

# Undue Influence:

Corporations Gain Ground in Battle over China's New  
Labor Law

—But Human Rights and Labor Advocates Are  
Pushing Back

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# Undue Influence

## Corporations Gain Ground in Battle over China's New Labor Law —But Human Rights and Labor Advocates Are Pushing Back

### *Executive Summary*

1. A behind-the-scenes battle is raging worldwide over reforms in China's labor law. On the one side are U.S.-based and other global corporations who have been aggressively lobbying to limit new rights for Chinese workers. On the other side are pro-worker rights forces in China, backed by labor, human rights, and political forces in the U.S. and around the world.
2. Corporations operating in China are claiming success in pressuring the Chinese government to weaken or abandon significant pro-worker reforms it had proposed. Global Labor Strategy's analysis of the revised draft of the law shows how many of their demands have been conceded.
3. Now both the American Chamber of Commerce in Shanghai (AmCham) and the US-China Business Council have launched an unpublicized new attack demanding further weakening of the law.
4. The Bush Administration recently revealed to the U.S. Congress that it has been "closely following" the drafting of the new labor contract law and that the American Embassy in China has been consulting AmCham on this matter. But the Administration appears to have done nothing to disassociate itself from the efforts of U.S. corporations and their representatives to restrict the rights of Chinese workers.
5. Chinese and international forces are engaged in a significant pushback against the gutting of China's new labor law. U.S. members of Congress have introduced legislation decrying the corporate intervention and apparent Administration complicity; China's official labor organization, the All-China Federation of Trade Unions (ACFTU), has taken a strong stand against corporate pressure; international union federations have pressured their employers to reverse course; and human rights organizations have mobilized support for Chinese workers' rights.
6. Such counter-pressure has led to splits among global companies operating in China. Nike has virtually repudiated the efforts of the United States Chamber of Commerce in Shanghai (AmCham) to lobby against the law. And the E.U. Chamber of Commerce has reversed its opposition to the law and renounced its threat that its member companies may leave China if the law is passed.

7. The battle is likely to come to a head in the Chinese National People's Congress in April or June of 2007. But the implementation of the new law, and the further expansion of Chinese workers' rights, will depend on the rapid changes going on in Chinese labor relations, which are increasingly marked by burgeoning strikes, worker protests, lawsuits, and changing forms of labor organizations, including the expansion of the ACFTU into foreign invested enterprises such as Wal-Mart.

8. The new focus on the role of U.S. and other global corporations in China represents the emergence of a "new paradigm" for analyzing the current form of globalization not just in terms of a "trade debate" based on "free trade vs. protectionism," but as a product of a global "sweatshop lobby" that is deliberately shaping labor law and labor markets around the world.

9. The role of China in the global economy is shaping up to be the dominant economic issue in the 2008 presidential elections in the U.S. With widespread anxiety about the security of U.S. jobs, the role of U.S. corporations in opposing rights for Chinese workers is emerging as a significant issue in those elections.

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## *I. Introduction*

A behind-the-scenes battle is raging worldwide over reforms in China's labor law.

In March 2006 the Chinese government, with considerable popular backing, proposed a new labor law with limited but significant increases in workers' rights. But global corporations based in the U.S. and elsewhere have lobbied to gut the proposed law. They have even threatened to leave China if the law is passed.

Their aggressive tactics appear to have worked. In December 2006, the Chinese government released a revised draft of the Labor Contract Law with many important protections for Chinese workers seriously weakened or eliminated wholesale.

The corporate community quickly claimed credit for these revisions. The US-China Business Council declared the draft a "significant improvement."<sup>1</sup> Individual corporations were also pleased with the results of their lobby campaign. Scott Slipy, director of human resources in China for Microsoft, recently explained to *Business Week* "We have enough investment at stake that we can usually get someone to listen to us if we are passionate about an issue."<sup>2</sup> According to a lawyer representing numerous corporations in China,

Comments from the business community appear to have had an impact. Whereas the March 2006 draft offered a substantial increase in the protection for employees and a greater role for union than existing law, [the new draft] scaled back protections for employees and sharply curtailed the role of unions.<sup>3</sup>

Despite successfully removing important pro-worker provisions from the first draft, the business community has launched a major new lobby effort to further gut the legislation. The US-China Business Council, for example, has told the PRC that elements of the revised draft are overly "burdensome," "prohibitively expensive," and will have "an adverse impact on the

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<sup>1</sup> US. China Business Council, "Comments on the Draft People's Republic of China Law on Employment Contracts (Draft of December 24, 2006). Available at <http://www.uschina.org/public/documents/2007/01/comments-employment-contracts-english.pdf>

<sup>2</sup> Dexter Roberts, "Rumbles Over Labor Reform: Beijing's Proposed Worker Protections are Giving Multinationals the Jitters," *Business Week*, March 1, 2007. Available at: [http://www.businessweek.com/globalbiz/content/mar2007/gb20070301\\_446878.htm?campaign\\_id=twxa](http://www.businessweek.com/globalbiz/content/mar2007/gb20070301_446878.htm?campaign_id=twxa)

<sup>3</sup> Andreas Lauffs, "Employers Face Tougher Rules: Upcoming changes to employment contract law are likely to further constrain the policies of foreign companies in China." Quoted in *Financial Times*, January 31, 2007.

productivity and economic viability of employers.”<sup>4</sup> One corporate lawyer ominously warned: “We will have to wait until the final draft is written and see how the law will be implemented. If the law is too negative for employers then we might see a slowdown of recruitment.”<sup>5</sup>

But as AmCham and other corporate lobby groups congratulated themselves and prepared to escalate their demands, forces inside and outside of China organized to oppose this undue corporate influence. Human rights organizations, labor movements, and legislators around the world have forced some corporations and business organizations—such as NIKE and the EU Chamber of Commerce—to reverse their stand. And pro-worker forces in China have pushed back, even introducing some new elements into the revised draft law that may expand worker rights.

*Undue Influence* describes and analyzes for the first time the revisions recently made in the Chinese legislation and the current battle over its final form. It reveals the splits in U.S. and E.U.-based businesses and their organizations in China. And it presents the campaign by human rights and labor organizations and their allies around the world to maintain and increase the rights embodied in the bill.

## 1. Background

On October 13, 2006, the *New York Times* reported from Shanghai:

China is planning to adopt a new law that seeks to crack down on sweatshops and protect workers’ rights.

The move, which underscores the government’s growing concern about the widening income gap and threats of social unrest, is setting off a battle with American and other foreign corporations that have lobbied against it by hinting that they may build fewer factories here.

Hoping to head off some of the rules, representatives of some American companies are waging an intense lobbying campaign to persuade the Chinese government to revise or abandon the proposed law.

The skirmish has pitted the American Chamber of Commerce — which represents corporations including Dell, Ford, General Electric, Microsoft and

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<sup>4</sup> US. China Business Council, “Comments on the Draft People’s Republic of China Law on Employment Contracts (Draft of December 24, 2006). Available at <http://www.uschina.org/public/documents/2007/01/comments-employment-contracts-english.pdf>

<sup>5</sup> Fergus Naughton “China to Revise Employment Law, Tighten Employee Safeguards,” AFX International Focus, February 13, 2007.

Nike — against labor activists and the All-China Federation of Trade Unions, the Communist Party's official union organization.<sup>6</sup>

The *Times* story was prompted in part by the report *Behind the Great Wall of China: U.S. Corporations Opposing New Rights for Chinese Workers* issued by Global Labor Strategies in October, 2006. The report argued that corporate opposition to the law is designed to maintain the status quo in Chinese labor relations, which includes low wages, extreme poverty, denial of basic rights and minimum standards, lack of health and safety protections, and an absence of any legal contract for many employees. It asserted that such opposition belied the claim that U.S. corporations are promoting social progress for workers in China. And it called for international support for the expanded rights for Chinese workers included in the proposed new law.

## 2. New Fronts in the Battle

This new report, *Undue Influence: Corporations Gain Ground in Battle over China's New Labor Law*, draws on an unpublished text of the new draft of the Labor Contract Law to analyze the concessions made to the corporate lobby and what these changes mean for Chinese workers' rights. It also reveals how the "battle" the *Times* described between American and other foreign corporations and labor activists over the law has itself now gone global. Far from being settled, this battle has extended from the Chinese legislature to the halls of the U.S. Congress and the executive offices of global corporations, drawing in labor and human rights groups in the U.S. and around the world. A final vote is expected in April or June.

The worldwide debate has fractured the unity of U.S. and E.U. based corporations in China and their lobbying organizations. The American Chamber of Commerce in Shanghai (AmCham), which lobbied for changes in the draft law, has been invited by the Chinese government to weigh in again. But AmCham is meeting resistance to its position from some of its own most powerful members. For example, Nike has virtually repudiated AmCham's position. According to Nike Vice President Hannah Jones, "Nike has a long history of actively supporting the Chinese government's efforts to strengthen labor laws and protections of workers' rights." When AmCham took its position on the law, Nike "had yet definitely to state a position either internally or externally to AmCham on the draft labor law currently under review." The European Chamber of Commerce in China had initially warned that the new law might lead foreign corporations to disinvest in China; but,

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<sup>6</sup> David Barboza, "China Drafts Law to Empower Unions and End Labor Abuse," *New York Times*, 10/13/06. Available at: <http://select.nytimes.com/gst/abstract.html?res=F30E16FC3A540C708DDDA90994DE404482>

under pressure from labor and human rights groups, it has now issued a stunning “clarification” welcoming the law. *Undue Influence* reveals this and other shifts among U.S. and E.U. corporations operating in China.

The opposition of U.S. corporations to expanded rights for Chinese workers is becoming a significant issue in the U.S. Congress. Concern about the impact of globalization, and opposition to the trade policies that have prevailed during the Bush era, were major themes for many Democratic candidates who now control important positions in Congress. Some have introduced legislation that places the focus on the actual role of U.S. corporations in China and elsewhere abroad. Their action is part of the broader effort of a Democratic Congress to take the policymaking initiative away from the Bush administration. This report details their actions so far and their plans for the future.

International human rights groups are forcing corporations operating in China to stop hiding behind organizations like AmCham and reveal where they stand on rights for Chinese workers. For example, the Business and Human Rights Resource Centre, an independent organization in partnership with Amnesty International Business Groups and leading academic institutions, invited a number of U.S. and European companies to respond to *Behind the Great Wall*. *Undue Influence* analyzes the responses from companies like Ericsson, General Electric, Google, Intel, Nokia, Procter & Gamble, Shell, and Tesco. It also highlights those that refused even to respond -- including AT&T, Carrefour, UPS, and Wal-Mart.

The exposure of corporate opposition to expanded labor rights for Chinese workers has generated outrage among labor organizations and their allies around the world. Inside China, leaders of the official All-China Federation of Trade Unions (ACFTU) have been fighting efforts by companies to restrict unions' role in setting new employer policies. Xie Liangmin, vice-director of the ACFTU's law department, publicly criticized US and EU Chambers of Commerce for issuing threats as the draft law moves through the legislative process. He told the *South China Morning Post* “It is excessive to intervene in a country's lawmaking process by threatening to withdraw investment.”<sup>7</sup>

Outside China individual unions and national and international labor federations around the world have not only condemned corporate lobbying against labor rights, but are pressuring corporations to reverse their stand. This is opening the way for trade unions not simply to oppose Chinese trade, but to fight what one international labor federation has called the “global sweatshop lobby.”

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<sup>7</sup> Bill Savadove, “Labour Law Won't Go to NPC in March,” *South China Morning Post*, January 31, 2007.

### 3. Why This Debate Matters to Workers in China

Currently in China there are few labor laws, fewer still laws that are enforced, and no social safety net. The result is harsh industrialization with few benefits accruing to workers and a growing inequality.

According to Chinese government figures, only 20 percent of private companies sign contracts with their employees. In 2005 alone more than 12 percent of Chinese workers were paid lower than the national minimum wage. A recent ACFTU study found that migrant workers were owed more \$12.1 billion in unpaid wages in 2004.<sup>8</sup>

The purpose of the new labor law is to create more stability in the labor market and establish some of the fundamentals needed to raise wages and living standards. Unfortunately, it is precisely the parts of the law that would help de-casualize labor and increase employment stability that U.S. corporations have most strongly opposed.

GLS recently translated selections from the comments on the draft labor law submitted to the Chinese government by tens of thousands of Chinese workers (See Appendix A). They tell a bitter story: no contracts, brutal working conditions, and the dire need for enforcement of laws and penalties for employer violations. One worker wrote: "As everyone knows, the reason that so many sweatshops dare to not pay back wages and dare to pay less than the minimum wage in ripping off the workers is because they haven't signed a contract!" Another celebrated the first draft law: "Finally there is a new law specifically for supporting the common people!" Numerous Chinese workers felt the law did not go far enough.

The new law is a response to an on-going upheaval on the part of Chinese workers. According to Liu Cheng, a professor of law at Shanghai Normal University and an advisor to the drafters of the proposed law, "The government is concerned because social turmoil can happen at any moment. The government stresses social stability, so it needs to solve existing problems in society."<sup>9</sup>

The dynamic at work in China is similar to what occurred in the industrial countries of the West in the early to mid decades of the 20th century. In the

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<sup>8</sup> Lui Cheng, "The Draft Labor Contract Law of the PRC and Its Background," March 11, 2007. On file with GLS.

<sup>9</sup> David Barboza, "China Drafts Law to Empower Unions and End Labor Abuse," *New York Times*, 10/13/06. Available at: <http://select.nytimes.com/gst/abstract.html?res=F30E16FC3A540C708DDDA90994DE404482>

context of rapid industrialization and rampant booms and busts, labor markets became chaotic. They were characterized by migrant labor, highly casual and contingent work relations, high turnover, harsh working conditions, low pay, few benefits, weak labor laws, lax enforcement, court battles, rampant strikes, and labor protests.

Over the course of the 20<sup>th</sup> century, pressure from workers and concerns about social unrest led to new employment laws and policies designed to stabilize labor markets and blunt some of the sharp edges of the industrial system. Steadier jobs, better working conditions, higher pay, access to more benefits, and long-term employment meant rising living standards for ordinary people.

In each country these laws and policies were shaped by local conditions. As a result advanced capitalist countries like the U.S., Germany, France, and Japan have quite different labor laws and industrial relation systems. But each incorporates labor market laws and institutions that create a framework for employment stability and worker rights. The provisions in the draft Chinese labor contract law are parallel to those found in many other countries; indeed, most are modeled on those found in Western countries. This reveals the opposition of Western corporations as consistent with their own attack on labor standards at home.

Corporations oppose new worker rights in China for the same reason that they are seeking to repeal labor and employment laws enacted during the 20<sup>th</sup> century in countries around the world. They want total flexibility to make labor nothing more than a variable cost of production. In China they have found a de-regulated paradise and they want to keep it that way.

The new law does not replicate western labor law in several key areas. It does not, for instance, provide workers with the right to independent trade unions with leaders of their own choosing and the right to strike. Labor code enforcement systems are not highly developed, and are undermined both by corruption and intra-government conflicts. But the law does provide important rights and a step in the right direction. Indeed, the proposed law may well encourage workers to organize to demand the enforcement of the rights that the law offers.<sup>10</sup> It will be a tragedy if U.S.-based global corporations are able to reverse such a step.

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<sup>10</sup> The solicitation of input from workers and others throughout China on the web, to which hundreds of thousands of people responded, increases the likelihood of popular support and mobilization for its enforcement.

#### 4. Why this Debate Matters to Workers and Policymakers in the U.S.

Workers, communities, and countries throughout the world are confronting the challenges posed by the emergence of China as a global economic powerhouse. About 25% of the global work force is now Chinese.<sup>11</sup> China increasingly sets the global norm for wages and working standards as it attracts jobs at both the high and low ends of the production chain. As a result the hard-won gains of workers in the global North are being rapidly undermined while the aspirations of workers in the developing world are being dashed as China becomes the wage setting country in many industries.

Roughly 66% of the increase in Chinese exports in the past 12 years can be attributed to non-Chinese owned global companies and their joint ventures<sup>12</sup>. Foreign owned global corporations account for 60% of Chinese exports to the US.<sup>13</sup> Indeed, if the US retail giant Wal-Mart were a country it would be China's 8<sup>th</sup> largest trading partner. The "Chinese threat" is less about trade with China than it is about trade with Wal-Mart and GE. Global corporations move to China to lower labor costs -- and they use those lower labor costs as a lever to drive down wages and working conditions for workers in other countries, and even within China itself.

Labor organizations around the world have become involved not only to defend the principle of universal labor rights, but because reform of China's labor law is important to workers everywhere. Chinese wages and conditions set those around the world not only in low-wage industries but increasingly in those with the highest of modern technology. Low wages and poor working conditions in China drive down those in the rest of the world in a "race to the bottom." Failure to raise standards in China will have a devastating effect on workers around the world.

"China bashing," whatever its emotional gratification, does not provide a solution for either workers or governments that are trying to come to terms with the impact of China in the global economy. In contrast, trying to reverse the role of U.S. corporations and their "sweatshop lobby" in perpetuating poverty and poor working conditions in China is providing a straightforward, concrete way that workers and their union and political representatives in the U.S. and around the world can help improve the conditions of workers in

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<sup>11</sup> Richard B. Freeman, "Doubling the Global Work Force: The Challenge of Integrating China, India, and the former Soviet Bloc into the World Economy," November 8, 2004, <http://www.iie.com/publications/papers/freeman1004.pdf>.

<sup>12</sup> Stephen Roach, "Doha Doesn't Matter Anymore", The Business Times Singapore, August 8, 2006

<sup>13</sup> Neil C. Hughes, "A Trade War with China?", Foreign Affairs, July/August 2005, <http://www.foreignaffairs.org/20050701faessay84407/neil-c-hughes/a-trade-war-with-china.html>

China. For that reason it is emerging as a central issue in both the labor and the political arenas.

## *II. U.S. Corporate Pressure Yields Results*

In April 2006 the Chinese government released the first draft of the Labor Contract Law and invited public comments.<sup>14</sup> The American Chamber of Commerce in Shanghai (AmCham) sent the Chinese government a 42-page submission on behalf of its 1300 corporate members. The statement demanded a list of revisions and outright reversals of “rigid” regulations, including provisions making it harder to fire workers, new protections for temporary workers, and restrictions on non-compete agreements. If its demands were not met, AmCham predicted the new law might “reduce employment opportunities for PRC workers” and “negatively impact the PRCs competitiveness and appeal as a destination for foreign investment.”<sup>15</sup> Similar submissions were sent to the PRC by the EU Chamber of Commerce and other lobby organizations.

Chinese workers also spoke. In response to the unprecedented request for public comment on the law, 191,849 comments poured into an open website, a large majority from regular Chinese workers. The Chinese National People’s Congress Legal Affairs Committee and several other legislative committees held a symposium to solicit further comments from members of the central government. They also dispatched deputies to investigate and research the impacts of the law in various regions throughout China.

On December 11<sup>th</sup> the Chinese National People’s Congress Legal Affairs Committee held a meeting to debate the suggested revisions to the Draft Labor Contract Law received during the public comment period. The committee met again on December 19<sup>th</sup> and soon issued a revised draft of the law. In contrast to the first public comment period, the government invited only select parties such as AmCham to submit comments on the second draft, and provided copies of the legislation only to these invitees.

GLS has obtained an English translation of the new draft, prepared by an international law firm on behalf of AmCham members. GLS analysis of the second draft reveals that U.S. and European corporate lobby efforts have been highly effective at scaling back various protections for Chinese workers.

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<sup>14</sup> Soon after the announcement of the law, a group of business people claiming to represent the American Chamber of Commerce burst into a Shanghai meeting of legislators and legal scholars debating the new draft law. They threatened to withdraw their investments from China if the current version of the legislation passed, arguing the government was turning the clock back twenty years. AmCham subsequently disavowed responsibility for their action. Personal communication with an individual attending the meeting. See also <http://www.itglwf.org/DisplayDocument.aspx?idarticle=15269&langue=2> for a published account.

<sup>15</sup> AmCham “Comments and Suggestions on Revision to Labor Contract Law.”

Corporate interests appear to agree. According to a lawyer at a firm representing many AmCham members in China,

Comments from the business community appear to have had an impact. Whereas the March 2006 draft offered a substantial increase in the protection for employees and a greater role for union than existing law, [the new draft] scaled back protections for employees and sharply curtailed the role of unions.<sup>16</sup>

Corporate trade groups largely concentrated their efforts on eliminating new contract rights for workers; mandatory collective bargaining requirements over health and safety, wages, and layoffs; limits on non-compete agreements; limitations on probation periods; mandated severance payments; and new protections for temporary workers. While some protections for workers remain in the second draft of the legislation, GLS's analysis shows that many important provisions have been seriously weakened or eliminated wholesale in response to global corporate threats and demands.

The following analysis identifies some of most significant amendments to the draft legislation that reflect the demands of AmCham and other foreign corporate interests.<sup>17</sup>

## 1. Contracts for All Workers

***First Draft of the Labor Contract Law:*** The initial draft provided that if an employer failed to enter into a written contract with workers, the law implied a non-fixed term contract—i.e. open-ended employment contract—between the employer and employee. In addition, when a dispute arose between an employer and employee as to the meaning of a specific contract provision, ambiguities were to be interpreted in favor of the employee.

***Global Corporate Demands:*** AmCham opposed these provisions on the ground that they were “not consistent with the recruitment system of modern enterprises.”<sup>18</sup> Instead it insisted on retaining the right to set pay and terms of work without written, enforceable contracts. Employers unilaterally would

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<sup>16</sup> Andreas Lauffs, “Employers Face Tougher Rules: Upcoming changes to employment contract law are likely to further constrain the policies of foreign companies in China.” *Financial Times*, January 31, 2007.

<sup>17</sup> The 2<sup>nd</sup> draft of the Labor Contract Law has not been officially translated by the PRC. GLS's analysis of the 2<sup>nd</sup> draft is based on an unofficial English translation authored by the Beijing law firm Squires, Sanders & Dempsey LLP. This translation was circulated by AmCham to its members in order to collect the second round of comments recently submitted to the PRC. A second unofficial translation of the 2<sup>nd</sup> draft has been prepared by the law firm Baker & McKenzie in Hong Kong. There are several discrepancies between the two translations. GLS has based its analysis primarily on the Squires translation since AmCham circulated this version. Where significant, we have noted translation discrepancies.

<sup>18</sup> AmCham comments p.25.

determine “All problems...such as pay confirmation, the way of handling the social insurance, the method of dismissal and the standard of compensation.”<sup>19</sup>

***Second Draft of the Labor Contract Law:*** The new draft no longer implies a non-fixed term contract when there is no written contract. Instead, an employer now has a one month grace period to sign a written contract.<sup>20</sup> If it fails to do so the employee will merely be provided the contract rights under the collective trade union contract of the employer or industry, if one exists. If not, the worker is only guaranteed the wages of similarly situated employees.<sup>21</sup>

Disputes as to the meaning of contract provisions are no longer interpreted in favor of the worker; rather if there is disagreement, the collective contract or State’s code will govern.<sup>22</sup> The second draft introduces a new mediation procedure whereby disputes are arbitrated by a tripartite panel composed of a representative from the trade union, employer and local labor administration. Finally, the second draft stipulates that non-full time employees can now be hired under oral agreement rather than mandatory written contract.<sup>23</sup>

***Implications for Chinese Workers:*** China’s labor law is predicated on the existence of a written labor contract signed individually or collectively by workers and employers. In theory, all workers are supposed to have contracts. In reality tens of millions of workers—many of them migrants—do not, leaving them in legal limbo unable to access existing rights and benefits however limited. As Liu Cheng, Professor of Law and Politics, Shanghai Normal University and an architect of the law, explained in an interview,

The main problem is the mind of the employer denying the employment relationship. When a dispute occurs and the employer with a dark mind refuses to pay and when it is brought to arbitration or the People’s Court,

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<sup>19</sup> Amcham comments p.36.

<sup>20</sup> Article 7, 2<sup>nd</sup> Draft: “If there exists a labor relationship between an Employer and any of its employees, but the Employer does not sign the written labor contract with the employee, the written labor contract shall be signed within one month from the date of employment.”

<sup>21</sup> Article 9, 2<sup>nd</sup> Draft: “If an Employer does not sign a written labor contract with any of its employees at the same time of following the employment formalities so that the treatments to the employee are unclear, the newly employed employee shall be treated under the standards provided in the collective contract of the Employer or in its industry; if there is no collective contract, the Employer shall give to the employee the same compensation for the same position.”

<sup>22</sup> Article 18, 2<sup>nd</sup> Draft: “If a dispute arises from any unclear term or condition of a labor contract such as labor compensation or conditions, the Employer and the employee may re-agree upon the same. If both parties fail to agree upon the unclear term or condition, the provisions of the collective contract shall apply; if the collective contract does not provide for the same, the relevant provisions of the State shall apply.”

<sup>23</sup> Article 68, 2<sup>nd</sup> Draft: “A non-fulltime employee can be hired through oral agreement.”

there is no evidence. So the new law will say there is a written contract and provide some minimum content.<sup>24</sup>

Unfortunately, the revised draft opens important loopholes that could allow employers to continue to avoid contracts for extended periods—for example the new draft no longer implies a non-fixed term contract for all workers laboring without a written agreement. The new provisions also shift the balance of power in dispute resolution back to employers by eliminating the presumption that ambiguous disputes should be settled in the workers' favor and instead prescribing arbitration by a tripartite panel.

Finally, and potentially most importantly, the new law exempts part-time employees—defined as those working less than 24 hours per week—from the requirement that they have a written contract. This part-time worker exemption could be a powerful incentive for firms to turn full-time jobs into part-time jobs. It follows a similar pattern established by big employers in the US—like Wal-Mart—that have developed a two-tier workforce that includes a shrinking number of full-time workers with some benefits and a growing number of part-time workers with no benefits. The number of part-time workers in China could grow as firms develop sophisticated staffing strategies based on avoiding the legal responsibilities entailed by a written contract.

## 2. Collective Bargaining with Employees

***First Draft of the Labor Contract Law:*** The first draft of the law provided for negotiations over workplace policies and procedures, health and safety, and firing with a labor representative.<sup>25</sup> It also expressly stated that before a company may lay off fifty or more workers, it must “reach consensus” with the trade union through “negotiation.”<sup>26</sup>

***Global Corporate Demands:*** Corporate lobby groups demanded unilateral authority, not negotiation. The US-China Business Council wrote, “It is not feasible to state that an employer’s regulations and policies shall be void if they are not adopted through negotiation with the trade union...requiring the

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<sup>24</sup> Chris White, “China’s new Labour Law amendments: The challenge of regulating employment contracts”, February 15, 2007. On file with GLS.

<sup>25</sup> Art. 4, 1<sup>st</sup> Draft “The rules and policies of any employer bearing on the vital interests of its employees shall be discussed and adopted at its trade union, staffs’ congress or staffs’ representatives’ congress, or made by equal negotiation.”

<sup>26</sup> Article 33 1<sup>st</sup> Draft: “If the objective conditions taken as the basis for conclusion of the labor contract have greatly changed so that the labor contract can no longer be carried out, and fifty or more persons need to be laid off, the employer shall be responsible for explaining the situation to its trade union or all of its staffs and reach a consensus with its trade union or staffs’ representatives through negotiation.”

consent of the trade union before such changes can be made is overly burdensome and may prevent important company policies from being implemented in a timely manner...Final authority and responsibility for company policies should rest in the hand of the employer.”<sup>27</sup> Corporations were as adamantly opposed to negotiating with unions over lay-offs. The US-China Business Council argued for the status quo in labor relations: “Article 33 of the Draft Law requires employers that plan to terminate more than 50 employees to negotiate the terms of the layoff with the trade union or the full staff of the enterprise. This is inconsistent with [the 1995 PRC Labor Law], which states that employer must inform, but not negotiate with, the trade union of the need for mass layoffs. We encourage the drafters to adopt the language regarding mass layoffs from the 1995 Labor Law.”<sup>28</sup>

***Second Draft of the Labor Contract Law:*** The new draft no longer requires that changes to company policies—such as work hours, health and safety, and other matters of vital interest to workers—be adopted by trade union representatives.<sup>29</sup> Instead, employers only need “refer” proposed changes to unions and permit them to “comment” and “consult.” If the trade union or other staff representatives have an objection they may “raise” the issue with the employer and consult on revisions.

At the same time, employers no longer need to negotiate with the trade union or staff representative over large-scale economic lay-offs. Now employers need only “explain” the situation to the union and report to the local labor administrator.<sup>30</sup>

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<sup>27</sup> U.S.-China Business Council comment on draft law p. 4.

<http://www.uschina.org/public/documents/2006/04/uscbc-comments-labor-law.pdf>

<sup>28</sup> US-China Business Council comment on draft law p.4.

<http://www.uschina.org/public/documents/2006/04/uscbc-comments-labor-law.pdf>

<sup>29</sup> Article 4 2<sup>nd</sup> version “In formulating, revising or deciding on the rules and policies and major matters bearing on the vital interests of its employees such as labor compensation, work hours, rest and leave, labor safety and health, insurance and benefit, staff training, labor discipline and quota management, any employer shall refer the same to its staffs’ representatives’ congress or all staffs, which shall raise proposals and comments in relation thereto after discussion, and consult with its trade union or its staffs’ representatives on and determine the same... In the course of implementation of the rules and policies of an employer, if the trade union or the staffs believes there is any improper provision in the rules and policies, they shall have the right to raise the same to the employer, who shall revise and improve the same through consultation.”

<sup>30</sup> Article 41, 2<sup>nd</sup> Draft: “In the event of any circumstances set forth below causing failure of performance of a labor contract, under which condition a laying off at least 20 employees or over 10% of the total employees will be needed, the Employer shall be responsible for explaining the situation to the trade union or all of its staffs 30 days prior to the layoff. The Employer can lay off employees after communications with the trade union or all of its staffs for their opinion and report to the local labor administrative authority: (i) where it is to be consolidated under the provisions of the bankruptcy law; (ii) where it runs into difficulties in production and management; (iii) where it is to be relocated to prevent pollution; (iv) where any other objective conditions taken as the basis for conclusion of the labor contract have greatly changed so that the labor contract can no longer be carried out.”

***Implications for Chinese Workers:*** The crack in the door to collective bargaining at the worksite over company policies and procedures, hours of work, health and safety, and wages—opened in the first draft—is partially closed in the second draft. Instead of “negotiations,” employers now merely have to “explain” and “consult” changes in company policies and procedures. The difference between negotiations and consultation is generally the difference between workers being merely able to register a complaint and workers having the right to act on the complaint.<sup>31</sup> The ACF TU has been pushing to reinstate the original language from the first draft. According to Xie Liangmin, vice-director of the ACF TU’s law department, “We think [new enterprise rules] should be voted on by all employees and not just resolved through discussions...”<sup>32</sup>

### 3. Freedom to Change Jobs

***First Draft of the Labor Contract Law:*** Non-compete agreements prevent workers from changing jobs easily if they have access to proprietary knowledge as determined by an employer. They also slow the transfer of knowledge needed for a developing economy like China. The initial draft limited the scope of non-compete agreements between employers and employees to “the geographical region within which any actual competition against the employee’s Employer may be found.”<sup>33</sup>

***Global Corporate Demands:*** AmCham reacted forcefully to the non-compete agreement provisions protecting employee rights in the first draft of the legislation. According to AmCham: “If carried out it will seriously affect the individual technology innovation of the Chinese enterprises and thus multi-national corporations would not introduce their advanced technology, let alone allow the Chinese staff members expose (sic) to and master (sic) the core technology.”<sup>34</sup>

***Second Draft of the Labor Contact Law:*** While initially seeming to limit non-compete agreements to senior managers and technicians, the second draft

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<sup>31</sup> Article 4 of the 2<sup>nd</sup> draft of the Baker & McKenzie translation has additional language that consultation with the union be conducted “on a basis of equality,” which is not found in the Squire, Sanders & Dempsey translation of Article 4.

<sup>32</sup> Bill Savadove, “Labour Law Won’t Go to NPC in March,” *South China Morning Post*, January 31, 2007.

<sup>33</sup> Article 16 1<sup>st</sup> Draft: “An employer may agree upon noncompetition, in the labor contract, with any of its employees who knows its trade secrets. . . . The non-competition scope shall be limited to the geographical region within which any actual competition against the employee’s Employer may be found. . . . If an employer agrees with any of its employees upon non-competition, it shall also agree with the employee upon the noncompetition economic compensation payable to the employee, which shall not be less than the annual salary incomes of the employee during his/her employment with the employer.”

<sup>34</sup> AmCham comments p. 35

actually extends the restriction to all “other persons with knowledge of the trade secrets of the employer.”<sup>35</sup> The new draft also eliminates the mandatory geographical limitation of such agreements, relegating the matter to private negotiations between the employer and employee. If an employer refuses to limit the geographical scope of the agreement, an employee could be barred from working in a similar industry anywhere in China.<sup>36</sup>

***Implications for Chinese Workers:*** By eliminating geographic limitations and by potentially expanding the number of workers deemed to possess proprietary knowledge, the second draft will make it more difficult for many workers to switch companies or look for higher paying jobs, even in distant parts of the country. It will greatly reduce their bargaining power in the labor market. It will also be an obstacle in developing domestic Chinese industry; transferring skill and technology to local small business; and spreading industry to less developed areas of China.

#### 4. A Pathway from Temporary to Permanent Work

***First Draft of the Labor Contract Law:*** The first draft mandated that temp agency workers become permanent employees after one year of employment.<sup>37</sup> It also required employers hiring through a temp agency to deposit at least 5000 RMB in a bank account for each employee to ensure payment of wages.<sup>38</sup>

***Global Corporate Demands:*** The US-China Business Council deemed these provisions to “impede the right of the employer to find the best person for the job” and to “reduce the flexibility of human resource allocation.”<sup>39</sup>

***Second Draft of the Labor Contact Law<sup>40</sup>:*** Unlike the original draft that mandated conversion after one year, employers will now have to convert

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<sup>35</sup> Article 25, 2<sup>nd</sup> Draft: “The persons under the non-competition provisions shall be limited to senior managers and senior technicians of the employer and other persons with knowledge of the trade secrets of the employer.”

<sup>36</sup> Article 25, 2<sup>nd</sup> Draft: “The scope, geographical region and period of the non-competition shall be agreed upon by the employer and the employee, and any of the provisions regarding non-competition shall be in compliance with the provisions of relevant laws and regulations. (3) The time limit of non-competition shall not be more than two years.”

<sup>37</sup> Article 40, 1<sup>st</sup> Draft: “If an employee is dispatched to and works with the accepting entity for one full year and the accepting entity wishes to continue to use the employee, then the labor contract concluded by and between the labor service agency and the employees shall be terminated, and the accepting entity shall sign another labor contract with the employee.”

<sup>38</sup> Art 12, 1<sup>st</sup> Draft: “Any employer employing employees in the form of labor dispatch shall deposit a reserve of no less than RMB 5000 Yuan to the designated bank account for each dispatched employee.”

<sup>39</sup> US-China Business Council comments p. 2.

<sup>40</sup>The Squire translation of Article 60 states that dispatch companies will be regulated by the provinces in which they are incorporated, rather than the locations where the workers are employed. Article 60 of the

temporary workers (i.e. those hired under fixed term contracts) only after the employee has been working for 10 years or more; or the fixed-term contract has been signed two consecutive times with the same employer.<sup>41</sup> As noted above in the contract section, under the second draft non-full time employees can now be hired through oral agreement, thereby eliminating the mandatory written contracts.<sup>42</sup> Finally, the second draft wholly eliminates the requirement that employers deposit 500RMB in a bank account for each temp worker they hire through a labor dispatch agency.

***Implications for Chinese Workers:*** The second draft takes a major step backward from the first draft by institutionalizing a two-tier workforce of permanent workers and temporary workers. Further, by eliminating the bond required by the first draft to be on deposit for each temp worker assigned, the second draft exposes temporary workers to a continuing epidemic of non-payment of wages cases that plagues Chinese labor markets. The second draft curtails the use of fixed-term contracts by limiting their use for two terms, after which an open-ended contract is required. This creates an incentive to churn, encouraging employers to fire workers at the end of the two non-fixed term renewals rather than convert to full time. Moreover, it is an incentive for expanded use of labor dispatch firms, even further attenuating the employers' liability in enforcement proceedings.

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Squire translation differs significantly from the Baker translation on this point: The Squire translation has dispatch companies regulated by the province in which they are incorporated; while the Baker translation has working conditions regulated by where workers are located. If the Squire translation is correct, the implications for temp workers are severe. By allowing labor dispatch agency workers to be hired under wages and terms of work of the area where the labor dispatch company is located, the new draft creates a powerful incentive for dispatch agency to locate in lower paid regions of China, and for user firms to employ these workers in higher wage areas of the country. The result is a lose-lose situation in which there is pressure to keep wages low in the less developed areas and downward pressure on wages in the developed areas. See Art. 60, 2<sup>nd</sup> Draft (Squire translation): "Where a labor service agency provides any laborer to work as employee outside the area where it is located, the work conditions and compensation of such employee is entitled to shall be provided in accordance with the local standards applied in the area where such agency is located." Article 60 2<sup>nd</sup> Draft (Baker translation): "If a staffing firm places a worker with a unit in another region, the worker's working conditions and labor compensation shall be in line with the standards and rates of the region where the said unit is located."

<sup>41</sup> Article 14, 2<sup>nd</sup> Draft: "If an employee claims renew of his/her labor contract under any of the following conditions, the non-fixed labor contract shall be signed: (i) when the labor contract is to be renewed, the employee has been working consecutively with the Employer for full ten or more years;(ii) when the Employer implements the labor contracts system for the first time or the labor contract is signed for restructuring of the state-owned enterprise, the employee has been working with the Employer for full ten or more years or his/her work time prior to his/her legal retirement age is within ten years; or (iii) the fixed term labor contract is to be renewed after signed consecutively for two times."

<sup>42</sup> Article 68, 2<sup>nd</sup> Draft: "A non-fulltime employee can be hired through oral agreement."

### *III. Corporate Lobby Groups Demand Still More*

Despite the concessions already made to the demands of the “sweatshop lobby,” numerous Chinese labor scholars, activists, and unionists believe that on the whole, the new legislation remains a major advance for Chinese workers. It retains significant worker protections that have been shielded from the corporations’ campaign.<sup>43</sup> These include:

- Nearly all employment contracts must be written, thus ensuring that millions of workers will no longer labor without enforceable rights.
- Individual firings are subject to just-cause provisions commonly used in European countries, rather than the U.S.-style at-will employment system whereby an employee may be fired for a “good reason, bad reason, or no reason at all.”<sup>44</sup>
- Collective contracts must be “more favorable” than the minimum standards set by local governments, and individual contract provisions cannot drop below the minimum standards of relevant collective contracts.<sup>45</sup>
- Unions may now bargain local industry-wide contracts with employers in the construction, mining, food and beverage services industries.<sup>46</sup>
- If employees are not represented by a union, they have the right to elect representatives and bargain collective contracts with the employer.<sup>47</sup>
- Employers must pay severance payments for termination of both fixed and non-fixed term workers<sup>48</sup>—a requirement that a member of a corporate lobby group recently called “ridiculous.”<sup>49</sup>
- Permissible probation periods are cut from 3 months to 2 months and apply without distinction to technical and non-technical workers.
- Temporary workers will now be entitled to “participate in or organize to establish trade unions,” although this is severely limited by the fact that the ACFTU is the only union authorized by the Chinese government.<sup>50</sup>

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<sup>43</sup> For an explanation of the worker protections included in the original of the legislation, see *Beyond the Great Wall*.

<sup>44</sup> Article 39 and 40, 2<sup>nd</sup> Draft.

<sup>45</sup> Article 54, 2<sup>nd</sup> Draft.

<sup>46</sup> Article 52, 2<sup>nd</sup> Draft.

<sup>47</sup> Article 50, 2<sup>nd</sup> Draft.

<sup>48</sup> Article 40, 2<sup>nd</sup> Draft.

<sup>49</sup> China Strategic Development Partners, “China’s Draft Labor Law: Some Comments,” January 25, 2007. Available at <http://www.allroadsleadtochina.com/?p=209>

<sup>50</sup> Article 63, 2<sup>nd</sup> Draft.

In a letter received by Rep. Lynn Woolsey in February, 2007, the State Department, on behalf of President Bush, wrote:

AmCham representatives have told our Embassy that they have had no dialogue with the NPC on the draft labor law beyond their public submission.<sup>51</sup>

However, according to a document leaked to GLS, AmCham has secretly submitted detailed comments on the revised law to the Chinese government.<sup>52</sup> These comments include demands to change many of the worker protections still incorporated in the revised draft of the law. A non-secret but little publicized commentary has also been submitted by the US-China Business Council, insisting that elements of the revised draft are overly “burdensome,” “prohibitively expensive,” and will have “an adverse impact on the productivity and economic viability of employers.”<sup>53</sup>

After saying that “[m]any American companies have been among the leaders in the implementation of workplace safety and employment practices designed to empower, inform, and protect their employees in China”,<sup>54</sup> AmCham calls for significant changes in the second version of the draft law that undermine its very purpose: to achieve some order and regulation in China’s new and chaotic labor markets by extending some basic rights and standards to Chinese workers.

***Trade Union and Collective Bargaining Rights:*** While it is far from providing full labor rights, the proposed Labor Contract Law includes significant openings for such trade union activities as collective bargaining and negotiation of collective contracts. But the “sweatshop lobby” is fighting to remove these provisions from the law:

- Both the USCBC and AmCham want to strike the requirement in the revised draft to bargain collective agreements if requested by employees and replace it with voluntary provision—thus closing the door further to the development of authentic collective bargaining.<sup>55</sup>
- AmCham wants a firm statement that the employer sets the policy and procedures at the workplace and only “consults” with employee representatives.<sup>56</sup>

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<sup>51</sup> February 9, 2007 Letter to Honorable Lynn Woolsey from Jeffery T. Bergner, US State Department Assistant Secretary of Legislative Affairs.

<sup>52</sup> Comments on the Second Deliberated Draft Labor Contract Law of the PRC, The American Chamber of Commerce, People’s Republic of China, The American Chamber of Commerce in Shanghai (AmCham).

<sup>53</sup> US. China Business Council, “Comments on the Draft People’s Republic of China Law on Employment Contracts (Draft of December 24, 2006). Available at

<http://www.uschina.org/public/documents/2007/01/comments-employment-contracts-english.pdf>

<sup>54</sup> AmCham Comments, p.1

<sup>55</sup> USCBC Comments, p. 3; AmCham p.11.

<sup>56</sup> AmCham Comments, p 9-10.

- Both the USCBC and AmCham want to prohibit labor dispatch workers and temp workers from forming a union at the user firm, only allowing unions at the dispatch or temp agency. This would preserve the legal fiction that workers are actually employed by dispatch and temp agencies and not the employer for whom they actually work. As a result employers can avoid the direct obligations and legal accountability that come with signing written contracts.<sup>57</sup>

**Job Security:** A major purpose of the law is to provide a degree of labor market stability and job security in place of today's highly contingent work practices. While the revised draft already includes significant concessions to foreign company's demands in this area, the sweatshop lobby is demanding still more:

- Both the USBC and AmCham want the ability to sign successive fixed term contracts without the obligation to convert to an open-ended agreement at the end of the second contract.<sup>58</sup>
- The USBC wants to strike the provision that requires severance payments to workers if they are not offered an open-ended job at better pay at the conclusion of two fixed term contracts.<sup>59</sup>
- The USCBC wants to strike the provision requiring two-year contracts for temp workers.<sup>60</sup>
- Both the USCBC and AmCham want longer probationary periods. The USCBC also called for multiple probationary periods as workers accept new jobs within a firm or are employed intermittently.<sup>61</sup>

Many of the law's provisions are simply efforts to prevent the costs of change and economic development from being thrown completely onto workers. However, the sweatshop lobby is opposing even modest provision for such protection:

- Both the USCBC and AmCham want to strike the seniority and family preference for lay-off clauses in the proposed law.<sup>62</sup>
- The USCBC wants to limit the reporting requirements for lay-offs to firms with over 20 employees.<sup>63</sup>
- AmCham wants a broader range of workers covered by non-compete agreements and stiffer penalties for violations.<sup>64</sup>
- Both USCBC and AmCham want separate training contracts so employers either require employees to complete a fixed term contract

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<sup>57</sup> USCBC Comments, p. 3-4; AmCham Comments, p.11.

<sup>58</sup> USCBCS Comments, p.3; AmCham Comments p.5.

<sup>59</sup> USCBC Comments, p.3.

<sup>60</sup> USCBC Comments, p.4.

<sup>61</sup> USCBC Comments, p.1; AmCham Comments p.6-7.

<sup>62</sup> USCBC Comments p.3; AmCham Comments p.9.

<sup>63</sup> USCBC Comments p. 3.

<sup>64</sup> AmCham Comments, p 12-13.

at the end of training or can recoup training costs directly from workers. Current draft allows this only after a worker has had one month of full-time training.<sup>65</sup>

While U.S. corporations and their representatives are trying to roll back worker protections in the Labor Contract Law still further, workers and labor organizations in China and around the world are trying to expand them still further. The ultimate result is still in play.

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<sup>65</sup> USCBC Comments, p. 2; AmCham Comments, p. 7.

#### *IV. Global Corporations Split*

When China first made public its proposed new labor contract law in April, 2006, the representatives of foreign corporations in China swung into action. They not only lobbied the Chinese government to gut labor protections in the law, but they threatened that foreign corporations might leave China if the new legislation were passed.

AmCham in Shanghai issued a 42-page critique warning that the law may “reduce employment opportunities for PRC workers” and “negatively impact the PRCs competitiveness and appeal as a destination for foreign investment.”

Dr. Keyong Wu, an expert for the British Chambers of Commerce, stated,

Business is attracted to China not only because of its labour costs but also because of its efficiency. If regulation starts to affect that and flexibility, then companies could turn to India, Pakistan and South-East Asia.<sup>66</sup>

When *Behind the Great Wall* and subsequent media reports exposed the role of foreign corporations in lobbying against reform of Chinese labor law, a series of fissures emerged within the corporations operating in China and the organizations that represent them. While much of this turmoil is taking place behind closed doors, information about it can be pieced together to infer what may be going on.

Nike, for example, has distanced itself so far from AmCham’s position that a recent release by the International Textile, Garment and Leather Workers’ Federation was headlined, “Nike Repudiates AmCham Position on Chinese Labour Law Reform.”<sup>67</sup> In response to a letter from the Federation, Nike wrote,

As one of the 7,000 members of the American Chamber of Commerce in China we had yet definitely to state a position either internally or externally to AmCham on the draft labor law currently under review.<sup>68</sup>

As if to put further distance between itself and AmCham on this issue, on January 17, 2007, Nike pointedly requested prior notification and adequate

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<sup>66</sup> Christine Buckley, “Foreign investors may quit if China tightens up labour law,” *TimesOnline*, 06/29/06.

<sup>67</sup> See ITGLWF’s December 20<sup>th</sup>, 2006 press release “Nike Repudiates AmCham on Chinese Labor Law Reform.” Available at: <http://www.itglwf.org/DisplayDocument.aspx?idarticle=15186&langue=2>

<sup>68</sup> Ibid.

time to respond before additional AmCham comments are submitted to the PRC.<sup>69</sup>

An even more remarkable shift occurred in the attitude of the E.U. Chamber of Commerce in China. Initially, according to the April 22, 2006 *South China Morning Post*, E.U. Chamber president Serge Janssens de Varebeke not only criticized the recently announced draft law, but issued a veiled threat that corporations would abandon China if the law were passed:

The strict regulations of the draft new law will limit employers' flexibility and will finally result in an increase of production costs in China. An increase of production costs will force foreign companies to reconsider new investment or continuing with their activities in China.<sup>70</sup>

On December 8, 2006, the E.U. Chamber issued a stunning "clarification," which it attributed specifically to the public attention its previous position had received:

In light of recent media attention concerning the European Chamber's position on the draft Labour Contract Law, the Chamber would like to take this opportunity to clarify its position on this important piece of legislation.

The Chamber believes that there is a serious need to improve working conditions in China and stands firmly behind the Chinese government's efforts to improve working conditions.

The European Chamber welcomes the fact that many of the articles presented in the draft law stem from labour laws in Europe. There is no doubt that if such a law was passed and strictly implemented, working conditions in China would drastically improve.

The Chamber believes that the introduction of the new labour contract law will assist Chinese firms in improving working conditions.<sup>71</sup>

The Chamber also emphasized the importance of implementation of existing regulations, and the need to apply standards equally to domestic and foreign companies.

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<sup>69</sup> January 17, 2007 Nike Letter to AmCham in China, Letter Available here: <http://www.business-humanrights.org/Documents/Nike-ltr-to-AmCham-China-re-Labour-Law-17-Jan-2007.pdf>

<sup>70</sup> Shi Jiangtao, "New labour law would bring conflicts, European firms fear," *South China Morning Post*, 4/22/06.

<sup>71</sup> "Statement on Draft Labour Contract Law", EU Chamber of Commerce. Available here: <http://www.europeanchamber.com.cn/events/news.php?id=286>

AmCham and the US China Business Council have made no such public changes. Indeed, the US China Business Council challenged the accuracy of GLS's report. (See Appendix C for USCBC charges and GLS's reply.)

Multiple sources indicate, however, that their positions have been a focus of internal discussion and dissent. In January AmCham Shanghai held a program for its members at the Portman Ritz-Carlton Hotel entitled "Labor Unions and the Draft Labor Law." Topics of discussion included "an overview of recent criticisms of American businesses in relation to the draft law."

A number of corporations have tried to put distance between themselves and the original positions of the foreign business organizations. Ericsson, for example, dissociated itself from the threats of withdrawing from China initially made by the EU Chamber of Commerce:

Ericsson supports the Chinese government's legislative efforts to improve the labor law and regulations for working standards . . . Ericsson is in no way actively lobbying against the proposed legislation by the Chinese government. Nor has Ericsson threatened to pull out of China if the new labor laws were to be passed. . . . Just because we are a member of the European Chamber of Commerce does not necessarily mean we endorse every lobbying initiative.<sup>72</sup>

But other corporations have stuck by their antagonism to the law. GE, for example, says it made comments to make the law better achieve objectives "essential to sound employer-employee relationships in the global economy in which China must compete."<sup>73</sup> GE's comments to the Chinese government covered the full range of topics that AmCham and other corporate critics of the bill addressed, including "protection of dispatched workers, the use of fixed-term contracts and the consequences of their termination, severance pay upon termination of worker contracts, the enforceability and use of non-competes, and the use and extent of probationary periods." The comments "reflect our perspective, as a global employer, that greater flexibility in the employer-employee relationship is preferable to locking in fixed costs that far exceed the useful working life of a particular relationship."

GE explicitly addressed two of the key elements of the draft law. With respect to "non-competes," it asserted that "employers must be allowed to take reasonable steps to protect their proprietary rights."

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<sup>72</sup> "Ericsson's Response to the Business Human Rights Resource Center," January 5<sup>th</sup> 2007. Available here: <http://www.business-humanrights.org/Documents/Ericsson-response-China-labour-law-16-Jan-07.pdf>

<sup>73</sup> "GE's Response to the Business Human Rights Resource Center," Available here: <http://www.business-humanrights.org/Documents/Chinalabourlawreform>

With regard to company rules, it indicated that it had opposed the draft law's proposal to require companies to secure the approval of worker representatives for certain decisions. GE argued that instead, decisions should be made by employers "upon consultation of the opinions of the trade unions, workers' congress, or workers' representative assembly." This "consultation obligation" was more appropriate than "securing worker representative approval" for "balancing the rights of workers and their representatives and the rights of employers to manage and protect their entrepreneurial rights."

Intel Corp took a similarly aggressive stance. When questioned, it expressed its serious "disagree[ment] with aspects of the law," including the increased role of unions in setting company policies.<sup>74</sup> (Last year Intel suppliers were found to be paying Chinese workers below the minimum wage and forcing them to work 15-hour days.)<sup>75</sup>

Other companies like Google, Wal-Mart, Microsoft, and UPS either argued that they bear no responsibility for the positions taken by their trade organizations or refused to respond. According to letter written by a Google representative on January 16, 2007, "We belong to numerous large-scale trade and industry associations, and don't necessarily agree with every position they take on every issue."<sup>76</sup> Google regularly promotes its socially responsible business practices.<sup>77</sup> However, it has done nothing to disassociate itself from the attack on worker rights undertaken by its representative associations. (Ironically, Google's corporate motto is "Don't Be Evil.")<sup>78</sup>

Whether in Washington or Beijing, hiding behind proxy organizations is a well-established way for companies to avoid accountability. They finance business associations to lobby on their behalf but claim an arms length relationship when organizations like AmCham take unpopular or unethical positions. It may well be unrealistic to think all of the members of business and lobbying organizations like AmCham will agree or even be informed on every issue, but when companies like Google and Wal-Mart are informed that their representatives are blocking new rights for Chinese workers, they have

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<sup>74</sup> Intel Letter available at: <http://www.reports-and-materials.org/Intel-response-re-Chinese-labour-law-12-Jan-2007.doc>

<sup>75</sup> "Chinese iPod Supplier Withdraws Lawsuit," Sunday Morning Herald, September 4, 2006. Available at: <http://www.smh.com.au/articles/2006/08/30/1156816956026.html>

<sup>76</sup> <http://www.business-humanrights.org/Documents/Google-response-re-Chinese-labour-law-16-Jan-2007.doc>

<sup>77</sup> However, Google has recently been criticized for tailoring the Chinese version of its search engine to meet the PRC's censorship demands.

<sup>78</sup> For more on Google's role in China, see: <http://www.nytimes.com/2006/04/23/magazine/23google.html?ex=1303444800&en=972002761056363f&ei=5090>

a responsibility to speak out if they disagree with their representatives' positions. Silence is consent.

In sum, it is clear that some global corporations have decided to go on record opposing the denial of worker rights advocated by AmCham and other representatives of foreign companies in China. Others have publicly distanced themselves from those positions. Some, however, have now publicly refused to disassociate or admitted without apology that they have opposed significant elements of the draft law.

These emerging divisions may reflect differences of interest among different foreign sectors. Nike's image is a crucial part of what it sells, and it has been intent to project itself as a leader in human rights ever since its image was damaged by labor rights campaigns. Some companies hope to sell products in China, and regard both a positive image and rising wages in China to be to their benefit. Some foreign employers, conversely, view China primarily as a source of cheap labor for exports and oppose anything that might raise their labor costs. Some foreign companies face competition from Chinese companies, and therefore have emphasized the importance of enforcing any regulations against domestic as well as foreign companies. The breakup of a common front among foreign corporations offers the promise of reducing one of the main barriers to effective labor legislation for the benefit of Chinese workers.

## ***V. Members of Congress Demand U.S. Corporations Respect Chinese Workers' Rights***

*New York Times* columnist Thomas Friedman predicts that China will be “the country that’s most likely to shape U.S. politics in 2008.”<sup>79</sup> China has already become a focal point of the insecurities that Americans feel about globalization. In the last election that insecurity helped Democrats running on so-called economic populist platforms score significant gains among diverse sectors of a population increasingly worried about its economic future.

The efforts of U.S. corporations to oppose greater rights for Chinese workers have already become a significant issue in American politics. Leaders of the new Democratic Party majority Congress indicate that they will make it a major issue between now and the 2008 elections.

On the eve of the 2006 elections, Members of Congress sent a letter to President Bush “protesting the efforts of U.S. corporations to undermine the most basic human rights of Chinese workers and block proposed new worker rights and labor standards protections in the proposed new Chinese labor law.” They urged President Bush to stand up and speak out to underscore the commitment of all Americans and our government to support internationally recognized worker rights.<sup>80</sup>

Congresswoman Lynn Woolsey, a leader of the group and now chair of the House Committee on Education and Labor’s Subcommittee on Workplace Protections, explained:

We are appalled that the American Chamber of Commerce in China and some of America’s most-prestigious, brand-name corporations are leading efforts inside China to weaken, if not block altogether, significant worker rights and protection provisions in the proposed Chinese labor law. This shameful lobbying campaign is totally inconsistent with our country’s long-standing commitment to promote respect for fundamental worker rights in law and practice everywhere. It is challenging enough for hard-working Americans to compete in the new global economy without having U.S.

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<sup>79</sup> Thomas Friedman, “China: Scapegoat or Sputnik?” *New York Times*, November 10, 2006. Available at: [http://select.nytimes.com/gst/tsc.html?URI=http://select.nytimes.com/2006/11/10/opinion/10friedman.html&OQ=rQ3D1&OP=25099ca0Q2FePH5eYNwnmYeQ27..6eQ24Q24eQ24.enZV\\_Vn\\_eQ24.@wVHBkE\\_FJYkQ26](http://select.nytimes.com/gst/tsc.html?URI=http://select.nytimes.com/2006/11/10/opinion/10friedman.html&OQ=rQ3D1&OP=25099ca0Q2FePH5eYNwnmYeQ27..6eQ24Q24eQ24.enZV_Vn_eQ24.@wVHBkE_FJYkQ26)

<sup>80</sup> Congressional Letter to President George Bush, October 31, 2006. Available at: [http://laborstrategies.blogs.com/global\\_labor\\_strategies/files/china\\_labor\\_letter\\_final.pdf](http://laborstrategies.blogs.com/global_labor_strategies/files/china_labor_letter_final.pdf)

corporate leaders seeking to play them off against the least-protected and lowest-wage workers in the world.<sup>81</sup>

Congresswoman Barbara Lee, now a Senior Democratic Whip, added:

This duplicitous U.S. corporate campaign discredits the long-professed claims of many U.S. corporate leaders and testimony before Congress that U.S. companies and investors in China de facto are leading by example, to respect the basic human rights of all Chinese workers and improve their working conditions and living standards.<sup>82</sup>

On December 8<sup>th</sup>, 2006, shortly after the 2006 elections, U.S. Representatives Lynn Woolsey (D-CA), Barbara Lee (D-CA), George Miller (D-CA), Barney Frank (D-MA) and twenty-eight other House Members introduced legislation calling on the President to express public support for the workers' rights and protection provisions of China's draft labor law and repudiate efforts by some U.S. corporations and their representatives in China to limit new rights for Chinese workers. The resolution notes:

While wages in the United States stagnate, many Americans worry that low wages and labor standards in China are driving down wages and working conditions in the United States.

And:

At [a] time when China exerts a growing impact on the global economy, efforts to improve the conditions of Chinese workers are profoundly important for workers in the United States and elsewhere.<sup>83</sup>

Specifically, the Resolution calls upon President Bush to take the following actions:

- 1) Instruct the United States Ambassador to the People's Republic of China and the United States Trade Representative to send a letter of support for the workers' rights and protection provisions of China's Draft Labor Contract Law to the Government of People's Republic of China;
- 2) Publicly repudiate the efforts of some United States corporations and their representatives in China to weaken or obstruct the workers'

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<sup>81</sup> Congressional Progressive Caucus Press Release "Twenty Seven Members of Congress Call Upon President to Stand Up and Speak Out in Support of Basic Human Rights of Workers in China, America, and Worldwide." November 2, 2006.

<sup>82</sup> Ibid.

<sup>83</sup> H. Res. 1110. Available at: <http://thomas.loc.gov/cgi-bin/bdquery/D?d109:7:./temp/~bdgUXS::>

rights and protection provisions of China's "Draft Labor Contract Law"; and

- 3) Strongly urge such United States corporations and their representatives in China to reverse their opposition to the workers' rights and protection provisions of China's "Draft Labor Contract Law" and make clear their support for increased legal protections for Chinese workers.

This resolution initiates a new approach to the "China debate." In the past, corporate interests have sought to allow goods, services, and especially capital to move freely around the world. They claimed that this would raise the standards of workers in poor countries like China. Their critics on both left and right have often urged restrictions on the import of Chinese goods as a way to protect American jobs. Stephen Roach, chief economist at Morgan Stanley, counts 27 pieces of legislation introduced in Congress since 2005 "that would impose some type of punitive actions on trade with China."<sup>84</sup> Such restrictions, although often condemned as "protectionism," have rarely proved to be an effective way to protect American jobs in the long run.

The new approach represented by this legislation no longer attempts to blame Chinese workers for "stealing American jobs." Rather, it addresses the way U.S. corporations are "outsourcing" American jobs to China and other poor countries. And it focuses attention on the efforts of U.S. corporations to keep Chinese workers poor by blocking legislation that would elevate their standards. This approach promises simultaneously to protect American workers' standards and to aid Chinese workers in their struggle to gain basic human rights in the workplace.

Members of Congress are particularly concerned that the Bush administration is allowing AmCham and other business representatives to be regarded as speaking for the United States government. In a February 9, 2007 letter, the administration said that it has been "closely following" and "will continue to follow" the drafting of the new labor contract law. But it gave no indication that it had made any efforts to differentiate the U.S. government's position from that of the sweatshop lobby. It did report that it has been advocating "important labor issues such as pension reform and social security" with the Chinese government.<sup>85</sup> But it gave no indication of why it is actively engaged in matters like Chinese pension reform but has chosen not weigh in on the new labor code, appearing to let AmCham and other business organizations to act as its proxy.

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<sup>84</sup> <http://www.morganstanley.com/views/perspectives/index.html>

<sup>85</sup> February 9, 2007 Letter to Honorable Lynn Woolsey from Jeffery T. Bergner, US State Department Assistant Secretary of Legislative Affairs.

The Administration also revealed that the American Embassy in China has been corresponding with AmCham on the draft labor law and is aware of AmCham's role in the PRC's legislative process. The Congress may well wish to investigate why AmCham was permitted to lobby against new rights for Chinese workers with full knowledge of and without opposition from the US Embassy, thus giving the appearance of Administration support, or at least acquiescence, in this attack on workers' rights.

With the Democratic sweep in the November, 2006 elections, many sponsors of the Progressive Caucus legislation now hold senior positions in Congress.

## ***VI. Labor and Human Rights Groups Worldwide Fight for Rights of Chinese Workers***

The complicity of U.S. and other global corporations in fighting against rights for Chinese workers has become a *cause celebre* for labor organizations around the world. The corporate effort to gut the Draft Labor Contract Law has become the poster child for the efforts of corporations to lower standards for workers everywhere.

A leading role in this process has been taken by the International Textile, Garment, and Leather Workers Federation (ITGLWF). It issued a statement entitled “Multinationals Accused of Hypocrisy over China Labour Law Reform,” demanding that EU and US corporations halt their lobby campaigns against the modest improvements embodied in the new law.<sup>86</sup> Neil Kearney, General Secretary of the ITGLWF, approached numerous apparel and footwear employers to request that they “distance themselves from the position of their industry associations.” Corporations have been responding. For example, according to the Federation, Nike “repudiated” AmCham’s position on the Chinese labor law.<sup>87</sup>

The ITGLWF has further asked Nike to demand that AmCham “withdraw the representation that it has made to the Chinese government, on the grounds that the submission does not appear to have been the subject of a proper consultation process and does not reflect the views of one of AmCham’s key members.”

The European Trade Union Confederation played a primary role in forcing the E.U. Chamber of Commerce to “clarify” its position after its aggressive lobby campaign against the new labor law was exposed. After the Chamber’s initial actions, John Monks, General Secretary of the ETUC, demanded that,

European companies should behave outside Europe as they are supposed to do inside. They should certainly not act to drive standards down. I must say that recent reports that European companies in China may reconsider new investment or continuing their activities in response to proposals to improve labour laws give us food for thought to say the least. I think it urgent that we

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<sup>86</sup> <http://www.itglwf.org/DisplayDocument.aspx?idarticle=15186&langue=2>

<sup>87</sup> See ITGLWF’s December 20<sup>th</sup>, 2006 press release “Nike Repudiates AmCham on Chinese Labor Law Reform.” (<http://www.itglwf.org/DisplayDocument.aspx?idarticle=15269&langue=2>).

reach some understanding about what is acceptable behavior and propose that we have a proper discussion about this.<sup>88</sup>

In June 2006 the ETUC brought the issue to the attention of the European Commission, condemning the “disgraceful occurrences” of “threats by the European Chambers of Commerce in Beijing to reconsider new investment or continuing their activities in China in response to proposals to improve labor laws.”<sup>89</sup> In response the Commission raised the union’s concerns with the European Chamber, and soon afterward on December 8<sup>th</sup>, 2006, the Chamber reversed its position in a public statement recognizing the “serious need to improve working conditions in China” and saying the Chamber “stands firmly behind the Chinese government’s efforts to improve working conditions.”<sup>90</sup>

Other unions and their officials, including the AFL-CIO, European Metal Workers and the Dutch Federation of Trade Unions, soon issued press releases, exposed E.U. and U.S. Chambers’ efforts on their blogs, and used a host of other campaign techniques to draw attention to the issue.<sup>91</sup> The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF) called for action by unions throughout Europe, and offered concrete opportunities for unions to block the EU Chambers’ lobby efforts:

EU-based corporations are now lobbying the government of China to kill minimum standards which have, for the most part, long been established in European law, beginning with the right to an employment contract...

Unions worldwide have a vital interest in defeating this corporate offensive...US unions have sounded the alarm. Unions in Europe should similarly work on exposing the lobbying activities of EU-based transnationals, and push for political action at national and EU-level. Politicians—and in particular those in trade and industry ministries—should be publicly challenged to reconcile this sordid lobbying for the maintenance of sweatshop conditions with their ideological claims for the civilizing mission of liberalized trade and investment flows.<sup>92</sup>

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<sup>88</sup> See ETUC General Secretary John Monks statement “Europe’s Trade and Investment with China: Challenges and Choices.” Available at: <http://www.etuc.org/a/2612>

<sup>89</sup> See ETUC’s statement on “Response to Public Consultation of the European Commission by the European Trade Union Confederation”. Available at: [http://www.etuc.org/IMG/pdf/China\\_Consultation\\_150606rev.pdf](http://www.etuc.org/IMG/pdf/China_Consultation_150606rev.pdf)

<sup>90</sup> EU Chamber of Commerce statement available at <http://www.eurochamber.com.cn/events/news.php?id=286>

<sup>91</sup> See for example: <http://blog.aflcio.org/2006/11/12/democrats-call-on-bush-to-support-china%E2%80%99s-draft-labor-law/>

<sup>92</sup> “China and Global Sweatshop Lobby” posted December 18, 2006. Available at: [http://www.iuf.org/cgi-bin/editorials/db.cgi?db=default&uid=default&ID=505&view\\_records=1&ww=1&en=1](http://www.iuf.org/cgi-bin/editorials/db.cgi?db=default&uid=default&ID=505&view_records=1&ww=1&en=1)

Recent statements from trade union officials around the globe show that the global labor movement is increasingly viewing the plight of Chinese workers to be intrinsically tied to working conditions in their own countries.

According to Bruce Raynor, President of UNITE-HERE,

China plays a key role in setting wages and working conditions around the world. Improving conditions for Chinese workers matters to workers everywhere. A major way to stop the global race to the bottom in wages and labor standards is to support efforts to raise wages in China.<sup>93</sup>

It is also becoming clear to many in the labor movement that global corporations, not just governments, are driving standards down to the lowest common denominator. As Julius Roe, the President of the Australian Manufacturers Workers Union and one of the most prominent labor voices in the fair trade vs. free trade debate, explained, “The exploitation of workers in China is driven by the profit interests of the multi-national companies and by the Chinese Government's desire to maximize foreign investment and economic growth, especially in the export sector.”<sup>94</sup>

Corporations and the media have frequently characterized labor unions as dinosaurs that only know how to say “no.” These new initiatives from the global labor movement represent a step toward a constructive China policy that can ally workers both inside and outside of China, all of whom have an interest in stopping the race to the bottom.

Many human rights groups and other NGOs have also been involved in the fight to protect the worker rights included in the new law, including the German Toy Campaign, PC-Global, India Committee of the Netherlands, Center for the Research on Multinational Corporations, and the CSR Platform, a coalition of 40 unions and NGOs working on Corporate Social Responsibility issues. The Business and Human Rights Resource Centre, chaired by former UN Human Rights Commissioner Mary Robins and affiliated with Amnesty International, asked leading companies about their role in opposing the law, then posted their responses on its website. (These responses are analyzed in Appendix B.) As Chris Avery, Director, and Gregory Regaingnon, Senior Researcher for the Centre explain:

Respect for labor rights is a core aspect of companies' human rights obligations. Companies' position on labor rights issues, including on labor law reform in countries such as China, are a major part of their human rights impacts, as are the lobbying activities of companies' associations . . . Raising concerns about companies' and business associations' lobbying on the draft

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<sup>93</sup> February 23, 2007 interview with GLS staff.

<sup>94</sup> February 16, 2007 interview with GLS staff

Chinese labor reform . . . has led to a closer examination of their positions and how they relate to the companies' stated human rights commitments.<sup>95</sup>

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<sup>95</sup> Email from Gregory Regaignon, 2/20/07.

## *VII. Conclusions and Recommendations*

China is hurtling into modernity at breakneck speed. Thirty years ago China was a command economy with virtually no labor market. Workers were simply assigned jobs at state owned enterprises. Today China's private sector employs hundreds of millions of workers in a wide open economy with a chaotic labor market.

In each industrialized country labor markets are socially regulated by a complex mix of laws, customary practices, local conditions, technologies, and the action of workers and their employers. These regulations developed over the course of the 20<sup>th</sup> century. But the laws and customary practices that govern China's labor markets are in their infancy. The development of labor market regulations is being squeezed into a few decades.

China now appears to be trying to create structures, regulations, and worker rights in its new labor markets. The new draft labor law is a modest but important step in that direction.

While the draft law does not guarantee independent trade unions, collective bargaining, or the right to strike, the law and the efforts to enact it could set in motion a process leading to further positive changes. If China mirrors the history of labor relations in the rest of the world, then as workers are proffered legal rights, they will begin creating the organizations and institutions to implement those rights.

For the first time in modern Chinese history, hundreds of thousands of Chinese workers participated in the legislative process by using the public comment period to voice their support and concerns. Further, China is currently seeing widespread—though sporadic—worker revolts, the emergence of grassroots labor NGOs, and stirrings of reform within official union structure. There are strong social factors which will tend to control these impulses: from the central government, desire to maintain political authority; from the Chinese people, yearning for stability after decades of upheaval. So “rule of law” solutions could find support in many quarters.

According to the PRC Minister of Police well over four million workers went on strike in 2005 alone and more than 30,000 lawsuits were submitted.<sup>96</sup> Liu Jichen, director of the ACFTU's legal work department, said in an interview that the main causes of labor disputes include failure of employers to honor

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<sup>96</sup> Guan Xiaofeng “Labor Disputes Threaten Stability,” *China Daily*, January 1, 2007.

labor contracts, delays in wage payments, illegal demands for overtime work, and non-payment of overtime wages. “These problems, if not solved properly, often lead to labor dispute cases or radical actions by some workers.”<sup>97</sup>

Enforcement of existing labor law remains a serious problem in China. The Chinese labor administration has recently been granted new legal powers for compliance, but enforcement at the local level will surely remain haphazard and generally favor employers.<sup>98</sup> According to Lui Cheng, “We must enhance the cost of employers violating the labor law.”<sup>99</sup>

The ACFTU is planning a campaign for enforcement of the new labor law. It is starting 866 new legal aid centers. Following up on its success in organizing Wal-Mart, it aims by the end of 2007 to unionize 70 percent of foreign companies.<sup>100</sup>

In addition, the ACFTU is calling for including in the labor law a new “Chapter on Collective Bargaining.” According to an interview by Australian legal scholar Chris White with Sun Wenbin, Director of the ACFTU’s General Office Legal Department,

We need it urgently because the right of unions to conduct collective negotiations . . . with legal provisions can better regulate the rights and interests of the parties. Trade union committees in the workplace should be consulted.<sup>101</sup>

Some voices in China are calling for still further rights. Addressing a conference on labor law, Professor Chang Kai of Beijing argued that labor standards should be regarded as a system. Such matters as wages, job security, social security levels, occupational health and safety and job training, and particularly collective labor rights such as the right to strike, should be included.<sup>102</sup>

Rather than supporting the modest efforts of the Chinese government to make labor markets less like the “Wild West,” U.S. and European corporations have aggressively demanded a reduced role for trade unions, weaker protections for contingent workers, more stringent non-compete agreements, and other restrictions on worker rights. These demands all too

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<sup>97</sup> Cited in “FOCUS: China to revise employment law, tighten employee safeguards,” XFN-ASIA, 2/13/07.

<sup>98</sup> Chris White, “China’s New Labour Law Amendments: The Challenge of Regulating Employment Contracts,” February 2, 2007. On file with GLS.

<sup>99</sup> Ibid

<sup>100</sup> Chris White, “China’s New Labour Law amendments,” based on an interview with Guo Chen in the ACFTU Grass-Roots Organizing and Capacity Building Department.”

<sup>101</sup> Chris White, “China’s new Labour Law amendments.”

<sup>102</sup> Apo Leong, “Labour Law Boxing in China,” Draft of Asian Labour Update no. 59.

closely echo those they have made to policymakers throughout the world. Several of the concessions in the second draft of the labor law that AmCham and others are now claiming credit for have already proven devastating to workers in other countries, including the United States. And these global forces have promised to continue to pressure the PRC to further reduce protections for Chinese workers.

Some influential Chinese officials are increasingly concerned about corporate efforts to erode new workers protection. In January of this year for example, Xie Liangmin, vice president of the ACFTU's law department, publicly criticized AmCham and their corporate members for their "threats." He told the *South China Morning Post* that "it is excessive to intervene in a country's lawmaking process by threatening to withdraw investment."<sup>103</sup>

China's impact on the global economy is so huge that workers in the rest of the world have a right and a duty to argue, cajole and fight for the adoption of internationally recognized labor rights in China—rights workers around the world fought for elsewhere in a century of struggle. Each industrialized nation has found its own path—none perfect—toward guaranteeing basic rights for workers.

Much of the U.S. discussion about China and globalization has been trapped in a century-old debate between "free trade" and "protectionism." But this way of defining the issue is deeply flawed. "Free trade" is a prescription for allowing huge global corporations to dominate the global economy and pit workers and communities against each other for scarce jobs. Classical economic "protectionism" is rarely effective in a global economy that has become increasingly integrated and complex.

A growing sector of the labor movement and its allies are trying to develop an alternative to this simplistic "free trade vs. protectionism" debate. AFL-CIO president John Sweeney recently wrote in the *Financial Times*, "The trade debate has changed dramatically in the past couple of decades, but many editorial writers and academic economists remain mired in the outdated debate about free trade versus protectionism."<sup>104</sup>

At the same time the hollow promises made by the promoters of corporate-led globalization are being questioned around the world. As Julius Roe, the President of the Australian Manufacturers Workers Union, recently told GLS,

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<sup>103</sup> Bill Savadove, "Labour Law Won't Go to NPC in March," *South China Morning Post*, January 31, 2007.

<sup>104</sup> John Sweeney, "Fairer Trade Does Not Mean an End to Free Trade," *Financial Times*, November 28, 2006. Available at: [http://us.ft.com/ftgateway/superpage.ft?news\\_id=fto112820061351126254](http://us.ft.com/ftgateway/superpage.ft?news_id=fto112820061351126254)

The rhetoric of the US Government about “human rights” is phony given that the most dramatic abuse of human rights is the abuse of the basic rights of workers in China—extreme long hours, underpayment and late payment of wages, appalling health and safety and suppression of strikes. The US Government is not seriously interested in improvement of workers rights in the US or anywhere else in the world and their silence on the question of the new Chinese labor laws demonstrates this.<sup>105</sup>

Organized labor and pro-worker allies in the human rights movement, civil society, and government have begun to reframe the “trade debate” in terms of global corporations’ role in suppressing the right of workers everywhere—especially in China. By putting the role of U.S. corporations front and center, labor and its allies are exonerating themselves from charges xenophobia and chauvinistic “China bashing.”

The labor movement has begun to express its traditional identification with and support of the common interests of workers and oppressed groups worldwide. Such a focus makes it possible for U.S. labor to visibly act in the interest of its members and of workers everywhere by challenging the behavior of corporations whose headquarters are as near at hand as New York, Atlanta, Chicago, and Los Angeles.

Professor Liu Cheng, an architect of the new law, warns in an interview that support for the new law within China is not enough “if there is no support from labor supporters outside China.”

“Some National People’s Party Congress representatives are influenced by the employer lobby. Although the principles of the amendments are secure, there may be concessions on the details, so we call for help.”<sup>106</sup>

Such help can come in many forms:

- Trade unions around the world should follow the lead of those that are already demanding that all home-based corporations doing business in China—especially corporations with whom they have agreements—support the pro-workers provisions in the new draft labor law and make that support public. Such pressure by unions not only builds support for new rights, but creates a practical bond of solidarity with Chinese workers.
- Global corporations should immediately disassociate themselves from lobbying efforts to gut worker protections in the law. Some corporations like Nike and Ericsson have already done this; others

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<sup>105</sup> February 16, 2007 interview with GLS Staff.

<sup>106</sup> Chris white, “China’s new Labour Law amendments.”

must follow. Those that do not should be publicly identified and condemned.

- Global corporations should publicly pledge that they and their subsidiaries and suppliers will fully obey the new law when it is enacted.
- Politicians should condemn the corporate opposition to expanded labor rights and act to put legislatures on record in favor of the expanded rights contained in the draft law. The 27 members of the US House of Representatives who took the first step and signed a letter decrying corporate opposition and supporting the worker rights aspect of the new law provide a good example for others to follow.
- Political organizations, trade unions, and civil society groups should investigate other international venues for action, such as charging corporations with violations of OECD guidelines. Article IV of the OECD Guidelines for Multinational Enterprises states that multinational employers should “observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.” The OECD Guidelines also enjoin employers to abstain from “improper involvement in local political activities.”
- When the new Contract Law is adopted, international trade unions should offer their technical assistance and support to the ACFTU to help monitor its implementation, thus drawing on international labor experience while recognizing the unique characteristics of the Chinese labor scene.

Workers, unions, and their allies worldwide have a vital interest in defeating this corporate offensive. Expanded rights for Chinese workers can help halt and reverse the race to the bottom in the global economy.

*\*\*Note: Download appendices at [www.laborstrategies.blogs.com](http://www.laborstrategies.blogs.com)*

*\*\*Note: Copies of China's 2<sup>nd</sup> Draft Labor Contract Law and a membership list of the American Chamber of Commerce in Shanghai are available on request from [info@laborstrategies.org](mailto:info@laborstrategies.org).*

## *About Global Labor Strategies*

Global Labor Strategies is a non-profit 501(c)-3 resource center providing research and analysis on globalization, trade and labor issues. GLS staff have assisted numerous unions, government officials, and NGOs in developing the strategies and research needed to function effectively in the global economy. These organizations range from trade unions to civil society groups, spanning North America, Asia, Europe and Latin America.

GLS staff have published many previous reports on a wide array of issues, including *Outsource This! American Workers, the Jobs Deficit, and the Fair Globalization Solution*; *Contingent Workers Fight for Fairness*; and *Fight Where You Stand!: Why Globalization Matters in Your Community and Workplace*. They have also written and produced the Emmy-nominated PBS documentary, *Global village or Global Pillage?*

GLS runs the Global Labor Blog—promoted by organizations such as the AFL-CIO and Harvard’s Trade Union Program—which is regularly read by journalists, academics and union officials around the world. GLS has offices in New York, Boston, and Montevideo, Uruguay.

**For more on GLS visit:** <http://laborstrategies.blogs.com>

**To contact GLS email:** [info@laborstrategies.org](mailto:info@laborstrategies.org)

## GLS STAFF

**Tim Costello** has over 40 years of work and union experience. He helped organize and served (until July 2005) as Coordinator of the North American Alliance for Fair Employment a network of 65 unions and community based organizations in the US and Canada. Costello was a truck driver and workplace activist for many years; following that, he worked on the staff of SEIU in Boston. He has extensive collective bargaining experience in a many of industries. He has co-authored 4 books and written scores of articles on labor and globalization.

**Brendan Smith** is a legal expert (J.D. Cornell University Law School) specializing in national and international labor law and policy. Besides his work at GLS, he is currently co-director of the UCLA Law School Globalization and Labor Standards Project. He has worked previously as a senior legislative aide for Congressman Bernie Sanders and staffed the Subcommittee on Domestic and International Monetary Policy, where he

organized a series of hearings and legislative efforts on the Asian financial crisis. Smith has also consulted for the AFL-CIO Solidarity Center, International Labor Rights Fund and Service Employees International Union, as well worked and traveled extensively throughout Asia, including China.

**Jeremy Brecher** is a leading labor historian, writer, and documentary script writer best known for the labor history *Strike!*. For more than two decades Brecher and Costello have studied and written about labor and globalization, writing such well-known books as *Building Bridges: The emerging Grassroots Coalition of Labor and Community* and *Global Village or Global Pillage?*. For the past 8 years they have been joined by Brendan Smith, who collaborated with them on the book *Globalization from Below: The Power of Solidarity*. Their Emmy-nominated documentary *Global Village or Global Pillage?* has been used by unions and other groups in the US and throughout the world to present an international grassroots response to globalization.

**Claudia Torrelli** is an international trade activist specializing in Latin American trade and economic relations with the Europe and the world. Besides her work with GLS she is on the staff of REDES (Friends of the Earth, Uruguay). She is also an activist in the Hemispheric Social Alliance, a Pan-American network of civil society and labor organizations, and works with the Netherlands based Transnational Institute's Alternative Regionalism Program. She holds a degree in International Relations from the University of Montevideo.