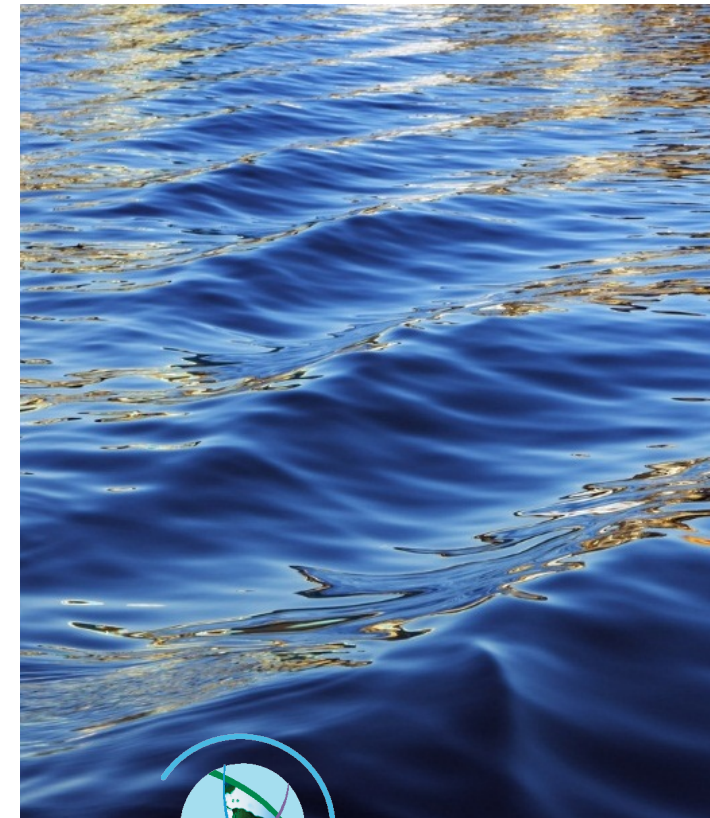




Director Duty of Care: China and US

De-Risking Business Operations and Investment Portfolios in a Changing Climate

Carissa Wong





Summary

Corporate liability for climate change

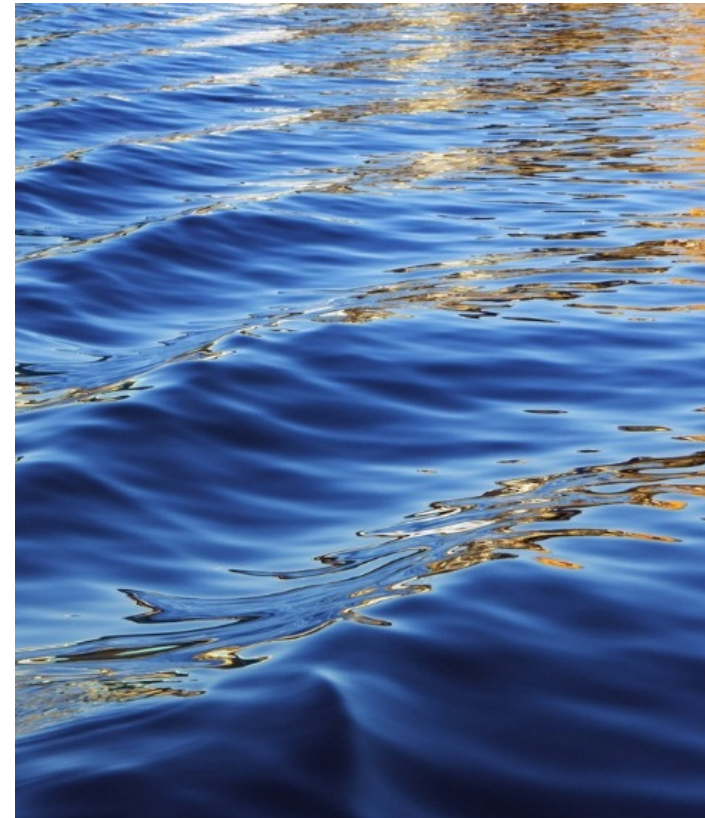
- Director Duty of Care

Comparison between China and the US

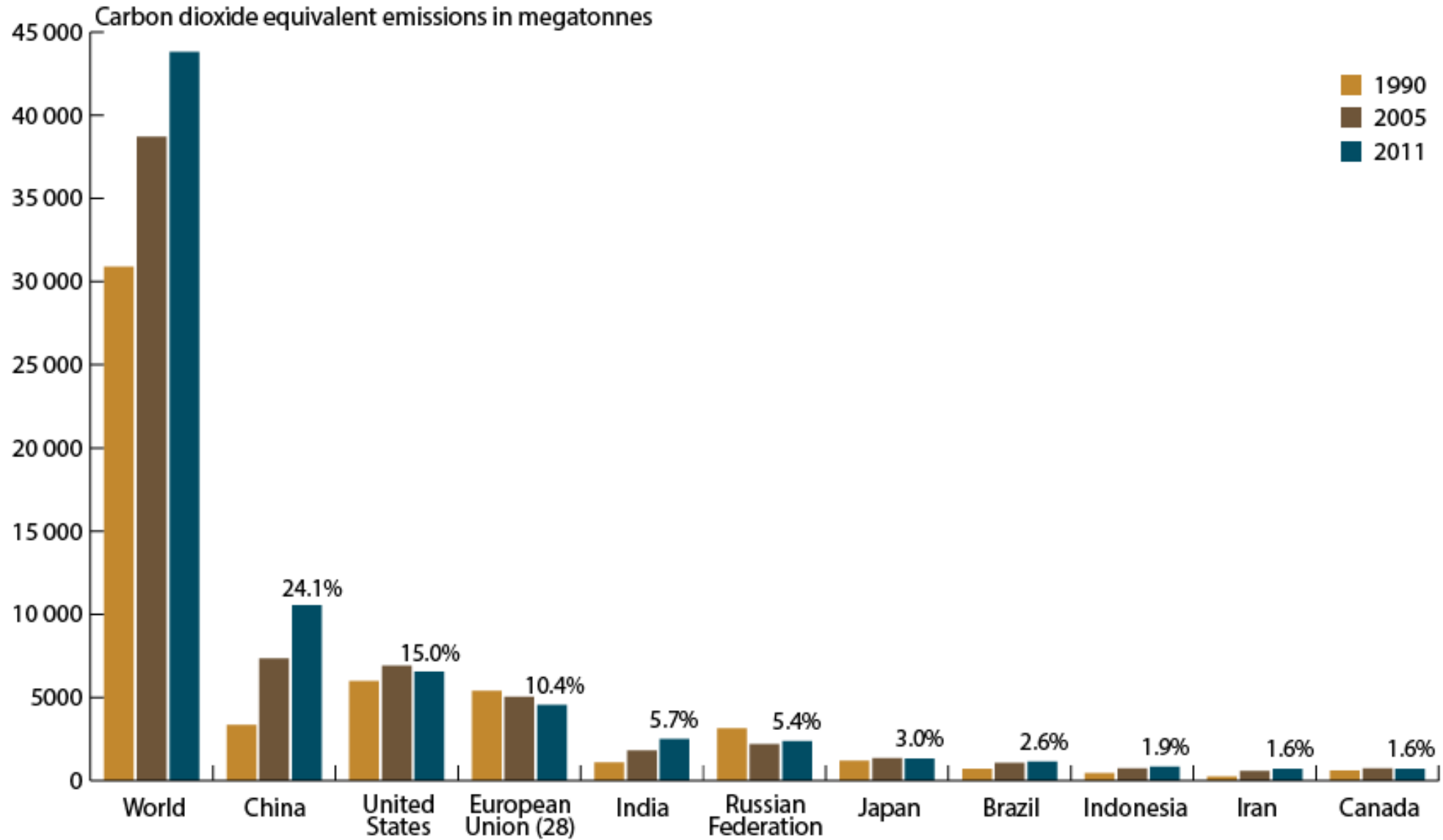
- Where is it better to sue?

Alternatives to Litigation

- What is better than lawsuits? Building relationships.



Global greenhouse gas emissions for selected countries, 1990, 2005 and 2011 (Credit: E&CC Canada)



www.ec.gc.ca/indicateurs-indicators



Director Duty of Care - US

US

- Plausible climate-related claims against Directors include:
- negligence
- product liability
- nuisance and public nuisance

China

- 2010 Tort Law – No Fault Liability



Corporate Law - Once upon a time...

US legal tradition

- Arose from Roman Law in 4th Century
- Small isolated populations, no central control over local affairs
- Laws focused on individual rights

Chinese legal tradition

- When formalized (100 BCE), society was organized around a central government and an absolute ruler
- Laws focused on maintaining control of ruler and performance of duties in Chinese bureaucracy
- Law not concerned with lives of ordinary person
- Village mediation for individual problems

Corporate Law - Evolved

US legal tradition

- Company has legal personhood
- Directors are agents of company
- Directors act in 'trust' for company
- Take position voluntarily, under contract

Chinese legal system

- Originally, family 'clan' structured commercial enterprise
- Concept of contract did not exist
- Modern company law was transplanted from continental Europe, later US
- Now directors have a mandatory duty to manage company (similar to status of parents as legal guardians for children)

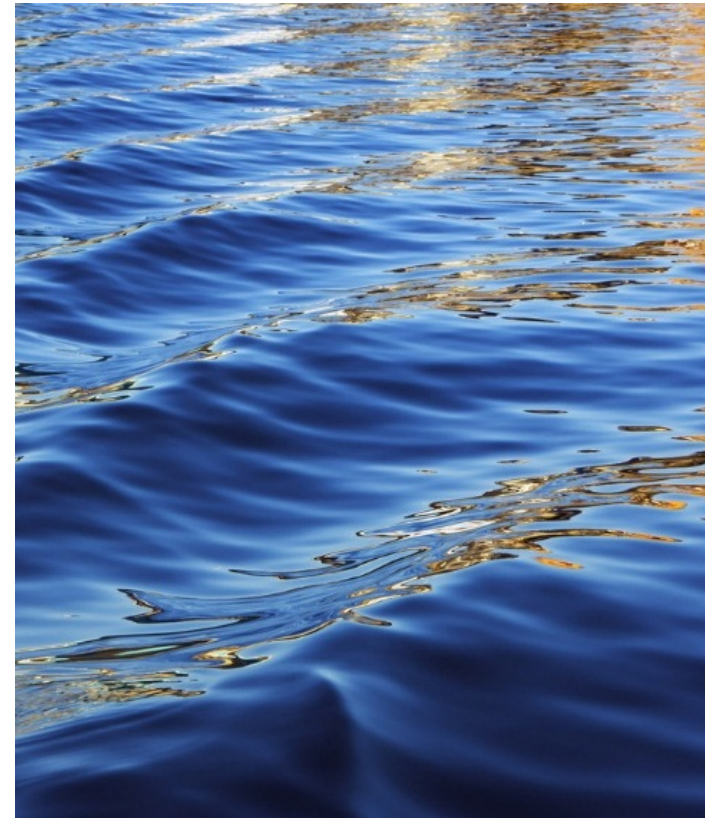
What Difference for Climate Change Liability?

- Not much....
- Functional Similarity between US and China
- The laws look different but produce the same outcome for public participation in climate governance
- A person in China cannot more easily sue the directors of a corporation than a person in the US.



What are the alternatives?

- Networks of communities that share values across traditional national borders; Eco-teams
- Ecologically and socially relevant adaptation
- Corporate Social Responsibility
- Mediation (UNEP-UNDPA)





Take Home

- Director Duty of Care Liability in China and US is similar
- Businesses and investors need to be aware of the range of liabilities
- Building relationships, not litigating, is necessary for adaptation

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