

Behind the Great Wall of China

U.S. Corporations Opposing New Rights for Chinese Workers

Opposition may harm workers in the US and other countries

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Executive Summary

US-based corporations are opposing legislation to give Chinese workers new labor rights.

US-based global corporations like Wal-Mart, Google, UPS, Microsoft, Nike, AT&T, and Intel, acting through US business organizations like the American Chamber of Commerce in Shanghai and the US-China Business Council, are actively lobbying against the new legislation. They are also threatening that foreign corporations will withdraw from China if it is passed.

China's Draft Labor Contract Law would provide minimal standards that are commonplace in many other countries, such as enforceable labor contracts, severance pay regulations, and negotiations over workplace policies and procedures. The Chinese government is supporting these reforms in part as a response to rising labor discontent.

Corporate opposition to the law is designed to maintain the status quo in Chinese labor relations. This 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.

Low wages and poor working conditions in China drive down those in the rest of the world in a "race to the bottom." The opposition of corporations to minimum standards for Chinese workers should be of concern to workers and their political and trade union representatives throughout the world.

I. Introduction

A major debate is underway in China on a proposed Draft Labor Contract Law that would grant new rights to Chinese workers. The debate has not been widely reported outside of China; it has been almost entirely ignored by media in the US. But when the Chinese government opened a 30 day public comment period this spring, nearly 200,000 comments were received. A majority of these were from ordinary workers. But some of the comments were from big US and European based global corporations and their lobbying groups that came out squarely against the new law.

Wal-Mart's recent agreement to recognize unions in China has made headlines worldwide. But Wal-Mart and other corporations, including Google, UPS, Microsoft, Nike, AT&T, and Intel, acting through the American Chamber of Commerce in Shanghai (AmCham) and other industry associations, are trying to block legislation that would significantly increase the power and protection of workers.

This corporate campaign contradicts the justifications that have been given for public policies that encourage corporations to invest in China. US based corporations have repeatedly argued that they are raising human and labor rights standards abroad. For example, the American Chamber of Commerce in Hong Kong asserts among its "universal principles" that "American business plays an important role as a catalyst for positive social change by promoting human welfare and guaranteeing to uphold the dignity of the worker and set positive examples for their remuneration, treatment, health and safety."¹ But US based corporations are trying to block legislation designed to improve the remuneration, treatment, health and safety, and other standards of Chinese workers.

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 everywhere. As U.S. wages stagnate, many Americans worry that low wages and labor standards in China are driving down those in America. Improving labor conditions in China can help workers in the rest of the world resist a race to the bottom that threatens to bring wages and conditions worldwide down to the level of the least protected.

The proposed legislation will not eliminate Chinese labor problems. It will not provide Chinese workers with the right to independent trade unions with leaders of their own choosing and the right to strike. But foreign corporations are attacking the legislation not because it provides workers too little protection, but because it provides them too much. Indeed, the proposed law may well encourage workers to organize to demand the enforcement of the rights it offers.

¹ "Universal Business Principles," The American Chamber of Commerce in Hong Kong. Available at: <http://www.amcham.org.hk/pr/background/universal-business-principles.pdf#search=%22universal%20business%20principles%22>

China's debate on the new legislation is already under way. Citizens, workers, and public officials in the U.S. and throughout the world should ask: Has public policy encouraged corporate investment in China so that global corporations can lobby against greater rights for Chinese workers?

II. Corporations oppose Chinese labor law reforms

1. The campaign against protections for Chinese workers

The People's Republic of China in April released a Draft Labor Contract Law whose proclaimed purpose is to protect workers' rights and interests. A GLS analysis of the response by US and other foreign corporations indicates that they are engaged in a concerted campaign to prevent improvement of the notoriously low wages and conditions of Chinese workers by blocking the proposed reforms.

This campaign is being conducted directly by large corporations like General Electric and Procter & Gamble, which have directly addressed Chinese lawmakers.²

This campaign is promoted publicly by three major organizations representing foreign corporations operating in China:

- The American Chamber of Commerce in Shanghai represents over 1,300 corporations, including 150 Fortune 500 companies.
- The US-China Business Council represents 250 US companies doing business across all sectors in China.
- The European Union Chamber of Commerce in China represents more than 860 members.

All three have sent the Chinese government extensive attacks on the proposed law. The statement of AmCham in Shanghai runs to 42 pages.³

These organizations have also issued barely veiled threats that foreign companies will leave China if the new legislation is passed. As AmCham comments on the draft legislation put it, the law may "reduce employment opportunities for PRC workers" and "negatively impact the PRCs competitiveness and appeal as a destination for foreign investment."⁴

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

² Bill Savadove, "Firms say new labour law is a step backward," *China Morning Post*, 3/21/06.

³ "Comments and Suggestions on Revision to Labor Contract Law," American Chamber of Commerce in Shanghai, April 19, 2006. Available at: <http://www.amcham-shanghai.org/NR/rdonlyres/A18F268D-6EE8-4221-B075-4F00282E8623/1427/AmChamShanghailaborcontractlawcommentstoNPCApr2006.pdf>

⁴ *Ibid*, p. 21

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.⁵

The affection of American corporations for the status quo in China is revealed by the emphasis in the AmCham document on the desirability of maintaining present Chinese labor law. That law is claimed to have “significantly promoted standardized operation of enterprises and establishment of modern enterprise system.”⁶ AmCham criticizes the proposed changes in the law for making it harder to fire workers and for “rigid” restrictions on “business administration of enterprises.” It concludes, “we doubt whether it is necessary to carry out such significant changes.”⁷

2. Why Chinese labor law needs “significant changes”

Despite extraordinary economic growth most Chinese workers live on the edge of poverty. They earn little and often work under abysmal conditions. Most lack basic rights or access to those rights. About 150 million Chinese urban and rural workers are unemployed—more than the entire workforce of the US.⁸

China abandoned its so-call “iron rice bowl” cradle-to-grave social security system in the 1980s when it ended traditional central planning and embarked on its wide-open, laissez-faire, development model. During the 1990s state enterprises were closed, private enterprises mushroomed, foreign investment skyrocketed and workers were left to fend for themselves.

In 1994 China adopted a labor law that mandated individual contracts between workers and companies. Soon after it also adopted a law allowing collective contracts negotiated by trade unions in some industries.

Labor contracts are supposed to stipulate wages, basic terms of employment, and the duration of employment. The reality is that many workers lack contracts and basic protections. Seventy per cent of all rural workers and about 15% of urban workers do not have a contract which means they can not access even minimal rights or benefits. In China’s booming construction industry 40% of all workers have no contract. Even those with contracts lack real security: country-wide 60% of all the contracts are for 3 years or less.⁹

3. Protections corporations are fighting against

⁵ Christine Buckley, “Foreign investors may quit if China tightens up labour law,” *TimesonLine*, 6/29/06.

⁶ “Comments and Suggestions on Revision to Labor Contract Law,” American Chamber of Commerce in Shanghai, April 19, 2006, p.20.

⁷ *Ibid*, p. 21.

⁸ Dorothy Guerrero, *Yale Global On-Line* 2/6/2006. Available at: <http://yaleglobal.yale.edu/display.article?id=6929>

⁹ Economist’s Intelligence Unit, Human Resources Section 7: Labour legislation: Overview, August 21, 2006, <http://www.tmcnet.com/usubmit/2006/08/21/1820817.htm>

While the proposed labor contract law addresses many of these problems, the protections it offers are modest. Most important, it does not provide for independent unions with leaders chosen by their members and the right to strike. Robert Kwauk, managing partner of Blake Cassels & Graydon's Beijing office, says "I'm telling my clients not to panic because the new rules are still very reasonable compared to the labor laws to which many of them are exposed otherwise in their domestic and international operations."¹⁰

Nonetheless, GLS's analysis indicates that foreign corporations are fighting against the very aspects of the legislation that might ameliorate some of China's most blatant labor problems:

Contract protections for all workers

Foreign corporations want to maintain the current system which creates a large underclass of highly precarious workers with no rights. Access to labor rights and benefits—however limited—depends on the existence of a written labor contract signed individually or collectively by workers and companies. But millions of workers currently work without one. The new law would create an implied contract for any worker who receives a wage, giving millions of workers rights and benefits now denied them. It stipulates that any ambiguities in the interpretation of a contract will be made in the employees' favor. AmCham opposes these provisions on the grounds that, "These provisions are not consistent with the recruitment system of modern enterprises."¹¹ Instead, companies want to set pay and terms of work for all workers without signed contracts unilaterally. Management alone would determine "All problems...such as pay confirmation, the way of handling the social insurance, the method of dismissal and the standard of compensation."¹²

Collective bargaining with employees

The new law provides for negotiations over workplace policies and procedures, lay-offs, health and safety, and firings with a union or an "employee representative." Foreign corporations demand unilateral authority, not negotiation. The US-China Business Council writes, "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 consent of the trade union before such changes can be made is overly burdensome and may prevent important company policies from

¹⁰ Julius Melnitzer, "Power Shift: China's government prepares to make sweeping changes to its labor laws," *Inside Counsel*, August 2006. Available at: http://www.insidecounsel.com/issues/insidecounsel/15_211/global_views/577-1.html

¹¹ "Comments and Suggestions on Revisions to Labour Contract Law", American Chamber of Commerce in Shanghai p.25

¹² Ibid p.36

being implemented in a timely manner. . . Final authority and responsibility for company policies should rest in the hands of the employer.”¹³

Freedom to change jobs

Non-compete agreements are a regressive feature of US and other western systems that have crept into the Chinese economy. They prevent workers from changing jobs easily if they have access to proprietary knowledge as determined by an employer. For a developing economy like China, knowledge transfer is essential. The new law caps damages employers can seek for workers who change jobs, makes it more difficult to claim confidentiality has been breached, and allows for geographic exemptions to foster the spread of skills throughout the country. The opposition to this provision comes with a threat: “If carried out,” according to the comments on the bill submitted by the AmCham, “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.”¹⁴

Limited probationary periods

Currently corporations can set probationary periods unilaterally, often for an entire year, keeping people in a highly precarious employment status. The new law sets standard probationary periods of from one to six months depending on the type of job. Management justifies the status quo because one to six months is “... not long enough to provide sufficient time for enterprises to examine new staff.”¹⁵

Payment for training

Under current practice employees sign a separate contract that allows companies to recover any training costs if a worker terminates his/her employment. Under current law almost anything that management considers “training”—including many of the kinds of on-the-job training that are standard for any new job—can be subject to re-payment, leaving a departing worker either in debt or, if unable to repay the training expenses, bonded to his/her current employer. The new law limits costs employers can recover by, for instance, defining “training” as instruction that takes place “off-the-job,” on a full-time basis, and lasting for at least 6 months. Companies oppose the new law because “the employer would not be entitled to

¹³ “Comments on the Draft Labor Contract Law of the People’s Republic of China (Draft of March 20, 2006),” US-China Business Council, April 19, 2006 p.2. Available at: <http://www.uschina.org/public/documents/2006/04/usc-bc-comments-labor-law.pdf#search=%22US-China%20Business%20Council%20Comments%20of%20the%20Draft%20Labor%22>

¹⁴ “Comments and Suggestions on Revisions to Labour Contract Law”, American Chamber of Commerce in Shanghai, p. 35.

¹⁵ Ibid. p. 39.

claim compensation from the departing employee for [on-the-job and other types] of training experiences.”¹⁶

Severance payments

There is theoretically no at-will employment in China; all workers are supposed to have labor contracts—although in practice many do not. Most contracts are for a “fixed term,” after which an employer can dismiss a worker without penalty and a worker can leave without penalty. This system encourages highly unstable employment relationships. The new proposal encourages stable employment by requiring employers to provide severance pay to workers whose contracts end, but not to those whose contracts are renewed. Management opposes this provision as “most unreasonable.”¹⁷

A pathway from temporary to permanent work

Chinese companies employ a large number of temporary workers hired through temp agencies. Temporary work encourages management to avoid the protections and commitment that come with standard employment. Under the new law, temp agency workers would become permanent employees after one year of employment at a client firm, thus reducing the number of insecure, contingent jobs. According to the companies, “This stipulation impedes the right of the employer to find the best person for the job and will reduce the flexibility of human resource allocation.”¹⁸

A fair system for lay-offs

In practice corporations frequently lay-off workers at their own discretion. Under the new proposals, corporations would have to lay people off on the basis of seniority. Management opposes seniority based lay-offs in part on a novel argument: “It is a discriminative policy against the new staff to fire them while they work for the [same] enterprise as the old staff.”¹⁹

III. Why foreign corporations oppose Chinese labor law reform

1. Corporations benefit by exploiting Chinese workers

While the extraordinarily rapid growth of the Chinese economy has often been noted, it is less often realized how much of that growth actually reflects the role of foreign corporations. According to Morgan Stanley’s chief economist Stephen Roach, 65% of the tripling of Chinese exports – from \$121 billion in 1994 to \$365 billion in mid 2003 – is “traceable to outsourcing by Chinese subsidiaries of

¹⁶ “Comments on the Draft Labor Contract Law of the People’s Republic of China (Draft of March 20, 2006),” US-China Business Council, April 19, 2006, p.2.

¹⁷ “Comments and Suggestions on Revisions to Labour Contract Law” American Chamber of Commerce in Shanghai, p.37

¹⁸ “Comments on the Draft Labor Contract Law of the People’s Republic of China (Draft of March 20, 2006),” US-China Business Council, April 19, 2006, p.2.

¹⁹ “Comments and Suggestions on Revisions to Labour Contract Law,” American Chamber of Commerce in Shanghai, p. 39

multinational corporations and joint ventures.”²⁰ The export surge blamed on China is primarily an export surge of global corporations utilizing Chinese workers.

The obvious motive for such foreign corporations to oppose the law protecting Chinese workers is their fear that it may eliminate the cheap labor costs they now enjoy.

According to the *New York Times*,

China’s growth relies on cheap labor. The foreign-invested factories here, including production centers for most multinational companies, depend on a flexible work force that actually grows cheaper by the year.

Guangdong [province] has grown by more than ten percent annually for the past decade. But its factory workers, mostly migrants from the interior, earn no more than they did in 1993... workers are losing ground even as China enjoys one of the longest and most robust expansions in modern history.

This is partly a paradox of globalization. China has attracted more foreign investment by far than any other developing country... But it continues to draw capital essentially because it is willing to rent workers for falling returns.²¹

2. Corporations benefit from promoting the “race to the bottom”

Foreign corporations have another, less obvious, motive for opposing protections for Chinese workers. The ability to hire cheap labor in China has put downward pressure on wages and workers’ conditions around the globe.

China plays a key role in setting global wage norms. It is the lynch pin of what Morgan Stanley chief economist Stephen Roach has called “global labor arbitrage”²² — in which corporations move from one labor market to another to take advantage of cheaper labor. The result is a global “race to the bottom” in which workers and their communities are put into competition with each other to see who can provide the lowest-cost labor and the most corporate-friendly conditions. According to Roach, the global labor arbitrage is also now acting as “a powerful structural depressant on traditional sources of job creation in high-wage countries such as the United States.”²³

The downward pressure put on the world’s wages by China is enormous. Harvard economist Richard Freeman estimates that the entry of India, Russia, and China into the world economy in the past few decades has doubled the workforce employed in the global economy. China, alone, accounts for 50% of this increase. And because

²⁰ Stephen Roach, “How Global Labor Arbitrage Will Shape the World Economy,” *Global Agenda*, 2005 Edition, Available at: <http://www.globalagendamagazine.com/2004/stephenroach.asp>

²¹ Joseph Kahn, “China’s Leaders Manage Class Conflict Carefully,” *New York Times*, January 25, 2004.

²² Stephen Roach, “Global: China and Global Labor Arbitrage,” *Global Economic Forum*, April 7, 2006. Available at: <http://www.morganstanley.com/GEFdata/digests/20060407-fri.html#anchor0>.

²³ Stephen Roach, “False Recovery,” *Global Economic Forum*, Morgan Stanley, January 1, 2004. Available at: <http://www.morganstanley.com/GEFdata/digests/20040112-mon.html>

these countries did not add significant capital to the global economy, more workers are competing to be employed by essentially the same amount of capital, increasing the bargaining power of capital and decreasing that of labor.²⁴ This contributes substantially to wage stagnation or decline in countries around the world. Chairman Ben Bernanke of the Federal Reserve Bank recently stated, there are “no historical antecedents” for the rapid integration of China, India, and the former Communist bloc into the world’s economy in the space of a just a couple of decades.²⁵

Andrew Ross of New York University, who recently spent a year in China studying how workers are coping with the rapid changes of the last decade, notes that foreign corporations can use the wages and working conditions in their Chinese operations to drive down labor conditions for workers at all levels worldwide:

No industrializing country has been able to compete for the top-end slot at the same time as it absorbs jobs lower down the production chain. . . . To command this spread—from the lowest assembly platform work to the upper reaches of industry and services—is to be in a position to set the global norm for employee standards as never before. Given the chronic disregard for job security and workplace rights in China’s foreign-invested private sector, such a norm is a clear threat to the stability of livelihoods everywhere.²⁶

3. Corporations fear more rights for Chinese workers

Under current Chinese law, workers do not have the basic human rights to organize, bargain collectively, and strike. A high proportion of Chinese workers are represented by unions, but these unions operate under the All-China Federation of Trade Unions (ACFTU), which is an arm of the government. The ACFTU is non-confrontational: its avowed purpose is to create “harmonious relations” in a workplace. Managers often serve as trade union officials. Strikes are illegal. The ACFTU is widely considered inside and outside of China to be ineffective.

Current Chinese labor law and the conditions it promotes have led to a huge upsurge in demonstrations, strikes, and other kinds of protests that have swept China in the past few years. Last year alone the government reported 300,000 labor disputes, nearly double the number reported in 2001.²⁷ The government’s decision to institute the limited reforms embodied in the proposed new labor law is a reaction to such action by Chinese workers, which government officials believe threatens the stability of their rule.

The new law proposes increased government inspection of wages, overtime, and working conditions, but foreign corporations know that the Chinese government is

²⁴ “China and the world economy: From T-shirts to T-bonds,” Economist.com, July 28 2005
http://www.economist.com/displaystory.cfm?story_id=4221685

²⁵ Krishna Guha, “Bernanke Calls for Fairer Globalization,” *Financial Times*, August 25, 2006.

²⁶ Andrew Ross, “A Fast Boat to China,” delivered at the Cornell Global Labor Conference on February 10, 2006. Ross is author of the book *A Fast Boat to China : Corporate Flight and the Consequences of Free Trade; Lessons from Shanghai*. (Pantheon, 2006).

²⁷ Antoaneta Bezlova, “China Grapples With Labor Dragon”, *Asia Times*, April 4, 2006.

unlikely to enforce this law in a way that will seriously threaten their interests. Indeed, they may well have doubts that the government will effectively enforce it at all. As AmCham acknowledges, even current Chinese labor laws “are not fully observed and enforced” and “many enterprises violate” their provisions.²⁸

Corporations have no guarantee, however, that the empowerment of Chinese workers will end with the current legislation. Historical experience in the U.S. and around the world has shown that when workers realize that they are entitled by law to certain rights, they may well create the institutions needed to access and enforce those rights.

Experience in many countries indicates that labor laws are often unenforced unless workers exercise the right to organize, bargain collectively, and strike. For that reason, corporations have reason to fear that even a limited guarantee of rights to Chinese workers will encourage their further efforts to form independent unions, elect their own leaders, and utilize their potential bargaining power. They fear, in short, that the proposed labor bill may be but one step in a new long march for Chinese workers as they fight for the legal rights due them and the institutional supports to enforce those rights.

IV. Policy recommendations

While public and media discussion often focuses on the role of the Chinese government in suppressing workers struggles and in not enforcing existing labor law, millions of these workers are exploited by global corporations or their subsidiaries and suppliers. Indeed, nearly two thirds of the increase in “Chinese” exports actually represents non-Chinese corporations and their subsidiaries and suppliers.

Public policy in the US and other countries has allowed these corporations to realize immense benefits from the low pay and poor conditions under which their Chinese workers work. These policies have been justified largely on the grounds that foreign corporations operating in China would elevate labor and human rights standards.

By opposing a labor contract reform law that would elevate labor and human rights standards, American and other foreign corporations are aggravating the very conditions they claimed they would ameliorate. Their campaign against the law blocks protections for Chinese workers, but continues protections for corporations that would exploit them. By doing so they hurt not only Chinese workers, but workers around the world who are put into competition with them.

²⁸ “Comments and Suggestions on Revision to Labor Contract Law,” American Chamber of Commerce in Shanghai, April 19, 2006, p. 21.

The new labor bill is expected to have its third reading this fall; if passed, it will come into full effect in March 2007.²⁹ U.S., European, and other global corporations have already weighed in on the bill—they want it gutted. Now is the time for other voices to be heard.

Corporations and business organizations in China, and their political allies, should be asked to immediately reverse their opposition to the draft labor code. And they should be asked to publicly support further legislation to ensure the basic human right of Chinese workers to organize, choose their own leaders, bargain collectively, and strike.

This is an opportunity for those who represent American workers in union halls and the halls of Congress to ask how US corporations are undermining workers' rights in China for their own profit. It is an opportunity for those who represent workers around the world to draw a line against the race to the bottom.

There is no need to travel to Beijing: The headquarters of the corporations that are opposing reforms for Chinese workers are in New York and Brussels, Los Angeles and London, and other cities and towns around the world.

Copies of China's Draft Labor Contract Law and a membership list of the American Chamber of Commerce in Shanghai are available on request at: info@laborstrategies.org .

²⁹ Chris Gill, "Come the Revolution," *The Guardian*, 06/24/06. Available at: <http://www.guardian.co.uk/china/story/0,,1804659,00.html>

ABOUT GLOBAL LABOR STRATEGIES

Global Labor Strategies is a newly formed non-profit 501(c)-3 resource center providing research and analysis on globalization, trade, and labor issues. GLS staff has assisted numerous unions, government officials, and NGOs develop the strategies and research needed to function effectively in the global economy. These organizations range trade unions to civil society organizations in 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 also 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.

The paper was written by GLS’s North American Staff.

For more on GLS visit: www.laborstrategies.blogs.com

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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.