

China's Approach to Labor Provisions in Free Trade Agreements: Evolution, Impact, and Framework

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Abstract: *labor provisions have become a fundamental trade rule in regional and bilateral trade agreements. Although China's legislation on pilot Free Trade Zones includes content related to labor protection, it primarily aligns with Labor indicators in "Doing Business", the assessment of business situations issued by the World Bank. It differs from the labor rights protection focus emphasized in trade agreements. The latest strategic documents issued by the State Council of China have addressed this issue to fully achieve the goal of aligning Free Trade Zones with high-standard trade agreements. Building on the development of Free Trade Zone legislation and domestic Labor law governance, China should proactively explore a tailored approach to labor provisions in Free Trade Agreements. In this approach, it should explicitly define the "baseline" and "ceiling" for labor provisions during negotiations and, within this framework, establish benchmarks for labor rights protection, enforcement mechanisms, and cross-border regulatory mechanisms suited to the specific conditions of the agreement parties.*

Keywords: labor law governance ♦ pilot free trade zones ♦ free trade agreements ♦ labor standards ♦ China's approach

Since the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP) came into effect, how to accept the enforceable labor provisions of the CPTPP has been a huge challenge for China.¹ Incorporating labor standards into trade mechanisms and strengthening labor rights protection have become new trends in regional and bilateral trade and investment agreements. The *U.S.-Mexico-Canada Agreement*, described as a "high-standard trade agreement of the 21st century," sets higher labor standards than its predecessor, the *North American Free Trade Agreement*; the European Union's new-generation free trade agreements (FTAs) incorporate labor provisions within a dedicated "Trade and Sustainable Development" (TSD) chapter to foster greater cooperation and consensus on Labor issues. If China aims to participate in high-standard international economic and trade agreements, it must align its labor legislation with the higher labor standards set by those agreements.

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¹ Li Xixia, "On the CPTPP Enforceable Labor Standards and China's Countermeasures," *Journal of China University of Labor Relations* 4 (2021): 42.

In 2013, China began establishing pilot free trade zones (FTZs) as a way to align with high-standard economic and trade rules. The pilot FTZs have accumulated extensive legislative experience in the Labor market and labor protection. In December 2023, the State Council issued the *General Plan for Advancing Institutional Opening-Up of China (Shanghai) Pilot Free Trade Zone in Alignment with High-Standard International Economic and Trade Rules* (the “General Plan”), to actively guide the FTZ legislation to align with international labor standards, and provide effective legislative experience for China’s approach to labor provisions in FTAs through pilot programs of the FTZs. At the same time, the deepening of the Belt and Road Initiative and the expansion of China’s network of trade agreements are leading to a strong demand for overseas labor protection for Chinese companies and China’s influence in establishing labor rule of law in developing countries. Therefore, from an overall strategic perspective, constructing China’s approach to labor provisions in FTAs and establishing its own basic concept of labor rights protection in economic and trade rules are important content allowing for China’s deeper engagement in future FTA negotiations.

I. From Optimisation of the Business Environment to Alignment with International Labor Standards: The Two Stages of FTZ Legislation

As an important platform for China to align with high-standard international economic and trade rules, the pilot FTZs aim to explore administrative model innovation, establish a new system that is compatible with international investment and trade rules, and make advanced arrangements for China’s engagement in future FTA negotiations. At present, China has 22 pilot FTZs² forming a network that aims to coordinate and integrate economic reforms and opening-up across coastal, inland and border regions. However, the labor standards legislation within the pilot FTZs is designed to align with the World Bank’s (WB) indicators in “Doing Business,” diverging from the labor provisions in high-standard economic and trade agreements such as the CPTPP. It was not until the State Council recently issued the *General Plan* that the diverged alignment was addressed in terms of FTZ legislation. With China speeding up its accession to the CPTPP and the growing demand for alignment with high-standard international economic and trade rules, on top of the existing institution oriented toward optimizing the business environment, the FTZ legislation should be fully guided toward a value-oriented transformation centring on international labor standards.

A. FTZ legislation oriented to optimise business environment

Whether it is the first Doing Business report (DB) released by the World

² People Data, “China expands its pilot free trade zone (FTZ) program for the seventh time, adding new zones and increasing the total number to 22,” accessed February 3, 2023, <https://baijiahao.baidu.com/s?id=1782600222303357815&wfr=spider&for=pc>.

Bank in 2004 or the newly launched Business Ready (B-READY) evaluation program in 2023, Labor indicators have always been crucial ones of the World Bank's business environment assessment.³ The World Bank promotes private sector development by assessing standards in areas like public services and Labor markets⁴, recognising the Labor factor as crucial for driving private sector growth.⁵ China's existing pilot FTZ legislation prioritises improving the business environment as an important strategic goal by focusing on talent systems. Its labor rights protection focuses on improving the supporting measures of talent services to enhance the effectiveness of public services and promoting the free flow of human resources to increase the flexibility of the Labor market, which aligns with the purpose of the World Bank's business environment assessment. Talent is the core resource for optimizing the business environment and the fundamental driving force for enterprise development. One of the keys to optimizing the business environment in the pilot FTZs is the construction of a talent system.

In general, the regulations of the existing 22 pilot FTZs cover all the important links in the talent system, such as introduction, training, identification, incentives, and service guarantees. Those in Guangdong, Zhejiang, Hunan, Shaanxi, Liaoning, Jiangsu, Shandong and Beijing have clearly stipulated that they should deepen the reform of talent development systems and mechanisms, explore the construction of an internationally competitive talent system, and formulate relevant support measures. Specifically, pilot FTZs in eastern, central and western regions have developed tailored talent guarantee systems reflecting their unique comparative advantages, development strategies and industrial structures. For example, pilot FTZs in the eastern region are focused on promoting modernization and system innovation in areas like talent identification, incentives, and services; those in the central region are strategically placed to promote the "Rise of Central China" strategy and emphasize improving talent introduction mechanisms and strengthening talent training cooperation; and those in the western region are strategically positioned to support the Great Western Development Strategy with a focus on strengthening the construction of talent service guarantee systems. The pilot FTZ legislation in regions such as Shanghai, Tianjin, Chongqing, Sichuan, Henan, and Hebei also propose to foster harmonious Labor relations; however, looking

³ The World Bank published its first Doing Business Report in 2004 and discontinued the report in September 2021, and unveiled its new Business Ready ("B-READY") indicator in 2023. Fan Wei, "The Interpretation on the World Bank's Labor Indicator in Business Environment Assessment and the Countermeasures of China," *Journal of CUPL* 1 (2024): 150-152.

⁴ World Bank, *Doing Business in 2004: Understanding Regulation* (Washington, D. C.: The World Bank, 2004), xi; World Bank, *Doing Business in 2005: Removing Obstacles to Growth* (Washington, D. C.: The World Bank, 2005), 29; World Bank, *Doing Business in 2006: Creating Jobs* (Washington, D. C.: The World Bank, 2006), 27.

⁵ World Bank, *B-Ready Methodology Handbook* (Washington, D. C.: World Bank, 2023), 256-257.

at the above provisions, the primary focus remains on the innovation and construction of talent service systems and flow mechanisms. Evidently, one of the important features of pilot FTZ legislation is that it reflects the World Bank's requirement that "Regulations and public services related to Labor are fundamental drivers of private sector development."⁶ From the perspective of optimizing the business environment index system, it regards Labor as an important production factor, and aims to improve the adequacy and effectiveness of the talent service systems and the flexibility of free talent flow.

It is true that optimizing the business environment will have a direct positive effect on production and operation and economic development.⁷ To a certain extent, an employment environment that promotes the free flow of the Labor market and fair competition overlaps with high-standard economic and trade rules centred on labor standards in the long run. However, their ideological roots, underlying values and realization approaches differ significantly.

1. Different ideological roots: deregulation vs strengthening supervision

An important reference for China's business environment assessment is the World Bank's DB report, while the introduction and development of which is the product of giant corporate groups promoting neoliberal ideas through international financial institutions.⁸ Neoliberalism advocates deregulation to promote free market competition and the development of private enterprises, as a result of which, interest groups formed by giant financial corporations can exert significant influence on government and market operations, potentially becoming a third force alongside the government and the market.⁹ In this context, the World Bank, which has been deeply influenced by neoliberalism, has held a resistant and opposing attitude towards labor rights. Following the financial crisis, the World Bank has partially recognized the positive role of the state and regulation, gradually moving from resisting labor rights to incorporating Labor indicators in its assessments. However, the dominance of giant corporations in public life has not weakened but increased, evolving from the previous confrontation with the government and the market to a more covert and subtle form. Therefore, the DB report essentially still regards government regulation as an obstacle to the development of private enterprises, and intends to promote an economy's policy and legal reforms through a set of assessment systems in order

⁶ World Bank, *B-Ready Methodology Handbook* (Washington, D. C.: World Bank, 2023), 256-257.

⁷ Lou Chengwu and Zhang Guoyong, "Research on the Construction of Business Environment Assessment Framework Based on the Subjective Perception of the Market Subject: A Review of Business Environment Assessment Model of the World Bank," *Contemporary Economic Management* 6 (2018): 62.

⁸ Zhong Feiteng and Fan Shuaishuai, "Investment Climate Assessments, East Asian Development and the Great Recession of Neo-Liberalism: The Case of the World Bank Doing Business Report," *Journal of Contemporary Asia-Pacific Studies* 6 (2016): 153.

⁹ Colin Crouch, *The Strange Non-Death of Neoliberalism*, translated by Pu Yan (Beijing: China Renmin University Press, 2013), 8.

to protect the development of private enterprises.

The high-standard international economic and trade rules represented by those involving Europe and the United States, while using different approaches to address Labor issues, are essentially based on international labor standards and conventions. For example, the rights listed in the CPTPP's Labor chapter are also based on international labor standards. International labor standards originated from the exploitation of workers brought about by the intense industrialization, particularly in Europe and the United States in the 19th century, and are the inevitable product of the working class's struggle against the adverse consequences of the industrial revolution. The emergence of sweatshops, characterised by overexploited Labor resources, sparked widespread worker unrest and social unrest, leading to the creation of the International Labor Organisation (ILO) and the development of labor standards. It can be said that the original intention of establishing labor standards was to urge countries to strengthen legislation and supervision to promote social equity and labor rights protection. International labor standards aim to protect vulnerable workers and promote substantive justice by setting common benchmarks for all countries. This is completely different from the deregulation and free competition led by enterprises in optimizing the business environment in terms of ideological roots.

2. Different underlying values: flexibility vs safety

From the perspective of optimizing the business environment, the core of the construction of Labor indicators lies in the support measures of talent services and the free flow of human resources. This actually reflects that enterprises, as the dominating players in business environment assessments, prioritize efficiency and recognize workers as the core production factor. The World Bank's DB report has been criticized for this reason. Its applicable Labor indicators have caused great controversy, and many countries refuse to include these indicators.¹⁰ The new B-READY program launched in 2023 has made adjustments to the previous assessment system and indicators; however, given the World Bank's specific ideology and ideological roots, the so-called goal of "achieving both flexibility and balance" is actually more inclined to protect the flexibility of enterprises at the expense of workers' interests by shifting costs and burdens onto workers. For example, in terms of the newly added social insurance, the World Bank's assessment indicator considers whether governments provide social security for workers and whether the funding sources increase the tax burden on enterprises. Its fundamental purpose is to ensure that enterprises use capital for business development and improve profitability. In terms of working hours, it emphasizes that by allowing flexibility in working schedules, businesses can better accommodate the production needs of enterprises while fixed-term contracts offer a way to hire employees without committing to long-term employment. In terms of dismissal

¹⁰ Timothy Besley, "Law, Regulation, and the Business Climate: The Nature and Influence of the World Bank Doing Business Project," *Journal of Economic Perspectives* 3 (2015): 100-106.

indicators, it emphasizes the need for companies to efficiently adapt to changes in the business environment, which is reflected in its proposal to limit the period of dismissal notice and severance pay.¹¹

However, incorporating labor provisions in FTAs and improving labor protection standards are vital for safeguarding worker safety and rights in international trade, aligning with international labor standards. The core is to recognize workers as vulnerable groups deserving protection, rather than viewing them solely as “resources for production” or “means of production.” In the field of global social policy, the ILO emphasizes that Labor is not a commodity. Especially in the context of economic globalization, the core value of labor standards lies in improving workers’ working conditions and protecting their basic dignity. International labor standards cover all aspects of fundamental human rights, social security, employment policies, working conditions, industrial relations, and protection of specific groups, and play an irreplaceable role in safeguarding the basic rights of workers and promoting labor legislation in countries around the world.¹² For example, in terms of social security, the ILO recognises the right to social security as a fundamental human right and has established a comprehensive framework for its protection, covering nine key areas including medical care, unemployment, work-related injuries, childbirth and more, and these standards are constantly being updated.¹³ In terms of working hours, working hours are the earliest and most widespread area of international labor standards. Among them, the *Reduction of Hours of Work Recommendation* (No. 116) advocates for the progressive reduction of working hours, emphasizing that such reductions should not result in wage reductions, and also requires restriction on overtime, while it also provides relatively comprehensive and highly operational measures.¹⁴ It can be seen that the core value of international labor standards is completely different from that of optimizing the business environment.

3. Different realization approaches: for businesses vs for workers

The World Bank’s DB report focuses on business costs and operations and safeguards business interests by measuring the business regulations across different economies and at different times, particularly concerning small and medium-sized businesses.¹⁵ At present, the B-READY system includes three dimensions: Pillar I (Regulatory Framework) is to assess the quality of Labor

¹¹ World Bank, *B-Ready Methodology Handbook* (Washington, D. C.: World Bank, 2023), 256-259.

¹² Liu Tiemin, *International Labor Organization and Occupational Safety and Health* (Beijing: China Labor and Social Security Publishing House, 2004), 13.

¹³ Lin Yanling, *Comparison between ILS & China’s Labor Legislation* (Beijing: China Workers Publishing House, 2015), 343-344.

¹⁴ Mo Rong, *Comparative Study on International Labor Standards Systems* (Beijing: China Labor and Social Security Publishing House, 2015), 142-144.

¹⁵ Timothy Besley, “Law, Regulation, and the Business Climate: The Nature and Influence of the World Bank Doing Business Project,” *Journal of Economic Perspectives* 3 (2015): 99-101.

laws and regulations, covering the regulatory provisions necessary for the operation of the Labor market; Pillar II (Public Services) is to measure the adequacy of Labor public services, assessing the social protection, Labor market and institutional framework to support the enforcement of Labor laws in the economies; Pillar III (Operational Efficiency) is to evaluate the efficiency of Labor laws and public services in practice, such as the time and cost businesses face when complying with Labor laws and social security requirements. The report evaluates an economy's business environment by summarizing scores under the three pillars. For example, Pillar III is divided into three categories: non-wage Labor costs, employment restrictions and costs, and public service efficiency, assessed through eight indicators, including non-wage Labor costs (social security fees and employment taxes, etc.), restrictions on recruitment (high standards for minimum wage, cumbersome dismissal procedures and costs), and time spent on dismissal,¹⁶ all of which revolve around the impact of government services and supervision on business development.

In comparison, international labor standards encompass a broader scope of labor rights and aim to provide a more extensive range of labor protections. These standards are primarily achieved through three categories: core, governance, and technical labor standards. Among them, core labor standards include five fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory Labor; the effective abolition of child Labor; the elimination of discrimination in respect of employment and occupation; and occupational safety and health.¹⁷ The implementation of labor standards requires member states to ratify relevant conventions; however, the *ILO Declaration on Fundamental Principles and Rights at Work* (1998) (the “Declaration”) establishes that even without ratification, all member states have a duty to respect, promote and realize the principles of fundamental rights due to their ILO membership. The approach to realizing international labor standards is centred on maintaining the fundamental human rights of workers and improving working conditions. It is not limited to the three pillars of business environment assessment, and the setting of specific standards does not focus on minimizing corporate costs or maximizing business flexibility.

In summary, given the differences in ideological roots, underlying value and realization approach, the model of the pilot FTZs oriented towards optimizing the business environment cannot completely address the issues of

¹⁶ World Bank, *B-Ready Methodology Handbook* (Washington, D. C.: World Bank, 2023), 260-262.

¹⁷ The 110th International Labor Conference adopted a resolution to add the principle of occupational safety and health to the ILO's Fundamental Principles and Rights at Work. As a result, the ILO now has 10 core conventions covering 5 fundamental rights at work. See ILO, “International Labor Conference adds safety and health to Fundamental Principles and Rights at Work,” accessed August 15, 2024, <https://www.ilo.org/resource/news/ilc/110/international-labor-conference-adds-safety-and-health-fundamental>.

alignment with international labor standards in FTAs. The pilot program experience from the pilot FTZ legislation is not enough to lead the construction of Chinese labor standards and the alignment with the high standards of the CPTPP. Thus the State Council issued the *General Plan*, with its core idea in labor provisions shifting from prioritizing business environment indicators to prioritizing international labor standards.

B. The *General Plan* for aligning with labor provisions in high-standard economic and trade rules

The *General Plan* extends from the construction of talent systems and mechanisms to the reform of a “post-border” administration system, reflecting the overall idea of guiding the Shanghai Pilot Free Trade Zone to take the lead in building a system and regulatory model prioritising international labor standards regarding the issues of labor standards.

1. labor rights protection standards highlighting “decent work”

The *General Plan* restates the protection of the fundamental rights of workers such as remuneration, rest and vacation, safety and health, social insurance, and vocational skills training on the basis of the Regulations of the Shanghai Pilot Free Trade Zone, and emphasizes the need to “strengthen labor protection and improve working conditions.” Modern society’s concern for fairness has evolved, moving beyond simply ensuring survival to focusing on development.¹⁸ Therefore, the *General Plan*, based on fundamental labor rights, further strengthens the protection of workers and the improvement of working conditions, highlighting the ILO’s concept of “decent work.”

In 2008, the ILO proposed the concept of “decent work” as a core element of international labor standards. This concept emphasizes the importance of respecting fundamental labor rights, as well as higher-level labor rights and Labor dignity such as promoting employment, strengthening labor protection and social security, and fostering social dialogue.¹⁹ If core labor standards are regarded as the “minimum program” for developing countries, then “decent work” makes a further requirement upon the “minimum program,” providing a more comprehensive and broader goal for global labor protection.²⁰ At present, the reform of China’s labor rule of law has achieved certain results as it has ratified seven of the ten core Labor conventions, basically realizing the protection of core labor rights. In order to further realize the pledge of “Improving the People’s Wellbeing and Raising Quality of Life” proposed in the Report to the 20th CPC National Congress, and to better align with the high-standard international labor protection, the *General Plan* puts forward new

¹⁸ Yu Shaoxiang, *General Introduction to Social Law* (Beijing: Social Sciences Academic Press, 2019), 115.

¹⁹ Lin Yanling, *Comparison between ILS & China’s Labor Legislation* (Beijing: China Workers Publishing House, 2015), 12-13.

²⁰ Dong Baohua, *Socialization and Internationalization of Labor Relations Adjustments* (Shanghai: Shanghai Jiao Tong University Press, 2006), 68.

requirements for strengthening the efforts and level of protection on the basis of reaffirming fundamental rights. This is a response to the concept of “decent work” and also provides preparation for higher-level protection obligations and the ratification of more Labor conventions.

2. Improving the social consultation system in the Labor area

Realizing modern social governance in the Labor area is crucial to China’s future development. The construction of a social consultation system is an important manifestation of the modernization of China’s system and capacity for governance.²¹ Compared with the previous pilot FTZ regulations, the greatest feature of the *General Plan* is its focus on promoting the construction and development of the social consultation system: first, it proposes to improve the tripartite mechanism for coordinating Labor relations at a macro level, “to accept and handle relevant opinions from workers, trade unions, and enterprises on a daily basis”; second, it proposes to promote the collective consultation system at the micro level, “to establish a system of collective wage consultation and normal wage growth for workers.”

Improving the tripartite mechanism at a macro level is an important part of social consultation. The *General Plan* is being carried out in two aspects: For one thing, it continues to improve the tripartite mechanism for coordinating Labor relations. China has gradually established a national and industrial tripartite consultation mechanism in accordance with the requirements of *ILO Recommendation No. 113*.²² However, it has been widely questioned whether the mechanism can be effectively applied in China’s situation. It is necessary to establish a tripartite mechanism with Chinese characteristics while drawing on foreign experience.²³ The pilot FTZs provide a platform for reform for the development and improvement of the tripartite mechanism. For another, the newly added public participation in the supervision mechanism of the tripartite mechanism is of great significance: First, in the current process of China’s social transformation, it features a complex and diverse landscape for Labor relations. By integrating various social forces, the tripartite mechanism allows for timely reception and reflection of public opinions, leading to improvements in both Labor and social governance efficiency within the pilot FTZs. Second, the FTAs led by Europe and the United States prioritize public participation and public supervision. For example, the European Union fully recognizes the importance of public participation in the implementation process, encourages public participation in the development and implementation of Labor policies, and improves the public’s understanding of Labor laws; the CPTPP also emphasizes

²¹ Lin Jia, “The Establishment of Social Negotiation System under the Labor Law Perspective,” *The Jurist* 3 (2016): 80.

²² Lin Yanling, *Comparison between ILS & China’s Labor Legislation* (Beijing: China Workers Publishing House, 2015), 267.

²³ Li Lilin and Yuan Qingchuan, “International Comparative Analysis of Tripartite Consultation and Its Revelations,” *Journal of Renmin University of China* 5 (2011): 25.

“Public Awareness and Procedural Guarantees (Article 19.8)” and the duty to “make the submission available to the public (Article 19.9)”. Therefore, integrating public participation into China’s tripartite mechanism is beneficial to adapting to international practices and aligning with high-standard international FTAs.

Establishing collective wage consultation at the micro level is a crucial step towards social consultation. Wages cover the basics necessary for a decent life for workers and their households and are also a key factor in Labor relations and social stability.²⁴ China’s wage legislation emphasizes the principle that “the level of wages shall be gradually raised on the basis of economic development.” In addition to mandatory regulations on wage guarantees, it also focuses on clarifying the content of wage distribution and wage growth systems through collective consultations between workers and employers. Therefore, the *General Plan* emphasizes the need to establish a system of collective wage consultation and normal wage growth for workers. It is not only a practice of China’s wage legislation, but also an attempt to reform and improve the collective wage consultation system within pilot FTZs guided by “institutional opening-up.” Under the guidance of the *General Plan*, the collective wage consultation system will become a key direction for the construction of labor standards in pilot FTZs in the future. Therefore, improving social consultation in pilot FTZs is not only to improve the construction of labor rule of law in pilot FTZs, but also to align China’s practice with international standards, and provide pilot program experience and feasible solutions for the negotiation of international trade agreements.

3. Labor inspection convention as part of China’s legal framework

In terms of effectively guaranteeing the implementation of labor standards, the new-generation EU FTAs supervise the implementation of relevant regulations by establishing committees and other means, while the CPTPP emphasizes the importance of inspection matters through special provisions such as “Enforcement of Labor Laws (Article 19.5).” Therefore, the *General Plan* makes further guidance on this, and clearly requires referring to the *Convention Concerning Labor Inspection in Industry and Commerce* (Convention No. 81) to improve China’s Labor inspection system and promote the alignment of Labor inspection standards with international standards. At present, the differences between China’s Labor inspection system and international conventions are reflected in the following aspects:

First, the differences in the regulatory paradigm. The shift from “inspection objects” and “inspection matters” to “workplaces” will further expand the scope of China’s Labor inspection. China’s current Labor inspection is mainly carried out with a focus on specific inspection objects and matters,²⁵ but the *Convention*

²⁴ Zhan Dongsheng, “On Wages in Labor Law,” *Law Review* 3 (2023): 101.

²⁵ Article 2 of the *Regulation on Labor Security Supervision* provides: “The labor security supervision over enterprises and individual industrial and commercial households (hereinafter referred to as the employing

Concerning Labor Inspection in Industry and Commerce takes “workplaces” as the logical starting point and includes “all workplaces relating to conditions of work and the protection of workers while engaged in their work”²⁶ in the scope of inspection. Second, the “soft functions” of China’s Labor inspection system are not fully established. Article 10 of the *Regulation on Labor Security Supervision* (the “*Regulation*”) does not include the two functions mentioned in the *Convention*: “to supply technical information and advice” and “to bring to notice defects or abuses not specifically covered by existing legal provisions.”²⁷ Given that China’s previous positioning of Labor inspection was limited to supervising the compliance of employers with the law and that China is now actively building a law-based government and a service-oriented government, promoting the construction of “soft functions” of Labor inspection is beneficial to the realization of modern governance in the Labor area. Third, in terms of the qualifications of inspectors, China’s system lacks diversified technical experts and specialists required by the *Convention*. Articles 7 and 9 of the *Convention Concerning Labor Inspection in Industry and Commerce* clearly stipulate the composition and professional requirements of Labor inspectors.²⁸ Although the

entities) shall be governed by this *Regulation*. The labor security supervision over job intermediary institutions, occupational skills training institutions, and occupational skills assessment and authentication institutions shall be conducted in accordance with this *Regulation*.” Article 11 provides: “A labor security administration shall conduct labor security supervision over the following particulars: (1) the employing entities’ formulation of internal labor security rules and systems; (2) the employing entities’ conclusion of labor contracts with laborers; (3) the employing entities’ obedience of provisions on prohibiting employment of child laborers; (4) the employing entities’ obedience of provisions on special labor protection of female employees and underage laborers; (5) the employing entities’ obedience of provisions on working hours, rests and holidays; (6) the employing entities’ payment of wages to the laborers and implementation of the lowest rate of wages; (7) the employing entities’ buying of various social insurances and payment of social insurance premiums; (8) the obedience of relevant provisions of the state on job intermediation, occupational skills training, and occupational skills assessment and authentication by the job intermediary institutions, occupational skills training institutions, and occupational skills assessment and authentication institutions; and (9) other particulars prescribed in laws and regulations on labor security supervision.”

²⁶ Article 2(1) of the *Convention concerning Labor Inspection in Industry and Commerce* provides: “The system of Labor inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by Labor inspectors.”

²⁷ Article 3(1) of the *Convention concerning Labor Inspection in Industry and Commerce* provides: “The functions of the system of Labor inspection shall be: (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by Labor inspectors; (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions; (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.”

²⁸ Article 7 of the *Convention concerning Labor Inspection in Industry and Commerce* provides: “1. Subject

Regulation stipulates the law enforcement subject of Labor security inspection and the entrustment of professional accounting firms for auditing,²⁹ the practice will also involve the monitoring of working conditions such as the health and safety of workers. It is necessary to strengthen the inspector team building with higher requirements in terms of composition and professionalism. Fourth, in terms of inspection reports, China's Labor inspection statistics and reporting system need further improvement. China has established the basic framework for Labor inspection statistics and relatively comprehensive provisions on report content. However, compared with the provisions of Articles 19, 20, and 21 of the *Convention Concerning Labor Inspection in Industry and Commerce*, it still shows problems such as limited scope of published data, inconsistent statistical calibres, and insufficient report content.

Labor inspections, as a compulsory means to protect workers, is widely used by countries around the world and has developed various forms.³⁰ The reform of the Labor inspection system through pilot programs in pilot FTZs is gradually reducing the gap between China's Labor inspection and international conventions. This will not only help improve the level of China's Labor inspection, but also further promote the alignment with the labor standards of high-standard trade rules.

II. China's Approach to Labor Provisions in FTAs: Domestic

to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, Labor inspectors shall be recruited with sole regard to their qualifications for the performance of their duties. 2. The means of ascertaining such qualifications shall be determined by the competent authority. 3. Labor inspectors shall be adequately trained for the performance of their duties." Article 9 provides: "Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are associated in the work of inspection, in such manner as may be deemed most appropriate under national conditions, for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers while engaged in their work and of investigating the effects of processes, materials and methods of work on the health and safety of workers."

²⁹ Article 3 of the *Regulation on Labor Security Supervision* provides: "The labor security administration of the State Council shall be in charge of the labor security supervision work of the whole country. The labor security administration of a local people's government at the county level or at any level above shall be in charge of the labor security supervision work within its own administrative area. The relevant departments of a people's government at the county level or at any level above shall, according to their respective duties, support and assist in the labor security supervision work of the labor security administration." Article 4 provides: "The labor security administration of a people's government at the county level or at the level of a city divided into districts may entrust an organization meeting the law enforcement conditions for supervision to conduct the labor security supervision. The labor security supervisors in a labor security administration or in an organization entrusted to conduct labor security supervision shall pass the corresponding assessment or examination before they are employed. The labor security supervision certificates shall be produced under the supervision of the labor security administration of the State Council." Article 15 provides: "Entrusting an accounting firm to audit the employing entity's payment of wages and social insurance premiums."

³⁰ Wang Quanxing, *Labor Law* (Beijing: Law Press • China, 2012), 464-465.

Development of the Rule of Law

The establishment of China's approach to labor provisions in future FTAs cannot be separated from the institutional experiment of pilot FTZ legislation, or the legal basis and legal protection provided by China's Labor laws. It must be noted that under the background of law-based governance in all dimensions, China's Labor law framework has basically taken shape and is increasingly improving,³¹ forming a fundamental labor rights system focusing on individual rights, a social consultation system focusing on multi-layer construction, and an administrative law enforcement system centered on Labor inspection. The establishment of China's approach must be based on China's labor rule of law. For one thing, it must be able to align with high-standard economic and trade rules within a reasonable scope and make improvements. For another, it must also maintain the normal trajectory of China's labor rule of law.³²

A. Continuous deepening of fundamental labor rights protection

Fundamental labor rights are the logical starting point of Labor law governance. The *Labor Law*, the *Labor Contract Law* and other laws have made corresponding provisions on fundamental labor rights at the basic law level. With the continuous advancement of the construction of the labor rule of law, the fundamental labor rights system, aligning with international labor standards, has been supplemented and improved in various aspects such as the elimination of forced Labor, abolition of child Labor, elimination of employment discrimination, and improvement of basic Labor, creating an increasingly modernized and internationalized environment for the labor rule of law.

1. Elimination of forced or compulsory Labor

Since the 18th CPC National Congress, the CPC Central Committee has significantly prioritized the protection of workers' rights, establishing a multi-faceted policy and legal framework to safeguard workers' personal freedoms and freedom of job choice. For one thing, the *Human Rights Action Plan of China (2021-2025)* explicitly stipulates "punishing forced Labor," and *China's Action Plan to Combat Human Trafficking (2021-2030)* strictly prohibits forced Labor through human trafficking. For another, China has explicitly protected workers' personal freedoms in its laws, including the *Constitution*, the *Criminal Law*, the *Labor Law*, the *Labor Contract Law*, the *Law on Promotion of Employment*, the *Law on the Protection of Rights and Interests of Women*, and the *Regulations Banning Child Labor*. In 2013, the Standing Committee of the 12th National People's Congress passed the *Decision on Repealing the Legal Provisions on Re-education through Labor* to strengthen the legal protection of labor rights. On this basis, China ratified the ILO's *Forced Labor Convention* and the

³¹ Wang Quanxing and Shi Chao, "Review and Reflection on Labor Laws of New China in 70 Years," *Seeker* 3 (2020): 123.

³² Wu Wenfang, "The Impact of International Labor Standards on Rules in Chinese (Shanghai) Pilot Free Trade Zone and Response to the Impact," *Journal of Shanghai University of Finance and Economics* 3 (2014): 17.

Abolition of Forced Labor Convention on April 20, 2022.

2. Abolition of child Labor

China has ratified the *Minimum Age Convention* (Convention No. 138) and the *Worst Forms of Child Labor Convention* (Convention No. 182). It has adhered to the same purpose as international labor standards in its domestic legislation and law enforcement, and has continuously increased its protection efforts. In response to the much-criticized exception of employing children in literature and art and physical culture industries,³³ the 2018 revision of the *Labor Law* changed the wording in Article 15 from “must go through the formalities of examination and approval in accordance with the relevant provisions of the State”³⁴ to “must comply with relevant state regulations,” increasing the protection for minors. In response to disputes such as “ineffective law enforcement”³⁵ and “certain issues that cannot be addressed simply through the Labor law,”³⁶ in June 2023, six authorities including the Ministry of Human Resources and Social Security jointly issued the *System for Eliminating Child Labor in Workplace and Enhancing Special Labor Protection for Minor Workers in Workplace (Model Text)*, and multiple authorities jointly carried out special actions to crack down on the use of child Labor through multiple channels and effectively increase law enforcement to safeguard the legitimate rights and interests of minors.

3. Elimination of discrimination in employment and occupation

Eliminating employment discrimination is a fundamental aspect of social justice.³⁷ China ratified the *Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value* (Convention No. 100) in 1990 and the *Discrimination (Employment and Occupation) Convention* (Convention No. 111) in 2006. The existing legal system fully absorbs the core principles and spirits of the conventions, and covers the main types of discrimination in employment: First, Article 3 of the *Law on Promotion of Employment* clarifies the principle of equal employment and opposes discrimination due to workers' ethnic backgrounds, races, gender, religious beliefs, etc.³⁸ Second, in response to disability discrimination, the 2018 revision

³³ Lin Yanling, *Comparison between ILS & China's Labor Legislation* (Beijing: China Workers Publishing House, 2015), 124.

³⁴ The original text of the provision reads: “Art, sports and special-skill units that plan to recruit juveniles under the age of 16 shall go through examination and approval procedures according to relevant State regulations.”

³⁵ Song Yue, “China's Legislation on Prohibiting Child Labor and Its Improvement: From the Perspective of International Labor Standards,” *Journal of China Youth College for Political Sciences* 1 (2013): 20.

³⁶ Xi Jia, “Employment and Labor Standard and its Nationalization in China,” *Journal of Northwest University: Philosophy and Social Sciences Edition* 3 (2009): 130.

³⁷ Li Weiwei, *Employment Discrimination: International Standards and National Practice* (Beijing: Law Press • China, 2006), 144.

³⁸ Article 3 of the *Law of the People's Republic of China on Promotion of Employment*: The workers enjoy the right to employment on an equal footing and to choice of jobs on their own initiative in accordance with

of the *Law on Protection of Disabled Persons* changed the wording from “prohibition of discrimination against disabled persons” to “prohibition of discrimination on the basis disability,” expanding the scope of protection against employment discrimination against disabled persons, and upgrading the “system for employment of disabled persons in a given proportion” to a national system. Third, in response to gender discrimination, the *Law on the Protection of Rights and Interests of Women*, which has undergone another major revision after 30 years, clarified the intervention against gender discrimination in the workplace, to create a fair employment environment for women. Fourth, in response to household registration discrimination, the Legislative Affairs Commission of the Standing Committee of the National People’s Congress reviewed the taxi administration regulations of more than ten cities in 2020 and 2022 respectively, and pointed out that using household registration or residence permit (temporary residence permit) as the access threshold for taxi drivers constitutes serious employment discrimination.

4. Improvement of basic labor standards

Basic labor standards, encompassing conditions such as wages and working hours, are a fundamental part of international labor standards. China has already included the legislation on basic labor standards in its legislative plan.³⁹ In terms of working hours, China has ratified the *Convention Concerning the Application of the Weekly Rest in Industrial Undertakings* (Convention No. 14) and has established a high-level protection system. At the regulatory level, China sets working hour standards similar to those in developed countries;⁴⁰ at the law enforcement level, it has been effective in addressing overtime;⁴¹ at the judicial level, it has provided effective judicial relief channels through the promulgation of typical cases.⁴² In terms of wages, China, based on its ratification of the

law. In kind employment, the workers shall not be subject to discrimination because of their ethnic backgrounds, races, gender, religious beliefs, etc.

³⁹ In 2018, the Standing Committee of the 13th National People’s Congress included “legislation on basic labor standards” in the third category in its legislative plan, conducted relevant research and demonstration, and drafted a law, which was expected to be submitted to the Standing Committee of the National People’s Congress for deliberation in 2022. (State Council, “Legislative Plan of the Standing Committee of the 13th National People’s Congress,” accessed March 6, 2023, https://www.gov.cn/xinwen/2018-09/08/content_5320252.htm?eqid=dad429480001cb41000000026455fcd1.)

⁴⁰ Wang Tianyu, “The System Construction and Legislative Improvement of Working Time Standards,” *Science of Law: Journal of Northwest University of Political Science and Law* 1 (2016): 129.

⁴¹ Multiple provinces in China are stepping up efforts to address the issue of overtime. Since March 2022, the departments of human resources and social security of at least nine provinces, including Beijing, Shandong, and Anhui, have announced that they would conduct a two-month investigation to address the issue of overtime and protect employees’ rights related to working hours, rest and vacation in accordance with the law. (Fu Ying, “Multiple provinces take action against overtime. What does this imply?” accessed December 18, 2023, <https://baijiahao.baidu.com/s?id=1728622197177290001&wfr=spider&for=pc>.)

⁴² On June 30, 2021, the Ministry of Human Resources and Social Security and the Supreme People’s Court jointly released the second batch of typical cases related to labor and personnel disputes. This release aimed

Minimum Wage-Fixing Machinery Convention (Convention No. 26), has continuously strengthened the protection of the Labor remuneration rights of vulnerable groups, effectively curbed wage arrears to migrant workers through key legislation and Labor inspection⁴³, and tried to clear wage arrears by including the crime of “refusing to pay Labor remuneration” in the criminal law. In addition, the government issues annual wage guidelines that are aimed at ensuring a minimum wage standard and promoting a coordinated approach between wage growth and economic growth.

B. Improvement of the social consultation system

Social consultation is an important means to resolve the conflicts between Labor and capital. Given the transition from single to diversified Labor relations, the Report to the 20th CPC National Congress proposes to improve the mechanisms for Labor relation consultation and mediation, and the *General Plan* emphasizes the need to improve the tripartite mechanism for coordinating Labor relations in the pilot FTZs. Under this background, China has further improved the social consultation system based on the needs of various levels such as the state, industries, enterprises and workers.

1. Enriching and expanding the tripartite mechanism

The tripartite consultation and mediation mechanism for Labor relations is an important mechanism and common practice in market economies to deal with social relations and the relations between Labor and capital.⁴⁴ Since its ratification of the *Convention Concerning Tripartite Consultations to Promote the Implementation of International Labor Standards* (Convention No. 144) in 1990, China has developed its tripartite mechanism for decades and has built a relatively comprehensive framework, which is basically in line with the

to clarify the application standards for working hours and provide guidance on key issues related to overtime, including overtime clauses, determining the facts of overtime, and the allocation of the burden of proof in cases of work-related injuries caused by overtime. The goal was to ensure that workers' right to rest was effectively realized.

⁴³ China issued and implemented the *Regulation on Guaranteeing Payments of Wages to Rural Migrant Workers* and the *Methods for Assessing the Work of Guaranteeing Payments of Wages to Rural Migrant Workers* in 2019 and 2023 respectively, and has made continuous progress in clearing wage arrears of rural migrant workers. According to the Ministry of Human Resources and Social Security's annual statistical bulletins on human resources and social security, labor security supervision agencies at all levels across the country recovered wage/benefit payments of 16.04 billion yuan for 1.689 million workers in 2018, 7.95 billion yuan for 831,000 workers in 2019, 6.52 billion yuan for 648,000 workers in 2020, and 7.99 billion yuan for 853,000 workers in 2021; and ensured timely wage payments of 9.54 billion yuan for 845,000 workers with further intensified labor security supervision enforcement in 2022. (Ministry of Human Resources and Social Security, “2018 Statistical Bulletin on Human Resources and Social Security Development,” “2019 Statistical Bulletin on Human Resources and Social Security Development,” “2020 Statistical Bulletin on Human Resources and Social Security Development,” “2021 Statistical Bulletin on Human Resources and Social Security Development,” “2022 Statistical Bulletin on Human Resources and Social Security Development”.)

⁴⁴ Yang Chengxiang, “On the Features and Reform Direction of the Tripartite Mechanism of Coordinating Labor Relations with Chinese Characteristics,” *Social Science Journal* 4 (2022): 136.

initiatives of international labor standards.⁴⁵

In terms of legislation, the *Labor Contract Law*, the *Trade Union Law* and the *Law on Labor-Dispute Mediation and Arbitration* make explicit provisions on the tripartite mechanism, which is basically consistent with international labor standards. In terms of the institutional system, in accordance with the requirements of *ILO Recommendation No. 113*, a multi-level tripartite consultation system has been formed, including both national and local tripartite consultation mechanisms. As of 2019, China implemented a nationwide tripartite mechanism, encompassing about 20,000 agencies at all levels; specifically, 22 provinces (autonomous regions and municipalities) established tripartite committees to coordinate Labor relations.⁴⁶ In terms of operation, the National Tripartite Conference on the Coordination of Labor Relations addresses key issues in the Labor field. It uses special meetings, organized the Office of National Tripartite Conference, to respond to new and emerging problems, strictly adhering to relevant provisions of international labor standards. In addition, in 2020, the national tripartite system for coordinating Labor relations launched the “Harmonious Advancement” action to improve Labor and employment management of enterprises through the joint actions of local tripartite organizations for coordinating Labor relations at all levels; in 2023, the *Opinions on Promoting the Establishment of Harmonious Labor Relations in the New Era* was issued, emphasizing that local tripartite organizations for coordinating Labor relations at all levels should play a role through employment guidance, policy consultation, legal aid, education and training, and further enrich and expand the realization approach and participation forms of the tripartite mechanism in combination with Chinese practice.

2. Upgrading the coverage and content of collective consultation

Freedom of association and collective bargaining (consultation) rights are fundamental workers’ rights, and are considered core labor rights. The *Freedom of Association and Protection of the Right to Organise Convention* (Convention No. 87) specifically stipulates the content related to the right to solidarity, and the *Right to Organise and Collective Bargaining Convention* (Convention No. 98) supplements Convention No. 87, aiming to address the protection of workers against anti-union discrimination and encourages the development and use of collective bargaining and collective contracts. While China has not yet ratified these two conventions (No. 87 and No. 98), their core principles are reflected in China’s Labor laws and practice, especially in collective consultation (bargaining). Collective consultation coverage is expanding, and there’s a trend

⁴⁵ Lin Yanling, *Comparison between ILS & China’s Labor Legislation* (Beijing: China Workers Publishing House, 2015), 266.

⁴⁶ Ministry of Human Resources and Social Security, “Reply of the Ministry of Human Resources and Social Security to Suggestion No. 2738 of the Second Session of the 13th National People’s Congress,” accessed January 21, 2024, http://www.mohrss.gov.cn/xxgk2020/fdzdgknr/zhgl/jytabl/jydf/201912/t20191203_344921.html.

towards improved protection systems for workers.

Respectively, China's *Regulations on Collective Contracts* and the *Labor Contract Law* outline detailed provisions for collective consultation covering subjects, content, procedures, and collective contracts, as well as other aspects of collective consultation. At the same time, in response to the increasing flexibility and adaptability of employment trends, the *Trade Union Law*, which was revised in 2021, clarifies the rights of workers in new employment forms to participate in and organize trade unions. It also provides a legal basis for workers in new employment forms to engage in collective consultation and sign collective contracts. On this basis, in December 2022, the Supreme People's Court issued the *Opinions on Providing Judicial Services and Guarantees for Stabilising Employment*, providing judicial guarantees for the collective consultation mechanism and promoting the formation of a comprehensive Labor management mechanism and guarantee system. Relying on the above legal regulations, the first collective contract for the internet industry was signed in Shanghai in 2022, and the first collective contract for China's express delivery industry and takeout industry was signed in 2023.⁴⁷ The coverage of collective consultation in Chinese industries has gradually extended from the traditional industries such as catering, building materials, and machinery to the Internet, finance, and medical industries. According to the statistics provided in the annual reports of the Ministry of Human Resources and Social Security from 2018 to 2022, China had more than 1 million valid collective contracts submitted for review every year, covering more than 100 million workers.⁴⁸

C. Improving and refining the system of Labor inspection

In terms of convention ratification, China has ratified the ILO's *Labor*

⁴⁷ In September 2022, Shanghai's internet industry signed its first "Collective Contract," along with a "Special Collective Contract for Wages" and a "Special Collective Contract for Female Employees". The contract responds to social concerns and covers various aspects such as anti-employment discrimination, avoiding and reducing overtime, protecting employees' right to vacation, and improving remuneration. In March 2023, YTO Express (Logistics) Co., Ltd. implemented the "YTO Express (Logistics) Co., Ltd. (Whole Network) Collective Contract," making it the first collective contract with whole-network coverage in China's express delivery industry; in July 2023, the Ele.me platform officially signed the food delivery industry's first whole-network collective contract and whole-network special collective contract for wages, special collective contract for female employees, and special collective contract for labor safety and health.

⁴⁸ By the end of 2018, a total of 1.75 million valid collective contracts had been submitted to the human resources and social security department for review across the country, covering 155 million employees; it was 1.75 million valid collective contracts covering 149 million employees in 2019, 1.45 million valid collective contracts covering 140 million employees in 2020, 1.32 million valid collective contracts covering 120 million employees in 2021, and 1.21 million valid collective contracts covering 110 million employees in 2022. (Ministry of Human Resources and Social Security, "2018 Statistical Bulletin on Human Resources and Social Security Development," "2019 Statistical Bulletin on Human Resources and Social Security Development," "2020 Statistical Bulletin on Human Resources and Social Security Development," "2021 Statistical Bulletin on Human Resources and Social Security Development," "2022 Statistical Bulletin on Human Resources and Social Security Development".)

Administration Convention (Convention No. 150). It has not yet ratified the *Convention Concerning Labor Inspection in Industry and Commerce* (Convention No. 81) but has adopted its core principles and guiding suggestions. China has built a Labor inspection system with Chinese characteristics based on Chinese practice, achieving full coverage of inspection with more refined inspection procedures.

1. Expanding the network coverage

In order to protect the rights of its large workforce, China has implemented a pilot program of grid-based and network-based administration of Labor security supervision across China since 2009. The program aims to create a Labor employment network that encompasses both urban and rural areas. In more than ten years of institutional advancement, it has made outstanding achievements in the protection of the legitimate rights and interests of workers.⁴⁹ Labor inspection is a crucial government function that enforces Labor laws and regulations, and is the main legal path for government regulation of Labor relations.⁵⁰ The construction and implementation of grid-based and networked administration has enabled full coverage of the Labor inspection network in China, effectively supervising the nationwide implementation of Labor laws and regulations. This corresponds to China's "wide coverage" basic labor rights protection model, and has established a set of national protection mechanisms for Labor relations, acting as "social police" to protect workers.⁵¹ This marks an active implementation of Convention No. 150, and is also a model of integrating international conventions with Chinese practices.

2. Ensuring procedural transparency

Institutional innovation must also be supported by the guarantee of fair and transparent procedures, so as to ultimately enhance the effectiveness of the legal protection of labor rights in substance. For one thing, China has continuously improved the Labor inspection procedures, basically covering the whole process of Labor employment with the *Regulation on Labor Security Supervision* and the *Several Provisions on the Implementation of the Regulation on Labor Security Supervision*. In 2022, China made amendments to the *Several Provisions on the Implementation of the Regulation on Labor Security Supervision*, improved the system of recusal or disqualification for

⁴⁹ For example, in October 2022, Fujian Province integrated the "network-based and grid-based" administration of labor security supervision and the targeted follow-up and guidance mechanism for clearing wage arrears, effectively improving the quality and efficiency of handling risks of wage arrears, and vigorously promoted the dynamic clearing of any leads for wage arrears cases before the Spring Festival in 2023. (Department of Human Resources and Social Security of Fujian Province, "Fujian: Innovating an all-domain grid-based supervision mechanism for clearing wage arrears," accessed December 16, 2023, http://www.mohrss.gov.cn/SYrlzyhshbzb/dongtaixinwen/dfdt/202303/t20230315_496850.html.)

⁵⁰ Tang Kuang and Tan Hong, "Logical Thinking and Path Choice to Strengthen Labor Supervision," *Journal of China University of Labor Relations* 3 (2015): 12.

⁵¹ Qin Guorong, *Labor Rights Protection and Labor Law Amendment* (Beijing: People's Publishing House, 2012), 75.

responsible persons of administrative departments of Labor security, and further enhanced the standardization of inspection procedures. In the same year, the *Provisions on the Hearing Procedures for Administrative Punishments with Respect to Labor* were revised, expanding the scope of hearings for administrative punishments related to Labor, and listing in detail the specific matters applicable to the hearing procedures. It gives full play to the value of the hearing system in promoting the fairness of Labor inspections. In addition, it has established regulations regarding pre-hearing preparation, hearing procedures and hearing results to safeguard the procedural rights of both workers and employers. These further reflect the promotion of the labor rule of law and democracy while aligning with the requirements of international conventions. For another, China has adopted a transparent reporting mechanism in its Labor inspection system to disclose inspection information to the public through quarterly and annual statistical bulletins on human resources and social security development, ensuring the effective implementation of Labor laws and regulations.

III. Factors Influencing the Construction of China's Approach to Labor Provisions in FTAs

At present, China has signed 22 FTAs. Four of them incorporate international labor standards through either Labor clauses within the agreements or through memorandums of understanding or Labor cooperation agreements, indicating a shift in China's approach from opposing to accepting labor provisions.⁵² However, compared to Europe and the United States, particularly in light of the CPTPP's high-standard Labor rules, China's approach to labor provisions is still immature. Therefore, we should also comprehensively consider the latest developments of representative international FTAs and their labor provisions, explore and construct potential factors with substantial influence on the formation of China's approach, and grasp their prominent features and common mechanisms to improve China's approach.

A. Scope of rights and obligations of labor provisions

The starting point for constructing labor provisions in FTAs is to determine the specific labor protection obligations that signatory states will assume, and this raises a key question: What types of labor rights should be included?⁵³ That

⁵² At present, China has signed 22 free trade agreements (FTAs). Four of them incorporate international labor standards through either labor clauses within the agreements or through memorandums of understanding or labor cooperation agreements, which are: the China-Chile Free Trade Agreement in 2006, the China-New Zealand Free Trade Agreement in 2008, the China-Peru Free Trade Agreement in 2010, the China-Switzerland Free Trade Agreement and the China-Iceland Free Trade Agreement in 2014. In addition, the China-EU Comprehensive Agreement on Investment (CAI) also contains relevant labor clauses (although the China-EU CAI is not a trade agreement, it is included for the discussion for its great research significance due to its labor clauses).

⁵³ Sandra Polaski, "Protecting Labor Rights through Trade Agreements: An Analytical Guide," *U. C. Davis Journal of International Law & Policy* 10 (2003): 8.

is, what is the basis for determining the scope of labor provisions in FTAs? This not only determines the scope of rights and obligations that signatory states need to assume, but is also likely to become the basis for resolving future Labor disputes. Therefore, determining the labor provisions is a prerequisite for setting Labor agendas in FTAs, and it is also the most urgent issue for China's approach.

In many FTAs with labor provisions, countries cite the ILO's *Declaration*, adopted in 1998, as the foundation for labor standards regarding labor rights and obligations. In terms of core content, the *Declaration* clarifies five fundamental principles and rights at work, including the abolition of child Labor, freedom of association and the recognition of the right to collective bargaining, the elimination of discrimination in respect of employment and occupation, the elimination of forced or compulsory Labor, as well as the principle of occupational safety and health adopted by the 110th International Labor Conference. Its preamble also mentions working conditions, also a part of labor rights protection, including wage levels, worker injury and disease protection, and working hours restrictions. In terms of law approaches, it reflects the ILO's "persuasion and promotion"⁵⁴ strategy and combines "soft law" instrument that is not legally binding with "hard obligations" that are legally binding. It also extends beyond the mere ratification of basic conventions and recommendations. The approach of using soft law documents such as declarations to confirm and strengthen international labor standards can reduce the pressure on member states to ratify specific conventions.

Judging from the different practices of various countries, in order to avoid pressure from signatory states to ratify more conventions, the United States does not use the ILO's international Labor conventions as the basis for its labor provisions, but adopts the concept of "internationally recognized labor rights" under the Generalised System of Preferences. This approach is similar to the *Declaration* and does not mandate the ratification of specific core conventions. The U.S. approach is actually based on its own interests. With the ratification of only two core conventions, it uses its Labor laws as the basis to promote its high-level labor standards in international trade.⁵⁵ While the European Union's new-generation FTAs show certain differences between their provisions, there are still commonalities observed to identify a "blueprint,"⁵⁶ as these agreements all incorporate labor provisions within a dedicated "Trade and Sustainable Development" (TSD) chapter. Moreover, they include more extensive international documents rather than just the ILO's *Declaration*, featuring a certain overlap with human rights protection provisions.⁵⁷ For example, the

⁵⁴ Zheng Lizhen, *On the Reconstruction of Transnational Labor Regulation Regime* (Beijing: Social Sciences Academic Press, 2014), 95-96.

⁵⁵ Bob Hepple, *Labor Laws and Global Trade* (Oxford: Bloomsbury Publishing, 2005), 107.

⁵⁶ Liam Campling, et al., "Can Labor Provisions Work beyond the Border? Evaluating the Effects of EU Free Trade Agreements," *International Labor Review* 3 (2016): 363.

⁵⁷ Wang Liwu and Zhang Baofen, "The Systematical Supply of Labor Clauses in EU's Free Trade

European Union-South Korea Free Trade Agreement, as the most extensive trade agreement signed by the European Union, includes labor provisions rooted in Article 13.4 of the *Declaration*, along with a series of other international Labor documents,⁵⁸ emphasizing the economic, employment and social implications of globalization.

In contrast, looking at China's FTA practice, it has accepted more and more international documents on labor standards. China has initially declared the obligations as an ILO member state and the commitments determined by the *Declaration* and its *Follow-up*, later extending to the *Centenary Declaration for the Future of Work*, and other aspects like sustainable development and decent work. In the *China-EU Comprehensive Agreement on Investment*, China committed to make sustained efforts to ratify the fundamental ILO Conventions, particularly Conventions No. 29 and No. 105. However, there is still a large gap with the current model of the European Union and the United States. How to determine the scope of rights and obligations of labor provisions in China's FTAs is the primary issue at present and also the basis for the construction of other related systems.

B. Openness and transparency of implementation procedures

The U.S. approach to "internationally recognized labor rights" in its FTAs is criticized for its vagueness and a lack of transparency in linking Labor disputes to trade sanctions. This has led to concerns and opposition from trading partners about the legitimacy of the measures.⁵⁹ Labor protection in China's FTAs also faces a similar situation. Some scholars express concerns that China's implementation of labor standards in trade rules lacks transparency and reliable procedures, leading to transparency barriers.⁶⁰ It is also for this reason that the negotiations to upgrade the China-Switzerland Free Trade Agreement have stalled. Procedural transparency in implementing labor standards is crucial. At present, China has formally applied to join the CPTPP, and the CPTPP attaches great importance to procedural fairness and transparency. Therefore, understanding the transparency of implementation procedures within representative FTAs, including analysing procedural guarantee requirements and mechanisms in such FTAs, is crucial for China to align with high-standard international economic and trade rules, particularly for joining the CPTPP and

Agreements and the Enlightenments," *Journal of Political Science and Law* 1 (2016): 40.

⁵⁸ Article 13.1.1 in Chapter Thirteen of the *European Union-South Korea Free Trade Agreement* also includes documents such as the *Agenda 21 on Environment and Development* of 1992, the *Johannesburg Plan of Implementation on Sustainable Development* of 2002 and the *2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work*. Article 13.2 of the *Agreement* provides that the Parties shall adopt or maintain measures affecting trade-related aspects of Labor issues in the context of Articles 13.1.1 and 13.1.2.

⁵⁹ Zheng Lizhen, *On the Reconstruction of Transnational Labor Regulation Regime* (Beijing: Social Sciences Academic Press, 2014), 97.

⁶⁰ Ronald C. Brown, "A New Leader in Asian Free Trade Agreements? Chinese Style Global Trade: New Rules, No Labor Protections," *UCLA Pac. Basin L.J.* 2 (2017): 30.

upgrading trade agreements in the future.

The CPTPP has outlined detailed provisions on transparency from different perspectives in “Public Awareness and Procedural Guarantees” (Article 19.8) and “Public Submission” (Article 19.9), which can be summarized in three aspects: First, the transparency requirements for the consideration of public submissions, that is, in the implementation and practice of labor standards, the procedures for contact points to receive and consider a public submission should be open and transparent, and the submission and the results of its consideration should be made available to the public; second, the transparency requirements for enforcement procedures, such as ensuring that the information related to enforcement is publicly available and that the proceedings for enforcement of Labor laws are fair and transparent; third, the transparency requirements for judicial procedures, including impartial and independent tribunals, and due judicial process. Under the terms of the CPTPP, signatory states have the obligation to enhance the transparency and fairness of their Labor laws, including through open and transparent law enforcement and judicial procedures. This also involves promoting enforcement effectiveness and rule of law democracy through public participation.

Regarding the “new-generation” EU FTAs, the European Commission’s strategic plan for 2016-2020 acknowledged the growing public scrutiny of trade policies and recognized the importance of labor provisions in FTAs as a key response to such scrutiny, so these labor provisions are intended to be inclusive and consider not only economic aspects but also values.⁶¹ Therefore, in the EU FTAs, the TSD chapters include substantial standards in labor provisions such as the obligations that the parties should fulfil, and also include procedural commitments. One of the important procedural requirements is to establish more in-depth and more comprehensive relevant obligations,⁶² aiming to ensure the transparency of the measures to implement labor provisions and provide the public with a reasonable opportunity to submit opinions.

China is also emphasizing openness and transparency in enforcement procedures. In its rule of law, it has continuously improved the social consultation and inspection mechanisms to strengthen the procedural guarantee for labor rights protection. But although progress has been made, there are still some shortcomings, such as the lack of a public participation system for social consultation and the inefficiency of Labor inspections in aligning with international conventions. There is still a certain gap between China’s practices and the requirements of major international FTAs on enforcement procedures.

C. “Soft” and “hard” choices for the supervision approach

Flexible production and economic globalization create huge challenges for

⁶¹ European Commission, “MANAGEMENT PLAN: Strategic plan 2016-2020-Trade,” accessed January 31, 2023, https://commission.europa.eu/publications/strategic-plan-2016-2020-trade_en.

⁶² Liam Campling, et al., “Can Labor Provisions Work beyond the Border? Evaluating the Effects of EU Free Trade Agreements,” *International Labor Review* 3 (2016): 358.

traditional domestic Labor law supervision. However, the development of international labor standards and international trade agreements provides mechanisms for cross-border supervision of Labor practices.⁶³ This constitutes the third key factor that needs to be considered in constructing labor standards: determining how effectively supranational bodies can enforce labor provisions within trade agreements.⁶⁴ This not only involves the extent to which China can accept cross-border supervision of labor standards, but also whether China can build a cross-border supervision method with Chinese characteristics, laying the foundation for long-term planning for active engagement in global institutional design.

As major economies in the world, both the United States and the European Union have established effective and sustainable cross-border supervision systems in their FTAs, which are unique and representative. The United States, utilising a “hard law” approach, has increased the implementation and supervision of labor provisions, and has built a Labor supervision mechanism that extends beyond national borders. The U.S. Labor supervision mechanism uses the Labor Council (Article 19.12) and the Contact Points (Article 19.13) as its main institutions, and monitors the enforcement of domestic Labor laws through cross-border means such as “Cooperation” (Article 19.10) and “Cooperative Labor Dialogue” (Article 19.11), thereby indirectly improving the level of Labor law enforcement. More important, the United States has also set enforceable labor standards and allowed the use of trade dispute mechanisms as a compulsory means of cross-border supervision.⁶⁵

Unlike the “sanctions-based” approach adopted by the United States, the European Union utilises a “soft law” approach and believes that the potential for improving labor standards lies more in institutionalized dialogue and cooperation mechanisms, rather than using compulsory dispute settlement mechanisms as a means of supervision.⁶⁶ An important foundation for this supervision approach is the CARIFORUM-EU Economic Partnership Agreement (EPA) signed in 2008. One impact of this agreement is the establishment of institutionalised dialogue and cooperation regarding social issues of the trade agreement facilitated by the Civil Society Mechanism (CSM), thus creating the external governance structure beyond borders sought by the EU approach.⁶⁷ In other words, on the one hand, the European Union employs a

⁶³ Patrick Macklem, “Labor Law beyond Borders,” *Journal of International Economic Law* 3 (2002): 608.

⁶⁴ Sandra Polaski, “Protecting Labor Rights through Trade Agreements: An Analytical Guide,” *U. C. Davis Journal of International Law & Policy* 10 (2003): 17.

⁶⁵ Li Xixia, *The Latest Development of Labor Standards in Free Trade Agreements* (Social Sciences Academic Press, 2023), 233.

⁶⁶ Myriam Oehri, “Comparing U.S. and EU Labor governance ‘near and far’ – hierarchy vs network?” *Journal of European Public Policy* 5 (2015): 740.

⁶⁷ James Harrison, et al., “Governing Labor Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development Chapters,” *Journal of Common Market Studies* 2 (2019): 261-262.

multi-faceted approach to influencing signatory states, focusing not only on immediate obligations but also on shaping political norms and fostering long-term, subtle influence through social participation such as dialogue and cooperation,⁶⁸ on the other hand, the European Union refuses to solve Labor problems through trade sanctions, and advocates for soft law mechanisms like consultation and expert group consideration to supervise and resolve Labor disputes. With the increasing interest in “hard law” approaches, the European Parliament has suggested that the European Union’s TSD chapter lacks a strict supervision mechanism and proposed incorporating a dispute settlement system that could impose financial penalties. However, the European Union rejected the proposal and proposed that: first, FTAs should reflect the needs and requirements of trading partners, rather than simply impose the interests and values of the European Union; second, the mechanism of forceful enforcement through sanctions will negatively impact the signatory states’ economies.⁶⁹

The *General Plan* places the content related to the construction of labor standards within the framework of the post-border administration system reform. For one thing, this reflects China’s desire to promote institutional opening-up in the “post-border” field and improve the level of domestic governance to engage in higher-level international cooperation and competition.⁷⁰ For another, this is also to supervise and regulate post-border Labor employment practices of signatory states, allowing them to gradually accept the Labor rules led by China, thereby realizing coordination of regional Labor rules and cross-border supervision. How to further refine and implement cross-border supervision of labor standards not only involves the construction of domestic post-border measures, but also affects China’s future engagement in global governance and rule design.

IV. Framework of China’s Approach to Labor Provisions in FTAs

The models of trade-Labor linkages in trade negotiations largely reflect the evolving global landscape of trade and Labor governance. The European Union and the United States used large regional agreements to consolidate and promote their existing approaches to labor provisions.⁷¹ In particular, the inclusion of the CPTPP’s labor provisions has put forward higher requirements for China’s institutional opening-up in alignment with high-standard international economic and trade rules in the field of Labor law. At the same time, as China is engaging

⁶⁸ Evgeny Postnikov and Ida Bastiaens, “Does Dialogue Work? The Effectiveness of Labor Standards in EU Preferential Trade Agreements,” *Journal of European Public Policy* 6 (2014): 924.

⁶⁹ Franz Christian Ebert, “Labor Provisions in EU Trade Agreements: What Potential for Channelling Labor Standards-related Capacity Building,” *International Labor Review* 3 (2016): 233.

⁷⁰ Xu Chongli, “The Changes in U.S. Trade Policy and Legal Strategy: Patterns and Mechanisms,” *China Law Review* 2 (2023): 142.

⁷¹ Billy Melo Araujo, “Labor Provisions in EU and U.S. Mega-regional Trade Agreements: Rhetoric and Reality,” *International and Comparative Law Quarterly* 1 (2018): 253.

in negotiations to upgrade more and more of its FTAs and the Belt and Road Initiative (BRI) is expanding its influence in global development and governance, there will be more potential trading partners in the future. A passive response to the challenges brought about by labor provisions can no longer adapt to China's opening-up strategy, and actively exploring China's approach for FTAs should become an important part of China's global governance strategy.

A. Baseline and ceiling of China's approach

China is accelerating the implementation of the FTZ strategy and expanding its high-level opening-up. This means that the framework of China's labor provisions should apply to both developed countries with high standards such as the European Union and the United States and developing countries with lower standards such as Latin America and Southeast Asia. Therefore, when conducting free trade negotiations with different countries, labor provisions should be tailored to each country's specific context to effectively protect workers' rights.⁷² This means, while formulating China's approach, China needs to prepare a certain flexible space for the possible non-implementation and institutional conflicts that may arise with the signatory states at different levels of development. The flexible space is divided based on two basic lines: the baseline of labor protection and the ceiling of labor provisions acceptable to China. (See Figure 1)

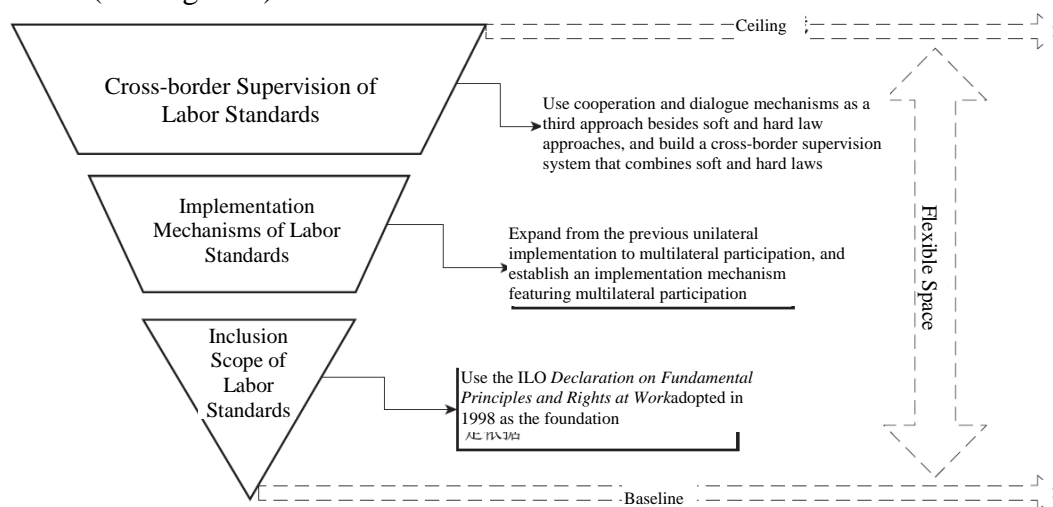


Figure 1 Framework of China's Approach to Labor Provisions in FTAs

1. Baseline of China's approach

⁷² Sandra Polaski, "Before the Senate Committee on Finance on the Implementation of the U. S. Bilateral Free Trade Agreements with Singapore and Chile," accessed September 9, 2023, <http://www.ceip.org/files/Publications/Polaski-testimony-Chile-Singapore.asp?p=43&from=pubdate>.

China has signed 22 regional or bilateral FTAs, with a majority of the signatories being developing countries. As of October 2023, China has signed cooperation agreements on the BRI with 152 countries, mostly developing or low- and middle-income countries. Foreseeably, with the advancement of the strategy of building a strong trading nation, China will open up more markets in developing countries and regions such as the Association of Southeast Asian Nations.

Therefore, to implement China's vision of "promoting human rights through development" in future trade negotiations with other developing countries, it is crucial to focus on promoting economic growth for all trading partners. Moreover, it is also necessary to emphasize labor protection and promote China's moral standing, which can enhance the international appeal of China's development model. At the same time, to prevent developing countries from perceiving China's labor provisions as trade protection, thereby generating resistance and confrontation, it requires building the greatest possible consensus between parties. Therefore, in setting the baseline of China's approach to labor provisions, it should take the obligations of the ILO member states and the *Declaration* as the basis, and use the coverage of fundamental labor rights protection of China's laws as the reference, and focus on basic labor standards, the abolition of child Labor, elimination of forced Labor, elimination of discrimination, occupational safety and health and other contents, aiming to help the signatory states improve labor protection and working environment and align with international labor standards and international human rights development.

2. Ceiling of China's approach

labor provisions have become a standard part of regional and bilateral FTAs negotiated by major trading powers such as the European Union and the United States. However, the specifics of these labor provisions can vary significantly across different FTAs and between countries. Even though they tend to reflect a certain pattern, there still exist differences. The reason is that labor standards in international trade are complex, encompassing economic, political and cultural factors. Determining appropriate labor provisions and protection levels for different signatory states requires considering their unique national conditions. Therefore, in future trade negotiations and consultations, China should combine China's rule of law process and specific practices to clarify the ceiling of labor provisions acceptable to China, which should be based on China's labor rule of law, the signed FTAs and the scope of practice of pilot FTZs. labor provisions beyond the ceiling are not in line with China's national conditions, which will lead to legal dilemmas and increased practical pressure, and are not conducive to the development of China's sustainable trade strategy and human rights protection.

B. System construction of China's approach

The framework of China's approach should be based on its domestic Labor law reform and also consistent with the vision of the *General Plan* centring on the construction of international labor standards. Meanwhile, it should also be

combined with the prominent characteristics and common mechanisms of international FTAs to achieve free trade negotiations led by China and build a high-standard global trade network.

1. Inclusion scope of labor provisions: from core conventions to basic declarations

The inclusion of labor provisions is a fundamental step that dictates the obligations of signatory states. As mentioned above, labor provisions in China's FTAs are evolving, but they remain constrained by the need to ratify core conventions, and face a gap compared with the EU and U.S. models. Thus, in order to further align with high-standard international economic and trade rules, it is feasible to consider using the *Declaration* as the main basis for determining the scope of labor provisions in China's approach.

For one thing, the ILO *Declaration* clarifies five fundamental labor rights, but it also emphasizes other labor rights in the preamble, unlike the ILO's ten basic Labor conventions that address the five core labor standards in separate sections, providing more highlighted details on each issue. Therefore, it can be described as constituting a "bundle of rights" to protect labor rights, which coincides with China's "extensive and comprehensive" model for fundamental labor rights protection. More importantly, the idea of being "extensive and comprehensive" is in line with deepening the protection of fundamental labor rights in the *General Plan*, so the *Declaration* is also highly consistent with the new development direction of China's pilot FTZs.

For another, relying on the *Declaration* can leave a flexible space in the setting of China's labor provisions. The *Declaration* states that all member states have an obligation, simply by virtue of their membership, to promote and realise the fundamental principles and rights at work. The *Declaration* itself does not create new legal obligations for member states, nor does it offer an authoritative interpretation of the *ILO Constitution*.⁷³ Therefore, a commitment to the *Declaration* in an FTA, like one with the United States, does not mean a commitment to a specific ILO convention.⁷⁴ By using the *Declaration* for the scope of labor provisions, it can not only lower the international attention to China's failure to ratify the *Freedom of Association and Protection of the Right to Organise Convention* (Convention No. 87) and the *Right to Organise and Collective Bargaining Convention* (Convention No. 98), without adding additional obligations and costs to China. This also ensures that China has greater room to manoeuvre in implementing unratified labor standards.

2. Implementation mechanisms of labor provisions from unilateral implementation to multilateral participation

While including labor standards in FTAs is important, an effective

⁷³ Chen Yifeng, *Transnational Labor Law: Labor Protection in an Era of Globalization* (Beijing: Peking University Press, 2023), 34-35.

⁷⁴ Ronald C. Brown, "FTAs in Asia-Pacific: 'Next Generation' of Social Dimension Provisions on Labor," *Indiana International & Comparative Law Review* 2 (2016): 80.

implementation mechanism is crucial for ensuring their actual enforcement.⁷⁵ Based on the above analysis, FTAs led by the United States and the European Union prioritize fairness and transparency of implementation procedures through public participation. Therefore, it is necessary to expand the construction of implementation mechanisms of China's approach from previous unilateral implementation to multilateral participation, so as to further promote the standardisation and transparency of China's implementation mechanisms and highlight China's labor rule of law and democracy.

In China's practice with its existing FTAs, it started with simple and general participation provisions in the *China-New Zealand Memorandum of Understanding on Labor Cooperation*,⁷⁶ and recently it has accepted the European Union's transparency provisions and requirements for regular multilateral consultations in the China-EU Agreement (Draft).⁷⁷ This indicates a trend of China gradually strengthening its multilateral participation in construction. The *General Plan* makes further arrangements on this basis, aiming to improve the transparency of Labor inspection procedures by improving the tripartite mechanism and increasing public participation in social consultation, and building a mechanism for the implementation of China's labor standards. These measures are in line with the trend of promoting fair and transparent implementation procedures in international trade agreements. Therefore, to refine and implement the arrangements in the *General Plan*, the implementation mechanisms of China's approach should be improved in two dimensions in combination with the achievements of China's domestic rule of law and the specific systems in international trade agreements. These two dimensions are:

The first is to continue promoting the improvement of domestic institutions in China. Having a certain degree of national capacity is considered a prerequisite for effectively implementing labor standards.⁷⁸ China's tripartite mechanism is an important way of social consultation, but it lacks a path for public participation and it has not established a mechanism for receiving, processing and considering public opinions. Therefore, it is necessary to enhance the social democratic function of the tripartite mechanism in future construction. At the same time, it should continue to strengthen the construction of fair and democratic procedures of the inspection system, and promote the regulatory model, functional improvement, team building and reporting system in alignment with international conventions. This is to ensure effective operation of the implementation mechanisms from the specific implementation procedures.

The second is to build specific systems with reference to the agreements

⁷⁵ Patrick Macklem, "Labor Law beyond Borders," *Journal of International Economic Law* 3 (2002): 620.

⁷⁶ Articles 3 and 4 of the *China-New Zealand Memorandum of Understanding on Labor Cooperation*.

⁷⁷ Article 3, Section 1, Section 4, and Article 5, Chapter 4 of the China-EU Agreement (Draft).

⁷⁸ Franz Christian Ebert, "Labor Provisions in EU Trade Agreements: What Potential for Channelling Labor Standards-related Capacity Building," *International Labor Review* 3 (2016): 472.

negotiated by the European Union and the United States. In terms of institutional setup, domestic institutions or officials can be designated as “contact points” as channels for public communication in accordance with Article 19.9 of the CPTPP, responsible for the reception, consideration and prompt response to public submissions; or national Labor consultation or advisory agencies can be established for workers, corporate representatives and other members of the public to submit their opinions on relevant matters. In terms of the form of implementation, it should provide a platform for stakeholders and the public to exchange opinions. Taking the European Union's approach as an example, they hold annual meetings through Domestic Advisory Group,⁷⁹ or facilitate exchanges between relevant parties through civil social forums.⁸⁰

3. Cross-border supervision of labor provisions: a third approach beyond soft and hard approaches

The “hard law” and “soft law” approaches to the supervision of labor provisions in FTAs are no longer distinctly separate, presenting a structural change featuring a complex of “soft law” and “hard law.”⁸¹ Accordingly, choosing between “hard law” and “soft law” supervision mechanisms is not the only option, and labor provisions should be tailored to the specific context to effectively protect workers' rights. When facing this issue, China should first consider that any reform related to trade and Labor must achieve an effective balance: the labor provisions in China's approach must support domestic economic growth, while also meeting the concerns of trading partners about China's labor standards.

In this context, cooperation and dialogue are crucial for post-border measures to take effect.⁸² For one thing, both the approaches of the European Union and the United States include cooperation and dialogue mechanisms, indicating that they are aware of their positive significance in promoting Labor supervision; for another, the *China-New Zealand Memorandum of Understanding on Labor Cooperation*, the *China-Switzerland Agreement on Labor and Employment Cooperation* and the *China-EU Comprehensive Agreement on Investment (CAI)* all include cooperation provisions, which provide a certain practical basis. In addition, the *General Plan* regards labor rights protection as an important direction for the reform of the “post-border administration system.” It releases the signal that China intends to connect with

⁷⁹ James Harrison, et al., “Governing Labor Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development Chapters,” *Journal of Common Market Studies* 2 (2019): 261.

⁸⁰ James Harrison, “The Labor Rights Agenda in Free Trade Agreements,” *Journal of World Investment and Trade* 5 (2019): 712.

⁸¹ Zheng Lizhen, *On the Reconstruction of Transnational Labor Regulation Regime* (Beijing: Social Sciences Academic Press, 2014), 140-143.

⁸² Xu Quan and Geng Xuyang, “The Development Trend and Problem Explanation of International Regulatory Cooperation of the Behind-the-Border Measures,” *Journal of Shanghai University of International Business and Economics* 9 (2021): 80.

the Labor administration of the signatory states through the regulatory framework of FTAs and implement cross-border supervision. Thus, in the cross-border supervision under China's approach, building a cooperation and dialogue mechanism is a feasible third approach besides "hard law" and "soft law" approaches.

The construction of the future Labor cooperation and dialogue mechanism can refer to relevant provisions of the CPTPP. It includes making specific provisions on cooperation in terms of substantive content. The content may not be limited to the practice of Labor laws and regulations, working conditions, law-abiding and law enforcement systems, and the construction of harmonious Labor relations and other matters addressed in the *China-New Zealand Memorandum of Understanding on Labor Cooperation*.⁸³ It can also be extended to the improvements in aspects like high-quality employment, work benefits, compensation systems, decent work, social protection and corporate social responsibility. At the procedural level, cooperation can be carried out by any technical means. The subjects involved in cooperation activities should include workers, enterprises, non-governmental organisations, academic experts, and others, because social dialogue is intended to address issues of common interest to all participants in social activities. Meanwhile, regulations on cooperation principles, financial support, time limits and other aspects can also be made as appropriate.

V. Conclusion

As an important component of the reform taking place within the global economic governance structure, the international trade rules system is undergoing its most significant reform and improvement since the Uruguay Round, which concluded in 1994.⁸⁴ In this process, countries have tried to gain greater initiative and voice in free trade through constructing their own labor provisions. While bringing challenges to China, it also provides China with a major opportunity to enhance its labor rights protection and participate in global governance. Therefore, it is imperative for China to actively put forward its ideas, proposals and practices regarding labor provisions within FTAs, to enhance its image globally and establish its position as a major player in international discussions on labor rights protection, aligning China's international influence with its overall national strength.

China's attitude towards connecting labor standards with international trade has evolved from opposition to gradual acceptance, and then to the proposal in the *General Plan* to fully align with high-level international standards. This shift in attitude demonstrates China's positive attitude towards international Labor governance and the improvement of people's livelihood. However, compared to Europe and the United States, China's approach to labor provisions is still

⁸³ Article 2 of the *China-New Zealand Memorandum of Understanding on Labor Cooperation*.

⁸⁴ Lu Yan, "Increasing Institutional Voice in the Global Value Chain — The New Round of Reconstruction of International Trade Rules and China's Action," *Frontiers* 23 (2015): 6.

immature. China's approach to labor provisions in FTAs should start with changing the value guidance of labor legislation in pilot FTZs and then the fundamentals of China's domestic labor rule of law. On this basis, it will construct a main framework by combining the latest developments and common features of international FTAs, featuring a flexible space for handling trade negotiations with different countries.

(Translated by *JIANG Yu*)