ONE GOAL, MULTIPLE STRATEGIES:
ENGAGEMENT IN SINO-AMERICAN WTO ACCESSION NEGOTIATIONS

by

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ABSTRACT

During the post-cold war period there has been much talk in the U.S. of the benefits of engaging countries with whom the U.S. has had a history of confrontational relations. While containment was often the preferred policy during the cold war the argument is now made that these countries need to be brought into international institutions in order to make relations with them more cooperative and predictable. It is argued that doing so serves to make these countries status quo powers that will not actively attempt to revise the international system.

International trade theory and U.S. trade policy have not been exceptions to this trend. Talk of engagement can be found in the ongoing bilateral WTO accession negotiations that the U.S. is currently participating in with both Russia and Vietnam. However, the complexity of such negotiations often leads the U.S. to utilize negotiating strategies that appear to belie the rhetoric of engagement. As a result, questions have been raised in regards to the commitment of the U.S. to a policy of engagement. This is misguided in that it assumes that variance in the strategies of engagement utilized by the U.S. qualifies as evidence that multiple goals are being pursued. In fact, variation across sectors of trade, in terms of both the negotiating power of the U.S. and the strength of the domestic constraints it is subject to, ensure that the utilization of multiple strategies in the pursuit of one overarching goal of engagement is necessary.

The Sino-American WTO accession negotiations that stretched over the period of 13 years is a strong case with which to test this argument. The size and scope of Sino-American trade relations ensured that terms had to be reached in every significant sector of trade. The fact that significant sections of the American political elite are wary of a
rising China also makes it an important case with which to evaluate engagement. Lastly, the timing of this case during the period when the post-cold war policy of engagement was being formulated adds to our confidence that it is a significant case with which to evaluate engagement and trade theory.
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1. Historical Background

When the People's Republic of China (PRC) formally applied to join the General Agreement on Tariffs and Trade (GATT) in July of 1986 there was much cause for optimism that accession would be brought about quickly. As it was necessary that bilateral deals first be signed with interested GATT contracting parties the U.S. and China initiated bilateral negotiations. While 36 other countries also requested bilateral negotiations many of these contracting parties only required negotiations in one or two issue areas of particular importance to their economy. Additionally, many of these contracting parties, including the European Union (EU), followed the negotiating lead of the U.S. and accepted that the Sino-American bilateral deal would largely dictate the terms that China acceded on.

Cold war balancing issues vis-à-vis the USSR and Bush Sr.'s interest in China policy ensured that these initial negotiations moved along quickly. Three rounds of bilateral talks took place before the GATT working party had met for the first time.\(^1\) By the time the working party began to assess China's memorandum on accession the U.S. and China had already held a fourth round of bilateral talks which saw them exchange frameworks of the draft of China's protocol.\(^2\) These initial negotiations were so successful that after the fifth round of bilateral talks it was necessary that they be slowed down in order to allow the GATT working party studying Chinese accession to catch up.\(^3\) In fact, up until mid-1989 the “outline that had emerged of the prospective protocol

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\(^1\) Hui Feng. The Politics of China's Accession to the WTO. (New York: Routledge, 2006), 140.

\(^2\) Ibid., 141.

would not force China to adopt market principles to become a contracting party of GATT”.  

The scale of what this would have meant for China’s accession can only be appreciated by recognizing the number of extensive reforms that the need to conform to market economy principles has necessitated. This process has caused great difficulty as provincial officials and elites have fought Beijing every inch of the way in order to protect their entrenched economic interests. While Beijing has wanted to make many of these reforms for its own reasons the pace of change that WTO accession has dictated has often stretched Beijing’s resources and legitimacy. 

With these considerations in mind it should come as no surprise that many expected China to accede by the end of 1989. As a result, engagement during this period was largely unproblematic. The political elite was largely in agreement in regards to U.S. national interests vis-à-vis China, the President provided strong leadership, and in the late 1980s 12% of the American public held a very favourable view of China with an additional 60% holding a favourable view. As a result, the implementation of a policy of engagement posed minimal problems. The bipolar international system of the day also ensured that during this period the goals and logic of engagement were clear and easy to justify. Regardless of the opinions policymakers and elected officials had of China’s system of government they were nearly uniform in their agreement with Nixon’s policy.

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of using relations with China to hedge against the U.S.S.R. As a result, enhanced economic relations with China was held to serve the national interest.

The crackdown at Tiananmen Square on June 4, 1989 brought the genial pace and content of negotiations to a quick end. American opinion, both public and elite, felt disillusioned with a regime that they had felt was slowly changing to become more like the U.S. The violence was therefore taken to be a betrayal of the basis of Sino-American relations since 1972. By the time serious negotiations resumed in 1992 the international system had changed considerably: the cold war had ended, China's trade surplus with the U.S. had doubled, several other non-market economies were also vying to accede to GATT, and there was growing uncertainty in regards to whether or not China posed a long-term challenge to American hegemony. While public opinion of China partially recovered from the doldrums of August 1989—when only 5% of the population reported a very favourable view and 29% reported a favourable view—during the period of 1993-1999 average public opinion was still only 6% very favourable and 34% favourable.6

These new concerns were reflected in the changed pace and tone of the bilateral negotiations that resumed in 1992. Prior to Tiananmen the U.S. and other Organization for Cooperation and Development (OECD) members had believed that the degree to which reforms had moved forward by the time of accession was of limited importance as China's leaders were dedicated to reform and had the necessary political power and legitimacy to implement them.7 As this attitude lost currency American negotiators instead began to argue that if China was not required to undergo reforms upon accession

6 Ibid. 384.
7 Jacobsen and Oksenberg, "China's Participation in the IMF, the World Bank, and the GATT." 102.
the bargaining power of the contracting parties to bring about such changes at a later time would be severely diminished.\textsuperscript{8}

The bilateral relationship also came under heavy fire from the Congress which wanted to punish China for its human rights record. Even the trade focused United States Trade Representative (USTR) spoke of the need for China to agree to clear commitments to follow GATT rules, put them in place faster than other developing countries had, and insisted that accession proceed on "commercially viable" terms.\textsuperscript{9} Negotiations were also made more complex by the launching of the World Trade Organization (WTO) which brought issues such as Intellectual Property Rights (IPR), market access, and telecommunications under the rubric of trade negotiations. The fact that most other trading partners were not willing to come to bilateral terms with China until after the U.S. had done so ensured that the new USTR negotiating stance vis-à-vis China had an immediate effect on the likelihood of its accession.

Additionally, American domestic politics were altered by the election of Clinton who had been highly critical of Bush Sr.'s closeness to China's elite leaders and his unwillingness to punish the PRC more stringently for its human rights record. As a result, Clinton pledged to link annual approval of China’s Most Favoured Nation (MFN) trade status —meaning that China is offered terms of trade that are equally favourable as those extended to other trading partners—to progress on human rights. With the succession of

\textsuperscript{8} Margaret M. Pearson. "China in Geneva: Lessons from the Earliest Years in WTO." 177.
administrations, and apparent change in policy, the future and logic of engagement was brought into question.

Ultimately, it was not until November, 1999 that the United States and China were able to come to an agreement that paved the way for Chinese accession in late 2001. China ultimately agreed to deep concession in sectors of trade of importance to the U.S. in order to gain American support for its bid. While the terms of the agreement demanded a lot of China a wide consensus exists that the final bilateral deal is evidence that a decision was made that a foreign policy based on containment was not in the national interest of the U.S. There are three convincing reasons to accept this conclusion: commercial considerations, the history of East Asia, and policy disagreements.

First and foremost, containment would only have worked if it could have been multilaterally imposed. Attempts by the United States to unilaterally contain China would have led to American companies losing out on Chinese commercial opportunities to their European, Russian, Japanese, and Korean counterparts.\(^\text{10}\) Due to their desire to enhance commercial relations with China, and limited interest in lining up with the United States, France and Russia could not have been expected to support a policy of containment. A unilateral attempt at containment would have therefore led to more Chinese aerospace contracts with France’s Airbus at the expense of America’s Boeing.

Second, the history of East Asia ensured that Japan and Korea would not have been willing to participate in an American led alliance that had the explicit goal of containing China. Henry Kissinger went as far as to state that: “A containment policy

towards China under the current circumstances is a pipe dream. It would have no Asian takers, especially Vietnam”. Engagement, in contrast, necessitates minimal coordination as it is the policy that all countries would have followed if free from American interference. It is also likely that containment would have been opposed by some supporters of Taiwan due to the fact that so many Chinese exporters are Taiwanese owned. Additionally, the fact that China’s rise is resulting from internal economic trends ensures that even if containment could be imposed on a multilateral basis it would merely slow down China’s economic growth, not prevent it. Containment would therefore ensure that once China has become more powerful it will view the U.S. as an enemy.

Third, even if these practical constraints were not in place it is questionable whether containment would have constituted sound policy. Joseph Nye Jr. argued that treating China like an enemy involved the risk of turning it into one. If there was only a 50% chance that in the future China would become an enemy a policy of containment would effectively have discounted 50% of possible potential Chinese behaviour. Furthermore, once enacted a policy of containment would have been difficult to reverse, greatly limiting America’s flexibility to respond to a highly complex bilateral relationship. A policy of containment would have made it impossible to gain Chinese

13 Ibid. 442.
16 Ibid. 94.
support for solving international and regional problems like proliferation and North Korea. Evidence that containment lost out is also provided by the fact that its proponents have spoken out against Clinton’s policy of engagement. John J. Mearshimer has argued that Clinton followed a misguided policy of engagement that the Bush administration has wisely begun to roll back. Robert Kagan also published a critique of Clinton’s engagement policy in *The Weekly Standard* in late 1997 in which he advocated containment.

Additionally, there are also four compelling reasons why engagement as a strategic goal and Chinese accession to the WTO serve American interests: common economic interests, burden sharing, a desire to rein in China’s elites, and therefore make it a more assuredly status quo power. First, the fact that China’s economic interests are largely complementary with those of the advanced industrial countries, not other developing countries, leaves it with little room for revisionism as a member of the international economic order. In fact, China’s dependence on export led growth for its modernization program will make it an ally in America’s attempt to further liberalize the world economy. One example of this is the fact that the U.S. and China share an interest in gaining improved access to difficult markets like South Korea and Japan.

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acceding to the WTO China has brought 10 cases to the dispute settlement mechanism in 2002, and an additional 20 in 2003.\textsuperscript{22}

Second, while in the past the burden of pressuring China to follow international economic norms fell largely on the shoulders of the U.S. WTO accession serves to internationalize it. By bringing Sino-American economic relations under the authority of the WTO it is possible that China will cease to see the U.S. as attempting to force it to live up to its own unilaterally set standards. Institutionalizing Sino-American trade relations therefore serves to render trade disputes less personal and more rules based.

Third, China’s accession is also important to America’s interest in making China’s foreign policy more predictable and less threatening to U.S. security. It has been argued that undemocratic countries where the median economic interest has limited influence in political institutions are more likely to pose a security threat to democracies.\textsuperscript{23} This is due to the fact that economic interests that benefit from international linkages can not be depended on to successfully pacify their nation’s foreign policy. Extensive economic relations with such countries are problematic for democracies as their median economic interest do enjoy influence in the policy making process. This is due to the fact that domestic economic actors that benefit from ties with non-democracies will act to protect their interests. This can hinder the ability of democracies to take credible balancing positions in the face of aggression by non-democracies.\textsuperscript{24} This does not necessarily mean that cutting economic ties to non-democracies will always

\textsuperscript{22} Ibid., 38.
\textsuperscript{24} Ibid. 12.
have a positive effect on security. Doing so can further weaken the influence of economic interests that benefit from international trade. This runs the risk of leaving domestic interests who have nothing to lose if conflict comes about to dominate the formulation of foreign policy. Under these circumstances strengthening the influence of internationalist economic interests at the expense of more conflictual interests by building up international economic linkages is therefore often preferable to cutting economic ties.

As a result, it has been argued that since the Second World War “political systems, economies, and societies exposed to contact with the U.S. have become more open, more tolerant of dissent, more accountable, more prosperous, more democratic, and more supportive of U.S. objectives”. Wherever the U.S. has chosen to cut ties, or foreign governments have done so, support for outcomes favoured by the U.S. has diminished. As a result, engagement with China will have more beneficial effects than containment.

China’s dominant political and economic interests—the labour rich coastal provinces, light industry, and, to a lesser extent, some inland provinces, and heavy industry—are internationalist and therefore stand to benefit from enhanced integration with the West. As these economic interests require extensive foreign investment and trade closer economic relations with the West will likely lead to an improvement in security relations by making China’s development more dependent on healthy international economic relations. China’s dependence on trade with the U.S. for 9.5% of its GDP also makes it possible for Chinese leaders to make credible commitments to

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avoiding confrontation and to valuing cooperation as they are held to serve their own interests as well.\textsuperscript{28}

This will help bring about the fourth reason that engagement benefits the U.S. A large stake in the markets of other great powers will leave China with less cause to consider using aggressive policies to achieve economic goals. Engagement therefore will help make China a more assuredly status quo power by strengthening its internationalist economic sectors and with them the predictability of Chinese foreign policy. The small stake the U.S. has in China's economy, amounting to only 0.9\% of U.S. GDP, also ensures that a policy of engagement involves minimal risk for the U.S.\textsuperscript{29}

While the U.S. can no longer manage Sino-American relations according to the dictates of an overarching foreign policy goal, as the cold war did in the past, it can be argued that engagement has provided a second best option with which to give shape and direction to bilateral relations.

2. Engagement

It therefore appears reasonable to accept that engagement as a strategic goal won out over containment. Furthermore, coupling this engagement goal with the U.S.'s overarching goal of maximizing its own commercial interests leads us to the conclusion that the strategic goal of the U.S. in China WTO accession negotiations was to engage China enough to make it a status quo member of the international system while simultaneously maximizing U.S. commercial gains.

\textsuperscript{28} Papayoanou and Kastner, "Assessing the Policy of Engagement with China." 19.
\textsuperscript{29} Ibid., 19.
However, it is important to avoid conflating the overarching goal of engagement with the strategies used to attain it. While the goal of the U.S. in the negotiations can be taken to be static this is not to say that there was no variance in the strategies used in its pursuit. In fact, the variance found in U.S. economic interests across sectors of trade, and its ability to attain those interests, ensured that multiple strategies of engagement were necessary if the U.S. was to attain the best deal possible. While intermediate negotiating power and weak domestic constraints in one sector would dictate that a more conciliatory stance would qualify as engagement, high negotiating power and strong domestic constraints in another sector ensure that a less conciliatory stance can also qualify as engagement. Past literature that has failed to distinguish between goals and strategies has therefore fallen into the trap of ascribing different goals to the U.S. on the basis of evidence that merely shows that a number of strategies were used in the pursuit of one overarching goal.

Engagement is the sort of fuzzy concept that, with a little stretching, can be made to describe a wide variety of behaviours. This is seen in the early years of the Clinton administration during which time serious doubt seems to have existed in regards to the shape engagement should take. In fact, it was only in 1995 that Clinton finally fell in line with Bush Sr.'s China policy by delinking MFN and human rights. As a result engagement was “initially tentative and guarded without any clear decisions about its breadth and depth” taken. At the very least it is certainly true that engagement does not

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advocate a specific policy towards trade relations with China.\textsuperscript{31} This is supported by the fact that while public opinion and U.S. business interests towards China can be taken as largely constant during the period of 1992-1999 considerable variation is found in the negotiating strategies used by the U.S.

This is made even fuzzier by the fact that accession in and of itself does not tell us much about the goal and strategies of engagement. Gowa has convincingly argued that, due to security externalities, free trade will be more common within alliances and less common across them.\textsuperscript{32} This logic would lead one to believe that if the end of the cold war led the U.S. to cast China in the role of a potential strategic competitor, instead of as a balancing state, China's accession to the GATT/WTO would cease to be in America's interest. However, it should be noted that few serious policy makers advocated denying accession to China. This is due to the increasing importance of the Chinese economy. It has therefore been argued that regardless of whether the United States desired to contain or engage China it was necessary that it be brought into GATT/WTO. A failure to do so had the potential to weaken the entire global trading order as China's economic growth would have led states to sign bilateral trade agreements with it.\textsuperscript{33} Additionally, if China did not liberalize its economy while continuing to expand its exports other countries would have been forced to adopt countervailing protectionist measures.\textsuperscript{34}

The fact that it is likely that containment would also have led to accession makes a close look at the negotiating process and the final terms that were agreed to necessary.

\textsuperscript{31} Liu. "Chinese Foreign Policy in Transition. 347.
\textsuperscript{33} Robert S. Ross and Greg Mastel. "Enter the Dragon" \textit{Foreign Policy} no. 104 (Autumn 1996) 22.
\textsuperscript{34} Robert S. Ross. "Engagement in U.S. China Policy." 188.
Process tracing and close examination of the terms the U.S. was willing to agree to and the constraints it was subject to are therefore the best avenue by which to evaluate what engagement meant and how it was pursued.

Furthermore, engagement has been advocated by a large number of scholars, policy makers, and politicians for a variety of often contradictory reasons. While all have supported the goal of engagement—further integrating China into the international system on terms favourable to U.S. commercial interests—each has added their own prefix to describe their conception of the strategy of engagement that should be adopted. There is a wide diversity in terms of the mix of carrots and sticks these differing strategies advocate using to do so. While some variants argue that the U.S. should be willing to offer overly favourable terms others posit that it should be used to wring as many concessions out of China as possible. Furthermore, while some see it as a learning process through which both Chinese and American interests will be shaped others conceptualize it in terms of traditional nuts and bolts negotiations. As a result, while the goal of engagement is clear it is necessary to discuss what engagement means at the strategic level in order to create a typology of its variants.

Cast broadly engagement describes a strategy that has rejected the idea that conflict with China is inevitable.35 It therefore seeks to interact with China in the hope that bringing it into the international system will make it a more dependable, predictable partner with whom the threat of conflict is greatly diminished. It is informed by the idea

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that if China “is treated like a partner it will not become an enemy”. As a result, it seeks to use “non-coercive means to ameliorate the non-status quo elements of a rising major power’s behaviour. The goal is to ensure that [its] growing power is used in ways that are consistent with peaceful change in regional and global order”. One of the most important and visible ways this can be done is by giving China a “greater stake in the success of institutions and regimes that foster global order and economic growth”. While convincing China to accept international norms is beneficial it is far more likely that these norms will be internalized if it is involved in the process of “crafting, monitoring, and ensuring their implementation”. This will ultimately serve to strengthen the American led economic order by reducing Chinese distrust of U.S. intentions.

While the number of prefixes that have been used to qualify engagement are almost endless they can meaningfully be collapsed into three categories: constructive, strategic, and communicative. Strategic engagement “follows the logic of strategic action, in which the initiator aims to manipulate the behaviour of an actor through threats and incentives in order to bring them in line with one’s preferences”. It is strategic in that it attempts to push Chinese behaviour in a pre-determined direction that is held to serve U.S. interests. While it allows for some compromise between opposing positions when

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39 Ibid., 68.


necessary this is expected to be reached on the basis of "the distribution of power" between negotiators.\textsuperscript{42} China's inferiority in terms of material power dictates that it can be pushed to make larger concessions than the U.S. can. Strategic engagement therefore holds that while China should not be treated like an enemy it can still be pushed hard to make deep concessions regardless of whether they rub up against its national interests. Alternatively, these differences in material power capabilities may lead policymakers to feel that China as an enemy will not be of great concern to the U.S.

Evidence of strategic engagement will therefore include an unwillingness to make more than minimal concessions in areas of negotiations where U.S. bargaining power is high. This is due to the fact that strategic engagement leaves no room for confidence building measures that are not related to calculations of the distribution of material power. Strategic engagement will therefore also look askance at programs designed to enhance China's state capacity as China is to be pressured, not coddled. Strategic engagement will also threaten sanctions with the expectation that China will respond by falling in line with American interests. A willingness to immediately come to a compromise when sanctions are being threatened will therefore be absent. As U.S. interests are taken to be constant negotiators operating under the logic of strategic engagement will also be largely unwilling to back off on demands for concessions even when they are aware of the fact that granting them would compromise China's national interest.

Strategic engagement is most likely to occur when consensus exists in regards to what U.S. commercial interests are and economic tradeoffs between sectors are minimal.

\textsuperscript{42} Ibid., 204.
A willingness by the U.S. administration to make statements that reinforce negative public opinion about China will also be taken as evidence of strategic engagement. This is due to the fact that such statements strengthen the domestic constraints in the U.S. that make it difficult to offer terms that China will find acceptable.

Constructive engagement, in contrast, seeks to establish a “web of relationships between the two countries”. This includes increasing economic and trade ties as well as military to military contacts. It accepts the idea that treating China as an enemy will likely become a self-fulfilling prophecy. Instead it seeks to push China towards a foreign policy that will be more acceptable to the U.S. by way of carrots such as MFN and WTO accession. When China fails to fall in line with American interests it advocates using measures such as trade sanctions to punish China for its unwelcome behaviour. While constructive engagement advocates changing China in ways that are more in line with American interests and objectives it recognizes the need for “mutual accommodation”. Furthermore, it accepts that China’s entry into multilateral institutions must be a negotiated process in order to ensure that accession does not force China to sacrifice vital interests. While this means that at times compromise will be necessary it does not go as far as to accept that American interests are up for debate. While the tactics used in the pursuit of these interests may change in order to better respond to Chinese political realities the underlining goals are still held to be constant.

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45 Pearson, “The Case for China’s Accession to the WTO.” 184.
Evidence of constructive engagement will therefore include a willingness on the part of American officials to adapt to Chinese political realities on the ground in order to identify goals that can be accomplished while remaining steadfast in regards to what constitutes the national interest. A willingness to collaborate with Chinese officials in order to build state capacity with training programs and consultation will be taken as evidence of attempts to build a “web of relationships” at various levels of society. A willingness to compromise and return to the negotiating table even when serious sanctions are being threatened will also be taken as indicative of constructive engagement.

Additionally, a willingness to back off on demands in areas that the U.S. comes to discover are particularly sensitive to China’s national interest will also be taken as evidence of constructive engagement. This is due to its argument that country’s can not be expected to sacrifice their national interest. One form this can take is U.S. tolerance of partial implementation by China of commitments that have been agreed to. As Beijing lacks the state capacity necessary to force the provinces and municipalities to fully comply with international agreements that it is a party to a level of domestic implementation below what has been formally agreed to is common. Overlapping authority among different levels government also renders full implementation problematic. Recognition by the U.S. of this constraint on Beijing’s authority and a tacit acceptance of partial implementation therefore constitutes strong evidence of constructive engagement. Lastly, U.S. administration media statements that China’s size and strength necessitate engagement in spite of the fact that there are many things about it that we do not approve of will also be taken as evidence of constructive engagement. Such
statements would signal that the administration is willing to spend political capital in order to create a more favourable public opinion of China. The fact that such a view would make it more politically viable to offer China concessions ensures that this would constitute constructive engagement.

While our third variant, communicative engagement, is of limited relevance to U.S. trade negotiations it is worth describing for the sake of completeness. (The reasons for this limited relevance will be made clear by the proceeding explanation of two level games and the structure of U.S. trade authority.) Doing so also serves to better define our other two variants by way of contrast. Communicative engagement attempts to reach agreements that are acceptable for all relevant parties. Coercion and manipulation are therefore not held to be useful bargaining tools. As a result, U.S. negotiators motivated by communicative engagement would not use threats of sanctions and the withholding of PNTR as part of a strategy to win concessions from China. Furthermore, instead of attempting to socialize new actors into accepting the norms and rules of existing institutions—and punishing them when they stray from these norms—these actors are instead given input into moulding institutions. This allows for the development of rules that all actors hold to be legitimate and sensitive to their interests. This makes it possible for actors to "compete for the distribution of goods without calling into question the existence of the game itself". Instead of evaluating engagement in terms of how successfully China’s behaviour can be brought in line with American interests it is argued that goals and interests come to be shaped by genuine dialogue. As a result, the interests

47 Ibid., 205.
and behaviour of the engager are as likely to be shaped by dialogue as the interests and behaviour of the engaged. The distribution of power and a concern with relative gains therefore do not inform communicative engagement in the way that they do strategic engagement.

Evidence of communicative engagement would therefore include a ready willingness to back off on requests for concessions in areas that are discovered to conflict with China’s national interests. Changing conceptions of U.S interests over time as negotiations lead them to be reconceived and a willingness to resist domestic pressure for sanctions in order to build bilateral confidence will also constitute strong evidence. Attempts by the U.S. administration to cast China in a more favourable light in order to make communicative engagement more palatable to the public, and therefore more actionable, will also constitute evidence of communicative engagement from the other variants. Lastly, a decision not to threaten sanctions and the denial of MFN even when doing so would likely improve the negotiating stance of the U.S. will be taken as strong evidence of communicative engagement. This is due to the fact that the other two variants consider such a negotiating strategy to be wholly legitimate.

These three variants of engagement can be contrasted with an outcome of no engagement. This occurs when extremely strong domestic constraints preclude the U.S. from offering any concessions in order to reach an agreement. The lack of bargaining room on such issues reduces negotiations to a “take it, or leave it” scenario. China can

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48 Ibid., 206.
either agree to the terms that have been dictated by domestic U.S. interests, or can resign itself to failing to reach a bilateral deal.

While the U.S. has one overarching goal of engagement in place at the strategic level it can be seen to make use of both strategic and constructive engagement in different sectors of trade during negotiations. However, in order to predict which one will be utilized it is necessary to understand the role that two level games plays in determining what is necessary and possible in an agreement.

3. Two Level Games

When participating in international negotiations the range of possible agreements that a country finds acceptable at the international level, its win set, is determined by the constraints imposed on it by the anticipated reaction of its domestic constituents. Putnam therefore argues that negotiations that must be agreed to internationally and domestically can be conceptualized as a two level game.\footnote{Robert D. Putnam. "Diplomacy and Domestic Politics: The Logic of Two Level Games" International Organization 42, no. 3 (Summer 1988): 428.} A two level game is most easily defined as circumstances under which negotiations at the domestic and international level interact to determine what sort of deal is possible.

In Putnam's model the need to secure domestic support places constraints on what head negotiators can agree to at the international level. The range of agreements that is acceptable at the international level is therefore restricted to those agreements that can be expected to attract the necessary amount of support among domestic constituents.\footnote{Ibid., 437.}
the same logic international pressure can bolster domestic interests that already favour a policy for their own reasons. An analysis of negotiations that is limited to interaction at just the domestic or international level is therefore insufficient to understanding the logic of negotiations. Due to this dynamic severe constraints on what sort of agreement will be domestically acceptable can provide bargaining leverage as negotiators can credibly claim to be unable to offer extensive concessions. Unfortunately, such constraints also make it far more difficult to reach a deal if there is little or no overlap between the respective parties win sets. For the same reasons a large win set can become a negotiating liability as foreign counterparts will become emboldened to make more extensive demands due to their awareness of the fact that such concessions are possible.\footnote{Ibid., 440.} As a result, an agreement is most likely to be reached when influential minorities in each government favour policies "that are being demanded internationally".\footnote{Ibid., 448.}

The strength of domestic constraints in the context of two level games can therefore provide important insights into which strategy of engagement will be utilized in a given sector of trade negotiations. If constraints are strong it follows that the resulting smaller win set will preclude the USTR from offering large concessions, or remaining open to differing conceptions of its interest. If constraints are week it follows that the resulting larger win set will allow the USTR to offer larger concessions and perhaps even re-conceive of what is in the interest of the U.S.

The logic of two level games explains why communicative engagement does not constitute a viable strategy of engagement in Sino-American WTO accession negotiations.
Domestic constraints will ensure that the USTR will push hard for concessions and will make use of coercion whenever such measures are necessary or useful in satisfying domestic interests. Demands for concessions will therefore only be foregone when they fall outside of the win set and are therefore unattainable, not due to a desire on the part of the U.S. to forgo coercion.

While the logic of two level games is therefore highly important in determining the bargaining position that will be adopted by the U.S. in negotiations with China it does not constitute a stand alone predictor. This is due to the fact that the effectiveness of domestic constraints is conditioned by the strength of U.S. bargaining power in a given issue area. For example, while a pairing of strong domestic constraints with high negotiating power can reasonably be expected to lead to an agreement on favourable terms the pairing of strong domestic constraints with low negotiating power can not be expected to produce a viable win set.

3.1 Domestic: Structure of US Trade Negotiating Authority

This model is a good fit with the manner in which trade negotiations are conducted by the U.S. While many executive branch departments have overlapping authority over US trade policy the USTR is recognized to be first among them. The USTR holds a cabinet level position in the administration, is overall head of formulating trade policy, and is directly involved in negotiating trade deals. The USTR was created in 1961 as a result of Congressional sentiment that the State Department’s mandate of managing relations with foreign countries made it ineffective at defending domestic economic interests. It was felt that a more “hard-nosed, domestically sensitive
bureaucracy" was needed to head international trade negotiations. In addition to the USTR, there are four other White House groups that constitute a separate layer of bureaucracy that parallels cabinet departments. These are the cabinet-coordinating group for economic policy, the National Security Council (NSC), Council of Economic Advisors (CEA), Office of Management and Budget (OMB). In spite of its standing as the head of trade policy the USTR does not monopolize trade authority as these four groups as well as executive line departments and agencies occasionally lead in various sectors of trade with or without the USTR's consent.

Another level at which policy is formulated in the executive branch is through inter-agency coordinating groups "where all relevant bureaucratic actors have the opportunity to state their policy recommendations and influence the search for consensus". Other departments and agencies with input into trade policy include Treasury, Energy, Agriculture, Commerce, Labour, Defence, and the Interior. As they usually have conflicting policy priorities log rolling between rival coalitions of agencies is essential in formulating policy.

While the executive branch is nominally in charge of formulating trade policy this authority is derived from the Congress which must approve all agreements negotiated by the executive. As foreign countries would be reticent to negotiate trade deals if the Congress was free to demand alterations after terms had been agreed to the executive must be granted fast track approval by the Congress before serious negotiations can begin.

54 Ibid., 107.
55 Ibid., 109.
56 Ibid., 113.
While fast track approval denies the Congress the ability to demand changes to trade deals it still must ratify all deals in an up or down vote before they can come into force.

The negotiating stance of the executive in general, and the USTR in particular, is guided by the fact that it will have to request renewed approval of its current authority and make requests for additional authority as trade negotiations embrace additional issues at some point in the future. As a result, the executive must remain sensitive to the domestic economic interests of individual states as a failure to do so would likely lead the respective Congressman to vote against the negotiated trade deal. Furthermore, the USTR reports to more Congressional committees than any other executive branch agency. These factors ensure that the USTR is highly responsible to domestic economic interests.

The executive/USTR is also subject to domestic constraints by way of special section 301 of the 1988 trade law. Special section 301 compels the USTR to respond to “information and recommendations it receives from interested actors in the business community”. If it is found that the U.S. is being denied the benefits of any trade agreements that it has entered into the USTR is required to respond by all means available. The limitations placed on the USTR’s bargaining stance by this requirement is made credible by the fact that it does not participate in setting the agenda of special section 301. The fact that the USTR only has 200 employees and limited resources in terms of regional expertise also renders it highly dependent on lobby groups for the information it uses to launch cases.

57 Ibid., 114.
59 Ibid., 28.
In the context of Sino-American accession negotiations the USTR was without a doubt the actor that played the lead role in international and domestic negotiations. The fact that it was a comprehensive set of negotiations that covered all major sectors of trade ensured that complex trade-offs across sectors were necessary. As a result, executive agencies with narrow mandates lacked the necessary coordinating authority to engage in credible negotiations. Additionally, the special sensitivity of China to Congressional politics ensured that the Congress wanted a negotiator that was both accountable to it and aware of its concerns. The number of avenues open to the Congress by which to inform and influence the USTR made it ideal for this purpose. Additionally, the fact that Clinton was largely hands off with China policy also gave the USTR more authority as executive agencies, like the NSC and CEA, whose mandate is to keep the President informed, could not hope to carry a great deal of influence.

3.2 International: Sino-American Relations

The argument that has been formulated thus far is predicated on the assumption that the U.S. has sufficient negotiating power vis-à-vis China to make use of strategic and constructive engagement. If China was found to have limited interest in coming to a bilateral agreement the negotiating power of the U.S. in bilateral negotiations would be brought into question. As a result, it would be impossible for the U.S. to utilize strategic and constructive engagement. It is therefore necessary to define what qualifies as power in trade relations. Krasner defines power in trade relations in terms of “the relative
opportunity costs of closure for trading partners. The higher the relative cost of closure, the weaker the political position of the state.⁶⁰

On the basis of this definition it is reasonable to accept that the U.S. held considerable negotiating power during bilateral negotiations. As mentioned earlier, while the U.S. depends on trade with China for a mere 0.9% of GDP China relies on exports to the U.S. for 9.5% of its GDP. China is therefore highly vulnerable to the cessation of bilateral trade. As a result, Beijing took the annual post-Tiananmen Square Congressional debate on the renewal of MFN and China’s human rights record very seriously. The risk of economic loss that this debate contained was exacerbated by the feeling in Beijing that it constituted interference in China’s internal affairs. Accession to the WTO was therefore seen as an important tool with which China could ensure continued access to China’s most important export market and insulation from the vagaries of domestic U.S. politics.

There are also three additional reasons to believe that accession was sufficiently important to China to provide the U.S. with considerable power during negotiations. First, Beijing wanted to join the WTO in order to reinforce its continuing economic reforms. By making China’s economic practices subject to the Dispute Settlement Mechanism (DSM) of the WTO Beijing would gain additional leverage over the provinces with which to force them to implement its economic reforms. The fact that successful plaintiffs at the DSM often direct the countervailing duties that they are permitted to enact on goods produced in the specific region of the country that had benefited from

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WTO violations places international pressure on sub-state governments. For example, when the U.S. imposed steel tariffs the EU prepared to enact countervailing duties on products originating in steel producing states.

Second, reform minded leaders Jiang Zemin and Zhu Rongji held accession to be necessary in order to defeat challenges to their authority from anti-reform leaders such as Li Peng. By acceding to the WTO and therefore weakening the anti-reform domestic economic interests that supported him Jiang and Zhu believed that they could reinforce their authority and prestige in the Chinese Communist Party (CCP).

Third, due to China's colonial past during the "century of humiliation" Beijing takes any impressions that it is being treated as a second class country extremely seriously. As a result, accession to the WTO was important to Beijing for reasons of national prestige to a degree that was arguably out of step with its short-term importance to the Chinese economy. The desire to accede before Taiwan made this consideration especially important. On the basis of this evidence of Chinese interest in coming to terms it is assumed that if it is made an offer that is reasonable in light of the domestic constraints that the U.S. is subject to China will be willing to make the concessions necessary to come to an agreement.

4. Hypotheses

While the U.S. goal of engagement remains constant the strategies that are used in its pursuit are subject to two factors that vary across sectors of trade: domestic constraints and negotiating power. The values of these factors interact to determine which strategy
of engagement will be utilized, both at the level of the rhetoric and the expected outcome in terms of implementation. As domestic constraints increase the demands that are made by the USTR increase. As negotiating power decreases the expectation that these demands will be met decreases. An inverse relationship therefore exists between the bargaining power of the U.S. in a given sector of trade (Independent Variable 1), and the domestic constraints in place for that sector (Independent Variable 2). The interactions between these two variables therefore dictates which strategy of engagement is utilized (Dependent Variable, rhetoric), and how high expectations are that that engagement will be successful (Dependent Variable, outcome). From this general hypothesis it follows that:

1. A positive correlation exists between domestic constraints and rhetoric.
2. A positive correlation exists between negotiating power and outcome.
3. When there is a strong positive correlation between domestic constraints and negotiating power we will expect the same level of rhetoric and outcome.
4. When there is not a strong positive correlation between domestic constraints and negotiating power we will expect the level of outcome to be higher than the level of rhetoric.

This can be juxtaposed with cases where domestic constraints are extremely strong. In these instances high U.S. negotiating power will lead China to acquiesce to the “take it or leave it” deal offered by the U.S. Low U.S. negotiating power will lead China to refuse to acquiesce to the “take it or leave it deal” offered by the U.S., ensuring that a deal is not reached.
5. Case Selection Justification

In selecting cases it is important to choose economic sectors that can reasonably be expected to be of importance to the U.S. Furthermore, in order to test my hypotheses it is necessary to examine sets of negotiations where the negotiating power of the U.S. and the strength of its domestic constraints varied. This makes it possible to test whether or not these IV’s had causal power in determining the negotiating stance of the U.S. and the terms it ultimately agreed to.

First, IPR is a case deserving study due to its importance to the American economy. It constitutes one of the sectors where America posts consistent trade surpluses. The fact that the promotion of “adequate and effective protection of IPR by America’s trading partners” is one of the major objectives of special section 301 also speaks to the importance of this sector. Furthermore, while in the past American and Chinese conceptions of IPR have found themselves at loggerheads China was not opposed to the U.S. desire for an IPR regime. Instead it disagreed about the speed at which it should be constructed, “the appearance of China taking orders from the U.S. and on the specific details contained in the U.S. demands”. Additionally, the fact that both the U.S. and China stood to benefit from a viable IPR regime ensured that these negotiations would not necessarily be zero-sum. However, the high likelihood that many U.S. economic interests would be hurt by sanctions and therefore had conflicting interests

62 Ibid., 7.
ensured that domestic constraints were limited. IPR is therefore an ideal case with which to examine the interaction between intermediate negotiating power and weak domestic constraints. It is therefore expected that negotiations in this area will be characterized by the rhetoric of strategic engagement and the level of implementation dictated by constructive engagement.

Second, the decision to grant/deny Market Economy Status (MES) is an important case due to its relevance to numerous sectors of trade. The U.S. had a strong negotiating position in these negotiations as a result of the fact that China had minimal leverage with which to pressure the U.S. to grant MES. Furthermore, due to the fact that U.S. business interests in all sectors that compete with Chinese imports were affected by the outcome of these negotiations strong domestic constraints were also in place. This is therefore an ideal case with which to examine the interaction between high negotiating power and strong domestic constraints. It is therefore expected that U.S. negotiations in this issue will be characterized by strategic engagement.

Third, services, such as telecommunications, are also important to the U.S. as it has a $69 billion surplus with the rest of the world in this area, with total services exports amounting to $280 billion. The fact that services account for 72% of American GDP ensures that they will enjoy considerable influence in lobbying the federal government. China’s telecommunications market is particularly attractive as Chinese telecommunications revenue grew 2,050% between 1991 and 1999. Furthermore, due to

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the linkages between economic sectors, concessions in areas such as banking are not as valuable without a modern telecommunications system. As a result, all U.S. economic actors that have an interest in conducting business in China have an interest in these negotiations. However, U.S. negotiating power in this sector is limited by the importance of telecommunications to national security. As a result, telecommunications is an ideal case with which to examine the interaction of intermediate negotiating power and strong domestic constraints. It is therefore expected that negotiations in this sector will be characterized by the rhetoric of strategic engagement and the level of implementation dictated by constructive engagement.

Lastly, agricultural negotiations are an important case due to the fact that the strength of the farm lobby effectively limited the USTR's win set to one viable outcome. Without support from the farm lobby it would have been impossible to get a deal through the Congress. Ultimately, China recognized that the U.S. could not make concessions in this area and that agricultural interests had to be "bought off" with favourable terms before a final bilateral deal could be reached. Agricultural negotiations therefore constitute the ideal case with which to test the extremely strong domestic constraints hypothesis. It is therefore expected that that negotiations in this sector will be characterized by no-engagement.

By the same logic, economic sectors that are not of great importance to the U.S. do not constitute useful case studies. While America still has a small textiles industry this is not a sector in which it can reasonably hope to compete with China. Furthermore, as

66 Harding, 287.
this is an area in which China has comparative advantage it is likely that America will be willing to make concessions here in exchange for sectors where it excels, such as aerospace, advanced electronics, and financial services. As a result, sectors like textiles can not be expected to provide a great deal of leverage.

The selection of these cases provides a wide range of variation on my DVs and IVs. IPR provides a case study with high negotiating power, weak domestic constraints, strategic rhetoric, and a constructive outcome. MES provides a case study with high negotiating power, strong domestic constraints, strategic rhetoric, and a strategic outcome. Telecommunications provides a case study with intermediate negotiating power, strong domestic constraints, strategic rhetoric, and a constructive outcome. Lastly, agriculture provides a case study with high negotiating power, extremely strong domestic constraints, and no engagement.

5.1 IPR

IPR bargaining was one of the most drawn-out, gruelling sets of bilateral negotiations. The chasm between China’s record of IPR protection during the early 1990s and the American demand that it have IPR protection in place at the time of accession often appeared unbridgeable. Sino-American IPR negotiations date back to the 1979 bilateral trade agreement when the U.S. pushed China to protect patents, trademarks, and copyrights. Chinese leaders at this time were said to be genuinely surprised that the U.S. would ask for protection in this area. This is due to the fact that they had traditionally

understood intellectual property as existing in the public realm. The attempt to keep it in private hands was therefore a concept that had no history of acceptance in China.

While American negotiators have experienced some success in getting China to pass IPR related legislation in the early 1990s they were surprised by how difficult it was to attain meaningful implementation. This is due to the fact that while IPR laws are nominally under Beijing's authority they apply differently to the central and provincial governments. This is due to the right of provincial governments to "review and decide on trademark infringement issues as well as the right to enforce the local trademark regulations which may be different from those of the central government or another province". 68 This creates a situation that is described as "having too many mother-in-laws" as several state agencies have overlapping authority that often becomes the subject of turf wars.

IPR negotiations were also unique due to the fact that it has been convincingly argued that they can be characterized by a model of partial implementation. Under this model negotiators anticipation of partial implementation allows them to come to terms outside of their usual win sets. 69 This is due to the fact that states that lack the capacity necessary for full implementation can make large concessions that they will ultimately not be expected to live up to. The country demanding full implementation benefits by reaching the best possible agreement available under implementation constraints while still signalling the level of implementation that it expects to be reached in the future as

state capacity is enhanced. In entering into these negotiations the U.S. had a minimum number of demands that had to be met in order for a potential agreement to be domestically ratifiable.\textsuperscript{70} This is due to the fact that the USTR was constrained by the “red face test”. This meant that it had to be able to go before a press conference and convincingly argue that the deal served U.S. interests.\textsuperscript{71} China’s interests, in contrast, were to resist as many U.S. demands as possible while averting “tit-for-tat trade sanctions”.\textsuperscript{72} This is due to the fact that doing so would reduce the space in which it could be “forced to move away from the status quo”.\textsuperscript{73}

Following the 1992 IPR talks that took place after serious accession negotiations had resumed the U.S. and China signed a Memorandum of Understanding (MOU) — which has the force of law in China— that mandated giving intellectual property legal protection in China and the drafting of detailed copyright regulations. In conjunction with this China joined the Berne convention and the Geneva phonograms convention.\textsuperscript{74} While the MOU was largely legislated into law this did little to address the problem of local enforcement.\textsuperscript{75} While this led the U.S. to threaten to impose sanctions this was complicated by the “high level of trade complementarity between the U.S. and China”

\textsuperscript{73} Ibid., 5.
\textsuperscript{75} Ibid., 702.
which created a "large constituency reluctant to see sanctions imposed". Groups like the Washington State China Relations Council lobbied intensively against sanctions, arguing that China would experience little trouble substituting goods from other countries for those that they would otherwise buy from the U.S. The fact that Chinese negotiators were aware of the conflicting domestic pressures faced by the U.S. made it extremely difficult for the USTR to convince them that sanctions would be carried out if a deal was not reached. This led Chinese negotiators to put off negotiations until the last moment at which point the USTR had to scramble to come to agreement and ultimately accepted Chinese promises of improved enforcement.77

When the U.S. was once again unsatisfied with Chinese compliance a second round of negotiations was held in 1995. When progress was found to be elusive the U.S. threatened to impose trade sanctions on Chinese exports of telephones, sporting goods, and plastic items unless enforcement efforts were stepped up.78 When China quickly threatened to impose countersanctions U.S. economic interests that would be hurt by countersanctions also made their disapproval known. The National Federation of Retailers argued that trade negotiations should not come at the expense of consumers as sanctions would raise the price of products like children's bicycles and telephones by 8-29% and 31% respectively.79 Opposition to sanctions was also voiced by toy and footwear manufacturers, and members of the electronics industry, who sourced their

77 Ibid., 176.
goods extensively from China, and The American Forest and Paper Association which imports a great deal of raw materials from China.\textsuperscript{80} Exporters, such as automobile manufacturers, who feared for their ability to invest in joint ventures also favoured a negotiated solution and therefore undercut the credibility of U.S. threats. Ultimately, an incredulous China proved resistant to U.S. pressure and with the negotiating strength of the USTR undercut an agreement was once again reached at the last minute.

As Chinese negotiators felt that the drafting of another MOU would imply that China had not lived up to its 1992 commitments this agreement was expressed in the form of an exchange of letters. In exchange for Chinese commitments to improve enforcement at the retail and manufacturing levels the U.S. agree to cancel China's classification as a ‘priority foreign country’ under U.S. trade law.\textsuperscript{81} The U.S. also agreed to assist China in enforcing IPR by setting up training programs between the U.S. customs service, the U.S. department of justice, and the U.S. patent and trademark office. Assistance from the U.S. customs service included: training of Chinese customs officers in China of IPR enforcement methods, the provision of technical equipment relevant to IPR enforcement, training in the identification of IPR violating merchandise and “assistance in building a centralized system of IPR recordations”.\textsuperscript{82}

Ultimately, uncertainty among Chinese officials about which parts of the agreement needed to be implemented in order to satisfy American demands led to the agreement being left largely unimplemented. When the third round of negotiations took

\textsuperscript{80} Ibid., 173.
place in early 1996 the U.S. demanded that China: improve customs controls on pirated goods, close more counterfeiting factories, and allow copyrighted U.S. goods enhanced access to the Chinese market.\textsuperscript{83} The U.S. also threatened to impose three billion in tariffs on Chinese textiles and electronics which led to Chinese threats of countervailing tariffs on American movies, TV programmes, and the suspension of joint venture talks.\textsuperscript{84} The degree to which China took the threat of sanctions seriously seems to be reflected in the claim made by the China Daily, the party’s official paper, that Chinese sanctions would be more damaging as they would affect both U.S. exports to, and investment in, China.\textsuperscript{85} When this initial bluster had died down the USTR pushed for another round of negotiations in 1996.

While the agreement that was finally reached largely replicated the terms agreed to in 1995 it also led American and Chinese officials to work together to target for closure three dozen counterfeiting factories in the south of China. This benefited China by establishing a task that would help satisfy U.S. demands which was within its state capacity to accomplish. It benefited the U.S. by providing it with a measure by which to determine the quality and extent of Chinese compliance with the bilateral agreement.\textsuperscript{86} This again qualifies as partial implementation as many other sections of the agreement were not implemented. In spite of this the U.S. did not pursue further action against China under the special 301 trade law. This provides reason to believe that the U.S. accepted the partially implemented outcome. Retaliation for failures of implementation

\textsuperscript{84} Ibid., 764.
\textsuperscript{85} Zeng, "Trade Threats, Trade Wars: Bargaining, Retaliation, and American Coercive Diplomacy." 179.
has therefore been replaced by “cycles of implementation and renegotiation”. It has been argued that this is due to the fact that once implemented the current agreement becomes the status quo upon which further negotiations will be based.

It is easy to use the IPR related threats of sanctions that the U.S. made towards China as strong evidence that these negotiations can be characterized as strategic engagement. However, it should be kept in mind that throughout the 1990s the USTR had to contend with a Congress that was in favour of punishing China by denying it MFN. As a result, a credible argument can be made that it was necessary to make these threats in order to placate the Congress so as to ensure that it did not attempt to throw the larger Sino-American relationship off course. This argument is supported by the fact that there is evidence that U.S. business interests recognized the tactical importance of the USTR-led IPR dialogue with China as a way to demonstrate U.S. resolve against China while splitting the opposition in the annual vote to renew China’s MFN status. The fact that threats of sanctions were without credibility also qualifies the degree to which they should be taken seriously.

Furthermore, the U.S. was willing to change its approach to the IPR dialogue over time as field work in China and bilateral negotiations made it more aware of the realities on the ground in China that made implementation problematic. This implies that U.S. preferences in dealing with China may have changed as learning led it to reconceive of

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87 Ibid., 702.
88 Ibid., 713.
the best methods with which to bring about Chinese compliance. Evidence that this indeed had taken place would constitute strong evidence against strategic engagement. At the very least, the U.S. was willing to collaborate and compromise in order to attain results.

It is also a stretch to argue that the U.S. was steering China towards a predetermined goal that was in-line with American interests. This is due to the fact that once U.S. negotiators became aware of the level of compliance that their Chinese counterparts were capable of they became willing to formulate new strategies of implementation that increased the likelihood of compliance. Strategic engagement therefore is too harsh a variant with which to characterize negotiations as the compromise that did take place was determined by which arrangements were viable, not by the distribution of material capabilities.

A strong case can therefore be made for constructive engagement. This is due to the fact that while threats and coercion played a role in negotiations China was not made to sacrifice its national interests and genuine compromise and collaboration took place. Furthermore, while U.S. negotiators became willing to experiment with new methods of winning compliance there is no evidence that America’s underlying long-term interests in this area underwent genuine change. Lastly, the U.S. initiatives to set up training sessions between American and Chinese customs officials is a strong fit with constructive engagement’s talk of establishing “webs of relationships”. This is an excellent example of the establishment of links at various levels of society that characterize constructive engagement.
Furthermore, while the terms demanded by the U.S. in these negotiations could be taken as reflecting a policy of strategic engagement the partial implementation that the U.S. ultimately found acceptable is in line with the sort of terms that could be expected to result from constructive engagement. As a result, the terms demanded by the U.S. can be taken as both signalling to China the sort of implementation that will be expected of it in the future and attempting to placate the Congress by appearing to be hard nosed with China. This was made possible by the fact that the USTR was most likely more concerned with the deal itself as this is the period during which the most people are paying attention.

Partial implementation therefore allowed the U.S. and China to come to an agreement that would otherwise fall outside of their respective win sets. China was able to commit to terms that its domestic interests and state capacity would prevent it from living up to while the U.S. was able to secure the terms that were necessary in order to win the support of domestic interests. The success of the negotiations in securing a level of implementation in line with constructive engagement also supports my hypothesis for cases with intermediate negotiating power. Lastly, the use of the rhetoric of strategic engagement and an outcome in line with constructive engagement corresponds with the expectations of my hypothesis for cases with intermediate negotiating power and strong domestic constraints.
5.2 MES

One of the negotiating points that proved to be the most problematic in reaching a final bilateral deal was whether or not China should be granted MES. Ultimately, the U.S. only agreed to recognize China as a market economy fifteen years after accession. This has serious ramifications for China’s ability to defend itself against charges of dumping at the WTO’s DSM. Dumping is said to have taken place when an exporting firm sells its goods abroad below the price they are sold for in their domestic market, or sells its goods in one foreign market below the price it sets in another foreign market. If the country to which the goods are being exported can convince the DSM body that this has taken place, and that it has caused “material harm” to its own firms, or threatens to do so, the country in question will be granted permission to impose countervailing duties on these exports.

Due to the ability of governments of non-market economies to subsidize some of the inputs in manufacture it is assumed that the price of their goods can not be depended on to accurately reflect real production costs. As a result, when calculating the true cost of production at the DSM body the production costs of third countries are utilized in determining whether firms have dumped products in foreign markets. This is problematic as the countries the U.S. usually uses for third country reference prices —Brazil, India, Indonesia, Pakistan, and Thailand— often have far higher labour costs. This is especially so for labour intensive Chinese industries that would not be viable in third countries that do not enjoy China’s abundant labour force. Furthermore, the size of

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China’s domestic market may allow it to achieve economies of scale that serve to bring its production costs below those of countries with considerably smaller industries.

Additionally, firms in market economies will sometimes be willing to sell their goods below their average total cost. An example of this is the fact that during economic downturns firms may choose to set prices at a level that just reflects the “marginal cost of production.” As long as prices for domestic and foreign markets are kept consistent such firms would not become subject to anti-dumping duties (ADD) in spite of the fact that they are selling goods at a loss. Under the non-MES methodology, however, profit margins are included in calculations of the actual cost of goods. This makes it considerably easier to successfully bring a dumping charge against a country that has been designated as a non-market economy.

In fact, a study of 208 EU and U.S. anti-dumping cases between 1995 and 1998 showed that the “further from pure price comparisons the methodology used for estimating dumping has been, the higher these margins have been.” While under pure price comparisons the U.S. and EU imposed anti-dumping duties of 3% and 22% respectively, 14% and 24% respectively under a mix of price comparisons and constructed values, and 25% each under various constructed methods, under non-MES pricing methodology anti-dumping duties of 40% and 46% were imposed. In fact, representatives of the U.S.-China business council went as far as to state that at best the

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92 Ibid., 87.
non-MES dumping standards are arbitrary and at worst are “grossly unfair to Chinese exporters”.\textsuperscript{94}

China’s ability to defend itself against charges of dumping is further hindered by the fact that the bilateral deal did not define what constitutes a market economy. As a result, the U.S. and other members of the WTO enjoy great leeway in determining, and arbitrarily changing, the circumstances under which they will use non-market economy provisions against China in dumping cases.\textsuperscript{95} While it is true that individual firms that are operating under market economy conditions may apply to the U.S. to be treated as such in anti-dumping cases as of 2002 no Chinese firms had successfully attained this designation.\textsuperscript{96} Furthermore, while the USTR in 1999, Charlene Barshefsky, stated that the U.S. department of commerce may choose not to use third country pricing when it is not appropriate it is widely recognized that in the past it has always buckled under pressure from domestic economic interests to use the more punitive methodology.

While China wanted to make it harder to impose anti-dumping tariffs on Chinese goods the U.S. played on China’s desire to bolster domestic economic reforms and gain international prestige by joining the WTO in order to resist making real concessions on this issue. This is not to suggest that alternative arrangements were not available. Scholars at the conservative American Enterprise Institute advocated the use of short-term, time limited measures which could be “structured to induce market evolution”.\textsuperscript{97}

This could come under part of an attempt to define what constitutes a market economy

\textsuperscript{94} Hughes, 97.
\textsuperscript{95} Lardy, “Integrating China into the Global Economy.” 88.
\textsuperscript{96} Ibid., 88.
and “interim goals for testing China’s progress towards meeting those goals”.\textsuperscript{98} They also argued that the failure to provide China with “clear methods for evaluating its graduation to a full fledged market economy and a timetable for ending anti-dumping actions” represents a major failing of the deal.\textsuperscript{99} This is especially ironic in light of past statements by USTR officials that trade agreements with China have been most satisfactorily implemented and enforced when they have avoided vague language and instead have included detailed schedules of implementation and commitments that China can be held to.\textsuperscript{100}

In evaluating which strand of engagement characterizes U.S. negotiations with China in the area of MES little evidence is found for constructive engagement. This is due to the fact that it expects compromise between positions and acceptance of the idea that countries can not be expected to sacrifice their national interest to characterize negotiations. Negotiations related to MES instead can be characterized by an absence of compromise as the U.S. remained unwilling to waver from its bargaining position. Constructive engagement therefore fails to fully capture the confrontational spirit of these negotiations.

Strategic engagement emerges as a far more accurate description in this area. Ultimately the U.S. forced China to fall in line with its interests while making minimal concessions. As a result, it is fair to argue that the U.S. did not shy away from forcing China to sacrifice vital interests in order to secure a deal. All this makes it clear that the

\textsuperscript{98} Ibid., 54.
\textsuperscript{99} Ibid., 53.
possibility that U.S. interest might evolve through dialogue was not on the negotiating table. The high negotiating power of the U.S. on this issue was supported by the strong domestic constraint which supported stringent terms. This is due to the fact that the DSM and the imposition of dumping duties constitutes a powerful tool with which concentrated import competing U.S. businesses can gain an advantage over their Chinese counterparts. Domestic interests that are hurt by such measures, such as consumers, are diffuse and therefore unable to lobby for their interests. As a result, the U.S. negotiating stance was also highly credible. Strategic engagement, at both the level of rhetoric and outcome, is in line with the expectations of my hypothesis for cases with high negotiating power and strong domestic constraints.

5.3 Telecommunications

Telecommunications was another area of negotiations that saw intense bargaining that only led to an agreement at the last minute. Under the final bilateral agreement foreign investors were permitted to hold equity of up to 25% in domestic and international fixed wire line telecommunications in Beijing, Shanghai, and Guangzhou at the time of accession, 35% in those cities plus fourteen additional ones a year later, and 49% nationwide after three years.\textsuperscript{101} In the area of value-added services and paging a stake of 30% was permitted in the same three cities at the time of accession, 49% in those three cities plus fourteen additional ones a year later, and 50% after two years (it should be noted that these seventeen cities represent the vast majority of China’s current and

\textsuperscript{101} De Workin, "WTO and the Telecommunications Sector in China." 641.
potential market for telecommunications). In the area of mobile telecommunications the bilateral deal stated that foreign companies would be able to have a stake of 25% after one year, 35% after three years, and 49% after five years.\textsuperscript{102} China has also agreed to a technology-neutral commitment which stipulates that foreign competitors are able to deliver basic telecommunications services, including local, long-distance, and international services, by any means of technology available.\textsuperscript{103}

Additionally, as the WTO recognizes that regulation can be used to hinder competition the WTO Basic Telecommunications Agreement (BTA) drafted a reference paper on the regulatory framework for telecommunications to ensure that this does not happen. This paper requires that regulatory agents be separated from telecommunications carriers and regulate in an impartial fashion towards all “market participants”.\textsuperscript{104} This directly effected the operations of China Telecom which up until the late 1990s had acted as both a “market participant” and a regulator. It also addresses the principle of interconnection by stipulating that all “market participants” should allow their competitors to connect to their networks “at any technically feasible point in the network upon request” with the terms of interconnection being “timely, cost based, transparent, and non-discriminatory”.\textsuperscript{105} In the area of universal service, the reference paper recognizes that it should be administered in a “transparent, non-discriminatory, and

\textsuperscript{103} Lardy, “Integrating China in the Global Economy.” 67.
\textsuperscript{105} Ibid., 17.
competitively neutral way”. Lastly, it states that licensing criteria should be made publicly available.

While these terms represent large concessions on the part of China it should be remembered that the recent development of competition in the Chinese market and the unfinished division of regulatory authority from the industry itself makes it likely that there will be some problems in implementing WTO regulations. As a result, while the Chinese telecommunications market will be opened there are important barriers and constraints that will place limitations on how far this can be expected to proceed.

While the Ministry of Information and Industry (MII) did draft regulations in the form of the “Temporary Regulation on Telecommunications Network Interconnection” these regulations are not as stringent as the provisions laid out by the BTA’s reference paper. One example of this is the fact that the reference paper’s requirement of “sufficient unbundling” is absent. As a result, telecommunications competition would be limited to the facility level. Additionally, there are no provisions related to the ability of customers to switch from one carrier to another without losing their number. As studies have found that the majority of consumers are unwilling to change their telecommunications service carriers if they cannot keep their phone numbers this

109 Ibid., 17.
110 Ibid., 17.
constitutes another significant barrier to new market entrants.111 Nor does it legislate dialing parity. While subscribers to China Telecom are not required to use access codes to make long distance calls subscribers to China Unicom must dial an additional three digits in order to do so. As a result, while China’s bilateral agreement did lead to some progress in interconnection and regulation legislation it did not go as far as to bring it up to the standards stipulated in the reference paper.

Questions also remain in regards to the ability of the newly independent market regulator to act independently. The fact that China remains a one party state in which the central government sets policy with the expectation that all state organs will adhere to it ensures that a regulator that truly acted independently would be unacceptable.112 While this is currently unavoidable in China it does have ramifications for how important this Chinese concession will ultimately prove to be.

Lastly, there is some doubt related to how meaningful China’s commitments to fully open its domestic telecommunications market within six years will prove to be. This is due to the fact that the likelihood of considerable foreign equity ownership is severely weakened by the fact that as long as Chinese carriers have a large amount of their assets owned by an overseas subsidiary of their state-owned parent company, little equity will be left for actual foreign companies to purchase.113 The fact that there is nothing in the bilateral agreement preventing China from doing so renders this a serious possibility. As a result, it is expected that the agreement will ultimately lead to minimal opening of the

111 Ibid., 18.
112 Ibid., 20.
113 Lu and Wong, “China’s Telecommunications Market: Entering a New Competitive Age.” 79.
telecommunications market. This is not to say that China has gotten off easy in telecommunications negotiations. A consensus exists that had it not been for the requirements of WTO accession China would not have moved to restructure its telecommunications industry and regulatory regime in such a short period of time. The pace and extent of these reforms ensure that the U.S. has still enjoyed considerable influence in the direction that China’s telecommunications sector will develop.

While detailed records of the evolution of negotiations in the telecommunications sector are unavailable strong domestic constraints can be assumed for reasons touched on earlier in the case selection justification section. Due to the importance of modern, efficient telecommunications service to success in other sectors U.S. business interests will hold stringent terms in these negotiations to be in their interest. The fact that no U.S. business interests would be hurt by stringent terms in the manner that some interests would have been hurt by sanctions resulting from disagreement during IPR negotiations also ensures that domestic constraints will not be contradictory.

In examining the actual terms that China was made to agree to evidence initially seems to exist for characterizing these negotiations with strategic engagement. The U.S. has pushed for access to all of China’s major markets under a schedule that will seriously challenge China’s ability to reform its telecommunications sector in time to remain competitive in its domestic market. The importance of these concessions are further highlighted by the sensitivity that telecommunications holds for national security. This is especially true for China due to its sensitivity to foreign involvement in its domestic market.

114 Zhang, “Assessing the WTO Agreement on China’s Telecommunications Regulatory Reform and Industrial Liberalization.” 18.
affairs. The U.S. can therefore be seen as being willing to push China to make deep concessions in spite of the effect that they have on China's national interest.

However, the actual level of implementation that can be expected of China in light of the various challenges it faces in terms of state capacity, domestic resistance, and political will is far closer to what we would expect from the intermediate bargaining power of the U.S. in this sector. In similar fashion to the IPR deal the telecommunications agreement allowed the USTR to satisfy domestic constraints while securing a level of implementation that reflected Chinese realities. Anticipated partial implementation is clear in terms of: likely levels of future foreign ownership, degree to which Chinese regulations are expected to be brought in line with WTO standards, and the decoupling of regulatory authority from commercial players. This anticipated partial implementation is in line with constructive engagement's willingness to compromise when necessary in order to come to terms. Partial implementation also reflects the argument of constructive engagement that China can not be made to sacrifice vital national interests as part of its accession. At the same time, there is no evidence that the long-term interests of the U.S. in this sector underwent any change. While the U.S. has recognized that it can not get everything it wants in the short-term partial implementation still allowed it to make its long-term demands clear. This is in line with the fact that under constructive engagement U.S. interests are not up for debate.

The use of the rhetoric of strategic engagement and an actual outcome in line with constructive engagement corresponds with my hypothesis for cases with strong domestic constraints and intermediate negotiating power.
5.4 Agriculture

Lastly, agriculture provides an example of a sector where engagement did not take place. In fact, it is somewhat misleading to describe the process that led to the bilateral agricultural agreement as “negotiations”.\textsuperscript{115} While the refusal on the part of the U.S. to waiver in its demands ensured that a final deal was a long time in the making, Chinese negotiators ultimately realized that the American farm lobby had to be bought off with favourable terms in order to avoid holding up the entire bilateral deal. As a result, China ultimately agreed to deep concessions. As part of this deal China agreed to reduce the average statutory rate for agriculture tariffs from 22\% to 15\% by January 2004.\textsuperscript{116} This reduction is especially important due to the fact that while it had been common for China to grant tariff exemptions for manufactured goods prior to accession such treatment was extremely rare in the agricultural sector.

In order to make agricultural protection more transparent the Uruguay round had required that all members replace non-tariff barriers with tariffs that provided an equivalent level of protection. As these increased tariffs were expected to depress trade countries were also required to impose minimum access opportunities. Products that were imported under these minimum access opportunities were made subject to far lower tariffs. For products where imports had accounted for less than 5\% of domestic consumption during the 1986-1989 base period the minimum access opportunity began at 3\% of base period consumption and rose to 5\% of initial consumption at the end of the

\textsuperscript{115} The following case study draws heavily upon Nicholas Lardy. Integrating China into the Global Economy. (Washington D.C.: Brookings Institute Press, 2002).
\textsuperscript{116} Ibid., 75.
implementation period. For products where imports had accounted for more than 5% of domestic consumption members had committed to establish minimum access requirements that kept imports at the same level as the base period average.

Under its minimum access commitment China was made to agree to extremely low tariffs of 1% for wheat, corn, rice, and cotton. Additionally, China's initial quota for wheat was set at 6.1% of base period consumption and rose to 7.8% in the final year. For corn the initial commitment of 4.7% rose to 6.4%. These figures represent large concession on China's part as their corn imports during the base period only amounted to 0.6% of consumption which should have meant that initial commitments should have initially been set at 3% and then risen no higher than 5%.

Commitments for rice imports are far less extensive as the initial quota was set at 1.4% and only rose to 2.7% in the final year. However, the significance of these commitments are only understood by recognizing that while increases in minimum access for wheat, coarse grains, and rice resulting from the Uruguay round of WTO negotiations amounted to 3.64 million metric tonnes China's accession commitments in these areas totalled 7.4 million metric tonnes, over twice the rest of the world's total.

Furthermore, in order to increase the likelihood that China would live up to these minimum access quotas U.S. negotiators demanded that China subject its state monopoly on grain imports to deep reforms. Ultimately the U.S.'s refusal to budge on this demand regardless of the strength of the resistance it faced led China to agree to allowing private

117 Ibid., 75.
118 Ibid., 76.
119 Ibid., 77.
traders to import between 10% and 67% of each quota. As a result, China had to develop a system by which any company with trading rights can, “according to transparent and objective regulations, readily obtain an import license to bring in major agricultural commodities”. This is a huge departure for a country that has been reticent to allow foreign firms to distribute products in China that it did not produce there.

Some of these stakes were also set to rise throughout the implementation period. Wheat, however, which is sensitive for China and only had private trader stakes set at 10% was not subject to these increases over time. As a result the U.S. pushed China to agree that if the entire wheat quota was not used in a given year it would be re-assigned to private traders before the end of that year. This was done to ensure that China was not able to limit imports in order to inflate prices and there-by encourage Chinese farmers to produce crops that would otherwise be uncompetitive. As private traders can now be expected to import whenever Chinese prices rise above international levels the viability of such a policy option is severely constrained.

Beyond these minimum access quotas wheat, corn, and rice tariffs were initially set at 80% and fell to 65%, 51%, and 43% respectively, in 2004. Cotton tariffs were initially set at 76% and were reduced to 40% while soybean tariffs were initially set at 85%, reduced to 9% in 2004, and phased out in 2006. In addition to surpassing the commitments made by contracting parties during the Uruguay round these commitments also go beyond those made by countries since the establishment of the WTO. Latvia,


121 Lardy, “Integrating China into the Global Economy.” 76.

122 Ibid., 78.
which also acceded in 1999 set its in-quota tariff rate for wheat, barley, and oats at 25%. China’s above quota tariff rates are also comparatively low. The EU’s above quota tariff rate for wheat dwarfs China’s initial commitment to 80%. Even starker are comparisons to Japan’s agricultural protection. For grain Japan imposes a tariff of 500%, while for wheat and coarse grains a tariff of 650% is in place.123

The importance of domestic constraints to the stringent terms that the USTR demanded and ultimately secured are highlighted by the strategy it used to convince China to make these extensive concessions. As negotiations entered their final stages the USTR supported its arguments for specific agricultural concessions with information about which members of Congress support they would secure for Chinese accession. While Chinese negotiators could not be sure that this was not merely done in order to secure further concessions it did serve to drive home the point that the USTR had minimal leeway to soften its demands.

While information outlining the role domestic constraints played in the U.S. demand for such stringent terms are unavailable there is no doubt that they played the central role in this stance. The American farm lobby has been described by The Economist as one of the most powerful, highly organised domestic lobby groups in the U.S.124 As a result, the farm lobby has a great deal of influence over how Senators in states with large agricultural sectors vote on trade deals. The U.S. farm lobby was therefore one of the main stumbling blocks to completing the Uruguay round of GATT

negotiations, and was central to the failure of the Cancun ministerial conference of the Doha round negotiations in 2003. The importance of the farm lobby is also reflected in the number of statements by USTR, Charlene Barshefsky, in which the benefits of the accession deal for U.S. farm products were singled out for special mention.

It is easy to rule out strategic engagement as a credible explanation of agricultural negotiations. First, there is no evidence of the U.S. making even the sort of minimal concessions that strategic engagement allows for when U.S. negotiating power is high in order to make a deal more viable. Additionally, there is no record of the USTR making threats of sanctions during agricultural negotiations.

Eliminating constructive engagement is even more straightforward. An attempt to describe this deal as part of an effort to establish a “web of relations” would be highly misleading. Furthermore, while constructive engagement is taken to recognize that accession must be a negotiated process in order to ensure that China is not made to sacrifice its national interest the agricultural deal is better described as an ultimatum that was eventually accepted. As a result, there is certainly no evidence that the USTR was willing to strike a compromise by offering concessions that would have made the deal less stringent. Quite the opposite. While the USTR was willing to agree to more favourable terms for politically sensitive wheat this product was also of less importance to American exporters. As a result, it is a stretch to classify it as evidence of a willingness to back off on demands that conflict with China’s national interest.

No engagement therefore emerges as the only credible description of the outcome in this sector. The U.S. is found to have effectively offered China a bad set of terms
which left China with a choice between giving in, or resign itself to failing to come to a deal. No-engagement at the level of rhetoric and outcome is in line with my hypothesis for cases where the U.S. has high negotiating power and is subject to extremely strong domestic constraints.

6. Ramifications-Greater Relevance

At the most basic level this thesis works towards a more nuanced understanding of the variety of pressures that the Sino-American bilateral trade relationship is subject to. While engagement was adopted as a strategic goal during accession negotiations this did not mean that it was possible, or even desirable, to adopt a uniform negotiating stance towards China across sectors of trade. By recognizing that domestic pressures and the bargaining power that made them credible often necessitated that a more conflictual approach be used in defending U.S. commercial interests one comes to better appreciate the argument that Sino-American relations are a complex mixture of coexisting conflict and cooperation.

Differentiating between engagement as a goal and as a strategy also works towards a better understanding of U.S. China policy. Doing so allows for a more systematic understanding by examining what engagement means at both levels instead of conflating the two. It serves to highlight the fact that variance in negotiating strategies can not be taken as evidence of multiple goals. As a result, it is possible to marshal seemingly contradictory strategies of engagement under the rubric of one goal, there-bye giving them an overarching logic that explains how they all serve to accomplish one end.
This thesis also works towards a more finely grained understanding of two level games by highlighting the role of context specific considerations. By adding an examination of the importance of negotiating power as an IV the predictive power of two level games can be greatly enhanced. This serves to shed some light on the machinations of U.S. trade negotiations. The interaction between U.S. negotiating power and domestic constraints in shaping negotiating strategies has ramifications for the role of the U.S. in the Doha round of WTO negotiations and numerous bilateral deals. American trade policy is expected to be highly opportunistic depending on the circumstances that it is faced with.

This can also be applied to an analysis of U.S. goals in bilateral WTO accession negotiations with Vietnam and Russia. If the U.S. is found to be more willing to grant concessions when its bargaining power is high, and more ready to expend political capital in order to overcome domestic constraints, an argument can be made that accession is being engineered on terms that will serve to balance China. However, if it is found that the U.S. is equally influenced by domestic constraints, and just as likely to demand a level of concessions that are in line with its negotiating power, a strong argument can be made that these accession negotiations are not being used to balance China. Furthermore, the fact that IPR and agriculture have been two of the main stumbling blocks to reaching a deal with Russia ensures that the cases are comparable on a number of important dimensions.\(^\text{125}\)

Bibliography


Clark, Mark J. “Should the S. Contain China” Comparative Strategy 16, no. 3 (July 1997): 275-292.


Gilby, George J. “The Myth Behind China’s Miracle.” Foreign Affairs 83, no. 4 (July/


