

ENCOURAGING SOCIAL PROGRESS IN CHINA

EU/China cooperation for the Social Pillar of sustainable development ¹

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ABSTRACT :

The present paper attempts to answer the central question of RESPECT on the influence and effectiveness of EU trade and investment policy on NTPOs [=non-trade policy objectives, often referred to as ‘values’] of trading partners, here the ‘social pillar’ of sustainable development. However, it does that solely in the specific context of EU/China trade and investment strategies.

Behind the broad aim of the paper lies a hypothesis about a long-run process of convergence between the EU and China with respect to the central aspects of the social pillar – adhering to international labour standards and the provision of social protection as understood by leading international organisations. For purposes of analysis, the notion of a ‘process of convergence’ culminates from three related but separate research questions:

The ***first research question*** : *In transforming from a system of central planning without private ownership towards a market economy, has China addressed the respect for international labour standards and built up a system of social protection based on individual entitlements?*

The ***second research question*** : *What is the process of convergence in policies, laws and entitlements with respect to labour ‘standards’ and social protection between China and the EU over the period 2000 -2020 ?*

The ***third research question*** is central to the RESPECT project. *Have EU trade policy vis a vis and cooperation with China on sustainable development systematically pursued the NTPOs of labour ‘standards’ and social protection since around 2000 and has this pursuit been effective in supporting a process of convergence ?*

As to the first question, China did build a system of social protection starting during the 1990s, but has hardly or not moved on the ratification of 4 ILO core labour standards. The EU

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has been involved from the early 2000s onwards in social protection. The process of convergence in social protection with e.g. the EU has progressed considerably. China now avails of 5 social insurance laws and a workers' saving facility for housing. With major efforts, the system has become truly China-wide. It has also set up funding options via the state budget. Although attracted by the European 'social model', the income effects of this new Chinese model has so far remained modest, especially for rural persons. In Human Development China moves steadily upwards but rural education remains significantly behind, so much so that long-run economic growth in China may well be hampered.

On the third question, no doubt the EU has been ready to cooperate with China in the 'social pillar' at all times. However, apart from one specific but intrusive project on lowering fatalities in coalmining – a core labour standard of health & safety on the workplace – EU-China cooperation has concentrated on social protection. The EU has been very active and responsive to Chinese demands. Lately, it has combined this work with the ILO (funded by the EU) and this extensive work is still ongoing. A recent breakthrough is the commitment by China in the draft CAI treaty (on investment) to eventually ratify the two ILO core conventions on forced labour. On the right to organise and collective bargaining, however, China has remained 'silent' and cooperation has simply not occurred.

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1. Purpose and structure

The present paper attempts to answer the central question of RESPECT on the influence and effectiveness of EU trade and investment policy on NTPOs [=non-trade policy objectives, often referred to as ‘values’] of trading partners. However, it does that solely in the specific context of EU/China trade and investment strategies, and solely for the social pillar of ‘sustainable development’. In other words, neither for the environment & climate pillar of sustainable development ² nor for NTPOs such as human rights or governance. It is submitted that sustainable development – even when focussed solely on its social pillar – is nevertheless a large policy domain that also has several layers of complexity.

Behind the broad aim of the paper lies a hypothesis about a long-run process of convergence between the EU and China with respect to the central aspects of the social pillar – adhering to international labour standards and the provision of social protection as understood by leading international organisations. For purposes of analysis, the notion of a ‘process of convergence’ culminates from three related but separate research questions. When formulating these research questions, it ought to be kept in mind that China still was a developing country in the mid-1990s as well as an emerging market economy, coming out of central planning with state-owned enterprises and agricultural collectives under communism.

The **first research question** : *In transforming from a system of central planning without private ownership towards a market economy, has China addressed the respect for international labour standards and built up a system of social protection based on individual entitlements?*

The **second research question** : *What is the process of convergence in policies, laws and entitlements with respect to labour ‘standards’ and social protection between China and the EU over the period 2000 -2020 ?*

The **third research question** is central to the RESPECT project. *Have EU trade policy vis a vis and cooperation with China on sustainable development systematically pursued the NTPOs of labour ‘standards’ and social protection since around 2000 and has this pursuit been effective in supporting a process of convergence ?*

The paper is EU trade policy relevant, because sustainable development is recognized as a large part of the NTPOs dealt with in RESPECT, even when focusing “only” on its social pillar. The proper delineation of sustainable development for the purpose of EU trade policy is far from easy, however, especially not after the adoption globally of the 2030 UN Agenda on Sustainable Development Goals, which are excruciatingly broad and encompassing. In section 2, three distinct though partly overlapping approaches to the definition of the ‘social pillar’ of sustainable development are set out. One of them assumes a more pragmatic perspective of the factual themes of the EU/China Dialogues and joint programmes undertaken which go beyond what – in a broad view of (EU) trade policy – is understood by

² This is analysed in another RESPECT paper by Jacques Pelkmans (2021)

the social pillar of sustainable development. One major such addition is ‘employment’ which has traditionally not been considered as belonging to the social pillar (although unemployment and the social protection against its consequences always has been) – interestingly, it was precisely ‘employment’ with which the EU/China Dialogues and related cooperation began in 2005. However, one might argue that all three approaches, in somewhat different ways, express the ambitious EU preferences in this domain.

It should be realized that China was at first – in the relevant period – a developing country and even today, decades later, it is best characterized as an upper-medium-income economy. Can one expect convergence in sustainable development with such an economy today? A priori one should not expect that, or at least not to an advanced degree, and this must be taken into account. One indication of this Chinese position is found in the fact that in the 16 FTAs China has concluded so far, either no sustainable development chapter is incorporated (in most cases) or merely incipient elements of a future such chapter dependent on further negotiations which are left completely open (see Pelkmans, Hu et al., 2018, section 2.3) – bearing in mind that a country may wish to keep NTPOs off a trade agreement. The convergence referred to in the second research question is therefore to be regarded as a process, with a clear direction over time. One should not expect this process to be completed today, except perhaps selectively. Having said the above, at multilateral level China has shown to be committed to sustainable development if reading the various statements issued by its government and indeed by China and the EU together.

Before proceeding with the analysis of the process of convergence and EU/China cooperation in the social pillar, section 3 attempts to provide the broader socio-economic context for the two decades. This socio-economic context centres around three crucial developments: (i) secular and very high economic growth in China but ‘at all costs’, (ii) the accelerated shift from state-owned enterprises [SOEs] with explicit functions in health, education, housing and social safety nets to a market economy with ever greater openness linked to WTO membership and separate social protection policies and funds as well as entitled access to education, and (iii) the initial status of ‘human development’ in China in the mid-1990s. The latter is a broader way of studying the social predicament of (here) Chinese citizens, than merely international labour standards, or even than social protection, as the ‘human development’ approach from UNDP also incorporates the state of health of citizens and their access to education.

The remainder of the paper proceeds with two blocks of sections – one block (of sections 4 and 5) on labour ‘standards’ and another block (of sections 6 – 10) on social protection. The sections on ‘labour standards’ first identify EU’s preferences and their promotion via EU trade policy bilaterally and multilaterally (e.g. the 1996 WTO ministerial with the Singapore issues) in section 4 and China’s difficult predicament with respect to international labour standards in section 5.

Social protection is dealt with in 5 subsequent sections, beginning with the case for social protection at ‘world standards’ and why it helps development. Section 7 explains the three social drawbacks of ‘growth at all costs’: social ‘apartheid’, ‘anything-but-decent’ work and the business practice of ranking cost-competitiveness above ensuring labour contracts and

proper enforcement. Section 8 sketches China's social protection in the late 1990s and around 2010. This is followed by an overview of EU-China social pillar cooperation since 2005. Section 10 links this with today's social protection in China. Section 11 builds on section 3.3 on Human Development in 1995 and surveys Human Development indicators in China for (nearly) 25 years later. Section 12 brings up the question whether the quest for 'values' in EU trade policy might not hide another quest, namely, that for the level-playing-field with China. This could be relevant for social issues. Section 13 attempts to answer the three research questions.

2. The substance of the social pillar of sustainable development

This section defines the substance of the social pillar of sustainable development. After a brief reminder of the 'values' in EU trade policy, three possible approaches will be discussed. Section 2.2 discusses the social pillar as the combination of social protection and labour standards. Section 2.3 sets out the more pragmatic approach as the collection of EU/China Dialogues and joint projects and activities in the social arena since 2005. Section 2.4 considers the social pillar as the social aspects of the sustainable development chapter of recent EU's FTAs. Although the EU and China do not have a FTA with each other, the sustainable development chapter of EU FTAs can be seen as an explicit codification of the relevant EU values pursued via EU trade policy.

2.1 NTPOs express EU values

In the important EU policy paper "Trade for all, towards a more responsible trade and investment policy" of October 2015³ the Commission develops a detailed approach to trade and sustainable development. In the foreword, Commissioner Cecilia Malmstrom speaks about "EU trade policy [being] not just about interests but also about values". Section 4 is called: 'A trade and investment policy based on values'. This value-driven approach can be traced back to the Lisbon treaty (in force since 2009) calling for coherence in all external policies based on values. The NTPOs identified in the RESPECT project almost entirely overlap with the values specified in 'Trade for all'⁴. Nevertheless, the boundaries of NTPOs are not clear in 'Trade for All' because of issue-linkages with 'development' and 'inclusive growth' and even more generally by 'contributing to the newly agreed global sustainable development goals (SDGs) under the 2030 Agenda for Sustainable Development' (p. 7, Introduction). It should be noted that the 17 SDGs are far wider than the notion of sustainable development used thus far in EU trade policy, and comprise numerous aspects which are strictly local or national. Also, the probably well-intended notion of the indivisibility of the 17 SDGs makes it simply impossible to focus on what is usually

³ See www.trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

⁴ Except for health and safety of products, which is anyway long pursued via TBT and SPS arrangements at the multilateral and bilateral level and, on the import side, by means of the requirements of the internal market.

considered sustainable development in an analytically meaningful way⁵. The present paper will not follow the SDG conceptualisation of sustainable development as it is analytically unworkable⁶. Moreover, it is also not necessary for EU trade & investment policy because the officially presented four elements of sustainable development by DG Trade of the Commission – although clearly comprehensive - are more narrow, focused as they are on being ‘trade-related’⁷, whether directly or indirectly.

But this delineation does not go far in solving the definition of the social pillar. There are three approaches to the social pillar of sustainable development. First, it is simply the combination of ‘social protection’ and the adherence to core ILO ‘labour standards’, including those falling under (ILO’s) ‘decent work’. Second, a much more pragmatic approach is to consider as the social pillar the collection of all issues China and the EU have had Dialogues, (action) programmes, joint declarations on in the social field. This would in any event include ‘employment’ but possibly more, besides the substance under the first approach. The third approach consists in the social pillar substance of the sustainable development chapter in typical EU FTAs. These three approaches together illustrate that bringing in ‘values’ in EU trade policy may not necessarily be fully operational. We shall therefore attempt to operationalize the NTPOs representing the broader ‘values’ at stake.

2.2. The social pillar : combining social protection and recognized labour standards

A first definition of the social pillar consists of the combination of ‘social protection’ (as understood worldwide by leading international organisations) and ‘international labour standards’ (i.e. rights of workers, including the fundamental ones as recognized by the ILO). This would seem to be the most obvious approach but it neither fully coincides with the range of themes and dialogues practiced between the EU and China nor with the ‘EU standard’ for chapters on sustainable development in EU FTAs.

Social protection can be defined by its overall aim and four components⁸. The *aim* of social protection is to ‘reach or maintain an adequate standard of living and good health throughout their lives’. Such social protection has four components :

⁵ The very wide scope of this approach might well be caused by the ‘development’ orientation of the UN agenda. Although anything but ‘narrow’, the trade approach is far more focused on what is or could be directly or indirectly trade and investment relevant.

⁶ In Pelkmans (2021) in Annex 1 it is shown why such an approach is unworkable.

⁷ On the European Commission website it is said that “EU trade policy aims to ensure that economic development goes hand in hand with (i) social justice, (ii) respect for human rights, (iii) high labour standards, (iv) high environmental standards” in promoting sustainable development. See <https://ec.europa.eu/trade/policy-making/sustainable-development/> last accessed on 20 March 2020. The present paper concentrates on the first and third items. However, the term ‘social justice’ is not only very broad (see the Pre-ambule of the ILO treaty), it can also be associated with several philosophies (including in socialist countries) which are adamant on radical redistribution and other intrusive approaches. Using this term is neither necessary nor desirable for an analytical paper. The present paper will employ the well-accepted but more neutral term ‘social protection’.

⁸ Here we use the definition and explanation of UN-ESCAP (2018), the UN Economic Commission for Asia and the Pacific, in its booklet “Why we need social protection”. See www.unescap.org and go to ‘social

- (a) basic income security for children (hence, access to nutrition, education, care and necessities);
- (b) basic income security for persons in active age (those unable to earn sufficient income, such as [b1] sickness, [b2] unemployment, [b3] maternity and [b4] disability);
- (c) basic income security for older persons;
- (d) essential health care (incl. maternity care) under conditions of availability, accessibility and quality.

As section 6 will show, social protection has become a commonly accepted norm for almost all countries, even when poor countries might not or not yet be able to afford all of its respective components. It is also explicitly referred to in SGD 1 as a kind of groundwork for any serious socio-economic and human development. International economic organisations such as ADB, UN-ESCAP, the ILO and the World Bank all deal intensively with social protection in various ways. However, this was not yet the case – certainly not anywhere near the same extent – in the mid-1990s when China was first confronted with the issue.

The other component consists of international labour standards. There are many, as developed and agreed over time by the ILO. The accepted practice in trade-related sustainable development is to prioritize the eight so-called ‘fundamental (or core) ILO Conventions’⁹. This practice follows the 1998 ILO Declaration on Fundamental Principles and Rights at Work in which all eight are enumerated. ILO Conventions are based on tripartite agreement and it is obliged to submit them for ratification to the relevant authority in an ILO member country (usually a parliament). The score in ratification is very high: in January 2019 92 % (1376 ratifications) had been achieved and another 121 were still required. They include the following :

1. Freedom of association and protection of the right to organise (1948; no. 87)
2. Right to organise and collective bargaining (1949, no. 98)
3. Forced Labour Convention (1930, no. 29 ; and its 2014 Protocol)
4. Abolition of Forced Labour Convention (1957; no. 105)
5. Minimum Age Convention (1973 ; no. 138)
6. Worst Forms of Child Labour Convention (1999; no. 182)
7. Equal Remuneration Convention (1951; no. 100)
8. Discrimination (Employment and Occupation) Convention (1958 ; no. 111)

In 2020 China had ratified 26 ILO Conventions¹⁰ (out of 190) but of the eight Core ILO Conventions, only four : no. 5 (minimum age, C138), no. 6 (worst forms of child labour, C182), no. 7 (equal remuneration, C100), and no. 8 (discrimination, C111).

development policy guides’. This publication leans heavily on ADB’s work (on its Social Protection Indicator) and the ILO for its regular World Social Protection Report.

⁹ See <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

¹⁰ However, 5 of these ratified Conventions are no longer in force

Moreover, the ILO Governing Body has designated another four Conventions as ‘governance’ instruments in its 2008 Declaration on Social Justice for a Fair Globalisation, for the purpose of a proper functioning of the international labour standards system. They include :

- i. Labour Inspection Convention (1947, no. 81)
- ii. Employment Policy Convention (1964; no. 122)
- iii. Labour inspection (Agriculture) Convention (1969 ; no. 129)
- iv. Tripartite Consultation (International Labour Standards Convention (1976 ; no. 144).

China has ratified two of these four : C122 on employment policy and C144 on tripartite consultation. However, it is not customary to include the latter four in trade-related bilateral obligations e.g. in FTAs or in unilateral GSP (or, for the EU, GSP+) conditions.

Altogether, the social pillar in trade-related sustainable development Dialogues or agreements (like FTAs) constitutes therefore quite a substantial set of values or value-related obligations and policies, including social security and assistance. As will be discussed in sections 4, 5, 7 and 8, China assumes an ambivalent position in the ILO. China is one of the founding members in 1919. It works with the ILO in various programmes or studies, including for example a special four-years programme on ‘Decent Work’ in 2016 ¹¹. At the same time, it has neither ratified the Conventions on the freedom of association and the right-to-organise nor the one on collective bargaining, the very bedrock of the ILO and its values. It is likely that China has not ratified these two most fundamental Conventions because China might consider them as an undermining or destabilising its political and social system of governance, based on an absolute reign of the Party (CCP) and its controlled single All-China Federation of Trade Unions [ACFTU] which retains a monopoly.

2.3 The social pillar as the collection of EU/China joint activities in this area

As shown in detail in Hu & Pelkmans (2020) and Hu (2021), the EU and China began with Dialogues and other initiatives already in the mid-1990s. Initially this was not framed as being a part of a sustainable development strategy although energy and shortly thereafter aspects of environment were touched upon. Yet, there were early signs.¹² With the strong

¹¹ ILO (2016), China-Decent Work Country Programme 2016 – 2020, Beijing/Geneva

¹² See also Pelkmans (2020) for detail. In the 1995 Commission paper on EU/China relations [COM (1995) 279] social reforms and the ‘smashing of the rice bowl’ are mentioned but not yet addressed in common EU/China initiatives. In the 1998 Commission paper [COM (1998) 181] there is a reference to what nowadays is called GSP+ when meeting international labour standards (and environmental protection). There is an emerging concern about ‘major social and political side-effects’ of the restructuring of SOEs, and that China should be ‘guarding against social instability’ e.g. by ‘welfare reform’ (and the EU ‘would be well-placed to offer its expertise’). But the annex with many projects does not comprise any social one yet. A preoccupation is expressed about the negative fall-out of the reform process: “Unemployment continues to be exacerbated by the reform process as the reformed SOEs shed workers at an increasing rate. This adds to urban drift as large populations of unskilled and semi-skilled workers migrate to the main cities. China will have to address increasing social and regional inequalities” (p. 413, as quoted in Snyder, ed., 2009). Only in the 2003 paper [COM(2003)533] is there a first mention of a planned cooperation project supporting social security reform (on p. 477, as quoted in Snyder, ed., 2009). The Chinese strategy paper on EU/China cooperation in 2003 (see in

EU support for China's WTO membership and the radical implications for domestic reforms in China, not least for many workers, the EU and China began to be interested in support and technical aid for China in aspects of social protection and employment policies. Since the conclusion of the Strategic and Comprehensive Partnership in 2003, bilateral relations and interest in more intensive cooperation grew rapidly¹³.

In 2005 the EU/China Employment and Social Policies Dialogue was initiated. It is an annual event until today – the last meeting occurred in 2018. Detailed reports on those many meetings seem not to be publicly available. The wording might well be so broad for reasons of convenience. Neither the very general term 'social policies' nor 'employment' would normally be considered part and parcel of 'sustainable development' in EU trade policy. China was of course preoccupied with unemployment, both from the point of view of social security and because of the concern about job creation. In 2006 the project referred to in footnote 12 began in earnest as the 'EU-China Social Security Reform cooperation project' running until 2010. It should be noted that social security is largely a Member State issue in the EU, only the coordination between Member States of social security paid to intra-EU migrants is (also) an EU issue.

In 2009 the Occupational Health & Safety Dialogue started and it was still running in 2018 (8th meeting of OSH). There were many indications, at first, that health and safety in workplaces in China was dealt with sloppily or hardly at all. It is both a social issue (high risks for workers, without risk premia) and an economic one, as many companies refused to invest in OSH for their workers (seeing it as an avoidable 'cost', and when accidents occurred, paid low compensation at best). In the EU it was regarded as one obvious escape of Chinese firms from the level-playing-field, both socially and economically. Clearly, the EU had much to offer for China in OSH systems, technical standards and 'best practices'. Whilst EU Member States had been struggling with OSH for over a century, the EU as such initiated OSH rules and policies in the 1950s for coal and steel industries under the ECSC. The EU OSHA Agency in Bilbao was founded in 1994 and has quickly assumed a major role in common approaches at a high level of safety for workers.

The most extreme instance of disregard of decent OSH for workers in China long was the coal industry, a huge sector with at the time some 5 million mine workers and coal output growing with 10 % annually. The OSH Dialogue applied of course to a range of sectoral activities and its nature makes it very difficult to enter into the many technical details of specific risk prevention in broader Dialogues. Therefore, it was decided that a special dedicated project had to be set up – jointly – to attempt to improve OSH in coalmines. At the time, accidents occurring in the coal industry were the second highest cause of accidental death in China, after road traffic accidents. As a derivative of the Dialogue, a special

Snyder, ed., 2009, pp. 490 ff), however, goes further. It first pleads for cooperation in the health and medical care but not in terms of general medical care as a form of social security, but rather for HIV and SARS treatments. But on labour and social security, 'China and the EU should strengthen cooperation on ..[...].. protection of the rights and interests of migrant workers and enhance coordination in international labour affairs. The two sides will negotiate and conclude a bilateral social security agreement and implement their joint social security cooperation programme as well as broaden exchanges in social insurance of various kinds".

¹³ See e.g. the three speeches by Chinese PM Wen Jiabao in 1994, all in Snyder, ed., 2009, pp. 499 – 509.

EU/China Project on Occupational Safety and Health in high-risk sectors was implemented from 2012 to 2016. It is discussed in detail in section 9.3.2. and 9.3.3.

The objectives of the OSH Dialogue, though, fed into the broad objectives of EU-China bilateral cooperation on social policy, including contributing to ‘decent work’ for all and adhering to agreed international standards, while the focus was on improving working conditions and reducing work-related accidents and illness. In 2014 the EU-China Social Protection Reform project began until July 2019. Also this project is discussed and assessed (section 19.4). However, a follow-up was arranged in a slightly different format beginning July 2019 until June 2022, namely with China and the ILO together: ‘Improving China’s institutional capacity towards universal social protection’. The financial background is the EU Partnership instrument ‘EU / China cooperation on employment, social affairs and inclusion’, a heading broader than ‘sustainable development’ usually is understood. This is even more true for the 2013-2020 EU-China Strategic Agenda for Cooperation which incorporates a heading VIII called Social Progress. Item 1 of this sums up the areas : social policies (where does that end?), promote social security, social cohesion [always problematic to define this term], full and quality employment, occupational health and safety, decent work (an ILO term), youth employment, social welfare, social assistance, demographic ageing, migration flows [no hint whether intra-China or only external e.g. China-EU, so far typically external] and cross-country mobility. This is truly massive, and with vague boundaries. But there is more : item 4 of heading VIII is about ‘health’ (also with the WHO) incl. anti-microbial resistance, e-health, prevention of cancer and a (regulatory) dialogue on pharmaceuticals [none of these would fall under ‘sustainable development’].

2.4 The social pillar as defined by labour & social clauses in EU FTAs

Another approach to the definition of the social pillar is to inspect the sustainable development chapter of EU’s recent FTAs. However, stylizing EU’s ambitious trade-related sustainable development preferences from recent FTAs may be a sound idea in and by itself, but what about trade relations with the many WTO partners *not* having a FTA with the EU? And China falls into that category. Thus, there are two reasons to be cautious about the ‘reading’ of EU’s trade-related sustainable development preferences from recent EU FTAs: China has no FTA with the EU in the first place ¹⁴, and China is not yet a developed country which might be expected to be able to ‘afford’ such ambitious preferences. In other words, convergence in sustainable development between the EU and China should not be expected so easily and, even if the process is developing, is unlikely to be completed at this stage. Stronger, by adopting the preferences as ‘stylized’ from the sustainable development chapter of the EPA between Japan and the EU, as will be done below, the ambition is one of the highest ones found in any FTA today – for the EPA upholds existing EU social, consumer protection and environmental standards in the same way as other EU trade agreements,

¹⁴ China and the EU have built up several instances of fairly ‘deep’ cooperation in sustainable cooperation, as will be shown. Invariably, what is included in the texts however, are phrases that such arrangements ‘do not imply binding legal commitments’ for the partners, a clear signal that partners carefully distinguish cooperation, even when ‘deep’, from FTA-like commitments.

including the FTAs with Canada (CETA) and Vietnam, and the proposed text of the revised FTA with Mexico.¹⁵ It does not stand to reason to expect China to fully pursue such ambitious aims already today. Using the sustainable development chapter of recent EU FTAs therefore has the function, and only this function, to sharply define or articulate EU's trade-related sustainable development preferences.

The operational inventory of sustainable development aspects in EU FTAs can be deduced from existing or negotiated FTAs texts. There are now 14 EU FTAs with SD chapters¹⁶. The most recent FTA texts best reflect EU sustainable development preferences in labour and the social area. We shall proceed as follows. In Table 1 the stylized inventory of these preferences is listed, on the basis of chapter 16 of the Economic Partnership Agreement between the EU and Japan¹⁷. This listing is not so much a legal exercise but merely a taxonomy of the substance of the sustainable development chapter as far as labour and the social area is concerned. Indeed, the wording of similar instances of sustainable development cooperation or commitments can differ between recent EU FTAs, whereas the substance is essentially the same. The purpose here is to identify stylized versions of EU preferences for trade-related sustainable development (so as to enable a comparison with what China might prefer), not the pursuit of legal finesse. The last column of Table 1 provides a comparison in shorthand with the EU FTAs with respectively Vietnam, Canada and (the draft FTA text of) Mexico, in order verify that EPA would not bias the analysis for the reader, when using it to identify EU SD preferences.

Table 1

Labour & social specifications in the sustainable development chapter of EU/Japan EPA

	subject	Substance in EPA	Similarity M,V,C
1	Context/objectives	i. Recognition of promoting trade in a way that contributes to sustainable development ii. taking into consideration seven specified multilateral agreements, Declarations and Agenda's on sustainable development and labour iii. economic and social development and environmental protection are mutually reinforcing components	V, C, M [as to item ii., for Vietnam 5 instead of 7 declarations; for Mexico idem ; for CETA idem; with the emphasis on the 'decent work agenda' of the ILO, there is no material difference]

¹⁵ See Factsheet on Sustainable Development, available at:

https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155721.pdf.

¹⁶ The EU with Canada, Central America, Colombia, Peru, Ecuador, Georgia, Japan,, Mercosur (negotiated text only), Mexico (provisional negotiated text of upgraded FTA), Moldova, Singapore, South Korea, Ukraine and Vietnam.

¹⁷ Officially the Agreement between the EU and Japan for an Economic Partnership, from August 2018, meanwhile ratified, see www.trade.ec.europa.eu/doclib/2018/august/tradoc_157228.pdf

2	Right to regulate	<ul style="list-style-type: none"> i. right to regulate for each Party ii. consistent with internationally recognized standards/agreements iii. each Party shall strive to ensure high levels of protection iv . 3 non-regression clauses and one on non-discrimination and no arbitrariness 	V, C, M [non-discrimination is either directly specified (Japan, art. 16.2.3) or specified via an article on international labour standards]
3	On international labour standards and conventions	<ul style="list-style-type: none"> i. full and productive employment and decent work, key elements ii. promoting international trade ...conducive to (i, idem) iii. exchange views and information on trade-related labour issues of mutual interest iv. reaffirm ILO obligations and commitments in the 1998 ILO Declaration on Fundamental Principles (etc.) v. respect and realize internationally recognized principles concerning the fundamental rights at work which are (a) freedom of association and the right to collective bargaining, (b) elimination of forced/compulsory labour, (c) abolition of child labour, (d) elimination of discrimination in respect of employment and occupation vi. sustained efforts to pursue ratification of fundamental and other ILO Conventions vii. commitments to effectively implement ratified ILO conventions viii. labour standards should not be used for protectionist trade purposes 	V, C, M
4.	Trade and investment favouring SD	<ul style="list-style-type: none"> i. [various issues related to environment & climate, see Pelkmans, 2020, Table 1]. ii. corporate social responsibility 	V, C, M [Mexico, CETA corp. social responsibility in cooperation articles, here under 7.; in Vietnam, CSR under this heading]
5	Scientific information	Parties shall take account of available scientific and technical information,	V, C, M

		international standards and the precautionary approach	
6	Transparency and evaluation	i. the pursuit of labour rights objectives in a transparent manner ii. recognize the importance of sustainability impact assessment	V, C, M
7	Cooperation in sustainable development aspects	i.via international organisations ii. cooperate on evaluating the mutual impact between trade and labour iii. corporate social responsibility, based on internationally agreed guidelines iv. cooperate on trade-related aspects of ILO's Decent Work Agenda	V, C, M [for CSR, see 4., above]
8	Consultation and enforcement	i.Committee on Trade and sustainable development ('interacting with civil society') ii. consultation requests iii. higher stage of dispute resolution: the Committee iv. last resort: panel of (3) experts	V, C, M [CETA, Civil Society Forum]

Note : V=Vietnam FTA, ch. 15 ; C=CETA, chapters 23 and 24 ; M=Mexico-EU upgraded FTA, still in negotiation stage; used is the EU negotiation proposal of April 2017, see www.trade.ec.europa.eu/doclib/docs/2017/may/trade_tradoc_155528.pdf , with a broad verification in the 'agreement-in-principle' of April 2018, see www.trade.ec.europa.eu/doclib/docs/2018/april/tradoc_156791.pdf , pp. 14/5

Ignoring 'consultation and enforcement' when comparing these commitments with China (as there is no FTA with China in the first place, hence no enforcement), one finds 7 articles in this chapter with a total of 26 verifiable items (in the 'substance' column). Of course, several of these items cover a range of complex commitments (e.g. in fundamental rights ; in 'decent work'; etc), so the total of 26 does not say much. All 26 items of substance are in principle relevant for EU/China trade cooperation in labour (though much less in social protection). Similar to environment and climate, a lot of substance hinges on multilateral actions and (legal and other) commitments. The more frequent and the deeper the multilateral commitments of both partners, the more credible and realistic the bilateral cooperation in sustainable development is expected to be. Section 4 provides a reminder about EU's long-standing strategy advocating in world trade policies to adhere to international labour standards and minimum social protection. In section 5 a deeper analysis of labour standards and the practical implications for workers of adherence and non-adherence of the core ILO Conventions in China will be provided. It will be noted that e.g. collective bargaining is encouraged in China but under constraints that are incompatible with

the relevant ILO core convention. Many other social laws having emerged in China in the period up to around 2010 cover many aspects familiar to EU citizens and labour unions.

China's reticence to ratify ILO core conventions about the right of association and about collective bargaining stands in contrast with Vietnam, and this is worth reflecting on. In the EU/Vietnam FTA, Art. 3.2, the fundamental principles and rights of workers (set out in Core Conventions) are specified as the freedom of association, the effective recognition of the right to collective bargaining¹⁸, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation. If one were to reflect on the possibility of China signing a FTA with the EU with such clauses, the lack of ratification of four Core Conventions would have to be overcome – no doubt a fundamental issue for China, and the EU for that matter. Vietnam calls itself 'a socialist republic' and might – by many – be regarded as similar to China, with a political monopoly of the Party, for example. However, in 2020 Vietnam had ratified 7 of the 8 Core Conventions, including (in 2019) the one on the right to organise and collective bargaining (C98). Not ratified yet is the one on the freedom of association and protection of the right to organise (C87).

3. China's socio-economic context in the late-1990s

Labour rights and social progress cannot be understood without appreciating the socio-economic context. This is indispensable if only because the position of workers, the status of social protection and the standard of living do not solely depend on social laws and policies. The socio-economic context in the China of the late 1990s will be sketched by means of four developments. First, in section 3.1, the pursuit of secular and very high economic growth but 'at all costs' will be set out. Second, the accelerated reform of state-owned enterprises [SOEs] in the 1990s causing massive labour shedding and, at the same time for those retained by surviving companies, no longer providing the SOE's health care, educational, housing and social safety net functions (section 3.2). Third, there is more to one's well-being than merely having a job, perhaps even with a low per capita income. Hence, in section 3.3, we are also interested in the nature and level of 'human development' at the time, for a better appreciation of the social predicament of Chinese citizens. In addition, China's social and economic landscape was strongly influenced by what has been called the "world's greatest migration", from rural areas inside China. It is briefly explained in Box 2.

Another element of the socio-economic context one must take note of is that by the late-1990s a vast number of foreign enterprises started to invest in China. There were three drivers of this incoming FDI. First, a selective opening up to foreign firms was practiced by China. Chinese governments at different administrative levels offered incentives in order to promote FDI opportunities. At the same time, many bilateral investment agreements [BITs] between China and EU member states were concluded at that time – offering greater

¹⁸ This complicated formulation matters because China does allow collective bargaining, but only under strict control of the All-China Federation of Labour Unions. As noted the relevant core Convention has not been ratified.

certainty to firms ; moreover, investment promotion is one objective of the BITs¹⁹. Second, the dominant economic driver for this FDI of EU origin was the combination of huge potential market size and (very) high economic growth, a classic and leading determinant of FDI in the economic literature. Third, the prospect of China's WTO accession also stimulated incoming FDI, as trade (and to a limited extent FDI) was expected to be governed by WTO terms, therefore commercial relations would be facilitated.

The FDI inflows into China are likely to have had a social dimension as well. One may ask the question whether the considerable FDI influx in the late-1990s,²⁰ has brought with it higher employment and social protection standards, incl. practices together with the employment opportunities. It appears that multinational enterprises have a relatively low tendency to export labour practices to their foreign affiliates, and that they adapt their labour practices to host-country conditions to an important extent²¹. In China in this early period foreign FDI into China was dominated by Hong Kong and Taiwan enterprises very familiar with local practices. In that period China became the 'world's factory' whereby many special economic zones (SEZs) were set up in the coastal cities (Shenzhen, Zhuhai, Shantou and Xiamen). Knowledge about the SEZs was fragmented but a recent overview²² shows how massive the first SEZ wave was: between 1980 and 1992, no less than 444 SEZs were created. In 2000 a second SEZ wave began until 2016 with another 219 SEZs all over the country. This was bound to have a major impact on industrial relations²³. It also led to labour conflicts,²⁴ which in turn helped new labour legislation to be enacted around the same time.

3.1 The Chinese growth machine and sustainable development

Once China decided to gradually introduce a market economy in the late-1970s, its economic growth quickly became very high and sustained indeed, averages of over 10 % real were observed for many years. A critical qualification is that this was "growth at all costs". It was

¹⁹ See Pelkmans, Hu et al., 2018, at p.215.

²⁰ For example, between 1990 and 2005, China, mainland plus Hong Kong, is by far the most important non-OECD country both as a source and as a recipient of FDI. In 2005, China represented more than a third of the total inward FDI of all non-OECD countries, and more than half of outward FDI. See *The Impact of Foreign Direct Investment on Wages and Working Conditions*, Background report for the OECD-ILO Conference on Corporate Social Responsibility, 2008, at p.5.

²¹ *The Impact of Foreign Direct Investment on Wages and Working Conditions*, Background report for the OECD-ILO Conference on Corporate Social Responsibility, 2008, at p. 14, also in *Sustainability Impact Assessment (SIA) in support of an Investment Agreement between the European Union and the People's Republic of China*, Ecorys, at p.47.

²² UNDP, CIDP & SIC, *China National Human Development Report*, special edition, 2020, see www.hdr.undp.org/sites/default/files/nhdr_cn.pdf p. 80

²³ The large volume of temporary migrant work force supplied labour force for SEZs, especially in the manufacturing sector, it has also compelled a revision of labour relations in terms of working conditions and social protection, etc. See Liang Z. (1999), *Foreign investment, economic growth, and temporary migration: the case of Shenzhen Special Economic Zone, China*, *Development and Society*, Volume 28 Number 1, June 1999, pp.115-37.

²⁴ For example, in 1978, virtually all workers worked in the public sector in urban SOEs or rural collective farms. In 2005, more than 80 per cent of workers were in the in non-public sector, including subsistence farmers who comprised 47 per cent of the total workforce. In the same period, labour conflicts have seen explosive growth since 1990s and in various forms, such as formal complaints to the arbitration councils, wildcat strikes or street protests – within and outside the formal labour relations system. See Lee C.H. (2009), *Industrial relations and collective bargaining in China*, ILO, at p.1.

long an obsession and there is still a “growth at all costs” mindset (OECD [2019] p. 71) today. China’s civil service system should share some of the blame, too, since the incentive for promotion within the system is largely based on economic growth in the locality, therefore civil servants focus on short-term, quick and strong growth, including FDI.²⁵

Amongst the numerous policy signals and incentives that e.g. provincial leaders and officials discern, apparently the most powerful success factor still remains high growth despite a wide range of other policy concerns. High economic growth is of cardinal importance both centrally and provincially and this is best observed when cyclical downturns or negative influences from the world economy hit China (ignoring COVID-19 for now). The typical response is to try to stimulate the economy, not so much to keep it from going into recession but merely preventing it from (perhaps only slightly) missing the high growth target by 1 % or 2 %²⁶. The upshot is that, today, China has many more credible measures in place to improve upon its social policy results but that, nevertheless, the outcomes are mixed.

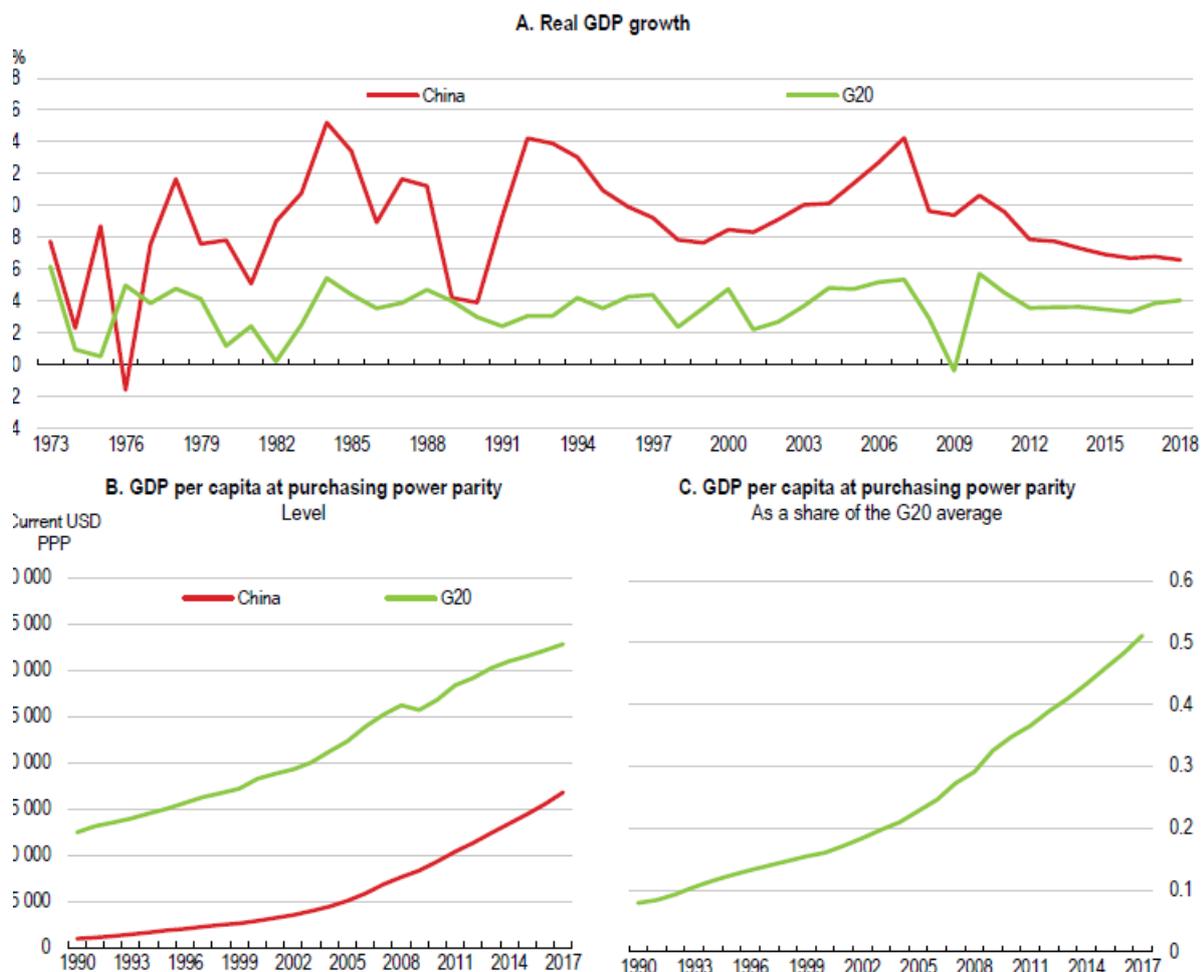
Figure 1 provides the long-run Chinese economic growth rates with three distinct but related indicators over 4 ½ decades. Starting from the late 1970s, the path has been record-breaking. In the 1990s the average annual nominal economic growth has been around 10 % and only after 2000 economic growth was beginning to level off structurally. Figure 1 depicts real growth which is nevertheless still high.

Figure 1

China’s consistently high economic growth: 1973 - 2018

²⁵ Gong, H./Wang, M./Wang, H. (2013), New energy vehicles in China: policies, demonstration, and progress, *Mitigation and Adaptation Strategies for Global Change*, at pp. 18, 207-228.

²⁶ This statement is valid before the COVID-19 crisis hit.



Source: OECD Economic Outlook database, and World Bank International Comparison Program database.

The Chinese growth machine was preceded by agricultural liberalisation in the late 1970s which demonstrated forcefully what incentivized farmers and agro-food entrepreneurs are capable of, with incredible progress in only a few years. In an impressive survey of 40 years of agricultural development Huang, Rozelle et al (2019) summarise the main findings in the analytical literature. Agricultural reforms were initiated with the introduction of the 'household responsibility system', dismantling the people's communes and contracting out cultivated land to individual households in each village, at first usually for 15 years (later extended to 30 yrs). All studies show that in the initial period of liberalisation agricultural productivity increased significantly, also helped by land transfers (hence, larger farm size), more and improved inputs, better equipment and public investment in rural infrastructure. After some years, this also caused the rural surplus of labour looking for employment outside the sector.

Box 1

The world's greatest migration: rural workers moving to the East of China in masses

Like many other developing countries, China suffered from a serious gap in the standard of living and in opportunities between the urban and rural population. By the mid-1980s, besides seeking non-agricultural jobs in the same country or province with TVEs (see Box 2) – a form of regional migration –, both pull and push factors led to an ever increasing flow of intra-China migrants seeking employment in the East of China, with its urban areas, heavy industry and mining as well as some low-skilled-labour-intensive export sectors. The rural push factors consisted of the combination of scarce (e.g. job) opportunities for young peasants, low income per capita (indeed widespread and outright poverty) and labour surpluses on numerous farms as a result of rapid productivity growth in agriculture after its liberalisation. The pull factors included at first job opportunities with TVEs in counties nearby and (a little later) a great demand for low-skilled or unskilled workers, also at higher and quickly increasing wages in or near the big urban areas of East China. The numbers of migrants in China rose to staggering numbers, at its peak around 2005 as high as some 230-plus million, almost equal to the entire working population of the EU-27 at the time!²⁷ Roughly, this total is an addition of nearly 150 million so-called ‘non-hukou migration’ to big cities and another 80 million to nearby counties (where often obtaining a local hukou was allowed, given the vicinity of the home); many of these 80 million worked in TVEs.

The old social welfare system was unfit for China’s mass internal immigration, radical reform was required. China’s initial employment and social security systems launched amidst SOEs’ restructuring exercise were structured mainly on the basis of a resident’s *hukou*, employer’s identities (e.g. SOE, foreign-invested-enterprise, collective, self-employed, etc.) and employment localities (e.g. urban, rural, township, etc.). As a result, when the rural-urban mass migration took place, migrant workers’ social rights and welfare were not taken care of because mobility was not captured by the system, and migrant workers lost their (rural) *hukou*, therefore their entitlement to social welfare. This failure became a huge challenge to the system. Migrant children lost access to education, too, since the distribution of school space was based on one’s *hukou* registration. Migrant children’s rural *hukou* registration did not entitle them to attend city schools. Because employers would frequently not pay for health insurance, despite obligations ever since the late 1990s, workers could be in for painful surprises in case of diseases (or felt forced to travel far away to home where they were entitled to care). Finally, access to decent and payable housing was also very poor.

The long-time acceptance of this discrimination and exploitation of millions of low-skilled migrant workers can only be explained by their critical importance for the export-led growth model of China. Low-cost competitiveness had absolute priority, yet was impossible without the migrants. Better social protection for migrants only began to be introduced in the late 1990s, and began to have beneficial effects only a decade or so later.

Another cause of China’s internal migration was that the country opened its agricultural sector as part of its WTO accession commitment, encompassing three policy areas, including market access, domestic support and export subsidies. However, this only

²⁷ However, there are significant problems with the proper disentangling of statistical information on what non-Chinese observers would call “migrants”. This cannot be treated here, for a careful analysis see Chan (2013). The most important reason for the confusion is that Chinese statistical reporting is made along the lines of various rather restrictive controls of intra-China mobilities, especially before the early 2000s. The data in Box 1 are from Chan (2013).

occurred after 2001. On market access, China agreed to significant reductions in tariff rates on a wide range of agricultural products. China also agreed to eliminate quotas and implement a system of tariff-rate quotas (TRQs) designed to provide significant market access for certain bulk commodities (e.g. grains) upon accession.²⁸ On domestic support, China committed to eliminate and not introduce, re-introduce or apply non-tariff measures unless justified under the provisions of the WTO Agreement. On export subsidies of agricultural products, China committed to forego the eight-year transitional period afforded to WTO developing members by the WTO Agreement on Agriculture. China has agreed to have no agricultural export subsidies, and to limit its domestic support to farmers to 8.5% of the value of production (compared with 10% for other developing countries). The consequences of these commitments were falling incomes, impoverishment of farmers, and the relocation of labour from agriculture to rural manufacturing and services, in town and village enterprises where farmer were able to seek higher incomes. To enable labour mobility required the *Hukou* registration to “mobile” in the first place, to follow individuals who move around the country, instead of sticking with employers, their identity and locality.²⁹ However, it was only in 2000, as part of China’s urbanisation strategy for the 10th Five-Year plan, that the *Hukou* system started to loosen.³⁰

Subsequently, the Chinese growth model was essentially based on huge investments in heavy industry (like steel, aluminium, cement) facilitated by extremely high savings rates due to the lack of a welfare state or of broad social protection during the 1980s and 1990s. Another growth driver consisted of strong export orientation of low-skilled-labour-intensive and low tech goods, based on cheap labour (with very low non-wage costs), scale and long

²⁸ Statement of Ambassador Charlene Barshefsky, United States Trade Representative, on Accession of China to the WTO, hearing before the Committee on Ways and Means, House of Representatives, 3 May 2000.

²⁹ The *Hukou* system is an ancient system for individual and household registration which was said to be implemented by China’s First Emperor (18 February 259 BC – 10 September 210 BC). A household registration record officially identifies a person as a resident of an area and includes identifying information such as name, parents, spouse, and date of birth. A *hukou* can also refer to a household register in many contexts since the household register is issued per family, and usually includes the births, deaths, marriages, divorces, and moves, of all members in the family.

The *Hukou* system was reinforced in modern day at the time of the Great Famine of 1959–61 (the associated food shortages continued into the 1970s, only ending in the 1980s) in order to curb the escalating urban influxes of rural migrants. Each citizen was required to register in their place of regular residence, often their birthplace. Moving from rural to urban areas required a complex and costly application for a transfer to a local *hukou*, which usually led to failure. Prior to the reform in the 1980s, this was a huge barrier, as without a proper *hukou* one would not qualify for a government job. Workers who ignored this requirement were denied social security benefits. Also see Chang J. and Tyers R., (2008) “Trade reform, macroeconomic policy and sectoral labour movement in China”, in *Agriculture and Food Security in China: What Effect WTO Accession and Regional Trade Arrangements?* ANU Press, pp.271-2.

³⁰ As part of China’s urbanisation strategy for the 10th Five-Year plan, Central Party Document Number 11 of November 2000 allows a person and his or her immediate family to obtain urban *hukous* if he or she has fixed accommodation and stable work (in a job for more than one year) in the urban area. Urban *hukou* was also offered to those who purchased a local commercial housing unit (to attract outside investment) and to holders of graduate degrees (attracting professionals). The focus of these reforms was still mainly on small towns and small cities, however. Nonetheless, according to China’s Committee to Restructure the Economy (SCORES), during 2001 about 600,000 rural residents acquired urban *hukou* in these small urban centres. See Chang J. and Tyers R., (2008) “Trade reform, macroeconomic policy and sectoral labour movement in China”, in *Agriculture and Food Security in China: What Effect WTO Accession and Regional Trade Arrangements?* ANU Press, p.273.

working hours (sometimes translating to overtime pay as extra income for workers). With rapid productivity growth in agriculture, rural areas became a source of cheap rural surplus labour. Unfortunately, such low-skilled intra-China migrants of rural origin often had no or weak contracts and little (if any) social protection. Many of them were attracted by TVEs (see Box 2, below) in their own counties, numerous other ones found their way to hundreds of special economic zones, soon to be linked to international value-chains. For other goods heavy though somewhat selective trade and FDI protection prevailed, preventing competitive imports (or indeed FDI) coming in or ensuring that such trade and inward FDI would be linked to Chinese partners and/or joint production facilities. Much of industry had easy and cheap access to energy based on coal, initially without any regulatory or tax constraints, hence without internalising negative externalities for society and even neighbouring countries. What counted initially in terms of labour and social protection were jobs, not the quality of work, nor worker rights (despite communism) except in the public sector (but less and less in SOEs).

This very short summary does not do full justice to all elements of the Chinese growth model but it provides most of its thrust. It is often said that China disregarded environment and climate (it did indeed, as shown in Pelkmans, 2021) for several decades, but its incipient style of semi-state capitalism was also disregarding elementary aspects of labour rights (or indeed their enforcement) and social protection, as well as its enforcement. With the opening up of rural agriculture and the relaxation of intra-China mobilities for workers and students, the view was that poverty could only be overcome by many millions of jobs and internal migration to areas where the jobs were found or created. The results were stunning as Box 1 shows: hundreds of millions of migrant workers moved around inside China, to townships and cities in their regions as well as to the fast-growing East of China. Despite the enormous challenges, (registered) unemployment remained quite low and – by (say) 2015 - more than 800 million Chinese had been lifted out of poverty. The growth model surely had its social costs, as will be discussed, but it must be acknowledged that China did achieve a key element of social progress – it was successful in creating numerous jobs for decades and hence a minimum of income. This elementary form of progress for so many people had been thought to be impossible in such a short while.

3.2 SOE reforms and the rise of social protection

By the 1990s, the imperative of (deep) SOE reform – also prompted by the need for China's credibility as a market economy when about to become a member of the WTO – turned out to grow into a mounting social challenge, apart from the economic one. When loss-making was no longer automatically covered by subsidies or credit lines with state banks, smaller SOEs massively went bankrupt or merged into larger firms whilst shedding surplus labour. This added up to many millions of workers. Moreover, all SOEs dislodged their non-economic functions such as education, social protection, social housing and health care. This double shock for tens of millions of workers in only a few years could not be compensated somehow by high economic growth, although this of course did help to generate additional demand for labour. When viewed in a longer time perspective, China has absorbed these

problems quite quickly, though there cannot be any doubt that there must have been many temporary losers at the time.

Knowing that the former Chinese command and planning economy was based solely on 'state-run' enterprises and agricultural collectives (without a profit motive), the long march towards a market economy hinged primarily on deep and wide-ranging reform in three parallel ways: profound and sustained SOE reform, the emergence of successful TVEs (Township & Village Enterprises) and the rise of private business as from the early 1980s. Over several decades, gradually changing incentives, disciplines and legal rules for SOEs emerged side-by-side with newly emerging private enterprise, although initially underprivileged compared to SOEs. The rise of private firms smoothed the transition towards a market economy because at first the SOEs were not forced to adjust radically and – more often than not – losses that did show up were simply covered, whilst unemployment – a major fear of the leadership – remained low. The big surprise – also for the leadership³¹ – was the successful rise of TVEs, a new enterprise form that did not even exist before 1978. By 1997 TVEs provided 18 % of all employment in China ; in 1998 some 28 % of China's GDP was generated by them and 35 % of exports³². Box 2 clarifies the role of TVEs in the 4 decades long Chinese reform process.

Box 2

TVEs: a surprising and unique element of China's development model

TVEs emerged in the late 1970s from the modest rural industrialisation attempts by CBEs (commune & brigade enterprises); by 1984 the CBEs were renamed as TVEs. Since the hukou system prevented labour migration at the time, the successful liberalisation of agriculture threatened to release a huge outflow of labour from agriculture that could go nowhere. The only way out would be a massive rural industrialisation which would never be possible without different and more incentives-driven forms of enterprise. Initially, most TVEs were collectively owned by several families. They chose to focus on what was dubbed the "5 small industries", namely small farm tools, small home appliances, small commodities, small hardware and small chemical fertilizers, all goods suffering from major shortages (given the overemphasis on heavy industries). The incipient market demand for these goods was enormous and little competition could be expected at first, also because private industry was still restricted. In addition, TVEs were established for coalmining activities and, at first in the coastal areas (because of long experience in the sector), in textiles and clothing. Initially, local governments were keen to support TVEs through financing, land use and employment ; moreover, TVEs mainly worked with farmers, hence the land contract system was regarded as a safety net which led TVEs to save on social security. By 1987 the output of TVEs surpassed China's agricultural output for the first time, an amazing milestone. Since 1983 TVEs had been given a high degree of managerial autonomy, worker appointments were replaced by contract-based employment and wages became more flexible, instead of being fixed on the base wage. Eventually, also

³¹ Deng Xiaoping said in 1987 "the most unexpected thing that came out of rural reform is the sudden rise of the TVEs... [...]... The central government should not be given the credit for it". Quoted from the 2020 China National HD Report, special edition, op.cit., p. 119.

³² Source as in footnote 24, p. 118

individuals could buy shares. In the late 1990s TVEs began to emphasize corporate ownership reform, some shares were even listed in the Shenzhen and Shanghai stock exchanges. Later still many TVEs became private enterprises so as to gain more flexibility. However, the days of easy markets with little competition and relatively low-cost entry were then over. Having low-skilled workers was no longer sufficient and, moreover, with hukou being relaxed and wages in the East much higher, labour costs rapidly increased. Nowadays, TVEs can hardly being recognized as a special category. In 2017 the TVEs altogether employed no less than 164 million people.

TVEs are important if one wants to understand the social predicament of China over the last few decades. They provided ample possibilities all over China to escape precarious employment (family labour ; self-employment) and acquire (more) decent jobs and higher wages. The success of TVEs, especially in the first two decades, greatly supported local infrastructure, development and governance, in the absence of national government support for the countryside. What often happens in developing countries, a hollowing out of the country side and a lack of perspective, has not or much less happened in China. At a later stage, it is primarily the workers from TVEs migrating to the East and forming the mainstay of urban industrialisation. Source : China National Human Development Report, special edition, op. cit., pp. 110 – 119.

In the early 1990s, with the Chinese leadership having observed the experiments of ‘crashing out’ of command economies in Central and Eastern Europe – especially in the former Soviet Union and in e.g. Poland with its ‘big bang’ - China decided to go for controlled gradualism and supported social adjustment. Indeed, China observed the negative fall-out of radical if not reckless transformation in some European countries such as corruption, allowing new tycoons to arise swiftly, bank failures (e.g. in Russia in 1998) and the great risk of social disruption due to job losses. However, supporting social adjustment amounted to a tall order as China did not have any social policy or social security system, other than the ‘iron rice bowl’ offered by SOEs and the egalitarian minimal security of collectives. But precisely the SOEs’ ‘iron rice bowl’ of permanent jobs and a host of free services to their workers like housing, education, health care and old-age pensions came under ever greater pressure with the increasing market-orientation of state-owned firms. It became one of the prominent reasons why SOEs could not become competitive, with market discipline and indeed competition on the rise. In the late 1980s and during the 1990s, not only the non-labour costs (covering those quasi-social services) per worker turned out to be critical for SOE competitiveness but the removal of overstaffing too. In fact, the so-called ‘hard budget constraint’ for SOEs arose when local, regional and federal government were less and less able or willing to cover losses suffered by numerous smaller SOEs, and frequently also larger ones. The conviction spread that especially many small SOEs were simply not viable.

Tackling both cost factors was most sensitive in a society where a separate state function (with tax-based and worker contributions based funding, answering social entitlements of workers) called ‘social protection’ did not exist. Moreover, adjustment of workers via job relocation between enterprises was initially unusual and far from easy. Some of this relocation was increasingly absorbed by the numerous new private enterprises, though often on terms far worse than in SOEs. Worse still, mobility of workers between regions or

provinces, let alone from the West of China to the coastal provinces or the North-East, was severely inhibited by the restrictive hukou system. West-East mobility of workers was only feasible if one would accept non-contractual arrangements in private companies, low wages and extremely long hours, without much or any support from local authorities for the quasi-social services (as the non-eligibility for quasi-social services, at least education and housing, followed from not-having a local hukou). Altogether, “as the market economy deepened, balancing social equity and economic efficiency has become a fundamental question in the reform of SOEs”³³.

Thus, during the first 10 years or so of the ‘Reform and Opening Up’ the issues consisted of providing enterprise autonomy (and keeping part of the profit), implementing a contract responsibility system and separating government functions from management and ownership questions. In the still fairly closed and not yet so competitive Chinese market, these improvements led at first to growth of SOEs with SOE employees going up from 33 million in 1978 to 42 million in 1985, whilst yuan-based output tripled. This was almost certainly more a question of scale than efficiency. But it would be a short-lived revival given the more competitive environment with (i) the rapidly growing private sector - even though private companies could not enter, de jure or de facto, certain sectors – and (ii) the entry of foreign FDI in specifically assigned sectors located in export processing zones with high productivity, not to mention (iii) the TVEs. As a result the share of SOE-dominated industries fell dramatically to 30 % in 1995. SOEs were increasingly regarded as (i) inefficient (too much labour and excessive investments), (ii) with low output given those resources, (iii) and having labour redundancies.

In 1993 two breakthrough initiatives were announced, as an incipient policy response to the crisis of SOEs and the quest for social equity. First, SOE reform aimed at ‘sustainable development of SOEs’ (a soft term for ‘viability’), the continuous improvement of economic efficiency and rising employee incomes. To do so in ever more competitive and open markets, large SOEs had to be re-invigorated while relaxing control over [many] small ones. The Chinese government pushed for restructuring and debt/equity swaps for the large ones and mergers, contracting for - and sales of - smaller SOEs, with a harsh principle guiding the end result : survival of the fittest. It did not yield sufficient results by 1998 when the Asian financial crisis only made things worse. Excessive staff redundancies were still there, excess capacity in some sectors prevailed, and SOE managers seemed incapable of adapting to fiercer competition. SOEs suffered massive losses and non-performing loans with banks shot up to over 20 %. Employees were also suffering slower wage growth - and medical care coverage evaporated. Another round of loss-covering subsidies seemed inevitable even though policy-makers understood that such spending would be ineffective to help SOEs turn around. A further round of SOE reform was initiated for 3 years led by PM Zhu Rongji. Some reforms were only more of the same³⁴ but this time there was more emphasis on technological transformation (supporting profitable firms), bankruptcy regulation and dismissal of staff. No less than 20 million workers were laid off in less than 3 years, several

³³ UNDP et al., 2020, p. 135

³⁴ Again, more debt-equity swaps, this time with 4 newly founded (state-owned) asset management companies.

tens of thousands of small & medium sized SOEs restructured, thousands of such small SOEs bought out and hundreds ending up bankrupt³⁵. This clean-up made a substantial improvement possible.

Second, in 1993 China's first social protection scheme was initiated in response to the dismissal of workers in SOEs. Laid-off workers (mainly if not only from SOEs, especially small ones) became an increasing problem and also caused a more general increase in urban poverty, ironically in an economy which was growing with record speed. The number of laid-off workers was already an unheard-of 3 million in 1993 and multiplied sixfold by 1998 to 18 million³⁶. These were the days that the negotiations about China's WTO membership were at its height and the US, the EU and Japan wanted to be re-assured that China would genuinely become a market economy, with the role of SOEs being central to that issue. By 1999 the emerged Chinese 'social safety net' consisted of three initiatives in order to socially support SOE reforms: (a) unemployment insurance, (b) a living allowance for laid-off workers and (c) the 'dibao', later called the MLA [= minimum labour allowance], the urban minimum living standard assistance paid to laid-off workers and other poor urban households. In the following few years, this set-up was improved by creating 're-employment centres' which combined the hand-outs to laid-off workers with an assurance that major social security benefits were not cut off, while providing training and helping to find new jobs. In fact, very much a form of 'active labour market policies' advocated nowadays everywhere.

China joining the WTO late 2001, its accession protocol comprised strict obligations to pursue further market-oriented reforms. China set out for yet another regulatory reform of SOEs and established, in 2003, SASAC (the State-owned Assets Supervision and Administration Commission of the State Council) supervising 196 very big non-financial SOEs. Via mergers and restructuring, these have now reduced to 98 in December 2017³⁷. And the number of small and medium-sized SOEs were slashed by hundreds of thousands but in 2014 there were still 18800 SOEs in industry and 3750 in construction. In banking and insurance there are few SOEs but all have large market shares (dominance). To what extent these SOEs are efficient enough to survive on their own is difficult to answer in general but it is most unlikely that they would again become the cause of serious potential social anxiety.

3.3 The nature and level of human development in China of the mid-1990s

The social predicament of people depends to a large extent on indicators now caught by the UNDP Human Development Index³⁸. The Human Development Index is a result of three

³⁵ Where possible, workers had priority in receiving compensation paid from remaining assets, instead of creditors.

³⁶ Source : UNDP et al, 1999

³⁷ See chapter 14 in Pelkmans, Hu et al., 2018 for far more detail on SOEs in China.

³⁸ For all detail and many references, see www.hdr.undp.org/en/content/human-development-index-hdi

component indicators : on health, education and income. The idea behind the index is to assess the development of a country *not by GDP alone*. The three indicators express (a) standard of living, (b) a long and healthy life, and (c) being knowledgeable as an expression of human capital. The HDI is a limited tool (as there is much more to development of a country) but has nonetheless been very successful as a way of approaching development in a richer fashion than just money income per capita on average. Since 2010 'poverty' is no longer defined by the UNDP only as an income measure ; for this purpose the MPI, the 'multidimensional poverty index' with ten indicators instead of three has been developed and measured ³⁹.

The risk of assessing China's labour & social protection record of 'sustainable development' by means of the HDI, therefore, is that it may still be too narrow. Incorporated in the notion of social protection is health in a sophisticated way, but not education (only 'access' to). Furthermore, it goes without saying that the HDI overlaps considerably with social protection but with the critical issue of the standard of living included as well.

In the following, China's HDI is inspected for the period 1990-1995 and compared to the

Figure 2

China Human Development Index between 1990 and 1995



world, respectively to the BRICS. Although China was growing very rapidly in the early 1990s and before, it started from a very low level. The rate of economic growth may, in part, be stimulated or facilitated by relatively high levels of the components of the HDI, in particular education. Figure 2 shows the HDI of China compared with that of the world for 1990-1995.

³⁹ See UNDP & Oxford PHI (2020), Charting pathways out of multidimensional poverty

China HDI maintained a steady increase during the early and mid-1990s, continuing the upward trend since 1978. In the early 1990s China's Human Development Index is still below the HDI averages of other developing countries; however, it displays a steeper trend than that of the world's HDI. Between 1990 and 1995, the difference between China's HDI and World HDI's narrowed by 3% percentage points. Table 2 compares China with other BRICS : clearly China was behind (except for India) and the distance in 1995 is still considerable.

Table 2

Comparing China's HDI trend with that of 4 BRICS: 1990-1995

	Brazil	Russia	India	China	South Africa
1990	0.613	0.734	0.431	0.499	0.625
1995	0.651	0.701	0.463	0.548	0.652

China Figure 3 decomposes China's HDI for 1990-1995 into the three components.

Figure 3

Components of China's HDI in 1990 - 1995

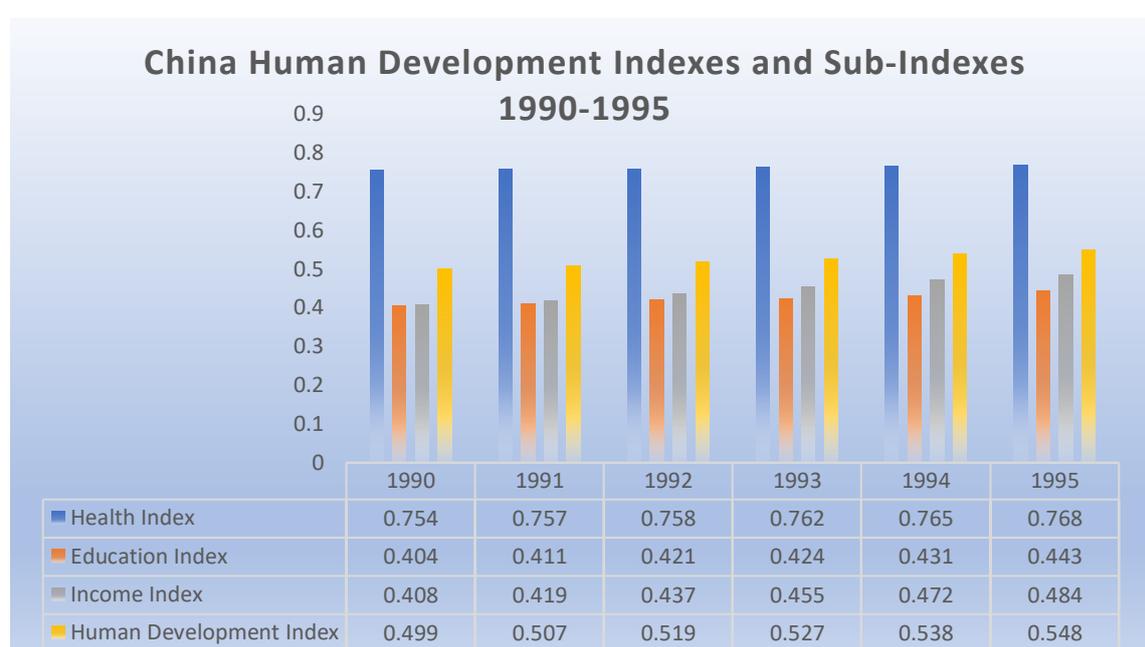


Figure 3 shows that China's health index was relatively high at the outset, and continued to increase throughout the period. On the other hand, the education index, although experiencing sharp increases, is the lowest of the three and was surpassed by the income index in 1987.

It may be worthwhile to have a closer look at the three components

- **Health or life expectancy index:** Life expectancy at birth expressed as an index using a minimum value of 20 years and a maximum value of 85 years.
- **Education index:** Calculated using Mean Years of Schooling and Expected Years of Schooling.
- **Income index:** GNI per capita expressed as an index using a minimum value of \$100 and a maximum value \$75,000.

Figure 4 shows life expectancy at birth where China does better than the world as a whole.

Figure 4

China's life expectancy at birth : 1990-1995

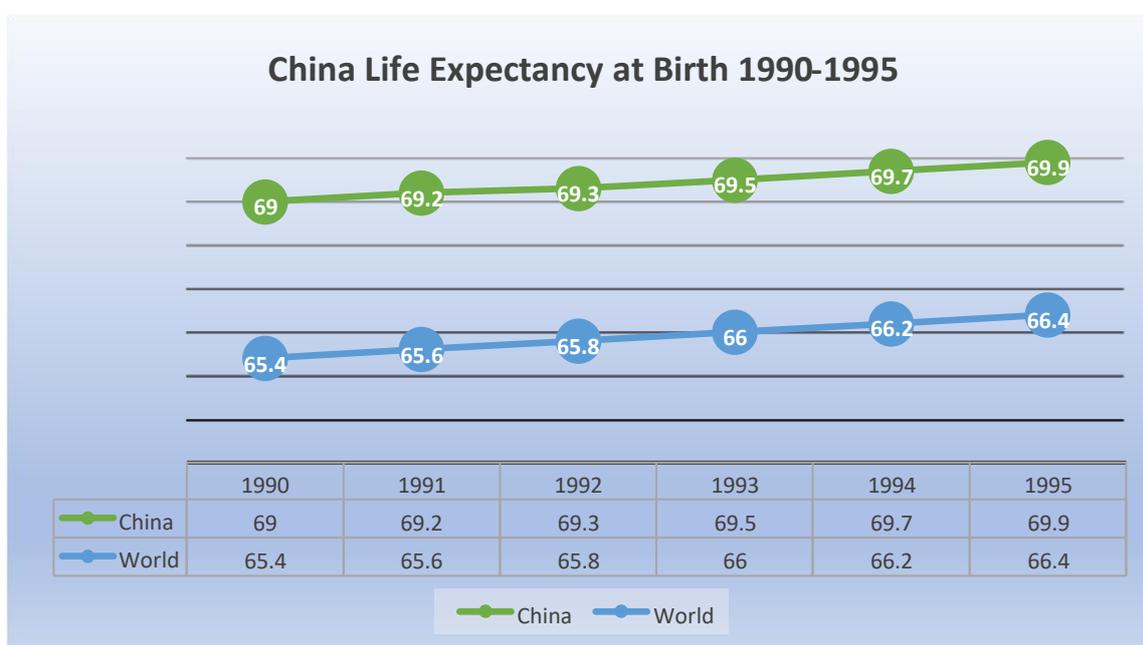


Table 3 compares China with other BRICS with respect to life expectancy.

Table 3

Life expectancy at birth, 1990-1995, China and other BRICS

	Brazil	Russia	India	China	South Africa
1990	66.3	68	57.9	69	63.3
1995	68.3	66	60.3	69.9	61.6

Not only does China score best already in the early 1990s, Russia and South Africa actually suffer from a decline in life expectancy.

Table 4 provides data on China's years of schooling received by persons of 25 years and older and expected years of schooling ⁴⁰.

Table 4
Years of schooling in China : 1990-1995

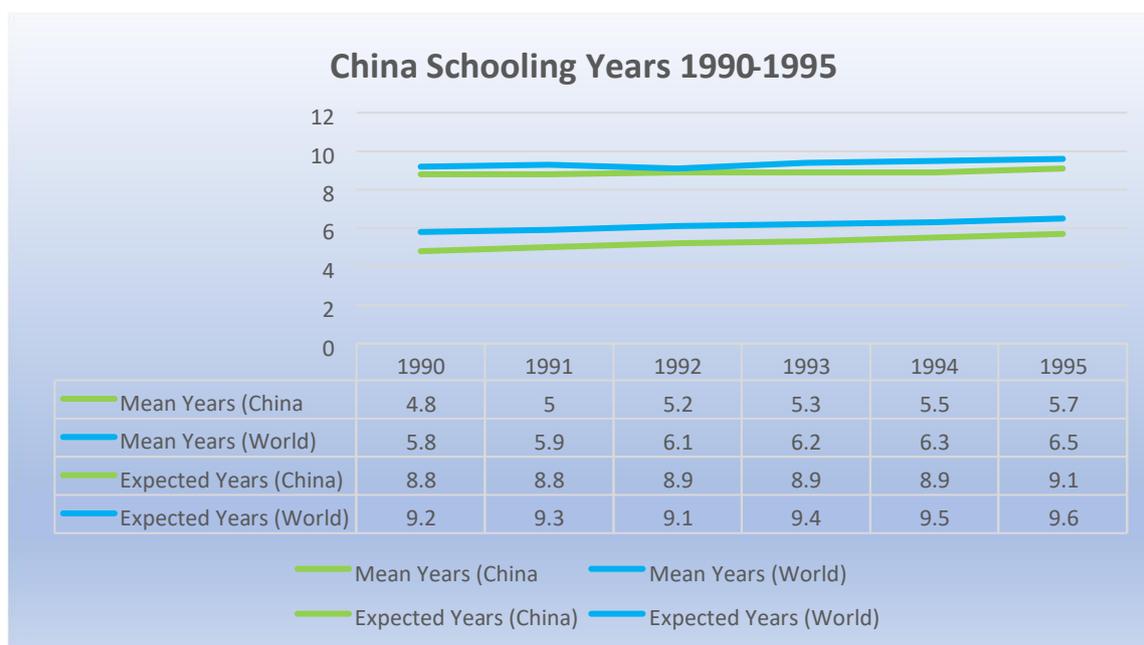


Table 4 depicts a slowly increasing trend for both sub-indicators but that also goes for the world. Table 5 compares both trends again with the other BRICS.

Table 5
Years of schooling in China and in other BRICS: 1990-1995

	Brazil		Russia		India		China		South Africa	
	M. years	E. years	M. years	E. years						
1990	3.8	12.2	9.2	12.8	3	7.6	4.8	8.8	6.5	11.4
1995	4.6	13.3	10	11.8	3.5	8.2	5.7	9.1	8.2	13

Between 1990 and 1995 all BRICS countries experienced an increase in their schooling years and in this case China lagged behind most of them, clearly surpassing only India in both indicators, and Brazil in terms of mean years. Figure 5 shows trends in GNI per capita, where China is catching up rapidly in only 5 years.

⁴⁰ If prevailing patterns of age-specific enrolment rates persist throughout the child's life.

Figure 5

China's income per capita [GNI], 1990-1995 (in 2011 US \$, PPP)

Table 6 compares this catch-up with the other BRICS.

Table 6

GNI per capita of China (2011 PPS) and the other BRICS : 1990-1995

	Brazil	Russia	India	China	South Africa
1990	10082	20898	1882	1487	9588
1995	10901	12897	2188	2468	9023

In 1990 China had the lowest GNI per capita among the BRICS countries. However, the growth experienced in only five years was the highest, enabling China to surpass India by 1993.

Assessing the social predicament of Chinese citizens via the HDI instead of merely via income per capita demonstrates that all three sub-indicators are improving but that health and income per capita do much better for China than education, even though education moves up as well. The education indicator in 1995 is also relatively weak (despite its upward movement) vis a vis both the world as a whole and the BRICS. In the longer run, medium and higher education will have to be emphasized more because otherwise China might risk to remain stuck in relatively labour-intensive sectors with growth inevitably levelling off for this reason alone. Finally, what the HDI in Figures 2 – 5 (and Tables 2-6) does not reveal is the

(growing) inequality in the three sub-indicators, and it goes without saying that this negatively affects the social predicament of many, especially rural, citizens. The inequality between rural and urban in China has always been large and tended to grow during the 1990s, whereas inequality between rich and poor at the individual or family level was increasing for the first time.

4. EU's preferences about 'labour standards' and their promotion via EU trade policy

The EU has a fairly long tradition in advocating the adherence to 'core labour standards' in world and/or bilateral trade policy. In 1996, the US, the EU and Norway were explicit advocates of addressing unfair or unacceptable working practices in the WTO with initiatives for the WTO Ministerial in Singapore but these initiatives foundered on the rocks of suspicious and unwilling developing countries. Before Singapore, there was a host of debates and high-level activities on the theme ⁴¹. However, one might go back to 1948 in the (never ratified) Havana Charter (Annex III) referring to unfair working conditions and the introduction of labour standards, particularly with regard to export products.

In the Commission communication 'The trading system and internationally recognized labour standards' of 19 July 1996 seven core standards are identified (all Conventions, p. 6): prohibition of slavery (no. 29), and of forced labour (no. 105), conventions on freedom of association (no. 87) and on the right to collective bargaining (no. 98), those on equal remuneration (no. 100) and on non-discrimination (no. 111) and the Convention on the minimum age for employment (no. 138). In the US non-paper ⁴² there is overlap for freedom of association, collective bargaining, prohibition of forced labour and non-discrimination in employment ⁴³. The US brought in the 'elimination of exploitative forms of child labour', as agreed in many fora but a standard without an ILO convention at the time. The EU would later agree with this preference to draft a new convention on child labour [now C182, 1999]. Norway also pleads for this in its non-paper for Singapore. Neither Norway nor the US mention equal remuneration, presumably as this might render the acceptance amongst developing countries more difficult, nor the one on a minimum age for employment – instead, Norway wants simply a new convention on child labour.

The communication also discusses unilateral action (with the EU's new GSP measures – both to withdraw and to incentivize), bilateral cooperation via development cooperation and EU trade policy dialogues, and finally multilateral action, in particular in the ILO and in the WTO, with the creation of a special working group in Singapore (but this was rejected). The

⁴¹ The UN Human Rights conference in Vienna (for social rights) in 1993, the Commission's 1994 White Paper on European Social Policy, the Declaration of the Copenhagen Social Summit of March 1995, the Commission's 1996 market access policy paper [COM(96)53], the long-expected 1996 OECD study on trade, employment and internationally recognized labour standards and the G-7 Lyon summit in June 1996, not counting ILO's own work

⁴² Annex 1 to the COM paper

⁴³ The fact that the US leaves out the prohibition of slavery is probably due to the avoidance (by the US) of an enumeration of specific conventions and their numbers; the non-paper focuses on broad notions of 'standards'. i.e. slavery and forced labour largely overlap.

political climate in the WTO was problematic as becomes clear from a quote from the COM paper : “Developing countries regard the debate on labour standards within the WTO as an attempt by the developed world to impose labour standards and pay levels which are out of proportion to their level of development, under threat of trade reprisals. As they see it, either they lose their competitive advantage, or the industrialized countries use labour standards as an excuse to raise trade barriers to protect the weaker sectors of their economies.”(p. 20) However, the Commission had already stated in its 1994 paper on Growth, competitiveness and employment that it proposes “... to set multilateral rules instead of taking unilateral measures, to devise positive economic cooperation policies, to refrain from resorting to trade discrimination as a means of leverage, and to prepare discussions about the best way to promote adherence to existing and future agreements on social policy.” (p. 7). The EU advocates ‘positive measures such as dialogue.... and technical assistance’ in the ILO (p. 17). Against the fears of developing countries, it quotes the 1996 OECD study meant for the Singapore WTO ministerial : ‘the strongest finding is that there is a positive association over time between successfully sustained trade reforms and improvements in core standards’ (p. 9).

Even though the EU failed to convince enough WTO partners to address the four ‘Singapore issues’ including the adherence to core labour standards, the said episode and documents form the basis of dialogues and cooperative initiatives with many EU trading partners, with or without a FTA connection. With China, the EU only began to be active on the social pillar of sustainable development in 2005. As shown in section 2.3 and footnote 12, the EU and China were interested in taking up a social dialogue, first as a technical project on social security already in 2003 (though it only took off in 2006), and in 2005 as the broader Employment and Social Policies Dialogue on an annual basis. Several other initiatives followed until today and in the near future. This will be further discussed in section 9. These various activities were expressing precisely the spirit of the 1996 Commission paper: “the Union has always upheld the view that there is a positive correlation between social progress, economic growth and trade liberalisation. However, there is no question of imposing on developing countries the higher wage levels and better working conditions which pertain in the industrialized world. Nor is this action designed to erect new barriers to trade under cover of a social agenda” (p.3). Moreover, “Each state has the sovereign right to choose what labour laws it will enact and the choice made will reflect both the country’s level of economic development and its political and social priorities. However, the need for development must not be taken as a pretext for abusive practices at the workplace or, particularly, to justify non-adherence to a universally agreed core of labour standards”. (p. 4). China will have noticed this careful positioning during the late 1990s or might have learned it in the early stages of ASEM when trade policy was still an active part of that process (cf. Pelkmans & Hu [2014]). The above sentences were likely to have inspired confidence with the Chinese leadership that the EU may well be a constructive and experienced partner in the social field, whether for labour standards or for social protection more broadly where China felt an immediate need for learning best practices.

5. International labour standards: China’s predicamen

5.1 China and the core ILO Conventions

With the deep transformation from central planning, an overwhelming dominance of SOEs and collectives, the absence of private ownership and of properly functioning markets for factors of production such as capital and labour, to a market-based system of competing firms, whether SOEs or private firms or indeed foreign enterprises as well as competition from the world via opening trade, China was compelled to shift employment relationships for workers from guaranteed and protected ‘membership’ of SOEs or other collectives to specified rights and duties in a labour contract. The strong influx of FDI in SEZs amounted to another strong incentive. Around the same period, China had become the most important non-OECD country as a recipient of FDI,⁴⁴ which was bound to have a positive impact on wages and working conditions. In general FDI contributes to higher wages and better working conditions – this seems to confirm a hypothesis that European-invested enterprises helped to forge improved labour/employment conditions in China. In a foreign-invested enterprise locally recruited senior employees typically are considered within the remit of the human resource architecture of a multinational company, therefore the employment provisions, including the conditions (e.g. maternity or paternity leave), must be in conformity with the human resource policies elaborated by the headquarters in Europe, for example, and may be subject to auditing by the headquarters, too. Such changes contributed to improved labour protection (more) in line with ILO standards.

Nevertheless, it did next to nothing to the fate of the ILO core labour standards in China. As noted (cf. section 2.2), China has ratified only four of the eight core conventions and 3 of them by 1973 or earlier. In other words, there was no connection with reforms or opening up. The fourth core convention (on the worst forms of child labour, no. 182) was ratified in 1999 and one might speculate that it was a relatively easy ‘gesture’ in the run-up to WTO membership. In the two decades since that ratification, there were few, if any, signs that China would ratify more core conventions. However, that might change with the emergence of the draft CAI (the Comprehensive Agreement on Investment between China and the EU) signed on 30 December 2020. The draft text⁴⁵ comprises three provisions which might be seen as opening the door to change, although the language is not truly affirmative. First, in section IV, sub-section 3 (on Investment and Labour), Art. 4.1 says that ‘Each Party.....shall respect, promote and realise.....the principles concerning the fundamental rights ... of the fundamental ILO Conventions’. However, this clause is conditioned by ‘in accordance with its obligations’ (of the ILO) and ‘its commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up’. Nevertheless, it remains at best inconsistent and probably even artificial to claim non-ratification of the bedrock Conventions of the ILO as being supported by such a CAI article. Second, in Art. 4.2 it says that ‘Each Party....is committed to...work towards the ratification of the ILO fundamental Conventions.... [and] .. make continued and sustained efforts on its own initiative to pursue

⁴⁴ See The Impact of Foreign Direct Investment on Wages and Working Conditions, Background report for the OECD-ILO Conference on Corporate Social Responsibility, 2008, at p.5.

⁴⁵ See www.ec.europa.eu/trade/policy/in-focus/eu-china-agreement/ published late January 2021.

ratification of the fundamental ILO Conventions No. 29 and 105, if it has not ratified them". The two are about Forced Labour and about the Abolition of Forced labour. Moreover, the Parties "... will also consider the ratification of the other Conventions..". Third, in Art. 5 the Parties agree to promote 'investment policies which further the objectives of the Decent Work Agenda'. At the same time, the intricate conditionalities do not point to a great eagerness to accelerate this process, to put it mildly. They look more like 'best endeavour' clauses, although at least China has not claimed that the four non-ratified Conventions are somehow incompatible with its governance regime.

5.2 The basics on China's labour legislation based on ratified Conventions

The Labour Law is the first law on labour relations adopted by China in 1994. Previously labour matters had been addressed solely by regulations. Under the Labour Law, for example Article 3 guarantees equal right to employment and choice of occupation, protection of occupational safety and health, social insurance and welfare, etc. Article 5 instructs the State to "... take various measures to promote employment,... lay down labour standards, regulate social incomes, perfect social insurance system, ... and gradually raise the living standard of labourers. Article 12 prohibits discrimination against "ethnic group, race, sex or religious belief". Women's equal rights compared to men in employment as well as employment rights of the disabled are guaranteed by Articles 13 and 14, respectively. Article 15 prohibits recruiting minors under the age of 16, unless with formal approval (for recruiting minors for arts, physical culture, e.g. circus artists) and in which case the right to compulsory education must be guaranteed.⁴⁶

In addition to the primary legislation against discrimination and child labour, China also issued a series of secondary legislation as legal interpretation to govern some specific circumstances.

On against discrimination in employment and occupation⁴⁷, this includes:

1. Special Rules on the Labour Protection of Female Employees (2012), in order to reduce and resolve the special difficulties which female employees may have in the course of their labour due to their physiological characteristics, and to protect their health.
2. Regulations on AIDS Prevention and Treatment (2006), lays down the obligations for the competent authorities for health education, prevention and control, treatment and succour, etc.
3. Employment Promotion Law (2007), in order to promote, among others, fair employment. For example, Article 27 prohibits using sex as a pretext for excluding women from employment or to raise recruitment standards for the females. Article 29 guarantees the labour rights of disabled persons. Article 31 guarantees that rural

⁴⁶ Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/37357/108026/>.

⁴⁷ For more laws on promoting equality in employment opportunity and treatment, see https://www.ilo.org/dyn/natlex/natlex4.listResults?p_lang=en&p_country=CHN&p_count=1095&p_classification=05&p_classcount=43

migrant and urban labourers shall enjoy equal labour rights as urban labourers. It is prohibited to set discriminatory restrictions against rural migrant labourers.

4. Regulations on Education for the Disabled (1994), promotes preschool, compulsory and vocational education for the disabled, and stipulates awards and penalties for compliance with, and breach of, the Law for the Protection of the Disabled.

On against child labour, this includes⁴⁸:

1. Provisions on Special Protection for Juvenile Workers (LMI No. 498 of 1994), in order to protect workers between 16 and 17 years of age, specifying types of labour which shall not be performed by juvenile worker, and listing medical conditions which shall bar a juvenile from working, etc.
2. Protection of Children and Youths Welfare and Rights Act (1992), in order to, among others, protect the interest and increase the welfare of children and youth, for employment preparation, vocational training and employment opportunities for youth over the age of 15 years old.
3. Law of the People's Republic of China for the Protection of Minors (1991), in order to protect minors under the age of eighteen, protection in family, in school, social protection and judicial protection. Legal responsibility is provided for violation of the law.

5.3 Four more ILO core conventions for ratification

China has four more ILO core conventions to ratify, which are Freedom of association and of collective bargaining (C087, C098) and Forced labour and its Abolition (C029, C105).

In terms of freedom of association, as mentioned before under the setting of employment relations in China, though Article 7 of the Labour Law guarantees the right to participate in, and organise, “trade unions in accordance with the law”, all trade unions must be under the governance of the All-China Federation of Trade Unions. Clearly, this critical provision introduces a different understanding of “freedom of association” and “collective bargaining”. And one that very few countries in the world would agree with. But it does help to explain employment relations in China, for example in relation to voluntary joining the trade union, settling labour-management disputes, good governance/management of enterprises and employment disputes (human resources).⁴⁹ In addition to a different understanding, there can be no doubt that the political system has also influenced China’s perspectives for ratification. It has silently delayed, indefinitely, the ratification of the two conventions on freedom of association and on collective bargaining.

⁴⁸ For more on the legislation to protect minors against child labour, see https://www.ilo.org/dyn/natlex/natlex4.listResults?p_lang=en&p_country=CHN&p_count=1095&p_classification=04&p_classcount=27.

⁴⁹ For the details of China’s legislation to uphold the labour rights of “freedom of association” and “collective bargaining”, see https://www.ilo.org/dyn/natlex/natlex4.listResults?p_lang=en&p_country=CHN&p_count=1095&p_classification=02&p_classcount=55.

A somewhat similar ‘unique’ understanding by China on “correction through labour and education”⁵⁰, in contrast to a conventional view of “retribution, deterrence, incapacitation, and rehabilitation”, was the *raison d’être* of the punishment system of re-education through labour in prison and in camps. However, China abolished re-education in camps in 2013 after decades of discussions. Some may query why such camps were abolished, but not prison re-education, and what is the likelihood of China abolishing the system of re-education in prison – not least in the light of the (prudent) commitment China pledged in the EU-China CAI.

In essence, “re-education through labour” camp was an extrajudicial detention and punishment system against minor crimes and political dissidents, characterised by long working hours and brutal conditions.⁵¹ Some suggest that abolishing the re-education camp could be leading to the abolition of the prison-labour system, but the causal link between the two is not apparent. Neither has the impact of the former on the latter, eight years on, been established. To all intents and purposes, it is easier to abolish an administrative structure by issuing an administrative order than amending a judicial structure that involves criminal penalty and procedure, as in the case of prison labour. Presently, based on China’s Criminal Law and Prison Law, prisoners are subject to “punishment with reform” and “education with labour”, which is a combined correction system to transform them into law-abiding citizens.

But in any case, to abolish the re-education prison-labour judicial system, China’s correctional principle of “correction through labour” must be rethought. Given the above, ratifying the two ILO Conventions on Forced Labour might well take a long time to materialise. As a reference, the Panel Report of the EU-Korea Labour Dispute acknowledged that due to the changes to the penal system, it is reasonable for Korea to take a longer time to ratify the ILO Conventions on Forced Labour, as long as “continued and sustained efforts” are made. In sum, the forced labour issue to China is probably more about penal reform, less about a labour issue. Probably for this reason, China has not enacted any legislation with regard to elimination of “forced labour”, unlike the legislation on “freedom of association” despite China’s different ‘understanding’ vis-à-vis the kind of labour rights as conventionally perceived.

Having said that, there is another layer of complexity to peel off before prison-labour will be abolished in China. This is because, in addition to serving as correctional facilities, in China

⁵⁰ Fu, H. (December 2005), Re-Education through Labour in Historical Perspective, *The China Quarterly* No. 184 pp 811-830, Cambridge University Press.

⁵¹ It is alleged that, since the abolition, other forms of extrajudicial detention have taken the place of “re-education through labour”. For example, in 2014 re-education facilities were created in Xinjiang targeting a wider context than minor crime and political dissidence – which were the reasons for first setting up the system in China in the mid-1950s. By 2017, these had become the massive Xinjiang internment camps, holding 1–3 million people, utilising forced labour, and now recognised as re-education camps.

prisons function also as economic production centres in order to be financially self-sufficient.⁵² This will make the ratification process drag on for even longer.⁵³

5.4 How China's domestic legislation helps, some examples

The present study is not the place for a fully-fledged analysis of China's labour laws in the broad sense of the term. It is more to illustrate that China's labour laws nowadays have come much closer to what in the EU would be understood as sound labour protection, quite irrespective of the ratification issues in the ILO. For example, there are a series of laws in China which support the prevention of child labour. It is acknowledged by the ILO that Chinese authorities at various administrative levels have implemented them to ensure that children of internal migrant workers have access to social services, especially compulsory education and quality education programme. But so far there are no official statistics on child labour, while the labour inspectorate is mandated to enforce the labour law, which outlaws child labour and sanctions violations.⁵⁴

Poverty reduction is an on-going process, too. It is a great achievement that 850 million people have been lifted out of poverty, but at the same time about 373 million Chinese are living below the upper-middle-income poverty line of US\$5.50 (EU€4.66) a day which is significant.⁵⁵

One way to spot the challenges/deficiencies that exist in labour protection is to look at the cooperation projects conducted between the Chinese authorities and ILO or the EU, or other international donors. The focus of these projects should overlap with the areas of labour standards that require improvement. When doing so, one observes discrimination (gender equality, HIV, ageism), employment equality, occupational safety and health, industrial relations, working time regulation and wage developments, employment (new skills for new jobs),⁵⁶ and migration and urban mobility as areas where deficiencies exist.⁵⁷

⁵² Also, nearly every forced labour facility in China operates under the dual identity of its prison name as well as its commercial name. See Deckwitz, S. (January 2012), *Gulag vs. Laogai: The Function of Forced Labour Camps in the Soviet Union and China*, (Utrecht University), p. 45.

⁵³ At the same time, it is reported that prisoners work long hours, often with no remuneration, bringing profitability to prisons and helping fund the operations of local and national governments. For details of the economic role of the prison-labour system, including export, see Dotson J. & T. Vanfleet (July 2014), *Prison Labor Exports from China and Implications for U.S. Policy*, U.S.-China Economic and Security Review Commission Staff Research Report, pp 4-10.

⁵⁴ This includes the Compulsory Education Law and corresponding measures to enforce the law and prevent school dropouts; the National Mid- and Long-Term Reform on Education and Development Programme (2010-2020), which consists specific compulsory education targets, and measures to raise the quality of education at all levels; the Plan of Action against Human Trafficking (2013–20), as well as the Anti-Trafficking Inter-Ministerial Joint Meeting (IMJM) of the State Council; and, the abolishment of the Re-education through Labour (RETL) programme. Available at: <https://www.ilo.org/beijing/areas-of-work/child-labour/lang-en/index.htm>.

⁵⁵ Available at: <https://www.worldbank.org/en/country/china/overview>.

⁵⁶ Available at:

https://ec.europa.eu/social/main.jsp?advSearchKey=China&mode=advancedSubmit&catId=22&doc_submit=&policyArea=0&policyAreaSub=0&country=0&year=0.

⁵⁷ Available at: <https://www.compas.ox.ac.uk/event/eu-china-dialogue-on-migration-and-mobility-support-project/>.

The priorities of the ILO China Decent Work Country Programme (2016-2020) are: 1) increase the quantity and quality of employment; 2) promote and extend social protection in and out of the workplace; 3) strengthen the rule of law and the realisation of fundamental principles and rights at work. The second and third priorities are relevant here. Of the 8 expected ‘outcomes’ of the programme, three reflect the ambiguities of China’s stance in the ILO (and hence with respect to the social aspects of sustainable development). Outcome 3.1 aims to improve institutions “in line with national laws and international standards and the Chinese laws and regulations”. To what extent is that really possible without further ratifications ? Outcome 3.2 is about the capacity of the social partners to ensure “responsive , inclusive, participatory and representative decision-making at all levels, consistent with national and international standards”. To what extent is that really possible without relaxing the monopoly of the ACFTU, among other things? Outcome 3.3 is about the government and its lawmaking, “by ratifying and, with social partners’ involvement, improving application of international labour standards”. Should this be read as a promise to prepare future ratifications of core Conventions ?

It is also instructive to elaborate briefly on the 1994 Labour law (as amended). Provisions with regard to freedom of association (Article 7 guarantees the right to participate in, and organise, “trade unions in accordance with the law”), promotion of employment (this includes prohibition of discrimination based on nationality, race, sex or religious belief and equal opportunities for men and women), employment contracts and collective agreements, occupational safety and health, social insurance and welfare, labour disputes and supervisions and inspection, etc. are included in the Labour Law. Later, a few judicial interpretations issued by the Supreme Court have provided clarifications on labour disputes, paid annual leave, and collective contracts.⁵⁸

Very significantly, the Labour Law abolished the previous practice of regulating employment relations by category of business ownership, whether private, public or state owned, which used to be treated separately and differently. Enactment of the Labour Law also symbolised the end of the ‘iron rice bowl’ system of lifelong employment by legislating for the labour contract system as the basic mode of employment relations in China.⁵⁹

The Labour Contract Law came into effect in 2008.⁶⁰ Applicable to all employees in the territory, it legalises the labour contract system, including labour inspection, labour dispute settlement, collective consultation and collective contract system. The law also requires employers to contribute to employees’ social security accounts and sets wage standards for employees on probation and working overtime. All these measures are of particular importance to migrant workers, with approximately 250 million of them employed in non-agricultural sectors in towns and cities at the time, many of whom worked without labour contracts or social benefits, and employees of private and small businesses whose labour

⁵⁸ Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=37357.

⁵⁹ See Casale G. and Zhu C., Labour administration reforms in China, ILO, Geneva, 2013, at p.10.

⁶⁰ Available at:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/76384/108021/F755819546/CHN76384%20Eng.pdf>.

contracts might not have been properly protected.⁶¹ As seen from Article 1, the law aims to establish and develop a harmonious and stable labour relationship.

After the Labour Law first declared in 1994 that a social security system would be established in China, the Social Insurance Law⁶² was promulgated in 2010 while in the intervening 17 years a number of relevant regulations were released at different administrative levels governing different social insurance schemes, such as work injury. The Social Insurance Law aims for establishing a universal coverage of basic social security system to safeguard citizen's constitutional right for protection in times of pension, medical, work-related injury, unemployment and maternity (Article 2). The law has dismantled the differences in social security benefits subsisting previously among employees, small business owners, part-timers and the self-employed, though civil servants enjoy a separate system promulgated by the State Council (Article 10). Social protection in China will be discussed in later chapters.

Certainly, when the old SOE-dominant labour/employment relations were restructured amidst SOEs reforms and FDI influx and when internal mass migration accelerated, enacting new labour legislation to govern new labour relations became an imperative. In 1978, virtually all workers worked in the public sector in urban SOEs or rural collective farms. In 2005, more than 80 per cent of workers were in the in non-public sector, including subsistence farmers who comprised 47 per cent of the total workforce.⁶³

Most of China's labour legislation was enacted during this period. China's Labour Law was first adopted in 1994, several other laws followed suit and subsequently in the 2000s another dozen major labour laws and industrial regulations were developed or revised. Table 7 summarises the more important developments in this period. The overall conclusion is that around 2010/11 China had accomplished a more or less complete system of (domestic) labour rights and social protection. This had to be further improved as will be discussed later (e.g. with the help of the EU and/or the ILO).

Table 7

Emergence of labour rights and social protection in China: 1992-2008

No. & year	New social law or provisions
1. 1992	Trade Union Law (amended 2001)
2. 1992	Women rights law (" 2005)
3. 1994	Labour law
4. 1995	Housing Providence Fund nation-wide
5. 1997	Unified Basic Pension systems for enterprise workers
6. 1998	Basic medical insurance system for urban staffers and workers

⁶¹ For detailed explanations on the provisions concerning open-ended contracts, labour dispatch, collective agreements at regional or sectoral level, tripartite mechanism for coordinating labour relations, see Casale G. and Zhu C., Labour administration reforms in China, ILO, Geneva, 2013, at pp.11-3.

⁶² Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=89811.

⁶³ Lee C.H. (2009), Industrial relations and collective bargaining in China, ILO, at p.2.

7. 1999	MLA (min. labour allowance) nation-wide
8. 1999	Unemployment insurance
9. 1999	Regulations on the administration of Housing Funds
10. 2000	Collective wage negotiations, decree issued by MOLSS
11. 2001	Revision of Trade Union Law
12. 2001	Tripartite consultation ctee for industrial relations
13. 2001	Joint Notification for Promotion of Collective Bargaining and Collective Agreements
14. 2002	Work Safety Law
15. 2002	Occupational Diseases Law
16. 2003	ACFTU announces 'to actively organise rural migrant workers'
17. 2004	(revision) Provisions on Collective Agreements
18. 2004	Work-related injury insurance regulations
19. 2006	Common views on regional/sectoral collective bargaining (Trip. Ctee)
20. 2006	Enterprise Trade Union Regulations
21. 2007	National Peoples' Congres: enact three key social laws: Labour Contract Law, Employment Promotion Law and Labour Disputes Mediation and Arbitration Law; all in force in 2008
22. 2008	(first ever) Partial recognition to strikes by Shenzen People's Congress, e.g. official procedures for handling strikes
23. 2008	Employment Promotion Law
24. 2011	Social Insurance law

6. Social Protection: what it is and why it helps development

In section 2.2 social protection is defined by its overall aim to 'reach or maintain an adequate standard of living and good health throughout ..' the lives of citizens. It has four components: basic income security for children, basic income security for persons in active age, basic income security for older persons, and essential health care under conditions of availability, accessibility and quality.

The overall aim can be better understood once one begins to appreciate the beneficial effects social protection has for overcoming very basic constraints in development and for security of people. There are six important considerations here

○ Social protection is a human right and an integral part of the 2030 UN SDGs [see SDG no. 1, esp. 1.3]. China has often underlined that it is keen to support 'human rights' as 'social and economic' rights, and this is likely to be a prominent example. Under social security, it is already in the 1948 Universal Human Rights Declaration and in a series of other Conventions. The human rights dimension makes Social Protection not a matter of charity or compassion, but a genuine entitlement that recipients ought not to have to fight for. This implies as well the application of central human rights principles: equality, (hence also) non-discrimination, participation, transparency and accountability.

- Social Protection is critical in reducing and preventing poverty, whilst levelling out inequalities; and poverty has in turn other deleterious effects that better be prevented.
- Social protection supports human development, inter alia via its positive effect on human capital
- Social Protection also enhances social cohesion and hence – other things equal – a better integration of marginalized groups and less social exclusion.
- Social Protection is expected to strengthen the labour force, being more healthy, vital, etc.
- Finally, Social Protection also stimulates economic growth directly via the multipliers of the social expenditure after initial spending by recipients (e.g. for Africa, research has established multipliers between 1.3 and 2.4.).

Beyond all this, Social Protection is also helpful to achieve *other* SDGs.

Now read what SDG no. 1.3 says : it expects all countries to implement nationally appropriate Social Protection systems and measures for all, including social protection floors, to end poverty by 2030. The basic principle should be : universal coverage. Social Protection recipients eat more and better i.e. in China the rural pension scheme resulted in a 10 % increase in food expenditures. In addition, access to affordable essential health care is central to living healthy lives. Moreover, with income security along a life-course, people can afford better access to nutrition, clean(er) drinking water, sanitation and (better) shelter. It also leads to more/better schooling as transfers enable families to absorb the costs associated with sending children to school, not least in rural areas. And it improves the gender balance that (otherwise) de facto leads to female discrimination (via unequal and often 'unpaid' workloads outside contracted work) and subsequent lesser chances in daily life.

Social Protection has the potential to reduce insecurity for workers and helps to formalize employment contracts. This is not a small issue in Asia-Pacific : some 60 % (!!!) of the labour force is an informal worker with a very weak or no legal status, when it matters. Workers in the informal economy have no or insufficient access to any form of Social Protection. This means that (social) laws yield nothing even close to universality, except purely by name: many, if not most, workers simply have no status under such laws. One can enumerate a number of beneficial effects of Social Protection but these are either public (e.g. multiplier effects) or for the relevant workers at stake. For many *other* workers in the informal labour market, social protection is – more often than not – a dream : without an ethical or social attitude or social awareness, without 'industrial relations' [i.e. between employers and labour unions , and on a structural basis] and without tough and meticulous enforcement of social laws, the Social Protection regime in laws in any non-developed country X will unfortunately result in a form of 'raw and insensitive capitalism' where workers are seen as a cost, and nothing else [so, not as a part of all the indispensable factors of production of the firm – a 'stakeholder' model without which there would be no output].

As well explained in an informative FAQ document ⁶⁴, EU countries are a stranger to this massive 'informalisation' of the economy given universal coverage and functioning welfare states.

A lack of Social Protection is a contributing factor to growing inequality in and between countries. It is also likely to augment the inequality of opportunity. Both can harm economic growth in the long run, but short-run profit seeking, let alone 'greed', is unresponsive to such concerns. Inequalities often tend to become intergenerational (and hence, turn into traps). Inequality may actually be economic, social and related to environment (e.g. air, water and soil). This is one reason for the links between the two pillars of sustainable development. But this can have two sides. Thus, in China in the late 1990s, logging in its forests became tightly restricted, in fact forbidden as a rule, with the consequence that nearly 1 million state forests workers faced a job loss. The conversion programme addressed this problem (or, dilemma) quite well : some 32 million rural households received cash transfers (as part of a new Social Protection programme for forest regions) for conservation activities and few jobs were actually lost.

The World Bank is of a similar view but emphasizes more the human capital aspect and cost-effectiveness. Social protection systems "are transformative as they not only help the poor and most vulnerable mitigate economic and fiscal shocks, but also help ensure equality of opportunity by giving them a chance to climb out of poverty, and become productive members of society. When poor and vulnerable people have the opportunity to improve their lives and that of their families, they are less likely to move in search of a better life. Well-designed social protection programs are cost-effective, costing countries on average about 1.5 % of GDP" ⁶⁵. Safety nets are often regarded as a means of harnessing human capital. The World Bank supports universal access to social protection. Universal social protection coverage includes : providing social insurance through cash transfers to those who need them, especially children ; benefits and support for people of working age in case of maternity, disability, work injury or for those without jobs ; and pension coverage for the elderly. Assistance is provided through social insurance, tax-funded social benefits, social assistance services, public works programs [an interesting addition] and other schemes guaranteeing basic income security.

An estimated 36 % of the very poor in the world escaped extreme poverty because of social safety nets. The poverty gap is reduced on average by about 45 % (for low and middle income countries). Globally, developing and transition countries spend an average of 1.5 % of GDP on safety net programs. Nowadays, worldwide some 2.5 billion people are covered by safety net programs and some 650 million people or 56 % of the poorest quintile ⁶⁶.

Ever since the mid-1990s, China began to realize that there is a case for a system of social protection, outside SOEs and separate from TVEs, for social (or possibly socio-political) reasons but also for the purpose of development. And Europe formed a rich source of

⁶⁴ See www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/ilo-beijing/documents/publication/wcms_761053.pdf (2020)

⁶⁵ See <https://www.worldbank.org/en/topic/socialprotection/overview> accessed on 12 April 2020

⁶⁶ All data from the Worldbank

inspiration, with a common desire to cherish welfare states whilst maintaining its diversity of social models, and of experience in techniques.

Unlike international labour rights, there are no world conventions on social protection, although some elements are covered by the ILO. The present paper is based on a social protection definition spelled out in section 2.2, in turn based on international organisations⁶⁷. In short, basic income security for children, for persons in active age (implying the cases of sickness, unemployment, maternity or disability) and for older persons as well as essential health care, including maternity care. In the ADB Social Protection Indicator, permitting fact-based comparisons across countries, also ALMPs (active labour market programmes) have been included⁶⁸.

7. Social drawbacks of ‘growth at all costs’

During the 1990s, China’s growth at all costs occurred in defiance of sustainable development, both for the environmental and climate pillar (cf. Pelkmans, 2021) and the social pillar. The following will mainly focus on severe socio-economic discrimination of rural versus urban workers and their families. In addition, there was a general disinterest in ‘decent’ work and a massive neglect by companies of honouring their obligations – modest as they were – to their workers, for the sake of competitiveness and enriching owners and managers. It is good to realise that the government and the Party began to consider explicit elements of a welfare state and enacted some of them in the second half of the 1990s but at first such initiatives did little to reduce this open defiance.

7.1 *Rural versus urban hukou and other forms of discrimination*

For a long time, the hukou status determined one’s working and earning options in life (see also Box 1). The predicament of rural people was to work in or connected to farming, fishing and forestry. And for ages this was serving the extended family, be it in modest ways. Farmers did not own the land, communities did, but nonetheless there was a very basic (community) notion of social protection in some elementary respects. All this changed, beginning in the late 1970s when agricultural liberalisation turned out to be extremely successful, rapidly augmenting productivity and prompting a surplus of labour looking for other employment. To a surprising extent this alternative employment was offered by TVEs (see Box 2) which tended to be in the same county or province so that the hukou issue did not normally arise. For a decade or so, most surplus labour in rural areas was absorbed by TVEs and to a lesser extent by foreign investors, building labour-intensive product assembly and processing plants in special economic zones (all over the country). By the early 1990s, TVEs employed more than 100 million people, an incredible performance knowing that 15 years before there simply were no TVEs at all.

⁶⁷ ADB, UN-ESCAP, ILO and the Worldbank

⁶⁸ ADB (2019), The Social Protection Indicator for Asia, Manila, p. 3 ; see www.adb.org

But the demand for labour in mining, construction and other private industry remained very strong and agriculture became less and less capable to 'bind' much labour as traditionally had been the case, given that machinery, better seeds, fertilizers, modern irrigation and other yield-raising inputs as well as better infrastructure pushed up productivity, hence causing a secular reduction of the agricultural labour force. Inevitably, young rural workers began to seek employment in the North, North-East, East and South-East of the country. A steady flow of (domestic) migrants became the 'new normal' during the latter part of the 1980s and especially the 1990s. As will be highlighted below, soon the numbers of migrants turned out to be staggering. In the 1990s, international organisations dubbed it the largest domestic migration wave ever, easily involving 200-plus-million workers (including the short-distance migration to TVEs). Labour intensive industries such as toys, consumer electronics, clothing & textiles, but also construction (a huge sector helped by rapid development of China), coal mines and other mining and, increasingly, heavy industry like steel, aluminium, ceramics and shipbuilding became dependent on migrants. And the migrants on them.

And by 2010 or 2015, one can portray this transformation as the 'lifting out of poverty' of hundreds of millions of Chinese compared to an only recent past. Reduction of poverty was the leading aim of Chinese development strategy, above anything else. The mobility and successful finding of jobs by so many millions of migrants in a relatively short period of time was regarded as an enormous success of 'the' Chinese model. No doubt it is. Had they been retained in their regions, many would have remained jobless, extremely poor and without perspective, also for their children. These consequences would have been bad enough on their own, yet one can hardly imagine the socio-political repercussions after a while. As emphasized repeatedly in this paper, whilst recognizing the success of lifting hundreds of millions out of poverty that China accomplished via growth and internal migration, it would be a mistake to conclude that relative poverty has largely been overcome. In 2020, hundreds of millions Chinese still live on very low incomes indeed.

In the 1990s, the nature and scale of socio-economic discrimination of migrants, solidly based on the hukou status and invisibly strengthened by a deeply felt form of conscious 'social distancing' by urban citizens everywhere, resulted in a kind of 'caste system' with some features of apartheid as well. For migrants leaving their family behind it meant that the kids rarely saw their father or parents (and growing up with the elderly). For families joining the migrant(s), it meant that kids would run into systematic discrimination in education and most good schools would be closed for them. Anyway, migrants' wages were low, far lower than most urban workers' wages, and schools were out-of-reach for that reason alone. Medical treatment was supposed to be undergone back home - easily some 1000 – 2500 km away – where clinics were ill-equipped and lacked quality doctors. As noted before, the majority of migrants did not enjoy written contractual arrangements, had to make extremely long hours every week – often with 6 or even 7 days a week - and had initially no form of insurance whatsoever. The housing facilities (if one can call them like that) were usually far outside towns and – more often than not – in dilapidated buildings or in overcrowded dormitories of the employer.

Once China began to build, step by step, elements of a welfare state, these sharp distinctions between urbans and rurals were initially cemented in the new systems. To be sure, there were also considerable differences amongst the urbans, especially between state civil servants, the military and teachers, on the one hand, and other urbans on the other. But such differences were far smaller than the cleavage between the migrants and all others.

7.2 Other costs of extreme growth for unskilled (migrant) workers

The growth and cost-competitiveness mindset of Chinese managers and industrial owners during the 1990s (and even later) was uncompromising. They did everything to squeeze out maximum efforts by the workers, whilst investing little in the work environment, including safety on the work floor, and attempting to get away with not honouring social obligations by trick work or outright deceit. Since the ACFTU showed next to no concern about these bad practices⁶⁹ and – at first – labour inspections were almost non-existent, whilst wildcat strikes were risky (or would lead to dismissals), the emerging set of social laws (see section 9) were hardly or not enforced. Suffering from all this were unskilled workers but the overwhelming majority of them would be migrants either from the rural parts of the same province or non-urban-hukou migrants from far-away provinces. This episode would foreshadow the enormous struggle in China between growth and cost-competitiveness, on the one hand, and improving on the near-absence of enforcement and ‘decent work’. Although there are numerous informal accounts of such practices, analytical studies are next to non-existent as reporting and the publishing of damaging data were strictly forbidden. At a later stage (from 2005 or so), the China Labour Bulletin (CBL) began to report from a relatively safe Hong-Kong base, but the Chinese government remains extremely sensitive to such reporting⁷⁰.

Not honouring social obligations to workers could consist of non-payments of social and pension contributions to funds (once they came into being) and this would typically be discovered only when migrants would wish to transfer the entitlements or receive cash, or when a company went broke (due to misfortune or a fake bankruptcy followed by relocation elsewhere). Frequently, overtime would not be paid in full or be falsely documented. More generally, the majority of migrants had no formal contract even when new laws to this effects had been introduced.

Occupational safety and health (OSH) in the workplace was given very little attention, everywhere but not even in very risky workplaces where it was essential – in construction and mines, be it coalmines or mines for other resources. The result was a huge and largely avoidable total of casualties, accidents and occupational diseases. Initially, little more than a very minimal compensation was paid to the family and no disability insurance for victims existed. Occupational risk was regarded as ‘normal’ and sometimes even old Chinese

⁶⁹ In Table 8 it will be observed that the ACFTU only began to officially be protective of migrants in 2003 !

⁷⁰ In 2010, a bilateral meeting between the EU and China derailed when the invited CBL director gave a statement on problematic social factory practices in China, and the Chinese Delegation walked out in protest.

traditions holding that prosperity of the community would go above the fate of the individual would be invoked. In section 9 the struggle to improve OSH in China will be dealt with, supported by EU programmes and a High Level China/EU Dialogue.

8. China's Social Protection in the mid-1990s, when reforms were drastic

8.1 Beginning with a separate social protection system

In the early 1990s, the social consequences of the reforms and structural transformation of China's economy began to dawn on policy-makers. Its labour market was not accustomed to large (be it perhaps temporary) surplus labour shed by SOEs and due to the modernisation of agriculture whilst the overall Chinese economy – including the labour market - was rife with restrictions and internal barriers, the greatest one of which was the hukou system. Another severe restriction consisted in the one-child policy⁷¹ which undermined the tradition that parents could rely on the extended family to look after them when growing old. As noted in Box 2, TVEs had absorbed 'agricultural' citizens as industrial and service workers in ever greater quantities in rural areas. Moreover, foreign enterprises, notably in special economic zones, exercised some additional demand for (mostly low-skilled) labour. However, despite all this and despite the very high economic growth which also stimulated the demand for labour, surplus labour became unemployed in masses, a daunting spectre for society and the Chinese leadership. Turning SOEs into market-oriented companies caused a dramatic loss in implicit social protection whilst the modernisation and liberalisation of agriculture meant a rupture in the ages-old social protection by the (extended) family, as jobless youngsters felt a need to move and seek industrial employment. Indeed, a much more market-oriented economy was in need of a logical complement : a system of social protection, partly on the basis of contributions by enterprises and workers, working like an insurance, partly based on the state's budget as an idiosyncratic expression of solidarity.

But this admission came only slowly. Growth had absolute priority : the fight against poverty would be won via high secular economic growth. In 1993, the Party proclaimed : efficiency first, equity later. But with many millions of workers unemployed and more labour shedding taking place year after year⁷², whilst new private companies and even (especially smaller) SOEs did not give many workers formal labour contracts – with all the insecurity

⁷¹ The one-child policy did not apply to all of China, however. In some 35 % of the country (mainly urban areas) the policy was strictly enforced, in some areas a second child was possible (after paying a fee) if the first one was a girl, and in remote areas no restrictions applied at all. The impact of the policy was magnified in the 1990s by the very low fertility rate during and after the famine caused by the Cultural revolution, which temporarily led to an extremely tiny number of babies in a few consecutive years, hence fewer children who could support parents in the 1990s.

⁷² It is very difficult to arrive at a robust estimate of the total labour shedded by SOEs in the 1990s. The measurement in terms of flows is surely impressive (some 40 mn to 50 mn redundancies probably) but a stock measure of the resulting unemployment is fraught with problems. As noted above, demand for labour was also sharply up year after year (by foreign companies, TVEs [see Box 2] and quickly growing private firms) and the net result in terms of unemployment is far lower but exact figures are hard to come by. The unemployment figures published at the time by China are not following international conventions.

implied - it became undeniable that poverty was on the increase, even when other parts of Chinese society were doing better all the time. The social insecurity grew so much that a MLA (Minimum Living Allowance) was gradually introduced by big cities and provinces, based on a calculated minimum cost of living, or rather subsistence. Once the State Council formally allowed such programmes to be nation-wide, urban MLA membership grew from 0.5 mn persons in 1999 to no less than 21 mn in 2002. However, neither actual benefits (some 10 % of local per capita income) nor the coverage of the MLA were impressive. Rural MLA variants attracted 3.2 mn rural residents by 2000 ⁷³. Especially the latter formed a break with a deeply rooted past, as rural villages were long held to be responsible for the so-called 'five guarantees' for the very poor, meant to consist of orphans, disabled and e.g. childless elderly: food, shelter, health care, clothing and burial expenses. The rise of poverty, be it in a segmented way, also increased interregional equality.

8.2 The early phase in Chinese social protection

In the mid- and late 1990s, the authorities finally reacted with the enactment of several laws as the beginning of what is nowadays regarded as social protection. In 1992 the Trade Union law was adopted but this merely confirmed the monopoly and control of the All-China Federation of Trade Unions. The same year a Women Rights Law was enacted ⁷⁴, a most welcome minimum protection against exploitation of the often weak position of women vis a vis managers. In 1993, minimum wages were introduced on a week of 44 hours. About the initial enforcement little seems to be known but, given the weak enforcement of many laws related to enterprises, one cannot be optimistic. Moreover, with huge new annual inflows of migrants, the Lewis effect ⁷⁵ was felt in that the rate of increase of the minimum wage was far lower than one would expect given the rapid rise of prosperity. Thus, in the period between 1995 and 2006 the rate of increase of average wages in 253 prefectural cities was higher than 10 % annually, whereas the minimum wage rose only with 6.5 % annually, causing the share of minimum wage in the average wage to fall from 44 % to only 27 %.

In 1994 the wide-ranging Labour Law was adopted (in force Jan. 1995) which imposed labour contracts for all full-time workers. A host of entitlements for workers were mandatory, either by law or explicitly to be incorporated in such contracts: minimum wage (usually the local one), a maximum of 44 hrs a week (with much higher wages for overtime and e.g. 300 % for work on a free day), specified days without a duty to work (e.g. the Spring Festival around Chinese New Year, etc.), special protection for women against certain heavy work and during pregnancy (following the 1992 law, as noted above), prohibition of violence by employers, prohibition of wage arrears (already then a widespread problem), a general entitlement of 'social insurance and welfare treatment' (art. 3), duty for the employer to ensure work safety and sanitation, a general entitlement of vocational training, a prohibition of child labour (below 16 years), timely warning of workers and consultation in case of a threat of severe cutting of the labour force or bankruptcy and the right to conclude

⁷³ All data in OECD (2010, pp. 135/6).

⁷⁴ Amended in 2005

⁷⁵ China in the 1990s seemed to be a model version of Arthur Lewis' (1956) theory, holding essentially that wages could not increase when there was an infinitely elastic supply of labour at all times.

collective contracts. The government (art. 70) is under the duty to set up a social insurance system and funds for compensation when workers 'become old, suffer diseases or work-related injuries, lose their jobs and give birth'.

Therefore, on the face of it, the Labour Law laid down many entitlements which fit a modern welfare state, with numerous responsibilities for the employer and a few complementary ones for the state. However, as so often in China, there are two realities, certainly in the 1990s if not later too: besides the reality of the Labour Law, there was the reality of a lack of enforcement and the frequent attempts by employers to try to get away with a business model applied to their workers which remained outright exploitative, knowing that enforcement was soft or simply absent. The many millions of migrants from rural areas (and without a local urban hukou) usually accepted either temporary work (for which a contract with all the specifications mentioned above was legally not required) or accepted an oral engagement from managers. In either case, these workers did have to work the full week and – more often than not – many hours of overtime. Many migrants returned home around the Spring Festival and would not necessarily return to the same factory – so, in fact they preferred immediate short-run cash payments instead of the very slow build-up of social security entitlements over a long period which – in the short run – would lower their cash income. Indeed, their de facto wages were often so low that many felt it was not worthwhile to engage in such long-run savings. Many migrants transferred money home and this was a significant driver of wishing to dispose of money immediately. Some migrants were simply not aware and mimicked others, some tried social security but found out how long it took before they could 'draw' from it, other realized quickly that the transfers of their entitlements were cumbersome given the complexities of the emerging social system in China and the bias against migrants (e.g. the entitlements of urban workers were much higher in value than for migrants, as the system was based on local living standards back home, and also incorporated plain discrimination of rural workers). It could also have to do with the bias in the coverage of medical expenses – a subject on its own – where the insured payments for medical care were far too low and treatment had to be paid upfront (despite the law specifying that medical insurance ought to pay first and subsequently ask for reimbursement of some part of it), strengthening incentives to go for immediate cash without dedicated savings.

Obviously, for companies the costs of having workers without contracts or only oral ones were far lower. It also meant that workers often were at the mercy of managers who insisted on impossible targets or on overtime far beyond the limits in the Labour Law. In some sectors, the situation was worse still, in particular in mining and construction, both big sectors. On top of all the objectionable practices of (say) textiles and clothing, toys, shoes, other consumer goods, consumer electronics, etc., both mines and construction sites were notoriously dangerous, with little or no investment in safe working conditions and personal protection equipment. This is not to say that there were no safety laws - even though they were vague at first and could be much improved – but rather that there was little or no enforcement, until accidents happened (and even then, only major ones would be followed by a clampdown, small ones would escape with a little corruption or a symbolic warning). Local officials were known to shield local enterprises (by looking the other way), thereby

facilitating growth targets of the region and boosting employment (see also section 9.3.3.). In the 1990s, the sheer scale of mining accidents had grown so much (6000 - 10000 dead per year was not unusual) that a special Agency for safety in mines was established in 1999. One amongst several quick activities of enforcement consisted in a campaign to close thousands of illegally opened small mines with extremely risky working conditions. In construction it was both the speed of working (e.g. in high-rises) and the costs of solid protection structures (such as high scaffolds) and equipment which stood in the way of safety. In the 1990s, China considered itself still as a developing country where daily risk taking was part of citizen and work life.

The Labour Law had disadvantages, other than a lack of enforcement. It is an example par excellence of a Chinese law which becomes significant and effective only once detailed implementation laws (often called 'regulations') are adopted in its wake. The law formulates a range of laudable entitlements but is not operational in many respects. For a sensible assessment, one needs to consider a series of more specialized or implementation laws being enacted later or indeed much later. It is indispensable as well to understand the funding of various insurances, pensions and subsidized government funds like the Housing Providence Fund. In addition, one ought to appreciate the role and working of the All-China Federation of Trade Unions which functions rather differently from a labour union in most countries of the world. Instead of a pre-occupation at all times with the pursuit of the interests of the workers in companies, and representing them with an explicit or implicit mandate to speak out clearly and act on their behalf, the ACFTU does not really function as the voice of workers. Although the staff of the All-China Federation of Trade Unions is much bigger, relatively, than that of unions in (say) OECD countries, with no less than one million staff members, there is often very little or no union activity in factories or for workers until there are elections or a labour or safety conflict arises. Typically, in such cases, the Union will try to mediate between angry workers and management so as restore peace and tranquillity on the work floor, for the sake of smooth production, instead of backing reasonable demands of badly treated workers. However, the All-China Union has a monopoly and is very closely associated with the Chinese Communist Party, indeed so much so that the links with the Party preoccupy staff members more than the classical union work. It is also known as a bureaucratic institution. The upshot is that this Union does little or nothing actively to ensure enforcement of contracts of workers, let alone that workers get a contract in the first place, or that aberrations in the day-to-day treatment of workers are effectively addressed. Worse, many elections of worker representatives in companies are co-arranged between management (!) and the All-China Union, without giving any voice to the workers in the first place. The right to strike was removed from the constitution in 1982, a remarkable move for a Party that came to power via strikes and revolt. It is often noted, however, that strikes are not forbidden. In fact, there are numerous small wild-cat strikes but (in the 1990s) they are hardly ever published. In recent years, with mobile phones and social media, it is more difficult for the government to pre-empt publication.

The Hong-Kong based CLB ⁷⁶ has developed a strike map in an attempt – an admittedly incomplete attempt – to get a rough proxy of labour disputes, their origin and location. Because workers do not have an effective ‘voice’ in companies and enforcement does not protect them, wild-cat strikes are the only option, even when such disruptions can be risky given the authoritarian regime. Neither for the thousands of (usually small) strikes nor for the major strikes or worker protests, has there ever been one recorded which was organised by the All-China Federation of Trade Unions ! From numerous reports and even court cases it is known that there are more than enough good social and other sound reasons for that mighty Union to make itself felt and heard. For workers to start a new trade union of their own is forbidden, it has to be organized under the All-China Federation.

9. EU/China social pillar cooperation: 2005 - 2020

This chapter should ideally comprise an overview of the two principal EU/China Dialogues (the one, started in 2005, on Employment and Social Policies, and the one initiated in 2009 on OSH), the three successive big projects (the one on Social Security [2006-2011] about which little seems published ; the one on OSH in High Risk Sectors [2014-2019]; and the one on Social Protection Reform [2014 – 2019], which has been succeeded by a triangular collaboration between the EU, ILO and China ⁷⁷ . The striking omission is work or cooperation *on international labour standards* with China.

9.1 The EU/China Dialogue on Employment and Social Policies

After some preliminary discussions between the EU and China ever since 1995 (see 2.3 and footnote 12), an ‘employment-oriented’ MoU was signed on 5 September 2005 in Beijing. It established a High Level Dialogue on employment, social security and pension schemes, as it was specified at the time. Commissioner Spidla immediately broadened it at the spot calling it ‘... the first step to an exchange of experience regarding labour issues, corporate social responsibility and social dialogue’’. The Dialogue and the projects in its wake clearly aim for mutual learning and capacity building. Spidla added that he looked forward to explain the European social security system, presumably in the knowledge that the preparation of the first major EU/China project on social security (beginning in 2006) was completed. The first conference in 2005 dealt with vocational training and human resources. The explicit link with sustainable development followed in the EU-China summit of November 2007, noting that ‘our cooperation on employment and social affairs is an important element of the dialogue on sustainable development and decent work’. In turn, this led to a strengthening of the 2005 Dialogue in a new MoU in January 2008, stating that the work would also be more

⁷⁶ China Labour Bulletin, see <https://clb.org.hk> . For the strike map, see <http://maps.clb.org.hk/strikes/en> . Unfortunately, the data underlying the map is recent and does not go back to the 1990s. In China itself it can be considered a crime publishing such data.

⁷⁷ EU & ILO, 2019 – 2022, Improving China’s institutional capacity towards universal social protection, see https://www.ilo.org/beijing/what-we-do/projects/WCMS_713539/lang--en/index.htm

‘prospective’, i.e. on long-run challenges and, on the Chinese side, would be supported by CASS (Chinese Academy of Social Sciences)⁷⁸. Spidla opened a joint Shanghai seminar on ageing and related structural changes, with all social stakeholders from both sides.

The set-up has been flexible and wide-ranging from the beginning. The declared link with sustainable development is more intentional than analytical because social protection has not initially been regarded as part of the sustainable development concept in FTAs that the EU concludes (see 2.4 and Table 1). It was mainly about international labour standards. However, with the ever greater emphasis on ‘decent work’ (cf. the EU-China summit of November 2007), a potentially large overlap with social protection has been introduced. Indeed, the term ‘decent work’ has crept into the text of more recent FTAs, which would seem to widen the social pillar of sustainable development enormously.

The documentation in the public domain about the Dialogue is very limited (and old links no longer work). But a recent meeting under the Dialogue demonstrated the wide and flexible set-up once again. The success of the Dialogue is hard to measure but it did generate a number of other more specific common activities, such as a targeted High Level Dialogue on OSH, and three large projects directly with the Chinese government (see below). Also the recent and current triangular work between the EU, the ILO and China originates from the Dialogue.

9.2 EU-China social security reform project 2006-2010

The jointly funded⁷⁹ social security project aimed to support the transition to a sustainable social security system in China which ‘guarantees accessible, adequate and affordable social security benefits to all citizens’⁸⁰. One component was about supporting policy development, capacity building, exchange best practices and build up a Dialogue on social security between China and the EU. The second component is essentially about implementation via pilots in six provinces (Beijing, Gansu, Hunan, Jilin, Sichuan and Shandong), as a stepping stone for a national roll-out.

In order to clarify the applied nature of this project, some details are provided here. The second component is about activities in five specific areas: medical insurance, business processes in social security administration, activities in old-age insurance, advances in questions of work injury and social care for the elderly. In medical insurance technical assistance focused on development of DRG⁸¹ systems and coverage for outpatient care and e.g. an operational manual was developed in Gansu. In business processes, some 26 of 39 business processes in social security have been introduced and selected IT assessments have been carried out in 4 provinces. With respect to the activities on old-age, work focussed on the implementation of the planned rural pension and on the needs surveys to this effect. In work injury, the introduction of standards and guidelines for work injury rehabilitation has been stimulated as well as the establishment of rehabilitation institutes.

⁷⁸ https://ec.europa.eu/commission/presscorner/detail/en/IP_08_30

⁷⁹ Each partner for € 20 million

⁸⁰ The quote is from an updated fiche of ‘eucss’ about the project originating from the overall EuropeAid website (on 5 March 2010). When accessing <http://www.eucss.org.cn> one enters a bookselling site !

⁸¹ DRG = diagnosis related groups

With respect to social care for the elderly, training for social care managers (in Hunan) was provided, with follow-ups in other provinces ; in Sichuan a unified basic package for the elderly was defined, the costs estimated and tested in 2 cities in the province. Where training was provided, a typical comment was that (lower) managers never were given any training, implying that instructions were just supposed to be top-down.

The project was entirely taking place in China and also managed from China, mostly by Chinese contractors. No matter how useful the project – which was clearly pragmatic and hands-on for those working with social security – has been, there is no publicly available report or any useful interim report or other publication. Indeed, in papers produced for the Social Protection Reform project (2014-2019), there is strong disapproval and disappointment about this lack of transparency.

9.3 Occupational Safety & Health: the Dialogue and the project for High-Risk sectors

The Occupational Safety & Health Dialogue started in 2009. Its purpose is to help improve working conditions, reduce work-related accidents and illness and thereby adhere to international standards contributing to decent work for all. It has continued until today. Apart from some conferences, little has been brought to the public domain. But that is not the case for a far more hands-on and fairly large project on OSH in high-risk sectors, in particular chemistry and coalmines. In the following the high-risk sectors project will be presented and discussed in detail, so as to demonstrate the utility of this EU /China endeavour.

Whilst two ‘social’ Dialogues are being held annually – the Employment and Social Policies Dialogue, starting 2005, and the Occupational Health & Safety Dialogue, as off 2009 – the second one generated a direct off-spring, called the EU-China Project on Occupational Safety and Health in High-Risk Sectors (2012-2016). Before going into the specific Project, it is useful to understand the general background of OSH⁸² in China. Although sporadic and ad-hoc interventions by the government already did occur during the pre-reform days in the 1960s -1980s⁸³, the first law (on safety of mining) was enacted in 1992 (with further provisions on coal mines safety inspection in 2000), followed by a fire prevention law in 1998. So, one may conclude that OSH became more prominent with increasing prosperity but at the same time with the much greater importance of private business in China (i.e. without the overall social protection, long guaranteed by SOEs). However, OSH strategy was addressed in earnest only from 2000 onwards. In 2001 the SAWS [State Administration of Work Safety] was established and soon elevated to ministerial level. In 2002 three noticeable events happened. First, the Law on Occupational Diseases Prevention and Control was enacted. Second, the Law on Work Safety was promulgated as well. These two laws, together with the new SAWS, dramatically improved the legal and operational basis for

⁸² In China there is a convention of splitting up OSH into OH [= occupational health] and OD [= occupational diseases]. When reading the literature, these 2 terms may be encountered frequently. The ILO and the WHO employ OSH as indeed most of the world does. The US and the EU call their relevant Agencies OSHA.

⁸³ In particular, on the medical side via a health inspection system, also checking on industrial hygiene

improving OSH in China. But it would remain an uphill struggle for a long time. The third event was China's close cooperation with the ILO ever since 2002. China had already ratified 12 relevant ILO Conventions⁸⁴ and requested technical support for a range of sectors⁸⁵. Also a bi-annual China/ILO Forum on Work safety was set up in an attempt to stimulate better implementation of OSH measures. That China was getting much more serious in OSH legislation and implementation was also demonstrated by frantic legislative activity in Beijing. In seven years time, another eight regulatory initiatives were undertaken such as Regulations on the safety administration of dangerous chemicals (2002), regulation on work-related injury insurances (2004), regulations on reporting, investigation and handling of work accidents (2007), etc.⁸⁶ The 11th Five years plan (2006-2010) gave OSH significant attention for the first time, with a number of initiatives and programmes. It was during the 11th plan period that China and the EU decided to set up a regular OSH Dialogue, with the first meeting in 2009. It was quickly concluded that by far the worst problem of OSH in China was found in coal mining and, to some extent, in other high risk sectors. From this inference, the special EU-China Project on Occupational Health and Safety in High Risk sectors emerged.

9.3.1. Purpose, structure and results of the Project

The overall objective of the EUCOSH project⁸⁷ is to help China "achieve effective standards of work safety and health in high-risk sectors comparable to those in the EU, including a zero-fatality rate". Thus, the ambition was to aim high. The more specific purpose was "to develop China's capacity at all appropriate levels to design and enforce an effective OSH strategy based on the principles of prevention and the direct involvement of workers in risk management". The project was funded and implemented together with the ministry (SAWS) throughout. Also the immediate follow-up is a direct extension of the project.

The starting points of the project included :

- i. OSH laws and regulations are reasonably well developed (around 2010) in China but they are overly prescriptive and complex
- ii. There is a lack of capacity to enforce regulations

⁸⁴ These are : the 1981 OSH Convention [155], the 1988 one on safety and health in construction [167], the 1990 one on chemicals, the 1921 weekly rest (for industry) one [14], the 1951 one on equal remuneration [100], the 1958 one on Discrimination in employment and occupation [111], the 1964 Employment Convention [122], the 1973 one on minimum age [138], the 1976 Convention on Tri-partite Consultation [144], the 1978 one on Labour Administration [150], the Vocational rehabilitation and employment (for disabled persons) [159] and the 1999 Convention on Worst Forms of Child Labour [182].

⁸⁵ See for more detail, ILO (2010), Review of work safety and health inspection system in the PRC, August, see www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_240207.pdf

⁸⁶ In addition, the 2004 law on administrative supervision, administrative regulations on work safety of construction projects (2004), administrative punishment measures for violation of work safety (2007), regulations of duties of internal bodies and staff in SAWS (2008) and interim' rules on administration of occupational health in workplaces (2009).

⁸⁷ The used abbreviation of the High Risk Sectors project. We quote from the official summary dated April 2016 when the project was terminated. See The EU's support to work safety in China, a brief summary of the EUCOSH project 2012-2016, www.sascharusch.de/resources/EUCOSH-Project-Summary-Report_small.pdf

- iii. Legal responsibilities for OSH are imperfectly assigned , resulting in misaligned incentives
- iv. The notion of a 'safety culture' in enterprises is absent, with SAWS relying solely on legal mechanisms to enforce norms

The idea was to work directly and in detail with enterprises ; six enterprises were selected: 2 coal mines, 2 non-coal mines, and 2 chemical enterprises. Sector-specific work was developed. Thus, for the 2 mining sectors, a complete OSH management system was initially requested but for practical (capacity) reasons and due to overload, two key elements from the ten steps were dealt with in detail: risk assessment and OSH Performance Monitoring. For the chemical sector, a Process Safety Management (PSM) framework was requested in the light of the large quantities of dangerous chemicals to be handled ⁸⁸. This China variant of PSM will gradually be rolled out for all 19000 companies producing or storing hazardous substances in bulk. In addition, considerable training activities were undertaken as well, especially of the 'training the trainers' variety. Some 1400 trainees completed the EUCOSH training and 200 Chinese experts joined the courses. Training stretched over 16 of the 31 provinces and autonomous regions of China. A Chinese-language training package was produced as well. Research and seminar papers were also promoted: a total of 170 international experts and 70 Chinese experts were involved in the project, in terms of funding the largest ever project undertaken by the EU in OSH. The recommendations delivered by the project were used to develop a list of policy proposals together with SAWS, in particular for the 13th Five Years Plan.

According to the final report (op. cit.), the outcomes of the project will be maintained and spread further in China. This goes for the results of training (8 packages), analytical literature (with many translations made available) and several initiatives to instil much more of an OSH culture in enterprises, e.g. by directly involving the workers in monitoring, with their advice, as well as not focusing solely on legal requirements but also on bottom-up responsibilities and reporting. The impact of the project can also be understood by the follow-up measures of SAWS. For the chemical sector, SAWS has stated that (a) the EUCOSH PSM approach will be expanded to 11 enterprises in 2016 at the Nanjing Chemical Industry Park, in 2017 this is to be expanded to all chemical plants in that industry park, and subsequently all 31 provinces and regions are expected to pilot the EUCOSH PSM approach in at least one chemical industrial park. For the mining sectors the follow-up is less well-defined but apparently the interest is strong. The technical consultancy firms have asked permission to use the material in order to address requests from a number of mining companies in China. That the interest from China was lively is also indicated by an EU-funded UK project on safety of coal mines in China undertaken just before EUCOSH ⁸⁹.

⁸⁸ EUCOSH PSM is a (stricter) variant of the US PSM and was developed in response to the 1982 Seveso disaster. The application for China was developed jointly by SAWS and EUCOSH by the EU during the run of the project.

⁸⁹ See W. Rongkang, D. Feickert & Li Weixia, Impact study on the EU-China coal mine safety training program in the UK in 2008, October 2009, www.miningquiz.com/pdf/China_Mine_safety/PDSF_IMPACT_STUDY%20Final.pdf

However, the overwhelming reason for sustained interest in best-practices on mining safety is the appalling record of China in (especially) coal mine safety which SAWS has been desperately trying to improve.

9.3.2. Chinese OSH in coal mines: improvements after decades of serious neglect

There are three social sustainability issues in coalmining in China. Each one of them is very problematic and the three together literally show a very painful degree of failure. Two of these are plain OSH issues and the third one is a pure but severe social (or inequality) question. There are reasons to believe that the situation has improved since the EUCOSH project was designed in 2011-2012, although not as much as would have been desirable. What is documented below refers to the situation around 2005 – 2010, that is, the basis for initiating the project.

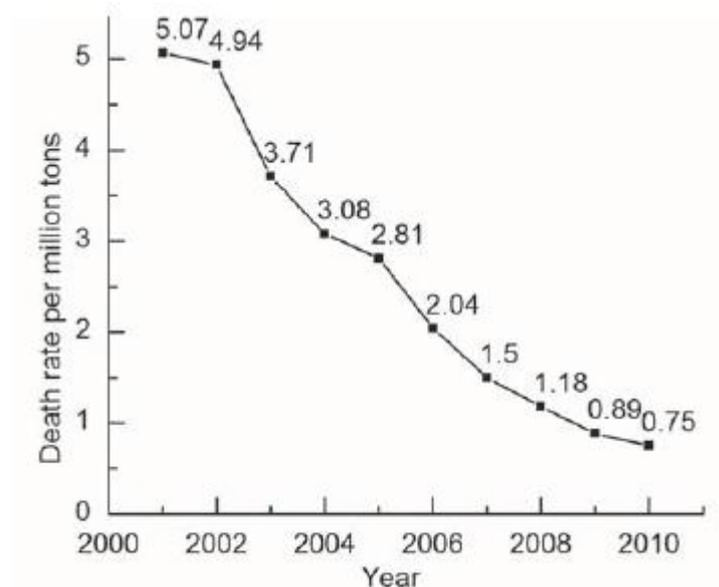
The three major issues⁹⁰ are : (i) the extremely high fatality rate in Chinese coalmines, no matter what criteria are chosen to measure this ; (ii) the extremely high number of coalminers contracting pneumoconiosis (or 'black lungs' disease) ; and (iii) when not counting the (low risk) non-mining administrative staff and management, almost all miners are migrants from poor areas. Because their wages are much lower than average industrial wages, and their workweeks very long, the migrant workers are not only de facto discriminated, but simply bad off on several counts such as being subjected to high and multiple risks, whilst receiving low hourly wages, with no labour union to stand up for them.

The fatality risks in China's coalmines have come down considerably, but from incredibly high levels. Based on the China Coal Industry Yearbook (various years), a crude estimate is that the total number of deaths between 1949 and 2005 is more than 250.000 ! Since there are known instances of suppressing the facts about large incidents in the past and since reporting (both by local officials and by mine management) is incomplete, the fatality rate has been higher than official figures in the past. The life of a mineworker seemed next to irrelevant (up to the year 2000 or so). The official fatality statistics are constructed as the number of deaths per 1 million ton of coal produced. In 1949 this rate was 22.5 . In Figure

Figure 6

Fatality rate of China's coalmines : deaths per million ton coal (2000-2010)

⁹⁰ It should not be forgotten that coal is also a leading cause of serious pollution in China. See Pelkmans (2021)



Source : Chu et al., 2016

6 it can be observed that this had come down to 5.07 in 2000 and declined further to 0.75, a significant further fall. This rate – achieved after decades of attempts to accomplish low-risk coalmining – is however still a large multiple of e.g. the US⁹¹ rate in the same period, namely hovering between 0.02 and 0.05 – in other words, the (official) Chinese rate is some 15 – 25 times the US rate⁹². A comparison with India shows that China is uniquely weak in coal mine safety: already in 2000 the Indian fatality rate was 0.43 and this fell to 0.114 in 2010, about one-sixth of China (Chu et al., 2016). Some 80 % of all fatalities in coal mining worldwide takes place in China, grossly disproportionate given China's share in global GDP, indeed even given China's share of world coal output (which grew to some 50 % in 2018). It should also not be forgotten that Chinese coal production has increased – in the same period – at a rate of some 10 % a year, so the absolute number of deaths tends to decrease at a slower rate than the fatality rate. In the period 2001 – 2012 (cf. Chu et al., op. cit) there were 30 848 accidents reported with a total of 51 232 fatalities. In other words, coal mining has remained a very risky activity, be it only less so than before. But there is no denying that the number of (officially reported) casualties has fallen quite a lot : from 6995 in 2002 to 1384 in 2012. A large share of this reduction has been accomplished by closing thousands of illegal (small) mines which often had safety levels far below Chinese standards and without almost any OSH policy and rules. More difficult has been the effective lowering of OSH risks in the numerous TVE mines. The Township and Village Enterprises have been discussed before (see Box 2) as early specialists in textiles & clothing, consumer electronics and handtools. In fact, TVEs in mining were the very first enterprises allowed when the 1978 reforms were initiated (and in small numbers even before that date because they could easily attract peasants). Although at first not truly private companies - their origins were the

⁹¹ A large coal producer, unlike the EU (of today)

⁹² See the extensive surveys by Tu Jianjun (2007) and by Chu, Jain, Muradian & Zhang (2016). It should be noted that China has far more deep coalmines than the US and that risks may also increase because many Chinese mines are in areas with high gas and high groundwater pressure.

village communities – by the early 1990s they were turning into profit-seeking enterprises, and later became private corporations. It turned out that they assumed extreme measures to maintain high profitability, including exposing their miners to high risks (so, avoiding costly OSH measures and equipment), forcing miners to make long working weeks (routinely more or much more than 50 hours underground) at relatively low wages, avoiding injury or death liability or any other insurance (and paying very low compensation to families in case of casualties) whilst exercising repressive action in the mines in case of protests or wild-cat strikes. Only in most of the SOE mines was the OSH situation better, or rather less bad. The situation in China's mines has long been miserable and this is not explained by China's (then still) developing status.

9.3.3 Why Chinese OSH efforts in coalmining only slowly gain effectiveness

There are nine reasons why OSH in China's coal mines is so difficult to accomplish effectively⁹³. Together, these reasons clarify that a sound and ambitious EU project EUCOSH and High Level Dialogues on OSH can contribute but are nevertheless bound to remain relatively ineffective without solving deep-rooted fault-lines in China itself.

- a. China has a relatively high share of underground coalmining, with (far) lower productivity than surface mining and higher risks
- b. As noted, China has many coal mines in areas with high gas pressures and high groundwater pressures. These are more likely to cause gas explosions, flooding and roof collapse.
- c. Because of the very low productivity, no less than 5 million workers are needed to meet the (around 2005) growing demand for coal. This leads to overcrowded mines, hence high fatality rates when accidents happen.
- d. The entry of TVEs has given a tremendous boost to coal output but amounted to a disaster for safety. By 1995 TVEs had a coal output share in China of 46 %, after which a gradual decline set in – in 1991 there were no less than 100.000 (often small) TVE mines. TVEs were notorious for their unwillingness to invest in OSH. Their strong preference was to operate far above capacity which implies, operating beyond safety thresholds. Workers suffered from chronic fatigues, safety rules were systematically violated and vital mining equipment often failed. As a result, around 2005 one-third of coal output is still produced by TVEs but some 70 % of fatalities originate from TVEs as well.
- e. Some 80 % (state mines) to 100 % of the mine workers underground are peasant migrants. Certainly in the 1990s and early 2000s, these migrants were low-skilled or unskilled, and often had no idea about the expertise needed in coal mines. Many of the skilled workers had fled the industry as risks became intolerable and the work environment and morale was considered as highly problematic. Mine companies exploited this lack of knowledge and pushed migrants to do dangerous jobs, even without proper PPEs or equipment, or indeed training. Of 49 industrial sectors, coalmining is the second lowest in pay. However, even with wages only at 60 % of average industrial wages, wages in TVE mines were distinctly lower still. The idea

⁹³ The following leans heavily on the survey by Tu Jianjun (2007).

(e.g. in the EU and the US) that mine workers receive high salaries because they can expect a considerable risk premium is alien to workers in China. Compensation money in case of a fatality was long not subject to a liability insurance obligation, and the payments to families left behind were very low⁹⁴. Workers often have no voice and protests are not accepted.

- f. The mine sector in China is endemically corrupt. Coal sector leaders wield enormous power. And local officials have typically been involved for a long time and on a massive scale. This is one cardinal reason why central Chinese policy announcements say very little about what actually happens on (or indeed under) the ground in provinces. It went so far that numerous officials tended to possess shares of local coalmines – the very mines they had to control and correct if necessary. When Beijing in 2005 forbade these practices, some officials even refused (!) and others shifted the shares to relatives. Given this flat denial of public responsibility, no sound OSH policy can be developed and OSH can never be credible.
- g. With SAWS and in particular SACMS (State Administration of Coal Mine Safety, started in 1999) it was hoped to roll out a national inspection system. But two factors undermined this intention. First, there were far too few inspectors and, second, the majority of inspectors were employees of state mines, a clear conflict of interest.
- h. Mine regulations have also suffered from a widespread shortcoming in China: proper implementation and enforcement. Most of this enforcement has to be provincial and local but that is precisely where the corruption is rampant. The clamp-down on TVE mines during the late 1990s caused the number of illegal mines to rise rapidly, insofar as these are known at all. In 2006 SAWS reported that they had to shut down no less than 10 669 illegal coal mines.
- i. The indispensable OSH investments in mines in order to satisfy OSH rules are not achieved: a 2006 estimate yields an *underinvestment* of \$ 8.8 bn, for China in those days a formidable sum.

All in all, technical assistance by or via the EU in OSH would seem to have been pragmatic and competent. The cooperation with SWAS and other officials has been close and results have been fed into Five Years Plans. These are certainly commendable achievements. But, especially (but not only) on OSH, such projects and the absorbed learning in China can only be truly effective if there are no or only minor obstacles or structures in the way of getting improved social outcomes. In OSH in coalmining, for example, this has proven to be quite difficult, even though risks have been falling fairly strongly over recent decades.

9.4 **On the EU/China Social Protection Reform Project 2014 – 2019**

What issues are covered by the project⁹⁵?

⁹⁴ See Chu et al., op. cit. for detail

⁹⁵ See the link for the project <https://www.euchinasprp.eu/en>; there is a risk that the link no longer works

The project is based on 7 identified “Main Problems & Needs”, summarized in Annex 1 of the Aide-Memoire of March 2018. These 7 areas cover almost anything that is relevant for discussing China’s social protection issues. What is striking is the frankness of the explanation of the problems. No vague or propagandistic language at all. In just a single page, with tiny font, a splendid overview is provided of the ‘challenges’ in China’s Social Protection in or just before 2014. And the Aide-Memoires claim that they have worked effectively on all areas, and with a lot of openness. An anecdote about NDRC illustrates that : NDRC initially kept some meetings ‘internal’ but as the value and practical appreciation of the project increased, NDRC stopped doing that and acted like all others.

The seven areas are :

1. Major disparities between rural and urban areas (between and within regions) ; it is mainly about how to ensure that the ‘rural-to-urban migration on a massive scale’ and existing practices (and rules) does not perpetuate the ‘segmented urban population’ which has meanwhile emerged, and rural migrants obtain equivalent social security
2. Steady growth of an ageing society; ‘will significantly raise the needs for elderly support and social care, and challenge the sustainability of pension fund and public finance’
3. Separate social insurance schemes, applied to different social groups ; those for workers in public institutions (then, 8 mn civil servants + 30 mn other like teachers and the army) - they are separated from general contribution schemes and rely on state finance. Not only are urban and rural residents distinguished but also the self-employed and ‘irregular’ workers; the text plainly says how it is : for the latter two participation is voluntary ‘and expensive’ – even where participation is mandatory, ‘there is widespread non-compliance’. Also, ‘social insurance should be portable in order to retain workers when they change jobs or place’.
4. Inappropriate supervision and management of social security funds ; there are 5 funds (pension, health, unemployment, working injury and maternity) – by the end of 2011 the rapid increase led to a total of Yuan 2.7 trillion. But... an estimated 33 % (!) of those funds have been lost in the decade up to 2011. Reasons include inflation and ‘unduly restrained investment options’, as well as extreme fragmentation of fund management over more than 2000 decentralised units (too small for ‘sustainability’), plus the lack of appropriate centralised supervision leading to misuse or embezzlement.
5. Weak and partial legal framework in social assistance systems ; such weaknesses undermine the effective functioning of ‘welfare’ spending. There are no unified standards for benefit calculations, and ‘central government intentions may be mismanaged or locally ignored’. Subsequently, a range of powers of local authorities to include or exclude is specified – showing that the modes of decentralisation are fraught with difficulties, prompting mistakes or far worse – local governments ‘hold power over social insurance capital and have the power to divert these funds to uses of their own’ (!); ‘the outcome is a system with limited and unequal implementation and vast and complex inequalities of provision across localities’.

6. Unbalanced, multi-layer social protection system ; private-public partnerships and the role of NGOs are minimal ; the ‘administration of the social protection system is inadequate and needs to be unified’. ‘Social assistance has low efficiency’ and ‘welfare services are minimal’. Rural migrants are often excluded. State-related employees ‘are a privileged group’.
7. Difficulty and complexity to the services delivery ; local government agencies and social workers often suffer from (too) low capacity. The local social insurance bureau’s are inefficient. Mis-targeting and misallocation occurs frequently. Health care services operate on a fee-for-service basis. ... ‘This complexity, along with that of government levels, contributes to the pattern of vastly differentiated provisions across the country’.

Plus four cross-cutting aspects of social protection as well

The four cross-cutting areas are : gender equality issues; issues related to disability (a forgotten domain in social protection in China)⁹⁶; good governance ; human rights issues. It was decided that disability [not a risk identified today under social insurance in China] would deserve a ‘Note on Disability Insurance’ which was published.

On publications

Apart from the Note on Disability Insurance, much insight can be had from the two Aid-Memoires, one of March 2018 [with the far more factual Task Force report of May 2018] and one of 2019 (no precise date, probably June). They are rich and full of soft and hard data. No less than 24 Technical Notes have been produced on many topics derived from the 7 main problems, in Component 1 and another 7 Notes under component 3., and the cross-cutting areas⁹⁷.

The 2019 Aid Memoire comprises a most relevant (what is called) ‘logical framework’. It comprises an overall objective [‘furthering social equity and inclusiveness of economic development throughout Chinese society’] and 3 ‘specific objectives’: (a) greater effectiveness of China’s social security system... thru strengthening institutional capacity; (b) core implementation issues, such as ‘appropriate legal and regulatory frameworks, and, enhanced and sustainable financial management of the social security system’; (c) idem, including enforcement of ‘social assistance’. There is a whole list of ‘verifiable indicators’. This is followed in considerable detail by 11 “Results” as shown in Table 8.

⁹⁶ It should be noted that the ILO and China have jointly worked on no less than 5 projects on disability issues in China (from rights and opportunities, all the way to employability) between 2008 and 2017 inclusive. The ILO notes that China counts some 85 million disabled people. Over 60 laws and regulations exist but apparently they lack implementation mechanisms, and not fully addressing the needs of disabled communities.

⁹⁷ See fn. 6 of the Task Force report 2018 for the 24+ 7 Technical Notes as well as footnotes 3 and 4 with links to other publications. The problem is that there is no longer public access to the Aide-Memoires, or indeed anything from the website. In the 2019 Aide-Memoire, the often repeated website for all this is :

<https://www.euchinasprp.eu/en/horizontal-en/project-memorabilia-en> .

Table 8

“Results” of the EU/China Social Protection Reform project (2014-2019)

Specific Objectives	Verifiable indicators
1. Greater effectiveness and inclusiveness of China’s social security system	Comprehensive reform proposals are developed and subject of public discussion
2. Implementation of appropriate legal and regulatory frameworks and for enhanced and sustainable financial management of the social security system	Mechanisms for Social Security financial management clarified and subject of public discussion
3. Improvement of of the policy and legal framework as well as policy enforcement of social assistance	Reports concerning access to social assistance show improvements in benefits targeting; In the cooperation agreement and under MoUs, progress has been reported every 6 months

Results	Verifiable indicators
R1 mechanisms for EU/China High Level policy dialogue on social protection reform established, and Specialised Public Bodies of EU MS in partnerships with NDRC and other ministries	High-level conferences on all 3 specific objectives ; agreed also for <i>after</i> the project ; various means like 6 Newsletters a year, etc ; Task Force on coherence and synergy; external project evaluation reports
R2 coordination among government agencies tasked with social protection in China strengthened (under NDRC)	Inclusion in the 13th Plan (2016-2020); tentative proposals for inclusion in the 14th Plan shared and discussed with stakeholders; comprehensive proposal for social administration systems reform is elaborated and and disseminated; project proposals within the project discussed nationally and internationally
R3 enhancing NDRC capacity for national policy evaluation techniques	A technique developed and tested ; over two-third of officials in the trainings in China and in the EU gave high approval ; clear goals assigned in pension reforms i.e. replacement of past income and minimum living standards ; methodology to assess gender implications of social protection reforms; interrelation between social protection and employment policy used for evaluation purposes ; MoUs between NDRC and EU MS as partners concluded for

	continued cooperation about social protection
R4 national policy framework for a full coverage of old-age insurance system throughout China, consolidated by strengthening the interface of various schemes, permission of funding pooling, old-age scheme for civil servants, etc.	Comprehensive model for multi-tier design of the pension system developed; universal social pension model developed and disseminated; analysis of the consequences of demographic ageing on the pension system conducted and disseminated ;
R5 reform efforts are supported in response to urbanisation trends (given intra-China mass migration, <i>the authors</i>), in particular (i) the harmonisation & integration of the various basic social protection systems for different groups, (ii) the portability of social insurances, (iii) and better suited assistance schemes	model provisions for the 'totalisation' and vesting of pension rights across regions, and piloted in selected places; systemic reform proposals are supported by (a) an analysis of the interrelation between social and economic development , and (b) the suitability and sustainability of pension schemes (also used for macro projections); proposals for bilateral Europe-China cooperation at the decentralised level, in the light of the growing urbanisation trend and labour mobility across China
R6 enhancing the Finance ministry's capacity in financial management and supervision of central and local models of social security systems coverage – e.g. spending responsibilities, mid-term budgeting of funds, and 'performance assessment models'	Policy proposal on division of decision power and spending responsibilities between central and local levels; methodologies /tools for managing social protection spending (etc.) to extend social insurance coverage; policy proposal for a coordinated management of the social assistance system is developed; an effective strategy for the efficient collection of social insurance contributions elaborated and discussed; development of Old Age services analysed and used to discuss the suitability and sustainability of a Long Term Care Insurance scheme, in turn supporting reform proposals
R7 enhance the top level design ability in the basic pension insurance ; establish actuarial model analysis for reforms	Reform proposal for the establishment of a multi-pillar pension system debated with stakeholders; a set of methodologies to assess the economic sustainability and adequacy of the Chinese pension system proposed to the Finance ministry ; actuarial models analyses and disseminated
R8 strengthening of capacity of Finance ministry of managing social insurance funds, i.e. fiscal support budgeting, investment techniques and adjustment mechanisms	Strategies for the investment of pension funds and techniques to strengthen risk control management, introduced and discussed; comprehensive policy to promote the management of pension funds

R9 strengthening the capacity of the Ministry of Civil Affairs (MoCA) for promoting and enforcing the Social Assistance Law, as well as rural and urban standards of living; upskilling of local officials on implementation	Legal framework for social assistance is reviewed and reform proposals are developed and tested; high approval rates of local officials ; better access of clients to social assistance mechanisms (both urban and rural) has been studied
R10 consolidation of legal standards for (a) unified standards for the estimation and calculation of social assistance benefits, (b) recognition of social assistance benefits, (c) identification of low-income families	Proposals for unification of benefits standards in social assistance is developed, discussed and tested; a methodology for functional identification of social assistance beneficiaries (target groups) is developed, discussed and tested ; definition and quantification of goals to be assigned to social assistance benefits developed and discussed; requirement(s) and methodology for social assistance developed
R11 strengthening of efforts of MoCA in improved care for poor rural people and disabled people ; transparency and public information of social assistance policies raised at provincial level	Targeting of social assistance towards the specific groups (children, elderly, people with disabilities, poor rural people); service delivery discussed; tools for public information and its transparency developed and tested

10. China's Social Protection in 2020

In the two and a half decades since China initiated the wholesale reform of social protection, the social predicament of Chinese citizens – be they workers, pregnant workers, farmers, pensioners or unemployed – has considerably improved. In the following the overall situation will be briefly sketched and several deeper problems will be set out. Nevertheless, we shall avoid to provide a treatise on social protection in China because the pursuit of the social pillar of sustainable development with EU trading partners is not and cannot be on detail. Of course, these ought to be nationally decided. The core issue we are interested in this section is whether China has been willing and capable to build up a fully-fledged system of social protection in which important social risks of citizens are covered via insurance mechanisms, the national and regional budgets and pooled saving schemes (with or without subsidies). And under universal coverage. Unlike China in the late 1990s, the broad answer for China in 2020 is affirmative. After first setting out the basis of the 2020 system by simply summing up what are the social obligations when a firm attracts a new worker we shall discuss two major drawbacks (on inequality and income distribution, and one on migrant workers) and briefly touch upon the fight against poverty. We shall not discuss ageing, Ageing in China started from a low level but now accelerates because of the (abolished) one-child policy and many millions of couples being reticent to have more children. However, at

the moment the pressure on dependency rates is still bearable and much lower than in many OECD countries.

Consider a company that hires a new worker. What are the social payments to be made by the employer and what by the employee? This gives us a simple but quite satisfactory answer to the query what social protection exists in 2020 in China. The basic facts are in Table 9.

Table 9

Contributions from the private sector to social protection in China

	SHANGHAI	
Social insurance/protection	employer	employee
Pension insurance	20 %	8 %
Medical insurance	9.5 %	2 %
Unemployment insurance	0.5 %	0.5 %
Maternity insurance	1 %	---
Industrial injury insurance	0.16 %	---
Housing Providence Fund	7 %	7 %
	GUANGZHOU	
Pension insurance	14 %	8 %
Medical insurance	7 %	2 %
Unemployment insurance	0.6 %	0.2 %
Maternity insurance	0.9 %	---
Industrial injury insurance	0.2 %	---
Housing Providence Fund	5 - 12 %	5 – 12 %

Source: Antoine Boquen, March 2021, www.nhglobalpartners.com/china-social-security-system-explained

As Table 8 shows, there are 5 types of social insurance and one other element of social protection: compulsory housing savings (with the help of the employer). This certainly covers a large part of the landscape of social protection and is a radical improvement over the mid-1990s. The Table gives the examples of two large cities, because large cities or regions may set different rates of contribution. Thus, in Shanghai the employer pays an addition ⁹⁸ over the gross wage of the employee of in total 38.16 %, with the worker 17.5 %. In Guangzhou the employer pays 27.7 % and the worker 15.2 %, both a little lower. Altogether these contributions are considerable, taking into account how young social protection is in China and that China is not yet – though close to the lowest – at the average income levels of OECD countries.

It is perhaps more insightful to give an example in renminbi for a typical worker in Shanghai. The gross salary costs for the employer are RMB 16.099. The employer has to contribute

⁹⁸ Assuming for Guangzhou the 5 % housing contribution.

RMB 840 to the Housing Fund (for this worker) as well as RMB 3250 for the 5 social insurances specified in Table 8. This leaves as a gross salary for the typical worker RMB 12.000. Before the worker receives the monthly pay-slip, there will be three deductions, as contributions to social insurance plus a tax: RMB 840 for the housing fund, RMB 1260 for the 5 social insurances and RMB 147 for the individual income tax, leaving a net salary of RMB 9573 that will be pocketed by the worker.

Social protection is not solely paid for by the private sector, also by the public sector in often complicated ways. There are contributions by the state and/or lower-level governments for the so-called 'basic pension' (not in Table 8) and for certain types of shortages of medical funds. In addition, there is what in China is called 'social assistance' (welfare), including the 'dibao' (subsistence minimum). Complexity further increases because some entitlements are different for different people. First, Table 8 shows that contributions can differ between regions, so can social allowances. The sharpest and indeed most stubborn disparity is between urban and rural workers or persons more generally. This has deep roots in history because farming communities were long expected to practice solidarity. With the great mobility and modernisation in today's China, this disparity appears without foundation and – together with the 'hukou', nowadays equally impractical and unfair – causes several irrational and painful disparities. Second, domestic migrants are severely disadvantaged compared to other urban workers, let alone the traditionally privileged civil servants and the army personnel. However, as so often in China, there seem to be two realities because the formal laws and arrangements for social protection have been significantly improved and begin to approach universal coverage as well. The migrants problem for social protection is briefly set out in Box 3.

Box 3

Problems of social protection for (outbound) rural migrant workers

As set out in Box 1, beginning in the late 1980s/early 1990s 'outbound migrants' – those migrating from their township, county or province to other (usually Eastern) provinces and hence liable to be unable (esp. when moving between provinces) to rely on their (rural) hukou – came in masses to the industrial and service centres of the country. In Box 1 a total of some 150 million 'outbound' migrants in 2005 is mentioned. By the end of 2017 this had swollen to 172 million, of which 77 millions interprovincial. Since most Chinese provinces are big, even a part of intra-provincial migrants lived and worked at a considerable distance from their rural origin. After a period of hesitation and very limited but targeted social protection after the 1990s, eventually a degree of harmonisation of social protection between urban and rural (but working in urban areas) was implemented around 2013/4. The central government insisted that social cohesion and inclusion is a key value of socialism with Chinese characteristics and hence created urban/rural instruments to make this happen.

Unfortunately, for the most part this is a paper reality. Without additional or more radical measures, it might turn into a factual reality only after many years if not a generation. There are several reasons for this initial failure. First, many rural workers are so-called

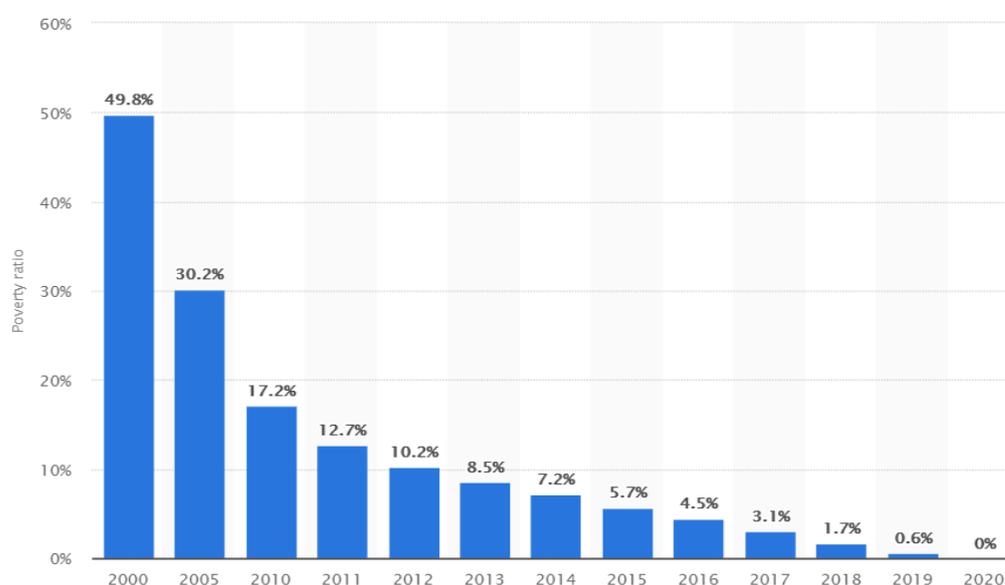
informal workers and do not sign labour contracts with their employers. In 2016 this was no less than 65 % ! This has several reasons, including low education and the sense of freedom to switch employers after the annual Spring Festival (around Chinese New Year) which indeed happens in large volumes. This switching also means that, in fact, many migrants only work 10 months a year. Of course, such job hopping only makes sense when jobs are unskilled, that is, when there is no human-capital loss for the worker when switching. As will be discussed in section 11.2, the education level in rural areas leaves a lot to be desired and this may well have a hysteresis effect – like a longer-run education handicap – in the county of origin but also for outbound migrants. Given that in and around big cities, the better schools are usually not open for children of migrants, there is a risk that this handicap becomes an intergenerational trap. Second, many migrants tend not to be well-informed and – as low income earners, and who might also send remittances back home – have a strong preference for secure short term income instead of shaving off a significant share for social protection (see Table 10) for a later purpose. Third, transferring social benefits when an outbound migrant, and when switching jobs frequently, is a great problem in China. Such social benefits are on ‘individual accounts’ but – unlike what one might expect – these accounts are not nationwide. This is caused by the fact that social protection administration and the funds are under national laws but locally managed. Most of the systems were not yet online in 2018 or – if they were – hopelessly incompatible. With over 30 000 townships and thousands of counties, and limited administrative capacities, the practical drawbacks of this fragmentation are immense. It is time-consuming and most irritating to transfer entitlements successfully, leading many migrants to just give up and prefer take-home-pay. More often than not, when migrants are switching employer, and no arrangements have been made, they may find that their entitlements (e.g. for pensions which require a minimum build-up of 15 years; for unemployment it is 5 years for full benefit) are simply zero-ed ! In 2017 a significant improvement was introduced for payments related to maternity leave and medical care, that is, a direct settlement for medical expenses incurred outside the pooling region which enables a migrant to obtain an instant refund. In addition to all this, the technical and financial capabilities of the local administrations also present a serious problem for e.g. pension funds. Scholars have found that invested capital available may be as much as 30 % lower than expected due to mistaken investments, quite apart from cases of embezzlement facilitated by lax supervision. Therefore, the gradual improvements in social protection for the outbound migrants enacted nationally are based on the philosophy of contracted labour (which is typically happening for higher skills workers but much less for migrants) and the existing fragmented systems of local administration and related rigidities. So, once again, there are two realities in China. The implication is that many migrants – the older ones now returning home for their old age – cannot enjoy their full pension income (which is low anyway) or receive no pension income at all. And may well suffer from other practical shortcomings of this system. The principal incentive why migrants actually moved in large numbers is and has always been the steady strong rise in real wages for decades, far above what they could earn locally, not or hardly because of the security of social protection.

Source: Zhang Yinghua (2019)

Third, although there is better social protection than before, in several respects it is of minor significance for the social predicament of less privileged, mainly the rural citizens. In other words, in term of the (re)distribution of income the system is weak, even in Chinese eyes (let alone, in European eyes). China used to have wide-spread poverty and a major income gap. In the ‘war on poverty’ the central government promised to eradicate poverty by 2020. And they did, as Figure 7 clearly shows. However, there are serious problems with this official claim because China is an upper-middle-income country for which the poverty line, according to the World Bank, should be much higher: instead of \$ 2.25 a day (which is roughly the 2300 yuan, corrected for increased purchasing power between 2011 and 2020) but more like \$ 5.50 a day. But with \$ 5.50 a day, the 2018 poverty rate in China was not 1.7 % (as Figure 7 suggests) but 17 %⁹⁹, an enormous difference.

Figure 7

Poverty eradication in China (%), based on Yuan 2300 p.y. (2010 pr.)



Source : Statista (2021) , see : <https://www.statista.com/statistics/1086836/china-poverty-ratio/>

And most of this rather extreme poverty is found in rural areas¹⁰⁰. Moreover, the methods of arriving at eradication typically were in campaign-style. More than 100.000 poor villages were targeted and visited for assessment, quick build-ups or easy infrastructural deficiencies were constructed and millions of households had to sign forms testifying that all in the household had received the money. Here some ‘adulteration’ took place because frequently 4 or 5 members had to share the money,

⁹⁹ China Power Team (2020),

¹⁰⁰ There is data on rural poverty (at \$ 1.90 at 2010 prices, and adjusted) but data on urban poverty is not published.

thereby again falling below the poverty line. Martin Raiser (World Bank) is quoted saying that, for all the praise about successful eradication, “we are less sure it is sustainable or cost effective”¹⁰¹. For the Party leadership, what matters is presumably the socio-political stability in the country, in the run-up to the 100th birthday celebration of the CCP in the summer of 2021. And a victory over poverty is likely to help. The lingering doubts over lingering poverty is also fueled by a speech of PM Li Keqiang in May 2020 holding that there “are over 600 million people whose monthly income is barely 1000 yuan (some \$ 140), not enough to rent a room in Chinese cities”¹⁰². Since that amount is less than \$ 5 a day, and it does not even enable renting a room, let alone to eat and ‘live’, how can poverty have been eradicated? And 600 million people amounts to some 42 % of the population !

But there is also a painful income disparity between rich and poor. Although the attack on poverty is helpful to some extent, the ‘attack on inequality’ has never been launched despite China’s history as an egalitarian country in the second half of the 20th century. Once the market oriented reforms were in full swing (say, as off the late 1980s), inequality in China began to sharply increase. A striking illustration of inequality as effected by social security has been given by Li Shi (2016) on the basis of the Gini-coefficient of inequality and the corrections of the coefficient due to social security measures. In 2015 the Gini coefficient was 0.47 (which indicates fairly sharp inequality), a little down from its peak in 2008. First, there is the decline from Gini based on market incomes only (0.52) to Gini of disposable incomes (0.44). This decline is hardly due to taxation (hence, incomparable with the EU ; taxation in China occurs mainly via indirect taxes) but to public transfers and private transfers (see also Table 10). When comparing urban and rural China (2013), Shi (op. cit.) finds that public transfers reduce the Gini by 21 % in urban areas whereas this effect is only 6 % in rural areas; in contrast, private transfers (in practice, remittances mostly) in rural areas reduce the Gini by no less than 12 % in sharp contrast with urban areas (only 2 %). A second marked difference is that in rural areas the retired pension barely reduces the Gini, but in urban areas the reduction is 19 %. Here one observes a clear proof of the low take-up of pension arrangements by migrant workers, as discussed above. In other words, social security has now reached rural China but it does very little to mitigate income disparities with urban citizens. Shi (op. cit.) also presents a comparison of Gini of 22 European countries with China and the impact of social security. The average decline of Gini is around 30 % in Europe compared to a decline of 8 % in China. The difference is telling. Moreover, what is not included is taxation of income, barely an issue in China (see Table 8). In Europe, income tax is a major equalizer as well. In other words, when including the impact of income taxation on the Gini, it would undoubtedly be significantly lower in Europe and not in China.

¹⁰¹ Gao Feng, China claims it has eliminated poverty, but is it true?, VOA News on China, 3 March 2021, <https://www.voanews.com/east-asia-pacific/voa-news-china> . Note that nominal income in rural areas is often profoundly affected by diseases (with incomplete coverage) and natural disasters, harder to fight than in cities.

¹⁰² Idem, Gao Feng. Remember that the World Bank recently estimated (see section 5.4, *infra*) that some 373 million live below \$ 5.50 a day in China.

11. Human Development – China’s social predicament in 2020

The social dimension of sustainable development refers to core labour standards and social protection. Given the prominence of sustainable development for the wider EU trade and investment policy, dialogues and wider EU trade and investment policy are, where relevant, driven by a focus on the adherence to international labour standards and on the realisation of appropriate social protection. The more China would progress in combining these two strata of social progress, the more the EU would be satisfied for the workers and citizens in China and the more productive EU/China social cooperation would be expected with a major partner sharing similar views.

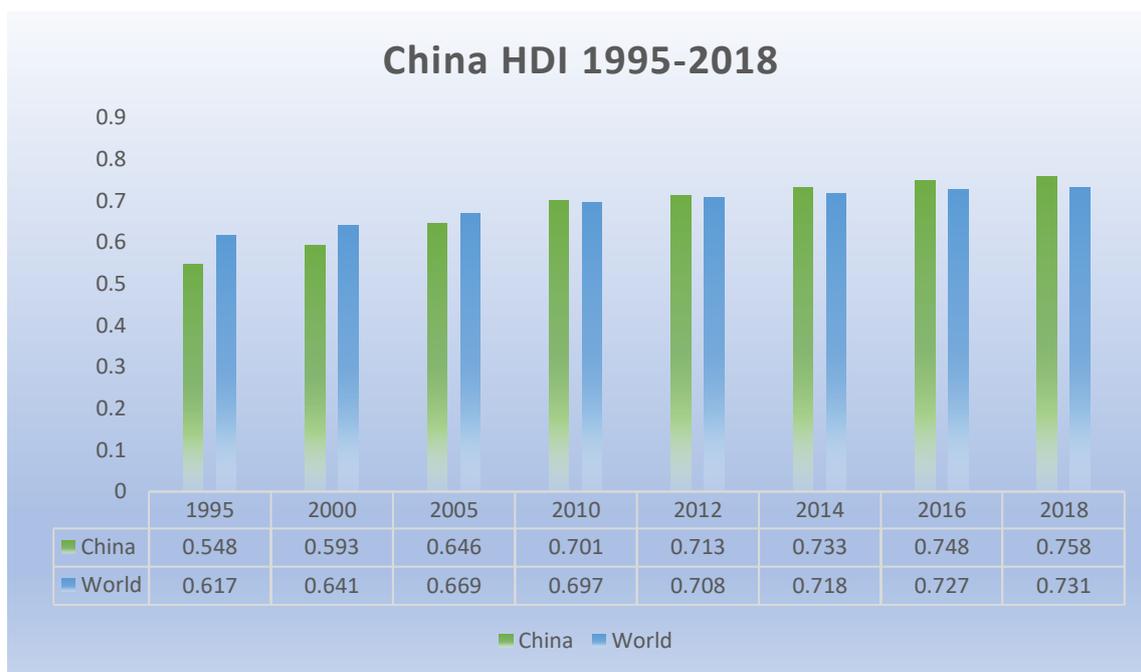
However, assuming a mere pecuniary and rights-based view is unduly narrow. This was recognized in UN circles already during the 1980s, culminating in the UNDP’s Human Development report – first issued in 1990 – and further refinements later on. In section 3.3. we have taken a snapshot of China’s HDI status and developments in the early 1990s. In those days China still was a relatively poor though rapidly growing developing country. In the present chapter the idea is to present the HDI of the latest year (2018) and the trends between 1995 and 2018. For both, trends in the three components of the HDI (per capita income, a public health indicator, and an education indicator) will be analysed too. The three components of the HDI are not independent: other things equal and over a longer period, both health and education are critical determinants of per capita incomes and their trend growth. Altogether, this generates a richer and more valuable picture of the social predicament of Chinese citizens and/or workers. Ideally, this predicament would consist of enjoying (i) core labour rights, (ii) appropriate social protection, (iii) typical OECD-levels HDI and trends. Although public health and education are arche-typical domestic policies, hardly ever the subject of (bilateral) treaty commitments linked to trade and investment, for the social predicament of citizens and workers the two factors are indispensable, and not just social protection and enjoying labour rights..

11.1 How China has improved on Human Development : 1995 – 2018

China has greatly improved on human development in these 23 years. Not only did it move up steadily from 0.617 in 1995 to 0.731 in 2018, it also surpassed the world HDI in 2008 or 2009, see Figure 8. China moved up in the HDI ranking worldwide but not spectacularly because other developing countries also markedly improved their HDI. This is especially the case for the 5 BRICS: India and Russia and to a lesser extent Brazil (and South Africa only modestly) have improved their HDI considerably, as shown in Table 10.

Figure 8

Trend of Human Development Indices in China : 1995 - 2018



It is remarkable that, whereas most OECD countries are in the very top and fairly stable, the United States, which was 2nd in 1990, had fallen to 15th place in 2019.

Table 10

HDI trends of the BRICS compared : 1995 - 2018

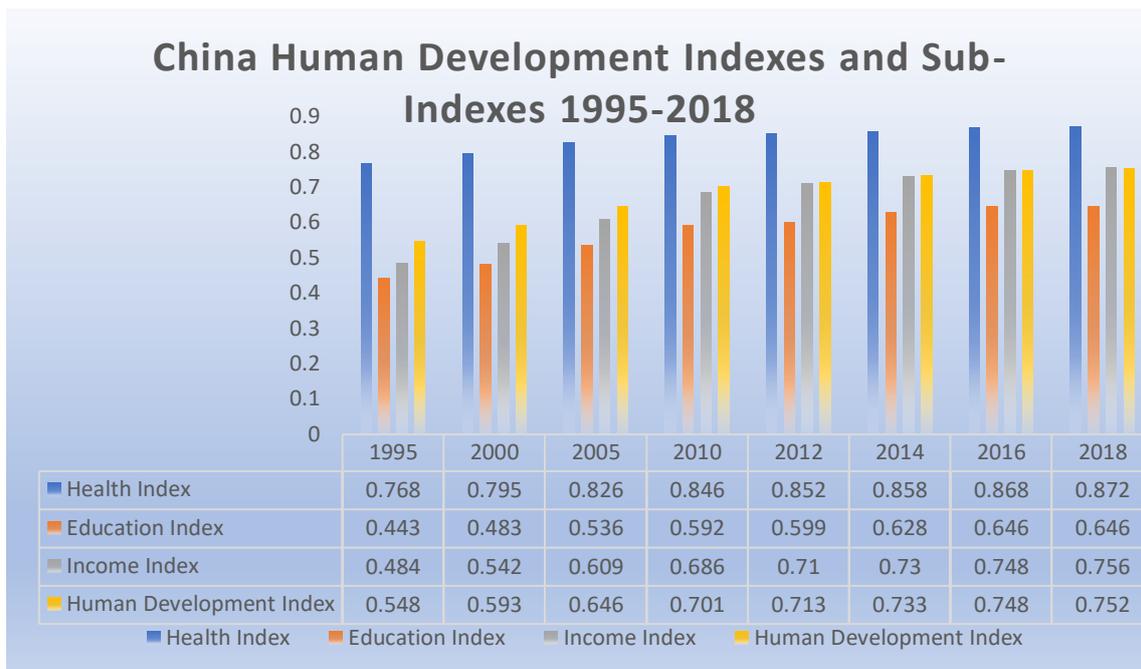
	Brazil	Russia	India	China	South Africa
1995	0.651	0.701	0.463	0.548	0.652
2000	0.684	0.721	0.497	0.593	0.629
2010	0.726	0.780	0.581	0.701	0.662
2018	0.761	0.824	0.647	0.758	0.705

Figure 9 depicts the HDI trend since 1995 for China, with its three components. The health index¹⁰³ of China has always dominated, and still does in 2018, although the distance with education and income has shrunk appreciably. One can again compare this with other

Figure 9

Trends of components of HDI in China: health, education and income 1995-2018

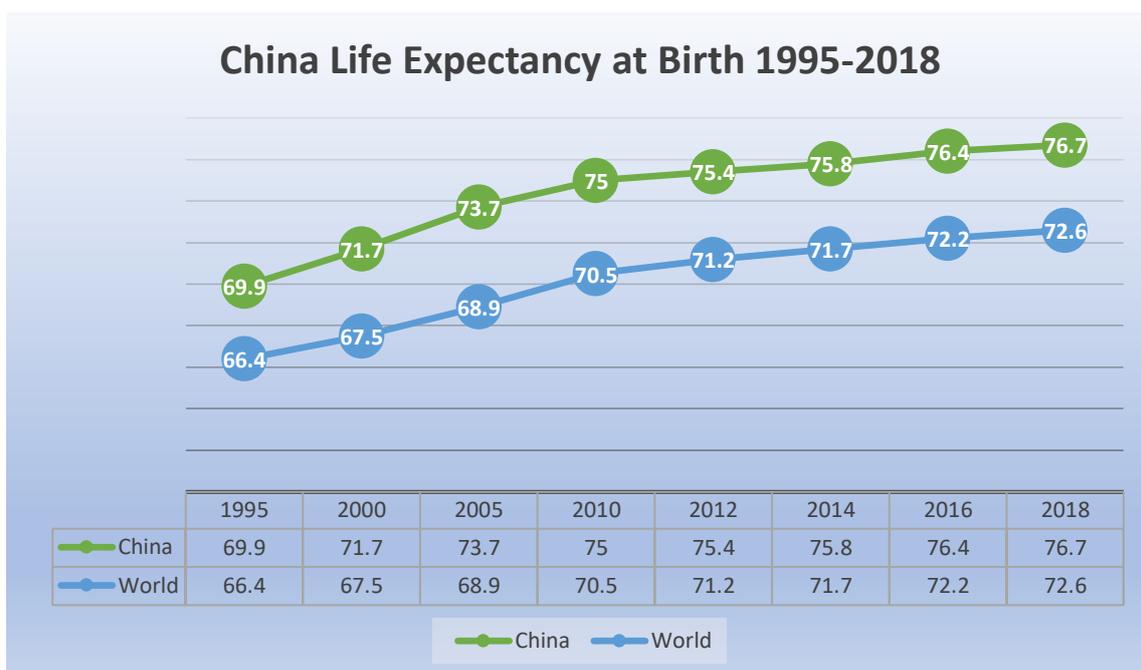
¹⁰³ That is, life expectancy at birth



countries, of course, but it is more sensible to realise that the social predicament of Chinese citizens has improved a great deal, which is what matters first of all. Figure 10 shows that the health index has consistently remained firmly above the world levels, even though both increased steadily since 1995. At the same time, with China's strong health trend performance in Figure 10, it nevertheless takes no higher place than 59th. However, in health it is the best BRICS in 1995 and still in 2018 (narrowly above Brazil).

Figure 10

China's health (life expectancy at birth) index : 1995 - 2018



Unsurprisingly, the fastest rise is in per capita incomes given China's growth machine: from a p.c. income of roughly one quarter of the world level in 1995, it rose to 8 times as much, ending slightly above the 2018 world level. Amongst the BRICS only Russia has a (much) higher p.c. income, but that is partly the result of Russia's massive natural resources. In education two sub-indicators are used: the actual number of schooling years (of cohorts now having left school) and the expected years of schooling (of newly arriving pupils). In the actual number of years of schooling, China climbed from a poor 5.7 years in 1995 to 7.9 years in 2018, whereas the expected years of schooling shot up from 9.1 years in 1995 to no less than 13.9 years in 2018. China's actual years of schooling stayed below the world average, in 1995 and still in 2018. This can be considered a weakness. On the other hand, although the expected years of schooling in 1995 were behind the world (by half a year), in 2018 China was ahead of the world by 1.2 years, a firm catch-up.

It is striking from the surveyed trends how long it takes, even when underlying economic growth is so powerful as it was in China, before one begins to approach HDI levels of OECD or EU countries. It would go too far to discuss this in detail for 27 countries plus China and for the HDI and its components. In 1995 China's HDI (0.548) was significantly below the lowest four (future) EU countries, i.e. those below 0.700: Bulgaria, Croatia, Latvia and Romania. By 2018 when China had climbed to 0.758, the gap with the lowest four (between 0.816 and 0.845) had narrowed appreciably. It is thus conceivable that China might catch up in Human Development with the lowest performing EU countries in 6 – 8 years from today (if trends remain unchanged). It should nevertheless be pointed out that China is still far from the top four EU performers in HDI which all score above 0.930. Zooming in on the components, China has already surpassed (narrowly) the 4 lowest performers in the EU on health¹⁰⁴, but did not come even close to the lowest performer in the EU on years of schooling (7.9 years for China, against 9.2 for Portugal, with other EU much higher), getting close to the lowest three in the EU for expected years of schooling (13.9 for China as against 14.2 – 14.5¹⁰⁵) and beginning to near the lowest three performers in terms of p.c. income¹⁰⁶.

These trends are illustrative for a China which is no longer merely 'growing at all costs'. China cherishes a far richer development concept and this is not to be described as mere propaganda or paper work. The 18th Party Congress in 2012 called for the 'construction of a harmonious society', with an emphasis on education whilst improving people's health. The ambition further increased in 2015 with the vision of 'innovative, coordinated, green, open and shared development, a vision that centers the concept of human development¹⁰⁷. In 2016 the 'Healthy China 2030 Plan' was launched. The HDI shows unmistakably that the social predicament of Chinese citizens has enormously improved since 1995 and this trend continues in a climate of lower (though still impressive) economic growth rates. These trends should

¹⁰⁴ Bulgaria, Latvia, Lithuania and Romania.

¹⁰⁵ For Luxembourg, Slovakia and Romania.

¹⁰⁶ For China in 2018 in 2011 US \$ (PPP) 16127 ; for Bulgaria, Croatia and Romania between 19646 – 23906.

¹⁰⁷ See China's HD report 2020, p. 37 for both citations.

help to solidify a foundation for secular EU /China cooperation in social aspects of sustainable development.

11.2 The urban/rural divide in China's Human Development

It has long been held that the income gap between rural and urban citizens in China was so large that one could speak of a deep divide. Whilst the North-East, East and South East of the country were growing fast, becoming even affluent, this would not or much less be the case for rural areas. But also rural health and educational opportunities were widely regarded as inferior to those of urban citizens.

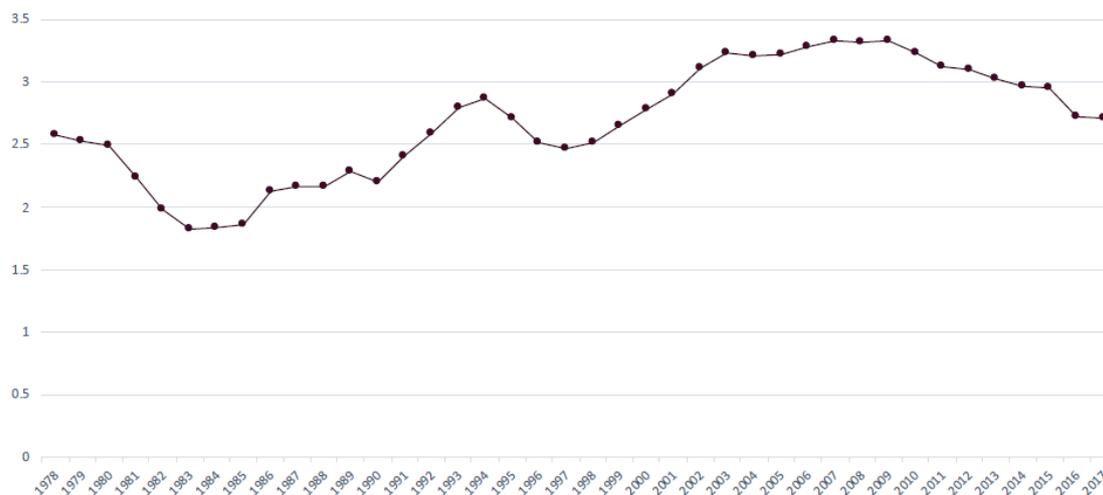
With new systematic and long-term data available, this issue can now be discussed with better factual evidence ¹⁰⁸. At a very aggregate level Figure 10 shows 40 years of the ratio of p.c. incomes of urban and rural resident. It shows considerable fluctuations but the 2017 ratio is almost identical to the 1978 ratio, that is, urban p.c. income is some 2.6 times the rural p.c. income, on aggregate. It is not the purpose of this paper to assess this measurement of the divide. The ratio does not seem to be extreme compared to other countries but it is certainly possible to find quite a few countries where the ratio is smaller, partly by policy design. However, it depends how rural and urban are delineated, whether it is pre- or post-tax, and whether ex-post compensatory measures for rural reduce the differences. It might also be the case – indeed, it is likely - that the effective purchasing power of (say) 100 yuan differs between rural and urban.

In any event, since the rather high overall inequality in 2007-2009, the Chinese government has made significant efforts to address the divide in a number of ways. This seems to have helped.

Figure 11

China's ratio of urban over rural p.c. incomes : 1978 - 2017

¹⁰⁸ All of the following (unless indicated) is from China's HD report 2020



Source : China Human Development Report 2020, p. 37

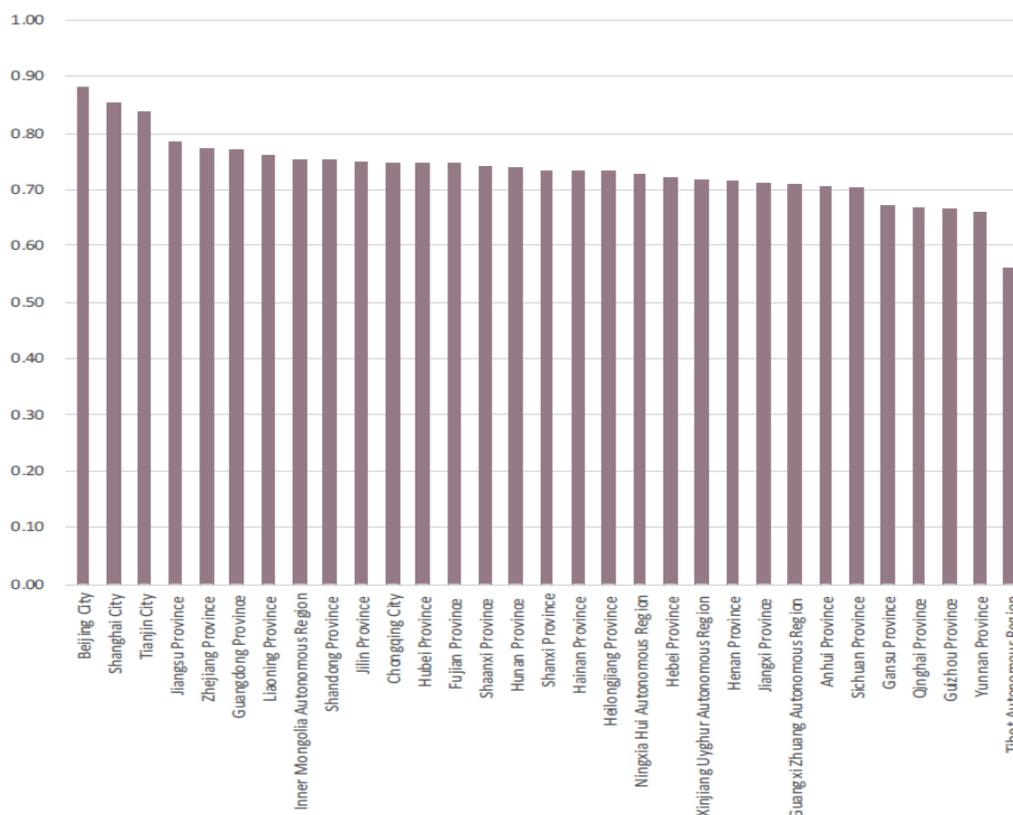
One reason amongst several is that the fight against poverty in China – important for decades – has become quite successful precisely in the country-side. “From 2013 to 2017, China’s rural poor population decreased by 13 million a year..” (op. cit., p. 38) and the poverty incidence fell from 10.2 % in 2012 to 3.1 % at the end of 2017. Average incomes have increased spectacularly : the p.c. income index of the HDI for the four super-regions grew between 1982 and 2017 with 127 % (Eastern), 171 % (Central, from a very low level), 181 % (Western, idem) and 97 % (North-East, with a lot of old heavy industry). In terms of 2011 US \$ (PPP), in absolute terms, the gap in 2017 between the coastal / Eastern region (\$ 21221) and the other three (\$ 11424 – \$ 12772) remains considerable, however.

In the following, the discussion will be conducted with HDI data only. The HDI for the four super-regions were at first characterized by a major gap between the North-East region and the Eastern region, on the one hand, and the Western and Central regions, on the other hand. But in 2017 these contrasts had all but disappeared, put differently, the coefficient of variation¹⁰⁹ fell from 10.6 % in 1982 to only 3.5 % in 2017. Another clear indication that there is no major urban/rural divide in HDI terms anymore is given in Figure 12 which depicts the HDI of most Chinese provinces in 2017.

Figure 12

Level of provincial HDIs in China : 2017, 31 provinces

¹⁰⁹ A dispersion measure, defined as the ratio of the standard deviation to the mean.



Apart from Tibet as an outlier, provincial HDIs are between 0.67 and 0.88, but without the three leading cities, the HDIs are really rather close. It follows that inter-provincial HDI disparities are moderate for the most part. Nevertheless, there is some concern that – even when HDI levels are satisfactory for China or for a province - inequalities are disturbing. Inequalities occur only in some provinces and not necessarily the traditionally ‘poor’ provinces. HDI are now known even at the level of prefecture-level cities (i.e. within provinces) and yields some unexpected results. Provinces like Shanxi, Fujian, Jiangxi and Shaanxi demonstrate a high level of HDI with small internal disparities whereas Xinjiang, Hunan, Hubei and Guangdong show great disparities, unexpectedly. Indeed, the most developed province in China - Guangdong – has very high disparities at cities’ level. Finally, HDI levels for women are more than 90 % of the HDI for men, so gender disparities are generally small.

11.3 China’s rural human capital gap and long-term economic growth

Unfortunately, there may well be a ‘human capital gap’ between the rural and urban areas in China. And its magnitude cannot be properly read from official HDI statistics.

As shown in Figure 9, the education element of the HDI is the weakest of the three. It is split into two sub-components: the actual and the expected number of years of schooling. As shown, the actual number of schooling was still very poor in 1995 (less than 6 yrs) but it rose to 7.9 yrs in 2018, lower than the world average. The expected number of school years was 9.1 in 1995 and rose to 13.9 yrs in 2018, passing the world average in the meantime. These HDIs are weaker than the components for health and p.c. income in China, but they are also

conveying a false picture, as revealed by painstaking empirical work by a group of (mainly Chinese) scholars led by Scott Rozelle ¹¹⁰. The misleading picture is the result of two aspects.

First, and long known informally, a China-wide HDI for education is almost useless unless further broken down into rural and urban HDIs. There is a ‘human capital gap’ between the rural areas and the urban ones. For a meaningful approach, one needs to understand this ‘gap’ and how it is gradually closing over time. For 2015 and for the age bracket of 25 yrs – 64 yrs, the gap is enormous: only 11.3 % of workers from rural areas had attained at least high school education, in contrast with no less than 44 % of urban individuals. Providing an order-of- magnitude of how many people are affected by this gap, the following data is telling : in 2014 871 mn Chinese had a rural hukou, of which 659 mn are of working age. Of these some 31 % have migrated to cities to work, some 227 mn. Problems of obtaining good schooling (high schools) are considerable in rural areas but probably even bigger in urban ones due to outright discrimination of rural-hukou children, forcing them either to be ‘left behind’ at home with grandparents (in ages 0-17 yrs, some 60 mn) or following education on low-rated private migrants schools. There is a host of reasons why kids from rural areas do not take up high school or drop out in large numbers (explained in Li et al., 2017, pp. 6-8).

The second reason is that the official statistics – almost certainly also underlying the official HDI indices – on educational accomplishments are grossly inflated (since around 2003). In Khor et al (2016), this discovery is explained by the mismatch of the 2010 census data (direct measurement, highly reliable) and the data from the Ministry of education, largely based on data supplied by local and provincial officials, in turn influenced by artificial incentives and subsidies to present ‘better’ figures. For high school attendance, the exaggeration is some 50+ % for 2010, which profoundly influences HDI data for education. Thus, HDI statistics on education as presented in this chapter cannot be relied upon as being as high as presented – sadly, China performs worse than official data tells us. However, the much more important inference is that this lower performance in Chinese human capital, at least in the countryside, has a major impact on the long-run economic growth of China for the (say) next two decades. Instead of attaining secular economic growth of some 5 % - 7 %, as suggested in long-run forecasts, the corrected data for high school education (esp. in rural areas) as an important component of human capital strongly suggest a secular economic growth of some 3 % annually (Li et al., 2017) for the period 2015 – 2035. In addition, it throws a more sombre light on the perspectives of rural youngsters, but this with a proviso. Indeed, one of the factors discouraging going to or staying in high school is the increasing scarcity of low skilled workers, inducing swiftly rising real wages for them. Going to school therefore presents them with an opportunity cost that – together with other factors (like high tuition for rural high schools ; lower quality schools, making it difficult to pass the country-wide college entry examination) – might be assessed as too high for many.

With a secular growth rate of some 3 %, there is a risk that China’s fear of getting stuck in the middle income trap may still be hard to escape from.

¹¹⁰ See Li, Loyalka, Rozelle & Wu (2017) and Khor, Pang, Liu, Chang, Mo & Rozelle (2016). More recent statistical confirmation and some policy recommendations are in Bai, Zhang, Wang, Dang, Abbey & Rozelle (2019).

12. Does a level-playing field matter between the EU and China ?

Formal and diplomatic EU texts on sustainable development are driven by ‘values’. When applied to trade and investment, and in particular in EU FTAs, this is true as well, as shown in section 2.4 and Table 1 for the social pillar and – for the ‘green pillar’ – in section 2.2 and Table 1 in Pelkmans (2021). Frequently, the difficulties in making significant progress in these areas, that is, in sustainable development as defined in EU trade agreements, at the bilateral, regional and multilateral levels have everything to do with cost considerations. It is therefore not inconceivable that the EU *values*-driven approach leading to the active promotion of the green and social pillars in bilateral economic relations with China, could be interpreted, just as well, as a strategy to more-and-more *levelling the playing field* [=LPF] in the fierce competition with China, both bilaterally and in third markets. A LPF approach vis a vis China need not deny that the EU is genuinely driven by values as expressed in sustainable development. It simply conditions this value-driven approach by setting qualitative limits on divergences or distortions which may hurt EU market players and disadvantage the EU at large. One might also put it differently : the combination of promoting/supporting sustainable development in China by the EU with the LPF approach seeks to ensure that new targeted protection, “offsetting” an ‘unlevel’ playing field, can be avoided. This idea is explored in the following.

Putting it simple, there are essentially three cost considerations in this respect. One is an *absolute cost threshold* that often applies to developing countries. A better and more insightful way of formulating this is a ‘developmental threshold’ where – even if the country would receive all the money to cover the costs for certain equipment (say, for OSH or climate purposes) - the wider context of linkages, capacity, maintenance, labour skills, related services, etc. would render it next to impossible to be up to the same level of sustainable development ambitions (read : values) as EU countries. In such situations, development support in various ways is the appropriate mode of bilateral and multilateral cooperation. This might have applied to the China of the 1980s and the early 1990s, no longer in more recent decades. Indeed, as discussed briefly before and in Pelkmans (2021), the EU-China relationship and the support that was forthcoming from Europe in the 1990s was dominated by development priorities.

A second consideration is about *relative costs*. The theory of comparative advantage holds that having different cost levels is not a valid reason not to trade as it can be rigorously shown that both partners will be better off with the right specialisation. However, this assumes that there are no significant distortions of a public and/or private nature which cause the costs to be twisted and no longer reflect market forces. Thus, trade between poor (but somewhat developed) and rich countries in goods requiring industrial processes and consistency of quality (etc.) is not only possible, but indeed a proven road to achieve higher levels of per capita income and broader development. In services it is more complicated but in directly trade-related services the same mechanism works (e.g. transport, logistics, trade

finance). The idea that costs (hence, prices) are so much lower in developing countries than in OECD or EU countries precisely expresses why such trade can be that advantageous for them, and yet for developed countries too. Only if costs would be artificially suppressed by distortive measures and /or illegitimate means is there a reason to be concerned about (i) the way the economy in that country is controlled, (ii) the effects on developed economies¹¹¹, or on its specific sectors at stake. Nevertheless, in today's WTO such distortions can be addressed only very partially, and developing countries can often shield behind the S&D clause on 'Special and Differentiated' treatment which provides them with much greater discretion.

A third consideration is about *significant (cost) distortions* in the trade (and possibly investment) between (fairly) developed economies. These distortions can be both private and public but the latter are expected to dominate. The word 'significant' matters because a perfectly non-distorted economic environment probably exists nowhere. It is a question of degree. Size or scale matters as well because a significant distortion in (say) Brunei Darussalam or Uruguay might not be of much importance in trade and investment, as compared to such distortions in big trading economies such as China, the US, the EU, or possibly even in medium-sized economies such as Japan, Indonesia or Russia. Modern market economies – surely those in Europe but some other ones as well - are much less distorted today than (say) in the 1950s when the 'mixed' economy was prevalent, external protection was relatively high and selective industrial policy (from coal and steel to shipbuilding, etc.) was still regarded as routine. The less distorted an economy is and the greater the trade intensity as well as the economic interdependence via global supply chains, the greater the sensitivity to major distortions in the economies of trading partners, in particular if such distortions have the potential of affecting negatively the competitive performance of the relevant sectors.

These basic features are the background to the level-playing-field debates about China. The term 'level-playing-field' [LPF] is not a term employed in the analytical economics of trade (policy) and investment. It is, after all, neither necessary nor desirable to render everything perfectly identical between trading partners. It is not necessary since quite diverse economies can (and do) have intense trade and investment relations with mutual gains and the differences in policies and institutions are rarely a reason for grave concerns. Of course this is partly because the WTO and regional as well as bilateral trade liberalisation have significantly reduced trade barriers the world over, be it in different degrees; moreover, many countries are keen to attract FDI and in order to position themselves for multinationals (and their supply chains), economic reforms have often been implemented with the effect of mitigating distortions. It is also not desirable to aim for perfectly equal or harmonised institutions and/or rules between trade partners, since domestic institutions and rules have to respond to local preferences, traditions and sensitivities at least to a considerable degree. Imposing a significant measure of forced homogeneity, despite heterogenous preferences and histories, is unlikely to serve the broad socio-economic welfare of the population.

¹¹¹ And what is too often forgotten in rich countries, the effects on other developing countries as well, given the greatly intensified South-South economic intercourse.

An economically meaningful debate on LPF cannot, therefore, refer to homogeneity between trading partners but to the reduction or minimisation of (potentially significant) distortions having or likely to have negative repercussions on trade and investment interests of trading partners. Such distortions can be various but have in common that (potential or actual) market gains for domestic market players are *not* due to competitive performance (in price or quality or one's own innovation) but to direct or indirect public interventions benefitting these domestic firms (or, extreme forms of market power). In a world economy assumed by the WTO, trade and investment are essentially based on market-driven competitive performance whilst domestic interventionism that actually or potentially is liable to affect trade¹¹² should be limited, measured and/or (e.g. in agriculture) subjected to explicit (globally negotiated and agreed) limits. The crux is to operationalise this fairly straightforward reasoning in the actual practices of WTO trading partners. This operationalisation is far from easy and can lead to divergence of views or strategies. Box 4 provides food for thought with two examples of recent LPF applications: BREXIT and the terms of UK market access to the EU27 Single Market, and the EU debate on the lack of LPF in China-EU trade and investment.

Box 4

Trade-related level-playing field debates: two recent examples

If significant distortions or an 'uneven' playing field is a matter of degree, what is the critical severity or *intensity* of measures / interventions and what is the intolerable *scope* (coverage) of different measures and/or policy areas as well as sectors? How difficult these questions are both analytically and in policy terms can be illustrated by BREXIT and by the China LPF debate in Europe.

In the case of BREXIT the former degree of (EU28) market integration was close to the highest one possible, short of the domestic economy of a single country. In the new post-BREXIT situation, the core question was how intense and how encompassing (i.e. scope) the degree of market access for the UK could still be when at the same time the UK insisted on 'regulatory autonomy' (or, in political terms, "taking back control") that could potentially unlevel the playing field. In the negotiations, the LPF issues were found to be relevant in the following areas: (a) environmental standards, regulation and long-run strategies ; (b) technical regulations and standards, in particular in heavily regulated sectors ; (c) state aid control; (d) labour and social standards ¹¹³. One might argue that technical regulation and standards (at least, those related to technical regulations) are not LPF issues, *stricto sensu*, because inside the EU it is EU regulation which must be enforced and applied. However, when analysing this closely, it turns out to be more complex. However, if one were to agree that technical regulation is not part of the LPF, the LPF consists of the two pillars of 'sustainable development', plus distorted competition via subsidies in many forms. Since the EU27 and the UK have concluded a FTA (be it a rich

¹¹² Of course, a lot of domestic intervention is geared to purely domestic issues, including social and other ones, or strictly local economic questions or infrastructure. The LPF debate is not about these areas.

¹¹³ These questions are analysed in detail in *Ensuring a post-BREXIT LPF*, 2019, Brussels, EPC [www.epc.eu], with Emily Lydgate, David Baldock & Martin Nessbit on environment, Vincent Verouden and Pablo Ibanez Colomo on state aids, Marley Morris on labour and social standards, and Jacques Pelkmans on technical regulation and standards.

and complex one), the usual technique of non-regression clauses on agreed levels of regulation in the green and social pillars of sustainable development (see Table 1) can be applied to avoid future divergences from an agreed LPF. It should be noted that SOEs are not considered a separate item of LPF between the UK and the EU27 for the simple reasons that (i) SOEs which operate on a non-market basis and with instructions from governments barely exist in Europe, (ii) SOEs in the EU27 (and before BREXIT in the EU28) fall fully under a strict and fully independent state-aids and transparency regime, which maintains a situation that an EU Member State can have SOEs by its own choice but *cannot* thereby distort in any way (just like private firms) the single market – for all practical purposes, there is no economic difference between a private firm and a SOE in the Single Market. If ever the UK would begin to ‘use’ SOEs in a distortive way, this would automatically be seen as state aid in the UK/EU partnership agreement.

The recent EU debate on the (lack of a) LPF with China emerged from a different debate about the necessary reforms in China in the long march towards a functioning market economy. Compared to the BREXIT debate, however, the market interdependence between the EU and China – though well developed – is not nearly as deep and wide. But the LPF-with-China discussion has evolved from that debate (before and shortly after the WTO membership) to a much wider one. It is no longer solely about further reducing the heavy state-involvement following a long period of central planning, backed up by considerable protectionism in services and FDI, but as well – and increasingly so – on the conscious and more and more systemic state-driven steering of advanced industries, technological progress and digital eco-systems, supplemented by (again, largely state-led) strategies such as the BRI and the problematic roles of state-owned Chinese banks in all this. We summarise a prominent presentation from BusinessEurope (2020), without detail here, merely to demonstrate the complications of the LPF discussion in Europe.

The BusinessEurope approach singles out no less than nine areas where the field in markets is ‘unlevel’. In addition, it offers four other areas where serious distortions are maintained, all having to do with competition, and finally, the report is deeply concerned about distorted competition (including trade finance) with Chinese firms in third markets. It is not a priori clear why the nine ‘unlevel’ aspects are LPF issues, and the other five are also relevant but not called LPF.

The nine areas include : i. weak rules or omissions in the WTO, leaving unsanctioned some significant distortions in China; ii. trade ; iii. investment ; iv. public procurement ; v. IPRs ; vi. forced technology transfer ; vii. standardisation ; viii. e-commerce ; ix. climate and energy. The four competition areas include : a. SOEs ; b. subsidies ; c. overcapacity (not leading to bankruptcies and market exit); d. competition and state-aid. In third (especially developing) markets, much of the activities of Chinese companies is derived from development aid (tied, de jure or de facto), subsidized trade finance (without having accepted the disciplines of the OECD, for ex.), non-transparent loans by SOE banks from China and various dubious practices in the BRI strategy causing Chinese companies to secure almost all private and public contracts ¹¹⁴.

The contrasts between the BREXIT LPF debate and the one about China are several. Conspicuous is that the very long lists in the China debate do not incorporate the social pillar of sustainable development. On the ‘green pillar’ of sustainable development it does include climate-and-energy but not other aspects of environment (perhaps because they

¹¹⁴ See e.g. Blockmans & Hu (2019)

are no longer regarded as extremely distorting). On the other hand, whereas the BREXIT debate includes state aid, and the China debate broader issues of competition, 8 of the 9 issues under LPF in BusinessEurope's report simply do not appear at all in the BREXIT debate ; neither do distortions in third markets.

Juxtaposing these two prominent examples lays bare the great difficulties of applying LPF notions in actual practice. Even the term 'significant distortions' is not so easy to apply.

From close observation of the EU/China trade and investment relations ¹¹⁵ and the research conducted for our RESPECT research on the green pillar in EU/China relations (Pelkmans [2021]) and the present paper on the social pillar in EU/China relations, we conclude that the EU has – by design or by gradual evolution over time – pursued a *combination* of promoting actively sustainable development in China in both pillars, with an emerging LPF approach. The latter has grown in importance and scope, more or less in tandem with the rapid economic growth of China and its increasing weight in global and bilateral trade. The combination of a sustainable development approach and LPF has so far been capable of constraining EU forces insisting either on protectionist responses or (interventionist) domestic counter measures or both, whilst keeping up its values in trade policy. The short description in Box 4 demonstrates that the LPF debate in the EU is now shifting to a much wider set of policy issues than merely the green and social pillars. The thrust of the EU debate is about the failure of minimising or correcting the systemic divergences between China and a regular market economy¹¹⁶. The nature of this policy debate being so very wide-ranging risks to dominate the far more constructive EU bilateral policies in the green and social pillars. In other words, the slow but gradual convergence with the EU in both pillars over time would seem to decrease the relevance of the LPF debate in sustainable development today, but that might well be overwhelmed by many *other* issues in the LPF approach.

In the late 1990s, there were huge divergences in both green and social agenda's between the EU and China. Although there has been some irritation, there has never been a protectionist or restrictive response directly related to the two pillars affecting negatively bilateral trade and investment. The main explanation is the development country status of China and the way the EU, at the time, saw China in terms of incipient strategies in the two pillars.

There can be little doubt that, at the time, the EU could have assumed a LPF approach *avant-la-lettre*, in holding that prices in China were artificially low due to extremely bad compliance in the social field (both labour laws, including OSH, and the actual availability of the five social funds for social protection especially for the hundreds of millions of migrants), as well as in the green pillar, both for climate (and the coal issues!) and a range of severe production-related forms of pollution the external costs of which were not at all priced in, despite laws to the contrary.

¹¹⁵ See the extensive policy research in Pelkmans, Francois, Hu et al (2018)

¹¹⁶ See Pelkmans (2018) for an analysis

13. Answering the research questions

We have attempted to address the social pillar of sustainable development in the EU /China trade and investment relations. This seemingly simple statement is actually confusing because it is not entirely clear what this social pillar actually comprises. One concept combines internationally recognised labour standards and a system of social protection. Another – especially in the context of nearly two decades of EU /China of cooperation and joint programmes – could be the collection of EU/China joint activities in this area. And a third view may consist of the social clauses in recent EU FTAs in the sustainable development chapter, as an expression of EU values, even if China and the EU never have concluded a FTA so far. If one takes the EPA with Japan as an ambitious example, it has 26 clauses on the social pillar of the sustainable development chapter. Most are on or closely related to core ILO Conventions on labour rights, with the rights of association and collective bargaining as the bedrock - the two foundations for workers to organise themselves effectively. Some clauses are directly or indirectly referring to (aspects of) social protection, e.g. with references to ‘decent work’. Social protection is therefore either an implicit issue – one on which a lot of EU/China cooperation has actually taken place and still occupies the two partners – or partners consider that these two areas (labour standards and social protection) are naturally closely connected. More far-fetched but not implausible is the possibility that the EU – initially or until recently – perceived risks of a non-level playing field in labour relations and the perhaps artificially low total labour costs per unit of Chinese exports. In that case, jointly addressing the social dimension of the bilateral trade and investment relations would both serve the upholding of EU values and help to pre-empt distorted bilateral economic intercourse. In any event, the paper pays considerable attention to social protection in China.

The time-span of the research undertaken is around 25 years. In order to better appreciate the social predicament of workers in those days, we deal extensively with the socio-economic context in the middle 1990s in China. The focus is on three critical aspects: (i) the very high and sustained economic growth of China, to some extent at the expense of many workers and in particular domestic migrants, (ii) the SOE reforms in the 1990s and the initial harsh effects on tens of millions of workers in the absence of social protection (or at best, some patchwork), and (iii) the poor status of human development as a measure wider than mere salary (with the help of the Human Development Index).

The paper subsequently deals with the undisputable value part: international labour standards. We show that, although four core ILO conventions are not ratified by China, China has meanwhile developed much legislation in various ways in order to address some of the fundamentals and at the same time gradually developed, with some painful imperfections, a system of social protection. Nevertheless, the refusal by China to move on the right of association and of collective bargaining, both closely connected with the monopoly of the ACFTU and indeed the political monopoly of the CCP, and the great hesitation about the two conventions on forced labour (e.g. in camps for ‘re-education’), remains a sore point for all workers and the ILO but surely also for EU/China cooperation. China may be seen as having

made a prudent move on the two conventions on forced labour in the draft CAI treaty between the partners on investment. One should expect that quite some time will lapse before these two conventions might be ratified and implemented by adjusting penal laws.

In social protection, China has improved the predicament of workers (and indeed all citizens) in China, not merely via high economic growth but also by means of a broad system of social protection, with universal coverage where appropriate. We survey at some length the painful social side of 'growth at all costs', mostly at the peril of low or unskilled migrants workers from poor provinces. The SOE reforms in the 1990s were harsh, with dramatic labour shedding and little or no social security at first, and some stop-gap measures later. China did, however, steadily build on the social protection system and, as of 2014, accomplished a 'national' system by finally combining some forms of social security for both rural and urban citizens. Nonetheless, as so often in China, there remain two realities. By sticking to the hukou registration, even if with greater flexibilities, and by maintaining a highly fragmented administration at local or regional level, often with limited capabilities, undeveloped or incompatible IT systems and insufficient pooling, the practical problems of transferring entitlements between provinces are huge. As a result, the system malfunctions in many ways. In addition, numerous outbound migrants have remained informal workers (some 65 % !), although the system of social protection is built strictly on contracted workers. The upshot is that precisely those workers mostly in need of social protection obtain the least.

We survey EU/China cooperation on labour standards and social protection, effectively begun in 2005. A series of major projects and programmes have been undertaken jointly: on social security (partly inside Chinese ministries), on safety and health in high risk sectors (esp. mining and chemicals), on social protection reforms, besides high level Dialogues for 15 years. The EU has also strongly encouraged China to work still more with the ILO which eventually China has done directly bilaterally (for example a four year programme on Decent Work), and also trilaterally (EU/ILO/China), for example on Improving China's institutional capacity towards universal social protection (2019-2022). Included are two detailed analyses of projects. One is on occupational safety & health in coalmining and chemicals. It is shown what the EU project's value-added has been (with technical standards but also including an insistence on worker participation bottom-up when improving OSH in mines and chemical plants and storage). In the meantime China has enormously reduced the fatalities in coalmining, although it firmly remains above e.g. levels of fatalities in India. The other is the project on reforms of social protection where a detailed ex-post evaluation is provided in order to illustrate actual and potential value-added.

That further reforms are badly needed follows from an assessment of the main tenets of social protection in China today. The picture has once again two sides. It is undeniable that China has done much to improve social protection, both by stricter and more ambitious laws for companies (and workers where relevant) and by spending more from the general budget. At the same time, zooming in on details as well as on what the effective results for rural people or migrants from rural areas but working in urban areas are, we show that there are still considerable discrepancies between the overall intentions and the basic social facts on

the ground. In terms of redistribution affected by social security – a desirable policy given rather sharp inequality in China – it is striking that these effects are small or very small except for pensions in urban areas. In rural areas, the redistributive effects of social protection are minimal, even though there they might be more desirable. China's 'war on poverty' was formally ended by the leadership in 2020, yet there are serious concerns about lingering poverty, both in terms of disposable incomes being very low and the size of the groups suffering. Again, two realities. The analysis is complemented by a review of Human Development in 2018, because poverty traps comprise more than mere disposable income. China has greatly improved the HDI but the education pillar remains relatively weak. Recent academic work has shown that large parts of rural areas suffer from an educational gap with urban areas, such that simulations show that over 2 decades the secular economic growth rate of China risks to fall to around 3 % (due to low human capital).

Finally, we explore briefly whether a level-playing field between the EU and China matters as far as social protection and labour standards are concerned. We conclude that the EU has in fact pursued a combination of promoting actively sustainable development in China in both pillars, *with* an emerging level-playing-field approach. This approach has, so far, been capable of constraining EU forces insisting either on protectionist responses or (interventionist) domestic counter measures or both, whilst keeping up its values approach.

It should now be possible to answer the three research questions.

The ***first research question*** is: *In transforming from a system of central planning without private ownership towards a market economy, has China addressed the respect for international labour standards and built up a system of social protection based on individual entitlements?*

The answer on labour standards is straightforward: China has only marginally addressed a solid respect for the ILO core Conventions and failed to move on any of the four remaining non-ratified Conventions. A potential move might be possible on two core Conventions (on forced labour) if the CAI treaty will be ratified. There is no sign whatsoever on the right of association or the one on collective bargaining, almost certainly because the Party or leadership fears that ratification and proper implementation would generate responses in the population and with workers that would eventually undermine the present regime. The other element in the first question can be answered much more positively : China has built a system of social protection over the last 2 ½ decades and we describe its main characteristics. However, that system is rather weak and full of problems (which are explained in the paper). Its redistributive impact is also weak. At the same time, China has worked actively with the EU and its Member States (as social protection is largely a Member States' competence) and continues to do so, now jointly in a tripartite with China and the ILO. In this sense the cooperation can only be called very positive. But it is also tedious.

The ***second research question*** : *What is the process of convergence in policies, laws and entitlements with respect to labour 'standards' and social protection between China and the EU over the period 2000 -2020 ?*

China has come from an SOE based system in urban areas and one based on collectives in rural areas. Hence, almost by definition China moved into the direction of many countries, as well as international organisations, all advocating respect for international labour standards and social protection. Meanwhile, China has moved quite far in the direction of the EU welfare states where fitting China's social and traditional characteristics. It now avails of 5 social insurance laws (pension, unemployment, medical, maternity leave and OSH) and workers' saving facilities for housing. It has also set up funding options via the state budget. On details China is clearly attracted by the 'European social model' and has moved, and is likely to move further, into this direction. This is remarkable because the European model has been criticized by some other Asian countries. Probably for this reason, the income effects of the new system has so far remained modest compared to the impact in Europe. We show that the practical implementations of these intentions still leave quite something to be desired, especially for the poorer rural areas and above all the outbound migrants. It should also be said that the power of such a (perhaps somewhat truncated) welfare state in China is limited as well by declining the use of income taxation for this purpose, unlike in Europe. However, China has come out of the status of a developing country in record time. At least in terms of average available income. But in terms of a broader Human Development approach, China is a little further behind. In terms of education, again mostly in rural areas, there is a worrying 'gap' which does not help the people from those areas and is even likely to suppress the long-term growth rate to some 3 % until 2035.

The **third research question** is central to the RESPECT project. *Have EU trade policy vis a vis and cooperation with China on sustainable development systematically pursued the NPTOs of labour 'standards' and social protection since around 2000 and has this pursuit been effective in supporting a process of convergence ?*

There is no doubt that – broadly – the EU has been ready to cooperate with China ever since China and the EU concluded the Strategic and Comprehensive Partnership in 2003. And right from the start of the first major project (following early meetings of the Social and Employment Dialogue with China), these were joint projects with a strong degree of 'ownership' on both sides. However, apart from the interesting and seemingly effective OSH project for the high-risk coal mining and chemicals sectors, which is essentially about labour standards, the projects mostly covered technical, administrative, financial/actuarial and conceptual questions of social protection. There is very little published evidence of any project activities directly related to internationally recognised labour standards, in particular about non-ratified core ILO Conventions. In this sense there is an obvious discrepancy between the need, as perceived by the EU, to prepare for ratification and full domestic implementation of these four Conventions, and almost certainly some other ones (as China has also not ratified a series of other ILO Conventions that would appear to be desirable), and the manifest – though 'silent'- positioning of China not to do so. There is an opening, however: the recent CAI draft treaty comprises a cautious quasi-commitment by China to strive towards ratification of the two Conventions on forced labour. It should be noticed that, on OSH for workers, the coal mining and chemicals project appeared to have been hands-on and useful, in particular for the miners themselves.

In contrast, China and the EU have been active in cooperation on social protection and continue to attempt searches for further improvement. A profound impediment is the domestic multi-layered structure of China's governments, their coordination (or the lack of it) and the limited capabilities at local levels. There is also a high degree of path dependence, with lingering inefficiencies proving hard to iron out. Moreover, there are deep-rooted inequalities between rural and urban, partly resulting from traditions and old barriers to intra-China mobilities. Finally, there are major educational inequalities between rural and urban which are deep-seated and may have caused hysteresis for another generation. Given all the inhibitions, the joint determination of the EU and China to address social protection and help improve it in many ways, already for more than 15 years, cannot be expected to be successful so easily. This determination has recently led to a tripartite set-up together with the ILO (until at least 2022).

The short answer to the third research question is therefore that the EU has pursued, in earnest, durable EU/China cooperation with respect to social protection, but that this turned out not to be acceptable to China as far as non-ratified ILO core Conventions are concerned. In terms of effectiveness, given the inevitable limits of bilateral cooperation, the social protection cooperation has been effective and practical – not least because activities, projects and programmes were truly 'joint' – and still continue, whereas, with respect to labour standards, the only breakthrough is the recent CAI draft treaty with its prudent quasi-commitment with respect to two Conventions on forced labour.

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