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Yin Yang

Shanghai Institute of Politics & Law, China

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Abstract

[extract] As a consequence of economic decentralization, which is a main aspect of Chinese economic reform, local governments have obtained much more economic powers. This means that the local governments have become not only much more self-determining in relation to the central government, but have acquired much greater power to manage directly the economic entities within their jurisdiction, and even the main players of economic competition and development. In this situation, local governments tend to make every effort to maximize economic interests of their own.

Consequently, negative phenomena have largely emerged in recent years, such as heaps of duplicate constructions, over-consuming of natural resources, various preferential policies for absorbing capital, unsighted reduction of tax, low-priced or free lending of land and numerous ways of local protectionism. Economic division among administrative regions and local protection of native interests certainly hinder the freedom and fairness of trade, and the shape of a unified free market. Moreover, these have led to worrisome beneficial conflicts among administrative regions, which have showed disadvantages on the unified interests between the state and citizens. The conflicts are turning out to be serious, and thus noteworthy.

Keywords

administration, China, development, regional conflicts, market regulation

TOWARDS A BALANCED DEVELOPMENT:
REGULATION OF BENEFICIAL CONFLICTS AMONG
ADMINISTRATIVE REGIONS
IN CHINA

By Yin Yang *

Background

Over the past two decades of China's reform and opening-up, the rapid and continuing growth of its economy has significantly pushed the Chinese population and economic activities to be more and more congregated towards metropolises, and even metropolitan circles consisting of a group of large cities, particularly, the *Yangtze* River delta, the Pearl River delta and the *Jingjintang* region. This has resulted in economic activities with trans-regional features becoming increasingly extensive in China. In other words, the conventional way of economic activities, which used to be conducted, highly within the scope of a certain administrative region, have been dramatically altered. The increase of trans-regional economic activities is significantly challenging the current Chinese administrative system in many ways. In particular, the challenge is linked to the question of how to coordinate the relationship between the division of administrative regions and the growing amount of trans-regional economic activities.

As a consequence of economic decentralization, which is a main aspect of Chinese economic reform, local governments have obtained much more economic powers. This means that the local governments have become not only much more self-determining in relation to the central government,¹ but have acquired much greater power to manage directly the economic entities within their jurisdiction, and even the main players of economic competition and development. In this situation, local governments tend to make every effort to maximize economic interests of their own.

* LLM (China Uni. of Political Science & Law), Ph.D. (Melbourne Uni.); Professor of Law (Shanghai Institute of Politics & Law, China).

1 As to the topic of the state's fragmenting authority and progressive loss of control over local governments in China, also see Pei Minxin, *Beijing Drama: China's Governance Crisis and Bush's New Challenge*, *Policy Brief* (2002) 21, Carnegie Endowment for International Peace.

Consequently, negative phenomena have largely emerged in recent years, such as heaps of duplicate constructions, over-consuming of natural resources, various preferential policies for absorbing capital, unsighted reduction of tax, low-priced or free lending of land and numerous ways of local protectionism. Economic division among administrative regions and local protection of native interests certainly hinder the freedom and fairness of trade, and the shape of a unified free market. Moreover, these have led to worrisome beneficial conflicts among administrative regions, which have showed disadvantages on the unified interests between the state and citizens. The conflicts are turning out to be serious, and thus noteworthy.

Current Situation of Beneficial Conflicts

Regional conflicts refer to the disagreements among local governments, resulted from their actions intended to intervene the society and market or from their unlawful inactions, in order to protect regional socio-economic and environmental interests. The interests of administrative regions, the need for protecting the interests and the trend of regional protectionism come into being together with the regions. Historically, this kind of symbiotic situation existed in many countries.² Following the development of China's reform and market economy, beneficial conflicts among administrative regions are growing. In general, there are three fields, where regional conflicts exist.

(1) *Conflicts stemming from restraining competition, controlling market and natural resources, and implementing local protection.* The types of actions conducted by local government in this field are: rejecting products made in other regions through explicit instruction or limiting the scope and quantity of others' products; establishing outposts in regional boundary or vital communication spots to keep others' products away; restricting or preventing the shift of special materials, important or rare

2 From a legal perspective, the conflict among local interests is a constitutional law issue, particularly, in the countries with federal systems. For instance, in the U.S. history, the basic reason for the movement from the Articles of Confederation of 1777 to the U.S. Constitution is that the former did not empower the Congress to tax and to regulate interstate commerce. The Articles emphasized state sovereignty, which led to the inability of the federal government to stop various ways of local protectionism and mutual discrimination in commerce and trade. Consequently, a new constitution to create a powerful federal government was needed. See Erqin Chemerinsky, *Constitutional Law: Principles and Policies*, (2002), Aspen Law & Business, 9.

products and key technology to others;³ and even restraining free shift of service and talents to others.

(2) *Conflicts stemming from trans-regional destruction of natural environment and resources.* In essence, the conflicts in this category have resulted from such actions of local governments as unreasonable economic policies, incompetent performance of monitoring enterprises' pollution, and of protecting natural environment and resources.⁴

(3) *Conflicts stemming from inviting commerce and absorbing capital.* Local governments in China usually share a common view that rapid economic growth can be achieved through inviting commerce and absorbing capital. As a result, some governments competitively reduce the price of lending land, and even at no cost. And others may cut down tax, even beyond legal limits.⁵

Reasons for the Occurrence of the Conflicts

What are the reasons for the occurrence of beneficial conflicts among administrative regions in China? Answers to the question are many-sided.

First, administrative and economic regions overlap. Administrative regions refer to administrative systems with artificial divisions of state territory based on the needs of political governance and administration. The boundaries of administrative regions are steady.⁶ In contrast, economic regions are spontaneous systems normally consisting of an economic centre, economic hinterland and radiation zone. Under the impact of

3 Cao Tianzhen, *Theory and Practice of Modern Competition Law*, Law Press, Chinese ed (1993), 25.

4 For example, in 2004, due to an inefficient action of a city in *Anhui* province in preventing the *Huai* river from the pollution of chemical industries in its jurisdiction, residents of another city situated in lower reaches gathered and built up a dam in order to block the river. This event eventually caught extensive attention in the province.

5 For instance, in 2002, Shanghai Municipal Government issued a policy, named '173 Plan'. The Plan meant that a number of preferential policies, regarding land, labor, tax and etc., would be applied to three Shanghai's districts in order to enhance economic growth. The districts have a total dimension of 173 square kilometers, and border *Zhejiang* and *Jiangsu* provinces respectively. As a way of competition, both *Zhejiang* and *Jiangsu* provinces subsequently put forward more preferential policies than those of Shanghai in order to obtain more investment. See official documents issued by Shanghai Municipal Government [2002] 72 and [2002] 73.

6 Zhou Keyu, *Toward Market Economy: Relationship between China's Administrative and Economic Regions, and Its Adjustment*, Fudan University Press, Chinese ed (2000), 28.

socio-economic development, the boundaries of economic regions are unstable. Therefore, administrative and economic regions usually cannot be overlapped. During the period of China's highly planned economy, however, the government was the only economic subject, and governed enterprises. In this context, local governments, under the leadership of the central, managed regional economy within the scope of their jurisdiction. And economic activities used to be conducted within regional boundaries in China. This led to unnatural overlapping between administrative and economic regions,⁷ which were called 'administrative economic regions'.⁸

Since the China's economic reform, local governments have been significantly empowered in terms of their economic independence. In other words, economic decentralization has changed the subordinate status of local governments to the central. In 1994, the reform of separating tax between state and local finance reinforced local economic interests. Under this circumstance, maximizing local interests started to become the cardinal motivation of local governments to develop their economies.

Secondly, governmental function and enterprise activities are mixed up. As a result of China's economic reform, the power to manage numerous state-owned enterprises were decentralized. That is to say, local governments' power to manage enterprises has dramatically enlarged. Many state-owned enterprises actually came to be owned by local governments. Local governments not only play the role of administering public sector affairs, but also directly involve in economic activities. On the one hand, the mixture between local governments and enterprises in function negatively affects independent economic activities of the later. On the other hand, the former would rather do its best to maintain enterprises' interests and support their development, because the government has integrated interests with the other. And conflicts among local governments will become inevitable when they strive to protect their own enterprises from disadvantages in competition with those of others.

Thirdly, the distribution of local government powers has not been well regulated. Policies rather than law are the bases for completing the allocation of local

7 In China, there is a typical situation where almost all capital cities of provinces and autonomous regions are also their economic centres. This is because the development of cities and the accumulation of financial capacities of cities in China have not resulted from a free market. Rather, they have largely resulted from governmental measures and the overlapping of administrative and economic regions.

8 Liu Junde, *Theory and Practice of China's Division of Administrative Regions*, East Normal University Press, Chinese ed (2002), 12.

governments' power in many times.⁹ In other words, the allocation is quite haphazard and lacks constitutional bases. From a legal viewpoint, neither the scope nor the procedure concerning the exercise of administrative powers by local governments for administering economic affairs is obvious. It is policies that often determine what are the limits on local administrative powers. So, the absence of law plus a recently decentralized executive power in China are rather likely to generate local protectionism and the abuse of local powers.

Fourthly, the governmental performance evaluation system has drawbacks. Over the past two decades, economic construction has been officially regarded as the central work of the government in China. One of the major objectives of local governments is the improvement and maintenance of economic growth in their own regions. As a result, competence in developing the economy has been extensively looked upon as the key to evaluating the performance of both local governments and their servants. The elements of appraising economic growth mainly include the speed of economic growth and the quantities of gross domestic production (GDP), inviting commerce and absorbing capital, and of interests and tax submitted to upper governments. This resulted in a variety of shortsighted and quantity-oriented governmental actions, such as making local policies to strive for market and to restrict the entry of products manufactured in other regions.

Fifthly, unbalanced regional development contributes to the conflicts. One of the crucial issues created by rapid economic growth in China is the imbalance between the east and the west, and between urban and rural areas. In 2004, the rate of the contribution of China's cities to its GDP was over seventy percent.¹⁰ The annual quantity of GDP of one city in southeast provinces is even equivalent to that of a whole province in the west. A survey shows that forty-two percent of the respondents in a poll chose the problem of the difference and gap of regional development as one of the four most significant issues, to which China needs to pay special attention at present.¹¹ Obviously, the disparities among administrative regions may, to a certain degree, generate regional beneficial conflicts.

9 For instance, the reforms of both the financial system and the system of admitting fixed assets investment in China were put into operation in accordance with policies in the past.

10 Cited from Li Peilin, 'Analysis of Social Situation in China 2004-2005', in Ru Xin *et al*, ed, *Analysis and Forecast on China's Social Development* (2005), Social Sciences Academic Press, Chinese ed (2004), 3.

11 The other three factors in order are the issues of corruption (55.1%), the difference and gap of citizens' income (48.6%), and of the three-aspects regarding agriculture, countryside and peasants (43.9%). Cited from Qing Lianbin, 'Social Situation Viewed by Officials', in Ru Xin *et al*, ed, *Analysis and Forecast on China's Social Development* (2005), *Ibid*, 47-48.

Finally, an efficient legal system to regulate the conflicts is non-existent. For the purpose of preventing the occurrence of regional beneficial conflicts and resolving them, a regulation system is essential. The system not only can increase the cost and liability of unreasonable actions conducted by local governments for their own interests, but also can resolve the conflicts and enhance harmonious relationships among administrative regions. For this task, there are a number of laws and regulations to be amended or enacted.

Drawbacks of the Existing Regulation on the Conflicts

(1) The current Chinese Constitution of 1982 regulates intergovernmental relations mainly in consideration of upper-lower philosophy under the leadership of the central. In other words, the feature of the constitutional system in this regard is rather vertical-oriented. Little attention has been paid to horizontal intergovernmental relations. The 1979 Law on Local Government Organizations deals with neither governmental actions nor intergovernmental affairs.¹²

(2) In China, the 1989 Administrative Litigation Law (ALL), the 1996 Administrative Punishment Law (APL) and the 2003 Administrative Licensing Law are basic legislation governing the fields of governmental actions, liabilities and judicial review. The ALL mainly deals with the disputes between the government and the administered resulted from specific administrative actions. It does not apply judicial review to governmental policy-making and rule-making actions, which actually are the fundamental means of local governments to strive for regional interests.¹³ Meanwhile, when state interests are damaged by local governments' actions intended to pursue regional interests, judicial review cannot be triggered to the extent that the ALL does not provide a litigation system for the sake of public interests. It also will be

12 The Law was amended three times, respectively in 1982, 1986, and 1995.

13 In contrast with the legislative system at local level in China, the supervision of and the control over local governments' power of rule-making is less restricted to the extent that neither the judiciary nor the legislature or upper-level governments can truly monitor it. Theoretically, the basic force to restrain local protectionism should be the judiciary in modern times. This is because the main function of the judiciary is to maintain the consistent implementation of state laws in order to safeguard the performance of socio-economic activities according to unified rules. In this context, the judiciary is more likely to represent national interests than the administrative. But, the practice in contemporary China proves that hardly can a judicial system, based on the same division with the administrative and financially depended on the government at the same level, exercises its power independently. On the contrary, it is quite likely to assist local governments to pursue local interests to the extent that they share common financial revenue. Obviously, this reinforces the conflicts among administrative regions.

problematic whether a government can have a legal qualification to accuse another government's action, provided that the judiciary can review policy-making and rule-making actions.

As the major function of the ALL, the APL also deals with the relationship between the government and the subject, having little to do with intergovernmental relations and the settlement of intergovernmental conflicts. The Administrative Licensing Law is quite recent, and contains a number of advanced ideas and systems, some of which may be regarded as the arrangements dealing with intergovernmental relations.¹⁴ Especially, Article 25 (2) prescribes that local legislation shall neither restrain individuals and enterprises of other regions from undertaking production and providing services, or limit the entering and selling of other regions' products. The Article directly handles local protectionism, and represents a progress of Chinese legislation with respect to intergovernmental relations. Yet, when local governments create or implement administrative licensing for their own interests without any reasonable or lawful bases, the Administrative Licensing Law provides no mechanism or way for other governments to supervise.

(3) In China, the 1993 Anti-Unfair Competition Law, the 1997 Price Law, the 1999 Inviting and Offering Bidding Law, the 2002 Governmental Acquisition Law and the 1989 Environmental Protection Law can be regarded as the fundamental legislation, dealing with the relationship between the government and market, and with the governmental function of environmental protection. The objectives of these laws, however, are not to resolve intergovernmental relations. They primarily take care of the relations between the government and non-governmental subjects, despite some scattered, inexact and unprepared stimulations regarding intergovernmental relations. Moreover, the laws do not provide explicit legal liabilities on governmental inactions.¹⁵ Although there are a few provisions that impose liabilities on local governments, there is virtually no power to enforce these liabilities. This makes those local governments, which unlawfully interfere with the market economy or fail to protect the natural environment, ignore their legal duties. For instance, although the Environmental Protection Law requires that local governments cooperate with each other in order to handle the problem of trans-regional pollution, it does not provide any measures for punishment in the event that the governments fail to cooperate for

14 For example, Articles 61 and 63 of the Law respectively provide the systems of interconnection of electronic records among different administrative agencies and of intergovernmental notification concerning administrative permission.

15 For example, Article 30 of the Anti-Unfair Competition Law, Article 45 of the Price Law and Article 83 of the Governmental Acquisition Law.

environmental governance, and even indulge the activities leading to the population of other regions.¹⁶

(4) In 2001, the Chinese State Council promulgated an administrative regulation, named Regulation on Prohibiting Regional Blockade in Market Economy Activities.¹⁷ Article two of the Regulation principally prescribes that governments at all levels shall be responsible for demolishing regional blockades and protecting fair competition, and for creating optimal conditions to establish and improve a unified, fairly competitive and normatively arranged market. Article three prohibits a variety of locally protective activities. The Regulation further stipulates the types of regional blockade and the corresponding liabilities. It can be understood as a specific legislation, safeguarding the freedom and unification of the Chinese market and demolishing the restriction of competition. In comparison with the legislation mentioned above, the content of the Regulation has more specific and operational features. Nevertheless, it has a number of shortcomings, such as the failure to establishing judicial review system due to its low position in the legislative hierarchy, and the remaining reliance upon the authority of upper governments for supervision and pursuing liability. As in the case of the flaws found in earlier pieces of legislation, the 2001 Regulation also lacks a full and systematic stipulation with respect to intergovernmental relations and regional interests.

The drawbacks of the existing regulation system dealing with regional beneficial conflicts in China can be summarized as following. First, the objective of the system is vague and inexact to the extent that it focuses on the relationship between the government and market subjects rather than on regional intergovernmental relations. Second, its content is scattered and inharmonious due to the absence of a comprehensive legislation. Third, apart from the administrative, no other branch of government, such as the judiciary, operates to resolve regional conflicts, and consequently, there are no effective legal restrictions on local governments. Finally, those few provisions relating to resolving the inter-regional conflicts are confined to

16 The most relevant provision may be Article 15 of the Environmental Protection Law. Yet, it only prescribes that trans-regional precaution against environmental pollution and destruction shall be handled through negotiation by related local governments, or be determined through coordination by the upper government.

17 In 1980, the State Council promulgated the Interim Regulation on Undertaking and Protecting Socialist Competition, which is the earliest regulation governing governmental monopoly in China. Then, in 1990, the Council passed another regulation, called Notification of Demolishing the Blockade in Interregional Markets and Motivating the Circulation of Commodities.

prohibitions, and do not establish cooperation in terms of mutual benefits and joint development.

Proposals for A Better Regulation System

(1) *Clarifying the boundary of local governments' powers and strengthening the restriction of the exercise of the powers through constitutional perfection.* The Constitution should play a vital role in controlling unreasonable economic activities conducted by local governments, to the extent of enacting specific laws dealing with resolving and coordinating beneficial conflicts among administrative regions. Article fifteen of the Chinese Constitution as amended in 1993 prescribes that, the State practises the socialist market-directed economy, improves economic legislation and perfects macro-readjustment and control, and prohibits disturbance of the orderly functioning of the social economy by any organization or individual. In this context, unreasonable economic activities carried out by local governments for their own interests erode the rule of law and basic constitutional principles, such as a free market, self-ruling enterprises, fair competition and the autonomy of personal wishes.¹⁸ Article fifteen, which represents the most relevant constitutional provision to the market economy, however, does not directly constrain unjust local economic activities. While its main function is to do with the governmental economic power regarding macro-readjustment and control, the function of restricting governments is missing.

Without apparent constitutional stipulations, governmental powers are quite likely to be unjustly exercised, and thus to hinder a free market and competition. Therefore, it will be meaningful constitutionally to stipulate local governments' liabilities to maintain a unified domestic market and the scope of their powers to administer economy, and to clearly prohibit their unjust interference in economy. And for the purpose of coordinating and resolving beneficial conflicts, it will be equally significant to provide relevant stipulations in the Constitution. The conflicts should be primarily handled within the administrative branch, while the roles of the judiciary and the legislature are subsidiary.¹⁹ Moreover, a stipulation of regional economic cooperation ought to be added to the Constitution.

18 For instance, the practice of rejecting products made in other regions in order to protect local products may infringe citizens' right to free choice of commodities; and that of rejecting talents from other regions in order to safeguard the rate of local residents' employment may violate citizens' right to free movement and equal employment.

19 For instance, the establishment of a system to scrutinize governmental normative documents and its inactions is necessary and practicable.

(2) *Perfecting regulations concerning fair competition.* At present, the most fundamental reason for the happening of beneficial conflicts among administrative regions in China is administrative monopoly. For this reason, both market and governmental competitions ought to be regulated in order to establish and maintain market order. Neither the restriction of competitions nor the protection of special competitors is the objective of regulation. Rather, the objective is to safeguard fair competitions based upon rules. In this context, it is becoming urgent to establish and perfect regulations on competition. As noted earlier, the 1993 Anti-Unfair Competition Law plays an insufficient role in disciplining the abuse of governmental powers intended to restricting competition. Consequently, the 1993 Law requires some amendments, and the Anti-Monopoly Law needs to be enacted. In so doing, attention needs to be paid to the following.

First, the concept of administrative monopoly ought to be defined, and its types need to be clarified, so as to enable regulatory agencies to make rapid and prompt judgment on governmental inference in market. Secondly, independent and authoritative anti-monopoly regulatory agencies shall be created. Such agencies shall be competent for controlling both specific and rule-making actions regarding administrative monopoly, and for both doing after-fact investigation and preventing the occurrence of monopoly. Thirdly, administrative agencies that conducted actions of restricting competition ought to hold strict liabilities. For this purpose, the disciplining of relevant governmental employees, who are responsible for restricting competition, is required. Meanwhile, governmental compensation is equally necessary in order to safeguard the interests of the parties, who have injuries resulted from governmental actions of limiting competition.

(3) *Regulations on administrative procedures.* To a large extent, beneficial conflicts among administrative regions are related to the imperfect Chinese administrative system. A normative administrative procedure system is able to reduce the possibilities of the occurrence of the conflicts. This is because through stipulating a series of procedural settings, such as administrative openness, notification, hearing, reasoning, participation and environmental impact appraisalment, administrative procedure laws may enable the government effectively to consider the proposals and interests of the community, who are adversely affected by governmental actions. In other words, the laws can strengthen the reasonableness of various administrative actions, and increase the possibility for the actions to be understood and accepted by the regional communities and other local governments.

It was a long time in the past that procedural laws, constraining the exercise of administrative powers, were either absent or short of an effective supervision system

to monitor the implementation of them in China.²⁰ Since the promulgation and implementation of the 1996 Administrative Punishment Law, the significance of administrative procedures has been increasingly emphasized. In particular, the effort to draft a comprehensive law on administrative procedures has already started.²¹ The draft for the law, however, focuses on the relationship between the government and the administered. It is deficient in its treatment of intergovernmental relations, particularly, having little to do with the relations among parallel governments.²² By and large, due attention has not been paid to the function of administrative procedure laws in realizing a national unified market, and protecting it from the interference of irrational administrative activities, and in raising governmental efficiency in trans-regional management with respect to natural environment and resources.

(4) *Regulations on the criteria of governmental performance evaluation.* As mentioned earlier, the focus of the current governmental performance evaluation system in China is on economic growth. This relates to the occurrence of beneficial conflicts among administrative regions. The system is problematic in the following aspects. First, the achievement of economic growth cannot be understood as a result fully from governmental contribution. It usually is a long-term accumulation of development, and may relate to many other factors, such as the original level of economic development, geographic surroundings, population and natural conditions. Secondly, even though the increasing of social property and welfare certainly means the growth of GDP, the growth of the later cannot necessarily represent the former.²³ This is

20 For example, under the circumstance that without complying with legal procedures the National Railway Ministry raised the ticket price during the period of the Chinese Spring Festival in recent years, the 1997 Price Law does not prescribe a strict liability. Article 45 is the most relevant provision of the Law, which merely deals with the liability for substantive disobedience to the Law, but not for procedural irregularities.

21 As to the details of the course of drafting the Chinese Administrative Procedure Law, see Ying Songnian, 'Appraising the Experimental Draft for the Administrative Procedure Law', *Tribune of Political Science & Law* (2004) 5, Chinese ed, 23-28.

22 For example, the 2003 Experimental Draft for the Administrative Procedure Law, suggested by the Group of Administrative Legislation, respectively stipulates intergovernmental relations in the fields of administrative assistance and jurisdiction. It is a significant progress. Nevertheless, the stipulations are unrelated to the resolution of disputes and conflicts, stemming from administrative restriction of competition or monopoly, and from trans-regional exploring and using of the natural environment and resources.

23 For instance, the annual rate of China's GDP growth in 2003 is 9%, whilst that of China's energy consumption is 15%. Cited from Yan Shihui, 'Environmental Situation in 2004 and Its Trends', in Ru Xin *et al*, ed, *Analysis and Forecast on China's Social Development* (2005), Social Sciences Academic Press, Chinese ed, (2004), 164.

because rapid growth of GDP may lead to social unfairness and have some negative impact on natural environment. Thirdly, the growth of economy and financial revenue can reflect economic scale and quantity only, but not to do with its efficiency and quality.

Therefore, the conventional criteria of appraising governmental performance shall be altered, and the system shall be reformed. In so doing, a specific law or regulation needs to be enacted.²⁴ Apart from economic factors, the criteria under the law shall contain two other elements. One is political, indicating citizens' attitude towards governmental authority, and the extent of lawfulness, openness and accountability of local governments. The other is social, representing the accessibility to social welfare, the realization of social fairness, and the development of citizens' participation and social self-governance.²⁵ As to perfecting economic criteria, a key criterion ought to be established in China. That is whether citizens or the public are satisfied with the sustainability of economic development, the quality of governmental service, the lawfulness and rationality of governmental actions. Obviously, the criteria differ from the conventional standards in terms of the growth of economy and financial revenue.

(5) *Introducing judicial review and amending the ALL.* As noted above, the objective of regulating administrative monopoly, which represents the fundamental reason for the occurrence of the conflicts of regional interests, can be achieved by virtue of the function of the Anti-Monopoly Law. Yet, if the regulatory agency, being responsible for implementing the Law, conducts unlawful actions, an external force for monitoring the agency shall be required. At this point, a judicial review system is necessary. This means that in China the judiciary (the people's court) can scrutinize not only specific or regulatory actions, conducted by anti-monopoly agencies, but also their rule-making and policy-making actions regarding monopoly. For undertaking judicial review in the later sense, the current ALL shall be amended.

As to the review of intergovernmental disputes, stemming from trans-regional exploring and using of natural environment and resources, there are two alternatives. One is that non-governmental parties initiate administrative litigation, including ordinary litigation (for plaintiffs' own interests) and litigation for public interests. The other is that governments trigger administrative litigation against others. The latter may not be applicable in China. This is because from a legal perspective the interests of local governments cannot be fully independent from the central to the extent that

24 For details, see Yang Yin and Huang Ping, 'Establishing a Legal System of Governmental Performance Evaluation', *Modern Law Science* (2004) 3, Chinese ed, 14.

25 See Sun Boying, *Local Governance in Modern Times: Challenging of the 21st Century*, China's People's University Press, Chinese ed, (2004), 116-120.

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China is not a nation with a federal system. From a practical viewpoint, the best institution to resolve intergovernmental disputes is the common upper-level administrative agency for both disputants. Hence, the second alternative is unnecessary to be regarded as an amendment to the ALL.

(6) *A special legislation: Law on Enhancing Regional Economic Cooperation.* In recent years, following the development of a market economy, its entry into the World Trade Organization and the strengthening of international economic cooperation,²⁶ a unified market and regional economic cooperation have been becoming increasingly important in China. The 2002 Report of the Sixteenth Congress of the Chinese Communist Party pointed out that the exchange and cooperation among China's East, Middle and West should be enhanced in order to achieve mutual benefits and joint development. The 2005 Report for Governmental Works of the State Council also mentioned that coordinated development among regions should be improved more actively; and a strategy for regional development, fitting for local natures, performing individual virtues, and emphasizing specific necessities and mutual connections, should be put into practice in order to satisfy the requirement of balanced development.

Under this circumstance, local governments are paying more and more attention to regional economic cooperation, notably the Pearl River Area Cooperation, the *Yangtze* River Delta Cooperation and the Closer Economic Partnership Arrangement between Hong Kong and Mainland China (CEAPA). The basic goal of regional economic cooperation is to eliminate the restriction of administrative regions, give full play to a unified market in economy, realize free trans-regional shifting of productive elements and commodities, and to construct a unified, open and orderly common market. Furthermore, regional economic cooperation contributes to improving the overall industrial arrangement and constructing a regional cooperative system, characterized with reasonable division of labor, effective operation, economical management, ideal service and internationally competitive capacity.²⁷ In a broader sense, regional

26 For instance, the Sino-ASEAN Free Trade Zone, based on the Framework Agreement on Comprehensive Economic Cooperation between China and ASEAN (the Association of Southeast Asian Nations), already started on July 20, 2005. The Zone is going to be wholly established in 2010, and shall contain 10 countries, relate to 7 thousand types of commodities and have 1.7 billion consumers.

27 For example, in the Pearl River area, an ideal industrial arrangement can be achieved according to such division as financial service of Hong Kong, electronic information and manufacturing of Canton province, and minerals and agricultural products of Jiangxi and Hunan provinces. For details, see Yang Runsheng, Xia Lijia and Cen Mengjun, 'Rethinking the Strategic Objective, Categories and Development of the Pearl River Area Cooperation', *People's Daily* (Internet News of Southern China), Chinese ed, April 7, 2005.

economic cooperation refers not only to industrial cooperation and redistribution, but also to integrated planning and systematic coordination, such as the construction of basic facilities of Internet and transportation, the protection of natural environment and the elimination of systematic barriers.²⁸ Notably, systematic coordination is the basis for the realization and implementation of industrial cooperation and arrangement, and integrated planning. The coordination requires that on the premise of complying with state laws and regulations governing unified market and free competition, all local governments eliminate the restriction of administrative districts, substitute trans-regional public policies for those of discrimination, and coordinate their legislative and regulatory work, and the execution of judgments made by courts.

From the viewpoint of bettering state governance and intergovernmental relations, the promotion of regional economic cooperation is one of the fundamental strategies for reducing and eliminating beneficial conflicts among administrative regions. From a legal perspective, however, systematic studies in this field and the relevant legislation have not really been carried out in China. The achievement of the task requires more attention to the field and relevant amendments to the existing legislation.²⁹ In particular, it requires special legislation, which may be entitled as Law on Enhancing Regional Economic Cooperation, to deal with regional economic cooperation. Such a proposed law can not only coordinate scattered legislation that may contain distinguished and contradicted philosophies and principles, but also comprehensively prescribe the objectives, relevant fields, basic running ways, prohibited matters and disputes resolution of regional economic cooperation. Additionally, the law can create new systems with respect to intergovernmental relations, such as systems of intergovernmental notification and trans-regional regulatory assistance.

28 For example, the Framework Agreement on Economic Cooperation in the Pearl River Delta Region put forward ten categories of cooperation, namely, basic facilities, industrial investment, commerce and trade, agriculture, labor, science and technology, culture, information construction, environmental protection, and sanitation and epidemic prevention.

29 Apart from the laws mentioned earlier, there are others that also need to be amended, such as the Environmental Protection Law, the Administrative Punishment Law and the Administrative Licensing Law. As to the first, systems of trans-regional cooperation and joint performance, concerning regulatory practice of environmental protection, are due to be added. A stipulation, laying strict liabilities on governmental inactions for the protection of environment, is also needed. And the systems of trans-regional cooperation and joint performance with respect to administrative punishment are equally necessary for the perfection of the second. For the third, a system of supervising governments by others concerned needs to be put into the Administrative Licensing Law in order to regulate the situation when administrative agencies unlawfully establish or implement administrative licensing.

Conclusion

As discussed above, beneficial conflicts among administrative regions represents a considerable issue for China's economic construction and establishment of administrative legality at present. There are a number of reasons for the occurrence of the conflicts, including the growing of trans-regional economic activities, economic decentralization, the integration between the government and enterprises, excessive interference of local governments in micro-economic fields, overlapped administrative and economic regions, and unreasonable governmental performance evaluation system. From a perspective of local governance, however, the absence or imperfection of a regulation system may be understood as the fundamental. The system not only needs to contain the laws governing a unified and orderly market, and the protection of natural environment and resources, but also necessarily relates to those dealing with intergovernmental relations and even to the Constitution.

While building up the system, attention should be paid to the restriction of local government powers via legislations with confined or disallowed means, in order to prevent and overcome their unreasonable activities. Meanwhile, those with positive and encouraging characteristics, by which to enhance regional economic cooperation, ought to be equally emphasized. The later category of legislation primarily requires a special law that aims to enhance regional economic cooperation. Specifically, the law assists to power up local governments and to shape a new structure of their interests to the extent that it can foster individual virtues, replenish single requirements and realize mutual benefits. As a result, this would lead to a balanced regional development in China.