



CHINA-OECD PROJECT ON GOVERNMENT APPROACHES TO ENCOURAGING RESPONSIBLE BUSINESS CONDUCT

This background report will form the basis of discussion at the China-OECD Symposium on Government Approaches to Encouraging Responsible Business Conduct at the OECD in Paris, France, on 26-27 June 2008.

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EXECUTIVE SUMMARY

Encouraging responsible business conduct is a shared objective of the OECD and China

1. All countries are facing the challenges of promoting sustainable development and conditions which facilitate responsible conduct on the part of business. As the world economy becomes more integrated, OECD countries, together with China and other emerging countries, have a shared responsibility to meet these challenges. OECD countries have taken steps to do this, including the adoption of the OECD Guidelines for Multinational Enterprises to ensure that their companies work in harmony with the local societies everywhere they operate.

China can benefit from policies encouraging responsible business conduct

2. Improved conduct by businesses operating in China can help address domestic challenges, including environmental pollution and occupational health and safety. It can also support China's export industries by helping to relieve concerns of international consumers, such as those over product safety. Responsible business conduct (RBC) can facilitate sustainable overseas investment by Chinese enterprises. Policies to encourage RBC can produce both tangible and intangible net benefits for Chinese enterprises, including order retention, reduced staff turnover, increased productivity and improved product quality.

China is adopting policies to encourage responsible business conduct

3. The Chinese government is strongly encouraging companies to adhere to high standards of behaviour. RBC is enshrined in the latest version of the Company Law, which requires companies to comply with laws and regulations, social morality and business morality. A code of conduct has been established for the textiles sector which may be extended to cover other sectors and the government has reportedly prepared RBC guidelines for all industries. The proponents of RBC are making a business case for it based on the notion of "soft competitiveness".

4. At the same time, the Chinese government is developing framework conditions to enable RBC in China. It has put in place a series of measures to ensure disclosure by enterprises of both financial and non-financial information. It has enacted laws to protect the rights of workers, including women workers and children, and is taking measures to protect the environment. Responding to concerns of domestic and international consumers, the Chinese government is taking measures to improve product safety.

5. The Chinese government is striving to ensure corporate compliance with laws relating to RBC. Further development of the capacities of the legal system that better ensures judicial competence and independence would facilitate these efforts. Stakeholder and public consultation in the development of legislation is improving. Consultation and arbitration procedures are available. The Chinese government is using RBC as an instrument to ensure legal compliance.

6. The Chinese authorities are also promoting RBC in overseas operations of Chinese enterprises. The main Chinese bank providing loans for investment overseas has started to implement environmental lending criteria.

7. China has signed and ratified international agreements relevant to promoting RBC, including United Nations and some core ILO conventions. China has signed a Memorandum of Understanding on Corporate Responsibility Co-operation with Sweden.

8. Chinese companies are seeking to learn about RBC standards. The Shenzhen Stock Exchange has published an instruction on social and environmental standards for listed companies. The OECD Guidelines for Multinational Enterprises were reportedly used as references in the development of this instruction. Chinese suppliers are working with OECD-based and other foreign enterprises to improve corporate conduct in a number of areas.

Remaining challenges

9. While the Chinese government has made efforts to encourage responsible business conduct, Chinese enterprises are still largely unaware of what RBC entails and have not organised themselves to promote it. This is not surprising, considering the short history of RBC initiatives in China, but the situation is not enhanced by the disparate nature of these initiatives. The lack of co-ordination of government agencies' approaches hinders communication of the government's expectations to Chinese companies. One result of the amorphous nature of RBC work in China at present is the lack of a set of nationally-recommended standards of corporate conduct and of effective reporting systems at enterprise level. However the central government is understood to be preparing a set of such standards and is also considering designating a government department as the national co-ordinating body for RBC. Such steps to improve co-ordination of RBC policy are to be encouraged. Legislation and regulations establishing framework conditions for responsible business conduct, for example in such areas as environmental protection and occupational health and safety, have been put in place in recent years, but have yet to be consistently and effectively implemented at local level.

I. BACKGROUND

10. China's promotion of a code of responsible business conduct (RBC) embodying concepts like those contained in the *OECD Guidelines for Multinational Enterprises* can help build the harmonious society that the country's leaders have espoused as a top priority and can also encourage more and better FDI inflows to China by improving the business environment for foreign investors.

Box 1. The OECD Guidelines for Multinational Enterprises

The *Guidelines for Multinational Enterprises* are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for RBC consistent with applicable laws and which are grounded on shared values expressed in international agreements to which China has subscribed, including United Nations conventions. The *Guidelines* aim to ensure that the operations of enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises. The *Guidelines* are part of the OECD Declaration on International Investment and Multinational Enterprises, the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives. The 30 OECD member and 10 non-member countries have adhered to the Declaration and the *Guidelines*.

The *Guidelines* encourage enterprises to respect human rights, including workers' rights, women's rights and children's rights. They call upon enterprises to encourage local capacity building, and support capital formation by creating employment opportunities and facilitating training opportunities for employees. They charge enterprises with upholding and applying good corporate governance principles, and with making effective disclosure of relevant information. The *Guidelines* also encourage enterprises to: protect the environment and public health and safety; combat bribery; protect consumer interests; contribute to the development of innovative capacity; conduct their activities in a competitive manner; and contribute to the public finances of host countries by making timely tax payments.

Relative to other major instruments that promote RBC, the *Guidelines* engage government responsibilities in a unique way—they are the only comprehensive code of conduct involving recommendations by governments to business. In addition, the *Guidelines* are promoted via a government-backed follow-up mechanism. The National Contact Points (NCPs, government offices located in each adhering country that promotes observance of the *Guidelines* among companies operating in or from their territories) are the most concrete sign of adhering government commitment to the *Guidelines*. The NCPs are expected to further the effectiveness of the *Guidelines* in accordance with the core criteria of viability, accessibility, transparency and accountability. The NCPs report annually on their activities. Among other responsibilities, the NCP is asked to provide conciliation and mediation in which companies and other interested parties may discuss concrete issues of business ethics by means of the "specific instances procedure"—the only international conciliation and mediation facility that can be used to address a broad range of business ethics issues.

11. This report focuses on core labour standards and environmental protection as two policy areas in which the Chinese government has in recent years made considerable progress in developing framework policies enabling enterprises to improve their conduct, but where substantial implementation challenges persist. The other areas of the *Guidelines* alluded to above remain to be researched separately.

12. The *Policy Framework for Investment* provides a checklist of important policy issues for consideration by any government interested in creating an environment that is attractive to both domestic and international investors and in enhancing the development benefits of investment to society, especially the poor. Developed by a task force of officials from some 60 OECD and non-OECD governments from all continents, the *Policy Framework for Investment* covers a range of policies that together have a direct bearing on the investment climate: investment policy; investment promotion and facilitation; trade policy;

competition policy; tax policy; corporate governance; policies for promoting RBC; human resource development; infrastructure and financial sector development; and public governance.

13. Chapter 7 of the *Policy Framework for Investment* specifically addresses RBC. Chapter III of the present report follows the structure of Chapter 7, with section headings consisting of the six questions comprising that chapter. Throughout this report, we use the term “responsible business conduct” (RBC) based on Chapter 7 of the *Framework*. RBC is often referred to in other sources as “CSR” (corporate social responsibility). For practical purposes, the two terms are frequently interchangeable. RBC consists above all of complying with legal and regulatory requirements; in addition, it includes responding to societal expectations that might be communicated through channels other than law.

Box 2. OECD Members and China face similar challenges in encouraging RBC

Responsible business conduct (RBC) goes hand in hand with government responsibility. Public policies that promote RBC include: providing an enabling environment that clearly defines the respective roles of government and business; promoting dialogue on norms for business conduct; providing for adequate disclosure so that investors can be held accountable for their actions; supporting companies’ efforts to comply with law; encouraging RBC through partnership and promotion; and participating in inter-governmental co-operation to promote agreed concepts and principles for RBC.

The OECD experience is that these policies are complex and require significant effort on the part of governments and publics to formulate these and put them into practice. They are not put into place automatically by the mere action of adhering to the *Guidelines*. For each example of corporate misconduct by Chinese enterprises mentioned in this report (see below) one can cite similar examples in other countries, including those adhering to the *Guidelines*.

Governments adhering to the *Guidelines* are engaged in a constant effort to develop and implement a system of policies to address the many challenges that present themselves and to promote responsible conduct of their companies, not only in their own economies but also when they operate abroad. Against this background the present report considers the efforts of the Chinese government to meet similar challenges by developing policies to apply high standards of corporate conduct. International co-operation in efforts to encourage RBC is particularly important in view of the increasingly cross-border *modus operandi* of modern enterprises.

14. The first *OECD Investment Policy Review of China: Progress and Reform Challenges* published in 2003¹ highlighted the role of environmental and social policies in attracting FDI. It pointed out that enterprises operating in accordance with relatively high social and environmental standards favour host locations with regulatory frameworks that are consistent with internationally-agreed principles.

15. The 2003 *Review* noted that enterprises operating on relatively high RBC standards may feel inhibited from investing in China if their competitors are not observing similar standards. If the differences are large, investors will have concerns about the evenness of the playing field.

16. The 2003 *Review* commended the Chinese government for its commitment to improving framework conditions for RBC, particularly in the area of environmental policy. The Chinese authorities were encouraged to continue with these efforts.

17. In September 2005 the Chinese government invited the OECD to co-operate with it in work to improve the understanding of Chinese enterprises, including state-owned enterprises (SOEs), of RBC standards. Such understanding is necessary, the Chinese government emphasised, because an increasing number of Chinese enterprises are responding to the policy of “going global” and are investing abroad; however, they lack experience and understanding of internationally-recognised principles of business conduct. The Chinese government invited the OECD to share knowledge with Chinese SOEs of such standards in particular based on the OECD *Guidelines for Multinational Enterprises*.

¹ OECD (2003).

18. In December 2005, in conjunction with the China-OECD December 2005 Multi-Stakeholder Symposium on China's Policies towards Cross-Border Mergers and Acquisitions, the OECD participated in a seminar organised by the United States Council for International Business (USCIB) on Corporate Social Responsibility in China. The seminar was attended by representatives of major Chinese corporations and US-owned foreign-invested enterprises. Attendees voiced support for initiatives to encourage responsible business conduct.

19. In February 2006 the then OECD Secretary-General Donald J. Johnston delivered a presentation at the keynote session of the Global Social Responsibility Forum in Beijing, *inter alia* outlining the benefits of responsible business conduct (RBC) for China and introducing the Guidelines for Multinational Enterprises. He explained that the OECD is happy to co-operate with China in developing good RBC standards and sharing experiences on OECD and Chinese government approaches to RBC.

20. On 8 September 2006 the project on Chinese and OECD Government Approaches to Encouraging Responsible Business Conduct was launched at a joint China-OECD seminar at the 10th China International Fair for Investment and Trade in Xiamen. High-level officials of the Ministry of Commerce of the People's Republic of China (MOFCOM) and the OECD spoke at this event, along with representatives of Chinese and OECD-based multinational enterprises. The OECD presented the OECD Guidelines for Multinational Enterprises.

21. In December 2006 the Business and Industry Advisory Committee to the OECD (BIAC) and the Trade Union Advisory Committee to the OECD (TUAC) issued a joint statement supporting the China-OECD project on Chinese and OECD Government Approaches to Encouraging Responsible Business Conduct. The consultative body to the OECD representing OECD-based NGOs, OECD Watch, also voiced strong support for the project.

22. The OECD Secretariat conducted a research mission to Beijing and Hong Kong in April 2007. The purpose of the mission was to consult stakeholders, including Chinese and OECD governments, international organisations, multinational enterprises, chambers of commerce, civil society organisations, labour representatives and academics regarding their experience of policies to encourage responsible business conduct. In November 2007 the Secretariat conducted a further research mission to factories in Guangdong, a province in South China, to study the implementation of CSC9000T, China's first corporate conduct standard.

23. This draft report is prepared for discussion at the Multi-Stakeholder Symposium on Chinese and OECD Approaches to Encouraging Responsible Business Conduct to be held in Beijing in Spring 2008. The final report will incorporate conclusions reached during the Symposium and be published as a chapter in the 2008 *OECD Investment Policy Review of China*.

II. THE CASE FOR ENCOURAGING RESPONSIBLE BUSINESS CONDUCT IN CHINA

China can benefit from policies to encourage responsible business conduct (RBC)

24. China can benefit from adopting and implementing effective policies to encourage responsible business conduct (RBC). Problems have arisen in the course of the country's rapid industrialisation, some of them capable of threatening social stability or damaging relations with other countries. While the Chinese government has primary responsibility for solving such issues, enterprises can contribute to solutions, both by complying with laws and regulations and also by striving to meet societal expectations that are not expressed as legal obligations. RBC is to be encouraged on economic as well as societal grounds, as it can render investment by Chinese enterprises more competitive and sustainable both at home and abroad. More broadly, it can play a key role in the government's initiative to create a harmonious society. The Chinese government strongly encourages enterprises to comply with the law and to behave responsibly, both in China and in their overseas activities.

Box 3. How the OECD Guidelines already apply to companies in China and to Chinese enterprises

The *OECD Guidelines for Multinational Enterprises* are one manifestation of broader co-operation on initiatives in which governments participate to develop and promote internationally-agreed norms for business, including various United Nations processes (e.g. the International Labour Organisation, the United Nations Office on Drugs and Crime, the United Nations Environment Programme) and the OECD anti-bribery convention, as well as regional initiatives (e.g. under the European Union, North American Free Trade Agreement consultation mechanisms, Asia-Pacific Economic Co-operation). China is already closely involved in many of these initiatives.

The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end.

While many businesses in both OECD and non-member countries have developed their own codes of conduct in recent years, the *OECD Guidelines* are the only multilaterally endorsed and comprehensive code that governments are committed to promoting through their network of National Contact Points. They apply to their companies' business operations world-wide.

Paragraph 2 in section I Concepts and Principles states: "Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate, while taking into account the particular circumstances of each host country." Therefore multinational enterprises based in countries and territories adhering to the Declaration on International Investment and Multinational Enterprises are expected to observe the *Guidelines* when operating in China, as elsewhere. This expectation extends also to Chinese-owned enterprises established in adherent countries and territories. Paragraph 10 in section II General Policies requires companies to encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the *Guidelines*. By extension, the *Guidelines* therefore apply to Chinese suppliers of multinationals sourcing their products in China. This report contains references to relevant sections of the *OECD Guidelines* as an indication of internationally-accepted practices in each policy area.

Effective policies to encourage RBC can help address serious problems

25. The Chinese government's decision in recent years to adopt policies to encourage business to behave more responsibly came after more than two decades of rapid economic development resulting from reforms initiated in 1978. Since then, rapid economic growth has raised living standards nationwide. As in other countries, this rise in living standards has been accompanied by unwelcome side-effects such as environmental degradation and increasing inequality. While at an earlier stage of development many people expressed a willingness to tolerate these as the inevitable costs of social progress, a new generation of Chinese people is now calling for the rise in incomes to be matched by improvements in other areas of life. Some newly affluent city dwellers, for example, are campaigning to protect the country's architectural heritage from property developers, or to breathe clean air and eat clean food. At the other end of the social spectrum, farmers resist land seizures by officials and workers protest against non-payment of wages. As a result, the government is concerned that illegal and/or anti-social behaviour of officials and companies may threaten the social and political order.

26. Such problems are not unique to China. OECD countries faced similar challenges in an industrialisation process that, for many, started in earnest several centuries before that in China. The Industrial Revolution brought rises in living standards only at terrible social cost. Countries that have now adopted enlightened standards of corporate conduct took many years to address such challenges as slavery, child labour, racial and religious discrimination, sexism, differential social class access to education and healthcare, slum housing, sub-standard—often dangerous—consumer products, and poisoned air and water. Older citizens in these countries can attest to great improvements during their lifetimes. Nevertheless, such problems, though massively diminished, still persist in some form.

27. China is today under international and internal pressure to move far faster in addressing these challenges than the industrialised countries did. Now that China, with one of the most open economies in the world, is integrating into an increasingly globalised world economy, it has become dependent on international investment and trade. Its exporters must take heed of consumer concerns in overseas markets just as its large enterprises must learn the rules to be observed in countries in which they wish to invest. China's rapid industrialisation is causing it to become a large and wasteful user of energy and raw materials and to rank among the world's leading polluters. At the same time, China's internal social strains (one indication of which is the alarming rise in the Gini coefficient, see Box 4) have inevitably become a major focus of government attention.

28. OECD countries have found that business can play an important role in helping to address the challenges resulting from economic growth and development. Laws are important, but so is a culture of compliance. These countries are happy to share the lessons learned from decades of policy development with countries that are now industrialising, so that they may have an opportunity to avoid or at least alleviate the harsh by-products of economic change. At the same time, they are ready to learn from the good experiences of non-OECD countries, including China, that are facing up to common challenges.

29. Below are cited examples of major problems on both domestic and international levels to which the Chinese government seeks assistance from business in implementing its chosen solutions. This list is indicative, not exhaustive.

Box 4. A major challenge: how to combine growth with equity

Rapid economic growth has reduced poverty in China to such an extent that the World Bank cites China as a model for other countries to follow. The number of people living in poverty is estimated to have fallen from 250 million in 1978, when economic reforms began, to under 24 million by 2001, using China's national poverty standard, which is currently CNY 680 per capita net income per year, much lower than the USD 1 per day used as the reference limit for extreme poverty in the Millennium Development Goals. The total number of poor people was estimated at 20 million in 2007,² though some economists cite higher totals (for example, as a result of the recalculation in 2007 of purchasing power of the Chinese yuan in the World Bank's International Comparison Project).

Other measures also indicate significant human development. Life expectancy has continued to rise, reaching 71.4 years in the 2000 national population census and 71.8 years in 2005 according to World Bank figures². Infant mortality³ (which fell during the central planning phase from 195 in 1955 to 61 by 1975) decreased from 52 in 1980 to 35 in 2005, according to United Nations estimates⁴. The illiteracy rate fell from 22.8% in the 1982 census to 15.9% in 1990 and 6.7% in 2000.⁵ The Engel coefficient (i.e. the proportion of family income spent on food) fell from 57.5% in 1978 to 36.7% in 2005 in urban areas and from 67.7% to 45.5% in rural areas in the same period.⁶

However, this does not mean that poverty is not still a serious policy challenge in China. Government officials admit that the national poverty standard is now too low and that the effect of its application to poverty relief measures is to deny them to many people who lack the basic amenities of life. Using the internationally standard poverty measure of USD 1 per day would, they say, add another 100 million people to the total of those in poverty.¹

While absolute poverty has been greatly reduced, inequality has increased markedly during the reform period. As a result of collectivist economic policies in the central planning phase, the Gini coefficient⁷ is estimated by one source to have plummeted from 0.561 in 1953 to 0.286 in 1975.⁸ Another source shows the Gini coefficient then rising from 0.295 in 1980 to 0.363 in 1992.⁹ Subsequent estimates from different sources vary, but agree in indicating a rise above 0.4 at the turn of the century: 0.403 in 1998¹⁰, 0.448 in 2000¹¹, 0.454 in 2001¹² and 0.449 in 2002¹³.

A static comparison of Gini coefficients shows that China is still far from being the most unequal society in the world. However, the Chinese authorities are more concerned about the dynamic picture. For example, World Bank statistics show Brazil as having a Gini coefficient of 0.5699 in 2004, compared to one of 0.3809 in rural China and 0.3398 in urban China. But the Brazilian figure shows no significant change from the 0.5757 recorded in 1981, when China had a coefficient of only 0.1846 in urban areas and, the year before, 0.2499 in rural areas.¹⁴

The largest contributor to income inequality in China is the rural-urban divide, which has persisted during the reform period, though there has been some narrowing of the gap¹⁵. In 1978, per capita annual disposable income in urban areas was CNY 343.4 compared to per capita annual net income in rural areas of CNY 133.6, 38.9% of urban income. By 2005, urban income had risen to CNY 10,493 and rural income to CNY 3,254.9, 31% of urban income.¹⁶ Recorded total Gini coefficients in several data sets tend to be higher in most years than the separate coefficients for urban and rural areas, indicating that the rural-urban disparity was the main cause of income inequality in those years¹⁷.

The second most important factor in income inequality is the disparity between the coast and the poorer hinterland. In 2005, per capita GDP in the Eastern Region was CNY 23,768, 69.3% above the national average of CNY 14,040, compared to CNY 15,982 in the North East Region (the country's old industrial base), CNY 10,608 in the Central Region and CNY 9,338 in the Western Region.¹⁸

Income disparities in urban areas have intensified with the steady migration of the rural population to seek work in the cities. Migrant workers typically enjoy a far lower living standard than the possessors of household residence permits (*hukou*), not only because they receive lower wages but also because they and their families

² People's Daily, 28 September 2007.

are not generally entitled to housing, education and healthcare. Inequality of opportunities therefore constitutes a major social divide between urban and rural workers.

Notes.

1. Wu Zhong, an official of the State Council Leading Group Office of Poverty Alleviation and Development, cited in Xinhua on 23 August 2006.
2. China Statistical Yearbook (2006) and World Bank web site.
3. The infant mortality rate is defined as the ratio of deaths of children under one year of age in a given year to the total number of live births in the same year.
4. United Nations Statistics Division web site.
5. China Statistical Yearbook (2006).
6. China Statistical Yearbook (2006). Caution should be observed in interpreting these data: in Chinese culture, a major form of conspicuous consumption (and doing business) is entertaining guests in restaurants, so higher income groups may increase, not decrease, the proportion of income spent on food.
7. The Gini coefficient is a standard measure of inequality, ranging from a value of 0 (perfect equality, everyone has the same income) to 1 (perfect inequality, one person has all the income, everyone else has zero income).
8. Dowling and Soo (1983).
9. Ying (1995).
10. World Bank, World Bank Poverty Monitoring Database (2002).
11. World Bank, World Development Report (2004).
12. Li (2005).
13. Chotikapanich, Rao and Tang (2005).
14. The World Bank, PovcalNet web site.
15. Rural-urban income comparisons need to be interpreted in the light of rapid urbanisation. At the beginning of the reform period, 20% of the population lived in urban areas; this proportion has recently passed 40%.
16. China Statistical Yearbook (2006).
17. Bramall (2001); Chotikapanich, Rao and Tang (2005); Khan and Riskin (1998); Li (2005); Zhang.
18. China Statistical Yearbook (2006).

Domestic problems that may be addressed by improving corporate conduct

Environmental pollution³

30. Pollution remains a serious problem in China.⁴ Its large cities suffer some of the most severe air pollution in the world. Poor urban air quality continues to affect public health, as well as causing large economic and environmental losses. Acid rain falls on about 30% of China's territory. Water pollution is also of high concern.⁵ Many water courses, lakes and coastal waters are severely polluted as a result of

³ The OECD Guidelines for Multinational Enterprises include a detailed list of steps to be taken by enterprises so that they can, "within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development".

⁴ This paragraph condenses the description of China's pollution in OECD (2007a).

⁵ Economy (2004) traces the worsening of water pollution in China and examines possible solutions in the light of international experience.

agricultural, industrial and domestic discharges. This pollution has severely degraded aquatic ecosystems, is a major threat to human health, and may limit economic growth. Nearly half of China's major cities are not fully compliant with drinking water quality standards. China also has very low water resources per capita (one quarter of the world average), and they are highly unevenly distributed.⁶ Among the 600 larger cities, 400 suffer from water shortages. Rapid industrialisation has also contributed to an overwhelming quantity of waste. The amounts of municipal waste, industrial waste and hazardous waste far exceed what can be safely treated and disposed of, putting human health and the environment at risk. Pollution, energy and material intensities of the Chinese economy remain high, as well as its water use intensity; China generates more pollution and consumes more resources than OECD averages.

31. As well as damaging health, environmental pollution is harming China's economic growth. A study produced in 2007 jointly by the World Bank and China's State Environmental Protection Agency (SEPA) estimated that air and water pollution cost China 5.8% of GDP in 2003.⁷ Official statistics show real GDP as having grown by 10.6% in 2003,⁸ so adjustment for the effects of air and water pollution would roughly halve economic growth for that year.

32. China's pollution problems also affect other countries. For example, an explosion at a petrochemical plant in Jilin in November 2005 released benzene into the Songhua River. The resulting pollution was so severe that the water supply in the major down-river city of Harbin (a provincial capital) was cut off for several days. Soon afterward, the chemical slick floated down the Amur River to the Russian city of Khabarovsk.⁹ China has been identified as a "hot spot" of regional trans-boundary pollution in North-East Asia.¹⁰ Pollutants from China have been found in the air as far away as New England.¹¹

*Health and safety at work*¹²

33. One Chinese writer states that disregard for the safety of employees is "the most notable manifestation of the lack of corporate social responsibility", citing in particular the high number of deaths in mine accidents.¹³ In a speech to a national work meeting on small coal mines in July 2007, Li Yizhong, head of the State Administration of Work Safety (SAWS), said that small coal mines were a "disaster area" for coal mine safety. Township and village coal mines accounted for 182 of the 257 accidents involving more than ten deaths and 3,649 of the 6,026 deaths in those accidents during the 10th five-year plan period (2001-2005). In 2006 small coal mines produced 37.9% of national coal output while accounting for 72.3% of accidental deaths, with a 3.885 deaths per million tonnes of coal, 6.2 times the rate observed in key state-owned coal mines, and more than double the rate in local state-owned coal mines.¹⁴ Li Yizhong

⁶ Ma (2004) explains the genesis of this problem in extensive detail.

⁷ World Bank and SEPA (2007).

⁸ National Bureau of Statistics web site <http://www.stats.gov.cn/>.

⁹ Xinhua, 16 December 2005.

¹⁰ OECD (2007a).

¹¹ Ebbert (2004), citing a study conducted by researchers, including Daniel Jacob of Harvard University and Robert Talbot, director of the Atmospheric Investigation, Regional Modeling, Analysis and Prediction Program of the University of New Hampshire.

¹² The OECD Guidelines for Multinational Enterprises encourage enterprises to take "adequate steps to ensure occupational health and safety in their operations".

¹³ Wang Zhile, ed. (2006).

¹⁴ www.coalinfo.net.cn [in Chinese].

stated in November 2006 that "With local governments as backstage supporters, unscrupulous mine owners just keep operating illegally".¹⁵

Problems in overseas operations that may be addressed by improving corporate conduct

Box 5. Global responsibilities of Chinese corporations: a Chinese view

"Our corporations are facing serious challenges from the eco-economy characterised by clean production and the recycling economy characterised by saving resources and recycling resources."

"It is notable that with more and more Chinese corporations stepping out of China and investing across the world, the responsibility idea and ethical standards of Chinese corporations also extend to the world, along with these deep-rooted problems. The China Aviation Oil incident¹, the boycott encountered by Wenzhou shoemakers² and the explosion accident that happened in Zambia³ all reflect that problems existing in shareholder, social and environmental responsibility in Chinese corporations have been exposed in overseas markets. International society will not apply lower standards to Chinese corporations overseas simply because they are from a developing country. Chinese corporations must rapidly promote their idea of corporate responsibility. Only when they make it can they really walk towards the world."⁴

Notes.

1. China Aviation Oil (Singapore) Corporation, a company supplying fuel to China's airlines, overseen by the State-owned Assets Supervision and Administration Commission of the State Council (SASAC 国务院国有资产监督管理委员会), was judged by SASAC to have seriously violated the decision-making process and made wrong judgments on oil futures trading, leading to losses totalling approximately USD550 million dollars. The company's general manager and deputy general manager were convicted by a Singaporean court in 2004 and the general manager ordered to resign by SASAC in February 2007. [People's Daily Online, 11 December 2004; Xinhua, 7 February 2007]
2. Wenzhou (温州) is the shoe-making centre of China. European shoe producers have supported anti-dumping actions to check large inflows of cheap shoes from Wenzhou. In September 2004 residents of Spain's main shoe production centre, Elche, demonstrated against Chinese shoe imports and set fire to a Chinese-owned shoe warehouse, destroying its contents. [China Daily, 30 September 2004]
3. In April 2005 a mining explosives factory belonging to BGRIMM Explosives (Zambia) Ltd., a joint venture between Beijing General Research Institute of Mining and Metallurgy and the Chinese-owned NFC Africa Mining Company blew up at the Chambezi copper mine. Over 50 people were reported killed in the explosion.
4. Wang Zhile, ed. (2006).

Hiring local labour, transferring skills and technology¹⁶

34. There is a widespread perception that Chinese companies operating abroad, particularly in Africa, employ little local labour, preferring to bring in skilled workers, or even unskilled prison labour, from China. Chinese companies operating abroad are also widely perceived as being reluctant to transfer technology, train workers or otherwise ensure that local spillover effects result from Chinese investment.

35. Such perceptions, based on anecdotal evidence, are not fully supported by research. For example, a study conducted by Stellenbosch University for DFID of the market entry models of Chinese construction firms in four African countries found that, in most instances, "Chinese construction companies regularly engage significant numbers of local labour and sub-contractors transferring skills and technology in the process". Except in Angola, local personnel accounted for 85-95% of the total workforce

¹⁵ Xinhua, 28 November 2006.

¹⁶ For example, the OECD Guidelines for Multinational Enterprises encourage enterprises investing abroad to "employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant government authorities".

of most of the Chinese construction companies examined in the survey. While predominantly employed as unskilled casual labourers, there were many instances of locals employed in administration and managerial positions – a phenomenon more common in companies with a longer in-country presence. No evidence was found to support rumours of the employment of prison labour from China.¹⁷

36. Similarly, a recent World Bank study reports that while the majority of professional staff in Chinese construction firms surveyed in its business case studies were from China, the majority of unskilled labour was African. The World Bank survey also found that Chinese firms sub-contract services to local firms, providing opportunities for acquisition of experience and access to technology for developing country firms. However, such opportunities were found to vary according to the country studied. In Angola, Chinese firms were found to import all materials, technology and staff from China, partly due to the high cost of local materials and the lack of skilled labour. A Chinese firm in Senegal was reported as including only nominal local content in sub-contracting, for example sub-contracting drawings but not engineering services such as structural engineering, which provides opportunities for acquisition of experience and technology. On the other hand, the transfer of skills, technology and work practices to workers and sub-contractors in Tanzania was found to be increasing as Chinese firms use new construction methods there.¹⁸

37. Nevertheless, the persistence of negative perceptions of the activities of Chinese enterprises operating overseas suggests that more efforts need to be made to correct such perceptions where they are incorrect and, where they have some basis in fact, to improve the performance of the enterprises.

Fair labour standards

38. There is also a perception reflected frequently in print and electronic media that Chinese employers in countries like those in Africa pay low wages, offer poor working conditions and observe lax safety standards.¹⁹

*Product safety*²⁰

39. An increasing problem (or at least one that is becoming increasingly apparent, perhaps also because of stronger media coverage) is that of unsafe products. Such products may affect purchasers of Chinese exports in other countries, for example in June 2007, US, Canadian and European governments warned consumers not to use Chinese-made toothpaste containing diethylene glycol, a dangerous chemical used in anti-freeze, which had been found on sale in several countries.²¹ In September 2006 EU consumer commissioner Markos Kyprianou, announced: “Nearly half of the dangerous consumer products detected in the EU, especially toys, are imported from China. This has to change.” Of the products listed each week on the EU’s product safety site, RAPEX, a high proportion—usually the majority—are made in China. A typical listing in October 2007, nearly thirteen months after the signing of an agreement between

¹⁷ Stellenbosch (2007).

¹⁸ Broadman (2007).

¹⁹ See, for example, Robyn Dixon, *Africans Lash out at Chinese Employers*, Los Angeles Times, 6 October 2006.

²⁰ The OECD Guidelines for Multinational Enterprises encourage enterprises to ensure “that the goods or services they provide meet all agreed or legally required standards for consumer health and safety”.

²¹ However, not all problems are the result of malfeasance by Chinese enterprises. In August 2007 the US toy producer Mattel recalled 20 million toys from the world market because of safety fears relating to lead paint and small magnets that could be shaken loose and swallowed by children, alleging fault on the part of a Chinese sub-contractor. Mattel later retracted its allegations against the Chinese supplier, took responsibility for design and verification problems, and issued a public apology to China.

the EU and China to restrict dangerous imports, includes 21 products from China out of a total of 39 that can, variously, cause electric shock, burns, fire, injuries, choking, poisoning and chemical hazard.²² In 2001 several companies produced soy sauce found by UK authorities to contain high levels of 3-MCPC, a chemical suspected of being linked to liver cancer, under the well-known brand name of a reputable soy sauce company, Pearl River Bridge.²³

40. However the worst cases usually affect Chinese domestic consumers, in some cases causing mass outbreaks of ill health and even deaths. For example:

- The HIV/AIDS virus was spread to an unofficially estimated 200,000 people in Henan province in the 1990s as a result of sales of dirty blood products by irresponsible firms.²⁴ The government banned blood sales in 2003, but the effects persist.
- In April 2004, more than 100 babies in Fuyang city, Anhui province were found to have enlarged heads as a result of being fed fake baby milk powder; 171 infants were found to be malnourished, 13 of these died.²⁵
- In January 2007 the State Food and Drug Administration charged the Guangdong Bioyee Pharmaceutical company with illegal production of products such as immunoglobulin, causing hepatitis C infections in patients.²⁶

41. In July 2007, the head of the food safety department at the State Food and Drug Administration admitted that food security problems had “impeded Chinese agriculture products and food many times in international trade” and damaged “national credibility and image”. He further warned that “hidden threats will gradually emerge and diseases will likely occur due to the harmful ingredients in food” and that “food safety accidents or events will not only affect the healthy development of the entire [food] industry, but also possibly affect the local economy and social stability”.²⁷

42. The Chinese media frequently report seizures of a wide variety of useless or harmful medicinal products. In the first three quarters of 2006, 11,000 “irregular” medical advertisements (i.e. for products that may not have been efficacious) were reported to the Ministry of Health. In 2005, one company produced a fake bird flu vaccine that was sold throughout China and is believed to have been responsible for spreading the disease in Liaoning Province.²⁸

43. In June 2007 Zheng Xiaoyu, the former head of the State Food and Drugs Administration (SFDA), was executed after having been found guilty of accepting bribes from eight pharmaceutical companies for approving sales of fake medications that in some cases led to multiple deaths.²⁹ The head of the food safety department of the SFDA stated in the same month that the food safety situation was not

²² Weekly overview report of RAPEX notifications for week 42, 2007, on the European Commission Consumer Affairs web site <http://ec.europa.eu>.

²³ *People's Daily Online*, 5 July 2001.

²⁴ Kaufman, Kleinman and Saich (2006).

²⁵ Wang Zhile, ed. (2006).

²⁶ *Xinhua*, 6 April 2007.

²⁷ *Financial Times*, 9 July 2007.

²⁸ *Reuters*, 30 November 2005.

²⁹ *Financial Times*, 10 July 2007.

optimistic and that food safety accidents would not only affect the healthy development of the food industry but could also affect the economy and social stability.³⁰

Policies to encourage responsible business conduct can produce net benefits for enterprises

44. Policies to encourage responsible business conduct (RBC) can produce net benefits from enterprises, reducing major risks and enabling sustainable investment. However, the business case for RBC has not yet been widely accepted by businesses in China. Regular collection and analysis of relevant data is necessary to establish a causal link between RBC and its expected benefits.

Widespread misunderstandings about RBC persist among Chinese companies

45. The existence of widespread misunderstandings about CSR/RBC has been confirmed by Chinese researchers. For example, the China CSR Survey 2006 conducted by Peking University's Market Economy Academy³¹ found that while most Chinese firms claimed to realise the importance of corporate social responsibility (CSR), very many of them failed to understand what it really means. The study, the first of its kind in China, surveyed attitudes towards CSR at 890 companies in China, including state-owned enterprises, privately owned enterprises and multinationals. Most companies, according to the study, equated CSR with charitable activities, though it was not necessarily clear that donations were always appropriately spent. Most companies, including large ones, reported that they regarded CSR as a burden and that CSR is a distraction for Chinese firms, which they thought should focus exclusively on building their business. The study also found that more than half of the small- and medium-sized firms surveyed thought CSR had little or nothing to do with their business development or strategy.

46. However, the Peking University study also discovered that an increasing number of Chinese companies were volunteering to co-operate in establishing NGOs to tackle social problems. It also noted that many firms had started to issue annual corporate CSR reports, citing those published by State Grid and the Pudong Development Bank (see below).

47. According to a specialist in the Ministry of Labour and Social Security, Zhang Junfeng, the biggest challenge to enterprises is awareness of RBC, which the government needs to promote further. Mr. Zhang points out that the private sector in particular is challenged by a lack of management skills, technical knowledge and money to implement RBC. He also stresses that the government is working to implement relevant laws but is hampered by lack of manpower for stricter monitoring due to tight budget constraints.³²

Costs and benefits of investing in RBC need to be measured and analysed

48. The primary duty of business is to comply with the law. However, Chinese enterprise managers themselves report—and other commentators concur—that most enterprises in China do not meet this basic standard of corporate conduct. Many enterprises report that they cannot afford to meet legal obligations such as paying taxes or paying wages on time. For example, multiple book-keeping software for the purposes of defrauding the tax authorities is widely available and understood to be in widespread use. A

³⁰ *Financial Times*, 9 July 2007.

³¹ People's Daily Online, 27 October 2006.

³² Zhang Junfeng, Deputy Director-General, Institute for International Labour Studies, Ministry of Labour and Social Security of the People's Republic of China, presentation to the 2006 BSR Conference in New York.

fortiori, meeting societal expectations that go beyond legal compliance is not generally regarded as a major goal of Chinese companies.

49. The *Policy Framework for Investment* points out that the “business case” for responsible behaviour is “often clear-cut”, for example, environmentally friendly production processes can decrease costs. The existence of a business case depends on particular circumstances. In China, it is arguable that there is a very strong case for many types of RBC, but that this case is not widely understood by enterprise managers.

50. The limited evidence available suggests that there remains a widespread underestimation among Chinese enterprises of the benefits of RBC and a consequent reluctance to spend on RBC initiatives. A FIAS study of the information and communications technology (ICT) sector in Shenzhen³³ reports that “the most consistent challenge articulated by suppliers is that the costs of implementing CSR standards are immediate, while potential benefits are long term” and that most factories do not have the systems in place to track relevant data and measure the costs and benefits of their RBC investments, so it is therefore difficult for suppliers to make strategic decisions on such investments.

51. The few companies that FIAS reported as tracking data on CSR standards reported anecdotal evidence of the following benefits:³⁴

- Securing more orders from international customers.
- Establishing a strategic partnership with key customers.
- Increased retention of workers (a major benefit due to the high turnover rate in the ICT industry)
- Increased productivity and quality.

52. However, there appears to be a more widespread perception by suppliers that there is not a demonstrable business case for making social and environmental improvements and that the costs of such improvements tend to outweigh the benefits. This perception stems from the fact that RBC costs tend to be quantifiable and short-term, while benefits are generally intangible, long-term and risky. In addition, suppliers do not collect and measure the necessary data to make informed decisions. The FIAS study concludes that incentives for CSR investment are lessened as the time horizon for returns on investments in areas such as personnel, systems and equipment is longer than usual customer contract lengths.³⁵ Therefore there is a need for increased management education to increase awareness of long-term benefits and also for the development of regular data collection and analysis mechanisms within enterprises.

Potential tangible benefits

Order retention

53. In view of the problems cited above concerning the reputation for quality of products manufactured in China, particularly in regard to product safety, and the need to address concerns over allegations of worker maltreatment frequently voiced by international media and NGOs, multinationals may prefer to source items from suppliers deemed capable of implementing international standards of

³³ FIAS (2007).

³⁴ FIAS (2007).

³⁵ FIAS (2007).

corporate conduct. Enterprises based in or operating from OECD Member countries and from non-member countries and territories adhering to the OECD Declaration on International Investment and Multinational Enterprises are required by the OECD Guidelines for Multinational Enterprises to “encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines”. Co-operation with foreign corporate customers to adopt and observe high RBC standards can therefore help Chinese companies retain orders and receive extra orders from OECD countries and from other countries and territories that export into OECD markets. While there is evidence that some Chinese managers have not hitherto felt confident that their enterprises will receive such benefits,³⁶ it is likely that increased international publicity for product recalls and other problems will prompt reconsideration of the cost/benefit equation.

54. An enterprise may therefore benefit directly from an improvement in its reputation as a result of more responsible behaviour. Such an improvement may also help improve the reputation of other firms in the same sector, providing beneficial externalities to the industry as a whole. The converse is also true: negative perceptions of one enterprise resulting from that enterprise’s bad behaviour may harm the image of all enterprises in the same sector, or even of all enterprises in a country. For example, the recall of some Chinese exports deemed to be harmful to consumers in the summer of 2007 prompted a rash of deprecatory comments in the media in OECD countries concerning other, or all, Chinese exports.). These effects are larger for some types of business than for others (e.g. companies that have brand capital at risk or that are exposed to adverse regulation or to negative sentiment in local populations). It is for this reason that business associations frequently undertake RBC initiatives that reflect the collective stake in proper conduct of all members of a particular business community.

Reduced staff turnover

55. With many millions of job-seekers moving to its coastal urban areas, China would appear to have a classic “unlimited supply of labour” economy, with the marginal productivity of labour in sectors such as agriculture zero or negligible and the price of labour a subsistence-level wage.³⁷ The sources of surplus labour in China remain broadly those cited by W. Arthur Lewis for such an economy: farmers (because of the tremendous growth of agricultural productivity unleashed by reforms in the early 1980s), population growth and improved industrial efficiency (due to the reform of state-owned enterprises, which has resulted in multiple lay-offs). Wage pressures might therefore be expected to be weak in Chinese industry.

56. While there is an element of truth in this characterisation, particularly for the early part of the period of economic reform, the picture is now changing. Living standards have improved in China’s countryside over the past three decades of economic reform, albeit more slowly than in urban areas. The gap may be narrowing between the economic returns to migrant labour, discounted for the hardship of working long hours in factories providing limited accommodation,³⁸ and potential economic and social returns to remaining in the home village. An indication of this is anecdotal evidence of a recent tendency for an increasing proportion of migrant workers to remain in their villages after returning home for the annual spring festival (Chinese New Year).³⁹ In Guangdong (广东), where there is a heavy concentration of manufacturing staffed by migrant workers, this trend has been particularly noticeable and was

³⁶ FIAS (2007).

³⁷ Lewis (1954).

³⁸ Documented in detail in Pun Ngai (2005). Pun Ngai is a sociologist who, as part of her field work, worked full-time on an assembly line in a Shenzhen electronics factory from November 1995 to June 1996.

³⁹ E.g. Olivia Chung, *Booming Chinese province faces labour shortage*, Asia Times Online (www.atimes.com), 9 March 2007.

recognised in 2006 when the government raised the minimum wage more rapidly to encourage workers to return after the spring festival.⁴⁰

57. Another problem reported by enterprises is a chronic skills shortage. Chinese vocational education is world-class, and has, especially during the past quarter of a century of economic reform, been available to a large number of students from the higher secondary stage upward, especially in the big cities. However, education opportunities remain skewed towards urban residents and many children in the countryside, especially girls, lack even basic education, though the government is now starting to address this problem (see below). Skilled workers can therefore command a premium and are likely to job-hop.

58. Retaining skilled and unskilled workers is therefore a challenge for enterprises. Initially, employers may meet this challenge by increasing wages. However, as wages rise above subsistence level, workers may also seek to improve their conditions of work, for example by choosing to work in a safer, cleaner environment, and to invest in their human capital, for example by choosing to work in an enterprise that provides training opportunities. Studies of turnover in OECD countries suggest that the factors that cause it are within the power of management to control.⁴¹

59. At the same time, there are other, mainly institutional, factors which may not be directly under the control of enterprise managements but may be susceptible to the exercise of their influence on policy decisions. For example, employers may be in a position to put pressure on local authorities to give local *hukou* (residence permits) to their workers.

60. During the visits made by the OECD to textile factories in Guangdong in November 2007 high turnover and difficulties with staff retention were cited by managers as key motivators of efforts to study and implement RBC standards in their enterprises (see Annex 3).

Increased productivity

61. Meeting RBC standards can increase productivity. A safe workplace is less subject to accidents that can stop production and cause injuries, with attendant medical and compensation costs. Keeping the workforce healthy minimises absenteeism and productivity loss,⁴² and reduces medical expenses.⁴³ As

⁴⁰ The Hong Kong Trade Development Council web site (www.tdctrade.com) noted that the increase in minimum wage across the Pearl River Delta on 1 September 2006 averaged 17.8% and reached as high locally as 32.6%. Previous periodic increases had been much lower.

⁴¹ Barak, Nissly and Levin (2001), from a metanalysis of 25 articles concerning the relationship between demographic variables, personal perceptions and organisational conditions and either turnover or intention to leave, found that burnout, job dissatisfaction, availability of employment alternatives, low organisational or professional commitment, stress, and lack of social support are the strongest predictors of turnover or intention to leave. They concluded that there may be a great deal that both managers and policy makers can do to prevent turnover.

⁴² Boles, Pelletier and Lynch (2004), conducted a cross-sectional analysis of 2,264 employees of a large national employer in the North-East United States. They found a direct association between health risks and productivity loss.

Michie and Williams (2003) found from a review of the literature that key work factors associated with psychological ill health and sickness absence in staff were long hours worked, work overload and pressure; lack of control over work; lack of participation in decision making; poor social support; and unclear management and work role. There was some evidence that sickness absence was associated with poor management style. Successful interventions that improved psychological health and levels of sickness absence used training and organisational approaches to increase participation in decision making and problem solving, increase support and feedback, and improve communication. It concluded that many of

excessive overtime working can lower productivity,⁴⁴ reducing the long hours worked in many Chinese factories is likely to raise productivity. Creating a pleasant work environment can raise morale and reduce frictions, minimising disputes. Improved environmental performance may also result in improved productivity.⁴⁵ At one factory visited by the OECD in Guangdong in November 2007, for instance, the management explained that it had built a low-emission coal-fired combined heat and power plant and a water treatment plant mainly to lower production costs (see Annex 3). To trace the relationship between these factors on a more systematic basis it is necessary to establish and maintain an integrated and effective reporting system in all enterprises.

Improved product quality

62. As labour costs start to rise and as lower-cost producers in Asia begin to follow China in opening their economies and developing export manufacturing, China is losing its low labour cost competitive advantage. Chinese enterprises are therefore seeking to move up the value chain and adopt advanced technology. The government is actively engaged in promoting scientific and technological innovation and encouraging enterprises to take advantage of it⁴⁶; it also seeks to attract foreign investment involving technology transfer to China and the establishment by foreign-invested enterprises of R&D centres in China. As noted above, the government is also sensitive to threats to the reputation of goods bearing the “Made in China” mark.

63. Implementing RBC can contribute to improvements in product quality as a result of the retention of good workers (see above); improved worker morale; production of healthy and safe products; good customer service;⁴⁷ and respect for customer confidentiality.⁴⁸

the work related variables associated with high levels of psychological ill health are potentially amenable to change.

⁴³ Goetzel et al (1998), in a study of 46,026 employees from six large health care purchasers concluded that common modifiable health risks are associated with short-term increases in the likelihood of incurring health expenditures and in the magnitude of those expenditures.

⁴⁴ Shimizu, Horie, Nagata and Marui (2004). This study of 94 randomly-sampled workers at a Japanese manufacturing company suggests a relationship between overtime working and self-reported low productivity due to cold-like symptoms and sleep loss.

Van Der Hulst and Geurts (2001), in a study of 535 full-time employees of the Dutch Postal Service, show an association between the combination of involuntary overtime and low rewards on the one hand and, on the other, elevated risks of health complaints, emotional exhaustion and negative home-work interference.

⁴⁵ Gray and Shadbegian (1995), considering 1979-1990 total factor productivity levels and growth rates in the paper, oil and steel industries, showed plants with higher abatement costs to have significantly lower productivity levels.

⁴⁶ For a full stocktaking and evaluation of China’s innovation policies, see OECD (2007b).

⁴⁷ For example, the OECD Guidelines for Multinational Enterprises require enterprises to “provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden”.

⁴⁸ For example, the OECD Guidelines for Multinational Enterprises require enterprises to “respect consumer privacy and provide protection for personal data”.

III. CHINA'S POLICIES FOR PROMOTING RESPONSIBLE BUSINESS CONDUCT

64. This part first highlights historical factors that impinge upon current policies to encourage RBC, including a tradition of paternalism that has been expressed via both government and non-government agencies. It then describes the developing legal framework for RBC, covering: workers' rights, women's rights and sex equality, children's rights, environmental protection and sustainable development, product safety and human capital formation in enterprises. The Review then examines the Chinese government's promotion of communication on RBC and protection of the rights framework, and also the measures taken by the Chinese government to support financial and non-financial disclosure, to support companies' efforts to comply with the law and to promote the business case for RBC. The Chinese government participates in inter-governmental co-operation to promote RBC. The chapter concludes with an indicative account of what Chinese enterprises and civil society organisations are doing to improve business conduct.

65. Each section of Part III is prefaced by one of the six questions in Chapter 7, Policies for promoting responsible business conduct, of the Policy Framework for Investment. The immediately following text is in each case based on relevant annotations in the PFI.

Government assumption of responsibilities

Q 7.1. How does the government make clear for investors the distinction between its own role and responsibilities and those ascribed to the business sector? Does it actively assume its responsibilities (e.g. by effectively enforcing laws on respecting human rights, environmental protection, labour relations and financial accountability)?

66. The core mission of business is to identify and manage investment projects that yield competitive returns to suppliers of capital. In fulfilling this core function, responsible business conduct also consists above all of complying with legal and regulatory requirements; in addition, it includes responding to societal expectations that might be communicated through channels other than law). The role of governments is to look after the collective interests of their citizens. As part of this role, they work with companies, trade unions and other civil society organisations to create enabling environments for responsible business conduct. If this enabling environment is well designed, including through a clearly communicated distinction between the respective roles and responsibilities of government and business, uncertainty over expectations concerning responsible business conduct are lowered, thus encouraging investment, and private and public sector actors will be encouraged to play mutually-supporting roles in enhancing economic, social and environmental wellbeing. Government and business roles need to remain distinct and they cannot substitute for one another – each sector needs to assume its responsibilities.

The Chinese government strongly advocates responsible business conduct

67. The Chinese government has recently adopted policies strongly encouraging responsible business conduct (RBC) by Chinese enterprises. Before the beginning of the century, officials and the official media in China were highly sceptical of RBC advocacy, regarding it as a “green trade barrier”⁴⁹ or “disguised

⁴⁹ For example, 'Green Barrier' Stifles China's Agro Exports, People's Daily, 31 March 2002. An article in the People's Daily of 19 July 2002, *China Subject to Most Restriction by US Trade Barriers*, charges that

protectionism”.⁵⁰ However, many Chinese exporters and suppliers to foreign-invested enterprises in China became exposed to RBC standards from the mid-1990s when they started to be asked to comply with them by customers through auditing procedures. One Chinese RBC specialist describes the 1996-2000 period as the “CSR 101 introduction period”. During this time, the government, general public, media and domestic Chinese enterprises had little exposure to the topic. This was followed by a period from 2000 to 2004 when Chinese enterprises felt under increasing pressure to implement CSR but the government chose to take a wait-and-see approach, neither completely accepting CSR nor rejecting it outright.

68. The same specialist concludes that from 2004 onward the Chinese government’s attitude has shifted from passive (i.e. fearing economic sanctions and trade barriers) to active and participatory.⁵¹ Official recognition of the importance of RBC has been strengthened, in particular following the official espousal of the goal of creating a “harmonious society” (*héxié shèhuì* 和谐社会) in September 2004.⁵² Chinese government and non-government bodies have held conferences on CSR in recent years, some of them involving international organisations [for example, the Global Corporate Social Responsibility Forum in held Beijing on 22 February 2006, at which OECD Secretary-General Donald J. Johnston delivered a keynote presentation (see Annex 2)].

69. The new policy is explicitly incorporated in relevant legal enactments. Article 5 of the Company Law of the People’s Republic of China, added in the most recent revision of the law in October 2005, states: “When undertaking business operations, a company shall comply with 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.”⁵³

70. The State Council is understood to be currently considering a draft set of corporate responsibility guidelines which have been approved by 9 ministries, led by the Ministry of Commerce (MOFCOM) and the National Development and Reform Commission (NDRC, the former State Planning Commission).

RBC with Chinese characteristics: the historical background

Tradition of paternalism

71. Chinese enterprises have inherited a tradition of paternalism from two sources: family businesses and state-owned enterprises (SOEs). Each form of business faces competitive threats which are forcing it

‘China’s agricultural and animal products have been plagued by “green trade barriers” since the country entered into the WTO.’

⁵⁰ Response to a question on the Chinese government’s attitude to RBC by a representative of an official Chinese government research body at the Seminar on Governance in China at the OECD in Paris, 3 February 2005.

⁵¹ Zhou Weidong, Director, BSR China, presentation to the 2006 BSR Conference in New York and GTZ 7th Round Table on Social Standards and CSR in China, *From CSR in China to Chinese CSR*, 15 November 2006, Beijing .

⁵² The concept of “harmonious socialist society” was first launched at the Fourth Plenary Session of the 16th Communist Party of China (CPC) Central Committee in September 2004 and further interpreted by President Hu Jintao at a high-level Party seminar held prior to the sessions of National People’s Congress (NPC) and the National Committee of the Chinese Political Consultative Conference (CPPCC) in March 2005.

⁵³ China Daily web site, <http://www.chinadaily.com.cn>.

to change its *modus operandi*. As enterprises attempt to adapt their internal structures, they also face the challenge of complying with a body of relatively new law that is continuing to expand rapidly. To the – albeit still limited – extent to which NGOs, the media and individuals are permitted to criticise their behaviour, enterprises also are increasingly challenged to comply with the law and respond to societal expectations which are communicated by other means than law.

Chinese family businesses

72. The traditional form of enterprise in China before the establishment of the People's Republic of China in 1949 was the family business. Some of the most highly-developed Chinese family businesses have been built over several decades by Overseas Chinese in South-East Asia, where, with some exceptions, their activities were not interrupted by confiscations of the scale of those in China in the early 1950s. With the *de facto* privatisation of much of the economy, family businesses have been re-emerging in China since the 1980s.

73. Chinese family businesses learned to thrive in hostile, or potentially hostile, environments such as those in South-East Asia, by developing operating networks known as *guanxi* (关系 “connections”) linking them with business partners and government agencies. Maintaining control in the hands of family members allowed the enterprise to profit from minimal transparency and disclosure, for example vis-à-vis competitors or tax collectors. Such a structure emphasises social cohesion based on kinship within the management echelon. It also fosters, at best, a paternalistic attitude, and, at worst, a lack of family feeling towards hired labour.⁵⁴

State-owned enterprises (SOEs)

74. After economic reforms were initiated in the late 1970s, industries which were formerly part of the government structure were made into state-owned enterprises (SOEs) and encouraged to develop independent accounting systems to enable them to become profitable. One reason for the lack of profitability of many SOEs was that they had by then become responsible not only for making products but also for providing housing, healthcare, education and other services to workers and their families. In the 1990s, the government decided to divest SOEs of these responsibilities. For example, the government reformed the housing market by forbidding enterprises from providing subsidised housing and by encouraging banks to lend for home purchases. These reforms are largely complete, but there are areas (such as social security) where the state has not yet been able to take over the full burden of responsibilities.

75. Managers of existing and former SOEs may therefore need training (and time) to adjust to demands from government and society that they take on new responsibilities, some of which may appear similar to those they have recently shed. At the same time, SOEs are having to fend for themselves in a competitive environment in which they are subjected to conflicting demands. For example, in trying to satisfy foreign customers and NGOs that it is providing adequate facilities for its workers, a factory may have to raise prices to cover the increased cost of production, discouraging foreign purchasers who expect China to be a minimum-cost supplier. The change from plan to market has not by itself sufficiently altered incentive structures to encourage socially-responsible behaviour. In the past, SOEs had to maximise output with little or no regard for their environment. Now they have to maximise profits, often showing a similar disregard for negative externalities.

⁵⁴

The Economist Intelligence Unit (2000).

Confucianism and compliance with social norms

76. The Confucian value system that dominated China for over two millennia stresses reliance on leadership by example, not on compliance with formal rules, which have, in the absence of an independent legal system, been associated not with the rule of law but with harsh punishments imposed by a domineering state power. One reflection of this is the tendency of the central government over many centuries to enact vague legislation, with the explicit intention of allowing local authorities the flexibility to interpret it according to time and place. Although Chinese law-making is now more sophisticated, not least because of the increasingly open process of preparing legislation and a greater readiness to learn from foreign experience, elements of this tradition of deliberate vagueness persist.

Corporate philanthropy is not RBC, but it can be a channel for it under the right conditions

77. In countries at the early stages of promoting responsible business conduct (RBC), it is normal for companies initially to select charitable giving as the vehicle of their responsible behaviour towards society. China is no exception, not least because there is already a well-established tradition of generosity by successful Chinese entrepreneurs, including Overseas Chinese tycoons who have founded a number of major public establishments in China and elsewhere.⁵⁵ Rich individuals in China continue to make large donations to a wide variety of public services (see Box 2). Such largesse is frequently ascribed to Confucian values.⁵⁶

78. Corporate philanthropy is not a substitute for RBC. In some cases, it is used as a mere public relations tool, giving “face” to enterprises and their leaders. When this is done to divert attention from irresponsible conduct, negative consequences may counteract any social benefit. Internationally-recognised standards of corporate conduct such as the OECD Guidelines for Multinational Enterprises and the Ten Principles of the UN Global Compact do not include sections explicitly endorsing charitable giving as a form of responsible business conduct.

79. At the same time, corporate philanthropy can constitute one channel among others for enterprises’ endeavours to behave in a socially responsible way. Internationally-recognised business conduct standards such as the OECD Guidelines can provide criteria for judging the appropriateness of charitable activities. For example, they can encourage the provision of endowments and gifts in a transparent way that accords with sustainable development and other goals, such as engaging in partnerships or initiatives that will enhance environmental awareness and protection (Guidelines, V.8).

80. While rich Chinese individuals are evidently successful in identifying targets for their charitable donations, the proprietors of small and medium-sized enterprises (SMEs) and individuals disposing of smaller sums may be less likely to donate to charity in China than elsewhere because of the lack of a developed infrastructure to ensure that donations are well spent. Establishing a charitable organisation is procedurally difficult, there is a shortage of searchable information on potential recipients, and, crucially, a lack of independent oversight and auditing of such organisations. The Ministry of Civil Affairs is reportedly drafting a Charity Law to remedy these deficiencies, but there is no indication of when this may be promulgated. Tax allowances for corporate donations to licensed non-profit welfare organisations were

⁵⁵ For example, Xiamen University, founded by Tan Kah Kee of Singapore in 1919 and Shantou University, opened in 1981 with an endowment of HKD 2 billion by Li Ka-shing of Hong Kong, China. Both men also subscribed to numerous other charitable endeavours both inside and outside China.

⁵⁶ For example, Yin (2006a), while seeing “Western” CSR as springing from Protestantism, ascribes Chinese CSR values to the somewhat innovative concept of the “Confucian merchant” (*rúshāng* 儒商).

introduced in January 2007. However, these are limited to only 20 such organisations and claiming procedures are complex.⁵⁷

Box 6. Corporate donations

In the Hurun 2006 China Corporate Givers List, Chinese entities made up 26 of list of 50 providers of charitable cash donations (of the others, 10 were based in Hong Kong, China, three in Chinese Taipei, two in Japan and one each in Indonesia, Korea, Singapore, Thailand, UK and USA). However, there were only three Chinese enterprises in the top ten, fewer than those from Hong Kong, China, which comprised four out of the top five givers. The Hurun 2007 Private Philanthropy List includes the largest 100 donations from those reported by China's 800 richest individuals.¹ The largest donation is USD260 000 and the average donation USD23 093. The main beneficiary sectors were: education (64), social public welfare establishments (37), poverty relief (21), health (17), culture (11), disaster relief (6), sports (5) (donors typically reported making donations to more than one).⁰

Source: <http://www.hurun.net>.

Box 7. A Chinese academic view of RBC

While many enterprise managers have only a limited understanding of RBC concepts, China's academic community is developing a deeper and more forward-looking approach. A leading exemplar is Wang Zhile, Director of the Research Centre on Transnational Corporations in CAITEC (China Academy of International Trade and Economic Co-operation, MOFCOM's research arm). Wang points out that "intensifying corporate responsibility is neither a show nor an additional burden on a corporation but the core of corporate values, the conduct code, the strategic guideline and the soft competitiveness for a corporation".¹ According to Wang, Chinese corporations have developed in three stages: 1) from the 1980s to the early 1990s, the introduction of hardware facilities; 2) from the early 1990s to the beginning of the century, the establishment of a modern corporate system; 3) the current phase, beginning with China's WTO accession in 2001, the strengthening of corporate philosophy. This viewpoint is based on the results of research visits by CAITEC staff to the headquarters of over 30 transnational corporations in OECD countries. On the basis of this research, CAITEC examined the varied development of RBC concepts in these countries and developed its own "soft competitiveness" strategy.

Note.

1. Wang Zhile, ed. (2006).

The Chinese government's approach to human rights⁵⁸

81. The Chinese government is now seeking to develop explicit policies to expand human rights and is no longer limited to the defensive approach it developed previously in response to criticism from abroad. China's state constitution was amended in 2004 to include for the first time a provision to respect and safeguard human rights.⁵⁹ In 2005 the State Council, China's cabinet, published a *White Paper on China's*

⁵⁷ David Wolf, China's Creaking Philanthropy Infrastructure, China CSR web site, 6 July 2007.

⁵⁸ The OECD Guidelines for Multinational Enterprises encourage enterprises to respect "the human rights of those affected by their activities consistent with the host government's international obligations and commitments". (II. General Policies)

⁵⁹ "The state respects and guarantees human rights." In Chapter Two, The Fundamental Rights and Duties of Citizens, Article 33. Chinese government web site www.gov.cn.

Progress in Human Rights in 2004,⁶⁰ in which human rights were classified into: people's rights to subsistence and development; civil and political rights; judicial guarantees for human rights; economic, social and cultural rights; equal rights and special protection for ethnic minorities; and the rights and interests of the disabled. The *White Paper* also included a report on international exchanges and co-operation in the field of human rights. Several domestic NGOs are active in the human rights area in China, including the China Society for Human Rights Studies, the largest such NGO in China and a member of the United Nations Conference of Non-government Organisations (CONGO).⁶¹

82. China participates actively in international fora on human rights. As indicated by the list of rights categories in the *White Paper*, the Chinese authorities place emphasis on a variety of human rights, though this list appears not to be as wide-ranging as that set out in the Universal Declaration of Human Rights.⁶² Since 1993 China has submitted many reports to the committees under the Office of the United Nations High Commissioner for Human Rights, including the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee against Torture and the Committee on the Rights of the Child (China is a member of all four committees).⁶³ China signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1997, ratifying it in 2001 (though entering a reservation on Article 8.1(a) effectively nullifying the commitment to independent trade unions), and the International Covenant on Civil and Political Rights (ICCPR) in 1998.⁶⁴

The developing legal framework for workers' rights

The role of workers in promoting responsible business conduct

83. The OECD's *Policy Framework for Investment: A Review of Good Practices* points out: "Trade unions and other elements of civil society also have a role to play in fostering and monitoring responsible business conduct. Like the business sector, they control resources that they can use to improve the quality of the dialogue relevant to the formation of both business and government policy. In particular, they can contribute their knowledge of situations in specific locations and workplaces and bring a wider array of perspectives (other than those of government or business)".⁶⁵

84. The role of workers in promoting responsible business conduct by exercising their right of supervision in areas such as health and safety is recognised by leading Chinese officials. For example, Li Yizhong, head of the State Administration of Workplace Safety (SAWS) told a meeting of coal miners in Henan Province in July 2007: "Implementing coal mine safety first of all depends on the workers. You are the ones who know best where the dangers are, and, once discovered, you can raise them with the mine director. You have to protect your own rights, only thus can [the principle of] workers being the masters be put into practice. You have the right to know and the right of supervision".⁶⁶ (This of course in no way can be taken as a detraction from the responsibility of employers for ensuring workplace safety, as detailed in ILO Convention 155, which China ratified in January 2006.)

⁶⁰ Available on the web site of the China Society for Human Rights Studies <http://www.humanrights-china.org/cn/index.htm> .

⁶¹ <http://www.humanrights-china.org/cn/index.htm> .

⁶² Available on the United Nations web site <http://www.un.org/Overview/rights.html> .

⁶³ United Nations Human Rights Web Site <http://www.unhchr.ch> . These also cover Hong Kong, China and Macau, China.

⁶⁴ Office of the United Nations High Commissioner for Human Rights web site <http://www.ohchr.org> .

⁶⁵ OECD (2006), p. 151.

⁶⁶ www.coalinfo.net.cn, 10 July 2007.[in Chinese]

Major laws protecting workers' rights have been enacted in recent years

The Labour Contract Law of 2007 provides increased protection for workers

85. The Labour Contract Law adopted by the Standing Committee of the National People's Congress on 29 June 2007 after unprecedented public consultation (see below) came into force on 1 January 2008.

86. The new law places responsibility for signing a written labour contract on the employer. If the employer has failed to do so for over a month after the worker has started work, the employer must pay the worker a double wage (Article 82). If a written employment contract has not been concluded after one year, the employer and the worker are deemed to have concluded an open-ended employment contract (Article 14).

87. The law provides protection against abuse of probationary periods. Probation periods of less than three months are not permitted in an employment contract, and are limited to one month for contracts of up to one year, two months for contracts of up to three years and six months for open-ended contracts. A worker may not have more than one probation period. Probation periods must be included in the contract of employment. The wages of a worker on probation may not be less than the lowest wage level for the same job with the same employer or less than 80% of the wage agreed upon in the employment contract, and may not be less than the minimum wage rate in the place where the employer is located (Article 19).

88. The new law also provides greater security of employment by stipulating that an open-ended contract shall be concluded when a worker renews his or her employment contract if, at the time of renewal, the worker has been working for the same employer for at least 10 years or has concluded a fixed-term contract with the same employer on two consecutive occasions (so a third consecutive contract must be open-ended, not fixed-term) (Article 14).

89. A worker may terminate a contract on 30 days' prior written notice to the employer. During the probationary period this is reduced to three days (Article 37). A worker may terminate the contract without notice if the employer uses violence, threats or unlawful restriction of personal freedom to compel a worker to work, if a worker is instructed in violation of rules and regulations or peremptorily ordered by the employer to perform dangerous operations which threaten the worker's personal safety (Article 38). The employer may terminate the contract immediately if the worker fails probation, materially breaches rules and regulations, commits serious dereliction of duty, is involved in corruption, causes substantial damage to the employer, or has criminal liability pursued in accordance with law (Article 39). The employer may terminate a worker's contract with 30 days' prior written notice or one month's wages in lieu of notice if the worker becomes incapacitated, remains incompetent after training or adjustment of position or if there is a major change in circumstances and the two sides are unable to reach agreement on amending the contract (Article 40).

90. The law states that, after bargaining on an equal basis, enterprise employees may conclude a legally binding collective contract with the employer on such matters as labour compensation, working hours, rest, leave, work safety and hygiene, insurance and other benefits. The draft of the collective contract shall be presented to the employee representative congress or all the employees for discussion and approval. This can be done with a trade union, if a branch exists; if not, the employer can conclude the contract with a representative of the workers under the guidance of the trade union at the next higher level (Article 51). Industry-wide or area-wide collective contracts may be concluded between a trade union and sectoral enterprise groups within areas below county level (Article 53). Collective contracts become effective 15 days after submission to the labour administration authority if the latter raises no objection (Article 54). Wages and conditions stipulated in a collective contract may not be lower than the relevant

legal minima (Article 55). In the case of a dispute arising from performance of a collective contract, the union may apply for arbitration or institute legal action against the employer (Article 56).

91. These provisions appear to accord with those in the OECD Guidelines for Multinational Enterprises that encourage enterprises to respect “the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers’ associations, with such representatives with a view to reaching agreements on employment conditions”.

92. The Labour Contract Law also protects workers from victimisation arising from efforts to protect health and safety. Article 32 (see below) stipulates that workers shall not be held in breach of their employment contracts if they refuse to perform dangerous operations that are instructed in violation of regulations or peremptorily ordered by management staff of the Employer, and that workers have the right to criticise, report to the authorities or lodge accusations against their employers in respect of working conditions that endanger their lives or health.

93. Anecdotal evidence suggests that implementation of the Labour Contract Law has begun in earnest: thousands of factories are reported to have closed in the first few months of 2008 as a result of rising labour costs that is widely attributed to new wage contracts (although other factors, notably yuan appreciation, are also likely to be involved).

94. At the same time, it is possible that some employers have used creative procedures to minimise the impact of the law. It remains to be determined whether other employers have followed the example of Huawei, in Guangdong province, which in late 2007 encouraged 7,000 of its employees to resign before the new law came into force and then re-hired many of them on new contracts.

The Employment Promotion Law of 2007 strengthens existing anti-discrimination legislation...

95. On 30 August 2007 the National People’s Congress passed an Employment Promotion Law that came into force on 1 January 2008, at the same time as the Labour Contract Law.⁶⁷ The new law requires employers to provide equal employment opportunities and fair conditions for workers, and forbids employment discrimination. The law standardises and reiterates non-discrimination provisions in a number of previous legal documents, under which discrimination has been prohibited on grounds of disability since 1991, on grounds of race, ethnicity, sex and religion since 1995, against HIV carriers, AIDS sufferers and their family members since 2006, and against hepatitis B carriers since early 2007. Specifically forbidden acts include refusal to hire women or subject them to higher recruitment standards. Limitations based on women’s marital or childbirth status may not be included in labour contracts. The law requires that special care should be provided to ethnic minorities when necessary.

96. The new law greatly strengthens existing law against employment discrimination. First of all, it widens the scope of anti-discrimination legislation. In addition to previous categories of worker who may not be subject to employment discrimination, it adds migrant workers and carriers of any infectious disease, not just HIV/AIDS and hepatitis B, who are otherwise healthy and whose employment does not violate health and safety regulations. Secondly, it for the first time grants explicit rights to individual workers to sue employers alleged to have discriminated illegally against them. There will thus be a sounder legal basis for claims in court against employers who have dismissed, or refused to hire, workers on unfair grounds.

97. The new law also contains a provision which could help eliminate of middlemen who exploit information asymmetries to levy unnecessary and excessive fees from rural migrants seeking jobs in urban

⁶⁷ Chinese government web site, www.gov.cn, 30 August 2007.

areas. Intermediary employment agencies not approved and registered by labour and social security authorities and industrial and commercial authorities will be closed down and fined between CNY 10 000 and CNY 50 000.

...and can form the basis for a more comprehensive and effective framework

98. While the new law is a significant forward step, it does not yet provide a comprehensive and fully effective framework to deal with workplace discrimination. Age discrimination (included in earlier drafts) is omitted from the law. Penalties and remedies in the form of reinstatement, back pay or punitive damages are not specified in the law, making it uncertain that the law can be effectively implemented, since courts will not have a firm basis for assessing these. Lawyers have commented that it is unclear whether employment discrimination claims will be treated as labour disputes or ordinary civil claims – an important distinction because the statutes of limitations for labour disputes and civil claims differ markedly.⁶⁸

The Trade Union Law protects the right of workers to join official trade unions

99. The Trade Union Law of the People's Republic of China was adopted by the National People's Congress in 1992 and amended by the Standing Committee of the National People's Congress on 27 October 2001. This law replaced the 1950 Trade Union Law.

100. Under Article 3, all “manual and mental workers in enterprises, institutions and government departments within the territory of China who rely on wages or salaries as their main source of income, irrespective of their nationality, race, sex, occupation, religious belief or educational background, have the right to organise or join trade unions according to law”, without obstruction or restriction by any organisation or individual. Article 10, which specifies that the All-China Federation of Trade Unions (ACFTU) shall be “established as the unified national organisation”, indicates that trade unions belong to the ACFTU structure.

101. The ACFTU is explicitly affiliated to the party-state. Article 4 of the 2001 Trade Union Law stipulates that trade unions “shall observe and safeguard the Constitution, take it as the fundamental criterion for their activities, take economic development as the central task, uphold the socialist road, the people's democratic dictatorship, leadership by the Communist Party of China, and Marxism-Leninism, Mao Zedong Thought and Deng Xiaoping Theory, persevere in reform and the open policy, and conduct their work independently in accordance with the Constitution of trade unions”.⁶⁹

102. To ensure the effectiveness of union representation, the OECD Guidelines for Multinational Enterprises enjoin enterprises to provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements; provide information to employee representatives which is needed for meaningful negotiations on conditions of employment; and promote consultation and co-operation between employers and employees and their representatives on matters of common concern.

103. The right to strike was added to China's state constitution in 1978 and excised in 1982. It is not clear whether such a right exists in practice. Article 27 of the Trade Union Law states that when there is a “work stoppage or slow-down strike” in an enterprise or institution, the trade union “shall, on behalf of the workers and staff members, hold consultation with the enterprise or institution or the parties concerned, present the opinions and demands of the workers and staff members, and put forward proposals for

⁶⁸ Lauffs, Andreas and Isaacs, Jonathan (Baker & McKenzie, Hong Kong), *Viewpoint: Workers to get right to sue employers*, *Financial Times*, 25 September 2007.

⁶⁹ Chinese government official web site, <http://english.gov.cn>.

solutions”. The main role of the trade union is set out in Article 27 as that of helping the enterprise or institution to “help restore the normal order of production and other work as soon as possible”.

104. The ACFTU monopoly implied by the Trade Union Law is not strictly compatible with free trade unionism as enunciated in the OECD Guidelines for Multinational Enterprises, which state that enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices, respect “the right of their employees to be represented by trade unions and other bona fide representatives of employees”. Nor does it accord with Article 42 of the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, which holds that “Workers employed by multinational enterprises as well as those employed by national enterprises should, without distinction whatsoever, have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.” However, the law does not explicitly prohibit workers from establishing their own representative system outside the ACFTU structure, though the practical ability to do so is limited. Workplace units of 25 workers or more have the right to elect a committee which does not have to be affiliated to the ACTFU. Nevertheless, ACFTU affiliation is a precondition for obtaining legal protection and status as a negotiating partner. This effectively renders collective bargaining impossible by a non-ACFTU union.

Enforcement of laws on respecting workers’ rights

105. As in other policy areas, enforcement at local level continues to lag behind the rapid accumulation of national legislation. The official media frequently cite cases in which workers’ rights have been flouted, sometimes with the complicity or connivance of local government officials.

106. In June 2007, for example, following the posting on the Internet of a letter from 400 parents seeking their children, who they believed to have been sold into slavery, 359 enslaved workers, including 65 mentally retarded people and at least 12 children, were freed at a brick kiln in Yongji, Shanxi Province and an team appointed from the Ministry of Labour and Social Security, the Ministry of Public Security and the All-China Federation of Trade Unions (ACFTU) to investigate a variety of abuses there. The released workers alleged that they had been confined at the brickworks and forced to work for over 15 hours a day without pay. One mentally retarded worker had allegedly been beaten to death at the kiln in November 2006 by a member of staff. Of the brick kilns in Shanxi, 2,036 out of 3,347 were found to be operating without licences; 315 were closed and 358 put under investigation.

107. The dozens arrested and sought by police on various charges relating to slavery at the kiln in Yongji included not only its managers but also the head of the labour inspection team of the city labour and social security bureau. A number of local officials had allegedly turned a blind eye to these abuses and even profited from slave labour. The case was widely publicised by government media and the prime minister chaired a State Council conference which pledged severe punishment of those who use child or forced labour or who maliciously injure workers.⁷⁰

An important sectoral initiative: CSC9000T

108. In 2005 the Chinese National Textile and Apparel Council published CSC9000T, a set of principles and guidelines for the textile and apparel industry.⁷¹ The CSC9000T web site describes these guidelines as “a social responsibility management system based on the Chinese laws and regulations, international conventions and practices, as well as China's special needs”.⁷² They appear to be a pilot for

⁷⁰. Xinhua, 22 June 2007.

⁷¹. China National Textile and Apparel Council (2005).

⁷². <http://www.csc9000.org.cn>

future guidelines applying to other industries. CSC9000T was drafted by the China Textile Information Centre (CTIC) in consultation with companies and other bodies.

109. CSC9000T was drawn up after the Chinese government considered adopting SA8000 during negotiations on textile trade with Europe and the United States. Although several Chinese experts recommended strongly that this be done,⁷³ the Chinese authorities responded that SA8000 was not in accordance with China's "national essence" (*zhōngguó guóqíng* 中国国情). (SA8000 is a private standard on which there is not complete agreement in the OECD area.) With the exceptions of the sections on working hours and on child labour and young workers, CSC9000T is relatively undemanding.

110. Domestic normative references cited as the basis for CSC9000T⁷⁴ include China's constitution and laws on labour, trade union, women's rights, protection of minors, production safety, disability, clean production, collective contracts, prohibition of child labour, work-related injury insurance, minimum wage and working hours. International conventions cited include the Universal Declaration of Human Rights, the United Nations Convention on the Rights of the Child, the United Nations International Covenant on Civil and Political Rights, the United Nations International Covenant on Economic, Social and Cultural Rights, the United Nations Convention on the Elimination of all Forms of Discrimination against Women and the Global Compact, together with 13 ILO Conventions. These ILO Conventions do not, however, include 29 and 105 on forced and bonded labour, 87 on freedom of association, 98 on the right to collective bargaining, or 135 on workers' representatives.

111. Child workers are defined in CSC9000T as any person less than 16 years of age who provides service for pay in an enterprise. This is a relatively high standard. In CSC9000T a juvenile or young worker is defined as being above the child worker age and below 18. CSC9000T requires that the enterprise shall guarantee that juvenile workers receive physical examinations at least once a year.

112. CSC9000T specifies a maximum working day of eight hours and a maximum work week of 40 hours. The relatively short work week specified in CSC9000T corresponds to the change from a six-day to a five-day week decreed by the Chinese government in 1995. Overtime is limited to three hours per day and 36 hours a month in CSC9000T, which also requires enterprises to pay extra for overtime. The principle that overtime should always be voluntary is not explicit in CSC9000T.

113. CSC9000T does not include an unconditional right to join any trade union. It states the principle that "the enterprise shall respect the right of employees to form and join the trade union and bargain collectively", while elsewhere specifying that "the All-China Federation of Trade Unions [ACFTU] and all the trade union organisations under it represent the interests of all employees and safeguard the legitimate rights and interests of employees". This definition circumscribes the choice of representation to exclude trade unions other than the ACFTU. Nor does CSC9000T provide scope for parallel means of independent and free association and bargaining, where the right to freedom of association and collective bargaining are restricted under law (as in China). It does, though, stipulate that all employees may join or organise trade unions and that trade union representatives may not be obstructed or restricted in carrying out their duties.

114. A major difference between the CSC9000T and the OECD Guidelines for Multinational Enterprises is the omission from CSC9000T of any requirement to ensure and monitor compliance on the part of suppliers and sub-contractors.

115. CSC9000T is intended as a national standard which will satisfy demands from external purchasers for more responsible conduct on the part of Chinese textile exporters. It is also largely limited

⁷³ For example, China Enterprise Confederation (2004).

⁷⁴ China National Textile and Apparel Council (2005).

to encouraging compliance with legal obligations and does not reference societal expectations in addition to those obligations. It may therefore be regarded as a halfway house towards adopting an internationally-recognised standard such as the OECD Guidelines for Multinational Enterprises.

Findings of the OECD research mission to Guangdong factories engaged in implementing CSC9000T

116. In November 2007 the OECD conducted a research mission to a number of textile factories in the South China province of Guangdong, adjoining Hong Kong. These factories are preparing to implement—and in one case have already started to implement—CSC9000T. All are part of the China National Textile and Apparel Council (CNTAC) 10+100+1,000 programme, which began in May 2007. This programme is explained in Annex 3, which contains a fuller account of the research mission findings.

117. The factories were selected by CNTAC as examples of good practice. The workplaces all appeared well-equipped, clean and highly organised. Nevertheless, even these factories did not all comply fully with existing law, let alone RBC standards embodying societal expectations above the law. From this small sample it was clear that there are examples of Chinese enterprises that can be held up as models of good practice in some respects, while in other respects there is room for improvement.

Measures to promote women's rights and gender equality

118. The Chinese government has taken numerous measures to promote sex equality,⁷⁵ starting with the Marriage Law of 1950 that abolished the “feudal” marriage system, which allowed polygamy, concubinage, child betrothal and other abuses, with one embodying free choice of partners, monogamy, equal rights for both sexes and protection of the lawful interests of women and children. Efforts to achieve equality were given further impetus with the adoption of an *Outline for the Development of Chinese Women (1995-2000)* based on the Platform for Action approved at the Fourth UN World Conference on Women held in Beijing in 1995. In 2001 the government further adopted an *Outline for the Development of Chinese Women (2001-2010)* designed to meet the requirements of the United Nations Millennium Development Goals. The 2001 *Outline* sets 34 major goals and 100 policies and measures in six fields: women and the economy; women's participation in decision-making and administration; women and education; women and health; women and the law; and women and the environment.

119. Despite these measures, the traditional prejudice against girls, motivated by economic considerations, persists, and is practised from, or even before, birth. The one-child family policy practised since 1980 has led in rural areas to a revival of female infanticide, and more recently, following the introduction of ultrascanning technology, to abortions of female foetuses. As a result, in 2005, boys aged 0-4 years outnumbered girls by 22.7%.⁷⁶ Prejudice against girls is manifested in differential access to education, particularly in rural areas. In the 2005 1% national sample population survey, women accounted for 49.8% of the total population over six years old, while making up 72.7% of those with no education whatsoever, 51.2% of those with primary school education, 45.5% of those with junior secondary education, 43.2% of those with senior secondary education and 42.7% of those with tertiary education. The sample survey also showed that 73.6% of illiterates were women. Even in the largely urban municipality of Beijing, 71.5% of illiterates were women.⁷⁷

⁷⁵ Details are in a government *White Paper on Gender Equality and Women's Development in China* published in August 2005 and available at <http://www.humanrights.cn> .

⁷⁶ National Bureau of Statistics web site.

⁷⁷ National Bureau of Statistics web site.

120. Sexual discrimination subsequently extends from education to the workplace. Surveys of women graduates in China in recent years suggest that sexual discrimination in recruitment remains widespread. Many employers openly state that they prefer to hire men, even in published job advertisements. For example, a random search for jobs in all categories in all areas of China on the recruitment web site zhaopin.com on 9 October 2007 with the search item “male sex” (*nánxìng* 男性) resulted in 7,777 results, most of them citing “men only”, “males required” or similar limitations. This is a small but nonetheless significant proportion of the advertisements on the site: when the search item “work” was input, there were 183,624 results. Other employers do not state a preference, but discriminate against women in practice. Hiring rates for female graduates are below those for males, and women generally earn less than men in the same jobs.

121. A 2001 joint survey of 48,192 people throughout China by the All-China Women’s Federation and the National Bureau of Statistics found that Chinese women’s social status was still lower than that of men. The survey included separate questionnaires for four groups consisting of migrant women farmers, women entrepreneurs, women workers in state-owned enterprises and women from minority nationalities. The survey found women to have a lower employment rate than men and more difficulty finding another job after being laid off. It also noted an increasing gap between the average wages of women and men. The survey found that girls in rural areas were less likely to receive education than boys. According to the survey, women still performed 85% of household duties.⁷⁸

122. According to a survey published in 2007 of several hundred women conducted by the South-West University of Political Science and Law, nearly 70% of Chinese women college graduates face sexual discrimination when applying for employment. The survey found that many employers ask only for male applicants in advertisements; others who do not advertise a gender preference refuse in practice to interview female applicants. Such discrimination was found to be worst in government organs, state institutions and state-owned enterprises. Most respondents chose to tolerate the discrimination, according to the survey. A survey conducted by the Ministry of Labour and Social Security, which covered 62 cities, shows that 67% of employers set gender restrictions against women or required in employment contracts that female employees don’t become pregnant for a certain number of years.⁷⁹

Measures to promote children’s rights⁸⁰

123. China ratified ILO Convention 138 on the minimum age of work in 1999 and Convention 182 on the worst forms of child labour in 2002.⁸¹ Regulations that took effect on 1 December 2002 ban the employment of children under the age of 16 years, imposing fines for violations and requiring employers to check workers’ identification cards for age. There are other indications that China is increasingly willing to address the issue of child labour. During the consideration by the United Nations Committee on the Rights of the Child of China’s second report in September 2005, there was official recognition that there were children in need of special protection measures, including street children, children of migrants and those vulnerable to trafficking. China still faces multiple challenges in child protection owing to visible disparities between urban and rural areas and a traditional culture favouring boys over girls. Since the proportion of children working is low, the challenge is to reach out and identify the isolated pockets of child labour. One group that is receiving greater attention are the children of migrant workers left behind with family members or those living with their parents in cities but not necessarily having access to

⁷⁸. People’s Daily, 4 September 2001

⁷⁹. Xinhua News Agency, 18 January 2007.

⁸⁰ The OECD Guidelines for Multinational Enterprises encourage enterprises to contribute to the effective abolition of child labour.

⁸¹ ILO web site, <http://www.ilo.org>, especially ILO (2006), from which the material in this paragraph is taken.

education. Moreover, the problem of child labour may spread with the rapid growth of labour-intensive industries. The International Programme on the Elimination of Child Labour (IPEC), launched in 1992, has been working in Yunnan Province since 2000 as part of the Mekong sub-regional project to combat trafficking in children and women and in 2004 launched a new project to prevent trafficking in girls and young women for labour exploitation within China. China was also represented at the first regional capacity building training course on child labour data collection organized by the ILO, together with the inter-agency research project Understanding Children's Work (UCW), held in Bangkok in November 2004. This reflects a growing willingness by China to learn from experience in other countries.

Measures to protect the environment and promote sustainable development

The 11th Five-Year Plan for National Economic and Social Development⁸²

124. The Chinese authorities replaced the system of central planning of production by one of "socialist market economy" in 1994. Five-year plans are now indicative, setting general goals for the whole economy that no longer involve annual production targets for enterprises. The 11th Five-Year Plan, covering 2006-2010, is intended to clarify the national strategic intention, define the key emphasis in government work and guide the behaviour of market participants. It is frequently referred to as a "five-year guidance" to distinguish it from earlier mandatory plans.

125. The 11th Five-Year Plan gives a higher priority to sustainable development than earlier plans and specifies more, and stricter, targets for energy conservation and environmental protection.

126. Drafters of the 11th Plan note persistent difficulties, including: shortages of farmland, fresh water, energy and other important mineral resources; vulnerability of ecosystems; irrational economic structure; rural issues; unemployment; and the weakness of China's independent scientific and technological innovative capacity. They also identify new major problems that emerged during the 10th Five-Year Plan period (2001-2005) as: a lack of co-ordination between investment and consumption; "blind" expansion of some industries, leading to superfluous capacity; slow transformation of economic growth mode (see below); excessive energy resource consumption; aggravated environmental pollution; and a continuous widening of the development gap between urban and rural areas and between regions, and a widening of income differentials in society as a whole.

127. A major focus of the 11th Plan is on accelerating the change of "economic growth mode" to one of sustainable development by making resource conservation a basic national policy, developing a recycling economy, protecting the ecological environment, accelerating the construction of a resource-saving and environmentally friendly society, and promoting the co-ordination between economic development and population, resources and environment.

128. Another major focus is that of constructing a "harmonious society", co-ordinating the development of economy and society to promote overall human development. This involves increased emphasis on social equity and enabling all people to share the achievements of reform and development, as well as paying more attention to the construction of democratic and legal systems, while maintaining social stability and solidarity.

129. Specific targets for energy conservation and environmental protection are not more extensive in the 11th Five-Year Plan than in the 10th Plan; there are fewer quantitative targets in the 11th Plan. There are specific targets to reduce emissions of sulphur and nitrogen oxides by 10% below the 2005 figure during

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This exposition is limited to the main areas of the 11th Five-Year Plan related to sustainable development.

the period 2006-2010, but these are unlikely to be met.⁸³ Energy consumption per unit of GDP is to be reduced by 20% during this period, water consumption per unit of industrial value added is to be cut by 30% and comprehensive utilisation of industrial solid wastes to be increased to 60% from the 2005 figure of 55.8%.

130. Sustainable development targets include reducing total discharge of major pollutants by 10%, increasing forest coverage from 18.2% in 2005 to 20% by 2010 and controlling greenhouse gas emissions by an unspecified amount. Rural domestic wastes and waste water treatment is to be promoted, along with improved sanitation. Industrial solid wastes, hazardous wastes, town refuse and other pollutants are prohibited from being transferred to rural areas.

131. The energy strategy of the 11th Five-Year Plan gives priority to conservation, but is based on coal, which has hitherto been a major source of both pollution and deaths from mining accidents. The 11th Plan continues the government's drive to consolidate coal production in a few large mines with a production capacity of 100 million tonnes and close down the numerous small and dangerous mines. Clean production and utilisation are encouraged, for example through coal liquefaction.

132. The emphasis in thermal power development is on large-scale, high-efficiency environmental protection units, using clean coal in 60MW fluidised bed power plants and integrated coal gasification gas-steam combined cycle power plants, as well as natural gas power plants. The elimination of small and backward thermal power units is to be accelerated. Several large hydropower projects are to be developed on the basis of ecological protection and proper resettlement of affected residents, environmental governance, flood prevention and navigation. Pumped storage stations are also planned. Nuclear power is also to be expanded, using advanced pressurised water reactors.

133. The production and consumption of renewable energy resources is to be encouraged by preferential financial, taxation and investment policies and by mandatory market share policies. The 11th Five-Year Plan includes the construction of 30 large-scale wind power generation projects of over 100,000kw each and the formation of wind power generation bases of one million kilowatts in several provinces. The development of biomass energy is to be accelerated and the use of stalks, waste incineration, bio-diesel and ethanol in power stations promoted. By 2010, installed wind power generating capacity is planned to reach 5 million kilowatts and biomass power generating capacity 5.5 million kilowatts. Solar, geothermal and ocean energy will also be developed.

134. Raw materials industries are required to reduce consumption and pollution, upgrade product quality and increase the industrial concentration ratio. The iron and steel industry is particularly urged to restructure to eliminate overcapacity and backward technology, equipment and products so that it can use less energy and less waste, including by increased waste recycling. The building materials industry is encouraged to develop energy efficient and environmentally friendly new building materials, insulation materials and green decoration materials. Light industries, including textiles, are encouraged to innovate with new technologies so as to reduce water consumption and pollution discharges.

135. Infrastructure construction plans are also guided by principles of sustainable development. While continuing to expand road and rail transport networks, the 11th Five-Year Plan gives priority to the development of public transport, making rail the preferred mode of transport. Urban water supply and drainage is to be made safer and based more on recycling.

136. While areas where resource environmental bearing capacity is relatively strong are designated as key development zones, others are restricted development zones where activities such as logging and

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See China Council for International Co-operation on Environment and Development (2007) for details.

reclamation are prohibited and afforestation, headwater conservation, wildlife protection and/or other measures are required. The Plan also makes provision for prohibited development zones, including national nature reserves, 31 world cultural and natural heritage sites, natural key famous scenic sites and natural forest parks. The maintenance and development of the various zones is to be supported by financial, investment, industrial, land and population management policies.

Box 8. The 2007 Government Work Report: re-orienting China's growth strategy

In his annual report on the work of the Chinese government delivered at the opening of the 2007 session of the National People's Congress,⁸⁴ Premier Wen Jiabao reiterated the government's basic approach, including the building of a harmonious socialist society, the strengthening of resource conservation and environmental protection, the promotion of social development and the resolution of issues related to the people's well-being. In outlining major policies for 2007, he stated that the government needed to improve the quality and efficiency of economic growth by attaching greater importance to saving energy and resources, protecting the environment and using land intensively, pay close attention to improving product quality, strengthen the competitiveness of the economy and better ensure the sustainability of economic development. He also stressed the need to put people first, promote faster progress in social programmes, work energetically to solve the most practical problems of greatest concern to the people and most directly affect their interests, safeguard social fairness and justice, and ensure that all of the people share in the fruits of reform and development.

Environmental conservation is at the heart of a new economic strategy described in Premier Wen's report, which stresses that: "We must make conserving energy, decreasing energy consumption, protecting the environment and using land intensively the breakthrough point and main fulcrum for changing the pattern of economic growth." The main elements of this strategy are:

- A tightening of energy consumption and environmental protection standards, including compulsory environmental impact assessments and closure of enterprises that do not meet standards after corrective steps have been taken.
- Resolute closure of backward production facilities, including thermal power plants, iron foundries, steel mills and facilities in the cement, electrolytic aluminium, ferrous alloy, coke and calcium carbide industries.
- Concentration on key industries and enterprises, especially key energy-saving projects such as upgraded boilers and furnaces, combined heat and power facilities, and urban public transport systems
- Giving full play to the role of the market and using price reforms, government finance, taxation and credits to promote energy saving and environmental protection.
- Accelerated development of energy-saving and environmentally-friendly technologies, stressing comprehensive resource utilisation, clean production and recycling.
- Bringing pollution under control and protecting the environment, using government funds to build urban sewage treatment and waste disposal facilities. The government will prohibit the relocation of urban polluting enterprises and dispersal of urban polluting materials in the countryside.
- Strengthening oversight and management of compliance with the law.
- Implementation of a responsibility system for fulfilling energy-saving and environmental protection targets.

Premier Wen stressed that these policies were not just for the government to apply. "We strongly advocate," he said, "conservation-oriented, environmentally friendly and civilised patterns of production and consumption throughout society so that conserving resources and protecting the environment become second nature for every enterprise, village, organisation and individual member of society. We need to work hard to build a resource-conserving and environmentally friendly society."

137. While the central government has a well-defined strategy on environmental protection and has evidently allocated it a high priority, implementation at local level lags far behind. The 2007 *OECD Environmental Performance Review of China* states: "Overall, environmental efforts have lacked effectiveness and efficiency, largely as a result of an *implementation gap*". It points out that "The biggest obstacles to environmental policy implementation are at the *local level*". The *Review* makes over fifty

⁸⁴. Wen Jiabao, Report on the Work of the Government, Delivered at the Fifth Session of the Tenth National People's Congress on 5 March 2007.

recommendations for improving implementation, all of which have been accepted by the Chinese government.

138. To the extent that environmental problems are linked to industrial activity, enterprises can play an important role in implementing environmental policies—although RBC complements, and cannot be a substitute for, effective government action. For enterprises to play this role, appropriate incentives are needed. Incentives could be provided by using mechanisms like public disclosure of environmental information to mobilise community pressure on enterprises, and prizes and awards for good corporate environmental practices. Internationally there are both positive and negative incentives. RBC in the environmental sphere can enhance the brand and sales, and provide some competitive advantage. Conversely, sales and reputation can be damaged by poor environmental practices overseas when highlighted by NGOs and the media.

139. The 2007 *OECD Environmental Performance Review of China* points out that "In general the environmental awareness and performance of domestic Chinese enterprises is weak. Exposure to foreign markets with well-established environmental regimes, and commerce with multinational companies based in China that have strong corporate environmental policies, are probably the main drivers at this time".

140. Chinese companies have started to respond positively to national initiatives in the area of environmental protection and energy conservation. The government has implemented a variety of approaches to promote cleaner production and adoption of environmental management systems. These provide win-win opportunities to save costs by using energy and materials more efficiently, thereby decreasing pollution. Some 8,000 Chinese companies have been certified under the ISO 14001 environmental management system, the second highest number after Japan.⁸⁵

141. The *Review* also recognises the dramatic increase in China's engagement with other countries in addressing environmental challenges, reflecting a growing recognition across the spectrum of Chinese institutions of the important economic, social and ecological stakes that China has in meeting these challenges, and also of its shared interests with the international community. China is now an active, constructive participant in a broad array of regional and global economic conventions, institutions and programmes, and is drawing heavily on international financial institutions and special mechanisms to augment its own resources and ensure that China's international commitments are met.

Measures to ensure product safety

142. Reacting to strong criticism in overseas markets (see above), the Chinese government has recently strengthened regulations to ensure product safety. The State Food and Drug Administration announced in July that from September 2007, all food exported from China must carry an inspection and quarantine symbol to guarantee safety. Small-scale producers will also have to take measures to meet hygiene standards or face closure. At the same time, the government has banned the use of diethylene glycol in toothpaste.⁸⁶

The development of civil society in China

143. During the period of economic reform that began in 1978, economic decentralisation has been accompanied by a partial loosening of the control exercised by the party-state over society since the establishment of the People's Republic of China in 1949. This is particularly evident in the relaxing of controls on individual consumption as a result of both policy change and a widening of consumer choice

⁸⁵ For details, see OECD (2007a), pp. 213-4.

⁸⁶ *China Economic Review*, 12 July 2007.

resulting from rapid GDP growth. However, the reluctance of the country's leaders to cede power has ensured that the development of autonomous social organisations has not kept pace with the proliferation and expansion of productive units.

144. In recent years academic discourse in China began to include discussion of the application of the concept of “civil society” to China in the 1990s.⁸⁷ Government consideration of the positive role of a “third sector” (i.e. non-government, non-business) stemmed from various motivations, including a recognition of the role of professional associations, a need to hive off functions to streamline the government, and a desire to recruit “social forces” (*shèhuì lìliang* 社会力量) to help fill gaps in social services provision.⁸⁸ Favourable mention of the development of “civil society” (*gōngmín shèhuì* 公民社会 or *shìmín shèhuì* 市民社会) in the media appeared in the period of preparation for the 17th National Congress of the Communist Party of China in 2007, when this began to be cited as the basis for constructing a harmonious society.⁸⁹

145. Over the past two decades a parastatal non-profit sector has been created by the central authorities to advance charitable, research, information and policy objectives. These are commonly referred to as “government organised NGOs” (GONGOs).⁹⁰ While not wholly independent of government, many are sufficiently removed from it to be able to play an advocacy role on behalf of interest groups. They often also provide access to international non-governmental fora. One commentator notes that they are “steadily acquiring a more independent identity and developing a sense of themselves as belonging to a distinctive, non-government community” and notes that the government evidently wants them to become financially independent, as it is “progressively withdrawing budgetary support and hidden subsidies from many organisations”.⁹¹

146. In addition to NGOs there are ad hoc groupings formed around specific issues. While these do not have the authority of official or semi-official bodies, they may have a strength of purpose and rationale that enable them to affect public policy. This is particularly the case with regard to environmental issues, where the government allows significant room for criticism and dissent in the media. For example, in June 2007 a campaign to block the construction by a Chinese Taipei owned company of a large plant to produce P-Xylene, a carcinogenic chemical, near a residential sector of the South China city of Xiamen succeeded after the project location was criticised by an academician of the Chinese Academy of Sciences and another 104 members of the Chinese People's Political Consultative Conference (CPPCC) and by 10,000 people who attended a demonstration in Xiamen. The local government effectively cancelled the project, which was estimated as potentially increasing Xiamen's GDP by approximately 70%.⁹²

⁸⁷ Brook and Frolic (1997) and China Development Brief (2001).

⁸⁸ China Development Brief (2001).

⁸⁹ For example, 和谐社会须以公民社会为根基 (Take Civil Society as the Foundation of a Harmonious Society), www.sina.com.cn 11 October 2006.

⁹⁰ China Development Brief (2001). The term used in official Chinese media is “official-run people's organisations (*guanban minjian zuzhi* 官办民间组织).

⁹¹ China Development Brief (2001).

⁹² *China Daily* 30 May 2007.

Promotion of communication on RBC and protecting the rights framework

Q 7.2. What steps does the government take to promote communication on expected responsible business conduct to investors? How does the government endeavour to protect the rights framework that underpins effective communication?

147. Law-making is the key channel for communicating societal expectations to companies, thus creating a stable, predictable environment conducive to investment. Expectations concerning responsible business conduct are also communicated through a multitude of other channels and these also affect the quality of the investment environment. Such communication can take place within the workplace, with local communities, with trade unions in the course of industrial relations and collective bargaining, through discussions with investors, dialogue with other civil society organisations, via the press and so forth. These two-way communication channels provide inputs that can be valuable for setting company policies and evaluating performance. These other channels complement the information communicated to companies through formal legal and regulatory processes.

148. Governments play several roles in ensuring that these other communication processes work well. While the protection of human rights (e.g. political, social, civil, labour and property) is a fundamental objective in itself, it is also a precondition for effective communication to take place. This removes threats of rights violations so that many voices, including those of investors, can be heard. Thus, the protection of the rights framework is a key responsibility of governments.

149. The Company Law of the People's Republic of China stipulates that companies shall protect the lawful rights and interests of their employees, conclude employment contracts with the employees, contribute to social insurance, and strengthen labour protection so as to realise safe production. It also requires companies to reinforce vocational education and in-service training of employees.

150. The Company Law supports the right of employees of a company to organise a trade union to carry out union activities and safeguard the lawful rights and interests of the employees according to the Labour Union Law of the People's Republic of China. Companies are required to provide the necessary conditions for trade union to conduct their activities. The Company Law entrusts trade unions to conclude collective contracts with companies on behalf of employees on remuneration, working hours, welfare, insurance, work safety and sanitation, and other matters. Pursuant to the Constitution and other relevant laws, the Company Law states that a company shall implement democratic management in the form of meeting of the representatives of the employees or any other ways. Companies shall solicit the opinion of trade unions before making decisions on restructuring or any important issue related to business operation, or to formulate any important regulation, and shall solicit the opinions and proposals of the employees through the meeting of the representatives of the employees or in any other way.

Box 9. Environmental Conditions in the Lending Policies of the Export-Import Bank of China¹

The Export-Import Bank of China (China Exim Bank 中国进出口银行) is solely owned by China's central government and acts as a state policy bank responsible to the State Council (China's cabinet). It provides financial support to exports of machinery, electronic products, high-tech products, construction projects and overseas investment projects. It is also the sole lending bank for the Chinese government's concessional lending.²

China Ex-Im Bank pays a high level of attention to the environmental impact of projects which it funds, emphasising environmental monitoring and management before, during and after project implementation.

Before – Project Review. China Exim Bank considers a project's environmental impact assessment a basic requirement for project review. It requires funded projects to conduct a feasibility study on environmental impacts and obtain endorsement or approval from the recipient country's environmental administration. Projects which are harmful to the environment or are not endorsed or approved by the environmental administration will not be funded. This policy has been thoroughly implemented in the thousands of projects funded by Exim Bank.

During – Project Examination. China Exim Bank conducts regular examinations during project implementation, including examinations of the project's environmental impact. Should any unacceptable negative environmental impact occur during project implementation, China Exim Bank will require the implementing unit to take immediate remedial or preventive measures. Otherwise, it will discontinue financial support.

After – Post-Project Review. After the project has been stopped or completed, China Exim Bank will conduct a post-project review. Environmental impact assessment is an essential part of post-project review. China Exim Bank will revise measures taken before and during other similar projects on the basis of the results of the post-project review. If necessary, relevant requirements and policies will be fully revised.

Notes

1. This box includes an unofficial summary of the environmental policy guidelines of the China Export-Import Bank as supplied in May 2007 by the Bank (in Chinese) to Pacific Environment, an international NGO and member of ECA Watch, which monitors the environmental and social standards set by export credit agencies. The original text sets these guidelines in the context of a detailed list of central government policies on environmental protection by enterprises.
2. <http://english.eximbank.gov.cn>

Supporting financial and non-financial disclosure

Q 7.3 Does the government ensure that an adequate framework is in place to support the financial and non-financial disclosure that companies make about their business activities? Is this framework flexible enough to allow scope for innovation, for tailoring practices to the needs of investors and their stakeholders?

151. Clear and complete information on enterprises is important to a variety of users ranging from shareholders and the financial community to other constituencies such as employees, business partners, local communities, special interest groups and society at large. Disclosure can be a powerful tool for influencing the behaviour of companies. However, weak disclosure and non-transparent practices can contribute to unethical behaviour and to a loss of market integrity at great cost, not just to the company and its shareholders but also to the economy as a whole.⁹³ Governments can enhance the quality of the

⁹³ OECD Methodology for Assessing the Implementation of the OECD Principles of Corporate Governance (2007).

investment environment by ensuring that an adequate framework is in place, whether through legislation or self-regulation, to support clear communication of all relevant rules and guidance for both financial and non-financial disclosures. When disclosures are mandatory, governments need to ensure that the application and enforcement of these requirements is non-discriminatory. At the same time, governments should seek to avoid unnecessary regulatory burdens and to allow innovation and adaptation to particular company circumstances to take place.

152. The Chinese government has in recent years put in place a framework of laws and regulations requiring financial and non-financial disclosure by companies about their business activities. Moreover, since 2002, China has undertaken crucial reforms and initiatives to enhance both corporate governance and the management of state-owned assets of which disclosure is only a part.

153. The Securities Law of the People's Republic of China was passed by the Standing Committee of the National People's Congress on 29 December 1998 and came into force on 1 July 1999. This law sets out listing requirements that include notification of information to the securities regulator. The Securities Law was revised in 2005 and came into effect on 1 January 2006. One of the key concerns that the government sought to address with this law was to improve the accountability and performance of listed companies.

154. The Company Law of the People's Republic of China was adopted by the Standing Committee of the National People's Congress in December 1993 and revised in December 1999, August 2004 and October 2005. In 2005, significant modifications were made to the Company Law and these came into effect on 1 January 2006. One of the major objectives of the revisions was to strengthen the protection of minority shareholders' rights, clarify fiduciary duties and improve corporate governance in China. The law prescribes fixed penalties for false reporting of capital contribution, the keeping of more than one account book, making false records, concealing information in reports submitted to the authorities, not informing creditors of changes in capital, and other financial disclosure failures.

155. The Accounting Law of the People's Republic of China was adopted by the Standing Committee of the National People's Congress on 21 January 1985 and revised in December 1993 and October 1999. The 1999 revision came into force on 1 July 2000. In February 2006, the Ministry of Finance released the Accounting Standards for Business Enterprises (ASBE), consisting of 39 standards to be applied to all listed Chinese companies. The Ministry also issued 48 auditing standards for certified public accountants. The aim of this initiative is to facilitate further development of a market economy in China, raise the quality of financial information and boost investor confidence. The new ASBE standards are intended to bring Chinese accounting practices largely in line with the International Financial Accounting Standards (IFRS). Although there are concerns that these new Chinese standards do not completely replicate the IFRS as intended by the international standard setters, they have incorporated many of its key principles.

156. A "Code of Corporate Governance for Listed Companies in China" was issued by the China Securities Regulatory Commission (CSRC) and the then State Economic and Trade Commission (SETC)⁹⁴ in January 2002. This Code is based on the OECD Principles of Corporate Governance and the Chinese authorities have been taking steps to strengthen its enforcement through inspections.

157. In parallel, the 16th Communist Party Congress in late 2002 concluded that better management of state-owned assets would be one of the top priority areas for the government and a new commission, the State Assets Supervision and Administration Commission (SASAC), was set up in April 2003 to manage state-owned assets. The establishment of SASAC represents a crucial step towards separating the ownership function from the regulatory function within the Chinese administration in respect to state-

⁹⁴ The SETC disappeared when it was merged into MOFCOM in March 2003.

owned assets. As set out in the OECD Guidelines on Corporate Governance of State-Owned Enterprises, priorities for moving forward include: ensuring a level playing field with the private sector; reinforcing the ownership function within the state administration; improving the transparency of SOEs' objectives and performance; strengthening and empowering SOE boards; and providing equitable treatment of minority shareholders.

158. This is also emphasised in the Shanghai Stock Exchange's 2006 annual report on corporate governance of listed SOEs, which states that while there has been progress with improving corporate governance mechanisms in SOEs, this is mainly in form and not in substance. For example, there is still a blurred line between the role of government and enterprises. Administrative interference continues in a few key areas of corporate operations by government, outside its scope of responsibilities as the capital provider. Also, the boardroom is more of a mere formality. The problem of "insider control" still exists in some companies.

159. Key to disclosure integrity, in 2006 the Shanghai Stock Exchange released *Guidelines of the Shanghai Stock Exchange on Internal Control of Listed Companies*, which provided a guide for listed companies to establish and implement an internal control system and also placed a requirement on information disclosure regarding internal control systems. In February 2007, the CSCRC issued Measures on the Administration of Information Disclosure of Listed Companies, requiring listed companies to make institutional arrangements to strengthen corporate governance and enhance disclosure of accurate information.⁹⁵

160. However, despite these encouraging reforms on paper, stake-holders are in broad agreement that information disclosure in practice lags behind the pace of enactment and promulgation of disclosure-related rules and standards. Therefore, the quality of disclosure can not be guaranteed. For example, abusive related party transactions between listed companies and state-owned companies are widespread, leading to tunnelling and misappropriation of funds. Also, considerable financial mis-reporting aimed at tax evasion needs to be dealt with not only to ensure compliance with tax laws but also to provide a firm basis for the enforcement of social insurance provisions.

161. In order to support China in its efforts to translate policy reforms on paper into action and enforcement, the OECD-China Policy Dialogue on Corporate Governance was established in 2004. Previous meetings focused, among other issues, on corporate governance of state-owned enterprises, and the OECD Guidelines on Corporate Governance of State-Owned Enterprises were presented for the first time outside the OECD at one of these. The most recent meeting took place on 29-30 March 2007 in Shanghai. Senior representatives from the CSRC, the Shanghai Stock Exchange, the Development Research Centre of the State Council (DRC) and SASAC, and their counterparts from some OECD member countries as well as Chinese and international business leaders discussed challenges in the boardroom. The next policy dialogue meeting in the autumn of 2008 is planned to focus on transparency and disclosure, a priority issue in China. Shareholders and potential investors require access to regular, reliable and comparable information in sufficient detail for them to assess the stewardship of management, and make informed decisions about the valuation, ownership and voting of shares. Insufficient or unclear information may hamper the ability of the markets to function, increase the cost of capital and result in a poor allocation of resources.

⁹⁵ Presentation on "Recent Progress of China's Corporate Governance Reform and *China Corporate Governance Report 2006*" by Zhou Qinye, Vice President of Shanghai Stock Exchange at the OECD Steering Group on Corporate Governance in April 2007.

Supporting companies' efforts to comply with the law

Q 7.4. How can the government support companies' efforts to comply with the law?

162. Effective and transparent enforcement of the law motivates compliance in a particularly straightforward way – by creating costs for non-compliance (e.g. the costs of investigations, legal costs, fines, imprisonment and damage to reputation) and by having a "deterrent" effect. Complying with law can be a challenge and requires the knowledge of specific business circumstances and deployment of managerial expertise and of formal management systems.

163. Governments can facilitate and motivate companies' efforts by seeking out companies' views on laws and enforcement practices. They can also provide conciliation and ombudsman facilities so that investors and others have the right to complain about government decisions that they believe are unjust. In addition, governments can acknowledge and support private initiatives to enhance compliance by providing guidance on appropriate compliance management practices.

Government can strengthen RBC with effective enforcement mechanisms

164. A key feature of economic reform in China since 1978 is decentralisation of control, starting with the breaking up of the rural communes, then proceeding through enterprise autonomy to formal dismantling in the 1990s of the central planning machinery built up since 1953. But effective decentralisation can require more, not less, regulation and regulation needs to be effective. The Chinese government can still play an important role in encouraging RBC by enforcing its legislation throughout the economy. Confronted with strong government implementation of laws on, for example, labour conditions, companies are likely to respond more positively than if implementation is lax.

165. In one study of differential behaviour of a company based in Chinese Taipei with factories in both Vietnam and China, researchers found that the company operated far higher labour standards in Vietnam, where abuses were less likely to be tolerated by local government, unions were stronger and the human rights awareness of workers was higher. These findings from surveys and interviews with workers were confirmed by frank admissions from the company managers.⁹⁶

China's legal system is still at an early stage of development

166. China's legal and regulatory framework is still at a relatively early stage of development compared to those of most OECD Member countries. Before economic reforms began at the end of 1978, the country was governed at national level by decrees of the leaders of the Communist Party of China rather than by legislative enactment, although some major reforming laws, including the Marriage Law and the Labour Law, were passed in the early 1950s. The rudimentary "socialist" legal system developed in the 1950s was, along with other state institutions, undermined and largely destroyed during the Great Proletarian Cultural Revolution of 1966-1969. Consequently, by the time China's constitution was amended in 1982 to stipulate that all state organs would henceforth be subject to the rule of law, the country lacked a body of law, functioning independent courts, trained judges and lawyers.

In the past quarter of a century, strenuous efforts have been made to address legal deficiencies

167. Another constitutional amendment in 1999 further emphasised the rule of law. The current version of the state constitution, last amended in 2004, states, *inter alia*, that: the people administer state

⁹⁶ Chan and Wang (2003).

affairs and manage economic, cultural and social affairs in accordance with the law (Article 2); the People's Republic of China governs the country according to law and makes it a socialist country ruled by law (Article 5); all state organs, the armed forces, all political parties and public organisations and all enterprises and institutions must abide by the Constitution and the law (Article 5); no organisation or individual is privileged to be beyond the Constitution or the law (Article 5); the state protects the lawful rights and interests of the individual, private and other non-public sectors of the economy (Article 11); all citizens of the People's Republic of China are equal before the law (Article 33); every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and the law (Article 33).⁹⁷

168. Over the past 30 years, over 300 laws and many thousands of regulations have been promulgated in China in similar policy areas to those in OECD jurisdictions. A high proportion of these cover economic affairs. Commitments undertaken by China for its accession to the WTO at the end of 2001 resulted in a major pruning and updating of the expanded body of economic law.⁹⁸

169. Since 1978 the training of lawyers has been greatly expanded. By the end of 2002 there were 123,855 licensed lawyers in China.⁹⁹ By June 2007, there were over 119,000 practising legal practitioners, including 103,389 full-time lawyers, 6,841 part-time lawyers, 1,817 lawyers holding official positions, 733 corporate lawyers, 1,750 army lawyers, and 4,768 auxiliary lawyers. Of these, 64.6% held first degrees in law and 10,000 had postgraduate qualifications. In addition, there were also over 30,000 legal support staff. Chinese lawyers worked in 11,691 legal offices, of which 8,024 were partnerships, 1,746 were legal co-operatives and 1,742 were supported by stated funding.¹⁰⁰

170. The official media report that there are now 300,000 people working in courts at all levels, and that 180,000 of these are judges – one of the highest totals in the world.¹⁰¹ However, China's judges are notoriously under-qualified. Many were previously recruited from decommissioned military personnel or court clerks and lacked formal legal education. Until the mid-1990s, no educational qualification was needed: any Chinese citizen over the age of 23 who had not been deprived of political rights was eligible to become a judge. The Judges Law, revised in 2001, now requires judicial candidates to have a law degree or to have passed the state judicial examination.¹⁰² From 2002, all judges have been subject to professional examination, with dismissal for all who fail.¹⁰³ However, the pass rate in the judicial examination has reportedly been extremely low, at around 10%.¹⁰⁴ The continuing shortage of qualified judges has prompted analysts to suggest solutions such as the recruitment of legal academics, the appointment of circuit judges and the delegation of non-essential duties to lower ranking court officials.

⁹⁷ Chinese government web site, <http://english.gov.cn>.

⁹⁸ OECD (2005).

⁹⁹ Ministry of Justice web site, <http://www.legalinfo.gov.cn>, English section.

¹⁰⁰ Ministry of Justice web site, <http://www.legalinfo.gov.cn>, Chinese section.

¹⁰¹ *China Daily*, 1 August 2007.

¹⁰² China Law and Governance web site, <http://www.chinareview.info>.

¹⁰³ OECD (2003).

¹⁰⁴ *China Daily*, 1 August 2007.

Efforts to maintain judicial independence need to be intensified

171. A major problem confronting the Chinese central authorities in their efforts to ensure the impartial application of law nationwide has been the lack of independence of judges at local level. This problem is in part a legacy of the “rule of man” that preceded the legal development of recent decades: numerous cases reported in the Chinese media attest to the authoritarian habits that persist at township and village level, in particular in dealing with complaints against alleged illegal actions by local officials.¹⁰⁵ Another factor militating against judicial independence is the lack of legal competence of many judges (see above), which motivates them to rely on advice from influential officials, themselves often interested parties in legal actions. The President of the Supreme People’s Court, Xiao Yang, said in July 2002 that “incompetent judges” were “one of the most vital factors in judicial inequity” and that judges are frequently “viewed as civil servants who have to follow orders from superiors, which prevents them from exercising mandated legal duties”.¹⁰⁶

172. The OECD in 2003 recommended that current efforts to improve the functioning and independence of the legal system could be intensified by: training and appointing legally-qualified judges to all courts; raising the pay of judges and other key legal personnel to reduce their vulnerability to offers of bribery; enhancing the status of judges vis-à-vis local government and party officials; and establishing at national and regional level mechanisms to guarantee the execution of court judgments.¹⁰⁷ It remains to be determined how far these actions have been taken and to what extent they have been effective.

Consultation on draft laws is improving...

173. The Chinese government has begun to consult companies, including foreign invested-enterprises, in drafting and implementing legislation. In earlier years, such consultation has not always been timely, complete and effective. The OECD recommended in 2003 that China increase the scope of stakeholder consultation with regard to FDI-related legislation, starting with more consistent and comprehensive consultation involving all major players in an industry and moving towards an open public debate on proposed legislation.¹⁰⁸

174. The most recent such legislation, the Labour Contract Law (detailed above), was released for public comment on 20 March 2006, over a year before it was passed on 29 June 2007. By 20 April 2006, the government had received 191,849 comments, over 65% of them from “ordinary workers”, according to the official media.¹⁰⁹ More comments – some of them adverse – were subsequently submitted from a wide range of stakeholders, including detailed proposals from foreign chambers of commerce in Beijing. The final version of the law included amendments that responded to the concerns expressed so effectively that it was welcomed by some of the strongest critics of the draft law. This procedure is a major step towards achieving legislative transparency and should be regarded as a provisional benchmark against which to measure the transparency of future law-making.

¹⁰⁵ See, for example, the egregious examples investigated in Anhui province, in Chen Guidi and Wu Chuntao (2006).

¹⁰⁶ OECD (2003).

¹⁰⁷ OECD (2003).

¹⁰⁸ OECD (2003).

¹⁰⁹ Xinhua, 22 April 2006.

...and measures are being taken to make government more open

175. This approach is consistent with the Chinese government's recent active espousal of more open government. On 24 April 2007 the State Council (China's cabinet) issued Decree 492, the *People's Republic of China Ordinance on Openness of Government Information*, which will go into effect on 1 May 2008. This aim of the ordinance is to ensure that "citizens, legal persons and other organisations may obtain government information in accordance with the law, to raise the transparency of government work, promote legal governance, and thoroughly bring into play the service function of government information in the productivity and lives of the masses and in economic and social events." Government at all levels is charged with setting up comprehensive systems to ensure such openness. State organs should "keep to the principles of impartiality, fairness and convenience for citizens in openness of government information" and "release government information in a timely and accurate manner". Detailed procedures for the release of such information are listed in the ordinance.¹¹⁰

Conciliation and arbitration procedures are available in China

176. The Chinese legal system contains an element of conciliation that is not present in many other jurisdictions. Although litigation is becoming more common in Chinese society, usage of local conciliation procedures remains popular, since it offers a quicker, cheaper and less vituperative method of dispute resolution.¹¹¹ However, the cases concerned tend to be limited to the domestic sphere. Of the 4,486,825 cases handled by local mediation committees in 2005, 23.4% were family disputes, 18.7% were neighbour disputes, 8.7% were in the area of housing and housing sites and 7.4% involved compensation for damage.¹¹²

177. A more specific conciliation procedure is available for disputes relating to the economy, trade, finance, security, investment, intellectual property, technology transfer, real estate, construction contracts, transport, insurance and other commercial and maritime business. In 1987 the China Council for Promotion of International Trade (CCPIT) and the China Chamber of International Commerce (CCOIC) set up the CCPIT Conciliation Centre in Beijing for this purpose and in the 1990s this was expanded to form a national network of over 30 conciliation centres. Such centres are not restricted to cases involving foreign investors or enterprises. The CCPIT Conciliation Centre has signed co-operation agreements with similar centres outside China, including the Hamburg and New York centres. In 1995 it joined the International Federation of Commercial Arbitration Institutions (IFCAI) and in 1997 it joined the London Court of International Arbitration (LCIA).¹¹³

178. Disputes that are international or "foreign-related", or are between a foreign-invested enterprise (FIE) and another FIE or between an FIE and a Chinese legal person, or involve the use by Chinese legal persons of foreign capital, technology or services, may be taken to the China International Economic and Trade Arbitration Commission (CIETAC). Arbitration can also be carried out through an arbitration agency in the country where the sued party is located or in a third country. China is a member of the International Centre for the Settlement of Investment Disputes (ICSID), so arbitral awards by ICSID in disputes involving China and the 135 other contracting states can be enforced under the terms of the United

¹¹⁰ Xinhua, 24 April 2007.

¹¹¹ OECD (2003).

¹¹² China Statistical Yearbook, 2006 edition.

¹¹³ OECD (2003).

Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which China joined in 1987 (for commercial disputes only).¹¹⁴

179. Local centres established under such bodies as municipal service centres for foreign investment and municipal foreign economic and trade committees deal with complaints against government departments. These appear to be becoming more systematic. Under this system, local governments down to county level are charged with setting up centres to handle complaints from FIEs and report them to the municipal centre within three days of receiving them. There are similar time limits for dealing with or otherwise handling such complaints, and the complainant must be informed of the result within 15 days.¹¹⁵

The Chinese government is using “CSR” as a tool to support legal compliance

180. The Chinese government has developed a substantial body of law relating to enterprise responsibilities. In endeavouring to ensure implementation of such laws, the government, as well as using available tools of line management, engages in extensive media publicity to mobilise public support. In recent years, an additional weapon in the government’s armoury is the campaign to encourage enterprises to behave responsibly. For example, the CSR initiative of the Ministry of Health is designed to make enterprises comply with health and safety law.¹¹⁶

Strengthening the business case for responsible business conduct

Q 7.5. How does the government through partnership (e.g. by participating in the development of standards that lower costs of designing responsible business policies) and through promotion (e.g. by improving the information on responsible business practices to customers and the public) help to strengthen the business case for responsible business conduct?

181. The ‘business case’ for responsible behaviour is often clear-cut. For example, environmentally friendly production processes can decrease costs. Likewise, careful control of labour practices in supply chains can boost productivity at production sites and protect brand capital in consumer markets (i.e. it can improve profitability and help the company to manage business risks). The existence of a business case depends very much on particular circumstances (for example, the desire to protect brand capital would not be relevant for companies positioned in non-branded market segments). To the extent that the business case exists, private initiatives are self-enforcing (that is, government intervention is not required to make them happen).

182. Governments can act to reinforce the business case by providing information about responsible practices (e.g. good performance in the environmental field) and by lowering the costs of developing and adopting responsible practices, such as through support for industry initiatives (e.g. the International Association of Oil and Gas Producers Guidelines on Reputational Due Diligence). They can also promote internationally accepted concepts and principles, such as those embodied in the OECD Guidelines for Multinational Enterprises. The numerous initiatives and experiences of governments aimed at developing closer partnerships with investors on issues relating to the promotion of responsible business conduct, including through their purchasing, contracting and other business relations with private companies, provide a rich source of policy guidance.

¹¹⁴ OECD (2003).

¹¹⁵ OECD (2003).

¹¹⁶ Speech by Minister of Health Gao Qiang at the Global Corporate Responsibility Forum in Beijing, 22 February 2006.

183. A number of leading Chinese experts reporting to government emphasise the business case for RBC.

184. Professor Wang Zhile (王志乐), director of the Research Centre on Transnational Corporations in the Chinese Academy of International Trade and International Co-operation (CAITEC) belonging to the Ministry of Commerce (MOFCOM), has written and spoken extensively on the need to develop “soft competitiveness” (*ruǎn jìngzhēnglì* 软竞争力), following a study launched in 2003 involving visits to the headquarters of over 30 transnational corporations based in Japan, Korea, Europe and the US and to 30 Chinese transnational corporation headquarters, and the holding of three seminars in China attended by more than 80 world-renowned transnational corporations with branches or subsidiaries in China.¹¹⁷

185. Professor Wang describes the “first enhancement” of Chinese corporations: that of introducing hardware facilities, as taking place from the 1980s to the early 1990s. In this period, he says, many of them imported a great number of technologies, products, equipment and production lines from other countries. The “second enhancement”, from the early 1990s, focused on the establishment of a modern corporate system. Meanwhile, a large group of transnational corporations set up foreign-funded businesses in China, offering a demonstration for Chinese corporations in building modern corporate systems.

186. Since China’s accession to the WTO in 2001, says Professor Wang, Chinese corporations have commenced the “third enhancement”, strengthening corporate philosophy, i.e. “to improve corporate responsibility philosophy and ethical level to be a responsible corporation”.

187. As a result of his study of OECD-based transnational corporations, Professor Wang identifies advantages of companies that implement RBC strategies as being that “companies with advanced ideas”:¹¹⁸

- Are more likely to attract top talents, who would prefer working for employers with better ideas than for those with “inequitable conduct”.
- Are more likely to promote employee loyalty and to encourage initiative and creativity in their employees.
- Are more likely to get support from investors and financial institutions, thereby accessing more stable and lower-cost capital.
- Are more likely to build good relationships with suppliers and customers, thus gaining stable and large profits.
- Are more likely to build mutual trust with the public and with host governments, rewarding them with more understanding and support.

188. Yin Gefei (殷格非), Vice President of the WTO Tribune, also under MOFCOM, speaks of the concept of Responsible Competitiveness,¹¹⁹ in which a company actively integrates social and environmental issues into its business operation, not only to satisfy stakeholder demands, but also increase its competitive advantage.¹²⁰ His book (with colleagues) on this subject contains case studies in the areas of

¹¹⁷ Wang (2006). The book’s main argument is summarised in the next two paragraphs.

¹¹⁸ Wang (2006).

¹¹⁹ Yin (2006b).

¹²⁰ Yin Gefei, Vice President of the WTO Tribune, GTZ 7th Round Table on Social Standards and CSR in China, *From CSR in China to Chinese CSR*, 15 November 2006, Beijing.

environmental protection, sustainable products and services, recycling economy and conservation economy, protection of customer and consumer rights and interests, maintaining employees' rights and interests, stakeholder engagement, "supporting the bottom of the pyramid" and CSR management systems. The enterprises examined include both Chinese and foreign companies.¹²¹ Mr. Yin and his colleagues recognise that while in China RBC (CSR) is often considered to be limited to legal compliance, in other countries it is divided into two levels, legal compliance and compliance with societal expectations beyond the law.¹²²

Participation in inter-governmental co-operation to promote responsible business conduct

Q 7.6. Does the government participate in inter-governmental co-operation in order to promote agreed concepts and principles for responsible business conduct, such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies and the United Nations Global Compact?

189. Governments are co-operating with each other and with other actors to strengthen the international legal and policy framework in which business is conducted. The post-war period has seen the development of the framework, starting with the adoption in the 1948 of the Universal Declaration of Human Rights. Multilateral instruments dealing with responsible business conduct, such as the OECD Guidelines, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies and the United Nations Global Compact, draw on this broader framework of international declarations and conventions. They communicate and promote agreed concepts and principles for appropriate business conduct. Forty countries have committed to promoting responsible business conduct of their multinational enterprises – wherever they operate in the world – under the OECD Guidelines for Multinational Enterprises. While the Guidelines recommendations are addressed to business, governments through their network of National Contact Points are responsible for promoting the Guidelines, handling enquiries and helping to resolve issues that arise in specific instances. OECD has encouraged non-Member economies to adhere to the OECD Declaration on International Investment and Multinational Enterprises, which the OECD Guidelines are part of.

190. By promoting inter-governmental co-operation in this field, governments can help to broaden awareness of basic principles for appropriate conduct. Increased global acceptance of common principles for business conduct also helps to reduce the likelihood that observing appropriate responsible business conduct principles could become a competitive disadvantage for investors.

¹²¹ Yin (2006b).

¹²² Yin (2006a).

Box 10. China's adoption of United Nations conventions

China has acceded to, signed or ratified the following United Nations conventions:

Convention on the Prevention and Punishment of the Crime of Genocide, signed 1949, ratified 1983.

International Convention on the Elimination of All Forms of Racial Discrimination, acceded 1981, with reservations.

International Covenant on Economic, Social and Cultural Rights, signed 1997, ratified 2001.

International Covenant on Civil and Political Rights, signed 1998, not yet ratified.

International Convention on the Suppression and Punishment of the Crime of Apartheid, acceded 1983.

Convention on the Elimination of All Forms of Discrimination against Women, signed and ratified 1980.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed 1986, ratified 1988.

International Convention against Apartheid in Sports, signed 1987, not yet ratified.

Convention on the Rights of the Child, signed 1990, ratified 1992.

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, signed 2001, not yet ratified.

Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, signed 2000, ratified 2002.

Slavery Convention, acceded 1937.

International Convention Against the Taking of Hostages, acceded 1993.

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, acceded 1987.

International Convention for the Suppression of Terrorist Bombings, acceded 2001.

United Nations Convention against Corruption, signed 2003, ratified 2006.

China has not acceded to, signed or ratified the following United Nations conventions:

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Convention on the Political Rights of Women.

Convention on the Nationality of Married Women.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

Convention on the International Right of Correction.

International Convention Against the Recruitment, Use, Financing and Training of Mercenaries.

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime.

China has signed a bilateral CSR agreement with Sweden

191. China has begun to enter into international commitments to encourage responsible business practices. The first of these is the Memorandum of Understanding on Corporate Responsibility Co-operation between the Ministry of Commerce of the People's Republic of China and the Ministry of Foreign Affairs of the Kingdom of Sweden signed on 10 June 2007.¹²³ This MoU expresses a shared view that “responsible business practices can facilitate social and economic development” and that “the demand for responsible business practices comes from many social quarters, including governments, consumers, business partners, shareholders, investors, employees, societal actors, etc. and as such is an important part of strengthening competitiveness”. The MoU seeks “long-term, socially and environmentally sustainable and cost-effective solutions in addressing these issues through international co-operation and joint activities”. It commits China and Sweden to conducting dialogues and exchanges of experience involving companies, national and local governments, and academic and research institutions.

The Chinese government is working with the ILO on labour standards

192. The Chinese government is working with the International Labour Organisation (ILO) on a range of labour issues, but has not committed itself to observe all ILO standards. The ILO works mainly with the WTO Department of the Ministry of Commerce (MOFCOM) and the Ministry of Labour and Social Security (MOLSS). It is also developing tools with UNIDO for training factory managers in China's textiles sector designed to improve CSR capacity building and factory management; after testing in this sector, the training material will later be used in other sectors. The ILO promotes its own standards in China and also exchanges information on other standards, including CSC9000T.¹²⁴

193. China has ratified four out of the eight fundamental labour Conventions of the ILO identified in the 1998 Declaration on Fundamental Principles and Rights at Work.¹²⁵ These are Conventions 138 and 182 on the abolition of child labour and Conventions 100 and 111 on the elimination of discrimination in respect of remuneration and employment. China has also ratified many of the other Conventions (see Table 1).

194. China has not ratified ILO Convention 87 on freedom of association and Convention 98 on the effective recognition of the right to collective bargaining. Nor has it ratified Convention 29 on the elimination of forced labour or Convention or 105 on the elimination of compulsory labour, though it has discussed adopting these conventions with the ILO. However, China notified that it would continue to respect existing ILO labour Conventions in both Hong Kong, China and Macao, China after their respective handovers to Chinese sovereignty in July 1997 and December 1999. It remains to be determined to what extent practices in both territories have been consistent with this intention.

¹²³ English version supplied by MOFCOM.

¹²⁴ OECD Secretariat discussions with ILO and UNIDO officials in Beijing, 9 and 12 April 2007.

¹²⁵ Adopted in 1998, the ILO Declaration on Fundamental Principles and Rights at Work is an expression of commitment by governments, employers' and workers' organizations to uphold basic human values. It covers four areas: freedom of association and the right to collective bargaining; the elimination of forced and compulsory labour; the abolition of child labour; the elimination of discrimination in the workplace.

Table 1. ILO Conventions ratified by China

ILO Convention	Ratification date and status
C7 Minimum Age (Sea) Convention, 1920	Ratified on 2 December 1936 Denounced on 28 April 1999
C11 Right of Association (Agriculture) Convention, 1921	Ratified on 27 April 1934
C14 Weekly Rest (Industry) Convention, 1921	Ratified on 17 May 1934
C15 Minimum Age (Trimmers and Stokers) Convention, 1921	Ratified on 2 December 1936 Denounced on 28 April 1999
C16 Medical Examination of Young Persons (Sea) Convention, 1921	Ratified on 2 December 1936
C19 Equality of Treatment (Accident Compensation) Convention, 1925	Ratified on 27 April 1934
C22 Seamen's Articles of Agreement Convention, 1926	Ratified on 2 December 1936
C23 Repatriation of Seamen Convention, 1926	Ratified on 2 December 1936
C26 Minimum Wage-Fixing Machinery Convention, 1928	Ratified on 5 May 1930
C27 Marking of Weight (Packages Transported by Vessels) Convention, 1929	Ratified on 24 June 1931
C32 Protection against Accidents (Dockers) Convention (Revised), 1932	Ratified on 30 November 1935
C45 Underground Work (Women) Convention, 1935	Ratified on 2 December 1936
C59 Minimum Age (Industry) Convention (Revised), 1937	Ratified on 21 February 1940 Denounced on 28 April 1999
C80 Final Articles Revision Convention, 1946	Ratified on 4 August 1947
C100 Equal Remuneration Convention, 1951 *	Ratified on 2 November 1990
C111 Discrimination (Employment and Occupation) Convention, 1958 *	Ratified on 12 January 2006
C122 Employment Policy Convention, 1964	Ratified on 17 December 1997
C138 Minimum Age Convention, 1973 *	Ratified on 28 April 1999
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	Ratified on 2 November 1990
C150 Labour Administration Convention, 1978	Ratified on 07 March 2002
C155 Occupational Safety and Health Convention, 1981	Ratified on 25 January 2007
C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983	Ratified on 2 February 1988
C167 Safety and Health in Construction Convention, 1988	Ratified on 7 March 2002
C170 Chemicals Convention, 1990	Ratified on 11 January 1995
C182 Worst Forms of Child Labour Convention, 1999 *	Ratified on 8 August 2002

* Fundamental Convention.

Source: ILO web site.

China is co-operating with OECD Member countries on RBC projects and meetings

195. Several bilateral RBC projects have been organised between China and OECD Member countries.

196. An early co-operative RBC project was the China State-Owned Enterprise Restructuring and Enterprise Development (SOERED) Project launched in 1999 by the United Kingdom Department for International Development (DFID) in the two Chinese provinces of Liaoning, in North East China, and Sichuan, in the West. An innovative feature of the project was its focus on developing “the concepts and practice of Corporate Social Responsibility in China”.¹²⁶ One output at the end of the project in 2004 was a reference guide in Chinese containing a compilation of RBC-relevant laws and regulations, an assessment of the progress of CSR in China, an account of China’s international agreements and activities related to CSR, Chinese CSR materials, CSR tools for enterprise managements and CSR experiences of foreign-invested enterprises in China.¹²⁷

197. The German Technical Development Cooperation (GTZ) is working with China’s Ministry of Commerce (MOFCOM) on the use of a multi-stakeholder approach to project implementation. Core activities include a research and policy dialogue to facilitate information exchange between relevant stakeholders and to identify and set priorities in addressing CSR issues. The main goal of the dialogue will be to influence policy makers to establish an enabling environment for Chinese companies to adopt more sustainable business practices. The program involves the establishment of pilot projects through a public-private partnership facility to serve as best practice case studies.¹²⁸

198. China is co-operating with the European Union (EU) in a project entitled EU-China Interdependencies on Energy and Climate Security. Project partners include the Chinese Academy of Social Sciences (CASS), the Chinese Energy Research Institute (ERI), Third Generation Environmentalism (E3G), the Institut du Développement Durable et des Relations Internationales (IDDRI), the Potsdam Institute for Climate Impacts Research (PIK), the Global Opportunities Fund (GOF) of the UK government, and the Royal Institute for International Affairs. The project is aimed at dealing with the challenges of global climate change, securing stable supplies of energy resources to advance national economic development and generating innovative market solutions to foster the potential of emerging technologies in meeting climate and energy security needs.¹²⁹

199. A number of RBC conferences and seminars have been held jointly between Chinese and OECD partners, both governmental and non-governmental, including, up to the end of 2005:¹³⁰

- September 2003, *Make Money with Moral: Seminar on Corporate Social Responsibility and Corporate Governance in China and the UK*, China Enterprise Corporation and the British Embassy in China, held in Shanghai and Beijing.
- March 2004, *Corporate Governance and Social Responsibility*, Chinese Institute of Certified Public Accountants (CICPA) and the Association of Chartered Accountants (ACCA), held in Beijing.

¹²⁶ Faint (2005).

¹²⁷ Environment and Development Research Institute (2004).

¹²⁸ Presentation of Ms. Vera Scholz, Director of the Programme Office for Social and Ecological Standards of GTZ at the GTZ 7th Round Table on Social Standards and CSR in China, *From CSR in China to Chinese CSR*, 15 November 2006, Beijing,.

¹²⁹ <http://www.eu-china-energy-climate.net>

¹³⁰ This partial list is based on that in Wang (2006). It is indicative, not exhaustive.

- September 2004, Contest of Sustainable Development Campaigns in China: Participation, Co-operation and Innovation, Economic Observer newspaper and Shell China.
- November 2004, Seminar on Social Responsibility and Corporate Interest, Sinopec Beijing Yanshan Chemical Corporation, COSCO Logistics, Tongxiang Lamp Factory, Tetrapak, IDEA, Ericsson and the Swedish Ministry of Foreign Affairs, held in Beijing.
- January 2005, *Scientific View of Development and Social Responsibility of Transnational Corporations in China*, Research Centre of Transnational Corporations of CAITEC and 100 representatives of transnational corporations, including Du Pont, Shell, Motorola and Ericsson.
- May 2005, *Social Responsibility of Transnational Corporations*, CEO Round Table, China Daily and Bayer Group, held in Beijing.
- May 2005, The Role and Responsibility of Transnational Corporations: Social and Environmental Responsibility, workshop held at the Fortune Global Forum in Beijing.
- June 2005, Forum on Strengthening Management of Global Supply Chain: Promote Strategic Capability of Chinese Suppliers, US Government, Kenan Institute of Private Enterprise and Shanghai Enterprise Council.
- June 2005, *China 'Responsible Care' Promotion Convention*, China Petroleum, Chemical Industry Association and the Association of International Chemical Manufacturers.
- September 2005, *2005 Sino-European CSR International Forum*, China WTO Tribune, CSR Europe, China International Centre for Economic and Technical Exchanges, China Institute of Industrial Relations, Institute of Chinese Economy and WTO Studies of Peking University and the China Asia-Pacific Association for Promoting Economic and Trade Co-operation, held in Beijing.
- September 2005, Corporate Citizenship Forum and Reporting Conference on 'Survey on the Development of Chinese Corporate Citizenship', China Charity Federation and China Trade News, held in Beijing.
- October 2005, CSR Forum, China Europe International Business School (CEIBS), BASF and Deutsche Bank, held in Shanghai.
- October 2005, Harmonious Society Construction and Corporate Social Responsibility International Summit, Chinese Productive Forces Academic Society.
- November 2005, Corporate Citizenship Responsibility Forum, Corporate Citizenship Committee of the China Association of Social Workers, held in Beijing.
- November 2005, Seminar on the Impact of the BASF Nanjing Project on Local Environment, Economy and Society, BASF, held in Shanghai.
- November 2005, *Global Compact Summit: China*, United Nations Global Compact, Shanghai Municipal Government and the State-owned Assets Supervision and Administration Commission (SASAC), held in Shanghai.

- December 2005, Opening Ceremony of Recycling Economy Commission and 2005 International Forum on Packaging Waste Recycling Economy, China Packaging Federation and Tetrapak.

Chinese companies are actively learning about RBC, but misunderstandings persist

200. One NGO working with Chinese companies to support the implementation of responsible business practices reported to the OECD Secretariat during the April 2007 mission that all large companies in China are aware of the need for responsible business conduct and are willing to learn from best practices abroad. This appears to be particularly the case with major state-owned enterprises (SOEs).

Chinese companies' CSR/RBC reports are at an early stage of development

201. Annual CSR/RBC reports produced by Chinese corporations are at a relatively early stage of development, so it is not surprising that they vary in quality.

202. Chinese enterprises' CSR/RBC reports usually include active initiatives that clearly contribute to the fulfilment of social and environmental goals. For example, China Mobile, which in January 2007 produced the first CSR/RBC report issued by a domestic telecommunications company in China, mentioned that it had partnered with major mobile phone makers, including Nokia and Motorola, to start a nationwide "Green Box" mobile phone recycling campaign at the end of 2005.

203. Such reports also contain elements of social responsibility which are limited to legal compliance, notably punctual tax payment.¹³¹ CNOOC, in its 2005 CSR report, stated that an important measure of contributing to society is paying tax on time and in full and that in 2005 it had paid CNY14.546 billion, of which CNY13.935 billion was paid in China. China Mobile claimed in 2007 that it had met its economic responsibilities by paying more than CNY164 billion in tax.

204. At the same time, these reports also include achievements which it is not recognised international practice to cite as CSR/RBC. For example, China Mobile, in the report cited above, state that had created 2 million jobs over the past six years and that it had increased rural telephone coverage and contributed to GDP growth. These are solid business and economic achievements, but they do not in themselves constitute responsible business conduct.

205. Corporate philanthropy continues to play a large part in annual CSR/RBC reports by major Chinese corporations. For example, the widely-praised 2005 State Grid CSR Report, which does contain important sections on such issues as environmental protection and sustainability, nevertheless largely concentrates in the chapter entitled "Be a Good Corporate Citizen" on poverty alleviation, aid to Tibet, supplying power to the 2008 Beijing Olympic Games, donating to South-East Asian tsunami relief and establishing charitable foundations and scholarships.

¹³¹ This is an internationally-standard feature of RBC norms, e.g. OECD Guidelines for Multinational Enterprises: "It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities".

Table 2. Domestic and foreign-invested enterprises reportedly publishing RBC reports in 2007

Domestic enterprises	Foreign-invested enterprises
BaoSteel	Alcoa
CHALCO	CNOOC Shell
China Mobile	Dongfeng Peugeot Citroën
CNOOC	Ford China
COSCO	Pfizer
Haier	Shell (China)
Jiangxi Mobile	Sony China
OMRON	Toshiba China
PetroChina	
PingAn Insurance	
Pudong Development Bank	
Shenyang Water Supply	
Sinochem	
State Grid	
Xizi UHC	
Zhejiang Mobile	

Source: Chinese Enterprise Confederation.

Some Chinese companies are rapidly developing an understanding of RBC issues

206. Some Chinese corporations have from the outset adhered to international standards of RBC reporting. The China Ocean Steamship Corporation (COSCO), a signatory to the United Nations Global Compact, constructed its COSCO Sustainable Development Report 2005 in line with the Global Reporting Initiative (GRI) Guidelines. This report is the only one from a Chinese domestic enterprise to date (October 2007) to be noted on the Global Compact web site as a Notable Communication on Progress (the other Notable COP listed in China is for William E. Connors, a foreign-invested enterprise). Currently (October 2007) 113 businesses and 17 non-business organisations are listed as active current Global Compact participants in China on the Global Compact web site; several others are listed as non-communicating or inactive.¹³²

Box 11. Chinese oil company activity in Peru

It was reported in October 2006 that a Chinese oil company, SAPET, exploring for oil in the Peruvian Amazon had announced that it would not enter the territory of isolated Indians, even though the land was inside its concession. SAPET was awarded the concession, known as Lot 113, in November 2005. Lot 113 was superimposed over an existing reserve for uncontacted Indians. After pressure from local Indian organisations, SAPET asked for the boundary of Lot 113 to be modified to exclude the uncontacted Indians' reserve. The Peruvian government complied with this request.¹

At the same time, Andes Petroleum, a partnership between China National Petroleum Corporation (CNPC) and Sinopec, two Chinese state-owned oil majors, was reported to be conducting a massive 3D seismic operation and considering drilling two exploratory wells in Yasuni National Park, a wildlife conservation area.²

Notes.

1. Survival web site <http://www.survival-international.org>, October 2006.
2. Yasuni Rainforest Campaign web site www.yasuni.ws, October 2006.

The Shenzhen Stock Exchange has adopted guidelines on socially responsible conduct

207. In September 2006 the Shenzhen Stock Exchange published guidelines on socially responsible conduct for listed companies (in Annex 1) and has since been actively training the 488 companies listed on the Exchange in how to apply them. As a result, 21 companies listed on the Shenzhen main board published CSR reports in 2006 and more are preparing to do so in 2007. The Exchange is currently trying to develop a social responsibility index. The new guidelines were adopted in direct response to the inclusion of responsible business conduct in the latest revision of the Company Law. References consulted in preparing the guidelines include the OECD Guidelines for Multinational Enterprises.¹³³

Chinese government and companies work with OECD-based corporations to improve practices

208. An example of co-operation on sustainable development between the Chinese central government, local governments, Chinese companies and OECD-based multinationals exists in the mining sector. The China International Mining Group (CIMG) comprises 97 foreign mining companies, mostly from OECD Member countries, operating in China.¹³⁴ The organisation is funded entirely by membership subscriptions and sponsorship from members and receives no government funding. CIMG was formed in Beijing in the 1980s and became a semi-formal organisation under the Australian Chamber of Commerce in 2002. Its original function was to press for improved market access, but its focus changed in 2005 to promoting sustainable mining. CIMG works with the Chinese government on the regulatory framework for mining in China. It produces a white paper every year on mining in China. CIMG submitted 65 suggestions for China's draft mining law. In 2006 it produced a position paper on the coal law, in collaboration with the Department of Safety of the Coal Ministry. CIMG is now working more in provinces, even in prefectures, exchanging ideas to find the "best fit" for each locality. CIMG promotes long-term investment strategies and brings together Chinese academics to produce case studies. On 23 May 2007 CIMG held an environmental dialogue with the government of Sichuan province on sustainable development in South-West China. CIMG translates into Chinese and promotes toolkits produced by its partner, the International Council of Minerals and Metals (ICMM). CIMG has increasing interaction with domestic companies. Chinese companies are only interested in foreign M&A if it increases their overseas activities. CIMG met six domestic companies in Chengdu. There is little incentive for them to adopt sustainable mining policies. Chinese local governments believe in keeping resources to themselves is better than letting foreigners exploit them, so they are buying abroad.

209. NGOs in OECD countries have frequently criticised home-country companies for not observing fair labour standards in the operations of their Chinese suppliers, although such criticism has become less strident as companies have intensified efforts to improve supplier conduct.¹³⁵ Some of the companies that have been targeted by NGOs are now among the most active in seeking to enforce RBC compliance along their supply chain. During its mission to China in April 2007, the OECD received reports from OECD-based clothing and footwear manufacturers operating RBC strategies in co-ordination with local governments in China, as well as from NGOs involved in similar initiatives.

¹³³ Information supplied to the OECD during an interview with Shenzhen Stock Exchange officials on 2 November 2007.

¹³⁴ Information in this paragraph is based on a Secretariat interview with Auslan Ishmael, General Secretary of CIMG, in Beijing on 11 April 2007.

¹³⁵ For example, Oxfam Australia (2006) chides OECD-based clothing manufacturers for not doing enough to protect workers' rights in factories operated by their suppliers in China, although it acknowledges that companies have made serious efforts to do this.

Chinese NGOs are working to improve understanding of RBC issues

210. Non-governmental organisations (NGOs) are a relatively recent phenomenon in China, where many are not yet fully independent of government or business. A report by China Development Brief in 2001 listed 250 active NGOs in China.¹³⁶ The report charted the recent development of civil society in China via the formation of a parastatal non-profit sector commonly referred to outside China as GONGOs (government organised NGOs) or SONGOs (state-owned NGOs). It suggested that such organisations may be evolving into more independent social actors as they succeed in accessing non-governmental funds, including donations from individuals, from domestic, overseas Chinese and international corporations, and from aid agencies. Many of these organisations deal directly with social and environmental problems faced by enterprises; a few work directly on RBC issues. This background report only has space to cite a few examples to illustrate the rich variety of NGOs operating in these policy areas in China.

211. The Global Environment Institute is a Chinese NGO established in Beijing in 2004 with the aim to provide market-based models for solving environmental problems in order to achieve development that is economically, ecologically and socially sustainable.¹³⁷ GEI's approach links primarily non-profit environmental conservation and community development with for-profit business management skills and market access channels. Last December GEI attended an international NGO meeting about Chinese enterprises abroad (mainly in Africa) with a focus on the extractive's industry but also including financial sector. Next step is to include more Chinese civil society organisations. A follow-up meeting will take place November 2007 in Bangkok after which more will be known about joint approach to the challenges. GEI runs project with the Chinese timber industry that operates overseas in areas such as Indonesia, Russia and Burma. In this field challenges are environmental degradation, forced migration and illegal logging. Since these companies concern state run plantations in China GEI works together with state forestry officials. This co-operation is fruitful. There is now a serious concern within the Chinese government to have a good image abroad. State forestry has developed a policy framework and guidelines, but awareness-raising is key. GEI developed training materials on these guidelines for sustainable business practice. GEI is looking for funding for project 'Balancing economic and ecological impacts of Chinese overseas enterprises. SEPA is looking more into outward investments now. Another important focus should be the financial sector and responsible investment promotion. GEI has a good relationship with Chinese government departments which welcome information sharing and learning from best practices. In general civil society in China still lacks capacity and there are hardly any funding possibilities in China. GEI partners with World Watch/ Earth Institute. Friends of Nature is the first environmental NGO in China.

212. The China water pollution map,¹³⁸ launched on 14 September 2006, is published by the China Institute of Public Environmental Affairs. It gathers together in one place fragmentary official information to map water pollution in various parts of China and publishes the names of 2,500 companies whose discharges exceed statutory levels.¹³⁹

¹³⁶ China Development Brief (2001).

¹³⁷ This paragraph is based on an interview with GEI conducted by the OECD Secretariat during its mission to China in April 2007.

¹³⁸ <http://www.ipe.org.cn>

¹³⁹ <http://www.chinadialogue.net>

IV. REMAINING CHALLENGES

213. As detailed above, the Chinese government has taken numerous measures to establish framework conditions for RBC. In recent years, it has directly encouraged enterprises to improve their conduct and is co-operating with international organisations, including the OECD, to develop policies and standards to encourage RBC. Chinese enterprises and business representative organisations have responded positively, publishing annual RBC reports and engaging in local and sectoral initiatives to improve conduct. At the same time, the Chinese government recognises that much more needs to be done.

214. Despite the widespread publicity initiated by the Chinese government, many, including large, enterprises in China are still unaware of the need for RBC. There is a general perception that RBC is an unnecessary diversion from doing business, and that short-term costs far outweigh less tangible long-term benefits.

215. The Chinese government has put major efforts into establishing corporate conduct codes, beginning with CSC9000T, that embody existing law. This is understandable, given widespread non-compliance. However, it is also important to ensure that voluntary codes also encompass societal expectations that are not limited to legal compliance.

216. Enterprise efforts to ensure RBC can be effective if RBC is built into the enterprise's operating strategy and if structures are developed to promote it. At present, even those few enterprises in China that have embraced RBC have frequently done so only to the extent of commissioning audits and/or reports designed primarily to demonstrate compliance to external stakeholders such as foreign customers or the Chinese government.

217. While legislation on framework conditions such as workers' rights and environmental protection has been greatly expanded and systematized, compliance remains problematic. Measures taken by national government are not consistently implemented at local level. Efforts to perfect the legislative framework need to be continued, but it is just as important to put in place effective enforcement and incentive measures to ensure compliance.

218. Above all, the many efforts on the part of government bodies to encourage responsible business conduct in China need to be co-ordinated more effectively. The Chinese government is reportedly establishing a single agency to be responsible for doing this. International experience suggests that such an agency can be effective if it is part of a carefully-designed structure that is accountable to society in accordance with specific national conditions.

219. The Chinese government is also understood to be preparing to announce a set of national RBC guidelines. This is an important step to support the national co-ordination initiative. China's increasing integration into the world economy will be made easier if the new guidelines are in line with internationally-recognised standards such as the OECD Guidelines for Multinational Enterprises.

ANNEX 1.

SHENZHEN STOCK EXCHANGE SOCIAL RESPONSIBILITY INSTRUCTIONS TO LISTED COMPANIES

25 September 2006¹⁴⁰

Chapter I. General Provisions

Article 1. These Instructions have been formulated in accordance with the Company Law, the Securities Law and other laws, administrative regulations and the rules of competent authorities for the purpose of implementing scientific outlook of social development, building social harmony, accelerating sustainable economic and social development and promoting commitment to social responsibilities.

Article 2. For the purpose of these Instructions, social responsibilities refer to the obligations listed companies should assume for the social development, for natural environment and resources, and for the interested parties including their shareholders, creditors, employees, customers, consumers, suppliers and communities.

Article 3. While pursuing economic results and protecting shareholders' interests, listed companies (hereinafter, Companies) should proactively protect the legitimate rights and interests of their creditors and employees, be honest and trustworthy towards their suppliers, customers and consumers, and commit themselves to social welfare services like environmental protection and community development in order to achieve social harmony.

Article 4. In business operations, Companies should follow the principles of free will, fair trade and good faith, observe moral and business ethics, and be subject to the supervision of the government and the public. They should not seek improper benefits by bribery, smuggling and other unlawful activities, nor infringe upon other people's intellectual properties like trademark, patent and copyright for the purpose of unfair competition.

Article 5. Companies shall, as required by these Instructions, perform their social responsibilities, make regular evaluation and issue voluntary disclosure on the performance.

Article 6. These Instructions apply to the companies whose shares are listed on Shenzhen Stock Exchange (hereinafter, Exchange).

Chapter II. Protection of the Interests of Shareholders and Creditors

Article 7. Companies shall improve their corporate governance structure, treat their shareholders fairly and ensure that their shareholders enjoy all the rights and interests as provided in laws, regulations and rules.

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Article 8. Companies shall select appropriate time and venue for convening the shareholders' meeting. Online voting is advocated, in a view to facilitate shareholder participation in shareholders' meeting for the exercise of their rights.

Article 9. Companies shall fulfil their information disclosure obligations in strict accordance with laws, regulations, rules and the Exchange's rules. Voluntary disclosure is advocated with respect to information that may have an impact on the decision-making of shareholders and other investors. All investors shall be treated in a fair manner. Selective disclosure is prohibited.

Article 10. Companies shall formulate long-term and consistent profit distribution policies and methods and work out viable and reasonable bonus plans in return for the shareholders.

Article 11. Companies shall ensure that they are financially sound and their assets and capital are safe. Due regards shall be paid to creditors' interest. Maximisation of shareholder interests shall not be made at the expense of creditor interests.

Article 12. In business operations and decision-making process, Companies shall give ample consideration to the legitimate rights and interests of their creditors and inform the creditors in a timely manner of the material information relating to the creditors' rights and interests. Companies shall furnish co-operation and support when the creditors seek access to Companies' financial, operational and management information for the purpose of protecting their interests.

Chapter III. Protection of Employee Interests

Article 13. Companies shall strictly abide by the Labour Law, protect the legitimate rights and interests of their employees in accordance with law, establish and improve employment systems such as remuneration and incentives, and ensure that employees enjoy their rights and fulfil their obligations.

Article 14. Companies shall respect the dignity of the employees and guarantee their legitimate rights and interests, care for them, promote harmonious and stable relations between employee and employer, and provide special labour protection to female employees in accordance with State regulations. They shall not unlawfully force employees to work, nor shall they inflict corporal punishment, physical or mental intimidation, verbal humiliation or any other form of abuse.

Article 15. Companies shall establish and improve the system of occupational safety and health, strictly implement relevant rules and standards of the State, educate the employees accordingly, provide them with healthy and safe working and living environment, minimize the chance of accidents, and reduce occupational hazards.

Article 16. Companies shall follow the principles of pay based on work and equal pay for equal work. Pay shall not be deducted or delayed without justification. It is prohibited that temporary contracts or any other disguised probation contracts be signed with employees to reduce their wages and social security.

Article 17. Companies shall not interfere with employees' freedom of religious belief. No discrimination shall be imposed regarding employment, remuneration, training, promotion, dismissal or retirement due to ethnic community, race, nationality, religious belief, gender or age.

Article 18. Companies shall establish a vocational training system, mobilise and use the funds for vocational training in accordance with State regulations, make great efforts to train employees, encourage and support on-the-job training and continuing education for the purpose of providing more career development opportunities.

Article 19. Companies shall, in accordance with the provisions in the Company Law and their articles of association, establish a system for selecting and appointing directors and supervisors from among the employees so as to ensure that employees have full rights in corporate governance. Companies shall support the trade union to conduct legitimate activities. They shall solicit opinions, through the employee representative meetings or union meetings, on matters related to the interests of employees such as wages, welfare, occupational safety and health, and social insurance and pay due regards to employees' reasonable needs.

Chapter IV. Protection of the Interests of Suppliers, Customers and Consumers

Article 20. Companies shall be honest and trustworthy towards their suppliers, customers and consumers. They shall not seek profits by means of false advertisement or promotion, nor shall they infringe upon the intellectual properties of their suppliers and customers like copyright, trademark and patent.

Article 21. Companies shall guarantee that the commodities or services they provide are safe. With regard to commodities and services that may threaten personal or property safety, a truthful explanation, plain warning as well as user instruction shall be provided.

Article 22. In case serious defects are found in the commodities and services they provide, which may impose threat on the personal or property security of customers even at proper usage, Companies shall immediately report to the competent authorities and make public announcement. In the meantime, preventive measures shall be taken against any possible damage.

Article 23. Companies shall urge their customers and suppliers to comply with business code of conduct and moral ethics or stop partnership with customers or suppliers who refuse to make improvement in this regard.

Article 24. Companies shall establish appropriate procedures to strictly monitor and prevent commercial bribes between the Companies/employees and the customers or suppliers.

Article 25. Companies shall keep confidential the personal information of their suppliers and customers and, without authorization or permission, may not use or sell such information for profit.

Article 26. Companies shall provide excellent after services and properly handle the complaints and suggestions submitted by suppliers, customers and consumers.

Chapter V. Environmental Protection and Sustainable Development

Article 27. Companies shall formulate environmental protection policies based on their impact on the environment. There shall be dedicated human resources in charge of the establishment, implementation, maintenance and improvement of their environmental protection system, and furnish necessary manpower, resources as well as technical and financial support to environmental protection.

Article 28. Companies' environment protection policies normally cover the following areas:

1. to comply with all the laws, regulations and rules that govern environmental protection;
2. to reduce resource consumption, including raw materials and fuels;
3. to reduce waste generation and make every effort to recover wastes for recycling;
4. to avoid, to the greatest extent, waste generation that pollute environment;
5. to apply environmental-friendly materials and energy-saving, waste-reducing design, technology and raw materials;

6. to minimize the adverse impact of corporate performance on environment;
7. to provide trainings to employees for the purpose of enhancing environmental protection awareness; and
8. to create an environment for sustainable development.

Article 29. Companies shall implement, as far as they can, facilities and processes that allow the greatest utilization of resources and lowest discharge of pollutants, as well as economical and rational technology for comprehensive utilization of wastes and pollutant treatment.

Article 30. Companies shall report to and file with the competent authorities regarding pollutant discharge. In case the discharge exceeds the national or regional standards, Companies shall pay a fee in accordance with the State regulations and assume the responsibility for the elimination.

Article 31. Companies shall allocate dedicated human resources for regular inspection of implementation of environmental protection policies. Behaviours in breach of environmental protection policies shall be rectified.

Chapter IV. Public Relations and Social Welfare Services

Article 32. Companies shall pay due regard to the interests of their communities in business operation. The Exchange encourages that dedicated unit be set up and dedicated personnel be allocated to harmonize the relations between Companies and communities.

Article 33. Companies shall, as much as they can, take part in public welfare activities in their regions relating to environment protection, education, culture, science, public health, community development and poverty relief in the best interest of the regions.

Article 34. Companies shall accept the supervision and inspection of the competent authorities and pay due regard to the public comments and media reports on themselves.

Chapter VII. Institutional Building and Information Disclosure

Article 35. The Exchange advocates that Companies should establish the social responsibility mechanism as required by these Instructions and work out social responsibility reports on a regular basis based on their review and evaluation of the status quo.

Article 36. Companies may release their social responsibility reports along with their annual reports. The social responsibility report shall include, but not limited to, the following:

1. implementation of social responsibility relating to employee protection, impact on environment, product quality and community relationship;
2. assessment of implementation of these Instructions and reasons for the gap, if any; and
3. measures for improvement and the timetable.

Chapter VIII. Supplementary Provisions

Article 37. The power of interpreting these Instructions rests with the Exchange.

Article 38. These Instructions come into effect as of the date of promulgation.

ANNEX 2.

SPEECH BY THE OECD SECRETARY-GENERAL AT A GLOBAL CORPORATE SOCIAL RESPONSIBILITY FORUM IN CHINA

Speech by th Hon. Donald J. Johnston, Secretary-General of the OECD Corporate Social Responsibility Forum, Beijing, China – 22 February 2006

I would like to thank China Newsweek, under the guidance of the Overseas Chinese Affairs Office of the State Council and the China News Service, for inviting me to speak at this Forum. I would also like to thank our master of ceremonies, Director Lin Yifu. I would add that I am especially honoured to appear alongside Minister of Health Gao Qiang, with whose ministry the OECD is pursuing active co-operation, and other leading Chinese officials, together with Franny Léautier of the World Bank and leaders of both business and NGOs.

Origins of the OECD

As Secretary-General of the Organisation for Economic Co-operation and Development, I should perhaps begin by saying a few words about the Organisation that I head. The OECD is often referred to as the only living legacy of the Marshall Plan, having evolved from the Organisation for European Economic Co-operation, the OEEC, which was created to administer the Marshall Plan in 1948.

As historians among you will know, the Marshall Plan was the cradle of economic development and security in post-war Europe. It established within a continent that had been ravaged by bloody conflict, both economic interdependence and security. This experience demonstrates that economic development and security have to go hand in hand, and that one cannot exist without the other.

A great deal of physical infrastructure was created under the Marshall Plan, through investments of approximately 14 billion dollars, made to rebuilding modern Europe in the wake of the devastation of World War II. But too many people make an error in thinking that the Marshall Plan was primarily about money. In fact, there was just as much financial assistance was given to Europe before the Marshall Plan. The genius of the Marshall Plan derived from the foresight of those who realised that while lasting peace, prosperity and security can be defended through military strength, they can only be secured through economic development and co-operation, indeed through economic interdependence brought about by institutional frameworks, not bricks and mortar. And the remarkable success of the Marshall Plan is clear for all to see: instead of exchanging bombs and bullets, Europeans now exchange goods, services and people.

This is the real legacy of the Marshall Plan, and it must be carried forward to future generations all over the planet. With the right combination of policies and international co-operation nations can build successful and secure economies and societies. Indeed, in recent years, we have seen examples inspired in part by the Marshall Plan. We have seen growing regional co-operation in Asia and the Pacific, in Southeast Asia, and in North and South America. We have seen the nations of Africa beginning to take control of their own destiny in forming the New Economic Partnership for African Development (NEPAD). We have the Stability Pact for South East Europe, where the OECD is an active partner, and I have just

been in Jordan where Middle East and North African countries and the OECD have launched a regional investment initiative known as the MENA/OECD Investment Program.

What the OECD is and what it does

The OECD has a mandate to promote economic growth and development throughout the world. It has 30 members and engagements with over 70 economies. The OECD promotes market-based economies and open, rules-based and non-discriminatory trading and financial systems, supported by good governance, or in other words, effective administration by a government accountable to its people.

OECD work, which covers just about every government policy area, except defence, falls into 4 broad categories. I would describe these as follows: firstly, we develop guidelines for economic or business activity which are agreed by a consensus among our membership. There are many examples and in a moment I will discuss in more detail the one which deals with responsible business conduct, namely the OECD Guidelines for Multinational Enterprises.

The second area of work addresses objectives shared by critical mass of members; examples include some of the work I have already mentioned, such as OECD support for the Stability Pact for South-Eastern Europe, the MENA project to contribute to Middle East peace and stability, and our work in Africa with NEPAD.

The third area of work is to help members and non-OECD economies meet domestic challenges through international comparisons of best practice, supported by in-depth analysis based on reliable data to develop national policies. Examples include our work on health systems, environment, education, pension plans, innovation policies and so on.

Finally, the OECD also has the capacity to identify important challenges that lie beyond the horizon but for which governments must start preparing in the near future. In this category, we examine issues such as the energy mix in 30 years time, the commercialisation of space and the potential and risks of nano-technology and so on.

Before I discuss OECD's guidelines contributing to responsible business conduct in a moment, let me first say a word about the increasing work we carry out here in China with our Chinese partners.

OECD's co-operation with China

The OECD's work with China is of crucial importance to our Organisation, as China is a key player in the world economy.

In fact, China and the OECD have been co-operating for many years across just about the whole range of the policy areas we cover, from economic surveillance to public and corporate governance, from agriculture and trade to taxation and labour market issues; from science, technology and education to anti-corruption and financial system reform. In just this last year, we published our first ever Economic Survey of China, an agricultural review as well as a major report on Governance in China, all prepared in close collaboration between OECD experts and the Chinese Authorities. And, amongst other things, we are now embarking on an environmental review of China, a regulatory reform review and an innovation review.

China is also taking part directly in the work of the OECD. China participates as an observer in two OECD Committees: the Committee on Science and Technology Policy and the Committee on Fiscal Affairs. We are pleased to note China's intention to co-operate directly in other committees.

China-OECD co-operation on investment policies has been continuing since 1995, leading to the 2003 investment policy review of China and subsequent follow-up activities. The 2006 investment policy review of China is about to be published. We will launch the publication here in Beijing in April this year.

Turning to the specific subject of this forum, namely global corporate social responsibility, the OECD is playing a central role.

Corporate social responsibility or CSR as it is known is not a term I like to use at the OECD. If you do a Google search you will find that there are no less than 38 or 39 million entries for corporate social responsibility.

At the OECD we prefer to talk about “responsible business conduct”. The difference? The reality is that business is conducted by individuals within corporations, not by the corporations themselves, and it is people who choose the legal framework in which they wish to undertake their business whether it be through partnerships, sole proprietorships or, as is most often the case, through corporations with limited liability. The exceptions to creating corporations tend to be found among some professional service firms such as lawyers, auditors, etc. I will return to the role of individuals.

The OECD first established and published guidelines for the behaviour of multinational enterprises in 1976. These enjoyed a moderately high profile for several years but, as far as I can determine, had little impact during the latter part of the 1980s and 1990s.

However, with the phenomenon of globalisation and the growth and expansion of enterprises with a global reach, the importance of responsible business conduct emerged as a major challenge. By 1999 we had completed major revisions to the guidelines. They had been strengthened and reinforced with mechanisms designed to expose unethical conduct and to subject offenders to pressures to conform to the agreed standards.

These guidelines now constitute recommendations by governments on business conduct, covering such areas as combating corruption, disclosure, the environment, science and technology, competition, taxation, human rights and labour relations.

Thirty-nine governments – representing the 30 OECD members and nine non-OECD economies – have agreed to these guidelines as part of a broader, balanced package of rights and commitments called the “OECD Declaration on International Investment”, which includes the principle of non-discriminatory treatment of foreign-controlled enterprises.

The objectives of the OECD Guidelines are “to strengthen the basis of mutual confidence between enterprises and the societies in which they operate; to help improve the foreign investment climate; and to enhance the contribution to sustainable development made by multinational enterprises.”

Responsible Business Conduct (RBC) benefits China

As this high-profile meeting attests, I am very pleased to note that the Chinese government is giving increasing attention to promoting RBC.

Indeed, as we have seen, public opinion in China is increasingly supportive of more demanding RBC standards. Good RBC performance by all enterprises, both domestic and foreign-owned, brings huge benefits to Chinese workers, consumers and citizens, for example more disclosure of company information, good environmental management and core labour standards.

RBC also benefits Chinese business in two ways:

- First, Chinese companies are increasingly “going global”. To operate abroad, they need to understand the RBC standards adopted in other countries. Subscribing to international “good RBC practices” will open doors for Chinese companies, as host societies will have increased confidence and trust in these companies, thereby making it easier for them to form business alliances with other major companies.
- Second, good RBC performance can contribute to a company’s long-term growth and profitability. For example, it can make it easier to compete for capital and labour, it can boost productivity and it allows companies to minimise reputational risk and damage to brands.

Finally, I would note that China has made rapid progress in establishing a market enterprise system. Encouraging good RBC performance is a logical next step.

OECD findings on Chinese companies

I would now like to say a few words about our findings about Chinese companies. OECD surveys of international business practices show that Chinese multinationals have made some progress in aligning their management practices with global trends. For example, we have noted the rapid uptake by Chinese companies of international environmental management systems. However, we consider that there remains much room for improvement, as is evident from the Chinese media. In this regard, we believe that the OECD’s Guidelines for Multinational Enterprises warrant careful consideration by the Chinese Government and corporations.

The contribution of the OECD Guidelines for Multinational Enterprises

One of the factors that make the Guidelines unique is the way they are implemented. Guidelines implementation is mainly the responsibility of so-called National Contact Points. These are government offices that are charged with promoting observance of the Guidelines among “their” companies, regardless of where they operate.

Guidelines implementation involves a mediation and conciliation facility that considers whether or not a particular investment project adheres to the Guidelines recommendations. This facility involves voluntary discussions between governments and companies on concrete ethics issues that arise in connection with international investment projects. This facility has been used more than seventy times since its creation in June 2000 to explore many questions – for example, a Korean company’s labour management practices in a Guatemalan export processing zones and a Canadian company’s resettlement of people in the vicinity of a mine in the Zambian copper belt. This dialogue can reassure companies that what they are doing meets international standards. Or they can help companies identify areas where they can improve. The OECD views this as a positive and pragmatic service that is both useful to businesses and enhances the contribution of international investment to host societies.

Moving co-operation ahead

The OECD is happy to co-operate with China in developing good RBC standards and sharing experiences on OECD and Chinese government approaches to RBC. China officially adheres to 10 of the 14 United Nations standards cited in the Guidelines. On 13 January 2006, China ratified the UN Convention against Corruption. All of this indicates that our RBC discussions can build upon a core of shared values.

Business, of course, is not alone in determining whether a country reaps the full benefits of investment. Governments are also important and RBC goes hand in hand with government responsibility.

A good regulatory environment is needed to facilitate responsible business behaviour. China, like other developing countries, can benefit from the OECD *Policy Framework for Investment*, which aims to help governments create an environment that is attractive to domestic and foreign investors and that enhances the benefits of investment to society. And China's participation in the PFI Task Force is an important part of ongoing China-OECD co-operation.

Whether we speak of business, governments or NGOs, we are addressing ourselves to individuals. Individuals in a position to influence the behaviour of the entities they direct, or work with or work for. I have noticed in my relatively long professional life that some individuals are capable of acting in the name of a corporation in ways that they would never contemplate doing as individuals on their own account. Sometimes this even includes criminal behaviour, which they would never condone personally, except as promoting the interests of their corporations and improving in theory the lot of their shareholders. Am I wrong in this? I do not think so, but I have never conducted a serious investigation of the issue but perhaps others have.

This brings me to the conclusion that individuals must be directly involved and personally accountable for RBC. Otherwise it is likely to exist only in resounding declarations in Annual Reports and other corporate public documents. This may be important but it is not where the answer lies to ensuring RBC. Boards of Directors, Management and employees must all be aware of and commit themselves to the principles found in the MNE Guidelines. The Guidelines should be taught in law schools and business schools. They should be widely disseminated and discussed and debated at conventions of lawyers, auditors and similar professional bodies in all countries.

In other words, they must become part of the international business culture. In pursuing responsible business conduct, people should be guided by the principle of the "golden rule": "Do not do unto others that which you would not want done unto you". This doctrine indeed finds itself well imbedded in the philosophies of all major religions including Confucius, Islam, Buddhism and Christianity.

Look at it this way: would you pollute rivers if you knew that in turn your rivers would be polluted? Would you deplete your forests and fisheries if you knew that in turn yours would be depleted? Would you render the air unsuitable to breathe if the same were to be done to your atmosphere? Individuals with daily lives to lead, children to rear and a future to look forward to for their communities must each take on the challenge of RBC.

In closing, I would just reiterate that the OECD looks forward to expanding its work with China in sharing experience on RBC standards and practices in the years to come. Later this year, the OECD will hold a meeting with Chinese representatives to share Chinese and OECD Member country government approaches to RBC. This will provide a firm foundation for follow-up activities in specific areas of RBC.

ANNEX 3.

OECD VISIT TO TEXTILE FACTORIES IN GUANGDONG

On 31 October and 1 November 2007 the OECD conducted a research mission to four factories in Guangdong province¹⁴¹. The Pearl River Delta is a relatively rich area which has benefited in the past three decades from investment from and/or via nearby Hong Kong. In addition, it has a widespread and prosperous diaspora in the rest of the world, and has benefited from investment flows originating in this community.

The visits were to:

- 31 October: Company A, Kaiping.
- 31 October: Company B, Kaiping.
- 1 November: Company C Clothing Factory, Kaiping.
- 1 November: Company D, Gaoming.

The first three factories are in the process of preparing to implement the national standard for corporate conduct in the textile and apparel industries, CSC9000T. Company D has already started implementation. All four factories are part of the 10+100+1,000 programme. This programme refers to the selection of about 100 key companies from about 10 textile clusters to establish the CSC9000T management system while providing CSR awareness training to 1,000 small and medium-sized enterprises (SMEs). The programme is aimed at assisting Chinese textile manufacturers in raising productivity, creating a fair trade environment and building a responsible supply chain. So far 114 key companies from 11 textile clusters have become involved in the programme.

The visits were organised by the China National Textile and Apparel Council (CNTAC). The OECD team was accompanied by a lawyer from CNTAC and an official of the Europe-China Trade Project based in Beijing. Discussions (all in Chinese) took place with managements and workers.

Company A is a large company producing chemical fibre and polyester chips. It is listed on the Shenzhen Stock Exchange and is one of the 300 largest shareholding companies in China. It has an annual independent production capacity of 680,000 tonnes of chips and yarn, including 150,000 tonnes of polyester yarn, 10,000 tonnes of Nylon 6 yarn and 100,000 tonnes of bottle grade or high I.V. chips. It also produces 420,000 tons of polyester chips for outside contracts. The company's web site emphasises customer service and states that the company's guideline is to "respect the employees, serve the customers, advocate more practices, encourage innovation".

Out of four Company A factories in Kaiping, the OECD visited the one with the oldest machinery and the smallest workforce. The 900 workers there are represented by 7 official union representatives who meet regularly. The average net monthly wage including overtime and bonuses was reported to be CNY 1,500, indicating that the company pays only the minimum wage.

¹⁴¹ In conformity with standard OECD practice, the companies remain anonymous.

The four workers interviewed by the OECD were all local, except for one from neighbouring Guangxi province. All had entered the factory immediately after leaving school. The factory operates an 8-day shift, with 2 days rest after 6 days work. Overtime appeared to be unsystematic, resulting from such events as typhoons or illness. As in the other three factories visited, workers were allowed only the national 10 days of annual holiday, i.e. 1 day for New Year (1 January), 3 days for Chinese New Year (a moveable feast, in January or February), 3 days for Labour Day (1 May) and 3 days for National Day (1 October).

One of the workers lived in the dormitory located in front of the factory, sharing a space similar to that of the small meeting room in which the interview took place with two other workers, free of charge. As in the other factories, a key attractant was the company's practice of paying wages on time. Company A also supplies a shuttle bus for transport to work. The factory has a health centre and a sports centre. Regular training, mainly in healthcare and safety, is conducted, reportedly following ISO guidelines.

The company reported that there were 8-10 export customer inspections of the factory each year, mainly focusing on machinery, management systems and quality control, but also sometimes including CSR. There is reportedly one product quality inspection by local government each year. There is also an annual safety inspection. Management said there was no need for a labour inspection because the company observes labour laws.

Company B is a wholly-foreign-owned enterprise (WFOE) established in 1995 with sole funding totalling USD 52 million from a company based in Hong Kong, China. The company imported internationally advanced OE-spinning equipment, looms and ready-made garment production lines from Germany, Switzerland, Belgium and Japan to form a complete, streamlined production line including spinning, weaving, dyeing and printing and ready-made garments. The annual production capacity of cotton yarn is 30,000 tonnes, various kinds of grey goods 18 million yards and bleached and dyed cloths 15 million yards. The export volume of denim ready-made garments is 600 thousand dozens a year. The sales income of the company in 2001 was CNY 380 million, including USD 30 million in export earnings, and taxes paid by the company in that year was CNY 40 million. The company is, together with the municipal government, establishing a Chemical Fibre Textile Industrial Town, which will cover an area of 494 acres.

The OECD interviewed a group of 6 workers at Company B with management not present. One of the workers was from Guangxi, the rest local. Three of them work a 12-hour day, i.e. a regular 8-hour day plus 4 hours overtime, for 26 days in 30-day months and 27 days in 31-day months. As a result, they earn CNY 1,700 – CNY 1,800, of which CNY 500 – CNY 600 is overtime pay. The other three interviewed do not have overtime. Overtime working is clearly compulsory.

Workers do not know how their wages were calculated, though they seem to be aware that they are being paid no more than the legal minimum. None of the workers has so far signed or been offered a labour contract.

There is no trade union or other system of worker representation. As at Company A, the main attraction of the company for these workers is that their wages are paid punctually. (They pointed out that in some factories wages are paid up to three months late.) They stated that they see inflation as a big problem.

The OECD visited one of the dormitories accommodating non-local Company B staff. The rooms visited included some on a floor reserved for men and others on a floor reserved for women. All rooms held bunk space for 12 people (two rows of three two-level bunks, hardboard on metal rails), with a tiny balcony outside. The actual number of persons sharing such a room seems to vary from 6 upward. Personal possessions are kept in a cardboard box, one per person. In one room the residents had placed two ageing fans for cooling. The bathroom in each case is a small yellow-tiled room on the balcony with traditional

Chinese toilet and a wall tap, presumably used to fill a nearby bucket for a “shower”. The room offers neither privacy nor cooking facilities. The corridors and staircases are of bare concrete and dark, the only decoration being notices warning against thieves or making excessive noise. The multi-storey building also holds a social centre with a room containing a single television set for some 100 or so people, and another room for sports such as table tennis.

Company C in Kaiping is relatively small, with a staff of 700. It has featured in China’s official media and in the international press as a workplace with relatively high labour standards. It produces jackets for Company X, a major OECD clothing brand specialising in outdoor clothing. The factory began working on improving labour conditions in 1998 in response to supply chain requirements from Company X. The managers report that investment in training and employee insurance has increased and that overall revenue has grown even faster as the factory has attracted more orders from Western buyers. Satisfied employees reportedly refer their friends to the factory. Company C’s partner in its work of improving labour conditions is the Institute for Contemporary Observation, based in the nearby city of Shenzhen; ICO is the leading Chinese NGO working to improve labour conditions in Guangdong province.

According to the manager, improvements in labour representation at Company C occurred in response to a loss of staff coming from other areas noticeable by 2003. This is attributed to four causes: skilled workers to retiring or returning to their places of origin to start new businesses; people in their 30s and 40s returning to their villages to look after their children’s education; cultural differences and discrimination against outsiders; the hard life of a worker in the textile industry. In addition, there is a problem with job-hopping, because Company C has limited room for wage increases.

SAI training started in the second half of 2003 and the first elections took place in 2004. Company C has chosen to allow workers to elect their representatives to a committee rather than to encourage the establishment of an official trade union branch. One reason was that management considered official unions to be inadequately representative, for example with only 7 or 8 union officials typically speaking for as many as 40,000 workers. The Company C workers’ committee is reportedly more effective with high workforce participation – incidentally at lower cost to the management than a union branch.

The OECD spoke to many of the workers on the shop floor, including worker representatives. The atmosphere was unusually relaxed and open. As with other factories visited, the OECD was informed that workers had brought their friends to work in the factory. There were also many family groupings, e.g. husband and wife, mother and daughter. The positive atmosphere in the factory appears not to be attributable to remuneration, which appears to be as low as in the other sites visited. The OECD was shown evidence not only of frequent participation in meetings by what appears to be most of the workforce, but also of regular safety training, social and sports activities.

The Company D weaving mill was opened on 20 October 2007 by the Company D Group, which, since its foundation in 1978, has grown to become a leading cotton shirt maker with over USD 500 million in annual revenue. Employing over 47,000 people worldwide, it supplies 60 million shirts each year to leading clothing brands around the world and major international retail chains. The company is vertically integrated from cotton growing in Xinjiang province to yarn spinning, weaving, knitting, trims and accessories manufacturing and garment making. The factory is equipped with yarn dyeing equipment from Italy and Switzerland, weaving looms from Japan and Italy and finishing equipment from top brands in Europe and Japan. It has a capacity of 3.5 million yards of cotton yarn dyed fabric a month. The new USD 150 million factory is designed to be both efficient and environmentally friendly. By weaving/knitting 90 million yards a year Company D is China’s largest manufacturer of cotton yarn dyed woven fabric. The Gaoming factory alone produces 13,000 tons of cotton knit fabric annually. Its garment manufacturing facilities are located in mainland China, Hong Kong, Malaysia, Mauritius, Sri Lanka and Vietnam. The final process of garment packaging and retailing (Company D also has its own label) enables Company D

to control quality from raw material to final product realising the benefit of vertical integration, a concept much advocated in MBA textbooks.

The Company D factory in Gaoming was far larger than the others visited by the OECD, employing 27,000 workers. Working conditions appear to be similar to those in the other factories in this study. Work sites are well ordered and clean, and safety equipment carries completed inspection cards.

The OECD visited Company D's combined heat and power plant, built in 2004 at a cost of USD 29 million, which provides steam and electricity for use in textile and garment production in the factory. The plant is coal-fired, using fluidised bed combustion. Emissions of pollutants is minimised by a number of processes: each of the three boilers is equipped with an electrostatic precipitator to remove particulates, lime is injected into the boilers for desulphurisation. The plant uses low-sulphur coal (sulphur content 0.4%-0.7%). The engineer in charge of the plant noted that while this results in low pollution, the incentive for this clean process was cost reduction.

The OECD also visited the water treatment plant at Company D. This plant treats waste water resulting mainly from the dyeing process. After undergoing treatment in a number of tanks the water is returned to the Pearl River, from which it originated, adding far less pollution than untreated water from other factories.

The four factories were selected for observation by CNTAC as pilot projects participating in the 10+100+1,000 programme and should not be seen as typical of Chinese factories. The intention of visiting them was to see what is possible in existing Chinese conditions. To the extent that high standards of responsible business conduct are exhibited in these workplaces, they may serve as models for other Chinese enterprises to follow. They also demonstrate the need to strengthen enforcement of existing law.

ENGLISH GLOSSARY

ACFTU	All-China Federation of Trade Unions
BIAC	Business and Industry Advisory Committee to the OECD
CNTAC	China National Textile and Apparel Council
CSC9000T	China's national standard for corporate conduct in the textile industry
CSR	corporate social responsibility
DFID	Department for International Development of the United Kingdom Government
GEI	Global Environment Institute
ILO	International Labour Organisation
MOFCOM	Ministry of Commerce of the People's Republic of China
OECD Watch	NGO advisory body to the OECD
RBC	responsible business conduct
SA8000	Social Accountability
SASAC	State-owned Assets Supervision and Administration Council of the State Council
SAWS	State Administration of Work Safety
SFDA	State Food and Drugs Administration
SME	small and medium-sized enterprises
SOE	state-owned enterprise
TUAC	Trade Union Advisory Committee to the OECD

CHINESE GLOSSARY

ACFTU	中华全国总工会
BIAC	经合与发展组织工商咨询委员会
CNTAC	中国纺织工业协会
CSC9000T	中国纺织企业社会责任管理体系总则及细则
CSR	公司社会责任，企业社会责任
DFID	英国国际发展部
GEI	全球环境研究所
ILO	国际劳工组织
MOFCOM	商务部
OECD Watch	经合与发展组织民办组织咨询委员会
RBC	有责任的社会行为
SA8000	社会责任国际 8000（社会责任标准）
SASAC	国务院国有资产监督管理委员会
SAWS	国家安全生产监督管理总局
SFDA	国家食品药品监督管理局
SME	中小企业
SOE	国有企业
TUAC	经合与发展组织工会咨询委员会

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