

CORPORATE SOCIAL ACCOUNTABILITY STANDARDS IN THE GLOBAL SUPPLY CHAIN: RESISTANCE, RECONSIDERATION, AND RESOLUTION IN CHINA

Li-Wen Lin *

ABSTRACT

This Article provides a view on corporate social accountability standards from a Chinese perspective, a slightly different angle from that of legal scholars in the United States. The legal literature in the United States typically only focuses on the importance and effectiveness of corporate social accountability standards to regulate the conduct of multinational companies in the era of globalization. However, the views of the outsourced companies in the developing countries, on which the multinational companies impose the standards, have seldom received attention. This Article tries to fill this void by examining the situation in China. As shown in this Article, effective implementation of corporate social accountability standards requires a refined approach that considers local circumstances in developing countries.

TABLE OF CONTENTS

I. INTRODUCTION	322	R
II. CORPORATE SOCIAL ACCOUNTABILITY STANDARDS ..	327	R
A. Formation: SA8000	327	R
B. Function in the Global Supply Chain: The Perspective of Multinational Companies	329	R
III. RESISTANCE TO CORPORATE SOCIAL ACCOUNTABILITY STANDARDS IN CHINA	330	R
A. Protectionism	331	R
B. Commercialization	333	R
C. Imbalance of Bargaining Power	334	R
D. Lack of Localization and Value Imperialism	336	R

* Research Associate, Asian Law, Politics and Society Program, University of Illinois; J.S.D. candidate; LL.M. 2005, University of Illinois at Urbana-Champaign. Thanks for helpful comments by Professors Tom Ginsburg, Cynthia Williams, and Patrick Keenan at University of Illinois and Professor Margaret Blair at Vanderbilt University. Also thanks for assistance by Ms. Carolyn Pribble and Ms. Kate Zhou. Errors remain my own.

- IV. RECONSIDERATION OF CORPORATE SOCIAL ACCOUNTABILITY STANDARDS IN CHINA 339 **R**
 - A. Protection for Whom?..... 339 **R**
 - B. Immature Supporting Mechanisms 344 **R**
 - C. A Changing Culture 348 **R**
 - D. Potential Benefits: Sustainable Economic Growth 350 **R**
 - 1. Alleviation of Inequality 350 **R**
 - 2. Dependence on the Global Market 352 **R**
 - 3. Creation of Fair, Accessible, and Predicable Investment Environments 353 **R**
- V. RESOLUTION..... 356 **R**
 - A. The Attitude of China’s Central Government..... 356 **R**
 - 1. Recognition of Corporate Social Responsibility in Recent Legislation 356 **R**
 - 2. The Progression of Corporate Social Accountability Standards in China 361 **R**
 - B. The Attitude of Local Governments 362 **R**
 - C. The Private Sector Response 363 **R**
- VI. RECOMMENDATIONS 364 **R**
 - A. Effective Rewards and Harmonization 364 **R**
 - B. Activate Consumer Awareness in China 366 **R**
 - C. Trigger Workers’ Awareness of Labor Rights 369 **R**
- VII. CONCLUSION..... 369 **R**

I. INTRODUCTION

Numerous definitions of globalization scatter the landscapes of policy discussions and everyday conversations. The definitions might be intentionally constructed to fit in a particular context or to achieve a particular purpose. Notwithstanding different contexts and purposes, economic factors and concerns are at the center of the definition of globalization both for pro- and anti-globalization groups. Martin Wolf, associate editor and chief economics commentator at the *Financial Times*, states in his book *Why Globalization Works*:

Globalization is defined in what follows as integration of economic activities, via markets. The driving forces are technological and policy changes — falling costs of transport and communications and greater reliance on market forces. The economic globalization discussed here has cultural, social and political consequences (and preconditions). But those

2007] *CORPORATE SOCIAL STANDARDS IN CHINA* 323

consequences and preconditions are neither part of its definition nor a focus of our attention.¹

Although the meaning of globalization is limited to the economic sense, the controversy of globalization usually revolves around its social consequences.²

The emergence of the global supply chain demonstrates a typical example of economic integration and the accompanying social consequences. With the great reduction in transportation costs and the help of international trade agreements, goods may be produced in locations with competitive advantages, and they may be sold around the world “through complex production and distribution systems under a variety of organizational and legal arrangements.”³ To utilize the competitive advantages of a location for manufacturing a certain product, foreign companies do not have to set up their own facilities in that location. Direct investment in a country with unfamiliar cultural and business environments is costly. By contracting with the local manufacturers, foreign companies can tap the resources in the host country without the pain and risks associated with direct investment. This is exactly what multinational companies such as Nike are doing in this era of economic integration. They outsource the supply chain operations in developing countries to produce products at competitive prices and then sell the products to markets around the world, largely to developed countries. This type of business strategy has some important legal implications. First, without directly controlling factories and hiring workers in the host country, foreign companies are not constrained by the environmental regulations and labor protection laws in the host country. Second, although one may argue that foreign companies may be subject to the laws of their home countries in regulating their business activities abroad, U.S. experience casts doubt on the effectiveness of this approach.⁴ Third, multinational companies

¹ MARTIN WOLF, *WHY GLOBALIZATION WORKS* 19 (2004).

² See JAGDISH BHAGWATI, *IN DEFENSE OF GLOBALIZATION* (2004) (debating whether globalization harms or helps children, women, labor, culture, democracy, and the environment).

³ PHILIP B. SCHARY & TAGE SKJOTT-LARSEN, *MANAGING THE GLOBAL SUPPLY CHAIN* 16 (1998) (explaining the concept of the global supply chain).

⁴ See Cynthia A. Williams, *Corporate Social Responsibility in an Era of Economic Globalization*, 35 U.C. DAVIS L. REV. 705, 750–72 (2002) (arguing that, at the moment, the Alien Tort Claims Act imposes weak constraints on corporate activities because of problems relating to the construction of causes of action, state sovereignty, forum non conveniens, and personal jurisdiction over defendants); see also David Kinley & Junko

are not constrained by international law either. Traditionally, multinational companies have not been directly subject to international law because they lack an international legal personality. Although there are some international legal instruments asserting that multinational companies have a duty to the community, they are either non-binding declarations or lack enforcement and monitoring mechanisms.⁵

The supply manufacturers in developing countries that contract with multinational companies are usually small companies measured on an international scale. These small manufacturers profit from the multinationals' cost-reduction strategy. They make profits not from selling advanced knowledge, but from selling cheap labor. To be competitive and profitable, these suppliers do not pay much attention to labor protection concerns and sometimes even egregiously violate laws, gaining profits at the expense of workers' health and lives. Meanwhile, the product market in the developed countries has become so competitive that multinational companies are pressed to squeeze every penny out of their operations, including their supply chains. Therefore, multinational companies do not have strong incentives to consider the production processes of their suppliers in developing countries. Price is their primary, if not only, concern. Workers' rights suffer in this unregulated global supply chain.

The plight of workers in developing countries in the global supply chain has been revealed through numerous reports, which have raised consumer awareness in developed countries and resulted in movements against goods produced in sweatshops. In response, multinational companies are incorporating corporate social accountability standards into their supply chain operations. These standards can be internal voluntary codes of conduct established by a multinational company itself or external voluntary standards established by non-governmental organizations. This Article focuses on the latter. Examples of the external standards are: SA8000, established by Social Accountability International (SAI); the Workplace Code of Conduct by the Fair Labor Association (FLA); and the Apparel Certification Program by Worldwide Responsible Apparel Production (WRAP). Although the details of these stan-

Tadaki, *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law*, 44 VA. J. INT'L L. 931, 939-44 (2004).

⁵ See Kinley & Tadaki, *supra* note 4, at 947-51.

2007] CORPORATE SOCIAL STANDARDS IN CHINA 325

dards are different, they share some general commonalities. They are based on the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and they are structured with a monitoring system.⁶

The legal literature in the United States typically focuses on the importance or insufficiency of corporate social accountability standards to regulate the conduct of multinational companies.⁷ The manner in which the people working in the outsourced factories in the developing world view these standards has seldom been discussed. This Article aims to fill this vacuum.

China, characterized as “the world’s factory,” plays an important role in the global supply chain. Since the corporate social accountability standards, whether internal or external, are largely implemented in factories, incorporation of such standards into the global supply chain unsurprisingly has great impact on the manufacturers in China.⁸ Major newspapers in China have frequently reported anecdotes of factories losing business from multinational companies because they failed to meet corporate social accounta-

⁶ See COMMITTEE ON MONITORING INTERNATIONAL LABOR STANDARDS, NATIONAL RESEARCH COUNCIL, MONITORING INTERNATIONAL LABOR STANDARDS: TECHNIQUES AND SOURCES OF INFORMATION 78–84 (2004) (comparing FLA, SA8000, and WRAP standards).

⁷ See, e.g., Sean D. Murphy, *Taking Multinational Corporate Codes of Conduct to the Next Level*, 43 COLUM. J. TRANSNAT’L L. 389, 433 (2005) (arguing that governments should provide “carrots” and “sticks” for corporate codes of conduct to be effective); Kinley & Tadaki, *supra* note 4, at 952–60 (explaining the impact of corporate codes of conduct); Beth Stephens, *The Amoralty of Profit: Transnational Corporations and Human Rights*, 20 BERKELEY J. INT’L. L. 45, 78–81 (2002) (explaining the partially binding aspect of voluntary codes of conduct). See generally Mark B. Baker, *Tightening the Toothless Vise: Codes of Conduct and the American Multinational Enterprise*, 20 WIS. INT’L L.J. 89 (2001); Lance Compa & Tashia Hinchliffe-Darricarrere, *Enforcing International Labor Rights Through Corporate Codes of Conduct*, 33 COLUM. J. TRANSNAT’L L. 663 (1995); Thomas F. McInerney et al., *Putting Regulation Before Responsibility: The Limits of Voluntary Corporate Social Responsibility*, in 2 VOICES OF DEVELOPMENT JURISTS (2005), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=658081; Charles Sabel et al., *Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace*, in SOCIAL PROTECTION DISCUSSION PAPER SERIES (May 2000), available at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Labor-Market-DP/0011.pdf>.

⁸ See KUA GUO GONG SI DE SHE HUI ZE REN YU ZHONGGUO SHE HUI [SOCIAL RESPONSIBILITY OF TRANSNATIONAL CORPORATIONS & THE CHINESE SOCIETY] 19 (Tan Shen & Liu Kaiming eds., 2003) [hereinafter SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS.] (roughly estimating that at least 8000 factories in the coastal area have been investigated by multinational companies about corporate social practices since 1995 to the time of this research). The report was part of the labor research series conducted by Tsinghua University in Beijing, supported by the Ford Foundation. *Id.*

bility standards. The most popular external social accountability standard for manufacturers in China is SA8000, although currently the number of factories certified under SA8000 is relatively small compared to the total number of factories in China.⁹ SA8000 has raised a heated debate in China.¹⁰ There are two competing opinions in China about the role of corporate social accountability standards in the global supply chain. The standards are widely viewed as creating either a technical trade barrier in favor of developed countries or a passport to the global market. Opponents criticize the protectionism, commercialization, and value-imperialism of corporate social accountability standards, while proponents view these standards not as external pressure but as internalized values that promote sustainable growth. Scholars, companies, and the Chinese government regularly exchange opinions with regard to this issue.

This Article provides an overview of the changing attitude toward corporate social accountability standards in China ? from uncompromising resistance, to reconsideration, and then to promising resolution. Part II explains the formation of corporate social accountability standards and their function in the global supply chain. Part III discusses criticisms of the standards and the causes of resistance in China. Part IV analyzes the criticisms in Part III and identifies benefits from the implementation of corporate social accountability standards in China. Part V describes the attitude of the Chinese government and the responses of the companies in China. Part VI gives recommendations on how to overcome the resistance in China and turn the external pressure into internalized values. Although this Article examines the situation in China, the analysis may also apply to other developing countries where corporate social accountability standards are struggling to become accepted.

⁹ According to Social Accountability International, there are 129 certified facilities in China as of September 30, 2006. There are 1112 facilities certified around the world. Italy has the most facilities certified (395), followed by India (141) and then China (129). See Social Accountability International, <http://www.sa-intl.org> (follow "SA8000" hyperlink; then follow "Certified SA8000 facilities" hyperlink) (last visited Apr. 15, 2007).

¹⁰ The debate has been raised by news reports since 2003. *Mei yu xiang wo tui SA8000 dabang, zhushanjiao kong cheng zhong zhaiqu* [The United States Wants to Use the Stick of SA8000, the Pearl Delta Likely to be a Disaster Zone] GD HK INFO DAILY (P.R.C.), Dec. 11, 2003. This news report planted an important seed of the debate.

II. CORPORATE SOCIAL ACCOUNTABILITY STANDARDS

A. Formation: SA8000

With the great reduction in transportation costs, multinational companies can manufacture products in developing countries where labor cost is substantially lower than in developed countries and then sell the products around the world at a competitive price. The low labor cost in developing countries is *partly* due to low levels of labor protection because of either lack of regulation or lack of enforcement by the local governments.¹¹ Since the 1990s, the media has frequently exposed sweatshop practices in developing countries by multinational companies or their suppliers.¹² Multinational companies, mainly driven by enlightened self-interest, have adopted corporate social accountability standards responsively, to repair their tarnished images, or preventively, to maintain customer goodwill.¹³ The standards can be internal codes of conduct established by a company itself or external standards usually set by non-governmental organizations and sometimes accompanied by verification mechanisms. SA8000 falls into the latter group. Although there are many external corporate social accountability standards in the world, this Article selects SA8000 as an example because it is the most hotly discussed standard in China.

SA8000 is a set of auditable corporate social accountability standards established in 1997 by the Council on Economic Priorities.

¹¹ Note that this is just one of the reasons for low labor costs. Low living expenses in developing countries result in lower wages, but this does not necessitate labor exploitation.

¹² See, e.g., Philip Shenon, *Made in the U.S.A.?—Hard Labor on a Pacific Island/A Special Report; Saipan Sweatshops Are No American Dream*, N.Y. TIMES, July 18, 1993, at A1 (reporting that labor exploitations were found in the suppliers for Arrow, Liz Claiborne, The Gap, Montgomery Ward, Geoffrey Beene, Eddie Bauer, and Levi Strauss).

¹³ See Robert J. Liubicic, *Corporate Codes of Conduct and Product Labeling Schemes: The Limits and Possibilities of Promoting International Labor Rights Through Private Initiatives*, 30 LAW & POL'Y INT'L BUS 111, 114–15 (1998) (arguing that self-interest motivation is the predominant reason multinational companies adopt codes of conduct); Harvey L. Pitt & Karl A. Groskaufmanis, *Minimizing Corporate Civil and Criminal Liability: A Second Look at Corporate Codes of Conduct*, 78 GEO. L.J. 1559, 1573–1600 (1990) (providing a historical review of the growth of codes of conduct fostered by scandals); Murphy, *supra* note 7, at 397–403 (explaining the impetus for the proliferation of codes of conduct); KIMBERLY ANN ELLIOTT & RICHARD B. FREEMAN, CAN LABOR STANDARDS IMPROVE UNDER GLOBALIZATION? 42–46 (2003) (describing firms' practice of adopting codes of conduct because they believe that "consumers will penalize them if they do not undertake corrective action" and analyzing firms' cost-and-benefit calculation of adopting higher labor standards).

ties Accreditation Association (CEPAA) and now supervised by Social Accountability International (SAI).¹⁴ SA8000 addresses national law compliance and incorporates International Labor Organization conventions, the Universal Declaration of Human Rights, and the UN Convention of the Rights of the Child.¹⁵ To measure the performance of a company with regard to labor protection, SA8000 provides criteria in nine different areas: child labor, forced labor, health and safety, freedom of association and right to collective bargaining, discrimination, discipline, working hours, compensation, and management systems.¹⁶

In addition to establishing standards, an important feature of SA8000 is its verification system, which was designed to overcome the criticisms about monitoring insufficiencies that usually discredit voluntary corporate social accountability standards. As of November 2007, SAI had accredited seventeen auditing companies to conduct monitoring and certification.¹⁷ To be certified under the SA8000 standard, a facility must first conduct a preliminary internal assessment of compliance with SA8000 and make any changes to conditions or policies as required by the standard. Then, an auditing company accredited by the SAI will conduct an initial assessment and provide corrective action requests for the applicant facility. After making changes in accordance with the corrective action requests, the facility may contact the auditing company to arrange a full certification audit. If it passes the audit, the facility will be certified. An SA8000 certification is good for three years. There will be surveillance audits every six months, or once a year if the certification auditor deems that the facility is performing very well in complying with the standard.¹⁸ The cost of obtaining a SA8000 certification is comprised of certification fees as well as corrective/compliance costs.¹⁹ The amount of the corrective com-

¹⁴ CEPAA changed its name to SAI in 2000.

¹⁵ See Social Accountability 8000, art. II (2001), available at <http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=710&parentID=540&grandparentID=473&nodeID=1> (follow "Official English Version" hyperlink; then follow "PDF" hyperlink) (last visited Apr. 15, 2007).

¹⁶ See Social Accountability International, Overview of SA8000, <http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=473> (last visited Nov. 26, 2007).

¹⁷ See Social Accountability International, SA8000 Accredited Certification Bodies, <http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=702> (last visited Oct. 28, 2007).

¹⁸ See *id.*

¹⁹ See YOU-HUAN LI, SA8000 ZHONGGUO QIYESHEHUI ZHEREN JIANSHE [SA 8000 AND THE CONSTRUCTION OF CHINESE CORPORATE SOCIAL RESPONSIBILITY] 178 (2004).

pliance costs vary from facility to facility depending on the degree of non-compliance and on the number of workers.

B. *Function in the Global Supply Chain: The Perspective of Multinational Companies*

Prior to globalization, companies only competed with other domestic companies who were subject to the same cost basis and regulatory environment. However, globalization has forced companies to compete with one another, regardless of size, origin, and industry. In order to survive in the competitive global market, companies have adopted new business management methods, primarily focusing on reshaping supply chains for cost reduction.²⁰ In the last decade, companies have “shifted responsibility for production and materials managements, whenever possible, to their suppliers” in order to reduce inventory carrying costs and shorten product cycle time.²¹ Since companies do not have direct control over their suppliers’ factories, supply chain management is important to ensure the smooth flow of supply. Supply chain management typically focuses on price, delivery speed, quality, and reliability.

For the most part, the suppliers are located in those developing countries that offer cheap labor and regulatory exemption privileges. From a multinational company’s standpoint, there are multiple layers of suppliers: from its first-tier suppliers over which it has great visibility to its suppliers’ suppliers over which it has minimal visibility or control. Each company, regardless of its size, only occupies a fragment of the global supply chain.²² Therefore, multinational companies may very well argue that they are incapable of controlling their suppliers, in particular, those hidden under multiple layers of contracting. Ostensibly, the shift of manufacturing to suppliers in developing countries and the invisibility of those suppliers may also offer a justification to shift the labor and environmental protection costs associated with the manufacturing process to the suppliers. This is an important economic reason for multinational companies to expansively utilize suppliers in the developing countries. However, revelations about sweatshop practices hidden in the extended and entangled supply chain and traced

²⁰ See DALE NEEF, *THE SUPPLY CHAIN IMPERATIVE: HOW TO ENSURE ETHICAL BEHAVIORAL IN YOUR GLOBAL SUPPLIERS* 36 (2004).

²¹ See *id.* at 35.

²² See *id.* at 42–57.

back to multinational companies has brought a deluge of condemnation by consumers in major markets. This suggests that the objective of supply chain management should be to obtain not only high quality products at low prices with timely delivery but also to do so in a socially responsible manner. Corporate social accountability standards are a tool for multinational companies to manage risks arising from socially irresponsible conduct by their suppliers in the global supply chain.²³ In sum, from the multinational companies' perspective, the basic function of corporate social accountability standards is to assure that labor rights are respected in the process of production and to control legal and reputation risks. The assurance process may be done internally by the employee auditors of multinational companies or externally by third parties, such as auditing firms or non-governmental organizations.

III. RESISTANCE TO CORPORATE SOCIAL ACCOUNTABILITY STANDARDS IN CHINA

In 1980, the seeds of the global supply chain were planted in China at four special economic zones.²⁴ Over the past two decades, they have grown and stretched beyond the fences of the designated zones and now cover a large part of China. With China's accession to the World Trade Organization (WTO), whose goal is to promote global economic integration, the global supply chain will certainly be more entrenched and rampant. Incorporation of corporate social accountability standards into the global supply chain certainly has great impact on China. As mentioned above, such incorporation grows out of consumer demand in Western countries. In the legal literature of the United States, the incorporation of corporate social accountability standards is usually touted as one of the important mechanisms to hold multinational companies responsible for their misconduct in developing countries.²⁵ However, this view is not popular in China, the world's third largest trader.²⁶ This section summarizes the arguments against corpo-

²³ See Robert Spekman et al., *Corporate Social Responsibility and Global Supply Chain Management: A Normative Perspective* (Darden Graduate Sch. of Bus. Admin., Univ. of Virginia, Working Paper No. 04-05, June 2004), available at <http://ssrn.com/abstract=655223>.

²⁴ The Chinese government established four special economic zones: Shenzhen, Zhuhai, Shantou, and Xiamen.

²⁵ See *supra* note 7.

²⁶ See WORLD TRADE ORGANIZATION, INTERNATIONAL TRADE STATISTICS 2005 at 1 (2005), available at http://www.wto.org/english/res_e/statis_e/its2005_e/its2005_e.pdf.

rate social accountability standards currently implemented in the global supply chain and discusses the causes of resistance in China. The resistance stems from four areas: protectionism, commercialization, imbalance of bargaining power, and lack of localization.

A. Protectionism

Incorporation of corporate social standards into the global supply chain has been stigmatized as a protectionist measure by the developed countries aimed at undercutting the competitiveness of developing countries. This view is pervasive among the industrial sectors and influences on every debate of corporate social standards in China.²⁷

Opponents emphasize the susceptibility of corporate social accountability standards to protectionist abuse. The protectionist goal may be obtained by requiring developing countries to raise labor protection or else developed countries reject access to their markets, thereby protecting domestic industries and unskilled jobs in developed countries. Companies can usually save labor-related costs in developing countries where labor laws are not enforced or under-enforced. The lack of enforcement of labor laws may be the result of a combination of legislative vacuum, lack of resources, and government favoritism toward enterprises. However, companies in developing countries may not enjoy the same amount of savings from a regulatory advantage when corporate social accountability is a criterion of supplier selection by multinational companies in developed countries. The bodies supervising corporate social accountability standards are multinational companies themselves, auditing firms, or independent organizations. These multinational companies and auditing bodies, which are well-equipped with resources and have business reputations at stake, press suppliers in developing countries to meet certain social and legal standards harder than the local governments do. The difference between enforcement by the local government and enforce-

²⁷ SA8000, the most hotly discussed corporate social accountability standard in Chinese newspapers and media, often has been described as a new technical trade barrier. See, e.g., *Zhongguo zuohao zhunbei ying tiaozhan [China Gets Ready to Take Challenges]*, PEOPLE DAILY (P.R.C.), Oct. 22, 2004 (reporting that the US, EU, and Japan will continue to use technical trade barriers, intellectual property rights, and SA8000 to increase China's textile production costs and curtail China's competitiveness); *Fada guojia yu qiangxing tuixing SA8000 biao zhun renzheng [Developed Countries Want to Impose the SA8000 Certification]*, MARKET POST (P.R.C.), May 14, 2004.

ment by multinational companies or auditing organizations is the main concern of supplier companies in China. The inspections by local governments in China are perfunctory, which explains why SA8000 aroused so much anxiety among companies in China, even though the contents of SA8000 are not vastly different from the requirements of China's labor laws.²⁸ The supplier companies in China can no longer slash compliance costs by disregarding the labor rights protected by law and corporate social accountability standards. This may narrow the wide gap in the price of labor between China and developed countries and, hopefully, may alleviate the problem of unemployment among unskilled labor in developed countries. Supplier companies failing to comply with the corporate social accountability standards will lose business and thus be denied access to the markets in developed countries.²⁹

In addition, many are skeptical about the intentions behind the adoption of corporate social accountability standards in the global supply chain given the low certification rate among companies in developed countries.³⁰ The SA8000 certified facilities are disproportionately located in developing countries.³¹ Companies in countries where corporate social responsibility is zealously promoted are surprisingly absent from the certification list.³² Although it may be argued that companies in developed countries

²⁸ See LI-QING LI & YAN-LING LI, *QIYE SHEHUI ZEREN YANJIU* [STUDIES ON ENTERPRISE'S SOCIAL ACCOUNTABILITY] 229 (2005).

²⁹ Many anecdotes of supplier companies in China losing business from multinational companies were reported by the media. See, e.g., *Shehui zheren renzheng kaoyan zhongguo chukou qiye* [Corporate Social Certification Challenges Chinese Exporting Companies] NANFANG DAILY (P.R.C.), Jun. 24, 2004 (reporting that a toy company having four factories and nearly 8000 workers in Shenzhen lost business from its multinational buyers and closed down in 2002 because of low wages, long working hours, and poor working conditions). See also *Chukou qiye zhi shehui renzheng* [Corporate Social Accountability Certification of Exporting Companies], NANFANG CITY (P.R.C.), Dec. 22, 2005 (reporting that in Zhongshen City of the Guangdong Province, a shoe factory with about 500 workers, was reported to have cancelled orders by its buyers for two months in 2002 because of non-compliance of the legal minimum wages requirement.)

³⁰ See YOU-HUAN LI, *supra* note 19, at 69.

³¹ See *id.* Countries listed are in order of the number of facilities certified as of December 31, 2006: Italy (503), India (190), China (140), Brazil (97), Pakistan (58), Vietnam (31), Thailand (22), Spain (16), Taiwan (9), France (7), Poland (7), Sri Lanka (7), Switzerland (6), Argentina (6), Greece (6), Israel (5), Philippines (5), Hong Kong (5), Indonesia (4), Portugal (4), Turkey (4), Belgium (4), Bolivia (4), UK (4), Costa Rica (3), Czech Republic (2), Korea (2), Romania (2), Bangladesh (2), Japan (2), Mauritius (2), Peru (2). Social Accountability International, http://www.saasaccreditation.org/facilities_by_country.htm (last visited Oct. 28, 2007).

³² See YOU-HUAN LI, *supra* note 19, at 69.

R

R

2007] CORPORATE SOCIAL STANDARDS IN CHINA 333

already have better working conditions and labor rights, it is doubtful that they have perfected labor protection.³³ Further, the low rate of unionization among workers in the United States, where the SA8000 standard was established, casts doubt on the real intentions behind requiring companies in developing countries to establish freedom of association.³⁴

B. Commercialization

High certification and consulting fees create an impression of commercialization of corporate social accountability standards in China. In order to be a certified supplier of a particular multinational company or to be certified under a particular set of corporate social standards established by a non-governmental organization, suppliers have to go through a complex certification procedure. Take the SA8000 certification as an example. The SAI does not provide any certification service directly to applicant companies. Rather, the SAI accredits certification firms to perform this task.³⁵ An applicant facility may submit its application and relevant documents directly to a certification firm.³⁶ If the certification firm finds the documents satisfactory, the certification firm will conduct on-site inspections to see if the applicant facility really meets the required standards.³⁷ Theoretically a certification will only be issued after the non-compliance items reported in inspections are corrected.³⁸ Unfamiliarity with the SA8000 standards and great volumes of documents usually force applicant facilities to seek help from consulting firms prior to the certification application in order to go through the certification process smoothly. The certification fees plus consulting fees, particularly the latter, may be very costly for a small company.³⁹ It is believed that the high consulting fees in China are products of the unregulated certifica-

³³ *See id.*

³⁴ The U.S. Department of Labor's Bureau of Labor Statistics reported that 12.5% of wage and salary workers were union members in 2005. *See* Union Member Summary, <http://www.bls.gov/news.release/union2.nr0.htm> (last visited Jan. 6, 2007).

³⁵ *See* Social Accountability International, <http://www.sa-intl.org> (last visited Dec. 2, 2006).

³⁶ *Id.*

³⁷ *Id.*

³⁸ This is not always the reality in China. *See* discussion *infra*.

³⁹ *See* You-Huan Li, *supra* note 19, at 265–66. In China, a facility with 300 workers is charged around \$9000 by a certification firm, but the consulting fees are usually several times the amount of the certification fees. *Id.* Surveyed companies spent over 500,000 RMB (about \$62,500) for certification and consulting fees. *Id.*

tion markets.⁴⁰ Applicant facilities unfamiliar with the SA8000 standards are vulnerable to unreasonable charges by consulting firms. This is a particularly serious problem when applicant facilities have difficulties complying with the standards.⁴¹

Further, incompetence of auditors in certification firms and easy manipulation by applicant facilities mar the good intentions of corporate social accountability standards and make the commercialization image more conspicuous. A large number of auditors in China are well-qualified to perform product quality certification but inexperienced and ill-trained in labor protection.⁴² Notice of inspection is frequently given in advance, and thus inspected facilities have enough time to create the appearance of compliance.⁴³ The superficiality of the certification process makes many Chinese supplier companies believe that money can settle the matter.⁴⁴

C. *Imbalance of Bargaining Power*

Currently, the main reason supplier companies in China implement social accountability standards is because buyers press them to do so.⁴⁵ These supplier companies are mostly in labor-intensive industries, particularly in apparel and toys manufacturing.⁴⁶ These industries are classic examples of buyer-driven commodity chains. "A commodity chain refers to the whole range of activities involved in the design, production, and marketing of a product."⁴⁷ "Buyer-driven commodity chains refer to those industries in which large retailers, branded marketers, and branded manufacturers play the pivotal roles in setting up decentralized

⁴⁰ See *id.*, 19, at 259-68.

⁴¹ See *id.*, at 265-66.

⁴² See SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 14.

⁴³ See *id.*

⁴⁴ Not only do companies have such an impression, but labor protection experts in China also have such an impression. For example, Wang Lin, the Chief Technical Advisor to the International Labor Organization (ILO) in China, said that SAI is a consulting company that sets up its own standard and tries to sell it. Although Wang Lin misunderstood the role of SAI, her remark does reflect commercialization of SA8000 in China. See *Bei kuada le de SA8000 renzheng [The Exaggerated SA8000 Certification]*, 172 ECONOMIC OBSERVER (2004) (P.R.C.).

⁴⁵ See SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 73.

⁴⁶ The SA8000 certified facilities in China are mostly in the apparel, toys, and accessories industries. See Social Accountability International, <http://www.sa-intl.org/> (last visited Apr. 11, 2006). However, the labor-intensive characteristic does not seem applicable to Italy, where the certified facilities are usually in the transportation and services industries.

⁴⁷ Gary Gereffi, *International Trade and Industrial Upgrading in the Apparel Commodity Chain*, 48 J. INT'L ECON. 37, 38 (1999).

R

R

R

2007] CORPORATE SOCIAL STANDARDS IN CHINA 335

production networks in a variety of exporting countries,” particularly developing countries.⁴⁸ Profits in the buyer-driven chains are gained from “unique combinations of high-value research, design, sales, marketing and financial services that allow the retailers, branded marketers and branded manufacturers to act as strategic brokers in linking overseas factories with evolving product niches in the main consumer markets.”⁴⁹ With the power to shape consumer demands in markets through the use of brand names and strategic networks, the buyers (retailers, branded marketers, and branded manufacturers) have leverage in the price bargaining with suppliers in developing countries⁵⁰ and are able to press the suppliers to implement corporate social accountability standards at the suppliers’ own costs. To attract consumers, the buyers usually advertise themselves as socially responsible companies and then shift the costs of implementation to the suppliers with weak bargaining power.⁵¹

These multinational buyers want to purchase products of high quality, at low prices, made in a socially responsible manner. However, low prices and socially responsible production do not always go together. Better working conditions involve increases in production costs, and such costs can not always be balanced by improved productivity *alone*. If the buyers do not reward the socially responsible suppliers by purchasing products with prices reflecting

⁴⁸ *Id.* at 41–42.

⁴⁹ *Id.* at 43. As opposed to buyer-driven commodity chains, producer-driven commodity chains refer to “those in which large, usually transnational, manufacturers play the central roles in coordinating production networks.” *Id.* at 41. The typical example of producer-driven commodity chains is the automobile industry. Profits in the producer commodity chain are gained from “scale, volume, and technological advances.” *Id.* at 43.

⁵⁰ *Id.* at 43; *see also* SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 164–66.

⁵¹ *See, e.g.*, SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 81; Dexter Roberts & Pete Engardio, *Secrets, Lies and Sweatshops*, BUSINESSWEEK, Nov. 27, 2006, at 50; Nike zjie yo “Baoshengong” sh chanyelien zhubu chengshou de biren ma? [Nike Discloses Its Suppliers. Is It Necessary for the Supply Chain to be Gradually Mature?], BUS. WATCH MAG., Jun. 7, 2005 (P.R.C.) (referencing the multinational branded companies’ suppliers in Guangdong, China and reporting that the suppliers complained that they were struggling to generate profits under the price pressure and social accountability requirements from the multinational companies; also reporting that one of Nike’s textile suppliers, with around 700 workers, confessed that it could not afford to fully implement the social accountability standards and therefore provided false information and only insured 50% of its workers); *Qiyehui zheren de zhongguo zh lu* [China’s Road to Corporate Social Responsibility] NANFANG WEEKEND (P.R.C.), July 21, 2005 (reporting that a Timberland clothes supplier confirmed that the price offered by Timberland had dropped by 30% over the past few years while its labor protection cost had risen by 30%).

R

R

the increase in production costs, the suppliers, in order to survive, will likely create the appearance of social responsibility without actually making any improvements.⁵² The burden of implementation costs is the main concern for the suppliers in China. Surveys show that the buyers do not effectively reward socially responsible suppliers.⁵³ This is because the decision to place an order with a supplier is controlled by the buyer's procurement department, which prefers low prices, while a supplier's compliance with social accountability standards is considered by another department, which does not influence the purchase decision.⁵⁴ Such policy schizophrenia of the buyers causes the suppliers to question the buyers' commitment to corporate social accountability. This schizophrenia also might encourage some suppliers to "buy" an appearance of social accountability.⁵⁵

D. *Lack of Localization and Value Imperialism*

Consumer pressure in the developed countries is the major impetus for the multinational companies' adopting social accountability standards into their supplier selection criteria. Inevitably, multinational companies cater to the consumers' concern or interest in the developed countries. However, the interest of the consumers in the developed countries does not always dovetail with the need of the workers and the reality in the developing countries.

Many of the corporate social accountability standards, including SA8000, refer to freedom of association, one of the core labor rights in the ILO Declaration on Fundamental Principles and Rights at Work.⁵⁶ However, the reality in China is that indepen-

⁵² See HELLE BANK JØRGENSEN ET AL., WORLD BANK GROUP, STRENGTHENING IMPLEMENTATION OF CORPORATE SOCIAL RESPONSIBILITY IN GLOBAL SUPPLY CHAINS 20 (2003), available at http://siteresources.worldbank.org/INTPSD/Resources/CSR/Strengthening_Implementatio.pdf ("[s]ome apparel suppliers confessed that they skillfully had developed the art of seeming to be in compliance without making changes"); SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 186 (a Nike manager engaging in corporate social responsibility matters in China said in an interview that 40%-50% of information provided by China suppliers is false); Roberts & Engardio, *supra* note 51 (reporting on the pervasiveness of falsifying records).

⁵³ See JØRGENSEN ET AL., *supra* note 52, at 27-29; SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 40-43.

⁵⁴ See SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 43.

⁵⁵ See *supra* notes 51 & 52.

⁵⁶ For more information, see ILO website, http://www.ilo.org/dyn/declaris/DECLARATIONWEB.ABOUTDECLARATIONHOME?var_language=EN (last visited Dec. 9, 2007).

R
R
R
R

2007] CORPORATE SOCIAL STANDARDS IN CHINA 337

dent organizations by workers are prohibited. Although unions may be formally created within a company, such unions should be subject to supervision of the All China Federation of Trade Unions, which is essentially an agent of the Chinese government.⁵⁷

There is a common claim by the suppliers in China that requiring companies in China to comply with social accountability standards ignores the reality that most of the indigenous companies are still in early stages of development and accumulation of capital. During this stage, many companies lack the resources to devote to labor protection. Surveys show that only a company that has grown to a certain size can afford to consider labor protection issues.⁵⁸

The resistance to corporate social accountability standards partly derives from differences in the underlying value of human resources. Such standards are the product of western civil societies in which the values of the division of labor and human resources have long been respected.⁵⁹ However, mainstream Chinese society traditionally has never shared these values. For thousands of years, Chinese society has held intellectuals (or those who earn their livelihood through knowledge) in high esteem and despised those who support themselves through labor. The concept of “men” in the Analects of Confucius mostly refers to intellectual persons, not to the uneducated commoners. Confucius stressed the hard-working virtue of the common people (peasants) in terms of benefits to the

⁵⁷ See Stephen F. Diamond, *The “Race To The Bottom” Returns: China’s Challenge To The International Labor Movement*, 10 U.C. DAVIS J. INT’L L. & POL’Y 39 (2003) (detailing the role of the All China Federation of Trade Unions).

⁵⁸ In China, companies with fewer than 1000 workers tend to object to corporate social accountability standards because of past management experience and low accumulation of capital; companies with between 1000 and 1500 workers tend to accept corporate social accountability standards; companies with over 1500 workers demonstrate an active and positive attitude toward social accountability standards if such measures stabilize the buyer-supplier relationships. See SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 42–43. The All China Federation of Trade Unions (ACFTU) also conducted a study on the conditions of labor protection in Shanghai, Tianjin, Jiangsu, and Zhejiang. The study shows that private companies above a certain size (100 workers or monthly revenue of 5 million RMB) have developed beyond the primitive accumulation stage and actively subject themselves to corporate social accountability standards. However, companies below that size are still in the primitive accumulation stage, disregarding labor protection while pursuing profits. See *Guanyu feigongyozh qiye zhong laudong bahu wenti de diaoyan baogao [Report on Labor Protection of Non-State-Owned Enterprises]* (P.R.C.) (2005) (released on May 31, 2005 by All China Federation of Trade Unions) (on file with author).

⁵⁹ See LI-QING LI & YIAN-LING LI, *supra* note 28, at 301.

R

R

ruling stratum, rather than in terms of the common people's moral qualities.⁶⁰ Mencius, one of the greatest philosophers in Chinese history stated that division of labor was a necessity.⁶¹ He manifestly stated that intellectuals should rule and labor should be ruled.⁶² Even in today's society, where the concept of the division of labor has evolved considerably, respect for intellectuals and disregard for laborers are still entrenched in Chinese society.⁶³

The consumption habits of Chinese consumers may explain another dimension of the value imperialism implicit in the corporate social accountability standards established by Western societies. Currently, in China, the corporate social accountability standards are primarily implemented in export-oriented companies.⁶⁴ The impetus for these companies to adopt social accountability standards is the demand from buyers. As explained above, these buyers in turn are pushed by the consumer movements in the developed markets. Essentially, consumer demand is the cause of corporate social accountability standards in the global supply chain. The reason domestic-oriented companies in China are not affected by the wave of corporate social accountability standards is that there is no apparent demand from Chinese consumers for such standards.⁶⁵ Chinese consumers have long followed the rule of "live within one's income" and the virtue of thrift.⁶⁶ They care more about the physical conditions and functions of products than about the process through which those products were made.⁶⁷ Fur-

⁶⁰ See Edward Shils, *Reflections on Civil Society and Civility in the Chinese Intellectual Tradition*, in *CONFUCIAN TRADITIONS IN EAST ASIAN MODERNITY* 59-60 (Tu Wei-ming ed., 1996).

⁶¹ See LI-QING LI & YIAN-LING LI, *supra* note 28, at 301.

⁶² See *id.*

⁶³ This may be evidenced by the fact that Chinese students are vigorously pursuing elite schools and intellectual school performance.

⁶⁴ See *SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS.*, *supra* note 8, at 1-91; LI-QING LI & YIAN-LING LI, *supra* note 28, at 184-207.

⁶⁵ See Zheng Guanghui, *cong xiaofeizhe diaocha kan Zhongguo shehui gongzhong de fanying* [The Chinese Society's Response to Corporate Social Responsibility: A Consumer Survey], in *SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS.*, *supra* note 8, 194-209.

⁶⁶ See LI-QING LI & YIAN-LING LI, *supra* note 28, at 221.

⁶⁷ See Douglas A. Kysar, *Preference for Process: The Process/Product Distinction and the Regulation of Consumer Choice*, 118 *HARV. L. REV.* 525, 529 (2004) (referring to "information regarding the manner in which goods are produced" as process information, including "the labor conditions of workers who produce a consumer good, the environmental effects of a good's production, the use of controversial engineering techniques such as genetic modification to create a good, or any number of other social, economic, or environmental circumstances that are related causally to a consumer product, but that do not necessarily manifest themselves in the product itself").

R

R

R

R

R

thermore, since Chinese consumers have long lived under planned consumption with relatively low consumption rates, the concept of consumer rights is still new to them.⁶⁸

IV. RECONSIDERATION OF CORPORATE SOCIAL ACCOUNTABILITY STANDARDS IN CHINA

A. *Protection for Whom?*

Similar to the function of corporate social accountability standards in the global supply chain, the linkage of trade and labor standards is also often criticized as protectionism. The debate over whether the WTO should adopt social clauses into its trade agreements may shed some light on whether the protectionist abuse of the corporate social accountability standards is real. Opponents of linkage between trade and labor standards suspect the motives of proponents, in particular unions, and believe such a linkage will repeat the protectionist experience of the anti-dumping rules.⁶⁹ However, as shown by Economists Kimberly Ann Elliot and Richard Freeman, the practices of General System of Preference (GSP) and trade-labor agreements between the U.S. and other developing countries evidence that this fear is unfounded.⁷⁰ If the labor unions and other interest groups were completely motivated by protectionism, they would focus on cash standards; for example, minimum wages, working hours, and health and safety protection to immediately slash developing countries' competitiveness. However, the petitions filed by these groups under GSP have focused on violation of freedom of association.⁷¹ Rather than dictating the substantive standards of wages and working hours, the groups leave the decision-making power to workers in developing countries. Further, if these petitioning labor unions and interest groups were completely protectionist, they would target large importing countries that take away their jobs on a ruthlessly large scale. Yet, the targeted countries under GSP only account for a small portion of imports.⁷² Nevertheless, protectionist motives may not be completely eliminated. To eliminate protectionism-motivated mea-

⁶⁸ See LI-QING LI & YIAN-LING LI, *supra* note 28, at 221–22.

⁶⁹ See ELLIOT & FREEMAN, *supra* note 13, at 80–92.

⁷⁰ See *id.*

⁷¹ See *id.* at 83.

⁷² See *id.* However, note that the reason the large trade partners of the United States, such as China, are not targeted may be due to complex political and economic compromises. Currently, China is not eligible for the U.S. GSP.

asures, refinements of substantive requirements, procedural safeguards, and other technical assistance are suggested.⁷³

Currently, incorporation of corporate social accountability standards into the global supply chain is a voluntary action by multinational companies rather than a mandate by states. The absence of direct state measures makes the protectionism arguments untenable in the WTO dispute system.

One noteworthy point is that, generally, the proposed linkage of trade and labor standards is limited to the four core labor rights recognized by the ILO in 1998,⁷⁴ rather than the cash standards. However, the corporate social accountability standards in the global supply chain adopted by multinational companies are composed of many cash standards.⁷⁵ The cash standards carry non-negligible cost increases in production. This leads us to consider an important question: who really benefits and who bears the costs of the corporate social accountability standards? Within developed countries, multinational companies typically are not supporters of protectionism. They can utilize the low-wage labor in developing countries to sell attractive low-price products. With strong bargaining power, they enjoy an apparently responsible reputation by shifting the implementation costs of social accountability to their

⁷³ See, e.g., Kysar, *supra* note 67, at 545 n.62 (summarizing the typologies of process-based trade measures offered by scholars to reduce protectionist abuse). Although the typologies are all for environmental measures, they are useful to give some guidance for labor issues. See Sungjoon Cho, *Linkage of Free Trade and Social Regulation: Moving Beyond the Entropic Dilemma*, 5 *CHI. J. INT'L L.* 625, 645 (2005) (recommending financial and technical assistance from rich countries to poor countries); see also Frank Emmert, *Labor, Environment Standards and World Trade Law*, 10 *U.C. DAVIS J. INT'L L. & POL'Y* 75 (2003) (arguing that substantive labor standards should be based on the ILO Conventions and be prioritized; also arguing for the use of the WTO dispute mechanisms to reduce protectionist abuse and compensate developing countries).

⁷⁴ See, e.g., Clyde Summers, *The Battle in Seattle: Free Trade, Labor Standards, and Societal Values*, 22 *U. PA. J. INT'L ECON. L.* 61, 87 (2001) (arguing that “[d]eveloping countries can retain their legitimate comparative advantages while recognizing at least minimum fundamental values”); Michael J. Trebilcock & Robert Howse, *Trade Policy & Labor Standards*, 14 *MINN. J. GLOBAL TRADE* 261, 279 (2005) (arguing that trade sanction should apply to violation of core labor standards and some generally accepted human rights; e.g., genocide, torture, and detention without trial); Daniel S. Ehrenberg, *The Labor Link: Applying The International Trading System to Enforce Violations of Forced and Child Labor*, 20 *YALE J. INT'L L.* 361 (1995).

⁷⁵ For example, Nike’s code of conduct is concerned with minimum wages, benefits, work hours, and health conditions. See Nikebiz.com, <http://www.nike.com/nikebiz/nikebiz.jhtml?page=25&cat=code> (last visited Jan.06, 2007). Wal-Mart’s Standards for Suppliers includes wages, benefits, and work hours. See <http://www.walmartstores.com/GlobalWMStoresWeb/navigate.do?cat=336> (last visited Apr. 15, 2007).

2007] CORPORATE SOCIAL STANDARDS IN CHINA 341

suppliers. Small companies that cannot relocate to developing countries and unskilled workers who lose jobs to the low-wage workers in developing countries might gain if the prices of imported products increase, thus making production in developing countries less competitive. However, since multinational companies refuse to reflect the cost of working condition improvements in their imported goods and place the cost on suppliers in developing countries, unskilled workers in developed countries are unlikely to benefit. Even if the increased costs for labor protection (the major costs are abiding by minimum wage laws and overtime pay laws) would be reflected in product prices, it is unlikely that the increase would be large enough to close or effectively narrow the disparity in labor costs between China and developed countries.⁷⁶ What's more fundamental is that even if the labor cost increases due to the implementation of corporate social accountability standards, the manufacture of labor intensive products will not move back to developed countries. Rather, it will move somewhere else that offers even cheaper labor.⁷⁷

In developing countries, suppliers are forced to absorb the implementation costs while still being pressured to offer low prices. Workers in developing countries can gain *only if* the multinational companies (the buyers) effectively reward the suppliers, thereby giving suppliers incentives to honestly improve labor conditions. However, at least now, this is not the reality. In sum, currently, as multinational companies adopt corporate social accountability standards into the global supply chain, those companies obtain reputations of social responsibility without compromising their economic interests in low prices. Unskilled labor in developed countries gains little from such adoption. If the rewards of such standards are uncertain, suppliers in developing countries can maintain marginal profits by creating an appearance of social responsibility. Meanwhile, the workers in developing countries are

⁷⁶ See LI-QING LI & YAN-LING LI, *supra* note 28, at 208 (reporting that wages in China are 1/30-1/50 of wages in developed countries); see also *The China Price*, BUSINESSWEEK, Dec. 6, 2004 (reporting that the manufacturing cost in China generally is 30%-50% less than in the United States and stating that China offers "cheap labor from \$120-a-month production workers to \$2000-a-month chip designers").

⁷⁷ This is evidenced by the fact that labor-intensive companies facing the labor cost increase in the coastal area of China are moving to the hinterland of China or Vietnam. See David Barboza, *Sharp Labor Shortage in China May Lead to World Trade Shift*, N.Y. TIMES, Apr. 3, 2006, at A1.

still at the mercy of others.⁷⁸ It leads us to consider whether workers in developing countries, the intended beneficiary of corporate social accountability standards in the global supply chain, desire and need such protection.

Before 2004, China had a seemingly inexhaustible supply of cheap labor from its rural areas. However, the labor shortage that has developed in major exporting areas since 2004 may herald the end of this situation. The Ministry of Labor and Social Security of China released a report in September 2004 on China's labor shortages.⁷⁹ According to the report, labor shortages are occurring in the major localities of processing industries, particularly affecting shoe, toy, electronics assembly, apparel, and plastic accessories industries. The labor shortage is also serious for small and medium sized companies and those companies constrained by low purchase prices offered by foreign buyers. The major reasons for labor shortages are low wages and poor working conditions.⁸⁰ Wages in the export-oriented sectors have remained static over the past dec-

⁷⁸ For example, on April 21 and 23, 2004, there were protests by about two thousand workers in factories of Stella International Ltd., a shoe supplier of Nike, Reebok, Clarks, Timberland, and other branded companies. The workers protested the intensified workload, shortened working hours, and reduced wages. The protest resulted in arrests of over one thousand workers. All but ten of the arrested workers were released. These ten workers were prosecuted by the government. They were found guilty of vandalism and sentenced by a court to imprisonment ranging from 9 months to 3.5 years. However, under pressure from labor rights organizations and its clients, Stella wrote letters to the court requesting commutation for the prosecuted workers. The appellate court of the Dong Guan City overruled the decision by the trial court and found the defenders not guilty on December 31, 2004. See *Xingang xiechang gongren saoluan diaocha* [A Report on the Stella's Workers' Protests], CHINA NEWSWEEK (P.R.C.), Oct. 25, 2004; see also *Zongguo zenfu gaibian panjue shfang xingang shjian beibu gongren* [The Chinese Government Changed the Decision and Released the Workers Arrested in the Stella Event], CHINA LABOR WATCH (P.R.C.), Jan. 1, 2005, available at http://www.chinalaborwatch.org/php/web/article.php?article_id=158. Note that although Stella's clients, including Nike, Reebok, and Clark, are praised by many for helping to rescue the workers, the role of these multinational buyers in this event deserves deeper analysis. Stella's measures (intensifying workload, shortening working hours, and reducing wages) were a response to these multinational buyers' socially responsible demand. Stella claimed that it tried to shorten the working hours (giving two more holidays per month to its workers) in order to be consistent with the trend of corporate social accountability standards in the global supply chain. However, faced with the price pressure and competition, Stella passed the cost to its workers by shortening the working hours, which aroused protests by the workers. After this event, it was reported that Stella reverted to its original working hours and wage policies.

⁷⁹ See MINISTRY OF LABOR AND SOCIAL SECURITY, GUANYU MINGGONG DUANQUE DE DIAOCHA BAOGAO [REPORT ON LABOR SHORTAGE] (2004); Barboza, *supra* note 77.

⁸⁰ See MINISTRY OF LABOR AND SOCIAL SECURITY, *supra* note 79.

2007] CORPORATE SOCIAL STANDARDS IN CHINA 343

ade despite increased living expenses.⁸¹ Meanwhile, wages in rural areas also have risen over the same period.⁸² The gap between wages in the export-oriented areas and rural areas has been narrowing, and workers in rural areas will not migrate unless the wages in the export-oriented areas are high enough to offer a better living. Additionally, the costs of migrating to export-oriented areas are high under the household registration (“hukou”) system in China.⁸³ Migrant workers are discriminated against by the local governments in export-oriented areas and have limited access to the social security system.⁸⁴ Additionally, local governments have made it difficult to change registration since they are concerned about the negative effects of an influx by migrant workers.⁸⁵ Therefore, if the working conditions subject them to high health risks, workers are unwilling to take the risk when social security is unavailable. Workers in developing countries are usually silent regarding their rights, particularly in China where freedom of association is prohibited. However, Chinese workers have voiced their anger through their exodus from sweatshops. The labor shortages in China’s export-oriented industries signal the workers’ preference for corporate social accountability standards. The suppliers must offer better working conditions in order to retain workers.⁸⁶ Thus, this creates a dilemma for some low-profit-margin supplier companies. Their buyers, who have strong bargaining power, refuse to raise purchase prices, while workers, empowered by the threat of an exodus, demand more perks. Therefore, some suppliers choose to close their factories or relocate to places more abun-

⁸¹ *See id.*

⁸² *See id.* The wages in the Pearl River Delta region are less than 510 RMB (\$64) per month.

⁸³ “Hukou” is a system designed to restrict migration from the rural areas to the urban areas. In the original hukou system established in the 1950s, only urban hukou holders could receive state-subsidized housing, food, education, medical care, and employment within the cities; rural hukou holders received no such benefits and protections. Without these protections, peasants could not survive in the cities and thus were bound to remain in rural areas. Although there have been some relaxations of the hukou system in the recent years, migrant workers are forced to file voluminous documents with governments and pay expensive fees to urban governments in order to retain temporary residency permits. They are victims of exploitation by urban governments, and their legal status in the urban areas is capricious. *See* Xin Frank He, *Regulating Rural-Urban Migrants in Beijing: Institutional Conflict and Ineffective Campaigns*, 39 *STAN. J. INT’L L.* 177 (2003).

⁸⁴ *See id.*

⁸⁵ *See id.*

⁸⁶ *See* Mei Fong, *Chinese Puzzle Surprising Shortage of Workers*, *WALL ST. J.*, Aug. 16, 2004, at B1.

dant in low-waged labor.⁸⁷ Other suppliers choose to stay and provide the wages and benefits that the workers demand, but struggle for profits as a result.⁸⁸

In sum, multinational companies that voluntarily adopt corporate social accountability standards in the supply chain are not motivated by protectionism. Labor unions are not purely protectionist and might gain little from the adoption. Workers in China have shown their desire for the standards. Meanwhile, supplier companies in China are not opposed to the standards if the rewards from being socially responsible are certain. Thus, if the rewards offered by multinational companies are sufficient, there would be little resistance to such standards. The pending question is how to structure effective rewards in the global supply chain.⁸⁹

B. *Immature Supporting Mechanisms*

Admittedly, the implementation of corporate social accountability standards in China has been stained by too much fragmentation. The inexperience of social auditors and the lack of standardization make Chinese suppliers think that the adoption of corporate social accountability standards only creates a lucrative market for certification and consulting firms exploiting such change. The undesirable fragmentation and confusion about the standards can be attributed to the general infancy of social auditing, worldwide, and the chaos of the certification market in China, specifically.

Since the 1990s, multinational companies have begun to adopt corporate social accountability standards into the global supply chain on a large scale.⁹⁰ Social auditing and certification services

⁸⁷ See *id.* (reporting that many low-margin manufacturers are relocating to China's hinterlands or Vietnam for cheap labor); see also Barboza, *supra* note 77.

⁸⁸ See Mei Fong, *supra* note 86 (reporting that a musical toy manufacturer, of which Wal-Mart is a client, improved its working conditions while struggling for profits); see also *supra* notes 47 & 48.

⁸⁹ See *infra* Part VI.

⁹⁰ For example, Reebok adopted Human Rights Protection Standards in 1992. See <http://www.reebok.com/Static/global/initiatives/rights/text-only/business/>. That same year, Wal-Mart developed Standards for Suppliers. See http://www.walmartstores.com/Files/proxy_2001/page12_proxy.html. The Gap developed Sourcing Guidelines in 1992 as well. See http://www.gapinc.com/public/SocialResponsibility/sr_fac_hist.shtml. In 1997, Mattel established Global Manufacturing Principles. See Mattel SEC filing DEF 14A, Mar. 26, 1998. In 1998, Adidas adopted Standards of Engagement. See ADIDAS-SALOMON, OUR WORLD: SOCIAL AND ENVIRONMENTAL REPORT 2000 at 12 (2000), available at <http://www.corporateregister.com/a10723/as00-e&s-de.pdf>. The SA8000 standard was launched in

2007] *CORPORATE SOCIAL STANDARDS IN CHINA* 345

thrive on the rise of these standards. Currently, corporate social accountability assurance services are primarily provided by quality certification firms and financial auditing firms, though more and more NGOs are joining in. For example, most of the certification bodies accredited by the SAI have well-established reputations and are experienced in one or more of the following areas: maritime risk management, product quality certification and testing, environmental safety qualifications, and other safety inspections.⁹¹

1997 and revised in 2001. <http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=473>.

⁹¹ The certification companies accredited by the SAI, as of September 2007, are ALGI, BSI, BVQI (Bureau Veritas Quality International), CISE (Centro per l'Innovazione e lo Sviluppo Economico), CSCC (Cal Safety Compliance Corporation), DNV (Det Norske Veritas), ITS (Intertek Testing Services), RINA S.P.A (Registro Italiano Navale Group), SGS-ICS, TUV Asia Pacific Ltd., TUV Rheinland Group, TUV SUD Group, and UL (Underwriters Laboratories Inc.). See Social Accountability International, <http://www.sa-intl.org/index.cfm?fuseaction=page.viewpage&pageid=702> (last visited Sept. 4, 2007). BSI, founded in 1901, now focuses on providing standards and software solutions, and certifying management systems and products. See About BSI, <http://www.bsi-global.com/en/About-BIS/> (last visited Sept. 4, 2007). BVQI was formed in 1988 in response to the demand for the independent certification of Quality Management Systems. It primarily provides services of management systems certification, product certification, and service certification. See About Us, <http://www.bvqi.com/> (last visited Mar. 27, 2007). DNV, established in 1864, provides services of risk management, certification, and consulting, in particular for maritime, oil and gas, and process and transportation industries. See About DNV, http://www.dnv.com/about_us/index.asp (last visited Sept. 4, 2007). Intertek, founded in 1885, was initially a maritime survey business that evolved to provide testing services. See Intertek History, http://www.intertek.com/aboutintertek/intertek_history.shtml?lang=en (last visited Sept. 4, 2007). RINA (Registro Italiano Navale), a company established in 1861 in Genova, has been providing ship classification and certification services since its establishment. See RINA, http://www.rina.it/eng/shipping_classification/shipping_classification_certification.asp (last visited Sept. 4, 2007). SGS, originally founded in 1878 in Rouen as a French grain shipment inspection house and later registered in Geneva in 1919, provides inspection services of traded goods, product testing services, and certification services of products, systems, or services. See About SGS, http://www.sgs.com/about_sgs/in_brief.htm (last visited Sept. 4, 2007). TUV Asia Pacific provides consulting, testing and servicing activities in technical safety, environmental protection, and the conformity assessment of management systems and products. See TUV NORD Group, <http://www.tuv-nord.com/english/189.asp> (last visited Sept. 4, 2007). TUV Rheinland provides product testing, system assessment, product certification, and consulting and auditing of corporate social responsibility. See TUV Rheinland Group China, <http://www.chn.tuv.com/eng/index.jsp> (last visited Sept. 4, 2007). TUV SUD's "conventional services are periodic vehicle roadworthiness testing, testing and inspection of industrial plants, product testing, or expert opinions." About TUV SUD Brief Profile, http://www.tuev-sued.com/about_tuev_sued/about_us/brief-profile (last visited Sept. 4, 2007). UL primarily provides product testing. See About UL, <http://www.ul.com/about/> (last visited Sept. 4, 2007). ALGI was formed in 1994 by former Labor Department Officers. ALGI is a certification firm that only provides SA8000 and WRAP product availability certifications. ALGI also provides security assessment services besides social accountability certification. See A.L.G.I. Ser-

Historically, such services have been their chief business. Their expansion of business to labor rights certification is a recent development. Although there may be shared auditing principles between product quality and labor protection, there are certainly significant differences between them, given the difference in subjects and purposes of the audits. Corporate social accountability standards in the global supply chain⁹² in contrast to the centuries-long evolution of maritime survey certification⁹² and the decades-long development of product quality management,⁹³ are still in their early stages and need time for improvement. Advanced and systematic auditor training and standardization on a sector-specific basis are needed to improve these standards.

The unregulated certification and consulting market is the reason for the fragmentation in China. This problem is not unique to social accountability certification. Rather, the chaos is common for the whole certification and consulting market in China, which is rife with illegal operations, unauthorized representations, bogus certifications, and sham auditors.⁹⁴ Recognizing these problems,

vices, <http://www.algi.net/en/cf.htm> (last visited Sept. 4, 2007). Only ALGI, CISE and CSCC are companies primarily focusing their business on corporate social accountability certifications.

⁹² The maritime survey business can be traced to the 19th century. *See supra* note 91.

⁹³ The history of product quality management can be traced back to World War II when the UK Ministry of Defense sent inspectors to its munitions suppliers to supervise the production process. *See* JOHN SEDDON, *THE CASE AGAINST ISO 9000* at 1 (2d ed. 2000). In 1959, the US government developed Mil-Q-9858a (Quality Program Requirement), a quality standards program for military procurement. *See id.* at 2. By 1962 NASA had developed “quality system requirements” for its suppliers as well. *Id.* In 1968, NATO (North Atlantic Treaty Organization) adopted the AQAP (Allied Quality Assurance Procedures) for its military procurement. *See id.* at 3. In 1969 the UK Central Electricity Generating Board and Ontario Hydro in Canada developed quality assurance standards for its suppliers. *See id.* “By this time, the idea of quality assurance had spread beyond the military.” *Id.* In 1969 a UK committee report on the inspection and assessment of the UK military quality systems reinforced the need for quality assurance and recommended the generic standards of quality assurance. *See id.* at 4. In 1971, the British Standards Institute (BSI) published the first UK standards, BS 9000, for quality assurance for the electronic industry. *See id.* BSI further published BS 5179, Guidelines for Quality Assurance, in 1974 and BS 5750, for common contractual documents of product quality control, in 1979. *See id.* at 4–5. In 1987, the International Organization for Standardization (ISO) produced the ISO 9000 series. *See id.* at 12.

⁹⁴ Fong-Qing Wang, the former Chair of the CNCA and now the Chair of CNAS, stated that the certification market has five problems: first, certification services are poor. Certification firms are charging unreasonable rates, inspecting perfunctorily, issuing certificates to unqualified clients, and even “trading” certificates. Second, the quality of auditors is poor. Some of the auditors take personal gifts and benefits from clients. If not satisfied with the gifts, they even refuse to issue certificates. Third, the conduct of the certification

2007] CORPORATE SOCIAL STANDARDS IN CHINA 347

the Chinese government established the Certification and Accreditation Administration (CNCA) in 2001 to supervise certification activities.⁹⁵ Later in 2003, the State Council enacted the Certification and Accreditation Act. The CNCA, under the authorization of the Act, promulgated Regulations of the People's Republic of China on Certification and Accreditation, launching the approval system and setting codes of conduct for certification firms.⁹⁶ The CNCA founded the China Certification and Accreditation Association (CCAA) in 2005 as a self-regulating association among the certification firms.⁹⁷ The CNCA also established the China National Accreditation Service for Conformity Assessment (CNAS) on March 31, 2006 to approve certification firms, testing laboratories, and inspection institutions.⁹⁸ Further, the CNCA announced that crackdowns on illegal certification and consultation services were the goal of the years 2006 and 2007.⁹⁹ Although the certification and consulting market will not improve overnight simply because of these newly established regulations and administrations, order in the market will be established over time through enforced regulations and competition among certification firms.

The infancy of social auditing and the disorder of the Chinese certification market do not undercut the merits of corporate social accountability standards in the supply chain. These technical problems can be overcome by improvement in social auditing skills and the development of certification markets.

firms is unregulated. Fourth, many regulatory agencies are not yet instituted and are not capable of supervision. Fifth, forward-looking strategies and research are insufficient. See *Renzheng renke hangye qingli menhu [Cleaning the Certification and Accreditation Services]*, ECON. INFO. DAILY (P.R.C.), Nov. 13, 2004.

⁹⁵ See Certification and Accreditation Administration of the People's Republic of China, <http://www.cnca.gov.cn/cnca/default.shtml> (last visited Dec. 15, 2007).

⁹⁶ See Regulations of the People's Republic of China on Certification and Accreditation (promulgated by the State Council of the People's Republic of China, Sep. 3, 2003, effective Nov. 1, 2003), available at <http://eng.cnas.org.cn/extra/col1/1156832200.pdf>

⁹⁷ See China Certification & Accreditation Association, <http://www.ccaa.org.cn/ccaa/xhjj/8563.shtml> (last visited Dec 15, 2007).

⁹⁸ See China National Accreditation Service for Conformity Assessment, <http://eng.cnas.org.cn/col678/col681/article.htm1?artid=4600> (last visited Dec. 15, 2007).

⁹⁹ See *2007nian renzheng rengke gongzuo yaodian [The Main Goals of CNCA in 2007]*, <http://www.cnca.gov.cn/cnca/zwx/jhgh/ndjh/16671.shtml>; *Guanyu yinfa 2006 nian renzheng rengke gongzuo yaodian [Concerning the Main Goals of CNCA in 2006]*, <http://www.cnca.gov.cn/cnca/zwx/jhgh/ndjh/4555.shtml>.

C. *A Changing Culture*

Cultural difference is a common explanation for resistance to foreign concepts. However, it is questionable whether traditional Chinese values make the corporate social accountability standards incongruent in China.

Even though traditional Chinese society undervalued those who earned their livelihood by labor, it is open to discussion how much traditional Chinese values have remained intact under the half-century rein of Communism, particularly following the Proletarian Cultural Revolution between 1966 and 1976. The Chinese Communist ideology celebrated workers. The Constitution of the People's Republic of China states that the country is led by the proletariat and based on the alliance of workers and peasants.¹⁰⁰ Before China opened itself to the rest of the world, the workers were a powerful political group with strong representation in the national and local people's congresses, thus influencing policy directions and resource distribution.¹⁰¹ The workers participated in decision making within factories, particularly with regard to wages, benefits, and bonuses.¹⁰² Nevertheless, the structure of the Chinese society has dramatically changed since China opened itself up to the outside world. In order to revive the state-owned enterprises, the government gave greater autonomy to management and took away workers' power over decision making and wage-setting.¹⁰³ Furthermore, the government adopted a layoff strategy to boost the state-owned enterprises.¹⁰⁴ The large-scale layoffs by state-owned enterprises and the waves of peasants seeking jobs in cities created an abundant supply of labor and tipped the labor market in favor of employers. The low social status of the workers is no surprise given that they are deprived of political power, faced with competitive markets, and without collective bargaining rights.

¹⁰⁰ See Xian Fa art. 1 (1982) (P.R.C.).

¹⁰¹ See DANG DAI ZHONGGUO SHE HUI JIE CENG YAN JIU BAO GAO [A RESEARCH REPORT ON SOCIAL STRUCTURE IN CONTEMPORARY CHINA] 141 (Xueyi Lu ed., 2002).

¹⁰² See *id.*

¹⁰³ See JINGLIAN WU, UNDERSTANDING AND INTERPRETING CHINESE ECONOMIC REFORM 139–154 (2005); see also Guang-Jin Chen, *Five Waves of Social Mobility in Contemporary China*, in DANG DAI ZHONGGUO SHE HUI LIU DONG [SOCIAL MOBILITY IN CONTEMPORARY CHINA] 94 (Xueyi Lu ed., 2004), available at http://www.china.com.cn/zhuanti2005/txt/2004-10/08/content_5674427.htm.

¹⁰⁴ The government adopted the layoff strategy in 1995 to revive the state-owned enterprises. See Guang-Jin Chen, *supra* note 103, at 95.

2007] CORPORATE SOCIAL STANDARDS IN CHINA 349

The change in social status of merchants offers another example of the low value traditionally placed on vocations in contemporary China. Traditional Chinese society had a low opinion of commerce and despised merchants. Confucius and Mencius regard “merchants as small men because their understanding is focused on what is profitable.”¹⁰⁵ Under the rule of the Chinese Communist Party (CCP), capitalists were deprived of their wealth and control over businesses.¹⁰⁶ Capitalists did not have any rights under the Constitution.¹⁰⁷ However, openness to the world market changed this structure. In 1988, private enterprises were first formally recognized through an amendment to the Constitution and the enactment of Provisional Regulations on Private Enterprises.¹⁰⁸ With the government’s promotion of economic growth, private entrepreneurs in China today have high social status and political participation.¹⁰⁹

Still a more fundamental problem of the cultural resistance argument is defining “culture.” The concept of culture is “suspiciously flexible, maddeningly ambiguous, and ultimately elusive.”¹¹⁰ “Culture may instead represent a response to external conditions and change as those conditions change.”¹¹¹ “Behind so many cultural attitudes, tastes, and preferences lie the political and

¹⁰⁵ See Shils, *supra* note 60, at 55, 59–60 (inferring that “for Confucius the only proper way to acquire wealth was to inherit it or to have it bestowed by the ruler”).

R

¹⁰⁶ Beginning in 1953, the CCP started its state ownership policy. The policy was implemented in two stages. Before 1955, an enterprise was structured in the form of co-operation by the state and private owners. The private owners could participate in profit distribution. Between 1955 and the end of 1956, the private owners only had rights to stated interests and did not have rights to profit distribution. After that, the private owners no longer had rights to stated interest. See Guang-Jin Chen, *supra* note 103, at 46.

R

¹⁰⁷ Note that capitalists were defined politically. See *id.* at 59.

¹⁰⁸ See Xian Fa art. 11, (1982) (P.R.C.); see also Guang-Jin Chen, *The Formation of the Stratum of Private Entrepreneur*, in DANG DAI ZHONGGUO SHE HUI LIU DONG [SOCIAL MOBILITY IN CONTEMPORARY CHINA] 243–44 (Xueyi Lu ed., 2004).

¹⁰⁹ See RANDALL PEERENBOOM, CHINA’S LONG MARCH TOWARD RULE OF LAW 197 (2002) (reporting that “[m]ore business owners are becoming members of the people’s congresses and the Chinese Political Consultative Committee . . . [and] over 15% of private enterprises owners are Party members.”); see also Guang-Jin Chen, *supra* note 108, at 241–65 (surveys of the economic, educational, and political backgrounds of the Chinese private entrepreneurs show expanding economic power, elitism, and active political participation).

R

¹¹⁰ See Frank B. Cross, *Law and Economic Growth*, 80 TEX. L. REV. 1737, 1757 (2002) (quoting Peter H. Schuck, *Perpetual Motion*, 95 MICH. L. REV. 1738, 1745 (1997)).

¹¹¹ See *id.* at 1758.

economic forces that shaped them.”¹¹² As explained above, the contemporary institutional environment is dramatically different from that of traditional Chinese society. The weight of traditional values must be analyzed carefully.

In sum, at least the current downward movement in workers' status in China is more the result of institutional change and market forces than a legacy of values in traditional Chinese society.

D. *Potential Benefits: Sustainable Economic Growth*

For the Chinese government and companies to truthfully accept corporate social accountability standards, it is necessary to do more than just refute negative concerns. One must also show that such standards will have positive effects. However, one should be careful to avoid value imperialism when analyzing potential benefits. Positive contributions should be evaluated from the perspective of China itself rather than from the perspective of western countries.

China is zealously promoting economic growth.¹¹³ Therefore, if there is a strong correlation between corporate social accountability standards and economic growth, the standards may be easily accepted in China out of self-interest. Corporate social accountability standards can contribute to sustainable economic growth in at least three ways: alleviation of inequality, dependence on the global market, and creation of accessible and predicible investment environments.

1. *Alleviation of Inequality*

China has developed economically at an unprecedented pace over the last two decades.¹¹⁴ Simultaneous with this economic growth, there has been a drastic reduction in poverty levels.¹¹⁵

¹¹² See *id.* (quoting HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 239–40 (2000)).

¹¹³ See *Zhonghua RenMin Gongheguo guomin jingji he shehui fazhan di shi yi ge wu nian guihua gangyao* [The Guidelines of the 11th Five-Year Plan on National Economic and Social Development of the People's Republic of China], available at http://www.gov.cn/ztl/2006-03/16/content_228841.htm, for a brief English version, see <http://www.china.org.cn/english/features/guideline/156529.htm>.

¹¹⁴ According to the World Bank, average annual GDP growth between 1986 and 2006 was 9%. See *China at a Glance*, http://devdata.worldbank.org/AAG/chn_aag.pdf (last visited Dec 10, 2007).

¹¹⁵ “[T]he number of people living in poverty (under \$ 1 per day) fell from 634 million in 1981 to 212 million in 2001.” WORLD BANK, *WORLD DEVELOPMENT REPORT 2006: EQ-*

2007] CORPORATE SOCIAL STANDARDS IN CHINA 351

However, economic development has also brought an increase in inequality.¹¹⁶ It is believed by some that inequality is an inevitable price for economic development. However, the view that development requires a trade-off between poverty and inequality has been refuted by empirical studies on China.¹¹⁷ Inequality is an impediment to further poverty reduction. In addition, the unrest among the poor has increased greatly in recent years due to disgruntlement about inequality.¹¹⁸ This unrest has caused concern among investors.¹¹⁹

Not only are the poor, unskilled workers deserting the sweatshops, but a growing number of the well-off urbanites are seeking jobs in state-owned enterprises rather than in private companies.¹²⁰ People are looking for job security and social benefits.¹²¹ Private companies in China notoriously do not provide insurance or pen-

UNITY AND DEVELOPMENT 122 (2005), available at <http://www.worldbank.org> (follow "Data & Research" hyperlink; then follow "Research" hyperlink; then follow "World Development Reports" hyperlink).

¹¹⁶ See, e.g., Ximing Wu & Jeffrey M. Perloff, *China's Income Distribution over Time: Reasons for Rising Inequalities*, (Department of Agricultural & Resource Economics, U. Cal. Berkeley CUDARE Working Papers, Paper No. 977, 2004), available at http://repositories.cdlib.org/are_ucb/977; see also *To Each According to His Abilities*, THE ECONOMIST, Jun. 2, 2001.

¹¹⁷ See Martin Ravallion, *A Poverty-Inequality Trade-Off?* 14 (World Bank Dev. Res. Group, Working Paper No. 3579, 2005), available at <http://econ.worldbank.org> (follow "Research" hyperlink; then follow "Working Papers" hyperlink) (finding that in China "the periods of more rapid growth did not bring more rapid increases in inequality; indeed, the periods of falling inequality (1981-85 and 1995-98) had the highest growth in average household income," and "the provinces that saw a more rapid rise in rural inequality saw less progress against poverty, not more"); see also Martin Ravallion & Shaohua Chen, *China's (Uneven) Progress Against Poverty* 4 (World Bank Dev. Res. Group, Working Paper No. 3408, 2004), available at <http://econ.worldbank.org> (follow "Research" hyperlink; then follow "Working Papers" hyperlink) ("At the outset of China's current transition period, levels of poverty were so high that inequality was not an important concern," but "more unequal provinces will face a double handicap in future poverty reduction; they will have lower growth and poverty will respond less to that growth.").

¹¹⁸ See Kathy Chen, *Free Market Rattles Chinese*, WALL ST. J., Jan. 26, 2006, at A9 ("According to Chinese police, 74,000 mass protests involving more than 100 people each occurred in 2004, compared with fewer than 10,000 a year in the mid-1990s.").

¹¹⁹ See Jason Dean, *China's Violent Protestors Worry Some Investors*, WALL ST. J., Jan 18, 2006, at A9 (demonstrators in Guangdong were demanding more compensation because land was taken from them to build a factory, but the more profound reason for the rise protests is social unrest due to the widening gap between the poor and the rich, leaving the poor disgruntled).

¹²⁰ See Chen, *supra* note 118.

¹²¹ See *id.*

sion plans.¹²² The well-off urbanites cannot handle the medical risks and expenses without the social benefits; surely the poor migrant workers are not equipped for these challenges either. The avoidance of providing benefits by private companies harms economic growth, since the driving force of economic growth in China should be the lively private companies rather than the sluggish state-owned enterprises.

Corporate social accountability standards, accompanied by private monitoring mechanisms, may alleviate the tension surrounding the issue of inequality in Chinese society by ensuring that companies provide minimum wages, insurance, pensions, and other labor protection. In addition to creating a stable investment environment, corporate social accountability standards can help expand the middle-class, which would be propitious for the upgrading of all industries supported by the Chinese government, from labor-focused to knowledge-based industries.¹²³

2. *Dependence on the Global Market*

Trade is an important reason for the remarkable economic growth in China. With its accession to the WTO, China has be-

¹²² According to a report released by the government of the Hunan Province, 397 of the 731 surveyed private enterprises in Hunan did not provide any pension insurance for their employees, accounting for 54.3% of all the surveyed companies in the year of 2003. Only 140 companies (19.2%) provided pension insurance for all of their employees. Of the 195,000 employees in the surveyed companies, only 70,000 (35.9%) were covered by pension insurance. However, in the same year, 96% of employees in state-owned enterprises nationwide were covered by pension insurance. See SUN QIXIANG ET AL, *ZHONGGUO SHE HUI BAO ZHANG ZHI DU YAN JUI: SHE HUI BAO XIAN GUI GE YU SHANG YE BAO XIAN FA ZHAN* [CHINA SOCIAL SECURITY SYSTEM RESEARCH] 41 (2005). Also, the Department of Statistics of the Guangdong province conducted a survey in 2002 on pension insurance in 600 private enterprises. The surveyed companies were subdivided into three types: domestic companies, companies owned by investors from Hong Kong, Macau, or Taiwan, and companies owned by foreigners. Of the 226 domestic companies, 192 provided pension insurance and the percentage of the 226 companies' employees covered by pension insurance was 39.1%. Of the 209 companies owned by investors from Hong Kong, Macau, or Taiwan, 191 provided pension insurance, and the percentage of the 209 companies' employees covered was 48.6%. 155 of the 165 companies owned by foreigners provided pension insurance and the percentage of their employees covered was 57.3%. See Zhao Qiong, *Guanyu gqiye shehui zeren de duihua* [About Conversation of Corporate Social Responsibility], *ECON. DAILY* (P.R.C.), Feb.14, 2004.

¹²³ See Ministry of Education of the People's Republic of China, The Educational Development During the 10th 5-Year Plan and the Plans for the 11th 5-Year Plan, Feb. 28, 2006, available at <http://www.moe.edu.cn/edoas/website18/info18515.htm> (addressing industry restructuring and promoting technology development and education) (last visited Mar. 22, 2007).

2007] CORPORATE SOCIAL STANDARDS IN CHINA 353

come more integrated into the global economy.¹²⁴ This integration means not only that China has the power to affect the global market, but also that China has to adjust itself to the market. Sensitivity to demand in foreign markets is necessary to survive in the competition. The United States and the EU are the major export markets for China.¹²⁵ The consumer preferences in these markets “may be heavily influenced by information regarding the manner in which goods are produced.”¹²⁶ There is a trend that the consumers in these markets demand products made in a socially responsible way.¹²⁷ If China as a seller does not satisfy consumer demands, other competitors will take over its market share.¹²⁸ To retain its global market share and sustain economic growth, China has to adapt to market demand.

3. *Creation of Fair, Accessible, and Predicable Investment Environments*

Advocates of the law and economic development theory hold that law is an important pillar of economic growth. This theory basically asserts that without the law providing property rights and enforcing contracts, people will not invest because they will not be able to capture the return from their investment.¹²⁹ Without such legal provisions transactions will be limited to the short-term. Impersonal transactions with third-party enforcement are essential for modern economic growth.¹³⁰ A number of empirical studies have shown that law is necessary though not sufficient for economic de-

¹²⁴ See NAT'L BUREAU OF STATISTICS OF CHINA, STATISTICAL COMMUNIQUÉ OF THE PEOPLE'S REPUBLIC OF CHINA ON THE 2005 NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT VI (2006), available at http://www.stats.gov.cn/english/newsandcomingevents/t20060302_402308116.htm (reporting that the value of exports increased from \$266.1 billion in 2001 to \$762 billion in 2005).

¹²⁵ See *id.*

¹²⁶ Kysar, *supra* note 67, at 529.

¹²⁷ See *id.*

¹²⁸ See HALINA WARD, WORLD BANK GROUP, PUBLIC SECTOR ROLES IN STRENGTHENING CORPORATE SOCIAL RESPONSIBILITY: TAKING STOCK 14 (2004), available at [http://www.ifc.org/ifcext/economics.nsf/AttachmentsByTitle/CSR-Taking_Stock.pdf/\\$FILE/CSR-Taking_Stock.pdf](http://www.ifc.org/ifcext/economics.nsf/AttachmentsByTitle/CSR-Taking_Stock.pdf/$FILE/CSR-Taking_Stock.pdf) (“Cambodia now accepts that its textile industry cannot compete with China simply on the basis of [labor] input costs. Instead, the country is seeking to position itself as a location for ‘responsible’ purchasing.”).

¹²⁹ See DOUGLASS C. NORTH, STRUCTURE AND CHANGE IN ECONOMIC HISTORY 5 (1981) (“the model assumes an incentive structure that will allow individuals to capture the returns to society of investment”).

¹³⁰ See generally DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE 35 (1990).

velopment.¹³¹ At first glance, though, China seems to be a counter proof to the law and economic development theory. China has experienced remarkable economic growth despite its weak legal system. China's great economic performance has been attributed to cultural factors and informal alternatives to law. Under the weak legal system, economic participants have relied on extended family relationships, guilds, clan groups,¹³² and client-like relationships with governmental officials to conduct their business.¹³³ However, this kind of relational capitalism has its limits for further economic development in China. First, such relational capitalism occurs among the Chinese themselves and other overseas Chinese. Foreign investors are unlikely to penetrate cultural and language barriers and establish the necessary relationships.¹³⁴ As opposed to the general accessibility of law, Chinese relational capitalism is essentially an investment barrier to foreign investors, even though foreign investment is important for China's further economic development.¹³⁵ Second, the relational capitalism, or "rule of relationships," does not "prevent the imposition of externalities on outsiders."¹³⁶ Environmental pollution¹³⁷ and labor exploitation causing social unrest are the costs of economic development. Third, the relational capitalism creates more opportunities for corruption and disfavors "the companies that are more economically efficient but lack the proper connections."¹³⁸

The Chinese government has recognized the importance for economic growth of having a strong legal system. This recognition is evidenced by declarations of Chinese policymakers; by mass legislations, e.g., labor laws; and by the reforms in the legal profession

¹³¹ See PEERENBOOM, *supra* note 109, at 458–62 (summarizing the empirical studies finding the correlation between the rule of law and economic development). **R**

¹³² See Tom Ginsburg, *Does Law Matter for Economic Development? Evidence from East Asia*, 34 *LAW & SOC'Y REV.* 829, 829–35 (2000) (book review).

¹³³ See PEERENBOOM, *supra* note 109, at 466. **R**

¹³⁴ See *id.* at 476 (explaining that in order to obtain the benefits of relationships, foreign investors would choose to partner with Chinese businesses by forming joint ventures).

¹³⁵ See *id.* at 477 (stating that "[foreign investment enterprises] employ 10% of the non-agriculture work force, generate over 20% of total national industrial output, and account for over 48% of all trade" . . . [and] "[b]y some estimates, China needs 3.0 to 4.2% of GDP just to bail out banks, another 2 to 5% of GDP annually to clean up the environment, plus an additional US\$744 billion, or about 8 to 9% of GDP annually, for electric power, telecommunications, transportation, water, and sanitation infrastructure projects").

¹³⁶ *Id.* at 467.

¹³⁷ See *id.*

¹³⁸ See *id.* at 472; see also Ginsburg, *supra* note 132, at 850. **R**

2007] CORPORATE SOCIAL STANDARDS IN CHINA 355

and in education.¹³⁹ Corporate social accountability standards can contribute to economic growth by improving the enforcement of laws and creating rule-based investment environments.

Compliance with law is the fundamental requirement of all corporate social accountability standards. These standards tend to address the same items already broadly regulated by the Labor Law of the People's Republic of China.¹⁴⁰ In spite of the overlapping substance of such standards and China's labor laws, resistance to the standards has emerged. This resistance highlights the lack of enforcement of the laws on the books in China. The explanations for the lack of enforcement vary depending on context. In the context of the labor laws, the explanation may be due to the lack of clarity of the law, a paucity of administrative resources, or corruption.

Although the Chinese government has promulgated numerous laws since it opened up the markets,¹⁴¹ the quality of the laws is poor. The laws are poorly drafted, excessively broad, vague, inconsistent, and opaque.¹⁴² The reasons for the poor quality include unclear separation of powers and inexperience of the drafters, which arguably provides discretion in implementation to local governments to adjust to local situations.¹⁴³ The poor quality of the laws undermines certainty and predictability, increases costs for investors, and creates opportunities of corruption for officials.¹⁴⁴

¹³⁹ See Eric W. Orts, *The Rule of Law in China*, 34 VAND. J. TRANSNAT'L L. 43, 111 (2001).

¹⁴⁰ For example, SA8000 addresses child labor, forced labor, health and safety, freedom of association and rights to collective bargaining, discrimination, discipline, working hours, compensation, and management systems. Article 15 of China's Labor Law prohibits hiring persons under the age of 16. Article 17 and Article 32(2) addresses voluntary employment relationship. Article 52 requires employer set up health and safety protection for employees. Article 7 states that employees have rights to participate and establish unions. Article 8 deals with collective bargaining. Article 12 bans discrimination. Article 36 states that the working hours must not exceed 8 hours per day and 44 hours per week. Article 41 states that the overtime must not exceed 3 hours per day or 36 hours per month. Article 48 and 49 set forth the minimum wages. Labor Law of the People's Republic of China (promulgated by the President of the People's Republic of China, July 5, 1994, effective Jan. 1, 1995), available at <http://trs.molss.gov.cn/was40/mainframe.htm>.

¹⁴¹ See Peerenboom, *supra* note 109, at 239 ("More than 350 laws and 6,000 lower-level regulations have been passed since 1978.")

¹⁴² See *id.* at 247–58 (explaining why the quality of the PRC's laws is poor).

¹⁴³ See *id.*

¹⁴⁴ See *id.*, at 251; see also Tong Xing, *Quanqiuhua xia zongguo laudong zhdu bianqian de guiji [The Track of the Changes of Chinese Labor System under Globalization]*, in SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 186–87 (reporting about an interview with a director of the CSR department of Nike who stated that the unclear laws

R

R

Corporate social accountability standards can serve as a supplementary guide on how to implement the laws and regulations of labor protection in China. Through the gradual implementation of corporate social accountability standards in the global supply chain, the government can study approaches to the issue of corporate social responsibility. That the government is learning is evidenced by its recent measures, discussed below.

Lack of administrative resources is another reason for the non- or under-enforcement of labor laws. The number of labor protection supervisors falls short of the desired amount.¹⁴⁵ Thus, corporate social accountability standards structured with verification systems can assist the government's administration of the labor laws. Moreover, since the standards are monitored by multinational companies and private or non-governmental certification bodies rather than local governments, whether the laws are enforced won't be at the discretion of the local officials. The investment environment will be shaped more by international market rules than the opportunistic local officials.

V. RESOLUTION

A. *The Attitude of China's Central Government*

In the 1990s, the central and local levels of the Chinese government were passive with regard to corporate social accountability standards. The government's awareness of corporate social accountability standards was triggered by the media hype in the years after 2003.¹⁴⁶ As shown below, the central government places the issue far beyond the limited scope of setting social accountability standards for export-oriented industries. Rather, the government frames the issue in a broader context of corporate social responsibility for all companies.

1. *Recognition of Corporate Social Responsibility in Recent Legislation*

In 1993, the People's Republic of China first promulgated its Company Law, which took effect on July 1, 1994. The concept of

are an obstacle to implementation of corporate social responsibility for its suppliers in China).

¹⁴⁵ The ratio of workers to labor rights administrators in China should be 8000:1, but is currently 25,000:1. See LI-QING LI & YAN-LING LI, *supra* note 28, at 154.

¹⁴⁶ See *supra* note 10.

2007] CORPORATE SOCIAL STANDARDS IN CHINA 357

corporate social responsibility was *partly* embedded in this law. The purpose of the 1994 Company Law was to protect the legal rights and interests of companies, shareholders, and creditors and to promote the development of the socialist markets.¹⁴⁷ The purpose of a company was set forth in Article 5, which addressed the economic nature and profit orientation of a company. Article 5 required that a company with its own assets “operate independently and be responsible for its own profits and losses.”¹⁴⁸ It also required that a company, “under the macro-adjustment and control of the State, organize its production and operation independently in accordance with market demand for the purpose of raising economic benefits and labor productivity and maintaining and increasing the value of its assets.”¹⁴⁹ The 1994 Company Law further required, in Article 14, that a company “abide by the law, *observe professional ethics*, strengthen the development of socialist culture and ideology, and subject itself to supervision by the government and *the public*.”¹⁵⁰ Article 14 can be interpreted as the overarching rule for corporate social responsibility. Under Article 14, a company must not only comply with law but also observe business ethics. Moreover, a company is subject not only to the supervision of the government but also of the public. Public supervision may be understood to include supervision by consumers, communities, investors, and other stakeholders.¹⁵¹

The 1994 Company Law also placed much emphasis on labor protection, including employee training, safety in production, union, consultation, and representation on supervisory boards. It required that a company protect the legal rights and interests of its

¹⁴⁷ Company Law of People’s Republic of China (promulgated by Presidential Order of the People’s Republic of China, Dec. 29, 1993, effective July 1, 1994) P.R.C. LAWS, art. 1, available at <http://www.jus.uio.no/lm/china.company.law.1993/doc#3> (hereinafter 1994 Company Law).

¹⁴⁸ *Id.* at art. 5.

¹⁴⁹ *Id.* at art. 5.

¹⁵⁰ *Id.* at art. 14. In Chinese, 职业道德 [professional ethics] usually describes the notion of doing business in a manner consistent with the moral rules in the profession. For example, a lawyer is required to follow the rules of professional responsibility. The usage of the term seldom applies to companies. For companies, the common usage is 商业道德 [business ethics]. Therefore, the usage in the 1994 Company Law is improper. It was corrected in the 2005 Company Law.

¹⁵¹ See Jun-Hai Liu, *Qianghua gongsi shehui zeren de falì skau jì lifa jianyi* [The Legal Justifications and Legislative Suggestions for Strengthening Corporate Social Responsibility], in *KUAGUO GONGSI DE SHEHUI ZEREN YU ZHONGGUO SHEHUI* [SOCIAL RESPONSIBILITY OF TRANSNATIONAL CORPORATIONS & THE CHINESE SOCIETY] 147 (Tan Shen & Liu Kaiming eds., 2003).

employees, strengthen labor protection, and realize safe production.¹⁵² It stated that a company's workers "shall, in accordance with the law, organize a trade union to carry out the trade union activities" and protect the lawful rights and interests of workers.¹⁵³ A company also had to provide its trade union with the conditions necessary for carrying out its activities.¹⁵⁴ Wholly state-owned companies and limited liability companies invested or established by two or more state-owned enterprises should, through workers' congresses or other forms, "practice democratic management in accordance with the provisions of the Constitution and relevant laws."¹⁵⁵ The 1994 Company Law also required that a company hear the opinions of workers and invite worker representatives to the related meetings when deciding upon matters that affected workers' interests, such as wages, benefits, production safety, and labor insurance.¹⁵⁶ The emphasis on labor rights is a reflection of the socialist ideology under the rein of CCP. Although labor protection is only an element of corporate social responsibility,¹⁵⁷ it is the core of corporate social accountability standards, such as SA8000. Thus, the concept of corporate social responsibility was partly embodied in the 1994 Company Law, although the term social responsibility was absent. However, this indirect approach was changed by the 2006 Company Law.¹⁵⁸

In 2005, the Chinese government overhauled the 1994 Company Law. The new version of the Company Law took effect on

¹⁵² 1994 Company Law, *supra* note 147, at art. 15.

¹⁵³ *Id.* at art. 16.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at arts. 55, 121.

¹⁵⁷ Other aspects of corporate social responsibility may include environmental protection, human rights protection, consumer protection, anti-corruption, etc.

¹⁵⁸ Professor Jun-Hai Liu, the first law professor promoting corporate social responsibility in China, argued that two purposes of a company were laid out in the 1993 Company Law: making profits (Article 5) and being socially responsible (mainly Article 14). Article 14 constrained Article 5. Since Article 5 defined the purpose of a company, the 1993 Company Law could be misconstrued as not treating corporate social responsibility as a purpose of a company. For clarification, Professor Jun-Hai Liu suggested that corporate social responsibility should be explicitly stated in Article 1 or in Article 5. At the time of the enactment of the 1993 Law, the importance of corporate social responsibility was downplayed against a background of helping state-owned enterprises shirk debt, the dominance of a laissez-faire point of view, hastiness in legislation, and a lack of well-developed corporate social responsibility research in western countries. See Jun-Hai Liu, *supra* note 151.

2007] CORPORATE SOCIAL STANDARDS IN CHINA 359

January 1, 2006.¹⁵⁹ In the 2006 Company Law, Article 5 states, “a company shall comply with the laws and administrative regulations, *social morality and business morality*. It shall act in good faith, accept the supervision of the government and the general public, and bear *social responsibilities*.”¹⁶⁰ The term “social responsibilities” is clearly articulated in Article 5.¹⁶¹ In addition to preserving the labor protections of the 1994 Company Law, the 2006 Company Law strengthens them by obligating companies to enter into formal labor contracts with their employees.¹⁶² The economic purpose of a company stated in Article 5 of the 1994 Company Law was completely removed, but this removal does not mean that making profits is no longer a purpose of a company. Article 1 of the 2006 Company Law preserves and enshrines the economic purpose by protecting the rights and interests of companies and shareholders.¹⁶³ In sum, the 2006 Company Law unequivocally makes it clear that companies must maintain corporate social responsibility in the course of pursuing profits.

In addition to the generally applicable 2006 Company Law, the China Securities Regulatory Commission promulgated the Code of Corporate Governance for Listed Companies in China (“the Code”) in 2002.¹⁶⁴ The Code essentially requires the listed companies in China to consider stakeholder interests in their corporate decisions. The stakeholder section of the Code¹⁶⁵ states that a listed company shall respect the interests of “banks and other creditors, employees, consumers, suppliers, the community, and other stakeholders.”¹⁶⁶ Moreover, “[a] listed company shall actively cooperate with its stakeholders” to advance a sustainable and healthy development of the company.¹⁶⁷ In addition, “[a] company shall provide the necessary means to ensure the legal rights of

¹⁵⁹ Company Law of People’s Republic of China (promulgated by Presidential Order of the People’s Republic of China, Oct. 27, 2005, effective Jan. 1, 2006) P.R.C. LAWS, available at http://www.chinadaily.com.cn/bizchina/2006-04/17/content_569258.htm.

¹⁶⁰ *Id.* at art. 5 (emphasis added).

¹⁶¹ *Id.*

¹⁶² *Id.* at art. 17.

¹⁶³ *Id.* at art. 1.

¹⁶⁴ Code of Corporate Governance for Listed Companies in China (promulgated by the China Securities Regulatory Commission, State Economic and Trade Commission, Jan. 7, 2001), available at http://www.ecgi.org/codes/documents/code_en.pdf [hereinafter the Code].

¹⁶⁵ The Code explicitly and unambiguously uses the term “stakeholders.” *Id.* at ch. 6.

¹⁶⁶ *Id.* at art. 81.

¹⁶⁷ *Id.* at art. 82.

the stakeholders.”¹⁶⁸ Further, when the rights and interests of the stakeholders are harmed, the stakeholders shall have opportunities and channels for redress.¹⁶⁹ A listed company also shall encourage its employees to express their opinions with regard to important decisions about corporate operations, financial conditions, and employee benefits “through direct communications with the board of directors, the supervisory board and the management.”¹⁷⁰ A listed company, while maintaining its sustainable development and maximizing shareholder interests, shall pay attention to “the welfare, environmental protection of public interests of the community in which it resides, and shall pay attention to the company’s social responsibilities.”¹⁷¹ The preamble of the Code states that a listed company shall reflect the Code in its articles and bylaws. The Code is the major measure of whether a listed company has a good corporate governance structure. The Securities Regulatory Commission may instruct a listed company with significant problems in its corporate governance to overhaul its governance in accordance with the Code.¹⁷²

The 2006 Company Law and the Code are consistent with the spirit of corporate social accountability standards. Both the Company Law and the Code require companies to consider stakeholders’ interests in their operation, particularly employees’ interests. The 2006 Company Law has great impact on all companies in China. Typically corporate social accountability standards have been implemented in export-oriented companies only. Domestic-oriented companies have been less exposed to these standards because of a lack of awareness in the domestic market. However, since the 2006 Company Law applies to all companies, whether export- or domestic-oriented, they have to embrace corporate social responsibility in their operations. Thus, corporate social accountability standards now have a statutory basis that has to be incorporated into every business operation in China.

¹⁶⁸ *Id.* at art. 83.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at art. 85.

¹⁷¹ *Id.* at art. 86 (referencing the phrase “company’s social responsibilities”).

¹⁷² *See id.* at Preface.

2007] CORPORATE SOCIAL STANDARDS IN CHINA 361

2. *The Progression of Corporate Social Accountability Standards in China*

There is growing demand in China to develop its own corporate social accountability standards. The demand is driven by recognition of corporate social responsibility and is also a defense against the imposition of western standards.¹⁷³ The movement in China towards corporate social accountability standards can be seen in three types of regulations: company law, labor law, and stand-alone corporate social accountability standards.

As mentioned above, the 2006 Company Law explicitly recognizes corporate social responsibility. Besides the Company Law, which provides the broad guidelines for corporate conduct, labor laws specify labor rights and dispute mechanisms. Although the emergence of corporate social accountability standards in the global supply chain is a response to states' failure to effectively control misconduct by multinational companies, it does not belittle the importance of national labor law. Compliance with law is the core content of corporate social accountability standards. The specificity of law can provide clear guidelines for compliance and enforcement and more harmonized standards. Accordingly, how to improve the protections offered by labor laws has always been a focus in discussions about corporate social responsibility in China. In the recent years, the Chinese government has promulgated many laws and rules on labor protection; for example, labor unemployment insurance, prohibition of child labor, minimum wages, and collective employment contracts. However, the effectiveness of these new laws and the enforcement of them by the government need to be examined closely.

Stand-alone corporate social accountability standards are deemed to be a direct countermeasure to Western standards, such as SA8000. The State Council approved a proposal that mandated

¹⁷³ For example, Zhuo-Hui Liu, the Vice Chairman of CNCA, stated that SA8000 is not suitable for the situation in China and that the CNCA currently has no plans to adopt any social accountability standards established by any foreign countries or international organizations. Social accountability certification deserves discussion in China only when China's own social accountability standards are available. See *SA8000 Ren zheng bu shi zhongguo guoqing* [SA8000 Certification Does Not Suit the Situation in China], CHINA BUSINESS HERALD (P.R.C.), Jan. 21, 2005. Also, Yu-Ling Ren, Counsellor of the State Council, has said that China has to speed up its research and establish its own corporate social accountability standards in order to prevent that China will be constrained by the standards set up by the western countries. See Le-Zhen Huang, *Qiye gongming yundong* [Corporate Citizenship Movement], CHINA ECON. WEEKLY (P.R.C.), Oct. 24, 2005.

the Ministry of Commerce, in cooperation with seven other ministries, to enact Chinese corporate social accountability standards.¹⁷⁴ Although this general set of corporate social accountability standards is not yet available, corporate social accountability standards still are being realized in government policies. For example, since 2005, the Ministry of Commerce has declared that in order to be eligible for export quota bids of certain minerals a company must provide its employees with labor and other social insurances paid for in full by the company.¹⁷⁵

Furthermore, the Shenzhen Stock Exchange released the Social Responsibility Guidelines for Listed Companies in September 2006.¹⁷⁶ These Guidelines sets forth basic standards for a listed company on how to interact with its stakeholders, including shareholders, creditors, employees, suppliers, consumers, and the community where it is located. It also suggests that a list company may on a voluntary basis release a social responsibility report periodically. The social responsibility report may address corporate social responsibility measures, systems, implementation conditions, reasons for non- or under- implementation, and corrective measures.

B. *The Attitude of Local Governments*

Since Chinese local governments are eager for local development and also compete with each other, they have shown mixed attitudes toward corporate social accountability standards.¹⁷⁷ The governments in the areas abundant with labor-intensive industries,

¹⁷⁴ The Chinese corporate social accountability standards were expected to be formally released in 2007. Currently, however, the charged ministries have still not completed the standards. This information was obtained by the author through personal contact with staff members in the Ministry of Commerce).

¹⁷⁵ See Ministry of Commerce of the People's Republic of China Department on Foreign Trade, <http://big5.mofcom.gov.cn/gate/big5/wms.mofcom.gov.cn/static/column/zcfb/g.html/1> (last visited Apr. 21, 2006).

¹⁷⁶ See *Shenzhen zhengjuan jiaoyisuo shanshi gongsi shehui zeren zhiyin [Social Responsibility Guidelines for Companies Listed on Shenzhen Stock Exchange]*, available at <http://www.szse.cn/main/rule/jysywgz/fxywgz/200609259300.shtml> (last visited Nov.10, 2007).

¹⁷⁷ A survey was conducted by the Contemporary China Research Center of Tsinghua University and the Shenzhen Contemporary Society Observation Center in 2001. The researchers interviewed two hundred local officials in the provinces of Guangdong, Hunan, Anhui, Jiangsu, and Shanghai City. Most of the local officials did not know about the codes of conduct. After research team members informed them of the codes' meanings, however, the local officials, except those in Guangdong, believed the corporate social accountability codes would be beneficial to society. Officials from Guangdong, which is a major locus of processing and assembly industries and accounts for more than one-third of China's export value, were concerned about the likelihood of factories moving away from

2007] CORPORATE SOCIAL STANDARDS IN CHINA 363

such as Guangdong, have traditionally been skeptical about the adoption of corporate social accountability standards and are concerned about the negative impact such standards could have on local industries.¹⁷⁸ However, their skepticism and concern seem to be overcome by the global trend toward corporate social accountability standards and the numerous labor disputes of recent years.¹⁷⁹

Shenzhen, a city packed with labor-intensive industries in Guangdong, is now considering promulgating corporate social accountability standards in response to external pressure from the global market and the internal pressure created by intense employment disputes.¹⁸⁰

The Hunan government declared that, on January 2006, it began to conduct a large-scale survey of the situation of corporate social accountability standards implemented in companies and that it would help companies to obtain SA8000 certifications.¹⁸¹

C. The Private Sector Response

Currently, companies in China have mixed attitudes toward corporate social accountability standards. There is no mystery behind these mixed views. The decision of whether to implement corporate social accountability standards is based on a benefit-cost calculation. The suppliers that have positive attitudes toward such standards are those who have gained committed buyer relationships.¹⁸² The suppliers that question the standards have not seen the benefits from the implementation of the standards.¹⁸³ However, for the time being there seems to be a consensus among the suppliers in China that high production costs and egregious viola-

Guangdong to other areas with lower labor costs. See SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 60–63.

¹⁷⁸ See *id.*

¹⁷⁹ The number of labor disputes accepted by labor and social security agencies nationwide was 47,951 in 1996. The number increased to 226,391 in 2003. See Ministry of Labour and Social Security, P.R.C., *Labour Disputes Accepted and Settled*, available at http://www.molss.gov.cn/gb/zwxx/2005-12/02/content_95346.htm (last visited Apr. 17, 2007).

¹⁸⁰ See *Qiyе shehui zheren jiang you Shenzhen biao zhun [Shenzhen Will Establish Corporate Social Responsibility Standards]*, Oct. 31, 2006, <http://www.shenzhen.molss.gov.cn/main/Web/Article/2006/10/31/0934550558C20400.aspx> (last visited Jan. 06, 2007).

¹⁸¹ See *Hunan qidong SA8000 renzheng chukuo qiye mianlin shehui zheren kauyan [Hunan Initiates SA8000 Certification, Exporting Companies Faced with Corporate Social Responsibility Challenges]*, available at http://www.hunan.gov.cn/sy/zwxy/zwtdt/200606/t20060624_32372.htm (last visited Nov. 10, 2007).

¹⁸² See SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 43.

¹⁸³ See JØRGENSEN ET AL., *supra* note 52, at 27–29.

R

R

R

tions of labor rights can put them out of business. When the price is too high, there is no buyer. When the labor standards are too low, there is no buyer either. While the general positive relationship between creating stable buyer relationships and good corporate social responsibility has not been established in China, the probability of losing business and employees due to sub par labor standards is recognized by the suppliers. The suppliers are trying to strike a balance between maximizing profits and providing acceptable labor standards.

VI. RECOMMENDATIONS

In order to implement corporate social accountability standards effectively and efficiently, the external pressure must be transformed into internal values. The attitudes of suppliers, consumers, and workers in China are crucial. The suppliers in China have resisted the standards primarily because increased costs may hurt profits. The Chinese consumers, who should be the impetus for such standards, are absent. The Chinese workers, who are the intended beneficiaries, are ignorant of their rights. Helping these key players to dispel their concerns and recognize their rights is important.

A. *Effective Rewards and Harmonization*

As mentioned above, the corporate social accountability standards in the global supply chain abound with cash standards. This indicates that implementation of corporate social accountability standards requires non-negligible costs. Presently, the multinational companies do not bear the large portion of the implementation costs, though they usually bear the costs of external or internal auditing. Rather, their suppliers in developing countries shoulder the costs of improving working conditions required by the standards. This cost allocation may be explained by multinational companies' strong bargaining power and suppliers' direct control over factories and employees. The burden of costs is the major concern and the cause of resistance by the suppliers in China. The burden may be eased by coordinating procurement policies with social responsibility requirements within a multinational company and harmonizing different standards among multinational companies.

Currently, multinational companies have problems in aligning their low-price purchase policy with socially responsible guidelines.

2007] *CORPORATE SOCIAL STANDARDS IN CHINA* 365

Procurement decisions are ultimately made by a procurement team with an overriding cost-reduction mission. The screening for socially responsible suppliers is conducted by another team, which operates independently from final purchase decisions. The insufficient coordination causes purchase decisions to favor low-price policies and ignores the costs of implementing corporate social accountability in supplier factories. This pushes many suppliers in China into a dilemma: to close or cheat. This situation may cause multinational companies to consider themselves as winners ? winning low prices and a socially responsible reputation. However, such a view is incorrect. If supplier companies have to close, multinational companies will lose the opportunity to outsource and gain cheap labor without incurring the costs and risks of direct investment. If supplier companies choose to cheat, then multinational companies will incur more costs of supervision and auditing or costs of remedying their reputations when their supplier's sweatshops get exposed to the public. Intensifying supervision is expensive and inefficient.¹⁸⁴ The outsiders (multinational companies and auditing firms) can never know more than the insiders (the suppliers). The costs of remedying reputation are enormous. In addition, socially responsible consumers in developed countries and workers in developing countries lose. The consumers are cheated by the socially responsible appearance of multinational companies and their suppliers. The workers are harmed whether the supplier companies choose to close or cheat. In sum, the root problem is that the uncoordinated policies within a buyer company give suppliers incentives to cheat and create the appearance of social responsibility without incurring the costs to honestly improve labor conditions. To solve this problem, multinational companies should directly include social responsibility experts in their procurement teams, consult their social responsibility departments not only during the screening stage but also at the final stage when the purchase decisions are made, or at least provide more information between procurement departments and corporate social responsibility departments.

¹⁸⁴ For example, a New York Times article reported that for GAP to “duplicate these intensive [monitoring] efforts at each of the 4,000 independent factories it contracts with would have taken about 4.5 percent of its annual profits of \$877 million [in 2000].” Leslie Kaufman & David Gonzalez, *Made in Squalor: Reform Has Limits: Labor Standards Clash With Global Reality*, N.Y. TIMES, Apr. 24, 2001, at A1.

In addition to coordinating procurement policies within a multinational company, harmonization of different corporate social accountability standards may reduce the cost of implementation for suppliers. Currently, there are numerous standards in the global supply chain. A supplier may be subject to conflicting standards and frequent audits by their different buyers. Suppliers usually complain that the contradictory standards and repeated audits disturb their everyday operations.¹⁸⁵ Although most of the corporate social accountability standards are based on the Conventions of ILO or the declarations of the United Nations, the specific details are diverse and sometimes conflicting, particularly with regard to the implementation of cash standards.¹⁸⁶ Moreover, conflicting technical standards may undermine the reasonableness of corporate social accountability standards as perceived by the suppliers and the workers. They may treat the standards as formalities rather than internalized values. Harmonization can be accomplished in two ways: through negotiation among multinational companies and non-governmental organizations on a sector basis or negotiation between a supplier company and its buyers. The SA8000 standard belongs to the former. Individual suppliers in developing countries do not have much say in the process of setting these standards. The latter approach allows supplier companies to play the central role in harmonizing different standards. Of course, these two methods are not mutually exclusive.

B. *Activate Consumer Awareness in China*

Corporate social accountability standards at the moment are primarily implemented in export-oriented companies in China. By and large, companies targeting the Chinese domestic market are not affected by the standards. This is because the standards are the products of the anti-sweatshop movements in the western civil society. Consumers in China have not yet shown a strong demand for products made in a way that honors basic labor rights. Such lack of awareness by Chinese consumers supports the Chinese suppliers'

¹⁸⁵ See JØRGENSEN ET AL., *supra* note 52, at 16–18 (“some suppliers report having been subjected to more than 30-50 audits per year,” and complain that “audits divert management time and resources, disrupt workflow, and challenge planning processes”); *see also* SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 82 (some suppliers complain of frequent and disturbing audits, and some workers in the survey said audits interfered with their rest time).

¹⁸⁶ For example, the details of implementation usually refer to the number and locations of toilets, the location of fire extinguishers, the capacity of each dorm room, etc.

R

R

2007] CORPORATE SOCIAL STANDARDS IN CHINA 367

perception that corporate social accountability standards are an imposition by Western countries rather than a fundamental demand by the populace in China. This perception is an obstacle to improved labor rights.

How to trigger such consumer awareness and then to transform the awareness into consumer movements is a difficult question in China. Many Chinese consumers seem to prefer government intervention by regulation and sanctions over consumer movements.¹⁸⁷ The reasons for this passive attitude by Chinese consumers is likely multifaceted. Passivity may be due to the long-time, tight state control of public interests and issues, resulting in heavy reliance on intervention by the government.¹⁸⁸ Further, consumer movements are a form of speech that may not be freely allowed in China. Nevertheless, the heavy reliance on state regulation to protect labor is inefficient and ineffective given the heterogeneity of the workplaces and the flexibility of employment relationships in rapid and competitive markets.¹⁸⁹ In addition, the heavy reliance on state intervention requires enhanced administration and enforcement by the government. However, the government's lack of enforcement resources is an important reason for the Chinese workers' torment.¹⁹⁰ Complete dependence on state intervention will at best prolong the Chinese workers' misery and at worst never end their difficulty.

Moreover, Chinese consumers tend to favor environmental protection over labor protection.¹⁹¹ Although this may be because the consumers may have more direct interests in a clean environment, media hype and the government promotion of environmental protection may also be important factors.¹⁹² The government has been reluctant to encourage activism regarding labor rights.

Non-governmental organizations (NGOs) play an important role in anti-sweatshop movements in western societies. However,

¹⁸⁷ See SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 208 (finding in the survey that consumers prefer government intervention). **R**

¹⁸⁸ See *id.* at 203–07 (describing the role of the Chinese government in the consumer movement).

¹⁸⁹ See Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342, 408 (2004).

¹⁹⁰ See LI-QING LI & YAN-LING LI, *supra* note 28, at 154. **R**

¹⁹¹ See SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 202. **R**

¹⁹² See *id.*

NGOs are undeveloped in China.¹⁹³ The government largely controls awareness and issue formation regarding consumer rights. The consumer rights protection and awareness of such issues presently rely on the efforts of the China Consumer's Association (CCA), established in 1984 with the support of the government.¹⁹⁴ CCA is superficially a non-governmental organization but is essentially a government agency. Although the Law of the People's Republic of China on Protecting Consumers' Rights and Interests recognizes that consumers have the right to form social groups in accordance with the law to safeguard their legitimate rights and interests,¹⁹⁵ it is questionable that an independent organization promoting labor rights would be approved by a government that prohibits independent unions. In the long term, giving the reins of the consumer movement to independent non-governmental organizations would trigger consumer awareness more effectively. However, in the short term, reliance on the efforts of CCA is required given the political reality.

CCA is promoting corporate social responsibility and consumer rights, with a particular focus on product safety and environmental protection.¹⁹⁶ CCA emphasizes the linkage between consumption and environmental protection in order to encourage companies to produce environmentally friendly products.¹⁹⁷ However, CCA, as the leading and the most influential consumer organization in China, should also promote the linkage between consumption and labor rights, another aspect of corporate social

¹⁹³ See C. David Lee, *Legal Reform in China: A Role for Nongovernmental Organizations*, 25 *YALE J. INT'L L.* 363, 375–82 (2000) (delineating the role of NGOs in China and stating that “there is ‘virtually no such thing’ as a completely nongovernmental institution in the PRC”); see also PEERENBOOM, *supra* note 109, at 201 (2002) (the CCP has put much effort into controlling social organizations and thus many of the social organizations formed in the last two decades are aligned with the interests of the Party).

¹⁹⁴ CCA is a social organization established by the government. The funding of CCA is provided by the government and social donations. See China Consumers' Association, <http://eng.cca.org.cn:801/page/aboutcca.htm> (last visited Apr. 17, 2007).

¹⁹⁵ See Law of the Peoples' Republic of China on the Protection of Consumer Rights and Interests (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 31, 1993, effective Jan. 1, 1994), art. 12.

¹⁹⁶ CCA supported “The Summit Forum of Corporate Social Responsibility and Consumption Environment 2006.” For detailed information of the Forum, see <http://business.sohu.com/s2006/qiyezeren/> (last visited Apr. 21, 2006).

¹⁹⁷ CCA announced “consumption and environment” as its theme for 2006 and 2007. See China Consumer's Association, *CCA Confirms the Annual Theme for the Year*, available at <http://eng.cca.org.cn:801/> (navigate through “CCA News”) (last visited Oct. 28, 2007).

responsibility. Given that labor rights violations are no less serious than environmental pollution and that the majority of the Chinese consumers are also the victims of labor abuse, the consumers would gain from such a linkage.

C. *Trigger Workers' Awareness of Labor Rights*

Although the Labor Law provides a high level of protection for workers, most workers in China are unaware of their rights.¹⁹⁸ Surprisingly, many workers in the factories that are implementing corporate social accountability standards do not understand the meaning and purpose of the standards.¹⁹⁹ As the intended beneficiaries of the standards, workers are passive, uninformed, non-consulted receivers of the benefits. However, corporate social accountability standards can never achieve success without the workers' active participation. Workers are the most efficient monitors of the standards. If workers would be aware of and understand the rights protected by the law and these standards, improvements in labor standards would likely accelerate and the goal of labor protection might be achieved. Further, triggering the awareness of workers in the export-oriented companies would have a positive spillover effect on workers in domestic-oriented companies because labor flows between companies may transmit the awareness of labor rights to workers who are not covered by the standards. .

Currently, awareness and understanding of corporate social accountability standards is disseminated to workers through employee brochures, posters, and the flow of labor between factories.²⁰⁰ However, the information is limited and fragmented. More systematic and profound education is needed in order to provide a fuller understanding of corporate social accountability standards among workers.

VII. CONCLUSION

In response to consumer demand in developed countries, multinational companies have incorporated corporate social accounta-

¹⁹⁸ Actually, ignorance of rights is not a phenomenon limited to poor workers in China, but is common throughout the population. The legal consciousness among citizens was seriously destroyed by the Cultural Revolution and cannot be rebuilt easily. *See Orts, supra* note 139, at 61.

¹⁹⁹ *See* SOCIAL RESPONSIBILITY OF TRANSNAT. CORPS., *supra* note 8, at 46–57.

²⁰⁰ *See id.* at 50.

370 *CARDOZO J. OF INT'L & COMP. LAW* [Vol. 15:321

bility standards into the global supply chain. However, the impact of the standards is primarily felt by the suppliers in developing countries such as China. By examining the development of corporate social accountability standards in China, as well as the causes of resistance to such standards, this Article argues that the standards are not protectionist and not incongruent with Chinese society. However, effective implementation of corporate social accountability standards requires a refined approach that considers local circumstances in developing countries. Future research should focus more on how to fairly implement the standards in a way that provides the suppliers in developing countries incentives to truly respect labor rights in their production.