
Corporate Social Responsibility in China: Window Dressing or Structural Change?

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ABSTRACT

In recent years many indigenous corporate social responsibility (CSR) initiatives have emerged in China. The Chinese CSR initiatives include laws and regulations, governmental instructions and guidelines, non-governmental standards and organizations. The recent growth of the Chinese CSR initiatives deserves an analysis of the CSR development in China, especially given that China's international image is usually associated with human rights abuses, substandard products, sweatshops, and serious environmental pollution. How sincere and serious are the Chinese CSR measures? Are they simply window dressing or is there any real structural change? This Article overviews major Chinese CSR initiatives and analyzes the Chinese CSR development from the perspectives of the historical and ideological foundations, instrumental motivations, and institutional environments in China.

I.

INTRODUCTION

Corporate social responsibility (CSR) essentially requires companies to conduct business beyond compliance with the law and beyond shareholder wealth maximization. It suggests that companies should do more than they are obligated under applicable laws governing product safety, environmental protection, labor rights, human rights, community development, corruption, and so on; it also suggests that companies should consider not only the interests of shareholders but also those of other stakeholders (e.g., employees, consumers, suppliers, and local communities). CSR requires companies to provide not only the quantity of goods, services, and employment but also the quality of life for those whose interests are affected by corporate activities. The abstract concept of CSR has been transformed into a long list of corporate practices including,

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but not limited to, environmental management systems, eco-friendly and safe products, labor protection measures and welfare plans, corporate philanthropy and community development projects, and corporate social and environmental performance disclosure.¹

China seems an awkward case in terms of CSR development. China is infamous for sweatshops and environmental pollution problems. The recent series of scandals of Chinese substandard products has again confirmed the shocking fact that many Chinese companies are unscrupulous about making money at the expense of human lives.² Made-in-China products are popularly associated not only with low prices but also low product quality and irresponsible production processes. Ironically, the widespread image of Chinese corporate irresponsibility may be a main driver for CSR development in China.

Since 2004 CSR has become a prominent issue in Chinese academic and policy forums.³ As this Article shows, in recent years many public and private CSR initiatives have emerged in China. The Chinese government in particular plays an important role in guiding the CSR discourse. The leading example is Article 5 of the 2006 Chinese Company Law, which requires companies to “undertake social responsibility” in the course of business.⁴ Another important state-led measure is the promulgation of the CSR principles for the Chinese central-government-controlled companies to follow. Some private initiatives are growing as well, such as the Responsible Supply Chain Association’s CSC9000T and the Chinese industrial associations’ joint declaration of the Chinese CSR Industrial Principles.

On the one hand, CSR advocates may be glad to see the growth of CSR initiatives in China. On the other hand, they may also cast doubt on the real purposes and effectiveness of these Chinese CSR initiatives. Are these Chinese CSR measures simply window dressing, through which China just intends to improve its tarnished international image? This question particularly arises from the notorious fact/allegation that the Chinese government pushes or uses companies as vehicles of human rights abuses. For example, the Chinese

1. For a brief history about the CSR concepts and practices since the 1950s, see Archie B. Carroll, *A History of Corporate Social Responsibility*, in THE OXFORD HANDBOOK OF CORPORATE SOCIAL RESPONSIBILITY (A. Crane, A. McWilliams, D. Matten, J. Moon and D. Siegel eds., 2008).

2. See e.g., David Barboza, *Why Lead in Toy Paint? It’s Cheaper*, N.Y. TIMES, Sept. 7, 2007; Andrew Martin, *Melamine from U.S. Put in Feed*, N.Y. TIMES, May 31, 2007; Walt Bogdanich, *Toxic Toothpaste Made in China is Found in U.S.*, N.Y. TIMES, June 2, 2007.

3. By using the term “gongsi shehui zeren” (corporate social responsibility) for title search in the China Academic Journals Full Text Database, this author found only 1 article published in 1994, 2 in 1998, 1 in 1999, and 1 in 2001. But since 2002, the literature has grown noticeably: 8 articles in 2002, 15 in 2003, 21 in 2004, 39 in 2005, 172 in 2006, 104 in 2007, and 57 in 2008 (as of Aug.). For an overview of the discussion path, see YOHUAN LI, QIYE SHEHUI ZEREN ZAI ZHONGGUO [CORPORATE SOCIAL RESPONSIBILITY IN CHINA] 4-7 (2007).

4. See Chinese Company Law (2006), art.5.

government requires search engine companies to conduct censorship based on the instructions provided by the Chinese government officials.⁵ The Chinese government also has aggressively employed the state-owned enterprises to acquire its political and economic interests in many conflict zones in Africa. For instance, international human rights organizations have seriously condemned China National Petroleum Corporation (CNPC), a state-owned enterprise directly controlled by the Chinese central government, for its indirect involvement in the Darfur genocide.⁶ These cases are contrary to the generally understood idea of CSR and raise doubt about the Chinese government's motive of promoting CSR.

This Article analyzes the question from the ideological, instrumental, and institutional dimensions. The ideological dimension finds that the charitable practices by traditional Chinese family enterprises, the socioeconomic function of state-owned enterprises under Chinese traditional communism, and the newly-minted Chinese socialist percept provide footholds for CSR in China. The instrumental dimension considers the economic pressure in the global market and the social, economic and political interests within China. However, the political, legal and economic institutions in China still pose great challenges for the true furtherance of CSR. With respect to the public initiatives, this Article suggests that it is fair to say the Chinese government may be sincere in promoting CSR to the exclusion of human rights issues. China has relatively consistent political and economic interests in promoting the labor and environmental aspects of CSR. The Chinese government's implicit exclusion of human rights from its official CSR measures signals a CSR discourse with Chinese characteristics. With respect to the private initiatives, private actors are becoming acquainted with the CSR standards in the global market, but the implementation is still subject to Chinese companies' technological capacity and bargaining power in relation to their international buyers.

The study on CSR development in China offers important implications for the CSR development in global and comparative senses. CSR initiatives are part of the global governance scheme. Globalization not only creates huge business space for corporations but also more out-of-reach areas for national regulators. Many innovative transnational governance mechanisms outside the traditional regulatory territory have emerged to capture the emptiness. Still, global regulatory order is inevitably shaped and constrained by the existing institutions

5. See HUMAN RIGHTS WATCH, RACE TO THE BOTTOM: CORPORATE COMPLICITY IN CHINESE INTERNET CENSORSHIP (2006) (illustrating how companies such as Yahoo, Google and Microsoft assist internet censorship in China), available at <http://www.hrw.org/en/reports/2006/08/09/race-bottom>.

6. See Stephen Diamond, *The PatroChina Syndrome: Regulating Capital Markets in the Anti-Globalization Era*, 29 J. CORP. L. 39 (2003); Patrick Keenan, *Curse or Cure? China, Africa, and the Effects of Unconditioned Wealth*, 27 BERKELEY J. INT'L L. 89 (2009) (noting that Chinese oil companies are not directly involved in the conflicts of Darfur).

at the country level; any design of global regulatory order cannot be practicable if it fails to consider the effects of implementing such global regulatory law in a given country. The CSR development in China is a good example for evaluating the effects of global governance on the local level. In particular, the contemporary CSR movement is primarily pushed by the civil society in developed countries, but the movement has great impact on developing countries in the age of globalization. The impact can interact with the local environments of developing countries, producing some intended and unintended effects. Moreover, the Chinese case study also suggests that different countries have different indigenous CSR courses. The understanding and implementation of CSR is subject to cultural and institutional settings. It indicates the importance of comparative research for the study of CSR.⁷

This Article is arranged as follows. Part II overviews the recent development of major Chinese CSR initiatives. It shows that CSR has gained an institutionalized position in the Chinese legal and political system. Additionally, some private actors have mobilized resources to develop CSR standards with Chinese characteristics. This overview sets the stage for the discussion in the following parts. Part III traces the related ideological roots of CSR in China. The indigenous ideologies echo many aspects of modern CSR generally understood in western societies. Part IV analyzes the instrumental motivations behind the Chinese CSR measures. There are external and internal forces that push China to embrace CSR, though with some qualifications. Part V elaborates upon the political, legal and economic institutional constraints on the CSR development in China.

II.

CORPORATE SOCIAL RESPONSIBILITY INITIATIVES IN CHINA

This section gives an overview of major Chinese CSR initiatives in the very recent years. The initiatives include corporate law, CSR standards and implementation guidelines, social and environmental information disclosure regulations, capital market regulations in connection with environmental performance, responsible production standards, and nongovernmental CSR organizations. This overview sets the stage for understanding the current CSR development in China.

7. See Cynthia A. Williams & Ruth V. Aguilera, *Corporate Social Responsibility in Comparative Perspective*, in OXFORD HANDBOOK OF CORPORATE SOCIAL RESPONSIBILITY (A. Crane, A. McWilliams, D. Matten, J. Moon and D. Siegel eds., 2008).

A. Public Initiatives

1. The Company Law

CSR is a concept closely related with the stakeholder model of corporate governance. In this regard, the Chinese company law may coexist harmoniously with CSR. When the Chinese legislators drafted the company law in the early 1990s, the idea of modern CSR was not conceptualized however. Employee participation in corporate governance provided in the 1994 Company Law was more of a politically and economically path-dependent product. The traditional Chinese socialist ideology celebrated workers. The Constitution of the People's Republic of China states that the country is led by the proletariat and is based on the alliance of workers and peasants.⁸ Under the traditional Chinese socialist model, the workers were a powerful political group with strong representation in the national and local people's congresses, thus influencing policy directions and resource distribution. The workers participated in decision making within factories, particularly with regard to wages, benefits and bonuses.⁹ This historical background influenced the path of Chinese corporate governance.

The 1994 Company Law did not explicitly refer to CSR, but it echoed some aspects of CSR, particularly regarding the rights of employees in a company. Under the 1994 Company Law, the role of employees was institutionalized into the corporate governance structure. Limited liability companies established by two or more state-owned enterprises (SOEs) were required to include employee representatives on the board of directors; and the employee representatives should be selected by employees.¹⁰ Limited liability companies and joint-stock companies were required to include employee representatives on the board of supervisors.¹¹

The 1994 Company Law further required companies to protect the advisory roles of employees in the corporate decision-making process. Companies were required to consult with trade unions and employees when making decisions concerning employee wages, welfare, safe production processes, and other issues related to employees' interests; companies were also required to invite employee representatives to attend relevant meetings.¹² Moreover, companies were required to consult with trade unions and employees when deciding significant operation issues.¹³

The 1994 Company Law also specified measures concerning labor rights.

8. See PRC'S CONSTITUTION, art. 1.

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

10. See Chinese Company Law (1994), arts. 45 & 68

11. See *id.* arts. 52 & 124.

12. See *id.* arts. 55 & 121.

13. See *id.* arts. 56 & 122.

The emphasis on labor rights is a reflection of the socialist ideology under the rein of the Chinese Communist Party. According to Article 15, “Companies must protect legal rights of employees, strengthen labor protection measures, and realize safe production; companies may through a variety of measures support employee education and training, and thereby improve the quality of employees.” Article 16 required that “employees can establish trade unions according to the law to engage in union activities and protect legal rights of employees; companies shall provide necessary conditions to enable such activities.” It further required that “wholly state-owned limited liability companies shall according to the Constitution and other laws implement democratic management through general meetings of employee representatives and other forms.”¹⁴

Article 14 was the overarching provision broad enough to contain the idea of CSR. According to Article 14, “Companies must comply with the law, conform to business ethics, strengthen the construction of the socialist civilization, and subject themselves to the government and public supervision in the course of business.” Under Article 14, a company must not only comply with the law but also observe business ethics. In other words, it indicated that companies should go beyond compliance with the law, a concept commonly found in the definitions of CSR. Moreover, a company is subject not only to the supervision of the government but also the public. Public supervision may be understood to include supervision by consumers, communities, and other stakeholders.¹⁵

Overall, the concept of CSR was partially embodied in the 1994 Company Law, although the term “social responsibility” was absent. For advocates of CSR, this indirect recognition of CSR was not enough. Professor Junhai Liu, a forerunner in advocating CSR from a legal perspective in China, proffered reasons for the absence of clear emphasis on CSR in the 1994 Company Law. First, the importance of CSR was downplayed against a background in which the government vehemently helped state-owned enterprises (SOEs) shirk debt and extricated them from the function of social services.¹⁶ An important purpose of the company law was to activate the profit-seeking motivation of SOEs. Article 5 therefore purposefully declared that “a company shall operate independently and be responsible for its own profits and losses.” Given this macro-economic background, the Chinese legislators were unlikely to place the idea of CSR in a conspicuous position. Second, the mainstream economic and legal scholars at that time were enchanted by ideas such as corporate profit-maximization, free competition, and enabling law; and they did not have a clear

14. See *id.* art. 16.

15. See JUNHAI LIU, GONGSI DE SHEHUI ZEREN [CORPORATE SOCIAL RESPONSIBILITY] 84, 122 (1999).

16. *Id.* at 85-86.

idea about the accompanying negative effects.¹⁷ Finally, the hastiness in legislation failed to consult the update-to-date development of corporate law in developed countries.¹⁸

The 1994 Company Law was criticized for its inability to cope with the changing economy in China. A comprehensive revision process of the company law therefore began in 2004. CSR was one of the many issues considered in the revision. As of October 27, 2005, the National People's Congress (NPC) passed the new company law, which took effect on January 1, 2006. The 2006 Company Law gives explicit recognition to CSR.

The legislative process in China is still not transparent, so it is hard to know what the exact deliberation was in the legislative process of the new company law. Nevertheless, some government officials and scholars who participated in the legislative process compiled the opinions considered in the legislative process and published them, which may serve as an alternative source of the legislative history.¹⁹ In the legislative process, a group of thirty-one NPC delegates from Shanghai proposed that the company law should make clear that "companies must protect and improve the interests of other stakeholders in addition to shareholders."²⁰ This group of the NPC delegates also proposed that CSR may be included as one of the legislative purposes of the company law. A NPC delegate from Jilin Province also proposed that the company law should address shareholder wealth maximization and CSR as well. He proposed that, in addition to protecting shareholders' interests, "companies should also consider other social interests such as the interests of employees, consumers, creditors, local communities, environments, socially disadvantaged groups, and the general public."²¹ Some NPC delegates from Guangdong Province suggested that the company law should contain a specific section defining the relationships between a company and its stakeholders.²² The Shanghai Stock Exchange recommended that to clarify the social responsibility of companies, Article 14 of the 1994 Company Law should be amended as "a company must comply with the law and protect public interests in the course of business activities."²³

Legislative drafters in the law making process also considered the academic

17. *See id.*

18. *See id.*

19. *See* 1-3 A RESEARCH REPORT ON THE AMENDMENTS TO COMPANY LAW (Kongtai Cao et al., eds. 2005). The Chinese government did not disclose official documents concerning the legislative history. The editors of this report compiled the opinions considered in the legislative process. The leading editor was and is still the head of the State Council's Legislative Affairs Office, responsible for drafting laws and regulations. Other editors were and are still also affiliated with the Office; and some are prominent law professors in China.

20. *See id.*

21. *See id.*

22. *See id.*

23. *See id.*

debate on CSR.²⁴ Chinese corporate law scholars disagree over whether CSR should be explicitly enshrined in company law. Some scholars argue for the inclusion of CSR in company law because it would help clarify the purposes of a company: profit-making and social responsibility.²⁵ Some scholars however take a conservative attitude toward emphasizing CSR in company law. One of their main concerns is that the zealous celebration of CSR in company law would endanger the for-profit nature of corporations.²⁶ Also, given that the profit-maximization awareness has not been successfully implanted into Chinese SOEs, the celebration of CSR in company law might mislead SOEs to sacrifice profitability.²⁷ Moreover, they also express concern that the government might use CSR as a cloak for political intervention to pursue its own political interests at the expense of the interests of minority shareholders, which can be a threat to economic efficiency.²⁸

Low transparency in the legislative process leaves it unclear why the legislators finally decided to incorporate CSR into the company law. However, the recognition of CSR is clearly symbolized in Article 5 of the 2006 Company Law. Article 5 states, “[i]n the course of doing business, a company must comply with laws and administrative regulations, conform to social morality and business ethics, act in good faith, subject itself to the government and the public supervision, and undertake social responsibility.”²⁹

In addition to the general principle concerning CSR, the 2006 Company Law also improves employee rights in corporate governance, which may help to illustrate the intention of Article 5. In the legislative process, many NPC delegates and consulted entities recommended the improvement of employee participation in corporate governance.³⁰ As a result, Articles 52 and 118 require

24. *See id.*

25. For the leading literature advocating CSR in Chinese company law, *see* JUNHAI LIU, *supra* note 15.

26. *See* Mingtian Chen, *Gongsi de Shehui Zeren – dui Cuantong Gongsifa Jiban Linian de Xiuzheng* [Corporate Social Responsibility—An Amendment to the Fundamental Concept of the Traditional Corporate Law], 6 SOUTHEAST ACAD. RES. 79, 84 (2003); Jian Fan, *Cong Gongsi de Yinglixin yu Shehui Zeren Kan Gongsifa Xiuding Zhidao Sixiang* [The Guiding Philosophy of the Revision of the Company Law, A View from the For-Profit Nature of Corporations and Corporate Social Responsibility], in MODERN COMPANY LAW IN TRANSFORMATION 64 (Baoshu Wang et al., eds 2006).

27. *See* Fen Yi, *Gongsi Shehui Zeren Bian—Jian Lun Zhongguo Gongsifa de Lifa Xuanze* [The Corporate Social Responsibility Debate – The Legislative Choice of Chinese Company Law], in MODERN COMPANY LAW IN TRANSFORMATION 468-471 (Baoshu Wang et al., eds., 2006); YOSU ZHOU, XIN GONGSIFA LUN [NEW CORPORATE LAW] 91-92 (2006).

28. *See* Fen Yi, *supra* note 27, at 468-469; Yosu Zhou, *supra* note 27, at 92.

29. *See* Chinese Company Law (2006), art.5.

30. Thirty-one NPC delegates from Shanxi Province proposed that company law should expand employee participation in corporate governance and protect legal rights of employees; the All China Federation of Trade Unions recommended all companies should include employees in corporate governance; the number of employee representatives on the boards should be specified;

the board of supervisors should include employee representatives; and the number of employee representatives should not be lower than one third of the supervisory board. The minimum number of the employee representatives on the supervisory board was not required in the 1994 Company Law; the lack of the minimum number requirement was often attributed as one of the major reasons for ineffective employee participation in corporate governance.³¹ Moreover, the 2006 Company Law also restates the importance of labor protection by adding that “the representative of the trade union may in accordance with the law enter into a collective contract on behalf of employees with the company in respect of wages, work hours, welfare, insurance, labor safety, etc.”³²

2. *General Principles of Corporate Social Responsibility*

In January 2008 the State-Owned Assets Supervision and Administration Commission of the State Council (SASAC) released the Guide Opinion on the Social Responsibility Implementation for the State-Owned Enterprises Controlled by the Central Government (hereafter “Guide Opinion”).³³ The Guide Opinion is an important legal document explaining the Chinese central government’s attitude toward CSR. Currently there are about one hundred fifty state-owned enterprises (SOEs) directly under Chinese central government’s control, and therefore subject to the Guide Opinion.³⁴ These enterprises are large and highly visible in China; most of them (or their subsidiaries) are listed

the collective contracts and equal bargaining should be included; the ratio and usage of employee welfare funds should not be unilaterally determined by management but by negotiation between employees and companies. The Beijing Bar Association recommended all companies should be required to consult with employees when deciding matters that materially affect employees interests; the company law should specify the number of employee representatives on the boards of directors and supervisors. The Legislative Affairs Office of the State Council recommended when all companies with employees above a certain number should include employee representatives on the supervisory board. The China National Petroleum Corporation recommended the company law should increase the number of employee representatives on the boards of directors and supervisors when the company is wholly owned by the state, but some of the representatives recommended the company law should delete provisions concerning trade unions, leaving the issues to labor law or trade union law. *See supra* note 19, Vol. 1, at 27, 49, 53, 57, 143-144 (2005).

31. JUNHAI LIU, *supra* note 15 at 580; ZHONGGUO GONGSI ZHILI BAOGAO 2007 [CHINA CORPORATE GOVERNANCE REPORT 2007] 49 (2007). Still, the implementation of the new requirement remains far from satisfactory according to a 2007 survey by the Shanghai Stock Exchange. According to the survey, 59.2% of the sample listed companies (135 companies) failed to meet the requirement. *See* Research Center of Shanghai Stock Exchange, ZHONGGUO GONGSI ZHILI BAOGAO 2007 [CHINA CORPORATE GOVERNANCE REPORT 2007] 49 (2007).

32. *See* Chinese Company Law (2006), art. 18.

33. SASAC, Guanyu Zhongyang Qiye Luxing Shehui zeren de zhidao yijian [The Guide Opinion on the Social Responsibility Implementation by the Central-Government-Controlled State-Owned Enterprises], <http://www.sasac.gov.cn/n1180/n1566/n259760/n264851/3621925.html>.

34. *Id.*

companies on the Shanghai or Shenzhen Stock Exchanges, and some of them are on the Hong Kong or even overseas stock exchanges.

The Guide Opinion contains four parts. The first part explains why CSR is important for the SOEs controlled by the Chinese central government.³⁵ The Guide Opinion explicitly lists four reasons. First, CSR is a concrete measure of promoting social harmony. Second, these SOEs are the backbone of China's economy and security, affecting every aspect of Chinese people's living. Therefore, implementation of CSR is important to meet public expectations. Third, CSR is the unavoidable option for sustainable development. CSR helps organizational creativity, corporate image, the quality of employees and corporate cohesion. Fourth, CSR is a necessity for the SOEs to participate in the international market and society.³⁶

The second part of the Guide Opinion considers the fundamental principles in the implementation of CSR. It expects the SOEs to become "leading examples" for all Chinese companies. The SOEs should "integrate CSR into corporate reforms," "adapt CSR measures compatible with conditions at the national and organizational level" and "step by step implement them."

The third part of the Guide Opinion sets forth the major contents of CSR for the central-government-controlled SOEs. The major contents include eight broad topics: (1) complying with the law and honestly conduct business; (2) increasing profitability; (3) improving product and service quality; (4) upgrading resources efficiency and environmental protection; (5) improving innovation and technology; (6) assuring production safety; (7) protecting employees' legal rights; and (8) actively engaging in charity.

Finally, the Guide Opinion proposes major implementation measures. First, in order to promote the awareness and cultivate a culture of CSR, the SOEs are encouraged to educate their employees on CSR topics, and include CSR discussion in their important meetings. Second, the SOEs are encouraged to include CSR into corporate governance, development strategy, and production process.³⁷ The SOEs may establish CSR management, auditing and evaluation systems. Third, the SOEs may issue periodic CSR reports or sustainability reports, disclosing information concerning CSR performance, measures and plans. Fourth, the SOEs may research and learn successful CSR experiences of domestic and foreign companies. Fifth, the organs of the Chinese Communist Party structured within the SOEs should promote CSR through its political resources. Overall, the Guide Opinion lays out some broad but still vague CSR principles for the SOEs.

In a separate press release, the State-Owned Assets Supervision and

35. *Id.*

36. *Id.*

37. Section IV of the Guide Opinion, *supra* note 33.

Administrative Commission of the State Council (SASAC) also explained the background information concerning the promulgation of the Guide Opinion.³⁸ The SASAC recognized that CSR has become a new trend at the global level, referring to a proliferation of CSR initiatives such as UN Global Compact, ISO 26000, and multinational companies' codes of conduct and sustainability reports. The SASAC also considered that CSR has gained increasing importance in China, mentioning the new company law, pro-CSR statements made by President Hu Jintao, and sustainability reports by a few Chinese SOEs. In the SASAC's view, however, the contents and measures of CSR for the central-government-controlled SOEs were still unclear in the global and domestic CSR movements. Therefore, the SASAC began a research project on CSR in 2006, which resulted in the Guide Opinion. The SASAC official further explained that there are various definitions of CSR proposed by international organizations (e.g., UN and World Economic Forum), and the definitions share some common ideas but also have different emphases.³⁹ The CSR principles for the Chinese SOEs should be consistent with the international trend but also be compatible with the national and organizational reality in China.⁴⁰ In other words, the Guide Opinion is based on international definitions of CSR but adapted with "Chinese characteristics."

Overall, the Guide Opinion basically covers most of the common topics appeared in the international CSR standards. But it is noticeable that the Guide Opinion does not include human rights protection as the core contents of CSR. Therefore, for example, PetroChina and its parent company CNPC—both subject to the Guide Opinion—may still satisfy the CSR standards despite the allegations of their involvement in human rights violations in Darfur, Sudan.⁴¹

3. *Corporate Social and Environmental Disclosure*

Corporate social and environmental disclosure has become an important component of the CSR implementation package. In some developed countries, corporations are required to disclose their social and environmental performance to their shareholders and the public.⁴² Following this trend, the Chinese

38. See SASAC, Press Release, Q&A between the SASAC Official and News Reporters, available at <http://www.sasac.gov.cn/n1180/n1566/n259760/n264866/3621552.html> (last visited July 6, 2008).

39. *Id.*

40. *See id.*

41. *See supra* note 6.

42. For France, see Lucien J. Dhooge, *Beyond Voluntarism: Social Disclosure and France's Nouvelles Regulations Economiques*, 21 *ARIZ. J. INT'L & COMP. L.* 441 (2004); for the UK, see Cynthia A. Williams & John M. Conley, *Triumph or Tragedy? The Curious Path of Corporate Disclosure Reform in The U.K.*, 31 *WM. & MARY ENVTL. L. & POL'Y REV.* 317 (2007); for Norway, see Audun Ruud et al., *CORPORATE RESPONSIBILITY REPORTING IN NORWAY: AN ASSESSMENT OF THE 100 LARGEST FIRMS*, Program for Research and Documentation for a Sustainable Society,

government has launched several Chinese CSR disclosure initiatives.

Since 2007, the State Environmental Protection Administration (SEPA, now the Ministry of Environmental Protection of China) has begun a series of measures concerning corporate environmental reporting.⁴³ In 2007 the SEPA promulgated the Regulation on Environmental Information Disclosure (Trial Edition) (hereunder “the Regulation”), which took effect on May 1, 2008.⁴⁴ The Regulation mandates environmental agencies and heavy-polluting companies to disclose certain environmental information to the public.⁴⁵ According to the official statement by the Vice Minister of the SEPA (Mr. Pan Yue), the Regulation has three significant meanings.⁴⁶ First, environmental disclosure is

Center for Development and the Environment, University of Oslo (2005), *available at* <http://www.prosus.uio.no/publikasjoner/Rapporter/2005-9/rapp9.pdf>.

43. For a summary of the measures, see Disanxiang Huanjing Jingji Zhengce Luse Zhengquan Zhidao Yijian Chutai, 2008 Nian Jiang Jianli Shangshi Qiye Huanjing Xinxi Tongbao Zhidu [The Third Environmental Economic Policy is Up, Environmental Disclosure System for Listed Companies Will be Established in 2008], Press Release of the Ministry of Environmental Protection of People’s Republic of China (Feb. 25, 2008), http://www.mep.gov.cn/xcyj/zwhb/200802/t20080225_118588.htm.

44. See Huanjing Xinxi Gongkai Banfa [the Regulation on Environmental Information Disclosure], Order No. 35 (2008) of the Ministry of Environmental Protection of the People’s Republic of China.

45. The Regulation imposes disclosure obligations on environmental agencies and companies, but this Article discusses corporate disclosure only. For companies, there are two kinds of disclosure: voluntary and mandatory. The Regulation encourages all companies to voluntarily disclose the following information: (1) environmental guidelines, annual environmental goals and results; (2) annual resources consumption; (3) the condition of environmental investment and environmental technology development; (4) the types, discharge amount, and density of pollutants; (5) the construction and operation of environmental protection facilities; (6) waste processing and recycling; (7) any voluntary agreement concerning environmental protection with the environmental agencies; (8) the performance of corporate social responsibility; (9) any other environmental information. According to the Regulation, companies may voluntarily disclose the environmental information through media, internet or publishing corporate environmental annual reports. The Regulation further authorizes environmental agencies to award companies that voluntarily engage in environmental reporting. Environmental agencies may publicly applaud disclosing companies through local major media and give them priority in financing or subsidies.

But when a company is on the environmental agency’s list of companies whose pollutant emission exceeds national or local standards, the company is mandated to disclose the following information to the public: (1) the names, discharge methods, discharge density, aggregate amount, the exceeding amount of major pollutants; (2) the construction and operation of environmental protection facilities; (3) emergency plans for environmental disasters. The company is required to disclose through local major media to the public within 30 days when the environmental agency releases the list. Environmental agencies (central and local) are required to disclose lists of heavy-polluting companies under the Regulation. In short, certain heavy polluting companies are under obligation to disclose environmental information to the public.

46. See Shoubu Huanjing Xinxi Gongkai Banfa Chutai Qiangzhi Huanbao bumen he Wuran Qiye Gongkai Huanjing Xinxi Pan Yue Huyu yi Gongzhong Shendu Canyu Tuidong Wuran Jianpai [The First Regulation on Environmental Disclosure is Up; Environmental Agencies and Heavy-Pollution Companies are Required to Make Environmental Disclosure; Pan Yue Appeals to In-Depth Public Participation to Reduce Pollution and Emission], Press Release of

an important measure to build a harmonious society. Environmental disclosure can build a communication bridge between the public and the government, through which the public can exercise environmental rights to monitor development projects and polluting companies. Different interest groups can constructively interact with one another and avoid conflicts. Second, environmental disclosure is a necessity for building socialist democracy and the rule of law. Timely disclosure enables the public to participate in environmental policymaking. Third, environmental disclosure helps to deepen administrative reforms and build a service-oriented government. The statement also referred to the point that China's failure to achieve its 2006 emission reduction goal indicated the complexity of the environmental problem. It is a problem involving "adjustment of the traditional development model and its consequent interest structure;" and "the adjustment cannot rely on a few environmental agencies but needs public participation." The government should provide institutional mechanisms for public participation, and environmental disclosure is an important "institutional underpinning."⁴⁷

The two Chinese stock exchanges, the Shenzhen and Shanghai Stock Exchanges, recently also have taken actions in promoting CSR disclosure. In 2006 the Shenzhen Stock Exchange released the Guide on Listed Companies' Social Responsibility (hereafter "Shenzhen Guide"). "The [Shenzhen] Guide is promulgated based on the Company Law and the Securities Law with purposes of achieving scientific development, building a harmonious society, advancing toward economic and social sustainable development, and promoting corporate social responsibility."⁴⁸ By the end of April 30, 2007, the fiscal year following the release of the Shenzhen Guide, twenty listed companies on the stock exchange had published separate CSR reports along with their 2006 annual reports, ten of which clearly mentioned the Shenzhen Guide as a reference.

The Shanghai Stock Exchange also launched CSR disclosure initiatives. In May 2008 it promulgated the "Guide on Environmental Information Disclosure for Companies Listed on the Shanghai Stock Exchange" (hereafter "Shanghai Guide") and "Notice on Strengthening Social Responsibility of Listed Companies" (hereafter "Notice"). Under the scheme provided in the Shanghai

the Ministry of Environmental Protection of People's Republic of China, (Apr. 25, 2008), available at http://www.zhb.gov.cn/xcyj/zwhb/200704/t20070425_103120.htm.

47. *See id.*

48. *See* art. 1 of the Shenzhen Guide. According to Article 35 in the Guide, "the [Shenzhen] Stock Exchange encourages listed companies to establish social responsibility reporting systems based on the rules set forth in the Guide, and periodically examine and assess their corporate social responsibility performance and existing problems." Article 36 suggests that "listed companies may issue CSR reports along with their annual reports." Article 36 further suggests that "the social responsibility reports should contain at least the following information: (1) the system and performance concerning employee, environment, product quality and community relationships; (2) a statement concerning any gap between implementation performance and the Guide, and give explanations; (3) improvement measures and concrete timetables."

Guide and the Notice, certain public companies are required to disclose environmental information in a timely manner to the public and all companies are encouraged to publish CSR reports in addition to annual financial reports.⁴⁹ In December 2008, the Shanghai Stock Exchange further accelerated the development of CSE disclosure by mandating three types of listed companies to issue the CSR annual report from the fiscal year of 2008.⁵⁰ The companies include companies that are listed in the Shanghai Stock Exchange Corporate Governance Index, companies that list shares overseas, and companies in the financial sector. According to the information released by the Shanghai Stock Exchange, there were 290 listed companies publishing CSR reports for the fiscal year of 2008. Among the 290 companies, 258 companies issued the report because of the mandatory requirement while 32 companies did it voluntarily. In 2007, the securities regulatory agency of Fujian Province issued a regulatory

49. Under the scheme provided in the Shanghai Guide and the Notice, there are three kinds of disclosure: real-time disclosure of significant environmental events, special disclosure by blacklisted companies, and CSR annual reports. The former two have underpinnings in environmental regulation and therefore are mandatory in nature.

The real-time disclosure of significant environmental events is to require a listed company within two days of the occurrence of any of the following environmental events to disclose possible impact on its operation and stakeholders. The environmental events, simply speaking, include significant investments in projects that have material environmental impact, significant investigations or punishments by the government because of environmental law violations, material litigations concerning environmental problems, being blacklisted by environmental agencies, announcement of a new environmental law or regulation that may have material impact on corporate operation, and any other events that may have significant impact on stock prices.

The special disclosure by blacklisted companies is to require companies blacklisted by environmental agencies to disclose the following information within two days of the announcement of the blacklist. The information briefly speaking includes the kinds, density, and quantity of pollutants, condition concerning environmental protection facilities, environmental emergency plans, and preventive measures concerning emission reduction.

As to CSR annual reports, listed companies are encouraged to publish annual CSR reports along with their annual financial reports on the website of the Shanghai Stock Exchange. The Shanghai Stock Exchange gives suggestions about what to disclose, including the following information: environmental protection policies, annual goals, and performance; annual consumption of resources and energy; environmental investment and environmental technology development; the kinds, quantity, density and whereabouts of the pollutants; condition of environmental protection facilities; waste recycling; voluntary agreements on environmental improvement with environmental agencies; awards granted by environmental agencies; and other environmental information voluntarily disclosed. The Shanghai Stock Exchange also suggests that listed companies may disclose in their annual CSR reports "social contribution per share," deriving from the idea of earnings per share.

50. See Shanghai Zhengquan Jiaoyisuo guanyu Zuohao Shangshi Gongsu 2008 Nian Luxing Shehui Zeren de Baogao ji Nebu Kongzhi Ziwo Pigu Baogao Pilou Gongzuo de Tongzhi [The Shanghai Stock Exchange's Notice Concerning Listed Companies' Implementation of Corporate Social Responsibility Reporting and Internal Control Self-Evaluation Reporting in 2008] (Dec. 4, 2008) (on file with author); Shanghai Zhengquan Jiaoyisuo Guanyu Zuohao Shangshi Gongsu 2008 Nian Niandu Baogao Gongzuo de Tongzhi [The Shanghai Stock Exchange's Notice Concerning Listed Companies' Preparation for 2008 Annual Report] (Dec. 30, 2008) (on file with author).

instruction requiring listed companies incorporated in the Fujian jurisdiction to publish an annual CSR report along with the annual financial report.⁵¹ Moreover, in 2008 the agency further issued the Guide on Social Responsibility of Listed Companies, Securities and Futures Management Institutions, and Securities and Futures Services Institutions (hereafter “Fujian Guide”).⁵² The Fujian Guide is intended to “implement scientific development, construct a harmonious society, advance the implementation of corporate social responsibility in the construction of the capital market, and therefore to realize the sustainable development of the companies themselves, of society and of the environment.”⁵³ The Fujian Guide urges listed companies and securities firms to issue CSR reports along with their annual reports. According to the Fujian Guide, through CSR reports, listed companies and securities firms can “improve CSR dialogue mechanisms, so they can understand and respond to stakeholders’ suggestions in a timely fashion, and proactively subject themselves to the supervision of stakeholders and of society at large.”⁵⁴ In order to promote CSR and CSR reporting, the regulatory agency also urged listed companies to sign CSR declarations, and launched a training conference to educate listed companies about how to implement CSR and CSR reporting.⁵⁵ According to Mr. Renhua Yue, the Director of the Fujian securities regulatory agency, the motivation of all the initiatives is based on the belief that “CSR is not window dressing, but a requirement for corporate long-term development.”⁵⁶

4. Socially Responsible Investing and Environmentally Responsible Financing

Recent research has become certain about the positive relationship between

51. See Fujian CSRC, Guanyu 2007 nian Niandu Baogao Xiangguan Gongzuo de Buchong Tongzhi [A Complementary Notice Concerning the 2007 Annual Report], available at <http://www.csrc.gov.cn/n575458/n870603/n1335084/10379111.html>.

52. Fujian Shangshi Gongsi, Zhengquan Qihuo Jingying Jigou, Zhengquan Qihuo Fuwu Jigou Shehui Zeren Zhiyin, [The Guide on Social Responsibility of Listed Companies, Securities and Futures Management Institutions, Securities and Futures Services Institutions], Fujian CSRC[2008] No. 30, available at <http://www.csrc.gov.cn/n575458/n870603/n4243228/10347251.html>.

53. See art.1 of the Fujian Guide.

54. See art. 44 of the Fujian Guide.

55. See Chuanzhong Yang & Yochuan Zhang, *All the Listed Companies Incorporated in the Fujian Province Publish CSR Reports*, SHANGHAI SECURITIES POST, A1, May 23, 2008, print and electronic versions available at http://paper.cnstock.com/paper_new/html/2008-05/23/content_61852450.htm.

56. See Miao Kang, *Fujian Zhengjianju: Xiaqu Shangshi Gongsi Bianzhi Nianbao Shi Bixu Jiaru Shehui Zeren* [CSRC: Corporations Incorporated in Fujian Jurisdiction should Include CSR Information When Preparing for the Annual Report], XINHUA NEWS, Jan. 18, 2008, available at http://news.xinhuanet.com/newscenter/2008-01/18/content_7445136.htm (reporting the speech in the Fujian CSR training program delivered by Mr. Renhua Yue).

CSR and corporate financial performance.⁵⁷ The positive relationship between CSR performance and financial performance strongly suggests that investment analysis should include social and environmental factors. The investment analysis approach generally is called “socially responsible investing” (SRI).

SRI recently has emerged in China. In May 2006 the Bank of China launched the first SRI fund in China, the Sustainable Growth Equity Fund. In March 2008, the Industrial Management Company made the initial public offering of the Xingye SRI Fund to domestic investors in China.⁵⁸ Moreover, China’s first SRI index was launched at the beginning of 2008 by the Shenzhen Securities Information Company and Tianjin Teda Company. The index, called “TEDA Environmental Protection Index,” focuses on the top 40 environmentally responsible companies listed on the Shenzhen and Shanghai Stock Exchanges. In August 2009, the Shanghai Stock Exchange also launched the “Responsibility Index”, selecting the top 100 socially responsible companies on the stock exchange.⁵⁹

The Chinese government recently began to use financial channels to improve corporate environmental performance. In July 2007, the Chinese government initiated the green credit policy. The State Environmental Protection Administration (SEPA), the People’s Bank of China, and the China Banking Regulatory Commission (CBRC) jointly promulgated the Opinion on Enforcement of Environmental Law and Prevention of Credit Risks, directing Chinese banks to incorporate corporate environmental performance into credit assessments.⁶⁰ According to the Opinion, the purpose of the decision is to increase the costs of violating environmental law and improve corporate environmental performance. The linkage between corporate environmental performance and the availability of loans basically works as follows. Environmental agencies at all levels should build an information database containing standardized information concerning corporate environmental

57. There has been a debate about CSR performance and financial performance for decades; but the recent and important study with more rigorous methodology by Marc Orlitzky et al., confirms the positive relationship; the Orlitzky’s study examines 52 studies which represent the population of prior empirical studies. See Marc Orlitzky et al., *Corporate Social and Financial Performance: A Meta-Analysis*, 24 *ORG. STUD.* 403 (2003).

58. See William Baue, *Bank of China International Investment Managers Launches First SRI Fund in China*, SOCIALFUNDS, Sustainability Investment News, June 6, 2006, available at <http://www.socialfunds.com/news/article.cgi/2026.html>; for the information about Xingye Social Responsibility Fund, including prospectuses, see <http://www.xyfunds.com.cn/column.do?mode=searchtopic&channelid=2&categoryid=822>.

59. See Shanghai Stock Exchange, <http://www.sse.com.cn/ps/zhs/sjs/hotspot/hotspot20090805a.html>; <http://www.sse.com.cn/ps/zhs/sjs/hotspot/hotspot20090721a.html>.

60. See Guanyu Luoshi Huanbao Zhengce Fagui Fangfan Xindai Fengxian de Yijian [The Opinion on Enforcement of Environmental Law and Protection of Credit Risks], Huanfa (2007) No. 108 [The Document of Ministry of Environmental Protection (2007) No. 108], available at http://www.zhb.gov.cn/info/gw/huangfa/200707/t20070718_106850.htm.

violations, environmental approval records, clean production certifications, and environmental excellence awards. The environmental agencies should provide the information to banks; and banks should incorporate the information into credit assessments. Along with the release of the Opinion, the SEPA immediately began the green loan program by blacklisting 30 companies for serious environmental violations and reporting the information to the credit management system of the People's Bank of China.⁶¹

Some Chinese banks have informally reported their progress in implementing the green loan policy. For example, the Industrial and Commercial Bank of China, one of the five major banks in China, claimed that it had screened its 59,000 corporate clients in 2007 to assess environmental performance, whereby "78 percent were cleared for green loans of more than 200 million RMB, accounting for about 80 percent of the total."⁶²

In January 2008, the SEPA signed an agreement with the International Financial Corporation (IFC) to develop guidelines for the green credit policy in China.⁶³ Under the Agreement, the SEPA and IFC will develop green credit guidelines for a number of key polluting sectors (e.g., pulp and paper mills, and mining), allowing banks to integrate environmental risks into their credit assessment process practicably. Moreover, the SEPA and other government agencies will jointly develop measures to introduce the IFC Performance Standards and Equator Principles to China. The Equator Principles, initiated by the IFC and a number of large banks (e.g., Citigroup, HSBC), are a set of standards for the financial industry to evaluate social and environmental risks in project financing.

In addition to the green credit scheme, the SEPA recently coordinated with the China Securities and Regulatory Commission (CSRC) to initiate a series of measures generally called "green securities."⁶⁴ Under the green securities

61. See Attachment 2 in the Press Release of Ministry of Environmental Protection of the People's Republic of China, Huanbao Zongju Shoudu Lianshou Renmin Yinhang Yinjianhui yi Luse Xindai Ezhi Gao haoneng Gao Wuran Hangye Kuozhang [The Ministry of Environmental Protection coordinated with the People's Bank of China, the China Banking Regulatory Commission to Suppress the Expansion of Pollution-Heavy and High-Energy-Consumption Industries through the Use of Green Credit], Press Release, July 30, 2007, available at http://www.zhb.gov.cn/xcyj/zwhb/200707/t20070730_107365.htm.

62. See Xiaohua Sun, *China to Bring in Green Loan Benchmark*, CHINA DAILY, Jan. 25, 2008, available at http://www.chinadaily.com.cn/bizchina/2008-01/25/content_6420781.htm.

63. See IFC Environment Highlight January 2008, China EPA, IFC to Develop Guidelines for Ground-breaking National Green Credit Policy, available at http://www.ifc.org/ifcext/enviro.nsf/Content/Highlights_January2008_ChinaGreenCredit.

64. See e.g., Guanyu dui Shenqing Shangshi de Qiye he Shenqing Zairongzi de Shangshi Qiye Jinxing Huanjing Baohu Hecha de Tongzhi [Notice Concerning the Environmental Checks on IPO Application by Companies or Re-Financing Applications by Listed Companies], SEPA [2003] No. 101, available at http://www.sepa.gov.cn/info/gw/huangfa/200306/t20030616_85622.htm; Guanyu Jiaqiang Shangshi Gongsi Huanjing Baohu Jiandu Guanli Gongzuo de Zhidao Yijian [The Guide Opinion on Strengthening Checks on

scheme, companies in 13 high-pollution and high-energy-consumption industries are subject to environmental performance reviews when applying for initial public offering (IPO) or refinancing. According to Mr. Yue Pen, the Vice Minister of SEPA, in the latter half of 2007, the SEPA completed 37 companies' environmental performance reviews for IPO applications, failing 10 companies, some of which are large companies, such as China Coal Energy Corporation, the second-largest coal producer by output in China.⁶⁵ The reasons that these companies failed to pass the reviews include: failure to strictly implement environmental impact evaluations; failure to phase out outdated facilities; failure to install environmental protection facilities required by law; emissions exceeding the permitted level; environmental protests, etc.

B. Private Initiatives

1. CSR Standards and Guidelines

Global supply chains play an important role in disseminating the concept of CSR in China. Multinational companies' codes of vendor conduct and other similar responsible production standards such as SA8000 are the main instruments for introducing CSR into China. These foreign responsible production standards however have confronted resistance in China. For many years, there has been a strong voice calling for China's own responsible production standards, particularly with regard to labor standards. Some suppliers in the textile and apparel industries where foreign responsible production standards are common have tried to gain leverage against the foreign standards by forming associations and developing their own standards. The prominent example is the CSC9000T developed by the China National and Textile and Apparel Council and other representatives of Chinese corporations.⁶⁶ CSC9000T (China Social Compliance 9000 for Textile and Apparel Industry) is a social management system, which is designed in social parlance to imitate ISO14000, the internationally-recognized environmental management tool.⁶⁷ CSC9000T provides objectives in the areas of management system, employment contract, child workers, forced or compulsory labor,

Listed Companies' Environmental Protection Performance], SEPA [2008] No. 24, available at http://www.sepa.gov.cn/info/gw/huangfa/200802/t20080225_118650.htm.

65. See Disanxiang Huanjing Jingji Zhengce Luse Zhengquan Zhidao Yijian Chutai, 2008 Nian Jiang Jianli Shangshi Qiye Huanjing Xinxi [The Third Environmental Economic Policy Is Up, Environmental Disclosure System for Listed Companies Will be Established in 2008], Press Release of the Ministry of Environmental Protection of People's Republic of China (Feb. 25, 2008), at http://www.mep.gov.cn/xcyj/zwhb/200802/t20080225_118588.htm; *China Takes Green Steps, Delaying Polluters IPOs*, (Chinese) WALL ST. J., Feb. 26, 2008 (reporting which companies' IPO or refinancing applications were denied by the CSRC because of the green securities program).

66. See the official website of CSC9000T, <http://www.csc9000.org.cn/>.

67. See Item 2 of the Scope Section in the CSC9000 Principles and Guidelines.

working hours, wages and welfare, trade unions and collective bargaining, discrimination, harassment and abuse, and occupational health and safety.

CSC9000T, like other Chinese CSR guidelines, self-claims itself a set of standards with “Chinese characteristics.”⁶⁸ At first glance, CSC9000T seems to be very similar to other certifiable responsible production standards prevalent at the international level. CSC9000T is not a set of standards designed for certification, however. It builds on an evaluation model, in which third party evaluation organizations evaluate suppliers’ social performance and give advice on how to improve it. Therefore, CSC9000T takes a much softer approach than the certifiable standards developed by international NGOs or multinational companies based in developed markets. The standards set forth in CSC9000T are long-term goals rather than immediately required standards. The Chinese suppliers further soften the stiffness of social performance requirements by holding control over the whole evaluation process. The evaluation process is controlled by the Responsible Supply Chain Association (RSCA) whose members are the same companies subject to the evaluation process. From a western buyer’s perspective, it may be too early to tell whether CSC9000T is a genuine device to protect labor rights or a cunning contrivance. However, based on the 2006 CSC9000T Annual Report, it may herald a Chinese way of implementing socially responsible standards.⁶⁹ The Annual Report discloses the identity of ten participant companies and the preliminary evaluation result, in which it reveals serious and prevalent violation of minimum wages, working hours and health protection. Such revelation may dismantle some suspicion of deception. It also in particular addresses the harmonious and cooperative interaction between the companies and the evaluators during the evaluation process, the importance of training and technical supports, and the flexibility of correcting problems with different urgency levels. Although CSC9000T uses so-called “third party evaluation organizations” to conduct evaluations, it does not stress the independent or adversary dimension that is typically associated with a third-party auditor. Rather, according to the Report, it is the “cooperative and harmonious” relationship between the CSC9000T evaluators and companies that inspires corporate commitment to labor rights improvement.⁷⁰ The stress on such cooperative and harmonious relationships may have its root in the Chinese cultural preference for non-adversary mechanisms such as mediation and conciliatory negotiation to solve disputes,⁷¹ but it also strongly resonates the

68. See CSC9000T Principles and Guidelines.

69. See CSC9000T, 2006 CSC9000T ANNUAL REPORTS, Chinese and English versions, available at <http://www.csc9000.org.cn/>.

70. See *id.*

71. See Carlos de Vera, *Arbitrating Harmony: ‘Med-Arb’ and the Confluence of Culture and Rule of Law in the Resolution of International Commercial Disputes in China*, 18 COLUM. J. ASIAN L. 149 (2004) (arguing that the Chinese arbitration system’s intermingling of arbitration and mediation, though contrary to the western notion of impartial arbitration, has its roots in China’s

cross-country finding that capacity-building assistance to suppliers in developing countries is an important complement to adversary monitoring for effective implementation of social responsible production.⁷² In summary, the Chinese suppliers are trying to find their own way, in which they can strike a balance between satisfactory working conditions and business reality in China.

In addition to the CSC9000T for the textile and apparel sector, a set of cross-sector standards also emerge in China. In April 2008, eleven industrial associations in coal, mechanics, steel, petroleum and chemicals, light industry, textiles, building materials, non-ferrous metals, electricity, and mining industries jointly promulgated the Social Responsibility Guide of the China Industrial Companies and Industrial Associations (hereafter “the Industrial Guide”).⁷³ According to the preamble in the Industrial Guide, “the behavior principles, the goals, and the indicators set forth in the Industrial Guide are compatible with the current reality of China’s socioeconomic and industrial development.” It further states that “from a global view, given the cross-national differences, developed countries and developing countries have different systems and standards of social responsibility.” Therefore, the associations “endeavor to propose a set of corporate-level and industrial-level guidelines that connect with the international trend, match China’s reality, and possess Chinese characteristics, thereby promoting and advancing the implementation of social responsibility by the Chinese industrial companies and industrial associations.”⁷⁴ The Industrial Guide can be regarded as the most comprehensive CSR standards in China thus far. According to the Industrial Guide, all industrial companies and industrial associations should establish a comprehensive CSR system.⁷⁵ The comprehensive CSR system should include the management system, the institution system, the information system, and the monitoring system.

cultural disposition towards harmony).

72. See Richard Locke et. al., *Does Monitoring Improve Labor Standards? Lessons from Nike* (MIT Sloan Sch. of Mgmt. Working Paper No. 24, 2006) (arguing that after surveying over 800 of Nike’s suppliers in 51 countries, monitoring suppliers and providing them with capacity building support is more conducive to improving conditions than monitoring alone); Richard Locke & Monica Romis, *Beyond Corporate Codes of Conduct: Work Organization and Labor Standards in Two Mexican Garment Factories* (MIT Sloan Sch. of Mgmt., Working Paper No. 4617-06, 2006) (arguing that monitoring plus technical and organizational assistance helps suppliers to improve working conditions).

73. See Zhongguo Gongye Qiye ji Gongye Xiehui Shehui Zeren Zhinan [*The Social Responsibility Guide of the China Industrial Companies and Industrial Associations*], CHINA INDUSTRY NEWS, Apr. 16, 2008, at A3, available at <http://www.cinn.cn/show.asp?ClassID=33&id=44792>.

74. See *id.*

75. See *id.*

2. *CSR Organizations, Forums and Awards*

A number of organizations with the specific purpose of promoting CSR in China recently have been established. The important ones include China CSR, SynTao, China CSR Map, and the Chinese Business Council for Sustainable Development, just to name a few. Major Chinese print media sources such as China Economic Weekly, China WTO Tribune, Nanfang Weekend also frequently publish special issues on CSR and periodically hold CSR forums and announce CSR awards. A leading nationwide CSR award is the Top 100 Corporations in the Annual CSR Survey, a program launched in 2006 by Peking University, Environmental Magazine, and the China Central Television (CCTV), which is commonly considered as the principal mouthpiece of the Chinese government.

C. Understanding the Initiatives in the Chinese Context

So far this Article has overviewed major CSR initiatives in China. The overview shows that CSR has gained some recognition by the government, academia, media, industrial associations, and companies in China. The Chinese governmental policies and laws explicitly recognize the importance of CSR and Chinese companies are becoming familiar with the concept of CSR and starting CSR programs.

Many of the Chinese CSR initiatives are explicitly intended to develop CSR with “Chinese characteristics.” The Chinese government plays an important role in directing the discourse of Chinese CSR. A definitional characteristic implied in the state-led Chinese CSR initiatives is that human rights issues are excluded from the scope of Chinese CSR. Private initiatives such as CSC9000T also develop its own features to differentiate from western-based CSR standards and suit the needs of Chinese companies.

The literal analysis of these Chinese CSR initiatives gives ideas about the CSR development in China. But a thorough understanding of the formation and limitations of the CSR initiatives entails an analysis concerning the political and socioeconomic environment in China. The following parts of this Article are to analyze the historical, ideological, instrumental and institutional foundations and limitations of CSR development in China.

III.

HISTORICAL AND IDEOLOGICAL FOUNDATIONS

A. The Social Responsibility of Family Enterprises in the Traditional Chinese Society

“*Gongsi shehue zeren*” (“corporate social responsibility”) is a neologism in

Chinese. It is apparently a translation from English, which has led many to claim its complete foreignness to the Chinese society. In fact, business practices of traditional Chinese family enterprises resonate with certain aspects of CSR.

The ideology of orthodox Confucianism is hostile to profit-making and business. As Professor Teemu Ruskola argues, under the anti-mercantile climate, traditional Chinese business organizations often claimed themselves as an extension of families or clans, using the kinship cloak to hide the truly business nature and to gain recognition by the state.⁷⁶ When the legitimacy of business was based on the ideology of kinship, it also meant that business had inherent social responsibilities. Family enterprises had responsibilities not only to their family members but also the larger social communities and even to the state (the “political family”).⁷⁷ This broad scope of responsibilities shared the main idea of modern CSR – corporations should be accountable not only to shareholders but also other stakeholders (e.g., local communities).

Zhan Buddhism and Daoism also influenced business practices in the traditional Chinese society. The secularization of Zhen Buddhism and Daoism combined with the Confucianism during the sixteenth and eighteenth centuries (Ming and Qing Dynasties) induced a culture of diligence, honesty and charity among businessmen.⁷⁸ Chinese businessmen realized their social significance and revealed willingness to contribute to the society. In the sixteenth and eighteenth centuries a large number of successful businessmen, particularly from the provinces of Shanxi and Anhui, donated large portions of their wealth to charitable works and even took over certain social functions that were used to be performed by local governments.⁷⁹ They built shelters for the poor, established schools for poor students, and constructed roads to facilitate transportation.

The charitable works were not just morally motivated but also legally urged. For example, an edict issued in 1731 by an emperor of the Qing Dynasty proclaimed that “the ideal way for a wealthy household to perpetuate itself included the need to be constantly vigilant, even in peacetime, in dispensing relief and aid to the poor.”⁸⁰ The charitable works therefore were part of efforts to discharge the family enterprises’ broad social and political duties.

The historical roots/tradition of CSR helps to explain the recent public

76. See Teemu Ruskola, *Conceptualizing Corporations and Kinship: Comparative Law and Development Theory in a Chinese Perspective*, 52 STAN. L. REV. 1599 (2000) (analyzing the corporate nature of Chinese clan corporations).

77. See *supra* note 60, at 1608, 1664 (arguing family enterprises’ responsibility to family members and local communities), 1622 (arguing Confucian political and social construct is an extension of family governances).

78. For the leading research on this topic, see generally SHI-YING YU, *ZHONGGUO JINSHI ZONGJIAO LUNLI YU SHANGREN JINGSHEN* [THE RELIGIOUS ETHICS AND BUSINESSMAN SPIRITS IN CHINA BETWEEN 16TH AND 18TH CENTURIES] (1987).

79. See *id.* at 98 & 161.

80. See *supra* note 76, at 1664.

outrage in China over corporate donations for the victims of the 2008 devastating earthquake in Sichuan, China. The Chinese major media and the public seriously criticized many Chinese and foreign companies for their “stingy” donations for the earthquake relief work, despite these companies had already donated a fair amount of money immediately after the earthquake.⁸¹ The criticized companies were forced by the public pressure to pour a lot more money than the amount they originally planned. Leaving other controversial questions aside, this high-profile event seems to suggest that the charity aspect of corporate responsibility is strongly rooted in the Chinese society.

But the historical trace of CSR in the Chinese context has limitations in understanding modern CSR. First, the charitable activities were usually limited to the businessmen’s clans and home towns. The recipients of the donations typically were those with certain familial or geographical ties with the businessmen. Second, charitable activities are only a small facet of modern CSR.

B. The Socio-Economic Function of State-Owned Enterprises in Traditional Chinese Communism

The concept of CSR, when discussed in the Chinese communist setting, is easily confused with the idea of state-owned enterprises as social services and benefits providers (*qiye ban shehui*) in the traditional Chinese communist economy. The misunderstanding of CSR as degeneration into the Chinese old unproductive economic model caused some worries in the early stage of developing CSR in China.

Before the economic reform, a state-owned enterprise (SOE) was not only a production unit but also a social services center. A SOE shouldered an important function of providing a cradle-to-grave welfare package to employees and their families. In addition to its main business, a SOE in the old days also extended its operation to educational institutions (e.g., kindergartens, elementary

81. The most criticized Chinese company was Vanke, a public company listed on the Shenzhen Stock Exchange. Mr. Shi Wang, the chairman of the Vanke board of directors, made a statement on his blog that “it is proper for Vanke to donate RMB 2 million; China is a disaster-prone country; charity donations are common; therefore corporate charity donations should be done in a sustainable way and should not become a burden on corporations.” He also stated that “there is an internal rule regarding the Vanke employee donation campaign: ordinary employees should not donate more than RMB 10 [about \$ 1.44] per person; the purpose of the rule is not to transform donations into burdens.” These statements aroused huge outrage in China. Multinational companies such as McDonalds, Nokia, and Samsung etc. were also under attack. Under the tremendous public pressure, these multinational companies eventually resorted to the Ministry of Commerce for help, asking the Ministry of Commerce to make a statement to show that the multinational companies were not stingy with donations and to pacify the public anger. Mr. Deming Chen, the Minister of the Ministry of Commerce, therefore on May 22, held a press conference to show that the stingy charge against these multinational companies was groundless. See http://www.nfdaily.cn/finance/finance_list/content/2008-05/23/content_4411340.htm.

and high schools, and libraries), health care institutions (e.g., hospitals and sanatoriums), old age pensions, and many other facilities (e.g., restaurants, dormitories, barber shops, bath facilities, and entertainment clubs) for the benefits of employees and their families.⁸² These social services operations were structurally attached to and financially reliant on the SOE.

There are important distinctions between CSR and *qiye ban shehui*. First, *qiye ban shehui* is an old economic model operated in the traditional Chinese communism while modern CSR, spreading from the West, is a partial solution to irresponsible corporate conduct in globalization. Second, CSR's beneficiaries include, but are not limited to, employees, creditors, consumers and local communities while *qiye ban shehui* only concerns about employees.⁸³ Third, the focus of CSR is about corporate obligations to society while the core of *qiye ban shehui* is social security.⁸⁴

Qiye ban shehui requires enterprises to set up internal units providing comprehensive social services. Such model is blamed as one of the main causes for dragging the financial performance of SOEs.⁸⁵ In order to modernize the SOEs, the Chinese government in recent years has channeled efforts into separating the social services operations from the main business of the SOEs. The SOEs are restructured as modern companies focusing on their main business only. The social services operations are cut off from the reformed corporations; for example, elementary and high schools can be handed over to local governments; hospitals can be structured as independent legal entities with profit or non-profit purposes; restaurants and entertainment clubs can be formed as independent business organizations.

Removing the social services operations from the SOEs, however, does not mean the reformed corporations undertake no social responsibilities. The essence of separating the social services operations from the main business operation is to make the SOEs specialized in their core business. The reformed corporations are still required to provide health care to their employees, for example, through buying health insurance, rather than through setting up hospitals within the corporations. CSR absolutely is not a relapse into the *qiye ban shehui* model in the old days. Although CSR requires a corporation to take care of social problems arising from its business course, the corporation's solutions are not equivalent to the *qiye ban shehui* model.

The reform of SOEs in China instead reveals the importance of CSR. First,

82. See BAOHUA DONG, LAODONG GUANXI DIAOZHENG DE SHEHUIHUA YU GUOJIHUA [THE SOCIALIZATION AND INTERNATIONALIZATION OF LABOR RELATIONS ADJUSTMENTS] 242-251 (2006); JUNHAI LIU, GONGSI DE SHEHUI ZEREN [CORPORATE SOCIAL RESPONSIBILITY] 12-14 (1999).

83. See *id.*

84. See *id.*

85. See Baohua Dong, *supra* note 82, at 245-247.

because the SOEs undertook the social security function in the old economy, removing the social services operations from the SOEs may seriously affect employees' interests. Second, the restructuring process of the SOEs usually involves large-scale layoffs of employees. How to properly settle the redundant employees without causing social unrest has been an important question. In the transitional period, balancing the interests of stakeholders in the SOEs is an important task, which therefore echoes some aspects of CSR.

C. Development Policy – Sustainable Development and Harmonious Society

CSR is commonly associated with sustainable development. Sustainable development has been repeatedly enshrined in the Chinese government's policy statements since 1992. The Chinese government signed the Declaration on Environment and Development at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, 1992. Following the adoption of the Declaration is a stream of government policy guidelines explicitly linked to the concept of sustainable development, including the Ten Policies on China's Environment and Development released in 1992; China's 21 Agenda – the White Paper on China's Population, Environment and Development published in 1994; the Ninth, Tenth and Eleventh Five-Year Plans for National Economic and Social Development, respectively adopted in 1996, 2001 and 2006 by the National People's Congress of China.⁸⁶

In October 2006, the Sixth General Meeting of the Sixteenth Central Commission of the Chinese Communist Party made an important declaration that "building a harmonious society" is the long-term goal of the Chinese socialism.⁸⁷ According to the declaration, there are many existing problems that can cause conflicts and damage social harmony, mainly including: inequality in regional development, population pressure and environmental pollution, unemployment, income inequality, low accessibility and quality of health care and social security.⁸⁸ Solving these problems is the current chief mission of the Chinese Communist Party, as the Declaration made clear.

These policy statements have symbolic importance for advancing CSR in China. They politically legitimate the status of CSR and open a door for public discussion of CSR relevant issues.

86. See Five Year Plans, <http://www.china.org.cn/english/features/guideline/156529.htm> (English version); see also GUILIN GAO, GONGSI DE HUANJING ZEREN YANJIU [RESEARCH ON CORPORATE ENVIRONMENTAL RESPONSIBILITY] 149-152 (2005).

87. See *The Sixth General Meeting of the Sixteenth Central Commission of the Chinese Communist Party*, Zhonggong Zhongyang guanyu Goujian Shehui Zhuyi Hexie Shehui Ruogan Zhongda Wenti de Jueding [Several Important Resolutions on the Construction of Socialist Harmonious Society by the Central Commission of the Chinese Communist Party], Oct.11, 2006, http://news.xinhuanet.com/politics/2006-10/18/content_5218639.htm.

88. See *id.*

IV.
INSTRUMENTAL MOTIVATIONS

A. Economic Interests in the Global Market as the External Push

The idea of CSR was transported to China in the 1990s mainly through global supply chains. The anti-sweatshop movement and environmental movement have caused multinational companies to adopt social and environmental standards in selecting their suppliers.⁸⁹ The standards can be internal voluntary codes of conduct established by a multinational company itself (e.g., Wal-Mart Standards for Vendor Partners; Nike's Code of Conduct) or external voluntary standards by non-governmental organizations (e.g., SA8000 established by Social Accountability International; Apparel Certification Program by Worldwide Responsible Apparel Production; ISO 14001 by the International Organization for Standardization). At the micro-level, Chinese suppliers have to prove that they meet the social and environmental standards in the production process in order to gain business from western-based multinational companies. At the macro-level, China has to respond to the CSR demand in the global market in order to retain economic growth.

Trade is an important account for the remarkable economic growth in China. With the accession to the WTO, China has become more integrated with the global economy. The integration means China not only has the power to affect the global market, but it also has to adjust itself to the market. Sensitivity to demand in the market is a necessity to survive in competition. The United States and the EU are the major markets to which China exports.⁹⁰ The consumers in these markets tend to express preference for products made in a socially and environmentally responsible manner. China as a seller has to satisfy their demands; otherwise, other competitors will fill in and take the market share.

The Chinese government and suppliers, however, initially held a strong resistant attitude toward the enhanced social and environmental standards in global supply chains, particularly with regard to labor protection measures.⁹¹

89. See, e.g., Harvey L. Pitt & Karl A. Groskaufmanis, *Minimizing Corporate Civil and Criminal Liability: A Second Look at Corporate Codes of Conduct*, 78 GEO. L.J. 1559, 1573-1600 (1990) (providing a historical review of the growth of codes of conducts fostered by scandals); Sean D. Murphy, *Taking Multinational Corporate Codes of Conduct to the Next Level*, 43 COLUM. J. TRANSNAT'L L. 389, 397-402 (2005) (explaining the impetus for the proliferation of codes of conducts).

90. See *id.*

91. This author has discussed the resistance in detail elsewhere, so a short summary would suffice here. See Li-Wen Lin, *Corporate Social Accountability Standards in the Global Supply Chain: Resistance, Reconsideration, and Resolution in China*, 15 CARDOZO J. INT'L & COMP. L. 321 (2007).

The resistance basically is grounded on four reasons: protectionism, commercialization, lack of localization, and imbalance of bargaining power. Because the enhanced social and environmental standards would increase production costs, developing countries such as China tend to regard the standards as protectionist measures to slash developing countries' competitiveness. Also, the high certification costs and incompetent certifiers associated with the implementation of the standards have led many Chinese manufacturers to think the standards as an extortion scheme, in which they need to pay off the certifiers to get a certificate of CSR. Chinese manufacturers also have claimed that the standards do not fit in with Chinese economic reality, in which most of the indigenous companies are still in the early stage of development and therefore lack resources to devote to labor and environmental protection. Moreover, Chinese manufacturers with weak bargaining power cannot make global buyers share the implementation costs of the standards, and therefore they have reduced incentives to honestly implement the standards.

It is commonly reported that many Chinese manufacturers use deceptive strategies such as double-bookkeeping in order to maintain economic interests (i.e., gaining business without actually implementing the CSR standards). Another important response to maintain economic interests in the international responsible production movement is to create indigenous CSR standards to compete against foreign standards; the CSC9000T discussed in Part II is an example of such countermeasures. Through establishing its own definitions and standards, China may gain control over the development of CSR. Economic interests may be maintained when CSR standards are not dominated by developed countries.

In face of the economic pressure in global supply chains, the Chinese government, companies and scholars have debated for years how to respond to the movement of responsible production at the global level. There have been two competing views in China about the role of social and environmental standards in global supply chains: a trade barrier in favor of developed countries or a passport to the global market. After years of debate, the resistance now does not possess much political clout. As shown below, in addition to the recognition of CSR as the unavoidable global trend, the domestic economic, social and environmental changes are becoming important underpinnings for the CSR development in China.

B. Social and Environmental Problems as the Internal Pull

China has enjoyed a remarkable economic growth since 1980s, but the growth comes with social and environmental costs. Chinese companies did not develop a sense of responsibility in the course of making profits. Some Chinese scholars argue that the rampage of corporate irresponsibility in China has a root in the political ambience in the initial stage of economic development. In the

1980s and early 1990s the main focus of the Chinese government was to revamp the moribund SOEs. The purpose of the restructuring was to wean the SOEs from financial reliance on the government and to instill the idea of profit seeking into the sluggish enterprises.⁹² The Chinese government had a much more consistent commitment to restructuring SOEs than to developing the private sector.⁹³ The 1988 amendment to the Constitution qualified the private sector as “supplementary” to the China’s economy and still placed the sector under “guidance, supervision, and control of the state.”⁹⁴ It was not until 1997 that the Chinese government recognized the serious importance of the private sector and further affirmatively encouraged the development of that sector.⁹⁵ Therefore, on the one hand, the high-profile infusion of profit seeking into the SOEs caused an unwitting side effect of disregarding other purposes of corporations, including social responsibility.⁹⁶ On the other hand, privately-owned enterprises, faced with the high uncertainty in macroeconomic policies, had diminished expectation of on-going business relationships and therefore dared to act in a dishonest and irresponsible way.⁹⁷

Meanwhile, the competition for foreign investment among the Chinese local governments also exacerbated the culture of corporate irresponsibility. The Chinese local governments usually do not hesitate to grant regulatory exemption privileges in order to attract investors. The quality of working conditions and the protection of natural environments usually gave way to local economic growth.

The social, environmental and economic conditions have greatly changed over the past twenty years, however. In the recent years, the consequences of corporate irresponsibility have loomed large and caused outrage within China. Before 2004, China had a seemingly inexhaustible supply of cheap labor from its rural areas. However, the labor shortage in major exporting areas since 2004 may herald the end of the situation. Low wages and poor working conditions were the major reasons for the labor shortage, according to a government report.⁹⁸ Workers in developing countries are usually silent regarding their

92. See Donald C. Clarke, *What’s Law Got to Do with It? Legal Institutions and Economic Reform in China*, 10 UCLA PAC. BASIN L.J. 1, 8 (1992).

93. See Donald C. Clarke et. al., *The Role of Law in China’s Economic Development*, GWU Law School Public Law Research Paper No. 187 (2006).

94. See *id.*, at 12.

95. See *id.*, at 14.

96. See JUNHIA LIU, *supra* note 15, at 85-86.

97. See Jingjing Wang, *Zhidu Anpai dui Qiye Chengdan Shehui Zeren de Yingxiang* [The Effects of Institutional Arrangements on Corporate Social Responsibility], in ZHONGGUO QIYE SHEHUI ZEREN BAOGAO [A REPORT ON CHINESE CORPORATE SOCIAL RESPONSIBILITY] 114-115 (2006).

98. See Ministry of Labor and Social Security, *Guanyu Minggong Duanque De Diaocha Baogao* [Report on Labor Shortage] (2004); David Barboza, *Sharp Labor Shortage in China May*

rights, particularly in China where freedom of association is prohibited. However, Chinese workers have voiced their anger through their exodus from sweatshops.

Other government reports also indicate that workers are increasingly willing to manifest/act on their dissatisfaction with corporate irresponsibility. For example, labor dispute cases received by the Labor Dispute Arbitration committees nationwide increased sharply over the past ten years, from about 90,000 cases in 1998 to about 500,000 cases in 2008.⁹⁹ The statistics do not include labor disputes unreported to the committees. The main issues in the cases were concerning nonpayment and illegal reduction of wages, insurance and welfare, termination of employment, and occupational injury. The rapid growth of labor disputes places serious pressure on the Chinese government to address the labor problems.

Environmental degradation is an alarming issue and taking an economic and social toll in China. The Chinese government is openly worried about this problem. In September 2006 State Environmental Protection Administration (SEPA) and the State Statistics Bureau issued a Green GDP report stating that in 2004 environmental pollution cost China \$64 billion, equivalent to 3.05% of GDP that year.¹⁰⁰ According to a special report that SEPA and the World Bank released in February 2007 only one percent of China's total 560 million urban residents breathed air of quality that satisfied current European Union safety standards; about 47 billion cubic meters of water below quality standards was nevertheless supplied to households, industry and agriculture; about 100 billion cubic meters of the total water supply (500 billion cubic meters) in China was contaminated.¹⁰¹

According to the World Bank officials, the report also included the death toll from air and water pollution, but the result was removed from the published version because SEPA feared the result would cause social unrest in China.¹⁰² It was estimated that outdoor air pollution caused 350,000 to 400,000 premature deaths a year; indoor pollution contributed another 300,000 people; and 60,000

Lead to World Trade Shift, N.Y. TIMES, Apr. 3, 2006, at A1.

99. See National Bureau of Statistics of China, 2007 Laodong he Shehui Baozhang Shiye Fazhan Tongji Gongbao [2007 STATISTICS COMMUNIQUE OF LABOR AND SOCIAL SECURITY DEVELOPMENT], at http://www.stats.gov.cn/tjgb/qtjgb/qgqtjgb/t20080521_402481634.htm; Shanghai Stock Exchange Research Center, *Zhongguo Gongsizhili Baogao* (2007): Liyi Xiangguanzhe yu Gongshe Shehui Zeren [CHINA CORPORATE GOVERNANCE REPORT (2007): STAKEHOLDERS AND CORPORATE SOCIAL RESPONSIBILITY] 38-39 (2007).

100. Pollution costs China 511.8b yuan in 2004, XINHUA, Sept. 7, 2006, http://www.gov.cn/english/2006-09/07/content_381756.htm.

101. See China SEPA & World Bank, COST OF POLLUTION IN CHINA, available at http://siteresources.worldbank.org/INTEAPREGTOPENVIRONMENT/Resources/China_Cost_of_Pollution.pdf.

102. See Joseph Kahn & Jim Yardley, *As China Roars, Pollution Reaches Deadly Extremes*, N.Y. TIMES, Aug. 26, 2007.

died from diarrhea and other diseases in relation to water pollution.¹⁰³ The social unrest concern of SEPA could be understandable. From 1995 to 2006, the number of petitions concerning environmental problems filed with the environmental agency increased by ten times (616,122 petitions in 2006), which posed a great challenge to the environmental agency with limited resources.¹⁰⁴ Based on the experiences over the past years, an environmental problem would likely escalate to protests if it is not reasonably solved through petition.¹⁰⁵ In recent years, Chinese citizens have staged many high-profile protests concerning environmental issues; some of the protests amassed thousands of protesters.¹⁰⁶ On the one hand, this signals that corporate environmental irresponsibility now is subject to public scrutiny in China. On the other hand, environmental problems are becoming a threat to social stability.

In the Chinese political context, social and environmental problems pose a serious challenge to the legitimacy of the ruling Chinese Communist Party (CCP). Good performance in improving living quality of the Chinese population is believed to be the most important pillar of the CCP's political legitimacy.¹⁰⁷ The Chinese government has tried to redress social and environmental problems through various channels, and one of the important channels is the legal system. The philosophy is that, if Chinese citizens can air their grievance through the legal system, they would not seek political revolution against the CCP.¹⁰⁸ But the construction of effective legal institutions takes considerable time, and China is still less than satisfactory. Other complementary mechanisms should be devised. The promotion and indoctrination of CSR may be one of the complementary mechanisms for the institutional weaknesses. In this regard, the Chinese government has a political motive in promoting CSR.

103. *See id.*

104. In 1995, there were 58,678 petitions filed with the environmental agencies nationwide; in 2006, the number increased to 616,122. *See* Zhifeng Tong, *Dui Wuoguo Huanjing Wuren Yinfa Quntixin Shijian de Skao* [Some Thoughts on Protests Arising From Environmental Pollution in China], in *ZHONGGUO HUANJING DE WEIJI YU ZHUANJI* (2008) [CRISES AND TURNING POINTS OF CHINA'S ENVIRONMENTS (2008)] 149-156 (2008); *see supra* note 85 (reporting that the SEPA only has "about 200 full-time employees, compared with 18,000 at the EPA in the United States").

105. *See* Zhifeng Tong, *supra* note 104, at 150 (reporting that 62.2% (10,285) of 16,523 protests that occurred in the Guangdong province between 2000 and 2004 was caused by the reason that they could not be resolved through the petition system).

106. *See* Zhifeng, *supra* note 104, at 153.

107. Political scientists call this kind of legitimacy "performance legitimacy." *See e.g.*, JOSEPH FEWSMITH, *CHINA SINCE TIANANMEN: THE POLITICS OF TRANSITION* 9 (2001) (arguing that since 1980s the Chinese government has been much more reliant on performance legitimacy than ideological legitimacy).

108. *See* Mary E. Gallagher, "Use the Law as Your Weapon!": *Institutional Change and Legal Mobilization in China*, in *ENGAGING THE LAW IN CHINA* 57 (2005).

C. CSR as a Strategy of Pressing Foreign Companies to Improve the Quality of Living in China

While indigenous Chinese suppliers are being pushed hard by multinational companies to implement CSR, the Chinese government and media in return also call for CSR practices by multinational companies that have direct operations in China. The Chinese CSR initiatives that target foreign multinational companies therefore may be deemed as a strategy to partially counterbalance or return the pressure imposed by multinational companies. CSR can be a legitimate strategy to take foreign companies under scrutiny and to transfer wealth from foreign companies to Chinese society.

In recent times, the Chinese media have enthusiastically disclosed and condemned many foreign-based multinational companies in China for their unsafe products or production processes, including Häagen-Dazs' unsanitary kitchens, Kentucky Fried Chicken's illegal use of red dye in food, Nestlé's unsafe iodine in infant formula, to name just a few.¹⁰⁹ The Research Center on Transnational Corporations of the Ministry of Commerce also has produced a series of reports targeting on CSR performance of foreign companies in China and advocated that foreign companies should undertake CSR in China.¹¹⁰ According to the reports, many foreign companies engage in irresponsible conduct in China including tax evasion, bribery, monopoly, poor labor protection, environmental pollution, and product safety.¹¹¹

The Chinese government also helped Chinese workers take actions against foreign companies. A leading case may be the unionization of Wal-Mart stores in China. Wal-Mart opened its first store in China in 1996 and quickly expanded to more than 200 hundred stores in the next few years. The expansion of Wal-Mart stores drew attention from the Chinese government. The All China Federation of Trade Unions (ACFTU), the only legitimate labor union in China and known for its close affiliation with the Chinese government, had criticized Wal-Mart for its refusal to set up labor unions.¹¹² After making fruitless requests to Wal-Mart, the ACFTU organized a grassroots movement among Wal-Mart workers and in 2006 successfully pressed Wal-Mart to accept the

109. See e.g., Seung Ho Park & Wilfried R. Vanhonacker, *Kuaguo Gongsì Yinhe Shìqū Zunjìng: Jiàng Zhōngguó Dàngzuo Shìyànshì?* [Why Multinational Companies Lose Respect? Treating China as a Laboratory?] (giving a summary of recent events of multinationals' irresponsibility in China and analyzing the causes), PEOPLE DAILY ONLINE, Nov. 22, 2007, available at <http://mnc.people.com.cn/GB/6562449.html>.

110. See KUA GUO GONG SI ZHONGGUO BAO GAO [REPORT OF TRANSNATIONAL CORPORATIONS IN CHINA] (Lezhi Wang ed., annual publications from 2004-).

111. See *id.*

112. See Wal-Mart Watch, *Breaking from Tradition: The Unionization of Wal-Mart China*, available at http://walmartwatch.com/research/documents/breaking_from_tradition_the_unionization_of_wal_mart_china/.

establishment of labor unions in all Wal-Mart stores in China.¹¹³ The labor unions have obtained pay raises by negotiating with Wal-Mart's management. The ACFTU further announced that it will press all foreign companies to establish labor unions in China.¹¹⁴ All the cases above show that China is becoming vigilant about foreign companies' CSR performance in China.

V.

INSTITUTIONAL CONSTRAINTS

A. *Political Institutions: Constraints on Non-Governmental Organizations and Sensitive Issues*

The CSR movements in developed countries are regarded as social movements. They are "collectivities acting with some degree of organization and continuity outside institutional or organizational channels for the purpose of challenging . . . the extant authority," here challenging the institutionalized logic of single-minded profit maximization as the corporate goal.¹¹⁵ Non-governmental organizations (NGOs) are the critical player in the CSR movement. But the pattern of the Chinese CSR development is quite different from its western counterpart. Although NGOs in China have increased rapidly over the past decade, the formation of NGOs is still controlled by the governmental authority and NGOs' CSR agenda should play out within the political environment permitted by the government.¹¹⁶ State-led CSR initiatives in China consequently take on a more influential role than in many other countries worldwide. State-led CSR initiatives on the one hand give legitimacy for CSR NGOs, but on the other hand delimit the boundary of CSR issues permitted in China.

It is accepted that the Chinese government is more tolerant of environmental NGOs than other kinds of NGOs working on topics such as human rights, labor rights and diseases.¹¹⁷ This indicates that CSR's environmental aspect can develop more easily in China than the human rights and labor rights aspects.

Chinese NGOs are more inclined to use non-confrontational tactics (e.g., public education, information dissemination, salon discussions, field trips, and

113. *See id.*

114. *See* Jiao Wu, *80% Foreign Firm Workers to Have TUs*, CHINA DAILY, Jan. 9, 2008, available at http://www.chinadaily.com.cn/china/2008-01/09/content_6379854.htm.

115. *See* David Snow et. al., *Mapping the Terrain*, in BLACKWELL COMPANION TO SOCIAL MOVEMENTS 11 (2004).

116. *See* Guobin Yang, *Environmental NGOs and Institutional Dynamics in China*, 181 THE CHINA QUARTERLY 46 (2005).

117. *See* Gerald Chan et. al., *China's Environmental Governance: The Domestic-International Nexus*, 29 THIRD WORLD QUARTERLY 291,292 (2008).

litigation) to advance their CSR agenda. Although Chinese NGOs are constrained in setting issues, they have learned how to push the issue boundary by strategically “using the regime’s own words as a weapon of protest, resistance and collective action.”¹¹⁸ The state-led CSR initiatives may therefore provide some protection for NGOs to promote CSR.

B. Legal Institutions: Ambiguous Rules and Implementation Gaps

The review of Chinese CSR initiatives in Part II shows that CSR has been institutionalized in the Chinese legal system. On the one hand, the institutionalization gives CSR a legal status in China. On the other hand, incorporating CSR into law mires CSR in the problems of the Chinese legal system—ambiguity and unpredictability in rules and deficiency in implementation.

The legal effects of the CSR initiatives—whether they are legally binding or simply advisory—quite often are unclear. Article 5 of the 2006 Chinese Company Law, as discussed in Part II, is a great example. Chinese corporate law scholars have different interpretations of the effect of Article 5. Some scholars understand it as an exhortatory rather than mandatory provision while some interpret it as part of fiduciary duties under the company law. Currently the real effect of Article 5 is aligned with the former view given that the law does not specify the contents of CSR and shareholders have very limited access to enforce fiduciary duties in courts to specify the “inherent incompleteness” of the duties.¹¹⁹

Moreover, the government-led CSR initiatives are quite uncertain and unpredictable. Some CSR initiatives are only temporary and in the trial stage, such as the Regulation on Environmental Information Disclosure, detailed in Part II.A.3. The uncertainties in the CSR initiatives may cause Chinese companies to choose a wait-and-see policy and withhold true commitment.

Implementation deficiency is another problem. The Chinese legal system is notorious for the gap between the law on the books and the law in practice. Many of the mandatory CSR initiatives are largely unenforced.

C. Economic Institutions: Weak Demand from Consumers and Investors

Consumers are an important stakeholder in CSR development in Western countries. By making purchasing decisions, consumers can strongly affect the

118. See *supra* note 93, at 52.

119. See Katharina Pistor & Cheng-Gang Xu, *Fiduciary Duty in Transitional Civil Law Jurisdictions: Lessons from the Incomplete Law Theory*, in *GLOBAL MARKETS, DOMESTIC INSTITUTIONS: CORPORATE LAW AND GOVERNANCE IN A NEW ERA OF CROSS-BORDER DEALS* 77-106 (Curtis J. Milhaupt ed., 2003).

economic interests of corporations and therefore change corporate behavior. However, CSR standards at the moment are primarily implemented in export-oriented companies in China. Companies targeting the Chinese domestic market are largely unaffected by the standards because Chinese consumers have not yet shown a strong demand for products made in a socially and environmentally responsible manner. Chinese consumers have long followed the rule of “live within one’s income” and the virtue of thrift.¹²⁰ They care more about physical conditions and functions of products than process information as to how products are made.¹²¹ Furthermore, since Chinese consumers have long lived in planned consumption and low consumption environments, the concept of consumer rights is still new to them.¹²² In recent years, the Chinese media have become active in disclosing terrifying practices in food production processes so Chinese consumers have increased awareness of food safety. But the transformation from consumer awareness to consumer action remains elusive, and it is also complicated by deficiencies in legal and regulatory institutions, such as the lack of consumer rights lawyers.¹²³

Socially responsible investors are another important group of CSR advocates in western countries. Over the past decade, developed countries have witnessed a strong growth of socially responsible investing (SRI), according to statistics SRI communities provided.¹²⁴ SRI has evolved from eccentric practices by a small club of faith-based investors to innovative strategies by a large community of giant financially-sophisticated investors.¹²⁵ Major asset management companies offer a variety of SRI products. Large institutional investors, particularly pension funds that focus on long-term growth (e.g., CalPERS, the largest public pension fund in US) have adopted responsible

120. See LI LI-QING & LI YIAN-LING, *QIYE SHEHUI ZEREN YANJIU [STUDIES ON ENTERPRISE’S SOCIAL ACCOUNTABILITY]* 301, at 221 (2005).

121. See Douglas A. Kysar, *Preference for Process: The Process/Product Distinction and the Regulation of Consumer Choice*, 118 HARV. L. REV. 525, 529 (2004).

122. See LI LI-QING & LI YIAN-LING, *supra* note 120, at 221-222.

123. See Howard W. French, *As China’s Economy Roars, Consumers Lack Defenders*, N.Y. TIMES, July 8, 2007, <http://www.nytimes.com/2007/07/08/world/asia/08china.html>.

124. For example, in the United States, the SRI assets grew from \$639 billion in 1995 to \$ 2.71 trillion in 2007, accounting for 10% of all assets under professional management in the securities market. In Europe, the assets involved in SRI significantly increased from €60 billion in 2003 to €1.033 trillion in 2005. See Social Investment Forum, EXECUTIVE SUMMARY OF 2007 REPORT ON SOCIALLY RESPONSIBLE INVESTING TRENDS IN THE UNITED STATES, available at http://www.socialinvest.org/resources/pubs/documents/FINALExecSummary_2007_SIF_Trends_wl_inks.pdf. See European Sustainable and Responsible Investment Forum, EUROPEAN SRI STUDY 2006, available at http://www.eurosif.org/publications/sri_studies.

125. SRI has religious origins. See Steve Schueth, *Socially Responsible Investing in the United States*, 43 J. BUS. ETHICS 189, 189 (2003) (giving a brief history of SRI; explaining that “[i]n early biblical times Jewish law lay down many directives on how to invest ethically,” and the Quakers and Methodists have avoided profits at the expense of killing and slavery of human beings; also arguing that the avoidance of investment in sin stocks originated from the religious beliefs).

investment principles. Leading financial information services have launched a number of SRI indexes, including Dow Jones Sustainability Index and FTSE4Good Index Series. Through the power of capital, investors press companies to engage in CSR behavior.

Currently the structure of the Chinese capital market poses serious questions for the SRI development in China. First, Chinese investors have not yet developed an appetite for SRI. The Chinese securities market has been infamous for excessive speculation. Indigenous Chinese investors are obsessed with short-term profits, rather than long-term investment.¹²⁶ The short-term investment environment is not conducive for SRI that usually has long-term orientation. Previously, insurance companies and pension funds (the social security fund), which tend to be more long-term oriented, were not allowed to invest in the securities market.¹²⁷ But recent policy changes have relaxed the restriction, so insurance companies and pension funds may be the potential capital source for SRI in China.¹²⁸

Second, the market segmentation of the Chinese securities market slows the penetration of SRI investors who are now primarily foreign investors. In order to control/stabilize its securities market, the Chinese government segments the market into the A-share and the B-share markets. The segmentation would make the Chinese domestic securities market less connected with international securities markets. The A-share market is open to domestic investors and qualified foreign institutional investors (QFIIs) only. Foreign investors cannot invest in the A-share market unless approved as QFIIs. The B-share market suffers from low liquidity and has been sluggish for years, only playing a marginal role in the Chinese securities market.

Foreign investors are more interested in entering into the A-share market, instead of the B-share market. By the end of February 2008, there were 52 foreign institutional investors approved by the CSRC, with investment quota of RMB 9.995 billion granted by the State General Administration of Foreign Exchange (SAFE).¹²⁹ So far, the Chinese government has maintained a restricted policy toward foreign investment in its domestic securities market. At present, investment by foreign investors only accounts for a small fraction of the

126. Based on the data released by the Shanghai and Shenzhen Stock Exchange, the average annual turnover ratio between 1993 and 2006 was 483%. Between January and May 2007, the annual turnover ratio was even up to 739%, which means investors held a certain share less than 2 months. For the detailed data, see Hongming Jin, *Guanzhu Liutonggu Huansholu zhibiao [Concerns about the Turnover Ratio Indicators of Tradable Stock]*, SHANGHAI SECURITIES POST, July 16, 2007.

127. See Temporary Provisions on National Social Security Funds Investment Management (investment in securities cannot exceed 40% of total assets).

128. See *id.*

129. See CSRC, QFIIs Zige Tongji Qingkuang Biao [The Statistics Concerning the QFIIs], <http://www.csrc.gov.cn/n575458/n776436/n804980/n828538/n828649/n9954004.files/n9954003.doc>.

market. The marginal role of foreign investors implies that the driving force of SRI in the Chinese securities market should come from within. But as suggested above, indigenous Chinese investors, particularly retail investors (as opposed to institutional investors), have little awareness about SRI and thus are not a major impetus for CSR.

VI.

CONCLUSION

In recent years many indigenous CSR initiatives have emerged in China. The Chinese CSR initiatives include laws and regulations, governmental instructions and guidelines, non-governmental standards and organizations. The recent growth of the Chinese CSR initiatives deserves an analysis of the CSR development in China, especially given that China's international image is usually associated with human rights abuses, substandard products, sweatshops, and serious environmental pollution. How can these Chinese CSR initiatives gain footholds in China? Are they just expedient strategies to beautify China's tarnished international image? As observed in developed countries, many companies use CSR as a tool of public relations. In this sense, the suspicion of CSR as window dressing does not just surround Chinese companies but companies regardless of their nationality. But indeed, the local institutional environments compound the suspicion in the Chinese context.

This article argues that China has historical foundations and many real incentives to develop CSR, but meanwhile there are many political, social and economic constraints that do not allow CSR to develop at a quicker pace. The Chinese government plays an important role in developing the indigenous CSR initiatives. The government has political, social and economic motivations to *encourage* and also to *control* the development of CSR in China, resulting in uneven development of CSR issues. Environmental issues have the broadest space to develop while human rights have the most limited. Chinese companies also have mixed incentives to *adopt* and *maneuver* CSR initiatives. The private CSR initiatives such as CSC9000T reveal Chinese companies' efforts to strike a balance between responsible production and cruel business reality.

Based on the experience in developed countries, the CSR development is a long process rather than an overnight change.¹³⁰ China is unlikely an exception to that experience. Modern CSR was ushered into China in the late 1990s and is just gaining attention there. In the early stage of development, it is reasonable to expect that there is a gap between the words promised in the CSR initiatives and the real implementation of the CSR measures. But the existence of the gap does not relegate the CSR initiatives to simple window dressing. In the early stage,

130. See *supra* note 1.

the effects of the CSR initiatives may rest more on awareness-raising and course-defining than complete implementation. The recent growth of the Chinese CSR initiatives may be regarded favorably as the initial step toward making CSR take roots in China.