# Complicity, Campaigns, Collaboration, and Corruption:

## Strategies and Responses to European Corporations and Lobbyists in China

Globalization Monitor

March 2010

# European Companies Lobbying in China and Chinese Reponses

Published March 2010 by
Globalization Monitor Limited

Globalization Monitor Limited,
P.O. Box 72797, Kowloon Central Post Office, Hong Kong
E-mail: info@globalmon.org.hk
Tel: (852) 6187 3401
Website: http://globalmon.org.hk

Designed & Typeset by Charlotte Wu



ISBN:  978-988-18039-4-8
Price: HK$ 120 / US$ 15 (postage included)

## Acknowledgement

This report was prepared by a research team which included the following members:

Au Loong yu, Lin Jingming, Rachel Page, Maria Ehnhage and Jakob Haglund.

We would like to thank the Isvara Foundation for sponsoring this report.

# Contents

**1 Forward**

**4 Executive Summary**

**8 Section I: Introduction**

**22 Section II: Actors:**

European companies in China
EU Chambers of Commerce
Foreign Lobbying companies
The EU and its member states
Chinese central and local governments
Chinese consultant companies

**55 Section III. Strategies**

Guanxi
Advocacy
Case One: Nestle
Case Two: British American Tobacco – BAT

**81 Section IV: Issues**

The Standards War: Mobile Phones
Lobbying and Legislation: Labor Contract Law
Corruption: The Siemens Case

**117 Section V: Conclusion**

# Forward

Soon after the 1989 crackdown on the democratic movement in China, the EU countries decided to resume full ties with China, which had temporarily been affected. The EU's decision was based on the belief that "promoting free trade with China will encourage improvement in human rights there". Twenty years have passed and it seems fair to say that this was just wishful thinking. On the contrary, we are now witnessing more and more Western companies and their CEOs adapting to China's authoritarianism instead. One of the fields where this kind of phenomenon seems rampant is business lobbying. Most business lobbying involves not only a lot of money, but also former government officials or politicians acting on behalf of influential corporations. In China's case this is especially so, and the way it is done may suggest a kind of business lobbying with strong elements of "Chinese characteristics". The fact that the first Chinese consultancy company, CGPR, was founded by the government, with the help of the US leading lobbying firm Burson-Marsteller, may show the extent of direct or indirect government involvement in business lobbying in China. Most Western companies also learn fast and are cultivating guanxi (literally 'connections' or 'personal ties') with Chinese officials in order to maintain competitiveness. Some of them are even prepared to pay bribes or to act irresponsibly to meet their goal. This report aims to provide an overview of European companies conducting business lobbying in China, showing how their single minded purpose of making money in the China context draws them further and further into a situation where they cannot resist becoming close partners of the authoritarian state; in the worst cases they have simply become accomplices of corrupted elements among Chinese officials and managers. On the other hand, although Western companies have little concern over improving China's human right conditions, it does not mean that they have not brought challenges to China, though these challenges, as conceived by the Chinese authority, are mainly competitive pressure on Chinese companies and threats to China's economic sovereignty or even its national security. This has resulted in nationalist responses from both the Chinese government and Chinese companies, including, in the field of lobbing, a call for building strong Chinese lobbying companies and think tanks as a way to counter the Western influence.

What is unfortunate is that until now there is little awareness among the civil society over the malpractices of Western companies lobbying in China and the latter responses, let alone the development of social movement or campaigns to place them under public scrutiny. There are two main reasons for that. Firstly, Chinese public, including genuine NGOs, have not prepared themselves in encountering business lobbying in general, and have no idea on its possible negative consequences. Secondly, even when some NGOs wish to monitor business lobbing they find it exceptionally difficult because there is little space for civil society. The absence of freedom of speech and association proved to be one of the best protections for corrupted government officials and business managers they can get, which allow their malpractices remain covered without ever being reported. Those got reported were, as always, just a tip of the iceberg. The authoritarian party state's practices of putting those who expose these malpractices behind bars further discourage the development of public monitoring on business lobbying. This inevitably places serious limit to our research. Hence our report focuses on the general lobbying strategies pursued by Western companies and the responses from the Chinese authority and Chinese companies, while little has been said on the responses from China's civil society's, and even less on suggestions for advancing public monitoring on the issue. Yet it would be inaccurate to leave any impression that Chinese workers, consumers and citizens are mere passive subjects of these processes. As the brave action taken by the victims of tainted milk shows, who have organized among themselves to stand up for their rights, there could be initiatives from the grassroots, if the information concerning these malpractices were finally being revealed. Our report serves the limited purposes of alerting the public the existence of the very issue of misbehavior concerning business lobbying and its relation to corruption in general, and of providing a general overview on how these work out in the society and their impacts on it. We hope this can eventually encourage more debate on the topic, or, if things go right, even the beginning of grassroots campaign to advance public scrutiny on business lobbying in China in the near future.

February 17, 2010.

***May Wong***

Executive Director
Globalization Monitor

## Executive Summary

The EU is now China's largest trading partner, while China is the EU's second largest trading partner. Intensive lobbying by European companies is one of the factors which contribute to their fast growing presence in China. This paper aims to provide a general picture of European companies' lobbying in China and the different responses of the Chinese to their lobbying.

Section I discusses the role the EU plays in the promotion of EU-China trade. Although the EU is aware of the authoritarian nature of the Chinese government, it nevertheless believes that "promoting free trade with China will encourage improvement in human rights there". Instead of changing China, however, it seems that it is the European companies which have changed, as they adapt quickly to the authoritarian state. Lobbying is just one of the areas where malpractices and corruption by European companies is rampant.

Intensive lobbying by European companies has brought them huge commercial success, but it has also triggered off increasing criticism from the Chinese. Intense debate between Chinese neo-liberals on the one hand and the nationalists on the other hand has been going on for years. The neo-liberals defend the official line of luring foreign investment on the grounds that it enables China's economy to grow and to enjoy technological transfer by foreign companies, that if some of the European and American investment in China has been involved in corruption it is more the fault of China's institutional problems than the investors. On the other hand, the nationalists, in addition to give the warning that the policy of luring foreign investment may threaten economic sovereignty - which has some rationale – they also argue that Chinese companies are necessarily good and Western companies, or even Western value in general, are necessarily bad, or at least problematic, and that they have to defend 'Chinese value' against 'Western value'.

Section II details the different actors in European companies' lobby-

ing in China. By definition lobbying necessarily means the influencing of a government's decision by interest groups. In the case of China this is particularly true, because despite the growth of the private sector, the state still exercises strong controls over the economy. This also applies to commercial lobbying in China. The fact that the first Chinese consultancy company, CGPR, was founded by the government, with the help of the US leading lobbying firm Burson-Marsteller, may tell us something about 'lobbying with Chinese characteristic'. Backed by the government it necessarily enjoys incredible advantage. Unilever commissioned CGPR to lobby on its behalf and this is one of the reasons why it has been so successful in China.

It is not true that all levels of Chinese government and all Chinese companies act as one in the face of Western competition. The central government has favored a kind of open door policy for foreign investment in a gradual and orderly way. Local governments, however, seek to get around policy and directives from the central government to pursue their own commercial interests. Western companies are aware of such contradictions between central and local government and are able to play one off against the other. They also do the same with Chinese companies. As more Chinese firms are integrated into global business networks, they become more tied to foreign companies and overseas markets. Contrary to the claim that Chinese companies share the same national interest, they split and compete among themselves. This section documents how groups of Chinese companies will ally themselves with groups of Western companies to compete with other Chinese companies.

Section III looks at the strategies that European companies employ to lobby Chinese government and companies. It first discusses the concept of guanxi, meaning 'connections' or 'personal ties'. Guanxi have practically become a method of economic organization relying on personal connections, without resorting to law or other formal rules. In many cases they act as substitutes for the laws. Having guanxi with someone always implies an obligation to exchange favors with others. The problem is there is only a thin line between exchanging favors and bribery. Unfortunately, foreign companies are in general deeply interested in adapting themselves to the cultivation of guanxi and the exchange of favors with officials, and have little regard to possible connections to corruptive practices.

The second lobbying strategy is to fund Chinese think tanks or NGOs to influence public opinion. Two cases studies on Nestle and BAT are given.

Section IV studies three important issues concerning lobbying. It first reports on the technical standards war between western IT companies on one side, and the Chinese government on the other. Since the late 1990s, the Chinese government has pushed for the setting of Chinese standards for video players, digital televisions, third-generation cellular telephones, and broadband wireless local area networks etc. In the majority of cases this was initially met with opposition from Western and Japanese. The latter soon realized, however, that it was better to accommodate the Chinese government's ambition while standing firm on their demand for a fair share of the market. To guarantee success the competing foreign companies ally with different Chinese companies. The Chinese IT companies also split among themselves because of the different market position each of them occupies. It is only in the case of WiFi where Western companies failed to persuade the Chinese government to allow WiFi to be adopted as one of the wireless standard in China because the latter wants its own standard to enjoy monopoly.

The second issue concerns how European companies try to influence Chinese legislation through lobbying. After a brief review of the lobbying of the law on direct selling, China's accession to WTO, the anti-monopoly law etc, this section goes on to detail the case of European companies' lobbying against the Labor Contract Law which aimed at improving the labor situation. The response of European companies explicitly contradicts the claim that social standards and human rights will be improved through increased foreign investment. European companies were joined, ironically, by many Chinese companies. Their joint efforts were met with hostility from labor, even so the law was eventually watered down.

This section then deals with a third topic, namely European companies' involvement in corruption in China. The reported cases are necessarily only a tip of the iceberg, given the lack of transparency in the nature of corruption, especially so in a country which has no freedom of speech. The section then describes how foreign and Chinese companies and officials evade the law to involve themselves in corruptive practices.

The fifth and final section draws together the most important debate concerning European companies lobbying in China. Contrary to the argument that following China's accession to the rule-based WTO, doing business in China now requires less *guanxi* cultivation, the truth is that there is no sign of its receding. In fact all environmental evidence points to the further flourishing of *guanxi* cultivation and favor exchanges. Even top government officials admit that corruption is becoming more serious than ever. As to the question of why European companies become involved in corruption, the answer, as provided by some, that Western companies are inherently clean and only become corrupted by the Chinese culture of *guanxi*, is entirely unconvincing. Any company, be it Western or Chinese, can become corrupt if there is no social control over it. The power of corporations to influence and corrupt government officials actually has its roots in the very predatory nature of corporations in their course of development since the industrial revolution. To tame them one has to look for a kind of democratic institution which can exercise control over corporations. In China, the absence of democracy means that corporations, foreign and domestic alike go unchecked by the public, which explains the terrible scale of corruption there. Hence, the suggestion to make laws regulating lobbying is far from adequate; what is required is a profound democratization of the political institution.

# Section I: Introduction

In 2007 EU-China trade reached €300 billion making the EU China's largest trading partner. At the same time, China was the EU's second largest trading partner. This was the result of a rapid development in trade between the two. Since 1978, the amount of trade between them has increased seventy fold. One of the reasons behind the increase is that the EU has become China's largest source of foreign direct investment.[1] Most of the EU's leading companies had already set foot in China long ago.

Despite the suppression of the protests on Tiananmen Square in June 1989, leading EU countries decided to maintain trade and economic relations with China. The European Council agreed at its meeting that month on a list of mild sanctions against China, which included the suspension of talks between top government officials, the postponement of new economic cooperation projects, the postponement of new requests for credit insurance and World Bank loans, and particularly an arms embargo.[2] Yet long term economic sanctions were entirely out of the question, and no significant change in European policy towards China followed. Despite the EU agreeing to sanctions against China some EU member states favored them considerably less than others. The British government, for example, secretly sent Percy Cradock and Robin McLaren to Beijing in late 1989 to negotiate the re-opening of sanctioned contracts.[3] British Prime Minister Margaret Thatcher had also been hostile to EU sanctions from the very beginning on the grounds that they could have

---

1 *Disijie Oumeng Zhongguo Maoyi yu Touzi Yuanzuo Huiyi Oumeng JIngji Shehui Weiyuanhui Baogao* (Report of the EU Economic and Social Committee of the Fourth EU-China Trade and Investment Round Table), http://www.china-esc.org.cn/news.asp?id=607

2 Case Studies in Sanctions and Terrorism, Peterson Institute for International Economics, http://www.petersoninstitute.org/research/topics/sanctions/china.cfm

3 Britain's China Policy from 1949 to 2005: From an Idealistic Approach to Return to a Focus on the Economic Factor, Reinhard Eisel, May 2007, http://www.cap.lmu.de/download/2007/2007_eu-china_eisel.pdf

negative implications for Hong Kong.[4] Germany and France were equally less enthusiastic about the application of sanctions. It was on Germany's initiative, for instance, that the interpretation of the arms embargo was left mostly at the discretion of individual EU member states.[5]

Little time past before the EU began to lift the sanctions it had imposed. Already in December 1989 the EC decided to lift the ban on official export credit financing. Following an intense business lobby from German and Italian business circles to press the EU for a quick normalization of EU-China relations, the Italian president was eventually convinced to demand dialogue with China re-start and to lift sanctions gradually starting in October 1990.[6] Since then EU direct investment in China has accelerated. Meanwhile, in 1996, the Chinese government reacted by placing an order of EU passenger aircraft. Former Prime Minister Li Peng made it very clear when he said that "If the Europeans adopt more co-operation with China in all areas, not just in economic areas but also in political and other areas, then I believe the Europeans can get more orders from China."[7] A report in New York Times remarked that:

> China is quite open about rewarding foreign countries for shutting up. In 1997, a month after France helped to stop a resolution censuring China at a meeting of the United Nations Commission on Human Rights in Geneva, China awarded Airbus Industrie a $1.5 billion contract to sell planes to China, making it quite clear that it was because of France's action at the United Nations.[8]

The only EU sanction to remain in place now is the arms embargo. There have been repeated calls for it to be lifted by countries who seek

---

4 Case Studies in Sanctions and Terrorism, Peterson Institute for International Economics, http://www.petersoninstitute.org/research/topics/sanctions/china2.cfm

5 Britain's China policy from 1949 to 2005, http://www.cap.lmu.de/download/2007/2007_eu-china_eisel.pdf

6 EU Economic relations with China , Franco Algieri

7 Ibid.

8 *John Kamm's Third Way,* by Tina Rosenberg, New York Times Sunday Magazine, Mar. 3, 2002. http://www.nytimes.com/2002/03/03/magazine/john-kamm-s-third-way.html?sec=&spon=&pagewanted=1

to gain from selling weapons to China, notable examples include France, who between 2000 and 2007 was repeatedly one of the world's top four suppliers of arms,[9] and Germany. Under pressure from their lobbying EU leaders have on numerous occasions suggested that the lifting of the embargo might not be far off. The US, however, is opposed to this happening and has warned that if the EU lifts the embargo then it might respond by placing restrictions on the transfer of military technology.[10] Lack of progress with regards to human rights is the main reason given by EU leaders for the embargo not to have been lifted thus far.

The reasons for EU's policy towards China after the 1989 crackdown on democratic movement must also be sought from the great social and economic transformation in China since then. After some initial wavering among the top leaders immediately after the crackdown, the Chinese Communist Party had not rolled back the market reform since 1980's, on the contrary, with Deng Xiaoping's 1992 tour to the south it signified the CCP's another big leap forward to full integration with global capitalism by opening up more extensively China's market to foreign investment. It was a temptation that no TNC can resist. A huge amount of FDI (Foreign Direct Investment) has flown into China since then startling old "friends" of China like William Hinton, who had lived in China during the land reform in the 1950's and had written favorably of it. He began to feel frustrated when Deng initiated the market reform in the 1980's; in 1993 he wrote to warn China that it was in danger of becoming a semi colonial country again; since foreign capital had enjoyed continuously expanding freedom it had succeeded in nurturing a class of compradors among children of high level cadres.[11] His warning remained unnoticed in China because by this time the Chinese government had decided that it needed a new kind of friend, namely foreign businessmen.

The US government initially linked trade to human rights in China

---

9 CRS Report for Congress: Conventional Arms Transfers to Developing Nations 2000-2007, Richard F. Grimmett, 2008, http://www.fas.org/programs/ssp/asmp/factsandfigures/government_data/2008/RL34723.pdf

10 Case Studies in Sanctions and Terrorism, Peterson Institute for International Economics, http://www.petersoninstitute.org/research/topics/sanctions/china.cfm

11 *Can the Chinese Dragon Match Pearls with the Dragon God of the Sea? A Response to Zongli Tang,* Monthly Review, July and August Issue, 1993.

in the post Tiananmen crackdown, although it looked like rhetoric rather than real commitment to human rights. Soon Clinton decided to drop the rhetoric altogether and promised to build 'peace through trade, investment and commerce', and de-linked human rights from trade. He was followed by Bush when the latter said 'trade freely with China and time is on our side.'[12]

While the US government showed more wavering over its continued engagement with China in the post 1989 era, the EU and its leading member states had argued, much earlier, that more trade with China would lead to acceptance of universal human rights value by the Chinese government. This was one of the main reasons for the EU and its leading member states to resume full trade and economic ties with China after the 1989 crackdown. The EC's 1995 communication on "A Long Term Policy for China-Europe Relations" stated that:

"EU policy is based on the well-founded belief that human rights tend to be better understood and better protected in societies open to the free flow of trade, investment, people, and ideas. As China continues its policy of opening up to the world, the EU will work to strengthen and encourage this trend."[13]

This communication discussed the growing significance of the Chinese economy and its commitment to engaging in China's markets and improving trade relations, particularly through making China "WTO compatible," so as to improve market access and financially benefit European companies.

The EU has continued to maintain that it is committed to trade as a means of improving human rights up until now. In a 2009 report to the European parliament, the Committee of International Trade reiterated the belief that:

> Chinese society has changed greatly during the last 30 years and that lasting progress can take place only slowly; [we] believes that democracy

---

12 John Kamm's Third Way, by Tina Rosenberg, New York Times Sunday Magazine, Mar. 3, 2002. http://www.nytimes.com/2002/03/03/magazine/john-kamm-s-third-way.html?sec=&spon=&pagewanted=1

13 "A Long Term Policy for China-Europe Relations" 1995, http://www.eu-in-china.com/download/com95_279en.pdf

> requires an effective civil society, which is in turn strengthened by trade and economic relations with the EU; therefore believes that "change through trade" is a way to aid China's transformation towards being an open and democratic society benefiting all sections of society;

What is odd about this is that the statement is immediately followed by the admission that:

> while regretting that the intensification of economic and trade relations between the EU and China has not gone hand in hand with substantial progress with regard to the human rights dialogue; believes that further reforms, especially in the environmental and social areas, are needed in order to ensure overall and lasting progress.[14]

This practically amounts to saying that although for twenty years there has been little progress in human rights as a result of trade, we still continue to believe in "change through trade". Yet it is only self contradictory in appearance; in substance it is not at all. The EU elite is just using human rights as a cover to advance their economic interests.

In reality for all its talk about its commitment to improving human rights, when it comes to EU-China talks and summits human rights are repeatedly pushed aside so as not to obstruct or even damage trading relations . In 1998 Chris Patten (then EU Commissioner for External Relations) said, in relation to Chinese strategy, that

> "The Chinese government believes that all it has to do is to crack the whip – threaten a blocked order here, a withdrawal of its goodwill, a cancellation of good relations until further notice – and we will jump back into line. And by and large we actually do, especially the Europeans."[15]

This comment helps to give us some insight into priorities regarding China-EU relations. It seems that Patten believes that the determination

---

14 Report to the European Parliament on Trade and Economic Relations, 27 January 2009.

15 Cited in "It's the system that matters: Institutionalization and making of EU policy toward China," Franco Algieri in China-Europe Relations: Perceptions, Policies and Prospects, ed David Shambaugh, Eberhard Sandschneider and Zhou Hong, 2008

to maintain good trade relations is of such great importance that it has the potential to control how European countries will behave in response to contentious issues with the Chinese government.

European governments are more serious and more ready to take on China over trade issues than human rights issues. Pressing issues of concern have been the EU's growing trade deficit with China (this reached €169 billion in 2008[16]), as well as China's level of compliance with WTO obligations. "In Europe there is a growing perception that China's as yet incomplete implementation of WTO obligations and new barriers to market access are preventing a genuinely reciprocal trading relationship,"[17] a 2006 policy document set out repeating its intention to, "urge China to move beyond its WTO commitments in further opening its market to create opportunities for EU companies."[18] The EU wants China to remove restrictions to its market and improve access for European goods. Under pressure from business it is also keen that the Chinese government acts to enforce Intellectual Property Rights (IPRs) arguing that, "EU companies suffer from a vast counterfeiting and piracy activity in China that affects their markets on a large scale."[19] The Foreign Trade Association (FTA) for example claim that European companies are concerned about the number of copies of products produced by China as they reduce the number of sales by European companies and damage image due to the poor quality copies.[20]

Despite the lack of priority given on the agenda to human rights, advocates of free trade continue to assert that investment by European business can be an effective way of introducing improved social standards

16 "A Power Audit of EU-China Relations," John Fox and François Godement, April 2009, http://ecfr.3cdn.net/532cd91d0b5c9699ad_ozm6b9bz4.pdf

17 Communication from the Commission to the Council and the European Parliament - EU – China: Closer partners, growing responsibilities, 2006, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2006&nu_doc=631

18 Ibid

19 European Commission: Intellectual Property June 2008, http://ec.europa.eu/trade/issues/sectoral/intell_property/ipr_china_en.htm

20 FTA Position on EU-China Trade Relations, June 2006, http://www.fta-eu.org/doc/unp/opinion/en/eu_china_fta_position.pdf

in supplier companies. "The more European retailers get involved in EU-China trade the more they can and will contribute to the improvement of social standards," argues the FTA who believe that the establishment of initiatives such as the Business Social Compliance Initiative with codes of conduct where buying conditions are based on ILO labor standards will lead to improved working conditions.[21] This argument is deeply flawed and is often far from what happens in reality. Many European corporations who have invested in China have not contributed to an improvement in social standards and working conditions. Foreign investors continue to be complicit in and responsible for worsening labour conditions and rights violations. This includes, for example, the suppression of workers basic labour rights in factories supplying garments to the German company Aldi,[22] to the denial of the right to strike by Danish corporation Maersk.[23] In addition TNCs (Transnational Corporations) have also actually acted to block the Chinese government from passing laws that would allegedly help protect the rights and interests of workers. One example is how the European Union Chamber of Commerce in China campaigned against the implementation of China's Labor Contract Law. Serge Janssens de Varebeke, who was president of the Chamber wrote to the National People's Congress in 2006 warning that the law might "force foreign countries to reconsider new investments or continuing their activities in China," due to the potential of stricter regulations raising production costs.[24] This response explicitly contradicts the claim that social standards and human rights will be improved through increased investment. Instead it shows where EU interests really lie; not with human and labor rights but with keeping costs low and maximizing profits.

In truth Western companies are actually adapting themselves to the

---

21 Ibid, http://www.fta-eu.org/doc/unp/opinion/en/eu_china_fta_position.pdf

22 Labour and Women's Rights in the Discount Business: Aldi's Special Bargains from China, Ingeborg Wick http://www.suedwind-institut.de/downloads/eng_sw_china_aldi-2_extract.pdf

23 Full Release of Investigation Report into MCID, April 2009, http://www.globalmon.org.hk/en/01news/04report-on-maersk/an-independent-investigation-into-mcid-is-urgently-needed/

24 Cited in "An Uncertain Victory for China's Workers" June 2008 Lyle Morris http://yaleglobal.yale.edu/display.article?id=10983

one party state. The TNCs' success in penetrating China's market first and foremost is due to their exceedingly accommodating or even flattering attitude towards the Chinese government. On China's side the Communist Party now needs new kinds of friends, and they have got them --- the foreign entrepreneurs. These entrepreneurs have demonstrated to the Chinese government that they are not only more than happy to forget everything that the latter had done in 1989, but have also presented themselves as trustworthy friends who have been supporting China's great endeavor of merging with global capitalism. Ethan Gutmann, formerly a Senior Counselor at APCO China, a subsidiary of the global investment consultant company, wrote a book after working in China for several years, called Losing the New China: A Story of American Commerce, Desire and Betrayal. In it he shows how the "American companies with Chinese characteristics" like Cisco, Motorola, and Microsoft kowtowed to the Communist party just to do business. He also mentioned the case of Nortel (a Canadian firm), which presented an Internet surveillance mechanism to China to monitor dissidents, potential or real. He describes three ways to guarantee success for foreign companies in China as follows:

> The first way of friendship was pioneered by Shapiro and Rittenberg: follow the Communist Party line and work for the Party's objectives at any given time…
>
> The second way of friendship was the way of all business in Asia: bring a gift (investment, political favors or technology). If Peter Batey could bring in investment and was willing to express confidence in the Chinese state at an hour when others were pulling out, he would be given access to the ministers he needed to run his public affairs shop for years to come.
>
> The third way was the way of the academic and even the journalist: simple flattery, the praise and support of Chinese culture…
>
> These were all personified by an expat named Laurence Brahm…I admired Laurence because he was not using one or two, but all three of the strategies of a friend of China.[25]

---

25 *Losing the New China: A Story of American Commerce, Desire and Betrayal*,by Ethan Gutmann, p. 76 & 81, Encounter Books, San Franciso.

First, something about Peter Batey. He was not a nobody; before he moved to China in 1986, he was personal secretary of the former UK Prime Minister Edward Heath. Batey is 'one of the wisest and most likable long-term expatriates in China today'. He applied for a permit to do business in Beijing just a few days after the Tiananmen Massacre when most of the foreign business people were flying out of China (they soon repented and flew back). The authorities initially suspected him of making some jokes, but soon realized he was serious and rewarded him for his favor generously.[26] According to the official website of the Great Britain China Centre, besides being Chairman of its Executive Committee, Batey is also "Senior Chairman of Vermilion Partners Ltd., an advisory and investment firm focused on China… Peter was chairman of the British Chamber of Commerce in China from 1994-6. He was awarded the OBE for services to Sino-British investment and trade in the Queen's Birthday Honours List in June 1997. He served as President of the European Union Chamber of Commerce in China in 2001-2."[27]

Laurence Brahm is a US lawyer, senior economy consultant, and a think-tanker on the state-own enterprises for the administration of former Premier Zhu Rongji. He becomes exceptionally successful by flattering the Chinese government. He surely got well paid for that: in 2001 he published a book China's Century: The Awakening of the Next Economic Powerhouse which contains contributions from eight Chinese Ministers, plus having former Premier Zhu Rongji to write the forward for him. Brahm also invited Batey to write a chapter for the book. According to Gutmman, after Batey handed in his draft Brahm made amendment to it to look more appeasing to the Party. Gutmman brought the revised draft to show it to Batey,

> As he read, he bagan to shake his head slowly. Then he smiled. Then he began to laugh. Then tears, actual tears of laughter, started to roll down his cheeks.[28]

---

26 Ibid, p.74.

27 http://www.gbcc.org.uk/executive-committee.aspx

28 *Losing the New China: A Story of American Commerce, Desire and Betrayal* ,by Ethan Gutmann, p. 97, Encounter Books, San Franciso.

Eventually Batey withdrew his chapter from *China's Century*.

By scarifying human rights and by intensive lobbying with 'Chinese Characteristics', these Western companies are quick in acquiring China's market. Their success has also triggered off increasing criticism from the Chinese though. Intense debate between the neo-liberals and the nationalists has been going on for years. While the neo-liberals defend the official line of luring foreign investment on the ground that it enable China's economy to grow and to enjoy technological transfer by foreign companies, the nationalists attack it as giving up economic sovereignty to foreign interest, and call for more protection of the domestic market from foreign competition. The nationalists used the metaphor of 'wolves' for these foreign TNCs. In 2004 the State Administration for Industry and Commerce made a report on how foreign TNCs act to restrict competition. It shows that in many industries in China, foreign companies are quick to occupy dominant market shares: software, PC and notebooks, mobile phones, cameras, tyres, packaging industry, large super markets and soft drinks etc.[29] The report gave new impetus to the protectionist or even nationalist discourses. Well known nationalists like economist Yang Fan, accused Western TNCs' investment in China of 'dissolving national sovereignty and national interest', and called for domestic private capital to unite with state capital to form 'national industry' so as to out compete foreign capital.[30]

Despite the debate, the official line of engaging foreign investment has not been changed. There are signs that the authority is increasingly alerted by the growing influence of foreign investment which may result in adjustment of policy, though. For instance, an article appeared in the prestigious official journal Liaowang (Outlook Weekly) in May 2008, which heavily criticized foreign businesses lobbying in China. The author

---

29 Guojia Gongshang Zongju Diaocha Xianshi Kuaguo Jutou Xian Longduan qushi (State Administration for Industry and Commerce Report Shows TNCs' Monopolizing Trend), http://tech.163.com/04/1115/11/157P68NP000915CE.html

30 *Ershiyi shiji zhongguo cenyu guoji jingzheng de huanjing yu dingwei* (The General Situation of China's Participation of International Competition and Its Position in the 21st Century) http://www.usc.cuhk.edu.hk/wk_wzdetails.asp?id=588 See also his speech in the Seminar of National Industry, December 31, 2006. http://www.wyzxsx.com/Article/Class16/200612/13523.html

of the article is Jiang Yong, director of the Research Centre of Economic Security at the China Institute of Contemporary International Relations. According to the Hong Kong newspaper Ming Pao, the institute is closely related to the Department of National Security. It is worth quoting at length:

> Foreign capitals, with the support of their own economic strengths and countries' political backup, have a variety of ways of remaining active amongst the Chinese government at all levels and in important civil associations, so as to consolidate and expand their interests in China… They are increasingly and ever more deeply intervening in China's important affairs and have brought about some complicated effects.

Then the article continues to document six features of the lobbying by foreign companies:

> Firstly, is their intensive lobbying. Foreign interest groups know well about our national conditions, they skillfully use their contacts to access leading cadres of all levels to engage in commercial lobbying so as to influence our decision making… Secondly, is their involvement in handing out favors. Foreign interest groups will hire leading cadres or general employees in the government as their consultants, or generously hand out money to research institutes of the government or the academy with the motive of influencing policy making and legislation…Thirdly, foreign interest groups forge an alliance with domestic interest groups… to lobby all levels of government to earn surplus profits….Fourthly, foreign interest groups forge an alliance with local governments, which themselves are guilty of 'adoring foreign capital'. Hence some local governments exclude Chinese companies and choose to sell shares of state owned enterprises only to foreign companies…Fifthly, the transnational monopolistic capitals tend to forge alliances amongst themselves (to take over Chinese companies)…Sixth, foreign interest groups rely on their own national political strength to promote their business interests. According to a private institute, foreign TNCs paying bribes in China has been increasing for the past ten years; among the 500,000 cases of corruption in China, 64 percent of them have been related to international trade and foreign companies. As experiences in the West show, if there is no restriction on lobbying by foreign interest

> groups here, it will endanger our national interests. Compared to the advanced countries (where they have some legal constraints) these lobbying activities face no restriction at all here. Now is the time to legislate to put lobbying under legal constraints.

Ethan Gutmann thinks that it is the abandoning of ‘American values’ and the adaptation to the one party state of China that explains the US companies’ indifference to human rights in China. The statement in fact carries an implicit meaning: that the evil lays mostly with China’s regime and that US companies will act more decently if they insist on ‘American values’. He is echoed by a well known Chinese liberal, now in refuge in the US, He Qingnian, who wrote the forward for his book. In the forward she used the classical metaphor of ‘yuehuaiweizhi’ to describe the Western companies’ experiences in China. The metaphor is about a kind of sweet mandarin which originated in the South but, once planted in the North, became sour. Here the sweet mandarin stands for the Western companies: they turned ‘sour’ because they are planted in the wrong place, in this case, China.

Conversely, Yang Fan and Jiang Yong attack foreign companies for corrupting Chinese officials and for their alarming influence over the Chinese government and the economy, which are seen as threatening to national interest. This nationalist discourse implies an implicit assumption that there exists a dichotomy of ‘Chinese value’ and ‘Western value’, that the latter necessarily inserts negative influence on the supposed purity of the former. This was exactly also the position of Deng Xiaoping, although he might not go so far in supporting the later day nationalists’ attack on foreign investment, it was he, as top leader, who said 1980’s that ‘opening up our doors (to foreign investment) necessarily bring along with it a few flies’. He was referring to the negative influence of ‘Western influences’ as ‘flies’, which necessarily ‘spiritually pollute’ (jingshenwuran) the Chinese socialism. He reassured his comrades that it only required periodically clearing the house by cracking down on ‘bourgeoisie elements’. He did, by expelling three well known writers from the party.

We are not able to deal with all aspects of the broad subject of foreign investment in China. This paper serves a more narrow purpose, namely to provide an overview of EU companies’ lobbying in China and how the

Chinese government and companies react. After identifying the actors on both sides, we will go on to describe what kind of strategies the EU companies have chosen in order to adapt themselves to the China market, and the areas in which they are most interested in applying these strategies to. Towards the end we will discuss the following questions which have already been touched on in previous sections:

1. The EU's position of 'promote human rights through trade.'
2. The yuehuaiweizhi argument that it is the deviation from the American or Western value, not compliance, which leads some companies to act in violation of human and labor rights or to become involved in corruption in China; that the misbehavior of these companies' can be explained as assimilation into Chinese culture or at least some aspects of it.
3. The Chinese nationalist discourse, which argues that foreign investors are overtly corruptive and exploitative in their influence over Chinese economic, political and spiritual lives, and that there exists a coherent national interest among Chinese companies in fending off the economic penetration of the market by foreign companies.
4. In light of the fact that foreign companies' lobbying in China often involves irregularities or even outright corruption, there is an urgent need to regulate lobbying. Yet, when in China the rule of law is not put into practice at all, it makes little sense to urge for legislation to regulate lobbying alone.

# Section II: Actors:

In this section we will look at the major and minor players concerned with the great endeavor of foreign business lobbying in China. We will also look at how Chinese players act in response to the ever persisting lobbying by foreign business.

The chief actor concerning foreign investment in China is first and foremost the TNCs, but there are also lobbying companies, chambers of commerce etc. In addition to the list there are also their respective countries. For EU companies this also means involving the European Union. Despite the presence of liberal democracy where all citizens are supposedly equal participants in public affairs, TNCs seem to enjoy much greater access in influencing governments or a union of governments than ordinary people. Top government and EU officials are often seen promoting business interests on behalf of big EU companies, attending the latter's banquets and taking CEOs of the latter with them when paying state visits to China. In some extreme cases TNCs have spent millions of dollars bribing government officials to promote their commercial interests. Although this has drawn attention to the need to regulate lobbying, to date only four political systems in the world have any such regulations: the US, Canada, Germany and the EU. According to some researchers, lobbying regulations are much weaker in Germany and the EU than in the other two.[31] It must also be noted that even when the US and its states have a stricter and much older history of regulating lobbying, it has not stopped their big corporations from continuing to enjoy exceptional and often illegitimate powers over government decisions.

By definition lobbying necessarily means the influencing of a government's decision by interest groups. Hence any study on foreign companies lobbying in a host country must include a study of the latter's government. In the case of China this is particularly true because the

---

31 *Regulating Lobbyists: A Comparative Analysis of the United States, Canada, Germany and the European Union*, by Raj Chari, Gary Murphy and John Hogan, The Political Quarterly, Vol. 78, No. 3, July/September 2007.

party state remains exceptionally powerful despite capitalist market reform, which was, according to the main stream discourse, supposed to contribute to the development of pluralism in both economy and politics, or even to the development of civil society. The dismantling of the 'planned economy', the thriving of private business, did mean that the power of the Party in controlling and distributing economic resources to production units all over China has greatly declined since 1990's. This is just in appearance, however. One must not lose sight of the fact that what constitutes the backbone of the new bourgeoisie class are none other than party officials themselves. Maurice Meisner, a well known China expert, argues in his book The Deng Xiaoping Era: An Inquiry into the Fate of Chinese Socialism 1978-1994:

> In a society where the bourgeoisie had been destroyed by a Communist state in the name of carrying out 'the transition to socialism,' the task of creating a new class of entrepreneurs necessary for the functioning of a capitalist market could only be performed by the Communist state itself, now in the name of creating a 'socialist market economy.' The bureaucrats of the communist regime, high and low, were best positioned to take advantage of the new market mechanisms --- and to heed Deng Xiaoping's injunction to get rich…
>
> It is thus hardly surprising that the new Chinese bourgeoisie not only is the creature of the Communist state and its policies but is also largely composed of a Party and state officials, ex-officials, their relatives, and their friends. While a significant portion of the bourgeoisie is private --- not having sprung directly from the bureaucracy --- they are nonetheless wholly dependent on bureaucratic patronage. Moreover, a major segment of the Chinese bourgeoisie is actually composed of bureaucratic organs of the Communist Party-state apparatus, the largest of which is the PLA, an increasingly important actor in the international world of capitalist trade, finance, and investment.
>
> Given its strongly bureaucratic character, China's new capitalist class contributes not to 'pluralism', as many Western observers reflexively assume, but rather to a further blurring of the line between state and society. The history of Chinese capitalism thus far provides little support

> for the recently faddish notion of an emergent 'civil society' striving to free itself from the clutches of the state.[32]

What is exceptional, therefore, is the way that the dismantling of the 'planned economy' has not only left the Party's political power largely intact, but also where it lost this part of its economic power, it has been compensated through allowing itself, or more correctly the bureaucracy, to run money making businesses, either legally or illegally. This has been done either through turning SOEs (State Owned Enterprises) into commercial entities, or through quanqianjiaoyi, which means 'an exchange between power and money.' If there is a substantial redistribution of power it is chiefly among the party state itself, that is to say the central government has had to give up some of its power to regional and local government, a consequence which has important bearing on our discussion below. Moreover, since the state partially withdrew from the economy in an exceptionally slow and gradual way, it necessarily means that it is always the government which the private sector has to look to for any significant business opportunity. Again, it is the bureaucracy who chiefly benefited from privatization. Small and medium sized SOEs (State Owned Enterprises) were often sold to the original directors of the companies, or their cronies, in collusion with local governments. The big SOEs fell into the hands of higher level bureaucrats and turned into commercial entities that were mostly floated in domestic and overseas markets. Since the state or municipal government always retained the controlling shares, it has chiefly been this level of bureaucrats and their families who have benefited from privatization. On the other hand more than 40 million workers were sacked and all protests against dismissal were crushed. Will Hutton observes that

> State, provincial, and municipal governments own state shares and direct legal-person shares, and every SOE has a Communist Party committee to ensure that it does the party's bidding. The system is used ruthlessly, despite the recent moves toward corporatization…

---

32 *The Deng Xiaoping Era: An Inquiry into the Fate of Chinese Socialism 1978-1994*, Maurice Meisner, Harper Collins Canada Ltd., 1996, p. 514.

According to Minxin Pei, the same person is both party secretary and chair in about half the firms; and in more than 70 percent of restructured SOEs party committee members have joined the board of directors. Moreover, the State Owned Assets Supervision and Administration Commission (SASAC), which runs the 196 largest SOEs in conjunction with the party's organization department, decides who will manage which SOE…

Bureaucrats and party officials make decisions not only for the medium and large scale SOE they control directly but also for large private companies…Almost no private company, however well run, wants to leave the opaque, informal world of guanxi personal relationship in which main aims is to hide revenue, cash and profits from outsiders' eyes and from potential political direction.[33]

The second aspect of this 'bureaucrats/capitalist' phenomenon is that

Government departments at all levels run their own companies to make money for the bureaucrats, despite the official ban in effect since the late 1980's.[34] For instance, the police department runs its own security guards companies, the labor department runs it own labor dispatch companies, the fire fighting department run its own companies to sell fire extinguishers, and so forth. Their companies are always successful because they always use their coercive power to sell their services to firms and factories under their jurisdiction.

For instance, the fire fighting department will require factories to buy fire extinguishers from a particular company run by them, or else face the consequences: the factories in question may end up being fined for the most minor offences. Their operations resemble the mafia; in fact, these officials often use local gangsters to do their jobs.[35]

33 *The Writings on the Wall*, p. 142-3.

34 This includes the army. The practice was halted, at least in appearance, in the late 1990's, because it posed too great a risk to the very existence of the state. Various reports show that, despite being sold off and disconnected from the army, high level officers still retain indirect control of these army run companies through their cronies.

35 *China: End of a Model--- Or the Birth of a New One?*, Au Loong Yu, New Politics,

Adding to this highly controlled privatization process is the fact that the Chinese government is still in control of the commanding heights of the economy, despite private economy now accounting for more than half of the GDP. Furthermore, the government still enjoys great regulatory power over all aspects of the business sector: to do the most trivial thing one often has to apply for the proper permits and licenses or pay the necessary fees. The fact that there is little transparency regarding when and how government decisions are reached only adds to these difficulties. China remains a patriarchal country with arbitrary rule as the norm. It is therefore only natural for private business (foreign and Chinese companies alike) to always look to the government, as the first and most important target to lobby. Scott Kennedy wrote

> Officials provide entrepreneurs access to scarce goods, credit, government and oversea markets, and protection from onerous regulations. Entrepreneurs, in return, provide officials with payoffs and gifts, employment, and business partnerships. These vertical alliances far outweigh horizontal cooperation among firms.[36]

In China one may even argue that civil society, as opposed to the state, either does not exist at all in the strict sense, or, if it does exist in a loose sense then it is so marginal and at the absolute mercy of the party state --- thanks to the success of the state in outlawing any attempt at autonomous association --- that it offers little civil space to common citizens. This even applies to business sector. In China nearly all chambers of commerce or industry association are controlled by the government.

Only with the correct understanding of the characteristics of Chinese capitalism can one grasp the reason why the government or its officials remain the most important actors in any discussion of business lobbying in China.

---

Summer Issue, 2009.

36 *The Business of Lobbying in China*, p. 10.

## European companies in China

EU FDI to China has been on the rise since 1980's, and its share in total FDI to China has increased significantly since the latter half of the 1990's. Whereas in the periods of 1986-89 and 1990-94, EU FDI in China accounted for 5.17 percent and 3.55 percent in average of national total respectively, between 1995-99 it rose to 8.32 percent and 8.2 percent in the period of 2000-05. At the end of 2005 Chinese Ministry of Commerce statistics showed the European Union as being the third largest investor in China from abroad with stocks of $62.352 billion.[37] As of 2008 there were more than 20,000 European funded enterprises in China.[38]

Given China's size and its rapid economic growth, uninterrupted for more than 30 decades, the TNCs' China strategy naturally aims at long term commitment rather than short term profitability. It was said that approximately three quarters of US and European firms described their overall approach to Chinese business strategy as aimed at establishing a long-term presence and high commitment to the Chinese market. Below gives the example of GM:

> The four principles of General Motors China Group, for example, well illustrate its commitment to Chinese society as a whole. Its first principle is the corporation's long-term participation in China's automobile industrial development. The second principle is to lead China's auto industry into the world because General Motors is the largest automobile company in the world. The third principle is to share its most advanced technology with the Chinese automobile industry. The fourth principle is to localize its practices in China. At present, among all the 4,000 employees in China, General Motors China Group hires 3,880 employees from the local labor market.[39]

The transfer of technology is one area where China hopes to gain from FDI. The EU takes advantage of this in the way it presents investments

---

37 *China's Commercial relations with Europe*, Zhang Zuqian in *China-Europe Relations: Perceptions, policies and prospects* ed Shambaugh, Sandschneider, Hong, 2008

38 Ibid.

39 *Effective public affairs in China*, Journal of Communication Management, Vol.8, 2004.

by EU companies and the accompanying transfer of "technology, management know-how and best practices," in terms of positive benefit to China's economic growth. [40]. According to Whitla and Davies, however, European companies have actually made a much less significant contribution to technology transfer through investment than might have been expected.[41] Nevertheless the nature of European investment means that it is perceived to be of great importance. This is because in contrast to FDI from Hong Kong, Taiwan, South Korea and Japan, which are more inclined to invest in often labor intensive projects which are meant to be re-exported to the world, EU's investment in China tends to be more in high end, high-tech projects which have a "catalytic impact"[42] on China's development. The majority of EU member companies are actually shown to be active in the petrochemicals, oil and gas, energy and utilities, pharmaceuticals, construction, information technology and telecommunications industries[43] with numerous companies setting up Research and Development investment programs. In addition European investment in the retail sector has also been growing, particularly since China became a member of the WTO as it meant that previous restrictions to market access were lifted.

One of the major ways that FDI takes place in China is through Joint Ventures (JVs). This way of operating, however, is seen by the EU as limiting to business and there is a move towards an increased number of EU companies operating as Wholly Foreign Owned Enterprises (WFOEs). Between 2004 and 2006 the number of companies operating in this way rose from 13-33%. EU companies complain that having a company run by two heads complicates decision making and therefore

---

40 European Chamber: European Business in China Position Paper 2006/7, Executive Summary

41 *Europe's Role in the Transfer of Technology to China*, Paul Whitler and Howard Davies, in *Trade and Investment in China: The European Experience,* ed Strange, Slater, and Wang, 1998

42 *Europe's Commercial Relations with China*, Robert Ash in China-Europe Relations: Perceptions, policies and prospects, ed David Shambaugh, Eberhard Sandschneider and Zhou Hong, 2008

43 European Chamber: European Business in China Position Paper 2006/7, Executive Summary

prevents advancement.[44] Costs of finding a partner, costs of negotiations and risks of opportunistic behaviour by partner companies are further reasons that have been cited as to why companies find WFOEs more favourable.[45] Indeed the European Chamber argues that a higher number of companies would operate as WFOEs if it was not for the way the Chinese government forces some businesses in key sectors such as petrochemicals, pharmaceutical and automotive industry to operate as joint ventures. It is noticeable that these are the key sectors where China seeks to gain most in terms of high level technology transfers. This therefore shows conflicting interests and might be viewed as contradictory, seeing as the EU presents itself in terms of how it can benefit China through such transfers.

At the same time it is also interesting that the Chinese companies themselves are not always reported as being satisfied with their European partners in these sectors. Claims have been made that Joint Ventures do not bring equal gains to both partners. Those in Joint Ventures with German company Volkswagen, for instance, have complained that while Volkswagen is earning significant amounts of money from China, it has brought too little an advancement in technology in exchange. Zhang Zuqian gives the example of how in 2003 it was reported that 80% of Volkswagen's profits came from its activities in China, where as only 14% of its global sales came from its joint ventures based in China. Volkswagen sold automotive parts to its Chinese partners at a rate 30% higher than in Germany, and seeing as most of the equipment in Shanghai Volkswagen's factories was imported from Germany, this is an example of an EU company failing to promote the expected development of industry[46]

44 Ibid

45 *Europe's Role in the Transfer of Technology to China*, Paul Whitler and Howard Davies, in *Trade and Investment in China: The European Experience,* ed Strange, Slater, and Wang, 1998

46 Zhang Zuqian

Numerous EU policy papers and reports endorse commitment to continued investment in China. A European Chamber Executive Summary paper on its position towards China from 2006 states that "European member companies are generally profitable and optimistic about their future in China," and that "The Chamber supports the increased integration of EU companies into China's economy and is pleased to play a role in this process."[47] Nevertheless despite such papers reiterating optimism by EU companies based on the belief that China's economy can continue to grow, it is important to consider that investment by European companies has not always been matched by financial returns and the expected great profits. A survey of EU companies conducted in the late 1990s revealed that half were failing to meet profit and cost expectations.[48] In 2004 a Deutsche Bank report confirmed that this continued to be the case for the EU country with the largest share of investment in China. Citing concerns over excess capacities and decreasing investment efficiency, it noted that in a lot of cases, for Germany, profitability of existing investment had still yet to materialise.[49]

Another point worth considering is the fact that the main reason given by participants in the EUCCC (European Union Chamber of Commerce in China) 2006 business confidence survey, for investing in China was to produce goods in China for China.[50] The European Chamber summary paper concludes that this shows how EU companies do not simply wish to invest in China as a manufacturing base but also see its domestic market as being of greater importance. Robert Ash also argues that this must be a key reason why European multinationals seek to invest in China; Western European companies also have access to cheap land and labour in Central

---

47 European Chamber: European Business in China Position Paper 2006/7, Executive Summary

48 *Europe's Commercial Relations with China*, Robert Ash

49 Foreign Direct Investment in China – good prospects for German companies? Deutsche Bank Research, August 2004.

50 European Chamber: European Business in China Position Paper 2006/7, Executive Summary

and Eastern Europe with wage costs in Bulgaria and Romania comparable to those in China.[51] On the other hand, it still cannot be denied that many European enterprises continue to move European production plants to China in order to manufacture products for export elsewhere.[52] According to Walden Bello:

> "By the turn of the millennium, the dream of exploiting a limitless market had vanished. Foreign companies headed for China not so much to sell to millions of newly prosperous Chinese customers but rather to make China a manufacturing base for global markets and take advantage of its inexhaustible supply of cheap labor. Typical of companies that found themselves in this quandary was Philips, the Dutch electronics manufacturer. Philips operates 23 factories in China and produces about $5 billion worth of goods, but two thirds of their production is exported to other countries."[53]

The EU was a strong supporter of China's ascension to the WTO due to its desire that China would open up its markets much more fully. Today, however, frequent concern is raised by investors that WTO terms are not being properly adhered to. According to the European Chamber executive summary paper, "Members are hopeful that Chinese officials will increasingly adhere to the WTO principles of non-discrimination, freer trade, and predictability when developing policy."[54] EU companies investing in China complain about obstacles created by the Chinese government which limit the way that they do business. Examples include lack of protection of intellectual property rights, lack of transparency as well as the introduction of specific Chinese standards. The way that the issue of licensing agreements is presented in the 2006 summary is particularly

---

51 *Europe's Commercial Relations with China*, Robert Ash

52 See *Economic Relations Between the PRC and States of Europe*, Markus Taube in *China and Europe since 1978: A European Perspective* ed R. Edmonds, 2002

53 *Chain-Gang Economics: China, the US and the Global Economy*, Walden Bello, May 2007

54 European Chamber: European Business in China Position Paper 2006/7, Executive Summary

telling of EU attitudes towards competing in the Chinese market. The Paper complains about the "unfair cost advantage" for Chinese companies as a result of an absence of licensing agreements leading to a loss of market share for European companies, while at the same time it presents the adoption and upholding of licensing arrangements as beneficial to China in the way that it would lead to more high-tech investment by European companies (who are reluctant to invest without licensing arrangements), which in turn, it argues, would thus enhance China's development. In other words EU companies hope for fewer limitations on their ability to compete in the hope that they can dominate a larger section of the market, at the same time they see the need to make it appear as though there is an incentive for China to do this.

Indeed there is concern by EU companies that it is imperative to adapt to the changing needs of China in the course of its rise. The 2006 summary paper cites concern over the perceived increase in emphasis on economic nationalism. Burson-Marsteller China, the subsidiary of the global PR company, published a newsletter *China Perspective*, and in the May 2009 issue it reminded foreign companies to be aware of the fact that with China's rise, the country is moving from extensive growth to intensive growth, which 'evolves an approach that is more selective about foreign investment', an approach that 'include greater relative emphasis on areas involving technology and knowledge transfers – coupled with various other strategies to overcome a perceived over-reliance on foreign technology and foreign market dominance'. It also alerts foreign companies that the authorities now want to retain and develop home–grown Chinese "national champion" companies.

> The recent decision by China's Ministry of Commerce to decline Coca–Cola Co.'s proposed acquisition of China Huiyuan Juice Group Ltd – a "famous Chinese brand" – can for example be understood from this perspective.[55]

---

55 *Navigating in 'Interesting Time'*, China Perspective, May 2009. http://www.burson-marsteller.com/Innovation_and_insights/blogs_and_podcasts/BM_Blog/Documents/China%20Perspective%20May%202009.pdf

An important point to make concerning foreign companies investing in China, however, is the fact that it would be wrong to consider either the EU companies or the Chinese companies as representing two distinct sides. There are common interests among foreign companies in making China more business friendly. This leads them to join hands in lobbying for the kind of legislations that serve their purposes. On the other hand however, there is always fierce competition among foreign companies over the market share of any particular industry in China, and this often leads them into allying with different Chinese companies to elbow out other foreign companies. This competition has actually allowed the Chinese government to play foreign companies off against each other in order to advance its own interests. James McGregor, once chief executive of Dow Jones & Co. in China, wrote in his book *One Billion Customers* that the Chinese government is so good at the art of playing foreign investors off against each other, in order to get the greatest benefits for itself, that it has reached 'Olympic game level'. His book mentions the example of the Three Gorges Dam, where the Chinese government allegedly led TNCs like Siemens, Mitsubishi, General Electric into a fight among themselves to get the contracts. In the end, the only proposals that were accepted were those which, in addition to providing the Chinese government with the best price, the best technology and technology transfer, added a clause stating that they would have to raise their own funds.[56].

Despite a rising tide in economic nationalism in China, it is equally true that Chinese companies, even if they are state owned, willingly participate in the same type of competition among themselves, and therefore are played off by foreign companies as much as they do to the latter. They are more concerned with the maximization of profit than the supposed national interest. Scott Kennedy, Associate Professor of East Asian Languages and Cultures and Political Science University of Indiana, who wrote the book *The Business Lobbying in China*, remarks in a separate paper that

> Because Chinese firms were integrated into global business networks, the MNCs did not face a united front of Chinese opposition but instead had local allies who lobbied on the same side. Chinese leaders

56 Chinese edition, Common Wealth Magazine Co. Ltd., Taiwan, 2006, p. 101.

> have long boasted of pitting foreigners against each other to keep them at bay, what in imperial times was called "using barbarians to counter [other] barbarians." It seems that multinationals have been able to turn this axiom on its head, using their Chinese allies against other Chinese interests.[57]

A final point to consider regarding EU companies investing in China is the way that the EU is keen to present their investment ventures by companies as having a positive role not only economically but also in terms of how they can contribute to improving labour conditions and helping with environmental protection. SUEZ Environment, a French industrial services company, for example, are reported as claiming to bring, "innovative technology and management experience that improves the welfare of people, protects, the environment and contributes to sustainable development."[58] An article in CNBC European Business magazine praises a subsidiary of the company, Sino-French Water Development, for providing drinking water and sewage treatment services to over 13.5 million people in China.[59] It doesn't acknowledge that access to water should be a right not a service or the fact that vast numbers have suffered due to water privatization in China as water corporations try to make huge profits, for example through water tariffs, at the expense of ordinary people.[60] In addition is the fact that, as highlighted previously, despite their rhetoric EU companies have been complicit in labour rights violations in China as they have been keen to take advantage of cheap labour, long hours and forced overtime.

---

57 *TPA: exploration with evidence from china*.

58 *Make Money in China: How To Get Rich When You Enter the Dragon's Den*, Vanessa Wong, May 2008 http://cnbceb.com/country-regional-city-reports/make-money-in-china/434/

59 Ibid

60 For more detailed information concerning how water privatization in China has caused problems in the lives of Chinese people see Globalization Monitor's "The Reform of the Urban Water Supply in Southern China: Water Privatization in China" http://www.globalmon.org.hk/en/wp-content/uploads/2009/04/water-privatization-in-south-china_mar09.pdf

## EU Chambers of Commerce

To advance their interests in China TNCs need to have organizational strength. The Chinese government, which has been so used to its paternalistic role, set up the China Association for Enterprises with Foreign Investment in 1987 on behalf of foreign investors who had just begun operation there. It established a national network in every province to look after the interests of foreign companies. At the end of 1997 it had ninety thousand members, making up 62 percent of all foreign companies in China. Yet foreign companies do not feel that it is their association.[61] Soon foreign chambers of commerce were organized according to nationalities. By 1999 there were already forty-four foreign chambers of commerce in China. The American Chamber of Commerce was created by industry, while the EUCCC (European Union Chamber of Commerce in China) was founded by its home governments and all companies in China from the region are members.[62] Chambers of commerce lobby both the Chinese government and their home governments and they often have committees and working groups to focus on specific industries and momentary problems.[63] According to the official website of the EUCCC in 2008 it had 1400 member companies, a Beijing head office and six branch offices nationally. It had 25 working groups to cover the most important industries such as automobile, pharmacy, aerospace, finance, intellectual property, energy, human resources etc.[64] In China, common people do not even enjoy the full right to petition the authorities. In Beijing and the rest of China, the beating up of petitioners to block them from petitioning is a daily occurrence. In contrast, the working groups of EUCCC, or American Chamber of Commerce, have direct access to high officials from the corresponding Chinese government departments, something which the EUCCC are proud of. The EUCCC hosts several

61 Kennedy, Business of Lobbying in China, p. 33.

62 Although the American Chamber of Commerce was set up much earlier in 1982, and the EU Chamber of Commerce was established much later in 2000.

63 Kennedy, Business of Lobbying in China, p. 33.

64 http://www.euccc.com.cn/

functions every month, from banquets to seminars, to closely monitor the business environment in China.65 We will see below how these chambers of commerce lobby intensively advance their commercial interests.

Both US and EU Chambers of Commerce issue a white paper or position paper annually, which make suggestions to the Chinese government concerning the need to make improvements to market access for foreign companies, dismantle trade barriers, and to strengthen protection of intellectual properties etc. Both organizations get the attention of high level officials from their respective country/union, as well as the Chinese government. In 2005 European Trade Commissioner Peter Mandelson flew to Beijing to attend the EUCCC's conference where its position paper was released. The December of the same year Bo Xilai, Minister of Commerce of China, attended the banquet of the American Chamber of Commerce and made a speech praising the latter's contribution persuading US Congress to approve China being given Permanent Normal Trade Relations status in 2000 and also its efforts in supporting China's accession to the WTO in 2001. In a report by a local journal, the author remarks that despite these policy papers sometimes being very critical of China's economic policy on opening up the market, they serve a good purpose as well:

> Some of the US Congress members have been influenced by China bashing, and become biased and began attacking China for this or that 'misconduct'. The American Chamber of Commerce's annual white paper corrects the mistakes of these people to a certain extent.[66]

We already reported on how Peter Batey, former chairman of the British Chamber of Commerce in China, acted immediately after the Tiananmen Massacre. What follows is John Kamm's story, which is equally illustrative of the way foreign companies and their chambers of commerce act when it comes to human rights in China. In 1989, Kamm was vice president of the American Chamber of Commerce in Hong Kong. He was also regional vice president of Occidental Chemical

---

65 *Zaihua oumei shanghui: jieli wei zhongguo youshuo de waiguoren* (EU and US Chambers of Commerce: Foreigners who lobby in China), May 15 2006,

66 Ibid.

Corporation, a multinational company. When the Tiananmen Massacre broke out he convinced a narrow majority of its members to pass a resolution condemning the suppression, while the rest of them insisted the Chamber should not make political statements. The following year, he became president of the Chamber. Due to close trade relations between Hong Kong and Mainland China he was very much connected to what was happening in Mainland China as well. During his one year tenure, he pressured Beijing to release political prisoners, but also advocated the extension of China's Most Favored Nation (MFN) trade status, because he believes in 'change through trade'. His colleagues in the Chamber continue to disagree with him, though. The New York Times reporter, whom we quoted earlier, reported that in 1991, Kamm's successor wrote to ask him to ensure that the press did not link the Chamber to his comments on human rights.

> Certain companies with significant business interests in China, the letter said, were worried that AmCham (American Chambers of Commerce) might be seen as a partner in activities 'which not only exceed our charter but which, it is felt, could trigger unfortunate reactions.' A month after that, the chamber passed a resolution that it should not be 'overtly linked/associated with' noncommercial issues.
>
> [Ten years later] Kamm … asked for AmCham's help (on China human rights issue). 'The majority of American corporations all around the world are not with you on the issue of working on specific cases,' said Christian Murck, AmCham's incoming chairman.
>
> A year ago, Kamm sent a letter asking for money from 100 companies that are members of both AmCham Hong Kong and the United States-China Business Council. 'Not a single company offered any kind of support -- moral or financial,' he says, adding, 'I did get a couple of $100 checks from employees.'
>
> American executives in China today are not exporting American values. Rather, they have absorbed those of the Chinese Communist Party, praising repressive leaders and endorsing, through silence or worse, their methods.[67]

---

67 *John Kamm's Third Way*, by Tina Rosenberg, New York Times Sunday Magazine,

## Foreign Lobbying companies

Since the 1980's many leading lobbying and public relations firms, including APCO, Ogilvy, Burson-Marsteller, Interpublic Group, Ketchum, Jones Day, Hogan & Hartson, DLA Piper and Hill & Knowlton, in addition to many of the 100-plus international law firms, have already set foot in China.. Together they provide valuable services to TNCs in promoting the latter's business interests in China. The efforts of these foreign PR companies do pay off. Partly thanks to their work, the Chinese bureaucracy is becoming more and more responsive to their persuasion. In the past, even low level officials might treat foreign companies with arrogance, be it concerning small things like processing applications for business licenses from foreign companies, to bigger issues like announcing new taxation laws with crippling short notice. Now things have changed rapidly. A 2007 Washington Post report is worth quoting at length:

> Armies of lobbyists are descending on the Chinese capital in anticipation of the 17th Communist Party Congress beginning in mid-October. The gathering will choose a new generation of leaders, setting the political agenda for the next five years.
>
> But the dark-suited Western lobbyists are an odd spectacle given that in China, policy and legislative decisions are still made behind closed doors. Lobbying exists in a gray area; because there are no laws specifically pertaining to it, it isn't even supposed to exist.
> In June, foreign companies successfully lobbied Chinese officials to remove conditions on hiring temporary workers in a new labor law that they said would make it prohibitively expensive to do business in China. Likewise in August, they were able persuade China to remove some language in early drafts of the anti-monopoly law that seemed to discriminate against foreign companies, according to Chinese and foreign academics. The Chinese government has said it took input from domestic and foreign interests into account but has not been specific...

---

Mar. 3, 2002. http://www.nytimes.com/2002/03/03/magazine/john-kamm-s-third-way.html?sec=&spon=&pagewanted=1

> Evans said that the degree to which Chinese officials are interested in hearing foreign perspectives on business issues has increased dramatically. In the past, he said, he would go into government meetings and recite a set of bullet points, and the meeting would end. These days, he said, there's real discussion and debate.
>
> 'They are very proactive in wanting to engage and share with the business community,' Evans said.
>
> Scott Kennedy, director of the Research Center for Chinese Politics and Business at Indiana University and author of "The Business of Lobbying in China," said that as recently as a few years ago foreign companies would grumble that they heard about new policies only after they were announced.
>
> 'That is increasingly no longer the case. Today, even if they don't agree with the final result, they know it's on the horizon,' Kennedy said.[68]

From the very beginning foreign PR companies chose to work closely with government officials in order to have access to China's vast domestic market. Scott Kennedy has this to say:

> There are two types of lobbying firms in China. Some are best characterized as PR firms, where 'PR' stands not for 'public relations' but 'private relations.' Staffed by former officials or relatives of current officials, they use their connections to solve specific, narrow-gauged problems for individual companies. While some of these outfits have contacts with national politicians, they primarily deal with provincial and lower level government and party officials. By contrast, lobbying firms focused on national policy employ former officials but use them not as 'influence peddlers' but as part of their strategy to push broader policy issues… According to an interview source, these staffers helped the firm through the bureaucratic maze so the company could present its policy positions to decision makers.[69]

---

68 *As China Opens, U.S. Lobbyists Get Ready to Move In*,by Ariana Eunjung Cha, Washington Post, http://www.washingtonpost.com/wp-dyn/content/article/2007/10/01/AR2007100101672.html

69 *The Business of Lobbying in China*, P. 54

The aforementioned Burson-Marsteller entered China in 1985 at the invitation of Xinhua News Agency, and become one of the first global public relations firms to operate in the mainland. Burson-Marsteller is one of the largest PR companies in the world. It has recruited former high level officials from the US government, and has been criticized for organizing a campaign against human rights organizations at the behest of the last Argentine military dictatorship (1976-1983). With its help the Xinhua News Agency established the first Chinese PR company, the China Global Public Relation Company (CGPR). Burson-Marsteller China has prestigious clients like Philips, Unilever and Intel.[70] It was awarded 'Consultancy of the Year' at the 2003 PR Week (Asia) annual awards ceremony held at the Grand Hyatt in Hong Kong in November, 2003. BM China was first recognized as Asia Pacific's 'Consultancy of the Year' in 2001.[71] This may be one indication that the company is doing well in China with its long earned expert knowledge of 'Chinese Characteristics', as defined by the Chinese Communist Party. In the May 2009 *China Perspective*, the company's newsletter, reminds foreign companies of 'two fundamental requirements' for them 'to earn differentiated reputation capital, brand equity and trust with Chinese stakeholders'. They are:

1. To be perceived as supporting and making a value–added contribution to the achievement of China's overarching and specific development goals and objectives (as articulated and defined by the Chinese government, but also in a broader sense).
2. To do so with the "right attitude" – an approach perceived as sincere, appropriate and sensitive to local conditions, expectations, culture and aspirations (Chinese stakeholders particularly dislike perceived arrogance or patronizing behavior from foreign companies – in part because of China's unique historical experiences with foreign

70 *Boya Gongguan de Zhongguo Jiqing* (Burson-Marsteller's China Dream), http://www.buildcc.com/index.php/viewnews-334875

71 *Burson-Marsteller China Named '2003 Consultancy of the Year'*, http://goliath.ecnext.com/coms2/gi_0199-642899/Burson-Marsteller-China-Named-2003.html

capital, as defined by the Communist Party).[72]

## The EU and its member states

Any discussion of EU companies lobbying in China cannot afford to leave out the role played by the European Union and its member states. The latter, through 'diplomatic lobbying', has helped its companies to further open up China's market. The most important 'diplomatic lobbying' in recent years has been the US and EU negotiations with China over the terms of China's accession to the WTO. The US and China concluded negotiations in 1999 making the subsequent negotiations between the EU and China a lot easier.

In order to access the WTO the Chinese government made huge concessions to the US and the EU; concessions that many developing countries like India had resisted. It voluntarily gave up the 10 percent domestic support in agriculture that developing countries are entitled to and accepted 8.5 percent instead. China's tariff cut is much deeper than India's[73]. Its average tariff for agricultural goods is now as low as 15%. This is significantly lower than the average 24% among developing countries. While India lowered her industrial goods average tarrif to 25-40%, China further cut its own to 10%. Chinese state owned trading *and investment* firms are required to function commercially, whereas WTO rules only requires trading firms to be subjected to market forces.

In the current General Agreement on Trade in Services negotiations the US and EU are delighted that China was so forthcoming in opening up her services sector. Recently, Bo Xilai, the commerce minister, proudly told his audience that while developed countries have opened 80 percent of 160 service sectors (specified by the WTO), and developing countries have opened 20-40 percent, China has opened 62 percent of her service

72 *Navigating in 'Interesting Time'*, China Perspective, May 2009. http://www.burson-marsteller.com/Innovation_and_insights/blogs_and_podcasts/BM_Blog/Documents/China%20Perspective%20May%202009.pdf

73 For instance, see *China and the WTO: An Economic Balance sheet*, by Daniel H. Rosen, Institute for International Economics web site

sectors to foreign competitors[74]. China's cutthroat competition helps the US and EU to press developing countries to follow China's example.

Regardless of the question of whether China's agenda of seeking increased economic influence through accession to WTO will be successful or not, the truth is that common peasants and workers have not benefited from the growth in trade and economy. On the contrary, in order to enter the WTO, China has restructured its industry and privatized its public service. As a result millions of workers in the state sector lost their jobs. For the same reason, the Chinese government also sacrificed the peasants. The agricultural tariff was reduced to one of the lowest in the world. All of the above measures will compound the impact of imported cereal products, and lead to the destruction of small peasant economy in the future. According to the official research, under the terms of WTO accession, more than 12 million farmers will have to leave the land. A recent World Bank report stated that since China's accession to the WTO, the average income for rural households has fallen 1%, and for the poorest it has fallen 6%.Recently, China become a net importer of agricultural products. This is quite alarming for a big country like China.[75]

Since China's accession to the WTO in 2001, the EU and its member states have continued to be active in monitoring China's implementation of its commitment to open up its market under the WTO framework: transparency, national treatment, reduction of customs duties, abolition of technical barriers, protection of intellectual property etc.

The other aspect of 'diplomatic lobbying' consists of top government officials or even the head of state of respective EU countries paying visits to China, often accompanied by bands of TNC CEOs, to win big government procurement contracts.

## Chinese central and local governments

Although China has been exceptionally open to foreign investment since

74 *Hong Kong Economic Journal*, 10 June 2005

75 These three paragraphs draw heavily from the paper by Au Loong Yu, *China accession to WTO and its consequences for working people*. Posted at Globalization Monitor, http://globalmon.org.hk

1992, there is always tension between the central and local governments concerning its practical implementation. The central government has favored a kind of open door policy for foreign investment in a gradual and directed, orderly way, and has laid down numerous directives to ensure this. The local governments, however, have their own agenda. Since the promotion of local officials is dependent on their ability to make the local economy grow and to attract enough foreign investment, they often ruthlessly cast aside labor and environmental protection laws in order to achieve their goals. In addition they are also usually either directly or indirectly involved in money making business as well. Having their own career and their own commercial interests to look after, local officials have long become relatively autonomous economic entities. They will therefore try to get around policy and directives from the central government if necessary. This is so called difang baohuzhuyi, or local protectionism. The local's tactic in getting around the central government is also known as shangyou zhengce, xiayou duice (if there is a policy above, then there is a strategy below to get around it). The local officials are not afraid of censure from the top. They can be heavily censured or deposed if they allow the people to enjoy freedom of speech or association, but few have met this fate for allowing foreign companies to pollute rivers or for allowing unscrupulous employers to poison thousands of workers through occupational hazardous chemicals. On top of this is the absence of a rule of law. Everyone believes that what matters is not what the laws say but whether one has good patron; if anyone is deposed it is not because he or she acts against the central government's directive but because he or she does not have a good enough patron.

> The third example is General Motors China Group's 'spread their dances around' strategy. This strategy breaks the group's whole operation into smaller units and tailors each one to pursue a niche with the relevant set of government authorities as stakeholders. This strategy gives General Motors China Group quick access to the market by overcoming governmental red tape.
>
> For example, Special Economic Zone (SEZ) authorities can benefit directly from job opportunities, taxes and revenues to their jurisdictions. As a result, SEZ authorities may assist foreign firms in overcoming policy

> restrictions regulated by the central government to secure their own stakes in the operation of foreign enterprises. The Tianjin Technological and Industrial Development Zone Authority (TIDZA) exemplified this situation well. The TIDZA Authority completely supported its biggest client, Motorola China, and challenged Beijing in a number of regulations to assist Motorola in becoming a member of the zone. In sum, the complex governance and management of foreign operations gives political power to different levels of the Chinese authorities involved. Conflict among central, regional and local governments influences the formation of foreign business policy because the net bargaining power a multinational corporation has is determined by its relationships with the different levels of government.[76]

The central government is supposed to look after the national interest, which is also supposed to override the narrow regional or local interests. The problem here is that it is the central government's policy to pursue capitalist market reform and in particular to open the door to foreign investment, which means it has to bear the consequence of such a policy, namely a restructuring of power sharing within the government to the benefit of regional and local officials. One might say that a centrifugal force has been released among the party state because of the reform. It is particularly strong at the regional and local level, but one can also feel its influence even in the central government where economic pluralism has been developed in the pursuit of an alliance with different interest groups at the regional and local level. Yang Fan, whom we quoted earlier, told an interesting story about a certain German brewery company's investment in China:

> Ten years ago I worked in the Price Administration Bureau…Hubei provincial government entered into a joint venture with a German brewery company. To protect its own brewery the Hunan provincial government would not allow beer from this joint venture to enter into Hubei. (The dispute) was supposed to be settled in our bureau. The bureau had two deputy directors, each of whom lobbied on behalf of one

76 *Effective public affairs in China*, Journal of Communication Management, Vol. 8, 2004.

> of the provincial governments. The director tried to find the middle of the road, but before he achieved anything the joint venture had already approached one of the top leaders in the central government and got what it wanted. This particular top leader was also a leftist, but do not allow yourself to have the illusion that being leftist necessarily means he (or she) would not take good care of foreign investors. A lot of people are accustomed to saying one thing but doing otherwise.[77]

'Parkinsons Law' on bureaucracy, according to which bureaucracy tends to expand over time as officials always want to multiply subordinates, not rivals, and make work for each other.[78] provides another reason for the thriving of 'local protectionism.' This seems to perfectly fit the situation in China: despite repeated calls for downsizing the numbers of public employees, the bureaucracy goes on expanding. Lower level governments always find ways to get around official policy, for instance hiring short term contract employees to do the dirty job of maintaining public order. In fact the bureaucracy has grown to such a size that its rank of administrative functionaries has reaches 11 million, and if all public employees are included this number amounts to over 50 million. The immense size means that the centre loses some of its practical control over its lower level bureaucrats.

## Chinese consultant companies

There are 400 different national industry associations, but they are founded either directly or indirectly by the government. "Most have been staffed by government officials, have had their offices in government buildings, and have been financed out of the government coffers."[79] Hence these industry associations are not seen by entrepreneurs as representing their interests. They prefer to do lobbying directly. Many big Chinese

77 Yang Fan's speech in the Seminar of National Industry, December 31, 2006. http://www.wyzxsx.com/Article/Class16/200612/13523.html

78 http://en.wikipedia.org/wiki/Parkinson's_law

79 *TPA: exploration with evidence from china*, Kennedy, 184.

companies open the special post of CGO (Chief Government Officer) and hire former officials to facilitate their dealing with government departments. For instance, Sina hired Lin Zhun as Deputy Government Officer because he worked in the central government between 1975 and 1992.[80] The other way to do the work is to hire lobbying companies.

China learns fast in every trick in the business world, and the art of lobbying is no exception. The harmonization with global capitalism has brought about a rapid growth of Chinese consultancy and lobbying companies out of nothing. To be successful these companies have to employ former government officials or people with powerful guanxi (connections, see section III). Although this practice is not specifically Chinese; the size and extensive involvement by children of government officials is exceptional:

> The importance of *guanxi* in navigating the bureaucracy in China cannot be overstated, and in recent years it has become a commodity that is increasingly for sale. Many of the sons and daughters of high ranking cadres, in particular, have set up 'consulting shops' or 'service' companies and offered their ability to mobilize their own *guanxiwang* (network of connections) and those of their parents, to the highest bidder.[81]

As mentioned earlier, Burson-Marsteller helped Xinhua News Agency to found the first PR company in China in 1985, the China Global Public Relations Company (CGPR). The fact that this first PR company was founded by a government agency is a bit ironic: if the CGPR is commissioned by a foreign company to lobby a certain Chinese government department, what this means practically is one public agency lobbying another public agency. In fact, in our case study on Unilever this was exactly what had happened. Because of its connection with the government, it has exceptional advantages over other PR companies. In its official website it lists five successful lobbying cases[82]:

---

80 *Zhongguo Shangye Youshuo Baitai* (Business Lobbying in China), http://news1.jrj.com.cn/news/2006-10-25/000001732166.html

81 *Guanxi: Grease for the Wheels of China*, Scott D. Sellgman, The China Business Review, Sept-Oct 1999.

82 http://www.cgpr.com/english/hqtd/hqtdyyszy.htm

- ♦ Opening the door of localization -- government relations case involving the visit to China of two board chairmen of Unilever;
- ♦ Exploring the mystery of OMO's price cut - media relations case involving the OMO brand of Unilever;
- ♦ How to promote brand recognition - case involving market promotion for Du Pont's Nomex paper;
- ♦ Giving the enterprise an engine - case of providing a series of PR services for Varity-Perkins;
- ♦ Risperdal-- PR case for a special medicine.

Chinese consultancy companies do more than regular business lobbying. Their chief mission is to cultivate *guanxi* (connections, see section III) and in many instances this involves bribery. James McGregor's book *One Billion Customers* mentions that if one wants to sell products to the Chinese government or its companies, one must stop for a while to think over just how far one might be prepared to go in selling one's soul (meaning paying commission or bribes). To avoid watchful eyes, it is common for foreign companies to hire consultant companies or agents to be the middle men, and commission or bribes are paid in the name of 'consultancy fees'. As to where the money goes, the foreign bosses will simply adopt a 'don't' ask, don't tell' attitude. McGregor quotes a Chinese lawyer saying that a European company had adopted a unique way to avoid being caught paying a bribe. It signed a contract with a consultant company on red paper in black ink so that it was impossible to make a photocopy. The boss kept the only contract in his safe, ready to destroy in case of internal auditing.[83]

In China, the work of lobbying and building guanxi with government officials, is not confined to consultant companies. It is spread among all kinds of 'intermediary organizations', which in China means any organization acting as a middle man between the government and firms or between producers and retailers. The term includes all kinds of consultants,

---

83 *One Billion Customers: Lessons from the Front Lines of Doing Business in China*, Chinese edition, p. 187-191.

accounting companies, law firms, notary public, industry associations etc. In January 2009 the China Youth Daily reported that the Chinese Academy of Social Science had made a report with the title 'Research Paper on Corruption Among Society's Intermediary Organizations and the Way to Deal with it', and it quoted at length how accountants, consultants, industry associations etc

> issue reports to help to cover up illegal acts of corruption and grafts so as to deceive others and reap illegitimate interests…Some of them have been commissioned by their clients to pay bribes to government officials through contact persons. Bribes can take the form of money, or houses and cars, or arranging for the children of the officials to study abroad etc. In procurements concerning telecommunication and medical appliances, where the amount of money involved is great, some big companies pay huge amounts in 'consultancy fees' to intermediary organizations like PR companies, accounting firms etc, and the latter will forward a part of the money as agreed to the officials…Many of these intermediary organizations are themselves founded under the guidance of the government, hence they are either government run, or semi-government run, or joint ventures between the government and private firms…These intermediary organizations become vassals of the government. They play double roles: when they speak to the government they are representatives of firms; when they speak to the firms they represent the government.[84]

Below we give a brief description of the Unilever case which was considered to be a classical case of success for foreign companies lobbying in China. The consultant company which Unilever relied on was none other than the China Global Public Relations Company (CGPR).

Unilever has a long history in China, dating back to 1932. The 1949 revolution put an end, at least temporarily, to its investment in China. In 1986 it returned, and in 1997 its investment already reached 640 million US dollars, paying 500 million RMB tax annually to China. In 1998 it

---

84 *Shekeyuan Baogao: Yixie Zhongjie Zuzhi Zheng Lunwei Fubai Zhongjie* (CASS Report: Some Intermediary Organizations Are Becoming Intermediary of Corruption), http://zqb.cyol.com/content/2009-02/02/content_2523276.htm

decided on a strategy of 'localization' --- meaning acquiring local brands through joint ventures --- to enhance a long term presence in China. By that time Unilever had already introduced many of its brands to China: Lipton tea, Hazeline, Ponds, Lux etc. To make its image more 'Chinese' it found it necessary to wed local brands. It gave the PR contract to the CGPR to work out a way for it to win over Chinese officials and media against a current of nationalists who were hostile to the increasing market share of foreign companies' at that time. Adding to the obstacles was the fact that, at the time, the Chinese government regarded, consumer products such as food, beverages, cleaning agents and personal care products --- products which Unilever specializes in --- as low priority in its plan to attract foreign investment. The CGPR advised Unilever to do something special to show its commitment to China: by sending Niall FitzGerald and Morris Tabaksblat, two of Unilever's chairmen, to visit China in June 1998 and meet with high ranking Chinese officials. This was the first time the company had ever sent two of its chairmen simultaneously to a country to promote business. It also held a board meeting with five members of their global team in Shanghai the first time that the Unilever board had ever met outside Britain or the Netherlands. This was supposed to fully demonstrate the company's confidence in China's vast market potential. The CGPR also mobilized its connections to make sure the two chairmen could meet with top leaders. According to a 2001 report by a business journal

> The CGPR have made the coordination of government contacts its core strategy for Unilever. All tactics must be based on it… It focused all its efforts on lobbying to tackle *zhengfu guanxi* (connections with the government), so that all public relations problems were solved with ease…The CGPR used its connections with Xinhua News Agency to ask the latter to be the receiving institute for the visit by the two chairmen. The Agency then directly contacted the State Department, which saved the time of going through the regular reporting procedures through the hierarchy. In the afternoon of June 10, 1998, Premier Zhu Rongji received the two chairmen and the latter expressed their confidence regarding long term investment in China, besides exchanging views on 'localization' with Premier Zhu. Earlier the two chairmen met with the Shanghai Mayor Xu Kuangdi, and took the opportunity to inform the

> Mayor that Unilever China was going to choose Shanghai as the location for the company's headquarters. The two sides also exchanged views on Unilever's asset restructuring plan.
>
> Evaluation (of Unilever's lobbying): the (lobbying) was very successful... Unilever's localization plan of proceeded smoothly...It acquired national brands such as Zhonghua toothpaste, Beijing Tea etc and made their sale promotion a priority.[85]
>
> A few years after this report Unilever was attacked by the nationalists as a 'killer of our national brands'.

In 1994 Unilever entered into a joint venture with Shanghai Toothpaste with the former having 60 percent shares. Unilever put in its own brand Signal, while Shanghai Toothpaste put in its famous brand Zhonghua (meaning 'China') and Maxim. Six years later, in 2000, Shanghai Toothpaste had to take back Maxim, because its sales had declined from 60 million pieces annually to 20 million. According to critics this was a Unilever conspiracy: to acquire a Chinese brand but then run business poorly so as to kill the local brand and give way to its own brand, Signal.[86] The story of Beijing Tea was similar. In 1999 Unilever acquired the Beijing Tea Corporation and its brand. Within three years the market share of Beijing Tea declined rapidly and was practically forgotten. According to the nationalist discourse this was a deliberate move by Unilever to make way for its own brand, Lipton tea. Eight years later, in 2007, Beijing Tea was bought back by the Beijing Tea Corporation.[87] The nationalist discourse was disputed by others though, as Unilever retained Zhonghua

---

85 *Yuanwai Youshui de Xinjingjie: Ping Lianghe Lihua zai Zhongguo de Bentuhua celue* (A New Realm of Lobbying: Localization Strategy of Unilever in China), Advertising Panorama, No. 8, 2001.

86 *Lianhe Lihua Liting Zhonghua Yagao, Xishua Minzu Pinpai Shashou* (Unilever Strongly Promote Zhonghua Toothpaste to Get Rid of the 'National Brands Killer' label), Beijing Business, November 30, 2004. Posted at http://www.mie168.com/CEO/2004-11/90369.htm

87 *Laomingpai 'Jinghua Chaye' cong Lianghe Lihua Chenggong Huigou* (Old Brand 'Beijing Tea' was Bought Back from Unilever), June 13, 2007. http://news.xinhuanet.com/fortune/2007-06/13/content_6237936.htm

toothpaste and it eventually became a major brand for Unilever with great commercial success. According to this critic, there was no such thing as a Unilever conspiracy to undermine Chinese brands because

> For TNCs like Unilever they do not really have any idea of a 'national brand'. They do not care whether the brands they sell are their own brands or through acquiring other brands, as long as they fall in line with the overall strategy and sales network and eventually earn profits from them.[88]

In our view the fact that Zhonghua (China) toothpaste is being held by a foreign company should not be as startling as one may think. In the final analysis brands are just advertisements in the service of commercial interest. While foreign companies pretend to be more Chinese, the rise of Chinese companies to a global level has led some of them, at least, to try hard to water down their Chinese origin by inventing names or changing their names to suggest a global rather than Chinese character. TCL, the TV producing giant, was called Today China Lion when it was founded in the 1980's; when the company began to go global in early 2000, it gave a new explanation for the acronym: The Creative Life.[89] Lenovo, the computer manufacturing giant, changed its original name of Legend Group to the present one to play down its Chinese origin. The list can go on and on.

Putting the debate aside, Unilever, with the help of CGPR, did very well in China's market.

---

88 *Lianghe Lihua de yangmou* (The Declared Conspiracy of Unilever), December 1, 2003, http://www.mie168.com/manage/2003-12/81598.htm

89 *TCL Zongzai Weishenme bei Peiwei Zuicha Zongcai?* (Why CEO of TCL Considered as the Worst CEO?) http://big5.job5156.com/news/18007.html

# Section III. Strategies

One of the differences between the lobbying strategies of the West and China is that, even though the actors are the same --- companies lobby governments to make decisions or to pass legislation which is favorable to them --- the way they do this is significantly different. In the West, lobbying targets elected officials --- congress members, presidents, chancellors --- hence business lobbying often involves election campaign contributions, which implies that to a certain extent they are brought into daylight or even put under public scrutiny, although skepticism is required as to how far this is the case. In China this is never the case. China's National People's Congress possesses no real power and its members never run elections, hence its members are rarely seen by TNCs as the most important targets for lobbying. Instead it is always the bureaucrats and mandarins who are targeted. On top of this is the fact that, in China discussions about how to deal with the government are always a carefully guided secret. It necessarily follows that business lobbying in China involves almost no transparency and public scrutiny.

In general business lobbying can include reporting research results, testifying as expert witnesses, supplying position papers or technical reports, contributions to politicians or parties, honoraria for speaking, paid travel, personal service, grassroots mobilization, advocacy advertising, public relations, press conferences, and political education programs.[90] In China these methods are used to the full extent that they often cross legal and ethical boundaries. Though there is no campaign contribution in China, companies can contribute to philanthropic projects run by government or semi-government agencies (even if they are formally NGOs these organizations are in fact quasi government agencies), for instance the Hope Project (a project that helps children who cannot afford to go to school because of poverty), the Red Cross, educational institutions, relief funds, and so on.

---

90 How Firms Influence Government Policy Decision-making in China, Gao Yongqiang and Tian Zhilong, Singapore Management Review, January 1, 2006.

Business people are well aware of the wide spread corruption among welfare projects, philanthropic and relief funds. The Hong Kong media exposed high officials from the Hope Project who were pocketing money. Yet in general when business people contribute to funds like this they simply do not ask questions about graft.

Below we will discuss two kinds of strategies which we should pay particular attention to.

## Guanxi

*Guanxi* is a central concept in understanding Chinese politics. Literally it means ‘relationship’, but it is better understood as ‘connections’ or ‘personal ties’. In appearance, *guanxi* is a common platform that one shares with others, such as locality, kinship, work place, and friendship. Having some kind of kinship, or just being *tongxiang* (same home village), *tongzong* (same surname), *laotongxue* (schoolmates), *jiutongshi* (former colleagues), can always become a strong base for *guanxi*. In contemporary China it increasingly signifies a personal network of influences, a patron-client relationship, or in the worst case even mafia like cliques.

One way of explaining *guanxi* is that it teaches a person to tell whether someone is an outsider/competitor or an insider/collaborator, thereby helping people to identify potential business partners. Being an insider brings great benefits and other people in your network will have to share information with you.[91] They will no longer be mere outsiders, but rather participants of the system with much greater opportunities to affect the business climate to suit their own interests. This gives these corporations more opportunities to have a bigger say, which in turn might lead to workers of these corporations getting a lesser say. A society that lacks proper democracy and rule of law, but instead relies on the system of *guanxi*, is prone to become an unequal one.

Business journals are filled with advice on how to best make use of *guanxi* as a way to gain access to the Chinese market of 1.3 billion people. Hence the foreign business community in China are more or less

---

91 *Demystifying Chinese Guanxi Networks: Cultivating and Sharing of Knowledge for Business Benefit,* Ben Chan, Business Information Review 2008;25;183.

familiar with the Romanization of this Chinese term. Books on *guanxi* are numerous. In Google search 456,000 entries are listed, and in Chinese there are millions.

Relying on personal ties to do business is not specifically Chinese. What makes it special in China is that, according to the two authors of the book *Explaining Guanxi*, Ying Lun So and Anthony Walker,

> *Guanxi* functions in uniquely Chinese ways and is entrenched and orchestrated to a degree not remotely approached by business relationship systems in other cultures. The significant distinguishing feature of *guanxi* is that fundamentally it is a method of economic organization without resorting to law or other formal rules. Business relationships in other cultures do not have the force of such a basis to sustain them…
>
> Maintaining *guanxi* requires the expenditure of time and money at an intensity which Westerners can have difficulty accepting and, if accepted, have great difficulty sustaining. The orchestration and elaboration of *guanxi*-moves can irritate Westerners and highlights the clash of cultures.[92]

This is echoed by Harold Chee and Chris West who wrote in their book *Myths about doing business in China* that

> People in China still have little confidence or trust in the legal/regulatory system and prefer to trust their personal relationships… *guanxi* assumes some of the functions of a legal system --- 'mutual favors' were not traditionally viewed as corruption --- and is a code of conduct substituting for the rule of law… It circumvents or neutralizes the bureaucratic system. With the right *guanxi,* there are few rules in China that can't be broken or at least bent: I have heard *guanxi* described as 'a tool to achieve the impossible.'[93]

This is best illustrated in the following examples of foreign companies using *guanxi* to achieve business successes in China.

> Although Ford had entered the Chinese market years ahead of them, it was GM who ended up leading the market. Their CEO John E.

---

92 Ying Lun So and Anthony Walker, p.2-3 and p.12.

93 Harold Chee and Chris West, p.66

> Smith developed extensive relationships with many Chinese officials at different levels, as well as hiring Shirley Young, the daughter of a prominent Chinese war hero, to create relationships and educate the company's expat staff about Chinese culture. This won GM the first bid to produce cars in China…
>
> AIG CEO Hank Greenberg spent 17 years courting central and provincial officials. In 1992 AIG was the first foreign insurer permitted to sell insurance policies. Greenberg was asked why AIG got the rights and was reputed to have said: 'What have you been doing for the last 17 years?'[94]

A business journal compared the experiences of the German automaker Volkswagen and the French Peugeot, again shedding light on the importance of guanxi:

> Both companies established their joint ventures in China in 1985 with strong support from their respective governments. However, different business and management strategies led to different outcomes: VW has become one of the largest foreign carmakers in China, claiming 24.6 percent of sales in 2007 in the Chinese market. Peugeot failed and had to sell its production facilities to Honda in 1999.
>
> VWs success lies in its market and nonmarket strategies, its amicable relationship with Chinese officials, its fast delivery of products and services through its extensive networks throughout China, its use of local management, and its quick response to challenges with strong local manufacturing and distribution networks. Peugeot, on the other hand, used designs, processes, components and management approaches developed in France. It developed only narrow networks in a few big cities in China, and depended too much on French expatriate managers, distrusting Chinese management talent and local component suppliers. It failed to establish relationships with local and central government officials, and its big, expensive cars did not meet the needs of Chinese customers.[95]

---

94 Ibid.

95 *When in China...* Li Mingsheng, Communication World, November 1,

When there is no *guanxi* base, intermediaries are needed. These are people who share common *guanxi* bases with the firms and the desired government officials. The most effective intermediaries are always those who are current or former officials, or at least their relatives and friends. Connections with the right officials are deemed more important than contracts or laws. Influential intermediaries may also include so called ‘old friends of China’ like Henry Kissinger and former President George Bush, who were much courted to be lobbyists of multinational companies and were flown to China to talk to their Chinese ‘old friends’.

Among European business people, establishing *guanxi* might be confused with giving bribes. They are not entirely the same thing. To simply bribe an official is something basically anyone can do, but to establish *guanxi* takes time and effort and might not pay off in the short run. A bribe is for an immediate and specific purpose, not for the slow building of relations. When TNCs wish to invest for the long term in China, spending time to build up *guanxi* is absolutely necessary. Although one should distinguish building up *guanxi* from outright bribes, they do nevertheless often lead to irregularities or even corruption because the ultimate purpose of their efforts is to make officials ‘provide entrepreneurs access to scarce goods, credit, government and oversea markets, and protection from onerous regulations,’ and if this means breaking some laws and formal rules, so be it. Some researchers of the subject speak of the fine line between ethical/legal and unethical/illegal behavior when it comes to cultivating, maintaining and using *guanxi*.[96] If the line is fine it is precisely because *guanxi* is meant to be a substitute for the rule of law and general justice, hence in the Chinese context it necessarily becomes a hotbed for corruption.

In Section II we talked about ‘local protectionism’ which is of relevance to our discussion here. It follows that *guanx*i are not only about courting high level officials, but also about low ranking officials. The running of business requires maintaining *guanxi* down to the lowest level of a distant, township government. Failure to accomplish this may result in disaster.

---

2008, http://www.allbusiness.com/company-activities-management/company-strategy/11694005-1.html

96 http://www.allbusiness.com/company-activities-management/company-strategy/11694005-1.html

> When a major multinational corporation failed to file paperwork in time to ensure the annual renewal of the registration of its representative office, the State Administration for Industry and Commerce (SAIC) offered the company a stark choice: pay a confiscatory fine or lose the registration, and with it the company's ability to operate legally in China.
>
> After much hand-wringing, the management decided to try back-channel routes to SAIC through *guanxi*, but none of the company's senior advisers was able to help. Though they knew ministers and State Council members, they did not know any local SAIC officials. Ever more desperate as the days ticked away, the management eventually discussed the problem openly with all of the company's employees, at which time an entry-level clerk came forward. It turned out that she had gone to high school with the daughter of a local SAIC director. After several phone calls and a banquet, the registration was renewed, with no fines paid. Such is the power of *guanxi*.[97]

To build up *guanxi* requires time and effort, as well as the right approach. It is here that another concept, *renqing*, is of great importance. *Renqing* literally means sentiment, but it can be better understood as personal obligations in one's relationship with others. Ying Lun So and Anthony Walker said that *renqing* 'covers not only sentiments but also its social expression such as the offering of congratulations or condolences or the making of gifts on appropriate occasions'. They further quoted Y. Yan as saying

> To act according to *renqing* rules is to put on a human face, but behind this face lurks the demand for reciprocity. One consequence is that gift or banquet-giving both involve much etiquette and polite rituals, which serve to mask or mute the instrumental nature of the gift and to save face for both sides…Such occasions as the Chinese New Year, the birth of a child, weddings and so on provide good opportunities to lay the groundwork.[98]

---

97 *Guanxi: Grease for the Wheels of China*, Scott D. Sellgman, The China Business Review, Sept-Oct 1999.

98 Ying Lun So and Anthony Walker, p.11 and 13

Having *guanxi* with someone always implies an obligation to offer some favors, with the expectation that, if necessary, you will be helped in return. Hence if you feel obliged to wine and dine with an old classmate when they invite you to, even if you are not eager to go, you will also feel ashamed not to return the favor in future. Therefore giving favors is also known as *zuorenqing*.

If you help the government officials when their children need to go abroad, or when they need to enroll on certain university courses, or provide jobs for their relatives, *guanxi* may be built. In this way the officials concerned may feel indebted to you, and will return the favor to you when you need their help. Moreover, if you add frequent visits to this it will be even better. Of course there is also gift giving. A Singapore business journal teaches business people how to give gifts:

> Gift giving is an important ceremony in China. Yeung and Tung (1996) identified gift giving as one of approaches to build *guanxi*. But how to deliver gifts and what kinds of gift giving are suitable is an art…There are several situations one can deliver gifts: the spring festival, the dragon boat festival, the mid-autumn festival, the lantern festival, and other occasions such as birthdays, children entering a higher school, and so on. The kind of gift depends on the situation and the local custom.
>
> Firms can invite officials to lavish banquets, provide them cost-free overseas trips, sponsor and support their children at universities abroad, and other forms of payments.[99]

In fact there is only a thin line between giving favors and bribery, and when the favors provided carry a lot of monetary value then they are just outright bribery. Still for the sake of clarity it is better to separate giving favors from outright bribery. In general to give *renqing* to someone is for the more common purpose of building trust and *guanxi*, and the returned benefit is not that specific and often in the future. Only when such trust and *guanxi* are securely built can one feel safe to bribe the other one when it is necessary.

---

99 *How firms influence the government policy decision-making in China.* Singapore Management Review, January 1, 2006.

When European business journals try to justify foreign investors' efforts in adapting to *guanxi* building in China, they in general avoid an argument as crude as the *yuehuaiweizhi* argument, because it has too much of a China bashing flavor. The alternative argument they advance is, however, as apologetic as the *yuehuaiweizhi* argument. They view the *guanxi* phenomenon as something originating from Confucian's collectivism, and counter pose it to Western individualism. Articles focus on the clash they experience between a willingness to achieve equality (what Western managers wish for) and the respect for authority and hierarchies (what Eastern managers aspire to).[100] When reading between the lines of these journals it is also clear that individualism is seen as far superior to collectivism. As to *guanxi*, Min Chen's book *Asian Management System* has this to say:

> The term refers to special relationship which two persons have with each other. It can be best translated as friendship with implications of a continual exchange of favors. Two people enjoying a *guanxi* relationship can assume that each is conscientiously committed to the other. They have undertaken to exchange favors in spite of official policies against such practices. *Guanxi* helped many Chinese survive the hardship of deficient supplies during the Maoist period….The relationship tends to be more utilitarian than emotional…One interesting feature of *guanxi* is that such exchanges of favors tend to benefit the weaker member more…Such unequal exchange reflects the Confucian principle of family cohesion, in which family ties demand mutual assistance…
>
> In short, in the Confucian system, man is a relation-oriented being who has an inherent interest in cultivating his *guanxi*. According to Confucius, there are many kinds of human relationships of which the five cardinal relations[101] are the most fundamental…Most scholars have observed the Confucian tendency to cultivate Chinese into a group-oriented and socially dependent being…The tendency of the Chinese to address each other by associating 'brothers' or 'sisters' with the addressee's surname

100 http://www.allbusiness.com/company-activities-management/company-strategy/11694005-1.html

101 Fathers and sons, ruler and subjects, older brothers and younger brothers, husbands and wives, friends between each other.

is a case in point.[102]

To claim that *guanxi* phenomenon is part of the Chinese culture of Confucianism is to justify European companies' attempts to establish cozy *guanxi* with officials and giving out favor to each other --- if something is part of a country's culture one merely has to play by the rules of that country if one wants to do business there.

There may be a grain of truth in this proposition but, stemming from the will to oversimplify and divide the world into black and white, it is too simple a worldview overall. The concepts of 'Western individualism' and 'Confucian collectivism' are too loose and arbitrary and one can always bend them in such a way to mean anything to satisfy one's purpose.

This is not denying altogether that there are aspects of the *guanxi* phenomenon which may have deeper cultural roots. The Chinese seem inclined to build personal connections with others even if none exist and the persons concerned are not particularly drawn to each other. In traditional Chinese society, people with the same family name were (and to some extent still are) sufficient reason to found association, which can play a significant cultural and commercial role. Ying Lun So and Anthony Walker have remarked that

> Chinese are not used to compartmentalizing the different roles that they have with others and so treat the other person according to the requirement of the current role. For example, it is difficult for them to say that 'being my teacher, I should be respectful to you, but now that you are my customer, I have to stick to the normal terms of trade'.

The two authors then quoted a joke:

> 'My surname is Li,' said Mr. Li.
>
> 'Oh. My wife's surname is also Li. So I should call you jiujiu (uncle on the matrilineal line),' said Chen, shaking the hand of Li vehemently as if he is very lucky in finally meeting with his wife's brother after so many years.

---

102 *Asian Management System,* Min Chen, Thomson Learning, 2004, p. 45-49.

'My surname is Cheng,' said another guest.

'Oh. So we are one family because I am Chen too!'

'No. My name is Cheng, not Chen.'

'Oh… Well, our names sound so close that I would still consider that we're from the same family.'[103]

To say that there are aspects of the *guanxi* phenomenon which may have deeper cultural roots is different from saying that it is fundamentally an outgrowth of the Confucian past, however. More importantly, there are also aspects of the *guanxi* phenomenon which are more modern and are in fact extremely individualistic. Nowadays the purpose of building *guanxi* is more for the advancement of personal, often commercial or monetary interests, not for the promotion of the collective interests of a clan or the state. Min Chen admits this by saying that the *guanxi* 'relationship tends to be more utilitarian than emotional'. If this is the case then maintaining that these *guanxi* are an outgrowth of Confuncianism, would have startled Confucius' faithful followers if not Confucius himself. The Confucian basic doctrine teaches that the harmony of the five cardinal relations, or *wulun guanxi* (also known as *renlun guanxi*) could only be guaranteed by upholding righteousness (*yi*), especially its predominance over the pursuance of personal benefits (*li*), otherwise the country or the society would break down as everyone only cares about and fights for his own benefit.[104] Hence Confucianism is inherently hostile to merchants and commercial interests, seeing them as necessarily damaging to the harmony of social relations. This doctrine will be met with hostility by today's *guanxi* cultivators --- officials and investors, foreign and domestic alike.

Even if the contemporary *guanxi* phenomenon can be best viewed from a supposed collectivist framework, then it is a kind of collectivism which represents a precise break with the Confucian past rather than its continuity. According to 'Confucian collectivism', individuals are not

103 Ying Lun So and Anthony Walker, P.4 and 11.

104 Never a her, because women only deserved to be locked up in their families and share no part in public life anyway.

only solidly embedded within the *wulun guanxi,* but also the purpose of their very existence is to serve the latter and keep them in harmony. To accomplish their task people need to restrain themselves as individuals. Only with such a humble attitude can one perform one's two main duties well, namely *zhong* (loyalty to the emperor) and *xiao* (filial piety) --- one is on a par with the other, and together they constituted the two main pillars supporting Chinese society. In other words, *wulun guanxi* were meant to serve the orthodox thinking of the state at the time. In contrast, the very purpose of contemporary *guanxi* building is to get around the official doctrine of communism or socialism (with Chinese characteristics), and along with it all the laws and regulations and even the constitution of the Communist Party, in order to serve personal interest. The *guanxi* phenomenon indeed is the antithesis of the collectivism of the party state (whose ascendency precisely signifies the destruction of Confucian collectivism), and its ability to thrive must be explained by both the success and failure of the party state. This process can be divided into two phases. The *guanxi* phenomenon only began to thrive after the Party decided to launch the 'socialist construction' after 1956 at increasing neck breaking speed. Thanks to the 'planned economy', the state concentrated all resources and their allocation in its own hands, but this came at the price of a severe shortage of consumer goods. Hence, the contemporary *guanxi* phenomenon has developed and thrived precisely because of the need to 'help many Chinese people survive the hardship of deficient supplies during the Maoist period': to ask an old classmate who worked for the government for a coupon to buy a watch, for instance. While ordinary Chinese people were in general involved in this kind of practice to have access to consumer goods, the government cadres' *guanxiwang* would have access to luxury goods which were denied to the public.

The second phase is the time when the *guanxi* phenomenon began to take new life. The 'old' kind of Chinese collectivism in Mao's era is possible only because it was wedded to the idea of communism, as understood by the Soviet Union, which justified Mao's decision to copy from the Soviet Union the hyper centralization administration model. This came at another price though: the social and human price of the neck-breaking industrialization and the rural communization, which put the whole nation into total exhaustion after Mao's death in 1976. The tragic failure of the 'communist experiments' increasingly led large leading sections of the party state to abandon the idea of communism altogether, and along with it the idea of altruism; as to the idea of democracy, the Party never shows an interest anyway. The only thing left that they still believe in is the collectivism of the monolithic party state, but since this remaining collectivism has divorced communism and now seeks to remarry its old foe capitalism, it necessarily brings with it the logic of personal enrichment among the bureaucracy, a great centrifugal force, which is precisely the antithesis of the collectivism that the Party embodies. In the competition of getting rich, party officials mobilize their *guanxi* to the full in order to scramble for their share of the pie. Min Chen quoted Liu Binyan, a famous writer who was one of the four expelled by Deng Xiaoping from the party in 1983 for the alleged crime of 'polluting people's mind with bourgeoisie thought', and who made a comment on the *guanxiwang* among the local party officials in a certain county at the time where a complex personal relationship, built of layer upon layer of interlocking connections, formed a dense net. Any Marxist Leninist principle, any Party plan or policy that came into contact with this net, would be struck dead, as if electrocuted…Right and wrong became thoroughly confused, reward and punishment turned upside down.[105]

This powerful *guanxiwang* of corrupted party officials is, practically speaking, dissolving the Party into thousands of networks of personal ties which override not only the law but also its own constitution, and has bred so much corruption that it is increasingly unable to implement its own policies and discipline. The *guanxiwang* of party officials also increasingly turns into a network not only for promotion but for the cultivation of commercial interests, which is qualitatively different from Mao's period.

In contrast, although ordinary Chinese people continued to use their *guanxi* for their work or for other family affairs, in the second period their *guanxi* cultivation tended to diminish in importance. Following the complete dismantling of the 'planned economy' and the diminishing of the role of the work unit as a unit of provision of necessities, ordinary

---

105 *Asian Management System,* Min Chen, Thomson Learning, 2004, p. 45.

people turned to the market for these goods. If the *guanxi* phenomenon has grown in importance it has chiefly grown out of the rising bureaucracy and the new rich against the background of capitalist reform. Therefore it is better to see *guanxi* building as first and foremost the practice of the bureaucracy and the new rich today, and the *guanxi* phenomenon as something embedded in a society in transition from failed communism to full grown authoritarian capitalism, under the auspices of the Party. If there are some elements of the *guanxi* phenomenon which are attributable to Confucian culture, they are better understood from the point of view of the contemporary Chinese elite making use of these elements in order to benefit themselves. In no way should they be seen as a necessary outgrowth from Confucian culture.

Li and Wright attribute *guanxi* to a lack of codified information or an institutional uncertainty, meaning that it is not entirely a Chinese phenomenon but rather an example of how in "less developed societies," where rule of law and other institutions are somewhat absent, things like *guanxi* develop in their place.[106] If there is a kind of 'Chinese characteristic' about the politics of *guanxi* in China, this may be found in the paramount position that the state and the bureaucracy occupies, and its colossal size. With 50 million state functionaries and public servants, who also monopolize all political power and the most profitable branches of the economy in the country, and who have developed a culture of despise for rule of laws, the Chinese *guanxi* network, which can be defined as a substitute for laws and regulations, is exceptionally gigantic. It also follows that the scale of business lobbying circling around the Party like the earth circling around the sun, and the share of national income that ultimately goes into the pockets of the bureaucracy, is equally colossal.

To conclude, to place the contemporary *guanxi* phenomenon in the category of Confucian collectivism, and oppose it to 'Western individualism', only serves the purpose of legitimizing both the corrupted Party members and European companies' attempts to become part of the *guanxi* system.

---

106 *The Issue of Guanxi: Discrepancies, Reality and Implications*, Ji Li and PhilipWright,1999, Department of Management , School of Business, Hong Kong Baptist University.

## Advocacy

A columnist for the China Chief Entrepreneur web posted an article attacking a certain 'foreign brand' shampoo for its advertisement, which suggested that consumers wash their heads every day, as being both unscientific and potentially harmful: since the shampoo contains so many chemicals that if one uses it to wash everyday one may have health problems.[107] We do not wish to discuss foreign companies' advertisement strategy here though. Nor do we intend to deal with the crude white washing or green washing 'CSR' programs of these companies, as Bayer AG, the German chemical and pharmaceutical company, did when it supported environmental projects and work with the China Foundation for Poverty Alleviation in some rural projects.[108] By 'advocacy' we refer to foreign companies' strategy in promoting business interests through more sophisticated methods: funding research institutes, holding seminars, or running educational programs etc to do the job. This is more like the activity of the joint efforts of KFC and CRCF (Chinese Red Cross Foundation) in founding the KFC Healthy Diet Fund in November 2007 to fund food related research to promote a 'healthy diet'. The annual budget is two million *yuan* and is paid for by KFC. According to the website of CRCF,

> Over the years, KFC has promoted the idea of a healthy and balanced diet, for it has always seen this as its social responsibility, and has put in a lot of effort into product development, promotion and propaganda of the need to do more exercise etc.
>
> Chen Junshi, Fellow of the Chinese Academy of Engineering, a well-known expert in nutritional health, was excited by the KFC Healthy Diet Fund. 'There is no such thing as good food or bad food; rather, the key lies in how to balance off one and the other. The founding of KFC Healthy Diet Fund will further promote the idea of a 'balanced diet ' in China.[109]

---

107 Qi Yuanbo, http://mkt.cce.cn/edu/swyal/200812/16-8632.html

108 *Kuaguo gongsi Zhongguo gongxianbang ershi qiang* (TNCs Contribution to China: the First Twenty Companies), http://big5.ce.cn/gate/big5/blog.ce.cn/html/60/142360-192100.html

109 http://www.crcf.org.cn/sys/html/lm_1/2007-11-27/142607.htm

In December 2008 the Fund convened its first seminar on a 'healthy diet' in Beijing. A survey report on the diet habits of school children was released jointly by Yang Xiaoguang, a researcher at the Chinese Centre for Disease Control and Prevention and also vice president of the Chinese Nutrition Society. According to the report by People.Com, the Fund is going to subsidize research into the dietary habits of Chinese urban residents and how they change over time.[110]

The fact that a fast food chain store was promoting research into 'healthy diet' did little to deter government officials from queuing up to for apply for research funds. That the research was going to benefit the company also seemed neither to bother the Red Cross nor the Centre for Disease Control and Prevention. This is but one of the many examples of TNCs' lobbying through funding suspicious research.

> In recent years, those institutions which enjoy real power often have their subsidiaries organizing seminars and research, to the extent that it stimulates the birth of a new profession, namely the preparation of seminars. Many foreign companies would like to sponsor seminars and research organized by those institutions which simultaneously are their lobbying targets. In 2003 when a subsidiary of a certain government department convened a "summit," a well-known foreign company sponsored the function with two million *yuan;* in appearance the money was for the fee of hanging a billboard in the venue. Some experts commented that 'this is a de facto bribe to the department'.

> According to a report by the Asia-Pacific Economic Times, a well-known foreign company has, since 1998, paid a staggering sum of money to run joint EMBA courses with colleges and research institutes, targeting high level government officials and managers from telecommunication companies. It even founded its own college. Institutes like this have world class professional backgrounds and teaching resources, and tuition fees are exceptionally high although the quota is small… It is understood that fees will be waived for those students who are recommended by their partners. 'The foreign companies will choose those who have the best potential (to study), and then these elites, together with members

110 http://shipin.people.com.cn/BIG5/114288/122881/122882/8494170.html

> of their companies, will develop different learning teams, and develop good relationships among them. This will kick off a virtuous circle which is beneficial to the long-term interests of the company.'[111]

European companies are as ambitious as American companies in funding research and other advocacy to promote their business interests. BP initiated a promotion program on climate change and global warming in China in 2007. It has also invested 10 million US dollars into a joint research project with the Chinese Academy of Social Science and Tsinghua University on 'clean energy', with the aim of commercializing the findings of this research.[112] The Danish company Novozymes ambitiously promotes bio-fuel technology in China, and in 2006 succeeded in entering into a joint venture with the China National Cereals, Oils and Foodstuffs Corporation to develope bio-fuels. This is despite the fact that China's grain production has been declining to such a point that China has now become a grain importing country.[113]

One of the reasons that public or semi-public researchers, institutes and think tanks are so willingly lured into cooperation with companies funding research and other advocacy, is that the government no longer pays enough money to these institutes,' and so they are increasingly left to rely on their own income. An Outlook article reported the case of a government run foundation and a governmental research institute on foreign diplomacy, that each relied on foreign companies for 50 percent of their funding. Another semi-governmental research institute received less than 30 percent of its funding from its supervising department, hence 63 percent of its funding was dependent on an American foundation and a German company. Jiang Yong, whom we quoted earlier, said in the same Outlook interview that

---

111 *Fubai yijing chengwei Zhonggo tese? Waiqi 'huise' jiegui Zhongguo* (Corruption with Chinese characteristics? 'Grey Harmonization' between Foreign Companies and China), http://business.sohu.com/20050530/n225757760.shtml

112 *Kuaguo gongsi zhongguo baogao 2008* (2008 Report of Transnational Corporations in China), China Economic Publishing House, P. 120.

113 Ibid, P. 135.

> For the past thirty years, Chinese think tanks have basically been government or semi-government institutes and so they have also been affected by the market reform. …The most embarrassing thing is funding. Due to the inadequate funding for social science research, many institutes have to look for their own business in the flood of marketization. Getting funding from external sources or even from foreign institutes and TNCs, has already become the chief source of income allowing these think tanks to survive. The disadvantage is that when one relies on the money of others, you have to listen to them.[114]

In 2004 the Oriental Outlook carried an article *The Debate over Economists as Spokespersons of Enterprise* which sparked a great debate. It mentioned how economists are practically being bought off by companies, meaning that their research is being compromised. It reports on the debate between two economists, Wu Jinglian and Xiao Zhuoji, over China's stock market. Wu criticized the stock market for being unfair and for evolving into a kind of 'elite's capitalism,' while Xiao denied the claim. At this point the reporter interviewed Yang Fan, the nationalist whom we quoted earlier, and who regards the two sides as spokespersons of two camps: the speculative capitalists and the compradors capitalists. He said that Wu was the senior economist of CICC (China International Capital Corporation Limited), a joint venture with Morgan Stanley, whose objective is to bad mouth the stock market until it drops significantly so as to benefit foreign capital. As for Xiao, his family was allegedly involved in speculation.

We are not able to verify Yang's claim, nor should it be our main concern. Our purpose is to describe the intense debate between the nationalists and the neo-liberals over the continuous growth of influence of foreign investment on all aspects of China. The onslaught of the, first US then, global financial and economic crisis since 2008 seems to further enhance the nationalist response, though. More accusing fingers are pointed towards foreign investment in general and 'foreign infiltration of our think tanks' in particular. In January 2009 the Outlook journal carried

---

114 *Gaijin yu jiaqiang duimei zhiku waijiao* (Improve and Strengthen Our Think Tank Diplomacy in Our Relationship with US), Outlook, November 20, 2006. http://news.sohu.com/20061120/n246487354.shtml

an article attacking domestic research institutes for being too pro-US and for being led to believe in the absurd forecasts about the global economic crisis that the US or Western think tanks were making:

> Towards the end of 2007, a well known economist from the Chinese Academy of Social Science predicted that China's inflation would at most rise to 4 percent, and that the economy would be able to stabilize itself. It turned out that within two months CPI rose to 8.7 percent, and then in the second half of 2008 it made a sharp fall to 1.2 percent. In the second half of 2007 when the US sub-prime crisis began to spread, the US government and the Fed tried to comfort the public by saying that it was not that serious. Most of the Chinese think tanks accepted this and believed that the crisis was just temporary and that the US problem would have little effect on China. In July 2008, when the international oil price surged to 147 dollars a barrel, many leading energy research institutes, picking up on what had been said by foreign analysts, predicted that towards the end of the year the price might reach 200 dollars. Yet they failed miserably because the oil price dropped to 35 dollars.

The article then reported on how heavy these research institutions now rely on foreign donations, implying that this was one of the reasons for their failure. It continued by saying that

> The Chinese Academy of Social Science and the research institutes of the universities have virtually copied their mechanism of academic evaluation and incentive from the West…
>
> 'If our research institutes are completely dominated by Western values when directing China's policy research, in the long run the negative effects will be terrible,' Huang Weiping, professor of the Economic Institute of the People's University said.
>
> Huang said that he contacted an American's foundation once: 'we had some collaboration over short term training courses on economics, and then a one year Master course, and then they proposed to sponsor my research. I felt their strategy was changing, trying to influence China's policy decision. I flatly declined their offer.'[115]

---

115 *Zhongguo zhiku: xianzhuang yu weilai* (China Think Tanks: The

Towards the end the article call for the promotion of 'Chinese values' through the rise of Chinese think tanks, so that the Chinese government can define its own version of 'liberty', 'democracy' and 'human rights' and eventually win the war of cultural hegemony over the West.

Below we describe two cases where the European companies involved have used questionable advocacy methods to promote their business.

## Case One: Nestle

In 2008 the Chinese market value of baby formula reached 20 billion *yuan*, with foreign brands like Nestle, Wyeth, and Mead Johnson etc enjoying half of the market share. These foreign brands are able to play a dominant role in high grade products because of their aggressive or even illegal ways of promotion: in addition to exaggerating the advantages of using infant formula as a substitute for breast feeding, they distributed free samples of infant formula to hospitals and parents to promote brand loyalty. This practice violated the *International Code of Marketing of Breast milk Substitutes*, issued by the World Health Assembly in 1981.

In November 1993 UNICEF released a report on companies not complying with the International Code and found that 12 out of the 20 countries were still receiving free supplies from Nestle, including China.[116] The January 1996 issue of New Internationalist reported the testimony of Mike Aaronson, Director-General of Save the Children UK, that

> A current cause for concern is a report on the use of Nestlé's formula Lactogen for infants in maternity hospitals in Kunming, Yunnan Province, China. The report was prepared by a Save the Children health-training adviser and staff of the Kunming Medical College. Based on data collected by hospital staff and the observation of trends in the city's hospitals, the report reveals a drop in breastfeeding and a large increase in the use of Lactogen due to the provision of free formula to mothers

---

Present Situation and Their Future), http://www.chinareviewnews.com/doc/1008/6/9/9/100869990.html?coluid=0&kindid=0&docid=100869990

116 The Nestle Cover Up in Australia, http://danny.oz.au/BFAG/coverup.html

> leaving hospital and the provision of formula to hospitals at less than the market price.
>
> In Kunming at least, Save the Children believes that Nestlé's actions have undermined the principles and aim of the International Code and all relevant resolutions. Save the Children has made these concerns known to Nestlé and is pressing for a satisfactory response.[117]

Then there had been growing complaints about foreign brands' aggressive promotion had marginalized local brands even if the latter were cheaper.

> Those foreign brands, making use of their advantages in brand names, public relations, sales etc, are able to give freely their products to hospitals, or build up good relations with doctors. Many of these exercises all take place behind the scenes. When babies are born these doctors and nurses will feed them a foreign brand's baby formula…Why are babies from interior China more receptive to domestic brands? It is because the antennas of the foreign brands have not yet reached hospitals there.[118]

Soon the Chinese companies followed the practice of distributing free infant formula to hospitals:

> As early as 2001-3, Yili infant formula…chose Guangzhou as the trial city. They hired people from Mead Johnson and Nestle to build up relations with the hospitals, handing out free samples to pregnant women or women who had just given birth, giving classes in 'how to feed babies' etc.[119]

Back in 1995 the Chinese Health Ministry had already enacted the regulation *Chinese Rules Governing the Administration and Marketing of Breast milk Substitutes* which embodied the principles of the International Code. In the same year China also introduced the *Law of the People's Republic of China on Maternal and Infant Health Care.* This law requires

---

117 http://www.newint.org/issue275/nestle.html

118 Qi Yuanbo, http://mkt.cce.cn/edu/swyal/200812/16-8632.html

119 http://www.emkt.com.cn/article/374/37424.html

medical and health institutions to disseminate guidance on child care and nutrition, including information on breastfeeding, to new mothers and women. How far this regulation has been enforced remains questionable though. The IBFAN (International Baby Food Action Network) released a report in 2004, pointing out that there is no regular mechanism to monitor the Chinese law and that violations take place. It shows a lot of pictures of how Nestle, Heinze, Johnson and Johnson, Mead Johnson, Chinese brands like Sanlu, Dumex etc, had all violated the code and the Chinese law by giving out free baby formula or by advertising in hospitals. The report warned that

> The current trend of entrepreneurism in China is disturbing because baby food companies are establishing their influence with the health community to get endorsement for their products, promote company loyalty and brand awareness - all of which compete with breastfeeding. Media blitzes coupled with the activities of company-friendly hospitals give the millions of one-child-only Chinese parents the wrong idea about infant feeding. The close relationship between companies and the health sector contradicts the country's commitment to the International Code which is aimed at promoting and protecting breastfeeding from commercial influence.[120]

The combined result of the fierce competition among baby formula producers, foreign or domestic, is that the infant formula market expands dramatically at the expense of breast feeding. According to a May 2004 report by China Daily,

> The number of babies in China fed exclusively on breast milk during their first four months of life has declined from around 76 per cent in 1998 to only 64 per cent today.[121]

In August 2006 six baby formula producers, including Nestle, announced a self imposed embargo on making advertisement for breast milk substitutes. Yet, in March 2009 Nestle decided to fund a special video website, baby.youku.com, providing education on how to raise babies.

---

120 http://www.ibfan.org/site2005/abm/paginas/articles/arch_art/298-2.pdf

121 http://www.chinadaily.com.cn/english/doc/2004-05/21/content_332404.htm

## Case Two: British American Tobacco – BAT

With funding from, among others, the National Cancer Institute, a group of independent scientists have conducted research into the multinational company British American Tobacco's (BAT) lobbying in China regarding tobacco related health problems stemming from second hand smoke. The report was published on the Public Library of Science's (PLoS) Medicine Online Journal.[122] According to the report, 540 million Chinese people are exposed to second hand smoke every year, causing more than 100,000 deaths. Banning smoking of course does not work to the benefit of tobacco companies, and therefore they are seen to lobby *against* smoking restriction campaigns, trying to downplay the dangerous risks of smoking. BAT has tried to minimize public awareness regarding second hand smoke, declaring it to be an insignificant contributor to air pollution in China. Companies exist to make a profit and when tobacco companies make their profit this is at the expense of people's health; the more they sell, the sicker people get. As mentioned in the discussion above, companies in general wish to enter the Chinese market, in part due to its enormous population density, and BAT of course is no exception; one-third of the world's smokers live in China.

In 2005 China became a member of the WHO Framework Convention on Tobacco Control, which seeks to reduce the number of tobacco-related illnesses in the world. This membership makes China more prone to work towards an environment with less public exposure to second hand smoke. BAT works in the opposite direction, as it tries to downplay media and government attention regarding tobacco health issues. Historically, tobacco corporations have funded research to come up with results beneficial to their own industry, for example results stating that second hand smoke constitutes minimal health risks. Today, BAT in China is trying to shift attention away from second hand smoke illness towards, for example, liver diseases, by funding and promoting the Non-

---

122 *Efforts to reprioritize the agenda′ in China: British American Tobacco's efforts to influence public policy on second hand smoke in China,* by Muggli, Lee, Gan, Ebbert and Hurt, Dec. 2008, accessible at PLoS medicine open access online journals at: http://medicine.plosjournals.org/perlserv/?request=index-html&issn=1549-1676 The section about BAT is, when no other note is given, referring to this report.

Governmental Organization the Beijing Liver Foundation (BLF). This is a very strategic move. By diverting the focus away from tobacco-caused illnesses towards other potential illnesses in China, such as liver disease or hepatitis, they avoid too much light being shed on illnesses caused by tobacco. BAT does this by funding BLF and lobbying the ministry of health to regard hepatitis as the most dangerous disease in China; not lung cancer caused by smoking. BAT thereby uses the BLF to gain access to the ministry of health, who are more likely to listen to the latter than the former. BAT thinks, according to the said report, that the BLF has provided them with a channel to reach customers.

Not only does this tobacco company promote awareness regarding other dangerous diseases at the expense of tobacco-related ones; they also produce reports saying for example that second hand smoke is not a health issue but a social issue. They claim that the media is overreacting concerning air pollution and its causes. According to the report, they ridicule the idea that “smoke from other people’s cigarettes” would be dangerous, or the “mysterious sick building syndrome”, the latter being an obvious reference to asbestos houses. Both of the above are very well known reasons for a decrease in people’s health, so attempts to ridicule and downplay this is absolutely outrageous and sounds like a desperate move by an industry eager to counter various anti-tobacco campaigns.

BAT also targets children, by inviting school classes to interactive talks about liver diseases (through the BLF). It is of course not bad to educate children on potentially dangerous liver diseases, but when this is done as a deliberate move by a powerful tobacco company in order to downplay the attention given to diseases caused by tobacco, it is all of a sudden not such an altruistic move anymore.

Another measure taken by BAT is the installing ventilation systems in public spaces, as a means to get around the various smoking restrictions put into place by authorities to spare the lungs of the staff as well as non-smoking customers from involuntarily inhaling dangerous second hand smoke. Installing ventilation systems enables BAT to get around smoking restrictions, but it is not an adequate solution. Ventilation doesn’t filter the air from all the toxic substances from the cigarettes. Nevertheless since BAT claims that smoke is an insignificant contributor towards air pollution, “accommodation efforts”, meaning ventilation, easily take care of this problem. By lobbying the Chinese ministry of health BAT may lead it to believe its propaganda. This means that the ministry will allow the removal of smoking restrictions in public spaces such as has happened in some areas of a Shanghai airport.

All of the above are examples of BAT's multifaceted strategy to influence and steer the public debate in China in a direction beneficial to the company. The use of a charitable organization like the BLF is well thought out, but NGOs must be cautious with regards to who they accept funding from. One might ask about the reasons why the BLF accepted funding from a major tobacco company and allowed it to lobby in its name.

Linking this case study with the notion of *guanxi*, it is very clear how it can be beneficial for a company to establish relations within various fractions of Chinese society. In the case of BAT it was very beneficial for them to have connections with the BLF, since it enabled them to lobby the ministry of health. If a company stretches its arms like this into different areas of society, enabling them to lobby, the strengthening of their power will inevitably come at the expense of transparency and accountability.

# Section IV: Issues

In this section we will look into how foreign companies in general and European companies in particular work to influence technical and/or industrial standards in China so as to capture a more guaranteed market share for themselves. We will give a more detailed account of the intense fight over the 3G mobile phone standard. We will then review how the companies lobby Chinese legislation, and provide the labor law debate as an example. The third issue we look into is corruption and how it relates to European companies, how Siemens, for example, once organized a worldwide network of bribery to win contracts, including in China. Towards the end we revisit the argument of '*yuehuaiweizhi*', first discussed in the introduction.

## The Standards War: Mobile Phones

Although China has been upgrading her industry quickly, often core technology continues to rely on Western or Japanese companies, and high royalty fees have to be paid accordingly. This dependence is illustrated by industry standards which have long been set by Western or Japanese companies if not governments. Since the late 1990s, the Chinese government has pushed for the setting of Chinese standards for video players, digital television, third-generation cellular telephones, and broadband wireless local area networks etc. In 2005 the People's Daily Online carried an article explaining why this was so burning to China[123]:

> After paying 'patent rent' for many years, Chinese high-tech companies are faced with more and more intellectual property rights disputes and trade barriers. It has become an urgent task for China to strive for more say in making technical standards.

---

123 China strives for more say in technical standards, May 14, 2005, http://english.peopledaily.com.cn/200505/14/eng20050514_185044.html

> In the high-tech field, technical standards have become important weapons for multi-national companies to protect themselves. At present, China mainly relies on foreign companies in core technologies. Lack of patent and technical standards has seriously affected the competitiveness of Chinese companies in the area.
>
> Statistics show that about 99.8 percent of 16,000 international standards are made by foreign institutions. Only two per thousand of those standards involve the participation of China in the standard-making process.
>
> 'Chinese companies must develop high technology and we must make our own technical standards if we hope to change from 'made in China' to 'made by China'", said Liu Qingtao from the research and development department of Lenovo Group.

China's efforts have always been an uphill struggle. Very often foreign companies have lobbied against Chinese standards. The Chinese government has come to the standards defense, but on the other hand has tried to incorporate the foreign companies' interests rather than defying them. This is not only because China still has to rely on Western and Japanese companies' technology in developing her own standards, but also because the immediate commercial interests of the Chinese companies, even if they are state owned, have long been paramount for them, and often decisively determine a close collaboration with foreign companies is a necessity, even at the cost of fighting against other Chinese State Owned Enterprises (SOEs).

In his book "The Business of Lobbying in China," Scott Kennedy has documented the standards war over VCD players in the mid 1990's. Based on his research he produced a paper in 2007 which gives a concise introduction to the VCD standards conflict in 1997-8:

> "China's first high-tech standards war broke out in 1998 when competing coalitions, composed of both Chinese and foreign firms, pushed alternate standards for video compact disc players (Kennedy, 2005a, pp. 119-125). In a fight reminiscent of the Betamax-versus-VHS videocassette recorders war of the late 1970s, one group advocated what it called the Super VCD format. However, another group of Chinese and foreign

> companies developed its own China Video Disc (CVD) standard. When the Ministry of Information Industry (MII) appeared ready to endorse the Super VCD standard, the CVD group's largest and most politically connected Chinese companies aggressively challenged the decision, which they claimed would unfairly constitute unnecessary intervention in the market. Persuaded by their arguments, the government forced the committee to revise the standard to encompass both groups' formats. As a result, video players based on both standards were allowed to be sold without any obstacles. The foreign firms, which also separately made their case before the government, owed their continued market access to their Chinese allies. The same story line of the video players and cellular technology is playing out in numerous other cases. Whereas the earliest alliances were informal, foreign companies are increasingly joining Chinese standards consortia, allowing foreign parties more institutionalized access to shape these technologies in ways that benefit themselves and their Chinese partners."[124]

The VCD standards war was then resolved in a way which was satisfactory for both parties. The process and the result of the conflict showed that it was not a confrontation between the Chinese government and companies on one side, and Western companies on the other side. In his book Kennedy said that both teams of companies which contested over the industry standards "consisted of foreign private, state-owned, and domestic private companies, and both teams had companies from different parts of China." He then provides the following table to show the companies involved in the two camps respectively.[125] The general picture of the standards war simply did not fit in the nationalist discourse which claims that the Chinese companies' interests are always distinctive from and opposite to the interests of foreign companies, that there is a distinctive 'national' industry whose relation to foreign TNCs is similar to those between prey and predators.

---

124 *Transnational Political Alliance: An Exploration with Evidence from China*, Scott Kennedy, Business Society 2007; 46; 174.

125 *The Business of Lobbying in China*, Scott Kennedy, Harvard University Press, 2005, P. 121-2

**The two teams in the standards conflict**

| Company (Location) | CVD Team Ownership | Location | Company | SVCD Team Ownership |
|---|---|---|---|---|
| C-Cube (US) | FP | US | ESS | FP |
| Philips (Jiangsu) | FP | Netherlands | Xinke (Shinco) | SOE |
| Xianke (Jiangsu) | SOE | Guangdong | Xiongmao | SOE |
| Xianke (Jiangsu) | SOE | Guangdong | Xiongmao | SOE |
| Changhong (Sichuan) | SOE | Sichuan | Jindian | SOE |
| Wanlida (Shanghai) | SOE | Fujian | Shanghai Broad | SOE |
| Xiaxin (Anhui) | SOE | Fujian | Wanyan | PE |
| Mudan (Guangdong) | SOE | Beijing | Chuanwei | PE |
| Jinzheng | PE | Guangdong | | |
| Bubugao | PE | Guangdong | | |
| Aiduo | PE | Guangdong | | |

*Ownership: SOE – state-owned enterprise; PE – domestic private enterprise; FP – foreign private enterprise.

Industry standards wars are not confined to manufacturing. Between 2002 and 2006 there was also a war over credit card standards. For years Visa and MasterCard had been dominant in the Chinese credit card market. The Chinese government decided to challenge the foreign credit card companies by launching its own national bankcard association, the China UnionPay (CUP), in March 2002. It was established with the approval of the State Council and under the approval of the People's Bank of China, and was practically managed by the latter. By the end of 2008, 196 CUP domestic member banks had issued more than 1.8 billion cards.[126] CUP's mission is not simply about issuance of credit cards. It is also about the making of a national credit card standard, which is able not only to compete with Visa and MasterCard nationally but also eventually globally. Since its founding, CUP encountered fierce competition from Visa and MasterCard. The latter two responded by subsidizing Chinese banks for every Visa or MasterCard the banks issued, and they were successful in continuously dominating the market. The CUP was unhappy about this, particularly because many Chinese banks which issued huge numbers of Visa and MasterCard are members of CUP and state owned.[127] In May 2006 a high ranking official from the People's Bank announced that CUP's standard would be accepted as the national standard.[128] Whether it succeeds or not only time will tell.

After the VCD standards war was settled, it was followed by the war over 3G standards. Below we will describe how the 3G standards war and the war over WAPI versus Wi-Fi unfolded.

On May 7, 2009, after a decade of intense lobbying between American, European and Chinese mobile phone standards, the Chinese government finally issued the much awaited 3G licenses to three Chinese telecom companies, each using a different standard.

---

126 China Unionpay Website: http://www.chinaunionpay.com/

127 Beizhi longduan shichang, yinlian biancheng wei diyu wailai jutou longduan (CUP responded to accusation of being monopolistic by saying that they are only defending China from Foreign Giant's Monopoly) http://www.china-cbn.com/s/n/000004/20060728/000000030627.shtml

128 Yinlian yinhangka jiang bianwei guojia biaozhun (China Unionpay Card Will Become National Standard), http://finance.sina.com.cn/money/bank/bank_yhfg/20060519/05482580131.shtml

| | Standard | Invested amount in 2009 | Global customers |
|---|---|---|---|
| China Mobile | TD-SCDMA | 25 billion RMB | 337,000 |
| China Telecom | CDMA2000 | 50 billion RMB | 95 million |
| China Unicom | WCDMA | 60 billion RMB | 320 million |

With 437 million mobile users in China in 2006, opening up 3G will be a big business worth billions of dollars for mobile operators. 3G networks allow mobile phones to handle data downloads faster, hence cell phone users can make video calls and watch TV programs.

The 3G networks use three technological standards, Europe's WCDMA, North America's CDMA 2000 and the locally developed TD-SCDMA (time division synchronous code division multiple access), or TD for short.

China Mobile, the world's largest network operator, will be using TD-SCDMA technology, China Unicom will use WCDMA and China Telecom will use CDMA2000.

The Chinese government had delayed issuing 3G licenses as it wanted its domestically developed TD-SCDMA technology to be refined further so that it could compete with CDMA2000 and WCDMA. This will save the Chinese telecom companies millions of dollars in royalties and patent use for acquiring foreign technology.

China Mobile has said that it will offer 3G handsets from Nokia on its TD-SCDMA network and that it has placed orders worth $4 billion to equipment suppliers to build the second phase of its 3G network. Its ambition is to have 100 million 3G subscribers in the next three years, although for the moment it has only 337,000 subscribers.

It took ten years for the war over 3G standards to be resolved.

In 1998, the Chinese company Datang Telecom Technology and Industry Group, with the help of Siemens, developed the TD in the hope of launching its own mobile phone standard. In 2000, TD was accepted by the International Telecommunication Union (ITU), the leading United Nations agency for information and communication technology issues. A powerful lobby launched by American and European companies to try to stop TD from being used soon followed. It based its reasons on the inadequacy of TD as a late comer. Soon Western telecom companies realized that the Chinese government would stand by its commitment to establish its own standard, because the latter did not want to repeat the scenario of the 2G market which was monopolized by western companies. They then changed their tactics and tried to persuade the Chinese government to issue 3G licenses earlier, in the hope that they could achieve a bigger share of the market before they faced competition from the domestic standard TD. They failed again, however, because the Chinese government would not do this until it was sure that TD was technically ready.

Not all of the Western companies had lobbied against TD, though. In 2002 Siemens made it clear that they would make mobile phone which could adopt TD.[129] It was also the time when eight Chinese telecom companies founded an alliance in the development of TD standard mobile phones. At this time the Western companies were also reassured that the Chinese government would adopt an even-handed approach regarding CDMA and WCDMA. It meant that the Chinese government had no intention to drive them out of the market. Rather, its preference was to simultaneously accommodate three technical standards, and given China's market size this is not difficult to achieve.

Then the Western companies played a double game: on one hand they announced that they were ready to provide technology to help the Chinese companies to develop the TD further, on the other hand they tried their best to lobby for a greater market share for CDMA or WCDMA. In October 2005, Nokia announced a joint venture with Nanjing Putian Telecom Co. Ltd. to develop TD based products. This was followed in 2006 by a breakthrough in TD technology jointly developed by Nokia and Datang Telecom. Meanwhile, Ericsson also struck a deal with the Chinese telecom company ZTE in developing TD related technology. In June 2004 the Canadian telecom giant Nortel Networks founded a joint venture with China's leading telecom manufacturer Putian Corp to do research and development on 3G equipment based on TD and the

---

129 3G biaozhun zhizheng (The fight over 3G), http://tech.tom.com/Archive/1121/1367/2003/7/28-30507.html

European WCDMA standards.[130] The Western companies were accused by some Chinese commentators, however, as only being half hearted in their collaboration with the latter in developing TD. According to these commentators, the main concern for these European companies remained in carving out a bigger market share for WCDMA.[131] It is not our main concern here to verify the accusation; suffice it to say that the accusation itself reflected the intense competition between the mobile phone giants, even though they knew in advance that there would be enough room for all three standards to co-exist side by side.

The Western companies also fought amongst themselves in order to get a bigger market share. Rob Conway, the GSM Association's CEO, paid a visit to China in July 2003 to lobby for WCDMA and criticized CDMA. The visit included meetings with the Ministry for Information Industry (MII) and its Minister Wang Xudong. He also met with China Mobile and China Unicom, long-time GSM supporters and members of the Association's Board. Conway was quoted as saying:

> GSM is the world's biggest commercial cooperative – a mobile telephony eco-system. The true importance of seamless international roaming, that can only be delivered by GSM, will become increasingly apparent as WTO membership and the 2008 Beijing Olympics stimulate growth in business travel and tourism to and from China, attracting millions of new visitors.[132]

He was also reported as saying that WCDMA was a better choice than CDMA for China since the former was well known for its openness, which meant that there were fewer patents for the technology.

He was followed by Ulrica Messing, the Swedish Minister of Commerce, who paid a visit to China in November 2004 to discuss 3G with the Chinese government, since China was one of the largest markets for the Swedish mobile phone manufacturer Ericsson.[133]

---

130 China Daily, June 23,2004.

131 TD beihou de xintai: hexin jishu buhui touru henda jingli (Behind TD: foreign companies will not put in much effort), http://news.ctocio.com.cn/25/7150525.shtml

132 China Ready For 3G W-CDMA, http://www.3g.co.uk/PR/August2003/5690.htm

133 http://tech.qianlong.com/28/2004/10/28/71@2344245.htm

On the part of the Chinese government, since their ambition to build their own mobile network standard could not have been accomplished without the support of Western companies, any suggestion of allowing TD to monopolize the market was entirely out of the question. If TD has any chance of success the Chinese government must include significant foreign involvement and cooperation. It must also be noted that the Chinese mobile companies themselves, notably China Mobile, at the risk of accusations of being un-patriotic, would prefer the Western standards over the domestic if there was no intervention from the government, given both CDMA and WCDMA standards reflect a higher level of technology than the domestic standard of TD.134 In fact the commercialization of TD-SCDMA would not clearly benefit China's existing mobile network operators, China Mobile, China Telecom, and China Unicom, as they run networks based on technology most compatible with European and American standards. Moreover, the Chinese telecom companies themselves have been so internationalized in both their ambitions and their actual operation, that they could not have developed technology only for use in China (TD has little chance of being used outside China).135 Therefore, although it was a contest between the Chinese and Western technological standards, it should in no way be understood as a struggle between the Western and Chinese companies. The different camps involved in fact did not align along national boundaries, but along commercial interests as perceived by different companies. To this it must be added that at least two of the three Chinese mobile giants had already struck a partnership deal with foreign companies: China Unicom sold minority shares to the Spanish Telefonica and the Korean SK Telecom, while the UK Vodafone holds 3.2 percent of the shares of China Mobile. After the issuance of 3G licenses the CEO of China Telecom, Wang Xiaochu, said that they were entering into negotiations with four or five foreign companies to be their prospective partners.[136]

---

134 Jinkuai fa 3G paizhao, zhongyidong wangyong WCDMA (Issue 3G licenses sooner the better, China Mobile prefer WCDMA), http://news.ccidnet.com/art/1525/20050322/226457_5.html

135 *Transnational Political Alliance: An Exploration with Evidence from China*, Scott Kennedy, Business Society 2007; 46; 174.

136 *Sanqiang dingli, jingzheng gengqu bairehua* (Three Mobile Giants Competition

Surely the Chinese government's attitude did not entirely coincide with the Chinese mobile giants, as the government has an eye not only on short term commercial success but also on 'national self-reliance' in the field of high-technology. This is why the state found it necessary to support the development of TD and then used its coercive power to force China Mobile to adopt TD and not WCDMA for its 3G network. It was equally true, however, that the Chinese government took care of Western mobile giants by handing out the remaining market to WCDMA and CDMA networks. Hence the decision to split the market share into three was reached with everyone having their own share. Yet the future is far from being decided, especially for China Mobile, because of the inadequacy of TD and the small population of its subscribers. While it was expected that China Telecom's 3G network would cover the whole of China within three months of acquiring the license in January 2009, China Mobile could only cover 30 cities. In Hong Kong's market commentators recommend shareholders sell China Mobile's stock because of the disadvantageous position it now occupies.[137] The fierce competition between the Chinese 3G mobile network standard and her Western partners has just begun and the outcome is still not decided.

Another standard war which is directly related to 3G standards is the battle over the WLAN (Wireless Local Area Networks) standard. It has been dominated by Wi-Fi in the world.

Wi-Fi is a trademark of the Wi-Fi Alliance for certified products based on the IEEE 802.11 standards. This certification warrants interoperability between different wireless devices. A Wi-Fi enabled mobile phone can connect to the internet when within range of a wireless network connected to the internet. The Wi-Fi Alliance is composed of more than 300 member companies, chiefly American and European companies, with Intel and Broadcom at the forefront. It officially issued the standard in 1999. The Chinese government began to challenge the Wi-Fi standard, criticizing it as unsafe. It is commonly believed that the Chinese government was concerned that the encryption protocols of Wi-Fi might not be enough to protect its carefully guarded secrets, especially military ones. Hence it

Will Intensify), Hong Kong Economic Journal, January 8 2009.

137 Ibid.

announced its intention in August 2001 of developing its own standard, WAPI (wireless LAN Authentication and Privacy Infrastructure). In May 2003 it was officially launched, and from June 2004 onward no other WLAN standard was allowed in China, and any foreign company which wanted to sell encryption-enabled equipment in China must cooperate with Chinese companies. Intel responded that they could not meet the WAPI regulation guidelines and would therefore stop shipping their products to China. Intel's action was supported by Western industry associations like the US Information Technology Office and the European Information and Communications Technology Industry Association, who lobbied the Chinese government to drop WAPI. A high ranking official from the Ministry of Industry and Information Technology then commented that Intel's action would not stop the Chinese government's determination to implement WAPI, and that China had her own chip manufacturers to satisfy domestic demands anyway.[138]

What was interesting about this was that, according to Scott Kennedy,

> A large swath of Chinese industry was also opposed to WAPI. Lenovo was officially a licensed vendor, but was not likely enthusiastic about being so. Lenovo has a long partnership with Intel and was in the early stages of negotiations to buy IBM's personal PC unit. Along with other Chinese companies, Lenovo also had to worry about the costs of developing a China specific product that could derail pursuit of a greater interest: exporting to the West.[139]

The standards war was carried to an international level in late 2004 when China wanted to make WAPI an international standard and made application to the International Organization for Standardization (ISO). The Wi-Fi Alliance made a similar move with its Wi-Fi standard. The war was concluded with a stunning defeat for China: at the ISO meeting in March 2006 the Wi-Fi was accepted and WAPI was rejected by 5 to 22.[140]

---

138 *Zhongguo jianchi WAPI, Intel buxiangwan* (China insist WAPI, while Intel refuse to comply), http://www.bnext.com.tw/LocalityView_3229

139 *The Political Economy of Standards Coalitions: Explaining China's Involvement in High-Tech Standards Wars*, Asia Policy, No. 2 July 2006.

140 Ibid.

The Chinese government still has a say in the domestic arena, though, and they continue to ban Wi-Fi and to forge an alliance among Chinese companies to develop electronic products based on WAPI. AMD, Intel's global rival, also expressed support of WAPI.

The Chinese telecom giants' lack of enthusiasm still poses a problem to the government's ambition, however. For instance, China Unicom still allows its network to use Wi-Fi because Wi-Fi based mobile phones continue to flood the Chinese market through parallel imports and China Unicom simply can not afford to lose these customers.141 Again, it is immediate commercial interests which have made the Chinese companies act in contradiction to the nationalist plan of the Central government. It seems that their calls for accommodating both standards to resolve the dispute has not convinced the government, however, who has an eye on national security and who is highly suspicious of the Wi-Fi Alliance. Hence the government continues to press the three big Chinese Telecom giants to develop WAPI based 3G mobile phone.[142] The final outcome has yet to unfold.

Unlike the Labor Contract Law (see below), the Chinese government has done little to promote public consultation over the telecom standards issue. The netizens are determined not to be sidelined, however. They have expressed their cynicism over the government's security claims about WiFi and often ridicule the government's action as simply trying to monopolize the industry to make money for itself. Below we post some of the comments which follow the article *The Dilemma of China 3G Wireless Network* on the Daqi Web:

- If a war (between China and US) is looming I don't see how WAPI will really keep us safe. (The government) is just fooling us as if we are children.
- It is all fake. The mobile phone domestic market is monopolized

141 *Zhongguo 3Gxian kunju* (The Dilemma of China 3G Wireless Network), http://digi.daqi.com/feature_295906_5_index.html

142 *WiFi he WAPI de zhandou, shui jiangshi zuihou de shenlizhe* (The Battle between WiFi and WAPI and Who is the Ultimate Winner?), http://net.zol.com.cn/131/1319729.html

by the government, and they cannot allow people to use WiFi to access Skype qq, because it would have cut the expenses of accessing the internet.

- These people sit together to have meeting after meeting just to think of a way to block the development of productivity.
- The claim of defending national information security is just nonsense. All around the world people are using WiFi, aren't they also concern about national information security? They are just like North Korea, who developed her own version of the internet on the pretext that the present internet is not safe enough. The government is simply protecting the (domestic) producers and neglecting the billions of consumers.
- They are upholding WAPI just to benefit the privileged class. It has nothing to do with national security. Just another example of 'Chinese Characteristics'.
- To hell with China Telecom!

The authorities may find these remarks offending, or at least not decent enough. For us it is not our concern to determine whether this or that particular comment is right or not, in tone or in the argument itself. We post these comments here just to give a complete picture of the debate. Any description of the debate cannot be complete without a voice from below.

## Lobbying and Legislation: Labor Contract Law

The first successful case of a foreign company lobbying for legislation in China was when Amway persuaded the Chinese government to revise its ban on direct selling in 1998.[143] The biggest and most successful

143 *Effective Public Affairs in China: MNC-Government Bargaining Power and Corporate Strategies for Influencing Foreign Business Policy Formulation,* by Yi-Ru Regina Chen, Journal of Communication Management, Vol. 8,4 395-413.

example of Western governments and companies' legislation lobbying was, however, their lobby for China to accept their terms when it ascended to the WTO in 2001. This was because according to WTO agreements, all national laws of its member states must comply with them; any laws that do not comply need to be revised. Hence within four years more than 800 laws and regulations were abolished to harmonize with WTO agreements.[144] It has only been since China's accession to the WTO that foreign companies have sunk enough roots into China so as to influence it in all dimensions, including legislation. Hence in 2007 a Washington Post report proudly declared

> In June, foreign companies successfully lobbied Chinese officials to remove conditions on hiring temporary workers in a new labor law that they said would make it prohibitively expensive to do business in China. Likewise in August, they were able persuade China to remove some language in early drafts of the anti-monopoly law that seemed to discriminate against foreign companies, according to Chinese and foreign academics.
>
> The Chinese government has said it took input from domestic and foreign interests into account but has not been specific.[145]

Below we tell the story of the joint efforts by foreign and Chinese companies to lobby against the Labor Contract Law in 2006.

On March 20, 2006, the Chinese legislature launched the public consultation period for its first draft of the Labor Contract Law. Within a month the government received 191,849 comments. The legislation process began in 2005, in response to growing labor disputes which often turned into violence. Rising numbers of spontaneous strikes prompted the government to draft the laws to regulate the labor market to the benefit of workers.

---

144 *Sinian tanzhiyihuijian, WTO rongru Zhongguo jingji jiti* (In Briefly Four Years WTO has been Integrated into China), December 16, 2005. http://ycwb.com/big5/content/2005-12/16/content_1039362.htm

145 *As China Opens, U.S. Lobbyists Get Ready to Move In*, October 2, 2007, http://www.washingtonpost.com/wp-dyn/content/article/2007/10/01/AR2007100101672.html

The first draft of the law aimed at providing more protection for workers. The most debated clauses include:

1. Employers failed to enter into a written contract with workers, the law implied a non-fixed term contract.
2. Employers must negotiate with labor representatives over workplace policies, procedures, health and safety, and firing.
3. Temporary agency workers become permanent employees after one year of employment.

Many took this as a significant step forward for labor rights, but it should be qualified by the fact that labor laws are often not enforced at the local level. In 1994 the Standing Committee of the National People's Congress passed the first Labor Law, which came into affect in 1995, but it was rarely enforced. According to a report by the research institute of the State Department, in 2004, ten years after the enactment of the Labor Law, only 12.5 percent of the 150 million rural migrant workers entered into a written contract, but even this small number of contracts were mostly either not enforced or contain clauses which were incorrect.[146] Big European companies are generally considered to be more law abiding. The example of the Dongguan container manufacturer of Maersk, however, is so horrible that it forces one to rethink the above claim. It was reported in January 2009 that the company was making workers there obey seventy three rules laid down in their "employees' manual". As well as banning leafleting, petition and strikes, punishable by instant dismissal if anyone violates, there is:

*Clause 18: Violating canteen regulations, damaging canteen equipment and disturbing order, including but not limited to: destroying utensils, not queueing for meals, leaving utensils on the table or failing to put them back into the designated place after meals: failing to put scraps and rubbish in designated places: or leaving food, soup, fruit skin, drinks, etc, spattered on the table or floor. 1st and 2nd offences: demerit recorded; 3rd offences: dismissal*

---

146 *Zhongguo nongminggong diaoyan baogao* (Investigation into China's Rural Migrant Workers), Zhongguo Yanshi Press, Beijing, 2006, p. 182.

The company made workers work 11 hours a day, six days a week. For a month with 26 working days, this meant a total of 286 working hours, including around 100 hours overtime. This far exceeded the 196 monthly working hours (40 hours per week plus a maximum of 36 hours of overtime a month) permitted by the 1995 Labor Law. The company imposed a barracks like regime in the factory that producing containers so as to squeeze labor from the workforce and raise productivity. Between 2006, when the factory was founded, and May 2008, production targets were raised from 80 to 150 containers a day. Targets were then further raised to 180, resulting in two serious strikes in January and May 2009.

Both the local government and the ACFTU (All China Federation of Trade Unions) did nothing to address the company's illegal act. If a global TNC can defy the labor law to this extent, then one can only begin to imagine the deplorable situation in small and medium size enterprises who hire the largest number of employees.

Workplace legal rights are only as strong as the unions which enforce them. Since the Chinese government forbids free associations in general and independent trade union in particular, and since the official ACFTU is just part of the one party regime whose top priority is to support the monolithic state without reservation, it follows that common workers neither have the channel to voice their grievances nor the necessary organized strength to enforce the labor laws. Hence the passing of the first labor law in 1995 has not stopped the trend of a falling share of wages in the national income. According to a World Bank report, wages in China as a share of GDP declined from 53% in 1998 to 41.4% in 2005, as opposed to 57% in the US.[147] The other side of the same coin is that profit as a share of GDP rose dramatically in the same period. A Chinese scholar named Wang Lianli, wrote that in manufacturing the proportion of wages to profits rose from 1:3.1 in 1990 to 1:7.6 in 2005.[148]

The business community, both domestic and foreign corporations and their chambers of commerce, should have been aware of the fact that the new labor contract law would probably have the same fate of non-

147 China Economy Quarterly Update, Feb 2007, World Bank Beijing Office, p.6.

148 *Tigao laodong baochou, zheli yu chuci fenpei* (Raise the compensation of labour, focus on initial distribution), by Wang Lianli, Xianggang Chuanzhen (Hong Kong Fax), published by research department of Citic Pacific, No. 2007-90, p.8.

enforcement as the 1995 Labor Law, yet they still bitterly opposed the draft labor contract law from the very beginning. The American Chamber of Commerce and the European Union Chamber of Commerce in China (EUCCC) — the two largest foreign investor's organizations in China – were among them. Both Chambers submitted recommendations and opinion papers to the Chinese government to try to persuade them to water down the draft law.

The EUCCC recommendations stated: "The labor laws currently adopted in several European countries have led to the increase in labor costs, resulting in many European countries having to move their production lines to countries outside Europe or to other European countries with less strict labor laws. Therefore, if China chooses to implement the draft law on labor contracts, it will undoubtedly face a similar challenge." It then went on to criticize the draft law, which if adopted would result in restricting firms' flexibility in using labor, forcing them to reconsider their choice of China as a production site. The American Chamber of Commerce was more direct: "We believe it might have negative effects on China's investment environment." These were just polite ways of making the threat of disinvestment if China insisted on going ahead with the labor contract law. Dr. Keyong Wu, an expert for the British Chamber of Commerce, stated, "Business is attracted to China not only because of its labor costs but also because of its efficiency. If regulation starts to affect that and flexibility, then companies could turn to India, Pakistan and South East Asia."[149]

According to a report by Global Labor Strategies, the international labor movement also played a role in defending the draft labor contract law. A leading role in this process was taken by the International Textile, Garment, and Leather Workers Federation (ITGLWF). It issued a statement entitled "Multinationals Accused of Hypocrisy over China Labor Law Reform," demanding that EU and US corporations halt their lobbying campaigns against the modest improvements embodied in the new law. The International Union of Food, Agricultural, Hotel, Restaurant, Catering,

---

149 *Foreign Corporations' Opposition to the New Chinese Labor Contract law and Their Impact*, National Labor Committee, http://www.nlcnet.org/article.php?id=473, September 2007.

Tobacco and Allied Workers' Associations (IUF) called upon the international labor movement to oppose the American and EU Chambers of Commerce's attempt to water down the draft law, because "unions worldwide have a vital interest in defeating this corporate offensive."[150] It was followed by the European Trade Union Confederation's move to press the EUCCC to "clarify" its position on the draft law. John Monks, General Secretary of the ETUC (European Trade Unions Confederation), demanded that,

> European companies should behave outside Europe as they are supposed to do inside. They should certainly not act to drive standards down. I must say that recent reports that European companies in China may reconsider new investment or continuing their activities in response to proposals to improve labour laws give us food for thought to say the least. I think it urgent that we reach some understanding about what is acceptable behavior and propose that we have a proper discussion about this.[151]

Their effort bore fruit when the E.U. Chamber issued a statement on December 8, 2006, to clarify that it did support the draft law:

> In light of recent media attention concerning the European Chamber's position on the draft Labour Contract Law, the Chamber would like to take this opportunity to clarify its position on this important piece of legislation. The Chamber believes that there is a serious need to improve working conditions in China and stands firmly behind the Chinese government's efforts to improve working conditions. The European Chamber welcomes the fact that many of the articles presented in the draft law stem from labor laws in Europe. There is no doubt that if such a law was passed and strictly implemented, working conditions in China would drastically improve. The Chamber believes that the introduction of the new labor contract law will assist Chinese firms in improving working conditions.[152]

---

150 http://www.iuf.org/cgi-bin/editorials/db.cgi?db=default

151 *Undue Influence,* Global Labor Strategies, March 2007, http://laborstrategies.blogs.com/

152 Statement on Draft Labor Contract Law, EU Chamber of Commerce, http://www.europeanchamber.com.cn/events/news.php?id=286

The following month Xie Liangmin, vice president of ACFTU's law department, joined the voice in the defense of the draft law and was reported criticizing the American Chamber of Commerce for their threat of disinvestment.[153]

Despite the outcry against the TNCs' opposition to the draft law, the latter still succeeded in convincing the Chinese government to water down clauses which aimed at the protection of labor in the second draft (released in December 2006) and subsequently in the bill passed by the People's Congress. The president of the American Chamber of Commerce in Beijing, James Zimmerman, was reported as saying that three quarters of their amendment suggestions were accepted in the second draft.[154]

Whereas the first draft made the provision that if an employer failed to enter into a written contract with workers, it implied a non-fixed term contract between the employer and the employee. The second draft eventually deleted this clause. The first draft stipulated that "rules and regulations which directly affect the employees shall be discussed and adopted by the trade union, workers assembly or congress of workers representatives". The tabled bill practically reduced the scope of "rules and regulations" to an explicit list, which included wages, work hours, occupational safety, insurance and welfare. This implied a tacit exclusion of the issue of managing companies from the 'rules and regulations' which the trade union was entitled to 'discuss and adopt', a point which the business community had expressed concern about. The word "adopted" was also deleted from the first draft, meaning that the listed issues which directly affected workers could only be "discussed" but did not necessarily require workers' approval.

The first draft required a company to "reach consensus" with the trade union through negotiation when it wanted to lay off fifty or more workers. The second draft substituted this clause with a much weaker version, namely that the company would only need to explain to the trade union why it was necessary to lay off workers in large numbers.

---

153 *Labour Law Won't Go to NPC in March*, Bill Savadove, South China Morning Post, Jan 31, 2007.

154 *Meguo zai hua gongsi chazu xin laodongfa: yingli gaoyu renquan* (American companies in China intervene on the new labor law: profit before human rights), July 27, 2007, http://news.jschina.com.cn

On April 24, 2007, the third draft was released. Although in some areas more protection was added concerning forced overtime, unreasonably short contracts or failure to enter into written contracts with employees, this draft also further relaxed the remaining restrictions on layoffs by adding that layoffs as a result of a shift of production, innovation and changes to the form of operation was legitimate. On June 29, 2007, the third draft was adopted by the Standing Committee of the National People's Congress.

In the end the two Chambers of Commerce had at least partially achieved their goal of significantly watering down the draft law in its protection of labor rights.

The debate did not come anywhere close to resembling a 'China versus Foreign' debate; far from it. The new draft of labor contract law was also bitterly opposed by Chinese business people and the dominant neo-liberal academics. According to Li Yuan, a high official of the National People's Congress and one of the drafters of the law, 90 percent of the people he consulted were employers or their associations who opposed the draft on the grounds that it gave too much protection to employees --- he did not bother to explain why 90 percent of the people he consulted were employers in the first place. It was followed by an open debate between two professors. The well known labor expert Chang Kai, professor of the People's University of China, came out in defense of the bill, arguing that laborers were more vulnerable than employers, hence the law must be explicitly protective towards labor. He was criticized by another labor expert, the neo-liberal Dong Baohua, professor of the East China University of Political Science and Law, for giving excessive protection to laborers at the expense of a flexible labor market. Li Yuan admitted in the interview that the united opposition from domestic and foreign companies had resulted in watering down the first draft, which the ACFTU criticized as a step backward for the protection of labor.[155] Even after the law was passed in June 2007, the Chinese employers and neo-liberal academics continued to resist its enforcement. In September 2007 Huawei dismissed all 7000 employees but rehired them on new contracts, so as to get around

155 *Laodong Hetongfa: jibian yu chongji* (The Debate on Labor Contract Law and its Consequences) http://www.chinahrd.net/zhi_sk/jt_page.asp?articleid=137748

the law's requirement to provide indefinite contracts to employers with over ten years of service. In December 2007 the CEO of Lenovo criticized the law as it would burden enterprises with unbearable costs.

It was also the first time common laborers had a chance to voice their support for the law through a website run by the government to collect opinions and suggestions though. In the month long consultation period, there were 191,849 comments and 65 percent of them were from common workers.[156] This made up just a small proportion of the overall number of worker's comments since over two years many more were posted on different websites. The debate continued even after the law took effect in January 2008 because of the fact that the business sector continued to resist the enforcement of the law. Special workshops were provided by law and human resources firms to employers all around China to teach the latter ways to circumvent the laws. In March 2008, when the Chinese People's Political Consultative Conference and the National People's Congress were convened, the business sector lobbied for an amendment to the new law. Zhang Yin, a member of the Political Consultative Conference and herself a big tycoon, called for the abolishment of the clause on indefinite labor contracts on the grounds that it was the equivalent to the iron bowl under the planned economy of the past period. Liu Xiqian, a member of the People's Congress and himself CEO of a big firm, got the support of 38 Congressmen and pushed, unsuccessfully, for the amendment of the law. It was the comments of well known Hong Kong based neo-liberal economist Steven N.S. Cheung which sparked intense opposition from common workers. Steven Cheung wrote that the new law was too protective of labor and would result in forcing firms to keep those lazy workers, and that the government should not intervene into something when it was the market which knew best.[157] This was greeted with the most intense counter attack from common workers on the internet:[158]

- ♦ So it isn't those lazy guys who have been making profits for the bosses, is it?? You people are just kicking down the ladder! It is

156 Ibid.

157 *Xinlaodongfa de kunrao* (The Puzzle over the New Labor Contract Law), http://zhangwuchang.blog.sohu.com/73132085.html

158 http://comment5.qq.com/comment.htm?site=news&id=8148284

simply shameless to describe workers as lazy.

- Shall we invite Mr. Cheung to come to Mainland China to work as a common worker who has no written labor contract, no pension, no insurance of any type, and can become disposable at any time the boss finds fit. Let him experience the vulnerability of working like that here. If he does not want to come and prefers to keep his good life in Hong Kong, then he should just shut up!
- Demand for a restoration of the slave system! Slaves at least won't be unemployed.
- I had worked for a pharmacy plant for more than a year. The company had not entered into a written labor contract with me, except for renewing my contract every month. Then I was fired in December 2007 for being too old. I need the job. Now I have to go back to my home (village or town). All I can do now is to cry and cry and cry!
- The constitution has no real protection for labor. Can't you see that workers who worked for the country for 20 or 30 years were just sacked without a word. All this stuff is just deceiving us.
- Steven Cheung's remark is outrageous! If he looks at the labor laws in Europe or US he will commit suicide. He opposes the labor law only because he himself is a capitalist and runs a labor intensive factory.
- In response to the notion 'without bosses there would not have been workers' I would like to say that the opposite is true!

Towards the later half of 2008 the debate was eventually ended by the approaching of the global economic downturn, when a wave of plant closures swept across China. Just months ago workers were fighting for the implementation of the new Labor Contract Law, now they have been sacked or are helplessly seeing their wages cut by the bosses. Millions of jobless migrant workers have had to return to their home villages.

## Corruption: The Siemens Case

Hu Angang, the Chinese economist, said in his book *Great Transformations in China: Challenges and Opportunities* that according to official estimation, the annual economic loss due to corruption between 1999 and 2001 averaged from 14.5 to 14.9 percent of GDP. His own estimated range was between 13.3 and 16.9 percent of GDP over the late 1990s alone.[159] That corruption is rampant in China is so obvious that even the former top leader, Jiang Zemin, admitted in 2002 that if the party state failed to crack down on corruption, the ruling position of the Party would be doomed.

It was reported in the South China Morning Post in 2006 that a World Bank survey of companies operating in China showed that half of them admit paying bribes, more than in either the Philippines or Indonesia. Over a quarter also described corruption as a major constraint on their business.[160] A year later a Xinhua net report held that the Anbound Group had done research into corruption, according to which, in the past ten years the government had investigated 500,000 cases of corruption with 64 percent relating to international trade and foreign companies. The Anbound group's report, according to Xinhua, also said that TNCs paying bribes in China had been on the rise in the same period.[161] Both reports referred to 'foreign companies' as a whole, and did not differentiate between country origins.

According to the Transparency International (TI) bribery survey 2008, Western and Japanese companies in general are less inclined to pay bribes when doing business abroad. Italian, French and Spanish companies had the lowest scores of BPI (Bribes Payers Index) which indicates that they are relatively more active in paying bribes than other European companies, for instance those from Belgium and Netherlands. By contrast, Russia,

159 Will Hutton, p. 121

160 *Corruption begins at home for foreign companies in China*, September 27, 2006.

161 *Dasui qiangiuze jiecheng de waizi jutou liyiquan* (Break the Cliques of Big Foreign Companies which are Founded upon Hidden Rules), http://news.xinhuanet.com/comments/2007-10/12/content_6863077.htm

China, and Mexico scored the lowest implying that their companies are more inclined to bribe in overseas investment.[162] It may be logical to guess that, according to TI, Western and Japanese companies investing in China may be less inclined to pay bribes. No one knows the truth, however, given the very nature of the extremely low transparency of the problem itself. A report posted on the People.com mentioned that the way foreign companies pay bribes tends to be more 'elegant' than the Chinese way and hence more hidden. Where as the latter bribes by paying money or by *xinghuilu* (providing sexual services), the former bribes by providing overseas training, sponsoring leading cadres' children to study overseas, running MBA courses jointly etc. This also means that it is harder to identify bribery paid by non-Chinese foreign companies because

> Firstly it is because the secrets of foreign companies paying are carefully (and successfully) guarded, as the persons involved necessarily need to speak foreign languages (that common Chinese people do not understand). They are also generally more professional in their trade, implying that their circles tend to be small and closed, hence their secrets are hard to discover.
>
> Secondly, many foreign companies bribed their targets outside of China and are hence difficult to investigate.
>
> Thirdly, luring foreign direct investment has been seen as an important task by all levels and all departments of government. The local governments are only interested in squeezing the most from the foreign companies investing there, and have no interest at all in monitoring their acts (of paying bribes).[163]

A report on the telecommunications industry revealed how foreign and local companies together cheated in the bidding for contracts, usually worth millions of dollars. The sum total of bribery can be as much as 10 percent of the contract. The money is split among different branches and levels of the government concerned, and the companies must make sure

162 http://www.transparency.org/news_room/in_focus/2009/gcb2009

163 *Timian waiyixia de waiqi xinghui* (Foreign Companies Paying Bribes under the Cover of 'Decency'), http://finance.people.com.cn/GB/1045/3523670.html

that no one is left out, or else they may face unforeseen consequences.[164]

We now once again turn to Ethan Gutmann for his story about the success of Motorola in China. He believes that the success of this 'American company having Chinese characteristics' in China lies in its assimilation of Chinese lobbying methods. Gutmann's book told the story of how Motorola promoted its paging business in China using a 'finder's system'. It works exclusively through Hong Kong and Taiwanese businessmen. Motorola had a contract with the finder: you get 3 percent if we win the award, but you've got to 'lobby' on our behalf. To 'lobby' meant that the finder would cut a deal with government officials, find out exactly who should receive the money, then pass the 3 percent award directly to the appropriate Chinese officials.

He then goes on to describe how Motorola, in its fight to get its CDMA-standard's share of the mobile phone market in 1995, which had been dominated by the European-standard GSM, was approached by a shadowy expat who had formerly made some successful deals for Ericsson, and presented with a strategy:

> The terms of the deal was… a ten million dollar discretionary fund. Hands off, no questions asked. Don't ask me where the money goes, and on those terms, 'I'll work for you.' We knew exactly what he was up to, and exactly how successful he would be, and how important and crucial it was.

This time Motorola felt the fund was just too large. The consequence of declining the 'strategy' was that Motorola 'watched the deal slip away and the standards war go to the Europeans who were willing to pay.'[165]

While it may be illegal for children of leading cadres to run their own business, it is entirely within the law for foreign companies to hire them as managers. It proves to be an effective way of paying bribes since it is difficult to prove any irregularities. One must also add that this form of bribery does not only target leading cadres. As explained earlier, doing business in China requires the maintaining of good relations with all levels and all related

164 *Dianxun waizi xinghui diancha* (Investigation on Foreign Telecom Companies Paying Bribes), http://www.360doc.com/content/070126/09/18666_345168.html

165 Ethan Gutmann , Chapter five.

departments of the government or State Owned Enterprises. Hence the list of potential candidates for vacancies can range from the children of top leaders to the cousin of a low ranking manager in some SOEs. The vacancies to be filled can also range from high level managers to ordinary drivers.

According to a report by Globalization Monitor in April 2009, Maersk's subsidiary in Dongguan, China, was both corrupt to the core and outrageously repressive to workers. In order to maintain peace in the barracks factory, the management relied on close cooperation with local government to maintain an iron hand over the workers. It seems that with such absolute power over the workers, the management was more prone to corruption as well. Company procurement is a common form graft, from light bulbs to construction contracts. Another channel of corruption is stealing, from small things like ear plugs to expensive cables worth hundreds of thousands of RMB. Promotion is based on bribery, not merits. Members of the management often hire and pay their own wives or other relatives to work in MCID.

> Up to now not a single person of the management was fired for corruption, however, while hundreds of workers have been dismissed for doing nothing or just for claiming back their legitimate rights. Full benefit of doubt is given to managers and team leaders, while more than a hundred workers were denied basic procedural justice.
>
> This or that particular accusation by workers may or may not be true, but the accusations speak for the need to undergo an impartial and independent investigation. We believe, after months of conducting extensive interviews with workers, that corruption is so rampant that at least part of the management had hijacked the company to serve their hidden agenda of corruption.[166]

Sometimes TNCs will resort to a second method and open a new company which has nothing to do with their own business; their purpose is simply to hire the relatives of important officials as consultants and pay the latter millions of *yuan* as a yearly salary for doing nothing. A

166 http://www.globalmon.org.hk/en/01news/04report-on-maersk/an-independent-investigation-into-mcid-is-urgently-needed/

third way is to give the officials shares in their companies. According to a Chinese news report, this is common in real estate. Certain foreign real estate companies will distribute shares to the officials in charge of land sales in exchange for the right to buy a particular piece of land.[167]

The Chinese government would occasionally crackdown on officials accepting bribes, but it seldom pursues the people who pay the bribes with the same zeal. A Wall Street Journal reports that

> 'As a policy, the Chinese prosecution -- they normally don't go after the people who bribe. It's been very consistent,' says Fu Hualing, an associate professor on the faculty of law at the University of Hong Kong. 'It doesn't matter if it's the lawyers bribing the judges or the companies bribing the officials.'
>
> Dr. Fu says bribery is a part of Chinese society and that the public and the government look at those who bribe with more sympathy than the government officials who accept bribes. 'If you talk to people on the street, they will think that it's the government officials who should be prosecuted, not the people who bribe,' Dr. Fu says.[168]

There is some rationale behind the attitude of the people described above, especially in relation to an earlier period of the market reform. In the long transition to capitalism under the auspices of the Party, the receding of onerous regulations and bureaucratic red tape was necessarily drawn out and difficult, hence it created immense and illegitimate obstacles to firms doing normal business. It has also created enough space for officials and their *guanxiwang* to engage in rent seeking activities. Common business people have to pay bribes to the latter for a particular license or permit even if they are fully qualified to get it. This is also why people in general hate the bribe taking officials but are less resentful

---

167 *Waiqi xinghui diaocha: dianxinye xinghui neimu jingren, fanfu mianlin kaoyan* (Foreign Companies Paying Bribes are under Investigation, Inside Story of Telecommunication's Corruption is Startling, Anti-Corruption Faces Tests), http://www.iwms.net/n892c8.aspx

168 *China Targets Bribe Takers, but What About Givers?; Zeal to Prosecute Those Who Instigate Graft Appears to Be Lacking*, Wall Street Journal September 7, 2007.

of those who pay bribes. Furthermore, if common folk pay bribes more often than not it is because they are blackmailed by low level officials.

It is doutful that this kind of sympathy for ordinary people or small businesses paying bribes can be extended to TNCs investing in China today. A more important point to note is that as China opens up its markets further, particularly since its accession to the WTO, TNCs have become less vulnerable to onerous regulations and bureaucratic red tape. They now enjoy more economic rights; for instance they are entitled to found wholly owned enterprises and no longer need to be forced into joint ventures with the Chinese government as they were in the past. If they bribe the officials it is less likely due to blackmail or unreasonable regulations, but more often because they want to pursue commercial interests at the expense of justice.

In the Chinese discussion of Western companies' paying bribes in China there is always someone who will put forward a '*yuehuaiweizhi*' argument, which we discussed in the introduction, meaning that Western companies are always seen as clean. They only become corrupt because they are forced to play by the corrupt rules in China. A Chinese consultant has this to say:

> When US companies are back in the US they are dedicated to their business, responsible and their intergrity concerning business ethics is beyond question. Once they arrive here in China, however, they can no longer refuse the temptation (of corruption).[169]

Do US companies really perform that well in the US? The fact that the US is one of the countries which had legislated to regulate lobbying very early on, and that it passed the law in 1977 to ban US companies from paying bribes in their overseas operation, should make us question this claim. That these laws were past is precisely a response to the corrupted practices of US companies, both in the US and overseas.

Do European companies necessarily perform better? Maybe or maybe not. We are not at all sure because the issue of bribery is simply a black hole from which no light can escape. Hence outsiders are never able to

169 *Waiqi zaihua xinghui diaocha* (Foreign companies investigated for paying bribes), http://jjdb.dzwww.com/bkzl/200506/t20050602_1082999.htm

observe its inner structure. The Siemens A.G. case should keep us aware of this fact and our skepticism may be justified after all.

In December 15, 2008, Siemens was involved in an unprecedented corruption case. The company pleaded guilty in both Munich and Washington, DC on December 15 and paid total fines and penalties of approximately EUR 1 billion for bribing government officials to get contracts around the globe from the 1990s to 2007.[170]

For years the global company, which has nearly 400,000 employees and yearly revenues above $100 billion, has tolerated fraud, deceit and concealment. They allocated funds to bribe public officials, to make phony contracts and fake invoices to cover up for the corruption. The board of directors knew what was happening but did nothing except tacit consent of the wrong doings. The fact that this corruption practice was completely global is also noticeable: from 2004 to 2006, Siemens bribed public officers in Nigeria, Italy, Greece, Liechtenstein, Israel, Hungary, Azerbaijan, Taiwan, and China. Siemens was forced to fire most of its management board after the scandal broke in 2006. It conducted an in-house inquiry that revealed 1.3 billion euros (1.8 billion dollars) in suspect payments over recent years.[171]

The German government began to investigate the company in 2006. The New York Times reported the interesting story of Reinhard Siekaczek, a former accountant for Siemens. He was one of several people who arranged payments of bribes to well-placed officials around the globe, from Vietnam to Venezuela, and from Italy to Israel. He was arrested by the government and decided to tell the whole story.

> Mr. Siekaczek says that from 2002 to 2006 he oversaw an annual bribery budget of about $40 million to $50 million at Siemens. Company managers and sales staff used the slush fund to cozy up to corrupt government officials worldwide. The payments, he says, were vital to maintaining the competitiveness of Siemens overseas, particularly in his

---

170 *Siemens' Unprecedented Corruption* Case Involved C, http://www.chinastakes.com/story.aspx?id=916

171 http://www.monstersandcritics.com/news/business/news/article_1448524.php/Siemens_guilty_of_massive_global_corruption_scandal_Justice_Department_officials__2nd_Roundup__

> subsidiary, which sold telecommunications equipment…
>
> Before 1999, bribes were deductible as business expenses under the German tax code, and paying off a foreign official was not a criminal offense. In such an environment, Siemens officials subscribed to a straightforward rule in pursuing business abroad, according to one former executive. They played by local rules.
>
> Each year, Mr. Siekaczek said, managers in his unit set aside a budget of about $40 million to $50 million for the payment of bribes. For Greece alone, Siemens budgeted $10 million to $15 million a year. Bribes were as high as 40 percent of the contract cost in especially corrupt countries. Typically, amounts ranged from 5 percent to 6 percent of a contract's value.[172]

Half the businesses of Siemens China were also reported as connected to bribery.[173] A Chinese report quoted a German report saying that 90 percent of Siemens China's business relied on middle persons between the company and well placed officials.[174] In addition, according to the Wall Street Daily, a former senior manager from Siemens' Telecommunications Department mentioned three high consulting fee receivers. One of these was related to Chinese business. The report said that a person called Max Rennert received a total of EUD4.74 million in consulting fees from Siemens to help the company obtain a mobile communications project in China.[175] In September 2007, the company had identified 20 employees who had allegedly committed undisclosed dubious acts, and were fired later. It has also been said that after the trial Siemens refrained from paying bribes, but also lost contracts to its competitors.

---

172 *At Siemens, Bribery Was Just a Line Item,* December 21, 2008, http://www.nytimes.com/2008/12/21/business/worldbusiness/21siemens.html?pagewanted=all

173 *Siemens China Cites 'Zero Tolerance' for Corruption*, August 23, 2007, http://www.china.org.cn/english/business/221861.htm

174 *Juzi zicha huilumen, Siemens China cheng shexian xinghui bushi* (The Big Company Investigate Itself, Siemens China Denies Paying Bribes), http://news.sdinfo.net/itxw/245861.shtml

175 *Siemens' Companies In China Involved In Bribery Scandal*, May 30, 2007, http://www.chinacsr.com/en/2007/05/30/1368-siemens-companies-in-china-involved-in-bribery-scandal/

It seems that the Chinese government takes no legal action against Siemens China. Local governments did prosecute those officials who took bribes from the company, though. According to a Chinese report[176], Siemens China bribed the following officials, who were later prosecuted:

- In 1998, A Shanghai subsidiary of Siemens China bribed Cui Zhongliang, head of the technology department of the Telecommunications Management Bureau of the Shandong provincial government, and was prosecuted in 2000 for corruption.
- In April 2007, a subsidiary of Siemens China bribed the director of a hospital in Changsha city with 1.28 million *yuan* and was sentenced to ten years in jail.
- In July 2007, Hou Yingshan, director of a hospital at Songyuan city, Jilin province, was arrested for accepting bribes from Siemens China in exchange for contracts.

The Siemens bribery cases in China also drew fire from those who defend Chinese 'national industry'. It is said that Chinese companies have grown to a point that they are increasingly able to challenge foreign companies, and that foreign companies would only be able to keep ahead of Chinese companies by paying bribes. This would result in 'doing harms to Chinese companies, and greatly restricts their living space.'[177] This claim can only be true if Chinese companies never pay bribes, but this would be a big claim which lacks strong evidence.

---

176 *Siemens' huilumen yueyongyueda, fanfu jizhi yu zuli* (Siemens' Bribery Gate Looks more Serious Following more Reports, But Anti-Corruption Mechanism Faces Obstacles), http://big5.jrj.com.cn/gate/big5/finance.jrj.com.cn/news/2007-09-25/000002723026.html. Also: *Siemens huilu yiyuan yuanzhang 400wan* (Siemens Bribes Director of Hospital 4 Million), http://news.luckup.net/html/2007-09/21824.htm

177 *Waiqi xinghui ehua minzu qiye jingzheng huanjing* (Foreign Companies Paying Bribes Makes Competition more Unfavorable to National Enterprises), http://mnc.people.com.cn/GB/6170528.html

The cracking down on those who accept bribes but not on those who pay them, especially when they are TNCs (be they foreign or Chinese), by the Chinese authorities is more questionable than ever. There is little optimism that the Chinese authorities will deal with those who pay bribes, however. On top of this, there is deep and common cynicism towards the authority's proclaimed campaign against corruption in general. Even though the central government in Beijing has promised to act decisively and assertively in the event of malfeasance in business transactions, allocating massive resources to different corruption-prevention commissions, no great change is to be expected. The main reason for pessimism is that, as we discussed earlier, corrupted official with powerful *guanxi* can always get away from being prosecuted no matter what the laws said. In fact, no matter how often high level officials are prosecuted for corruption, it fails to restore confidence among the public that the government is really doing something serious on corruption. More often than not these prosecutions are just viewed as the result of inner party struggles, hence prosecutions are more often seen as a victory for the more powerful faction than a victory for justice; the underdog lost the fight only because it had weaker *guanxi* than its opponents. This can be seen in the case of former Shanghai mayor Chen Liangyu. Chen, who faces charges for misuse of public funds, was also known as a prominent figure in the so called Shanghai Faction that was linked to former President Jiang Zemin, and a leading opponent of current President Hu Jintao's Youth League Faction. It is therefore widely believed that Chen was dismissed not only because of malfeasance, but also to disarm his ability to hurt the current administration.[178]Again, public opinion may be right or may be wrong on this or that particular case, but its perception has some rationale in general due to the fact that those being prosecuted are not necessarily the most corrupted and those who are most corrupted often remain in office and continue to gain promotion. In addition to this is the fact that anti-corruption agencies do not enjoy even the apparent independence from the party or the government that one would expect an agency of this nature to have. In essence, the Communist Party has assigned itself to be the watchdogs of corruption in its country. Their organs, however, appear

178 *Shanghai Party Boss Held for Corruption*, New York Times, September 25, 2006.

to be working more as tools for the Politburo's Standing Committee (China's top leadership) to dethrone officials that are seen as factional leaders.

## Section V: Conclusion

The above review of malpractice by EU companies shows that the promise of "change through trade" has not been delivered, and we suspect it will not be delivered at all. From the day when the European governments and its companies decided to invest more in China immediately after the Tiananmen Massacres, it meant that in practice they willingly accepted the rules as laid down by the Chinese government. These rules can be boiled down to the following sentence: if you do not talk about human rights, then we will grant you money making opportunities. That they willingly accepted this rule is not because they have made a wrong choice, or were misled; on the contrary, they are acting precisely in accordance with their own commercial interests. At this point the foreign business community may argue that if Western investment had not directly contributed to the improvement of human rights in China, it has brought in new technology which benefits ordinary people by providing them accessible electronic communication and the internet --- the number of Chinese netizens now ranks top in the world. The statement needs to be qualified however, by the fact that the influx of Western investment into China has also armed the authoritarian state with the most advanced technology in imposing its censorship and surveillance over its citizens and netizens. The state remains as powerful as before, while civil society is nowhere to be seen. Despite the alleged benefits of foreign investment ordinary people are still unable to form autonomous associations, and anyone who dares to do this is always easily tracked down by the authority, thanks to Western technology transfer. This brings us back to a basic point which needs to be stressed again and again, namely that foreign companies do share the benefits of the authoritarian state of China, although it does not mean that every incident of human rights' abuse is in the interest of foreign investors. By denying basic labor rights to their employees and the right to free speech and free association, it also guarantees investors, foreign and domestic alike, that they would not be pressed by any organized labor or consumer movement. Only under this condition could Dongguang

Maersk impose its barrack like regime on its workers; the same can be said of Nestle, where no consumer campaign against it is possible. With this in mind the 'change through trade' argument looks increasingly unconvincing.

Mainstream business journals may then retreat and take up a second line defense, saying that with the enforcement of the WTO agreement leading to China's business environment becoming more rule based than before, the *guanxi* phenomenon may begin to recede.

> 'It has reached a point in China where you can do things systematically,' said David Wolf, director of the Beijing branch of the U.S. public relations firm Burson-Marsteller.
>
> With China likely to enter the World Trade Organization this year, lobbying efforts will increase as other governments and companies jockey to have their interests represented in the new laws China must issue to comply with WTO regulations…
>
> Shortly after the government opened the country to foreign investment in 1979, getting anything done required either carefully choreographed high-level meetings or get-to-know-you banquets with local Communist Party cadres. By the late 1980s, foreign company officials often found themselves pressured by corrupt officials who wanted free trips abroad or cash bribes…
>
> 'The karaoke era is passing,' Wolf said of the days when companies had to wine, dine and take government officials to karaoke bars to maintain relationships.
>
> In the meantime, foreign business executives who still rely on old-fashioned *guanxi* are taking a chance of being upstaged by other companies as modern business practices slowly enter Chinese society.
>
> 'Personal *guanxi* as a business tool is temporary,' said Patrick Powers, head of the Beijing-based United States-China Business Council.[179]

---

179 *Courting China: Lobbyists set up shop in world's largest market to smooth way for U.S. business*, Shai Oster, San Francisco Chronicle, January 9, 2001. http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2001/01/09/MN33203.DTL

This is disputed by others. In 2004 Business Week carried an article[180] which said

> Yes, China has big problems with counterfeiters, but it's also a place where you can get things done if you have the right connections -- *guanxi* ...
>
> Beijng's entry into the World Trade Organization three years ago was supposed to make China more of a rule-based system, where *guanxi* would have far less influence, and also improve its legal system to make its rules easier for companies to understand. Yet *guanxi* remains important in China. Just ask Andreas Tschirky, head of the new research center in Shanghai for the Roche Group, the Swiss pharmaceutical company. He says the local and central governments understand the importance of beefing up protection for intellectual-property rights (IPR) -- and one sign of their commitment is the relationships that Roche now has with their representatives.
>
> 'We have a specific person in the Shanghai government to whom we can address all of our issues,' says Tschirky, who adds that Roche has "direct access" to officials from the central government.

It is probably true that with the WTO regime now firmly place in China it provides more favorable rules for Western TNCs to run business there. The problem is that this does not necessarily imply the decline in the importance of building up *guanxi* with officials. There is no sign showing that officials are becoming more respectful of the rule of law. Conversely, since corruption is becoming more and more serious (Premier Wen Jiabao admitted that in 2007)[181], it is reasonable to suspect that the opposite is true, and that a rule of law is lacking now in pretty much the same way as before. With this in mind, it is difficult to imagine that *guanxi* are becoming less important. It is also equally unimaginable that those Western TNCs which pay bribes or favors are now able to rid themselves

---

180 *Big Pharma Has a Friend in Guanxi, b*y Bruce Einhorn, December 7, 2004, http://www.businessweek.com/bwdaily/dnflash/dec2004/nf2004127_9786_db065.htm

181 *Wen Jiabao tan fubai fang zhonghua: xuduo gaoji lindaoren sheji fubai* (Premier Wen Warns about Corruption: Many Leading Cadres Involved in Corruption), 2007-3-17, http://www.stnn.cc/feitures/two_conferences/focus/200703/t20070317_492156.html

of malpractices, at the risk of losing contracts --- as the Siemens case shows.

A Chinese specialist on TNCs said in an interview that Western companies, even if they are clean in their home country, have to adapt to a more corrupted business environment in China because

> Even if they enjoy more advantages in capital and technology, they are weaker (than local companies) in influencing government decision and lack the capacity in adapting to local environment. There are government departments which aim at expanding their power to promote rent-seeking activities, and there are local competitors which rely on malpractices like paying bribes (to get contracts). These practices put these foreign companies under stress (of fear of losing in the competition for market), and in response they have to model themselves on local companies in adopting 'special ways' to deal with the government. Eventually a strategy tailored to local situation is developed, which is alien to the practice of their mother companies in their home countries though.[182]

The statement is correct in pointing out the immense pressure of competition felt by foreign investors, but it is also one sided, and may be taken as evidence for proving the validity of the *yuehuaiweizhi* argument --- that Western companies are supposed to be inherently clean but only go bad in China or elsewhere because they are forced to play by the local rules. The Siemens case reminds us again that this may not be the case. If Western corporations are inherently clean there would be no legislation against corruption or to regulate lobbying in their home countries in the first place. This is not to deny that Western companies, when they operate in their home countries, tend to be less involved in corruption than in their operations in China or other less developed countries. It does not mean they are intrinsically clean because of the mysterious effects of 'Western values,' however. An investigation into the history of industrial capitalism and corporations will show that it is the growth of social movements, which gradually impose so much social,

182 *Fubai yijing chengwei Zhongguo tese? Waiqi 'huise jiegui' Zhongguo* (Has Corruption Already Becomes a Chinese Characteristic? Foreign Companies are 'Grey Harmonizes' with China), http://business.sohu.com/20050530/n225757760.shtml

legal and economic constrain on corporations, that forces them to act with more social responsibility there. In fact, if corporations have an intrinsic nature then it is their desire to make money at whatever social, human and environmental costs. Let us not forget Milton Friedman's famous remark, that there is no social responsibility for corporations except to make money. This is not just some fanatical remark, but a correct generalization of the evolution of corporations from state-created entities, regulated by the state, to corporations achieving an autonomous and increasingly dominant position, free of social constraints.[183] This is what the 'free market' is all about. The ascendancy of this 'free market' was so destructive to the social fabric that it provoked its own opposition --- the social reform movement, labor movement, socialist movement etc, and eventually this great social contest resulted in the post war Keynesian consensus and the welfare state. The economist and anthropologist Karl Polanyi, wrote in his book *The Great Transformation* (1944) that if there is no state intervention to put 'market society' under constraint, 'human society would have been annihilated'.[184] If fewer cases of corruption concerning European companies in their home countries are reported, it is due to the fact that companies are more restrained by the laws and social movements there, which date back more than a hundred years. The ascendancy of neo-liberalism from the 1980's, which eroded Keynes' old fashioned welfare state, is only being challenged again with the onset of the global financial crisis in 2008.

If China needs to be prudent in inviting in foreign investment, it is not because it may bring along with it the alleged evil influence of 'Western values' such as individualism or liberal democracy, as the nationalists may argue, but more because of the predatory nature of corporations in general. It is the very nature of corporations, the nature of profit maximization, which also explains why the same kind of skepticism towards Western TNCs should also be extended to big Chinese corporations. Chinese corporations have not become more socially responsible, as the tainted milk case shows. Even if they are not worse than the Western companies

---

183 See *Corporation Nation*, Charles Derber, St Martin's Griffin, New York, 1998, Chapter Six.

184 *The Great Transformation*, Karl Polanyi, Beacon Press, Boston, 1971, P. 76.

--- a very suspicious claim --- they are no better. The corporations' need to make money at whatever social cost also means that there can not be a coherent and consistent 'national interest', diametrically opposed to foreign companies among Chinese corporations, especially so when they themselves are increasingly becoming TNCs. This is why they have not consistently and closely allied among themselves to fend off foreign TNCs, and have instead often split among themselves and each formed alliances with one or more foreign TNCs. This is not to deny that there may be a scenario where a common interest over certain issues, as opposed to the interest of foreign TNCs, among all big Chinese corporations occurs, especially for those monopolistic companies. This kind of common interest, however, is bound to be specific, and would be intended only to serve the wider interest of profit making. To sum up, it is this paramount objective of corporations in general which decides when Chinese corporations should make a deal with other Chinese corporations in order to fight against foreign competitors, and when to do the opposite. If there is something called 'national interest' corporations will be the most unlikely carrier candidates, even though their CEOs often pay lip service to it when they want to present their narrow interests as a 'national' interest. When it comes to any workers' challenge to the Victorian factory regime, which is underpinned by an Orwellian state, or any substantial improvement in labor standards, Chinese corporations simply forget anything to do with national interest or how horrible the working conditions of their fellow country men and women are, and act together with foreign investors to oppose them, as the Labor Contract Law case shows.

It is also legitimate to be suspicious of the supposed neutrality of research conducted or sponsored by Western mainstream think tanks, or the philanthropic support given to a Chinese academy or research community by Western TNCs. This is different from saying that there exists a kind of Chinese value which needs to be defended from the influence of 'Western values', as though there exists a homogenous and exclusive value for each ethnicity or great culture. It is even worse when one says that the Communist Party needs to promote the rise of Chinese think tanks to allow it to define its own version of 'liberty', 'democracy' and 'human rights' and eventually win the war of cultural hegemony over the West. It also amounts to saying that the definition of 'Chinese values' and 'Western values,' and the defense of the former from the latter, need to be made exclusively by the Party or its agency, and that a free exchange of opinion and meaningful participation by the public are superfluous if not counter-productive. This kind of nationalist and authoritarian argument is simply inventing an excuse to deny ordinary Chinese people access to precious knowledge and the experiences of international social movements against the onslaught of the TNCs' agenda of commodifying everything. For instance, Chinese mothers would not be able to campaign against the malpractice of Nestle or any baby formula producers because of the lack of access to international NGOs' experiences of similar campaigns (for example the International Baby Food Action Network), in addition to the absence of free speech and free association etc. Hence, due to censorship, while Nestle and Mead Johnson can produce advertisements which violate the law in China, ordinary Chinese mothers can find little information on the internet about the adverse effects of using infant formula as a substitute for breast feeding. This only serves to leave Chinese mothers at the hands of predatory companies, be they foreign or Chinese, and in no sense serves the interest of the Chinese, which the nationalist discourse is supposed to work for.

Both European and Chinese companies are equally prone to corruption if there are no social, legal and economic restraints on them. Hence the conclusion which needs to be drawn should be obvious: not only should laws governing lobbying and fighting corruption be made in China, but all rules of law must be respected by the ruling party. Anything short of this will not be able to put TNCs, foreign and domestic alike, under public scrutiny and hold them accountable. A second point to make is that civil liberties should be respected to allow the free development of social movements and civil society in general. Only with the combined results from social movements and legal reform could society impose necessary constraints on the impulse of corporations to make money at whatever social and environmental costs. The bad news is that we are nowhere nearer this state of affair than we were twenty years ago. There may be small improvement in this or that area but the general picture is not promising for the near future. Regarding business lobbying things are no better. There is no reason to despair, however. Authentic NGOs, although small in number, have nevertheless kept on growing in the past ten years. Activists from different fields are accumulating valuable experiences. We believe a slow but steady growth of social movement is possible in a medium term. Moreover, Western and Hong Kong NGOs can also play an increasing role in monitoring TNC activities in China. Although ordinary Chinese people are kept in the dark concerning TNC lobbying and malpractice in China, Western and Hong Kong NGOs are able to access publicly released information there, thanks to an institutionalized rule of law, free speech and stricter laws on regulating lobbying or fighting corruption in these places. The more China is integrated into global capitalism, the harder it is for TNCs, with the help of Chinese officials, to cover up their malpractice than it was before. They may still cover up their misbehavior in China with more ease, than they are able in their home countries. Siemens' bribing officials in China was exposed thanks to the German government's investigation into the company. The same can be said of Hong Kong; with its rule of law securely in place and a strict law on fighting corruption; it has prosecuted many top managers from Chinese companies investing in Hong Kong, and in the course of which it has exposed many cases of corruption. With this in mind we believe that collaboration between activists in Mainland China, Hong Kong and international NGOs in bringing TNCs under greater public monitoring is both possible and desirable.