

October 13, 2006

China Drafts Law to Empower Unions and End Labor Abuse

By [DAVID BARBOZA](#)

SHANGHAI, Oct. 12 — China is planning to adopt a new law that seeks to crack down on sweatshops and protect workers' rights by giving labor unions real power for the first time since it introduced market forces in the 1980's.

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.

The proposed rules are being considered after the Chinese Communist Party endorsed a new doctrine that will put greater emphasis on tackling the severe side effects of the country's remarkable growth.

Whether the foreign corporations will follow through on their warnings is unclear because of the many advantages of being in China — even with restrictions and higher costs that may stem from the new law. It could go into effect as early as next May.

It would apply to all companies in China, but its emphasis is on foreign-owned companies and the suppliers to those companies.

The conflict with the foreign corporations is significant partly because it comes at a time when labor, energy and land costs are rising in this country, all indications that doing business in China is likely to get much more expensive in the coming years.

But it is not clear how effectively such a new labor law would be carried out through this vast land because local officials have tended to ignore directives from the central government or seek ways around them.

China's economy has become one of the most robust in the world since the emphasis on free markets in the 80's encouraged millions of young workers to labor for low wages at companies that made cheap exports. As a result, foreign investment has poured into China.

Some of the world's big companies have expressed concern that the new rules would revive some aspects of socialism and borrow too heavily from labor laws in union-friendly countries like France and Germany.

The Chinese government proposal, for example, would make it more difficult to lay off workers, a condition that some companies contend would be so onerous that they might slow their investments in China.

"This is really two steps backward after three steps forward," said Kenneth Tung, Asia-Pacific director of legal affairs at the [Goodyear Tire and Rubber Company](#) in Hong Kong and a legal adviser to the American Chamber of Commerce here.

The proposed law is being debated after [Wal-Mart Stores](#), the world's biggest retailer, was forced to accept unions in its Chinese outlets.

State-controlled unions here have not wielded much power in the past, but after years of reports of worker abuse, the government seems determined to give its union new powers to negotiate worker contracts, safety protection and workplace ground rules.

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 [Nike](#) — against labor activists and the All-China Federation of Trade Unions, the Communist Party's official union organization.

The workers' advocates say that the proposed labor rules — and more important, enforcement powers — are long overdue, and they accuse the American businesses of favoring a system that has led to widespread labor abuse.

On Friday, Global Labor Strategies, a group that supports labor rights policies, is expected to release a report in New York and Boston denouncing American corporations for opposing legislation that would give Chinese workers stronger rights.

"You have big corporations opposing basically modest reforms," said Tim Costello, an official of the group and a longtime labor union advocate. "This flies in the face of the idea that globalization and corporations will raise standards around the world."

China's Labor Ministry declined to comment Thursday, saying the law is still in the drafting stages. Several American corporations also declined to comment on the case, saying it was a delicate matter and referring calls to the American Chamber of Commerce.

But Andreas Lauffs, a Hong Kong-based lawyer who runs the China employment-law practice at the international law firm of Baker & McKenzie, said some American companies considered the proposed rules too costly and restrictive.

Mr. Lauffs said the new rules would give unions collective-bargaining power and control over certain factory rules, and they would also make it difficult to fire employees for poor performance.

"You could hire a sales manager, give him a quota and he doesn't sell anything, and you couldn't get rid of him," Mr. Lauffs said. "It's not easy to get rid of someone now, but under these rules it would be impossible."

It is not clear what the final law will look like, and only an updated draft is expected soon. But specialists say the trend suggests that there may be new challenges ahead for foreign companies doing business in this country.

Under China's "iron rice bowl" system of the 1950's and 60's, all workers were protected by the government or by state-owned companies, which often supplied housing and local health coverage.

But by the 1980's, when the old Maoist model had given way to economic restructuring and the beginning of an emphasis on market forces, China began eliminating many of those protections — giving rise to mass layoffs, unemployment, huge gaps in income and pervasive labor abuse.

The worst off have been migrant workers, most of them exiles from the poorest provinces who travel far from home to live in cramped company dormitories while working long hours under poor conditions.

Migrant workers in virtually every city complain about abuses like having their pay withheld or being forced to work without a contract.

“I don't know about the labor law,” said Zhang Yin, an 18-year-old migrant who washes dishes in Shanghai. “During the three months I've been here, my boss has delayed the salary payment twice. I want to quit.”

Having grown increasingly concerned about the nation's widening income gap and fearing social unrest, officials in Beijing now seem determined to improve worker protection. In recent years, more and more factory workers have gone to court or taken to the streets to protest poor working conditions and overdue pay.

“The government is concerned because social turmoil can happen at any moment,” says Liu Cheng, a professor of law at Shanghai Normal University and an adviser to the authorities on drafting the proposed law. “The government stresses social stability, so it needs to solve existing problems in the society.”

In a surprisingly democratic move, China asked for public comment on the draft law last spring and received more than 190,000 responses, mostly from labor activists. The American Chamber of Commerce sent in a lengthy response with objections to the proposals. The European Chamber of Commerce also responded.

The law would impose heavy fines on companies that do not comply. And the state-controlled union — the only legal union in China — would gain greater power through new collective-bargaining rights or pursuing worker grievances and establishing work rules. One provision in the proposed law reads, “Labor unions or employee representatives have the right, following bargaining conducted on an equal basis, to execute with employers collective contracts on such matters as labor compensation, working hours, rest, leave, work safety and hygiene, insurance, benefits, etc.”

If approved and strictly enforced, specialists say the new laws would strikingly alter the country's vast labor market and significantly push up the wages of everyday workers.

“If you really abide by the Chinese labor laws,” said Anita Chan, an expert on labor issues in this country and a visiting fellow at the Australian National University, “migrant-worker wages would go up by 50 percent or more.”

Until now, though, existing Chinese labor laws have gone largely unenforced, which has further complicated the debate here. Opponents of the proposed law argue that enforcing existing labor laws would be enough to solve the country's nagging problems. Advocates respond that adopting new laws would set the stage for stricter enforcement.

Even lawyers working for multinational corporations seem to agree that there is an epidemic of cheating.

Mr. Liu, the Shanghai lawyer who advised the government on the draft proposal, says many companies avoid existing laws by using employment agencies to hire workers. He says the new law will do more to protect workers from such abuse by holding companies accountable.

“The principle is not to raise the labor standard dramatically,” he said, “but to raise the cost of violating the law. The current labor law is a paper tiger and is a disadvantage to those who obey it. If you don’t obey the law, you won’t be punished.”

[Copyright 2006 The New York Times Company](#)

[Privacy Policy](#) | [Search](#) | [Corrections](#) | [RSS](#) | [First Look](#) | [Help](#) | [Contact Us](#) | [Work for Us](#) | [Site Map](#)
