

# Recent Developments in Labour Policy and Regulation in China<sup>1</sup>

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## Abstract

*China's economic success since the 1980s has attracted much scrutiny, both internal and external, of labour standards in its workplaces. Numerous reports in recent years have found evidence of poor labour conditions including lack of safety, in many industries and workplaces. The ensuing outcry within China and outside has resulted in pressures to strengthen the labour regulation regime. While it has become increasingly clear that the traditional communist party approaches will not be able to deliver the kind of labour reforms needed to keep China's progress on track, it is equally unlikely that China will embrace a western-style legal regulation regime in the near future. This paper assays recent developments on a number of fronts to argue that improvements in labour standards in China are occurring, albeit at a slow pace, following a "third way". This process involves several key actors. The governments in China are making gradual changes to the law and to administrative practice to give workers more power to question managerial authority. Greater dissent by workers in workplace matters such as safety and other working conditions are not only "tolerated", but in many cases, encouraged by the authorities. Contributing to government actions are initiatives by three other actors: foreign buyers & foreign-invested firms; non-governmental organizations (NGOs); and, the All China Federation of Trade Unions (ACFTU) which is adopting a more independent stance in foreign-invested firms and in state enterprises that are shedding jobs. The main conclusion of this paper is that the evolution of labour standards in China is more likely to follow the "third way" rather than the much-debated dichotomy of centralized communist party control vs. western-style labour regulation. The key issue for the future is not whether labour standards in China will improve but rather the speed at which they will evolve given the strengths and weaknesses of the "third way". If we better understand the dynamic by which labour standards are improving in China, we could engage constructively with various actors to facilitate their efforts. If not, we are much more likely to view China as a monolithic state incapable of improving labour conditions which deserves our condemnation. In that case, we would be missing the boat that could help improve labour conditions.*

## I. Introduction

China's economic success since the 1980s has focused increasing attention on the social front, notably on labour and working conditions in addition to human rights. No other country elicits so much attention (and concern) in this regard than does China and its workplaces. Given its size, its impact on global trade, and its authoritarian government, China

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poses a huge challenge for policymakers and theorists alike. The orderly development of China is important not only to its own citizens but also to the rest of the world. At home, poor labour conditions, especially as they translate into workplace injuries and fatalities lead to workplace disruptions which, as they become widespread, eventually interrupt the pace of economic growth. Can the current system of labour regulation meet the standards of decent work during a time of rapid economic growth in China? Can the current system of labour regulation sustain the pace of growth in China in the near term and in the longer-run? Although a full consideration of these questions is beyond the scope of this chapter we contribute to this line of investigation by analyzing recent developments in labour policy in China.

The principal argument offered in this chapter is that even though democracy in China's political process has made no progress in recent years, greater pluralism is emerging in China's regulation of labour standards at the workplace. This is due largely to three main factors. First, government policy now supports a variety of actors and independent processes playing a role in workplace regulation. Second, the emergence of China as a major player in international trade and investment has brought external pressures to bear on improving labour conditions. Third, there is increasing overlap between the interests of external and internal actors, especially in the area of improving labour conditions. This is especially true when we examine the role of the major actors such as the government, the employers, the unions and non-governmental organizations (NGOs) in creating social conditions that help make legislation more effective.

Numerous studies and task force reports conducted by independent agencies, both external and internal, mostly find evidence of poor labour standards in China. In thinking about the future of working conditions in particular and about the system of workplace regulation in general, the relative effectiveness of two alternate systems, the communist and

the western-style capitalist-democratic system, have been considered and debated. In this chapter we argue that both of these systems have inherent weaknesses as a model for China's development in the medium term<sup>2</sup>. Instead of these two models of workplace governance, this paper investigates a "third way" as a possible model for developing better labour standards in China in the near-to-medium-term. We argue that China will find it hard to sustain the traditional communist system of workplace control as its economy develops. If politics overrules workplace priorities, the price would be paid by workers who will bear the high cost of poor labour conditions. On the other hand, it is also unlikely that political and economic change in China would adopt a western-style labour regulatory regime based on hard law and enforcement. Rather, the better prospects for improving labour standards in China lie in the "third way" which involves gradual evolution of a web of institutions, some from the communist system and others from outside, that will create a web of formal rules and informal norms to improve labour standards. In this paper, we conceptualize the 'third way' in terms of the changing role of government agencies, the All China Federation of Trade Unions (ACFTU), the larger employers (both domestic and foreign-invested), the courts, the non-governmental organizations (NGOs) engaged in worker welfare and lastly, the workers themselves. Our treatment of a vast country like China is selective and for the most part, based on secondary sources. All the same, the analysis and the evidence are supportive of the emergence of the "third way" as a model for China's evolution of labour regulation in the near-to-medium term. If the dynamics of the "third way" were to be formally recognized and incorporated into policy made in Beijing it could lead to faster improvements in labour standards throughout China.

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<sup>2</sup> In the short-term, the communist system is likely to prevail while the long-term outcome is hard to predict.

## II. A Framework for the “Third Way”

Many believe that the economic development in China is sustained at the price of extensive exploitation of unskilled labour and continuous competition of lowering labour costs (Chan & Ross, 2003; Chan, 2003; Diamond, 2003). Labour rights violations have been well-documented by academics, labour activists and NGOs promoting labour rights standards, such as the Solidarity Centre of the AFL-CIO, International Confederation of Free Trade Unions(ICFTU), China Labour Bulletin and CSR Asia.

According to a Hong Kong Christian Industrial Committee’s report on toy factories in China, twenty factories supplying toys for well-known western brands such as Disney, Hasbro, McDonald’s, and Mattel are essentially run like “sweatshops”(HKCIC 2001). Workers in some of these factories are forced to work up to 16 hours a day, six or seven days a week for wages as low as \$60 a month. The report also found that other safety and health conditions are far from satisfactory.

Besides long working hours and low wages, other poor conditions are well-documented. These include poor enforcement of labour standards and safety laws (Pringle & Frost 2003), discrimination against women and migrant workers (Compa 2004; Cooke 2005), violations of freedom of association (Compa 2004; Diamond 2003; Munro 2005), and widespread industrial disasters (Chan & Senser 1997; Compa 2004; Pringle & Frost 2003).

One result of these studies has been increased pressure from the outside on the Chinese government to improve its record of poor labour standards. Notable among the groups putting pressure on the government in Beijing are many independent rights advocacy groups, international agencies and governments and legislatures from countries that are finding it hard to compete with cheap imports from China. While the actions of these groups are well covered in the western media, the coverage of internal pressures within China to improve labour standards is relatively uncommon.

The internal pressures for change in China deserve more detailed treatment for many reasons. One of them is that the internal processes set in motion by these pressures are often far more effective than external interventions in bringing about significant change. The current prosperity in China is limited to people in a few cities like Beijing and Shanghai. Large segments of the population in the interior are still poor and relatively untouched by new opportunities. Economic reforms introduced in the 1990s have reduced the entitlements to a steady job and basic health care, which has reduced the economic and social status of many workers. Grievance and spontaneous outbursts caused by large income and social inequality, corruption and unemployment have become widespread in recent years. 58,000 protests were documented in 2003 alone. All market participants, ranging from peasants to stock holders, are impacted by abnormal market phenomena such as corruption and over-taxation (Elliott, 2005). These protests have drawn the attention of the growing middle class in China, which has begun to push for better legal protection of workers' rights.

As a direct consequence of these developments, many changes are taking place in China's system of labour regulation. This chapter argues that the roles of four key parties to the employment relationship in China, the government, the employers, the ACFTU and NGOs, are evolving in the wake of a compelling case for better labour regulation. We argue that the quality and quantity of change is such that a transformation, not just incremental change, is taking shape. A principal driver of this transformation is a set of overlapping interests that have resulted from overall changes in economic and social policy. As reforms have been introduced in economic and social spheres, it has pushed these parties in certain directions, creating overlapping interests that did not exist in the pre-reform period. It is rarely the case that their interests overlap in the area of labour protection. Rather, the overlap occurs in other spheres, e.g., economic, social or political, but in a way that better labour regulation helps each of the parties achieve their other objectives. These changes are

effectively creating a web of regulations that are likely to be more effective than any previous regulations under the pre-reform communist regime. Overlapping interests ensure that regulations are not at risk of non-implementation due to inattention of any single party. More than one party is eager, under these conditions, to pursue better enforcement.

Some observers believe that as more Chinese people start pressing for their rights, the government will learn to adapt and change (Elliott, 2005). While this may be a simplistic answer to the need for change, we argue in this paper that several actors in the Chinese industrial relations system are responding to internal and external pressures by taking a variety of steps that are leading to gradual improvement in labour conditions in China. This evolution can lead to a “third way” for China which would be distinct from the old communist party control and from the western-style regimes of hard law. “third way” of achieving better labour standards at the workplace. The responses of each of these actors are discussed below.

### **III. Pressures on and Responses of the Government**

The roles that the communist Chinese government plays in the market have evolved from a dominating planner and administrator to a regulating arbitrator and inspector (Taylor, Chan & Li, 2003: p 46). In 2004, the Chinese government first introduced the slogan, “build socialist harmonious society”. A harmonious society is characterized by democracy, the rule of law, equity, justice, sincerity, amity and vitality. It fully leverages on people’s talent and innovation, distributes the social wealth generated from reform and development amongst its citizens, and reinforces the government-citizen relationship. Labour relations are generally regarded as one of the most important factors that affect a harmonious society. The Chinese government has taken proactive measures to address the needs of Chinese people in endeavour to maintain a harmonious labour relationship.-These measures include new

legislation, media exposure, independent role of ACFTU, NGOs activities, more or better access to labour court, protection of disadvantaged group, etc., described in greater detail later in this section.

Moreover, the government in Beijing is not immune to external pressures for change. The arrival of MNCs has created new pressures for the government to improve standards. In general, labour conditions in state-owned enterprises do not attract the same degree of scrutiny as do labour conditions in MNC workplaces. Politically, it is far easier for the government to ignore violations of labour standards within their own chain of command than when the violations occur in a workplace that is in whole or in part run by foreign interests. As we will argue in the next section, some of this pressure is generated and conveyed through the official union channels, which in turn is controlled by the communist party apparatus.

Other sources of pressure come from the presence of NGOs. These organizations collect evidence and publicize violations of labour standards as set in Chinese law. NGOs also create pressures for the government by educating workers and making them more aware of their rights under the law. Many of these organizations would not have existed in the early 1980s. But their growth in recent years testifies to NGO presence being “tolerated” by the government. This new-found tolerance may indicate a growing realization that NGOs serve a useful social function in the economy and society.

Adding to the pressure are also foreign governments and legislatures (e.g., the U.S. Congress) especially from the west that are facing growing trade imbalances with China. Although it is hard to translate such pressures that include issues such as revaluing the yuan, into specific actions that the Chinese government would have taken in respect of better labour standards, the signs of change in the government are all too clear if one were to observe policy outcomes. Other influences from abroad come from international agencies such as the

International Labour Organization (ILO) and the World Bank that has made several loans to China in support of restructuring industries.

Internally, the government faces the potential of large-scale disruption to workplaces and beyond if they were to ignore poor labour standards. Spontaneous large-scale demonstrations of tens of thousands of workers have taken place many times in recent years throughout the country. Adding to these pressures are the voices of an increasingly confident and prosperous middle-class that wants to see the rule of law followed in all spheres including better labour standards. The growing inequality within Chinese society has created a dissatisfaction among the less privileged that results in pressures on the government to improve conditions for workers. Lastly, in a very broad sense, the coercive nature of “official” corruption has added to the dissatisfaction among workers as they may attribute poor or unsafe working conditions as resulting from corrupt officials who are not performing their public duties.

We identify five areas where the government has responded to these pressures to improve labour standards. First and foremost, the government has begun to introduce new legislation and update others to facilitate better standards. This is a significant move both in terms of the government’s recognition of the problems as also its political will to begin to change the system. Second, government policy has promoted alternate dispute resolution systems at different levels where workers can challenge managerial decisions without appearing to question the political authority of the government. This is a significant move that signals the government’s desire to delink political authority from managerial authority. Third, the Beijing government has stepped up its official cooperation with the ILO and other NGOs. Fourth, the government appears more tolerant of labour protests over wages and working conditions and more open to criticism from various quarters over poor labour conditions. Lastly, the government through its own propaganda machinery has taken an

active role in mobilizing a campaign to improve labour standards. Each of these initiatives is discussed below with evidence that substantiates each of these inferences.

**a. New legislation**

Chinese government is reducing its “role as an employer”; in stead it is increasing its “role as a regulator” (Cooke, 2005, p195). To narrow the widening gap between the rich and the poor, a potential trigger of social unrest, the Chinese government issued the Enterprises Minimum Wage Regulations in 1993. It says that all types of enterprises in China should pay employees minimum wages. It also requires that local government should set up the minimum wage according to the following five principles: local minimum living wages, average wage level, local productivity, unemployment, and local economic development. The average at early of 1994 was 218 yuan/month. In February 2004, Ministry of Labour and Social Security issued a new Minimum Wage Stipulation to replace the one in 1993. This new move updates the criteria used to set up the minimum wage at the local level, as well as covers rural migrant workers and hourly urban workers. By July 2005, the average minimum wage increased to 486yuan/month. Minimum wages increased by 123% over ten years. But there are problems in implementation and enforcement of minimum wage policy in China (Cooke, 2005).

The most important event in Chinese legislation in 2006 was the draft labour contract law. China's top legislature, the National Peoples' Congress (NPC) is attentive to the public opinions (People's Daily Online, March 21, 2006). This draft law, together with the law on property rights publicized at an earlier time, marks a new era of legislative democracy in China (see chapter by Dong in this book). The open communication to the public on this first draft law governing the labor contracts sent out a clear message that the Chinese leadership attempted to establish a law that safeguards labour rights as well as maintains workplace

harmony to the greatest extent possible. The release of the draft law was followed by over 190,000 public feedback to local or national legislative bodies within the first 30 days, the majority of which in the format of email.

The Labour Contract Law was adopted at the 28th Session of the Standing Committee of the 10th National People's Congress on June 29, 2007 by National People's Congress and will be effective from January 1, 2008. It will have a huge impact on labor relations in China.

**b. More and better access to labour courts**

In the hope of mitigating the underlying irritants that lead to petitions, China revised its regulations on worker grievance handling process, which became in effect on May 1, 2005 (Xinhua News Agency, March 5, 2005). As a result of these and other measures, the number of cases accepted by central and local Labour Dispute Arbitration Committees increased from 12,368 in 1993 to 313, 773 in 2005. This number increased significantly in every year during this period and continues to rise at the time of this writing in late 2007.

**c. Encouraging workers to press grievances through media campaigns and slogans**

The government in Beijing appears to recognize that it cannot deliver better labour standards on its own without the assistance and involvement of workers. Media in China have been installed in a new role of public watchdogs and whistle-blowers by the official policy (Frost 2006a). When we searched on Baidu, the most popular Chinese web search engine, the terms of "Labor law and Regulations" (*lao dong fa gui*) we got 556,000 hits in December 2006. Bureaus of Labour and Social Security at all levels of government - central, provincial and municipal - have their own websites to educate workers about their legal rights. Some websites, such as *Chinalaobounet*, are certified by the Ministry of Labour and Social Security

to provide legal information and free online legal help. The website, *Labour Lawyer*, provides free information on filing a lawsuit. Southern Metro News, a mainland paper, documented several stories in 2006 about illegal factories and workers fighting for back wages in five-star hotels in Shenzhen. Some empirical studies suggest that media exposure and legal knowledge increase the likelihood of workers asserting their rights (Gallagher, 2006). Such individuals are much more likely to use the formal channels to resolve workplace disputes and to fight for labour rights in the courts. Thus, we may expect that better information, education and awareness would lead to greater protection of workers.

Unpaid wages is a major issue in China today. In September 2005, the Guangzhou Bureau of Labour and Social Security initiated a campaign to publicize fraud companies with wrongful conduct records to discipline their wage payments. On June 26, 2006, thirty enterprises were blacklisted for acute default on wages. The thirty enterprises, most of which are private, were in default of paying over 20 million yuan (US\$2.5 million) in wages to more than 8,000 workers. Official statistics showed that between 2002 and 2005 the Bureau facilitated defaulted wages of over 300 million yuan (US\$37.5 million) to some 300,000 workers in Guangzhou (China View, June 26, 2006).

#### **d. Tolerate/Encourage NGO Role**

A major development in labour policy in the years since the early 1980s has been a change in government attitude and policy towards NGOs working in the area of labour rights and worker protection. Whereas in the older days any significant activity outside the ambit of governmental organizations was seen as being illegitimate and potentially subversive, labour-oriented NGOs are not only tolerated but also encouraged. A more detailed treatment of NGOs appears in Section V later in this chapter. However, it is important to point out here that increasingly active NGOs are at least in part, a direct result of change in government

policy. There is increasing recognition within policy circles that government acting alone is no longer sufficient to take care of growing problems of labour. There are many areas where civic society groups can participate and do a better job. In this line of thinking, NGOs can be invaluable adjuncts to government efforts in creating productive, safe and prosperous workplaces.

In one example of concrete government support for NGOs, we found that the State Council Leading Group Office of Poverty Alleviation and Jiangxi Provincial Poverty Alleviation and Development Office utilized 11 million yuan (\$1.35 million dollars) to fund six NGOs for implementing a poverty alleviation project in six townships in Jiangxi Province. Farmers who were used to the government-sponsored type of poverty relief expressed their satisfaction at this new working mode. Dong Xiaoping, a farmer in Liukeng Village in Le'an County put it this way: "NGOs are different from government projects in poverty relief. NGO workers would come to our homes and talk patiently on everything with each of us" (Xinhua News Agency October 6, 2006 ).

**e. Protections for disadvantaged workers – migrants, laid-off and the unemployed**

A report from the United Nations released in December dubbed China's 140 million migrant workers a "disadvantaged social group," as their rights are often infringed upon in cities (People's Daily Online February 11, 2006). Employers in China have been known to ignore concerns about the health and safety of migrant workers. Migrant workers are often not paid in full, do not have access to medical services and pensions, face public discrimination, and have little say on important issues.

While defaulted wages and industrial injuries are common concerns for millions of migrant workers, their working conditions have been slowly improved thanks to new policies initiated by the government. A brand new national policy was adopted by the State Council to improve the social security system for migrant workers. According to the new policy, the

medical insurance will not only help cover industrial injuries, but also the medical treatment for serious diseases (Gov.cn, March 20, 2006).

In another example, funding is provided by the Ministry of Labour and Social Security to support the skill upgrading training initiatives for 8 million migrant workers in five years. Some 2 billion yuan (250 million U.S. dollars) of China's state budget has been earmarked for training programs for migrant farmers working in urban areas that aim at enhancing wage and job security for migrant workers. The training allowance averages about 500 yuan (62.5 dollars) per worker (Gov.cn , September 11, 2006).

The government is providing more rural migrant workers with work-injury insurance. The expansion of work-related injuries insurance coverage mainly benefits migrant rural workers. By July 2006, more than 90 million people benefited from the insurance nationwide, amongst which 18.71 million being migrant rural workers. The number of migrant rural workers covered by the insurance has skyrocketed nearly 6.2 million since 2005(Xinhua News Agency September 6, 2006).

Similarly, there are new programs initiated since 2000 that target laid-off and unemployed workers with re-training. In 2005, 10.9 billion yuan (1.3 billion US dollars) of the central budget is allocated to help laid-offs' reemployment, which represented an increase of 2.6 billion yuan (316.7 million US dollars) from the last year (China View, March 5, 2006). Other programs provide job search assistance to vulnerable workers.

Yet another area of government policy is the improvement of workers in the mining sector. Liaoyuan municipal government introduced a program to resettle outplaced coal mine workers. Some 800 million yuan (100 million U.S. dollars) was invested in 2005-06 to help more than 50,000 miners and their families reallocate as well as get reemployed (China View, August 13, 2006). The Evolving Role of the ACFTU

## IV. The Evolving Role of the ACFTU

The All-China Federation of Trade Unions (ACFTU) is the only official union in China. Due to the monopoly nature in the role as well as the dependence on the Chinese Communist Party (CCP), ACFTU's approach to workplace issues is traditionally characterized top-down, bureaucratic, and reactive. The implication is that workers questioning the effectiveness of ACFTU have no choice to form alternative unions, but must rely on the present union structure for change (Quan, 2004). Since its revival in the post-Cultural Revolution era as of late 1970s, its mandate has principally been allocating enterprise-based social welfare benefits and maintaining production order. Such roles were rooted from its personnel administration origin under the old state-dominated economy, where hardly any workplace relations were contract-based (Cooney, 2004). Because "workers are the master of the state", ACFTU holds the view that the interests of labour and management are virtually identical. Therefore it is the union's role to defend both concurrently (Wong, 2004).

With a growing free market economy, ACFTU is now facing new challenges. The labour-management conflicts are escalating under the backdrop of the expansion of capitalism, the growth of foreign investment, and the emergence of a new generation of entrepreneurs (Wong, 2004). When serious labour abuses occur persistently both in private companies and some foreign corporations, the management position and policies become difficult to defend. Labour relations in these enterprises are sometimes not so harmonious and workers need an independent voice to represent them and protect their rights.

To counter these challenges, ACFTU transforms its role to go beyond merely distributing social welfare. The role now encompassed duties of organizing labour in the private sector, negotiating collective agreements with foreign companies and lobbying foreign corporations to be socially responsible. Of course, their evolving role is not

completely an internal decision. Just as there are internal and external pressures on the government, the ACFTU faces a similar set of demands for a change in their role. The presence of foreign-invested firms, the demands of international buyers for compliance with labour standards, the growing presence of NGOs in China and the ACFTU's own links with international labour organizations are all contributing to changes at the ACFTU. In response, the ACFTU is making enforcement of legislated standards a priority and asserting its independent role in questioning managerial decisions. It has begun to work more closely with the ILO and other labour bodies abroad. Lastly, it is encouraging more democratic elections at the grassroots level. Each of these developments is discussed below in greater detail.

The 2001 revisions to the Trade Union Law make it easier for the ACFTU to play an independent role in the workplace. These revisions articulate union's role as workforce representative, hence strengthen the union's independence from employers. The revision says that "ACFTU and all the trade union organizations under it represent interests of all employees and safeguard legislated rights and interests of employees".

It seems that the ACFTU increasingly recognize the weak and ineffective enforcement of labour law in China. Discrimination in employment, sexual harassment, gender inequity were highlighted as continuing key problems in ACFTU's 2004 annual report (Compa, 2004). They want to make conditions better for workers and to achieve this goal they are looking beyond changes in their own law to external benchmarks. In one initiative, the ACFTU studied labor laws from over one hundred countries. It clearly showed their strong desire to benchmark Chinese values and strategies with those of developed economies (Mantsios, 2002).

A new generation of union leaders appears to be emerging in China. They realize that the 'transmission belt' model of monopolistic unionism is not appropriate at a time when China is moving rapidly towards becoming a leading economic power in the world. These

leaders want to see a more proactive ACFTU role. In particular, those who have studied or travelled abroad are thirst of innovative ideas and approaches to address China's new labour relations issues. According to Cathy Walker, the director of the Health and Safety department of the Canadian Auto Workers, the Chinese trade union delegations who have visited the CAW in Canada. She found out that despite the Chinese did see the importance to understand union functions in a market economy, they emphasized more on stability and co-operation with management (Walker, 2004). In order to acquire knowledge on the new roles of trade union in a free market economy as well as the status quo of labour relations world wide, the ACFTU proactively formed relationship with most major trade unions in Europe, Asia, Africa and Latin America (Wong, 2004). The ACFTU also participates in ILO activities that promote and develop international co-operations, urges government ratification on more International Labour Organization Conventions, and actively involves in drafting ratification plans and applications for international labour standards.

As suggested earlier, there are many signs that the ACFTU is becoming more active at the workplace to address worker's rights. Driven by economic reforms in China, the changing role of the ACFTU is especially evident in foreign and joint-venture firms. We consider some examples below. However, this new-found ACFTU activism is not limited to the presence of the outsiders. The union appears to have become active in several domestic arenas as well. Two such examples are championing the cause of workers being displaced by the restructuring of state enterprises and migrant workers. Several instances of such activity are discussed below.

***a. A more independent role in foreign/JV workplaces***

Hard on the heels of its success in organizing unions in Wal-mart stores across the country, the ACFTU has reiterated that Chinese trade unions will stick to independent

development with “Chinese characteristics”. This appears to be an argument that trade unions can function differently in China, i.e., they can protect worker interests without questioning political authority and/or without developing a political profile for the labour movement. Taylor, Chang and Li (2003) suggest that in the near term, “ There are no viable alternatives to the ACFTU, however, it has some positive advantages in seeking to articulate workers’ interests compared to other organs , existing or imaginary...” (p.103).

Despite that most Chinese enterprises have set up trade unions to comply national laws, only one fourth foreign-funded companies have so far formed unions. Since 2004, the ACFTU has made a major push to unionize foreign-funded enterprises. Such expansion indicates the ACFTU’s ambition to maximize legal protection for worker rights and interests, while securing mutual benefits for both labour and management ( People Daily Online, Aug.10, 2006).

The ACFTU’s campaign to install workplace unions in foreign-owned firms is most evident in its success at Wal-Mart. In August 2006, Wal-Mart's agreement not to apply its worldwide union opposition attitude to its Chinese outlets undoubtedly strengthened the confidence of national union leaders. Since the inception of the first trade union two weeks ago, Wal-Mart, has seen unions mushrooming one after another in its 60 Chinese outlets (China Daily, Aug.10, 2006).

These successful cases have much implication for the ACFTU. When a large, known-for-union-opposition multinational like Wal-Mart accepted the recognition of the ACFTU, the likelihood to unionize other multinationals increases enormously. The formation of trade unions is only the first step to bring into place a needed mechanism. To make it work and substantially raise labour standards will require more efforts from all sides. Of course, setting up a union is only an initial step. To be effective in guarding and enhancing worker rights the

ACFTU will have to take on management when necessary and to win in enough instances that employers would begin to take note of their views.

The ACFTU's ability to ensure worker rights has increased since the second half of 2004. Under a new regulation, enterprise trade unions are now able to hire a wage payment monitor. A monitoring system requires companies to maintain a monthly salary payment form, which must be endorsed by the trade union president, and copied to the ACFTU. Relevant departments are entitled to monitor company asset transaction such as the transfer of real estates, equipment, raw materials, which can be sold at auction if the company defaults on pay (Frost 2005d). In Shanghai, trade unions request relevant government office to stipulate "unsafe temperatures" to reduce occupational accidents in heated time so that working hours for many workers are reduced when the temperature reaches 35°C. In Shaoxing, the union has been able to collectively negotiate wages and working conditions in 6659 enterprises employing a total of 600,000 workers. The collective negotiation has ensured that workers' wages are more closely linked to enterprise profits, which not only benefits workers, but also decreases turnover rates for the employers (Frost 2005a).

Besides emphasizing the role of the trade union as workers' representative, the 2001 trade union law remedy also entitles workers the right to establish trade union branches in plants and enterprises under democratic grassroots election. According to Trade Union Law of People's Republic of China, Chapter 1, article 3 "all labourers have the right, in accordance with the law, to take part in or organize labour unions". ACFTU head Wang Zhaoguo said, "[T]rade unions have assumed the responsibility of speaking out for the workers and seeking fair solutions for them. ....We should punish those who have prevented the establishment of trade unions in line with the law." ( People's Daily Online, August 31, 2004). Under these provisions, workers in two Reebok shoe factories held open elections for their trade union representatives (Maitland, A. 2002). Such deviation from the traditional norm represents a

small progress in worker involvement at the workplace in China. In Guangdong, the ACFTU claims that its campaign for shop-floor level elections in the past years have won the participation of one-third of 120,000 local unions in the Guangdong province (Compa, 2004). To help migrant workers in Zhejiang province, the ACFTU released a document titled “Endorsement Measures for Organizing Migrant Workers to Join in Trade Unions”, claiming that migrant workers have to be included in trade unions upon employment (Frost 2005d). As a result, 35% of 10 million migrant construction workers have joined the trade union (Frost 2005b).

To help the public know and learn about the new roles of trade union in China, ACFTU builds some programs to popularize “union brands”. Starting in 2000, unions set up a charity program named *Jinqiu Zuxue*, which is a contribution by the union to the education of needy children. This activity has already influenced trade unions all over the country and has become a trade union brand. By 2004, the 16.95 million yuan raised by the Fujian Federation of Trade Unions supported the education of 31,000 students, 8,500 of them at university. Other trade union brands organize *chunfeng* and *chunyu* activities, which assist workers on every aspect of work and life where needed. These brands are shaping a renewed public image of trade unions (Frost, 2005c).

### ***b. Helping Displace and Migrant Workers***

In China, many unemployed and laid-off workers lead hard lives as they lack not only jobs but education, health care and housing. The ACFTU has adopted a program to assist workers with training or small bank loans to help workers start their own businesses, which in turn, could boost job opportunities for others. According to the ACFTU, 35 percent of approximate 40 million transient workers in the construction engineering industry have joined the trade unions as of 2005, and an additional 6.5 million are expected to be admitted

into trade unions in 2006. By 2008, 70 percent of all migrant workers are expected to become union members (China View, March 12, 2006 ). The ACFTU has sought to enhance its influence among migrant workers by helping curb incidents of ill-treatment. The management of several state-owned companies were condemned by the union for employee abuse after it emerged that 11 migrant workers were fed leftovers at a Beijing construction site. The vice-chairman of the ACFTU was quoted by the official newspaper, *China Daily*, as condemning some state-owned firms' failure to respect workers which violated the moral norms (People's Daily Online, Apr.28, 2006 ).

The ACFTU initiated another campaign to urge employers to extend lunch breaks for construction workers so as to prevent heat strokes. The trade union branches also launched educational programs on heat stroke prevention for workers working in heated conditions. In 2005, Shenzhen municipal government issued guidelines for working in heated environment, which stipulated that workers should stop working when the temperature reaches 40 degrees centigrade and work no more than four hours when the temperature reaches 38 degrees. Workers should also stop outdoor work from noon to 3 p.m. when the temperature reaches 35 degrees (China View, July 11 2006). While some of these roles may have been carried out traditionally by the ACFTU, the recent evidence points to the growing salience of these initiatives within the ACFTU hierarchy. We present this evidence here to support our argument that ACFTU is increasingly finding itself in situations where they have to take an active role in worker protection. This role of the ACFTU is one piece of the growing pluralism in protecting labour rights in China.

## **V. The Growing Role of NGOs in China**

Since 1978 when China initiated the policy of reform and opening-up, the country has witnessed a steady growth in NGOs, also called, "civilian organizations" in the official

Chinese language terminology. Initially, any organization independent of the government was seen by authorities with a mixture of suspicion and caution. However, over the years since 1978, the government has become increasingly tolerant and in some instances even welcoming of these organizations. In the words of Li Yong of the Ministry of Civil Affairs, NGOs "have become important social organizations in China and they have exerted positive influence in boosting China's economic growth and helping maintain social stability"( China View, July 06, 2005). It would appear that the Chinese government sees NGOs as a "bridge" between the government and the public.

Many of China's poor labour conditions result from poor enforcement of laws and regulations rather than absence of regulatory protection. Moreover, given the lack of democratic processes to voice dissent and feedback, it is hard, if not impossible, for the government to know about all the labour abuses in far-flung workplaces. Thus, there is a void in the communication between the government and workers that NGOs can fill. NGOs can communicate with workers to raise their awareness of labour laws and workplace rights. NGOs provide training to workers on trade union laws and in other skills that are likely to make them voice their concerns, e.g., in communication, organizing and negotiation. NGOs can also help workers conduct democratic elections under the Trade Union Law of China. In some instances they can be independent trade unions although this is still not very common. In China, according to trade union law, the trade union must be under party control but the local unions can be democratically elected. Trade union law also specifies a union's right to bargain and contract with employers. The Chinese government would accept these unions especially when they can successfully negotiate with foreign employers. But for workers to fully exercise this right they need training from external agencies such as international trade unions and NGOs. This is where NGOs in China have begun to play a significant role.

Supported by labour lawyers and local journalists, some Chinese NGOs have pursued complaints of workers over low wages, unpaid wages, long working hours, poor safety and health conditions, and living conditions in dormitories. Some NGOs are even helping workers to set up their own unions under the trade union law. The China Labour Bulletin (CLB) is a Hong Kong-based NGO on worker rights protection in mainland China. Their activities include monitoring and reporting worker protests in front of local government building via their website and e-bulletin. More recently, they introduced a new approach named “Case Intervention Program”. They contact workers, encourage them to set up a union through factory-wide elections and then register it formally with the ACFTU. The CLB believed that organizing Chinese workers represents an integrated part of their work in mainland China. Their efforts are also backed by a recent provincial law in Guangdong that permits ten or more workers in any factory to organize and register their own union branch. (Munro 2005).

NGOs can also act as a credible and independent inspector of labor standards. As suggested by O’Rourke and Brown (2003), NGOs and international unions can engage in improving the conditions and worker’s rights in Chinese factories instead of organizing boycotts and then hoping for the best. Due to the public suspicion on corporate promises or governmental inspections, independent audit of labour standards is essential for establishing credibility. Some NGOs are playing this role in China by providing training for workers and conducting audits of labour practices. For example, CSR-ASIA provides information as well as develops instruments for promoting corporate social responsibility in the Asia-Pacific region. Associated with its partners, it publishes reports, provides training and education on corporate social responsibility and facilitated dialogues. The certification such as the SA8000 should not exempt the Chinese enterprises from the scrutiny and ongoing monitoring from NGOs for actual compliance. In this regard, CSR-ASIA provides training to workers and employers to enhance their awareness of the need for ongoing vigilance and in some cases,

provides further funding to ensure sustained improvement in labour conditions. Another example of NGO functions is reflected in the China Capacity Building Project which leverages on the collaboration among footwear manufacturers, labour rights groups, and occupational health professionals to strengthen plant health and safety programs in southern China. The Asia Monitor Resources Centre (AMRC), Chinese Working Women Network (CWN), Hong Kong Christian Industrial Committee (HKCIC), and the Hong Kong Confederation of Trades Unions (HKCTU) all took part in this project (Szydy, O'Rourke, & Brown, 2003). Thanks to this program, significant increase in worker's awareness of occupational safety and health standards is reported. Considerable amount of workplace hazards were also identified and removed.

NGOs can also help to develop workers' capacity for self-development and self-awareness. The Institute of Contemporary Observation (ICO) is a good example. Founded in 2001, the ICO is a civil society organization concerning with labour, law and corporate social responsibility. Its areas of research and activities include labour law, public policy, human rights, and occupational health and safety. Since 2003, the ICO has provided training on international labour rights to small to medium size enterprises in southeast China. By March 2004, it had had covered workplaces with over 200,000 workers. ICO also established a community college providing free public education courses to migrant workers in the subjects of legal awareness, occupational health and safety, HIV prevention, etc. (ICO, 2007). In addition, the college provides professional courses in foreign languages, computers and IT skills, management and entrepreneurial skills, etc., so as to facilitate migrant workers to continue their education or advance in their career. Moreover, free legal aid and consultation are provided to vulnerable groups, mostly migrant workers in the Pearl River Delta. Such aid bridges the communication gap between workers and government-run legal

aid centers, private law offices and other legal professionals. Over 3,000 workers were helped in collective disputes from 2003 to 2005(ICO, 2007).

By the end of last year, China saw the number of non-governmental organizations (NGO) increase to 346,000. This is an 8 percent increase of it in the previous year (China View, Feb, 04, 2007). Measured by yardstick, NGOs have become an important part of China's social and economic fabric. What is most remarkable is that within the relatively short span of twenty-five years official policy has evolved to the point where NGOs are viewed as exerting a "positive influence in boosting China's economic growth and helping maintain social stability." ( People's Daily Online, July 7<sup>th</sup>, 2005).

## **VI. External Forces: Supply Chains and Foreign-invested Enterprises**

As mentioned in the sections above, another driver of growing pluralism in China's labour regulation is the role of foreign-invested firms and of international buyers in China. Since they have been an important influence on the changing role of several actors in the system of labour regulation it is important to briefly review their role separately.

Multinational companies like Wal-Mart, Adidas, Toys "R" Us have a significant presence in China and their participation is bringing pressures for improving basic labour standards to ensure that they meet at least the core labour standards as advocated by the ILO. The motivation of multinational firms to move in this direction comes largely from having to satisfy their customers and advocacy groups back home that they are engaging in ethical sourcing overseas.

Wal-Mart sourcing accounts for China's sixth largest export market, buying around \$18 billion worth of made-in-China goods in 2004. To comply with core labour standards, Wal-Mart requires its suppliers to limit the work hours to 40 hours per week plus no more

than 3 hours of overtime a day (Frost, 2006b). The suppliers also have to meet requirements on safety and accommodation conditions. Wal-Mart managers pay surprise visit to suppliers national wide to test their premises. More than 6,500 representatives of suppliers and factories underwent the standard training in 2004, and more than 11,000 suppliers were trained of factory management and Wal-Mart's standards in 2005. Among the 7,200 factories audited by Wal-Mart auditors and third party firms, 141 factories were permanently terminated the business relationship due to labour violations (Frost, 2006b)

Likewise, Adidas has also implemented the Adidas Codes of labour practice that requires main contractors to comply with ILO core labour standards, and other firms also consider such codes to be an effective tool in ensuring contractor compliance in developing countries(Frenkel & Scott 2002).

It is hard to say if the improvement in labour standards in China would have occurred even if multinational buyers and firms were not present. But it is safe to say that foreign presence as buyers, operators or investors has definitely contributed to the changes that this paper has documented. On the other hand, such pressures alone could not have achieved these results. In other words, the dynamic changes occurring within the Chinese political, legal and economic systems are at the core of changes in labour practice.

## **VII. Discussion & Conclusions**

The evidence summarized in this paper points to growing pluralism in China's system of labour regulation. This is most evident in the growth of independent voices of NGOs, workers and in some workplaces, the ACFTU. In addition, the presence of foreign firms as manufacturers and buyers is also adding to the pressure to improve labour standards. This trend is relatively recent in China and is driven by several factors. First, there are more actors within the system compared to the number in the pre-liberalization era when a monolithic state controlled every aspect of the workplace. Second, there is growing overlap

of interests among these actors such that improving labour conditions brings benefits to multiple actors. Third, the state appears to have accepted the need for independent voices in the workplace in the form of NGOs or other worker initiated grievances. This evolution is not systematic but driven by a combination of gradual capacity building and crises that erupt from time to time due to events such as major accidents, significant restructuring or large-scale layoffs. A caveat for the reader in regard to these inferences is in order. The evidence in this chapter has not shown that labour conditions in China are good or even that their regulation is adequate and timely. The only robust inference that can be drawn from here is one of growing pluralism over time in monitoring, reporting and remedying violations of labour conditions as required under Chinese law.

The inference of growing pluralism in labour regulation needs to be reconciled with the fact China has made little or no progress towards greater democracy in its political system. One way to do so is to separate workplace dissent from political dissent. The communist government in Beijing appears to have drawn a line in the sand that accepts the former while practicing a zero-tolerance policy towards the latter. Public policy appears to tolerate or even encourage, in some instances, challenges to managerial authority while taking a very hard line against challenges to political authority. Both are seen as being essential to goals of sustained economic growth. Thus, from the perspective of Beijing policymakers, the differential treatment given to workplace dissent and political dissent is not only not contradictory but is entirely consistent with the populist goal of sustained economic development of the nation. Of course, the official view in Beijing notwithstanding, it is likely that as more internal contradictions develop within this policy framework over time, the government will find it increasingly difficult to honour the line in the sand that treats workplace dissent differently from political dissent. We know from the examples of Poland and South Africa that given sufficient time it becomes very hard for authoritarian regimes to

separate workplace worker movements from broader political dissent movements. However, in the case of China, this is not the only possible outcome. If greater economic freedoms are valued by China's citizens more than greater political freedoms it is also possible that greater economic rights would supplant the clamour for more political freedoms in the near-to-mid term. In that case, the current trend towards greater pluralism in the labour policy regime could continue at the expense of greater political democracy. By some accounts, this is exactly what policy planners in Beijing may be hoping for.

The multiplicity of actors together with overlapping interests makes the evolving labour policy regime more resilient to any regressive attempts to suppress worker voices in the future. Under current conditions, no single actor including the Government can block the pace of pluralist workplace reform without seriously compromising its own interests. This alone would ensure that the evolution towards a regime for improving labour standards would continue, even if the pace of reform is not fast or smooth enough. If the current trends continue, it is likely that in the next 10-20 years, China would have improved its labour standards considerably above the current levels by developing a number of channels through which workers could question managerial decisions. The ACFTU could further develop its "independent" culture by behaving more like its international labor counterparts at least in workplace issues. China's exposure to international institutions is likely to grow as well, bringing with it increasing pressure to improve its labour standards. This could be the "third way" for China to develop pluralism in labour regulation even as it maintains a one-party political system. This trend is likely to hold as long as there is a combination of external pressure, internal protests and a desire on part of the government to keep the economic growth on track.

The conclusions of this chapter suggest that the rest of the world can constructively engage various actors in China to facilitate better labour conditions for Chinese workers.

Rather than view China as a monolithic state controlling all aspects of civilian life, we need to better understand the dynamic processes that are evolving to improve labour conditions. This process is neither smooth nor orderly. Yet, a deeper understanding of the dynamic can help us engage with NGO efforts, multinational firms operating in China and even the ACFTU. The rest of the world can support efforts to educate and inform workers by supporting the work of NGOs in China. They can pressure foreign firms doing business in China to ensure compliance with labour standards. The international labour community can build bridges to ACFTU for knowledge exchanges that would lead to ACFTU exercising its legal authority to protect worker rights. Such approaches are more likely to yield positive change in China in contrast to the periodic denunciation of labour conditions in Chinese workplaces by expedient politicians. If the rest-of-the-world sticks to the old view of China as a monolithic state that does not tolerate any dissent in the workplace, we would have missed an important opportunity to influence positive change in labour conditions in China. In other words, *we would have missed the boat to China!*

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