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Labor Relations and Protection of Labor Rights under Globalization: Core Labor Standards in China

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Under the circumstances of globalization, WTO plays a positive role in propelling the realization of “market economy and free trade” all over the world. However, aiming at capital expansion, this kind of propel formed the suppressing and exploitation towards labor and the extremely imbalance between capital and labor. The protection of labor rights has become a social problem as important as economic development in every country. Along with China’s entry into WTO, the impact of globalization on labor issues and labor relations of China should be taken into consideration. The advance of social clauses and international labor standards aimed at promote the protection of labor rights as well as aiming at the self-regard protectionism. Therefore, China should make her policies on the basis of understanding the situation and response actively. In order to adjust labor law system after her entry into WTO, it’s urgent to improve labor law legislation in a market economy in China by referencing core labor standards specified in international labor conventions and by basing on the principles of law and the local situation in China.

Keywords : WTO, labor relations, labor standards, labor rights and benefits, labor legislation, trade union movement

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China's entry into World Trade Organization (WTO) symbolized the integration of China into the world economy and it has become a structural part of globalization. However, China is still at the phase of transition into market economy. The entry into WTO will inevitably cause the collision between WTO rules and the current economic and law systems. Although the entry into WTO is the logical choice of China's reform of market economy, it will sharpen the conflicts in economy, society and law in the process of reform. The protection of labor rights and legislation of labor standards will become one of the most important issues.

I. WTO and the Restructuring of Labor Relations

WTO was founded on the basis of GATT in 1995. Its basic principles and object is to standardize the trade legislation and implementation in each member state in order to strengthen the liberalization of trade in the world. The appearance of WTO claimed the new economic structure of globalization has come into being.

The formation of new economic structure is in the context of the splitting and disappearing of the former socialistic camp since 1980s. Before 1980s, when the two camps were closed and confronting each other, it was a basic principle and truth that socialism features planned-economy and capitalism features market-economy though there was contradictions and conflicts inside each camp. Along with the former socialistic states gave up planned-economy and made choice of market-economy, some resumed capitalistic market-economy and some explored socialistic market-economy, market-economy, this capital-centered operational system has become a global choice. Capitalism has gained the rights of speaking and disposing in the world economy. There has formed a worldwide common market, it is the so-called economic globalization. If you want to enter this market, you must abide by the rules which has been formed and accepted for hundreds of years in market-economic countries. Globalization actually means the capitalistic economic system and rules have been conquering and unifying the world.

WTO came onto stage at this historical moment. Compared with GATT, WTO expended from tariff to the whole trade or market behavior in content, it not only enacts rules but also charges in the judgment and implementation of the rules. It

incorporates the three functions of international legislation, judgment and implementation in itself, especially its general supervision power has the final restriction rights to the member states, and the member states have the obligations to punish the one who don't obey the arbitrage. There is only one basic judging spirit: no discrimination in treatments in capitalistic free trade and no disturbance in market. WTO has actually become a world government or global government of capital.¹⁾

WTO has undeniable positive meaning to enhance the realization of worldwide 'market economy and free trade'. However, this kind of enhancement aims at capital expansion and also uses it as a tool and, capital expansion directly requests the suppression and exploitation of labor. Under the background of globalization, the labor relations and the situations of the strength balance of labor movement has changed greatly since 1990s.

Firstly, the primary condition of world economic integration is capital internationalization, but the development of the boundlessness of capital especially multinationals has promoted the capital union and cooperation all over the world which has become self-consciousness and actions of the capitalists. Despite the competition and conflict between capitals are always cruel, "the world union of capitalists" has really come into being in the sense of labor relations under the support of states. While the status of capital has been kept on ascending, the one of labor is dropping down increasingly. Due to the interests of state and the limits of politics, the slogan of "unite all the proletarians in the world" is still only a slogan, though the proletarians have struggled for it for 150 years. Labor unions are in more inferior positions confronting capital. Except isolated cases, the labor movement in many countries is in quite difficult position.

Secondly, the labor relations take on two totally different trends in deferent countries in the globalizing world. One is the capital-controlled cooperation in labor relations with the promotion of government, which is mainly in some developing countries and previous socialistic countries. The other is severe conflict which mainly exists in some traditional developed capitalistic countries. The failure of mine workers' strike of the

1) Qin Tong, globalization and world trade, *China vs. World*, March 2000,
<http://www.chinabulletin.com>

UK in 1984 had been anticipated as the epilogue of labor-capital conflict in the 20th century. But since 1990s, the tide of strike continually hit Western Europe and North America such as UK, France and Canada after the silence of only a few years. The coexistence of cooperation and conflict is another feature of labor relations in the globalizing world.

Thirdly, taking economic developing as their first priority, the states follow a rational line to favour and support capital and the governments lose their justice. They collusions between government and capital prevailed in many countries and regions. To pursue economic development at the expense of labor rights has been a tacit starting point of policymaking. The main method of implementing this kind of policies is to limit the rights of labor and labor unions through labor legislation or revising labor laws. Such practice has intensified labor-capital conflicts and the instability of society in many countries and regions.²⁾

The strengthening of capital power and the infringement upon labor rights broke the relative balanced situation of international labor relations which has been formed for more than 30 years since the end of the World War II. Especially the disappearing of socialistic camp symbolized in the flag of worker class made the resist against capital lost in an extremely adverse situation without backup. Therefore, striking against globalization and moreover against WTO have become important issues of current labor movement in the world. When the Seattle Session was going on in December 1999, a demonstration organized by labor union exploded, which involves tens of thousands of people including worker representatives from all over the world. This demonstration called on 'protect the labor rights', 'oppose unfair competition' and claimed to dissolve the WTO. The parades protest angrily, 'we protest against that the profits of enterprises and the stipend of chief administrators increased continually whereas the income of majority dropped and, the quality of health care and education aggravated sharply. We do not protest against globalization, but query what kind of globalization we need, who is in charge, and who will benefit from it?' The demonstration was suppressed by US government. Rubble bullets and tear bombs were discharged and several thousands of people were arrested.³⁾ From

2) Chang Kai, *The World Economic Integration and The Labor Legislation in China*, *Paper Collection of International Seminar on Labor and Social Security*, Oct. 1998, Hong Kong

then on the anti-globalization campaign which mainly consists of labor campaign actively carried out globally.⁴⁾ Though these anti-globalization campaigns were commented entirely different based on different points of view, but the conflicts centring on globalization proved that the international conflicts between labor and capital has come to be very severe.

The process of China's striving to enter WTO is also the process of getting herself involved in globalization. The impact of this process on labor relations in China embodies in two aspects:

On the one hand, it promoted market-oriented transition and internationalization of labor relations in China.

Firstly, international investment is swamping into China. According to the state statistics, till 2003, China has authorized 465,277 foreign invested enterprises, agreement funds 943.130 billion USD, actual input 501.471 billion USD. The employees in foreign invested enterprises surpassed 30 millions. And it was noticeable that the proportions of multinationals and international syndicates have been going up increasingly. Till now more than half of the top 500 corporations has set up enterprises or agencies in China.

Secondly, the system of ownership in China has changed greatly. Especially the 15th CPC Congress speeded up the privatization of state-owned and collective-owned enterprises and let the private-owned enterprises to get a great momentum of development. Which Congress put forward that the public ownership could have different forms and encouraged the development of non-public ownership. By the end of 2003, the number of private-owned enterprises of China had already reached 3.01 million, employees 42.99 million, registered capital 3,530.5 billion RMB yuan. The non-public economy is becoming the leading economic form.

Thirdly, China has furthered its transition from planned economy to market economy by fixing on the market-orientation and introducing general operational mechanism of market economy which includes not only the property right relations and managerial rights relations but also the adjustment and handling of labor relations.⁵⁾

3) Sounds from Seattle, *Globalization Monitor*, Hong Kong, 3rd issue, January 2000

4) Xiao Tong, What does the Anti-globalization Mean?, *Beijing Youth Daily*, 12th August 2001.

On the other hand, the process speeded up the reconstruction of labor relations as well as pricked up the labor conflicts in China.

Firstly, there is coming forth new type of labor relations, especially the non-public labor relations in foreign invested or local private enterprises. This kind of market-oriented labor relations is relations of economy and interest. Which means the employers aim at the maximum profit and the employees pursue the maximum salary.

Secondly, the labor relations in public sectors has been transforming from planned economy to market economy. In the sense of state economic system, China's labor relations are changing from very political and administrative and same-interest labor relations into the interests-based and market-oriented ones. This transformation will recover the nature of labor relations based on interests.

Thirdly, the social problems in labor relations have become more and more serious and the labor conflicts are growing up. Due to the emergence of the class of proprietors and managers and, the polarity between rich and poor, many social labor problems such as employment, distribution, social security, occupational safety and health have become increasingly serious.

Globalization has intensified the labor problems in the world at the same time of promoting economic development and growth. What the Labor problems reflect is not the underdevelopment of economy or insufficiency of wealth but the unfair distribution of social wealth and rights.⁶⁾ In essence, labor problems in China are the problems of protecting labor rights in labor relations. China's entry into WTO will sharpen the labor problems, the first of which is employment. One of the prevailing forecasts is: the entry into WTO will bring up 2.94% in GDP and, each percent brought means 4 million jobs creation, so the entry into WTO should increase 11.76 million jobs. It was said that the forecast was from the UNCTAD (UN Conference on Trade and Development) and the Bank of Asia. But another opinion from US well-known economists regards that according to China's concession on the

5) Chen Guang Fu, Enhance the Work of Organizing Labor Unions, Promote the Healthy Development of Non-public Enterprises, December 2000.

6) Hans Peter Martin & H. Schumann, *Trap of Globalization*, pp.12, Central Translation and Edition Publishing Company, Beijing, October 1998. Originally published under the title DIE GLOBALISIERUNGSFALLE, Rowohlt Verlag GmbH Reinbek bei Hambrug, 1996.

agricultural and industrial products, the unemployment workers will increase 11 million.⁷⁾ The former forecast is an armchair strategy that has not concerned actual situation in China and, the actual situation could be more serious than the latter forecast. The reason is there is another important factor, that is, the unemployed workers from State-owned enterprises bankrupt because of the competitive new foreign invested enterprises. Unemployment will make the problems of wage, social security and vocational safety and health more serious. Under the circumstances of labor supply exceeds demand and of capital dominance, it will be more difficult to protect labor rights. Mr. WEI Jian-xing, the former member of Standing Committee of the Political Bureau of CPC and the former Chairman of Chinese Worker Union criticized some enterprises, especially non-state-owned enterprises, for infringement on labor rights occurred repeatedly, withholding workers' wages, arbitrarily insulting workers, poor working conditions and so on.⁸⁾ With China's entry into WTO, the current strain in labor relations is exacerbating and the workers are in a more disadvantageous position.

II. Labor Standards: a Problem of Law needing Solution

Social clauses and labor standards have become a problem of law that can't be avoided to give solution. Social clauses are the clauses relating to social rights which mainly consist of labor rights, environmental protection and human rights, etc. Among them, labor rights are the most fundamental and core contents. That is to say the social clauses can be viewed as labor standards problem in some degree. The shaping of this problem is because the presenters intent to directly link the social clauses to international trade, that is to say that the violator should suffer economic punishment.

The first presenter was US. In 1953, the State Department of US informally put forward the clause of inhibiting unfair labor in GATT. But it haven't come into an

7) Han De Qiang, *Collision: Trap of Globalization and the Realistic Choice of China*, pp20-21, Economy and Management Publishing Company, Beijing, 2000.

8) Wei Jian Xing, the Speech on the National Conference on Labor Union Organizing Work in Newly-built Enterprises, November 12th 2000

agreement without common understanding about the definitions of unfair labor with other countries. And it had been put forward several times in the Tokyo bout talks in 1978 and other occasion but had been strongly opposed by developing countries.⁹⁾ In 1993, US declared this proposal again at the 13th World Conference on Vocational Safety and Health representing the Western countries. Thereafter at the meeting of foreign ministers of ASEAN and EU, on behalf of EU, the foreign minister of Germany Ginkel proposed clearly that human rights, environmental protection and working conditions should be taken into international trade and, should directly link labor rights and vocational safety and health with economic issues. What he had suggested is the well-known so-called *Social Clauses*. ILO is also an active advocator of social clauses. The director of ILO also proposed social clauses in his report on the International Labor Congress in 1994, suggesting that connect basic labor standards with international trade regulations and punish those violators or who can't meet the standards. The participating countries were divided on totally opposite sides confronting it.

After WTO was founded in 1995, the problem of social clauses came into agenda again. At the 1st Ministerial Meeting of WTO in Dec. 1996 in Singapore, *Core Labor Standards* were listed as a very important new issue in the final declaration formed through fury debate. The declaration claimed: 'we renew our commitment to the observance of internationally recognized core labor standards. The ILO is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labor standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question'.¹⁰⁾ This Declaration actually indicates that developing countries have admitted labor standards as a 'problem' and promised to find out solutions. However, the debate about the directly link between social clauses and international trade haven't conclusion yet and it is also a big obstacle in

9) Jiao Xing Kai, *Labor Law and Protection of Labor Rights*, pp. 453-454, Yuedan Publishing House, Taiwan, 1995.

10) <http://www>wto>org/english/newe e/pres96 e/wtodec.htm>.

the negotiating process of China's entry into WTO.

As a reflection of social and economic issues, the cropping up problem of social clauses has two reasons:

Firstly, along with their integration into globalization of developing countries, especially Southeast Asian countries, their export boomed with comparative advantage of low price of labor and simple products. This situation impacted on the market and employment in developed countries. The developed countries tried to directly link the social clauses with international trade to impair the comparative advantage of developing countries so as to realizing protectionism and non-tariff barrier. The representative opinion is as follows: due to the different levels of wage, working hours, working environment, situation of vocational safety and health in different countries, the countries with low labor standards can lower their production cost and have comparative advantages in international trade and, there certainly will work out 'social dumping' to the countries with high labor standards. Therefore, uniform international labor standards should be made in trade agreement to limit the trade of the violating countries at the same time of promoting free trade. The holders of this opinion are the US-led western countries.

Secondly, with the rapid development of globalization and free trade, social problems and labor conflicts have become more and more strain. The rich benefited much from the globalization while the unemployed workers increasing rapidly, social security getting inadequate, working conditions getting worse and lots of workers in poverty-stricken. These problems not only generally exist in developing countries but also spread into developed countries.¹¹⁾ The intensifying of labor conflicts and the descending of labor status made the ILO be an active propagator of the direct link between social clauses and international trade.

Although both developed countries and labor organizations demand a direct link between social clauses and international trade, their focuses and purposes are different. The developed countries aimed at seeking for trade protection and non-tariff barrier by social clauses, while the labor unions hope to protect labor interests. For example, AFL-CIO stressed that in the globalising world, workers are exploited in

11) Hans Peter Martin & H. Schumann, 1996.

market of the world because WTO has not forced to implement the minimum labor standard. The most effective way to protect labor rights is to award a prize to or punish a certain product by global trade system. The ILO Declaration on Fundamental Rights at Work adopted by the International Labor Conference in 1998 put forward that, ‘labour standards should not be used for protectionism trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.’¹²⁾

Although neither the focus nor the purpose of developed countries and labor organizations is the same, but their direct claiming is the same. Therefore, they actually support and cite each other. In the case of Seattle Conference in 1999, the government of US got support from AFL-CIO and President Clinton not only tabled a proposal that labor standards should be included in WTO agreements, but also ratified ILO convention No.182 which calls for immediate action to ban the worst forms of child labor. The direct purpose of the labor unions in developed countries is to protect the workers’ interests in their countries. For this purpose, they even definitely oppose China’s entry into WTO. However, we could not confuse the countries, governments and labor unions because of it is a more complicated problem which includes not only the competition between different countries in international trade, but also the competition between different classes and social strengths in labor relations.

Certainly, both labor unions and governments of developed countries have definite political purpose putting forward the problem of labor standards. They hope to influence the concept and framework of law in developing countries according to western values. However, we shall not simply say NO to it because firstly, the process of international trade can not but relate to labor standards. To promote social development at the same time of economic development is an inevitable demand. Secondly, up to now, the frame of multilateral trade regulations of WTO mainly set down by developed countries and, governments and labor unions in these countries

12) <http://www.ilo.org/public/english/standards/decl/declaration/text/>

are energetically promoters for labor standards. Besides, employers also accept this. The proposal of labor standards also has been taken in by the international organizations such as UN, ILO. Therefore, in a long run, to connect labor standards with international trade is an inexorable trend. At the 1st Ministerial Meeting of WTO in Dec. 1996 in Singapore, the final declaration reflected that most member countries, including developing countries, are acquiescent to this trend. What is still not sure may be only when and how to put in practice.

Therefore, China's entry into the WTO could not avoid to resolve the law problem of labor standards. What we should do is to take a more positive and practical attitude. We must persevere in our opinions in negotiation and association, namely we oppose the direct link between labor standards and international trade, especially using trade punishment as a solution of problem of labor standards because it is neither fair nor good for protecting workers' rights. However, we must adjust our strategy. We should not deny the relations between labor standards and international trade. We should speed up and better the legislation of labor standards in China, and gradually meet with international labor standards to take precautions of future risk.

With China's entry into WTO, China is not only a typical developing country, but also is a socialist country. Under the circumstance of globalization, China has become a rare survival socialism country in the world. In the Constitution of China, to insist on socialism direction and representing the interests of working class is the fundamental demand.¹³⁾ To insist on and to better labor standards is an important legal measure to represent and protect the interests of working class. We oppose to link the labor standards with international trade directly because this direct link could not directly protect workers' interests. However, labor standards plays an important role in international trade. In the legal system of market economy, economic rights can not be completely separated from social rights and political rights. China can not leave an impression in the international community that we only care for economic growth, but not workers' rights and interests. Under the circumstance of globalization, the conflict between labor and capital is still one of the essential conflicts in the

13) 'The People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants', Article 1, Chapter 1, Constitution of PRC, 1993

world. Workers all over the world share the same interests and demands. The Marxism slogan ‘Proletarians of All Countries, Unite!’ still should be the principle which China’s government and labor union movement endeavor to follow.

China has ratified the International Convention On Economic, Social And Cultural Rights, which means that the convention will have the authentic of domestic law and become one of the law origins of China labor law. This convention has contained the elementary content of core labor conventions.¹⁴⁾ To implement the obligation indicated by the convention is accordant with ratifying and implementing international labor standards.

The labor problems and labor conflicts caused by globalization are international which China’s problems are a part of it.¹⁵⁾ China’s entry into the WTO makes labor problems in China more internationalized. Market economy is an integrated legal system so that entering WTO needs linkage labor law of China with international labor standards gradually. This trend is also the internal demand of labor relations and protecting labor rights and interests in China. Certainly, labor standards legislation in China is not to copy the international labor standards, but to take China’s situation and law environment into consideration, which we must insist on and indicate.

III. International Labor Standards and China’s Labor Legislation

Generally speaking, International labor standards, or named international working standards are conventions and recommendations ratified by ILO conferences, and other principles or rules which got international agreement and have complete system on labor relations and other related issues. The aim and tenet of ILO conventions is to define and to protect labor rights in the world.¹⁶⁾

Labor standards mentioned in social clauses are so-called Core Labor Standards or

14) See, International Convention on Economic, Social And Cultural Rights, Article 6-15, International Convention on Civil Rights and Politic Rights, Article 22.

15) Little Global Encyclopaedia of Poverty and Rich, *Globalization Monitor*, Hong Kong, 3rd issue, January 2000.

16) Wang Jia-chong, *Outline of ILO Convention*, pp15-17, China Labor Publishing House, 1991.

Fundamental Rights at Work, which is firstly put forward in Summit Conference on Social Development Issues in 1995.¹⁷⁾ The ILO Declaration on Fundamental Principles and Rights at Work adopted by the International Labor Conference in 1998 indicates these fundamental principles are as follows. Freedom of association and the effective recognition of the right to bargain collectively, the elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in respect of employment and occupation.¹⁸⁾ The four principles are mainly embodied in eight International Labor Conventions.¹⁹⁾ By the end of Feb. 2000, 80% of ILO member states have ratified at least one of the eight labor conventions. More than 50 countries, including Germany, France, Italy, Cuba have ratified seven in all. UK, Australia and some other countries have ratified six of them, and Canada, Japan have ratified four. US only ratified ILO convention No.105 and until now, China has only ratified No.100 and No.138.

According to the ILO Declaration on Fundamental Principles and Rights at Work, all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions.²⁰⁾ However, as the rules dealing with labor relations in each member country, international labor standards have the nature of general international law. It means, these rules can have direct legal authentic only when the ratifying states have taken necessary measures in accordance with domestic legal system and practice. These necessary measures may be domestic legislation, or directly implementing

17) introduction, <http://www.ilo.org/public/english/standards/decl/declaration/text/>

18) article 2, <http://www.ilo.org/public/english/standards/decl/declaration/text/>

19) See: Convention No.87, Convention Concerning Freedom of Association and Protection of the Right to Organize; Convention No. 98, Convention Concerning the Application of the Principles of the Right to Organize and to Bargain Collectively; Convention No. 29, Convention Concerning Forced or Compulsory Labor; Convention No. 105, Convention, Convention Concerning the Abolition of Forced labor; Convention No.100, Convention Concerning Equal Remuneration; Convention No.111, Convention Concerning Discrimination (Employment and Occupation); Convention No.138, Convention Concerning Minimum Age; Convention No.182, Convention Concerning Worst Forms Child Labor.

20) ILO Declaration on Fundamental Principles and Rights at Work, 1998, Article 2.

ratified conventions, or give tacit consent to the binding force of international labor conventions to domestic laws.²¹⁾

As the member country of ILO, China has the responsibility and obligation to the observance of the fundamental principles and rights at work as well as ratifying more ILO labor conventions, especially core labor conventions under proper circumstances. Until now, the total number of ILO Conventions that China has ratified is 23, including 14 ratified by the former government of China before 1949. The 23 ratified Conventions are only 12.5% of 184 ILO Conventions and are less than 1/3 of average number ratified by all member countries.²²⁾ This situation is extremely unfit for our position and function as one of the founders of ILO and a socialist country. The entry into WTO brought more pressure to China. In the context of the demand for labor legislation and legal circumstances in China, to strengthen and better legislation on labor standards is one of the most important approaches to protect labor rights and interests and harmonize labor relations. Furthermore, the legal circumstances of ratifying core labor conventions are basically matured.

The rights of workers in industrial relations are set out in the labor law of the People's Republic of China, promulgated in 1994, together with regulations issued later. It should be noted that China has begun to introduce a market-oriented labor law system.²³⁾ It is fair to say that except some differences with international labor standards on freedom of association and forced and compulsory labor, China's labor standard legislation can basically meet with the demand of international community in content, especially some of labor standards such as working time which is even above the general international labor standards. With entry into WTO, China should meet with international labor standards gradually. Here I provide a brief summary of the right of association and the right to bargain collectively as stipulated by law and as translated into practice in China.

As the collective right of workers, the right to freedom of association and

21) Wong Jia-chong, *the Outline of ILO Conventions*, pp16-17, China Labor Publishing House, 1991.

22) All-China Federation of Trade Unions, *Selections of Foreign Labor Law and Regulations*, pp. 1179-1200, 1997.

23) Chang Kai, *Economic Integration of the World and Labor Legislation in China*, *Paper Collection of International Conference on Labor and Social Securities*, Hong Kong, 1998.

collective bargaining is the most fundamental and important right. The character of collective labor rights is the organization of labor. Collective rights are not exercised by individual worker but by labor union. Workers use the right to counterwork with employers collectively so as to balance and adjust labor relations. Collective is the main character of contemporary labor relations system. Besides, collective labor right is also the major content of contemporary labor law system.²⁴⁾ In a narrow sense, the right of association is the right of workers to organize and join in labor union and to guarantee the independent operation of unions. In a broad sense, the right of association is the right of workers to use the power of organization against employers in order to protect their own interests. The right contains three aspects. Firstly, the right to freely organize and join in labor union; Secondly, the right to bargain collectively, namely labor unions represent workers to sign collective agreement through collective bargaining with employers; thirdly, the rights to collective dispute or collective action which mainly means the right to strike.²⁵⁾ The three rights are always called ‘three labor rights’ in the circle of labor law. In Japan, they are also named ‘basic labor rights’.²⁶⁾

In terms of legal provision, Chinese workers have the right to organize trade unions: China's Constitution provides for the right of association. According to the Constitution of the People's Republic of China: “citizens enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration”.²⁷⁾ According to the Trade Union Law of PRC, workers have the right to organize and join trade unions according to law.²⁸⁾ Of course, the trade unions which workers “have the right to organize and join according to law” means the trade unions of the All-China Federation of Trade Unions (ACFTU), the unified national workers' organization (Article 10, 11). Such provisions clearly differ from the concept of “freedom of association” as defined by the ILO.²⁹⁾ However, ILO Convention No. 87

24) Changkai: labor rights standard: the basic point and core of establishing labor law system??and several basic theoretic issues about labor law system, labor law communication, the second issue in 1997, P38-40.

25) [Japan]竹内昭夫 New Law Lexicon, p. 950.

26) [Japan] 沼田稔次郎: Basic labor right, p. 30, 1969.

27) PRC Constitution, the thirty-fifth item, the second chapter.

28) PRC union law, the third item, the first chapter.

does not *require* constituents to introduce a plural trade union system. It merely requires constituents to allow for the existence of plural trade unions, namely, to provide for the possibility of a plural trade union system.³⁰⁾ ILO Convention No. 87 does not restrict the trade union movement to a plural system, but requires the possibility of plural trade unions. The avoidance of a plural system should aim at promoting labor rights, and a unified system should be based on a common understanding. It should not be forcibly imposed by legislation.³¹⁾ The monopoly status of the ACFTU is a result of the history of Chinese trade union development and of the centralization of the planned economy.

However, now that China has become a member of WTO, the workers' right to freedom of association needs to be strengthened. This is also required by globalization and market-oriented industrial relations.³²⁾ In contrast to the situation of the labor unions, the employer associations in China, including national associations, are not organized as a single unified body. The national employer associations include the Association of Foreign Invested Enterprises, the Association of Public Ownership Enterprises, China's Entrepreneur Association and many others. There is no restriction on organizing local employer associations, which only need to observe the general regulations governing mass organizations. This situation has resulted in unequal rights in industrial relations. To resolve the problem, China needs to strengthen the workers' right to freedom of association.

In fact, comparing plural system with unified system of trade union, the two both have some advantages and disadvantages.³³⁾ What is critical is to choose the system meeting the case of situations in the very country, and to make the choice by workers or labor unions themselves and, their decision must be legal under the very political

29) Convention No. 87 notes: "workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization" (Article 2).

30) WANG Jia-chong, 1991, *An Outline of the Conventions of ILO*, China Labour Press, p. 48.

31) HUANG Yue-qin, 1994, *On Labour Law*, Labour Research Institute of Political University of Taiwan, p. 286.

32) See CHANG Kai, "Globalization and China's Labour Legislation", in *Asian Labour*, Sep.-Dec.1998.

33) Chang Kai, Zhang De-rong, *General Theory of Trade Union Law*, pp. 220-221, 1993.

and legal circumstance. The ILO Convention No. 87 also stipulates that: ‘In exercising the rights provided for in this Convention workers and employers and their respective organizations, like other persons or organized collectives, shall respect the law of the land.’³⁴⁾ Workers or labor unions can campaign only in this legal circumstance or they will offence the law.³⁵⁾

In the declaration ratifying the International Covenant on Economic, Social and Cultural Rights (ICESCR) in March 2001, the Standing Committee of the National People’s Congress of China announced that “the PRC will interpret the first item of the first paragraph of Article Eight according to the Constitution of PRC, the trade union law of PRC, the labour law of PRC and other relevant provisions”.³⁶⁾ Article 8 of this Covenant ensures: “the right of everyone to form trade unions and join the trade union of his choice ... for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.”³⁷⁾

Concerning the ratifying declaration, the spokesman of the fourth session of the ninth National People's Congress commented: “The first item of the first paragraph of Article 8 deals with the workers’ right to form and join a trade union. The Constitution, trade union law, labor law and other laws of the PRC effectively provide China's workers with the right to participate in political, economic, social and cultural life, including the right to form and join trade unions. Since the establishment of the PRC, the workers of China have formed and joined trade unions according to

34) ILO: “the covenant of tong freedom and protection of organization rights(No.87)” June.1948, the eighth item.

35) About this viewpoint, the author ever repeated in several overseas lectures, namely, movements of worker sand labor unions have to operate in the legal bound. Even though there are some limitations in law, they should not offence law. Which is a common sense in democratic countries, but some people abroad who are interested in labor problems in China seemed to neglect it. For example, they place great hope on workers’ organizations outside the ACFTU. In fact, these organizations are illegal in China.

36) The Decision on Ratifying ICESCR by the Standing Committee of the National People’s Congress of China, *People's Daily*, 1 March, 2001.

37) UN, ICESCR, 1966, first item, Article 8.

these laws. Ratification of the ICESCR indicates that China's government will continue to protect the workers' right to form and join trade unions according to the Constitution, trade union law, labor law and other laws of the PRC.”³⁸⁾ In the declaration, China's government did not evaluate the Article directly, simply clarifying its position. This is a mild approach, but it clearly means that the Government is insisting on the principle of national legislation and the unified system of trade union organization.

A more realistic approach is to organize the workers into the existing trade unions, and to prevent the employers from controlling those unions. By the end of 1998, trade union density in private enterprises was 7.3 per cent, covering 11.5 per cent of workers, while union density in public sector enterprises was only 4 per cent.³⁹⁾ However, in many privately owned enterprises without trade unions, the workers' status is very disadvantaged. The ACFTU has selected the unionization of privately owned enterprises as its priority task and has already made considerable progress. A total of 610,000 trade unions had been established in privately owned enterprises with a membership of 20 million workers by the end of 2000.⁴⁰⁾ The ACFTU plans to raise the number of trade unions in the private sector to 1 million and their membership to 36 million by the end of 2002.⁴¹⁾

To protect the workers' right to organize, it is necessary to guarantee the independence of trade unions and to prevent the rise of “company unions” . Although the ACFTU has made great efforts to organize workers, most trade unions in privately owned enterprises are still controlled by employers. Furthermore, some unions were set up by the employers or on their behalf. Some union presidents are even the wife of the employer or the second owner of the plant.⁴²⁾ ILO Convention

38) SHEN Lu-tao, “China will protect laborers’ right of trade union according to the law”, *People's Daily*, 5 March, 2001.

39) Office of FIEs' Work and Office of POE's Work of the ACFTU, “Pushing the organizing work into a new phase”, (unpublished), October 1999.

40) Chinese Trade Unions Statistics Yearbook (2000), Chinese Statistic Press, Beijing, 2001, p. 36.

41) WEI Jian-xing; Speech at the National Conference on Establishing Trade Unions in Newly-built Enterprises, 12 Nov 2000. See, Chinese Trade Union Yearbook (2001), p.11.

42) This problem causes concern in trade unions and legal circles presently. Many experts have expressed their worry and put forward suggestions related to employer control over

No. 98 stipulated that national law should forbid employers from discriminating against unions or union members; the Convention also prohibited the creation of company unions or company-dominated trade unions. These are an important problem in China, demanding urgent legislation against unfair labour practices.⁴³⁾ The revised Trade Union Law of PRC imposes restrictions on employer-dominated trade unions.⁴⁴⁾ However, because workers in POEs are in a weak bargaining position, the ACFTU still has a long way to go to remove employers' influence on trade unions.

About the right to bargain collectively, China's labour law lays down that: "The staff and workers of an enterprise as one party may conclude a collective contract with the enterprise on matters relating to remuneration, working hours, rest and vacations, occupational safety and health, insurance and welfare", and: "a collective contract with the enterprise shall be concluded by the trade union on behalf of the staff and workers"(Article 33). In 1996, a joint circular mandating the gradual implementation of a collective consultation and contract system was issued by the Ministry of Labour and Social Security, ACFTU, the State Commission of Economics and Trade and the China Entrepreneurs' Association. In this circular the four governmental or quasi-governmental organs required their own subordinates at all levels to participate in implementing the system. Furthermore the work of establishing and implementing collective contracting system was emphasized as the pivot of "establishing a effective system to protect economic and political rights of workers and staff" at the 13th National Congress of the ACFTU in October 1998.⁴⁵⁾ On 8 Nov, 2000, the Ministry of Labour and Social Security issued its *Trial measures on settling wages through collective bargaining*.

In spite of the support of departments of government in implementing collective

trade unions, and "boss's trade union" and "yellow union" in the column of "the laws should back up our trade unions" on the Workers' Daily. See, Workers' Daily, Beijing, 1/3/2000, 10/3/2000, 20/4/2000.

43) See, CHANG Kai, "Legislation with regard to unfair labour practices", in *Chinese Social Sciences*, May 2000, pp. 71-82.

44) It is clearly stipulated that "the close relatives of major managerial staff can't be the candidates of members of trade union committee in enterprises." See the Trade Union Law of PRC (2001), Article 9.

45) Zhang Ding Hua: "the report on the 13th national convention of Chinese labor unions" October 29th 1998.

contract system, trade unions in China encountered the rejection of the employers, especially in POEs and foreign-invested enterprises (FIEs). The management usually adopts one of two strategies for rejecting collective bargaining: it simply rejects the request to bargain collectively, or it controls the bargaining.⁴⁶⁾

One important way of perfecting the system of collective bargaining in China is to give it legal recognition, especially to enact a national law on collective contract and to specify the mode of implementation. In China's Labor Law, it stipulated that "The staff and workers of an enterprise as one party may conclude a collective contract with the enterprise on matters relating to remuneration, working hours, rest and vacations, occupational safety and health, insurance and welfare".⁴⁷⁾ In terms of law, the system of collective bargaining and collective contract amounts to the self-regulation of labour and capital. A necessary condition for such a system is that trade unions should be independent of the employer and should enjoy the right to collective action. However, the organizational strength of workers in China, especially in POEs and FIEs is rather weak and they lack any definite guarantee of the right to strike. Therefore, there are two kinds of possible result of a collective contract system; one is difficult to implement in POEs and FIEs, the other is only a matter of form in SOEs.⁴⁸⁾ It is important to strengthen trade unions' right to collective bargaining by prohibiting unfair labour practices and by legal assistance. At the same time, it is necessary to speed up reform of the trade union system in order to make unions truly independent from employers. The trade union right to collective action should also be guaranteed. Through these measures, the system of collective contract in China can be given full play in a market economy.⁴⁹⁾

Some maintain that the Chinese Government prohibits strikes. Strictly speaking,

46) Trade unions of China pay more attention to the number of collective contracts thus the management's strategy of "rejecting the request of bargaining" was often referred to in the documents of ACFTU. However, the situation of management's controlling over collective bargaining has never been mentioned formally. In fact, the second case is more prevalent.

47) Labor Law of the PRC, 1994, Article 33.

48) See Li Qi, "On the collective consultation system in SOEs", *Researches on Trade Union Theory*, 1/1999, pp. 15-18.

49) See, Chang Kai: "Legislation with regard to unfair labour practices", *Chinese Social Sciences*, 5 /2000, pp. 71-82.

Chinese law neither allows nor bans strikes. In brief: “the existing law system generally evades the problem of strike.”⁵⁰⁾ Of course, this situation cannot respond to the need to establish a legal framework for industrial relations in a market economy. At present, labour law experts in China agree that legislation should be adopted when the opportunity arises so as to guarantee workers’ right to strike.⁵¹⁾ We have already mentioned that the Standing Committee of the National People’s Congress of China ratified the ICESCR in February 2001. Article 8 of this Covenant provides that: “workers enjoy the right to strike, but should exercise the right according to the laws of each nation.” In the declaration ratifying this Covenant, China has not made any special comment on the Article, which indicates that it has the same effect as domestic laws in China. This means that Article 8 of the ICESCR could serve as the legal basis of strike legislation in China. The phrase: “should exercise the right according to the laws of each nation” also demands concrete legal provisions on the right to strike in China.

About equal remuneration and eliminating discrimination in respect of employment and occupation, the equal treatment of men and women in the workplace has been a continuing priority of the Government of the PRC and China has ratified the Equal Remuneration Convention (No. 100). The Labor Law of the PRC stipulates: “Workers, regardless of their ethnic group, race, sex, or religious belief, shall not be discriminated against in employment.”⁵²⁾ According to the ILO Convention No. 111, the term [discrimination] mainly includes “any distinction, exclusion or preference made on the basis of race, color sex, religion, political opinion, national extraction

50) See, Chang Kai, Zhang De-rong, (1993), *General theory of trade union law*, Publishing House of Cadre School of Central Committee of CCP, pp. 319, 327.

51) I proposed that the working class should be given the right to strike in 1988. See, Chang Kai, (1988), “A survey of strike movement”, in *Collected Papers on Contemporary Trade Unions*, Vol. 1, Workers’ Press, Beijing, pp.51,58; also see, Shi Tan-jing, (1999), “Discussion on situation of labour disputes and strike legislation in China”, *Law Research*, Vol.6, 1999, pp. 54,56. Besides, many scholars put forward the same opinion at many legislation seminars in mainland China. The clauses about strike were placed on the agenda of drafting the “Collective Contract Law” many times. However, the academy and organs concerned have not reached an agreement on the proper time for legislation on strike.

52) Labour Law of the PRC, Article 12.

or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” .⁵³⁾ From a legal perspective, there are few differences between the ILO Convention and Chinese Labor Law in defining employment discrimination. In practice, some forms of discrimination continue to occur, including gender discrimination, mainly because of inadequate legislation and problems of enforcement. The area of registered residence (hukou) discrimination refers to restrictions on rural workers employed in urban areas. This type of discrimination is caused by the separation between the urban and rural labor markets. Improving the labor market system requires a unified market and social security provisions. Therefore, gradually eliminating discrimination between the urban and rural labour force represents progress in developing and perfecting the labor market in China.

For a long time, the Chinese government has been attempting to prohibit child labor strictly. There have not the problem of child labor in SOEs. In order to stop the tendency of recruiting child laborers in some POEs and FIEs, in November 1988, the national Ministry of Labor, the National Educational Committee, the Ministry of Agriculture and the ACFTU jointly issued the “Circular of Prohibition of Child Labor” . In April, 1991, the State Council issued a “Law of Protection of Minor” , which stipulates that “state organizations, social organizations, enterprises and institutions, as well as individual industrial and commercial households, rural households and urban inhabitants, are prohibited from employing child labor” .⁵⁴⁾ Chinese Labor Law also prohibits employers to recruit juveniles under the age of 16.⁵⁵⁾

We should say that China’s regulations of prohibition of child labor are accordance with the ILO Covention No. 138. However, some evidences show that, in recent years, some non-public enterprises employ more and more child laborers in order to decrease their production costs. This problem is more serious in some remote areas. Although there are few accounts and statistics relating to the problem, the cases that are reported by media are shocking.⁵⁶⁾ The cause of this problem may be a lack

53) ILO Convention No. 111, Article 1.

54) Law of Protection of Minor of PRC, 1991, Article 28.

55) Labor Law of PRC, 1994, Article 15.

56) e.g. “54 Children Nearly Become Indentured Laborers” 21st April, 2000, Workers’ Daily;

of adequate supervision and effective punishment. It's important to complete the legislation of prohibition of child labor and to promote the implementation of laws and regulations.

About forced labor, for the purposes of ILO Conventions, the term "forced or compulsory labor" shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.⁵⁷⁾ In fact, forced labor is the restriction and infringement of personal freedom. It is a issue relating to basic human rights. In China, there are two aspects in abolition of forced labor: one is the employers in enterprises force ordinary laborers to working, the other is the departments concerned of government force criminals to working.

China's law strictly prohibits forced labor and protects workers employed in routine enterprises from forced labor. But this kind of regulations is mainly embodied in criminal law and civil law aiming at protection of human rights and personal freedom.

With the rapid developing non-public sectors, the problem of forced labor has been becoming more and more serious, especially in POEs and FIEs. Some employers disregard the law, arbitrarily extending working hours, forced workers to work in very abominable working conditions, even employ musclemen to prevent workers from escaping, and seeking profits at the expense of workers' lives. In some worst cases, the forced workers have to "work for 12 to 20 hours everyday in burning hot, can't go out without permission of supervisors, often are punished with punches and kicks even with whips" .⁵⁸⁾ Such worst cases have offended criminal law. However, many cases of forced labor do not reach personal injury and can't be punished by criminal law while civil law is also limited to prohibit these cases. Therefore, in order to abolition forced labor, we should strengthen and better the regulations concerned in labor law referring to international labor standards, prohibit forced labor through punishment.

"No Time to Delay the Prohibition of Child Labor" , 25th July, 2000, etc.

57) ILO Convention No. 29, Convention Concerning Forced or Compulsory Labor, Article 2.

58) Lu Jin-bao, "Why the Infringements are more and more Serious?", 26th June, 2001, Workers' Daily.

Strictly speaking, the concept of “reform of criminals through labor” is beyond the field of ordinary labor law because its subjects are not workers and management in the usual sense of these terms. What is related to this issue is with prison system. China’s system of reforming of criminals through labor does have shortages and limitations, which has been discussed deeply in the law circle. The reform of the system is still on the way. However, the subject of China’s prison system is beyond the scope of this paper.

Generally, China entry WTO makes protecting laborers' interests an urgent social and legal issue. To provide more protection for Chinese laborers, the Chinese government has to take the international labor standards as reference and complete the domestic labor law system. It is undoubted that there are still gaps between the Chinese labor standards and the international core labor standards. Moreover, as we have noted, there will be a great need for the arbitration system and the courts to play a role in actual implementation of these laws. We anticipate the development of new legal mechanisms to ensure the upholding of laws. However, these gaps also mean a great room for China to develop its labor law system.

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세계화하에서의 노동관계와 노동기본권 보호 : 중국의 핵심노동기준

Chang Kai

WTO는 세계화라는 조건하에서, 전 세계에 걸친 ‘시장경제와 자유무역’의 실현을 추진하는 데 긍정적 역할을 한다. 그러나 자본의 팽창만을 목적으로 한다면, 이러한 세계화 추진은 노동에 대한 억압과 착취, 그리고 자본과 노동 사이의 극도의 불균형을 형성하게 된다. 노동권의 보호는 모든 국가에서 경제발전만큼 중요한 사회적 문제가 되었다. 중국이 WTO에 가입함과 더불어, 세계화가 중국의 노동 문제 및 노사관계에 미친 충격이 고려되어야 했다. 사회적 조항과 국제노동기준의 진전은 노동권의 보호를 촉진시키는 것뿐 아니라 자애적 보호무역주의(self-regard protectionism)를 목적으로 한다. 따라서 중국은 이러한 상황을 이해하는 기반 위에 정책을 결정해야 하고 능동적으로 대응해야 한다. WTO에 가입한 후 노동법 체계를 조정하기 위해서는 국제노동협약에 의해 구체화된 핵심노동기준을 참조하고, 법률의 원칙과 중국의 지역상황에 기초함을 통해, 중국 시장경제의 노동입법을 개선하는 것이 시급하다.

핵심용어 : WTO, 노사관계, 노동기준, 노동권과 수익, 노동입법, 노동조합운동