reopening to the outside world began in earnest with the authorization of local legal regimes for foreign investment in four Special Economic Zones (SEZ) on the southeast coast. The *de jure*, and even greater *de facto*, ceding of foreign economic regulatory power to provincial and local government has reached the point where much of what matters is now decided locally (within broad parameters that the central government has mandated or, sometimes, been resigned to accept).<sup>21</sup> This pattern will become even more striking and complex when Hong Kong becomes a P.R.C. Special Administrative Region, with its own quasi-constitution, its independent memberships in key international economic organizations, and its profoundly unsocialist legal and economic order (to be retained for at least fifty years, the P.R.C. has promised).<sup>22</sup> The fragmentation of foreign economic

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<sup>21</sup> See China Laws for Foreign Business — Special Zones and Cities, *supra* note 7 (collecting local laws and regulations governing foreign investment, most dating from the later 1980s and 1990s); see also NICHOLAS R. LARDY, FOREIGN TRADE AND ECONOMIC REFORM IN CHINA 38-41 (1992) (describing decentralization of foreign trade authority); LIEBERTHAL & OKSENBURG, *supra* note 11, at 349-50, 389-90 (describing autonomy of provincial authorities and local units in handling foreign investment relations).

<sup>22</sup> See generally THE BASIC LAW AND HONG KONG'S FUTURE (Peter Wesley-Smith & Albert H.Y. Chen eds., 1988); KEVIN P. LANE, SOVEREIGNTY AND THE STATUS QUO: THE HISTORICAL ROOTS OF CHINA'S HONG KONG POLICY 111-36 (1990).

regulatory authority has been occurring along non-geographic lines as well, with a variety of central government ministries and commissions exercising their rule-making and law-interpreting powers to structure the environments for trade and investment that face the enterprises subject to their control or supervision.<sup>23</sup> On the U.S. side, some more muted versions of the same patterns can be seen in the room for divergent "China policies" to be pressed by various federal government departments, and in the space that federalism has left for state government initiatives to promote trade and investment with China, as with other foreign nations.<sup>24</sup>

In addition, the Chinese state enterprises that have plunged whole-heartedly into the sea of international commerce contrast significantly with traditional transnational corporations, as well as with conventional policy-making and regulatory organs of government. Their limited and uncertain ownership rights, and their complex and evolving relationships with the state,<sup>25</sup> are

<sup>23</sup> See *Zhonghua Renmin Gongheguo Xianfa* [Constitution of the P.R.C.] art. 90 (1982) (authorizing ministries and commissions under the State Council to issue regulations, directives, and orders within their substantive jurisdictions); see, e.g., *Duiwai Jingji Maoyi Bu Guanyu Waishang Touzi Qiye Goumai Guonei Chanpin Chukou Jiejue Waihui Shouzhi Hengde Banfa* [Ministry of Foreign Economic Relations and Trade Measures for Foreign Investment Enterprises Purchasing Domestic Products for Export to Achieve a Balance of Foreign Exchange Income and Expenditure]; *Zhongguo Yinhang Banli Zhongwai Hezi Jingying Qiye Huokuan Zanxing Banfa* [Provisional Measures of the Bank of China for Providing Loans to Chinese-Foreign Joint Ventures]; see generally KENNETH LIEBERTHAL, *GOVERNING CHINA: FROM REVOLUTION THROUGH REFORM 194-205* (1995) (describing functionally differentiated *xitong* that define the principal vertical cleavages in China's Party-state); LIEBERTHAL & OKSENBERG, *supra* note 11, at 113-20 (discussing roles of the Ministry of Foreign Economic Relations and Trade, now called the Ministry of Foreign Trade and Economic Cooperation); KENNETH G. LIEBERTHAL, *Introduction: The "Fragmented Authoritarianism" Model and Its Limitations*, in *BUREAUCRACY, POLITICS, AND DECISION MAKING IN POST-MAO CHINA* 1, 8-10 (Kenneth G. Lieberthal & David M. Lampton eds., 1992).

<sup>24</sup> See, e.g., David M. Lampton, *America's China Policy in the Age of the Finance Minister: Clinton Ends Linkage*, 139 *CHINA Q.* 597, 616-17 (1994); David Nyhan, *Region's Future Lies in Export*, *BOSTON GLOBE*, Sept. 8, 1995, at 23 (describing Massachusetts state government and private business joint initiative to promote local exports to China); Scot Lehigh, *Weld Offers Factory Incentive, but Hyundai Stalls*, *BOSTON GLOBE*, Sept. 4, 1991, at 18 (describing state tax incentives offered to Asian companies to establish manufacturing plants in Massachusetts).

<sup>25</sup> See generally Donald C. Clarke, *Regulation and Its Discontents: Understanding Economic Law in China*, 28 *STAN. J. INT'L L.* 383 (1992);

among the traits that mark them as a different sort of actor whose presence in the international economy reflects and requires a more complex set of legal rules.

At the supra-national level, regional institutions, organizations, and fora are part of a growing variety of actors distinct from, and suspended between, individual nation-states and GATT-like or UN-based universal regimes. Of particular significance for China, the U.S., and U.S.-China ties — as well as good examples of a ubiquitous trend — are the Association of Southeast Asian Nations (“ASEAN”) and the Asia Pacific Economic Cooperation (“APEC”) summits.<sup>26</sup> Counting among its prime concerns the maintenance of access to U.S. markets and the need to respond to China’s rise as a regional economic power, ASEAN constitutes a reasonably effective mechanism for coordinating its member governments’ policies and for pursuing concerted action in fields affecting international economic and legal-economic relations, and it may ultimately provide the basis for a free trade area with attendant NAFTA-like, or even European Union-like, multilateral institutional structures. The looser APEC grouping, which pursues legal and policy reforms conducive to a more open regional economic order including the United States and China, represents yet another form of participation — and perhaps an embryonic participant — in the construction of a richly layered and densely nested international economic legal order.

A fifth and final lesson is the most cautionary: discontent

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Howard Chao & Yang Xiaoping, *The Reform of the Chinese System of Enterprise Ownership*, 23 STAN. J. INT’L L. 365 (1987); James V. Feinerman, *The Evolving Chinese Enterprise*, 15 SYRACUSE J. INT’L L. & COM. 203 (1989); Peng Xiaohua, *Characteristics of China’s First Bankruptcy Law*, 28 HARV. INT’L L.J. 373 (1987); Ta-kuang Chang, *The Making of the Chinese Bankruptcy Law: A Study in the Chinese Legislative Process*, 28 HARV. INT’L L.J. 333 (1987); Xinbian Gongsifa Jiaocheng [Newly Compiled Teaching Materials on Company Law] 24-52 (Jiang Ping ed., 1994); Zhongguo Qiyefa Gailun [Outline of China’s Enterprise Law] 43-76 (Wei Mansi et al. eds, 1990).

<sup>26</sup> See generally Rodney Tasker et al., *Growing Pains*, FAR E. ECON. REV., July 28, 1994, at 22 (describing ASEAN’s growing focus on security issues and the threats posed by China); Adam Schwarz, *Bigger is Better*, FAR E. ECON. REV., July 28, 1994, at 24 (describing ASEAN’s plans for increasing group’s leverage in future negotiations to liberalize world trade regime); Sebastian Moffett, *The Devil’s in the Details*, FAR E. ECON. REV., Nov. 30, 1995, at 14 (reporting on APEC’s gradual move toward regional free trade order); Susumu Awanohara & Nayan Chandha, *Uncommon Bonds*, FAR E. ECON. REV., Nov. 18, 1993, at 16 (describing 1993 APEC summit meeting, including discussion of trade liberalization goals).



with some of the consequences of international economic integration has given rise to a limited reaction, and a persisting threat of a stronger backlash, that is inimical to a large, expanding realm for international economic law. As substantial portions and vital sectors of national economies have become dependent upon, and vulnerable to, international economic forces, and as thickening international economic ties have made a wide range of sometimes-troubling foreign events seem closer to home, the terms of engagement with the international economy have emerged as — and merged with — major issues in domestic politics and law-making. The principal manifestations are Janus-faced, seemingly paradoxical, phenomena: a renascent economic nationalism that is marked by protectionism or a modern-day mercantilism, and a sort of evangelical internationalism that conditions one nation's economic engagement on its partners' living up to a variety of non-economic standards of good behavior.<sup>27</sup>

In these areas as well, patterns discernible in many bilateral and multilateral relationships are particularly evident in the issues that have roiled trade and investment relations between China and the United States. On the Chinese side, the reform-era leadership has been entranced with the successes its East Asian neighbors have achieved through reliance on "developmental states" that pursue aggressive national industrial policies.<sup>28</sup> In recent years, the P.R.C. has used prospective purchases of goods from U.S. suppliers in a carrot-and-stick strategy to wring from Washington continued MFN privileges or other favorable treatment under U.S. laws.<sup>29</sup> At the same time, the economic face of a resurgent

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<sup>27</sup> For a fuller discussion of some of the non-economic aspects of this argument, see Jacques deLisle, *Disquiet on the Eastern Front: Liberal Agendas, Domestic Legal Orders, and the Role of International Law After the Cold War and Amid Resurgent Cultural Identities*, 18 *FORDHAM INT'L L.J.* 1725 (1995).

<sup>28</sup> On other East Asian states' industrial policies, see CHALMERS JOHNSON, *MITI AND THE JAPANESE MIRACLE: THE GROWTH OF INDUSTRIAL POLICY, 1925-75* (1982); STEPHAN HAGGARD, *PATHWAYS FROM THE PERIPHERY: THE POLITICS OF GROWTH IN THE NEWLY INDUSTRIALIZING COUNTRIES* (1990). On the reform-era Chinese leadership's reaction and response, see, e.g., GORDON WHITE, *RIDING THE TIGER: THE POLITICS OF ECONOMIC REFORM IN POST-MAO CHINA* 35 (1993).

<sup>29</sup> See, e.g., Calvin Sims, *China Steps Up Spending To Keep U.S. Trade Status*, *N.Y. TIMES*, May 7, 1993, at A1 (reporting on series of major Chinese purchases of U.S. goods on eve of U.S. decision on whether to extend China's MFN privileges); Craig R. Whitney, *China Awards Huge Jet Order to Europeans*, *N.Y. TIMES*, Apr. 11, 1996, at A1 (describing Chinese order of jets from

Chinese nationalism has sharpened domestic hostility to laws that confer special privileges on foreigners, including a series of SEZ tax breaks that are now slated for rescission.<sup>30</sup> These objections have become intertwined with longer-standing worries, and occasional calls for corrective action, focusing on the central government's declining abilities to make its writs run amid the increases in provincial and local government autonomy and the rapid spread of corruption that has been especially serious in the regions most tightly tied to the outside world.<sup>31</sup> More diffusely, in the decade and a half since the impact of the new "open door" policies began to be felt in China, distress at the resulting erosion of political control and "pollution" by "Western" values has been a recurring refrain and has provided a potent issue for elements within the Chinese leadership that would contain or roll back entanglements with the capitalist world.<sup>32</sup> Such moralism has had its more aggressively outward-looking face, shown in a series of scathing official denunciations of U.S. criticisms as the hegemonic and sovereignty-undermining pretensions of a foreign power lacking the moral standing to judge China's behavior, and

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European manufacturer as part of "carrot and stick" strategy used to pressure Clinton administration not to impose trade sanctions on China); Robert Hurtado, *With Sanctions Set, Companies Rethink Their China Plans*, N.Y. TIMES, Feb. 6, 1995, at A1 (quoting Boeing official's statement that no new orders from China were to be expected in wake of U.S. determination to impose trade sanctions on China).

<sup>30</sup> See, e.g., *China SEZs To Lose Import Tax Breaks within Five Years*, REUTERS, Mar. 22, 1996, available in LEXIS, Asiapc Library, China File; Seth Faison, *Outlook '96: The Economy — Why China is Ready to Cool Off*, N.Y. TIMES, Jan. 2, 1996, at C9 (noting foreign investor reaction to announcement of end of tax breaks); Benjamin Kang Lim, *China Says Policy on Special Econ Zones Unchanged*, REUTERS, Apr. 5, 1996, available in LEXIS, Asiapc Library, China File (quoting Premier Li Peng's statement that cancellation of some tax breaks was "inevitable").

<sup>31</sup> See Potter, *supra* note 8, at 180-84 (discussing the problems of localism and corruption following in the wake of decentralization and local integration with the outside world); Alison W. Connor, *Anticorruption Legislation: Will More and Better Rules Curb Widespread Corruption?*, E. ASIAN EXECUTIVE REP., Jan. 15, 1989, at 8 (describing forms of corruption and legal measures to combat it).

<sup>32</sup> See, e.g., ORVILLE SCHELL, *TO GET RICH IS GLORIOUS: CHINA IN THE 80'S* 170-82 (1984) and PEARSON, *supra* note 8, at 120-25 (both discussing the 1983-84 "Campaign Against Spiritual Pollution" and broader concern with, and proposed responses to, cultural and ideological impact of influx of Western ideas and fashions accompanying reform-era policies of welcoming foreign investment).

potentially undeserving of the access to China that it has heretofore enjoyed.<sup>33</sup>

On the U.S. side, cabinet member-led road shows to promote the sale of U.S. goods to China reflect a greatly-diluted form of the interventionist and developmentalist impulse that has spurred the embrace of government industrial policy elsewhere. There may be more than just a little economic nationalist sentiment — and not just a muscular defense of “fair trade” principles — behind U.S. threats to deny MFN privileges, impose sanctions, or oppose China’s bid to join the WTO in the face of China’s huge bilateral trade surpluses, extensive piracy of intellectual property, use of low-paid prison labor in export industries, and various other transgressions.<sup>34</sup> The U.S. demand that China satisfy non-

<sup>33</sup> See, e.g., *Trade Dispute: US Demands are “Flagrant Intervention” in China’s Internal Affairs*, BBC-SWB, Jan. 6, 1995, available in LEXIS, Asiapc Library, China File (denouncing U.S. demands that China revise its intellectual property laws as a violation of international law principles of sovereignty and as demanding standards that the U.S. could not meet, and threatening trade sanctions in retaliation); *Chinese Premier Speaks on Human Rights Issue*, XINHUA GENERAL OVERSEAS NEWS SERVICE, Jan. 31, 1992, available in LEXIS, Asiapc Library, China File (quoting Premier Li Peng’s speech at United Nations, stating China “is opposed to interference in the internal affairs of other countries using the human rights issue as an excuse”); Steve Holland, *Bush, Li Peng Clash on Human Rights*, REUTERS, Jan. 31, 1992, available in LEXIS, Asiapc Library, China File (describing Li Peng UN speech as “a clear signal of rejection” of U.S. criticism of Chinese government’s human rights record); see also Seth Faison, *Beijing Sees Plot to Thwart China*, N.Y. TIMES, Aug. 1, 1995, at A2 (discussing general view among some Chinese leaders that U.S. is plotting to contain China politically and frustrate China economically).

<sup>34</sup> See, e.g., Patrick E. Tyler, *Ron Brown in China: Trade Gets an Open Door, Human Rights the Closet*, N.Y. TIMES, Sept. 4, 1994, § 4, at 2 (reporting on mission by Commerce Secretary Brown and American business executives to promote signing of agreements between U.S. firms and Chinese); Patrick E. Tyler, *China Trip Ends with Signing of Energy Deals*, N.Y. TIMES, Feb. 25, 1995, § 1, at 39 (reporting on similar mission led by Energy Secretary Hazel O’Leary); David E. Sanger, *How Washington Inc. Makes a Sale*, N.Y. TIMES, Feb. 19, 1995, § 3, at 1 (describing such missions as part of broader U.S. policy of promoting opportunities for American business); David E. Sanger & Steven Erlanger, *U.S. Warns China Over Violations of Trade Accord*, N.Y. TIMES, Feb. 4, 1996, § 1, at 1 (describing impact of intellectual property piracy on U.S. economy as “potent” political issue driving threat of sanctions); *On the Brink*, FAR E. ECON. REV., Feb. 16, 1995, at 54 (noting that U.S. Trade Representative Mickey Kantor paid careful attention to net impact on U.S. businesses in crafting threatened trade sanctions against China for intellectual property piracy); Florence Chong, *Australia: Interview with Ira Wolf — U.S. Trade Official*, BUS. TIMES (SINGAPORE), May 24, 1994, available in LEXIS, Asiapc Library, China File (Assistant U.S. Trade Representative for Japan and China

economic criteria as a condition of expanding and deepening economic ties with the United States has been even more visible and dramatic, most notably in the controversial linkage of China's enjoyment of MFN trading status to its human rights record, and in the protracted debate about "delinkage" and substitutes for the abandoned policy.<sup>35</sup>

These lessons collectively teach that the battering down of Chinese walls is only one of several defining features of contemporary international economic law. Indeed, it is one of the simplest and the most preliminary aspects, although one that has been more complicated and protracted than many have imagined. Much of what defines the scope, shapes the character, and establishes the importance of international economic law lies in other, more complex facets of the field. It lies in the rules for issuing and obtaining the "building permits" for constructing transnational economic relationships — and precluding the reconstruction of Chinese walls — in the space that the battering rams have cleared. As the analogy to building permits reminds us, the process can sometimes work smoothly and predictably, but it can also be byzantine, replete with hidden traps and slippery rules,

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describing China's export of prison labor-produced goods as a rights issue relevant to China's MFN status and for the WTO, and pledging U.S. "will use our government to open [foreign] markets" to allow in U.S. goods that are competitive under conditions of fair trade and competition); Jean-Luc Forgeron, *China: Slaves of China Who Make the Cup that Cheers the West*, OBSERVER, Oct. 30, 1994, available in LEXIS, Asiapc Library, China File (describing exports of Chinese prison labor-produced goods as "amount[ing] to dumping, as they are so cheap"); Susumu Awanohara, *The K-Street Crowd*, FAR E. ECON. REV., June 2, 1994, at 25 (noting opposition to extension of MFN for China expressed by representative of AFL-CIO labor union).

<sup>35</sup> See Exec. Order No. 12,850, 58 Fed. Reg. 31,327 (1993) (conditioning extension of China's MFN status beyond June 1994 on China's compliance with bilateral agreement on prison labor and on "overall, significant progress" in five human rights areas); Presidential Determination No. 94-26, 59 Fed. Reg. 31,103 (1994) (extending China's MFN status for an additional year, without reference to human rights conditions); Presidential Determination No. 95-23, 60 Fed. Reg. 31,047 (1995) (similar); Lampton, *supra* note 24 (analyzing Clinton Administration decision to "de-link"); BEYOND MFN: TRADE WITH CHINA AND AMERICAN INTERESTS (James R. Lilley & Wendell L. Willkie II eds., 1994) (discussing several aspects of trade-human rights linkage); Diane F. Orentlicher & Timothy A. Gelatt, *Public Law, Private Actors: The Impact of Human Rights on Business Investors in China*, 14 NW. J. INT'L L. & BUS. 66 (1993) (assessing private corporate policies and proposed code of conduct legislation establishing human rights standards for U.S. companies doing business with and in China).

and can even invite a fair amount of lawlessness and corruption. The foregoing lessons thus point to possible frustrations for many participants in the activities that are or might be governed by international economic law. They also point, however, to a fruitful and important agenda for scholars and analysts of this vast, vital, varied, and evolving field.

In stressing the new prominence of international economic law in international affairs, economic relations, and law, and the growing complexity of international economic law, this essay has sought to underscore, with examples drawn from the U.S.-China case, what ought to be obvious. In suggesting what kinds of issues are shaping the on-going and uncertain transformation of international economic law, this essay has attempted to identify some of the important questions, albeit ones that may still be unanswerable even with respect to the relatively narrow field of the Sino-U.S. interactions that have provided the principal examples here. The first of these undertakings may be appropriate, and certainly is customary, on the occasion of the inaugural issues of a journal devoted to the field. That this journal is among a very few that have explicitly adopted this focus also suggests that the seemingly obvious may well warrant some berating. The far more important endeavor is to extend this essay's second project, and to pursue answers to the possibly unanswerable, still-unanswered, and too often unasked questions about the legal regulation of economic dealings that cross political borders. That is a task for those who will use the pages of this and future issues of this journal to advance our understanding of the developments and difficulties that shape international economic law.