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# China's Economic and Political Clout Grows in Latin America at the Expense of U.S. Interests

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## INTRODUCTION

For many years during the Cold War, the Third World was a battleground for two superpowers—the United States and the former Soviet Union. These two nations fought to exert their influence throughout Latin America in order to gain political, economic, and military clout. When the Soviet Union fell, the United States lost interest in its relationship with Latin American countries. During the past five years, China has stepped into the void left by these two retreating superpowers.<sup>1</sup> As China increases and solidifies economic ties to the region and secures oil, minerals, and other commodities from this region, it gains economic and political influence at the expense of U.S. interests. If Chinese economic power surpasses that of the United States, Latin American countries may no longer feel the need to cooperate with U.S. initiatives in trade, human rights, antinarcotics, environmental safeguards, and U.S. national security. In

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1. See generally Mary Anastasia O'Grady, *The Middle Kingdom in Latin America*, WALL ST. J., Sept. 3, 2004, at A11 (noting that leaders of some Latin American countries see China as an alternative to dealing with the United States and that anti-American sentiment is rising). In referring to China's investments in Latin America, the Institute of Cuban and Cuban-American Studies at the University of Miami quoted Dr. Cynthia Watson: "They are interested in oil contracts in Venezuela, Ecuador and Colombia. . . . [T]hey want to show Latin American nations that they will treat them as sovereigns, that they won't preach to them and they will act as partners." *Id.* Dr. Watson is a professor of strategy at the National War College in Washington. *Id.*

China, Latin America is likely to find an attractive alternative to economic trade that is not contingent upon U.S. interests.

The Monroe Doctrine proclaimed that the Western Hemisphere is "America's backyard."<sup>2</sup> The United States helped Latin American countries gain their independence from Spain and later in the twentieth century, assisted them in the process of democratization.<sup>3</sup> Stable democracies in Latin America reduce regional crises and increase cooperation. Today, the United States needs a stable Latin America in order to assure itself an important source of regional oil.<sup>4</sup>

This Note seeks to highlight a potential threat to the economic, political, and military interests of the United States in Latin America as China's economic influence grows. Part I discusses current U.S. and Chinese trade relations with Latin American countries. Part II analyzes the potential consequences of China's increasing economic activity in Latin America, why the United States must counter it, and how it must do so. Part II also analyzes U.S. insistence of dealing with the issue of agricultural subsidies only through the legal framework of the World Trade Organization Agreement on Agriculture and its effect on the future of the Free Trade Agreement of the Americas. This Note concludes that if the United States does not counter China's aggressive economic involvement in Latin America, the United States will lose clout in the event of a confrontation with China. Instead of the current approach, the United States should pursue bilateral agreements and, together with each Latin American country, put in place social policies that will enable Latin Americans to adjust to free trade.

## I. UNITED STATES, CHINA, AND LATIN AMERICA

### A. UNITED STATES TRADE RELATIONS WITH LATIN AMERICA

#### 1. *Historical Trade Figures and New Trade Initiatives*

Annual trade between the United States and Latin America

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2. Richard E. Friedman, *Letter from the Publisher*, NAT'L STRATEGY F. REV., Fall 2004, at 4, available at <http://www.nationalstrategy.com/Fall%202004.pdf>.

3. *Id.*

4. *See id.*

(including the Caribbean) is approximately \$360 billion.<sup>5</sup> This is almost as much as the United States trades with the entire European Community.<sup>6</sup> "By the year 2010, U.S. trade with Latin America is expected to exceed that with the European Economic Community and Japan combined."<sup>7</sup> Currently, the United States has various trade agreements with Latin American and Caribbean countries.

The United States, Mexico, and Canada signed the North American Free Trade Agreement (NAFTA),<sup>8</sup> which came into force in the United States on January 1, 1994.<sup>9</sup> It eliminated tariffs between these three countries on most of the products they manufacture.<sup>10</sup> In its effort to promote a good working relation within the NAFTA framework, the United States established consultative committees through which trade differences could be addressed.<sup>11</sup> The only other Western Hemisphere free trade agreement to which the United States is a party is the Chile Free Trade Agreement (Chile FTA).<sup>12</sup> Chile and the United States have eliminated tariffs on eighty-five percent of trade and will phase out remaining tariffs by 2007.<sup>13</sup> One reason that the United States entered into this free trade agreement with Chile was to reward Chile for its low level of corrup-

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5. *Department of Defense Authorization for Appropriations for Fiscal Year 2004: Hearings Before the Comm. on Armed Services United States Senate*, 108th Cong. 535 (2003) (statement of Gen. James T. Hills), available at <http://armed-services.senate.gov/statemnt/2003/March/Hill.pdf> (last visited Jan. 28, 2005) [hereinafter *Hearings*].

6. *Id.*

7. *Id.*

8. For text, see North American Free Trade Agreement, Dec. 17, 1992, 32 I.L.M. 605.

9. See North American Free Trade Agreement Implementation Act § 101, 19 U.S.C. § 3301 (1993) [hereinafter NAFTA Implementation Act]; Exec. Order No. 12,889, 58 Fed. Reg. 69,681 (Dec. 27, 1993).

10. See NAFTA Implementation Act § 101, 19 U.S.C. § 3301 (1993).

11. *U.S.-Latin American Trade Policy Initiatives Beyond NAFTA*, AGEXPORTER, May 2003, at 7, available at <http://www.fas.usda.gov/info/agexporter/2003/May/pgpercent207.pdf> (last visited Jan. 28, 2005) [hereinafter *Trade Policy Initiatives*].

12. See Press Release, Office of the United States Trade Representative, United States and Chile Sign Historic Free Trade Agreement (June 6, 2003), available at [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2003/June/United\\_States\\_Chile\\_Sign\\_Historic\\_FreeTrade\\_Agreement.html](http://www.ustr.gov/Document_Library/Press_Releases/2003/June/United_States_Chile_Sign_Historic_FreeTrade_Agreement.html) (last visited Jan. 28, 2005) [hereinafter Chile FTA]. See generally *Trade Policy Initiatives*, *supra* note 11, at 7; OFFICE OF THE U.S. TRADE REPRESENTATIVE, FINAL ENVIRONMENTAL REVIEW OF THE U.S.-CHILE FREE TRADE AGREEMENT 3 (2003), available at [http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Chile\\_FTA/asset\\_upload\\_file411\\_5109.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Chile_FTA/asset_upload_file411_5109.pdf) (last visited Jan. 28, 2004) [hereinafter ENVIRONMENTAL REVIEW].

13. *Trade Policy Initiatives*, *supra* note 11, at 7.

tion.<sup>14</sup> As of October 2004, Congress has passed no implementing act.

The United States is pursuing the Central America Free Trade Agreement (CAFTA) with five Central American nations: Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.<sup>15</sup> Although negotiations were scheduled to be completed by December 2003, as of October 2004 no agreement had been reached.<sup>16</sup> The United States Senate is to debate the issue in 2005.<sup>17</sup>

The United States Congress passed the Caribbean Trade Partnership Act in 2002.<sup>18</sup> The Act expanded the Caribbean Basin Economic Recovery Act,<sup>19</sup> which provides preferential treatment for the importation of certain products from Caribbean countries.<sup>20</sup>

In 2002, the United States enacted the Andean Trade Promotion and Drug Eradication Act.<sup>21</sup> The Act was an expansion of the Andean Trade Preference Act,<sup>22</sup> which was first passed in 1991.<sup>23</sup> It gave the President the power to grant duty-free treatment for eligible articles.<sup>24</sup> The Act granted additional

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14. See *Hearings*, *supra* note 5, at 535–42.

15. See *Trade Policy Initiatives*, *supra* note 11, at 7 (noting that CAFTA will comprise thirty-five million consumers among five countries).

16. See *id.*

17. Friedman, *supra* note 2, at 5.

18. *Trade Policy Initiatives*, *supra* note 11, at 7.

19. For the Executive Summary, see THOMAS F. JENNINGS ET AL., U.S. INT'L TRADE COMM'N, CARIBBEAN BASIN ECONOMIC RECOVERY ACT: IMPACT ON U.S. INDUSTRIES AND CONSUMERS, at v (1994), available at <http://hotdocs.usitc.gov/docs/pubs/332/pub2927/pub2927.pdf> (last visited Jan. 28, 2005). For the 2003 report assessing the effects of the Caribbean Basin Economic Recovery Act on the U.S. economy, on U.S. industries, and on U.S. consumers, see WALKER A. POLLAR ET AL., U.S. INT'L TRADE COMM'N, THE IMPACT OF THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT 1-1 (2003), available at <http://hotdocs.usitc.gov/docs/pubs/332/pub3636/pub3636.pdf> (last visited Jan. 28, 2005).

20. See 19 U.S.C. § 2702(b) (listing the twenty-seven beneficiary countries); *Trade Policy Initiatives*, *supra* note 11, at 7.

21. Andean Trade Promotion and Drug Eradication Act of 2002, Pub. L. No. 107-210, 116 Stat. 1023 (2002). For background information, see Office of Management and Budget, *H.R. 3009-Andean Trade Promotion and Drug Eradication Act* (Nov. 16, 2001), at <http://www.whitehouse.gov/omb/legislative/sap/107-1/HR3009-h.html> (last visited Jan. 25, 2005); *Trade Policy Initiatives*, *supra* note 11, at 7.

22. 19 U.S.C. §§ 3201–3206 (1991). For background information, see U.S. Department of Commerce, *Andean Trade Preference Act*, at <http://www/mac.doc.gov/atpa/webmain/intro-revise.htm> (last visited Jan. 30, 2005).

23. *Trade Policy Initiatives*, *supra* note 11, at 7.

24. 19 U.S.C. § 3201 (1991) (“The President may proclaim duty-free treatment for all eligible articles from any beneficiary country in accordance with the provisions of this chapter.”).

trade benefits<sup>25</sup> and increased the list of duty-free items to 6,300.<sup>26</sup> Although this and other trade acts have improved economic relations between the United States and its neighbors to the south, the United States has more ambitious goals.

The United States aims to set up a free trade zone in this hemisphere.<sup>27</sup> The Free Trade Area of the Americas (FTAA)<sup>28</sup> would include thirty-four of the hemisphere's thirty-five nations (excluding Cuba).<sup>29</sup> The FTAA would thus bring 800 million people into a single market.<sup>30</sup> However, several sources of friction, especially ongoing disputes between the United States and some Latin American countries, particularly Brazil, will make it unlikely that an agreement will be reached any time soon.<sup>31</sup>

## 2. Sources of Friction

Many Latin American governments and their citizens do not support the FTAA.<sup>32</sup> Presidents Nestor Kirchner of Argen-

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25. *See id.* § 3203.

26. *See id.*; *Trade Policy Initiatives*, *supra* note 11, at 7.

27. *See* Mario E. Carranza, *Mercosur, The Free Trade Area of the Americas, and the Future of U.S. Hegemony in Latin America*, 27 *FORDHAM INT'L L.J.* 1029, 1030–31 (2004) (noting that the FTAA negotiations were launched in April 1998 and were supposed to be concluded by January 2005). The FTAA would annex the Latin American economies to the U.S. economy and this would eliminate all barriers to U.S. investment in the region, which includes national restrictions on government procurement. *Id.* at 1032. It would also allow U.S. firms “to sue the Latin American governments over health, labor, and environmental laws.” *Id.* *See generally* Rafael Lorente, *Trade Key to Latin America Strategy but Some Fear Bush's Approach is Too Narrow*, *S. FLA. SUN-SENTINEL*, Nov. 3, 2003, at 1A, 2003 WL 65981736 (discussing that the United States seeks to have a hemispheric free trade agreement and that it uses trade agreements to promote democracy).

28. For background information, see *Free Trade of the Americas*, at [http://www.ftaa-alca.org/SPCOMM/tci/tnmin22\\_e.asp](http://www.ftaa-alca.org/SPCOMM/tci/tnmin22_e.asp) (last visited Feb. 7, 2005); Carranza, *supra* note 27, at 1030 (noting that the FTAA negotiations were launched on April 18–19, 1998).

29. Lorente, *supra* note 27, at 1A.

30. *See Trade Policy Initiatives*, *supra* note 11, at 7 (noting that the U.S. proposal providing that fifty-six percent of agricultural imports from countries in this 800 million-people region will be duty-free as soon as the FTAA takes effect and that other agricultural tariffs “will fall into staging categories of five years, [ten] years, or longer”). Nations should get different rates of reductions depending on their economic size and level of development. *Id.*

31. Lorente, *supra* note 27, at 1A (asserting that disputes between Brazil and other nations in the region are making it less likely that the FTAA will be completed by 2005).

32. *See* Carranza, *supra* note 27, at 1033–34 & n.12 (noting that seventy-six percent of those polled in Brazil, the largest economy in South America, believed that free trade in this hemisphere would benefit the United States primarily); Oppenheimer, *infra* note 43 (discussing the poll conducted by Zogby International and

tina and Luiz Inácio Lula da Silva of Brazil have publicly criticized it.<sup>33</sup> Mr. Enrique Espinosa, a former trade negotiator for Mexico, said "It would be very bad to rush the negotiation in order to meet the deadline."<sup>34</sup> President da Silva recently traveled to China as part of a mission to rearrange global trade.<sup>35</sup> By negotiating trade deals with China, Brazil and Argentina are attempting to challenge U.S. domination in free-trade talks in the Western Hemisphere.<sup>36</sup> The major sources of friction include the perception of hypocrisy on the part of the United States on free trade and the perception of lopsided benefits given to the United States from the FTAA.<sup>37</sup> Many Latin Americans, correctly or not, think that the United States treats their countries as inferior nations that are expected to support U.S. interests, rather than as equal trading partners.<sup>38</sup> Another source of fric-

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the University of Miami). Thirty-nine percent of those polled said that the FTAA would benefit both Latin America and the United States. Carranza, *supra* note 27, at 1033-34 & n.12. The United States wants to gain access to the MERCOSUR—the southern trade bloc comprising Brazil, Argentina, Paraguay, and Uruguay—before this bloc establishes a free trade deal with the European Union. *See id.* at 1031, 1034; Carlos A. Ball, *U.S. Policy Has Gone South*, L.A. TIMES, Sept. 9, 2003, at B13 (noting that Latin Americans oppose the FTAA for various reasons including the fact that the United States insists on free trade but gives its farmers generous subsidies). The United States imposes strict labor and environment standards that may remove competitive advantages that smaller countries may have over the United States. *Id.*

33. Geri Smith, *The Latin Chill May Get Even Frostier*, BUS. WK., Jan. 26, 2004, at 63.

34. *Talking Trade*, LATIN TRADE, Sept. 2004, at 19; *see also* Makram Haluani, *Benign Neglect*, HARV. INT'L REV., Winter 2003, at 50 (discussing that Latin American nations are hesitant about moving too quickly and opening their markets). Rushing to set up the FTAA may result in negative economic consequences in Latin American countries. *See id.* at 52. Many have refused to open their government procurement bidding processes to foreign companies. *Id.*

35. *See Brazil: China Appeal*, ECONOMIST INTELLIGENCE UNIT-BUS. LATIN AM., May 17, 2004, at 2, 2004 WL 63625721 (noting that Brazil sees a tremendous economic opportunity in China).

36. *Id.*

37. *See* Ball, *supra* note 32, at B13.

38. *See* Brian Selmeski, *Latin America: Latin America 101*, NAT'L STRATEGY F. REV., Fall 2004, at 6, *available at* <http://www.nationalstrategy.com/Fall%202004.pdf> (last visited Jan. 21, 2005) (arguing that the United States should not ignore, confuse, or bully Latin Americans). The United States should view Latin America as an opportunity and learn about the region's culture and intimate issues. *Id.* at 12. It should take elected officials and their national priorities seriously as well as their limitations. *Id.* It should recognize that free trade is not desirable nor is it possible at this time. *Id.* The United States should promote freer trade with greater sensitivity and safeguards for these countries instead of pressuring Latin American politicians. *Id.* Finally, it should support the Millennium Development Goals (MDGs) established by the United Nations to address poverty, education, healthcare, HIV prevention, and the environment. *Id.*

tion is that many Latin Americans have not seen the promised benefits of capitalism and have grown skeptical of democracy in general.<sup>39</sup>

The perceived U.S. hypocrisy was at its highest level in March 2002, when President Bush imposed tariffs on steel from Brazil and Venezuela<sup>40</sup> and announced a \$130 billion subsidy package for U.S. farmers.<sup>41</sup> The Bush Administration also imposed a sixty percent surcharge on orange-juice concentrate from Brazil, protecting 90,000 orange-growing farmers in Florida.<sup>42</sup> Brazil and Argentina are demanding that the United States cut its agricultural subsidies, but the United States insists that it will address the issue of agricultural subsidies only at the World Trade Organization (WTO), which offers a flexible legal framework within which the United States can continue its agricultural subsidies.<sup>43</sup> These protectionist measures add to Latin Americans' perception of the United States being not fully committed to free trade in the Americas.<sup>44</sup>

China, on the other hand, has lowered its own tariffs from forty-one percent in 1992 to six percent after joining the WTO in December of 2001.<sup>45</sup> It has the lowest tariff protection of any

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39. Ball, *supra* note 32, at B13 (noting that Latin Americans' contempt for capitalism was demonstrated at President Kirchner's inauguration in Argentina when Fidel Castro, the strongest opponent of capitalism in this hemisphere, received a standing ovation).

40. Haluani, *supra* note 34, at 51.

41. For statutory text, see Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171 § 1103, 116 Stat. 134 (codified as amended in scattered sections of 7 U.S.C., 16 U.S.C., 21 U.S.C.). See also *id.*; Carranza, *supra* note 27, at 1063 & n.102 (noting that in 2002 President Bush imposed steel tariffs, which were eventually cancelled in December 2003 to avoid retaliatory tariffs from the European Union and Japan) (citing Dan Freeman, *Steel May Test Bush Mettle*, SAN ANTONIO EXPRESS-NEWS, Dec. 5, 2003, at 1A).

42. Carranza, *supra* note 27, at 1063.

43. *Id.* at 1057 (discussing Brazil's insistence on agricultural concessions from the United States, while the United States maintains that it is a non-negotiable matter); Carranza, *supra* note 27, at 1050 (noting that the United States wants to exclude farm subsidies from the FTAA negotiations and instead utilize the WTO framework in the Doha Round of global trade talks); Carmen G. Gonzalez, *Institutionalizing Inequality: The WTO Agreement on Agriculture, Food, Security, and Developing Countries*, 27 COLUM. J. ENVTL. L. 433, 455-58 (2002) (arguing that the text of the WTO Agreement on Agriculture gives countries enough flexibility to protect their agricultural industries); Andres Oppenheimer, *Latin Nations Fear Free-trade Scales Tip Toward U.S.*, AKRON BEACON J., Nov. 4, 2003, at 3, 2003 WL 2491245.

44. See Carranza, *supra* note 27, at 1057 (discussing that Brazil does not think that the United States is seriously committed to the FTAA because the United States refuses to offer reciprocal concessions).

45. *The Dragon and the Eagle*, ECONOMIST, Oct. 2, 2004, at 6.



developing nation in the world.<sup>46</sup>

There is wide disappointment in capitalism and in democracy among many Latin Americans. Political and economic movements in Latin America made up of unions, farmers, and Indian groups are becoming more common and powerful.<sup>47</sup> The adjustments that Latin Americans have made for globalization have damaged certain sectors of their economies, particularly in infrastructure-related areas such as transportation, communications, and technology.<sup>48</sup> Many Latin Americans have lost faith in the democratic process and in politicians.<sup>49</sup> They have resorted to voting for priests, ex-coup leaders, and inexperienced populists,<sup>50</sup> many of whom have successfully encouraged suspicion of capitalism.<sup>51</sup>

Many Latin Americans feel that the United States does not treat their countries as equal partners. An integral part of the Hispanic culture can be summed up with the word *cortesía*, meaning courtesy.<sup>52</sup> It is this system of “courtesies, traditions, and values that bind Latin American society.”<sup>53</sup> However, instead of respecting this cultural understanding, the United States has alternated between bullying and ignoring Latin America.<sup>54</sup> Latin Americans believe that during its War on Ter-

46. *Id.* The Chinese yuan was pegged to the U.S. dollar at an artificially low rate. *Id.* at 14, 16. Pegging the yuan to the U.S. dollar helps keep China’s exports competitive, which creates jobs for their many underemployed workers. *Id.* This has also helped China double its foreign-exchange reserves to \$480 billion, most of it in U.S. government securities. *Id.* In a sense, China is financing the U.S. current-account deficit. *Id.*

47. Selmeski, *supra* note 38, at 8 (noting that “Indians, landless peoples, urban poor, and others” are increasing in outspokenness and power). “Frustration with broken promises and worsening conditions has also meant that popular protests remain a key part of the region’s democratic process.” *Id.*

48. See João P. Koslovski, *A Strategic View of Negotiations Between Brazilian Agricultural Cooperatives and the WTO*, at <http://www.agricoop.org/activities/ICAO%20Koslovski.pdf> (last visited Jan. 21, 2005) (discussing that fast pace and fierce competition has led to policies that have hurt infrastructure projects throughout the region).

49. *Bolivia’s Referendum: Counter-reform—or Muddle Along?*, *ECONOMIST*, Jul. 17, 2004, at 35; Selmeski, *supra* note 38, at 8 (“A 2004 United Nations Development Program (UNDP) report entitled “Democracy in Latin America” . . . concluded that nearly fifty-five percent of the region’s inhabitants would prefer an authoritarian government to a democratic one if it could better their economic circumstances.”).

50. Selmeski, *supra* note 38, at 8.

51. See David Luhnnow, *Free Markets Spur Protest*, *WALL ST. J.*, Sept. 7, 2004, at A18.

52. Friedman, *supra* note 2, at 5 (defining “*cortesía*” as “a system of courtesies, traditions, and values that bind Latin American society”).

53. *Id.*

54. Selmeski, *supra* note 38, at 6 (noting that “skeptics are likely wondering

ror, the United States seems to have forgotten Latin America.<sup>55</sup> Even before the preoccupation with the War on Terror, U.S. embassies in Brazil, Argentina, and Mexico had no ambassadors for a period of at least two years during the 1990's.<sup>56</sup> This lack of *cortesía* and other sources of friction have created the opportunity for an economic and political alternative—China replacing the United States.

## B. CHINA'S TRADE RELATIONS WITH LATIN AMERICAN COUNTRIES

### 1. China's Growing Economic Clout

In 1979, General Secretary of the Communist Party, Deng Xiaoping, initiated economic reform that transformed China from a control economy to a market economy.<sup>57</sup> During the 1990s China set up economic zones to encourage foreign companies to open plants and factories.<sup>58</sup> Since that time, foreign trade has been liberalized,<sup>59</sup> financial markets have been created,<sup>60</sup> China's gross national product has grown dramatically,<sup>61</sup> and ties with neighboring countries have improved.<sup>62</sup> In 2003, due to foreign direct investment, China exported \$438 billion worth of goods.<sup>63</sup> China's gross domestic product accounts for

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whether Latin America really matters to the United States any more, considering the urgency of current events in the Middle East and Central Asia").

55. *Id.*

56. Cynthia A. Watson, *That Sinking Feeling Again: Deterioration in U.S.-Latin American Relations*, NAT'L STRATEGY F. REV., Spring 2001, available at <http://www.nationalstrategy.com/nsr/v10n3Spring01/100319.htm> (last visited Jan. 31, 2005).

57. Steven L. Chan, Book Note, 15 B.C. THIRD WORLD L.J. 211, 211 (1995) (reviewing WILLIAM H. OVERHOLT, *THE RISE OF CHINA: HOW ECONOMIC REFORM IS CREATING A NEW SUPERPOWER* (1993)) (discussing that China broke up collective farms, began its manufacturing drive, and invited foreign investment).

58. Michael O'Boyle, *The China Threat*, BUS. MEX., Oct. 1, 2003, at 30.

59. WILLIAM H. OVERHOLT, *THE RISE OF CHINA: HOW ECONOMIC REFORM IS CREATING A NEW SUPERPOWER* 30 (1993).

60. *Id.* at 45-46.

61. *Id.* at 29-30.

62. *Id.* at 321-22.

63. Neil King, Jr., *A Whole New World*, WALL ST. J., Sept. 27, 2004, at R1, 2004 WL-WSJ 56941795 (noting that during the 1980s, foreign manufacturers in Taiwan, Japan, and South Korea opened factories in China in order to take advantage of the cheap labor, in the late 1990s, dozens of multinational corporations opened factories in China, and from 2000 to 2003, as many as 60,000 new factories were opened in China by foreign companies); *The Dragon and the Eagle*, *supra* note 45, at 4 (noting

thirteen percent of world output, second only to the United States.<sup>64</sup> China's gross domestic product grew approximately nine percent and eight percent in 2003 and 2002, respectively,<sup>65</sup> and its economic expansion has averaged almost eight percent per year between 1999 and 2003.<sup>66</sup>

Some economists think that China's economy will cool and that its expectations are overblown.<sup>67</sup> Other economists believe that China's financial system is unable to allocate capital efficiently, thereby lowering its return on investment.<sup>68</sup> However, most economists predict that China will grow no less than seven or eight percent per year between 2004 and 2008.<sup>69</sup> China has many attractive qualities for foreign investors such as an endless supply of Chinese low-skilled laborers who work long days at forty cents per hour.<sup>70</sup> At the upper end of the market, Chinese schools produce competent engineers that can be hired for as little as \$3,000 per year.<sup>71</sup> China also offers an enormous domestic market.<sup>72</sup> According to China expert Daniel Rosen, a fellow at the Institute for International Economics in Washington, D.C., "China offers great production costs for exporting to the global market, but it also offers a domestic market with

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that China is the largest recipient of foreign direct investment and that within one decade it could be the world's largest exporter and importer, enough to overtake the United States and become the world's largest economy).

64. *The Dragon and the Eagle*, *supra* note 45, at 4.

65. Phelim Kyne, *Foreign Investment in China Remains Strong*, WALL ST. J., Sept. 16, 2004, at A15.

66. *Brazil: China Appeal*, *supra* note 35.

67. *See The Dragon and the Eagle*, *supra* note 45, at 6 (discussing that China suffers serious problems that may curtail its growth, such as a fragile banking system, widespread corruption, environmental pollution, and the risk of social and political unrest exacerbated by income inequalities and continuing human rights abuses).

68. *See id.* at 7-8 (noting that China has over-invested in sectors such as cars and steel and therefore some projects will not be profitable).

69. *Latin America: Made in China*, ECONOMIST INTELLIGENCE UNIT-BUS. LATIN AM., Apr. 12, 2004, at 3, 2004 WL 63625618.

70. O'Boyle, *supra* note 58; Don Bauder, *China Factor Involves a Hefty Helping of Angst*, SAN DIEGO UNION TRIB., Feb. 19, 2003, at C1, 2003 WL 6566972 (discussing that Chinese manufacturing wages average sixty cents per hour, which is five percent of the average U.S. laborer and ten percent of other Asian laborers).

71. O'Boyle, *supra* note 58; Mei Fong, et al., *Chinese Manufacturers Are Closing Quality Gap*, WALL ST. J., Oct. 14, 2004, at A17. Ernest Preeg, a senior fellow in trade and productivity at the research institute Manufacturers Alliance/MAPI, predicts that China will surpass Japan and move into a "three-way relationship with the U.S. and Europe in the area of advanced technology products" within the next decade. *Id.*

72. *The Dragon and the Eagle*, *supra* note 45, at 4 (noting that China's imports grew by forty percent in 2003).

enormous growth potential."<sup>73</sup>

## 2. China's Investments in Key Sectors in Latin America: Oil, Commodities, and Infrastructures

China's high demand for commodities has driven up the price of metals, agricultural products, and oil.<sup>74</sup> China is a major importer of raw materials, a plentiful commodity in Latin America.<sup>75</sup> This makes doing business with China very attractive to Latin American countries, especially Brazil.<sup>76</sup> For example, China's top steel maker, Baosteel, is considering a joint venture with Brazil's Companhia Vale de Rio Doce, the world's top iron ore miner.<sup>77</sup>

Latin America and the Caribbean provide over thirty percent of U.S. imported oil, which is more than all of the Middle Eastern countries combined.<sup>78</sup> But China is not just securing oil and commodities from Latin American countries, it is becoming intimately involved in its extraction, transportation and infrastructure construction.<sup>79</sup> China's approach has been to show Latin American countries that, unlike the United States, it will treat them as sovereigns and as partners.

In 2003, trade between China and Brazil totaled eight billion dollars, making China Brazil's second-largest trading part-

73. O'Boyle, *supra* note 58.

74. See *Latin America: Made in China*, *supra* note 69, at 3; Brian Bremner and Dexter Roberts, *The Great Oil Hunt*, BUS. WK., Nov. 15, 2004, at 60; see *What has China Cost Mexico*, LATIN AM., MEXICO & NAFTA REP., Mar. 9, 2004, LEXIS, Nexis Library, Mexico & Nafta Report File (noting that China's oil imports increased one-third in 2003 and that some forecasters expect China to import as much oil in 2020 as did the world's largest oil importer, the United States, in 2003); *The Dragon and the Eagle*, *supra* note 45, at 12 (asserting that China's demand for oil is maintaining high oil prices worldwide). According to the International Energy Agency, China's increase in annual demand for oil in 2004 will be approximately fifteen percent greater than the increase in 2003, with a daily consumption of over six million barrels per day. Jeffrey Ball, *Efforts to Reduce U.S. Addiction to Oil Are Few*, WALL ST. J., Sept. 28, 2004, at A8.

75. *Latin America: Made in China*, *supra* note 69.

76. *Id.* (discussing China's future role as a leader of investment in the region, especially in Brazil).

77. *Id.* (noting that China is also an important market for Peru's metals, as well as Mexican and Venezuelan oil).

78. *Hearings*, *supra* note 5, at 3.

79. See *supra* text accompanying note 77; *Venezuelan PDVSA to Invest in China*, LATIN AM. NEWS DIG., Sept. 10, 2004, 2004 WL 82097926 [hereinafter *PDVSA*] (noting that China National Petroleum Corporation (CNPC) is involved in forty projects in thirty-two countries worldwide including Venezuela's state oil company Petroleos de Venezuela (PDVSA)).

ner after the United States.<sup>80</sup> Brazil is China's largest trading partner in Latin America and annual bilateral trade has tripled since 2000.<sup>81</sup> Both countries recently took part in a workshop entitled "Brazil and China in the 21st Century," at which Chinese entrepreneurs sought Brazilian partners in economic sectors such as oil and agriculture.<sup>82</sup> China seeks to invest directly in Brazil's infrastructure,<sup>83</sup> where it has agreed to invest between \$3 billion and \$4 billion in railways and refineries.<sup>84</sup>

With Argentina, China seeks not only bilateral trade agreements but also to become an investment partner, particularly in the infrastructure and transportation sectors.<sup>85</sup> To this end, Argentine President, Nestor Kirchner, and Chinese President, Hu Jintao, signed an agreement on June 28, 2004, which enables both countries to jointly begin construction of a railway and allows Argentina to export its citrus fruit to China.<sup>86</sup>

Realizing that it must work with China because it cannot compete against it, Mexico has decided to increase its exploration and production of oil to satisfy China's demand.<sup>87</sup> In February 2004, Mexico held a conference entitled "China's Influence on Mexico's Future," at which Mexico's ambassador to China

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80. *Latin America: Made in China*, supra note 69.

81. See *Brazil: China Appeal*, supra note 35 and accompanying text (reporting that annual trade between Brazil and China should reach \$10 billion in 2005).

82. See *Brazil Exports to China at \$1.1 Bln Q1 2004*, LATIN AM. NEWS DIG., Apr. 27, 2004, 2004 WL 65869970 [hereinafter *Brazil Exports*]. China currently imports steel products, pulp and paper, chemical, and plastic products from Brazil. *Id.*

83. *Brazil: China Appeal*, supra note 35.

84. *China Mulls Up to \$4 Bln Investments in Brazil*, LATIN AM. NEWS DIG., Apr. 15, 2004, 2004 WL 65869461 (noting that Chinese companies are primarily interested in investing in railways, oil and refineries, and raw materials, including an important railway project connecting Brazil to the Pacific ports of Chile); see also *Brazil, China Sign MOUs on Chinese Investment in Energy Projects*, BBC MONITORING ASIA PAC., Sept. 8, 2004, 2004 90389170 (noting that China has also expressed interest in expanding investments in Brazil's Free Trade Zone of Manaus).

85. See *Argentina to Export Citrus Fruit to China*, LATIN AM. NEWS DIG., June 30, 2004, 2004 WL 82096240 [hereinafter *Fruit to China*] (discussing that Argentina will shortly start exporting citrus fruit to China, which could reach \$150 million per year, while China will also work on investment and joint projects in Argentina, including a railway construction project).

86. See *id.*

87. See *What has China Cost Mexico*, supra note 74 ("Mexico cannot expect to compete successfully with China because . . . China's labour is cheaper and, arguably, its supply chain (infrastructure, electricity, logistics) is more efficient."). Mexico's share of U.S. imports fell in 2002 because it has been undercut in the U.S. market by China. *Id.* Mexico is starting to develop a policy that will allow it to make use of its comparative advantages. *Id.* It plans, for example, to follow Brazil's lead and will supply China with the commodities that China needs, primarily oil. *Id.*

announced that Mexico will increase its oil output to meet China's demands.<sup>88</sup>

China has agreed to invest in Venezuela's state oil company, Petroleos de Venezuela (PDVSA).<sup>89</sup> Venezuela's Foreign Minister met with the managers of China National Petroleum Corporation (CNPC) in order to establish a strategic alliance over the exploration, transformation, and transportation of crude oil, including upgrading necessary infrastructure.<sup>90</sup> China also has indicated interest in investing \$3 billion in Ecuador, primarily in its oil sector.<sup>91</sup>

China is even courting smaller, sometimes forgotten countries. China expressed interest in investing in the construction of a new canal through Central America.<sup>92</sup> The proposed canal would cost \$20 billion and would utilize Lake Nicaragua and one river in southeast Nicaragua.<sup>93</sup> Guyana and China enjoy bilateral economic and technical cooperation.<sup>94</sup> President Hu Jintao said that China is willing to develop relations with Caribbean countries that would be of mutual benefit to Latin America and China.<sup>95</sup> This cooperation increases access for Latin American businesses to the growing Chinese consumer market.

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88. *Mexico: Eyeing Oil Exports to China*, LATIN NEWS DAILY, Feb. 24, 2004, 2004 WL 67935290.

89. *PDVSA, supra* note 79 (noting that China's investment in the Venezuelan petroleum industry will strengthen China and Venezuela's strategic alliance).

90. *Id.*; see also *Chinese Yankuang to Start Railroad Repair Works in Venezuela*, LATIN AM. NEWS DIG., Sept. 20, 2004, 2004 WL 82098141 (reporting that China will invest \$3 billion to repair a railroad network linking central and western Venezuela).

91. *China Reportedly Interested in Investing in Ecuadorian Oil*, BBC MONITORING LATIN AM., Jan. 7, 2003, 2004 WL 4133432 [hereinafter *Ecuador*] (reporting that the Chinese government invited a government delegation of Ecuadorians to China, "which facilitated contacts for meetings with board members from the Sinopeg Oil Company, China's largest refinery, and the China National Petroleum Corporation (CNPC) in order to attract foreign investment to Ecuador").

92. *Chinese Govt. Interested in Interocean Canal Investment*, BUS. NEWS AM., Sept. 2, 2003, LEXIS, Nexis Library, Business News Americas File (reporting that, unlike the Panama Canal, the new canal would be able to accommodate ships of 250,000 tons, many of which transport iron-ore from Brazil and Venezuela to China; the Panama Canal can accommodate ships no heavier than 50,000 tons).

93. *Id.*

94. *Hu Xiao, Leaders Seek Expansion of Cooperation*, CHINA DAILY, Mar. 28, 2003, 2003 WL 3053610 (naming various cooperative projects between Guyana and China in industry, agriculture, and hydroelectric energy).

95. See *id.* (noting that President Hu Jintao expressed understanding for the challenges that Caribbean countries face in the global market).

### 3. Chinese Market Attractiveness to Latin American Countries

Eager to obtain new customers, foreign manufacturers and distributors want to tap into all areas of the growing Chinese market.<sup>96</sup> China is rapidly creating the largest middle class in the world, which will have tremendous buying power.<sup>97</sup> Foreign direct investment in China increased nineteen percent, to \$43.6 billion, from January to August 2004 alone.<sup>98</sup> China consumes an increasing amount of oil and commodities and it opened its agricultural market because it needs to import great quantities of food.<sup>99</sup>

Latin American leaders welcome an economic power that treats them as true partners and provides an attractive economic alternative to dealing with the United States.<sup>100</sup> The trade trip to China by Brazil's president in May of 2004 underscores this point.<sup>101</sup> Given China's needs for the raw materials that Latin American countries have and given China's cooperation in infrastructure and satellite technology development, it appears as though China, Brazil, and other Latin American countries are entering an era of greater cooperation.<sup>102</sup>

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96. Cf. *China/Brazil Bilateral Trade to Hit US\$5 Bil—Serbia to Increase Business with Brazil*, VALOR ECONOMICO, July 2, 2003, 2004 WL 65878955 [hereinafter *China/Brazil*] (noting as an example that Embraer, one of the largest Brazilian aircraft manufacturers, has partnered with a Chinese company to install its first assembly line in China because "China has become an important focus to the company").

97. O'Boyle, *supra* note 58, at 32; see *China/Brazil*, *supra* note 96.

98. Kyne, *supra* note 65, at A15. For a discussion predicting China's future, see Kenneth Lieberthal, *China in 2033*, CHINA BUS. REV., Mar./Apr. 2003, at 44.

99. *Brazil: China Appeal*, *supra* note 35 (reporting that China, Brazil's third-largest customer, has a strong demand for Brazil's soya beans and that exports to China of Brazilian soya beans and iron ore account for approximately sixty-eight percent of Brazil's total exports to China); see also *Chile, China Review Joint FTA Economic Study Progress*, LATIN AM. NEWS DIG., June 4, 2004, 2004 WL 65871224 (noting that trade delegations from the two countries recently agreed on a plan for Chile to export fruit to China in 2004).

100. See O'Grady, *supra* note 1.

101. See *Brazil: China Appeal*, *supra* note 35.

102. See *id.*; *Brazilian Foreign Minister Interviewed on Ties with China*, BBC MONITORING ASIA PAC., Mar. 29, 2004, 2004 WL 72819223 (noting that Brazilian Minister of Foreign Relations, Ambassador Celso Amorim, spoke highly of the achievements Brazil and China have made through cooperation in the science, technology, and cultural fields and remarked that there is still huge potential for further development of trade relations).

## C. LATIN AMERICA AND U.S. INTERESTS

## 1. U.S. Oil Interests

Roger Noriega, Assistant Secretary of State for Western Hemisphere Affairs, has stated that President Bush's policy on Latin America "is based on promoting democracy through programs aimed at curbing corruption and improving education, promoting trade, and fighting drug trafficking."<sup>103</sup> Latin America is also an essential source of oil for the United States.<sup>104</sup> As China gains more clout in Latin America, the United States may obtain less cooperation from Latin American countries with regard to securing oil, promoting human rights, expanding antinarcotics programs, fighting terrorism, assuring U.S. national security, promoting democracy and higher environmental standards, and reaching long-term trade agreements.<sup>105</sup>

It is imperative for the United States to secure future sources of oil from Latin America. Twenty percent of U.S. energy originates in the Andean countries, which comprise Colombia, Bolivia, Peru, Ecuador, and Venezuela.<sup>106</sup> Fourteen of that twenty percent originates in Venezuela.<sup>107</sup> Unrest in Venezuela and other oil-producing countries in Latin America as well as rising anti-U.S. sentiment throughout the region may jeopardize the United States's access to Latin American oil.<sup>108</sup> The election

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103. Lorente, *supra* note 27.

104. See Alfredo Corchado, *Summit Starts in Mexico: Hemisphere Needs Hope, Analysts Say, as Fox Hosts Bush, Other Leaders*, DALLAS MORNING NEWS, Jan. 12, 2004, 2004 WL 56658272; *Bolivia's Referendum: Counter-reform—or Muddle Along?*, *supra* note 49.

105. See O'Grady, *supra* note 1, at A11. The author states the following concerns:

The rise of China in the region could complicate U.S. efforts to control illegal immigration, weapons shipments, the drug trade and money laundering because China is cooperating with Latin countries that are not especially friendly toward those efforts. Some of these nations may try to use the Chinese alternative to challenge U.S. hegemony.

*Id.*

106. See Corchado, *supra* note 104, at A1.

107. *Id.*

108. Selmeski, *supra* note 38, at 4 (discussing that until recently, Mexico had only one political party and it has a ten-year-old, growing insurgency that opposes NAFTA). In Venezuela, President Chavez recently won a referendum to stay in power by urging voters to vote for him in order to defy the United States. *Id.* Colombia is the heart of the "War on Drugs," and it has the longest running civil war in this hemisphere. *Id.* Argentina suffered an economic crisis in 2001 that forced half the population into poverty. *Id.* Brazil would likely oppose a regional free trade



of leftist leaders to positions of power and a movement throughout Latin America to nationalize the oil industry further add to this potential decrease in U.S. access to Latin American oil.<sup>109</sup>

## 2. Human Right and Narcotics Trafficking

For years the United States has worked to promote human rights throughout Latin America. In contrast, on June 4, 1989 in Tiananmen Square, Beijing, hundreds of student demonstrators who were advocating for greater freedom were killed by soldiers in the Chinese army.<sup>110</sup> Fifteen years later, some of the surviving students remain in prison as do many political prisoners.<sup>111</sup> In the meantime, democratic countries in Latin America and Europe have been willing to overlook China's violations of human rights.<sup>112</sup> On the global scale, China's economic investments in other countries, like the Sudan, have frustrated U.S. efforts to promote human rights.<sup>113</sup>

agreement. *Id.* See generally *Hearings, supra* note 5, at 535 (noting that the volatility in the Middle East makes Latin American oil supply even more imperative).

109. See generally *Bolivia's Referendum: Counter-reform—or Muddle Along?*; *supra* note 49 (noting that Venezuela relies on multinational corporations to produce oil but President Chavez is working to establish Petrosur, a regional state-owned company, to increase government control of the oil sector). Argentina's President Kirchner has also announced his intention to create a new state oil company. *Id.* In Bolivia, the leftist groups that overthrew President Gonzalo Sánchez de Lozada are pushing for the re-nationalization of the oil industry. *Id.*

110. JONATHAN D. SPENCE, *THE SEARCH FOR MODERN CHINA* 739 (1990) (discussing that the students involved in the Tiananmen Square massacre wanted greater democratic involvement in government decisions to eradicate the widespread corruption and nepotism of communist party members).

111. *Don't Lift the Arms Ban*, *ECONOMIST*, Oct. 2, 2004, at 13–14; see generally Sheryl WuDunn & Nicholas Kristof, *China's Rush to Riches*, *N.Y. TIMES MAG.*, Sept. 4, 1994, at 38 (noting that China imprisons human rights campaigners).

112. See O'Grady, *supra* note 1, at A11 (noting that China has won observer status in the Organization of American States (OAS), an organization that promotes democracy throughout the Americas, and that the status enables China—as an official observer of democracy in Latin America—to oversee processes that ensure that democracy is stable in the Americas); *Don't Lift the Arms Ban, supra* note 111, at 13 (noting that some European countries, especially France, have called for lifting the arms ban imposed on China after the Tiananmen Square massacre, calling the incident an “anachronism”).

113. China is an outspoken opponent of the possibility of the United Nations intervention in the Sudan, where the Muslim government allegedly authorized the slaughter of thousands of Christians. See Peter S. Goodman, *China Invests Heavily In Sudan's Oil Industry: Beijing Supplies Arms Used on Villagers*, *WASH. POST.*, Dec. 23, 2004, at A1, 2004 WL 101232209; Peter S. Goodman, *China Stakes a Claim in Sudan*, *WALL ST. J. EUR.*, Dec. 28, 2004, at A12, 2004 WL-WSJE 88764516. PetroChina owns forty percent of the Unity fields in Sudan. *China: PetroChina Forms Overseas Arm*, *CHINA ECON. REV.*, Nov. 29, 2001, at 15, 2001 WL 12686738 (noting

The United States has been expanding antinarcotics programs. One way in which it has encouraged cooperation from Latin America is through trade agreements such as the Andean Trade Preference Act.<sup>114</sup> This type of cooperation is also important in the War on Terror since drug trafficking fuels terror groups worldwide.

### 3. Promotion of Democracy in Latin America

One major U.S. interest is the promotion of democracy throughout Latin America. China is a communist country that considers democracy an impediment to progress. Some regional and economic experts believe that China will evolve from an authoritarian regime to a successful democratic society, as did South Korea and Japan.<sup>115</sup> However, the Communist Party is tightening its grip on Chinese society and it is doubtful that China will truly welcome democratic policies.<sup>116</sup> China had a chance to show the world that it would move towards democracy

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that PetroChina is the listed unit of China National Petroleum Corp (CNPC)).

114. See Andean Trade Preference Act, 19 U.S.C. § 3102 (2002):

Congress makes the following findings: . . .

(2) The Andean Trade Preference Act has been a key element in the United States counternarcotics strategy in the Andean region, promoting export diversification and broad-based economic development that provides sustainable economic alternatives to drug-crop production, strengthening the legitimate economies of Andean countries and creating viable alternatives to illicit trade in coca. . . .

(4) The continuing instability in the Andean region poses a threat to the security interests of the United States and the world. This problem has been partially addressed through foreign aid, such as Plan Colombia, enacted by Congress in 2000. However, foreign aid alone is not sufficient. Enhancement of legitimate trade with the United States provides an alternative means for reviving and stabilizing the economies in the Andean region.

(5) The Andean Trade Preference Act constitutes a tangible commitment by the United States to the promotion of prosperity, stability, and democracy in the beneficiary countries.

*Id.* § 3102.

115. OVERHOLT, *supra* note 59, at 137 (noting that political liberalization has occurred largely because of a change in social structure that accompanies economic reform, rather than a change in government policies).

116. *Hu Done It*, *ECONOMIST*, Sept. 25, 2004, at 14 (noting that President Hu Jintao holds three positions: President, General Secretary of the Communist Party, and head of the party's military commission); Lieberthal, *supra* note 98, at 48 (discussing the possibility that if China succeeds in managing the challenges it faces, in 2033 China will likely continue to be an authoritarian one-party system linked to domestic business elites while keeping the lower classes engaged through the promotion of a nationalist commitment).

when it took control of Hong Kong in 1999, but instead it chose to curtail democracy by prohibiting elections for certain government positions in Hong Kong.<sup>117</sup>

Many Latin Americans do not want to let the free forces of the market dictate, nor have they seen the benefits of democracy.<sup>118</sup> Many of them are willing to take their chances with an authoritarian government.<sup>119</sup> Latin American presidents are frequently forced to resign and are replaced by leftist groups that oppose globalization.<sup>120</sup> Yet, U.S. administrations have not given enough attention to this disturbing and growing sentiment.<sup>121</sup>

#### 4. *Environmental Standards, Market Share, and an Economic Alternative*

While the United States has provisions for environmental standards in its trade agreements, it is doubtful that China will let environmental concerns slow its economic progress in Latin America.<sup>122</sup> China has experienced economic growth at the expense of its environment, containing nine of the world's ten most polluted cities.<sup>123</sup> Chronic respiratory disease has become the

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117. *Suffrage on Sufferance*, ECONOMIST, Sept. 18, 2004, at 47 (noting that the Chinese government refused to allow elections for Hong Kong's Chief Executive post and for more democratic elections for its Legislative Council in 2007 and 2008).

118. In Mexico, forty-five percent of those surveyed in late 2003 said that NAFTA had benefited their economy, down from sixty-eight percent who thought that NAFTA would benefit Mexico in 1993. See Corchado, *supra* note 104, at A1. According to Latin Barometer Corp., a Chile-based polling organization, fifty-three percent of people polled want democratic governments, but only twenty-eight percent say that they see benefits of democracy at work. *Id.*

119. Selmeski, *supra* note 38, at 8 (citing a 2004 UN report which found that fifty-five percent of the inhabitants of Latin America would prefer an authoritarian government to a democratic government if it provided a better economic situation).

120. *Bolivia's Referendum: Counter-reform—or Muddle Along?*, *supra* note 49, at 35 (reporting that leftist groups in Bolivia who led a violent uprising that forced President Sanchez de Lozada to resign in October 2003 are pressing the new government to re-nationalize the oil and gas industries).

121. See Selmeski, *supra* note 38, at 12–13 (noting that the United States has ignored the fact that some Latin American democracies are faltering, and providing a list of recommendations for ways in which U.S. administrators can work to stabilize Latin America and reach U.S. objectives).

122. See generally ENVIRONMENTAL REVIEW, *supra* note 12 (describing the environmental review process of the U.S.-Chile Free Trade Agreement as required by the Trade Act of 2002); O'Grady, *supra* note 105, at A11 (quoting Cynthia Watson, a professor of strategy at the National War College in Washington, who stated that in order to satisfy its targeted need to find energy sources, China will treat Latin American nations as sovereigns rather than "preach to them").

123. Lieberthal, *supra* note 98, at 46.

leading cause of death in the country.<sup>124</sup>

Chinese manufacturers have been gaining market share in industries where Mexico lost market share.<sup>125</sup> By mid-2003, China surpassed Mexico as the second-largest supplier of goods to the United States.<sup>126</sup> China has erased many of Mexico's economic advantages that the United States and Mexico had worked hard for years to obtain under NAFTA.<sup>127</sup>

China may be able to develop greater clout relative to the United States with small countries that depend on the textile industry. As China imports great quantities of raw materials and exports labor-intensive manufactured goods, it drives down the price of its exports and it increases the price of raw materials that it imports.<sup>128</sup> Poor countries that depend on the textile industry will earn lower prices for their exports and will have to pay higher prices for their raw materials.<sup>129</sup> China has an important bargaining chip with these countries that the United States does not.

Some countries, particularly Cuba, have looked to China to counter-balance the United States's world power.<sup>130</sup> After the fall of the Soviet Union, China became Cuba's political and fi-

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124. *Id.* (discussing that as China emerges as an economic power, the Chinese people are paying a high price with their declining health, especially in the large cities); see also *A Great Wall of Waste*, *ECONOMIST*, Aug. 21, 2004, at 55, 56 (citing the World Bank estimation that 300,000 people per year die prematurely from respiratory diseases in China).

125. See O'Boyle, *supra* note 58, at 33 (reporting the U.S. government's estimation that about eighty-five percent of world production could end up in China).

126. *Id.* at 31.

127. *China to Surpass Mexico in Trade with U.S.*, *EFE NEWS SERV.*, May 14, 2003, WL *EFE News Serv.* File (noting that Mario Abedrop, who heads COMCE's (Mexico's Foreign Trade Council) Mexico-China Committee, stated that the NAFTA bloc's benefits to Mexico have gradually eroded); see also O'Boyle, *supra* note 58, at 33 (noting that Mexican exports to the United States have decreased while Chinese exports to the United States have increased for similar goods).

128. *The Dragon and the Eagle*, *supra* note 45, at 10 (noting that the average prices of shoes and clothing in America has fallen by thirty percent in real terms over the past ten years).

129. *Id.* In 1995, one hundred and twenty three nations agreed to end textile quotas, in part, because rich nations were using them to protect domestic industries. Scott Miller & Charles Hutzler, *Poor Nations Seek WTO Textile Aid*, *WALL ST. J.*, Oct. 1, 2004, at A2 (noting that in Latin America, textile-dependent countries include El Salvador and the Dominican Republic). In the past decade, however, rich nations have outsourced production primarily to China. *Id.* China now rejects any new quotas or safeguards and instead stated that it will work to resolve these issues directly with these countries that depend on the textile industry. *Id.*

130. Vanessa Bauza, *Castro Observes New China; Cuban President's Visit Calls for Increasing Relationships*, *S. FLA. SUN-SENTINEL*, Mar. 1, 2003, at 21A, 2003 WL 14868710; O'Grady, *supra* note 1, at A11.

nancial partner.<sup>131</sup> China and Cuba are involved in biotechnology joint ventures and arms trade.<sup>132</sup> They jointly operate an electronic warfare facility in Cuba, which is connected to China's global satellite network.<sup>133</sup> Together they monitor U.S. telephone conversations and Internet data.<sup>134</sup>

Due to the United States's relative decline in the global economy and its continued dependence on foreign capital in order to finance current account deficits, Latin American governments, especially Brazil and Argentina, see a window of economic opportunity.<sup>135</sup> The window gives Latin American countries a chance to develop their own economic policies. This opportunity is even more important considering a possible merger of the two largest trading blocs in South America: The Andean Community and Mercosur.<sup>136</sup> If such a merger occurs, the promise of increased bargaining power for these countries may prove fatal to the proposed FTAA.

#### D. CHINESE LEVERAGE

With China's growing sphere of influence and economic clout comes leverage that it may use to frustrate U.S. interests and to gain support for diplomatic, political, and perhaps mili-

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131. See Vanessa Bauza, *Castro Marvels at Changed China since his '95 Visit*, ORLANDO SENTINEL, Mar. 2, 2003, at A17, 2003 WL 14540822 (noting that Castro met with Chinese President Jiang Zemin who has provided millions of dollars in economic aid to Cuba).

132. See Bauza, *supra* note 130 (noting that in 2001, James Kelly, assistant Secretary of State for East Asian affairs stated that the Chinese had delivered military equipment to Cuba and that Chinese military delegations have visited Cuba recently).

133. O'Grady, *supra* note 1, at A11.

134. *Id.* China already presents special security concerns for the United States since it has been working with Iran to develop anti-ship cruise missiles. See *Worldwide Threats to Intelligence Community: Hearing before the Senate Select Intelligence Comm.*, 108th Cong. (2003) (statement of Vice Admiral Lowell E. Jacoby), 2003 WL 294958.

135. Carranza, *supra* note 27, at 1037 (discussing how U.S. economic weaknesses have negatively affected its ability to control Latin America). The United States is currently dependant on foreign capital as a means through which to finance its current account deficits. *Id.* Latin American countries now have an opportunity to develop their own foreign economic policies. *Id.*; see also *supra* note 46 and accompanying text.

136. See Carranza, *supra* note 27, at 1061-62 (noting that the Andean Community (comprised of Bolivia, Ecuador, Colombia, and Peru) and the MERCOSUR (comprised of Argentina, Brazil, Paraguay, and Uruguay) have incentives to create a greater trading bloc, which will give these groups greater bargaining power with NAFTA countries including the United States).

tary initiatives.<sup>137</sup> Much like the former Soviet Union's powerful control over its "member" countries, communist China may have similar leverage over Latin American countries. If China reaches this level of influence and if the United States confronts China on an economic, political, or military matter, no Latin American country could economically afford to oppose China.<sup>138</sup> Moreover, the United States itself may not be in a position to oppose China.

The trade disparity between the United States and China is the greatest of any country pair in the world: China exports \$114 billion worth of goods to the United States and imports only \$20 billion from the United States.<sup>139</sup> U.S. manufacturers have opened factories in China, predicting that in the next five years technology manufacturing will be centered there.<sup>140</sup> In the event of a confrontation, the United States may lose 100,000 export-oriented jobs.<sup>141</sup> The United States must realize that the Chinese threat is real and it must examine its own policies towards Latin America before China's leverage can no longer be countered.

## II. THE CHINESE THREAT, THE FTAA STUMBLING BLOCK, AND A RECOMMENDED U.S. PLAN OF ACTION

China is securing bilateral agreements, forming partnerships with Latin American companies and governments, building and repairing infrastructure, and treating Latin American leaders as equals and always with *cortesía*. As a result, China is becoming an attractive economic alternative for Latin American countries that have historically been forced to deal predominantly with the United States.<sup>142</sup> The United States cannot afford to distance itself from oil-producing countries in this hemisphere nor can it afford to ignore countries that may help it

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137. WuDunn & Kristof, *supra* note 111, at 54.

138. See generally OVERHOLT, *supra* note 59 (arguing that as foreign trade between China and Latin America increases, Latin American countries will become economically dependant on China).

139. Bauder, *supra* note 70.

140. *Id.* (noting that high technology manufacturers like Dell, Intel and Royal Philips Electronics have already made plans to base technology manufacturing in China).

141. OVERHOLT, *supra* note 59, at 394; see also Irwin M. Stelzer, *An LBJ Conservative*, WKLY. STANDARD, Nov. 1, 2004 at 18 (discussing how Chinese currency is affecting the U.S. economy).

142. *Brazil: China Appeal*, *supra* note 35.

promote democracy, human rights, and its other interests. The United States should be aware of a future threat posed by a potentially aggressive China that is economically tied to Latin America. The United States should counter China's actions with favorable bilateral trade agreements.

## A. THE CHINA THREAT

### 1. Oil

Securing oil for future demand is imperative. While the United States works to secure oil in a volatile Middle East, China is quietly forming partnerships with the key oil-producing countries of Mexico, Venezuela, and Ecuador.<sup>143</sup> In forming these partnerships, China is creating jobs throughout Latin America and offering economic cooperation, joint partnerships, infrastructure construction, and over one billion new consumers.<sup>144</sup> In addition to agreeing to future purchases of oil, China is involved in the actual extraction and transportation of oil and also in the building of infrastructure to support the oil industry.<sup>145</sup>

The threat of China's growing interest in Latin American oil is evident in light of two alarming and related trends: anti-U.S. sentiment is on the rise and socialist leaders are coming to power. These leaders are moving towards state control of the oil industry.<sup>146</sup> If anti-U.S. leftist leaders control twenty percent of the oil that the U.S. imports, an oil embargo against the United States would become a frightening prospect, especially in the event of a U.S. military confrontation with China.<sup>147</sup>

The United States should build on its existing relationships with oil-producing countries in Latin America. Like China, it should establish partnerships in order to secure oil for its future consumption beyond maximum current output. For example, the United States currently consumes all of the oil that Mexico exports. Given the energy shortages in the United States since

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143. See *supra* notes 78–91 and accompanying text.

144. See *supra* notes 80–102 and accompanying text.

145. See generally *supra* notes 79, 90–91 and accompanying text.

146. See *Bolivia's Referendum: Counter-reform—or Muddle Along?*, *supra* note 49, at 36; *supra* note 109 and accompanying text.

147. For a general discussion of Latin America's potential economic dependence on China and how it may not be economically feasible for Latin America to defy China, see *infra* notes 157–68 and accompanying text.

2000, U.S. companies should have partnered with Mexican firms to increase Mexico's oil production. Instead, China and Mexico are taking steps to jointly develop Mexico's oil industry so that Mexico can expand its production and export capacity.<sup>148</sup> Like China, the United States must invest in the infrastructure that will allow for successful joint exploration for oil and other commodities. Infrastructure projects provide a large incentive for Latin American countries to trade with China since these projects will improve their infrastructure, employ thousands of workers throughout their countries, and bring economic opportunities to small towns.

By partnering with Latin American private and public oil firms, the United States could increase regional oil production and secure added capacity for itself. Moreover, by addressing Latin American infrastructure needs, the United States will bring jobs and other economic opportunities to the region and in the process dissipate anti-U.S. sentiment in Latin America.

## *2. Democracy and Human Rights*

In a democratic country, elected leaders are held accountable by their constituents. In an authoritarian or communist country, there are no such checks and balances. While some dictators or communist leaders are benign, there is no political safeguard that will prevent future, malevolent leaders from taking aggressive action against their own people or other countries. In the event that citizens protest, non-democratic leaders will quickly silence dissidents and continue to act with impunity.<sup>149</sup> The safest way to ensure peace and cooperation is to promote democracy and respect for human rights.

China's growing influence in Latin America represents a risk to unstable democracies in the region. If unchecked, China's economic prominence will cause fragile democracies in Latin America to think twice about the supposed benefits of democracy, capitalism, and globalization.<sup>150</sup> There is a common misconception that, since Latin American countries are democ-

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148. See generally *What has China Cost Mexico*, *supra* note 74; *supra* note 87 and accompanying text.

149. See generally SPENCE, *supra* note 110, at 739–44.

150. See *supra* note 118 and accompanying text. See generally Carranza, *supra* note 27, at 1048 (noting that negative reactions to globalizations have led to the removal of four presidents in the Latin American countries of Ecuador (2000), Peru (2000), Argentina (2001), and Bolivia (2003)); Corchado, *supra* note 104.



racies (with the exception of Cuba), democracy is permanent.<sup>151</sup> Based on the reversing trends of the past four years, it is evident that regional democracy is unstable.<sup>152</sup> As more socialist presidents are elected throughout Latin America and faith in the benefits of democracy and capitalism diminish, Latin Americans may begin to favor authoritarian regimes.<sup>153</sup> As China invests heavily in the region, bringing jobs and providing access to Latin American producers for over one-and-a-half billion Chinese consumers, Latin American voters may begin to believe that communism can really work. Communist China offers Latin American countries an opportunity to see the economic benefits of such a system.

The vices of communism have been evident throughout the twentieth century. Unlike Karl Marx's stateless, classless, communist nation, "communist" countries have actually been ruthless in their pursuit of party loyalty and obedience.<sup>154</sup> Unlike the moderate, evolutionary, and law-abiding outlook that intellectuals had for communism in the beginning of the twentieth century, history has proven that the dictatorship of the proletariat has in fact suppressed expression, human rights, and other freedoms that people hold dear.<sup>155</sup> While the United States often offers trade incentives as a reward for adherence to principles of human rights, China is likely to disregard such requirements.<sup>156</sup>

### 3. *Loss of U.S. Economic And Political Clout*

Many of China's gains may come at the expense of U.S. interests. For example, Latin American companies opening manufacturing facilities are becoming more dependent on Chinese investment to lower their manufacturing costs.<sup>157</sup> Compli-

151. See generally Selmeski, *supra* note 38.

152. *Id.* at 7; see *supra* note 108 and accompanying text.

153. See Corchado, *supra* note 104; Selmeski, *supra* note 38, at 8; *supra* notes 50–118 and accompanying text.

154. See HAROLD C. HINTON, AN INTRODUCTION TO CHINESE POLITICS, 94–95 (1973) (noting that Stalin used police forces to control his party and used a brutal approach to pressure peasants).

155. See Stephen Schwartz, *The New Evil Empire?*, WKLY. STANDARD, Dec. 13, 2004, at 16 (noting that the citizens of Soviet communism were promised freedom and wealth and instead received government oppression).

156. See *supra* notes 110–29 and accompanying text. This is evident by the way China has dealt with Cuba. While the United States punishes Dictator Fidel Castro for his human rights abuses, China freely trades with the island. *Id.*

157. See generally *China/Brazil*, *supra* note 96.

cating matters, Latin American companies in China (and Chinese companies in Latin America) may not adhere to the strict environmental and labor standards that United States imposes in exchange for economic aid and trade agreements.<sup>158</sup> Moreover, "even if average incomes remain low, a growing number of Chinese will enjoy high incomes."<sup>159</sup> If China continues to grow at the current pace, "by 2020 [its] top 100 [million] households will have an average income equivalent to the current average in western Europe."<sup>160</sup>

China's regional influence has already diminished U.S. leverage with Latin American countries. For example, because of frustrations over the results of NAFTA,<sup>161</sup> Mexico is now focusing on how it can increase trade with China.<sup>162</sup> Trade with the United States will always be important for Mexico, but Mexico now believes that its future lies in favorable trade agreements with China. Countries that have been hurt by Chinese economic competition have realized that they must adjust and find mutually beneficial trade agreements with China.<sup>163</sup>

#### 4. Potential Loss of Support for U.S. Interests

The United States frequently bases trade agreements with Latin American countries on cooperation with regard to human rights, antinarcotics programs, environmental issues, anti-terrorism initiatives, and U.S. national security concerns.<sup>164</sup> On the other hand, China offers a less burdensome alternative to dealing with the United States.<sup>165</sup>

Many Latin Americans do not share the same priorities as

158. See ENVIRONMENTAL REVIEW, *supra* note 12, at 3 ("The environmental review process is designed to ensure that, through the consistent application of principles and procedures, environmental considerations are integrated into the development of U.S. trade negotiating objectives and positions."); see also *supra* note 122 and accompanying text.

159. *The Dragon and the Eagle*, *supra* note 45, at 9 (discussing the possibility that a vast market for consumer goods will be opened up when China's real income continues to grow by eight percent a year).

160. *Id.*

161. See *supra* text accompanying notes 125–32.

162. See *What has China Cost Mexico*, *supra* note 74.

163. See *id.*; *Mexico: Eyeing Oil Exports to China*, *supra* note 88.

164. See Andean Trade Preference Act, 19 U.S.C. § 3102 (2002); Chile FTA, *supra* note 12 ("Cooperative projects will help protect wildlife, reduce environmental hazards and promote internationally recognized labor rights.")

165. See O'Grady, *supra* note 1 (noting that China will complicate U.S. efforts in environmental matters and other issues because China does not concern itself with them); see *supra* note 105 and accompanying text.

the United States and believe that the United States does not understand their concerns.<sup>166</sup> Some Latin American countries struggle to find the resources to fight crime or even to feed their people. They have problems with violent uprisings and internal political strife.<sup>167</sup> Latin American countries may agree to cooperate with the United States when the United States offers attractive economic incentives but if China offers equally attractive incentives with no burdensome and expensive requirements, Latin American countries may prefer to deal with China.<sup>168</sup>

China, on the other hand, understands Latin American concerns. It realizes that if too much focus is placed on the environment or on human rights, a particular industry may never get off the ground or fail to be competitive in the world market.<sup>169</sup> In contrast to the United States, China has recently experienced these growing pains first hand and knows that dealing with certain social issues may delay progress. However, based on past actions, it is doubtful that China would require any cooperation in these matters.

##### *5. Potential Loss of Political and Logistical Support in the Event of a U.S. Confrontation With China*

China has made military moves and arms deals that should raise warning signs in the United States. China has sold missile technology to Iran and delivered military equipment to Cuba.<sup>170</sup> It also appears that China has set up a permanent electronic surveillance post in Cuba, just ninety miles from the United States.<sup>171</sup> These actions may be considered political jockeying. For example, China's sale of military equipment to Cuba may be in retaliation to the United States selling arms to Taiwan.<sup>172</sup> Its electronic surveillance outpost may be a political response to the United States's monitoring of Chinese communications from its spy planes. A more realistic confrontation may occur in the event of a forceful reunification with Taiwan.

China will continue using its economic power to accomplish

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166. See generally Selmeski, *supra* note 38.

167. See *supra* note 120 and accompanying text.

168. See *supra* notes 45–46, 100, 102, and accompanying text.

169. See *supra* notes 122–29 and accompanying text.

170. See *supra* notes 130–36 and accompanying text.

171. See *supra* text accompanying notes 132–39.

172. See *supra* note 120 **Error! Bookmark not defined.** and accompanying text.

its own political goals. For several decades, the United States has had treaty obligations to protect Taiwan from mainland aggression.<sup>173</sup> China prefers a peaceful resolution but says it will use force if necessary to bring back this "renegade province."<sup>174</sup> If the United States decides to stand firm, it may need the backing of Latin American countries in order to obtain international legitimacy at the United Nations, where China is the only communist country on the Security Council. It is also likely that China will not be seen as an aggressor and regarded instead as merely reeling in its own Taiwanese citizens who could be considered outlaws for pushing for secession. The United States, on the other hand, may be seen as an aggressor meddling in the internal affairs of a sovereign nation, a sovereign nation whose economic trade is imperative to continued economic growth in Latin America.

While a lack of Latin American political support may hurt the United States, the region's logistical cooperation with China may prove fatal in the event of a military confrontation with the United States. China may sabotage U.S. trade in Latin America during a military confrontation and may even pressure Latin American countries to stop trading in goods that "further" the military efforts of the United States. China has controlled the flow of goods between the Atlantic and the Pacific Ocean since Hutchinson Whampoa Ltd., a Chinese company, was given control of both the Atlantic and Pacific ports of the Panama Canal in 1997.<sup>175</sup> Although the United States has the right to protect the canal pursuant to the treaty it signed with Panama, Panamanian legislators may create laws eliminating such rights. It is conceivable that Panamanian legislators may request that the Chinese military move into U.S. built bases in order to "protect" the canal; after all, the Chinese have filled the void left in Cuba when the former Soviet Union pulled out.

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173. See *China, Taiwan Rebuff Powell Effort*, at [http://www.kazine.com/databases/articles/october%2004%20\(new\)/china,%20taiwan%20rebutt%20powell%20effort.htm](http://www.kazine.com/databases/articles/october%2004%20(new)/china,%20taiwan%20rebutt%20powell%20effort.htm) (last visited Jan. 25, 2005) (noting that U.S. treaty obligations involve providing defensive weapons to Taiwan and also that China has threatened to invade Taiwan in the event Taiwan officially declares statehood). Taiwanese President, Chen Shui-bian, told visiting former South Korean President, Kim Young-sam, that "Taiwan is definitely a sovereign, independent country . . . that absolutely does not belong to the People's Republic of China." *Id.*

174. See generally *id.*

175. See Rowan Scarborough, *China Company Grabs Power Over Panama Canal*, WASHINGTON TIMES, Aug. 12, 1999, 1999 WL 3091878 (noting that Hutchinson Whampoa Ltd., a shipping company with ties to China's leadership and its armed forces, controls both the Atlantic and the Pacific ports of the Panama Canal).

As China's need for oil and as its obsession with reining in Taiwan grows, China's control over the Panama Canal becomes more important. The Chinese military recently published a book entitled "Liberating Taiwan," detailing a plan to use Chinese warships to impose oil embargoes on Taiwan, Japan, and on the United States.<sup>176</sup> In the event of such a confrontation the loss of oil from Latin American countries may prove lethal to the United States. It is with this sense of urgency that the United States should counter China's growing influence by offering favorable bilateral trade agreements and reconsidering the wisdom of its agricultural subsidies.

## B. THE UNITED STATES SHOULD PROCEED SLOWLY WITH THE FTAA AND FOCUS ON BILATERAL TRADE AGREEMENTS

### 1. *The United States Should Not Insist on the FTAA Until It Helps Latin American Countries Establish Sound Social Policies*

The FTAA may bring attractive long-term benefits potentially offering lower prices for consumers and forcing countries to strengthen their comparative advantages.<sup>177</sup> However, it may be difficult if not impossible to reach those long-term benefits if the short-term negative effects of free trade cannot be overcome. For example, when foreign competitors are allowed to compete with each other, many domestic industries are forced to lay off workers and eliminate contracts with smaller providers of components or raw material in order to increase their productivity.<sup>178</sup> If these and other negative effects are substantial, the pressure to implement protectionist measures will increase.<sup>179</sup>

The United States should not insist on the FTAA before

176. Bremner & Roberts, *supra* note 74, at 61.

177. See *Nagging Debts About the Benefits of Globalization, and a Look at the Evidence*, *ECONOMIST*, Sept. 18, 2004, at 80 ("[A]ll countries can raise their living standards through specialisation and trade. . . . [Countries] gain[] from focusing on the goods in which [their] relative advantage is greatest . . ."). The gains from the winning sectors should more than compensate for the losses of the losing sectors. *Id.*

178. See Lindsay M. Fainé, Note, *The Internationalization of Chilean Agriculture: Implications of the United States-Chile Free Trade Agreement*, 13 *MINN. J. GLOBAL TRADE* 383, 404 (2004).

179. See generally Selmeski, *supra* note 38. The irony is that the protectionist measures that keep competition out of the country actually keep the prices of domestic goods artificially high. These high prices are financed primarily by poor consumers, many of whom pushed for protectionist measures in the first place. See Fainé, *supra* note 178, at 403.

Latin American countries are ready to deal successfully with the short-term negative effects of free trade. Latin American countries will have to establish sound social policies—such as job placement and government retraining programs—before a free trade agreement is implemented. People whose countries do not have proper social policies in place will be disappointed in the results of the FTAA and will lobby against it. President Bush must also deal with the political pressures of domestic parties such as labor unions and business groups.<sup>180</sup>

It is in this political reality that the United States expects Latin American countries to open its markets to U.S. goods while accepting the generous farm subsidies the United States bestows on its farming sector.<sup>181</sup> U.S. agricultural subsidies are a political sticking point in the FTAA negotiations, especially for Brazil. U.S. politicians cannot afford to lose potential votes in agricultural states such as Florida and President Bush has made it clear that farm subsidies will be excluded from FTAA negotiations.<sup>182</sup> Without giving up farm subsidies as Latin Americans demand, the United States will not be able to obtain the concessions that it demands, such as intellectual property and antidumping provisions, nor will President Bush be able to obtain a satisfactory FTAA.<sup>183</sup> Without “a genuine initial balance of reciprocal concessions the final products of the negotiations ends up disproportionately benefiting the United States.”<sup>184</sup> The United States should recognize that Latin American leaders feel these pressures to a greater degree since significant portions of Latin American populations are often affected by pro-trade policies. Additionally, these affected populations often create more trouble for their leaders even during non-election years (for example by blocking roads, violently demonstrating, and clashing with police forces).<sup>185</sup>

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180. See Carranza, *supra* note 27, at 1045 (“Domestic political constraints will significantly affect the outcome of the FTAA negotiations: “The choices of U.S. trade negotiators are greatly affected by the demands of . . . domestic constituencies, including labor, environment, and business groups, all of which in turn impact the more general perceptions of the American public.”) (quoting Christopher M. Bruner, *Hemispheric Integration and the Politics of Regionalism: The Free Trade Area of the Americas*, 33 U. MIAMI INTER-AM. L. REV. 1, 64 (2002)).

181. See *supra* notes 40–44 and accompanying text.

182. See Carranza, *supra* note 27, at 1050 (asserting that President Bush will not make concessions on agricultural subsidies, which have strong domestic constituencies in battleground states).

183. See *id.*

184. *Id.* at 1053.

185. See *Bolivia's Referendum: Counter-reform—or Muddle Along?*, *supra* note

In non-democratic countries trade liberalization may not be quite so complex. When there is no realistic threat of internal dissent, it is easy to accomplish aggressive trade goals that will benefit the country in the long term. Chile, for example, is now a democratic country and one of the most open countries in the world with regard to trade. However, Chile achieved this openness largely because of policies created under its dictatorial regime. In 1973, General Augusto Pinochet overthrew the government, named himself president, eliminated union power, and began to liberalize trade.<sup>186</sup> Despite some tariff increases during the 1980s, Chile continued its trade liberalization during the democratic transition in 1990.<sup>187</sup> However, now that Chile is a stable democracy, and as worker groups proliferate, there is growing internal opposition to Chile's broad trade liberalization, particularly from the rural peasant farmers whom the government may not have taken into account in conducting its trade negotiations.<sup>188</sup>

Like Chile during its dictatorial years, non-democratic China has the political flexibility to offer generous trade agreements to Latin American countries because they face no realistic threat of internal dissent. China's authoritative regime is free to implement trade policies that may be unfavorable to a segment of its population. While the United States may be politically constrained from offering concessions that some Latin American countries desire—such as access to U.S. agricultural markets—China may be in a better position to grant these concessions.<sup>189</sup>

An aggressive push for the FTAA by the United States could erase a decade of progress with regards to the lowering of tariffs and would make it easier for leftist, anti-American, pro-protectionist candidates to be elected to office throughout Latin America. The United States has employed aggressive, if not coercive, pressure in promoting the FTAA.<sup>190</sup> Robert Zoellick, U.S.

49; *supra* note 120 and accompanying text.

186. See Fainé, *supra* note 178, at 387–90.

187. See *id.* at 389–90.

188. See *id.* at 389 (discussing how Chile did not properly implement important social policies that would have helped poor farmers adjust to trade liberalization).

189. See *Brazil Exports*, *supra* note 82.

190. See Carranza, *supra* note 27, at 1039–40 (“[T]he United States has deployed a coercive, rather than benevolent, diplomacy.”). Countries that stood firm with Brazil were issued economic threats. *Id.* For example, Caribbean nations were “told to forget about a newly negotiated trade agreement.” *Id.* Central American countries were issued similar warnings. Eventually they ended their support for the Brazilian position but still did not fully embrace the U.S. position. *Id.*

Trade Representative, has said that "America will not wait for the won't-do countries."<sup>191</sup> An aggressive push for the FTAA also adds to the perception that only the United States will benefit from such an agreement. This belief is further fueled by the United States's refusal to find a fair trade balance and the way in which the United States has pressured Brazil by attempting to isolate it.<sup>192</sup> Even seemingly non-protectionist measures employed by the United States are perceived as an attempt to benefit the United States. Labor and environmental standards, for example, are seen as excuses to remove any competitive advantage that a smaller country may have over the United States.<sup>193</sup> Studies support this notion and show that the FTAA will provide greater benefits to the United States than to Latin America.<sup>194</sup>

The FTAA would provide judicial tools beneficial to U.S. domestic production. For example, U.S. multinational corporations would be able to sue Latin American governments in special trade courts if those governments allow their corporations to cut corners by ignoring environmental laws. Additionally, when the wages of U.S. laborers increase, U.S. firms may be able to use this judicial tool to sue Latin American governments in order to make sure that their wages also increase.<sup>195</sup> Another one-sided benefit for the United States is the elimination of national restrictions on government procurement. U.S. companies could afford to bid for prized government contracts in military bases and ports throughout Latin America. It is highly unlikely that Latin American companies could compete for similar government projects in the United States.<sup>196</sup> The FTAA, it is said, would allow the United States to reassert its hegemony over

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191. *Id.* at 1055 (citing Robert B. Zoellick, *America Will Not Wait for the Won't-do Countries*, FIN. TIMES, Sept. 22, 2003, at 23).

192. *Id.* at 1057. Brazil demanded a "genuine balance of reciprocal concessions" but the United States decided to try to isolate Brazil by negotiating around it. *Id.* The United States effectively attracts Latin American countries with limited access to the U.S. market while maintaining its agricultural subsidies. *Id.* Argentina was given a trade offer by the United States as part of this "divide and conquer" strategy but Argentina declined and instead sided with Brazil. *Id.*

193. See Ball, *supra* note 32, at B13.

194. Carranza, *supra* note 27, at 1038 ("[I]t is highly doubtful that Latin American countries stand to gain much from entering into an arrangement which gives their rich counterparts—the USA and Canada—a much greater preferential market access than the later are able to offer in return. . . .") (citing Arvind Panagariya, *The Free Trade Area of the Americas: Good for Latin America?*, WORLD ECON. 485, 504–05 (1996)) (alteration in original).

195. *Id.* at 1032.

196. See *id.*



Latin America to compensate for the relative decline of U.S. global economic position.<sup>197</sup>

## *2. Agricultural Subsidies Within the Legal Framework of the WTO Agreement on Agriculture*

The United States has insisted on leaving the topic of agricultural subsidies off the table throughout the FTAA negotiations, preferring to discuss it within the WTO legal framework instead.<sup>198</sup> Although the goal of the WTO Agreement on Agriculture (“Agreement”) is to liberalize agricultural trade,<sup>199</sup> the Agreement has enabled developed countries to maintain “trade-distorting subsidies and import restrictions.”<sup>200</sup> The Agreement’s provisions favor agricultural producers in developed countries. For example, one characteristic of the Agreement is that it converts non-tariff barriers to tariffs, while prohibiting further non-tariff barriers.<sup>201</sup> Unfortunately, “many developed countries evaded the underlying objective . . . by setting . . . tariff equivalents for non-tariff barriers at . . . excessively high level[s].”<sup>202</sup> In essence, developed countries created tariff equivalents with higher levels of protection than those used “under the old system of quotas and variable import levies.”<sup>203</sup>

Another way that the Agreement benefits agricultural producers in developed countries is by allowing them to determine

197. *Id.* at 1034 (“[T]he FTAA is part of the U.S. ‘imperial project’ to consolidate ‘client regimes’ in Latin America.”) (citing James Petras, *U.S. Offensive in Latin America: Coups, Retreats, and Radicalization*, available at <http://www.monthlyreview.org/0502petras.htm>).

198. *Id.* at 1050.

199. See generally Gonzalez, *supra* note 43, at 452–53.

The WTO Agreement on Agriculture obligates WTO members to liberalize agricultural trade in three significant respects. First, the Agreement expands market access by requiring the conversion of all non-tariff barriers to tariffs (tariffication) and the binding and reduction of these tariffs. Second, the Agreement requires the reduction of both the volume of and expenditures on subsidized exports. Third, the Agreement requires the reduction of trade-distorting domestic subsidies.

*Id.*

200. *Id.* at 460.

201. *Id.* at 453, 460 (noting that non-tariff import restrictions include “quotas, embargoes, variable import levies, minimum import prices, and non-tariff measures maintained by state enterprises”).

202. *Id.* at 460 (discussing that this “dirty tariffication” nullified the benefits of tariff bindings and tariff reduction by creating tariff equivalents).

203. *Id.* at 460–61.

which tariffs to reduce.<sup>204</sup> Naturally, developed countries reduced tariffs on items produced outside of their borders.<sup>205</sup> Developed countries were also able to utilize the Agreement's unique safeguard provision, which allowed them to impose "additional duties in the event of an import surge or of particularly low prices compared with 1986-88 levels."<sup>206</sup> The developed countries would then set the trigger prices far above this average.<sup>207</sup> This safeguard provision, though, is not available to most developing countries. It is available only to those countries that have engaged in "tariffication" in the past (those that converted all their non-tariff barriers to tariffs).<sup>208</sup>

While attempting to liberalize agricultural trade, "the WTO Agreement on Agriculture did not prohibit the use of export subsidies in the agricultural sector."<sup>209</sup> Under the agreement, developed countries are able to use export subsidies to their advantage over developing countries because developed countries have "historically subsidized agricultural production, whereas developing countries have historically needed to tax the agricultural sector."<sup>210</sup> In fact, "only 25 out of 135 countries have the right . . . to subsidize exports."<sup>211</sup>

With regards to domestic subsidies, the Agreement requires countries to reduce them.<sup>212</sup> In the interest of reducing domestic subsidies, "[t]he Agreement require[s] countries to reduce domestic subsidies based on an Aggregate Measure of Support (AMS),"<sup>213</sup> but the Agreement also exempts many of the subsi-

204. Gonzalez, *supra* note 43, at 461.

205. *Id.* (commenting further that the Agreement required a thirty-six percent reduction on average and noting that tariff reductions differed between temperate-zone products and tropical products, the later being lower and the former higher).

206. *Id.* at 462-63.

207. *Id.* at 463 (discussing that developed countries are able to reduce market access by applying additional duties whenever the world market price for a particular good reaches a certain percentage below the inflated trigger price).

208. *Id.* at 463.

209. *Id.* at 463-64 (noting that the agreement merely requires a reduction in export subsidies). The Agreement actually establishes "permissible levels of market distortion." *Id.* at 464.

210. Gonzalez, *supra* note 43, at 464 (discussing further that the Agreement exacerbates inequalities between developed and developing countries).

211. *Id.* (noting further that the Agreement exacerbates inequalities between developed and developing countries).

212. *Id.* at 465.

213. *Id.* at 466 ("[AMS is] a baseline figure that [takes] into account all domestic agricultural subsidies during the 1986-88 base period."). In calculating the AMS, several factors are considered: "amber box" subsidies are "those subsidies deemed to be most trade-distorting"; "blue box" subsidies are "direct payments to farmers under production limiting programs"; "green box" subsidies are those that have "mini-

dies traditionally utilized by developed countries.<sup>214</sup>

The U.S. Farm Act, which provides certain subsidies to the American farming sector, introduces counter-cyclical payments.<sup>215</sup> These payments are controversial because the United States claims that counter-cyclical payments fall under the “green box” exemption since the money is not linked to what the farmers grow, nor to how much they grow.<sup>216</sup> Critics argue that counter-cyclical payments should not be exempt because they are indeed linked to production influencing the fair price that farmers should be able to obtain.<sup>217</sup> Latin American countries recognize that the WTO legal framework within which the United States wants to negotiate clearly provides the United States with an unfair competitive advantage.<sup>218</sup> If the United States insists on installing the Agreement as the legal framework for the FTAA, key players such as Brazil and Argentina will not join the FTAA and ultimately the FTAA will not be formed.

### C. RECOMMENDED U.S. STRATEGY

For now, the United States should forgo the FTAA and instead promote an individualized trade plan for each Latin American country.<sup>219</sup> The United States should use industry-specific and country-specific consultative committees just like it

mal or no trade-distorting effects” and are therefore exempted from subsidy reduction. *Id.*

214. *Id.* at 465 (discussing further that these exemptions lead to a marginal decrease in domestic subsidies).

215. *See generally* Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171 § 1103(d), 116 Stat. 134 (codified as amended in scattered sections of 7 U.S.C., 16 U.S.C., 21 U.S.C.) (allowing payment from 2002 through 2007 when the effective price for the covered commodity is less than the target price for the covered commodity).

216. *See generally* Sophia Murphy, *Farm Bill Outrage Goes Global*, FOREIGN POLY IN FOCUS, May 22, 2002, at 1, available at <http://www.fpif.org/pdf/gac/0205farmbill.pdf> (last visited Jan. 30, 2005) (asserting that the farm bill’s counter-cyclical payments are not “decoupled” from production). Under the Uruguay Round, “countries could give as much as they wanted to their producers if the payments were ‘decoupled’—meaning that such government payments should not be linked to either what farmers grew or how much they grew.” *Id.*

217. *Id.*

218. Gonzalez, *supra* note 43, at 464 (“By permitting past users of export subsidies to maintain these subsidies, subject to certain reduction obligations, while prohibiting the introduction of new subsidies, the Agreement institutionalized the unfair competitive advantage held by developed country producers.”) (internal citations omitted).

219. *See* Carranza, *supra* note 27, at 1036.

is presently doing under NAFTA.<sup>220</sup> At this time, the FTAA would be detrimental to small countries that do not have the necessary social policies in place to ensure a successful adjustment to free trade.<sup>221</sup> In the meantime, individual industries can work with their governments and with U.S. trade representatives to implement sound social policies to ameliorate the impact of free trade. Matters of human rights (decent working conditions and wages), assistance with terrorism (particularly in potential hotspots in the Iguazu region), and other U.S. interests (such as antinarcotics cooperation) can be tied into each individualized trade plan but the most important part of this plan is the mutual cooperation between the United States and each Latin American country in the interest of developing social policies that will alleviate the short-term pains due to free trade. These social policies must specifically consider the very poor sectors of society and populations with limited skill sets. The fact that many Latin American countries do not have the resources to retrain their citizens is problematic. By not taking these citizens into account in developing their social policies, Latin American countries run the risk of fueling dangerous uprisings which further impede economic progress. Poor Latin Americans must be taught new skills that will enable Latin American countries to improve upon their comparative advantage in the aggregate.

Social policies meant to ameliorate the short-term impact of free trade are meaningless without reliable physical infrastructures like roads and potable water. Specifically, Latin American countries lack dependable roads and basic services like trash collection and telephone access. The United States must be an active participant lest it be seen as the greedy instigator of harmful big business trade agreements.<sup>222</sup> The United States must be ready to partner with each Latin American country to build the infrastructure necessary to support these social policies. Like China, the United States should pursue joint ventures with local companies and governments in order to build roads, upgrade sewer systems, and provide telephone service to tens of thousands of people. Genuine partnerships will create jobs, promote trade, and improve overall relations between the United States and Latin American countries.<sup>223</sup>

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220. See *Trade Policy Initiatives*, *supra* note 11, at 7.

221. See Carranza, *supra* note 27, at 1050-51.

222. See *id.* at 1054.

223. See *id.* at 1064.

The United States also needs to address domestic political problems before free trade agreements are made with Latin America. Otherwise, groups of citizens may make it politically impossible for U.S. legislators to approve free trade agreements. The United States could take important domestic steps now in order to prepare itself for a future FTAA. For example, it could open its agricultural industry to a few countries at a time, thereby giving U.S. farmers time to adjust and sending a message to Brazil and other Latin American countries that it is sincere about a fair FTAA in the future.<sup>224</sup> Another important reason why the United States should consider opening its agricultural industry, even if it is to one country at a time, is that China is becoming an attractive alternative trade partner to Latin American countries. China has to feed over one-and-a-half billion people and it seeks to import agricultural products from Brazil, Argentina, Chile, and other Latin American countries in order to do so.<sup>225</sup> With such a willing consumer, Latin America will have an attractive alternative to the United States if the United States refuses to budge in its protection of its agricultural industry.

The United States must take seriously the national priorities of each Latin American country.<sup>226</sup> The United States should not pressure Latin American politicians but rather it should treat Latin American leaders with *cortesía*, that is, it should not ignore (not addressing their concerns and interests), bully (aggressively pushing for the FTAA), or perplex (pushing for the FTAA while maintaining U.S. agricultural subsidies) Latin American leaders.<sup>227</sup> It should present a clearer vision for Latin American policy.<sup>228</sup>

## CONCLUSION

Trade relations between China and Latin America are growing. China is forming solid economic alliances and providing an attractive alternative to dealing with the United States. The United States cannot afford to lose economic or political clout to China or it may lose Latin American support for impor-

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224. See *id.* at 1065.

225. See *Brazil Exports*, *supra* note 82; *Brazil: China Appeal*, *supra* note 35; *Fruit to China*, *supra* note 85.

226. See Selmeski, *supra* note 38, at 12.

227. *Id.* at 6.

228. *Id.* at 13.

tant interests such as human rights, democracy, and a reliable oil supply.

The United States must act to counter China's involvement by opting for bilateral trade agreements with sound social policies rather than by aggressively pursuing the FTAA. The United States should not hide behind the legal framework of the WTO Agreement on Agriculture because this increases Latin American resentment and encourages these countries to seek other trading partners like China. Instead, the United States should understand and address the needs of each Latin American country and form partnerships in key sectors such as the oil industry. It must also work with Latin American governments to build the infrastructure necessary to support future, mutually-beneficial free-trade agreements. Due to the factors outlined in this Note, such as increasing anti-U.S. sentiment, the growing popularity of leftist leaders, the emergence of China as an economic alternative to dealing with the United States, and a trend towards the nationalization of oil industries, the more aggressively the United States pushes for the FTAA without taking into account social policies in Latin America, the more precarious its future supply of regional oil becomes. More than economic trade is at stake for the United States.

