INDUSTRIAL RELATIONS IN CHINA: THE EVOLVING NATURE OF LABOR LAW REFORM

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ABSTRACT

The "Industrial Relations in China: the evolving nature of labor law reform" project will permit a greater understanding of the governance of labour reform as China continues its rapid market integration. Indeed, it is now the case that in China, the concept of governance is increasingly diffusing among alternative stakeholders, such as international corporations. This project will demonstrate that labour reform is moving away from traditional state-centric frameworks, and toward the private sector delivery of labour reform compliance. By examining the concept of governance in China through the lens of labour reform, the emerging issues related to China’s integration into the world economy are clearer. This project outlines the strengths and weaknesses of both domestic and international labour reform frameworks, and allows the reader to understand the primary drivers of labour reform, especially in the labour-intensive export-oriented development zones of South China.

Keywords: Industrial Relations; China; Labour Contract Law; Codes of Conduct; Pearl River Delta; Labour Contract Law

Subject Terms: Industrial relations - China Labor policy; China Labor market - China; Organizational behavior - China; Employees – China - Attitudes.

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## GLOSSARY

<table>
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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>NPC</td>
<td>National People’s Congress</td>
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<td>LCL</td>
<td>Labour Contract Law</td>
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<td>PRD</td>
<td>Pearl River Delta</td>
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<td>SEZ</td>
<td>Special Economic Zone</td>
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<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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<tr>
<td>OECD</td>
<td>Organization of Economic Development</td>
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<td>UN</td>
<td>United Nations</td>
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<td>ISO</td>
<td>International Organization for Standardization</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>ILSR</td>
<td>International Labour Standards Regime</td>
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<tr>
<td>CFA</td>
<td>Committee on Freedom of Association</td>
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<td>ITO</td>
<td>International Trade Organization</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>MFN</td>
<td>Most Favoured Nation</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>SAAS</td>
<td>Social Accountability Accreditation Services</td>
</tr>
<tr>
<td>CSR</td>
<td>Corporate Social Responsibility</td>
</tr>
<tr>
<td>TBT</td>
<td>Technical Barriers to Trade</td>
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<tr>
<td>IISD</td>
<td>International Institute of Sustainable Development</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
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<tr>
<td>ACFTU</td>
<td>All China Federation of Trade Unions</td>
</tr>
<tr>
<td>CCP</td>
<td>Chinese Communist Party</td>
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<tr>
<td>LDAC</td>
<td>Labour Disputes Arbitrational Committees</td>
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1. LABOUR REFORM IN CHINA

In June 2007, the National People’s Congress (NPC) of China passed a package of landmark labour reforms. Given the gargantuan task of providing social safety nets for approximately 350 million urbanizing Chinese over the next twenty years, the Chinese government believes the Labour Contract Law (LCL) that became effective January 2008 is a timely and necessary set of reforms.\(^1\) China’s leadership knows its stake in the reform process has never been higher with the danger of national disintegration being a powerful consequence if the proper provisioning of public goods and welfare is not carried out. Foreseeing the social consequences of rapid urbanization, Deng Xiaoping, the architect of China’s entry into the world market, noted shortly after his famous 1992 “Southern Tour” that the success of future state governance hinges on the ability to manage efficiency and fairness, while avoiding the polarization of wealth between central and provincial governments, regions, classes, and nationalities.\(^2\)

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1.1. THE 2008 LABOUR CONTRACT LAW

Indeed, since the enactment of the first Labour Law of China in 1995, the standing members of the NPC believe the new 2008 LCL will favor "neither employers nor employees" in application, and will work to benefit the long-term stability of China through provisions calculated to improve social welfare. In light of these sweeping regulations, it is clear the 2008 LCL represents an evolution of state governance in China following a litany of previous programs intended to improve policy performance and explicate provisions in the domain of labour law reform. Key employer-employee provisions of the 98 articles of the 2008 LCL include:

♦ COLLECTIVE BARGAINING

The new law requires companies to follow collective bargaining processes when negotiating aspects that personally impact an employee's welfare. Employee representatives must also collectively negotiate issues related to salary and salary adjustment mechanisms. Individual contracts must be signed within 30 days of employment, and must not establish conditions that are below those set through the collective bargaining process.

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SEVERANCE PAYMENTS

Severance payments are now required for all workplace terminations that are equal to approximately one month salary per year worked. Major changes that benefit the employee include severance packages that are now required at the conclusion of fixed contracts in instances when the employer prefers not to renew. Benefiting the employer, new stipulations are made for employees making more than three times the local published average monthly salary. In instances of severance for these highly paid employees, severance is not based on actual salary, but paid as per the average monthly salary for the local area.

MASS LAYOFFS

Reaffirming the 1995 law, the 2008 LCL prohibits mass layoffs if 30 days prior notice is not given to employee representatives. Layoff conditions are now prioritized so that workers with dependants, including the elderly and children, are given preference in workplace retention policies. In instances of worker layoff including more than 20 employees, or 10 percent of the total workforce, the employers are required to provide specific justification to those affected through established protocols.

TRAINING REIMBURSEMENTS

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6 Ibid., 61.
In instances where training is provided for employees, a fixed term of employee service is required. If the employee fails to satisfy the terms of conditions, the employer reserves the right to collect damages to reimburse the costs of training.⁷

### 1.2. A MARKET ANALYSIS OF LABOUR LAW REFORM

With the intention of defining a methodology by which to evaluate the context of the 2008 LCL, it is important to note studies that have examined aspects of the Chinese government's ability to implement reform. For example, Ray Yep has examined state governance in China by measuring the redistributive capacity of center-local governance relations through the lens of the 1994 Tax Sharing Scheme.⁸ Important outputs of the study include defining the relational power of Chinese federalism as the central government's inability to implement reforms due to weak local level capacity in poorer provinces. Pak Lee has written similarly on China's state governance challenges, noting that tax reform has been compromised through "vertical legitimacy deficits." Throughout the 1990, the central government was crippled by its inability to provide reciprocal benefits to the provinces in exchange for the fiscal transfers that were remitted to the central government.⁹ As Lee notes, this cycle of federal relations increased resistance from the leaders of wealthier provinces, who rejected central

⁷ Ibid.
government intrusion in provincial affairs.\textsuperscript{10} Alternative topics of measuring state governance include Yasheng Huang's examination of cadre appointment during the 1990s. Huang explains that while the central government has devolved cadre appointments to provincial-level leaders, it has nevertheless implemented central monitoring and performance measurement systems. Huang concludes by noting effective \textit{nomenklatura} control of the central bureaucracy remains, despite the appearance of power devolution.\textsuperscript{11}

While the methods of these studies have usefully shed light on the evolving nature of how Chinese state actors interact with society, the role of alternative actors is not taken into account. As social welfare challenges in China are now, more than ever inextricably linked to market forces, a less state-centric approach is required. Therefore, this project will examine the context of the 2008 LCL, and explain that the extent of China's legislative commitment to labour reform has been affected by the internationalization of labour law reform. Soft law standards, such as corporate codes of conduct are increasingly being enforced by firms acting in concert with international labour activist organizations, signaling a shift toward the private-sector delivery of public sector responsibilities. The outputs of this project are focused on stakeholder data related to the Pearl River Delta (PRD) region, an area of China where non-state actors are particularly pronounced and market forces are relatively more entrenched. It is therefore pertinent to ask whether the presence of a maturing market economy and the


associated non-state actor governance instruments will impact the state's ability to implement the ambitious language of the 2008 LCL.

1.3. LOCATING PRIVATE GOVERNANCE IN LABOUR LAW REFORM

Although in principle the traditional sphere of state authority in labour reform allows it to withdraw legitimacy from competing actors, there is nevertheless widespread understanding that the state competes at a disadvantage with international corporations. For example, corporations can "enter" and "exit" national markets in a manner that maximizes shareholder profit. However, the consequences of a firm's action, such as environmental pollution or use of labour are costs absorbed only by the state.\textsuperscript{12} J.A. Schumpeter foresaw "creative waves of destruction" emanating from the state's asymmetrical relation to market forces, and believed that the institutional arrangements that supported the entry of unregulated markets would eventually be unravelled as the state was increasingly forced to impose conditions that discouraged the initial market incentives.\textsuperscript{13}


\textsuperscript{13} Nicholas, Tom, "Why Schumpeter was Right: Innovation, Market Power, and Creative Destruction in 1920s America," Journal of Economic History, 2003, 63, 4; 1027.
Karl Polanyi similarly foresaw the consequences of rising private governance, noting the role of entrenched market systems and the corollary of rapid shifts in the international division of labour.\footnote{Polanyi, Karl, "The Great Transformation: The Political and Economic Origins of Our Time," Boston: Beacon Press, 2001, 5.} Polanyi argues that by the 19th century, the state power that had traditionally subordinated the power of market forces was fracturing.\footnote{Rieth, "Corporate Social Responsibility in Global Economic Governance: A Comparison of the OECD Guidelines and the UN Global Compact," 138.} The genesis of reform occurred in England during the late 1790s, changing the existing social order through the establishment of property markets and the enclosure movement. Free trade principles were similarly entrenched by the repeal of the Corn Laws in the mid-19th century. Into the 20th century, the wider acceptance of free market principles occurred in the United States, despite noteworthy legislation, such as the Sherman antitrust legislation, that targeted Standard Oil and American Tobacco.\footnote{Nicholas, "Why Schumpeter was Right: Innovation, Market Power, and Creative Destruction in 1920s America," 1029.} Indeed, large corporations increasingly navigated anti-trust legislation, in part facilitated by Herbert Hoover’s “associative state” government policy that acted to concentrate industry.\footnote{Ibid., 1027.} As Franklin Roosevelt noted in 1930, “50 or 60 large corporations, each controlled by two, three, or four men, do 80 percent of the industrial business” in the United States.\footnote{Jones, R.J Barry, "The world turned upside down? Globalization and the future of the state," Manchester, Manchester University Press, 2000, 71.}

Speaking to these trends, Polanyi notes that the ascendancy of “a self-regulating market implied stark utopianism,” in that state power must serve as a necessary
counterweight to the market in facilitating stable social development.\textsuperscript{19} As opposed to the state providing the necessary legal framework to promote capitalism, Polanyi emphasizes the seesaw nature of power between the state and alternative stakeholders in the development process, and explains that some states are relatively better off at enforcing policy due to the establishment of a protective countermovement of institutions to protect society against market forces.

Indeed, the consequence of a fully functioning market system was the disembodiment of the market from society. As a result, Polanyi explains, a “double movement” occurred, whereupon rapid social changes in the basis of employment reciprocated the expansion of a protectionist countermovement to protect individuals against the perceived negative aspects of market forces. While popular counter-movements manifested into the rise of Bolshevism in the early 20\textsuperscript{th} century or the rise of Nazism during mid-century Europe, less extreme examples usually entail the demand for informal and formal institutions and agreements that protect society against the negative aspects of market forces.\textsuperscript{20}

Building on this framework of instrumental power, or power that can be effectuated as policy, Susan Strange notes in her seminal work, \textit{The Retreat of the State}: "power is simply the ability of a person or group of persons so to affect outcomes that their preferences take precedence over the preferences of

Matters most concerning the use of state power pertain to providing security against violence, stable money for trade and investment, an enforceable system of law, and finally, facilitating the availability of public goods and infrastructure. States often have the capability to act, whether through exercising international relations, moving armies, or citing codes of laws. However, for Strange, the key distinction in defining state power is that while a state may have the capability to act, it may not have the “will and skill;” these being qualities that face challenges from the strengthening of alternative actors, such as market forces. Largely intangible and unpredictable in nature, the “will and skill” to implement reform is a function of the state’s relationship to the market. For example, a state may not be willing to impose certain legislated commitments if doing so would undermine specific policy goals, such as the promotion of an export-oriented economy using cheap, unregulated labour. Thus, similar to Schumpeter and Polanyi, Strange foresees a potential narrowing of traditional state power due to asymmetrical relations to market actors.

While Strange’s central argument is that state power is declining, she notes that cursory examination of this thesis suggests otherwise. For example, Polanyi’s “double movement” of increased intervention by the state to protect society appears to be growing, as increased regulation on matters that affect daily lives is more commonplace, noted for example in the various policies implemented by the Chinese state to alleviate the rural-urban divide that will be discussed later in

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22 Ibid., 5.
23 Ibid., 18.
this project. However, Strange notes that in terms of "matters that the market, left to itself, has never been able to provide," the state has become less effective. The reason: "the shift from state to markets has actually made political players" of non-state actors, co-opting the power of governments.

The corollary of a declining sphere of traditional governance that dominated the regime of state-instituted "hard laws" is the growth of "soft law" standards that emphasize compromise among diverse stakeholders. Soft law standards have origins in the 1970s, and are informal institutions that bring together shared economic, environmental, or social values in a manner that transcends the traditional role of the state. Despite lacking the formal authority of hard law standards that "rely primarily on the authority and power of the state," soft law standards are proliferating as a more efficient method through which to promote voluntary standards and agreements. In issues where the state may not be willing to impose certain legislated commitments, "soft laws" are especially useful as a means to regulate labour laws. Therefore, as private actors are increasingly exercising soft power, it is important to understand the implications in the domain of labour law reform. The following section will explicate the consequences of linking international trade with internationally agreed upon labour standards.

24 Ibid., 5.
25 Ibid., 44.
27 Ibid., 10.
2. ISSUES IN CHINESE LABOUR LAW REFORM

To measure the asymmetrical relations among the different actors affected by the 2008 LCL, it is important to define a methodology of performance. Governance can be defined as "the sum of the many ways individuals and institutions, public and private, manage their common affairs." The basis of governance rests on either the explicit agreements - formal governance, or implicit agreements – informal governance that occur through stakeholders involved in the labour law reform process.

2.1. KEY STAKEHOLDERS IN THE REFORM PROCESS

In China, public and private governance challenges are inextricably linked as increasing number of non-state stakeholders emerge. A continuous process of conflicting interests in governance includes formal institutions empowered to

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enforce compliance, as well as informal institutions that are tacitly established through the perception of mutually agreed benefit.\textsuperscript{29} The following stakeholders are active in claiming spaces of authority in labour law governance:

\section*{STATE GOVERNMENT}

State governance requires a degree of authority that in turn is a function of both recognized legitimacy and power capability. Power capability refers to areas falling within the traditional domain of the state, including control over a national army, police force, or taxation system. It is often the case, however, that state power capability refers less to economic and military capabilities, as it does to socio-political cohesion.\textsuperscript{30} Meanwhile, as a precondition to authority, legitimacy has both moral and legal dimensions. Legal legitimacy is the establishment of rules and procedures, while moral legitimacy is a function of acting righteously or in the best interest of those impacted by the governance program.\textsuperscript{31} The extent of these complementary sources of legitimacy used in concert with power capability dictate the basic governance structures that enforce policy agendas.

\section*{SOCIETY}

Governance strategies can be undermined if the proposed regulations do not represent a general societal consensus.\textsuperscript{32} For example, society often manifests its interests through labour activism, which in turn is a function of the efficacy of

\textsuperscript{29} Ibid.
\textsuperscript{30} Lee, "Into the Trap of Strengthening State Capacity: China's Tax-Assignment Reform," 1023.
\textsuperscript{31} Ibid.
\textsuperscript{32} Kirton, John, and Michael Trebilcock, "Hard Choices, Soft Law," 190.
state governance in labour reform. Contemporary labour activism in China is largely a result of a hastily developed state-mandated industrialization policy that in turn has created a dualistic society that accentuates the differences between peoples, races, and regions. As a result of institutional barriers, such as segregation and state-mandated discrimination, environments may be established that poorly situated a portion of society within the urban social context.\(^{33}\)

\* MARKET FORCES

With the entrenchment of global markets, non-state stakeholders are increasingly active in governance issues. It is important to note that the authority of the market vis-à-vis the state is asymmetrical. Similar to the state, market forces are empowered with a sense of legitimacy. However, unlike market forces, that project a sense of legitimacy, the state monopolizes power within the national context, as well as levels of legitimacy. Indeed, as the private sector is usually empowered either "explicitly or implicitly by state governments with the right to make decisions for others," the principle exists that state governments can roll back the legitimacy of market actors. It is often the case that the extent of the market forces involvement in governance reform is a function of societal comfort with the devolution of state power to the private sector.\(^{34}\)


INTERNATIONAL ORGANIZATIONS

Organizations representing a spectrum of informal and formal institutions, such as the World Trade Organization (WTO), Organization of Economic Development (OECD), the United Nations (UN), the International Organization for Standardization (ISO), as well as Social Accountability International (SAI) are creating a complex mixture of public and private regulatory recommendations on labour use that encroach on the traditional space of state governance.

2.2. THE INTERNATIONALIZATION OF LABOUR LAW REFORM

As governance in labour reform diffuses amongst diverse stakeholders, the notion of declining state power is of growing importance. Among the primary arguments given for the perceived decline of state governance in the field of labour reform has been the continued debate regarding linking international labour standards to international trade. Despite arguments for labour standards being solely a domestic regulatory affair, it is increasingly apparent that considerable space exists for voluntary initiatives given the unwillingness or inability of states to manage labour issues in an increasingly competitive global marketplace. Between the Second World War, and prior to the establishment for the WTO, developments have trended toward the hybridization of private and
public sector commitments towards labour reform as a function of global market expansion.

Indeed, the International Labour Organization (ILO), the sole surviving article of the Treaty of Versailles, has been the traditional international sponsor of labour law reform. Seen as a bulwark that contains the combined threats of post-war intra-European labour competition and the rising threat posed by the Bolshevik revolution of 1917, the ILO is based upon the premise that labour management is no longer the sole concern of state governments, and that a model would be required - International Labour Standards Regime (ILSR) – to monitor labour standards worldwide.\textsuperscript{35} The core of the ILSR is an inclusive model of fair working standards that included the tripartite coordination between governments, trade unions, and corporations.

However, after the Second World War, the notion of an internationally agreeable definition of “fair labour standards,” was reaffirmed through alternative frameworks representing the post-war reality. As envisioned by the United States, the framework of the post-war period established the Bretton Woods institutions. It is important to note that early in its institutional formulation, the coordinating body of the Bretton Woods system was the International Trade Organization (ITO) and contained within it a mandate to harmonize the moral, legal, and economic aspects of international trade through “the improvement of

wages and working conditions as productivity may permit." Indeed, by 1948, 53 trading nations signed the Havana Charter that established the first precedent of linking international trade to international labour standards as espoused by the ILO.

However, by 1950, it became clear to member states that the United States Congress would not ratify the ITO due to the perceived consequences of abandoning aspects of national self-interest to the interests of other trading nations. Not only did the withdrawal of the United States from the ITO essentially make it irrelevant and powerless as an international body, it put to the side the institutional framework linking economic and labour reform simultaneously.

As the divergence between trade and labour widened, soft law frameworks appeared as a function of expanded world trade. During the 1970s, the group of 77 (G77), representing the newly independent developing countries, continually sought to regulate the growing role of international corporations. By 1974, the Commission of Transnational Corporations was established through the UN to negotiate a governing code of conduct for international corporations. By the 1980s, events such as the 1984 tragedy in Bhopal, India, and the 1989 Exxon Valdez oil spill underscored the unregulated nature of international corporations,

37 Mendes, Errol and Ozay Mehmet, "Global Governance, Economy and Law," 69.
and brought renewed attention toward establishing a framework of regulation based on soft law consensus.\(^{39}\)

At the same time, the Bretton Woods system moved forward in establishing the General Agreement on Tariffs and Trade (GATT). As the original intention to have the ITO as the supervisory body of the GATT was no longer possible, the GATT agreements proceeded with institutional deepening without the social welfare provisions as originally suggested in the Bretton Woods system. As the normative position of each trading nation is to produce according to its comparative advantage, the corollary of the GATT agreements was the optimization of the world’s resources. In order to facilitate these goals, the GATT codified rules that placed limits on the “ability of member states to undermine negotiated concessions,” thereby alleviating potential trade distortions.\(^{40}\) Various other instruments included a “Most Favoured Nation” (MFN) clause that prohibited trade discrimination from contracting nations, along with provisions to encourage regional trade agreements.\(^{41}\) The GATT agreements also recognized the role of subsidies and provisioned for instances when a member state can prove a causal connection between the subsidy and perceived injury by permitting retaliation through the displacement of exports of the offending member.\(^{42}\)

\(^{39}\) Ibid.
\(^{40}\) Mendes, Errol and Ozay Mehmet, “Global Governance, Economy and Law,” 71.
\(^{41}\) Ibid.
\(^{42}\) Ibid., 88.
On the surface, it would appear that the extent to which a GATT member state could benefit from the terms of global trade is a function of its governance capability to enforce compliance with international trade agreements. For example, in member states with weak institutional capacity, domestic state governance strategies could be powerfully influenced by multilateral agreements that protect the negotiated concessions of the GATT framework.

However, while it may be the case that some states are incapable of enforcing compliance as a consequence of weak institutional capacity, it is nevertheless the case that to bolster its terms of trade, a trading nation may willingly abandon labour reforms to lower the costs of doing business. The debate as to whether non-compliance of domestic labour reform agendas by state governments is an act of intentionally conferring benefits, and therefore a form of subsidy, or is simply a function of institutional inability has been central to understanding the growing demands to link international trade to international labour standards. By the end of the Cold War, it became increasingly apparent that the divergence between labour reform and international trade had accentuated the differences in state governance agendas between trading nations and increasingly called into question the traditional structures for ensuring compliance within existing state-oriented frameworks.

44 Ibid.
2.3. STATE-ORIENTED REGULATORY APPROACHES

By the time of the Uruguay round of the GATT negotiations (1986-1994), the notion of a social clause being linked into trade agreements was gaining widely attention. As the GATT was sensitive to the "respective needs and concerns at different levels of economic development" for member states, there were no institutional safeguards to ensure minimum labour standards in the developing countries, which composed approximately 80 percent of the GATT member countries. As the usage of cheap labour was increasingly viewed as a form of export subsidy, not only did the developed states retaliate through massive subsidies of domestic agricultural and textile industries, but further momentum was placed on linking labour rights with international trade agreement, as originally envisioned by the ITO, into the future trading framework.

THE WTO- ILO SOCIAL CLAUSE

Established in 1995, the WTO instituted the various GATT agreements while establishing new provisions for trade adjudication that took into account the social dimension of international trade. Indeed, the WTO emphasized in the preamble of the Marrakech Agreement the importance of development that protects human health and safety. In terms of its adjudicatory model, the authority of the WTO is based on hard laws, as opposed to the softer law

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45 Ibid., 77.
consensus model of the GATT. In detail, the hard law nature of the WTO is noted by the Appellate Body, which passes final binding judgments in trade disputes, and permits retaliation against an offending member state through the application of tariffs. 47

Indeed, unlike the GATT, the negotiations of the WTO have been characterized as either being power-based or law-based. On the one hand, law-based negotiation can be considered to be undertaken with the intention to establish consensus through symmetrical market agreements. On the other hand, power-based negotiation can be considered to be undertaken with the intention to dominate outcomes through references to the relative sizes of national economies and trade volumes. 48 As a result, the informal agenda of the WTO was more often established via the power-based negotiations of the large developed states, as opposed to law-based agreements of a symmetrical nature. 49

By 1998, the WTO had authorized the ILO, as the dominant institution in the domain of labour reform, to establish the Declaration on Fundamental Principles and Rights at Work as a guiding framework. This was to establish minimally acceptable labour standards. The standards protected as envisioned in the

47 Mendes, Errol and Ozay Mehmet, "Global Governance, Economy and Law," 83.
49 Ibid.
social clause model originated in the core principles of the ILO, as noted in Figure 2.

Figure 2 Proposed Social Clause Model of the WTO

<table>
<thead>
<tr>
<th>Standard Protected</th>
<th>Relevant ILO Convention</th>
<th>Method of Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freedom of Association</td>
<td>Number 87 – Freedom of Association</td>
<td>If non-compliance is noted, a dispute settlement would be arbitrated through a joint WTO-ILO committee.</td>
</tr>
<tr>
<td>Collective Bargaining</td>
<td>Number 98 – Right to Organize and Collective Bargaining</td>
<td></td>
</tr>
<tr>
<td>Prohibition on Forced Labour</td>
<td>Number 29 – Forced Labour Convention</td>
<td></td>
</tr>
<tr>
<td>Prohibition on Child Labour</td>
<td>Number 105 – Abolition of Forced labour</td>
<td></td>
</tr>
<tr>
<td>Prohibition on Non-Discrimination</td>
<td>Number 111 – Discrimination Convention</td>
<td></td>
</tr>
</tbody>
</table>


Predictably, developing countries that depended on export-driven growth generally opposed linking international trade with a social clause, viewing such an instrument as akin to trade protectionism that had a high likelihood of intruding on the traditional governance space of the state. Noting the discrimination of the GATT era that excluded agriculture and textiles from measures to liberalize international trade, a social clause seemed to be a way to empower members of the WTO to revoke MFN status over claims of perceived non-compliance in a member state’s labour force. Although the WTO includes more member states than the GATT, and is therefore more inclusive by providing more access for

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states to address trade disputes, the institutional and power-based asymmetries resulting from the framework are nevertheless underscored by the fact that 90 percent of trade disputes originated from the wealthier countries of North America, the European Union, and Japan.\(^{51}\)

Conversely, developed states argued that a social clause was the only way to avoid the “race to the bottom” to which the erosion of wages in the home country inevitably corroded. Moreover, lobbyists for a social clause argued that without minimum labour standards, market actors could use the threat of transitioning to production areas that have no minimum standards as a way to compel domestic governments in wealthier states to alter labour and environmental standards downward to enhance competitiveness.\(^{52}\) The impetus for a social clause reform in developed countries largely originated with trade unions and others affected by the trend of increasing employment opportunities being sent to less compliant locales.\(^{53}\)

At the same time, international corporations from the developed states with a large stake in developing markets had mixed attitudes toward the notion of linking a social clause to international trade agreements. In some cases, international corporations initially transitioned to developing nations in order to

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\(^{51}\) Mendes, Errol and Ozay Mehmet, “Global Governance, Economy and Law,” 84.


get away with bad practices prohibited in the home country.\textsuperscript{54} Thus, a social clause would undoubtedly increase the costs of business in a developing country. However, many international corporations are cognizant of the risk of reproach from transnational activists for perceived human and labour rights violations. Thus, the extent to which an international corporation feels affected by increased labour regulations in a developing country is a function of its initial commitment to internal corporate social responsibility initiatives.\textsuperscript{55}

Despite varying views on the WTO-ILO social clause model, the central problem was the inability of actors existing in the traditional space of labour reform to exercise authority. Despite having legitimacy, the ILO has little power. It relies upon moral suasion through flexible, actor negotiated tripartite coordination. While tripartite negotiation among states, firms, and labour unions can be an effective process in developed nations, it is not always the case in developing nations given weak bureaucratic capacity.\textsuperscript{56} As views on a social clause polarized along lines of economic development, and as many countries either lacked institutional depth and transparency, or were willingly undermining stated labour regulations to bolster the comparative advantage of its production processes, the ILO lacked the institutional credibility to regulate international labour standards on a domestic level in many offending states.


\textsuperscript{55} Ibid.

Moreover, as opposed to containing within it a framework that supervises compliance of stated procedures through rigid monitoring, the ILO relies only on a complaints procedure, known as the Committee on Freedom of Association (CFA). The effectiveness of the CFA is suspect however, as the compliance of its findings in individual member states are difficult to gauge given its weak supervisory procedures.\(^{57}\) Thus, it became increasingly untenable for trading nations to prove the causal relationship between non-compliance of labour standards and trade subsidization via the WTO-ILO framework. As membership of the ILO complements the membership of alternative institutions with stronger regulatory mechanisms, much of the contemporary linking of international labour standards with international trade can be associated with alternative, market-oriented institutional frameworks borrowing from the standards as agreed upon by the 182 ILO member states.


\textbf{THE OECD GUIDELINES}

Alternative state-level labour standards include the OECD Guidelines, formulated at the turn of the 21\textsuperscript{st} century with the intention of creating a broad international investment framework that covers eight major issues of corporate ethics. Similar to the WTO’s proposed social clause, the OECD Guidelines borrow heavily from the ILO, specifically the 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Moreover, similar to the WTO’s
social clause model, the OECD’s model is primarily state-centric, as governments are responsible for the implementation of OECD findings.

Promoting the legitimacy and transparency of the program was a lengthy review process involving member states, the business community, labour representatives, non-governmental organizations (NGOs), and non-member countries. Chief among the general principles of the OECD Guidelines is that firms are required to “encourage corporate conduct compatible with the Guidelines’ as well as the mandate for firms to “respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.”

Moreover, the formulation of the initiative highlighted the concern of developing nations that the program could be used for protectionist purposes by emphasizing the specificity of labour reform as a function of a member state’s level of development. Thus, many issues plaguing the WTO-ILO model were avoided, such as the fears that developing countries would lose WTO Appellate Body disputes based on charges of using cheap labour as a form of trade subsidy. However, despite taking into account the relative development of OECD states, complicating the initiative was the absence of accommodating rules for non-member states. Moreover, further handicapping the theoretical basis of the OECD Guidelines is its dependence on the efficacy of state governance to implement the agenda at the firm level.

60 Ibid., 295
THE UN GLOBAL COMPACT

At the same time the OECD was drafting its guidelines for corporate behavior, a more general, strictly voluntary initiative was promulgated by the UN at the turn of the new millennium. The UN Global Compact includes nine principles, four of which pertain to labour standards:

<table>
<thead>
<tr>
<th>Principle 3</th>
<th>Uphold Freedom of Association</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principle 4</td>
<td>Eliminate Forced labour</td>
</tr>
<tr>
<td>Principle 5</td>
<td>Abolish Child Labour</td>
</tr>
<tr>
<td>Principle 6</td>
<td>Eliminate Discrimination</td>
</tr>
</tbody>
</table>


While the OECD Guidelines are regulated by officials at the state level, and then implemented by firms at the local level, the UN Global Compact communicates the expectations of its principles directly with corporations. Composed of over 4700 businesses in 120 countries, the UN Global Compact is composed of stakeholders from other UN agencies, business associations, labour, civil society, academia, as well as the public sector.\(^{61}\) Moreover, while the OECD Guidelines includes enforcement mechanisms and ways to handle complaints,

the UN Global Compact is unambiguous in its unwillingness to assist with enforcement of its general principles.\footnote{Kirton, John, and Michael Trebilcock. “Hard Choices, Soft Law,” 297.} Therefore, while the WTO-ILO social clause intrudes on the autonomy of state governance agendas through the promotion of a rigid enforcement agenda, the OECD Guidelines intrudes to a lesser extent on the autonomy of the state, with a corresponding decrease in the efficacy of its regulatory mechanism. Conversely, the UN Global Compact does not intrude on the governance agenda of the state, nor does it contain within it an enforcement mechanism to ensure compliance with its findings. The UN Global Compact did however, place new emphasize on labour standard regulations at the firm level, which would be utilized by more market-oriented approaches to labour law reform.

2.4. MARKET-ORIENTED REGULATORY APPROACHES

Similar to the UN Global Compact that avoids relying on the ability of state governance polices to enforce labour standards framework by communicating directly with corporations, the Social Accountability Accreditation Services (SAAS) SA8000 audit standard established in 1998 is primarily a corporate self-regulatory initiative. The framework is strongly allied with industry, with its corporate board members including major western corporations such as the GAP. Among the “most robust initiatives,” SA8000 is a regulatory model that emphasizes “ratcheting labour standards” through a mixture of transparency,
competitive comparison, continuous improvement, and sanctions. By integrating the market activities of private actors with international labour standards, the SA8000 signals a shift toward the private sector delivery of private goods by requiring that international corporations disclose information to an SAAS approved international monitor. The monitor in turn measures the applicable facility's compliance in the producing nation with international and domestic labour standards. The practical consequence of the SA8000 code of conduct is to gauge the level of labour law compliance in labour-intensive industries in developing countries. Non-compliance noted in a facility reciprocates sanctions, usually requiring monetary fines and mandatory follow-up audits. As a result, employers in developing countries have real incentive to improve labour conditions in order to avoid further sanctions via the scheduled follow-up audits. By introducing incentive via market mechanisms, the intention of the SA8000 framework is to work toward continuous improvement in labour standards without relying on domestic state governance policy.

From the perspective of the labour unions in developed countries, the SA8000 framework helps the terms of trade by punishing industries in less developed countries that use the comparative advantage of cheaper labour through stringent monitoring programs and sanctions. At the same time, international corporations view the SA8000 as a legitimate framework that addresses potential public relations issues related to perceived negative aspects of labour sourcing in

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63 Ibid., 124.
facilities of developing states through highly publicized corporate social responsibility (CSR) publications and other social outreach programs.\textsuperscript{65}

Speaking to the significant void in international labour reform frameworks that effectively promote the delivery of labour reform via state governance initiatives, the SA8000 has achieved rapid progress with its sanction's oriented corporate regulatory framework. Up to 2008, and within a span of one decade, expansion from eight accredited facilities in three countries to approximately 1800 facilities in 67 countries worldwide has occurred.\textsuperscript{66} Approximately one million employees now work in facilities that are SA8000 registered. Underscoring the relative success of the SA8000 standards to alternative labour reform frameworks is a strong regulatory mechanism based on market incentive. Moreover, while alternative frameworks, such as the WTO-ILO model, are reliant on power-based negotiations at the state-level that accentuate the varying stakeholder interests between trading nations, the SA8000's emphasis on ratcheting labour standards at the corporate level avoids many of these issues.

Pointing toward the continued trend toward the private sector delivery of public sector goods via its close link with industry, the ISO has also made significant progress in filling the regulatory void created by the failed social clause of the WTO-ILO. As an international standards body that is voluntarily composed of national representatives of industry, its strong links to governments supplies its

\textsuperscript{65} Ibid.

treaties and agreements with a higher level of legitimacy than other non-government organizations.

For example, standardizing product design (ISO 9000) and environmental standards (ISO 14000) through accreditation and monitoring are a form of "conformity assessment" that ensure best practices exist internationally, in turn minimizing the growth of non-tariff barriers to trade that may otherwise occur as a result of diverging expectations on product design, weight or environmentally friendly inputs. In doing so, a defining characteristic of the ISO is that conformity assessments pertain to the process of production, as opposed to the product itself, thus facilitating a new monitoring framework.

Indeed, an ISO regulation for labour would act to ensure socially responsible production in developing countries. According to its strategic vision, the "ISO Horizon 2010 – Standards for a Sustainable World" proposal envisions the ISO extending its institutional framework to cover economic, social, and environmental standards harmonization between trading nations in the 21st century. While this framework finds support in organizations such as the International Institute of Sustainable Development (IISD), central to enhancing its legitimacy is the necessity of further coordinating and establishing "meaningful and cooperative relationships" with alternative stakeholders involved in the labour reform framework. The proposed universality of an ISO labour regulation through

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its close links to the WTO means that such a model would require closer tripartite coordination between governments, unions, and corporations. Other actors are supporting the ISO, noted at the 2002 United Nations World Summit on Sustainable Development that included key outcomes such as the encouragement of industry to adapt "such initiatives as the ISO standards" to improve labour standards.

Since the Second World War, the internationalization of labour reform has ebbed and flowed due largely to the conflicting interests between states, corporations, and labor activism stemming from the rapid expansion of world markets. The current era of the WTO that emphasizes the potential role of labour non-compliance as a form of trade subsidy has fostered the growth toward the private delivery of public services. The SA8000 standards as well as the development of an ISO regulatory mechanism suggests that labour regulatory frameworks are creating new political pressures on state governance strategies. On the one hand, labour governance has shifted upward from state governments to international organizations and corporations on a transnational level. At the same time, governance has shifted downward from state governments toward the municipal or firm level. As a result, "a multilayered process of governance"

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68 Ibid.
exists that is hybridizing the traditional sphere of labour reform between private and public sector actors.\textsuperscript{70}

\textsuperscript{70} Kirton, John, and Michael Trebilcock, "Hard Choices, Soft Law," 197.
3. FRAMEWORK FOR FURTHER ENQUIRY

Thus far, governance of labour reform has shifted away from the traditional domain of the state, and toward the domain of market-oriented regulatory frameworks that borrow from both domestic and international labour standards. Reasons for the decline of state power and contemporary approaches to labour law reform are related both to the historical path of the Bretton Woods system, as well as the institutional inability of multilateral ILO-based negotiations to implement a labour monitoring system at the state level. As an expanding framework, private governance initiatives, such as the robust SA8000 standards are filling the state’s regulatory void in the WTO era.

This project will now trace a contemporary history of market expansion in China. The theory of an emerging framework of a multilayered process of governance in labour reform will be analyzed in relation to the Pearl River Delta, an area often termed the “world’s factory floor.” It will be asked whether China is currently undergoing a “double movement” as defined by Polanyi, where market reform is reciprocating changes in social expectations for institutional labour reform so as to combat the negative social impacts of the market. It will be shown that the willingness or ability of the Chinese state to impose new laws, such as the 2008 LCL, is a function of the level of diffusion of stakeholder interests in the
development process. Indeed, in areas of China that are particularly labour intensive, such as the Pearl River Delta, it will be demonstrated that the costs of imposing more stringent labour laws impact market stakeholders to a greater extent vis-à-vis less labour-intensive industrial regions.
4. HISTORY OF MARKET DEVELOPMENT IN CHINA

The expansion of the market in the thirty years since the implementation of economic reforms demonstrates a pre-existing capacity for the Chinese central government to enact policy. Since the early 1980s, state governance strategies have facilitated the entry and operation of nearly 600,000 foreign companies within China's borders. This pattern of international trade has been established through policies that relaxed foreign trade restrictions while encouraging linkages with foreign firms in order to attract foreign investment and technology. However, while the introduction of market reforms has brought with it an absolute decline in poverty, it has also led to the decline of central governance capability by facilitating the diffusion of power to regional actors.

4.1. STATE CAPACITY AND THE EXPANSION OF MARKET REFORM IN CHINA (1978-PRESENT)

Throughout the market reform era, Chinese state planners sought maximum economic growth, with concerns such as employees' rights, health care, and the

environment seen as consequence of growth deferred to a later date. The notion of a trickle-down effect was a guiding reform policy for much of this period, positing that continual market growth would act to solve social problems.  

However, the direct consequence of rapid market growth was a divergence in state governance through an evolution of centre-local imbalances that followed three distinct phases.

During the first stage (1979 to 1984), the state implemented reforms that established a nascent market for consumer goods. State-owned enterprises dominated the economy, as did strict government control. Precipitating the expansion of a consumer economy was the establishment of the "household responsibility system," which permitted farmers to sell a portion of crops. Moreover, profit became attainable, as crop prices rose above government set floors, thus creating an incentive for crop production efficiency.

During the second stage (1985, 1992), although the state implemented reforms that established markets for commodities, labour, capital, foreign currency, and land, the political will for entrenching reform was stymied by both financial crisis and ideological rifts. For example, during this period, little institutional infrastructure or oversight existed to limit the rapid growth of capital projects, inflation, and speculation in property and security markets. Many of these

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73 Ibid.
projects contained fixed capital investment in property, whereupon provincial and municipal leaders used funds borrowed from banking institutions whose main customers were in turn state-owned corporations. Thus, a moral hazard facilitated the poor use of capital. Although large amounts of capital in long-term property investment projects made many well-connected individuals wealthy, they nevertheless undermined the liquidity of the financial system and created large-scale inflation.

As a means to rein in the spending power of provincial leaders and cool off the overheated economy, the China’s Ministry of Finance initially sought policies that fiscally extracted revenues from the provinces based on profits generated, as opposed to a set intra-provincial tax rate.\(^7\)\(^6\) Provincial leaders, especially those representing the more prosperous coastal cities were opposed to such policies, preferring to accelerate economic development. Thus, dilemmas in Chinese federalism related to asymmetrical regional development, and poor institutional development marks much of this period.

During the third stage (1993 – present) policies have increasingly been enacted that have entrenched the role of market economics. Shortly after Deng Xiaoping’s “Southern Tour” that ideologically deepened the state’s commitment to market reform, Party Secretary Jiang Zemin, in 1992 revised the constitution to create a “modern enterprise system” in a manner that embraced a “socialist

\(^7\)\(^6\) Lee, “Into the Trap of Strengthening State Capacity: China’s Tax-Assignment Reform,” 1009.
market economy.”77 At the time, as opposed to having a “modern enterprise system,” state-owned enterprises in China still employed approximately 75 million people, of which 15 million were redundant.78 Abandoning the principle of a planned economy under public ownership, Jiang would later reaffirm these policies in 1997, announcing reforms that accelerated the closure of the state-owned enterprises, of which only 40% to 50% were profitable.79

Unlike the second stage of development characterized by resistance to the central government by recalcitrant leaders from the wealthier provinces, central leaders skilfully used a carrot-and-stick approach during the third state of development in order to alleviate the consequences of regionalism that had the real danger of leading to national disintegration. For example, the 1994 Tax Sharing Scheme induced compliance with a fiscal system that shared budgetary revenues between central and provincial governments based on the relative growth of a province’s tax revenues.80 This reform package was conciliatory toward the provinces, as it supplied provincial leaders with incentive to pursue policies that maximized economic growth, in that central extraction was on a basis of taxes collected, as opposed to profits generated. In order to encourage compliance from the wealthier states, Prime Minister Zhu Rongji offered special cash injections to Guangdong Province, while reaffirming the special status of the Pudong development area in Shanghai. In instances when provincial leaders

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77 Hughes, “Smashing the Iron Rice Bowl,” 68.
78 Ibid., 71.
79 Ibid., 73.
refused to comply with the new federal arrangement, Zhu simply sacked the leader, as was the case of the Party Secretary of Jiangsu Province in 1993.\textsuperscript{81}

Although the new tax-sharing scheme was a compromise that augmented the central government's extractive capacity, the real consequence was the relative expansion of regional power vis-à-vis the central government. As the disparity in regional growth increases due to the current tax sharing arrangement, the relative share of the central government expenditures has dropped.\textsuperscript{82} Thus, the central government finds itself in a governance trap. The central government must uphold its commitment to provide mandated social welfare, although it is committed to a tax-sharing scheme that encourages profit-seeking behaviour and the expansion of state-level inequality.\textsuperscript{83}

4.2. THE EXPANSION OF REGIONAL INEQUALITY: THE ROLE OF EXPORT PROCESSING ZONES

Nowhere has the extent of state capacity been as noteworthy in establishing regional inequality as seen in the Pearl River Delta (PRD) region of South China. Indeed, the PRD development zone has been the most economically dynamic region of China since the initiation of market reform. The PRD region is primarily comprised of the cities of Guangzhou, Shenzhen, Dongguan, Foshan,

\textsuperscript{81} Ibid.
\textsuperscript{82} Ibid., 1023.
\textsuperscript{83} Ibid., 1024.
Zhongshan, Jiangmen, and Zhuhai and totals a population of approximately 40 to 50 million people,

Figure 4 Map of Guangdong Province, including key PRD cities

Source: Consulate General of Canada in Guangzhou

Indeed, as a “comprehensive economic reform area,” the region set its own course, including increased autonomy in finance, labour, and prices. Moreover, given its close proximity to Hong Kong, the city of Shenzhen in particular is a leader in terms of foreign exchange and stock market development. Underlining the economic development is the rapid expansion of services and infrastructure

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currently underway in the region, including the Hong Kong-Shenzhen Western Corridor Project, the Guangzhou-Shenzhen-Hong Kong express rail link, the Hong Kong-Macau-Zhuhai Bridge, the 2nd Phase of the Baiyun Airport in Guangzhou, and the 150 billion yuan in investment for the 2010 Asian Games in Guangzhou.  

Figure 2 notes the relative distribution of GDP in the PRD cities. As demonstrated, the twin juggernauts of Guangzhou and Shenzhen powered the economic expansion. While China as a whole averaged approximately 10 percent during the era of market reform, the PRD region in particular attained 16 percent growth. As the fastest growing region in the fastest growing country in the world, the PRD become the global leader in the manufacturing of electrical products and textiles in a remarkably short period.

Indeed, a significant development in the progression towards China's entry into world markets was the establishment of SEZ cities along coastal China to generate foreign direct investment. State-implemented policies included a 15 percent enterprise income tax rate, tax holidays for up to five years, and the streamlining of processes to repatriate capital investments after a contractual period.⁸⁷ Although initially, the SEZ cities of coastal China were plagued with poor infrastructure and other services, these areas eventually codified contract and patent laws, and minimized the red tape of the state bureaucracy. As the centrepiece of the SEZ strategy, Shenzhen in particular, with its close proximity to Hong Kong, attracted high levels of foreign investment that spilled over into neighbouring PRD cities. As noted in Figure 6, the ratio of foreign invested

industrial output approximates a high level of the PRD’s total industrial output, underscoring the important role of international market forces in the local economy.

**Figure 6 Ratio of foreign invested industrial output to total industrial output**

![Graph showing the ratio of foreign invested industrial output to total industrial output for various cities in Guangdong, with a line for each city. The graph includes data from 2003 to 2007.](image)

Source: Guangdong Statistical Yearbook, various years

Moreover, Figure 7 further demonstrates both the important role of international market forces in facilitating exports, and the relative percentile share of each of the PRD cities total exports in order to provide a sense of perspective. Zhuhai, in particular, is noteworthy given that nearly 85 percent of its exports are foreign invested. Indeed, underscoring the commonality between the PRD cities is a high ratio of total exports to total GDP. While Guangzhou, the administrative capital of the region, has a ratio of total exports to GDP of approximately 50 percent, the heavily invested cities of Shenzhen, Foshan, and Zhuhai all have
ratios of total exports to GDP exceeding 150 percent. These trends suggest that the PRD cities are deeply entrenched in the international market system, and that state governance strategies inextricably affect the interests of alternative stakeholders in the development process, including international corporations.

Figure 7 Foreign invested exports as a proportion of total exports for PRD cities

It is therefore clear that the export bases of all the PRD cities share direct linkages to the region’s commitment in attracting foreign investment and to some extent considerably depend on foreign investment to sustain growth. Figure 8 demonstrates the value of policies that attract foreign investment, as of 2007, the total value of exports in the region by enterprises with foreign investment totalled approximately 200 billion USD. Therefore, while the PRD region contains only 0.4 percent of China’s land area and only 3.5 percent of its population, the area

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88 Guangdong Statistical Yearbook, various years.
now encompasses approximately 10 percent of China’s national GDP and 30 percent of total trade. As a result, the PRD is a noteworthy example of the power of international market forces, and the extent to which government policies can act to exacerbate regional inequality.

Figure 8 Total Values of Exports of Enterprises with Foreign Investment in the PRD Cities

Source: Guangdong Statistical Yearbook, various years
5. ANALYZING THE IMPLEMENTATION OF LABOUR REFORM IN CHINA

As demonstrated, the process of developing a market economy has in turn facilitated centre-local state governance imbalances, particularly in the PRD region where the promotion of international markets has fostered economic growth. As noted by Polanyi, an important corollary of economic development is rapid shifts in the division of labour, which in turn creates social instability. In China, throughout the market reform era, it will be demonstrated that economic growth and the reorganization of labour, noted in the decline in state-owned enterprises, and the promotion of urbanization, has not necessarily led to sustainable social progress. As a result, a "double movement" of state mandated policies to protect society against the role of disembedded markets has become increasingly prevalent in China, in turn creating negative impacts on market forces.\(^{89}\)

The next section will first examine the social consequences of economic reform in China. Attempts by the Chinese state to "re-embed the economy within social relations" as a way to alleviate social instability is occurring, although it will be shown that to some extent, labour reform in areas of China that are highly

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exposed to international market forces are being intentionally undermined by state actors so as to enhance the competitiveness of exports. Indeed, as noted by Schumpeter, earlier in this project, the unregulated institutional framework that originally facilitated economic growth in regions of China will unravel if the state increasingly imposes conditions – social reforms - that discourage the initial market incentives. Following, it will be demonstrated that co-opting the role of state-mandated labour policies, market actors are increasingly turning to corporate codes of conduct, such as SA8000, to bolster labour reform in areas of China, in turn creating a complex, multilayered system of private-public sector governance that has varying impacts on regional stakeholders.

5.1. THE SOCIAL CONSEQUENCES OF MARKET REFORM

The rapid development of market reform in China has in turn altered traditional social customs. Prior to the era of market reform, the planned economy relied on the mechanisms of "soft budget constraints" and "iron bowl." "Soft budget constraint" was a guiding ideological principle during much of the communist era that emphasized that in instances when the expenditures of a state-owned enterprise or municipality exceeded revenues, an outside organization would shore up the deficit.\(^9^0\) The other pillar of the planned economy was an "iron bowl" that instituted lifelong employment, regardless of one’s ability to perform the assigned task. During this time, the economy firmly embedded itself within society.

\(^9^0\) Ibid., 17.
Structuring the two pillars of the planned economy was a system of labour organization based upon communes in rural areas, and units in urban areas. Not only did this determine the pattern of economic production, but it also filled important social and political functions, providing salary, day-care, kindergarten, medical care, old-age insurance, and funeral service. With the implementation of market reforms, and the consequence of rapid shifts in the division of labour, the pillars of the planned economy eroded, thus affecting the social and political roles of the communes and units. Within a short period, “hard budget constraints” replaced “soft budget constraints,” while the “iron bowl” replaced the “household responsibility system.” Village communes no longer took responsibility for farmers, and urban workers in government, and state-owned enterprises no longer guaranteed lifetime employment. The moral linkage that embedded the market within society was broken, and people increasingly had to depend less on a collective, and more on individual self-interest.

Indeed, as the pendulum of governance swung towards the market, and the traditional authority of the state declined, the negative impacts on society increased. For example, because of a hastily developed industrialization policy, the state’s governance strategies created a dualistic society to the extent that in China’s major cities, approximately 20% of the population are now migrant

91 Ibid., 18.
92 Ibid., 19.
workers.\textsuperscript{93} Between 1995 and 2006, the number of rural migrants migrating to the cities rose from 80 million in 1995 to 150 million in 2006.\textsuperscript{94} For those migrants who are unlucky and are unable to obtain a "hukou" or household registration that permits urban status, discriminatory policies are wide ranging. For example, residential segregation is institutionalized, as only urban "hukou" holders can obtain housing. For migrants, housing usually consists of "state housing" that is inferior and crowded dormitory accommodations. Moreover, other forms of state instituted discrimination include state mandated per capita fees for urban employers that employ migrants, as well as inability to access urban social welfare services.\textsuperscript{95} In the boom town of Shenzhen, discrimination is wide ranging, as only 1.5 million individuals in Shenzhen are registered with a "hukou," despite a total population of approximately 10 million people. As a result, these institutional barriers create an environment whereupon migrants are not well situated within the urban social context of China's major cities to take advantage of labour reforms. With continued, accelerating urbanization, the rising threat of destabilizing, anti-market backlash looms.

\textsuperscript{93} Wang, F., Zuo, X. "History's largest labor flow: understanding China's rural migration - inside China's cities: institutional barriers and opportunities for migrant workers", 276
\textsuperscript{95} Wang, Zuo, X. "History's largest labor flow: understanding China's rural migration - inside China's cities: institutional barriers and opportunities for migrant workers", 276
Underscoring the iniquitous nature of China’s economic development has been the expansion of labour activism. The traditional institution in China that safeguards workers’ economic, political, and cultural rights, the All China Federation of Trade Unions (ACFTU) has been the unified national organization since 1925. Representing 130 million workers in China, the ACFTU is tasked with working towards the state’s policy of establishing a socialist market economy. However, despite official high profile delegations and coordination with international stakeholders, the ACFTU remains a non-transparent appendage of the Chinese Communist Party (CCP) that is increasingly struggling due to a fragmented leadership and institutional attachments to the era preceding market reform. As noted in Figure 2, trends for the Labour Disputes Arbitrational

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Committees (LDAC) speak to the growing nature of social unrest in China since the enactment of policies intended to limit the role of state-owned enterprises and expand the role of private enterprise.

5.2. STAKEHOLDER RESPONSES TO THE EXPANSION OF SOCIAL WELFARE POLICY

Recent strategies that attempt to re-embed market forces within the governing social relations are often oriented toward addressing centre-provincial imbalances in regional income inequality. For example, the 1999 "Go West Policy" is a package of reforms that attempt to lift incomes and thereby ease social tensions. Entrenching the policies include the "three rural issues," whereupon central governance strategies emphasize the need of subsidizing agriculture, while expanding rural school systems and medical coverage. Such policies include the 2003 reestablishment of the rural cooperative medical system and the 2007 policy of free rural education. However, while the Chinese government response to the rise of market forces is notable, it is important to explain why such policies do not always extend to areas of China where they are most likely to be required, such as the labour intensive industrial centres of export production areas in the PRD.

First of all, examining the state of compliance of national labour standards in export-intensive areas of China is difficult to gauge due to the fact that access to factories are often restricted, while local-level officials may be implicated in corruption that facilitates non-compliance. As opposed to areas of China that are not export-oriented, areas of China such as the PRD region, largely draw investors and foreign investment because of the perception of weak regulatory enforcement.\textsuperscript{99} Evidence for suspected collusion of state officials with industry in undermining stated labour regulations include the fact that areas such as Shenzhen have special authorities that exclude aspects of national labour legislation from the scope of compliance. Moreover, local level officials often ignore rules that forbid migration in order to facilitate labour-intensive production.

While the enhancement of labour standards in previously unregulated export-processing zones is a major victory for workers, for many companies battling record inflation, higher energy costs, and a global financial downturn, the added costs of the 2008 LCL is discouraging the initial market incentive. For example, a 2008 first quarter survey by the American Chamber of Commerce notes that nearly 20 percent of foreign companies active in China now have concrete plans to move out of China due to rising labour costs. Moreover, a recent study by the Federation of Hong Kong Industries reports within the PRD region, about 10,000

companies are now scaling back operations due to added labour costs.\textsuperscript{100}

Speaking to the impacts of regulating labour standards in the PRD region, while the new laws are increasing labour costs across China by only 15 to 18 percent, in the more unregulated PRD region there are 35 percent labour cost increases.\textsuperscript{101}

Although the argument given by developing countries for weak regulatory compliance is that cheap labour is a form of comparative advantage, for the developed countries, on the other hand, views are varying. Trade unionist lobbies in developed countries argue the use of unregulated labour is a form of export subsidy, and therefore tend to support the 2008 LCL. At the same time, however, trade representatives from developed countries view the 2008 LCL as negatively affecting the bottom line. The American Chamber of Commerce, the US-China Business Council, the European Union Chamber of Commerce, and nearly 250 U.S. companies operating in China are all on record in opposing the implementation of the 2008 LCL.\textsuperscript{102}

Thus, while the 2008 LCL undoubtedly increases the costs of labour, international corporations are cognizant of the need to avoid criticism and negative public relations due to the perceived labour exploitation from


\textsuperscript{101} Tan, Teri, "Creeping costs mean higher prices in Asia," \textit{Publishers Weekly}, 255:40, April 7, 2008.

stakeholders that perceive a "race to the bottom" in labour standards. At the same time, these corporations are wary of relying on state-mandated labour standard implementation in areas with weak institutional and bureaucratic capacity. Therefore, because of a regulatory deficit in export-oriented zones in developing states, and a complex web of often-contradictory state policies, market actors are increasingly engaging in the re-regulation of labour policy through corporate regulatory initiatives such as SA8000 that acts to enforce the language of the 2008 LCL at the firm level.\(^{103}\)

5.3. THE SHIFT TOWARD CORPORATE REGULATORY FRAMEWORKS IN CHINA

Indeed, comparing the SA8000 framework and the 2008 LCL suggests the complementarily and overlap between domestic state policies and international frameworks. By enforcing labour law implementation at the firm level, SA8000 increasingly utilizes aspects of social welfare legislation that are relevant for individuals that are often part of the non-registered population, and thus fall outside of the social welfare system. Listed below are the nine sections that are typically found in the SA8000 corporate regulatory initiative, as well as the associated state-mandated labour standards found in China.

\(^{103}\) Ibid., 129.
 CHILD LABOUR

Provisions for the prohibition of child labour are included within the SA8000 corporate regulatory framework. Complementing the SA8000 framework, Chinese domestic law states employers may not hire an employee under the age of 16 to perform duties that are “dangerous” or include nighttime employment hours. However, employees may be hired at the age of 15 for purposes that relate to the creation of “special arts and crafts.”

 FORCED LABOUR

As per the SA8000 framework, provisions for the prohibition on forced labour typically include ensuring the autonomy of an employee’s property. This provision overlaps with the 2008 LCL, where it states in Article 9 that in instances where an employer hires an employee, identity cards or other certificates should not be detained, nor is it permissible to collect the property of an employee.

 HEALTH AND SAFETY

As per the SA8000 framework, provisions for the promotion of workplace health and safety usually refer to the employer providing a workplace atmosphere that is conducive to minimizing hazards, while at the same time taking steps to avoid accidents. This standard complements stated laws in China, noted for example

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105 Ibid.
with the Fire Services Law, Article 21 that prohibits the employer to monopolize or conceal fire hydrants.\(^{106}\)

\(\checkmark\) FREEDOM OF ASSOCIATION

The SA8000 framework emphasizes the fact that employers must facilitate a process whereupon the employees' ability to form and join trade unions and to bargain collectively is protected. This provision overlaps with the emphasize of the 2008 LCL that requires collective bargaining, as well as the Labour Union Law, Article 3, which notes that all workers must have the right to join and organize unions.\(^{107}\)

\(\checkmark\) DISCRIMINATION

Within the SA8000 framework, there is clear emphasis on prohibiting discrimination in hiring, remuneration, training, and termination. Moreover, there is further emphasis on prohibiting discrimination based on religion, disability, gender, sexual orientation, political views, affiliation, or age. Overlapping the SA8000 framework, the 1995 Labour Law of the People’s Republic of China, article 3, protects workers rights in terms of employment on an equal basis. Moreover, prohibitions exist on discrimination in the individual’s


ability to choose occupations, obtain remuneration, have holidays, obtain protection of occupational safety and health, and receive training in vocational skills.  

✧ DISCIPLINARY PRACTICES

The SA8000 framework clearly prohibits the use of corporal punishment, as well as verbal or mental abuse. These prohibitions overlap with the stated regulations of China, as noted by article 96 of the 2008 LCL that bans compelling workers to work via the use of force, threat or other measures designed to restrict personal freedom.  

✧ WORKING HOURS

The SA8000 framework prohibits working hours that regularly exceed 48 hours per week, while all overtime work requires a corresponding compensation that exceeds the regular payment agreement. Although 48 hour work weeks are an international standard, it nevertheless applies to SA8000 corporate codes of conduct in China, where the domestic law, as per the 1994 Regulations of the State Council Governing Working Hours for Employees, forbids working hours regularly exceeding 40 hours per week.  

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109 Ibid.

REMUNERATION

As per SA8000, a company shall ensure wages are regularly paid and meet the legal or industry minimum standards. Moreover, the basic needs of employees must be met. The remuneration provision of the SA8000 framework overlaps with the China's Labour Law, article 48, which calls for the implementation of guaranteed minimum wages as set by provinces, municipalities, and the central government.
6. CONCLUSION

Affecting the efficacy of labour reform in China is the fact China is currently experiencing great governance challenges. As predicted by Polanyi over a half-century earlier, the expansion of market reforms has led to rapid social upheavals in China and the introduction of new stakeholders in the development process. As a result, the traditional sphere of state governance has declined and fragmented along the lines of central-provincial competition, while the power of market actors has increased. Moreover, large populations, often concentrated in labour intensive export processing zones, find themselves unregistered and without state conferred social welfare benefits.

At first, the simultaneous promotion of both trade and labour rights would be the defining features of the international trading system following the Second World War. However, this project has demonstrated that national self-interest, as well as institutional inability of leading international sponsors, such as the WTO and ILO, has shifted the onus of labour reform toward the private sector. Indeed, market forces in China have long benefited from the state's non-enforcement of labour law, and are now strongly opposed to the implementation of the 2008 LCL.
It is now the case that corporate regulatory frameworks, such as the robust SA8000, are particularly successful in pursuing the harder laws of the WTO era given the complementarily with the national labour laws of China. While the unparalleled reliance on the private sector to promote labour standards in China signals the next step in the market disembidding itself from social functions and the continued entrenchment into global markets, it also signals new opportunities to include unregistered segments of the urban population into the framework of contemporary labour reform legislation. Thus, it appears that given the Chinese state’s regulatory deficit in labour reform, and the demonstrated rapid expansion of formal labour disputes, the advent of private sector regulatory initiatives may be a necessary institution to help ward off the ever-present threat of national disintegration due to the growth of wealth inequality and regional disparity.
REFERENCE LIST


Guangdong Statistical Yearbook, various years.


Nicholas, Tom, “Why Schumpeter was Right: Innovation, Market Power, and Creative Destruction in 1920s America,” *Journal of Economic History*, 2003, 63; 4; 1027.


