

TRADE, INVESTMENT AND HUMAN RIGHTS: CHINA'S WINDOW OF OPPORTUNITY

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Globalization presents China with many serious challenges, especially in terms of growing disparity in income and opportunity. At the same time, China's increasing integration into the world economy presents opportunities for interventions that may advance China's progress toward a more transparent and democratic society.

This issue of the *China Rights Forum* explores the challenges and opportunities of China's increasing integration into global economic and human rights systems and processes, and the implications of these developments for advancing institutional and individual protections for human and labor rights in China. What is the impact of this global integration on China's economic and legal reforms, and what is China's impact on these contested and developing institutions, processes and agendas? Where are the opportunities for making more effective interventions for promoting human rights and supporting the independent civil society emerging in China? This overview outlines the larger landscape against which these challenges need to be addressed.

Globalization: Then and now

Although not a new phenomenon historically, globalization today is marked by the development of technology, transportation and communication infrastructures enabling a greater speed in transfer of information, goods, capital and people than the world had previously known. The dominant economic model of globalization that shapes international economic policies focuses on the removal of barriers to free trade and closer integration of national economies.

Institutionally, the new post-World War II economic order was implemented by two international institutions, the International Monetary Fund (IMF), the World Bank (technically the International Bank for Reconstruction and Development) and regional organizations such as the Organisation for Economic Co-operation and Development (OECD), a grouping of the most influential economies at that time. Trade was man-

aged by an institutional arrangement known as the General Agreement on Tariffs and Trade (GATT). Formed at a UN Monetary and Financial Conference at Bretton Woods, New Hampshire in July, 1944, with the aim to rebuild post-war Europe and to avert future economic crisis and depressions, the IMF and the World Bank were tasked with ensuring exchange rate stability and facilitating development.

The GATT, a multilateral agreement reached in 1948 (and the precursor to the WTO), and the WTO (formed in 1995) comprise the core of the global trading regime, which includes more than 20 multilateral agreements, an organizational structure that oversees the review and implementation of these agreements, and a dispute settlement process. Initially focused on the elimination of trade restrictions, the current trade regime has evolved to address an increasing number of areas beyond trade, including services, intellectual property and investment through the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Agreement on Trade-Related-Investment Measures (TRIMS).

More recently, the ideological underpinnings for the implementation of this global order were shaped what has come to be known as the "Washington Consensus," formed or imposed on the international community and national governments in the 1980s and 1990s and guided by tight fiscal and monetary policies, market liberalization and privatization. Overlaying these pillars is labor market deregulation, including weakening of trade unions. Some have labeled this a neo-liberal approach, premised on a simplistic market fundamentalism that ignored real world complexities and assumed a simple model of perfect information and competition. This model's descriptive and prescriptive faith in markets to reach efficient outcomes also failed to address the challenges of equitable growth and distributive justice, without which the effectiveness and sustainability of any growth is undermined.

All three of the key international economic institutions, the IMF, the World Bank and the WTO, have come under attack—from within as well as from outside. Former chief economist of the World Bank and winner of the Nobel Prize in Economics, Joseph E. Stiglitz has published a trenchant critique of the failures of the narrow economic focus in international economic policymaking and the failures of both markets and governments

to promote sustainable growth and equitable development. Stiglitz focuses most critically on the IMF and its lack of transparency and accountability regarding its activities and decision-making, its one-size-fits-all approach in imposing conditions and rigid implementation time-tables on developing countries, as well as its lack of expertise and understanding of national economies at the staffing and operational levels.¹

The failure of the WTO's Third and Fifth Ministerial Conferences (held respectively in Seattle in December 1999 and Cancun in September 2003) to launch a new round of multilateral trade negotiations also reflects the difficulties of a decision-making process that now requires consensus from more than 148 members, four-fifths of which are developing or transitional economies. The Seattle and Cancun Ministerials fell apart not only due to anti-globalization and anti-WTO demonstrators, but as a result of serious substantive disagreements between developed and developing countries, policy differences between member states involving North-South splits, and disputes among the major industrial powers.

The Doha Agenda, signed at the Fourth Ministerial, initiated a new round of trade accords to be agreed upon by January 2005, a deadline now long past. It has to be noted that one of the challenges facing the trade negotiators is giving life to what is in fact a political agreement reached in the context of pressures, from the U.S. in particular, following September 11, 2001. The current Doha Round of negotiations intensified the divide between developing and developed countries during the Fifth Ministerial, when trade talks collapsed over lack of consensus, particularly on agricultural issues. Trade policy developed and implemented in a real world vacuum is increasingly recognized as bad trade policy—unsustainable, inequitable and ineffective at promoting even macro-economic goals of growth and monetary stability.

The assumptions reflected in policies of trickle-down economics, or trickle-down-plus, is that macroeconomic growth will eventually benefit people at the bottom, but these have not been borne out empirically. A rising tide has not lifted all the

Non-renewable sources (oil, gas, coal and uranium) currently account for almost 90 percent of energy consumption. Based on current rates of use and known reserves, the International Energy Agency (IEA) forecasts that the world's oil supply will have completely run out in 40 years, natural gas in 60 years and coal in 200 years.²

boats, but rather allowed a small elite to sail off on a luxury liner while the vast majority struggles on rickety rafts, without food, water, a sail or even a paddle.³

The UN Secretary General's report, *In Larger Freedom: Towards Development, Security, and Human Rights for All*, points out that although a dramatic reduction has been made in extreme poverty, more than one billion people continue to subsist on less than a dollar a day.⁴ The Chinese government's designated poverty level of 637 yuan per year is even less than the "dollar a day" standard established by the World Bank.⁵

The pressure and move towards more sustainable and equitable policies is also reflected in cross-linkages between human rights and trade, between the WTO and UN human rights jurisprudence and in processes discussed more fully below. The IMF, World Bank and the WTO have in varying degrees adopted greater transparency in policymaking and institutional processes, in addition to more inclusive interactions with broader constituencies and stakeholders, including civil society actors such as NGOs.

It is onto this shifting global landscape that China has emerged with its enormous economic and political dominance.

China as global citizen: enter the dragon

With one-fifth of the world's population and one of the developing world's largest and fast-growing economies and biggest GDPs, and as the largest recipient of foreign direct investment since 2003 and an active investor abroad, China is a heavyweight player in the current shifting global configurations. With its almost double-digit growth, China's "economic miracle" is often presented in sharp contrast to less successful transitions from planned central economies to market economies. With the privatization of its state-owned enterprises (SOEs) leaving an estimated 12 to 15 percent of total population unemployed,⁶ and the dismantling of social safety networks, development of capital markets, and liberalization of trade and investment barriers into its domestic markets, China is indeed a poster child for a Washington Consensus with Chinese characteristics.

Yet China's integration into the global economic regime also imposes demands upon China to implement structural and systemic reforms that could have an impact on building a rule of law and greater protections for human rights. China's major WTO commitments, as set forth in nearly 1,000 pages of accession documents, include obligations to improve the transparency, predictability and uniformity of its legal system, provide mechanisms for independent reviews of administrative action, and ensure compliance with core GATT/WTO non-discrimination norms such as non-discrimination between foreign and domestic products and between WTO members.⁷

In addition to signing onto a set of global rules and a global system for negotiating the rules, over the past twenty years China has also signed onto and ratified an increasing number of human rights and labor instruments, and is an increasingly active participant in various UN human rights processes.

While China has signed and ratified almost all of the core human rights treaties, it has ratified only 23 of the 184 Conventions passed by the ILO, and only three of the eight core Conventions.⁸

Similar to the impact of WTO accession on Chinese domestic legal, structural and norm-shifting, China's integration into the international human rights system also provides an opportunity to monitor and shape domestic implementation of international human rights obligations. For example, under the UN treaty body review processes, organizations such as HRIC participate in NGO briefings for the expert members of the oversight treaty body committees, submit parallel reports expanding on the issues and presenting recommendations,

China's international human rights obligations

- The Convention on the Rights of the Child (1992)
- UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (1988)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), (1980)
- International Convention For Elimination of Racial Discrimination (CERD) (1981)
- International Covenant on Economic, Social, and Cultural Rights (China signed 1997, ratified in 2001 with reservations regarding independent unions)
- International Covenant on Civil and Political Rights (signed on October 5, 1998, not yet ratified)

and observe the formal review of the country report sessions.⁹

When China ratified the International Covenant on Economic Social and Cultural Rights (February 2001), it entered a declaration regarding Article 8, the right to freely form trade unions.¹⁰ The All-China Federation of Trade Unions (ACFTU) represents 135 million workers and all unions must be registered under it. Following review of China's initial country report under the ICESCR, the Committee on ESCR recommended that China "institute legislative reforms, including amendments to the Trade Union Act, to allow workers to form independent trade unions outside the structure of the official ACFTU."¹¹

This is one example of how NGOs and the international review and monitoring processes can have an impact on domestic legal reform and implementation of China's international obligations, but the process requires ongoing monitoring by NGOs. Towards the end of a visit to China by the UN High Commissioner on Human Rights in late August this year, the High Commissioner signed a "Memorandum of Understanding between the PRC Ministry of Foreign Affairs and the UNHCHR Concerning the Agreement to Cooperate on the Formulation and Establishment of a Technical Cooperation Program." Included in the scope of the MOU was technical assistance to help implement the recommendations of the UN Committee

on Economic, Social, and Cultural Rights. In light of the interrelated nature of the two aspects of the High Commissioner's mandate—monitoring and technical cooperation—the efficacy of technical assistance programs must be linked to human rights monitoring and evaluation mechanisms. This suggests an ongoing role for the international community.

At the same time, it is also important to monitor China's impact on these institutions and policymaking. As past HRIC reports have documented, China has extended its domestic repression of critical voices to the international arena.¹² For example, of the 21 China-related NGOs who indicated an intention to apply for accreditation to the World Summit on Information Society (WSIS) Phase I, only 4 were accredited, and not one of the nine Taiwan-based NGOs was accredited, apparently due to objections raised by the Chinese government.¹³ International NGO support for HRIC's current WSIS Phase II accreditation application reflects the international community's recognition of the importance of insisting on a non-politicized, transparent and inclusive process for these international meetings,¹⁴ especially one tasked with the formulation of democratic and inclusive norm-setting for such an important area as access and ownership of information and technology.

In the WSIS preparatory and summit process to develop the new governance system and principles for the information society of the twenty-first century, China was also a key voice in eliminating references to labor rights and in watering down references to human rights in the WSIS Principles and Platform of Action.

Human rights for 1.3 billion people: where the rubber meets the road

When it comes to the complex case of China, even a Nobel Prize-winning economist may not get it right—China is not a "successful" model of implementation of market reforms due to paced implementation of liberalization and privatization.¹⁵ Just ask the more than 240 million "floating population" of migrants pouring to the cities from the countryside, the 700 million rural inhabitants without access to primary healthcare, the 160 million people still living in absolute poverty,¹⁶ the hundreds of millions of unemployed workers of SOEs, and victims of rights violations and abuses within the legal and administrative systems. Notwithstanding policy efforts to pace

China and the ILO's Core Conventions

<i>Freedom of association and collective bargaining</i>	<i>Elimination of forced and compulsory labour</i>	<i>Elimination of discrimination in respect of employment and occupation</i>	<i>Abolition of child labour</i>
C87, 1948 Freedom of Association and Protection of the Right to Organise NOT RATIFIED	C29, 1930 Forced Labour NOT RATIFIED	C100, 1951 Equal Remuneration 11 Feb 90	C138, 1973 Minimum Age 28 Apr 99
C98, 1949 Right to Organise and Collective Bargaining NOT RATIFIED	C105, 1957 Abolition of Forced Labour NOT RATIFIED	C111, 1958 Discrimination (Employment and Occupation) NOT RATIFIED	C182, 1999 Worst Forms of Child Labour 08 Aug 02

marketization and privatization, China is struggling with massive unemployment, economic and social dislocation, “non-performing” loans totaling \$157.83 billion,¹⁷ and growing social unrest and instability.

This social unrest is fueled by popular discontent with pervasive corruption and land grabs, massive forced relocations and inadequate compensation, the collapse of social safety networks (basic healthcare and primary education), poor labor conditions and unpaid wages totaling \$43 billion related to 124,000 projects in various sectors.¹⁸ Even the official Chinese media has recognized that without adequate responses, the level of social unrest, now at designated a “yellow” level, will reach “red”—that is, dangerous to social stability—by 2010 if not addressed effectively.¹⁹

China’s effectiveness in projecting its “success” image and in attracting foreign investors and partners is due in part to its repression of domestic voices critical of the human and often hidden costs of these economic policy decisions. Among the regime’s various factions, the conservative view that political control by the CCP and social stability must be maintained at all costs has won the day. Political reform has been bifurcated from economic reform policy and debates, while repressive state control ensures the silencing of any criticisms of current policies.

Efforts by Chinese citizens to protest, report and investigate abuses or problems, or to organize independent unions or political groups, are often met with detention, imprisonment, repression and surveillance. However, Chinese journalists, grassroots activists, petitioners, scholars and lawyers continue to press on. In light of the Chinese government’s invocation of terrorism to crack down on peaceful expression and claims of cultural identity or religious practice in Tibet and Xinjiang, recent Chinese official announcements regarding the formation of special anti-terrorism forces raises human rights concerns that call for careful monitoring.²⁰

These ongoing violations of the rights of Chinese citizens to freedom of information, expression and association, and failure to respect and promote economic, social and cultural rights for all of China’s people, pose complex challenges for the international community, including multilateral trade, labor and human rights bodies, corporations doing business or wishing to do business in China, governments engaged in bilateral trade relations or dialogues with China, and foreign funders supporting programs for building rule of law, greater transparency and accountability in governance. While important for advancing an environment conducive to respect for human rights, rule of law and accountable governance are not proxies for human rights.

Faced with the potential market of 1.3 billion consumers, the prospect of lucrative trade, military or assistance packages, or of maintaining an in-country presence, various foreign actors must juggle their perceived interests and investments. At the end of the day, effectively addressing human rights violations will depend upon the willingness of these actors to tackle human rights abuses in the face of threats to in-country investments or agendas. At the same time, failure to address social inequalities and systemic abuses creates a ticking bomb of social instability that will also undermine the security and sus-

tainability of any investment. The strongest factor for promoting sustainable and equitable development, rule of law and a more democratic and open society is the development of a truly independent, flourishing and diverse civil society in China.

Shifting landscapes and windows of opportunity

Several recent developments create a unique window of opportunity for creating more innovative and effective approaches for a range of actors to bring different comparative advantages to the China and global table, as well as greater media attention to the issues. These include China’s WTO accession, corporate responsibility norms such as the OECD Guidelines on Multinational Enterprises²¹ and the UN Global Compact, the lead-up to and preparations for China’s hosting of the Olympic Games in 2008, and the exponential growth of the Internet and communication technologies in China. In addition, institutional investors are increasingly interested in using their power and influence to promote greater corporate social responsibility and accountability.

Four strategic observations can be drawn from these domestic and international developments:

First, the increasing development of **trade, labor and human rights cross-linkages** and the inclusion of “social” or non-trade concerns—the environment, sustainable development, reducing inequalities, and poverty alleviation—in WTO policy debates and the new trade agenda, call for more effective interventions by a broader range of actors, including NGOs and transnational corporations. The UN Office of the High Commissioner on Human Rights has also helped to frame a human rights perspective through five key reports linking trade, investment and human rights, including the responsibilities of transnationals and related business enterprises.

In addition, UN Secretary General Kofi Annan in July this year appointed a Special Representative for business and human rights, Dr. John Ruggie, with a mandate to identify standards for corporate accountability and develop assessment tools for measuring the human rights impact of business. Human rights NGOs, labor groups and other civil society actors have an opportunity to make a constructive contribution as the Special Representative prepares his first report for the next session of the Commission on Human Rights.

Second, the **growing space for civil society inside China** and **in Chinese cyberspace** underscores the centrality of an educated, informed and engaged citizenry as the best protection for human rights and for promoting sustainable and equitable reforms. An independent and diverse civil society space continues to expand through a reported 200,000 civil society organizations,²² more than 103 million Internet users and the increasing activism of China’s human networks of human rights defenders, including lawyers, journalists, scholars, intellectuals and grassroots activists. However, the Chinese government is able to maintain political control and a climate of self-censorship and information control through laws on registration of social organizations and foreign NGOs, state secrets and state security, its police and state security apparatus, and the deployment of state of the arts censorship and surveillance

OHCHR Reports

- Human Rights and TRIPS (2001): Focus on ICESCR, right to health
 - WTO and Agriculture (2002)
 - Rights to food and development
 - Enforceable and differential assistance
- Real market access for developing OECD countries
- Liberalization of Services (2002): Rights to health, education and development
- Human Rights, Trade, and Investment (2003): Outlines a human rights perspective on investment liberalization
- Responsibilities of Transnational Corporations and Related Business Enterprises with Regards to Human Rights (Feb. 15, 2005)

technology. International public and private actors need to be vigilant against undermining this emerging civil society space, and should exercise leadership and vision in asking how they can support greater space for these independent voices.

Third, there is a **growing interest in corporate social responsibility (CSR)** reflected in the launch of the Global Compact Network in China in 2001, the convening of corporate social responsibility conferences, and the opening of workplaces to international monitoring groups on labor standards and working conditions. Foreign investors and businesses have a responsibility to avoid complicity in human rights abuses and to promote respect for human rights as they take advantage of the gradual opening of market sectors in post-WTO China. The widely-supported “Norms of Responsibilities of Transnational Corporations and other Business Enterprise with regard to Human Rights” (UN norms), adopted in 2003, are an important foundation for developing best practices and corporate leadership initiatives.

Recognizing the ongoing debates and different approaches within and outside of the business and NGO communities towards CSR and socially responsible investment (SRI), **HRIC makes the following CSR/SRI-related suggestions for a range of different actors:**

- **Building Chinese civil society:** the key litmus tests for any CSR/SRI initiatives should be whether a strategy empowers or undermines the emerging civil society space inside China.
- **UN/Multilateral organizations:** CSR initiatives should build on and not undermine human rights developments and jurisprudence.
- **National governments:** National governments can urge China (which has observer status in key committees of the OECD) to adhere to the OECD Guidelines on Multinational Enterprises, as well as creating national contact points.
- **Foreign consultancies:**
 - Outside training and capacity building programs should

aim for “built-in obsolescence” by incorporating a turn-key and localization hand-off process.

- While monitoring efforts with respect to labor standards and working conditions are important and impact individual factories or workplaces, the right to form independent union or worker organizations needs to be respected and integrated into any certification process.
- **Individual company initiatives addressed towards social or corporate responsibility:**
 - Company initiatives should be referenced towards and evaluated within existing international benchmarks and norms, such as the OECD Guidelines on Multinational Enterprises and the Global Compact.
 - In-country initiatives should include an assessment of scaling up with building local capacity as the central focus.
 - In addition to focusing on environmental sustainability issues and workplace conditions, company human rights policies should include strong statements of freedom of expression and association, including the right to form independent unions.

Finally, one key challenge is integrating and drawing upon **existing diverse benchmarking and substantive indicators**, including those that address human development, poverty, environmental sustainability and transparency. The considerable methodological challenges presented by China, including the lack of comprehensive data and alternative methodologies, raise questions of validity and reliability, the assessment of causality and correspondence, and the overarching framework of information control.²³ However, benchmarks and indicators remain important tools for more systematically promoting both monitoring and the development of more effective struc-

Examples of Existing Indicators:

- The Human Development Index (HDI) premised on 1/3 knowledge, 1/3 life expectancy and 1/3 per capita GDP
- Human Poverty Index (HPI-1) builds in a long and healthy life (measured in probability of living beyond 40), knowledge (measured in literacy) and decent standard of living (measured in access to clean water and percentage of children under weight for their age).
- The Environmental Sustainability Index (ESI) comprised of 20 variable indicators.
- The Transparency International Index uses information based on opinion polls, but the questions lack objectivity, and the number of people polled is insufficient to suggest reliable data.
- Reporters Without Borders' World Press Freedom Ranking is based on a questionnaire that assesses the state of press freedom in each country, including violations directly affecting journalists and news media.

tural and policy solutions. Much more work needs to be done to strengthen existing benchmarks and indicators, as well as developing new ones that link human rights concerns with other related areas—the environment, governance, trade and investment. HRIC’s Incorporating Responsibility 2008 campaign, launched in January 2003, proposes three benchmarks—the release of all political prisoners, removing censorship and surveillance of the Internet and greater investment in social welfare to ensure equitable development—as a measure of progress in respect for and promotion of freedom of expression and information, civil and political rights and economic, social and cultural rights. IR 2008 will continue to monitor and report on these developments.

NOTES

1. Joseph E. Stiglitz, *Globalization and its Discontents*, (New York: W.W. Norton and Company, 2003).
2. United Nations Environment Programme, *Resource Kit on Sustainable Consumption and Production*, http://www.unep.org/pc/sustain/10year/SCP_Resource_Kit.htm.
3. The top fifth of countries commands 86 percent of the world’s GDP, while the bottom fifth has just one percent. The top fifth has 82 percent of the world export markets and 68 percent of foreign direct investment; the bottom fifth just one percent of each. Nelson Mandela, “Globalizing responsibility,” *Boston Globe*, January 4, 2000, <http://www.globalpolicy.org/soecon/inequal/nelson.htm>; United Nations Development Programme, *Human Development Report 2002: Deepening democracy in a fragmented world*, (New York: UNDP, 2002), 19.
4. United Nations, “Report of the Secretary-General of the United Nations for decision by Heads of State and Government in September 2005,” In *Larger Freedom: Towards Development, Security, and Human Rights for All*, (A/59/2005), <http://www.un.org/largerfreedom/>.
5. “Current poverty line gives false picture,” *China Daily*, January 13, 2005, http://news.xinhuanet.com/english/2005-01/13/content_2454326.htm. The World Bank established the “dollar a day” standard to measure poverty in 1985. By this standard, more than 200 million Chinese still live in poverty, and many of them live in remote and resource-poor areas in the western and interior regions. The World Bank, “Economic Achievement and Current Challenges,” *World Bank in China*, March 2005.
6. Interview with Wang Jian, a research fellow of the State Development and Reform Commission, “Urbanization: A Long-Term Solution to Unemployment,” at <http://www.bjreview.com.cn/lh2003/NPC%20Special-16-BR12-05.htm>.
7. See Sharon Hom, “China and the WTO: Year One.” *China Rights Forum*, No. 1, 2003.
8. International Labor Organization, “The ILO in China,” <http://www.ilo.org/public/english/region/asro/beijing/inchina.htm>.
9. See for example HRIC’s parallel report to the Committee on the Rights of the Child, posted on the Child Rights Information Network. Human Rights in China, “Implementation of the Convention on the Rights of the Child in the People’s Republic of China: An NGO Parallel Report by Human Rights in China, July 2005,” <http://www.crin.org/resources/infoDetail.asp?ID=6019>.
10. “The application of Article 8.1 (a) of the Covenant to the People’s Republic of China shall be consistent with the relevant provisions of the Constitution of the People’s Republic of China, Trade Union Law of the People’s Republic of China and Labor law of the People’s Republic of China. . . .” United Nations, “Declarations and Reservations,” UN Treaty Collections, http://www.unhchr.ch/html/menu3/b/treaty4_esp.htm, made upon ratification, 2001.
11. “Concluding observations of the Committee on Economic, Social and Cultural Rights: China.” Committee on Economic, Social and Cultural Rights, Thirty-fourth session, May 13, 2005, E/C.12/1/Add.107.
12. Sharon Hom and Jennifer Rockwitz, “Looking Back at Cancun and Forward to Hong Kong,” *China Rights Forum*, No. 4 (2003). Sharon Hom and Amy Tai, “The World Summit on Information Society: Promises Disconnected from Reality,” *China Rights Forum* No. 1 (2004).
13. Excluding the four organizations accredited under ECOSOC, only four organizations were accredited through the WSIS application process. Of the four organizations accredited, two were self-identified as Hong Kong and two were self-identified as China (despite one of the two organizations actually being based in Hong Kong). The 13 organizations that were not on the Executive Secretariat’s list for accreditation included all nine of the organizations self-identified as Taiwan-based and three organizations self-identified as China-based.
14. A petition was circulated during WSIS II, PrepCom-2, facilitated by the Human Rights Caucus, supporting HRIC’s application for accreditation to WSIS, PrepCom-3 and Tunis. The petition is signed by 53 international and national human rights organizations, media and other civil society members, representing 20 countries and working on issues such as culture, democracy, development, digital rights, human rights, labor, law, press freedom, science and social justice.
15. Stiglitz, *ibid*.
16. World Bank, *2004 World Development Indicators*, (Washington, D.C.: Development Data Center, 2004), 54.
17. Banks in China continue to clear away bad loans,” *Xinhua News Agency*, July 29, 2005, http://english.people.com.cn/200507/29/eng20050729_198946.html.
18. “Vice Premier Demands Pay for Migrant Workers,” *China Daily*, August 24, 2004, <http://www.china.org.cn/english/2004/Aug/104941.htm>.
19. Fu Jing, “Income gap critical by 2010, experts warn,” *China Daily*, August 22, 2005, http://www.chinadaily.com.cn/english/doc/2005-08/22/content_470967.htm.
20. “China under threat of terrorism: official,” *Xinhua News Agency*, August 30, 2005 http://news.xinhuanet.com/english/2005-08/30/content_3423421.htm.
21. Organisation for Economic Co-operation and Development, “Guidelines for Multinational Enterprises, Revision 2000,” <http://www.oecd.org/dataoecd/56/36/1922428.pdf>.
22. There is no authoritative figure for the number of civil society organizations, in part because the definition of such organizations in China is ambiguous. Knowledgeable sources suggest that there are at least 200,000 registered “social organizations,” but not all would necessarily qualify as civil society organizations in the strictest sense. The Tsinghua NGO Research Center has estimated the number of unregistered NGOs as high as one million, while a Western expert numbers NGOs in the generally accepted international sense as in the hundreds or thousands.
23. HRIC, “Labor and State Secrets,” *China Rights Forum*, No. 3, (2003).

HRIC WTO Backgrounder

What is the WTO?

The World Trade Organization (WTO), consisting of 148 member countries and encompassing over 97 percent of world trade, is a multilateral international organization that manages rules of global trade. On December 11, 2001, the People's Republic of China (PRC) became the 143rd member after 15 years of negotiations, the longest in WTO history. China's participation in the WTO is seen as a major step in its integration into a multilateral rules-based system, norms of openness and transparency, and acceptance of the central role of markets and private enterprise.

Agreements on WTO rules are established through member country consensus, and are signed and ratified by the participating nations. The fundamental principles of the WTO are: 1) no member country has preferential treatment over another member; 2) trade barriers should be lowered in order to make treatment of foreign and local goods equal; 3) practices supporting predictability and economic stability should be implemented; 4) fair competition should be promoted by discouraging practices such as export subsidies; and 5) developing countries should benefit through development and reform.

Decision-making at the WTO

The Ministerial Conference is the highest decision-making level of the WTO and is mandated to meet at least every two years, when all country members gather to decide on issues relevant to any of the multilateral trade agreements. The decision to hold the upcoming Sixth Ministerial in Hong Kong brings China to the forefront. Though Hong Kong is technically a separate trade territory, China will undoubtedly be exerting its influence, and it is very important that civil society actors monitor and participate in the planning processes to ensure full access and transparency.

The General Council, which includes all member countries, meets regularly to manage the day-to-day business of the WTO and reports to the Ministerial Conference. The General Council also convenes as the Dispute Settlement Body, which oversees the review and implementation of the trade agreements, and as the Trade Policy Review Body, which reviews the trade policies and practices of member countries. In addition to the three sectoral councils—the Council for Trade in Goods, the Council for Trade in Services and the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPs)—there are also three committees and other subsidiary bodies that report to the General Council.

Negotiating the WTO rules

Unlike other multilateral, international mechanisms that establish rules, the WTO provides a forum for its members to negotiate the rules through a consensus-based process. Agreements are reached through consensus when no member country formally opposes the agreement. This method may be problematic when consensus is difficult to reach, such as in the current Doha Round, or in cases where the final language

is deliberately vague, resulting in later disagreements over interpretation.

The anti-globalization movement

The “anti-globalization movement” consists of a diverse group of activists with different objectives, many of whom are not against globalization, but oppose specific aspects of globalization that they deem unjust. Generally, many of the activists supporting the movement maintain that liberalization of trade under the current model unfairly favors developed countries, whose wealth and political influence often lend them negotiating superiority over developing countries. Further, activists assert that the WTO and other international institutions, such as the World Bank and International Monetary Fund, have a detrimental impact on the lives of people everywhere, including on issues concerning poverty, human rights, labor and the environment.

The Doha Round

The Doha Agenda, signed at the Fourth Ministerial, initiated a new round of trade agreements to be agreed upon by January 2005. The current Doha Round of negotiations has intensified the divide between developing and developed countries that developed during the Fifth Ministerial when trade talks collapsed over lack of consensus on agricultural issues. Developing countries opposed the U.S. and EU domestic policies of providing direct and indirect subsidies to their agricultural sec-

CHRONOLOGY

January 1, 1948: General Agreement on Tariffs and Trade (GATT) comes into force

March 1948: International Trade Organization rejected

January 1, 1995: An extension of GATT, the WTO is established by the Marrakesh Agreement during the Uruguay Round

December 9–13, 1996: First Ministerial Conference, Singapore

May 18–20, 1998: Second Ministerial, Geneva, Switzerland

November 30–December 3, 1999: Third Ministerial, Seattle, Washington

November 9–13, 2001: Fourth Ministerial, Doha, Qatar. The Doha Development Agenda is the current and ninth round of negotiations.

December 11, 2001: The PRC joins the WTO

September 10–14, 2003: 2003 Fifth Ministerial, Cancun, Mexico

December 13–18, 2005: Sixth Ministerial in Hong Kong

tors while demanding that developing countries remove protectionism against foreign goods. This practice has had a devastating effect on developing countries whose agricultural sectors cannot compete with the goods that are being “dumped” into their economies at low prices.

Other major issues that could not be agreed upon were the General Agreement on Trade in Services (GATS) and Trade Related Aspects of Intellectual Property Rights (TRIPS). GATS is intended to liberalize services in the public domain, including water, health and education. Developing countries worry that privatizing these basic necessities could have a destructive impact when coupled with irreversibility and rules that prohibit some forms of government regulation. The TRIPS Agreement includes rules on patents, copyright and trademarks. Developing countries are demanding a declaration in the agreement ensuring that pharmaceutical patents would not impede efforts to protect public health through the production of more affordable medicines, and developed countries, particularly the U.S., are unwilling to concede.

The current stalemate on negotiations threatens the extended deadline set for the end of 2006.

The Singapore issues

The Singapore issues involve the declaration passed at the 1996 Singapore Ministerial mandating the establishment of working groups to consider issues related to investment, competition policy, transparency in government procurement and trade facilitation. During the Fifth Ministerial, developed countries attempted to introduce a new round of negotiations concerning these four “Singapore issues.” Developing countries are opposed to new negotiations while issues from the Doha round remain unresolved. Developing countries are also concerned that the developed countries’ main interest in pushing these issues is to benefit from market access, as new treaties relating to these issues may prevent them from regulating investments and assisting local businesses who would otherwise be unable to compete with cheap foreign products.

The role of NGOs at the WTO

The Marrakesh Agreement (1994) that established the WTO includes a specific reference to NGOs. The General Council further clarified the framework for relations with NGOs by adopting a set of guidelines¹ that “recognizes the role NGOs can play to increase the awareness of the public in respect of WTO activities.” Accredited NGOs are allowed to attend the Plenary Sessions of the Ministerial Conferences as observers. To obtain accreditation, NGOs must demonstrate that their activities are “concerned with matters related to those of the WTO.” According to the official WTO Web site, only 235 NGO observers

attended the First Ministerial in 1996. The Fifth Ministerial saw a rise in NGO participation, with 1,600 representatives of nearly 800 organizations participating. More than 2,000 NGO participants are expected at the Sixth Ministerial in Hong Kong this year.² During the period between Ministerial Conferences, symposia are periodically arranged for NGOs and representatives of WTO Member countries to informally discuss specific issues. NGO groups participating in WTO activities are diverse in objectives and geographic composition, including human rights organizations, environmental organizations, labor organizers and religious groups.

In recent efforts to formally participate in WTO decision-making processes, NGOs who are neither directly involved nor a third party have utilized *amicus curiae* submissions to raise issues to dispute settlement panels and the Appellate Body, a standing body under the Dispute Settlement Body. The controversy over this process has yet to be settled, as some member countries argue that disputes should be resolved strictly among Member countries. The dispute panels and Appellate Body have maintained the right to accept submissions, but there are no formal rules at present clarifying the process of how *amicus* briefs are reviewed, accepted or used.

In September 2003, HRIC was granted NGO observer status and subsequently participated in the Fifth Ministerial Conference at Cancun. In cooperation with its partner organization La Fédération Internationale des Ligue des Droits de l’Homme (FIDH), HRIC convened a roundtable discussion on the PRC and the WTO, which focused on the interconnectedness of human rights and trade, and the impact that Chinese accession to the WTO has had on human rights in the PRC. HRIC has been accredited to the Sixth Ministerial in Hong Kong, and plans to observe the Ministerial meetings and Conference and actively participate in NGO side activities.

REFERENCES AND SOURCES

See “Resource List: China, Trade, Investment and Human Rights” in this issue.

NOTES

1. World Trade Organization, “Guidelines for arrangements on relations with Non-Governmental Organizations,” (WTO Doc. No. WT/L/162), 23 July 1996, http://www.wto.org/english/forums_e/ngo_e/guide_e.htm.
2. Hong Kong Legislative Council, “Background Brief on Hong Kong’s Hosting of the Sixth Ministerial Conference of the World Trade Organization,” LC Paper No. CB(1)862/0405, Panel on Commerce and Industry, Meeting on February 15, 2005. The link to this document is www.legco.gov.hk/yr04-05/english/panels/ci/papers/ci0215cb1-862e.pdf, but it can only be accessed indirectly through the Legco Web site at www.legco.gov.hk.