

**The Associational Power of Overseas Business in China—A Case Study  
of the Shenzhen Collective Consultation Ordinance and the Guangdong  
Regulations on Democratic Management of Enterprises**

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# **The Associational Power of Overseas Business in China—A Case Study of the Shenzhen Collective Consultation Ordinance and the Guangdong Regulations on Democratic Management of Enterprises**

## **Abstract**

Investigating the case of the Shenzhen Collective Consultation Ordinance and the Guangdong Regulations on Democratic Management of Enterprises, this article demonstrates how the transnational capitals in China deploy their associational power alongside their structural economic power to lobby and pressure the national and local governments to advance their interests. In addition, building upon Hall's and Soskice's ideas on varieties of capitalism, the authors have developed the concepts of "varieties of transnational capitals" to account for the differing positions of overseas business associations towards the two legislations, which are shaped by two determining factors: a) their positions in the global production chains, and b) the industrial relations model in their home countries.

**Key words: China, labour, business associations, associational power, transnational capital, legal legislation**

## **I. INTRODUCTION**

Ignited by the Honda workers' strike, in 2010 there were country-wide waves of labour protests in China. Trying to stabilize the volatile labour relations, the Shenzhen Collective Consultation Ordinance (SZCCO) and the Guangdong Regulations on Democratic Management of Enterprises (GDRDME) were put on the discussion table of the Shenzhen and Guangdong governments again in 2010, after two years of suspension. However, due to the strong opposition of some overseas business associations, these two legislations were put off yet again. This article seeks to examine the role of overseas business associations in shaping labour legislations in China by focusing on the SZCCO and the GDRDME. The authors will elucidate how transnational capitals shape labour legislations in China through their class agencies - the chambers of commerce. We contend that although Chinese workers' demands for wage negotiations have recently risen to new heights, the overseas businesses have tried to preserve their workplace power by deploying their associational power and structural economic power.

This article is based upon the qualitative data collected from April to July 2011. The authors interviewed 27 representatives from 25 business chambers, foreign embassies and consulates, and government agencies of various countries, based in Hong Kong and several cities in mainland China (see Appendix I). Foreign embassies and government agencies were interviewed in addition to the chambers of commerce as they could be regarded as a part of the transnational capitalist classes.<sup>1</sup> Furthermore, in order to ensure the reliability of the information obtained from interviewees from various business

associations and to better understand the legislation progress of the SZCCO and GDRDME, an industrial relations expert from the International Labour Organization in Beijing, nine labour and legal scholars, two trade unionists and government officials, as well as a lawyer, were interviewed. In addition, a systematic review of documents produced by the business chambers, trade unions and governments has been conducted.

In the next section, drawing from global labour studies, our conceptualization of transnational capitals' power is expounded. Our framework will provide a critical perspective for analyzing overseas business organizations' lobbying activities on Chinese labour legislations. Next, we highlight the socio-economic and political background against which the two legislations took place. The third section highlights the two determining factors that shape the positions of overseas businesses associations towards the SZCCO and GDRDME. It also explicates how different chambers of commerce representing the interests of various types of transnational capitals exercised their associational power to lobby the Chinese government against the two legislations. Section four is conclusion.

## **II. TRANSNATIONAL CAPITAL IN CHINA: STRUCTURAL AND ASSOCIATIONAL POWER**

The interest group theories have been quite commonly used, especially in the U.S., to account for lobbying activities. Basically the interest group theorists believe in "countervailing power" and "balance of power" (McFarland 2010, 38). They assume that plural interests exist in society and that citizens could readily form different interest groups to use resources to pursue their interests and to influence policy and law making (Dahl 1961, Lowi 1979, Wilson 1980). However, this paper has not adopted the interest group approach; rather it seeks to engage with the global labour studies and to adopt a class perspective (Marx 1990, Silver 2003, Wright 2000). Instead of viewing business associations and worker organizations simply as ones of the many interest groups existing in societies (as the interest group theories assume), this paper gives weight to the capital-labour relations viewing the conflicts between the capitalist class and working class as primarily shaping the capitalist social formation. Moreover, this paper does not consider antagonistic classes (or "interests groups" if using the terminology of the interest group theories) to be having even or equal access to economic and political resources for pursuing their interests (as some of the interest group theorists assume); it maintains that the dominant and dominated classes have held different degrees and forms of power. Holding different theoretical assumptions about the capitalist societies and class agents from the interest group theorists', this paper has engaged with the Global Labour Studies to examine how the capitalist class deploys its associational power alongside its structural power to advance its class interests in face of the Chinese state's attempt to give workers the rights of collective bargaining.

Studying labour struggles from a global and historical framework, Silver contends that western capital has resorted to "spatial fix," "technological fix," "product fix" and "financial fix," to solve the crisis of overproduction and falling profitability in the 1970s.<sup>2</sup>

Spatial fix refers to the relocation of production from countries with higher labour costs to those with lower costs, while technological fix is the introduction of new technologies to production in order to reduce production costs and boost productivity. Product fix refers to the shift of industrial production to service provision, and financial fix is the significant movement of capital investment from production to the financial market. While some suggest that these developments of global capitalism has imposed adverse impacts on the labour movement, Silver contests this by showing that worker power has been enhanced in certain respects. Drawing upon Wright,<sup>3</sup> Silver distinguishes between three types of labour power. The first type is marketplace bargaining power, which is rooted in tight labour markets. When the country's general unemployment level is low and market demand for labour supply is high, workers have stronger marketplace bargaining power. The second type is workplace bargaining power resulting from workers' strategic positions in a particular industry which is embedded in global capitalism. The third type of labour power is associational power, which refers to "the various forms of power that result from the formation of collective organization of workers."<sup>4</sup> Silver argues that labour workplace bargaining power has been strengthened since capitalism adopted a more complex production system and division of labour at the global level. Taking the automobile industry as an illustration, she expounds that the just-in-time and lean production model has heightened workers' disruptive power; labour strikes at any node of the global production chain can easily lead to its partial, if not complete, breakdown. Moreover, Silver observes that wherever capital goes, labour-capital antagonism follows; the spatial fix of capitalism has thus fostered conditions for the emergence of stronger working classes in the new sites of production. In other words, the associational power of labour in the new nodes has been enhanced.

The emerging pattern of strikes in China, especially the automobile workers' strikes in 2010, seems to confirm Silver's optimism regarding the possibility of enhancing workers' associational power in newly industrialized countries, including China.<sup>5</sup> However, as labour and capital are two antagonistic sides of the social relations of production in capitalist societies, the analysis of workers' power would not be complete without paying attention to capital's power. The importance of understanding the power of transnational corporations (TNCs) in the age of global capitalism has been captured by Gill and Law:

Given the rise of transnational corporations (TNCs) and of international capital mobility, monetary and information flows, and communications links, a *global* analysis of the power of capital is essential. (italics original)<sup>6</sup>.

They have classified transnational capitals' power into two types: structural power and behavioral power. TNCs' structural power, they maintain, is rooted in the increasing capital mobility across the globe, which Silver conceptualizes as the "spatial fix" of transnational capital. This mobility has enabled TNCs to play off one country against another, and turn relocation of production into a threat to workers' employment. By "behavioral power" of TNCs, Gill and Law refer to the authority or influence that the corporations exert over national or international institutions. They place special emphasis on the role of international lobbying when exercising their power:

So far we have referred to transnational corporations lobbying their parent governments in order to obtain policies favorable to their operations overseas. Such lobbying also takes place with regard to host governments, as well as international organizations such as the World Bank<sup>7</sup>.

Their understanding of transnational capitals' behavioral power is insightful, but so broad that almost every action of TNCs that allows them to gain leverage in the global market and over their parent or host governments, is considered to be exercise of their behavioral power. A more precise concept—associational power—is propounded by Traxler, Blaschke and Kittel in their studies of international comparative labour relations.<sup>8</sup> They see associational power as a concept that can be used to examine both capital and labour: “[s]ince our concept of class logics of action captures the structural aspect, we can reserve the notion of associational power for agency”.<sup>9</sup> For them, the primary source of associational power is membership and its secondary source derives from capital's or labour's engagement with third parties, such as the state. They contend that influencing government's industrial and labour policies at both the national and regional levels are key examples of the exercise of capital's or labour's associational power: “[o]nly through participation in state regulation can organized business and labour extract secondary power.”<sup>10</sup> While Wright and Silver apply the concept of associational power to analyze workers' organizing capacity in the global economy as reviewed above, Traxler, Blaschke and Kittel demonstrate that this concept is also applicable to examine the power of capital, the rival of labour.

Drawing on the literatures of global labour studies, we argue that the transnational capital in China possesses two forms of power: structural power and associational power. China's rapid economic growth has relied heavily on the labour-intensive, export-oriented manufacturing invested by the foreign direct investment (FDI) which has employed mostly migrant workers. This has granted them vast structural power to shape the labour regimes in China. Prominent research in Chinese labour studies have illuminated well TNCs' structural power and their influence in the workplace.<sup>11</sup>

However, TNCs' associational power in the field of China studies is relatively underexplored. Most scholars paying attention to capital's associational power in China are concerned with the domestic business associations. For instance, Unger has elaborated the corporatist nature of local business associations by focusing on associations targeting respectively the small, middle-sized and big businesses in Beijing; Lee has examined the role of China Enterprise Confederation in representing businesses in the tripartite system in China and its weak representational capacity; Foster concludes that local business associations are extensions of the local government's administration and can hardly contribute to the development of civil society in China.<sup>12</sup> Given the large number of foreign-invested enterprises (FIEs) in China and their increasing presence in policy advocacies, overseas business associations in China deserve more investigation.

Business lobbying has become increasingly common in China. Kennedy has documented how lobbying takes place in the industries of steel, consumer electronics and software.<sup>13</sup> He suggests that both domestic and foreign businesses have actively influenced the making of national policies in areas such as taxes, intellectual property rights and technical standard. However, in his elaboration, the role of business associations in

lobbying has been left out. In view of these literature gaps, this article seeks to explore the associational power of transnational capital in China by studying the role of overseas business chambers in opposing the SZCCO and GDRDME, two important labour regulations in the province of Guangdong and the city of Shenzhen. While the new Chinese working class, 230 million migrant workers, has been more coordinated than any time before to influence labour policies through their collective actions in the new millennium, its rival, global capital, has also acted promptly to exercise its associational power through its class agencies—the chambers of commerce and relevant government agencies from their home countries—to shape Chinese labour laws.

Ever since China's economic reform in 1978, labour unrest in both the FIEs and state owned enterprises (SOEs) has been growing.<sup>14</sup> Responding to this, the Chinese party-state has been trying to channel labour discontent to the legal system, which places prime emphasis on individual rights (such as ones' legal entitlement to minimum wage, social insurance, over-time premium and so forth), rather than collective rights (including the rights to organize, to strike and to collective bargaining).<sup>15</sup> The implementation of three new labour laws—the Labour Contract Law in 2008, the Labour Dispute Mediation and Arbitration Law and Employment Promotion Law in 2007, and—were meant to be a legal response within the individual-rights based framework, to pacify the increasingly disgruntled workers in recent years. However, collective disputes have not disappeared after their promulgation. Strikes have continued to spread, against the backdrop of recurring labour shortages and a widening income gap in the country. The radicalization of workers' actions in 2010 as exemplified by the Honda strike and other strike cases have clearly exposed the incongruity between the individual rights-based legal framework and the collective interest-based nature of industrial disputes.<sup>16</sup> In these strikes, workers' demands usually included democratic trade union reform and wage increases higher than the minimum legal requirement, all of which could hardly be addressed by the existing legal framework.

Driven by workers' pressing demands, the Chinese government and the ACFTU have attempted to add some elements of collective rights to the current labour regulatory framework. Shortly after the Honda strike in 2010, 13 provinces issued documents in the name of the Chinese Communist Party (CCP) committee or local government to promote collective wage consultation. Moreover, after a few years of suspension, the Shenzhen and Guangdong governments put the GDRDME and the SZCCO respectively on the discussion table again in August 2010.

While migrant worker activism created huge pressure for the party-state to improve labour laws, global capital did not remain silent. This study finds that many global corporations acted swiftly to the two proposed legislations and lobbied strongly against them through their class agencies. In the end, the Guangdong and Shenzhen governments once again suspended the legislations. It is against this socio-political and legal development that the authors aim to investigate the role of overseas business chambers in shaping labour regulations in China, by focusing on the GDRDME and SZCCO. By doing so, we will shed light on how transnational capitals deploy their associational power and structural economic power to protect their interests in China.

### **III. VARIETIES OF TRANSNATIONAL CAPITALS: DIFFERENT POSITIONS AND LOBBYING STRATEGIES**

The comparative capitalism literatures maintain that capitalism has a number of varieties, instead of being monolithic. Hall and Soskice (2001)'s classic work theorizes that economic activities in the liberal market economy (LME) model, as in the United States, are principally coordinated through the competitive market whereas the coordinated market economy (CME) model, as in Germany and other western European countries, is largely dependent on non-market coordination. In a LME and CME, economic activities, including industrial relations, vocational training and education, corporate governance, inter-firm relations and firms' relations with employees, are carried out in different manners. Extending Hall and Soskice's theorization of varieties of capitalism, we contend that "varieties of transnational capitals" have emerged in global capitalism. Transnational capitals are not homogenous. As will be elaborated below, their logic, preferences, values, and economic and political activities in their host countries are subjected to the path-dependent effects of the variety of capitalism rooted in their home countries.

Building upon our theorization of varieties of transnational capitals, the overseas business chambers under examination in this article are divided into three main types: the American, European and East Asian types.<sup>17</sup> The overseas business chambers, foreign embassies and consulates, and foreign government agencies we interviewed have different positions towards the GDRDME and SZCCO. The American Chamber of Commerce in South China has carried out subtle and covert lobbying against the two legislations; the European Union Chamber of Commerce have manifested an ambiguous and ambivalent position; and the East Asian capitals have shown explicit and overt opposition. Their differing positions can be accounted for by two determining factors concerning the characteristics of various varieties of transnational capitals: 1) their positions in the global production chains, and 2) the industrial relations model in their home countries.

Regarding the first factor, the American and European transnational capitals in China are more concentrated in the consumption and circulation end of the global value chain, while the East Asian capitals are more concentrated in the production end. This difference is a key to explain why they respond differently towards the two legislations. In global capitalism, most US and European corporations have outsourced their production to suppliers in developing countries. As a result, the direct business done by many western brands in China focuses on marketing and sales in the consumption market or in the service and financial industry; and most product suppliers to these western brands are operated by East Asian capitals (and in some cases by local Chinese domestic companies).

The East Asian capital-run supplying factories usually produce low-end products and their production is labour-intensive. Their employees are largely unskilled or semi-skilled

workers hired at conditions simply in line with, if not lower than, the legal requirements, as they do not possess much marketplace bargaining power, workplace bargaining power or associational power. Thus, collective bargaining that aims to “regulating wages and other core conditions of employment by negotiation between unions and employers” would help boost rank-and-file workers’ associational power in these low-end factories and would drive their wages up.<sup>18</sup> On the contrary, the American and European transnational capitals in China hire more skilled and managerial employees, whose strong marketplace and workplace bargaining power have to a large extent guaranteed them good salaries that are well above the legal standards. In other words, the SZCCO and GDRDME would have a greater impact on the East Asian suppliers than on the American and European transnational capitals.

The second determining factor that shapes transnational capitals’ attitude towards the two legislations is the industrial relations model in their home countries. Overseas chambers tend to not welcome labour regulations that are not based on the industrial relations model of their home countries, as will be shown below in the cases of American and East Asian capital. Moreover, they feel the moral pressure not to openly oppose labour regulations that are in line with their home countries’ norms, as in the case of European capital. In addition, a strong trade union movement in the overseas chambers’ home countries has proven to have positive effects on labour legislations in China.

### **The United States: Subtle and Covert Lobbying**

Two US business chambers in China were interviewed, namely, the American Chamber of Commerce in the People's Republic of China (AmCham China) located in Beijing and the American Chamber of Commerce in South China (AmCham South China) located in Guangzhou. They are independent from each other, yet connected in terms of information exchange.

#### *AmCham China*

AmCham China does not have any official position towards the SZCCO and the GDRDME. During our interview, the president of AmCham China appeared to know a little about the two proposed legislations.<sup>19</sup> He showed greater concern over other issues such as the expansion of the Chinese state-owned enterprises in the Western market and intellectual property right in China. This finding is supported by our informants from other business associations and scholar-interviewees, who pointed out that AmCham China did not lobby much against the two regulations.<sup>20</sup>

The reason for its unconcerned attitude is due to the geographical-juridico politics in China. The major members of AmCham China are from the northern and central parts of China (such as Beijing, Dalian, Wuhan and Tianjin), which are not going to be affected by the labour legislations in the South. As far as their members’ interests are not greatly affected, AmCham China does not have to be vocal on this issue. This is in huge contrast to its high-profile opposition to the Labour Contract law in 2008, which is a national law and affects firms all over China. Different from AmCham China, members of other



overseas chambers of commerce under investigation in this article were all affected by the two proposed laws.

Moreover, it is worthy to note that many members of AmCham China are not engaged in the labour-intensive manufacturing industries. Its president revealed that its members usually have no manufacturing capacity in China and each of them has around 25 suppliers in the country. Therefore, even if the two proposed legislations were to apply to its members, collective bargaining would not create much upward wage pressure for them. The geographical-juridico politics in China plus the fact that AmCham China represents corporations that are mostly non-labour intensive and from the non-manufacturing industries have made it not so vocal on the legislations of SZCCO and GDRDME.

### *AmCham South China*

AmCham South China, which focuses on the Southern regions, has opposed the SZCCO and GDRDME. This is largely related to the economic development of the Guangdong province. Guangdong is an export-oriented manufacturing region that mainly serves the US and European consumption market (and increasingly the local market). It has attracted immense foreign investment and made substantial contribution to the country's economy.<sup>21</sup> In 2009, a total of US\$355.9 billion processing trade volume was recorded in Pearl River Delta (PRD) alone, which amounted to 40 percent of China's full amount; and the province's export and gross industrial production reached US\$358.9 billion and 6.82 trillion yuan respectively in 2009.

The region's reliance on the secondary industry means that many enterprises there are labour-intensive, thus labour issues are of great concern to them. This explains why AmCham South China, whose members are often engaged in the manufacturing industry, is more concerned with the two legislations than AmCham China, whose members are more attached to the service and technology sectors. The president of AmCham South China noted that "many of our members are investing in the manufacturing industry; laws on collective bargaining will add to their financial burden". Moreover, as Hall and Soskice suggest, the US firms are used to the LME model in which collective bargaining is not compulsory for employers, and industrial relations are immensely coordinated through the market institutions,. The US labour market is highly fluid and deregulated in ways that allow firms to hire and fire employees easily at low cost. Following the LME model, AmCham South China, which represents the American variety of transnational capital, opposes strict labour regulations in China. Its president told one of the author that "we are not looking for militant trade unions and unnecessary regulations". Furthermore, since the SZCCO and GDRDME only concern South China, the geographical-juridico politics in the country has propelled AmCham South China to voice its opposition on its members' behalf.

AmCham South China submitted a position paper on the two legislations to the governments, which, however, is not available through any official channels.<sup>22</sup> It held some private discussions with the government and met the Mayor of the Dongguan City

to express its reservation on the legislations. Also, since its president is concurrently the vice-chair of the Dongguan City Association of Enterprises with Foreign Investment (the Association), AmCham South China had made its opposition known via the Association, which has weekly meetings with the Mayor's office as well as a monthly meeting with the Mayor. Moreover, the Association has built up working relations with associations for enterprises with foreign investment in other cities in the Guangdong province, some of which also opposed the proposed legislations. The president of AmCham South China noted that

the Chinese government is responsive if what you say is supported by facts and is in the government's interest...it is important to make suggestions that are of mutual benefit to the businesses and Chinese government...that is one of the keys in influencing the government...what is in our best interest should also be in their interest...it is important to educate the government officials, get them to understand your points and the issues, and understand that our advocacy is to their interest.

He commented that the two proposed laws probably would not be passed due to the feedback from various associations, including AmCham South China and the Association. AmCham South China's lobbying against the proposed laws was not an one-off or piece-meal attempt, rather it should be understood as one of the continuous efforts of the Chamber to exercise its associational power to influence the government's policies and laws. Its president emphasized that "lobbying is not about working on a single issue, it is an ongoing process." The Chamber meets the officials from the Ministry of Commerce from time to time. Every year it produces the white paper to highlight issues of concern to its members. It holds media conference to promote its dissemination and sends copies to high-ranked government officials at both the local and national level, trying to influence their policies. The president revealed that the then Guangdong Province Party Secretary had read the Chamber's white paper and sent some of its chapters to the government leaders in the province. This shows that the associational power of overseas chambers has been derived out of a process and is accumulative in nature.

### **Europe: Ambiguous and Ambivalent Position**

In China, European firms can be represented at two levels: their national business chambers and the European Union Chamber of Commerce in China (EUCCC). The former usually deals with issues of individual firms (e.g. when they have economic or labour disputes) while the latter puts more effort into policy advocacy, lobbying and networking among businesses. EUCCC's headquarters is situated in Beijing and branches have also been set up in eight other cities, which are under the coordination of their Beijing headquarters. EUCCC has not formulated any official position on the SZCCO and GDRDME.<sup>23</sup> However, quite perplexingly, EUCCC in Guangzhou and Shenzhen already took the initiative to organize seminars on how to deal with collective bargaining for members. For example, on 20 June 2011, EUCCC Guangzhou and Shenzhen organized a seminar called "China HR Strategies to Gain Advantage in a Competitive Environment." Some parts of the seminar addressed issues like "How best to manage

strikes,” “How to go slows” and “What the law allows in handling collective bargaining.”<sup>24</sup> This somehow reveals that it is an issue of concern to EUCCC and its members.

EUCCC’s ambivalent position towards the legislations can be accounted for by our two determining factors. First, 65% of its members are big MNCs while only 30% are small and medium-sized enterprises; as many of them concentrate on the service and high value-added industries, they would not be so impacted by the upward wage pressure created by collective bargaining.<sup>25</sup> Second, many western European countries have been practicing the CME model. Their industrial relations and wage negotiations are vastly coordinated through non-market institutions; firms often adopt a consensus decision-making structure in which employees’ representatives are included and through which their cooperation is secured. As collective bargaining is a long-established norm in European industrial relations, the EUCCC is under the moral pressure not to openly oppose the European norm, even if it does not help promote the European model in China. The representative from EUCCC in Beijing noted that “labour is a difficult issue, but it affects businesses. It is a tricky thing to lobby on and it is difficult to criticize”. Throughout the interviews the EUCCC representatives emphasized strongly that European firms are used to social and labour regulations. The EUCCC’s cautiousness is probably also due to the lesson that it has learned from its opposition to the 2008 Labour Contract Law. During the public consultation of the Law, the EUCCC openly expressed concern over the rising labour costs that might be created by the Law and implied that European businesses might invest elsewhere if the Law was to be passed. Later, the European Trade Union Confederation imposed immense pressure on the EUCCC and it subsequently clarified that it supported the Law.<sup>26</sup>

Although EUCCC did not lobby against the two proposed legislations, its representative did share with the authors its broader strategies in lobbying the Chinese government. It meets different ministries on a regular basis. For instance, it meets the vice Mayor of Beijing every year and has developed good relations with the Foreign Investment Bureau. When it seeks to lobby on specific issues, EUCCC will write letter to the government officials concerned, appeal to the EU commissioner and Ambassador, and invite the government officials for meetings. EUCCC in Beijing has a Government Affairs Manager, who has maintained working relations with the Chinese government officials from the International Corporation Department. In addition, EUCCC works closely with AmCham China on certain issues, believing that “two voices together means double effect”.<sup>27</sup>

Our fieldwork found that the position of the national chambers of the major European countries, such as France and Germany, on the two proposed legislations was quite in line with the EUCCC’s. They did not officially oppose the two legislations.<sup>28</sup> However, it should be noted that the Swedish Embassy is in support of the SZCCO and GDRDME. The Counsellor for Labour Market Affairs of Embassy of Sweden in Beijing commented: “the labour market in China is strange and volatile; laws do not ensure a functional labour market. Therefore collective bargaining is a means to stabilize the labour market.”<sup>29</sup> The Embassy, working closely with the Swedish trade unions, has tried to promote the Swedish industrial relations model in China through dialogue and cooperation with the government and the ACFTU. Together with the Ministry of Commerce in China, it

conducted workshops on Corporate Social Responsibility for provincial government officials, which did cover the issue of collective bargaining. In the future, it plans to organize seminars on collective bargaining for trade union and government officials. The Counsellor remarked that it is not common for the Embassy of European countries in China to delegate specific officers to work on issues related to labour rights or the labour market. The Swedish Embassy set up such a position because trade unions in Sweden are powerful enough to assert significant institutional power within the government structure and to influence its policies. The case of the Swedish Embassy demonstrates that transnational capitals coming from countries with more coordinated forms of industrial relations tend to be less antagonistic, if not more supportive, towards stronger labour regulations in China.

### **East Asia: Explicit and Overt Opposition**

#### *Hong Kong*

Many Hong Kong business associations are against the SZCCO and GDRDME; this again could be accounted for by their positions in the global production chain. Most Hong Kong investments in China are concentrated in the export-oriented manufacturing industry and labour-intensive service industry.<sup>30</sup> Over 80% of the Hong Kong businesses in Guangdong are in the labour-intensive manufacturing industries.<sup>31</sup> They would be seriously impacted by the upward wage pressures created by collective bargaining; thus they were highly vocal in lobbying the government. In addition, Hong Kong firms are not used to collective bargaining or workers' participation in corporate governance even in their home region, where the industrial relations model leaves almost everything to the market; they therefore strongly resist pro-labour regulations in China. One of the informants from the Hong Kong General Chamber of Commerce (HKGCC) noted to the authors: "wage bargaining between workers and enterprises will create huge pressure on wages...workers are not well educated; they get emotional easily. The previous draft of the Shenzhen Collective Consultation Ordinance made it possible for only one-fifth of the workforce in enterprises to initiate collective bargaining, it's just too easy, it's disturbing."<sup>32</sup>

HKGCC, one of the four largest chambers in Hong Kong, submitted two position papers on the SZCCO and GDRDME to the governments. In the first position paper, it opposed allowing worker-directors to take part in the companies' supervisory activities and decision-making due to the worry that they would leak out confidential business information. It was also against the suggestion in the SZCCO that companies should start wage bargaining with worker representatives if one fifth of its employees so request; it was afraid that workers would abuse the bargaining mechanism and easily resort to strikes and collective actions if no agreement could be reached and that wage bargaining would create high wage pressure on companies and increase their business costs. Analyzing from our conceptualized framework of transnational capitals' power, HKGCC worries that employers' workplace power over companies' operations, wage and profit distribution would be constrained by the increasing bargaining power of workers given by the two legislations.

In the second position paper, HKGCC summarizes that these legislations

will not only deepen labour-management conflict, but also create difficult business environment for enterprises and obstruct their development; in the long run, it will also affect the country's economic development and peoples' living standards (the authors' translation).

Here HKGCC is hinting at its structural economic power over the Chinese governments. The governments are being reminded that they and the businesses are on the same boat; if businesses' interests are harmed by the two legislations, the country in the long run will suffer too. As the patron-client relations between the foreign investment and the local governments are intricate in China, this indirect warning backed by transnational capitals' structural economic power seems to be an effective strategy in lobbying the government, as will be elaborated later.

Federation of Hong Kong Industries (FHKI), another large business association in Hong Kong released two position papers which stated that the two legislations would harm industrial harmony, give rise to labour-management conflicts and might even lead to a return to the situation of everybody eating from the same "big pot of rice" (*dahuofan*) as in the state-socialist period. It also asserted that the legislations would have negative impacts on the business environment and dampen entrepreneurship, or even threaten social stability and economic growth.<sup>33</sup> The structural economic power of foreign businesses is once again stressed here. FHKI is of the opinion that wages should be determined by the free market, rather than through collective bargaining. Its vice-president commented:

If workers can join the board of directors as proposed by the GDRDME, business costs will increase because worker representatives will definitely fight for the maximum interests of workers. They may also oppose to investment beneficial to the long term development of enterprises, such as buying more machineries for production, as they want higher wages<sup>34</sup>

Deploying their associational and structural economic power, the lobbying strategies of HKGCC, FHKI and other Hong Kong business chambers targeted four levels: their corporate members, the Hong Kong government, the Guangdong provincial government and the Chinese central government. At the level of members, in order to solicit their support to bolster stronger associational power, individual chambers held members' consultations from time to time and the four biggest chambers held a joint consultation to collect enterprises' opinions.<sup>35</sup> These consultations paved the way for further mobilization of businesses to oppose the two legislations.

At the level of the Hong Kong government, the chambers released their own position paper as well as a joint position paper, which was submitted to the Hong Kong (and Guangdong) government for the sake of lobbying. The FHKI vice-president revealed that after taking their comments into consideration, the Hong Kong government submitted its own position paper to the Ministry of Commerce in China which largely reflected Hong Kong businesses' interests. Also, the Hong Kong Business Community Joint Conference, which consists of over 40 business associations, published a petition in two Hong Kong newspapers.<sup>36</sup> Moreover, utilizing their political connection, the chambers appealed for

support to some key Hong Kong politicians who are holding symbolic, if not important, positions in the Chinese government, and invited them to help lobby the Chinese governments. These politicians included Ms. Elsie Leung Oi-sie, who is the former Secretary for Justice of Hong Kong and currently the Deputy Director of the Hong Kong SAR Basic Law Committee under the Standing Committee of the National People's Congress of the PRC, and Ms. Rita Fan Hsu Lai-tai, currently a standing committee member of the National People's Congress of the PRC.<sup>37</sup>

The chambers' strategies for lobbying the Guangdong government are four-fold. First, it appealed to its structural economic power by highlighting Hong Kong businesses' economic contribution to the region and the negative impacts of the two legislations on them.<sup>38</sup> The chairperson of the China Affairs Committee of the Chinese General Chamber of Commerce remarked that the new legislations would lead to large-scale investment withdrawal and enterprise closure, which would in the end weaken the competitiveness of the region.<sup>39</sup> This is a threat of "investment strike" to the Chinese local governments.<sup>40</sup> In China, the local governments have strong motivation to maintain high economic growth because of their independent fiscal status from the central government's and the strong patron-client relations between the government officials and investors in the province. By stressing their economic significance to the Guangdong province, the Hong Kong businesses were giving signals to the Guangdong government that its interest would possibly be harmed by the legislations too. Second, the four biggest Chambers, the Hong Kong Business Community Joint Conference and some Hong Kong politicians sent their lobbying letters to *Huang Huahua* (黄华华), the then Mayor of the Guangdong Province, *Wang Yang* (汪洋), the then Secretary of the Guangdong Committee of the Communist Party of China, and the Legality Committee of the Guangdong Provincial People's Congress.<sup>41</sup> Third, the four Chambers sought to lobby the provincial government face-to-face. For example, they met officials from the Ministry of the Human Resources and Social Security of Guangdong Province.<sup>42</sup> FHKI and its affiliated Chinese association called PRD Council meets the Vice Mayor of some PRD cities, such as Dongguan, Huizhou, Shenzhen and Zhongshan every month to discuss issues of concern to them, including the SZCCO and GDRDME.<sup>43</sup> The informant from HKGCC revealed that when new drafts on the GDRDME came out, it would email or fax its comment to the Guangdong government directly and it would visit the government officials more frequently, like once or twice a month.

Finally, the Hong Kong business associations also lobbied the central government, even though the SZCCO and GDRDME are only local legislations. The Hong Kong General Chamber of Textile Limited met the Minister *Chen Deming* (陈德铭) from the Ministry of Commerce in November 2010.<sup>44</sup> Also, a delegate from HKGCC was sent to Beijing to meet the Ministry of Commerce, Ministry of Finance and the National Development and Reform Commission (NDRC) to voice its concern over the legislations. And members of the general council of HKGCC, two of which are the Hong Kong legislative councilors, met the Vice Premier of the country to discuss the legislation.<sup>45</sup> As a result of these four level of lobbying strategies adopted by the Hong Kong business associations, the proposed legislations have been put off.

My informants from HKGCC and FHKI believed that lobbying campaigns against the two legislations were quite successful as the Guangdong government has taken some of their suggestions. One of the informants said “It is useful to lobby the government...the central government gave us very good response and it tried to be friendly. And the Guangdong government officials are more open when compared to other parts of China; this is probably because it knows that Hong Kong businesses have contributed tremendously to its economy. It is not difficult to lobby the government (concerning the two proposed laws).”<sup>46</sup> Another one said “It is probably because the Hong Kong businesses have expressed serious opposition that the legislations have not been passed. However, I am not entirely satisfied. I would not be satisfied till the legislations were completely abandoned.”<sup>47</sup>

### Japan

An official from the Japanese External Trade Organization in Hong Kong, which is Japanese government-supported, suggested that Japanese businesses in China consider the SZCCO and GDRDME as one of their two urgent concerns (the other one is increasing labour costs).<sup>48</sup> They are worried that the legislations will provoke labour disputes and increase labour costs. Also, they are against the idea that outsiders, for example, hired trade union presidents and government officials, who have no knowledge of the companies, can participate in the bargaining process. In other words, they fear that they will be losing their workplace power over wage determination and enterprise operations to workers and outsiders. Its lobbying activities included meeting the Guangdong provincial government to express their concern and submitting an opinion paper, which, however, is not available to the public.

### Taiwan

Representatives from the Shanghai and Guangzhou office of the Taipei World Trade Center, a Taiwanese government-supported agency focusing on economic affairs in China, and the Dongguan Taiwan Business Association, were interviewed. They noted that thousands of Taiwanese factories were closed down during the global financial crisis in 2008-09 and the profit rate of many Taiwanese firms had dropped due to rising cost of labour and raw material, and unfavorable international market condition. The priorities of both the Trade Center and Association were to negotiate actively for Taiwanese companies with the provincial and municipal governments for favor such as reduction of tariff and tax, and loose implementation of labour laws. It was against this socio-economic background that the Association itself had not come up with any official position on the legislations as Taiwanese enterprises’ major concern is their transformation from export-oriented businesses into ones based on the domestic consumption market, rather than the new labour regulations. Moreover, although some Taiwanese SMEs had reservations towards the legislations as the burden of increasing labour costs would be heavier for them than for large firms, they do not have much say within the Association. Bosses from big firms, who have different considerations from the Taiwanese SMEs, usually dominate the positions of executive committee in the Association. The bosses from big firms “told the government that they will follow its

policies on collective bargaining” because “they want to use this to bargain with the government for more privileges and concessions”.<sup>49</sup>

In spite of the little attention given to the two legislations by the Associations, surveys had been conducted among its members to find out their opinions on the SZCCO and GDRDME. Taiwanese business associations have stronger influence in China compared to other countries because of the special political relations between Taiwan and China. Take the Association as an example; it has close contact with and much influence on the local Dongguan government. It meets the government every month and can directly contact the Vice Mayor for anything important. Every three months, an expanded meeting at the city level with the government is held. It was in this expanded meeting with the government that the Associations reflected Taiwanese firms’ opinions on the two legislations.

Before closing this section, it is important to highlight that the suspension of the legislations of the SZCCO and GDRDME is not solely because of the lobbies of overseas business associations. It is true that they have exerted pressure on the Guangdong and Shenzhen government, but their opposition was not the sole concern of the governments.<sup>50</sup> We find out from our fieldwork that many SOEs were also skeptical about the laws. They have not openly opposed the laws and they mainly expressed their opinions and articulated their interests through the State-owned Assets Supervision and Administration Commission of the State Council (SASAC), which supervises and manages SOEs on behalf of the state.<sup>51</sup> The labour and legal scholars that we interviewed revealed that SASAC is one of the fiercest opponents of the legislation within the party-state. The interests of domestic and global capital regarding labour regulations have converged; this convergence has strengthened the associational power of the capital as a bloc and in turn has heightened its capacity to influence the state policies.

Moreover, the suspension of the two legislations was also due to the party-state’s own worries about spillovers of labour activism and industrial conflict that could be triggered by the SZCCO and GDRDME.<sup>52</sup> After the wave of labour protests sparked by the Honda workers’ strike in 2010, the party-state became more anxious to pacify the aggrieved workers. As a result, the SZCCO and GDRDME were put back on the discussion table. According to the informant from HKGCC, the Guangdong government officials indicated to her that they did not support the legislation; they were pressured by the central government to make Guangdong a pilot province in this regard. However, later the party-state realized that if collective negotiation were to be implemented effectively, it would have to be backed by a strong workers’ organization, which in turn might help breed independent workers’ organizations in the country.<sup>53</sup> As the effects of the wave of strikes in 2010 faded, the potential negative impacts of these two legislations on social and political stability began to outweigh their positive effects in the eyes of both the central and the local government. Therefore, the legislation was suspended again in face of a convergence of interests among foreign and local capital as well as the party-state.



## IV. CONCLUSION

By examining how the transnational capitals' class agencies lobbied against the SZCCO and the GDRDME, this article seeks to fill up two important gaps in the China studies. First, while current studies have illuminated well TNCs' structural power and the associational power of domestic business associations in China, the associational power of transnational capitals as exercised through lobbies and their influence over the state regulations has been underexplored. Second, in terms of business lobbying in China, previous studies have investigated the lobbying activities of individual businesses, but not much attention has been paid to the lobbying campaigns and strategies of overseas business chambers (with a few exceptions). Drawing on the literatures of global labour studies, this paper contends that transnational capitals have exercised two forms of power over labour in China: structural and associational power. We have elaborated how the transnational capitals utilized these two forms of power to influence the local legislation on collective negotiation in Guangdong and Shenzhen. Furthermore, inspired by the concept of "varieties of capitalism", we have formulated the notion of "varieties of transnational capitals" to analyze why the positions and lobbying strategies of transnational capitals coming from various countries were different concerning these two regulations. Our arguments and findings are summarized as below.

First, global capitals' associational power, as exercised through their commercial chambers and the government agencies of their home countries, has effectively compelled the Chinese governments to put off the legislations of collective bargaining in Guangdong and Shenzhen which are critical for strengthening workers' associational power. Business associations from various global regions had adopted different positions towards and lobbying strategies against these two laws. Their differing positions were shaped by two determining factors related to the characteristics of different varieties of transnational capitals: 1) their positions in the global production chains, 2) the industrial relations model in their home countries. Concerning the American transnational capitals, many of AmCham South China's members invested in the labour-intensive manufacturing industry that would be most affected by the two legislations and their US member-firms were more used to a liberal industrial relations model under which collective bargaining did not play an important role; it had therefore subtly and covertly lobbied the governments against the laws. For the European transnational capitals, the EUCCC and other national business chambers and government agencies from Europe did not lobby against the two laws because in their home countries, wage determination was vastly coordinated through collective bargaining, and European firms in China tended to be concentrated more in the service and high value-added industries which would not be so impacted by the upward wage pressure created by collective bargaining. For the East Asian transnational capitals, business associations from Hong Kong and Japan strongly opposed the legislations because their members were concentrated in the labour-intensive manufacturing industries which would be directly affected by the laws, and they were skeptical towards collective bargaining, which had never played an important role in their home countries.

Second, alongside the transnational factors, the geographical-juridico politics in China also shaped business associations' positions towards the legislations. Since SZCCO and GDRDME were local legislations that would not affect areas outside Shenzhen and Guangdong, overseas business chambers whose jurisdiction lies in other provinces were not so concerned with the laws. This explains why AmCham China, whose members came from the northern and central parts of China, did not oppose the two legislations while AmCham South China, whose jurisdiction lies in the southern part of China, was active in lobbying the governments. Similarly, as the East Asian transnational capitals were concentrated in the South China region, they were highly vocal to oppose the laws.

Third, the suspension of the two proposed laws was a result of the convergence of interests between the local and foreign capitalists and the party-state. The capitalist bloc opposed the laws due to concern over rising labour costs while the party-state's reservation is related to the possibility of spillover of labour activism triggered by the two legislations.

Fourth, the analysis of workers' power cannot be separated from that of the capital's power or *vice versa*. Borrowing Wright's and Silver's framework of workers' three types of power (marketplace power, workplace power and associational power), previous studies have demonstrated that the marketplace bargaining power and workplace bargaining power of the Chinese migrant workers have been enhanced in the past decade against the context of rising labour shortage and labour protests. However, compared to their domestic and global rivals, the Chinese migrant workers' associational power is fundamentally weak because the only state-endorsed union, the ACFTU, has failed to represent them properly. The ACFTU and its local branches have played a role in representing workers' interests in the two proposed legislations; for example, the SZCCO was first drafted by the Shenzhen Federation of Trade Unions (SZFTU). However, SZFTU did not insist on its original position, once pressure came from the top<sup>54</sup>. Many labour NGOs in Guangdong support these two laws, but they did not have leverage to influence the legislations. Workers' associational power remains weak because its formation has been constrained by two political factors: the state's manipulation over trade unions and the absence of freedom of association in China. There was hope that the SZCCO and GDRDME as legal means can enhance workers' associational power to some extent; but this study finds that besides the political constraints, capital's associational power is another significant obstruction to the rise of workers' associational power.

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**Appendix I: The Chambers of Commerce and Government Agencies That Have Been Interviewed**

<b>Countries/Regions of Origin</b>	<b>Chambers of Commerce</b>	<b>Embassy, Consulate or Government Agency</b>
USA	The American Chamber of Commerce, PRC [in Beijing]	
	The American Chamber of Commerce in South China [in Guangzhou]	
	The American Chamber of Commerce in Hong Kong	
European Union	EU Chamber of Commerce in China, Beijing Office	Delegation of the European Union in Beijing
	EU Chamber of Commerce in China, Shenzhen Office	Delegation of the European Union in Hong Kong
	EU Chamber of Commerce in Hong Kong	
Germany (Western Europe)	Association of German Chambers of Industry and Commerce in Hong Kong	
	German Chamber of Commerce, South China	
UK (Western Europe)	British Chamber of Commerce, Hong Kong	
France (Western Europe)	French Chamber of Commerce, Guangdong	French Embassy in Beijing
	French Chamber of Commerce, Hong Kong	French Consulate in Guangdong
	French Chamber of Commerce, Beijing	
Sweden (Scandinavia)		Swedish Embassy
Benelux countries	Benelux Chamber of Commerce in China	Consulate General of Belgium
Hong Kong	Hong Kong General Chamber of Commerce	
	Federation of Hong Kong Industries	
Japan		Japanese External Trade Organization, Hong Kong
Korea		Korea Trade-Investment Promotion Agency, Guangzhou

Taiwan	Taiwan Merchant Association Dongguan	Taiwan World Trade Center, Shanghai
		Taiwan World Trade Center, Guangzhou

<sup>1</sup> Sklair, 1997; Kees van Der Pijl, 1984.

<sup>2</sup> Silver, 2003.

<sup>3</sup> Wright, 2000.

<sup>4</sup> Silver, 2003

<sup>5</sup> See, for example, Chan, 2010; Chan, 2011; Chen and Tang, 2013; Hui, 2011; Chan and Hui, 2013.

<sup>6</sup> Gill and Law, 1989, 482

<sup>7</sup> *ibid* 483

<sup>8</sup> Traxler, Blaschke and Kittel, 2001: 74

<sup>9</sup> *ibid*.

<sup>10</sup> *ibid.*, 75.

<sup>11</sup> For example, Chan, 2001; Lee, 1998; Pun, 2005.

<sup>12</sup> Unger, 2008,; Lee, 2006 ; Foster, 2008.

<sup>13</sup> Kennedy, 2005.

<sup>14</sup> For example, Cai, 2006; Chen, 2003; Lee, 2007; Chan, 2011.

<sup>15</sup> Chen, 2009.

<sup>16</sup> Chan and Hui, 2012; 2013; Chen and Tang, 2013; Hui, 2011.

<sup>17</sup> It should be noted that in Hall and Soskice's theorization, Asian capitalism has not been dealt with. In this sense, the authors have moved beyond their intellectual attempt.

<sup>18</sup> Hyman, 2001, 187.

<sup>19</sup> Interview with the President of AmCham China (26 May 2011).

<sup>20</sup> One of these businesses associations is Hong Kong General Chamber of Commerce; Interview with a labour scholar (7 August 2011)

<sup>21</sup> The Guangdong province has strong manufacturing industries that produce computers, computer accessories, mechanical and electrical products, refined chemicals, toys and garments; see AmCham South China, 2011, 142.

<sup>22</sup> Interview with President of AmCham South China, 7 June 2011.

<sup>23</sup> Interviews with a representative from EUCCC in Beijing (26 May 2011) and four representatives from EUCCC in Guangzhou and Shenzhen (17 June 2010).

<sup>24</sup> One of the authors joined the seminar.

<sup>25</sup> Interview with an official from EUCCC in Beijing.

<sup>26</sup> Globalization Monitor, 2010.

<sup>27</sup> Interviews with the representative from EUCCC in Beijing.

<sup>28</sup> Interviews with Regional manager and economic analyst from the German chamber of commerce in Shenzhen (11 May 2011), Executive Director of Association of German Chambers of Industry and Commerce (29 April 2011), Trade Commissioner of French Consulate General (18 April 2011), Director of the Social Affairs of French Embassy in Beijing (23 May 2011).

<sup>29</sup> Interview on 30 May 2011.

<sup>30</sup> See *Mingpao*, 2010a and 2010b; *Wenhui Bao*, 2010b.

<sup>31</sup> Interviews with two representatives of HKGCC, 6 May 2011. One of them was responsible for HKGCC lobbying activities against the two proposal legislations.

<sup>32</sup> *Ibid*.

<sup>33</sup> FHKI, 2010a and 2010b.

<sup>34</sup> Interview on 22 July 2011.

<sup>35</sup> Interview with the vice-president of FHKI and two representatives from HKGCC. Also see Chinese Manufacturers' Association of Hong Kong, 2010.

<sup>36</sup> Singtao Daily, 2010.

<sup>37</sup> *Ibid*.

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<sup>38</sup> *Hong Kong Economic Journal*, 6 September 2010. In 2010, Hong Kong was China's third largest trading partner, after the U.S and Japan. Hong Kong is also the largest source of foreign direct investment in China.

<sup>39</sup> *Hong Kong Economic Times*, 15 September 2010.

<sup>40</sup> Gill and Law, 1989, 481.

<sup>41</sup> Interviews with HKGCC representative and FHKI vice president. Also see the website of Hong Kong Apparel Society Limited (2010), available at [http://www.hkapparel.com.hk/chi/info\\_activity\\_content.php?ID=181&year=2010](http://www.hkapparel.com.hk/chi/info_activity_content.php?ID=181&year=2010).

<sup>42</sup> Interviews with HKGCC representative and FHKI vice president.

<sup>43</sup> Interview with the Vice President of FHKI.

<sup>44</sup> Takungpao, 2010.

<sup>45</sup> Interview with officials from HKGCC.

<sup>46</sup> Interview with the HKGCC representative.

<sup>47</sup> Interview with the FHKI vice president

<sup>48</sup> Interview on 20 July 2011.

<sup>49</sup> Interview with the representative from Dongguan Taiwan Business Association.

<sup>50</sup> Interviews with scholars on 14, 20 and 22 May 2011. One of the interviewed scholars has been constantly consulted by the Shenzhen government on various labour regulations, another one by the Guangzhou city government and the last one by the Guangdong and Guangzhou government.

<sup>51</sup> *ibid*

<sup>52</sup> *ibid*

<sup>53</sup> *ibid*

<sup>54</sup> A trade union leader told the authors during a conference in 2011 that they did not support the revised version of the collective consultation law as its content has contained less protection for workers. However, he said the trade unions were not going to strive for an improvement of the law.