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THE CLINTON ADMINISTRATION'S RESPONSE TO CHINA'S HUMAN RIGHTS RECORD: AT THE HALF-WAY POINT

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I. INTRODUCTION

In a recent book on cultural relativism and universal human rights, Jack Donnelly succinctly stated that:

[I]t is often claimed that there are a variety of distinctive and defensible conceptions of human rights that merit our respect and toleration even if we disagree with them.

One standard form of such arguments has been the claim that there are 'three worlds' of human rights. The 'Western' (First World) approach, it is asserted, emphasizes civil and political rights and the right to private property. The 'socialist' (Second World) approach emphasizes economic and social rights. The 'Third World' approach emphasizes self-determination and economic development. Furthermore, both the socialist and the Third World conceptions are held to be group oriented, in contrast to the fundamental individualism of the 'Western' approach.¹

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1. JACK DONNELLY, INTERNATIONAL HUMAN RIGHTS 35 (1993); *see also id.* at 34-38. A

I prefer to say that the People's Republic of China (China) is a non-Western nation that uses the notion of cultural relativism to explain its position on human rights. The Constitution of China² appears to grant Chinese citizens the full complement of rights³ found in most western democracies. But as R.P. Peerenboom has recently stated, "[d]espite the rhetoric of universal human rights, the reality is that different states have different conceptions and practices with respect to rights, reflecting their own cultural, philosophical, political, ethical, and economic traditions."⁴ In the 1991 State Council White Paper on Human Rights, the Chinese government officially stated its position on human rights for its citizens.⁵

further elaboration on the subject is found in Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HUM. RTS. Q. 400, 400-19 (1984). As Donnelly opines, "if all rights rested solely on culturally determined social rules, as radical cultural relativism holds, then there could be no human rights, no rights one has simply as a human being." *Id.* at 404. See also Rhoda E. Howard, *Cultural Absolutism and the Nostalgia for Community*, 15 HUM. RTS. Q. 315 (1993); Fernando R. Tesón, *International Human Rights and Cultural Relativism*, 25 VA. J. INT'L L. 869 (1985); Christopher C. Joyner & John C. Dettling, *Bridging the Cultural Chasm: Cultural Relativism and the Future of International Law*, 20 CAL. W. INT'L L.J. 275 (1990); Abdullahi Ahmed An-Na'im, *Toward a Cross-Cultural Approach to Defining International Standards of Human Rights*, in HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES 19, 22-26 (Abdullahi Ahmed An-Na'im ed., 1992); Nancy Kim, *Toward a Feminist Theory of Human Rights: Straddling the Fence Between Western Imperialism and Uncritical Absolutism*, 25 COLUM. HUM. RTS. L. REV. 49, 56-59 (1993); Fali S. Nariman, *The Universality of Human Rights*, 50 REV. INT'L COMMISSION JURISTS 8 (1993); Christina M. Cerna, *Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts*, 16 HUM. RTS. Q. 740 (1994).

For understanding and bridging cross-cultural perspectives on human rights, see G.J.H. van Hoof, *Human Rights in a Multi-Cultural World: The Need for Continued Dialogue*, in ESSAYS IN HONOR OF WANG TIEYA 877, 878-91 (Ronald St. John MacDonald ed., 1994).

2. The most recent Constitution of the China was adopted by the Fifth Session of the Fifth National People's Congress on December 4, 1982. XIANFA [Constitution] (1982) (P.R.C.), translated in *Constitution of the People's Republic of China*, available in LEXIS, Asiapc Library, CHINA File. For analysis of the 1982 Constitution, see Andrew J. Nathan, *Political Rights in Chinese Constitutions*, in HUMAN RIGHTS IN CONTEMPORARY CHINA 115-20 (R.R. Edwards et al. eds., 1986); Albert Hung-yea Chen, *Civil Liberties in China: Some Preliminary Observations*, in CIVIL LIBERTIES IN HONG KONG 107, 120-24 (R. Wacks ed., 1988); Ann Kent, *Waiting for Rights: China's Human Rights and China's Constitutions 1949-1989*, 13 HUM. RTS. Q. 170, 178-201 (1991).

3. Chapter II, Articles 33-56, of the Chinese Constitution, entitled "The Fundamental Rights and Duties of Citizens," provides a comprehensive list of human rights that includes political, social, and economic rights. XIANFA [Constitution] arts. 33-56 (1982) (P.R.C.), translated in *Constitution of the People's Republic of China*, available in LEXIS, Asiapc Library, CHINA File. For a very brief outline of these rights and duties, see Chen Qing Bai, *Chinese Constitutional Law*, 26 BRACKTON L.J. 77, 82-83 (1994).

4. R.P. Peerenboom, *What's Wrong With Chinese Rights?: Toward a Theory of Rights with Chinese Characteristics*, 6 HARV. HUM. RTS. J. 29, 50 (1993).

5. For an English translation, see *State Council White Paper on Human Rights*, XINHUA

A five-day Asian Regional Conference on Human Rights was held in Bangkok March 29 through April 2, 1993, in preparation for the Second World Conference on Human Rights planned for June, 1993. The forty-nine states in attendance adopted the Bangkok Declaration on Human Rights⁶ during the course of their deliberations. The Declaration contained a number of sections that either expressly or implicitly stated that signatory states' commitment to human rights was a subjective matter. The Declaration, for example:

1. Stressed the urgent need to democratize the United Nations system, to eliminate selectivity, to improve procedures and mechanisms in order to strengthen international co-operation based on principles of equality and mutual respect, and to ensure a positive, well-balanced, and non-confrontational approach in addressing and realizing all aspects of human rights;
2. Discouraged any attempt to use human rights as a conditionality for extending development assistance;
3. Emphasized the principles of respect for national sovereignty and territorial integrity, as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure;
4. Recognized that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, and bearing in mind the significance of national and regional particularities and various historical, cultural, and religious backgrounds; and
5. Reaffirmed the interdependence and indivisibility of economic, social, cultural, civil, and political rights, and the need to give equal emphasis to all categories of human rights.⁷

These statements were included in an attempt to undermine the idea of the universality of human rights.⁸ The Chinese media subsequently

NEWS AGENCY, Nov. 8, 1991, available in LEXIS, Asiapc Library, ALLASI File. The White Paper contained some important innovations on the Government's attitude toward human rights and is excellently analyzed in ANN KENT, BETWEEN FREEDOM AND SUBSTINENCE CHINA AND HUMAN RIGHTS 222-30 (1993).

6. *Report of the Regional Meeting for Asia of the World Conference on Human Rights*, U.N. GAOR World Conf. on Hum. Rts., at 2, U.N. Doc. A/CONF.157/PC/59 (1993) [hereinafter *Bangkok Declaration*]. The Bangkok Declaration is reproduced in Ibrahim Fall, *The U-Word*, UNESCO COURIER, Mar. 1994. For some insights into the views reflected at the Conference, see Tan Lian Choo, *Stop Tying Aid to Human Rights, Asian Countries Tell the West*, STRAITS TIMES, Apr. 3, 1993, available in LEXIS, Asiapc Library, ALLASI File; Kunda Dixit, *Human Rights: Asia-Pacific States Set Strong Agenda*, INTER PRESS SERVICE, Apr. 2, 1993, available in LEXIS, Asiapc Library, ALLASI File; *Asian Rights Declaration Turns Away From Western Codes*, JAPAN ECON. NEWSWIRE, Apr. 2, 1993, available in LEXIS, Asiapc Library, ALLASI File; Vichai Phuphatana, *Asia Rejects Pressure on Human Rights; Regional Declaration Efforts to Link Development Assistance to Rights Obligations*, NIKKEI WEEKLY, Apr. 12, 1993, available in LEXIS, Asiapc Library, ALLASI File.

7. *Bangkok Declaration*, supra note 6.

8. Representatives of more than 110 non-governmental organizations, from some twenty-

embarked on a campaign against the Western concepts of human rights.⁹

The United Nations World Conference on Human Rights was held in June, 1993, in Vienna, Austria.¹⁰ China and other non-Western countries were unable to erode¹¹ the universality of human rights, as originally declared by the international community in the 1948 Universal Declaration of Human Rights.¹² Their arguments were based on different values of non-Western states. On June 25, 1993, the World Conference adopted by acclamation the Vienna Declaration and Pro-

six countries in the Asia-Pacific region, were meeting in Bangkok at approximately the same time as the Asian Regional Conference. These representatives stressed, among other things in their Declaration, that the universality of human rights and the advocacy of human rights could not be considered to be an encroachment upon national sovereignty. There must be a holistic and integrated approach to human rights where one set of rights could not be used to bargain for another. International solidarity transcends the national order to refute claims of state sovereignty and non-interference in the internal affairs of a state. Nusara Thaitawat, *Thailand: NGO's Fear Governments May Distort Rights*, BANGKOK POST, Mar. 29, 1993, available in LEXIS, Asiapc Library, ALLASI File.

9. See *Human Rights: Chinese Media Step Up Anti-Western Offensive*, INTER PRESS SERVICE, June 15, 1993, available in LEXIS, Asiapc Library, ALLASI File.

10. *United Nations World Conference on Human Rights: Vienna Declaration and Program of Action*, U.N. Doc. A/C.157/24, reprinted in 32 I.L.M. 1661 (adopted June 25, 1993) [hereinafter *Vienna Declaration*].

11. At the Conference, the head of the China delegation, Ambassador Liu Huaqiu stated: The concept of human rights is a product of historical development. It is closely associated with specific social, political and economic conditions and the specific history, culture and values of a particular country. Different historical development stages have different human rights requirements. Countries at different development stages or with different historical traditions and cultural backgrounds also have different understanding and practice of human rights. Thus, one should not and cannot think the human rights standard and model of certain countries as the only proper ones and demand all countries to comply with them. It is neither realistic nor workable to make international economic assistance or even international cooperation conditional on them.

Human Rights News, 11 NETH. Q. HUM. RTS. 293, 294-95 (1993).

12. *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. Doc. A/810, at 71 (1948) [hereinafter *Universal Declaration*].

gram of Action,¹³ in which the universality of human rights was affirmed repeatedly.

II. THE CLINTON ADMINISTRATION'S VIEW

On September 28, 1992, President Bush vetoed Congressional legislation that would have revoked Most-Favored-Nation (MFN) trading status for Chinese state-owned enterprises, unless China's action on the adherence to the provisions in the Universal Declaration of Human

13. *Vienna Declaration*, *supra* note 10. The universality of human rights appears in:

1. The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfill their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question. . . .

Id. at 1664.

5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. . . .

Id. at 1665.

32. The World Conference on Human Rights reaffirms the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues. . . .

Id. at 1671.

37. Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of cooperation with the United Nations human rights activities. The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist. . . .

Id. at 1672.

A brief summary of what transpired at the Conference is provided by Ineke Boerefijn, *World Conference on Human Rights*, 11 NETH. Q. HUM. RTS. 293, 293-301 (1993). For an analysis of what was accomplished at the Conference, see Inke Boerefijn & Koen Davidse, *Every Cloud . . . ? The World Conference on Human Rights and Supervision of Implementation of Human Rights*, 11 NETH. Q. HUM. RTS. 457, 457-68 (1993).

On the stated goals of the United States prior to the Conference, see the press briefing of Counselor Timothy Wirth and John Shattuck, Assistant Secretary for Human Rights and Humanitarian Affairs. Timothy Wirth & John Shattuck, *World Conference on Human Rights*, 4 U.S. DEP'T ST. DISPATCH 412 (1993).

Rights was forthcoming.¹⁴ A few days later, Congress failed to override the President's veto.¹⁵

During the U.S. presidential campaign, President Clinton indicated that he would support the use of selective trade sanctions against China to persuade it to ease its repression of human rights. In other words, President Clinton would link U.S. trade with China to Beijing's progress on human rights.¹⁶ Following President Clinton's success at the polls, the view from abroad was that the President-elect would increase tension with China due to his support for Congressional efforts to tie trade benefits to human rights in China.¹⁷

Following his discussion with President Bush on foreign affairs, President Clinton expressed the view that President Bush's policies toward China were showing signs of reducing violations of both human rights and trade violations.¹⁸ During this period of time, the Chinese government showed sporadic progress in individual human rights situations, such as the release of Chinese dissidents.¹⁹

As the time neared for President Clinton to make a decision on whether to extend MFN status to China for another year, the business community indicated that it favored renewal without any strings attached. On May 12, 1993, for example, the President received a letter with more than 300 American corporations and trade associations signing on to that effect.²⁰ However, not all U.S. corporations were willing to ignore ongoing human rights violations. A few days earlier, Levi Strauss & Company, manufacturers of jeans and other clothing, announced that it would not make direct investments in China, as it

14. See Daniel C. Turack, *China's Human Rights Record Since Tiananmen 1989 and the Recent Mixed Response of the United States*, 23 GA. J. INT'L & COMP. L. 507, 509-10 (1993).

15. Adam Clymer, *Senate Sustains China-Trade Veto*, N.Y. TIMES, Oct. 2, 1992, at A14.

16. See Thomas L. Friedman, *Clinton's Foreign Policy Agenda Reaches Across Broad Spectrum*, N.Y. TIMES, Oct. 4, 1992, at 1; Daniel Southerland, *Business Leaders to Urge Clinton to Reverse Stance on China Trade*, WASH. POST, Oct. 23, 1992, at B1. Mr. Clinton indicated that he would support legislation that would place conditions on MFN status for China based on progress on human rights. *One-on-One With The Candidates/Bill Clinton*, USA WEEKEND, Nov. 1, 1992, at A14.

17. A.D. Horne, *Clinton Victory Greeted with Uncertainty, Anxiety Abroad*, WASH. POST, Nov. 5, 1992, at A15.

18. Thomas L. Friedman, *Clinton Says Bush Made China Gains*, N.Y. TIMES, Nov. 20, 1992, at A1.

19. *Chinese Dissident is Freed, Human Rights Group Says*, N.Y. TIMES, Nov. 1, 1992, at 6 (reporting the release of Qian Liyun); Sheryl WuDunn, *Chinese Dissident Freed From Prison*, N.Y. TIMES, Nov. 26, 1992, at A13 (reporting the release of Bao Zunxin). This same report also indicates the release from prison of several Roman Catholic Priests. *Id.*

20. Keith Bradsher, *Pressure From Companies*, N.Y. TIMES, May 13, 1993, at A10. On the intense lobbying campaign in favor of MFN status for China see Michael Weisskopf, *Backbone of the New China Lobby: U.S. Firms*, WASH. POST, June 14, 1993, at A1.

would be contrary to the company guidelines that prohibit work "in countries where there are pervasive violations of basic human rights."²¹

On May 27, 1993, President Clinton indicated that he would extend China's MFN status for another year with conditions, but would not link China's trade practices or arms sales to MFN status extensions. In his decision, the President favored the twin goals of supporting market reform in China and ensuring a significant share of Chinese trade for American business.²² At the time of issuing the Executive Order,²³ President Clinton issued a statement where he outlined the following concerns: many activists and pro-democracy leaders continued to languish in prison because they dared to exercise their conscience; international access to their prisons was restricted; reports of abuses against the people and culture of Tibet; China's role in proliferation of dangerous weapons; Chinese sales of missiles; and China's practices that blocked the sale of American goods.²⁴

Executive Order 12,850—Conditions for Renewal of Most-Favored-Nation Status for the People's Republic of China in 1994,²⁵ issued on May 28, 1993, called for the Secretary of State to make a recommendation before June 3, 1994, on whether to extend MFN status to China for the following year, beginning July 3, 1994. Specifically, the Secretary of State was not to recommend an extension unless he found that it would substantially promote freedom of Chinese emigration and that China was complying with the Memorandum of Understanding on prison labor (Prison Labor MOU).²⁶ His recommendations required an overall finding that China had made significant prog-

21. *Human Rights Issues Prompt Levi Strauss Cuts in China*, N.Y. TIMES, May 5, 1993, at D5. For the Chinese response, see *Beijing Shrugs Off Levi's Exodus From China*, REUTER LIBR. REP., May 6, 1993, available in LEXIS, News Library, CURNWS File. Interestingly, in November, 1993, undercover agents disrupted an international smuggling ring that conspired to send 50,000 pairs of counterfeit Levi's jeans from Chinese factories to the San Francisco Bay area. Jim Doyle, *U.S. Crackdown on Bogus Levi's: Smuggling Ring Accused of Plot to Import Jeans Made in China*, S.F. CHRON., Nov. 13, 1993, at A17. The impact of other American corporations is stated in the letter to the editor by Deborah T. Leipziger, *Look for the Human Rights Label*, N.Y. TIMES, Feb. 14, 1994, at A16.

22. Daniel Williams & R. Jeffrey Smith, *Clinton to Extend China Trade Status; Future Action to Depend on Human Rights Progress*, WASH. POST, May 28, 1993, at A1.

23. Exec. Order No. 12,850, 3 C.F.R. 606 (1993).

24. President's Statement on Most-Favored-Nation Trade Status for China, 29 WEEKLY COMP. PRES. DOC. 981 (May 28, 1993).

25. 3 C.F.R. 606.

26. Memorandum of Understanding on Prohibiting Import and Export Trade in Prison Labor Products, Aug. 7, 1992, U.S.-P.R.C., 31 I.L.M. 1071 (entered into force Aug. 7, 1992) [hereinafter Prison Labor MOU].

ress in adhering to the Universal Declaration of Human Rights,²⁷ in releasing and otherwise providing an acceptable accounting of prisoners or detainees whose incarceration was due to their non-violent expression of political or religious beliefs, in providing access to prisons by international humanitarian and human rights organizations to ensure humane treatment of prisoners, in protecting Tibet's religious and cultural heritage, and in permitting international radio and television broadcasts into China.²⁸ In addition, the President ordered the Secretary of State and other officials to make certain that China was abiding by fair, nondiscriminatory trade practices, vis-à-vis U.S. businesses, and that it was adhering to the Nuclear Non-Proliferation Treaty,²⁹ the Missile Technology Control Regime (M.T.C.R.) guidelines and parameters,³⁰ and other nonproliferation commitments.³¹

China immediately protested the conditions attached to the MFN status extension.³² Overall, President Clinton was lauded³³ for a balanced policy on China, as he gained a year before having to take specific steps on the serious issues involved. He did not have to count votes, as his predecessor had done when Congress sought to override the Presidential veto on its legislation³⁴ to take away China's MFN trading status.

After a two-year hiatus, a direct dialogue on human rights issues between the United States and China resumed when the Assistant Secretary of State for Human Rights and Humanitarian Affairs, John Shattuck, visited Beijing in October, 1993.³⁵ Bilateral dialogue contin-

27. *Universal Declaration*, *supra* note 12.

28. 3 C.F.R. 606, § 1.

29. Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161.

30. Agreement on Guidelines for the Transfer of Equipment and Technology Related to Missiles, Apr. 7, 1987, 26 I.L.M. 599 [hereinafter M.T.C.R.].

31. 3 C.F.R. 607, §3.

32. *MOFTEC Spokesman on Clinton's Announcement*, XINHUA GEN. OVERSEAS NEWS SERVICE, May 29, 1993, available in LEXIS, Asiapc Library, ALLASI File. See also Lena H. Sun, *China Protests Trade Decision, Issues Warning; Analysts Say Beijing Actually Is Relieved*, WASH. POST, May 29, 1993, at A21; Sheryl WuDunn, *China Denounces Terms of Clinton's Trade Deal*, N.Y. TIMES, May 30, 1993, at 12.

33. See, e.g., Peter Passell, *Economic Scene: A Cold-War Trade Weapon Isn't Used on China and May Never Be*, N.Y. TIMES, June 3, 1993, at D2; Richard H. Solomon, *No More Bull in the China Shop; Why Clinton Has Made the Right Move on Trading with Beijing*, WASH. POST, May 30, 1993, at C3; *On China: Mr. Clinton Keeps Faith*, N.Y. TIMES, May 30, 1993, at E10. For an early discussion of how the conditions attached to the 1994 renewal, see Richard A. Brecher, *A Pandora's Box; Trade Relations Between China and The United States*, 20 CHINA BUS. REV. 6 (1993), available in LEXIS, Asiapc Library, ALLASI File.

34. For Congressional action on MFN-related bills during 1992, see HOUSE COMM. ON FOREIGN AFF., 103D CONG., 1ST SESS., CONGRESS & FOREIGN POL'Y 1992, at 155-60 (Comm. Print 1993) [hereinafter COMM. ON FOREIGN AFF. 1992].

35. See *U.S. Hails Start of China Human Rights Dialogue*, REUTER ASIA-PAC. BUS. REP.,

ued on a variety of human rights issues, including Tibet, when President Clinton met President Jiang Zemin in Seattle during the Asia Pacific Economic Cooperation Forum (APEC).³⁶ There were positive gains.³⁷ Other officials met at approximately the same time without any positive results, other than one American official saying that China acknowledged that some 3300 political prisoners were being held.³⁸

The new year, 1994, brought a series of American delegations to China that found some positive aspects concerning human rights.³⁹ Near the end of January, 1994, Secretary of State Warren Christopher

Oct. 12, 1993, available in LEXIS, Asiapc Library, ALLASI File; Patrick E. Tyler, *U.S. Praising China, Is Still Wary on Rights*, N.Y. TIMES, Oct. 13, 1993, at A15. While in China, Assistant Secretary Shattuck raised the issue of recent arrests of Beijing journalist Gao Yu and Hong Kong reporter Xi Yang. He visited Daapchi Prison in Lhasa, where he met with Yulo Dawa Tsering, a Tibetan monk who was sentenced to ten years in 1987 for "spreading counter-revolutionary propaganda." Daniel Kwan, *Beijing Not Doing Enough for MFN-Envoy*, S. CHINA MORNING POST, Oct. 21, 1993, available in LEXIS, Asiapc Library, ALLASI File. Interestingly, U.S. Agriculture Secretary Espy was in Beijing at this time to sign U.S.-Sino agreements for at least twenty joint projects involving agricultural technology. *Id.*

36. Daniel Williams, *Chinese Leader Plays to Audience at Home; Jiang, Who May Succeed Deng, Varies Little From Script*, WASH. POST, Nov. 21, 1993, at A34.

37. *Id.*

38. *Christopher Calls for Chinese Moves on Tibet*, REUTER LIBR. REP., Nov. 18, 1993, available in LEXIS, Asiapc Library, ALLASI File. Just before President Clinton met President Jiang, Asia Watch released a report that indicated an increase in arrests of students, monks, dissidents, religious advocates, including about 100 Tibetans, and named individuals. Ian D. Stewart, *Report Details Dissident Arrests in China*, PROPRIETARY TO THE UNITED PRESS INT'L, Nov. 18, 1993, available in LEXIS, Asiapc Library, ALLASI File.

A report released in May, 1993, by the London-based human rights group, Tibet Information Network, indicates that there were more than 300 political prisoners in Tibet. Robert Barnett, *Tibet Political Prisoner Total 'Soars to 335'*, S. CHINA MORNING POST, May 14, 1993, available in LEXIS, Asiapc Library, ALLASI File; *Tibet Jailing More Political Prisoners-Report*, REUTERS LIBR. REP., Sept. 24, 1993, available in LEXIS, Asiapc Library, ALLASI File. A more substantial report was subsequently published. ASIA WATCH, *DETAINED IN CHINA AND TIBET: A DIRECTORY OF POLITICAL AND RELIGIOUS PRISONERS (1994)*. It compiles information on some 1700 people known, or believed to be, presently imprisoned in connection with their political, ethnic, or religious views. *Id.* For a short summary of the publication's contents, see Teresa Poole, *China Jailing More Political Dissidents; Human Rights Report Finds Rising Numbers Held, Especially in Tibet*, THE INDEPENDENT, Feb. 21, 1994, available in LEXIS, Asiapc Library, ALLASI File; John Kohut, *Prisoners Political Pawns; China Repression 'On Rise,'* S. CHINA MORNING POST, Feb. 21, 1994, available in LEXIS, Asiapc Library, ALLASI File. The actual number of persons detained in China and Tibet for peaceful religious or political activities is unknown. *Id.*

39. For example, two Tibetan human rights activists, arrested the previous May, were released. *Human Rights Progress Pledged*, FACTS ON FILE WORLD NEWS DIG., Jan. 20, 1994, at 37. Chinese officials also indicated that discussions with the International Committee of the Red Cross (I.C.R.C.) would soon occur to enable Red Cross visits to Chinese political prisoners. Patrick E. Tyler, *China Promises U.S. to Try to Improve its Human Rights*, N.Y. TIMES, Jan. 16, 1994, at 1; Thomas L. Friedman, *Bentsen Says China Isn't Doing Enough on Rights*, N.Y. TIMES, Jan. 20, 1994, at A6;

met with Chinese Foreign Minister Qian Qichen, who brought notice of further Chinese concessions on human rights.⁴⁰ On February 24, 1994, the Clinton Administration provided Congress with an assessment⁴¹ dating back to the President's Executive Order 12,850, of May 28, 1993.⁴² That mid-term review outlined the steps the Administration had taken, China's cooperation, and changes that had taken place to that time. One conclusion found "[m]ore progress on human rights [was] needed for the President to extend MFN treatment [in] June."⁴³

In response to the President's May, 1993, Executive Order 12,850,⁴⁴ Secretary of State Christopher released a report on May 26, 1994, finding China had complied with the two mandatory conditions in the Executive Order so as to permit Christopher's recommendation that China's MFN trading status be renewed.⁴⁵ Specifically, the Jackson-Vanik Amendment⁴⁶ criteria were met and all pending Chinese

40. One important concession was China's agreement to discuss individual cases on Washington's list of 235 high-priority political prisoners. Warren Strobel, *China Agrees to Talk About 235 Prisoners*, WASH. TIMES, Jan. 25, 1994, at A1. Another gain refers to further U.S. inspections of factories suspected of using prison labor. Still another gain was the release of a Tibetan tour guide, Gendun Rinchen, and a former Buddhist monk, Lobsang Yonten. Thomas W. Lippman, *China Prisoner Release a Positive Move, State Department Says*, WASH. POST, Jan. 15, 1994, at A22.

41. *China: Human Rights and MFN: Joint Hearing Before the Subcomms. on Economic Policy, Trade And Environment; International Security, International Organizations and Human Rights; and Asia and the Pacific; House Comm. on Foreign Affairs*, 103d Cong., 2d Sess. (1994) (statements of Winston Lord, Assistant Secretary of the State for East Asian and Pacific Affairs and John Shattuck, Assistant Secretary of State for Human Rights and Humanitarian Affairs): Winston Lord, *Mid-Term Review of Most-Favored-Nation Status for China*, 10 U.S. DEP'T ST. DISPATCH 127 (1994).

42. 3 C.F.R. 606.

43. Lord, *supra* note 41, at 130.

44. 3 C.F.R. 606.

45. A summary of the Secretary of State's Report is found in *William J. Clinton, U.S. Renews Most-Favored-Nation Trade Status for China*, 5 U.S. DEP'T ST. DISPATCH 345, 346-47 (1994) [hereinafter Report of Secretary Christopher Summary]. See also Elaine Sciolino, *White House Gets Progress Report on Rights in China*, N.Y. TIMES, May 24, 1994, at A1. Secretary of State Christopher made no recommendation, as required by the 1993 Executive Order. *Id.*

46. The Jackson-Vanik Amendment to the 1974 Trade Act links MFN status to a country's emigration policies. See Trade Act of 1974, 19 U.S.C. § 2432 (a)-(e) (1990). The history and policy goals of the Jackson-Vanik Amendment and its twin aims of promoting human rights, in general, and freer emigration, in particular, are discussed in Robert M. Dow, *Linking Trade Policy to Free Emigration: The Jackson-Vanik Amendment*, 4 HARV. HUM. RTS. J. 128 (1991). For an excellent review of the freedom-of-emigration requirements, assurances, and waiver policy of the Jackson-Vanik restrictions, see Jessica Korn, *Institutional Reforms That Don't Matter: Chadha and the Legislative Veto in Jackson-Vanik*, 29 HARV. J. ON LEGIS. 455, 470-75 (1992).

President Clinton reported to Congress on May 28, 1993, that the "numerical limitation for immigrants from China was fully met. The principal restraint on increased emigration continues to be the capacity and willingness of other nations to absorb Chinese immigrants, not

emigration cases concerning the United States were resolved. Furthermore, China was found to be in compliance with the 1992 Prison Labor MOU⁴⁷ on prison labor exports, although there was concern that some goods made by prison labor were still being exported to the United States.

Secretary Christopher further reported that the "overall significant progress" contemplated in the 1993 Executive Order was not met, although there was "ongoing progress" in a number of President Clinton's other five areas⁴⁸ of concern.⁴⁹ These included China's public declaration of adherence to the Universal Declaration of Human Rights,⁵⁰ the release of a number of the Tiananmen-era prisoners and other prisoners of conscience, including two Tibetan dissidents, substantive discussions with the International Committee of the Red Cross (I.C.R.C.) that would permit Red Cross access to prisons and prisoners, and Chinese review of Voice of America (V.O.A.) jamming in talks with U.S. experts. The report listed the concerns with Chinese performance in an array of human rights shortcomings within the five announced areas.⁵¹ Because China did not achieve the "overall, significant progress" envisioned by the 1993 Executive Order, certain sanctions imposed following the 1989 Tiananmen Square tragedy would continue, and there would be an immediate import ban on arms and ammunition from China. Furthermore, the report outlined the future United States policy approach on human rights in China.⁵²

In President Clinton's news conference of May 26, 1994, he referred to China as being the world's fastest growing economy and that U.S. exports to China for 1993 were over \$8 billion. He did not mention that for 1993 the U.S.'s trade imbalance with China was \$23 billion.⁵³ He also indicated that the U.S. exports to China supported over 150,000 American jobs without mentioning the number of new jobs that were added in the United States since he took office.⁵⁴ In sum, he

Chinese policy." President's Report to the Congress on Most-Favored-Nation Trade Status for China, 29 WEEKLY COMP. PRES. DOC. 984 (Jan. 11, 1993). The report indicates that during fiscal year 1992, 26,711 U.S. immigrant visas were issued for China, 75,758 U.S. visas were issued worldwide to tourists and business visitors from China, and 18,908 student visas, including exchange students, were issued. Moreover, with one exception, Chinese students who returned home from abroad for visits did so without any problem. *Id.*

47. Prison Labor MOU, *supra* note 26, 26 I.L.M. at 599.

48. See *supra* note 24 and accompanying text.

49. Report of Secretary Christopher Summary, *supra* note 45.

50. *Universal Declaration*, *supra* note 12.

51. Report of Secretary Christopher Summary, *supra* note 45.

52. *Id.*

53. *Id.* at 345-46.

54. During the President's travels in campaigning for congressional and gubernatorial candidates, he took credit for the five million jobs added since he took office. See Robert D. Her-

would renew MFN trading status to China⁵⁵ and delink human rights from the annual extension process involving MFN, as he considered that policy no longer useful. He announced that he would pursue a new policy to support those in China who were working to advance human rights and democracy. Specifically, the new policy would include increased broadcasts of Radio Free Asia and the V.O.A., increased support for Non-Governmental Organizations (NGOs) working on human rights in China, and development with business leaders of a voluntary set of principles for business activity in China.⁵⁶

A. *Chinese Goods Produced by Prison or Forced Labor*

Under the Bush Administration, a bilateral agreement was concluded in Washington on August 7, 1992, as the Prison Labor MOU,⁵⁷ whereby China undertook to stop the export of prison-made goods to U.S. markets. The agreement did not compel China to desist in its use of prison labor to manufacture products for export, as long as their destination was not the United States. In early March, 1993, U.S. Under-Secretary of State-designate Peter Tarnoff indicated that the Clinton Administration was far from satisfied that the Beijing Government was adhering to the Prisons Labor MOU.⁵⁸ China denied the allegation.⁵⁹ At Congressional hearings in May, 1993, while President Clinton was still considering the issue of MFN status renewal for China, it was learned that:

[g]oods made with slave labor are being shipped to us through subsidiaries in Hong Kong. The names of known prison factories are being altered, the brand names of products are being changed to correspond with those from nonprison factories, and new links with legitimate businesses are being made, including with U.S.-owned enterprises.⁶⁰

shey, Jr., *Jobless Rate Fell Again in October to a 4-year Low*, N.Y. TIMES, Nov. 5, 1994, at 1.

55. President's Memorandum on Most-Favored-Nation Trade Status for China, 30 WEEKLY COMP. PRES. DOC. 1203 (June 6, 1994); President's Letter to Congressional Leaders on Most-Favored-Nation Trade Status for China of June 2, 1994, 30 WEEKLY COMP. PRES. DOC. 1203 (June 6, 1994).

56. Report of Secretary Christopher Summary, *supra* note 45.

57. Prison Labor MOU, *supra* note 26. There is a very interesting comparative study on prison-labor in Jonathan M. Cowen, *One Nation's "Gulag" is Another Nation's "Factory Within a Fence": Prison-Labor in the People's Republic of China and the United States of America*, 12 UCLA PAC. BASIN L.J. 190 (1993).

58. *China Said Continuing to Use Prison Labor to Produce Exports*, REUTER ASIA-PAC. BUS. REP., Mar. 4, 1993, available in LEXIS, News Library, CURNWS File.

59. *See China Denies Using Prison Labor to Make Exports*, REUTER EUR. BUS. REP., Mar. 9, 1993, available in LEXIS, News Library, CURNWS File.

60. *Future Of United States-China Policy, Joint Hearings before the Subcomms. on Economic Policy, Trade and Environment; International Security, International Organizations and Human Rights; and Asia and the Pacific; House Comm. on Foreign Affairs*, 103d Cong., 1st

Once again the Chinese Government denied that it was violating the Prison Labor MOU.⁶¹ The U.S. Department of State indicated that the U.S. Customs officers assigned to the U.S. Embassy in Beijing had presented sixteen cases of suspected violations to the Chinese officials, who found four instances of non-compliance and rectified the situation. The U.S. Customs officers visited only three prisons and awaited Chinese approval to visit five other prisons.⁶² In July, 1993, another confirmed report found that the prison-labor manufactured goods were continuing to be exported, although the extent of sales was indeterminate.⁶³ A few days later, an editorial in a prominent U.S. newspaper indicated that only one U.S. Customs officer was assigned to carry out the inspections, and that officer was not even based in China.⁶⁴

At Congressional hearings held September 9, 1993, the Washington Director of Asia Watch testified that fourteen cases for investigation of possible prison labor being used to produce goods for export to the United States were submitted to the Chinese for investigation in June, 1993,⁶⁵ following the President's Executive Order on MFN status.⁶⁶ He indicated that in past investigations, the Chinese merely reported the problems were resolved without any supporting documentation or follow-up inspections by U.S. officials to verify the alleged Chinese resolution of complaints. He recommended that a new list of prison facilities be compiled and presented to the Chinese for unre-

Sess. 15 (1993) (statement of Phillip Fishman, Assistant Director, International Affairs Department, AFL-CIO) [hereinafter *Future of United States-China Policy*]. See also *id.* at 16-17 (statement of Hongda Harry Wu, Executive Director, Laogai Research Foundation); *Report Alleges Prison Labor Exports by China Continue*, 10 Int'l Trade Rep. (BNA) 814 (May 19, 1993).

61. Prison Labor MOU, *supra* note 26. *China Says Prison Labor Export Issue 'Settled,'* AGENCY FR. PRESSE, May 19, 1993, available in LEXIS, News Library, AFP File.

62. *U.S. to Probe Alleged Prison Labor Export From Mainland China*, CENT. NEWS AGENCY, May 20, 1993, available in LEXIS, News Library, CURNWS File.

63. Nicholas D. Kristof, *Export of Prison Goods Seems to Continue*, N.Y. TIMES, July 19, 1993, at A9. The exports are sent to countries other than the United States. *Id.*

64. *Get Serious About Chinese Prison Labor*, N.Y. TIMES, July 21, 1993, at A16; Judith Weinraub, *The Hidden World of China's Gulag: On the Hill, a Former Prisoner's Exhibit of Secret Photographs*, WASH. POST, July 15, 1992, at C1.

65. *Chinese Forced Labor Exports to the United States: Joint Hearing before the Subcomms. on Economic Policy, Trade and Environment; International Security, International Organizations and Human Rights; and Asia and the Pacific; House Comm. on Foreign Affairs*, 103d. Cong., 1st Sess. 25 (1993) (statement of Mike Jendrzeczyk, Washington Director, Asia Watch) [hereinafter *Chinese Forced Labor Export*]. Appendix 1 to this document contains a statement by Xu Yiruo made September 3, 1993, on Prison Conditions and Production Activities in a number of Chinese prisons where he was incarcerated as a political prisoner. *Id.* app. 1 at 65.

66. 3 C.F.R. 606.

stricted inspection by U.S. Customs officers where documented evidence of export activity exists and, if not permitted access, the United States should ban entire categories of goods suspected of being produced by prison labor. Moreover, he asked the Committee to urge the Clinton Administration to increase the number of U.S. Customs officials posted at the embassy in Beijing from the present one person, as monitoring compliance was not effective. He further suggested consideration of the development of a "code of conduct" for U.S. companies operating in China, which would deter prison labor exports and promote human rights in China.⁶⁷

At the same hearing, the Department of State Assistant Secretary for East Asian and Pacific Affairs, testified that the Prison Labor MOU called for prompt investigations of suspected violations relating to trade in prison-labor products, an exchange of information involving meetings between officials and experts of both sides, evidence furnished for use in judicial or administrative proceedings against violators, and prompt facilitation of visits to relevant facilities at the request of either party. He noted that there were problems at almost every stage of the process. Since the signing of the Prison Labor MOU, the United States had presented thirty-one cases of suspected violations for Chinese investigations. The Chinese had initially reported on sixteen cases and subsequently reported on the outstanding fifteen cases on September 8, 1993, which had been presented to them in June. A summary of the Chinese findings was presented for consideration by U.S. officials. Finally, the Assistant Secretary related that two full-time customs officials would soon be assigned to a new Beijing office, one of whom would be primarily responsible for prison-labor issues.⁶⁸ Testimony by the Commissioner of the U.S. Customs Service revealed that Chinese reports on alleged violation sites were brief and lacked sufficient detail to resolve questions as to whether there had been prison-made exports from those facilities.⁶⁹ He indicated that the Customs Service had blocked the import of an array of products made by prison labor.

On September 16, 1993, the Chinese Foreign Ministry rejected the charges made at the congressional hearing concerning its violations of the Prison Labor MOU.⁷⁰ During his visit to Beijing in January,

67. *Chinese Forced Labor Export*, *supra* note 65, at 25 (statement of Mike Jendrzeczyk).

68. *Id.* at 7 (statement of Winston Lord, Assistant Secretary of East Asian and Pacific Affairs, U.S. Department of State). See also *Chinese Compliance With MOU Governing Prison Labor Exports*, 4 U.S. DEP'T ST. DISPATCH 681 (1993).

69. *Testimony of George Weise, Commissioner, U.S. Customs Service, House Foreign Affairs Committee, Chinese Forced Labor Exports*, FED. NEWS SERVICE, Sept. 9, 1993, available in LEXIS, News Library, FEDNEW File.

70. *China Calls U.S. Prison Labour Charges Groundless*, REUTER LIBR. REP., Sept. 16, 1993, available in LEXIS, News Library, REUWLD File.

1994, Treasury Secretary Lloyd Bentsen announced that China had agreed to inspections of five prisons and their records by United States Customs officials.⁷¹

B. Radio Free Asia⁷²

During 1992, Congress considered, but took no action, on three bills to increase U.S. broadcasting into China and Asia.⁷³ China was already receiving more than 300 hours of foreign broadcasting per week in Cantonese, Mandarin, Tibetan, and English during the year.⁷⁴

In 1993, Secretary of State Christopher endorsed a new Radio Free Asia service during his confirmation hearing. However, a prestigious group, including a former Secretary of State, a Secretary of Defense, and two former U.S. ambassadors to China, perceived that such broadcasts would reinforce repressive and xenophobic tendencies in China.⁷⁵ The Beijing Government would, of course, consider any new surrogate service to be an affront to its internal sovereignty⁷⁶ and

71. James Gerstenzang & Rone Tempest, *China Opens Prisons to U.S. Inspection to Help Resolve Trade Conflicts*, L.A. TIMES, Jan. 21, 1994, at A12; Thomas L. Friedman, *U.S. Inspections of Jail Exports Likely in China*, N.Y. TIMES, Jan. 21, 1994, at A1.

Despite the MOU undertakings, in May, 1994, Human Rights Watch/Asia revealed that Technical Consulting Trade Co. Inc. of Roscoe, Illinois, had imported five shipments of latex medical examination gloves, which involved prison labor, from China. Lena H. Sun, *China Violated Pact on Prison Labor, Rights Group Says*, INT'L HERALD TRIB., May 25, 1994, available in LEXIS, Asiapc Library, ALLASI File.

72. On the earlier efforts to set up Asia Democracy Radio, see Turack, *supra* note 14, at 522-25; COMM. ON FOREIGN AFF. 1992, *supra* note 34, at 166-67; David A. Hennes, *China/Asia Broadcasting: Proposals for New U.S. Surrogate Services*, in CRS REPORT FOR CONGRESS 3-10 (Oct. 1, 1992).

73. S. 2985, 103d Cong., 2d Sess. (1992); H.R. 1156, 102d Cong., 1st Sess. (1991) (introduced by Rep. Porter); H.R. 1049, 102d Cong., 1st Sess. (1991) (introduced by Rep. Bentley). See also *The Radio Free China Act*, S. 2985 Hearing before the Senate Comm. on Foreign Relations, 103d Cong., 2d Sess. 1 (1992).

74. Henry E. Cato, *Radio Redundancy*, N.Y. TIMES, Nov. 10, 1992, at A22 (indicating that the matter of a news broadcast service was not really necessary).

The U.S. government-controlled Voice of America (V.O.A.) was already broadcasting to China, Burma, Cambodia, Laos, North Korea, and Vietnam. Critics took the position that the V.O.A. broadcasting into China, for example, only used a small fraction of the time for news and information about China in English, and only a small percentage of the broadcasts were in native languages. It was envisaged that Radio Free Asia would broadcast entirely in Chinese dialects, and in other native languages to the other countries, and would deal with news about the individual country. Unlike the V.O.A., Radio Free Asia would include on its staff not only professional journalists, but area experts who would develop the programming. See Leon Hadar, *Pondering the Export of Democracy Over the Airways to Asia*, BUS. TIMES, June 25, 1993, available in LEXIS, News Library, BUSDTL File.

75. Don Oberdorfer, *Experts Urge Clinton to Ease Stance on China; Group Advises Against Trade Status Conditions*, WASH. POST, Feb. 9, 1993, at A13.

76. Kazutami Yamazaki, *Radio Offers Power Medium for Democracy*, NIKKEI WEEKLY,

would attempt to jam⁷⁷ incoming broadcasts.⁷⁸ During 1993, five bills⁷⁹ were introduced in Congress that advocated conditions on MFN renewal for China with greater international broadcasting into China as one condition. Other bills sought to authorize appropriations to provide for the consolidation of international broadcasting activities.⁸⁰

In March, 1993, most of the witnesses testifying before the House International Operations Subcommittee on United States International Broadcasting favored establishment of Radio Free Asia.⁸¹ The Clinton Administration did request \$30 million as part of the 1994 fiscal year international affairs budget for establishment of Radio Free Asia.⁸² Subsequently, President Clinton announced his commitment to launch the new broadcasting entity "to provide accurate local and international information for the people of Asia whose governments still suppress

Jan. 11, 1993, available in LEXIS, Asiapc Library, ALLASI File.

77. The Chinese government was currently jamming V.O.A.'s Mandarin and Tibetan broadcasts into China. See Hennes, *supra* note 72, at 21-22. In March, 1993, Guo Luoji, a board director of the New York based Human Rights in China organization, speaking with Canadian members of parliament, urged Canada to increase its Chinese language broadcasts to China, as the Canadian Broadcasting Corporation (CBC) was not jammed like the V.O.A. broadcasts. *Canada Urged to Support Human Rights Drive in Mainland China*, CENT. NEWS AGENCY, Mar. 31, 1993, available in LEXIS, Asiapc Library, ALLASI File.

78. Broadcasts via short-wave into China on news and informational programming about their own country came from Taiwan, the United Kingdom, Hong Kong, Australia, Japan, the former Soviet Union, Germany, and India. Certain clandestine broadcasts also emanate from Taiwan. Hennes, *supra* note 72, at 26.

79. S. 659, 103d Cong., 1st Sess. (1993); S. 806, 103d Cong., 1st Sess. (1993); S. 1034, 103d Cong., 1st Sess. (1993); H.R. 1835, 103d Cong., 1st Sess. (1993); H.R. 1890, 103d Cong., 1st Sess. (1993); H.R. 1991, 103d Cong., 1st Sess. (1993).

80. S. 1281, 103d Cong., 1st Sess. (1993); H.R. 2333, 103d Cong., 1st Sess. (1993); H.R. 4603, 103d Cong., 1st Sess. (1993).

81. See *Radio Free Asia Favored to Promote Democracy in Mainland China*, CENT. NEWS AGENCY, Mar. 25, 1993, available in LEXIS, Asiapc Library, ALLASI File; *U.S. Lawmaker Calls for Establishing Radio Free Asia*, CENT. NEWS AGENCY, Mar. 25, 1993, available in LEXIS, Asiapc Library, ALLASI File. Debate was still sharply divided on whether the proposed Radio Free Asia should be run by an independent body, such as the Board of International Broadcasting, or be part of the V.O.A., which is operated by the U.S. Information Agency. Michael Chugani, *Split Opinions on Radio Free Asia*, S. CHINA MORNING POST, Mar. 27, 1993, available in LEXIS, Asiapc Library, ALLASI File; Dick Kirschten, *Radio Wars*, 25 NAT'L J. 865 (1993).

82. *U.S. State Department Requests Budget for Radio Free Asia*, CENT. NEWS AGENCY, June 12, 1993, available in LEXIS, News Library, CURNWS File.

the truth."⁸³ Predictably, China called President Clinton's decision on Radio Free Asia "an interference in China's internal affairs."⁸⁴

On May 28, 1994, President Clinton signed Executive Order 12,850⁸⁵ extending MFN status to China for another year. However, this was extended with conditions. Under the process adopted by the President, the Secretary of State was to make a recommendation to him on whether to extend MFN status for China for a twelve-month period beginning July 3, 1994. The recommendation called on the Secretary to "determine whether China . . . made overall, significant progress with respect to . . . permitting international radio and television broadcasts into China."⁸⁶

In early 1994, the activity in Congress to finance the radio project brought a strong Chinese rebuke against interference in internal affairs.⁸⁷ On the other hand, in late March, 1994, Secretary of State Christopher announced that China agreed to review interference with V.O.A. signals.⁸⁸ Nonetheless, at the end of April, 1994, President Clinton signed the bill creating Radio Free Asia,⁸⁹ which was followed by a strong protest by the Vice Foreign Minister, Tian Zengpei to Ambassador J. Stapleton Roy.⁹⁰

83. John Hughes, *U.S. Broadcasting Enters New Era*, CHRISTIAN SCI. MONITOR, June 21, 1993, at 19. The President also indicated that the present diverse U.S. international broadcasting operations would be consolidated under a new structure. The President was somewhat influenced by a published article that was brought to his attention. See Joshua Muravchik, *Tune In To Democracy*, N.Y. TIMES, June 15, 1993, at A27.

84. *China Attacks U.S. Plan for Radio Free Asia*, PROPRIETARY TO THE UNITED PRESS INT'L, June 24, 1993, available in LEXIS, Asiapc Library, ALLASI File.

China, however, was proving to be less able to prevent the growing number of its people who were investing in satellite dishes. This meant that the Chinese "Government ha[d] already lost [total] control over information." Nicholas D. Kristof, *Satellites Bring Information Revolution to China*, N.Y. TIMES, Apr. 11, 1993, at 1.

85. 3 C.F.R. 606.

86. *Id.* at 607, § 1(b).

87. *Washington to Press Forward With Radio Free Asia*, CENT. NEWS AGENCY, Jan. 28, 1994, available in LEXIS, News Library, CURNWS File. Criticism came from other countries to be covered by Radio Free Asia's intended broadcasts. See *Vietnam Attacks U.S. Asian Radio Plan*, REUTERS LIMITED, Jan. 29, 1994, available in LEXIS, News Library, CURNWS File; *Burma Protests U.S. Plans for Asia Radio*, AGENCE FR. PRESSE, Mar. 11, 1994, available in LEXIS, News Library, CURNWS File.

88. *Fact Sheet: Department of State Foreign Affairs Network*, 5 U.S. DEP'T ST. DISPATCH 177 (1994). See also Foreign Relations Authorization Act of 1994, Pub. L. No. 103-236, 108 Stat. 382, 432 (codified as amended at 22 U.S.C. § 6208 (1990 & Supp. 1995)).

89. Foreign Relations Authorization Act of 1994, § 6208. See also *Radio Free Asia, Taiwan Sales Approved*, N.Y. TIMES, May 1, 1994, at 8.

90. *China Denounces Bill Passed by Congress*, WASH. POST, May 6, 1994, at A26; Uli Schmetzer, *Beijing Ups Anti-U.S. Rhetoric, Blasts Meddling on Capital Hill*, CHI. TRIB., May 6, 1994, at 7. Actually, based on the amount required for a successful launch, Radio Free Asia was potentially underfunded. See Joshua Muravchik, *Radio Free Asia, Not Trade Sanctions*;

At a news conference held in the White House, President Clinton announced that although "the Chinese did not achieve overall significant progress in all the areas outlined in the Executive Order [12,850] relating to human rights . . . clearly there was progress made."⁹¹ President Clinton was delinking human rights from MFN trading status for China and would not have to certify in 1995 that China had met any human rights conditions to renew MFN. The Jackson-Vanik Amendment requirements were met as all outstanding emigration cases were resolved. He indicated specifically that negotiations were proceeding on how to deal with China's jamming of the V.O.A. broadcasts and that the United States was moving forward with Radio Free Asia broadcasting.⁹² Before the President informed Congress of his decision to extend MFN status to China, Congress already had authorized the appropriations necessary to establish Radio Free Asia.⁹³ It is envisioned that, once operational, Radio Free Asia has a target of nine hours of uncensored news broadcasts to China, both on developments in China and the outside world.⁹⁴

China: Stunting Its Economy is Bad for Human Rights—And America's Interests, L.A. TIMES, May 11, 1994, at B7. On May 17, 1994, China agreed to talk with American technicians about halting its jamming of V.O.A. radio broadcasts. Thomas L. Friedman, *China May Allow U.S. Broadcasts*, N.Y. TIMES, May 18, 1994, at A1.

91. President's News Conference, 30 WEEKLY COMP. PRES. DOC. 1166 (May 26, 1994).

92. *Id.* The MFN was extended for China on June 2, 1994. President's Letter to Congressional Leaders on Most-Favored Nation Trade Status for China, 30 WEEKLY COMP. PRES. DOC. 1203 (June 2, 1994). For some examples of reactions to the President's decision, see Ann Devroy, *Clinton Reverses Course on China; MFN Action Separates Human Rights, Trade*, WASH. POST, May 27, 1994, at A1; Robert A. Rankin & Jennifer Lin, *China Gets Preferred Trade Rank*, TIMES-PICAYUNE, May 27, 1994, at A1; Paul F. Horvitz, *U.S. Ends Link to Rights, China Keeps Trade Status; But Clinton Bans Weapons Imports to Keep Some Pressure on Beijing*, INT'L HERALD TRIB., May 27, 1994, available in LEXIS, News Library, CURNWS File.

93. The Foreign Relations Authorization Act of 1994, § 6208. For expenses to carry out the Radio Free Asia Program authorized under § 309 of the International Broadcasting Act of 1994, \$10 million dollars was allocated. See Pub. L. No. 103-317, 108 Stat. 1724 (1994).

94. Dina Elboghady, *House Funds Radio Free Asia*, STS. NEWS SERVICE, June 30, 1994, available in LEXIS, News Library, CURNWS File. The Board of International Broadcasting was responsible for making a report to Congress within three years as to the effectiveness of Radio Free Asia with respect to: whether it was technically sound and cost-effective; whether it met the standard of projected quality; whether it was received by a sufficient audience to warrant its continuation; to what extent it was duplicating broadcasting from other credible sources; and, to what extent were the interests of the United States being served by maintaining broadcasting of Radio Free Asia. Foreign Relations Authorization Act of 1994, § 6208.

Interestingly, despite China's ban on the use of private satellite dishes that receive television programs, the practice cannot be thwarted. Philip Shenon, *A Repressed World Says, 'Beam Me Up'*, N.Y. TIMES, Sept. 11, 1994, at E4.

C. Tibet

A rift existed between Congress and the Bush Administration⁹⁵ with regard to China's policy towards Tibet. Around the beginning of 1993, it was reported that ten Tibetan monks and nuns had been sentenced from five to nine years for the crime of shouting independence slogans at demonstrations in Lhasa during December, 1992.⁹⁶ On January 13, 1993, at the Senate confirmation hearing of Warren Christopher, the soon to be Secretary of State said "[w]e ought to be more effective with China with respect to Tibet . . . because the violation of human rights there are [sic] very striking."⁹⁷ In early February, 1993, it was reported that for some time, Chinese officials restricted the movement of young Buddhist monks residing in smaller monasteries in Tibet from travel to the larger monasteries where they would receive religious education, and that both monks and nuns received reduced ration cards from governmental authorities.⁹⁸ Later that month, the newly appointed Communist Party leader in Tibet removed a large number of Tibetan officials because of their sympathy for the Dalai Lama.⁹⁹ Also, during February, 1993, at the forty-ninth session of the United Nations Human Rights Committee,¹⁰⁰ China's representative

95. With respect to the human rights situation in Tibet and earlier U.S. policy regarding this issue, see Patricia Wing Lau & Jeffrey Sims, *Human Rights in Tibet: An Emerging Foreign Policy Issue*, 5 HARV. HUM. RTS. J. 193 (1992); Turack, *supra* note 14, at 525-27. The situation of Tibet, as discussed in the United Nations Commission on Human Rights, is briefly outlined in Joe W. Pitts III & David Weissbrodt, *Major Developments at the UN Commission on Human Rights in 1992*, 15 HUM. RTS. Q. 122, 140-42 (1993).

This article does not seek to examine the need for protection of the Tibetan culture as an ethnic minority. For that perspective, see Michele L. Radin, *The Right to Development as a Mechanism For Group Autonomy: Protection of Tibetan Cultural Rights*, 68 WASH. L. REV. 695 (1993).

96. *Rights Group Says Chinese Jailed 10 Tibetans in Protest*, N.Y. TIMES, Dec. 27, 1992, at 6. An elaboration of this news is found in *China is Still Abusing Tibetans*, PLAIN DEALER, Jan. 1, 1993, available in LEXIS, News Library, CURNWS File. See also *Chinese Jails Tibetans for Urging Freedom*, PLAIN DEALER, Jan. 23, 1993, available in LEXIS, News Library, CURNWS File.

China has, in the past, tried to resolve its political problems in Tibet by keeping large numbers of Tibetans in prison. An excellent account is given in LAW ASSOCIATION FOR ASIA AND THE PACIFIC HUMAN RIGHTS STANDING COMMITTEE & TIBET INFORMATION NETWORK, *DEFYING THE DRAGON* (1991).

97. *Nomination of Warren M. Christopher to be Secretary of State: Hearing before the Senate Comm. on Foreign Relations*, 103d Cong., 1st Sess. 99 (1993) (statement of Warren Christopher).

98. Daniel Southerland, *Tibet Monasteries Choked by China, Monk Declares; Buddhist Education Being Restricted, Leader Charges*, WASH. POST, Feb. 6, 1993, at G11.

99. Nicholas D. Kristof, *Communist Party Chief Calls for a Purge in Tibet*, N.Y. TIMES, Feb. 14, 1993, at 11; Tim McGirk & Raymond Whitaker, *Communists Purge Tibetan Officials*, THE INDEPENDENT, Feb. 19, 1993, available in LEXIS, News Library, INDPNT File.

100. *Chinese Envoy Terms Tibet "Occupation" Claim "Grave Distortion of History,"* BBC

dismissed alleged human rights violations in Tibet made by NGOs as lies. Furthermore, during February and March, 1993, pro-independence protests in Tibet brought arrests by the police.¹⁰¹

The Dutch-based Centre on Housing Rights and Evictions issued a report in March, 1993, which found that only two percent of the historic homes in Lhasa survived the Chinese campaign to eradicate this indicia of Tibetan culture.¹⁰² This urban renewal scheme was at the expense of architectural treasures and favored Chinese migrants, who then received the best housing.¹⁰³ More worrisome was the projection that another 10,000 buildings faced demolition.¹⁰⁴

During 1992, the Dalai Lama, Tibet's exiled spiritual leader, claimed that China was jettisoning radioactive waste in the Tibetan region. In April, 1993, the International Campaign for Tibet, a U.S. based organization formed in 1988 to monitor human rights in Tibet, issued a report that accused China of conducting nuclear weapons research on the Tibetan plateau and dumping radioactive waste.¹⁰⁵ Predictably, when the Dalai Lama met briefly with President Clinton and Vice-President Gore during a visit to Washington in April, 1993, and discussed human rights in China and Tibet, China criticized their meeting.¹⁰⁶ Not surprisingly, during April, 1993, China received crit-

SUMMARY OF WORLD BROADCASTS, Aug. 11, 1993, available in LEXIS, Asiapc Library, ALLASI File.

101. Robert Barnett, *18 Tibetans Held After Protests*, S. CHINA MORNING POST, Mar. 12, 1993, available in LEXIS, News Library, CURNWS File. See also *50 Monks Arrested at Lhasa Monastery, Travelers Say*, JAPAN ECON. NEWSWIRE, Apr. 27, 1993, available in LEXIS, Asiapc Library, ALLASI File.

102. SCOTT LECKIE, *DESTRUCTION BY DESIGN: HOUSING RIGHTS VIOLATIONS IN TIBET* (1994).

103. *Id.*

104. Ron Gluckman, *Demolishing Tibet's Culture*, S. CHINA MORNING POST, Mar. 20, 1994, available in LEXIS, Asiapc Library, ALLASI File; *Old Tibet Falls to Chinese Wreckers*, THE INDEPENDENT, Apr. 17, 1994, available in LEXIS, Asiapc Library, ALLASI File.

105. Sheryl WuDunn, *Nuclear Dump Site Reported in Tibet*, N.Y. TIMES, Apr. 19, 1993, at A13; see also Tony Walker, *China 'Dumping N-waste in Tibet': Indian Industrial and Military Facilities Within Missile Range, Says Report*, FIN. TIMES, Apr. 20, 1993, at 6; Tony Walker, *China 'Has Nuclear Dump Sites in Tibet'*, THE AGE (Melbourne), Apr. 20, 1993, available in LEXIS, Asiapc Library, ALLASI File. Subsequent reports contained similar allegations. See *Experts Worried About Threats to Tibet Environment*, REUTER LIBR. REP., Oct. 1, 1993, available in LEXIS, Asiapc Library, ALLASI File; *Dalai Lama Says China Has Deployed Nuclear Weapons in Tibet*, PROPRIETY TO THE UNITED PRESS INT'L, Dec. 4, 1993, available in LEXIS, Asiapc Library, ALLASI File.

106. *China Criticizes Clinton For Meeting Dalai Lama*, REUTER LIBR. REP., Apr. 28, 1993, available in LEXIS, Asiapc Library, ALLASI File. China insists that the Dalai Lama is only the spiritual leader of Buddhism, but the 1989 Nobel Peace Prize recipient is also recognized as an envoy of peace. William Rees-Mogg, *Tibet's Envoy of Peace*, THE TIMES (London), May 6, 1993, available in LEXIS, Asiapc Library, ALLASI File. China's response to meetings of

icism¹⁰⁷ of its human rights record with respect to Tibet and to conditions in Chinese prisons from the United Nation's Committee Against Torture. The Committee found that China had failed to comply with its implementation of the United Nations Convention Against Torture¹⁰⁸ as there were reports of large numbers of cases involving torture and ill-treatment.

During a visit to Tibet in May, 1993, by a group of European diplomats, anti-Chinese Tibetan dissidents were arrested to prevent their contact with the Europeans.¹⁰⁹ As a consequence of refusing the diplomats access to the detained dissidents, the European delegation

foreign leaders with the Dalai Lama or any adverse reports on its human rights record in Tibet often results in denials of official visits to Tibet. See Geoffrey Crothall, *Australians Denied Right to Visit Tibet*, S. CHINA MORNING POST, Nov. 3, 1992, available in LEXIS, Asiapc Library, ALLASI File.

When the Dalai Lama met with British Foreign Secretary, Douglas Hurd, in May, 1993, China's government announced that it regarded the meeting as an interference in China's internal affairs, and thus, a violation of international law. See Barnett, *supra* note 38. While in London, the Dalai Lama expressed his desire to discuss with Chinese officials the 'one country, two systems' approach for Tibet, along the lines of Beijing's policy for Hong Kong and Taiwan. Alexander Nicoll, *Dalai Lama Calls For Dialogue: Tibetan Leader Voices Fears of 'Cultural Genocide'*, FIN. TIMES, May 13, 1993, at 4.

A cursory report of President Clinton's encounter with the Dalai Lama is found in Valerie Strauss, *Clinton Meets Dalai Lama, Pledges Help*, WASH. POST, Apr. 28, 1993, at A9. A brief outline of Tibet's plight is summarized in the editorial, *The Ghost Called Tibet*, N.Y. TIMES, Apr. 16, 1993, at A30.

107. *EC Lectures China On Human Rights*, REUTER NEWS SERVICE, Apr. 30, 1993, available in LEXIS, News Library, CURNWS File. Almost a year earlier, Amnesty International released a report on Tibet that detailed "at least 200 political prisoners being held without trial" and described horrific practices in Chinese detention centers and prisons. *Study Sees Rights Abuses by China in Tibet*, N.Y. TIMES, May 20, 1992, at A10.

108. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/Res/39/46 (1984). The Convention Against Torture and Other Inhuman and Degrading Treatment or Punishment was opened for signature on February 4, 1985, and entered into force on June 26, 1987. The draft Convention is reprinted in 23 I.L.M. 1027 (1984), and substantive changes are noted in 24 I.L.M. 535 (1985).

109. Jonathan Mirsky, *Chinese Round up Tibetan Dissidents*, THE TIMES (London), May 22, 1993, available in LEXIS, Asiapc Library, ALLASI File; see also Nicholas D. Kristof, *Visitors Protest Arrests in Tibet*, N.Y. TIMES, May 23, 1993, at 11. It was China's position that the European delegation was interfering in China's internal affairs. See *China Arrests Six in New Tibet Protest*, REUTER LIBR. REP., June 4, 1993, available in LEXIS, Asiapc Library, ALLASI File.

During August, 1993, thirty-four U.S. Senators wrote a "letter to Jia Chunwang, Minister of State Security . . . calling for the 'immediate and unconditional release' of the three Tibetan human rights monitors arrested . . . for allegedly attempting to present information on human rights conditions in Tibet" to the delegation from the European Community in May. *U.S. Senators Lobby for Release of Tibetans*, CENT. NEWS AGENCY, Aug. 7, 1993, available in LEXIS, Asiapc Library, ALLASI File.

canceled a farewell dinner. Their hosts retaliated by refusing to provide information regarding the visitors list of Tibetan prisoners of conscience.¹¹⁰ The following week, pro-independence Tibetans, who demonstrated in the capital, Lhasa, were met with a significant police reaction.¹¹¹ Also during May, 1993, the Tibet Information Network, a London-based service organization, reported that it had the names of 335 political prisoners in Tibet.¹¹²

At the U.N. sponsored Conference on Human Rights held in Vienna during June, 1993, China objected to the host's permission for the Dalai Lama, as one of fourteen Nobel Peace Prize laureates, to enter the Vienna Centre where the conference was held.¹¹³ Although the

110. John Kohut, *Diplomats Ask For Details of Tibetan Activists*, S. CHINA MORNING POST, May 24, 1993, available in LEXIS, Asiapc Library, ALLASI File. The Chinese foreign ministry indicated that the European Community's response was inappropriate, as it constituted an interference into China's internal affairs. *EC Statement on Tibet Criticized*, XINHUA GEN. OVERSEAS NEWS SERVICE, June 3, 1993, available in LEXIS, Asiapc Library, ALLASI File.

111. David Schlesinger, *Violent Anti-Chinese Protest Reported in Tibet*, REUTER LIBR. REP., May 24, 1993, available in LEXIS, Asiapc Library, ALLASI File; see also David Schlesinger, *Second Day of Unrest in Tibet, Tear Gas Fired*, REUTER LIBR. REP., May 25, 1993, available in LEXIS, Asiapc Library, ALLASI File; Nicholas D. Kristof, *Tibetans Protest China's Iron Rule*, N.Y. TIMES, May 25, 1993, at A3. All foreigners were subject to intimidation by the police. *Chinese Tighten Grip On Rebellious Lhasa*, SUNDAY TIMES (London), May 30, 1993, available in LEXIS, Asiapc Library, ALLASI File. Smaller pro-independence demonstrations met similar police action a few days later. Geoffrey Crothall, *More Protestors Arrested in Tibet*, S. CHINA MORNING POST, June 2, 1993, available in LEXIS, Asiapc Library, ALLASI File; Lena H. Sun, *China Represses Second Day of Tibetan Protests; Travelers Tell of Tear-Gassing*, WASH. POST, May 26, 1993, at A21; Geoffrey Crothall, *Monks Arrested for Lhasa Protest*, S. CHINA MORNING POST, June 8, 1993, available in LEXIS, Asiapc Library, ALLASI File.

112. Nicholas D. Kristof, *Visitors Protest Arrests in Tibet*, N.Y. TIMES, May 23, 1993, at 11. In early June, 1993, Sweden called on China to declare a general amnesty for political prisoners in jail or under detention in China and Tibet. *Sweden Calls on China to Declare Amnesty for Prisoners*, REUTER LIBR. REP., June 4, 1993, available in LEXIS, Asiapc Library, ALLASI File. One of the few positive aspects of Secretary of State Christopher's trip to China in March, 1994, was to receive a Chinese pledge of information about 106 Tibetan political prisoners. Elaine Sciolino, *Sourly, Christopher's Talks in Beijing Come to an End*, N.Y. TIMES, Mar. 15, 1994, at A3.

113. The Chinese attempt to bar the Dalai Lama met with a boycott by the other invited Nobel laureates, which led to a compromise worked out by the Austrian Foreign Minister, Alois Mock, and the Conference chairman. See David B. Ottaway, *Universality of Rights is Defended by U.S.; Protest Over Dalai Lama Mars Vienna Talks*, WASH. POST, June 15, 1993, at A15; Jan Krcmar, *Dalai Lama Scores Small Triumph Over China at Rights Conference*, REUTER LIBR. REP., June 15, 1993, available in LEXIS, Asiapc Library, ALLASI File.

On May 25, 1993, the Secretary-General of the United Nations, at the insistence of China, refused to allow a Chinese dissident to appear at a press conference at U.N. headquarters in New York. Shen Tong, who was a guest of the U.N. Correspondents Association, held the news conference outside the U.N. headquarters on the sidewalk. See *Tibetans Demonstrate Against China; Other News*, FACTS ON FILE WORLD NEWS DIG., June 10, 1993, at 436 B1.

Dalai Lama could not address the plenary meeting, he was able to address a meeting of the NGOs at the Conference. China was successful in barring the NGOs from participation in drafting the Conference's final document.¹¹⁴ In his address to the NGOs, the Dalai Lama stated that he did "not see any contradiction between the need for economic development and the need for respect of human rights."¹¹⁵ He also rejected another familiar Chinese argument that human rights were an internal affair, and added "[i]t is not only our right as members of the global human family to protest when our brothers and sisters are being treated brutally, but it is also our duty to do whatever we can to help them."¹¹⁶ Interestingly, the Organization for Economic Cooperation and Development (O.E.C.D.), for the first time in its history, issued a report destined for the Vienna Conference that denounced China regime's "harsh repression of democratic movements in China and Tibet."¹¹⁷

In July, 1993, senior Chinese officials met in Beijing with two members of Tibet's government-in-exile, including Gyalo Thondup, the Dalai Lama's elder brother, to discuss trying to set an agenda for formal talks. Previous high level talks had last occurred in 1984, when China insisted that the Dalai Lama first renounce demands for Tibetan independence.¹¹⁸ No agreement for direct talks has taken place.

At the forty-fifth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights, held in Geneva on August 14, 1993, the head of the Chinese delegation, Jin Yongjian, spoke. He indicated that with respect to China's alleged resettlement of Chinese Han into Tibet, the 1990 census shows Tibet's population to be 2.1 million, of whom more than ninety-five percent were of Tibetan origin.¹¹⁹

114. Jan Krcmar, *China and Allies Bar Rights Activists From Key Committee*, REUTER LIBR. REP., June 16, 1993, available in LEXIS, Asiapc Library, ALLASI File.

115. Raymond Whitaker, *Vienna Gives Dalai Lama a Hero's Welcome: A Compromise Enabled Tibet's Spiritual Leader to Overcome Chinese Opposition*, THE INDEPENDENT, June 16, 1993, available in LEXIS, Asiapc Library, ALLASI File.

116. *Id.*

117. *Cooperation: OECD Accuses China*, E. ASIAN AFF., June 16, 1993, available in LEXIS, Asiapc Library, ALLASI File.

118. *Tibetan Exiles, China Reopen Talks*, TORONTO STAR, July 22, 1993, available in LEXIS, News Library, CURNWS File. No country officials recognize the Tibetan government-in-exile that operates from Dharamsala in northern India. *Id.*

119. *Tibet: Official Claims Han Nationality "Has Never Surpassed 5%" of Tibetan Population*, BBC SUMMARY OF WORLD BROADCASTS, Aug. 20, 1993, available in LEXIS, Asiapc Library, ALLASI File. This position was refuted by other sources. *Group Alleges Chinese "Final Solution" in Tibet*, REUTER LIBR. REP., Aug. 29, 1993, available in LEXIS, Asiapc Library, ALLASI File. The article reports that the Chinese "outnumber the six million Tibetans by one million and that continuing Chinese migration to the region amounts to 'cultural

President Clinton's November, 1993, meeting with President Jiang Zemin at the APEC summit in Seattle was used by the latter to respond to President Clinton's concern over human rights in Tibet. President Jiang instructed that "Asians give greater emphasis to the rights of the people rather than privileges of a few."¹²⁰ Indeed, before the year ended, Asia Watch published a detailed report as to the current human rights situation in China and Tibet.¹²¹ In the introduction to the report it is noted that during 1993 there was no indication that economic reforms had any positive affect toward political liberalization or curtailment of human rights abuses.¹²² Interestingly, on June 15, 1994, Winston Lord, Assistant Secretary of State for East Asian and Pacific Affairs, acknowledged at a Congressional hearing that the United States had virtually no leverage with China on the issue of Tibet.¹²³

D. Arrest, Detention, Political Prisoners, Prison Conditions, and Torture

Chinese citizens in China can be detained for lengthy periods of time without being charged or brought to trial.¹²⁴ Citizen contact with

genocide." *Id.* Also, the official Chinese policy is that Tibetans enjoy their constitutional rights. *Tibetans Enjoy Full Human Rights*, XINHUA GEN. OVERSEAS NEWS SERVICE, Aug. 27, 1993, available in LEXIS, Asiapc Library, ALLASI File.

A draft resolution presented to the United Nations Sub-Commission on Human Rights called for the dispatch of special United Nations observers to Tibet to investigate reports of summary executions, torture, disappearances, and religious presentation. Ultimately, the Sub-Commission voted that no action was to be taken. See Juan Gasparini, *Tibet: NGO's Call for Human Rights Investigation*, INTER PRESS SERVICE, Aug. 19, 1993, available in LEXIS, Asiapc Library, ALLASI File.

120. Susumu Awanohara, *Diplomacy: No Ground Given*, 156 FAR E. ECON. REV. 13, 14 (1993). For commentary in line with President Jiang Zemin's statement, but with a view to preserving the Tibetan right to cultural integrity, see Radin, *supra* note 95.

121. ASIA WATCH, CHINA IN 1993: ONE MORE YEAR OF POLITICAL REPRESSION (1993).

122. *Id.*; see also *Human Rights must Accompany Development*, Group Says, REUTER LIBR. REP., Nov. 17, 1993, available in LEXIS, Asiapc Library, ALLASI File.

123. *U.S. Admits to Losing Battle Over Tibet*, CENT. NEWS AGENCY, June 15, 1994, available in LEXIS, Asiapc Library, ALLASI File.

124. For example, Yu Zhuo was held for distributing pro-democracy posters for five months without being charged. *Wuhan Student Detained 'Without Charge' for Five Months*, JAPAN ECON. NEWSWIRE, Feb. 11, 1993, available in LEXIS, Asiapc Library, ALLASI File. Also, there is the case of Tang Boquao, who was held for one year without trial. Jasper Becker, *Crimes of Punishment*, THE TIMES (London), Mar. 6, 1993, available in LEXIS, News Library, CURNWS File. The report also contains details of torture and inhuman treatment. *Id.*

A brief outline of the various reasons for detention that can result in a Chinese citizen being held for as many as four years without judicial process is found in John Gittings, *China Holds 'One Million a Year Without Trial'*, THE GUARDIAN, June 4, 1993, available in LEXIS, Asiapc Library, ALLASI File. For a more detailed discussion on the substantive criminal law and criminal procedure in China, see ALBERT HUNG-YEE CHEN, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA 153-68, 185-90 (1992); Elaine Sciolino,

journalists can result in arrests and convictions for either or both situations, on the basis of violating China's state secrets law.¹²⁵ One of the most celebrated Chinese dissidents, Wei Jingsheng, was sentenced to prison for fifteen years in 1979 for allegedly passing an internal newspaper to a foreign journalist. He was released in September, 1993, just prior to the International Olympic Committee's (I.O.C.) decision on the site-city for the 2000 Olympics.¹²⁶ He was arrested in March, and again in April, 1994, a month that also saw at least five foreign journalists taken into custody by Chinese police.¹²⁷ In an eight-day period, five political dissidents were arrested in early April, 1994.¹²⁸ On the other hand, it was announced on April 24, 1994, that the celebrated Chinese dissident, Wang Juntao, was released due to his medical condition and immediately left China for the United States.¹²⁹ Just before President Clinton was due to announce his decision on MFN status for China, Human Rights Watch/Asia released a report revealing that 500 previously unknown prisoners were being held in Beijing as a consequence of the Tiananmen Square events of 1989.¹³⁰ During July,

Christopher Ends Beijing Talks Citing Modest Gains, N.Y. TIMES, Mar. 14, 1994, at A3.

125. *Four More Jailed for Contact with Foreign Press*, JAPAN ECON. NEWSWIRE, July 31, 1993, available in LEXIS, Asiapc Library, ALLASI File; see also Matt Forney, *China Defends Jailing Political Prisoners*, PROPRIETARY TO THE UNITED PRESS INT'L, Oct. 15, 1993, available in LEXIS, Asiapc Library, ALLASI File. The article also relates the incidence of China's Xinhua News Agency journalist who was sentenced to life in prison in 1993, for espionage because he leaked the text of President Jiang Zemin's speech before it was delivered. *Id.*

126. *Asia Watch Criticizes Release of Noted Dissident*, JAPAN ECON. NEWSWIRE, Sept. 14, 1993, available in LEXIS, Asiapc Library, ALLASI File. It was widely recognized that China was trying to upgrade its image for the I.O.C. selection committee. *Id.* Lena H. Sun, *China Frees Prominent Dissident 6 Months Short of 15-Year Term; Analysts Suspect Release Timed to Help Get Olympic Games*, WASH. POST, Sept. 15, 1993, at A21.

127. Patrick E. Tyler, *China Detains and Then Frees a Top Dissident*, N.Y. TIMES, Mar. 5, 1994, at 1; Steven Greenhouse, *President Condemns Beijing; Christopher's Visit Questioned*, N.Y. TIMES, Mar. 5, 1994, at 4; Patrick E. Tyler, *China Dissident Reports Release*, N.Y. TIMES, Mar. 6, 1994, at 12; Patrick E. Tyler, *China Says Its Top Dissident is Not Being Held but has Left Beijing*, N.Y. TIMES, Mar. 8, 1994, at A4; Patrick E. Tyler, *China Arrests Leading Dissident for the Second Time in a Month*, N.Y. TIMES, Apr. 2, 1994, at 1; Patrick E. Tyler, *Chinese Dissident Facing Possibility of New Charges*, N.Y. TIMES, Apr. 6, 1994, at A12.

128. David Schlesinger, *China Detains Dissident as MFN Deadline Nears*, REUTERS WORLD SERVICE, Apr. 8, 1994, available in LEXIS, Asiapc Library, ALLASI File.

129. Patrick E. Tyler, *Chinese Releases Dissident and Sends Him to the U.S. for Treatment*, N.Y. TIMES, Apr. 24, 1994, at 5. For an insight into the trial of Wang Juntao, see Asia Watch, *The Case of Wang Juntao*, 10 UCLA PAC. BASIN L.J. 151 (1991).

130. HUMAN RIGHTS WATCH/ASIA, *THE PRICE OF OBSCURITY IN CHINA* (1994); see also John Omicinski, *China Said to Hold Hundreds of Political Prisoners*, GANNETT NEWS SERVICE, May 19, 1994, available in LEXIS, Asiapc Library, ALLASI File; Lena H. Sun, *Rights Groups Cite Hidden Dissident Arrests in China*, WASH. POST, May 19, 1994, at A36; *Report Says Hundreds of New Prisoners in Chinese Jails*, AGENCE FR. PRESSE, May 18, 1994, avail-

1994, China conducted a major trial of fourteen Chinese political dissidents in Beijing.¹³¹ Finally, during October, 1994, Chinese human rights activists received three-year sentences in Shanghai as part of the Chinese system of "re-education through labor."¹³² China has shown itself to be consistent in not tolerating any type of peaceful dissent, as illustrated by the arrest of political activists only hours after the formation of a pluralist group.¹³³

Following President Clinton's election, China periodically released political prisoners.¹³⁴ This was alleged by some as a sign of China's intent to cooperate with the new U.S. administration. However, fundamental human rights reforms were not forthcoming, nor were other gestures, such as allowing the I.C.R.C. access to Chinese prisons, lifting restrictions on religious belief, and accounting for political prisoners. Perhaps China, in its plans to appear either more congenial and less repressive to the world community in seeking to host the Olympic Games in the year 2000 or in an attempt to send the United States a signal to forestall any consideration of a change of policy with respect to MFN renewal, began to parole Catholic priests¹³⁵ and

able in LEXIS, Asiapc Library, ALLASI File.

131. Philip Shenon, *Prison Sentences Seem Likely in Trial of 14 Chinese Dissidents*, N.Y. TIMES, July 24, 1994, at 15. On the eve of Secretary of Commerce Ron Brown's arrival in Beijing, many dissidents were placed under house arrest. Patrick E. Tyler, *Abuses of Rights Persist in China Despite U.S. Pleas*, N.Y. TIMES, Aug. 29, 1994, at A1.

132. Patrick E. Tyler, *Rights Groups Fault China List of Those Held as Dissidents*, N.Y. TIMES, Mar. 31, 1994, at A6 (listing prisoners as "not convicted of any crime" but serving multi-year sentences). Sentenced were "Yang Zhou and Bao Ge, of the Chinese Human Rights Association in Shanghai." Simon Long, *China Imprisons Rights Activists*, THE GUARDIAN, Oct. 12, 1994, available in LEXIS, Asiapc Library, ALLASI File.

133. *Arrest of "Peace Charter" Members Show Beijing's Will on Dissent*, AGENCE FR. PRESSE, Nov. 16, 1993, available in LEXIS, Asiapc library, ALLASI file.

134. On January 29, 1993, it was announced that Wang Xizhe, associated with the 1979 Democracy Wall movement, and Gao Shan, jailed for the 1989 Tiananmen Square protests, were both released from prison. Lena H. Sun, *China Said to Release Two Political Prisoners: Move Seen as Goodwill Gesture to Clinton*, WASH. POST, Jan. 30, 1993, at A17; Nicholas D. Kristof, *In a Nod to U.S., China Plans to Free 2 Dissidents*, N.Y. TIMES, Feb. 2, 1993, at A7.

On February 17, 1993, two students, Guo Haifeng and Wang Dan, the last of the 1989 pro-democracy student demonstrators, were released according to the New China News Agency. However, dissidents like Wei Jingsheng, who were incarcerated for earlier democracy protests, were still imprisoned. Sheryl WuDunn, *China Frees Leading 1989 Dissident from Prison*, N.Y. TIMES, Feb. 18, 1993, at A6; Lena H. Sun, *China Frees 2 Students, Including a Leader of '89 Protests*, WASH. POST, Feb. 18, 1993, at A29. For a follow-up of Mr. Wang's transition to his new life, see Lena H. Sun, *Chinese Militant Swaps Protest for a Beeper: Making Money Seen as Step to Democracy*, WASH. POST, June 2, 1993, at A21.

135. Nicholas D. Kristof, *China Releasing Catholic Priests from Prison*, N.Y. TIMES, Mar. 21, 1993, at 19; see also *China Releases Priest*, WASH. POST, Apr. 4, 1993, at A38. On May 21, 1993, China released a Catholic bishop who was imprisoned in 1983. Lena H. Sun, *Dissi-*

political prisoners¹³⁶ from its prisons. However, the Chinese undertaking, given to Secretary of State James Baker in 1991, was to allow Chinese dissidents to leave China if not subject to legal proceedings. This was still not fully met by May, 1993.¹³⁷

It appears that torture is widespread and systematic in Chinese prisons.¹³⁸ In 1987, China's Minister of Public Security designated a new nationwide system of special public security-run mental hospitals or *ankong*, where dangerously mentally ill people were confined. Among them were dissidents who were forcibly given psychotropic drugs and punitive electro-shock therapy, and were threatened with confinement for life. Congress was informed, just before the issue of MFN status to China was to be determined by the President in May, 1993, of the proliferation of these institutions.¹³⁹ In March, 1993, the head of the Supreme People's Procuratorate, Liu Fuzhi, informed the

dent to be Freed in China; Beijing Seen Acting to Boost Its Image, WASH. POST, May 22, 1993, at A14. Xu Wenli, who participated in the Democracy Wall Movement of 1978-79, was also released. *Id.*

136. Just prior to President Jiang Zemin's APEC meeting trip to Seattle in November, 1993, two elderly Roman Catholic bishops were released from a Chinese labor camp, where they spent three years. Patrick E. Tyler, *China Frees 2 Elderly Bishops*, N.Y. TIMES, Nov. 28, 1993, at 20.

137. For example, Hou Xiaotian, Yu Haocheng, and Li Honglin were denied passports to travel abroad. Nicholas D. Kristof, *Some See Half-Empty Glasses in U.S.-China Pact*, N.Y. TIMES, May 10, 1993, at A6.

138. A.M. Rosenthal, *On My Mind; China's Black Book*, N.Y. TIMES, July 7, 1992, at A13. Rosenthal refers to ASIA WATCH, ANTHEMS OF DEFEAT (1992) and HONGDA HARRY WU, LAOGAI: THE CHINESE GULAG: CRACKDOWN IN THE HUNAN PROVINCE 1989-92 (1992). See also Nicholas D. Kristof, *Jailed Pro-Democrats in China Charge Torture*, N.Y. TIMES, Sept. 1, 1992, at A4.

The barbaric treatment of political prisoners in Lingyuan prison is discussed in Bai Yong, *The Torturers of Lingyuan*, N.Y. TIMES, Sept. 2, 1992, at A19. Soon after President Clinton took office, one case reported in the Chinese official paper tells of the death of Deng Fujiang, a purported thief, who was beaten to death by a group of local officials. *Chinese Police Torture Peasants to Death*, REUTER LIBR. REP., Jan. 27, 1993, available in LEXIS, Asiapc Library, ALLASI File. Other instances of police torture of non-political prisoners, including a handicapped man and an eleven-year-old child, are reported in *Police Torture Exists in China*, AGENCE FR. PRESSE, Aug. 5, 1993, available in LEXIS, Asiapc Library, ALLASI File. See also Jay Mathews, *China's Abuse of Political Prisoners Detailed: 1970's Democracy Wall Dissidents Especially Mistreated*, *Human Rights Group Reports*, WASH. POST, Mar. 29, 1993, at A20; Becker, *supra* note 124.

Religious persecution could also include inhuman treatment by Chinese officials towards those who openly practiced their faith. Louis Won, *Rights Group in Call on Religious Persecution*, S. CHINA MORNING POST, Jan. 14, 1993, available in LEXIS, Asiapc Library, ALLASI File (referencing the report of Christian Solidarity International).

139. *Future of United States-China Policy*, *supra* note 60, at 58-59 (statement of Robin Monroe, Research Associate, Asia Watch); Claire Rosemberg, *Chinese Woman Recounts Dissident's Life in Mental Asylum*, REUTER LIBR. REP., Sept. 17, 1993, available in LEXIS, Asiapc Library, ALLASI File.

National People's Congress of ongoing investigations regarding the practice of using torture to extract confessions.¹⁴⁰ Periodically, individual stories of brutality were smuggled out of prison and reached sources who would relate their plight.¹⁴¹ The human rights organization, Lawyers Committee for Human Rights, released a report¹⁴² in May, 1993, that blamed China's criminal justice system as a key source for human rights abuses. The next month, former British Foreign Secretary, Lord Howe, issued a report that stressed deep concern over the Chinese use of torture in jail and detention without charges.¹⁴³

It is also alleged that slave labor camps exist where political prisoners are incarcerated.¹⁴⁴ Continued pressure by Chinese authorities in relation to their population control program caused the United Nations Fund for Population Activities to threaten cessation of its activities in China in May, 1993, due to cruelty to women.¹⁴⁵ Also, just before President Clinton's determination of extending MFN trading status, a lay Catholic human rights group in Washington, D.C., issued a report on China's torture of religious believers and its false representations that religious leaders had been released.¹⁴⁶

140. David Holley, *China Acting Against Torture, Aide Says; Law Enforcement: Top Prosecutor Says Hundreds of Cases of Possible Forced Confessions Have Been Investigated*, L.A. TIMES, Mar. 23, 1993, at 11.

141. The account of Liu Gang is briefly told in David Schlesinger, *Chinese Dissident Alleges Torture in Prison Tract*, REUTER ASIA-PAC. BUS. REP., May 12, 1993, available in LEXIS, Asiapc Library, ALLASI File. Subsequently, two human rights organizations brought to light that China prohibited family visits to Liu Gang, a ban that violated both international rights norms and China's own standards of prisoner treatment. *Asia Watch Condemns Beijing For Treatment of Liu Gang*, CENT. NEWS AGENCY, Dec. 11, 1993, available in LEXIS, Asiapc Library, ALLASI File.

142. LAWYERS COMMITTEE FOR HUMAN RIGHTS, CRIMINAL JUSTICE WITH CHINESE CHARACTERISTICS: CHINA'S CRIMINAL PROCESS AND VIOLATIONS OF HUMAN RIGHTS (1993). The report addresses unlawful arrest, detention, restrictions on the right to defense counsel, obstacles to presenting a legal defense, and absence of an independent judiciary. *Id.* See also John Gittings, *China Holds 'One Million A Year' Without Trial*, THE GUARDIAN, June 4, 1993, available in LEXIS, Asiapc Library, ALLASI File.

143. The report was the result of a delegation to China led by Lord Howe. See John Gittings, *Britain Condemns Chinese 'Brutality'*, THE GUARDIAN, June 30, 1993, available in LEXIS, Asiapc Library, ALLASI File.

144. A.M. Rosenthal, *On My Mind: Sixteen Million Slaves*, N.Y. TIMES, June 19, 1992, at A15. With respect to slavery and torture of women, see Jessica Neuwirth, *Chinese Women Suffer Under a Brutal System*, N.Y. TIMES, July 29, 1992, at A14; Sheryl WuDunn, *Women Face Increasing Bias as China Focuses on Profit*, N.Y. TIMES, July 28, 1992, at A1.

145. *China's Cruelty and Women's Rights*, N.Y. TIMES, May 21, 1993, at A26.

146. *China's Persecution of Christians Continues*, PUEBLA INSTITUTE, May 19, 1993. The Puebla Institute press release is found in *Human Rights Policy Under The New Administration, Hearing and Markup of H. Res. 188 and H. Con. Res. 106 before the Subcomm. on International Security, International Organizations and Human Rights, House Comm. on Foreign*

Interestingly, before going to the U.S.-Chinese meeting in Seattle in November, 1993, Foreign Minister Qian Qichen announced that China was prepared to allow inspections of prisons by the I.C.R.C., if the organization made such a request.¹⁴⁷ Further, Amnesty International released a report at the beginning of June, 1994, that gave the reader harrowing descriptions of torture and ill-treatment in Chinese prisons.¹⁴⁸ A few weeks later, Human Rights Watch/Asia released a report that described systematic persecution of a Christian sect, known as the Shouters for their evangelical practice of shouting "Jesus is Lord" in unison.¹⁴⁹ Their persecution involved arbitrary detention, torture and exorbitant fines for worship outside China's official church.¹⁵⁰

An unprecedented forum¹⁵¹ called "Doctors, Ethics and Torture" was held in Beijing by Chinese medical ethicists in early November, 1994. At least part of the three-day program was devoted to foreign specialists teaching the Chinese audience how to detect torture injuries, whether physical or psychological.¹⁵² Perhaps in a genuine attempt to curtail the use of torture, China has at least begun the process of strengthening supervision in its prison system, which may provide

Affairs and the House Commission on Security and Cooperation in Europe, 103d Cong., 1st Sess. 91-92 (1993). Of tangential interest is the report of Patrick E. Tyler, *China Holds Christian Visitors 4 Days*, N.Y. TIMES, Feb. 18, 1994, at A3.

147. Sheila Tefft, *China May Open Prisons to Red Cross Inspections*, CHRISTIAN SCI. MONITOR, Nov. 10, 1993, at 2; Patrick E. Tyler, *China May Allow Red Cross to Visit Dissidents in Jail*, N.Y. TIMES, Nov. 10, 1993, at A1; Patrick E. Tyler, *Red Cross Says the Chinese are Seriously Discussing Prison Visits*, N.Y. TIMES, Jan. 22, 1994, at 3.

148. AMNESTY INTERNATIONAL, CHINA: HUMAN RIGHTS VIOLATIONS FIVE YEARS AFTER TIANANMEN (1994). The report lists 1419 people executed and 2564 death sentences recorded during 1993. See also Innes Wilcox, *China: Torture in China Must End, Says Amnesty*, THE AGE (Melbourne), June 1, 1994, available in LEXIS, Asiapc Library, ALLASI File.

For the Chinese view of prison life, see *Chinese Official Says Prison Life Okay*, PROPRIETARY TO THE UNITED PRESS INT'L, May 24, 1994, available in LEXIS, Asiapc Library, ALLASI File; *China Says Plush Prisons Have Karaoke Bars*, REUTERS WORLD SERVICE, May 25, 1994, available in LEXIS, Asiapc Library, ALLASI File. Specifically, with regard to the Chinese view on its treatment of named political prisoners, see Patrick E. Tyler, *Chinese Government Shows Video of 4 Prisoners Mentioned by U.S.*, N.Y. TIMES, Mar. 2, 1994, at A2; Hou Xiaotian, *China Tries to Hide Rights Problems*, N.Y. TIMES, Mar. 11, 1994, at A30. Hou Xiaotian is the wife of Wang Juntao. *Id.*

149. A synopsis of the report is discussed in *Group Charges China Tortures Christians*, PROPRIETARY TO THE UNITED PRESS INT'L, June 21, 1994, available in LEXIS, Asiapc Library, ALLASI File.

150. *Id.*

151. The foreign contingent was led by physicians from Copenhagen's International Rehabilitation Council for Torture Victims. Jeffrey Parker, *Doctors Hold Risky Forum on Torture in China*, REUTERS WORLD SERVICE, Nov. 9, 1994, available in LEXIS, Asiapc Library, ALLASI File.

152. *Id.*

greater accountability when torture is employed.¹⁵³ Also, to convince President Clinton at the APEC Forum in Indonesia of something positive in its human rights record, China released four dissidents for their role in the 1989 Tiananmen Square events and four Tibetans for their acts of conscience.¹⁵⁴

E. Sino-United States Trade

Less than a month after President Clinton's inauguration, there was a certain uneasiness that the President might actually attempt to translate his campaign rhetoric into presidential policy. A report issued by the influential Atlantic Council and National Committee on U.S.-China Relations recommended against tying favorable trade benefits for China to human rights.¹⁵⁵ When the trade figures for 1992 were released, it showed a U.S. deficit of \$18.08 billion in its trade with China, second only to the U.S. trade deficit with Japan.¹⁵⁶ U.S. Trade Representative (U.S.T.R.) Mickey Kantor indicated that the imbalance was due to the lack of market access by American exporters, even though China agreed, in principle, to access in 1992.¹⁵⁷

China and the United States allegedly resolved their trading problems by signing a market access agreement on October 9, 1992, called a Memorandum of Understanding (Market Access MOU)¹⁵⁸ that would promote greater transparency of Chinese trade policies. To implement the Market Access MOU, China purportedly published thirty-two internal trade documents and abolished 122 regulations.¹⁵⁹

153. Jeffrey Parker, *China Draft Law Would Strengthen Jail Supervision*, REUTERS WORLD SERVICE, Oct. 22, 1994, available in LEXIS, Asiapc Library, ALLASI File.

154. *China Releases 8 Political Prisoners*, PROPRIETARY TO THE UNITED PRESS INT'L, Nov. 6, 1994, available in LEXIS, Asiapc Library, ALLASI File.

155. The report was the product of two groups co-chaired by John Whitehead, a former deputy secretary of state in the Reagan administration, and Barber Conable, former president of the World Bank. Carol Giacomo, *New Study Challenges Clinton's Position On China*, REUTER LIBR. REP., Feb. 8, 1993, available in LEXIS, Asiapc Library, ALLASI File.

156. Louise Lucas, *Kantor Hits Out Over Huge Trade Deficit*, S. CHINA MORNING POST, Feb. 20, 1993, available in LEXIS, Asiapc Library, ALLASI File.

157. *Id.*

158. 57 Fed. Reg. 38,912 (1992); Memorandum of Understanding Concerning Market Access, Oct. 10, 1992, U.S.-P.R.C., 31 I.L.M. 1275 [hereinafter Market Access MOU]. For an initial appraisal of the Memorandum on Understanding, see Steven Greenhouse, *China Will Lower Barriers to Trade in Accord With U.S.*, N.Y. TIMES, Oct. 10, 1992, at A1; Jim Mann, *U.S., China Avert Clash Over Trade Diplomacy: Agreement 'In Principle' After a Year of Talks is Aimed at Giving American Firms More Market Access, Avoiding Retaliatory Tariff Hikes*, L.A. TIMES, Oct. 10, 1992, at A1. A very good review of the market access dispute leading up to the Market Access MOU, and appraisal of its terms and significance beyond the agreement's terms, is found in Patrick H. Hu, *The China 301 on Market Access: A Prelude to GATT Membership?*, 3 MINN. J. GLOBAL TRADE 131 (1994).

159. Daniel Southerland, *Clinton Sending First Trade Delegation to China*, WASH. POST,

China signed the Market Access MOU after the United States threatened to increase its tariffs on Chinese imports up to 100 percent in connection with an investigation under Section 301 of the Trade Act of 1974.¹⁶⁰ The Market Access MOU had the effect of moving China's General Agreement Trade and Tariffs (GATT) application¹⁶¹ forward, as it obligated China to meet certain measures required for its entry into GATT. These measures included lowering of a broad range of tariffs, eliminating quotas, eliminating import licenses and other non-tariff barriers, and the publication of trade laws and regulations.

At a press conference held in Washington, D.C., at the end of March, 1993, the U.S. Assistant Trade Representative for Japan and China, Ira Wolf, commented on a foreign trade barriers report that China continued to use a myriad of import restrictions and certification requirements as barriers to trade. The report was also critical of China's curtailment of service and investment through barriers and the unwillingness to eliminate the smuggling of United States and other foreign products into its territory, which harmed U.S. exporters. As to the trade deficit, the report indicated that the Chinese engaged in transshipment of textiles and other goods into the U.S. market, which, according to the U.S. Customs Service, adds to the trade deficit by about \$3 billion annually.¹⁶² On April 21, 1993, a U.S. delegation

Feb. 27, 1993, at C1.

160. Omnibus Trade and Competiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988) (codified as amended at 19 U.S.C. §§ 2411-2422 (Supp. II 1990 & Supp. III 1991)) [hereinafter Trade Act].

161. China was interested in having the United States support its "re-entry" into GATT. Without major domestic reforms to free its economy before becoming a GATT member, China would be at liberty to flood foreign markets with cheap, state-subsidized exports, while maintaining protective barriers for many of its own industries. For an informal look at the needed Chinese commitments, see *China and the GATT; Snail's Pace*, THE ECONOMIST, Mar. 6, 1993, at 35.

For a discussion of the progress on China's application for GATT membership and the obligations that China would need to meet, see Susan MacCormac, *Eyeing the GATT*, 20 CHINA BUS. REV. 34 (1993), available in LEXIS, Asiapc Library, ALLASI File. On the background of China's relationship with the GATT and its view of progress made, see Monica Hsiao, *China and the GATT: Two Theories of Political Economy Explaining China's Desire For Membership in the GATT*, 12 UCLA PAC. BASIN L.J. 431 (1994). Earlier assessments of China's quest for GATT membership are found in Wenguo Cai, *China's GATT Membership: Selected Legal and Political Issues*, 26 J. WORLD TRADE 35 (1992); Chung-Chou Li, *Resumption of China's GATT Membership*, 21 J. WORLD TRADE 25 (1987); Turack, *supra* note 14, at 518-19.

162. *Peking Under U.S. Pressure to Remove Trade Barriers*, CENT. NEWS AGENCY, Apr. 1, 1993, available in LEXIS, Asiapc Library, ALLASI File. The U.S. report attacks China's record on tariffs, import restrictions, labelling, and export subsidies. *Id.* For a discussion on the transshipment problem and why the U.S. figures differ from those of the Chinese, see Jan Prybyla, *How Should the U.S. Handle Trade Issues With China?*, 15 E. ASIAN EXECUTIVE

went to Beijing to discuss trade matters with officials from China's Ministry of Foreign Trade and Economic Cooperation.

When MFN trading status was extended for another year, President Clinton determined that United States' concerns about China's future trade practices and foreign arms sales would be negotiated separately,¹⁶³ thereby delinking MFN from these previous hurdles. China's response was predictable, deeming the Presidential Executive Order 12,850¹⁶⁴ an interference in China's internal affairs and the attached conditions as an "open violation of the principles set forth in the three Sino-U.S. joint communiques and the Agreement on Trade Relations between China and the United States."¹⁶⁵

During June, 1993, the United States threatened to impose an import quota to reduce textile imports by 73.7 million square feet, at a cost of \$80.78 million to China. This was in response to illegal textile transshipment by firms giving their textiles false country of origin labels, such as "made in Mongolia or the Dominican Republic."¹⁶⁶

In early October, 1993, it was announced that the estimate of Chinese transshipment of textiles from third countries was valued at \$1.5 billion.¹⁶⁷ A few days later, it was reported that authorities in

REP. 9 (1993).

163. Lena H. Sun, *China Protests Trade Decision, Issues Warning; Analysts Say Beijing Actually is Relieved*, WASH. POST, May 29, 1993, at A2.

164. 3 C.F.R. 606.

165. Richard A. Brecher, *A Pandora's Box: Trade Relations Between China and the United States*, 20 CHINA BUS. REV. 6 (1993), available in LEXIS, Asiapc Library, ALLASI File. This article also discusses related issues, such as freedom of emigration, the MOU on prison labor, the issue of Chinese compliance with the United Nations Declaration on Human Rights, account and release of prisoners, humane treatment of prisoners, protection of Tibetans religious and cultural heritage, and access to international radio. *Id.*

166. *China Slaps U.S. Move to Cut Textile Quota*, REUTER ASIA-PAC. BUS. REP., July 16, 1993, available in LEXIS, Asiapc Library, ALLASI File. Jennifer Hillman, the chief textile negotiator in the U.S. Trade Representative office, indicated that the Chinese were engaged in rampant copyright infringement, including U.S. fabric and textile designs and the appropriation of famous U.S. clothing brand names. *Id.*; *China-U.S. Textile Trade Talks Fail to Reach Agreement*, BBC SUMMARY OF WORLD BROADCASTS, Sept. 6, 1993, available in LEXIS, Asiapc Library, ALLASI File. The United States and China originally reached a Memorandum of Understanding on Textiles on December 18, 1987. See 53 Fed. Reg. 55 (1988), and the amendment of December 13, 1990, at 55 Fed. Reg. 52,070 (1990). On the Chinese response, see *China Denounces U.S. Threat to Lower Textile Import Quotas*, PROPRIETARY TO THE UNITED PRESS INT'L, Sept. 5, 1993, available in LEXIS, Asiapc Library, ALLASI File.

The Chinese officials indicated that they would investigate illegal transshipment. See *Official Regrets Result of Textiles Talks with U.S.*, XINHUA GEN. OVERSEAS NEWS SERVICE, Sept. 4, 1993, available in LEXIS, Asiapc Library, ALLASI File. China also indicated that it would adopt corresponding measures on U.S. imports if the United States took action. Matt Forney, *China Threatens to Restrict U.S. Imports*, PROPRIETARY TO THE UNITED PRESS INT'L, Sept. 7, 1993, available in LEXIS, Asiapc Library, ALLASI File.

167. *U.S. Official Wants Tough Steps on Illegal Trade*, REUTER ASIA PACIFIC BUS. REP.,

China's Ministry of Foreign Trade and Economic Co-operation (M.O.F.T.E.C.) had withdrawn textile trading rights and taken punitive action against three of its companies for illegally placing labels of other countries on its manufactured garments and then exporting them.¹⁶⁸ United States officials continued to warn that, unless China's record on human rights, weapons sales, and trade practices improved, its preferential trade status would be in jeopardy when MFN renewal was considered.¹⁶⁹

The lack of sufficient Chinese progress to resolve trade problems resulted in trade sanctions announced on January 6, 1994, which slashed over \$1 billion from the amount of textile goods that could be imported into the United States. Secretary of the Treasury Lloyd Bentsen said that the Chinese still had ten days to resolve the situation. The reduction in quotas of between twenty-five and thirty-five percent for the Chinese imports was to take effect on January 17, 1994, depending on the type of product.¹⁷⁰ In January, 1994, the United

Oct. 5, 1993, available in LEXIS, Asiapc Library, ALLASI File. Jennifer Hillman, chief textile negotiator of the U.S. Trade Representative office, estimated the loss at about \$2 billion. In July, 1993, the United States cut China's textile quota by \$80 million for the illegal transshipment. *Id.*; see *China Cracks Down on Textile Frauds*, REUTER LIBR. REP., Oct. 9, 1993, available in LEXIS, Asiapc Library, ALLASI File.

168. *China Cracks Down on Textile Frauds*, *supra* note 167; Wang Yong, *China: Companies Punished For Illegal Exports*, CHINA DAILY, Oct. 9, 1993, available in LEXIS, Asiapc Library, ALLASI File. In early December, 1993, further measures were announced against illegal exports by M.O.F.T.E.C. *China Cracks Down on Illegal Textile Exports as U.S. Threat Looms*, PROPRIETARY TO THE UNITED PRESS INT'L, Dec. 7, 1993, available in LEXIS, Asiapc Library, ALLASI File; Nick Driver, *China Punishes Textile Exporters, Predicts Renewal of Trade Status*, PROPRIETARY TO THE UNITED PRESS INT'L, Dec. 24, 1993, available in LEXIS, Asiapc Library, ALLASI File.

169. During October, 1993, for example, such warnings were issued by Secretary of Agriculture Espy, Secretary of State Christopher, and U.S. Deputy Trade Representative Charlene Barshefsky. See Andrew Quinn, *Senior U.S. Official Urges China to Act on Rights*, REUTER LIBR. REP., Oct. 20, 1993, available in LEXIS, Asiapc Library, ALLASI File; Steven A. Holmes, *U.S. Sets June Deadline for China to End Abuses*, N.Y. TIMES, Oct. 21, 1993, at A13; Nick Driver, *China, United States Discuss Trade Disputes*, PROPRIETARY TO THE UNITED PRESS INT'L, Oct. 25, 1993, available in LEXIS, Asiapc Library, ALLASI File. On October 25, 1993, a deadline of December 31, 1993, was announced for Chinese compliance with the Textile-Export MOU. The deadline does not meet any statutory requirement, nor is there any indication of what measures the United States would take. *Id.*

170. On January 10, 1994, quotas on Chinese textile imports were published. These quotes were effective on January 17, 1994. 59 Fed. Reg. 1385 (1994). See Thomas L. Friedman, *China Reacts in Dispute Over Textiles*, N.Y. TIMES, Jan. 8, 1994, at A39; *China Blasts U.S. Textile Quota Cuts as Anti-GATT*, REUTER BUS. REP., Jan. 10, 1994, available in LEXIS, Asiapc Library, ALLASI File (commenting on Chinese reaction).

A few days before Treasury Secretary Lloyd Bentsen was to arrive in Beijing in a last attempt to resolve the problem, U.S.T.R. Kantor announced at a news conference the dimensions of the textile dispute. Thomas L. Friedman, *U.S. Pares Imports of China's Fabrics in a*

States and China reached an Memorandum of Understanding on Textile Exports (Textile Export MOU),¹⁷¹ whereby the Chinese accepted a reduction in the growth of its textile and clothing exports to the United States, heavy penalties for any further illegal shipments of mislabeled textiles and garments, and a formula for joint U.S.-Chinese inspections of factories suspected of fraudulent labeling and shipments.¹⁷² The new MOU on textiles replaced the earlier agreement that expired on December 31, 1993. Under the new MOU, China's textile and apparel exports to the United States would not increase in 1994, and would grow by one per cent annually in 1995 and 1996, unlike the previous agreement under which Chinese exports grew at 4.4% per annum. Silk exports would be restricted to one percent annually.¹⁷³

Between January 19 and 22, 1994, Secretary Bentsen went to China, where it was announced that the Sino-U.S. Joint Economic Committee,¹⁷⁴ which had not met since 1987, would be re-instituted

Punitive Move, N.Y. TIMES, Jan. 7, 1994, at A1; Simon Beck, *Clinton Shows Readiness to Stand Ground on Trade Issues*, S. CHINA MORNING POST, Jan. 8, 1994, available in LEXIS, Asiapc Library, ALLASI File; David Schlesinger, *China Warns of Trade War But Still Wants to Talk*, REUTER BUS. REP., Jan. 7, 1994, available in LEXIS, Asiapc Library, ALLASI File. The fact sheet issued at the time of Mr. Kantor's announcement indicated that Chinese goods entered the U.S. market masquerading as products from twenty-five different countries. Friedman, *supra*, at D2.

171. Agreement between the United States and China Concerning Trade in Textile and Apparel Products, Jan. 1, 1994, U.S.-P.R.C., Hein's No. KAV 428, Temp. State Dep't No. 95-149 (entered into force June 8, 1995), available in WESTLAW, USTREATIES Database [hereinafter Textile Export MOU]. See also 59 Fed. Reg. 3848 (1994).

172. Daniel Southerland, U.S., *China Reach Pact On Textile Exports; Under Compromise, Beijing Will Limit Sales*, WASH. POST, Jan. 17, 1994, at A20; Peter Behr & Daniel Southerland, *China Agrees to Trade Pact on Textiles; 3-Year Agreement Includes Unannounced Inspections*, WASH. POST, Jan. 18, 1994, at C1.

For a discussion of what the new agreement's terms meant, see Dan Martin, *Mending The Textile Rift*, 21 CHINA BUS. REV. 9 (1994), available in LEXIS, Asiapc Library, ALLASI File.

173. Silk exports in 1991 were worth \$900 million and about \$2.6 billion in 1993. Behr & Sutherland, *supra* note 172; see also Patrick E. Tyler, *Textile Accord With China Averts Trade Clash*, N.Y. TIMES, Jan. 18, 1994, at C1. During 1993, U.S. customs officials discovered more than \$581 million of illegal imports, suspected of being only twenty-five percent of the amount that illegally entered the United States. China exported \$7.2 billion worth of textiles, excluding silk goods, to the United States in 1993. Rone Tempest, *China Signs Textile Pact*, L.A. TIMES, Jan. 18, 1994, at D1.

174. The full text concerning the announcement is found in, *Full Text of Joint Statement of 8th Session of Sino-U.S. Joint Economic Committee*, XINHUA NEWS AGENCY, Jan. 21, 1994, available in LEXIS, Asiapc Library, ALLASI File. See also *Sino-U.S. Joint Economic Committee "A Success;" Joint Statement Issued*, BBC SUMMARY OF WORLD BROADCASTS, Jan. 22, 1994, available in LEXIS, Asiapc Library, ALLASI File.

Secretary Bentsen also stressed the need for more Chinese progress on human rights. Friedman, *supra* note 39, at A6. Similarly, Secretary of State Christopher made the same point

to provide a forum to discuss China's efforts to reform its economy and for the United States to express concerns about Chinese trade practices. China's trade surplus with the United States for 1993 was almost \$23 billion.¹⁷⁵ Despite the January, 1994, Textile Export MOU and Chinese efforts to curtail transshipment, the practice of illegal shipments continued.¹⁷⁶ Meanwhile, Chinese trade and American investment continued to expand.¹⁷⁷

On March 30, 1994, the Clinton Administration announced that a new general license would be available for a range of Coordinating Committee on Multilateral Export Controls (C.O.C.O.M.)¹⁷⁸ controlled items into countries like China. Many high-tech American firms would be better able to compete on a world basis than previously under the Cold-War-era international export control regime.¹⁷⁹ C.O.C.O.M. would cease to function on March 31, 1994, while its successor regime would become operational in the fall.¹⁸⁰

Market access in China for pure sales and services by American firms is extremely difficult, and during May, 1994, a U.S. report outlined the barriers faced by American firms.¹⁸¹ During June, 1994,

on human rights issues. Elaine Sciolino, *China Rejects Call From Christopher for Rights Gains*, N.Y. TIMES, Mar. 13, 1994, at 1.

175. *The Prepared Statement of Rep. Nancy Pelosi, (D-CA) before the House Ways and Means Committee*, FED. NEWS SERVICE, Feb. 25, 1994, available in LEXIS, Asiapc Library, ALLASI File. For the first time, Chinese authorities admitted to a sizeable trade surplus with the United States. *Lies, Damn Lies and Trade Figures*, S. CHINA MORNING POST, Jan. 30, 1994, available in LEXIS, Asiapc Library, ALLASI File.

176. Mark O'Neill, *China Says Illegal Textile Transshipment Continue*, REUTER ASIA-PAC. BUS. REP., Apr. 10, 1994, available in LEXIS, Asiapc Library, ALLASI File; *China Cites Illegal Deals*, N.Y. TIMES, Apr. 11, 1994, at D10.

177. For example, the Chinese announced that as a result of their mission to New York in April, 1994, they were returning home with over \$11 billion in signed contracts. *China Reports Big Deals in U.S. Trade Mission*, REUTERS BUS. REP., Apr. 21, 1994, available in LEXIS, Asiapc Library, ALLASI File.

178. MICHAEL B. MARKS, U.S. DEP'T OF STATE, CURRENT POLICY NO. 568, EAST-WEST RELATIONS AND TECHNOLOGICAL TRANSFERS 3 (1984).

179. For a description of the advantages to American high-technology producers and exporters, see Ann A. Flynn, *U.S. Liberalizes Export Controls For China*, 21 CHINA BUS. REV. 4 (1994), available in LEXIS, Asiapc Library, ALLASI File. Seventeen nations were party to C.O.C.O.M., which was established in 1949, for the purpose of voluntarily restricting the sale of military goods and technology to Eastern bloc countries. See MARKS, *supra* note 178, at 3; Lynn E. Davis, *Export Controls and Non-proliferation Regimes in the Post-Cold War Period*, 5 U.S. DEP'T STATE DISPATCH 149 (1994).

180. Davis, *supra* note 179, at 150.

181. See *Investment-Related Restrictions Based on Industrial Policy Draw Criticism From the U.S.*, 16 E. ASIAN EXECUTIVE REP. 12 (1994), available in LEXIS, Asiapc Library, ALLASI File. On the obstacles that U.S. firms encounter in attempting to do business in China, see Peter Behr, *For U.S. Firms in China, Obstacles and Opportunity*, WASH. POST, Sept. 1, 1994, at B10.

China accused the United States of costing it millions of dollars in exports due to its anti-dumping laws.¹⁸² Despite the January, 1994, Textile Export MOU,¹⁸³ the United States announced a cut in China's quota on July 1, 1994, due to China's restricted markets and trade barriers.¹⁸⁴ In August, 1994, the Chinese government reported that it had uncovered 460 cases of unfair competition during a nationwide crack-down in the first half of the year. It provided a view of what steps were taken against those entities that were engaged in illegal economic activities.¹⁸⁵

Secretary of Commerce Ron Brown was the first U.S. cabinet member to visit China after President Clinton's renewal of MFN in May, 1994.¹⁸⁶ During his visit to China in August, 1994, Secretary Brown was informed of a range of retaliatory trade measures against the United States if concessions were not made by the latter to China's textile industry. The new policy of separating China's human rights practices from its trade privileges was clearly in evidence when Secretary Brown was in China.¹⁸⁷

At the time of delinking MFN status from human rights issues in May, 1994, President Clinton suggested establishing a voluntary code of conduct for United States businesses as one way to promote the American human rights agenda. Over the summer of 1994, American administration officials unsuccessfully met with business and human rights leaders to find some common ground in developing the code.¹⁸⁸

182. *China Lashes Out At "Unfair" U.S. Trade Law*, REUTER BUS. REP., June 11, 1994, available in LEXIS, Asiapc Library, ALLASI File. For one example of the impact of alleged Chinese dumping in the United States, see Peter Behr, *China's Other Trade War; Computer Diskette Maker Says He's a Casualty in Fight With Low-Cost Manufacturers*, WASH. POST, May 30, 1994, at F1. More access for U.S. service industries would include accounting, insurance, telecommunications, distribution, travel, audio-visual, and advertising.

183. Textile Export MOU, *supra* note 171.

184. Benjamin Kang Lim, *China, U.S. in New Dispute Over Textile Quota*, REUTER BUS. REP., July 22, 1994, available in LEXIS, Asiapc Library, ALLASI File. The U.S. view of its action, and the Chinese reaction, are outlined in *China Accuses U.S. of "Trampling" on Textile Agreement*, AGENCY FR. PRESSE, July 22, 1994, available in LEXIS, Asiapc Library, ALLASI File. The United States denied that it cut China's textile quota but stated it credited goods of Chinese origin to the quota. *Id.*

185. *China Uncovers 460 Cases of Unfair Trade*, REUTERS WORLD SERVICE, Aug. 12, 1994, available in LEXIS, Asiapc Library, ALLASI File.

186. Steven Mufson, *U.S., China Act to Boost Trade Ties*, WASH. POST, Aug. 30, 1994, at A1.

187. Lyndsay Griffiths, *China Warns U.S. of Retaliatory Trade Strike*, REUTER BUS. REP., Aug. 29, 1994, available in LEXIS, Asiapc Library, ALLASI File.

188. Amelia A. Newcomb, *U.S. Seeks Code of Conduct for China*, DAILY YOMIURI, Aug. 16, 1994, available in LEXIS, Asiapc Library, ALLASI File. For the view of such a code by business leaders, see Peter Behr, *Companies Are Urged to Lean on China*, INT'L HERALD TRIB., Apr. 26, 1994, available in LEXIS, Asiapc Library, ALLASI File; Edward A. Gargan,

What was envisaged by human rights groups was a set of guidelines comparable to the Sullivan Principles that were initially advocated in 1977 by the Rev. Leon H. Sullivan of Philadelphia, who outlined how corporations could operate in South Africa to gradually abolish apartheid.¹⁸⁹ With respect to China, the NGO Human Rights Watch, proposed that U.S. businesses consider five voluntary guidelines, namely: (1) prohibition of the use of prison products; (2) discouragement of compulsory political indoctrination in the workplace; (3) not discharging people for their political beliefs; (4) allowing workers to discuss work-related issues freely; and (5) for U.S. executives to discuss human rights issues in their localities with Chinese officials.¹⁹⁰

Before the year ended, the Clinton Administration rewarded China under the Textile Export MOU¹⁹¹ of January 17, 1994. This reward came after China's crackdown on illegal shipments of mislabeled textiles and garments destined for U.S. markets, and took the form of increasing the quota of textile products from China.¹⁹²

F. Intellectual Property

Under pressure to avoid a possible all-out trade war over deficiencies regarding protection in China's laws concerning patents, copyrights, trademarks and trade secrets, the United States and China signed an MOU (Intellectual Property MOU)¹⁹³ on January 17, 1992.

Business Objects to a Code in China, N.Y. TIMES, May 24, 1994, at C2. For an excellent discussion of the background and overview of any proposed voluntary code of conduct for American business entities in China, see Diane F. Orentlicher & T. 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).

189. In May, 1981, a private report was issued by a group authorized by the Rockefeller Foundation. This report urged U.S. corporations to abide by the Sullivan Principles, and further recommended that the U.S. government endorse the Principles. *Summary Of Recommendations For Policy On Southern Africa*, N.Y. TIMES, May 23, 1981, at 7. The Sullivan Principles called for desegregation of the workplace, fair employment practices, equal pay for equal work, job training and advancement, and improvement in the quality of worker's lives. *Sullivan, Agents for Change: The Mobilization of Multinational Companies in South Africa*, 15 LAW & POL'Y INT'L BUS. 427 (1983). In 1985, President Reagan issued Executive Order No. 12,532, which encouraged all American companies doing business in South Africa to abide by the Sullivan Principles. 50 Fed. Reg. 36,861 (1985).

190. Gargan, *supra* note 188, at C2. See also Steven Mufson, *For U.S. Firms in China, a Struggle Over Rights and Roles*, WASH. POST, Aug. 25, 1994, at B10.

191. Textile Exports MOU, *supra* note 171.

192. The Directive from the Committee for the Implementation of Textile Agreements, 59 Fed. Reg. 61,587 (1994) (effective Dec. 5, 1994).

193. Memorandum of Understanding on the Protection of Intellectual Property, U.S.-P.R.C., 34 I.L.M. 676 [hereinafter Intellectual Property MOU]. See also 57 Fed. Reg. 3084 (1992). For a discussion of the terms of the MOU and changes to be implemented, see Joseph T. Simone, Jr., *Improving Protection of Intellectual Property*, 19 CHINA BUS. REV. 9 (1992),

In this MOU whereby China agreed to initiate the necessary steps to adequately protect U.S. copyrights, patents, trademarks, and trade secrets.¹⁹⁴

On March 9, 1993, Ambassador Mickey Kantor, the U.S. Trade Representative, in testimony before the Senate Committee on Finance stated:

One of my principal responsibilities as U.S.T.R is to open foreign markets and break down barriers to U.S. manufactured goods, agricultural products and services. This includes pursuing the strong protection of U.S. intellectual property, so important to our high technology industries. When all is said and done, opening foreign markets is our main objective in the Uruguay Round; . . . it will be a principal focus of our efforts with respect to Japan and China, as well as in other nations around the world. . . . Consequently, we need to use every tool at our disposal—multilaterally where possible, and bilaterally where necessary—to make sure that other markets are comparably open to our own.¹⁹⁵

In mid-November, 1993, U.S. Deputy Trade Representative Charlene Barshefsky acknowledged that China had put "world class" laws in place to protect intellectual property rights but enforcement was lax, particularly in relation to compact discs.¹⁹⁶ On November 30, 1993,

available in LEXIS, Asiapc Library, ALLASI File; Thomas T. Moga, *Recent Intellectual Property Developments in Japan, Taiwan, and China*, 70 U. OF DET. MERCY L. REV. 313, 321-26 (1993); Richard L. Thurston, *Country Risk Management: China and Intellectual Property Protection*, 27 INT'L LAW 51, 54-60 (1993). On the background leading up to MOU, see Turack, *supra* note 14, at 510-14; Xiao-Lin Zhou, *U.S.-China Trade Dispute and China's Intellectual Property Rights Protection*, 24 N.Y.U. J. INT'L L. & POL. 1115 (1992).

194. *China Acceded to the Berne Convention for the Protection of Literary and Artistic Works on July 10, 1992*, 3 U.S. DEPT. ST. DISPATCH 708 (1992); Recent Actions Regarding Treaties to which the United States is Party, 31 I.L.M. 1256, 1257; Geneva Convention for Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Oct. 29, 1971, 25 U.S.T. 309, 866 U.N.T.S. 67; TREATIES IN FORCE 390 (Jan. 1, 1994).

China is a member of the Madrid Agreement Concerning the International Registration of Trademark. Madrid Agreement Concerning the International Registration of Trademarks, Apr. 14, 1891, 828 U.N.T.S. 389 [hereinafter Madrid Agreement]. See *China, 1992 NAT'L TRADE DATA BANK MARKET REP.*, Mar. 11, 1992, available in LEXIS, Market Library, MKTRPT File. Art 1 (2) of the Madrid Agreement provides that "[n]ationals of any of the contracting countries may, in all the other countries party to this Agreement, secure protection for their marks applicable to goods or services, registered in the country of origin, by filing the said marks at the International Bureau of Intellectual Property." Madrid Agreement, *supra*, art. 1, 828 U.N.T.S. at 389. China also became a party to the Patent Cooperation Treaty on January 1, 1994. Patent Corporation Treaty, June 19, 1970, 28 U.S.T. 7645. See also *White Paper; Intellectual Property Protection in China*, BBC SUMMARY WORLD BROADCASTS, June 20, 1994, available in LEXIS, News Library, CURNWS File.

195. Michael L. Doane, *TRIPS and Intellectual Property Protection in an Age of Advancing Technology*, 9 AM. U. J. INT'L L. & POL'Y 465, 467-68 (1994).

196. Rich Miller, *U.S. Official Warns China of Trade Retaliation*, REUTER LIBR. REP., Nov. 16, 1993, available in LEXIS, Asiapc Library, ALLASI File. See also *On Trade Policy*

U.S.T.R. Kantor announced¹⁹⁷ that China was placed on a "priority watch list" under "Special 301" of the Omnibus Trade and Competitiveness Act of 1988.¹⁹⁸

The GATT's Uruguay Round was finally concluded on December 15, 1993,¹⁹⁹ after seven years of deadlock over intellectual property protection.²⁰⁰ The adoption of the text of the Final Act²⁰¹ by consen-

Toward China, FED. NEWS SERVICE, July 28, 1994, available in LEXIS, Asiapc Library, ALLASI File (statement by Charlene Barshefsky before the House Ways and Means Subcommittee on Trade).

197. U.S.T.R. Kantor said:

We cannot tolerate the pirating or counterfeiting of U.S. products. Protection of U.S. rights is key to this administration's policy of opening markets and creating trade opportunities for our companies and jobs for our workers. . . . The resulting widespread infringement of copyrights, trademarks and patents has led to losses of hundreds of millions of dollars for U.S. industry.

Mainland China Moved to Priority Watch List, CENT. NEWS AGENCY, Dec. 1, 1993, available in LEXIS, Asiapc Library, ALLASI File. For the Chinese response, see *China Attacks U.S. Censure on Intellectual Property*, REUTER LIBR. REP., Dec. 2, 1993, available in LEXIS, Asiapc Library, ALLASI File. China's Foreign Ministry spokesman indicates what measures it took to strength protections. *Id.*

198. Trade Act, Pub. L. No. 100-418, 102 Stat. 1107 (1988). Special 301 is Section 301 of the Act. On the origin and evaluation of section 301, see Julia C. Bliss, *The Amendments to Section 301: An Overview and Suggested Strategies for Foreign Response*, 20 L. & POL'Y INT'L BUS. 501 (1989). When China is placed on the "priority watch list," the U.S.T.R. is required to enter into negotiations with his Chinese counterpart with a view to improving the protection of intellectual property rights. See 22 U.S.C. § 6208 (1990 & Supp. 1995); see also Judith H. Bello & Alan F. Holmer, "Special 301": *Its Requirements, Implementation, and Significance*, 13 FORDHAM INT'L L.J. 259 (1989); Marjorie A. Minkler, *The Omnibus Trade Act of 1988, Section 301: Permissible Enforcement Mechanism or a Violation of the United States' Obligations Under International Law?* 11 J.L. & COM. 283 (1992).

199. GATT-Multilateral Trade Negotiations (The Uruguay Round): Final Act Embodying the Results of the Uruguay Round Trade Negotiations, Dec. 15, 1993, 33 I.L.M. 1 [hereinafter GATT Uruguay Round Final Act].

200. Roger Cohen, *The World Trade Agreement: The Overview; GATT Talks End in Joy and Relief*, N.Y. TIMES, Dec. 16, 1993, at D1; see also *The GATT Deal: The Longest Round of All*, FIN. TIMES, Dec. 16, 1993, at 5. See generally Guiguo Wang, *China's Return to GATT*, 28 J. WORLD TRADE L. 51 (1994); Donald C. Clarke, *GATT Membership for China?*, 17 U. PUGET SOUND L. REV. 517 (1994). China did not become a charter member of the WTO. See Jeffrey Parker, *China Hits U.S. on GATT Rebuff, But Still Wants In*, REUTER BUS. REP., Dec. 21, 1994, available in LEXIS, Asiapc Library, ALLASI File.

201. GATT Uruguay Round Final Act, *supra* note 199, 33 I.L.M. 1. A number of documents annexed to the Final Act are reproduced, specifically the Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods, Dec. 15, 1993, 33 I.L.M. 81 [hereinafter TRIPS Agreement].

On December 15, 1993, President Clinton sent an Executive Summary to the U.S.T.R. and Congress explaining the results of the Uruguay Round. See 58 Fed. Reg. 67,263 (1993). With respect to those aspects of the Round concerning Trade-Related Intellectual Property Rights, see 58 Fed. Reg. 67,289 (1993). A summary of President Clinton's Executive Summary is found in *Contemporary Practice of the United States*, 88 AM. J. INT'L L. 312, 320-322

sus, embodied the results of the Round. In brief, the Agreement on Trade-Related Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS) established certain minimum standards of intellectual property protection²⁰² for patents,²⁰³ copyrights,²⁰⁴ and trademarks.²⁰⁵ The World Trade Organization (W.T.O.) was established to implement the provisions of the GATT, including those in the area of intellectual property protection.²⁰⁶ The GATT ministers set

(1994).

202. TRIPS Agreement, *supra* note 201, 33 I.L.M. 81. The TRIPS Agreement provides the following coverage: (1) Computer Programs: fifty years of protection and an exclusive right to authorize or prohibit rental of programs, *id.* arts. 10, 12, at 87-88; (2) Semiconductor Chips: ten years of protection, an extension of protection to products incorporating protected chip designs, and a "reasonable" royalty payment imposed on innocent infringers for the disposition of stock on hand, *id.* arts. 37-38, at 97-98; (3) Sound Recordings: fifty years of protection and the right to prohibit unauthorized rentals, *id.* art. 14, at 88; (4) Motion Pictures: fifty years of protection for works where companies may be the author, *id.* art. 12, at 87; (5) Pharmaceutical: twenty years of patent protection from the date an application is filed, safeguards against compulsory licensing, and implementation of procedures to permit patent applications for pharmaceutical and agricultural chemical products, *id.* art. 39, at 98; (6) Trademarks: prohibition on requirements mandating foreign trademarks be "linked" with local trademarks, greater protection for international well-known marks, and guaranteed protection for service marks, *id.* art. 20, at 90; (7) Trade Secrets: protection against misappropriation and unauthorized use, as long as reasonable steps are taken to protect commercially valuable information, *id.* art. 39, at 98.

203. *Id.* arts. 27-34, at 93-97. Key patent benefits include: (1) product and process patents for virtually all types of inventions, including pharmaceutical and agricultural chemicals; (2) meaningful limitations on the ability to impose compulsory licensing; (3) a patent term of twenty years from the date the application is filed; and (4) prompt implementation of procedures to permit the filing of patent applications covering pharmaceutical and agricultural chemicals. *Id.*

204. *Id.* arts. 9-14, at 87-88. Key copyright benefits include: (1) protection of computer programs as literary works and databases as compilations under copyright; (2) imposition of an obligation on members to grant owners of computer programs and sound recordings the right to authorize or prohibit the rental of their products; (3) establishment of a fifty year term for the protection of sound recordings, as well as a requirement that members provide protection for existing sound recordings; and (4) establishment of a minimum fifty year term of protection for motion pictures and other works where companies may be the author. *Id.*

205. *Id.* arts. 15-21, at 89-90. Key trademark benefits include: (1) requirement that members register service marks in addition to trademarks; (2) enhancement of protection for internationally well-known marks; (3) prohibition of mandatory linking of trademarks; and (4) prohibition of compulsory licensing of marks. *Id.*

206. The W.T.O. replaced Multilateral Trade Organization (M.T.O.) in all references throughout the Final Act and all its Annexes. General Agreement on Tariffs and Trade-Multilateral Trade Negotiations (The Uruguay Round): Agreement Establishing the Multilateral Trade Organization, Dec. 15, 1993, 33 I.L.M. 13 [hereinafter W.T.O. Agreement].

The W.T.O. encompasses the present GATT structure, as well as trade in services and the protection of intellectual property rights. W.T.O. membership is open to those countries that (i) are signatories of the GATT; (ii) agree to adhere to all of the provisions of the Uruguay Round; and (iii) submit schedules of market access commitments for industrial goods, agricul-

January 1, 1995, as the date for the GATT Uruguay Round Agreement²⁰⁷ and the W.T.O. Agreement to take effect.²⁰⁸

Repeated complaints from the United States about intellectual property right infringements in China were met by Chinese acknowledgements that violations of the 1992 Intellectual Property MOU²⁰⁹ have continued. However, the Chinese government planned to set up special courts to deal with infringement cases. It did not plan to otherwise crackdown.²¹⁰ In 1993, Microsoft Corporation pursued a court action in one of these new courts.²¹¹

Although there was ongoing pressure from U.S. business leaders for action against China over pirating on a massive scale,²¹² at the

tural goods, and services. *Id.* at 15-21; 58 Fed. Reg. 67,293 (1993).

The W.T.O. Agreement includes the General Agreement on Tariffs and Trade Negotiations (The Uruguay Round): Understanding on Rules and Procedures Governing the Settlement of Disputes, Dec. 15, 1993, 33 I.L.M. 112 [hereinafter GATT Uruguay Round Understanding]. Part V of the TRIPS Agreement, *supra* note 201, 33 I.L.M. 81, in turn, falls within the aforementioned Understanding. See GATT Uruguay Round Understanding, *supra*, 33 I.L.M. 112. See also 58 Fed. Reg. 67,291 (1993). See generally, Andreas F. Lowenfeld, *Remedies Along With Rights: Institutional Reform in the New GATT*, 88 AM. J. INT'L L. 477 (1994).

207. W.T.O. Agreement, *supra* note 206, 33 I.L.M. 13.

208. On December 8, 1994, President Clinton signed into law the implementing legislation for the GATT Uruguay Round Agreement. 19 U.S.C. § 3511 (Supp. 1995). The United States deposited its instrument of acceptance on December 23, 1994. 60 Fed. Reg. 1003 (1995). The GATT Agreement, including the TRIPS Agreement and the W.T.O. Agreement, took effect on January 1, 1995. GATT Uruguay Final Act, *supra* note 199, 33 I.L.M. 1.

209. Intellectual Property MOU, *supra* note 193, 34 I.L.M. 676.

210. John Kohut, *Courts Plan to Combat Piracy*, S. CHINA MORNING POST, Jan. 29, 1994, available in LEXIS, Asiapc Library, ALLASI File (statement from M.O.F.T.E.C. Minister Wu Yi). Another report indicates that "[ninety-five] percent of imported compact discs sold on the mainland last year were either smuggled or pirated by local production companies, the Shanghai-based Wen Hui Daily reported." *China Tells U.S. To Stop Criticism Against Property Protection*, PROPRIETARY TO THE UNITED PRESS INT'L, Jan. 28, 1994, available in LEXIS, Asiapc Library, ALLASI File. Piracy has been defined as "any unauthorized and uncompensated reproduction or simulation of [someone else's] creative intellectual product." J.H. Reichman, *Intellectual Property in International Trade: Opportunities and Risks of a GATT Connection*, 22 VAND. J. TRANSNAT'L L. 747, 775 (1989).

211. Mike Laris, *In China, Challenging the Pirates: Software Companies Test New Laws, Courts*, WASH. POST, Jan. 3, 1994, at F13. The report indicates that the Intellectual Property Division of the Beijing Intermediate People's Court has been hearing cases during the last six months against individuals, companies, and government agencies allegedly pirating audio and video cassette tapes, computer discs, and product labels. *Id.* See also Mark O'Neill, *China Defends Trademark Protection Record*, REUTERS ASIA-PAC. BUS. REP., Apr. 12, 1994, available in LEXIS, Asiapc Library, ALLASI File.

212. *U.S. Puts Off Sanctions on China and Japan*, N.Y. TIMES, May 1, 1994, at 8; Peter Behr & Daniel Williams, *Intellectual Piracy Issue Caught in China Debate: Administration Divided on Sanctions' Timing*, WASH. POST, Apr. 28, 1994, at D11. The U.S.T.R. office indicated that "as many as two dozen compact disk [sic] and laser disc factories [were] operating in central and south China, turning out some [fifty] million pirate copies of record-

end of April, 1994, U.S.T.R. Kantor announced that the decision on naming China a "priority foreign country" would be postponed for sixty days so as not to complicate the President's decision on renewal of MFN status for China.²¹³ In mid-June, 1994, China announced that it had issued a White Paper, in which it maintained that its intellectual property protection was complete and indicated how it had enforced the laws against violators.²¹⁴ Despite Chinese protests, on June 30, 1994, China was identified as a priority foreign country by U.S.T.R. Kantor²¹⁵ under "Special 301"²¹⁶ as suspected of tolerating intellectual property violations. This meant that a six-month investigation was

ings, . . . films, [and] computer games . . . each year, mostly for export" to other Asian countries. *Id.* at D14.

213. *U.S. Puts Off Piracy Decision on China*, REUTER WORLD SERVICE, May 1, 1994, available in LEXIS, Asiapc Library, ALLASI File.

214. *China Says Copyright Protection Complete*, PROPRIETARY TO THE UNITED PRESS INT'L, June 16, 1994, available in LEXIS, Asiapc Library, ALLASI File. The problem was not whether China had sufficient up-to-date laws to protect intellectual property, but rather its lack of desire to enforce the laws or provide sufficient enforcement mechanisms.

On Chinese protection of software, see Henry Hong Liu, *Legislative Update — Legal Aspects of Software Protection in China: The Computer Software Protection Regulations*, 9 SANTA CLARA COMPUTER & HIGH TECH. L.J. 469 (1993). For Regulations on Computer Software Protection of the People's Republic of China, promulgated by the State Council in 1991, see *id.* app. at 493; K.H. Pun, *A Critique of Copyright Protection For Computer Software in the People's Republic of China*, 16 EUR. INTELL. PROP. REV. 227 (1994).

China amended its patent law of 1984 on September 4, 1992, and it entered into force on January 1, 1993. David Hill & Judith Evans, *Chinese Patent Law: Recent Changes Align China More Closely With Modern International Practice*, 27 GEO. WASH. J. INT'L & ECON. 359, 359 n.2 (1993).

On China's copyright law of September 7, 1990, which entered into force on June 1, 1991, see Chengsi & Pendleton, *A Response to United States Government Criticisms of the Chinese Copyright Law*, 13 EUR. INTELL. PROP. REV. 257 (1991); Li Xiang Sheng, *Waiting for Supplements: Comments on China's Copyright Law*, 13 EUR. INTELL. PROP. REV. 171 (1991).

On China's trademark law, see Benny Lee & Xavier B. Delmas, *Welcome Changes to the Trade Mark Law of the People's Republic of China*, 14 EUR. INTELL. PROP. REV. 67 (1992). Further amendments took effect on July 1, 1993. These amendments elevated the Chinese standard to the international level by providing for the protection of service marks and well-known marks. See *China: Government To Register Service Industry Trademarks*, BBC MONITORING SERVICE: FAR E., July 21, 1993, available in LEXIS, Asiapc Library, TXTFE File; *Trademark Laws in China are Amended to Include Services*, BUS. ASIA, July 19, 1993, available in LEXIS, Asiapc Library, CHINA File.

215. 59 Fed. Reg. 35,558 (1994). See also *Special 301 Investigation Into China's IPR Enforcement*, 6 U.S. DEP'T ST. DISPATCH 22 (1995); Thomas L. Friedman, *China Faces U.S. Sanctions in Electronics Copyright Piracy*, N.Y. TIMES, July 1, 1994, at D2. For the Chinese reaction, see *Decision on China's Intellectual Property Rights Not Acceptable, Says Chinese Government*, XINHAU NEWS AGENCY, July 1, 1994, available in LEXIS, Asiapc Library, ALLASI File.

216. Trade Act, Pub. L. No. 100-418, 102 Stat. 1107 (1988).

initiated to verify the alleged transgressions, which, if true, would subject China to specific sanctions.²¹⁷ A few days later, China's National People's Congress adopted new rules to impose more stringent measures, including prison terms for copyright violators.²¹⁸

On July 21, 1994, Deputy U.S.T.R. Barshefsky demanded that China close down twenty-six factories that had the capacity to manufacture up to 75 million compact discs for illegal export.²¹⁹ These illegal exports cost U.S. industry a \$1 billion annual loss. China did attempt to curtail the violations,²²⁰ as interim reports would indicate.²²¹ As the deadline of the end of December, 1994, approached, Chinese officials made it clear that China would produce its own list of sanctions against U.S. interests if the latter imposed sanctions on China.²²²

On December 31, 1994, the U.S.T.R. announced²²³ economic

217. Friedman, *supra* note 215.

218. *Chinese Action On Copyright*, N.Y. TIMES, July 6, 1994, at D12; Philip Shenon, *Chinese Accused of Pirating Disks*, N.Y. TIMES, Aug. 18, 1994, at C1.

219. *U.S. Official Demands China Clean Up Trade Act*, REUTER WORLD SERVICE, July 21, 1994, available in LEXIS, Asiapc Library, ALLASI File. Consequently, Chinese officials ordered a crackdown against the theft of intellectual property. *China Orders Crackdown on Copyright Piracy*, REUTER BUS. REP., July 30, 1994, available in LEXIS, Asiapc Library, ALLASI File; *China's Policy Woes Tarnish Image*, PROPRIETARY TO THE UNITED PRESS INT'L, July 30, 1994, available in LEXIS, Asiapc Library, ALLASI File. Courts were set up in Beijing, Shanghai, Guandong, Hainan, and Fujian to deal with copyright violations, and five Beijing firms were sued by Microsoft Corp., Lotus Development Corp., and Autodesk Inc. *Id.*

220. *China Fights Copyright Violation*, PROPRIETARY TO THE UNITED PRESS INT'L, Aug. 3, 1994, available in LEXIS, Asiapc Library, ALLASI File (giving an account of the many positive steps taken by China). Interestingly, the Walt Disney Company was successful before the intellectual property chamber of the Beijing People's Intermediate Court against a number of Chinese firms that had pirated its intellectual property. Benjamin Kang Lim, *China Court Favors Disney in Key Copyright Suit*, REUTER ASIA-PAC. BUS. REP., Aug. 4, 1994, available in LEXIS, Asiapc Library, ALLASI File; *China Steps Up Fight Against Trademark Pirates*, PROPRIETARY OF THE UNITED PRESS INT'L, Oct. 19, 1994, available in LEXIS, Asiapc Library, ALLASI File.

For a discussion on many aspects of the problems involving intellectual property protection and ramifications of the U.S.T.R. investigation, see Lee M. Sands & Deborah Lehr, *IPR Watchdogs: Intellectual Property Rights*, 21 CHINA BUS. REV. 16 (1994), available in LEXIS, Asiapc Library, ALLASI File.

221. Michael DiCicco, *China Pushes Grassroots Attack On Piracy*, PROPRIETARY TO THE UNITED PRESS INT'L, Nov. 8, 1994, available in LEXIS, Asiapc Library, ALLASI File; *Shanghai Cracks Down on Fake CDs*, PROPRIETARY TO THE UNITED PRESS INT'L, Nov. 24, 1994, available in LEXIS, Asiapc Library, ALLASI File.

222. *U.S. Warns China Time Running Out On Copyrights*, REUTER WORLD SERVICE, Dec. 16, 1994, available in LEXIS, Asiapc Library, ALLASI File; Maggie Farley, *U.S.-China Trade Talks Stall Over Copyrights*, L.A. TIMES, Dec. 17, 1994, at D1; *China Threatens Trade War With U.S.*, PROPRIETARY TO THE UNITED PRESS INT'L, Dec. 27, 1994, available in LEXIS, Asiapc Library, ALLASI File.

223. Some of the examples of counterfeit copies cited by the United States included the movies "The Lion King" and "Jurassic Park," being illegally sold in China before the video-

sanctions against China under "Special 301"²²⁴ and published a list of products,²²⁵ worth \$2.8 billion, that would be the subject of retaliation. A spokesman for M.O.F.T.E.C. reiterated²²⁶ all of the steps that China had taken to protect intellectual property rights. Despite the operation of some state-owned plants involved in pirating operations, China tried to demonstrate its good faith by pointing to the courts in Foshan and Guangdong that ordered closure of three factories that illegally used technology patented by the Foshan Porcelain Research Association.²²⁷ Furthermore, the Chinese government took other positive actions, such as the closure of twenty factories that were directly involved in infringing intellectual property rights.²²⁸

Following the U.S.T.R. announcement at the end of December, 1994, the investigation was extended to February 4, 1995, which included time for public comment before U.S. sanctions went into effect. This period also provided the United States and China an opportunity to negotiate further on the issues and, accordingly, negotiations commenced on January 18, 1995, at M.O.F.T.E.C.²²⁹ However, any

tapes had been released in the United States. "All of the videos were stolen off satellite broadcasts," Mr. Kantor said." David E. Sanger, *U.S. Threatens \$2.8 billion of Tariffs on China Exports*, N.Y. TIMES, Jan. 1, 1995, at 14. See also Peter Behr, *U.S. Threatens Chinese Over Pirated Movies, CDs: Trade Sanctions Could Exceed \$1 Billion*, WASH. POST, Jan. 1, 1995, at A27.

224. Trade Act Pub. L. No. 100-418, 102 Stat. 1107 (1988).

225. 60 Fed. Reg. 1829 (1995). The proposed list of products is found in the Annex at 60 Fed. Reg. 1832-43 (1995).

226. *Chinese Responses to Sanctions; MOFTEC Spokesman Calls U.S. Trade Sanctions "Absolutely Unacceptable,"* BBC SUMMARY OF WORLD BROADCASTS, Jan. 3, 1995, available in LEXIS, Asiapc Library, ALLASI File (citing a list of Chinese counter-retaliatory measures against the United States); *China Warns It Will Retaliate If U.S. Proceeds with Sanctions*, N.Y. TIMES, Jan. 1, 1995, at 14.

227. Jane Macartney, *China Seals Three Plants For Patent Infringement*, REUTER ASIA-PAC. BUS. REP., Jan. 3, 1995, available in LEXIS, Asiapc Library, ALLASI File. See also *China Says It is Urging Boycott Of Pirated Goods*, L.A. TIMES, Jan. 5, 1995, (China attempting to combat local illegal sales); Rone Tempest, *Growing Market For Pirated CDs*, THE GUARDIAN, Jan. 5, 1995, available in LEXIS, Asiapc Library, ALLASI File (describing how local Chinese peddlers operate in illegal sales); *Intellectual Property; Ming Pao: Guangdong Official Cites Manpower Shortages in Piracy Crackdown*, BBC SUMMARY OF WORLD BROADCASTS, Jan. 3, 1995, available in LEXIS, Asiapc Library, ALLASI File (stating reasons as to why it is difficult for the Chinese to fight piracy of intellectual property).

228. *China Closes Factories for Infringing Copyright*, S. CHINA MORNING POST, Jan. 12, 1995, available in LEXIS, Asiapc Library, ALLASI File.

229. Jane Macartney, *Sino-U.S. Talks to Avert Looming Trade War Begin*, REUTER BUS. REP., Jan. 18, 1995, available in LEXIS, Asiapc Library, ALLASI File. Interestingly, China reported that it had executed 2665 persons since 1991, who were convicted of intellectual property piracy and that its courts handled 7923 of these cases. *Id.*; David E. Rosenbaum, *China Trade Rift With U.S. Deepens*, N.Y. TIMES, Jan. 29, 1995, at 1. As to the origin of the equipment used in producing the illegal compact discs, see Steven Mufson, *Pirated Compact*

compromise appeared unlikely,²³⁰ and on February 4, 1995, the U.S.T.R. made its determination to increase import duties 100% on a specified list of products from China, as of February 26, 1995.²³¹ With protracted negotiations between the United States and China continuing past the midnight deadline, the parties reached agreement²³² in the early hours of February 26, 1995, thus avoiding the operation of the set sanctions.

G. Arms Control and the Missile Technology Control Regime

Western industrialized nations have been concerned since the mid-1980's with the supply and proliferation of weapons of mass destruction and long-range delivery systems to third world countries. Consequently, the M.T.C.R.²³³ was agreed to in 1987 by seven industrialized nations, namely: Canada, the Federal Republic of Germany, France, Italy, Japan, the United States and the United Kingdom (i.e., the G-7 Group).²³⁴ Their aim was to limit the proliferation of ballistic

Discs—Noisy Sample of U.S.-China Trade Trouble, WASH. POST, Jan. 17, 1995, at A16.

230. *Beijing Blames U.S. Negotiators*, N.Y. TIMES, Jan. 29, 1995 at 1; Rone Tempest & James Gerstenzang, *U.S., China Near Brink as Piracy Talks Break Off*, L.A. TIMES, Jan. 29, 1995, at A1.

231. 60 Fed. Reg. 7230 (1995). The Annex to the U.S.T.R.'s determination lists the products that are subject to a 100% duty. The Annex appears at 60 Fed. Reg. 7232-34 (1995). See also David E. Sanger, *President Imposes Trade Sanctions On Chinese Goods*, N.Y. TIMES, Feb. 5, 1995, at 1; Helene Cooper & Kathy Chen, *Sanctions Put U.S., China on Course to Trade War*, WALL ST. J., Feb. 6, 1995, at A3.

232. Steven Mufson, *Trade War Averted by U.S., China; Beijing Would Protect Intellectual Property in Tentative Accord*, WASH. POST, Feb. 26, 1995, at A1. In the early hours of February 26, 1995, the Chinese authorities raided and closed down two factories in Shenzhen and Zhuhai, two of the most flagrant violators of copyrights. *Id.*

The agreement also provided for greater access for recordings and films. Rone Tempest, *U.S., China Reach Last-Minute Deal To Avert Trade War*, L.A. TIMES, Feb. 26, 1995, at A1; 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; see also Termination of Section 301 Investigation and Action Regarding the People's Republic of China's Protection of Intellectual Property, 60 Fed. Reg. 12,582 (1995) (proposed March 7, 1995); Provision and Market Access to Persons Who Rely on Intellectual Property Protection, 60 Fed. Reg. 7230 (1995) (proposed Mar. 7, 1995).

233. M.T.C.R., *supra* note 30, 26 I.L.M. 599.

234. *Id.* The Agreement, which entered into force on April 16, 1987, is not a treaty, but rather exposes a common policy and guidelines for the Parties to follow. It also contains a list of controlled goods and technologies. See 22 C.F.R. 120.29. (1995). For a discussion on the M.T.C.R. structure and proposed operations, see Jack H. McCall, Jr., "The Inexorable Advance of Technology"? American and International Efforts to Curb Missile Proliferation, 32 JURIMETRICS J. 387, 407-10 (1992); Martha Fitzpatrick, *Arms Control: Export Controls On Missile Technology—Agreement on Guidelines for the Transfer of Equipment and Technology Related to Missiles*, April 7, 1987, 29 HARV. INT'L L.J. 142 (1988).

missiles that were capable of carrying nuclear warheads. Each party to the M.T.C.R. guidelines was responsible for implementing the regime in accordance with its national law.²³⁵ During the Bush Administration, the issue of China's sales of missiles and missile technology to third world countries was linked, along with human rights, to China's securing MFN trading status from the United States.²³⁶

On a visit to China in November, 1991, Secretary of State James Baker received oral assurances from the Chinese government that, although China would not accede formally to the M.T.C.R. Agreement, it would observe the guidelines and parameters therein.²³⁷ Subsequently, on February 1, 1992, the Chinese Foreign Minister informed the Secretary of State, by letter, that China would abide by the M.T.C.R. Agreement.²³⁸ In November, 1992, U.S. intelligence reports indicated that China was exporting sensitive missile technology to Pakistan.²³⁹ This technology involved M-11 surface-to-surface ballistic missiles or their components.²⁴⁰ China responded that it had observed its pledge in accordance with the M.T.C.R. Agreement.²⁴¹ In

Subsequent to M.T.C.R.'s adoption, the U.S. Department of State held a press briefing on April 16, 1987. U.S. DEP'T OF STATE, AMERICAN FOREIGN POLICY, CURRENT DOCUMENTS 1987, at 74-80 (1988). The White House announced the new policy to limit the proliferation of nuclear capable weapons through Marlin Fitzwater. Statement by the Assistant to the President for Press Relations Announcing New Guidelines, 23 WEEKLY COMP. PRES. DOC. 395 (Apr. 16, 1987). On the basic structure of the U.S. implementing legislation, see F. Kenneth Schwetje, *They Shall Beat Their Swords Into Plowshares (In Accordance With All Relevant Arms Control Agreements)*, 17 ANNALS OF AIR & SPACE L. 383, 384-89 (1992).

235. M.T.C.R., *supra* note 30, 26 I.L.M. 599.

236. See generally, Turack, *supra* note 14; *see also* 138 CONG. REC. S15,922 (daily ed. Oct. 1, 1992) (letter of Pres. Bush).

237. The guidelines focus on delivery systems, that is, on missiles and boosters apart from "raw materials and technology" for nuclear weapons deemed subject to other regulation. The parameters of control refer to missiles whose range is beyond 190 miles and whose payload capacity is greater than 1100 pounds. M.T.C.R., *supra* note 30, 26 I.L.M. at 600.

238. Elaine Sciolino, *U.S. Lifts Its Sanctions on China over High-Technology Transfers*, N.Y. TIMES, Feb. 22, 1992, at 1.

239. For background as to the United States' concern over Pakistan's nuclear weapons capability, see Stephen H. Cassidy, *The Newest Member of the Nuclear Club: Pakistan's Drive for a Nuclear Weapons Capability and United States Nuclear Proliferation Policy*, 12 HASTINGS INT'L & COMP. L. REV. 679 (1989).

240. *Id.*

241. *China Denies Breaking Arms Pact on Missile Sales*, REUTER LIBR. REP., June 10, 1993, available in LEXIS, Asiatic Library, ALLASI File. The M-11 missiles weigh approximately 1100 pounds, have a range of about 190 miles, and are capable of carrying nuclear or conventional warheads. *U.S. Weighs Sanctions on China over Missile Technology Exports*, AGENCE FR. PRESSE, Aug. 25, 1993, available in LEXIS, News Library, AFP File. For a brief background on China's arms sales since 1990, see Alexander T. Lennon, *Trading Guns, Not Butter; Chinese Arms Exports*, 21 CHINA BUS. REV. 42 (1994), available in LEXIS, Asiatic Library, ALLASI File.

reviewing China's MFN status in May, 1993, President Clinton indicated that he would not hesitate to take action if the transfer of M-11 missiles to Pakistan was confirmed. President Clinton had delinked China's arms sales from MFN extensions.²⁴²

Despite Chinese denials, the United States announced sanctions against China that involved a two-year ban on the sale of high-technology for use by the Chinese in its satellite program.²⁴³ In mid-July, 1993, the United States infuriated China by monitoring its flag-ship, The *Yinhe*, and charging that the ship was carrying a cargo of chemicals destined for use in Iran's chemical warfare program.²⁴⁴ Under a compromise, China and the United States arranged for Saudi Arabian officials to inspect The *Yinhe* in September, 1993. None of the alleged chemicals were aboard.²⁴⁵

Intermittent talks between various American and Chinese officials took place over the summer and fall of 1993, in an attempt to resolve the issue of the sanctions and sales to Pakistan. These were to no avail.²⁴⁶ Meanwhile, on the eve of the meeting between President Clinton and Chinese President Jiang Zemin in Seattle, the United States Department of State announced,²⁴⁷ as a humanitarian gesture, approval of the sale of a U.S. made supercomputer to China for weather forecasting.

In early January, 1994, the Clinton Administration formally lifted its ban on the sale of three satellites to China after the Chinese agreed

242. Statement on Most-Favored-Nation Trade Status for China, 29 WEEKLY COMP. PRES. DOC. 981 (May 28, 1993).

243. Terry Atlas, *U.S. Sanctions Hit China: Arms Sales to Pakistan Spark Action*, CHI. TRIB., Aug. 26, 1993, at 1; Steven Greenhouse, *\$1 Billion In Sales Of High-Tech Items To China Blocked*, N.Y. TIMES, Aug. 26, 1993, at A1. The Chinese vehemently protested the U.S. sanctions. Patrick E. Tyler, *China Protests U.S. Trade Sanctions*, N.Y. TIMES, Aug. 28, 1993, at 3. The Chinese Deputy Foreign Minister told Ambassador J. Stapleton Roy that "[t]he Chinese government ha[s] been left with no alternative but to reconsider its commitment to the Missile Technology Control Regime." Rone Tempest, *China Threatens To End Commitment To Arms Trade Curbs*, L.A. TIMES, Aug. 28, 1993, at A4.

244. Jim Mann, *U.S.-China Ties Turn Sour Amid Tension On Key Issues*, L.A. TIMES, Aug. 26, 1993, at A1.

245. Rone Tempest, *No Weapons, Chemicals Found On Gulf Ship, China Says*, L.A. TIMES, Sept. 3, 1993, at A10 (noting that chemicals, such as thiodiglycol and thionyl chloride, were not on board). The Chinese government demanded a formal apology and \$13 million in damages, while the U.S. State Department described the incident as "unfortunate." Rone Tempest, *China Asks U.S. Apology, Damages For Search Of Ship*, L.A. TIMES, Sept. 6, 1993, at A1.

246. Elaine Sciolino, *U.S. Warns Beijing As Problem Grows*, N.Y. TIMES, Oct. 1, 1993, at A10; Elaine Sciolino, *U.S. and China Try to End Bar to High-Tech Trade*, N.Y. TIMES, Nov. 12, 1993, at A10.

247. Ruth Marcus & Daniel Williams, *U.S. Agrees to Sell Supercomputer to China*, WASH. POST, Nov. 19, 1993, at A48.

to commence talks on limiting the sale of missiles and missile technology.²⁴⁸ On October 4, 1994, the United States and China reached two agreements²⁴⁹ and issued joint statements on "Missile Proliferation"²⁵⁰ and on "Stopping the Production of Missile Materials For Nuclear Weapons."²⁵¹ These resolved the issues of China's sale of missiles and their components, preventing proliferation of nuclear weapons and the removal by the United States of its ban on sales of high-technology to China.

III. CONCLUSION

In his news conference on May 26, 1994, President Clinton acknowledged that China did not achieve "overall significant progress" in all the areas relating to human rights, but delinked human rights from MFN status, as he considered the previous policy of linkage no longer useful.²⁵² During 1993²⁵³ and 1994,²⁵⁴ there was ample evidence to

248. Thomas L. Friedman, *China Reacts in Dispute Over Textiles*, N.Y. TIMES, Jan. 8, 1994, at 39. In November, 1993, an agreement was proposed whereby China would not admit that it had exported M-11 ballistic missile components to Pakistan, but that it would promise that no such sales would be made to Pakistan, or any other country, in the future. R. Jeffrey Smith & Daniel Williams, *U.S. Offers to Waive China Trade Sanctions; Pledge Not to Export M-11 Missile Sought*, WASH. POST, Nov. 11, 1993, at A39.

249. *The U.S. and China: Curbing Missile And Nuclear Weapons Proliferation*, 5 U.S. DEP'T ST. DISPATCH 701 (1994).

250. Both countries agreed to take the following steps as of Oct. 4, 1994:

(1) the United States will take the measures necessary to lift the sanctions imposed in August 1993, and (2) once the United States lifts the sanctions, China will not export ground-to-ground missiles featuring the primary parameters of the Missile Technology Control Regime (MTCR)-that is, inherently capable of reaching a range of at least 300 km with a payload of at least 500 kg. Both sides also reaffirm their respective commitments to the Guidelines and parameters of the MTCR, and have agreed to hold in-depth discussions on the MTCR.

Id. at 702.

251. Both countries agreed "to work together to promote the earliest possible achievement of a multilateral, non-discriminatory, and effectively verifiable convention banning the production of fissile materials for nuclear weapons or other nuclear explosive devices." *Id.*

252. *U.S. Reviews Most-Favored-Nation Trade Status for China*, 5 U.S. DEP'T ST. DISPATCH 345 (1994).

253. HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT 1994, at 152-58 (1993); U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1993, 103D CONG., 2D SESS. 604-20 (Comm. Print 1994); ASIA WATCH, CONTINUING RELIGIOUS REPRESSION IN CHINA (1993).

254. HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT 1995, at 142-149 (1994); Ann Kent, *China and the International Human Rights Regime: A Case Study of Multilateral Monitoring, 1989-1994*, 17 HUM. RTS. Q. 1 (1995); ASIA WATCH, *supra* note 38; AMNESTY INTERNATIONAL REPORT 1994, at 98-101 (1994); Eric Kolodner, *Religious Rights in China: A Comparison of International Human Rights Law and Chinese Domestic Legislation*,

indicate that China continued to be oppressive with regards to the human rights of its citizens. There are sound reasons behind President Clinton's decision to delink MFN trading status for China from human rights.²⁵⁵

Clearly, the reasons behind MFN determination as regards the Jackson-Vanik Amendment²⁵⁶ are outdated.²⁵⁷ Although China has resumed high-level dialogue²⁵⁸ with the United States concerning human rights, the recent Department of State global human rights survey for 1994²⁵⁹ shows that China has made no progress in any major human rights area. It is stated that in 1994:

[T]here continued to be widespread and well-documented human rights abuses in China, in violation of internationally accepted norms, stemming both from the authorities' intolerance of dissent and the inadequacy of legal safeguards for freedom of speech, association and religion. . . . Abuses include arbitrary and lengthy incommunicado detention, torture and mistreatment of prisoners.²⁶⁰

China barely avoided the embarrassment of its human rights record before the United Nations Human Rights Commission on March 8, 1995.²⁶¹

President Clinton's policy of promoting human rights in China through its economic development has not produced the anticipated changes. With a deficit of \$29.5 billion in trade for 1994 with China,²⁶² and President Clinton taking credit for five million new jobs

16 HUM. RTS. Q. 455 (1994).

255. For example, see the cogent arguments made in Christopher P. Carney, *Human Rights, China, and U.S. Foreign Policy: Is a New Standard Needed?*, 19 ASIAN AFF. 123 (1992); Randall Green, *Human Rights and Most-Favored Nation Tariff Rates for Products from the People's Republic of China*, 17 U. PUGET SOUND L. REV. 611 (1994).

256. 19 U.S.C. § 2432(a)(1) (1988).

257. Kevin M. Cowan, *Cold War Trade Statutes: Is Jackson-Vanik Still Relevant?*, 42 U. KAN. L. REV. 737 (1994); L. Jay Kuo, *Farewell to Jackson-Vanik: The Case for Unconditional MFN Status for the People's Republic of China*, 1 ASIAN L.J. 85 (1994).

258. Patrick E. Tyler, *China Agrees to Resume Talks With U.S. on Human Rights*, N.Y. TIMES, Aug. 31, 1994, at A2; Patrick E. Tyler, *Chinese Aide Conciliatory Despite U.S. 'Foolish' Stand on Rights*, N.Y. TIMES, Mar. 11, 1995, at 4. See also the letter to the editor by Assistant Secretary of State John Shuttuck, *U.S. Still Presses China on Prisoners*, N.Y. TIMES, Feb. 28, 1995, at A12.

259. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1994, at 555-73 (1995).

260. Elaine Sciolino, *State Department Study Says China Lags On Human Rights*, N.Y. TIMES, Feb. 1, 1995, at 1.

261. U.N. Human Rights Panel Declines to Censure China, N.Y. TIMES, Mar. 9, 1995, at A4; Patrick E. Tyler, *U.S. Clashes With China On U.N. Vote Over Rights*, N.Y. TIMES, Mar. 2, 1995, at A5; Patrick E. Tyler, *China Warns of New Peril to U.S. Ties*, N.Y. TIMES, Feb. 23, 1995, at A6.

262. David E. Sanger, *Trade Gap Set Record Last Year*, N.Y. TIMES, Feb. 18, 1995, at 17.

since becoming President, it seems difficult to believe that the United States lacks any leverage on the important issues of human rights. His determination and success are illustrated with regard to: Radio Free Asia; the Textile Export MOU²⁶³ of January 17, 1994; the February 26, 1995, Market Access MOU,²⁶⁴ regarding China's protection of intellectual property and market access to persons who rely on intellectual property protection; and the resolution of issues over China's sale of missiles and their components, as well as China's undertaking to halt production of fissile materials for nuclear weapons. President Clinton carefully chose to threaten sanctions against China when U.S. interests were at stake. On the matter of human rights issues concerning China, the President's current policy is disappointing thus far. This challenge awaits him in the second half of his administration.

263. Textile Export MOU, *supra* note 171.

264. Market Access MOU, *supra* note 158, 31 I.L.M. 1275.