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Globalisation, Foreign Direct Investment and their Impact on Labour Relations and Regulation: the Case of China

Abstract: This paper examines foreign direct investment (FDI) and the impact on labour relations and labour regulations in China in the context of globalisation. It seeks to identify the relationships of the process of globalisation, the behaviour of multi-national enterprises (MNEs) and labour relations. Issues such as labour recruitment, forms of employment status, wages and welfare, human resource management (HRM) and the role of trade unions in foreign owned enterprises (FOEs) are examined. The paper also tackles the problems within FOEs and the response of the Government at both central and local levels. It concludes by identifying the major issues related to the relations between the globalisation and changes of labour relations and regulations, and the possible direction for developing economies to use FDI more effectively in an institutionalised environment.

1. INTRODUCTION

Foreign direct investment (FDI) is one of the most important elements of globalisation. It has been increasing dramatically in China since 1979, when economic reform and the open door policy were implemented, and it has been the single most important reason for the rapid economic growth in the past two decades. The outcome of this process has attracted even more...
foreign investment into China. By 1998, China absorbed total foreign direct investment of US$234 billion involving some 302,326 separate projects.\textsuperscript{1} China is second only to the United States in terms of receiving FDI. Among the foreign-owned enterprises (FOEs) in China, more than 50% are in the manufacturing industry, and more than 30% are in the real estate sector. Other sectors share only a small proportion of total investment.\textsuperscript{2}

In China, FOEs come in three main types: the equity joint venture, the contractual joint venture, and the wholly owned foreign enterprise. In the Chinese statistical system, this group has been categorised as Other Ownership Economic Units (distinguished from State-owned Economic Units, Urban Collective-owned Economic Units, Private Enterprises, and Individual Households), which include joint management units (joint ventures), stock ownership units (share holding companies), foreign funded units (wholly foreign owned firms), Hong Kong, Macao, and Taiwan Chinese funded units.

The contribution of FOEs to the national economy is significant. For instance, FDI accounted for an average of 2.5% of total national investment in the 1980s, but this has increased to 15% in recent years.\textsuperscript{3} The FOEs’ share of national industrial output increased from 7.5% in 1992 to about 20% in 1996.\textsuperscript{4} They shared an even larger percentage of total national trade value of 47% in 1996.\textsuperscript{5} Their contribution to taxes also doubled between 1992 and 1993 from 10.7 million Renminbi to 20.6 million Renminbi.\textsuperscript{6} In 1996, the tax payment contributed by FOEs constituted 10% of total national tax revenue.\textsuperscript{7} In addition, FOEs are important in the creation of job opportunities. Whilst it is not possible to obtain figures of FOE employment in the rural areas, by 1996 they were responsible for the employment of 9.6 million workers in the urban industrial sector.\textsuperscript{8}

However, some serious problems exist in a large number of FOEs, especially in the areas of employment relations. The problems - though not unique to these enterprises - reflect the lack of fulfilment of basic requirements for workers’ benefits and working conditions. Problems include a lack of basic hygiene facilities, frequent industrial accidents, overcrowded working environments and exposure to pollution, high

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temperature and noise without protection, physical abuse, long working hours and low wage payment.

The initial response from the Government towards such problems was rather blurred and hesitant. Several reasons can be offered. First, in their enthusiasm for seeking foreign investment, some Government officials may have been less than energetic in the supervision and regulation of FOEs. Second, endemic corruption among the officials and public servants creates an environment in which foreign investors are able to avoid prosecution for violations of labour rights. Third, the means open to workers’ organisations to protect workers may well be inadequate. At present, the rate of organised unions in FOEs is still very low. Finally, labour law and labour regulation have been in the state of transformation and uncertainty during this period. However, as the problems have become more serious, the Government has become more concerned about political stability and it believes that the industrial disputes occurring in FOEs could lead to turmoil. During the recent international financial crisis, the fragility of the economy and the high incidence of unemployment in the Asian region spurred the Government to implement certain protection measures. Therefore, the recent efforts of the Government are encouraging a reorientation in favour of regulation (e.g. the new Labour Law of 1995), through encouragement of trade unionism and more intensified inspection.

This paper tackles the relationship between globalisation, foreign investment behaviour and changing labour relations in the dynamic developing economy of China. Section 2 reviews the issue of ‘globalisation’ and its links with labour relations; section 3 illustrates the impacts of FDI on employment, forms of employment status, wages and non-wage benefits, human resource management and trade unions, and different labour relations system between FOEs and State Owned Enterprises (SOEs); sections 4 and 5 examine the problems within FOEs and their impact on Government policy and legislation. In conclusion, the major issues relating to the relationship between the globalisation and changes of labour relations are identified. Generally speaking, FOEs have generated a special need for legislation due to their special status. Their foreign identity is different from the conventional local enterprises and systems in which their social basis of expectations about value and behaviour is different. As for the host government, FDI as one of the important elements of globalisation should be under the control of adequate legislation for maintaining social coherence.
2. GLOBALISATION AND LABOUR RELATIONS

Globalisation refers to the development of an economy and forms of governance that span much of the world. Such developments reflect three processes: (a) the integration of financial and currency markets across the entire world; (b) the integration of production, trade and capital formation across national boundaries in global corporations; and (c) the emergence of functions of global governance that partially regulate national economic, social and environmental policies. The fusion of financial institutions, multi-national corporations (MNCs) and other organisations also reflects the decisions that permit, promote or execute enhanced connection. Cox identifies three key factors responsible for the phenomenon of globalisation: the structural power of capital, the restructuring of production, and the role of debt. As for the structural power of capital, international capital is the dominant influence over the State’s economic decisions. Since States are over-dependent on investment and capital, the power of capital forces the State to create a ‘favourable’ environment for investment. In other words, the State is constrained by the structural power of capital from following an independent economic development plan. Tighter control of labour, restriction on trade unions, the maintenance of low wages and long working hours, reduction of regulations protecting workers’ rights, and hesitancy in enforcing labour regulations over labour disputes can be seen as part of the outcome.

As for the restructuring of production, Cox suggests that the ‘globalisation process’ has been accelerated by the emergence of a new model of production which shifted from Fordism to post-Fordism. The new model is based on a core-periphery structure of production in which the core functions are carried out by a small number of employees who handle research and development, technological organisation and

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12 Ibid. pp. 45-49.
innovation. The periphery is responsible for the production process itself, and, because it is more loosely linked to the overall production process, its components can be called into action according to the corporation’s needs. The consequences of the new model of production can be identified in two respects: one is the weakening of trade union power and corresponding strengthening of the power of capital under the globalisation process; the other is a model of production which makes business operation less controllable by the individual State authority.

The third factor is the role of debt. Since the 1980s governments and corporations alike have been increasingly dependent on borrowing in foreign currencies, and the burden of servicing that debt has made governments and corporations more accountable to external bond markets than to their own public. Governments are constrained in their fiscal and monetary policies from pursuing their own programs of economic development. Associated with the problem of servicing the debt, States have also to deal with the financial manipulators who have made finance an independent power over the real economy. Because their short-range interests are in immediate financial gain, this can lead to the destruction of jobs and productive capital, seriously harming industrial development. In other words, foreign indirect investment also damages the efforts of foreign direct investment. The recent Asian regional financial crisis has reflected these problems.

In the 1970s, ‘offshore production’ was considered a novelty adopted by a small number of innovative companies. By the 1990s, it had become a necessary survival strategy for organisations. In the past two decades, developments in a few areas have made integrated international production systems a common practice. First, the use of computers and new communication technologies in business has enabled companies to develop sophisticated logistic management systems that make the co-ordination of international production activities viable. Second, with the advancement in transportation, companies are now able to manufacture different parts of a product at locations that offer the advantage of low cost. As a result, capital moves relentlessly across national boundaries in search of the lowest production costs. Certainly, China is among the most attractive places for FDI because of its abundant cheap labour and potential huge consumption market. In addition, there are recent indications that the integrated production system is giving way to international subcontracting of production capacity. Jaikumar and Upton and Hoogvelt describe how

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13 Ibid.
15 Op cit.
companies like NIKE used the internet to make loosely-linked providers of flexible production capacities bid competitively for subcontracting orders meanwhile avoiding any responsibility for the conditions under which labour is carried out. Nowadays, new technology, transport and communications systems enable the MNCs to use parts sourced from all over the world and to become simply marketing outfits with limited assembly capacity.

All these factors according to Falk, have resulted in a significant loss of control by States over national economic policy. This is defined as ‘globalisation from above’. In contrast, transnational social forces that have managed to establish links between local action and global campaigns such as international human rights movements and labour movements are promoters of ‘globalisation from below’. These transnational social movements push for the establishment of a global civil society.

In this new global environment, a serious challenge is confronting the State and labour movements. Can the State perform a meaningful role vis-à-vis international capital? What institutional transformation is required for maintaining the balance between attracting foreign investment and protecting labour rights in a developing economy? Using FDI in China as an example, we may expand our perspective regarding the roles of State, foreign capital and labour in this ‘globalised’ economy.

3. FDI AND ITS IMPACT ON LABOUR RELATIONS

The large number of FOEs in China has created significant employment opportunities for both the Chinese workforce and foreign professionals. The workforce of FOEs can be divided into foreign employees and local employees. In recent years, more than 100,000 expatriates have been employed in FOEs. Most of these are managerial staff and technicians. The wages of these expatriates are ten times their local counterparts' earnings. Special accommodation, shopping centres, entertaining centres and education facilities exist for foreign employees and their families. The

17 Ibid.
18 Ibid.
local employees are mainly blue-collar workers. A certain number of managerial staff and technicians are also being recruited locally.

In the early 1980s when FDI started to move into China, FOEs enjoyed many incentives, including a set of labour regulations which were different from those which applied in local firms such as SOEs.

In the case of SOEs, there has been a gradual transformation of labour regulation since the early 1980s. Formerly, SOEs were under the centrally controlled labour allocation system and the overwhelming majority of workers in urban SOEs were permanent employees. This lifelong employment system represented a guarantee of security - the so-called 'iron rice bowl'. Under this system the recruitment, allocation, employment permit, transfer and dismissal of workers were subject to the official approval of State labour personnel departments at the appropriate level.\ [21]

Wages were based on a nationally standardised wage system, comprising eight grades for manual workers, fifteen grades for technical and twenty-five for cadres.\ [22] On top of the basic wage came a range of supplements and allowances, incentive payments, and bonus payments. Most important, the enterprise (in other words the work unit) could also be the site of delivery of a wide range of non-wage benefits, including subsidised housing, subsidised meal halls, free kindergarten and day care, medical care, retirement payments, funeral expenses, and a variety of other subsidised activities. The value of these welfare benefits amounted to 14% of the total money wage bill.\ [23]

However, FOEs as a new form of economic entity have not followed the same employment system as SOEs. The regulation under the centrally controlled labour allocation system did not permit SOEs to recruit employees. SOE employees were allocated by a labour administration department – the so-called ‘Labour Bureau’. However, when FOEs were established in China, new regulations permitted FOEs the autonomy to recruit employees directly. There are several avenues of recruitment for FOEs: one is through public advertisement; another is by introduction through employment agents, local labour bureaux, and individuals who are working in FOEs and have relatives and friends searching for jobs; a third is participating in the local 'labour market' to recruit blue collar workers or

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22 Y. Zhu and I. Campbell, op cit.
in the 'intellectual exchange centre' to search for managerial staff and technicians.

At the national level, the amount of employment in FOEs as a proportion of total employment is still relatively small (see Table 1), and insignificant compared with SOEs and collective-owned enterprises (COEs). Nevertheless, FOEs have a higher rate of growth of employment than these other enterprises. Because of the increase of employment in FOEs, the total number of urban employees has remained around 150 million in recent years, despite the fact that both SOEs and COEs have had negative growth of employment due to the rationalisation and lay-off of superfluous workers.

Table 1. Urban employees and composition by ownership, 1986-1996

<table>
<thead>
<tr>
<th>Year</th>
<th>SOEs®</th>
<th>COEs#</th>
<th>FIEs*</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Staff &amp; workers (mil)</td>
<td>Increase (%)</td>
<td>Staff &amp; workers (mil)</td>
<td>Increase (%)</td>
</tr>
<tr>
<td>1986</td>
<td>93.33</td>
<td>----</td>
<td>34.2</td>
<td>----</td>
</tr>
<tr>
<td>1987</td>
<td>96.54</td>
<td>3.4</td>
<td>34.9</td>
<td>2.0</td>
</tr>
<tr>
<td>1988</td>
<td>99.84</td>
<td>3.4</td>
<td>35.3</td>
<td>1.2</td>
</tr>
<tr>
<td>1989</td>
<td>101.10</td>
<td>1.3</td>
<td>35.0</td>
<td>-0.9</td>
</tr>
<tr>
<td>1990</td>
<td>103.50</td>
<td>2.4</td>
<td>35.5</td>
<td>1.4</td>
</tr>
<tr>
<td>1991</td>
<td>106.60</td>
<td>3.0</td>
<td>36.3</td>
<td>2.3</td>
</tr>
<tr>
<td>1992</td>
<td>108.90</td>
<td>2.2</td>
<td>36.2</td>
<td>-0.3</td>
</tr>
<tr>
<td>1993</td>
<td>109.20</td>
<td>0.3</td>
<td>33.9</td>
<td>-6.4</td>
</tr>
<tr>
<td>1994</td>
<td>108.90</td>
<td>-0.3</td>
<td>32.1</td>
<td>-5.3</td>
</tr>
<tr>
<td>1995</td>
<td>112.61</td>
<td>3.4</td>
<td>31.2</td>
<td>-2.8</td>
</tr>
<tr>
<td>1996</td>
<td>112.43</td>
<td>-0.16</td>
<td>30.2</td>
<td>-3.2</td>
</tr>
</tbody>
</table>


@SOEs: state-owned enterprises / #COEs: collective-owned enterprises / *FIEs: foreign-invested enterprises

24 Domestic private enterprises (DPEs) and the informal sector are also employing a certain proportion of national labour force. For example, officials estimate that employment reached 45.44 million in the household sector and 10.14 million in DPEs by mid-1996. However, due to inconsistency of data on employment in these sectors, the author only selects SOEs, COEs and FIEs as comparable data within the table.
Generally speaking, the workforce in FOEs is relatively young, with a higher educational and training background compared with the employees in other types of firms. In addition, FOEs tend to pay higher wages and spend more on training due to technology and higher quality standards. Furthermore, FOEs have employed a large number of local industrial workers and migrant rural workers at regional level, especially in the Pearl River Delta region in Guangdong province. Foreign investment creates many forms of non-agricultural employment, including manufacturing, services and other jobs. Table 2 demonstrates that the manufacturing sector accounts for the largest proportion (80%) of employment in FOEs. The second largest is the services sector which constitutes 17% of total FOE employment.

Table 2: The proportion of employment by sectors and female participation in FIEs, 1996

<table>
<thead>
<tr>
<th>Sector</th>
<th>% of FIE employment</th>
<th>% of female employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>agriculture</td>
<td>0.2</td>
<td>37</td>
</tr>
<tr>
<td>mining</td>
<td>0.3</td>
<td>25</td>
</tr>
<tr>
<td>manufacturing</td>
<td>80.0</td>
<td>49</td>
</tr>
<tr>
<td>construction</td>
<td>2.0</td>
<td>16</td>
</tr>
<tr>
<td>services</td>
<td>17.0</td>
<td>49</td>
</tr>
<tr>
<td>others</td>
<td>0.5</td>
<td>34</td>
</tr>
</tbody>
</table>

Source: calculated from CSPH, 1997.

In the early 1980s, SOEs and COEs were still under the lifelong employment system (namely the ‘iron rice bowl’). However, FOEs began to utilise contract employment practices in Special Economic Zones (SEZs) in Guangdong and Fujian provinces. In 1986, the Government issued a
temporary regulation introducing a contract-based employment system.\textsuperscript{27} Under this system, there are two types of employee: ‘contract’ employees with an employment duration of more than one year and ‘temporary’ employees with an employment duration of less than one year. Both types of employees sign contracts with their companies individually. These contracts prescribe duties, rights and benefits for individual employees.\textsuperscript{28} However, in terms of welfare, these two categories of employee enjoy different benefits. For example employees with contracts for more than one year have more favourable conditions such as medical and social insurance.

In recent years, the proportion of ‘contract’ employees has increased. In 1994, for example, ‘contract’ employees constituted 46\% of total employees in FOEs compared with 34\% in 1989. Since FOEs employ only ‘contract’ and ‘temporary’ employees, the turnover rate is higher in FOEs than in other types of firms. In 1992, for example, the average turnover for all joint-ventures in China was 14\% and for Guangdong province 18\%.\textsuperscript{29} The majority of those employees leaving their jobs did so for higher salaries or better jobs in other firms, most of which were other FOEs.\textsuperscript{30}

Thus it was the case that starting from the 1980s there were two parallel employment systems operating in China: firstly the centrally controlled labour allocation system operating in the State sector, and secondly the contract-based employment system fundamentally located in the FOEs. This had a significant impact on the reform of the employment system in China and provided the impetus for the extension of the contract-based system to SOEs and COEs nationally in the late 1980s.\textsuperscript{31}

In 1986, the Government stipulated that the minimum wage level of FOEs employees should be at least 120\% of the average national wage level,\textsuperscript{32} in order to guarantee an equivalent income for FOE employees compared with employees in SOEs, where non-wage benefits were a significant part of their income. In fact, FOEs were the first group of enterprises to implement minimum wage regulation in China. Table 3 indicates that FOEs have a higher wage level compared with SOEs and COEs. In 1995, for example, wages in FOEs were 132\% of wages in SOEs, and 189\% of wages in COEs.\textsuperscript{33} Rapid economic growth has produced not only an increase in nominal wages but also a significant growth in real

\begin{thebibliography}{99}
\bibitem{28} See Y. Zhu and I. Campbell, \textit{op cit}. pp. 37-38.
\bibitem{29} See A. Verma and Z. Yan, \textit{op cit}.
\bibitem{30} \textit{Ibid}.
\bibitem{31} See Y. Zhu and I. Campbell, \textit{op cit}. pp. 29-49.
\bibitem{32} Q. Zhang, \textit{op cit}.
\bibitem{33} CPH, \textit{op cit}.
\end{thebibliography}
wages. Official figures suggest that real wages have doubled for SOE (202.3, 1978=100) and COE employees (174.3, 1978=100) between 1978 and 1994, and that these have been accompanied by dramatic increases in real wages in FOEs (196.0, 1984=100) between 1984 and 1994.34

Table 3: Average yearly wages of urban labour force since 1985 (unit: RMB 1.00)

<table>
<thead>
<tr>
<th>Year</th>
<th>SOEs</th>
<th>COEs</th>
<th>FIEs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>1213</td>
<td>967</td>
<td>2252</td>
</tr>
<tr>
<td>1986</td>
<td>1414</td>
<td>1092</td>
<td>2025</td>
</tr>
<tr>
<td>1987</td>
<td>1546</td>
<td>1207</td>
<td>2300</td>
</tr>
<tr>
<td>1988</td>
<td>1853</td>
<td>1426</td>
<td>2475</td>
</tr>
<tr>
<td>1989</td>
<td>2055</td>
<td>1557</td>
<td>3077</td>
</tr>
<tr>
<td>1990</td>
<td>2284</td>
<td>1681</td>
<td>3334</td>
</tr>
<tr>
<td>1991</td>
<td>2477</td>
<td>1866</td>
<td>3940</td>
</tr>
<tr>
<td>1992</td>
<td>2878</td>
<td>2109</td>
<td>4001</td>
</tr>
<tr>
<td>1993</td>
<td>3532</td>
<td>2592</td>
<td>4734</td>
</tr>
<tr>
<td>1994</td>
<td>4797</td>
<td>3284</td>
<td>5964</td>
</tr>
<tr>
<td>1995</td>
<td>5625</td>
<td>3931</td>
<td>7463</td>
</tr>
<tr>
<td>1996</td>
<td>6280</td>
<td>4302</td>
<td>8261</td>
</tr>
</tbody>
</table>


Although the money wage is higher in FOEs than in other types of firms, 25% of wages in FOEs is made up of insurance, covering items such as retirement and old-age pensions, unemployment benefits, medical costs and others. At present, only FOEs have a relatively comprehensive social insurance policy. SOEs and COEs are in the transition process from a welfare system to an insurance system. In fact, the Government uses FOEs as a platform to implement social insurance policy. On the one hand, the Government can gain some experiences from this initial experimental practice in FOEs and then expand the policy to SOEs and COEs later. On the other hand, it helps to change people's attitude towards the transition from a welfare system to an insurance system.

Economic reform has aimed at increasing the autonomy of enterprise management. FOEs are expected to bring advanced management systems into China. The results of this process are varied, but it does seem that managers have enjoyed an increase in power. The major difference between FOEs and other types of firms is that FOEs have greater autonomy on
recruitment, selection and dismissal, whereas in SOEs and COEs nepotistic practices are widespread and institutionalised. In principle, both FOEs and other types of firms seem to enjoy managerial flexibility in assigning work. Supervisors have absolute power to assess individual workers' performance without much objection from workers or unions.

A new development in the area of management is the introduction of the concepts and practices of human resource management (HRM) in FOEs. As Poole indicates, HRM is a relative new term even in Western society: it originated in the USA and arrived in the mid-1980s in the UK and much of Europe. In China, many Western management schools (mainly from the US and UK) set up joint teaching arrangements with Chinese universities to introduce Western management subjects. HRM was one of the new concepts brought in as part of these new subjects. Meanwhile, many FOEs started to practice HRM in a modified way in order to achieve international competitiveness and flexibility.

According to recent surveys, a number of large MNCs from the US, Europe and Japan are implementing this so-called flexible HRM in their joint-ventures and wholly owned enterprises. In this approach, new technology is integrated into the production system as a whole and decentralisation of control and self-management systems are encouraged. By using fewer middle managers, and promoting a multi-skilled workforce with more decision-making power and autonomy, companies try to achieve a more cost-effective and less hierarchical management system. There is also a strong emphasis on continuous training that can be seen as a reflection of managerial will to develop a competent workforce. In addition, several techniques are used to induce organisational commitment. One approach is to create a company culture by emphasising company values and shared missions. Another common technique is participation

35 Y. Zhu and I. Campbell, op cit.
36 A. Verma and Z. Yan, op cit.
schemes. A variety of schemes such as formal grievance procedures and schemes involving profit sharing or stock options are adopted.

Although the number of union organisations and union membership in FOEs has increased in recent years (in 1998 there were 53,634 FOEs having union organisations, with 5.45 million members)\(^39\), only about 20% of FOEs have unions, and even where such unions exist their influence remains relatively weak.\(^40\)

One reason for the weakness of unions is the fact that Government policy did not push for unionisation in FOEs in the 1980s and early 1990s. The major concern of the Government was the fear of losing foreign investment if unionisation became compulsory. Another reason is lack of union independence from management due to the union formation process and selection process of union leadership in some FOEs. For example, some union leaders in these firms are chosen directly by management. In other firms the leaders may be relatives or friends of the owners or managers. This personal kinship prevents the union from representing workers and protecting workers’ interests effectively. However, there are some formal union organisations in relatively large FOEs, with a formation similar to the unions in SOEs and COEs, where one or two full-time union officials take charge of union activities. Unlike SOEs and COEs, there is no Workers’ Congress at the enterprise level in FOEs.

4. PROBLEMS WITH FOEs

As we have seen there are growing problems connected with labour relations and labour abuse in FOEs. Nevertheless it is necessary to recognise that there are important differences in the labour relations method of FOEs according to various factors, including their size, industrial sectors and country of origin.

The general situation in FOEs is that large-sized enterprises have a better performance than small- and medium-sized enterprises insofar as their industrial relations are concerned.\(^41\) Among the large-sized enterprises, most investors are MNCs from North America, Europe, Australia and Japan. They are more involved in capital-intensive and high-tech industries (some are in the tertiary sector) which do not require the exploitation of cheap labour to make a profit, but the control over the

\(^{39}\) *Guangming Daily*, 18/10/1998.


\(^{41}\) Q. Zhang, *op cit.*
technology and market is more important. In addition, a large number of MNCs have experienced a variety of labour relations systems in different countries. As a result, many of them are inclined to adopt a co-operative strategy towards the regulatory requirements of the host country. They pay more attention to providing appropriate working conditions and training, and encourage workers' participation in decision-making process as part of a long-term strategy for economic success.

Among the small- and medium-sized enterprises, most investors come from South Korea, Taiwan, Hong Kong and some from Japan. These firms concentrate on labour-intensive simple processing industries which depend on minimising the cost of labour and other welfare in order to gain higher profits. These enterprises often lack a long-term plan. Short-term behaviour determines that they are less interested in spending more capital on welfare facilities and training. Furthermore, a large number of small and medium enterprises relocated to China from the newly industrialised economies (NIEs) of East Asia in the 1980s and early 1990s. Many of these are family-based businesses, and their business culture emphasises traditional Confucian values. In most cases, management requires absolute obedience and loyalty from workers.

It is very difficult to obtain details of labour abuse occurring in FOEs due to the political sensitivity of this kind of field research in China. However, reports from Government organisations have been collected for this paper. A leading critic from the Government’s Foreign Investment Bureau, Zhang Quan, has conducted a systematic survey on labour abuse in FOEs. According to Zhang, an unsafe working environment was the major problem in FOEs. For instance, in the period between 1991 and 1993, there were five fire accidents in FOEs in Guangdong and Fujian provinces, which killed 244 workers and injured 76 workers.

Human rights abuses also occurred in FOEs, for example, there is no break during working time. Some factories do not allow workers to go to the toilet. Workers cannot take leave if they are sick. If workers make mistakes, they can be punished by fines or physical punishment. Some factories use male supervisors to search female workers. In a Korean-owned factory, a supervisor carried a stick to supervise production and to readily abuse workers. In a Taiwanese-owned footwear factory, the manager suspected a female worker of stealing a pair of shoes. She was

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42 Ibid.
43 Ibid.
44 Ibid.
45 Ibid.
punished firstly by parading her through the streets carrying a pair of shoes, and secondly by putting her into a dog cage.\textsuperscript{46}

Long working hours and continuous overtime work are also characteristic of the employment pattern in FOEs. For instance, in Dongguan City in Guangdong province, seventeen FOEs established a daily working schedule of between 10 and 12 hours. Some FOEs organise uninterrupted work-shifts of up to 36 hours in length. Others threaten to reduce wages or fire workers if workers refuse to work overtime.\textsuperscript{47}

Exploitation is also found in production levels and pay rates. For example, in Zhuhai SEZ, a Japanese-owned factory set the production quota at the level of 4000 pieces per worker per working day, but the maximum level in Japan is only 2500 pieces per worker per working day (60% higher in China than in Japan). Some FOEs set wage levels much lower than the minimum wage level. An FIE in Shenzhen SEZ only pays 5 to 7 Reminbi per day, much lower than the local average wage level of 11.5 Reminbi per day. Some factories lay off workers before the new year in order to avoid paying the end of year bonus.

Other problems such as failing to provide workers with written contracts, delaying wage payments, and using force to end labour disputes have also been reported by various Government organisations. The lack of enforcement of law and regulation is characteristic of the Chinese legal system. This is due to the high degree of corruption and favouritism shown by administrators towards transgressors. As a result of these and other abuses, labour conflicts in the FOEs have escalated, and more and more strikes have occurred across the country. Both central and local governments are aware that such tensions may lead to social instability and block further economic reform. These concerns have led to a reorientation in favour of greater regulation through encouragement of trade unionism and more intensified inspection.

5. **GOVERNMENT RESPONSE AND NEW LEGAL FRAMEWORK**

As noted, the Government has gradually become more clearly focused and decisive in imposing legal requirements upon FOEs. This revised approach reflects several important factors which have changed the country’s outlook on employment in this sector. First, the maturity of economic reform has created a huge consumer market in China, and as a result China is now a very attractive location for foreign investment. As a consequence of this,
the Chinese State has a greater degree of bargaining power against foreign investors than ever before. Second, labour disputes in FOEs are still an ideologically sensitive matter in China, where the socialist state is expected to provide protection for workers from foreign capital’s exploitation. Third, the awareness of workers’ rights among employees has led both individual workers and trade unions to put pressure on the Government to act.

By implementing regulations to control the behaviour of FOEs and establishing institutional mechanisms to facilitate tripartite working relations among Government, trade unions and employers’ associations, the Government hopes that a more coherent industrial relations system can be established and further crisis can be prevented. In order to achieve these goals, both central and local governments have been working hard to implement some initiatives.

As for the central government, it has sought to establish more relevant legislation and to improve the means of implementing and enforcing the laws. In 1995, the first Labour Law was implemented and it provided a legal framework for protecting workers' rights. Since this is the first Labour Law to be introduced under communist rule (i.e. since 1949), uncertainties of application and enforcement of the law have arisen. However, some important issues have been addressed.

In the new Labour Law, insofar as individual rights are concerned, a compulsory policy on using contracts between employers and employees, a maximum working hours of 44 hours per week and overtime work of one hour per day, overtime payment (150% of wages on normal days, over 200% on holidays and over 300% on public holidays) and a minimum wage have all been stipulated. Other issues include working conditions, safety and hygiene, protection for female workers and young workers (ages between 16 and 18), training, social insurance and welfare. In addition, the new Labour Law has opened the way for an element of collective bargaining. Article 7 decrees that workers ‘shall have the right to join and organise labour unions according to law’ and that ‘labour unions shall represent and protect the lawful right and interests of the workers, and shall develop their activities autonomously and independently according to law’. Most importantly, subsequent articles allow for collective agreements between employees and management (on matters such as labour remuneration, working hours, rest, holidays, labour safety and hygiene, insurance, welfare, etc.), negotiated either by the trade union or – in enterprises without a union – representatives elected by the employees. Collective agreements are binding and standards in individual contracts may not be lower than those provided for in the collective agreement.

In recent years, under the new Labour Law, trade unions have been required to play a crucial role in the emergence and establishment of the so-called ‘collective negotiation and collective agreement’ (CNCA) process.
which is seen as occupying the same function as collective bargaining in Western systems. The reason for developing the CNCA concept rather than adversarial collective bargaining is to promote a less confrontational system of industrial relations. This is in keeping with the Government’s view that industrial relations in China is fundamentally based on cooperation.\footnote{Worker, 1/1995, pp. 4-10.}

The most important matters contained in CNCA agreement include wages, working hours, holiday arrangements, insurance and welfare, health and safety, job description, discipline code, duration of contracts, the condition and procedure of changing, dismissing or ending contracts, handling contract disputes, and the responsibility for contract violations and so on. At the present time, the CNCA process has been established in a majority of SOEs and COEs. However, only a small number of FOEs have adopted the process.

Several problems have emerged since the CNCA process was established. For example, because the CNCA process is new, workers’ representatives are lacking in experience. As a result their legal knowledge and negotiation skills are inadequate to meet the requirements of the system. Furthermore, an aversion of conflict is a feature in the State’s design of the collective contract institution to underscore its non-adversarial and non-confrontational character and make it distinctive in the Chinese context and acceptable to FOEs.\footnote{M. Warner and S. H. Ng, \textit{op cit}.} As a result most enterprises have tended to adopt similar agreements based on the sample provided by Government labour administration. The system of CNCA thus demonstrates a high degree of state intervention and control. Another problem is that a CNCA can only be developed in FOEs with the establishment of a union and as we observed earlier, there are unions only in a minority of FOEs. In the absence of unions, individual workers are reluctant to represent other workers voluntarily because of the fear of losing their jobs. Conversely, management does not trust individual workers due to their lack of education and unfamiliarity with labour law and regulations. Hence, because of the low level of unionism in FOEs the majority of contracts are individual agreements between employer and employee, and in these circumstances there are serious problems in the enforcement of workers’ rights.

Since the new Labour Law was implemented, the central government has been working on new legislation, including the Work Contract Law, the Employment Promotion Law and the Social Insurance Law, with the aim of improving the labour law system. These initiatives of the central

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government indicate a shift from the traditional governance by administrative means towards the rule of law and the settlement of disputes through a judicial system. However, the gap between the establishment of law and its enforcement is still quite obvious.

In China, the central government is in charge of national policy formation and the establishment of law and regulation. However, the phenomenon of ‘policy from above and counter-policy from below’ is widespread in China. Therefore, the implementation and enforcement of policy, regulation and law usually depends upon the effort and co-operation of local governments. For labour law and labour regulations of central government to be implemented, the local governments must co-operate.

So far, the local governments have taken some initiatives towards facilitating the implementation of the labour law and regulations. For instance, some local governments have established supervisory teams to examine the problems of labour abuse within firms. The first supervisory team was set up in Shenzhen SEZ by its local labour administration. The major task of the team is to monitor the implementation of the relevant labour laws and regulations. Three types of monitoring processes have been carried out: first, a general inspection carried out in each enterprise every year; second, selective monitoring for certain enterprises; and third, special monitoring for particular enterprises which have been the subject of complaints by workers.

A further initiative has been the development of labour dispute mediation commissions and arbitration commissions at both enterprise and local labour administrative levels. A labour dispute mediation commission at enterprise level is composed of a union leader and representatives of management and workers. The chair is held by the union leader. If the mediation fails at enterprise level, one of the parties may apply to the Labour Dispute Mediation and Arbitration Commission at the Regional Labour Administrative Department - namely the Labour Bureau. The regional commission is composed of representatives of the Labour Bureau, the trade union at the corresponding level, and the employing unit. The mediation shall take two months initially. If it fails, one of the parties may apply for arbitration. After arbitration, both parties have the right to appeal to the People’s Court at local and later intermediate levels.

Although at an early stage of transformation, the initiatives of both the central and local governments are designed to institutionalise a tripartite industrial relations system which not only provides a relatively secure investment environment for business, but also creates an opportunity for unions to participate over a wider range of activities in terms of representing and protecting the interests of working men and women.
FDI as the major element of globalisation has been an important force for high economic growth and job creation in China. The inflow of foreign investment has been growing rapidly in recent years and its positive impact can be identified as generating revenue, introducing new technology and higher quality standards, and creating employment opportunities. In fact, FOEs have been used experimentally as a trial for the contract-based employment system, the social insurance system and HRM by the Government as detailed above. At the same time, difficulties also exist within a large number of FOEs: among them the problem of low level unionism, lack of institutional protection for workers, inadequate working environment and exploitation of labour.

However, FOEs are relatively new organisations in China and they have generated a special need for law due to their particular status. They are not part of the conventional government-corporate system in China, characterised by hierarchical links between the Government and companies which are mainly SOEs and COEs. FOEs do not share the social basis of expectation which guides the behaviour of SOEs and COEs. This has led, and continues to lead, to misunderstandings and abuses of labour rights. Implementing legislation and using institutional mechanisms to solve the problems and manage the socio-economic transition have therefore become the highest priority for the authorities. However, the problem of the gap between the establishment of law and the enforcement of law still exists even after many initiatives made by both central and local governments. Institutionalisation of the industrial relations system, and effective supervision and enforcement of labour regulation and legislation, are the key issues which will determine the outcome of further political and economic reforms. The successful outcome could eventually create an environment of accountability and rule of law in which FOEs cannot continue to take advantage of an unregulated environment. Certainly, the internal pressure from Chinese workers and intellectuals and external pressure from ILO and international trade union movements on the Chinese Government to establish adequate institution of industrial relations are building up.

The case of China provides a lesson for other developing economies. Under current globalisation, States cannot become over dependent on FDI but must appropriately use them for national development. The recent regional financial crisis has taught us that, without protection, development cannot be sustained and political and economic chaos can erupt and cause severe damage. ‘Globalisation from above’ has not been matched by the development of a global society. Current international law and international institutions are not strong enough to prevent crisis and human rights
It is crucial to develop a grass-roots-oriented global civil society to empower ordinary citizens in this global village with collective strength. In the process of ‘globalisation from below’, the trade union movement is one of the important forces to speak on behalf of workers and to put pressure on national and international governing bodies to act accordingly, and on MNCs to behave under national and international laws. Building a global civil society relies on the development of civil society in individual countries, especially in the developing countries.

China as the largest developing country plays a crucial role in this development. The transformation from the tradition of governing by administration to rule of law has a profound impact on Chinese society. The introduction of an institutionalised industrial relations system (such as the formation of the tripartite system and collective bargaining) indicates that the corporatist framework is transforming from a ‘state corporatism’ to a ‘societal corporatism’. Hence, the gradualist transition in China from traditional methods of social control to ones commensurate with a ‘civil society’, the rule of law and a pluralist framework for negotiations among the State, foreign capital and workers is likely.

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