

China in Latin America: Law, Economics, and Sustainable Development

by Carmen G. Gonzalez

Carmen G. Gonzalez is an Associate Professor at Seattle University School of Law.

Editors' Summary

China's emergence as a global economic power and its growing engagement with Latin America have provoked both scholarly and popular debate. Some scholars contend that China is a rising imperial power scouring the globe for natural resources, exploiting less powerful nations, and rejecting international environmental agreements that would curb its profligate consumption of the world's natural resources. Others applaud China's unorthodox development strategies and portray China as a successful model for developing countries and as a welcome counterweight to U.S. economic and political hegemony. What will be the implications of China's rise for the future of international economic law and international environmental law and policy?

The growing economic and political ties between China and Latin America have sparked controversy among scholars, pundits, and policymakers.¹ With titles such as "The Coming China Wars" and "The Dragon in the Backyard," recent books and articles depict China as a rising imperial power engaged in a scramble for the resources of the developing world and as a competitive threat to Latin America.² Other studies applaud China's pragmatic, unorthodox development strategies and portray China as a successful model for developing countries.³ The competing narratives about China's rise do agree on one thing: China has become a formidable force in the developing world whose influence merits careful evaluation.

China is currently Latin America's second largest trading partner after the United States.⁴ Its trade with Latin America skyrocketed from \$10 billion in 2000 to \$140 billion in 2008.⁵ China recently surpassed the United States as the main trading partner of Brazil, the largest economy in South America.⁶

Seeking raw materials for its industries and markets for its finished products, China is importing primary commodities from Latin America (such as petroleum, iron ore, soybeans, and copper) and is exporting manufactured goods.⁷ Chinese companies are also investing in the Latin American

Author's Note: Professor Gonzalez has worked on rule of law and environmental law projects in Latin America and in the former Soviet Union. During academic year 2008-2009, she was a Visiting Professor at the Hopkins-Nanjing Center for Chinese and American Studies in Nanjing, China. The author would like to thank Richard Delgado for his comments on an earlier draft of this Article.

1. See Tyler Bridges, *China Makes Big Moves in Latin America*, MIAMI HERALD, Aug. 10, 2009; PETER NAVARRO, *THE COMING CHINA WARS: WHERE THEY WILL BE FOUGHT AND HOW THEY CAN BE WON* 101-07 (2007); *THE VISIBLE HAND OF CHINA IN LATIN AMERICA* (Javier Santiso ed., 2007); *THE EMERGENCE OF CHINA: OPPORTUNITIES AND CHALLENGES FOR LATIN AMERICA AND THE CARIBBEAN* (Robert Devlin et al. eds., 2006).
2. See NAVARRO, *supra* note 1, at 87-107; *The Dragon in the Backyard*, ECONOMIST, Aug. 13, 2009; MINQI LI, *THE RISE OF CHINA AND THE DEMISE OF THE CAPITALIST WORLD ORDER* (2008); Mauricio Mesquita Moreira, *Fear of China: Is There a Future for Manufacturing in Latin America?*, 35 WORLD DEV. 355 (2007); Roldan Muradian, *Is China a Threat to Mesoamerica's Development?*, 5 SEATTLE J. SOC. J. 797 (2007); Nicola Phillips, *Consequences of an Emerging China: Is Development Space Disappearing for Latin America and the Caribbean?*, Center for International Governance Innovation, Working Paper No. 12 (January 2007), available at <http://www.cigionline.org>; Sanjaya Lall & John Weiss, *China's Competitive Threat to Latin America: An Analysis for 1990-2002*, 33 OXFORD DEV. STUD. 163 (2005).
3. See, e.g., RANDALL PEERENBOOM, *CHINA MODERNIZES: THREAT TO THE WEST OR MODEL FOR THE REST?*, 26-81 (2007); James Angresano, *China's Development Strategy: A Game of Chess That Countered Orthodox Development Advice*, 34 J. SOCIO-ECON. 471 (2005).
4. Simon Romero & Alexei Barrionuevo, *Deals Help China Expand Sway in Latin America*, N.Y. TIMES, Apr. 16, 2009.
5. See Bridges, *supra* note 1.
6. See *id.*
7. See *id.*; *The Dragon in the Backyard*, *supra* note 2.

mining sector in order to secure long-term access to energy and minerals.⁸

In addition to trade and investment, China is vying with the World Bank and the Inter-American Development Bank to become a major lender in Latin America.⁹ In 2009 alone, China announced loans of \$10 billion to Brazil's national oil company, \$2.7 billion to Ecuador, \$10 billion to Argentina, and \$138 million to Jamaica.¹⁰ China also disclosed that it would invest \$12 billion in a China-backed development fund for Venezuela.¹¹ The ostensible purpose of these loans is to cultivate good will, to secure long-term contracts for natural resources at favorable rates, and to help finance imports from China.¹²

China's economic influence has been accompanied by deepening diplomatic and cultural ties. China has expanded embassies, promoted tourism to Latin America, sent high-level trade delegations to the region, financed educational opportunities in China for foreign students, and opened up Confucius Institutes to teach Chinese language and culture.¹³ China has also forged an alliance with Brazil, India, and Russia to demand a greater voice for developing countries in international economic and political affairs.¹⁴ Indeed, China has successfully appealed to developing countries by emphasizing "peaceful development," "strategic partnerships," and "win-win solutions" as alternatives to western economic and political hegemony.¹⁵

This Article attempts to bridge the contentious debate over China's role in Latin America by interrogating the dominant narratives that portray China as either a menace to Latin America's development or as a model worthy of emulation. The Article proceeds in five parts. Part I places China's engagement with Latin America in historical context by providing an introduction to the economic history of Latin America. Part II examines the claim that China's economic rise should be regarded as a model for Latin America. Part III evaluates the claim that China poses a threat to Latin America's development. Parts IV and V discuss the implications of China's rise for international economic law and for sustainable development.

The Article concludes that the emerging patterns of trade and investment between China and Latin America pose both challenges and opportunities. While China's economic rise provides short-term benefits to countries that export natural resources, it ultimately threatens to reinforce Latin America's economically disadvantageous and ecologically unsustainable specialization in the production of primary commodities (such as minerals and agricultural products) and to retard the evolution of more dynamic economic sectors that promise higher wages and revenues. At the same time, China's

unorthodox approach to economic development and the growing international recognition of the staggering environmental costs of its growth-at-any-cost economic model may lay the foundation for the emergence of an alternative to the discredited Washington Consensus—an alternative that is both environmentally sustainable and economically just. In particular, China and Latin America have the opportunity to work collaboratively toward a Southern agenda on international trade and investment that recognizes the importance of integrating economic development, poverty alleviation, and environmental protection.

I. A Brief Economic History of Latin America

In order to evaluate the developmental impact of China's growing influence in Latin America, it is important to place this relationship in the context of Latin American economic history. Latin America's post-independence development strategies can be divided into three distinct but overlapping phases: primary product specialization (prior to the Great Depression), import substitution industrialization (beginning in the late 19th century but peaking between 1930 and 1970), and free market economic reforms (dominant after the debt crisis of the 1980s).¹⁶

From the 19th century through the Great Depression, Latin America was incorporated into the world economy as an exporter of primary products and an importer of manufactured goods.¹⁷ This pattern of trade and production had been imposed several hundred years earlier by Spain and Portugal, but persisted in the aftermath of political independence due, in part, to the power wielded by the existing system of international trade and finance.¹⁸ As industry expanded in Britain, France, Germany, and the United States, manufacturers closely aligned with the major banks offered credit to the newly independent Latin American nations to encourage them to purchase U.S. and European manufactured goods.¹⁹ In addition, the rapid pace of industrialization in Europe and the United States generated a voracious demand for raw materials from the former colonies.²⁰ Seeking to capitalize on this demand, Latin American governments borrowed heavily to construct the ports, railways, and roads necessary to bring these commodities to market.²¹ In theory, Latin America's growing debt would be repaid from the revenues generated by the increased output of primary commodities.²² In practice, reliance on primary product exports proved to be a serious economic bane.

Specialization in primary commodity production rendered Latin American economies dangerously vulnerable to

8. See *The Dragon in the Backyard*, *supra* note 2.

9. See Bridges, *supra* note 1.

10. See *id.*; Romero & Barrionuevo, *supra* note 4; *The Dragon in the Backyard*, *supra* note 2.

11. See Romero & Barrionuevo, *supra* note 4.

12. See *id.*; Bridges, *supra* note 1.

13. See Bridges, *supra* note 1; see C. FRED BERGSTEN ET AL., CHINA'S RISE: CHALLENGES AND OPPORTUNITIES 214 (2008).

14. See Bridges, *supra* note 1.

15. See BERGSTEN ET AL., *supra* note 13, at 214.

16. See VICTOR BULMER-THOMAS, THE ECONOMIC HISTORY OF LATIN AMERICA SINCE INDEPENDENCE 17, 393 (2d ed. 2003).

17. See *id.* at 14-18, 78.

18. JAMES M. CYPHER & JAMES L. DIETZ, THE PROCESS OF ECONOMIC DEVELOPMENT 86 (1997).

19. See *id.*

20. See *id.* at 86-88.

21. See *id.*

22. See *id.* at 88.

market fluctuations and to the declining terms of trade for primary products relative to manufactured goods.²³ Using data from the late 19th century to the late 1930s, Argentine economist Raul Prebisch demonstrated that the export prices of primary commodities declined significantly over time relative to the price of manufactured goods.²⁴ As a result, developing countries that specialized in primary commodity production were required to sell increasing amounts of their output on world markets in order to purchase the same amount of manufactured goods.²⁵

Known as the Singer-Prebisch hypothesis, this analysis suggests that it is economically disadvantageous to specialize in the export of natural resources and that countries should instead promote industrialization so as to develop a comparative advantage in much more dynamic economic sectors.²⁶ The Singer-Prebisch hypothesis has been confirmed by subsequent studies and has been cited to explain the economic decline and increasing debt burdens experienced by many developing countries.²⁷

Following the collapse of commodity prices during the Great Depression, many Latin American countries embarked upon a new phase of economic development known as import substitution industrialization (ISI).²⁸ ISI began as an emergency effort by Latin American countries to produce manufactured goods that could no longer be purchased abroad because the crisis in commodity markets had deprived these countries of hard currency.²⁹ Over time, ISI became an economic strategy designed to jump start industrialization by substituting imported manufactured goods with domestically produced equivalents.³⁰ ISI came about through state intervention in the economy in the form of tariffs and quotas designed to protect infant domestic industries from foreign competition.³¹ Far from being a Latin American innovation, virtually all industrialized countries utilized elements of ISI to promote the development of a domestic industrial base.³²

In Latin America, ISI produced a dramatic increase in industrial output, high levels of economic growth, and improved standards of living, but did not fundamentally alter the region's specialization in primary product exports.³³ Because ISI depended on the importation of inputs and machinery, Latin American countries continued to rely on the export of minerals and agricultural commodities to earn the foreign exchange necessary to keep the ISI industries operating.³⁴ Beginning in the 1960s, some Latin American

countries (particularly Brazil and Mexico) prioritized the development of export-oriented industry in order to diversify exports and generate additional foreign exchange.³⁵ While Latin American manufactured exports did increase substantially between 1967 and 1980, the bulk of industrial production continued to be oriented to the domestic market, and the region's dependence on primary commodity exports persisted.³⁶

Some scholars attribute Latin America's failure to alter its productive structure in favor of efficient, internationally competitive industries to the so-called natural resource curse.³⁷ According to these scholars, countries with abundant natural resources will be tempted to simply increase the volume of primary commodity exports to maintain growth rates and avoid balance of payments crises rather than undertake more difficult economic restructuring.³⁸ Indeed, efforts to promote other industries will often provoke resistance from the agricultural and mineral elites who profit from primary product production.³⁹

The demise of ISI was precipitated by the debt crisis of the 1980s. In response to significant petroleum price increases by the Organization of Petroleum Exporting Countries (OPEC) in the early 1970s, many developing countries borrowed money from the major commercial banks to finance the importation of petroleum, machinery, and other products necessary for industrialization.⁴⁰ The commercial banks eagerly encouraged massive borrowing by these countries in order to earn interest on the "petrodollars" deposited in their coffers by OPEC nations.⁴¹ Regrettably, in many Latin American countries, the loan proceeds were misappropriated by corrupt officials or were used by authoritarian government to purchase weapons.⁴²

When additional oil price rises in 1979-80 caused interest rates to skyrocket just as world market prices for primary commodities plummeted, many developing countries were unable to meet their debt repayment obligations.⁴³ The debt crisis forced Latin American nations into constant rounds of negotiation with the International Monetary Fund (IMF) and the World Bank for the restructuring of loans to facilitate repayment.⁴⁴ By the mid-1980s, almost three quarters of Latin American countries were operating under IMF- and World Bank-supervised loan repayment programs.⁴⁵

As a condition of IMF and World Bank assistance, developing countries were required to adopt structural adjustment programs consisting of a standard recipe of neoliberal economic reforms designed to reduce the role of government in the economy and to give greater power and resources to the

23. See *id.* at 171-74.

24. See *id.* at 173.

25. See *id.* at 172.

26. See *id.* 174, 177-79.

27. See *id.* at 87 (Box 3.5), 177-80; Raphael Kaplinsky, *Revisiting the Revisited Terms of Trade: Will China Make a Difference?*, 34 *WORLD DEV.* 981, 982 (2006); U.N. FOOD & AGRIC. ORG., *THE STATE OF AGRICULTURAL COMMODITY MARKETS 2004*, 10-13, 20-21 (2004).

28. BULMER-THOMAS, *supra* note 16, at 17; DUNCAN GREEN, *SILENT REVOLUTION: THE RISE AND CRISIS OF MARKET ECONOMICS IN LATIN AMERICA* 22 (2003).

29. See GREEN, *supra* note 28, at 22.

30. See *id.* at 22-23; CYPHER & DIETZ, *supra* note 18, at 271-72.

31. CYPHER & DIETZ, *supra* note 18, at 276-80.

32. See *id.* at 271.

33. See GREEN, *supra* note 28, at 23-24; CYPHER & DIETZ, *supra* note 18, at 319.

34. See GREEN, *supra* note 28, at 25; CYPHER & DIETZ, *supra* note 18, at 302.

35. See GREEN, *supra* note 28, at 27; CYPHER & DIETZ, *supra* note 18, at 319.

36. See GREEN, *supra* note 28, at 27; CYPHER & DIETZ, *supra* note 18, at 319.

37. See CYPHER & DIETZ, *supra* note 18, at 312, 319.

38. See *id.* at 312-13.

39. See *id.* at 312, 319.

40. See SUSAN GEORGE, *A FATE WORSE THAN DEBT: THE WORLD FINANCIAL CRISIS AND THE POOR* 28-29 (1990); RICHARD PEET ET AL., *UNHOLY TRINITY: THE IMF, THE WORLD BANK, AND THE WTO* 71 (2003).

41. See PEET ET AL., *supra* note 40, at 71-72; GEORGE, *supra* note 40, at 29.

42. See GREEN, *supra* note 28, at 29.

43. See PEET ET AL., *supra* note 40, at 72, 74-75.

44. See GREEN, *supra* note 28, at 30.

45. See PEET ET AL., *supra* note 40, at 75.

private sector.⁴⁶ Known as the Washington Consensus, these reforms included deregulation and privatization of industry and public services, trade liberalization, curtailment of government expenditures, elimination of barriers to direct foreign investment, financial liberalization, and enforcement of property rights.⁴⁷

With its emphasis on export-led growth and specialization based on comparative advantage, the Washington Consensus reinforced Latin America's historic reliance on the export of primary commodities rather than promoting investment in new, dynamic economic sectors.⁴⁸ Latin American countries were encouraged to export traditional primary commodities (such as soy and copper), new "nontraditional" agricultural products (such as strawberries and flowers), and low-tech manufactured goods (such as shoes and textiles) produced in low-wage assembly plants known as *maquiladoras*.⁴⁹ In addition, by requiring Latin American countries to open up their markets to cheap, imported manufactured goods, the Washington Consensus bankrupted local firms and jeopardized the region's industrial future.⁵⁰

Adherence to the Washington Consensus resulted in significant slowdown in economic growth relative to the 1960s and 1970s, mounting indebtedness, sharp increases in poverty and inequality, and growing social and political unrest.⁵¹ Indeed, Latin American cities were periodically rocked by "IMF riots" that left hundreds dead and wounded and produced property damage totaling millions of dollars.⁵² Beginning in the early 1990s, grassroots social movements engaged in mass mobilizations, strikes, and popular insurrections to bring down regimes closely identified with the IMF, the World Bank, and major transnational corporations.⁵³

The devastation wrought by the Washington Consensus produced a resurgence of the left and center left in Latin American electoral politics. The electoral victories of Michele Bachelet in Chile, Hugo Chavez in Venezuela, Nestor Kirchner (and subsequently Cristina Fernandez Kirchner) in Argentina, Luiz Inacio Lula da Silva in Brazil, Tabare Vazquez in Uruguay, Daniel Ortega in Nicaragua, Evo Morales in Bolivia, Rafael Correa in Ecuador, Mauricio Funes in El Salvador, Fernando Lugo in Paraguay, and Alvaro Colom in Guatemala indicate a significant leftward shift in Latin American politics.⁵⁴

46. See GREEN, *supra* note 28, at 50-56.

47. See LATIN AMERICAN ADJUSTMENT: HOW MUCH HAS HAPPENED? 18 (John Williams ed., 1990).

48. See GREEN, *supra* note 28, at 136.

49. See *id.* at 119-20, 124-31.

50. See *id.* at 120, 136.

51. See JOSEPH STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 18-20 (2002); Jean Grugel & Pia Riggirozzi, *The End of the Embrace? Neoliberalism and Alternatives to Neoliberalism in Latin America*, in GOVERNANCE AFTER NEOLIBERALISM IN LATIN AMERICA 15 (Jean Grugel & Pia Riggirozzi eds., 2009); William Finnegan, *The Economics of Empire: Notes on the Washington Consensus*, HARPER'S, May 1, 2003, at 42, 45-50.

52. See GREEN, *supra* note 28, at 39.

53. See Gerardo Renique, *Strategic Challenges for Latin America's Anti-Neoliberal Insurgency*, in DISPATCHES FROM LATIN AMERICA: ON THE FRONTLINES AGAINST NEOLIBERALISM 35-38 (Vijay Prashad & Teo Ballve eds., 2006).

54. See Grugel & Riggirozzi, *supra* note 51, at 16; Blake Schmidt & Elisabeth Malkin, *Leftist Party Wins Salvadoran Vote*, N.Y. TIMES, Mar. 17, 2009; Hector

The Washington Consensus, as its name implies, was largely engineered and supported by the United States, and was regarded by its critics as a new form of colonial domination.⁵⁵ Structural adjustment opened up the economies of Latin America to U.S. and European traders and investors.⁵⁶ The mass privatizations of the 1990s enabled transnational corporations to purchase Latin American banks, airlines, and telecommunications companies and to invest in the oil sector.⁵⁷ By emphasizing export-led growth, structural adjustment increased the supply and lowered the price of raw materials for the benefit of the global North while locking the global South into its traditional role as exporter of primary commodities.⁵⁸ It is against this background that China emerged as a major player on the Latin American economic scene.

II. Is China a Model for Latin America?

China is engaging with Latin America at the very moment that center and center-left Latin American governments are searching for alternatives to the Washington Consensus. Some scholars contend that China represents an alternative model of successful economic growth and development or, at the very least, a source of insights that can be adapted to the Latin American context.⁵⁹ This part critically evaluates this claim.

China has undergone one of the most remarkable economic transformations in modern history. While Latin America stagnated under the Washington Consensus, China achieved average annual growth rates of at least 8-10%.⁶⁰ China currently ranks as the world's second largest national economy and second largest exporter.⁶¹ Since 1980, more than 400 million Chinese citizens have risen from abject poverty,⁶² and China is generally on track to meet the Millennium Development Goals by 2015.⁶³

China achieved its economic success by disregarding many of the policy prescriptions associated with the Washington Consensus.⁶⁴ Instead of liberalizing its trade regime, China imposed high tariffs and quotas on imports to protect domestic industries and to boost foreign exchange reserves.⁶⁵

Tobar, *Guatemala's New Leader Inherits Woes*, L.A. TIMES, Nov. 6, 2007; Daniel Ortega: *Return of the Sandinista*, INDEPENDENT, Nov. 8, 2006.

55. See Paul Drake, *The Hegemony of U.S. Economic Doctrines in Latin America*, in LATIN AMERICA AFTER NEOLIBERALISM: TURNING THE TIDE IN THE 21ST CENTURY? 33 (Eric Hershberg & Fred Rosen eds., 2006); GREEN, *supra* note 28, at 68-71.

56. See GREEN, *supra* note 28, at 68.

57. See *id.*

58. See *id.*

59. See Robert Devlin, *China's Economic Rise*, in CHINA'S EXPANSION INTO THE WESTERN HEMISPHERE: IMPLICATIONS FOR LATIN AMERICA AND THE UNITED STATES 138 (Riordan Roett & Guadalupe Paz eds., 2008); Joshua Kurlantzick, *China's Growing Influence in Southeast Asia*, in CHINA'S EXPANSION INTO THE WESTERN HEMISPHERE at 198.

60. See THE EMERGENCE OF CHINA, *supra* note 1, at 3; BERGSTEN ET AL., *supra* note 13, at 9.

61. See BERGSTEN ET AL., *supra* note 13, at 9.

62. See DANI RODRIK, ONE ECONOMICS, MANY RECIPES: GLOBALIZATION, INSTITUTIONS, AND ECONOMIC GROWTH 2 (2007).

63. See PEERENBOOM, *supra* note 3, at 129, 132.

64. See RODRIK, *supra* note 62, at 239; Angresano, *supra* note 3, at 472.

65. See PEERENBOOM, *supra* note 3, at 73.

China did not relax these restrictions until very late in its economic development process.⁶⁶ Instead of opening its markets to foreign investment, China steered foreign companies into joint ventures, imposed onerous technology transfer requirements in order to develop domestic technological capacity, and required foreign companies to purchase a certain proportion of their inputs from local firms.⁶⁷ These restrictions were not lifted until China joined the World Trade Organization (WTO).⁶⁸ Instead of engaging in large-scale deregulation and privatization of industry, China continued to regulate private companies and to hold the majority share in many enterprises while encouraging the expansion of the private sector.⁶⁹ Instead of minimizing state intervention in the economy, the Chinese government has maintained a strong and proactive presence designed to achieve long-term development goals.⁷⁰ In the mid-1990s, for example, the Chinese government intervened in the economy to favor capital-intensive industries, such as automobiles, electronics, machinery, and petrochemicals.⁷¹ In the late 1990s, the government's industrial policy shifted toward support of technologically advanced enterprises, particularly in the software, integrated circuits, and automobile industries.⁷²

Dubbed the "Beijing Consensus,"⁷³ China's alternative path to economic development is not a one-size-fits-all economic recipe.⁷⁴ On the contrary, the Beijing Consensus represents an unorthodox approach to economic development that rests on two key pillars: pragmatism and state intervention in the economy.⁷⁵

The hallmark of the Beijing Consensus is pragmatism.⁷⁶ Rather than following a predetermined recipe for economic reform, such as that set out in the Washington Consensus, China adopted policies, institutions, and legal norms uniquely suited to local conditions.⁷⁷ China also implemented its economic reforms gradually and incrementally—with small-scale pilot experiments typically preceding general application of new policies.⁷⁸

The second key feature of the Beijing Consensus is the central role of the state in the process of economic development.⁷⁹ The Chinese government actively intervened in the economy in order to guide economic development, regulate foreign trade and investment, and mitigate the negative impact of globalization on disadvantaged economic actors.⁸⁰

Indeed, China's spectacular economic rise confirms the pivotal role of the state in the process of economic diversification and industrialization.⁸¹ China's rise is a reminder that nearly all industrialized countries (including France, Germany, Great Britain, Japan, South Korea, Taiwan, and the United States) achieved economic prosperity through the use of protectionist instruments, including tariffs, subsidies, quotas, and other measures designed to promote those industries and sectors most likely to contribute to long-term economic growth.⁸²

Latin America is the region where the free-market reforms associated with the Washington Consensus were most diligently implemented and where the corresponding results have been most disappointing.⁸³ As left-of-center governments reevaluate national economic policy, China's use of long-term strategic planning and proactive state intervention to achieve national development goals can serve as a source of inspiration and as an antidote to the rigid prescriptions of the Washington Consensus.⁸⁴ Following China's lead, Latin American nations would do well to pursue a pragmatic approach to economic development that studies the experiences of other successful countries, adapts insights from other countries to local circumstances, implements reforms gradually and incrementally, and adjusts and expands reforms according to the observed results.⁸⁵

However, it is important to acknowledge the enormous costs of China's economic rise and the numerous challenges that the country faces, including rapid urbanization, growing unemployment and inequality, rising social protest, and serious environmental degradation.⁸⁶ One of the most important lessons that Latin America can derive from China's experience is the importance of integrating environmental protection into economic planning rather than adopting the "grow first, clean up later" approach.

China is facing an environmental crisis of staggering proportions. Water pollution, water scarcity, desertification, air pollution, deforestation, loss of biodiversity, waste accumulation, depletion of fisheries, soil erosion, and contamination of crop land impose enormous costs on the Chinese econ-

66. *See id.*

67. *See id.* at 74; THE EMERGENCE OF CHINA, *supra* note 1, at 28; HA-JOON CHANG, *BAD SAMARITANS: THE MYTH OF FREE TRADE AND THE SECRET HISTORY OF CAPITALISM* 29-30 (2008).

68. *See* PEERENBOOM, *supra* note 3, at 74.

69. *See id.*; Angresano, *supra* note 3, at 481.

70. *See* THE EMERGENCE OF CHINA, *supra* note 1, at 27-29.

71. *See id.* at 32.

72. *See id.*

73. *See generally* JOSHUA COOPER RAMO, *THE BEIJING CONSENSUS* (2004); PEERENBOOM, *supra* note 3, at 5-7, 73-77, 80-81.

74. *See* Ching Cheong, *Rise of the Beijing Consensus?*, CHINA DAILY, Oct. 28, 2008, at 9.

75. *See* PEERENBOOM, *supra* note 3, at 5.

76. *See id.*; Angresano, *supra* note 3, at 479-80.

77. *See* PEERENBOOM, *supra* note 3, at 5.

78. *See* THE EMERGENCE OF CHINA, *supra* note 1, at 31, 35-36.

79. *See* PEERENBOOM, *supra* note 3, at 5.

80. *See id.*

81. *See generally* HA-JOON CHANG, *GLOBALISATION, ECONOMIC DEVELOPMENT, AND THE ROLE OF THE STATE* (2003); STIGLITZ, *supra* note 51; *THE DEVELOPMENTAL STATE* (Meredith Woo-Cumings ed., 1999); PETER EVANS, *EMBEDDED AUTONOMY: STATES AND INDUSTRIAL TRANSFORMATION* (1995); *BRINGING THE STATE BACK IN* (Peter Evans et al. eds., 1985).

82. *See* HA-JOON CHANG, *KICKING AWAY THE LADDER: DEVELOPMENT STRATEGY IN HISTORICAL PERSPECTIVE* 19-51, 59-66 (2002).

83. *See* RODRIK, *supra* note 62, at 99.

84. *See* Devlin, *supra* note 59, at 137-40.

85. For example, drawing lessons from the recent experiences of Finland, Ireland, and New Zealand, Latin American countries might forge strategic alliances between the private sector, the public sector, and academia to promote innovation and investment in new, dynamic export-oriented industries. Drawing inspiration from China, Latin America's countries might place renewed emphasis on education, research and development, infrastructure investment, and access to domestic credit. *See* Devlin, *supra* note 59, at 126-43 (describing how the Chinese government, guided by a long-term strategic vision, cautiously and gradually introduced market-based reforms and discussing innovative approaches to economic development in other countries).

86. *See* Barbara Stallings, *The U.S.-China-Latin America Triangle: Implications for the Future*, in *CHINA'S EXPANSION INTO THE WESTERN HEMISPHERE*, *supra* note 59, at 255.

omy, and jeopardize the health of millions of its citizens.⁸⁷ According to the World Bank, China experiences 750,000 premature deaths per year as a consequence of air and water pollution.⁸⁸ Of the world's 20 most polluted cities, 16 are located in China.⁸⁹ Only 1% of China's 560 million urban dwellers breathes air considered safe by European Union (EU) standards.⁹⁰ Pollution and natural resource degradation cost the Chinese government between 8-12% of the country's annual gross domestic product (GDP).⁹¹ These costs include hospital and emergency room visits, workplace absenteeism, damage to fisheries and agriculture, the incapacitating effects of chronic illness, and the long-term consequences of childhood lead exposure.⁹² China has also become one of the leading contributors to major global environmental problems, including climate change, the illegal timber trade, transboundary air pollution, and marine pollution.⁹³

While rejecting the Washington Consensus, the Chinese government has adopted the unsustainable, resource-intensive, growth-at-any-cost economic model pioneered by the United States and other wealthy countries.⁹⁴ This economic model equates progress with economic growth as measured by GDP.⁹⁵ GDP growth is achieved by consuming ever-increasing amounts of natural resources and by discharging ever-growing amounts of pollution.⁹⁶

Regrettably, China is replicating this resource-intensive path at a time when the world's ecological systems are severely stressed and increasingly unable to support the

growing global economy.⁹⁷ According to the United Nations (U.N.) Millennium Ecosystem Assessment Synthesis Report, human economic activity over the past 50 years has produced more rapid and severe ecosystem degradation than in any comparable period in human history.⁹⁸ Approximately 60% of the valuable ecosystem services examined in the U.N. report have deteriorated, including flood control, water filtration, air purification, erosion control, waste treatment and detoxification, and regulation of regional and local climate.⁹⁹ An economic development strategy that exacerbates this environmental degradation is likely to be catastrophic for China and for the rest of the world.¹⁰⁰

Ecological economists have long warned that the scale of the global economy is rapidly exceeding the capacity of the planet's ecological systems to supply essential resources and to assimilate wastes.¹⁰¹ Given these ecological constraints, unlimited economic growth is a physical impossibility.¹⁰² Sustainability will only be achieved by maintaining the scale of the economy within the regenerative and assimilative capacities of the planet's ecosystems.¹⁰³

Instead of embracing an outdated economic model based upon the fallacy of unlimited economic growth, Latin American governments should recognize that growing numbers of Chinese officials, scholars, and grassroots environmentalists are calling for an alternative path to industrialization that respects ecological limits and seeks to minimize resource consumption and waste generation.¹⁰⁴ The Chinese government has articulated environmental protection as a national priority and announced numerous initiatives to advance it.¹⁰⁵ Latin American governments might well draw inspiration from China's economic success, but should avoid replicating China's disastrous growth-at-any-cost economic model.

87. See Elizabeth Economy, *The Great Leap Backward? The Costs of China's Environmental Crisis*, 86 FOREIGN AFFAIRS 38 (2007); BARRY NAUGHTON, *THE CHINESE ECONOMY: TRANSITIONS AND GROWTH* 487-503 (2007); Jianguo Liu & Jared Diamond, *China's Environment in a Globalizing World* 435 NATURE 1179 (2005).

88. See Richard McGregor, *Environmental Damage Stirrs Public Anger*, FIN. TIMES (London), July 3, 2007, at 6; David Barboza, *China Reportedly Urged Omitting Pollution Death Estimates*, N.Y. TIMES, July 5, 2007.

89. See Economy, *supra* note 87, at 40.

90. See Joseph Kahn & Jim Yardley, *As China Roars, Pollution Reaches Deadly Extremes*, N.Y. TIMES, Aug. 26, 2007.

91. See Economy, *supra* note 87, at 46; NAUGHTON, *supra* note 87, at 493.

92. See NAUGHTON, *supra* note 87, at 493-94.

93. See Economy, *supra* note 87, at 44-46; Jacques Leslie, *The Last Empire: Can the World Survive China's Headlong Rush to Emulate the American Way of Life?*, MOTHER JONES, Jan./Feb. 2008, at 32, 34-39.

94. See Leslie, *supra* note 93, at 83; see also BERGSTEN ET AL., *supra* note 13, at 78.

95. See JAMES GUSTAVE SPETH, *THE BRIDGE AT THE EDGE OF THE WORLD: CAPITALISM, THE ENVIRONMENT, AND CROSSING FROM CRISIS TO SUSTAINABILITY* 46-50 (2008).

96. See *id.* at 49-51. Although China has passed hundreds of environmental statutes since 1983, economic development has traditionally taken priority over environmental protection, and local officials are evaluated and promoted based upon their success in promoting economic growth. Nevertheless, the Chinese government embarked upon an ambitious and unprecedented effort to quantify the costs of pollution by calculating "Green GDP." Released in 2006, China's first Green GDP report subtracted the costs associated with environmental degradation from traditional GDP in order to provide a more realistic assessment of the health of the Chinese economy. The report revealed that pollution cost the country the equivalent of 3% of GDP in 2004—a conservative assessment that did not take into account groundwater or soil contamination or the overexploitation and depletion of resources. Under fierce pressure from local officials, China's innovative efforts to quantify Green GDP were scuttled in 2007—reportedly because the second Green GDP report indicated an increase in the amount of economic loss due to environmental pollution. See Jane Qiu, *China's Green Accounting System on Shaky Ground*, 448 NATURE 518 (2007); Jane Spencer, *Why Beijing Is Trying to Tally the Hidden Costs of Pollution as China's Economy Booms*, WALL ST. J., Oct. 2, 2006, at A2.

97. See Christopher Flavin & Gary Gardner, *China, India, and the New World Order*, in WORLDWATCH INST., STATE OF THE WORLD 2006 (2006), at 15, 21.

98. U.N. MILLENNIUM ECOSYSTEM ASSESSMENT, ECOSYSTEMS AND HUMAN WELL-BEING: SYNTHESIS 1-5 (2005), available at <http://www.millenniumassessment.org/documents/document.356.aspx.pdf>.

99. See *id.* at 6-7.

100. See Flavin & Gardner, *supra* note 97, at 7, 15-18.

101. See ROBERT COSTANZA ET AL., AN INTRODUCTION TO ECOLOGICAL ECONOMICS 1-18 (1997); Kristen Sheeran, *Ecological Economics: A Progressive Paradigm?*, BERKELEY LA RAZA L.J. 21, 26-28 (2006); Flavin & Gardner, *supra* note 97, at 15-18.

102. See COSTANZA ET AL., *supra* note 101, at 7.

103. See *id.* at 15.

104. See Flavin & Gardner, *supra* note 97, at 18-19, 23; MARK LEONARD, *WHAT DOES CHINA THINK?* 41-44 (2008); James Fallows, *China's Silver Lining: Why Smoggy Skies Over Beijing Represent the World's Greatest Environmental Opportunity*, ATLANTIC 36, 42-47 (2008); Alex Wang, *The Role of Law in Environmental Protection in China: Recent Developments*, 8 VERMONT J. ENVTL. L. 195, 200-01 (2007); Jesse L. Moorman & Zhang Ge, *Promoting and Strengthening Public Participation in China's Environmental Impact Assessment Process: Comparing China's EIA Law and U.S. NEPA*, 8 VERMONT J. ENVTL. L. 281, 283 (2007); Sholto Byrnes, *The Man Making China Green*, NEW STATESMAN, Dec. 18, 2006-Jan. 4, 2007, at 60.

105. See, e.g., Cynthia W. Cann et al., *China's Road to Sustainable Development*, in CHINA'S ENVIRONMENT AND THE CHALLENGE OF SUSTAINABLE DEVELOPMENT 11-25 (Kristen A. Day ed., 2005) (describing some of the Chinese government's efforts to promote sustainable development).

III. Is China a Threat to Latin America's Development?

Far from serving as a model for Latin America, China has emerged in the writings of some scholars as a threat to Latin America's economic development.¹⁰⁶ For example, two recent books on China's growing ties with Latin America conclude that China's rise may reinforce Latin America's economically disadvantageous integration into the global economy as a producer of primary products and an importer of manufactured goods.¹⁰⁷

China's trade with Latin America is motivated by China's quest for raw materials to fuel its rapid industrialization and to feed its population and by China's pursuit of new markets to sustain its export-driven economic growth.¹⁰⁸ China is importing petroleum, copper, iron, steel, soy, wood/wood pulp, fishmeal, and various other primary commodities from Latin America.¹⁰⁹ At the same time, it is exporting a variety of manufactured goods, including textiles, footwear, motorcycles, computers, appliances, and automobiles.¹¹⁰ Like the imperial powers of an earlier period, China is also financing infrastructure projects in Latin America in order to improve the flow of commerce and is investing in petroleum and iron mining operations in order to secure access to these valuable commodities.¹¹¹ Despite official Chinese government pronouncements about South-South cooperation, China's engagement with Latin America bears a striking resemblance to the colonial model described in Part I of this Article.

In order to develop a more nuanced understanding of the impact of China's presence in Latin America, it is useful to classify the region into three parts: the Southern Cone (Argentina, Brazil, Chile, Paraguay, and Uruguay); the Andean region (Bolivia, Colombia, Ecuador, Peru, and Venezuela); and the Caribbean, Central America, and Mexico.¹¹²

The Southern Cone and Andean nations have benefited in the short term from the spike in commodity prices caused by China's voracious demand for energy and raw materials.¹¹³ These nations rely on natural resources to generate the bulk of export revenues, and their export structures are thus complementary to those of China.¹¹⁴

However, some Southern Cone nations have suffered losses as a consequence of competition from China in manufac-

ured goods. Chief among these is Brazil. While Brazil does export raw materials to China and cooperates with China in information technology, space satellites, biotechnology, and medicine, Brazil's domestic manufacturing industry faces intense competition from China in both the Brazilian market and abroad (including the EU, Japan, the Mercosur countries, and the United States).¹¹⁵ Even Argentina and Chile, whose exports generally complement those of China, have suffered losses as a consequence of competition from Chinese manufactured goods; these countries, along with Brazil, have imposed numerous anti-dumping and safeguard measures on Chinese manufactured products.¹¹⁶

In sharp contrast to the natural resource exporting countries, the Caribbean, Central America, and Mexico have faced direct competition from China in the export of textiles and apparel.¹¹⁷ Mexico also competes with China in the electronics, computer, appliance, automobile, and motorcycle markets.¹¹⁸ As Chinese manufactured exports have penetrated the U.S. market, Central America and Mexico have experienced a steep decline in their share of that market.¹¹⁹ In 2003, China overtook Mexico as the largest exporter of goods to the United States.¹²⁰ China also competes with Central America and Mexico for foreign investment.¹²¹ Between 2000 and 2006, Mexico lost over one-half million manufacturing jobs as a consequence, among other things, of low-wage competition from China.¹²² The enormous losses suffered by Mexico due to China's economic rise have resulted in frequent calls for protection of Mexican industry.¹²³

Finally, Chinese companies have invested in the petroleum and mining sectors of certain Andean countries (Ecuador, Peru, and Venezuela) in order to secure access to valuable resources, but their presence has generated controversy and social unrest.¹²⁴ In Ecuador, Chinese firms took over certain petroleum exploration contracts formerly held by Occidental Petroleum, were awarded additional oil exploration and development contracts, and later purchased the oil field and pipeline assets of a Canadian firm.¹²⁵ In Peru, a Chinese company owns and operates the nation's largest iron mine.¹²⁶ In Venezuela, Chinese firms operate several oilfields.¹²⁷ In both Ecuador and Peru, Chinese firms have been embroiled in labor disputes with workers, conflicts with indigenous peoples, tax disputes with local authorities, and numerous conflicts with government officials over environmental law violations.¹²⁸ Regrettably, the limited but

106. See *supra* note 2, for books and articles portraying China as a menace to Latin America's development.

107. See Stallings, *supra* note 59, at 249, 253; Francisco E. Gonzalez, *Latin America in the Economic Equation—Winners and Losers: What Can Losers Do?*, in CHINA'S EXPANSION INTO THE WESTERN HEMISPHERE, *supra* note 59, at 151-55; R. EVAN ELLIS, CHINA IN LATIN AMERICA 3-4, 286-87 (2009).

108. See ELLIS, *supra* note 107, at 9-13; Xiang Lanxin, *An Alternative Chinese View, in CHINA'S EXPANSION INTO THE WESTERN HEMISPHERE*, *supra* note 59, at 54-57. Latin America's interest in China is driven by the lucrative opportunity to export commodities to the world's most populous nation, by the attractiveness of China as a potential investor, and by the hope that growing ties with China will help mitigate the political and economic influence of the United States. See ELLIS at 24-28.

109. See ELLIS, *supra* note 107, at 12, 50-53, 273-74.

110. See *id.* at 204.

111. See *id.* at 278-81, 288, 110-15, 126-28, 151-52.

112. See *id.* at 7.

113. See Phillips, *supra* note 2, at 9.

114. See *id.*; Gonzalez, *supra* note 107, at 152.

115. See Gonzalez, *supra* note 107, at 153; Monica Hirst, *A South-South Perspective, in CHINA'S EXPANSION INTO THE WESTERN HEMISPHERE*, *supra* note 59, at 99-100.

116. See Gonzalez, *supra* note 107, at 152-53.

117. See *id.* at 157-10; Phillips, *supra* note 2, at 8-9.

118. See Gonzalez, *supra* note 107, at 160-61; ELLIS, *supra* note 107, at 204.

119. See Muradian, *supra* note 2, at 809, 816; Phillips, *supra* note 2, at 21.

120. See ELLIS, *supra* note 107, at 205.

121. See Muradian, *supra* note 2, at 811.

122. See ELLIS, *supra* note 107, at 205-06; Muradian, *supra* note 2, at 811.

123. See ELLIS, *supra* note 107, at 206.

124. See *id.* at 110-15, 126-28, 150-51.

125. See *id.* at 126-27, 274.

126. See *id.* at 150.

127. See *id.* at 111.

128. See Soren Hvalkof, *Outrage in Rubber and Oil: Extractivism, Indigenous Peoples, and Justice in the Upper Amazon*, in PEOPLE, PLANTS & JUSTICE: THE POLITICS

troubling record of Chinese resource extractive companies in Latin America appears to mimic the behavior of their western transnational counterparts.¹²⁹

In sum, China's engagement with Latin America has produced winners and losers. Latin American countries that export primary commodities have benefited in the short term from China's demand for raw materials. Those countries that produce manufactured goods have encountered stiff competition from China, and have suffered mounting losses. In addition, China's limited direct investment in Latin American resource extractive industries has exacerbated social and environmental conflicts.

Notwithstanding the short-term gains of natural resource exporters, China's engagement with Latin America threatens to impoverish rather than enrich that region in the long term. China's demand for natural resources is likely to lock Latin America into primary product specialization that produces neither technological innovation nor demand for skilled labor.¹³⁰ Numerous studies have demonstrated that countries specializing in the export of natural resources tend to suffer from economic stagnation.¹³¹ Indeed, commodity booms in Latin America have historically frustrated economic development by shifting resources away from manufacturing and by producing economic busts when commodity prices subsequently collapsed.¹³² Furthermore, Latin American countries seeking to diversify into more dynamic, technology-intensive manufactured products will find themselves constrained by formidable competition from China and may even experience deindustrialization.¹³³

Finally, China's trade and investment presence in Latin America poses significant risks to the region's environment. Agro-export specialization in the developing world has generally led to erosion of genetic diversity, unsustainable levels

of pesticide use, agrochemical contamination of lakes, rivers, and groundwater, increased human exposure to toxic pesticides, depletion of aquifers, and deforestation (due to the conversion of forests to crop land).¹³⁴ Mining and petroleum extraction are among the most polluting sectors of the economy,¹³⁵ and typically result in toxic discharges to air, water, and land, as well as conflict with local and indigenous communities.¹³⁶ In the absence of effective environmental stewardship by Latin American governments, the region's growing commercial ties with China will likely accelerate environmental degradation by increasing pollution, depleting nonrenewable resources, and promoting the unsustainable use of renewable resources.

As one Chinese analyst candidly observes:

The fact remains that Chinese trade and investment in the region cannot escape the stigma of a neocolonial pattern, especially given China's very narrow commodity needs. The historical precedent of success in this framework is, ironically, not the United States, but Great Britain. From the sixteenth century to the early twentieth century, Britain invested heavily in South America to extract primary materials and agricultural goods to sustain its enormous manufacturing capacity. . . . Whether this trade pattern is sustainable and for how long remains a key question.¹³⁷

In order to grapple with the challenges posed by China's rise, Latin America needs to upgrade its industrial capabilities, to invest in technology and education, and to integrate sustainability into development planning. While the current patterns of trade and investment between China and Latin America may not bode well for Latin America's role in the world economy, it is important to recognize that China is not the root cause of Latin America's predicament. Instead of demonizing China (as a threat) or idealizing it (as a model), it would be more productive to consider ways in which China and Latin America might collaborate to make the legal regimes governing trade and investment more environmentally sustainable and development-friendly.

IV. Toward a More Just Economic Order

The need for South-South cooperation to transform the rules governing international trade has been recognized since the post-World War II period. The majority of developing

OF NATURE CONSERVATION 83, 103-06 (Charles Zerner ed., 2000); Scott Holwick, *Transnational Corporate Behavior and Its Disparate and Unjust Effects on the Indigenous Cultures and the Environment of Developing Countries*: Jota v. Texaco, a Case Study, 11 COLO. J. INT'L ENVTL. L. & POL'Y 183 (2000); Richard L. Herz, *Litigating Environmental Abuses Under the Alien Tort Claims Act: A Practical Assessment*, 40 VA. J. INT'L L. 545 (2000); Hari Osofsky, *Environmental Rights Under the Alien Tort Statute: Redress for Indigenous Victims of Multinational Corporations*, 20 SUFFOLK TRANSNAT'L L. REV. 335 (1997); Raissa S. Lerner & Tina M. Meldrum, *Debt, Oil, and Indigenous Peoples: The Effects of United States Development Policies in Ecuador's Amazon Basin*, 5 HARV. HUM. RTS. J. 174 (1992); Judith Kimmerling, *Disregarding Environmental Law: Petroleum Development in Protected Natural Areas and Indigenous Homelands in the Ecuadorian Amazon*, 14 HASTINGS INT'L & COMP. L. REV. 849 (1991).

129. See ELLIS, *supra* note 107, at 150-51, 275-76.

130. See Phillips, *supra* note 2, at 11; Roldan Muradian & Joan Martinez-Alier, *Trade and the Environment: From a "Southern" Perspective*, 36 ECOL. ECON. 281, 287 (2001).

131. See Macartan Humphreys et al., *What Is the Problem With Natural Resource Wealth?*, in ESCAPING THE RESOURCE CURSE 1-14 (Macartan Humphreys et al. eds., 2007); Tobias Kronenberg, *The Curse of Natural Resources in Transition Economies*, 12 ECON. TRANSITION 399, 400-01 (2004); Edward B. Barbier, *Agricultural Expansion, Resource Booms, and Growth in Latin America: Implications for Long-Run Economic Development*, 32 WORLD DEV. 147, 145 (2003); Sanjaya Lall, *The Technological Structure and Performance of Developing Country Manufactured Exports 1985-1998*, 28 OXFORD DEV. STUD. 337, 340-41 (2000).

132. See BULMER-THOMAS, *supra* note 16, at 69-72; Barbier, *supra* note 131, at 146-47; Mamerto Perez et al., *The Promise and Perils of Agricultural Trade Liberalization: Lessons From Latin America*, Working Group on Environment and Development in the Americas (June 2008) at 4-5.

133. See Mesquita Moreira, *supra* note 2, at 372-73; ELLIS, *supra* note 107, at 287.

134. See Carmen G. Gonzalez, *Trade Liberalization, Food Security, and the Environment: The Neoliberal Threat to Sustainable Rural Development*, 14 TRANSNAT'L L. & CONTEMP. PROBS. 419, 469-70; Barbier, *supra* note 131, at 139; Perez et al., *supra* note 132, at 13-14; Working Group on Development and Environment in the Americas, *Globalization and the Environment, Lessons From Latin America* 16-19, 34 (2004).

135. See Roldan Muradian & Joan Martinez-Alier, *Globalisation and Poverty: An Ecological Perspective*, World Summit Papers of the Heinrich Boll Foundation, No. 7 (2001) at 14, available at <http://www.worldsummit2002.org/publications/WSP7.pdf>.

136. See JOAN MARTINEZ-ALIER, *THE ENVIRONMENTALISM OF THE POOR: A STUDY OF ECOLOGICAL CONFLICTS AND VALUATION* 54-67, 100-08 (2002).

137. See Lanxin, *supra* note 108, at 55. See also Lall & Weiss, *supra* note 2, at 184 (describing the pattern of trade between China and Latin America as "almost a classic illustration of colonial trade between developing and industrialized regions").

countries were under colonial rule at the 1947 inception of the General Agreement on Tariffs and Trade (GATT).¹³⁸ Developing countries quickly realized that political independence was not tantamount to economic independence, given the economic stagnation that had occurred under colonial domination and given an international economic system that seemed to favor industrialized countries.¹³⁹ GATT, for example, advanced the interests of industrialized countries at the expense of those less developed. While industrialized countries benefited from GATT's reduction of tariffs on manufactured goods, various GATT exceptions enabled industrialized countries to limit or exclude textiles, clothing, and agricultural products from their less developed counterparts.¹⁴⁰

By the mid-1950s, developing countries had organized to demand a variety of measures to overcome the colonial legacy, stimulate economic development, and address persistent inequities in the international trading system.¹⁴¹ These measures included the removal of industrialized country trade barriers and subsidies on primary products; preferential market access and nonreciprocal tariff concessions for the benefit of developing countries; and the right of developing countries to promote industrialization through the imposition of tariffs and quotas to protect infant industries.¹⁴²

In 1964, the U.N. Conference on Trade and Development (UNCTAD) entered into operation as an organ of the U.N. General Assembly to promote trade-related initiatives that would accelerate economic development.¹⁴³ That same year, developing countries came together as the Group of Seventy-Seven (G-77) to build solidarity and cooperation among developing countries in the area of trade and development and to demand a more just international economic order.¹⁴⁴

As a consequence of sustained pressure from developing countries, GATT was amended several times to make its provisions more development-friendly.¹⁴⁵ The amendments included provisions permitting developing countries to engage in infant industry protection and encouraging industrialized countries to provide greater market access opportunities for developing country products.¹⁴⁶

Regrettably, the amendments fell far short of expectations. Their language was often nonbinding and frequently excluded the very products of greatest interest to developing countries (clothing, textiles, and agricultural products).¹⁴⁷ The benefits of preferential market access declined over time

as overall tariff levels decreased.¹⁴⁸ The infant industry protection provisions proved unworkable because they required developing countries to negotiate compensatory measures with affected trading partners.¹⁴⁹

The WTO, which succeeded the 1947 GATT, did not improve matters. In exchange for enhanced market access for developing country textiles and agricultural products, developing countries agreed to undertake new obligations in a variety of areas that were of particular interest to industrialized countries (including intellectual property, services, and investment).¹⁵⁰

Lamentably, the WTO did not succeed in dismantling the trade barriers that excluded developing country products from industrialized country markets.¹⁵¹ With respect to agricultural products, for example, industrialized countries maintained import barriers and actually *increased* subsidies in the years following the WTO's entry into force.¹⁵² As a consequence of these subsidies and import barriers, developing countries lost an estimated \$35 billion a year.¹⁵³ While the United States and the EU continued to subsidize domestic agribusiness and to utilize tariffs to exclude developing country agricultural products, the structural adjustment programs mandated by the IMF and the World Bank typically required developing countries to open up their markets to ruinous foreign competition.¹⁵⁴ In addition, the WTO restricted the ability of developing countries to use tariffs and subsidies to strategically promote potentially dynamic industries; dismantled the import barriers that had been used by developing countries to protect domestic industries from more technologically advanced foreign competitors; and imposed a host of new and costly obligations on developing countries in the areas of intellectual property, services, and investment.¹⁵⁵

In recognition of developing countries' dissatisfaction with the WTO legal framework, the ministerial declaration launching the Doha Round of WTO negotiations promised a review of the development-friendly provisions of the WTO in order to make them "more precise, effective and operational."¹⁵⁶ Developing countries organized themselves into coalitions in order to exert their collective influence on the trade negotiations.¹⁵⁷ However, little progress had been made on the issues of most concern to developing countries by the time of the 2003 Fifth Ministerial Conference in Can-

138. Faizel Ismail, *Rediscovering the Role of Developing Countries in GATT Before the Doha Round*, 1 LAW & DEV. REV. 49, 50, 55 (2008).

139. See PHILIPPE CUTLER, DIFFERENTIAL TREATMENT IN INTERNATIONAL ENVIRONMENTAL LAW 60 (2003).

140. Ismail, *supra* note 138, at 58-59; Carmen G. Gonzalez, *Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security, and Developing Countries*, 27 COLUM. J. ENVTL. L. 433, 441-45; YONG-SHIK LEE, RECLAIMING DEVELOPMENT IN THE WORLD TRADING SYSTEM 107-10 (2006).

141. See Ismail, *supra* note 138, at 59; Peter Lichtenbaum, *Reflections on the WTO Doha Ministerial: "Special Treatment" vs. "Equal Participation": Striking a Balance in the Doha Negotiations*, 17 AM. U. INT'L L. REV. 1003, 1009 (2002).

142. See Ismail, *supra* note 138, at 59-67.

143. CUTLER, *supra* note 139, at 61.

144. See Hirst, *supra* note 115, at 91.

145. See Ismail, *supra* note 138, at 65-67.

146. See *id.*

147. See LEE, *supra* note 140, at 37-38.

148. See *id.* at 37.

149. See *id.* at 29-30.

150. See Frank J. Garcia, *Beyond Special and Differential Treatment*, 27 B.C. INT'L & COMP. L. REV. 291, 297 (2004).

151. See *id.* at 298.

152. See Gonzalez, *Institutionalizing Inequality*, *supra* note 140, at 468.

153. See *World Trade Talks Near Collapse Over Farm Subsidies Row*, FIN. TIMES, Oct. 19, 1990, at 1.

154. See Gonzalez, *Trade Liberalization, Food Security, and the Environment*, *supra* note 134, at 457-60; 463-64 (2004); OXFAM, RIGGED RULES AND DOUBLE STANDARDS: TRADE, GLOBALISATION, AND THE FIGHT AGAINST POVERTY 95-91 (2002); Gonzalez, *Institutionalizing Inequality*, *supra* note 140, at 446-49, 459-68.

155. See Garcia, *supra* note 150, at 298; LEE, *supra* note 140, at 41-42.

156. See WTO, Ministerial Declaration of 14 November 2001, ¶ 44, WT/MIN(01)/DEC/1, 41 I.L.M. 746 (2002).

157. See Sonia E. Rolland, *Developing Country Coalitions at the WTO: In Search of Legal Support*, 48 HARV. INT'L L.J. 483, 492-99 (2007).

cun, Mexico.¹⁵⁸ Frustrated by the unwillingness of the United States and the EU to reduce their agricultural subsidies, delegates from Africa, Asia, and Latin America walked out.¹⁵⁹ The Doha Round of trade negotiations collapsed again in 2008 as a consequence of ongoing disputes between developed and developing countries over agricultural trade.¹⁶⁰

In light of the dependence of so many developing countries on agricultural production, the Doha Round of WTO negotiations must, at a minimum, require developed countries to reduce agricultural subsidies and open their markets to developing country agricultural products and allow developing countries to protect the livelihoods of poor and subsistence farmers.¹⁶¹ However, this is only the first step. As China's economic rise demonstrates, successful industrialization has historically required state intervention in the economy to subsidize and protect key industries until they were strong enough to compete in world markets. In order to advance rather than frustrate economic development, any reforms emerging from the Doha Round of WTO negotiations must give developing countries the permission to deploy subsidies, tariffs, quotas, local content requirements, technology transfer obligations, and other trade-restrictive measures to promote those industries most likely to contribute to long-term national well-being.¹⁶²

China, at least rhetorically, has emphasized that it shares a common history of colonial domination, poverty, and struggle for independence with Latin America.¹⁶³ China's official pronouncements support developing country efforts to transform the current WTO legal framework and recognize the importance of development.¹⁶⁴

However, countries that arrive at the pinnacle of economic success through protectionism have a disconcerting tendency to advocate free trade in order to prevent other countries from catching up.¹⁶⁵ As the 19th century German economist Friedrich List pointed out in connection with British industrial development:

It is a very common clever trick that when anyone has attained the summit of greatness, he *kicks away the ladder* by which he climbed up, in order to deprive others of the means of climbing up after him. . . . Any nation which by means of protective duties and restrictions on navigation has raised her manufacturing power and her navigation to

such a degree of development that no other nation can sustain free competition with her, can do nothing wiser than *to throw away these ladders* of her greatness, to preach to other nations the benefits of free trade, and to declare in penitence tones that she has hitherto wandered in the paths of error, and has now for the first time succeeded in discovering the truth.¹⁶⁶

Like Great Britain, the United States achieved its economic might through protectionist means, but became an ardent proponent of free trade once it achieved industrial supremacy after World War II.¹⁶⁷ By imposing free market reforms on developing countries through aid and trade policy and through the World Bank, the IMF, and the WTO, industrialized countries are, in effect, consigning developing countries to poverty.

It is unclear whether China, having achieved economic success, will kick away the development ladder or will work with other developing countries to promote a more just international economic order.

Notwithstanding its pro-development rhetoric, China has refused to assume a leadership role among developing countries and has asserted that it seeks to serve as a bridge between developed and developing countries.¹⁶⁸ For example, prior to the Cancun Ministerial Conference, China joined the alliance of approximately 20 developing countries (G-20) that sought to reform agricultural policy in the United States and the EU.¹⁶⁹ However, China maintained a low profile in the agriculture debate and allowed other developing countries, particularly Brazil and India, to lead the struggle against EU and U.S. agricultural protectionism.¹⁷⁰

China's positions in the Doha Round of WTO negotiations have been motivated largely by its national self-interest rather than the collective interests of developing countries. With respect to market access for nonagricultural commodities, for example, China proposed more flexible commitments, e.g., longer compliance time frames and/or lower tariff reductions, for newly acceded WTO members than for other developing countries, despite developing country objections.¹⁷¹ In connection with the review of the dispute settlement mechanism, China proposed that developed country WTO members be prohibited from bringing more than two cases per year against a particular developing country member and that the time frame for WTO disputes over safeguards and anti-dumping measures be shortened.¹⁷² These proposals advance China's self-interest in two distinct respects. First, in light of growing trade frictions between

158. See Eugenia McGill, *Poverty and Social Analysis of Trade Agreements: A More Coherent Approach?*, 27 B.C. INT'L & COMP. L. REV. 371, 376 (2004).

159. See Elizabeth Becker, *Poorer Countries Pull Out of Talks Over World Trade*, N.Y. TIMES, Sept. 15, 2003, at A1; Gretchen Peters, *In Cancun, a Blow to World Trade*, CHRISTIAN SCI. MONITOR, Sept. 16, 2003, at 6.

160. See Heather Stewart, *Tariffs: WTO Talks Collapse After India and China Clash With America Over Farm Products*, GUARDIAN, July 30, 2008.

161. See Carmen G. Gonzalez, *Deconstructing the Mythology of Free Trade: Critical Reflections on Comparative Advantage*, 17 BERKELEY LA RAZA L.J. 65, 69 (2006).

162. See *id.*; LEE, *supra* note 140, at 62-8. See generally PUTTING DEVELOPMENT FIRST: THE IMPORTANCE OF POLICY SPACE IN THE WTO AND INTERNATIONAL FINANCIAL INSTITUTIONS (Kevin Gallagher ed., 2005).

163. See Lanxin, *supra* note 108, at 45.

164. See Marcia Don Harpaz, *China and the WTO: New Kid in the Developing Bloc?*, International Law Forum of the Hebrew University of Jerusalem Law Faculty, Research Paper No. 2-07 (Feb. 2007), at 48-49, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=961768.

165. See CHANG, *KICKING AWAY THE LADDER*, *supra* note 82, at 4-5.

166. *Id.* (quoting Friedrich List). Drawing upon List's insight, Cambridge University economist Ha-Joon Chang has written extensively on industrialized countries' reliance on protectionism to achieve economic prosperity. See, e.g., *KICKING AWAY THE LADDER*, *supra* note 82; *BAD SAMARITANS*, *supra* note 67.

167. See CHANG, *KICKING AWAY THE LADDER*, *supra* note 82, at 5.

168. See Harpaz, *supra* note 164, at 50.

169. See *id.* at 51.

170. See *id.* at 51-52.

171. See *id.* at 53-56.

172. See Chan Kar Keung, *The Reform of the WTO Dispute Settlement Mechanism and the Participation of China*, 6 J. CHINESE & COMP. L. 203, 224-26 (2003).

China and the United States,¹⁷³ China's proposal must be regarded as an effort to limit the number of WTO complaints that the United States may bring against China.¹⁷⁴ Second, because China is the world's leading target of anti-dumping investigations, China appears to be laying the groundwork for rapid, offensive WTO action whenever WTO members impose anti-dumping measures on Chinese exports.¹⁷⁵ To its credit, China did advocate a dispute resolution reform proposal that does enjoy substantial developing country support. China proposed that in cases brought by developed country WTO members against developing country WTO members, if the developing country respondent is found not to have violated its WTO obligations, the developed country complainant should bear the developing country's legal costs.¹⁷⁶

Finally, China has taken positions directly contrary to the interests of other developing countries in order to advance its economic interests. For example, when the WTO Agreement on Textiles and Clothing required the elimination of textile quotas by 2005, it soon became apparent that China and India would wind up dominating textile imports to the detriment of other developing countries.¹⁷⁷ China blocked a proposal calling for a formal work group to study the impact of the elimination of the textile quotas, and opposed a proposal to enable developing countries to maintain their market share once quotas ended.¹⁷⁸ Indeed, China even opposed the WTO's proposed technical assistance program to help developing countries adjust to the new regime out of concern that this program would instruct developing countries on the textile agreement's safeguard provisions.¹⁷⁹

China is a relative newcomer to the WTO, and its role in the organization is still evolving. By virtue of its economic power and participation in the so-called BRIC group (Brazil, Russia, India, and China) of developing countries, China will undoubtedly exert a major impact on the evolution of international trade law and international trade and financial institutions. However, the nature of this impact remains uncertain. While the limited evidence available to date suggests that China is likely to become an advocate for the status quo rather than a leader in the struggle to create a more just economic order, it is too early to make a definitive assessment.

V. The Challenge of Sustainable Development

In sharp contrast to China's uncertain role in the evolution of international trade law, the impact of China's rise on sustainable development is becoming increasingly clear.

In its influential 1987 report, the World Commission on Environment and Development defined sustainable development as "development that meets the needs of the present

without compromising the ability of future generations to meet their own needs."¹⁸⁰ Another widely accepted definition of sustainability is "improving the quality of life while living within the carrying capacity of supporting ecosystems."¹⁸¹ Despite its vagueness, sustainable development is a useful concept because it underscores the indivisibility of social and economic development and environmental protection.¹⁸²

The greatest long-term threat to sustainable development is the resource-intensive, growth-at-any-cost economic model pioneered and promoted by the United States and other wealthy countries. Until now, this Article has considered the threat posed by this economic model to the domestic environment in China and in Latin America. This part discusses the implications of this model for the global environment.

Mahatma Gandhi observed long ago that the planet does not have the ecological capacity to permit every citizen of the world to enjoy the wasteful, consumption-driven lifestyle of the West.¹⁸³ The industrialization of England, he noted, had required the enslavement and exploitation of large parts of the world.¹⁸⁴ If India were to adopt a similar development path, he warned, "it would strip the world bare like locusts."¹⁸⁵

The world's wealthiest countries and its rising economic powers (China and India) are currently consuming a disproportionate share of the world's natural resources by importing primary products and exporting wastes (to other countries or to the global commons), in addition to drawing upon their domestic natural resource endowments.¹⁸⁶ China, the EU, India, Japan, and the United States are currently using 75% of the planet's biocapacity—the amount of biologically productive land required to supply resources and absorb wastes.¹⁸⁷ This situation is sustainable only if poor countries freeze their economic development and continue to use only a fraction of their biocapacity.¹⁸⁸ If all countries of the world were to pursue growth at any cost, they would quickly exceed the carrying capacity of the world's ecosystems and would provoke global environmental catastrophe.¹⁸⁹

Climate change is perhaps the most well-known example of human activity exceeding the ecological limits of the planet. After decades of debate, the reality of climate change is now indisputable. As the Intergovernmental Panel on Climate Change (IPCC) explained in a recent report, "warming of the climate system is unequivocal, as is now evident from observation of increases in global average air and ocean

173. See generally Chad P. Brown, *U.S.-China Trade Conflicts and the Future of the WTO*, 33 FLETCHER F. WORLD AFF. 27 (2009).

174. See Harpaz, *supra* note 164, at 59-60.

175. See *id.* at 60.

176. See Chan Kar Keung, *supra* note 172, at 225.

177. See Harpaz, *supra* note 164, at 63-64.

178. See *id.*

179. See *id.* at 64-65.

180. See WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* 43 (1987).

181. See ANDREW DOBSON, *FAIRNESS AND FUTURITY* 23 (1999).

182. See DAVID HUNTER ET AL., *INTERNATIONAL ECONOMIC LAW AND POLICY* 200 (2007).

183. See RAMACHANDRA A. GUHA, *HOW MUCH SHOULD A PERSON CONSUME? ENVIRONMENTALISM IN INDIA AND THE UNITED STATES* 231-32 (2006).

184. See *id.* at 231.

185. See *id.*

186. See Flavin & Gardner, *supra* note 97, at 16; Carmen G. Gonzalez, *Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade*, 78 DENV. L. REV. 979, 1001-03 (2001).

187. See Flavin & Gardner, *supra* note 97, at 16.

188. See *id.*

189. See *id.* at 18; Gonzalez, *Beyond Eco-Imperialism*, *supra* note 186, at 1003.

temperatures, widespread melting of snow and ice, and rising global average sea level.¹⁹⁰

Developed countries are the major contributors to global warming. While China and the United States are the world's largest *current* emitters of carbon dioxide (CO₂),¹⁹¹ developed countries account for 86% of the world's *cumulative historic* CO₂ emissions; developing countries (including China) represent only 14%.¹⁹² Moreover, the per capita CO₂ emissions of the United States are approximately six times greater than those of China.¹⁹³

Notwithstanding their limited responsibility for producing climate change, developing countries will be disproportionately harmed by climate change, due to their economic dependence on agricultural production, their vulnerable geographic locations, and their limited resources for adaptation and response to disasters, such as floods and hurricanes.¹⁹⁴ Within each country, the communities most directly affected will likely be members of marginalized or subordinated populations, including the poor, women, and members of racial, ethnic, and religious minorities.¹⁹⁵ As Hurricane Katrina in the United States demonstrated, even in wealthy countries, racial minorities and the poor are often inadequately protected against environmental hazards and forced to resort to self-help when environmental disasters strike.¹⁹⁶

One of the central dilemmas for the international community is how to create incentives for China, the United States, and other countries to accept and enforce binding commitments to reduce greenhouse gas (GHG) emissions.¹⁹⁷ As China and the United States continue to blame each other for the international stalemate on climate change,¹⁹⁸ the planet teeters on the brink of catastrophe, with the world's most vulnerable people bearing the greatest risk.¹⁹⁹

Some scholars contend that China has become a modern day imperial power—scouring the globe for natural resources, exploiting less powerful nations, and rejecting international environmental agreements that would curb its profligate consumption of the world's natural resources.²⁰⁰ Others point out that China has become a popular offshore destination for the industrialized world's most pol-

luting industries.²⁰¹ In other words, industrialized countries have achieved domestic environmental improvements (such as clean air and, in some cases, lower GHG emissions) while maintaining unsustainable levels of natural resource consumption by shifting their dirtiest industries to China and to other developing countries.²⁰² Indeed, recent studies confirm that the United States has outsourced many of its GHG-emitting industries to developing countries²⁰³ and that at least 30% of China's GHG emissions are attributable to the production of manufactured goods consumed primarily in developed countries.²⁰⁴ Furthermore, when one takes into account the energy embodied in traded goods, China emerges as a net exporter of energy—in sharp contrast to its popular image as an insatiable energy consumer.²⁰⁵

These studies suggest that a post-Kyoto climate change agreement must continue to allocate the lion's share of responsibility for financing GHG abatement to the EU, the United States, and other developed countries based on production of GHGs (current and historic) and on consumption of products whose manufacture elsewhere in the world resulted in GHG emissions. While estimating GHG emissions based on consumption rather than production significantly lowers China's contribution to global warming, it does not absolve China from responsibility. China's projected increases in GHG emissions are so huge that China's emissions, when added to the GHGs already in the atmosphere, are likely to trigger catastrophic climate disruptions, even if all other countries achieve near-zero emissions.²⁰⁶

Climate change is both an environmental issue and a development issue, because its disproportionate impact on poor countries and vulnerable populations poses a direct threat to global efforts to alleviate poverty and improve economic and social well-being. Climate change is also a development issue, because the greatest future increases in GHG emissions are predicted to come from developing countries and because the problem cannot be solved without the participation of developing countries.²⁰⁷

The development implications of climate change were brought into sharp relief in December 2009, when Brazil, China, India, South Africa, and the United States negotiated a nonbinding agreement (the Copenhagen Accord) at the Copenhagen climate summit.²⁰⁸ Representatives from

190. See Intergovernmental Panel on Climate Change, *Climate Change 2007: The Physical Science Basis*, Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (2007), Summary for Policy-Makers, at 5, <http://www.ipcc.ch/pdf/assessment-report/ar4/wg1/ar4-wg1-spm.pdf>.

191. See *Gas Exchange: CO₂ Emissions 1990-2006*, 447 NATURE 1038, 1038 (2007).

192. See RUCHI ANAND, INTERNATIONAL ENVIRONMENTAL JUSTICE: A NORTH-SOUTH DIMENSION 30 (2004).

193. See Michael Vandenbergh, *Climate Change: The China Problem*, 81 S. CAL. L. REV. 905, 918 (2008).

194. See ANAND, *supra* note 192, at 35-41.

195. See *id.* at 39.

196. See Center for Progressive Reform, *An Unnatural Disaster: The Aftermath of Hurricane Katrina* (2005) (Center for Progressive Reform White Paper), at 23-40, http://www.progressivereform.org/Unnatural_Disaster_512.pdf.

197. See Vandenbergh, *supra* note 193, at 907.

198. See *id.* at 908-11, 923-28.

199. See Ruth Gordon, *The Climate of Environmental Justice: Taking Stock: Climate Change and the Poorest Nations: Further Reflections on Global Inequality*, 78 U. COLO. L. REV. 1159, 1589-99 (2007).

200. See GUHA, *supra* note 183, at 238-39.

201. See Jiahua Pan et al., *China's Balance of Emissions Embodied in Trade: Approaches to Measurement and Allocating International Responsibility*, 24 OXFORD REV. ECON. POL'Y 354, 374 (2008).

202. See Muradian & Martinez-Alier, *supra* note 130, at 286; Muradian & Martinez-Alier, *supra* note 135, at 15.

203. See Rihit Chatterjee, *Outsourcing U.S. Greenhouse-Gas Emissions*, ENVTL. SCI. & TECH., July 15, 2007, at 4834, 4834-35. Curiously, even stalwart environmentalists such as Lester Brown have applauded the recent U.S. drop in carbon emissions (after a century of ever-increasing emissions) without mentioning the outsourcing of these emissions to China and other developing countries. See Lester Brown, *On Energy, We're Finally Walking the Walk*, WASH. POST, Sept. 20, 2009.

204. See Pan et al., *supra* note 201, at 371, 373-74.

205. See *id.* at 374.

206. See Vandenbergh, *supra* note 193, at 908.

207. See Matthew Clarke, *The Climate and Development Nexus*, 4 ICAFI J. ENVIRON. ECON. 21, 33 (2006).

208. See John M. Brodeur, *Many Goals Remain Unmet in 5 Nations' Climate Deal*, N.Y. TIMES, Dec. 19, 2009; see COPENHAGEN ACCORD OF 18 DECEMBER 2009,

the developing countries most vulnerable to climate change (including African nations and small island states) denounced the Copenhagen Accord's lack of specific GHG reduction commitments and the exclusion of G-77 nations from the negotiating process.²⁰⁹ Some observers claim that China deliberately sabotaged the Copenhagen summit; others point the finger at the United States and other wealthy countries.²¹⁰ Supporters of the Copenhagen Accord emphasize that it does pledge billions of dollars to help developing countries adapt to climate change and that it represents an important first step toward the negotiation of a binding agreement that is both equitable and ambitious.²¹¹

Climate change is only one example of the myriad ways that human economic activities are exceeding ecosystem limits and producing a variety of alarming consequences, including unprecedented extinction of species; widespread chemical contamination of land, air, water, and human bodies; grave shortages of freshwater; and rapid degradation and desertification of agricultural lands.²¹² If we are to achieve social and economic development without exceeding the limits of the planet's seriously degraded ecosystems, it is important to acknowledge that the resource-intensive, growth-at-any-cost economic model is no longer viable. Instead of demonizing China as an imperial power or depicting it as victim of an unjust international division of labor, we must devise a radically different paradigm of economic development that places human well-being, including the right to a healthy environment, at its core rather than relying on GDP as a proxy for human flourishing.

One of the benefits of the growing economic ties between China and Latin America is the opportunity to formulate a Southern agenda on trade and environment under the framework of sustainable development that integrates economic development, environmental protection, and poverty alleviation. Such an agenda would steer the trade and environment debate toward developing country concerns and away from efforts to impose northern labor and environmental standards on developing countries in a manner reminiscent of the IMF's imposition of the Washington Consensus on debtor nations.²¹³ With the Doha Round of WTO negotiations at an impasse, China and Latin America should use

bilateral trade and investment agreements as an opportunity to innovate and experiment, rather than merely replicating the trade and investment agreements developed by the United States and other wealthy nations. While an analysis of China's bilateral trade and investment agreements with Latin American nations is beyond the scope of this Article, it is significant that China has incorporated environmental, labor, and social security cooperation into some of its trade agreements²¹⁴ and has recognized the importance of securing regulatory space for environmental protection.²¹⁵

However, if Sino-Latin American economic relations are to embrace sustainable development and to reject the North-South colonial model, it is vitally important that any future agreements contain additional measures to reconcile economic, social, and environmental objectives. For example, China and Latin America might break the investor protection-centered paradigm of bilateral investment agreements and more effectively use investment as a means to broader social ends by crafting agreements that specify the rights and obligations of the foreign investor, the host state, and the home state—with sustainable development as the express overarching goal.²¹⁶ This approach could be used to impose standards of conduct on transnational corporations, to require the home country of the foreign investor to more closely monitor and regulate the extraterritorial activities of its companies, and to expand the rights of victims of environmental, labor, and other abuses.²¹⁷ Furthermore, trade and investment agreements between China and Latin America might provide that environmental, labor, and human rights treaties will prevail in the event of conflict with the provisions of trade and investment agreements and could more

available at http://unfccc.int/files/meetings/cop_15/application/pdf/cop15_cph_auv.pdf.

209. See Brodeur, *supra* note 208; *Copenhagen Talks: Climate Deal Faces Poor Nations' Fury*, *TAIPEI TIMES*, Dec. 20, 2009, at 6.

210. Mark Lynas, *How Do I Know China Wrecked the Copenhagen Deal?*, *GUARDIAN* (U.K.), Dec. 22, 2009, available at <http://www.guardian.co.uk/environment/2009/dec/22/copenhagen-climate-change-mark-lynas>; Bernaditas de Castro Muller, *Pressure on Poor at Copenhagen Led to Failure, Not Diplomatic Wrangling*, *GUARDIAN* (U.K.), Dec. 23, 2009, available at <http://www.guardian.co.uk/environment/blog/2009/dec/23/g77-copenhagen-bernaditas-de-castro-muller>.

211. See Brodeur, *supra* note 208; *Copenhagen Talks*, *supra* note 209.

212. See SPETH, *supra* note 95, at 1-9.

213. See Magda Shahin, *To What Extent Should Labor and Environmental Standards Be Linked to Trade?*, 2 L. & DEV. R. 27, 35-36 (2009) (describing the reasons that developing countries have generally opposed the incorporation of labor and environmental standards into trade agreements); Gonzalez, *Beyond Eco-Imperialism*, *supra* note 186, at 1004-09 (explaining why developing countries have regarded the use of unilateral trade restrictions, eco-duties, and upward harmonization of environmental standards to improve the environmental performance of the global South as manifestations of imperialism).

214. China has signed free trade agreements with Chile and Peru and bilateral investment treaties (BITs) with 15 nations in Latin America and the Caribbean. For a complete list of BITs signed by China as of June 1, 2009, see http://www.unctad.org/sections/dite_pcbb/docs/bits_china.pdf. Both the China-Peru and China-Chile free trade agreements provide for cooperation on labor, social security, and environmental issues. See Free Trade Agreement Between the Government of the Republic of Peru and the Government of the People's Republic of China, Art. 161 (2009) (not yet in force), available at http://www.sice.oas.org/TPD/PER_CHN/Texts_28042009_e/index_e.asp; Free Trade Agreement Between the Government of the People's Republic of China and the Government of Chile, Art. 108 (2005), available at http://www.sice.oas.org/Trade/CHL_CHN/CHL_CHN_e/chilechinind_e.asp.

215. See Jarrod Hepburn et al., *Sustainable Development in Regional Trade and Investment Agreements: Policy Innovations in Asia?*, at 40-41 (Centre for International Sustainable Development Law, June 28, 2007).

216. See, e.g., Aaron Crosby et al., *Investment and Sustainable Development: A Guide to the Use and Potential of International Investment Agreements* 29-35 (International Institute for Sustainable Development (IISD) 2004). The IISD has drafted a model investment agreement and an accompanying handbook with numerous suggestions on ways to balance investor rights and host country policy space. See <http://www.iisd.org/investment/model/>; http://www.iisd.org/pdf/2005/investment_model_int_handbook.pdf.

217. For example, bilateral investment agreements could impose minimum performance requirements in the area of labor, environment, and human rights (consistent with national laws and international standards); could expand civil remedies available to those injured by the foreign investor's noncompliance; could mandate that investments have significant linkages with the local economy so as to promote economic development through job creation, technology transfer, training, and use of local inputs (to the extent permitted by the WTO Agreement on Trade-Related Investment Measures); and could allow counterclaims against a foreign investor in investor-state arbitrations for damages caused by the foreign investor's breach of its obligations. See Crosby, *supra* note 216, at 29-35; Howard Mann, *International Investment Agreements, Business, and Human Rights: Key Issues and Opportunities* 13-15 (IISD 2008).

explicitly protect the state's right to regulate in the public interest.²¹⁸ Finally, China and Latin America should mandate social and environmental impact assessments of both current and proposed trade and investment agreements, and should provide for public participation and consultation during the impact evaluation and treaty negotiation process.²¹⁹ These suggestions are illustrative rather than exhaustive, and are intended to emphasize the opportunities for bilateral and regional South-South innovation in the area of trade and investment, so as to foster rather than frustrate social, economic, and environmental goals and to create a template for broader South-South cooperation.

VI. Conclusion

The demise of the Washington Consensus and the rise of China as a major economic power suggest that a return to state-led economic development is imminent in Latin America and elsewhere in the developing world. While Latin America may benefit from emulating some of China's unorthodox development strategies, the international trade regime may pose obstacles to the implementation of some of these strategies. In addition, China's economic development has been based upon the resource-intensive, consumption-driven, growth-at-any-cost economic model pioneered by the United States and other wealthy countries. This economic strategy has produced widespread environmental degradation, threatens to produce irreversible harm to the ecological systems necessary to support human life and human economic activity, and may reinforce resource-extractive models of trade and investment in Latin America. Rather than portraying China as a threat to Latin America's development or idealizing it as an economic model, this Article proposes that China and Latin America work collaboratively with other nations to develop alternative paradigms of economic development and alternative models of environmental and economic governance that improve the quality of life while respecting ecological limits.

218. See Hepburn, *supra* note 215, at 52-53.

219. *See id.*