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Trade Policy and the Rule of Law

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Address

Trade Policy and the Rule of Law

Ambassador Charlene Barshefsky*

Good morning. I thank the Law School and Dean Sullivan for inviting me to speak at this Commencement ceremony. And to the graduates and your parents, my deep gratitude for your willingness to share this special day.

America and the Rule of Law

Each of you — beyond the talent, perseverance and wit you must have to complete Dean Sullivan's curriculum — is fortunate and privileged to begin your careers in this millennial year.

Fortunate because, when we look out upon our country today, we see a nation more prosperous, successful and secure than at any time in recent history. This is clear in the lowest unemployment and crime rates in decades; in the recovery of our rivers and streams; in the astonishing advance of science, technology and medicine.

Privileged because as lawyers, you can do more than almost any other Americans to build on these achievements. Our strong economy — our healthier environment — our scientific innovation — these are the result of policy choices expressed and made meaningful in law during the past decade. Over the next decade, the challenges posed to law will be still more complex: the development of computers, telecommunications and the Internet poses questions about the conduct of international business and protection of personal privacy; understanding of the genetic code raise equally complex questions in medicine, insurance, agriculture and other fields; and society is changing rapidly with immigration, aging, and other demographic phenomena.

* United States Trade Representative. Remarks prepared for delivery to the University of Minnesota Law School Class of 2000.

This may make law appear an even more specialized and fragmented field than it is today. But though your anti-trust course may have, on the surface, had little in common with environmental law, immigration, civil rights or intellectual property; and though all of them are complex in their own way; these subjects also have a deep unity and simplicity. Together, they represent the social contract of the rule of law, through which citizens and nations join to establish rights, limit arbitrary power, and enable policy to proceed without force; and on which we must rely as we consider the challenges of this new century.

U.S. Trade Policy

Our trade policies are no exception. Like every field of law, trade law and agreements are ways to create and protect rights; ease daily life; and find ways to settle disputes amicably and peacefully. This is true, above all, in the central trade and foreign issue before us this year: China's accession to the World Trade Organization.

The Chinese experience in revolution, reform and now the WTO accession, is a study in the value of law: the arbitrary suffering, deprivation and conflict that can arise in its absence; the creation of rights, material well-being and cooperation through its development.

To understand this fully, and grasp the role trade has played in it, we can begin by looking at the initiative at the heart of trade policy for the past half century – the trading system created as the General Agreement on Trade and Tariffs, or GATT, in 1948, and now embodied by the WTO.

The creation of the trading system reflected the experience of President Truman and his Allied colleagues in Depression and war. In the 1930s, they had seen their predecessors, under the pressure of financial crisis, respond with a cycle of tariff hikes and colonial preference schemes that — as each country attempted to rescue itself — injured all, cutting trade by nearly 70%, worsening unemployment, and ultimately contributing to political upheaval. And the trading system is an element in a larger effort to prevent another such experience, through the development of a postwar world reflecting principles of shared responsibility, mutual benefit, and ultimately the rule of law:

- Collective security, reflected by the United Nations, NATO, the Rio Treaty and our alliances with the Pacific democracies.

- Open markets and economic stability, with the creation of the IMF and World Bank on the one hand, and the GATT on the other.
- Commitment to human rights, embodied by the Universal Declaration on Human Rights, and then a series of more recent Conventions.

Over half a century, the GATT and now the WTO have grown in membership, from the original 23 countries to today's 136 economies and 4.5 billion people. It has grown in scope: tariff reductions are now joined by agreements on dispute settlement, trade in industrial goods, services and farm products, intellectual property rights, technical barriers to trade, and most recently information technology, telecommunications, financial services, and duty-free cyberspace. And when we step back a moment, we see its enormous benefit.

It has promoted growth and rising living standards. Since 1950, as world markets have opened and nations accepted rules and impartial dispute settlement, trade has expanded fifteen-fold and world economic production six-fold. The result is unprecedented social progress: since the 1950s, world life expectancy has grown twenty years, infant mortality dropped by two-thirds, and famine receded from all but the most remote or misgoverned corners of the world.

And it has strengthened peace and stability. It helped reintegrate Germany and Japan in the 1950s, and then nations emerging from colonial rule in the 1960s and 1970s. It has now taken up a task of equal gravity, as after the Cold War nearly 30 nations breaking with communist planning seek WTO membership to reform their economies and integrate with the world.

The work remains imperfect and incomplete; the institutions can be reformed and improved. But altogether, the trading system — resting on the values and aspirations you have learned here at the Law School — has been a remarkable success: creating widely accepted rules and means of settling disputes, developing rights, easing economic interaction, promoting development and shared economic benefit, and strengthening security.

The Chinese Revolution

China's decision to join this system will be a defining moment — both for the trading system itself, and in the history of modern China.

As befits one of the world's largest and oldest nations, China contributed substantially to the postwar vision. It was a founding member of the GATT, and the Confucian scholar Dr. Chang Peng-chun was among the principal drafters of the Universal Declaration of Human Rights. But a year later, with the Communist revolution, it set off on a very different road.

Every student of law knows the famous line from Shakespeare — “first, let's kill all the lawyers.” This quotation, though from Elizabethan England, has peculiar relevance to postwar China: Jack Cade, the character credited with the line, is a revolutionary and a megalomaniac who plans, after finishing off the lawyers, to follow up with everybody else who can read and write. And he does this in pursuit of a specific vision:

“All shall eat and drink on my score, and I will apparel them all in one livery, that they may agree like brothers, and worship me their lord.”

Cade, in other words, hopes to create a world in which people depend on the state for economic existence, dress alike, say and think the same things, and serve an absolute ruler. Such a world has few closer parallels in real life than China under Chairman Mao, except perhaps that in the Chinese case, traders rather than lawyers came first.

Beginning in 1949, China shut the doors it once tentatively opened to the world. Among its new leaders' first steps after the revolution were to expel foreign businesses from China, and to bar direct economic contact between Chinese private citizens and the outside world. Inside China were analogous domestic policies — destruction of private internal trading networks linking Chinese cities and villages, abolition of private property and land ownership, and of course suppression of any right to object to these policies.

These economic measures had a clear parallel in legal affairs. Between 1949 and 1957, the number of lawyers in China shrank by 70%. In 1957, with the so-called “Anti-Rightist Campaign” and then the Great Leap Forward, most remaining law offices were closed, lawyers arrested or sent to the countryside, and the Ministry of Justice itself abolished.

China over the next twenty years was one might call an “a-legal” society — a nation with neither lawyers, nor law enforcement, nor laws. Policy and administrative decisions rested instead upon interpretation of edicts and slogans — in some cases explicit and clear, in others as vague as “Criticize Confucius and Lin Biao,” or “Smash the Four Olds” — by officials aware at all

times that they might be arrested either for insufficient dedication to these slogans, or for what might retroactively be seen as excessive dedication when policies changed. The result was an appalling sequence of catastrophes: the imprisonment or worse of hundreds of thousands of writers, scholars, scientists and professionals between 1957 and 1959; a famine which killed as many as 30 million rural Chinese men, women and children between 1960 and 1962; the closure of schools and universities; the period of anarchy and violence known as the Cultural Revolution.

In essence, our postwar commitment to collective security, open markets and human rights made up a coherent vision of a peaceful and open world under the rule of law. China's rejection of these concepts in the Maoist era made up an equally coherent and consistent policy. Its economic isolation in the 1950s and 1960s can be separated neither from its diminishing space for individual life and freedom at home, nor its revolutionary role in the Pacific.

The Reform Era

China remains today a repressive and authoritarian country. The State Department's Human Rights Report documents a lamentable record of restrictions on freedom of speech and religion, suppression of labor rights and punishment of those who attempt to assert their rights in these areas. That is why we have sanctioned China as a "country of particular concern" under the International Religious Freedom Act, and why we presented a resolution raising concerns about China's human rights record to the UN Human Rights Commission in April.

But the report, and our resolution as well, also note that China is not today the country Shakespeare described. It has abolished the most damaging measures of the Great Leap Forward and Cultural Revolution era, abolishing rural communes and reviving private businesses in cities and villages. And it has relaxed some earlier policies intended to seal off China from the world economy, notably bans on foreign investment and private export trade. These decisions have worked together to raise living standards; to slowly replace command with law; to change Chinese society in ways that inherently increase respect for some of the rights and liberties cited in the Universal Declaration:

- Property rights, with farmers able to farm their own land, entrepreneurs to start businesses, and families able to pass on their property to their children.
- Greater openness to information, with Chinese citizens able to listen to foreign radio and TV, and more recently to access foreign web-sites.
- Some aspects of freedom of association, as Chinese meet and exchange ideas with foreigners as well as people from Hong Kong and Taiwan, and as the repressive "work-unit" system that once bound Chinese workers to particular jobs and factories has eroded.
- And access to courts and the legal system, as research by Dr. Pei Minxin and the Lawyers Committee for Human Rights finds, with the number of lawyers rising from one or two thousand in 1980 to perhaps 150,000 today; litigation rising from essentially zero before 1980 to about 5 million cases by 1995; and of particular interest, citizen lawsuits against government agencies rising from a few hundred in 1986 to over 50,000 a year by 1995.

Economic contacts with the outside world play a part in this. For example, research on Chinese businesses shows positive changes in labor relations: workers in joint ventures not only earn more, but are more likely to have and use formal grievance procedures to assert their rights and solve disputes with management. Further, indigenous Chinese firms find themselves forced to adopt similar measures, to attract the most qualified workers now choosing foreign employers.

The Role of Trade Policy

Our China trade policy has helped support and develop these trends from the beginning. From the lifting of the trade embargo in 1972 to the WTO accession, our work has rested on concrete and specific U.S. trade interests. But it has also served deeper goals. Internationally, it has supported our security interests, by integrating China into the Pacific and world economies. Inside China, it has accelerated economic reform and the rule of law — in some cases, given the rudimentary state of Chinese law in 1980, building it from the ground up.

A case in point — incidentally, with a specific grounding in Article 27 of the Universal Declaration of Human Rights — is our work on intellectual property rights. This rests on our commitment to fight piracy of our creative industries. But it also means more than this: to develop intellectual property policy is

to draft and publish laws; train lawyers and officials; improve and ensure access to judicial procedures — ultimately, to create a culture of rights, due process and limits on arbitrary state power where it did not exist before.

Chinese WTO Commitments

Our bilateral agreement with China on WTO accession is the capstone on this work, and the most significant step for our China trade policy in decades.

It is a comprehensive agreement, covering industrial goods, services, farm products and unfair trade practices. It will develop legal norms and rules across the Chinese economy and within thousands of individual industries. In each area, it establishes rules Chinese officials will follow in a vast array of areas, and means of redress should they violate those rules. It does so in the legal profession itself: some of you may take advantage of the agreement to practice in China in the coming years, assuming of course that Congress passes permanent Normal Trade Relations and enables us to win the benefit of the agreement.

Taken as a whole, this is more than policy change. As the Lawyers Committee for Human Rights has argued, they mean a more full adoption of internationally accepted standards for domestic law, regulation and administrative procedure. It means an acceptance by China of an entire body of agreements, rules and enforcement procedures developed over decades; and a commitment to this element of the system of mutual benefit and shared responsibility developed after the Second World War. In sum, our agreement brings China further away from the legal void of the Maoist era; and closer to the rule of law.

That is why some of the leading advocates of democracy and human rights in China and Hong Kong — Bao Tong, jailed for seven years after Tiananmen Square; Ren Wandong, a founder of China's modern human rights movement; Martin Lee, the leader of Hong Kong's Democratic Party — see this as China's most important step toward reform and liberalization in 20 years. And it is why China's WTO membership marks a signal advance of the ideals taught here at the School — as the world's largest nation adopts more fully than ever before the principles of rights, acceptance of common rules, and impartial settlement of dispute at the heart of law.

Conclusion

China's experience is an illustration in real life — between 1950 and 2000, the lifetime of a single generation — of the loss of law and then of its development. At each step, we can see the arbitrary force, poverty and conflict that arise in the absence of law; and the slow, incomplete but steady development of individual rights, material well-being and civil peace that accompany its recovery.

This is ultimately what each of you has learned, in each field you studied at the School, and the process to which you will contribute as lawyers. This is what neighborhoods and industries use to create jobs while preventing pollution; it is what companies use to ensure fair competition; how radio and television stations and now Internet service providers enable one another to share airwaves and bandwidth. It is the means by which we find mutual benefit and reduce the risk of tension, coercion and force.

Whether it is in trade, criminal justice, civil rights, environmental law, or any other field, in no other walk of life does one have such an opportunity.

Nowhere else can you so directly affect the policy of governments, as they consider the new challenges of this new century.

No other field so directly joins moral and ethical questions with the practical response to specific and material disputes.

And nowhere do you have such an opportunity to strengthen the culture of rights, due process, and personal security which makes our country a decent place to live — and, as we see in China, can do so throughout the world.

This is what makes you so fortunate and so privileged today. I offer you my sincere congratulations and best wishes on your graduation.

Thank you very much.