

A Many-Headed Dragon: Growing Pluralism in Labour Policy and Regulation in China

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China's economic success since the 1980s has attracted much scrutiny, both internal and external, of labour standards in its work-places. Numerous reports have found evidence of poor working conditions, including unsafe practices, and this has resulted in pressures to strengthen labour regulation. While it has become increasingly clear that traditional communist party approaches will be unable to deliver far-reaching labour reforms, it is equally unlikely that China will embrace western-style legal regulation in the near future. This paper surveys recent developments, and argues that labour standards in China are slowly improving due to the incremental adoption of a "third model." This process involves several key actors. Governments in China are making gradual changes to law and administrative practice, enabling workers to question managerial authority. Greater dissent by workers is not only tolerated, but is often encouraged, by the authorities. Contributing to government actions are initiatives by three other actors: foreign buyers and foreign-invested firms; non-governmental organizations; and the All-China Federation of Trade Unions, which has taken a more independent stance in its dealings with both foreign-invested firms and state enterprises. In the authors' view, the evolution of labour standards in China is more likely to follow this "third model" rather than centralized communist party control or western-style regulation. The key issue for the future is not whether labour standards will improve, but

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how fast they will improve in light of the strengths and weaknesses of the "third model." The authors suggest that a better understanding of the dynamic by which these standards are developing in China will allow those in the West to engage with various actors and to facilitate their efforts. Otherwise, they contend, if China is seen as a monolithic state that is incapable of ameliorating the conditions of work, it will be difficult to play a constructive role in achieving change.

1. INTRODUCTION

China's economic success since the 1980s has focused increasing attention on the social front in that country, notably on labour and working conditions as well as on human rights. No other country elicits so much attention (or concern) in this regard. Given its size, its impact on global trade and its authoritarian government, China poses a huge challenge for policymakers and theorists alike. Its orderly development is important not only to its own citizens, but also to the rest of the world. At home, poor labour conditions lead to workplace disruptions, especially when such conditions translate into on-the-job injuries or fatalities. These disruptions have the potential to interrupt the pace of economic growth.

Can the current system of labour regulation ensure acceptable work standards during a time of rapid economic growth in China? Can this system keep up with the pace of growth in the near term, and in the longer run? Although a full consideration of these questions is beyond the scope of this paper, we seek to encourage further investigation by analyzing recent developments in labour policy in China.

The principal argument we offer is that even though China's political process has made little or no progress toward democracy in recent years, more pluralism is emerging in the regulation of labour standards. This is due largely to three factors. First, government policy now supports a variety of actors and independent processes that play a role in workplace regulation. Second, the emergence of China as a major player in international trade and investment has brought external pressures to improve labour conditions. Third, there is increasing overlap between the interests of external and internal actors, especially with respect to the improvement of labour conditions. This becomes particularly clear upon examining the role of the major actors — government, employers, unions, and

non-governmental organizations (NGOs) — in creating social conditions that help to make legislation more effective.

Generally, the evidence found in studies and task force reports by independent agencies, both external and internal, is that labour standards in China are poor.¹ In thinking about the future of working conditions in particular, and workplace regulation in general, the focus of commentators has largely been on the relative effectiveness of two alternative systems — communism and western-style capitalist democracy. We argue that both systems have inherent weaknesses as models for China's development in the medium term. As a substitute for those systems, we investigate a third model of workplace governance, which we suggest has the potential to develop better labour standards in China in the near to medium term.

In our view, China will find it hard to sustain the traditional communist system of workplace control as its economy develops: if politics continue to overrule workplace priorities, it is the workers who will bear the high cost of poor labour conditions. At the other end of the spectrum, it is also unlikely that political and economic change will lead to the adoption of western-style labour regulation based on hard law and enforcement. Rather, the best prospects for improving labour standards in China lie in a "third model" of regulation, which involves the gradual evolution of a web of formal rules and informal norms, some carried forward from the communist system and others borrowed from outside. In this paper, we conceptualize the "third model" in terms of the changing role of a range of actors: government agencies; the All-China Federation of Trade Unions (ACFTU); larger employers (both domestic and foreign-invested); the courts; NGOs engaged in worker welfare; and workers themselves. China is a vast and varied country, and our analysis is selective and is based for the most part on secondary sources. Nonetheless, the evidence demonstrates the emergence of this new

1 Studies documenting poor labour conditions in China's workplaces are too numerous to cite exhaustively. For typical examples, see A. Chan & R.J.S. Ross, "Racing to the Bottom: International Trade without a Social Clause" (2003), 24(6) *Third World Quarterly* 1011; A. Chan, "A Race to the Bottom" (2003), 46 *China Perspectives* 41; S.E. Diamond, "The 'Race to the Bottom' Returns: China's Challenge to the International Labor Movement" (2003), 10 *U.C. Davis J. Int'l L. & Pol'y*.

model. In our view, if the dynamics of the “third model” were to be formally recognized and incorporated into policy made in Beijing, it could lead to faster improvement in labour standards throughout China.

2. A FRAMEWORK FOR THE “THIRD MODEL”

Many believe that rapid economic development in China has been attained through extensive exploitation of unskilled labour and continuous pressure to lower labour costs. Labour rights violations have been well documented by academics, labour activists and NGOs focused on labour standards, such as the Solidarity Centre of the AFL-CIO, the International Confederation of Free Trade Unions, the China Labour Bulletin, and CSR Asia.

According to a Hong Kong Christian Industrial Committee report on toy manufacturing in China, 20 factories supplying toys for well-known western brands, such as Disney, Hasbro, McDonald’s and Mattel, are essentially run as “sweatshops.”² 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 safety and health conditions are far from satisfactory. This research was conducted in the late summer and fall of 2001, in the major industrial cities of Guangdong province (in southern mainland China), namely, Shenzhen, Dongguan, Guangzhou and Nan Hoi. As there are no national surveys of working conditions across China as a whole, we do not know whether the situation is similar in other industrial regions.

Besides excessive working hours and low wages, other examples of poor labour conditions have been amply documented. These include weak enforcement of labour standards and safety laws,³ discrimination against women and migrant workers,⁴ violations of

2 HKCIC, “How Hasbro, McDonald’s, Mattel and Disney Manufacturing Their Toys” (Hong Kong: Hong Kong Christian Industrial Committee, 2001).

3 T. Pringle & S.D. Frost, “The Absence of Rigor and the Failure of Implementation” (2003), 9 *International Journal of Occupational Environmental Health* 309.

4 L. Compa, “The Struggle for Worker Rights in China” (Washington, D.C.: Solidarity Center of AFL-CIO, 2004); F.L. Cooke, *HRM, Work and Employment in China* (London and New York: Routledge, 2005).

freedom of association,⁵ and failure to take adequate steps to prevent industrial accidents.⁶

One result of these studies has been increased external scrutiny of the Chinese government's response. Among the many organizations putting pressure on Beijing to improve labour standards are independent rights advocacy groups, international agencies, and the governments and legislatures of countries around the world. Just a few examples are the American Friends Service Committee, the Japan International Labour Foundation, and OXFAM Hong Kong.⁷ The actions of these groups are well known, given the coverage they receive in the western media. Relatively less is known about internal pressures from groups operating within China.

Nonetheless, the internal pressures for change deserve more detailed treatment because they set in motion processes which are often far more effective than external interventions in bringing about reform. China's current prosperity benefits people mainly in big cities like Beijing and Shanghai. At the same time, large segments of the population in the interior remain poor and relatively untouched by new opportunities. Economic reforms introduced in the 1990s reduced entitlements to a steady job and basic health care, and thus diminished the economic and social status of many workers.⁸ Furthermore, corruption and excessive taxation affect all citizens, from peasants to stockholders. As a result, formal grievances as well as spontaneous outbursts have become widespread in recent years; over 58,000 protests were documented in 2003 alone.⁹

As a direct consequence of these developments, many changes are taking place in China's system of labour regulation. We argue that the roles of four key parties to the employment relationship — the

5 See Compa, *supra*, note 4; Diamond, *supra*, note 1; R. Munro, "What's Being Done on . . . Promoting Labor Rights?" (2005), online: <<http://www.wmd.org/action/non-jan05/china.html>>.

6 See Compa, *supra*, note 4; Pringle & Frost, *supra*, note 3; A. Chan & R.A. Senser, "China's Troubled Workers" (1997), 76 *Foreign Affairs* 104.

7 See the online journal, China Development Brief: <<http://www.chinadevelopmentbrief.com/dingo>>.

8 M. Elliott, "Small World, Big Stakes," *Time*, June 19, 2005 (vol. 165, no. 26), p. 20.

9 *Ibid.*

government, employers, the ACFTU, and NGOs — are evolving in such a way as to make the case for better labour regulation more compelling in their eyes. A principal driver of this change is the emergence of significant overlap in the interests of all parties, in the wake of shifts in national economic and social policy. As reforms have been introduced in economic and social spheres, the key parties have been pushed in certain directions, creating overlapping interests that did not exist in the pre-reform period. The parties' interests rarely coincide squarely in the area of labour protection itself. Rather, the overlap occurs in other spheres — economic, social or political — and improved labour regulation enables each of the parties to achieve its objectives in those spheres. The economic and social reforms now underway are weaving a web of rules that are likely to be more effective in ensuring better labour standards than any of the regulations which existed under the pre-reform communist regime. Overlapping interests ensure that these newer regulations are not at risk of non-implementation due to inattention by any single party; different parties have acquired a common interest in better enforcement of labour laws. In Parts 3 to 6 of this paper, we discuss how the responses to current pressures by the key actors may point the way to a distinctive new approach to labour standards.

3. PRESSURES ON AND RESPONSES OF THE GOVERNMENT

The role of China's communist government in the market has evolved from that of a dominating planner and administrator to a regulating arbitrator and inspector.¹⁰ In 2004, the government first introduced the slogan, "Build a socialist harmonious society,"¹¹ and good labour relations appear to be an integral part of its view of such a society. The government has in fact taken a series of measures intended to achieve and maintain harmonious labour relations. These include new legislation, media exposure, an independent role for the ACFTU, support for NGO activities, and the provision of more or

10 B. Taylor, K. Chang & Q. Li, *Industrial Relations in China* (Cheltenham, U.K.: Edward Elgar, 2003), p. 46.

11 K. Yu, "We must work to create a harmonious world," *China Daily*, May 10, 2007, online: <http://www.chinadaily.com.cn/opinion/2007-05/10/content_869406.htm>.

better access to labour courts. Each of these is described in more detail later in this section.

Moreover, the government in Beijing is not immune to external criticism. The arrival of multinational corporations (MNCs) has brought new expectations for improved standards. In general, labour conditions in state-owned enterprises do not attract the same degree of scrutiny as in MNCs. Politically, it is far easier for the government to ignore violations of labour standards within its own chain of command than in workplaces run in whole or in part by foreign interests. As we will argue, some of this pressure is generated and conveyed through official union channels, which in turn are controlled by the communist party apparatus.

Other pressures come from NGOs, which collect evidence and publicize violations of labour standards under Chinese law. NGOs also educate workers, making them more aware of their legal rights. There were few such organizations in the early 1980s, and their growth in recent years testifies to the government's willingness to "tolerate" them. This new-found tolerance may indicate a growing realization that NGOs serve a useful function in the economy and society.

Adding to the pressure are foreign governments and legislatures (such as the U.S. Congress), especially in western countries, that are facing growing trade imbalances with China. Other influences from abroad include international agencies such as the World Bank, which has made several loans to China in support of industrial restructuring, and the International Labour Organization (ILO). Although it is hard to pinpoint specific actions taken by the Chinese government to improve labour standards in response to external criticism, the signs of change in government policy and enforcement are all too clear if one observes outcomes.

Internally, the Chinese government appears cognizant of the potential for large-scale disruption of workplaces if labour standards remain poor. Spontaneous demonstrations involving tens of thousands of workers have taken place throughout China in recent years. Moreover, an increasingly confident and prosperous middle class wants to see stricter labour standards.¹² The growing inequality

12 Y. Zhou "Towards the Rule of Law in Contemporary China: An Educational Approach," *Perspectives*, vol. 3, no. 1, online: <http://www.oycf.org/oycfold/httdocs/Perspectives2/13_083101/rule_law_china.htm>.

within Chinese society has created a new class of dissatisfied workers who are likely to attribute poor or unsafe working conditions to corrupt officials' neglect of their public duties.¹³

We can identify five areas where the government has responded to these pressures. First and foremost, it has begun to introduce new, and updated, legislation to facilitate better labour standards. This is a significant step because it indicates the government's recognition of the problems and its willingness to take appropriate measures. Second, government policy has promoted alternative dispute resolution systems, which allow workers to challenge managerial decisions without appearing to question the political authority of government. This signals the government's desire to separate political authority from managerial authority. Third, Beijing has modified its stance toward the ILO and other NGOs. Fourth, the government appears more tolerant of protests over wages and working conditions, and more open to criticism in this area. Lastly, it has taken an active role in mobilizing public campaigns to improve labour standards. Each of the aforementioned initiatives is discussed below.

(a) New Legislation

The Chinese government is reducing its role as an employer and is taking steps to enhance its role as a regulator.¹⁴ To narrow the widening gap between rich and poor, the government issued the Enterprises Minimum Wage Regulation in 1993,¹⁵ requiring that all types of enterprises in China pay employees at or above the mandated minimum wage. Furthermore, this regulation requires the local government to set the minimum wage according to five principles: local minimum living wages, average wage level, local productivity, unemployment, and local economic development. At the beginning of 1994, the average minimum wage was 218 yuan per month. In February 2004, the Ministry of Labour and Social Security issued a new Minimum Wage Stipulation, to replace the 1993 Enterprises Minimum Wage Regulation. The new legislation includes updated

13 E. Cody, "Hundreds Are Reproved by China for Corruption," *Washington Post Foreign Service*, December 17, 2004, p. A25.

14 See Cooke, *supra*, note 4, at p. 195.

15 *Ibid.*, at p. 133.

criteria for setting the local minimum wage, and extends coverage to rural migrant workers and hourly urban workers. By July 2005, the average minimum wage had increased to 486 yuan per month — an increase of 123% since 1995.

Nonetheless, implementation and enforcement of the minimum wage is problematic. For example, local authorities sometimes disregard the application of the legislation to rural migrant workers, who should be its main beneficiaries. These workers are often seen as “an additional source of urban disorder that causes social problems such as increased crime rates and traffic congestion.”¹⁶ Workers may be reluctant to complain about non-enforcement of minimum wages, knowing that there is a large queue of workers from the countryside ready to take their place. Some employers do not comply with minimum wage legislation because they disagree with it;¹⁷ others are unable to comply for financial reasons, because their factories are out of production or in debt.

An important event occurred in 2006 — the promulgation of the draft Labour Contract Law. This bill, together with the previously publicized law on property rights, marked a new era of legislative democracy in China.¹⁸ The government’s open communication to the public about the legislation sent a clear message that the Chinese leadership was attempting to safeguard labour rights as well as to maintain workplace harmony. The release of the draft law was followed by a great deal of public feedback to local or national legislative bodies (nearly 200,000 responses were received within 30 days). After several rounds of revisions, 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, and became effective on January 1, 2008.

The passage of the Labour Contract Law underscores several arguments made in this paper. First, it makes labour policy in China more transparent than in the past. Second, this was the first time since the advent of economic liberalization that the government asked for public feedback on draft labour legislation. Third, by

16 *Ibid.*, at p. 145.

17 F.L. Cooke & J. Rubery, “Minimum Wage and Social Equality in China” (Geneva: International Labour Organization, 2002).

18 See Gallagher, *infra*, note 22.

accepting input from diverse parties — labour and management, domestic and foreign, rural and urban — the government signalled its desire to craft a law that would balance different interests, which is central to the idea of pluralist labour regulation. As pointed out earlier, these changes do not in themselves guarantee improvement in standards, but they are indications of growing pluralism in China's labour regulation.

(b) Greater Access to Labour Courts

Revised regulations on the process for handling workers' grievances came into effect on May 1, 2005.¹⁹ As a result of this measure, and others, the number of cases accepted by central and local Labour Dispute Arbitration Committees rose from 12,368 in 1993 to 313,773 in 2005.²⁰ This number increased significantly in every year during this period, and continued to grow through 2007. A full analysis, broken down by industry, region, size of enterprise and other factors is not yet possible due to a lack of data, but the overall increase in the number of cases over a dozen years suggests that workers have more avenues in which to pursue grievances. The new regulations also allow workers to bring a wider variety of grievances to court. Although we have no direct evidence of this, it is reasonable to infer that workers are winning a higher proportion of grievances; if the vast majority were decided against them, the number of complaints would likely stabilize or even decrease over time. The rising number of complaints also suggests that more legitimacy is being accorded to worker grievances within an otherwise authoritarian political system.

(c) Encouragement of 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. The mass media in China have taken on a

¹⁹ Xinhua News Agency, March 5, 2005.

²⁰ *China Statistics Year Book*, 1994-2006.

growing role as public watchdogs and whistleblowers.²¹ In December 2007, we conducted a search on the most popular Chinese web search engine, *Baidu*, using the search phrase “labour law and regulations” (*lao dong fa gui*): we had 1,730,000 hits. 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 *Labour Lawyer* website provides free information on filing a lawsuit. *Southern Metro News*, a mainland paper, documented several stories in 2006 about illegal factories and workers who fought their employers (five-star hotels in Shenzhen) for payment of back wages. Some empirical studies have found that media exposure and legal knowledge increase the likelihood that workers will assert their rights.²² It is to be expected that better information, education, and awareness will make workers more willing to use formal channels such as grievance procedures and labour courts to resolve workplace disputes.

Unpaid wages, a major issue in China today, constitute another area where government action is leading to the enforcement and gradual expansion of labour rights. In September 2005, the Guangzhou Bureau of Labour and Social Security initiated a campaign to publicize the names of companies with a history of non-payment of wages. On June 26, 2006, 30 enterprises (most of them private), which owed over 20 million yuan (U.S. \$2.5 million) in unpaid wages to more than 8,000 workers, were blacklisted for acute default on payment of wages. Official statistics show that, between 2002 and 2005, the Bureau facilitated payment of over 300 million yuan (U.S. \$37.5 million) in unpaid wages to some 300,000 workers

21 S. Frost, “China View” (2006a), *CSR Asia*, vol. 2, no. 40, p. 6, online: <<http://www.csr-asia.com/upload/csrasiaweeklyvol2week40.pdf>>.

22 M. Gallagher, “Winners and Losers in Economic Reform: Probing the Foundation of China’s Sustainable Autocracy,” paper presented at the University of Western Ontario’s 2006 International Labour Law Lecture and Conference, *Labour Law and the Global Workplace*, October 20–21, 2006.

in Guangzhou.²³ Even though enforcement may not be uniform across the country, these figures demonstrate the government's political will to enforce certain labour rights guaranteed under Chinese law, and they indicate that the gradual expansion of labour regulation is part of the government's larger plan for governance. Better enforcement, and greater involvement of workers in the process, further add to the growing pluralism of labour regulation in China.

(d) Growing Acceptance of NGOs

A major development in labour policy since the 1980s has been a change in the Chinese government's approach to NGOs that work in the area of labour rights and worker protection. During the pre-reform years, any significant organizational activity outside the ambit of the government was seen as illegitimate and potentially subversive. In recent years, labour-oriented NGOs have not only been tolerated but even encouraged, as long as they operate within certain limits. There is increasing recognition within policy circles that government regulation can be more effective in dealing with labour problems if it is done in conjunction with NGO activism. It appears that NGOs can play a constructive role in ensuring productive, safe and fair workplaces.

One example of government support of NGOs is the allocation of 11 million yuan (U.S. \$1.35 million), by the State Council Leading Group Office of Poverty Alleviation and Jiangxi Provincial Poverty Alleviation and Development Office, to fund six NGOs working on a poverty alleviation project in six townships in Jiangxi Province. Farmers who were used to government-administered poverty relief measures expressed satisfaction with this new working model.²⁴ The growing presence and role of NGOs in China is further discussed in section 6.

23 "30 firms blacklisted for defaulting wages," *China View*, June 26, 2006, online: <http://news.xinhuanet.com/english/2006-06/26/content_4749173.htm>.

24 J. Subler, "China Cautiously Enlists NGO Help in Poverty Fight," Reuters, April 8, 2007, online: <<http://www.reuters.com/article/latestCrisis/idUSPEK14506>>; J. Watts, "Charity: New Cultural Revolution," *The Guardian*, January 10, 2006, online: <http://www.guardian.co.uk/world/2006/jan/10/china.jonathanwatts>>.

4. THE EVOLVING ROLE OF THE ACFTU

The All-China Federation of Trade Unions (ACFTU) is the only official union in China. As the ACFTU is a monopoly, dependent on the Chinese Communist Party, its approach to workplace issues can be characterized as top-down, bureaucratic, and reactive. Workers who question the effectiveness of the ACFTU have no legal or practical capacity to form alternative unions, and must rely on the present union structure to work for change.²⁵ Since the ACFTU's revival in the late 1970s, its mandate has been principally to allocate enterprise-based social welfare benefits and to maintain production order. Such roles were rooted in the personnel administration system of the old state-dominated economy, in which contract-based employment was almost unknown.²⁶ Because "workers are the master of the state," traditional ACFTU policy holds that the interests of labour and management are virtually identical, so the union's role is to defend both concurrently.²⁷

In the growing free-market economy, the ACFTU faces new challenges. Labour-management conflicts are escalating with the expansion of capitalism, foreign investment is growing, and a new generation of entrepreneurs is emerging.²⁸ When serious labour abuses occur persistently both in private domestic companies and in foreign-owned corporations, it becomes difficult for the ACFTU to defend management policies. Labour relations in such cases become strained, and workers need an independent voice to represent them and to protect their rights. To counter these challenges, the ACFTU is attempting to transform its role beyond merely distributing social welfare, to include organizing workers in the private sector, negotiating collective agreements with foreign corporations, and lobbying for those corporations to be socially responsible.

Of course, pressure to change its role has not come only from within the ACFTU; like the government, it faces both internal and

25 K. Quan, "Unions Need To Talk" (2004), 11(4) International Union Rights 5.

26 S. Cooney, "Limitations and Possibilities" (2004), 11(4) International Union Rights 8.

27 K. Wong, "Labour Solidarity with China's Workers" (2004), 11(4) International Union Rights 20.

28 See Wong, *ibid.*

external pressures. 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 all militate for change. In response, the ACFTU is making the enforcement of legislated standards a priority, and is asserting its ability to question managerial decisions. It has begun to work more closely with the ILO and with other labour bodies abroad. Lastly, it is encouraging more democratic elections at the grassroots level.

The 2001 revisions to the Trade Union Law²⁹ made it easier for the ACFTU to play an independent role in the workplace. That law now states that the "ACFTU and all the trade union organizations under it represent interests of all employees and safeguard legislated rights and interests of employees." Such a formal and explicit statement of the union's role as the representative voice of workers serves to assert its independence from management.

There are many indications that the ACFTU recognizes that the enforcement of labour laws in China is weak and ineffective. Discrimination in employment, sexual harassment, and gender inequity were highlighted as continuing problems in the ACFTU's 2004 annual report.³⁰ In trying to improve conditions for workers, the ACFTU appears to be looking to external benchmarks, and no longer simply attending to changes in domestic law. In one initiative, for example, the ACFTU studied the labour laws of more than a hundred countries.³¹

The use of external benchmarking is also evident in the ACFTU's attempts to develop relations with labour movements in other countries. The new generation of union leaders in China appears to realize that the "transmission belt" model of monopolistic unionism is not adequate at a time when the country is rapidly becoming a global economic power. These leaders want to see a more proactive ACFTU. In order to learn about the role of trade unions in a free market economy, as well as to better understand

29 For the English version, see online: <<http://www.51labour.com/LawCenter/lawshow-68038.html>>.

30 See Compa, *supra*, note 4.

31 G. Mantsios, "Tea for Two: Chinese and U.S. Labor" (2002), 11 New Labor Forum 61.

labour relations world-wide, the ACFTU has formed active relationships with major trade unions on all continents.³² The ACFTU participates in many ILO activities that promote and develop international cooperation, urges government ratification of ILO conventions, and takes part in drafting ratification plans and applying international labour standards. In recent years, Chinese trade unions have reached out to several Western unions for help in learning how to bargain collectively and to organize workers at the grass-roots level.³³

As suggested earlier, there are many signs that the ACFTU is adopting a more independent voice in addressing rights in the workplace. Driven by economic reforms in China, the changing role of the ACFTU is especially evident in foreign and joint-venture firms. Its activism also extends to the cause of migrant workers and workers displaced by restructuring in state enterprises.

(a) More Independent Stance toward Foreign-Owned Enterprises/Joint Ventures

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 follow an independent path of development, one with “Chinese characteristics.” The ACFTU apparently takes the position that, despite its cultivation of ties with the international labour movement, trade unions can function differently in China than in other parts of the world — that they can protect worker interests without questioning political authority or developing a political profile for the labour movement. Taylor, Chang and Li have written: “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”³⁴

Since 1978, when economic reform began, the ACFTU’s national membership has declined, as many state-owned companies with large union memberships disappeared due to restructuring. By

32 See Wong, *supra*, note 27.

33 A. Chan, “Made in China: Wal-Mart Unions,” *YaleGlobal*, October 12, 2006, online: <<http://yaleglobal.yale.edu/display.article?id=8283>>.

34 Taylor, Chang & Li, *supra*, note 10.

the late 1990s, the ACFTU had decided to try to expand its membership by signing up workers at foreign-owned companies. The 2001 trade union law gives workers the right to establish ACFTU branches in plants and enterprises through an open election process. According to the Trade Union Law of the People's Republic of China,³⁵ "all labourers have the right, in accordance with the law, to take part in or organize labour unions." Relying on these provisions, workers in two Reebok shoe factories held open elections for trade union representatives in 2002.³⁶ Such deviation from the historical norm represents some progress, albeit small, toward worker representation in Chinese workplaces.

The best illustration of the ACFTU's campaign to establish workplace unions in foreign-owned firms is the experience at Wal-Mart. In August 2006, Wal-Mart agreed not to oppose formation of ACFTU-affiliated unions in its Chinese outlets. Since the inception of the first trade union, local union organizations have been steadily emerging at many of Wal-Mart's 60 outlets in China.³⁷ An editorial on the ACFTU website comments in these terms:

This successful experience in setting up Wal-Mart unions is groundbreaking in that we have discovered a new line of thinking. It not only will influence other foreign and private investors to quickly abide by the law to allow unions to be established, it also brings to trade unionists a new mission. Following the new logic in setting up unions, new adjustments in union work will be needed, be it in methods, in organizational structure, ways of identifying backbone activists, down to how to use union funds . . .³⁸

Because Wal-Mart is a large multinational that is known for its opposition to unions, its recognition of the ACFTU could significantly increase unionization at other multinationals in China. In past decades, workers at foreign-owned and private firms tried to get the support of the ACFTU, but without success. Few workers knew how to use the law to set up their own union branches; to vindicate their rights, they had to go to the streets, or engage in wildcat strikes. The

35 Chapter 1, Article 3.

36 A. Maitland, "Sewing a Seam of Worker Democracy in China," *Financial Times*, December 11, 2002.

37 See Chan, *supra*, note 33.

38 *Ibid.*

recent developments at Wal-Mart, however, signal to workers that they have the right to demand union representation in their respective workplaces.

(b) Other Areas of ACFTU Activism

The ACFTU's capacity to protect workers' rights was enhanced in the second half of 2004, when a new regulation gave enterprise trade unions the right to hire a wage payment monitor. As part of the monitoring system, companies are required to prepare a monthly salary payment form, which must be endorsed by the union president and copied to the ACFTU. Relevant ACFTU departments are entitled to monitor company asset transactions, such as the transfer of real estate, equipment, and raw materials, which can be sold at auction if the company defaults on pay.³⁹ In Shanghai, trade unions requested the relevant government office to stipulate "unsafe temperatures" in order to reduce occupational accidents on hot days. This resulted in a regulation pursuant to which the working hours of many workers are reduced when the temperature reaches 35°C. In Shaoxing, the union has been able to negotiate wages and working conditions in 6,659 enterprises employing a total of 600,000 workers. The collective agreement has ensured that workers' wages are more closely linked to enterprise profits, which not only benefits workers but also decreases turnover rates.⁴⁰

To increase public awareness of the heightened role of unions in China, the ACFTU has undertaken programs to popularize the trade union as a "brand," in much the same way as a company would promote its image through brands. Starting in 2000, unions set up a charity program named *Jinqiu Zuxue*, which is aimed at providing education to needy children. This program now operates across the country, and has become widely associated with trade unionism. 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 whom

39 See Frost, *infra*, note 42.

40 S. Frost, "China View" (2005a), *CSR Asia*, vol. 1, no. 6, p. 5, online: <<http://www.csr-asia.com/upload/csrasiaweeklyvol1week6.pdf>>.

were in university. Other widely-known trade union initiatives include *chunfeng* and *chunyu*, which are aimed at assisting workers. These programs are shaping a renewed public image of trade unions.⁴¹

The ACFTU has made extensive efforts to reach out to migrant workers, whose ranks have swelled in the past two decades. To help migrant workers in the province of Zhejiang, for example, the ACFTU issued a document entitled “Endorsement Measures for Organizing Migrant Workers To Join in Trade Unions,” which states that migrant workers must be permitted to join a union upon employment.⁴² As a result, approximately 35% of 10 million migrant construction workers have joined a union.⁴³

It is important to point out that the ACFTU is still affiliated with the Chinese Communist Party, a relationship that limits the potential for union independence. The CCP has not come to a clear decision as to the degree of independence with which the ACFTU is to be allowed to function. The CCP would like to enhance the ACFTU’s legitimacy by allowing greater democracy in union elections and union organization, while retaining overall control in its own hands.⁴⁴ This is a difficult balancing act for both organizations. It is hard to predict how the ACFTU’s need for greater autonomy over its affairs will be resolved in the future. For now, there is enough fluidity and ambiguity in this relationship to allow greater pluralism in labour regulation. The transformation of the ACFTU supports the inference that changes are occurring at the margins of labour policy, in the direction of greater pluralism. However, the evidence indicates that it would be misleading to suggest that ACFTU policy yet addresses worker needs adequately.

41 S. Frost, “China View” (2005c), *CSR Asia*, vol. 1, no. 23, p. 6, online: <<http://www.csr-asia.com/upload/csrasiaweeklyvol1week23.pdf>>.

42 S. Frost, “China View” (2005d), *CSR Asia*, vol. 1, no. 24, p. 7, online: <<http://www.csr-asia.com/upload/csrasiaweeklyvol1week24.pdf>>.

43 S. Frost, “China View” (2005b), *CSR Asia*, vol. 1, no. 22, p. 4, online: <<http://www.csr-asia.com/upload/csrasiaweeklyvol1week22.pdf>>.

44 J. Howell, “New Democratic Trends in China? Reforming the All-China Federation of Trade Unions” (2006), online: <<http://www2.ids.ac.uk/futurestate/drc-pubs/summaries/summary%2020-Howell-ACFTU.pdf>>.

5. THE GROWING ROLE OF NON-GOVERNMENTAL ORGANIZATIONS (NGOs) IN CHINA

As mentioned earlier, since the introduction of reforms in 1978, China has witnessed a steady growth in NGOs, also called “civilian organizations” in official Chinese terminology. Viewed with a mixture of suspicion and caution during the pre-reform days, NGOs have come to be recognized as beneficial to both the state and the people. That is not to say that NGOs in China are totally free to act, but rather that their activities are considered legitimate, as long as they stay within certain boundaries, e.g. that they refrain from political criticism of the government. It appears that the Chinese government sees NGOs as a “bridge” between it and the public.⁴⁵

Many of China’s poor labour conditions result from lax enforcement of laws rather than from an absence of regulatory rules. Moreover, given the lack of democratic processes to voice dissent and provide feedback, it is hard if not impossible for the government to know about the many labour abuses in far-flung workplaces. Thus, NGOs help to fill this void in communication between the government and workers, and to raise workers’ awareness of labour laws and workplace rights. They train workers in trade union law and in other skills that are likely to help them express their concerns — for example, communication, organizational and negotiation skills. NGOs can be relatively effective in these roles because they are seen by workers to be independent of government or management control.

NGOs also help workers to conduct democratic elections under the Trade Union Law of China. According to that law, the central trade union must be under party control, but local unions can be democratically elected. The law also specifies a union’s right to bargain and contract with employers. But workers cannot fully exercise these rights without training from external agencies, such as international trade unions and NGOs. This is an area where NGOs in China have begun to play an important role.⁴⁶

45 R.Y. Hsia & L.T. White III, “Working amid Corporatism and Confusion: Foreign NGOs in China” (2002), 31 *Nonprofit and Voluntary Sector Quarterly* 329.

46 *Ibid.*

Supported by labour lawyers and local journalists, some Chinese NGOs have pursued complaints by workers about low or unpaid wages, long working hours, poor safety and health conditions, and substandard living conditions in dormitories. The China Labour Bulletin (CLB) is a Hong Kong-based NGO that seeks to protect worker rights in mainland China. Its activities include monitoring and reporting on worker protests at local government buildings, through its website and e-bulletin. More recently, it introduced a "Case Intervention Program," through which it contacts workers and encourages them to set up a union through factory-wide elections, and then register the union formally with the ACFTU. The CLB's efforts are backed by a recent provincial law in Guangdong, which permits ten or more workers in any factory to organize and register their own union branch.⁴⁷

NGOs also act as credible and independent inspectors of labour standards. As suggested by O'Rourke and Brown,⁴⁸ NGOs and international unions can most usefully promote improvements in workers' rights and working conditions by ensuring compliance with existing rules, rather than by organizing boycotts. Due to public suspicion of self-serving corporate conduct and of inspections by government agencies, independent audits of labour standards by NGOs can be essential for establishing the credibility of corporate efforts to promote labour standards. Some NGOs do, in fact, train workers and conduct audits of labour practices. For example, CSR-ASIA disseminates information on corporate social responsibility and develops instruments for promoting it in the Asia-Pacific region. In association with its partners, it publishes reports, provides training and education, and facilitates dialogue. Even when workplaces obtain certification of compliance that relates to working conditions, such as SA8000, there remains a role for independent scrutiny and ongoing monitoring by NGOs. The training given to workers and employers by CSR-ASIA enhances their awareness of this need for ongoing

47 See Munro, *supra*, note 5.

48 D. O'Rourke & G.D. Brown, "Experiments in Transforming the Global Workplace: Incentives for and Impediments to Improving Workplace Conditions in China" (2003), 9 *International Journal of Occupational Environmental and Health* 378.

vigilance, and in some cases, the organization provides further funding to ensure sustained improvement in labour conditions.

Another notable example is the China Capacity Building Project, which encourages 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, the Chinese Working Women Network, the Hong Kong Christian Industrial Committee, and the Hong Kong Confederation of Trade Unions all took part in this project. Researchers found a significant increase in workers' awareness of occupational safety and health standards as a result of it. A considerable number of workplace hazards were identified and removed.⁴⁹

Some NGOs, such as the Institute of Contemporary Observation (ICO), provide training for workers in self-development and self-awareness. Founded in 2001, the ICO is a civil society organization concerned with labour rights and corporate social responsibility. Its areas of research and activity include labour law, public policy, human rights, and occupational health and safety. Since 2003, the ICO has organized training on international labour rights in small and medium-sized enterprises in southeast China. By March 2004, it had covered workplaces that employed a total of over 200,000 workers. It also established a community college providing free public education to migrant workers on legal awareness, occupational health and safety, HIV prevention, and other subjects,⁵⁰ as well as professional courses in foreign languages, computers and IT, and management and entrepreneurial skills. Free legal aid and consultation, which bridges the gap between workers and government-run legal aid centers, private law offices and other legal professionals, is offered to vulnerable groups such as the migrant workers in the Pearl River Delta. Over 3,000 workers were given assistance in collective disputes from 2003 to 2005 in this area alone.⁵¹ Although nationwide figures are not available, data from a few locations suggest that

49 B. Szudy, D. O'Rourke & G.D. Brown, "Developing an Action-Based Health and Safety Training Project in Southern China" (2003), 9 *International Journal of Occupational Environmental and Health* 357.

50 ICO (2007), online: <<http://www.ico-china.org/guwm1/Einglish/Eksy.asp>>.

51 *Ibid.*

the number of workers who come in contact with NGOs is large and growing.

By the end of 2006, China saw the number of NGOs on its territory rise to 346,000 — an 8% increase over the previous year.⁵² Measured by any 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 25 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."⁵³ Some observers have noted that to be effective in the long term, NGOs must be willing to work within controls and priorities set by the government. For foreign NGOs, understanding the political climate and regulatory structure in the country is essential if they wish to carry out their mandates successfully.⁵⁴

6. EXTERNAL FORCES: SUPPLY CHAINS AND FOREIGN-INVESTED ENTERPRISES

As mentioned above, another driver of pluralism in China's labour regulation are foreign-invested firms and international buyers. Because they have been a pervasive influence on the changing role of several actors in the system of labour regulation, it is important to briefly review the underlying reasons for that influence. Multinational companies such as Wal-Mart, Adidas, and Toys "R" Us have a large-scale presence in China, and their participation in the country's economy contributes to the pressure to raise basic labour standards to internationally accepted benchmarks, such as the ILO's core labour standards. The motivation of multinational firms to move in this direction comes largely from having to satisfy customers and advocacy groups in their home countries that they engage in ethical sourcing overseas.⁵⁵ Much research has been done on the impact of

52 "Chinese NGOs increase to 346,000 last year," *China View*, February 4, 2007, online: <http://news.xinhuanet.com/english/2007-02/04/content_5691283.htm>.

53 See *People's Daily Online*, July 7, 2005: <<http://english.peopledaily.com.cn/>>.

54 Hsia & White, *supra*, note 45.

55 Most large multinational corporations face such pressure. On footwear maker Nike, see R. Locke *et al.*, "Beyond Corporate Codes of Conduct: Work Organization and Labour Standards at Nike's Suppliers" (2007), 146 *Int'l Lab. Rev.* 21.

multinational firms, positive or negative, on labour conditions in developing countries. Discussion of corporate codes of conduct adopted by multinational and transnational firms can be found elsewhere, and we will not summarize them here.⁵⁶ Suffice it to say that numerous international firms have forged ahead with such voluntary efforts, even though they have been criticized for a lack of independent monitoring.

Several recent studies⁵⁷ report that corporate initiatives have been effective in bringing about better compliance with core labour standards. While some studies continue to find routine breaches of standards in supplier factories,⁵⁸ others show that multinational sourcing has a positive effect on local labour conditions. Two influential multinationals operating in China are Wal-Mart and Adidas.

Wal-Mart sourcing accounts for China's sixth largest export market. In 2004 purchases by Wal-Mart in China amounted to \$18 billion. The company requires suppliers to limit work hours to 40 per week, and overtime to no more than 3 hours per day.⁵⁹ Suppliers must also meet safety and housing standards, and Wal-Mart managers pay surprise visits to investigate premises. More than 6,500 representatives of suppliers and factories underwent standards training in 2004, and in 2005 more than 11,000 suppliers were trained in factory management and company standards. Among the 7,200 factories audited by Wal-Mart and third-party firms, 141 were permanently terminated as suppliers due to labour violations.⁶⁰

56 For examples of other reports, see, K.A. Elliott & R.B. Freeman, *Can Standards Improve under Globalization?* (Washington, D.C.: Institute for International Economics, 2003); *Implementing Codes of Conduct: How Businesses Manage Social Performance in Global Supply Chains* (Geneva: International Labour Office and Greenleaf Publishing, 2004); Clean Clothes Campaign, *Looking for a Quick Fix: How Weak Social Auditing Is Keeping Workers in Sweatshops*, November 2005, online: <www.cleanclothes.org/ftp/05-quick_fix.pdf>.

57 Locke *et al.*, *supra*, note 55.

58 Verité, "Excessive Overtime in Chinese Supplier Factories: Causes, Impacts, and Recommendations for Action," September 2004, online: <www.verite.org/news/Excessiveovertime>.

59 S. Frost, "Wal-Mart and Ethical Sourcing" (2006b), *CSR Asia*, vol. 2, no. 42, p. 11, online: <<http://www.csr-asia.com/upload/csrasiaweeklyvol2week40.pdf>>.

60 *Ibid.*

Adidas has implemented codes of labour practice which require principal contractors to comply with ILO core standards. In one study that focused on two factories, the application of these codes was found to be effective in ensuring contractor compliance.⁶¹ In general, there is evidence that foreign multinationals tend to have higher labour standards than other employers. Another study found that in Guangdong province, wages were higher and compliance with rules on compensation (minimum wages, overtime pay) was better in foreign-invested firms.⁶²

It is hard to say whether labour standards in China would have improved even if multinational buyers and firms had not been present. But it is safe to say that the foreign presence — buyers, operators, investors — has contributed to an increased focus on labour standards. This attention may not always result in more rigorous standards in specific workplaces, but it does lead to debate among all parties, which in turn generates an impetus to address poor labour conditions. We have argued in this paper that it is the existence of overlapping sets of interests that creates conditions for systemic change. External pressures, important as they are, could not by themselves achieve long-term results. However, when external pressures are combined with other factors — namely, the interests of the government and the ACFTU, and the reinvigorated role of NGOs — efforts by foreign firms can bring about a more conducive climate for change.

7. CONCLUSION

The evidence summarized in this paper points to growing pluralism in China's system of labour regulation. This is most visible in the growth of independent voices on the part of NGOs, workers, and in some workplaces, the ACFTU. The presence of foreign firms as manufacturers and buyers also lends force to efforts to raise labour standards.

61 S.J. Frenkel & D. Scott, "Compliance, Collaboration, and Codes of Labor Practices: The Adidas Connection" (2002), 45 *California Management Review* 29.

62 Minquan Liu, Luodan Xu & Liu Liu, "Wage-Related Labour Standards and FDI in China: Some Survey Findings from Guangdong Province" (2004), 9(3) *Pacific Economic Review* 225.

This trend toward more pluralistic regulation is relatively recent in China, and it is driven by several factors. First, there are more actors within the system than in the pre-liberalization era, when a monolithic state controlled every aspect of the workplace. Second, there is growing overlap of interests, so 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 avenues for addressing worker-initiated grievances. This evolution is not systematic but is impelled by a combination of gradual capacity-building and the eruption of crises from time to time, due to such events as major accidents, extensive restructuring, and large-scale layoffs. However, a caveat in regard to these inferences is in order. The evidence does not show that labour conditions in China are good, or even that their regulation is adequate and timely. The only robust conclusion that can be drawn points to an expanded pluralism in the monitoring, reporting and remedying of violations of labour standards prescribed by Chinese law.

Furthermore, this inference needs to be reconciled with the fact that China has made little or no progress toward democracy in its political system. One way to do that reconciliation is to separate workplace dissent from political dissent. The communist government in Beijing seems to have drawn a line in the sand that accepts the former while practising a zero-tolerance policy towards the latter. Public policy appears to tolerate or, in some instances, even to encourage challenges to managerial authority, while taking a very hard line against challenges to political authority. Both responses are seen as essential to economic growth. From the perspective of Beijing policymakers, the different treatment given to workplace dissent and political dissent is not at all contradictory but is entirely consistent with the stated goal of sustained economic development.

The official view in Beijing notwithstanding, it is likely that as more internal contradictions develop within this policy framework, the government will find it increasingly difficult to respect the line in the sand that treats workplace dissent differently from political dissent. We know from the examples of Poland and South Africa that over time, it becomes very hard for authoritarian regimes to separate workplace movements from broader movements of political dissent. However, in the case of China, confluence between the expression of workplace dissent and of political dissent is not the only possible

outcome. If Chinese citizens value economic freedoms more than political freedoms, granting a greater measure of economic rights could supplant the clamour for enlarged political freedoms in the near to mid term. In that case, the trend toward pluralism in labour policy may continue, albeit at the expense of movement toward political democracy. By some accounts, this is exactly what policy planners in Beijing are hoping for.

The multiplicity of actors, together with their overlapping interests, will in the future make the evolving labour policy regime more resilient to any regressive attempts to suppress worker voices. Under current conditions, no single actor (not even the government) can block the pace of pluralist workplace reform without seriously compromising its own interests. This alone ensures that the evolution toward a regime of better labour standards will continue, even if the pace of reform is neither fast nor smooth. If trends continue, it is likely that in the next 10 to 20 years, China will improve its labour standards considerably by developing a number of channels through which workers can question managerial decisions. The ACFTU could further develop its “independent” culture by behaving more like its counterparts in other countries, at least on workplace issues. China’s exposure to international institutions is likely to grow as well, bringing with it mounting pressure to improve labour standards. This tendency is likely to hold as long as there is a combination of external pressure, internal protests and a desire on the part of government to keep economic growth on track. This could be the “third model” that allows China to develop pluralism in labour regulation, even as it maintains a one-party political system.

The analysis set out in this paper suggests that the rest of the world can fruitfully engage various actors in China with a view to facilitating better labour conditions for Chinese workers. We need to understand the dynamic processes that are evolving to improve those conditions — processes that are neither smooth nor orderly. Such an understanding can help us to engage with NGO efforts, with corporate initiatives, and even with the ACFTU. Other countries can bolster efforts to educate and inform Chinese workers by supporting the work of NGOs. They can insist that foreign firms doing business in China ensure compliance with labour standards. The international labour community can build bridges to the ACFTU through knowledge exchanges that would help it to exercise its legal authority to

protect worker rights. Such approaches are more likely to be effective in facilitating progressive reforms than periodic denunciation of labour conditions in Chinese workplaces. If we do not modify the outdated view of China as a monolithic state that controls all aspects of life and brooks no dissent in the workplace, we will have missed an important opportunity to encourage positive change.