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WHAT IMPACT WILL THE REVISED TRADE UNION LAW OF CHINA HAVE ON FOREIGN BUSINESS?

Zana Z. Bugaighis†

Abstract: Cheap labor. Minimal regulations. Bribeable officials. Foreign corporations attracted to China because of its low cost of business have avoided the unionization desired by the Chinese Communist Party (“CCP”) despite China’s history of weak trade union laws and inconsistent enforcement of union mandates. However, recent concerns of social unrest have forced the CCP to consider reforming the political tools used to control Chinese society. The CCP wants to create social stability, avoid independent unionization, and prevent the westernization of China. Foreign Investment Enterprises (“FIEs”) present new challenges for labor market regulation in China with their large number of non-unionized workers revolting at poor working conditions, as well as FIEs’ importation of western values. The Trade Union Law amendment of 2001 affords the All-China Federation of Trade Unions (“ACFTU”) more avenues of enforcement through which to force FIEs to unionize and obliges the ACFTU to become a greater presence in private enterprises—especially FIEs. Moreover, the proposed (draft) Labor Contract Law provides the ACFTU with greater oversight power through which to monitor the actions of FIEs and Chinese workers.

The new regulatory environment providing greater legal authority to the ACFTU does not need to cause foreign enterprises to withdraw from China out of fear of increased unionization or further legislation. The ACFTU and CCP value harmonious relationships over striking workers and value foreign business. Moreover, unionization will help consolidate workers under the socialist regime of the CCP, creating a more stable society and working environment in China, which ultimately will benefit FIEs. China’s battle with FIEs to increase unionization is being waged by the CCP in order to enable the CCP to control the Chinese workforce and minimize outside influence, not in order to impose stricter conditions on foreign investment and take control over foreign business from enterprise management.

I. INTRODUCTION

Recently, China’s push for unionization of Foreign Investment Enterprises (“FIEs”) has become big news due to the country’s unionization of mega-store Wal-Mart’s Chinese workforce.1 Wal-Mart, staunchly anti-union in the U.S., conceded suddenly to unionization requests by the All-China Federation of Trade Unions (“ACFTU”)2 after a fight lasting more than two years.3 Most interesting in this story, and explored in this

† The author would like to thank the journal editorial staff.
2 Id.
comment, are the reasons why Wal-Mart allowed unionization in its Chinese stores and the motivations and legislation behind the Chinese Communist Party’s (“CCP”) and ACFTU’s push to compel Wal-Mart to unionize.

For years, dwindling trade union membership has4 threatened the CCP’s control over increasingly agitated Chinese workers, allowing for an increasing number of strikes in China. FIEs’ increasing role in the Chinese economy, and their refusal to unionize, caused the CCP concern over possible westernization of the Chinese workforce inconsistent with socialist ideals. With large numbers of workers’ protests, widespread labor unrest, and increased independent organization, as well as a real fear of foreign influence, the CCP recognized the ability of the ACFTU to exert control over the troubled Chinese workforce.

The CCP is attempting to reassert control over Chinese workers by increasing unionization through a grant in the Trade Union Law of more enforcement and oversight power to the ACFTU and by creating further legislation in order to improve political relations with, and labor conditions for, workers. This move is meant to strengthen the power of the CCP through national unionization and to facilitate economic development through social stability in China’s new market economy. Spurred by the CCP, the ACFTU, China’s only legal trade union, is attempting to unionize the entire Chinese workforce, with a goal of unionizing eighty percent of FIEs by the end of 2007.

4 IHLO.org, ACFTU and Trade Unions: Some Thoughts on the 2006 ACFTU Year Plan, http://www.ihlo.org/LRC/ACFTU/000306.htm (last visited Nov. 28, 2006) (“In the wake of the massive SOE restructuring, the ACFTU lost several million members and a significant proportion of its income.”). [hereinafter Some Thoughts on the 2006 ACFTU Year Plan].
7 Some Thoughts on the 2006 ACFTU Year Plan, supra note 4.
8 See A Little Solidarity, supra note 5.
11 See infra Part III-IV.
12 See infra Part IV.
Although recent legislative changes and proposed legislation show that the CCP is giving the ACFTU oversight over enterprise management and worker relations, as well as more avenues through which to hold employers accountable,15 these changes do not need to cause FIEs to reconsider doing business in China. In re-regulating the ACFTU, the CCP is providing trade unions with multiple masters16—stressing harmony, productivity, and encouraging foreign business. Moreover, the CCP is aligning ACFTU leadership more firmly with its own, indicating that the needs of the CCP, and not those of the worker, will control the actions of the trade unions.17 Finally, the social stability sought by the CCP will benefit enterprise management by providing workers with greater allegiance to CCP mandates—creating fewer strikes and slow downs.18

Part II of this comment looks at the political, economic, and market conditions in modern day China that have caused the CCP to push for greater unionization in the hope of attaining social stability. Factors examined include China’s move from a planned economy to a socialist market economy, the effect of unemployment and dissatisfied workers, the rise of FIEs, the decrease in union membership, and the effect of lost union dues on the ACFTU and CCP. Part III discusses what the recent legislative changes made by the CCP reveal about the party’s political and economic objectives for China and its workforce, as well as what consequences this might have on foreign business. This section highlights the changes made in both the 199219 and 200120 amendments to the Trade Union Law of China and the proposed legislation of the (draft) Labor Contract Law,21 detailing the increased worker protection available and the barriers that make it difficult for the ACFTU to be an effective advocate for Chinese workers. Part IV looks at what role the CCP has provided for itself in its re-regulation of the ACFTU. Finally, Part V proposes that FIEs do not need to look unfavorably on this new regulatory environment and can continue to engage in profitable business in China.

15 See infra Part III.
16 See infra Part III.
17 See infra Part IV-V.
18 See infra Part IV-V.
20 Trade Union Law, supra note 9.
21 (draft) Labor Contract Law, supra note 10.
II. **Government Re-regulation of Trade Unions Was Prompted by the CCP’s Loss of Control over the Chinese Workforce Due to Low Levels of Unionization**

Massive unemployment and few worker protections led to worker strikes and protests that compelled the CCP to provide more power to the ACFTU in order to guarantee implementation of its policies and regain control over the Chinese workforce. The shift from a planned economy to a socialist market economy in China caused many State-Owned Enterprises (“SOEs”) to close, resulting in the loss of jobs and benefits for many state-employed workers. As unemployment soared and working conditions worsened, increasing worker strikes and attempts at independent unionization threatened social stability in China. With union membership on the decline due to the loss of SOE union members and the refusal of growing FIEs to allow Chinese workers to unionize, the CCP lost committees in enterprises, resulting in less control over Chinese workers. The CCP also subsequently lost funding formerly provided by union dues. In addition, FIEs’ increasing role in the Chinese economy created concerns of westernization, prompting the CCP to rely more on the ACFTU to deliver its socialist message to Chinese workers.

A. **The CCP Is Threatened by Dwindling Union Membership and a Loss of Control over Increasingly Agitated Workers**

China, as a socialist state, has a long history of trade unionism centralized in the ACFTU. All unions in China must be affiliated with the ACFTU, which is controlled by the CCP. The ACFTU officially dates

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23 Id.; A Little Solidarity, supra note 5.
26 Id.
27 A Little Solidarity, supra note 5.
28 Id.
29 Some Thoughts on the 2006 ACFTU Year Plan, supra note 4.
31 Mary Elizabeth Gallagher, Contagious Capitalism: Globalization and the Politics of Labor in China 82 (2005). Though it is extremely important to the view the changing role of the trade unions in context, the history of the movement has been detailed extensively elsewhere and only background essential to understanding this comment is noted here.
32 Trade Union Law, supra note 9, art. 10.
back to May 1, 1925, and operates under the principle of “democratic centralism,” with each union branch deferring to higher levels in the union hierarchy. The ACFTU has a membership of 134 million, with thirty-one trade union federations of provinces, autonomous regions, and municipalities “directly under the Central Government” and ten industrial unions that are nationwide. The highest level of trade union authority is the National Congress of Trade Unions, which meets every five years. When the Congress is not in session, the Executive Committee of 267 members is the highest level of union authority. When the Executive Committee is not in session, the Presidium of thirty-nine members holds the highest level of power. Lastly, the Secretariat, consisting of a first secretary and members elected from the members of the Presidium, takes care of routine work for the ACFTU. Although the ACFTU is defined as independent, the ACFTU governing members are closely aligned with the CCP. Unions are financed by membership dues that include a mandatory contribution fee of two percent of the monthly payroll of all employees and staff members paid by the unionized enterprises, dues from trade union members’ own paychecks, and subsidies provided by the CCP.

In the 1950s and 1960s, Chinese workers under China’s “iron rice bowl” system were provided jobs by local labor bureaus and were furnished housing and health coverage by the Chinese government or SOEs. During this time, trade unions did not act on behalf of Chinese workers. Instead, at their best, the unions acted as mediators between workers and management. Labor turnover was minimal due to the labor protections provided by the CCP. SOEs and collective enterprises participated as “mini welfare states.” with trade unions influencing the

33 A Little Solidarity, supra note 5; NG SEK HONG & MALCOLM WARNER, CHINA’S TRADE UNIONS AND MANAGEMENT 86 (1998).
34 TRADE UNIONS OF THE WORLD 6th, supra note 22, at 67.
35 Trade Union Law, supra note 9, arts. 9, 11.
37 Id.
38 Id.
39 Id.
40 Id.
41 Trade Union Law, supra note 9, art. 4.
42 See TRADE UNIONS OF THE WORLD 6th, supra note 22, at 69.
43 Trade Union Law, supra note 9, art. 42.
45 Barboza, supra note 25.
46 A Little Solidarity, supra note 5.
47 Id.
distribution of social services that the enterprises provided to workers.\textsuperscript{49} Nearly all workers in SOEs continue to be trade union members.\textsuperscript{50}

China’s transition from a planned economy to a market economy in the 1970s led to changes in industrial relations bringing about rapid development of the private sector\textsuperscript{51} and the eventual closure of a large number of SOEs.\textsuperscript{52} This move also meant an end to China’s lifelong employment system, resulting in “mass layoffs, unemployment, huge gaps in income and pervasive labor abuse.”\textsuperscript{53} Many rural laborers traveled to industrialized areas\textsuperscript{54} where China’s emphasis on free markets encouraged workers to labor for low and often unpaid wages.\textsuperscript{55} Foreign investment rose in tandem with these increasing labor abuses.\textsuperscript{56}

Closures of SOEs, due to unprofitability and China’s massive unemployment problem coupled with social unrest, forced the CCP to re-examine the role of the ACFTU in creating job security and worker confidence.\textsuperscript{57} A 1993 survey of SOE workers revealed that 46.5 percent believed that “the union doesn’t play a large role.”\textsuperscript{58} Moreover, workers reported no confidence in trade unions, as they were considered “part of the administration.”\textsuperscript{59}

In the 1990s, SOEs employed over 110 million workers (with almost complete unionization) and were “heavily subsidized, overmanned and often loss-making,”\textsuperscript{60} which soon lead to forced closures and subsequent mass unemployment.\textsuperscript{61} The Tiananmen Square protest in June 1989 quelled the rising independent trade movement that attempted to re-establish protections for workers.\textsuperscript{62} It also forced the CCP to re-examine the ACFTU and trade unions’ roles in maintaining social stability.\textsuperscript{63} The process of eliminating

\textsuperscript{49} \textit{Trade Unions of the World} 6th, supra note 22, at 68.
\textsuperscript{50} Id. at 69.
\textsuperscript{51} \textit{Amendment Empowers}, supra note 24.
\textsuperscript{52} \textit{Trade Unions of the World} 6th, supra note 22, at 67.
\textsuperscript{53} Barboza, supra note 25.
\textsuperscript{54} \textit{Trade Unions of the World} 6th, supra note 22, at 67.
\textsuperscript{56} See Barboza, supra note 25.
\textsuperscript{57} Howell, supra note 6, at 8 nn.6-8.
\textsuperscript{58} Gallagher, supra note 31, at 188 n.70 (citing “A Report on the Status of the National Working Class,” (guanyu quanguo gongren jieji duiwu zhuankuang de diaocha baogao) Trade Union Work Report (gonghui gongzuo tongxun) 31 (1993)).
\textsuperscript{59} Id.
\textsuperscript{60} Ng Sek Hong & Malcolm Warner, \textit{China’s Trade Unions and Management} 80 (1998).
\textsuperscript{61} \textit{Trade Unions of the World} 6th, supra note 22, at 67.
\textsuperscript{62} Howell, supra note 62, at 10.
inefficient and unprofitable SOEs was slowed in China due to the impact these closures had on social welfare, unemployment, and consequent social instability.64 Most SOEs in China have been, or are now becoming, privatized, and foreign investment in SOEs is encouraged in order to increase profitability and limit closures.65 Today in China there are between 80 and 120 million unemployed workers, including those formerly employed by SOEs.66

Numerous violations of workers’ rights and the growing number of strikes67 negatively impacted social stability and economic development in China,68 making the CCP fear loss of control over the Chinese workforce and loss of foreign investment.69 The CCP resolved to mute any attempts at independent unionization and to regain control of social stability through increased unionization via the unitary operation of ACFTU.70

B. FIEs’ Increasing Role in the Chinese Economy Creates Concerns of Westernization for the CCP as Well as a Loss of Financing for the CCP and ACFTU Through Lost Union Dues

With union membership down, the CCP’s control over workers was weakened, permitting the infiltration of western values71 and creating instability that had the potential to affect foreign investment.72 As the number of SOEs declined, the private sector and FIEs contributed to the country’s success73 without much unionization74; indeed, FIEs often refused to permit unionization at all.75 FIEs’ refusal to sanction unions and pay the two percent wage contribution to the ACFTU weakened the latter’s political and financial strength.76 By 1999, union membership fell to 87 million, down from 104 million in 1995, leaving the CCP anxious for change.77

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64 Id.
65 Id.
66 Id.
67 A Little Solidarity, supra note 5.
68 Amendment Empowers, supra note 24.
69 Howell, supra note 62, at 24.
71 Some Thoughts on the 2006 ACFTU Year Plan, supra note 4.
72 A Little Solidarity, supra note 5.
73 Amendment Empowers, supra note 24.
74 GALLAGHER, supra note 31, at 85 (Before 1994, unionization at foreign firms was less than ten percent despite regulations that called for their unionization).
75 Howell, supra note 62, at 10.
76 Id.
77 A Little Solidarity, supra note 5.
With the number of workers employed in FIEs on the rise, the CCP placed its goal of creating a unionized socialist workforce over its fear of losing foreign business—despite the evident importance of foreign business in China’s economy. From January to December 2006, imports and exports of foreign-invested enterprises totaled US $1036.451 billion, accounting for 58.18 percent of China’s total imports and exports. In 2000, FIEs employed just over three million workers. By March of 2006, the ACFTU stated that twenty million Chinese workers were employed in FIEs and that this number was growing quickly. That month the ACFTU launched a campaign to set up trade union branches in FIEs carrying out business in China. In some instances, the ACFTU acted by forcing the establishment of basic level unions in FIEs, an action that prior to the 2001 amendment was a fundamental violation of the trade union law. This forced establishment was due in part to FIEs’ unwillingness to unionize, and partially to a lack of worker interest in establishing unions themselves. However, in order for the ACFTU to reach its goal of unionization in the face of these obstacles, the CCP has been uncharacteristically willing to overtly interfere in order to encourage unionization. At the Fourteenth National Congress of the ACFTU, ACFTU Vice Chairman Zhang Junjiu stated, “the Western hostile forces have never halted in Westernizing and dividing us. They attempted to make use of the conflicts between social interests and labor relations, to damage the unity between working class and trade union.” The ACFTU’s agenda to unionize more workers, especially

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83 Some Thoughts on the 2006 ACFTU Year Plan, supra note 4.
84 Trade Union Law, supra note 9, art. 2 (Trade unions are mass organizations of the working class formed by the workers and staff members on a voluntary basis).
85 Id.
86 See infra Part V.B.1.
87 Some Thoughts on the 2006 ACFTU Year Plan, supra note 4.
those in FIEs, is motivated by this presumption and by the hope that a socialist message will create a more stable workforce.  

III. RECENT LEGISLATIVE CHANGES SHOW THAT THE CCP INTENDED THE TRADE UNION LAW AND DRAFT LABOR CONTRACT LAW TO PROVIDE MORE PROTECTIONS TO WORKERS WITHOUT UNDULY RESTRICTING BUSINESS

The Trade Union Law amendment and the (draft) Labor Contract Law grant more enforcement and oversight power to the ACFTU over all enterprises in China without taking too much control over business from enterprise management. The Trade Union law provides competing masters for the ACFTU—requiring trade unions to protect workers’ rights while remaining loyal to the CCP’s objectives and encouraging business. Although trade unions are granted more influence over worker disputes, and greater authority with which to handle these claims, the ACFTU is not meant to be antagonistic towards enterprise management. Instead, the CCP values harmonious relations between workers and enterprise in order to further the CCP objectives of social stability and a healthy economy.

A. The 1992 Amendment to the Chinese Trade Union Law Laid the Foundation for Change Actualized in the 2001 Amendment

In 1992, a new Trade Union Law replaced the antiquated Trade Union Law of 1950. The 1992 Trade Union Law defined ACFTU’s role as an “instrument of official policy” and confirmed the ACFTU’s presence as the sole trade union organization of China. This 1992 amendment was the beginning of the CCP’s push to unionize FIEs through formal legal

88 Some Thoughts on the 2006 ACFTU Year Plan, supra note 4 (“The [ACFTU’s] work-plan for 2006 contains four main sections[:] [t]o improve the quality of the workforce[,] [t]o build a better system under the ACFTU to protect workers’ rights[,] [t]o enhance union-organizing in private enterprises[,] and [t]o promote the rights of migrant workers.”).
89 See infra Part III-A-D.
90 See infra Part III-IV.
91 See infra Part III A-D.
93 Trade Union Law 1992, supra note 19.
measures. The 1992 amendment lowered the threshold number of workers requesting unionization that was required in order to unionize an enterprise from two hundred to twenty-five, giving the ACFTU access to more sectors of the workforce.\footnote{Trade Union Law 1992, supra note 19, art. 12; TRADE UNIONS OF THE WORLD 5th, supra note 95, at 65.} In 1991, only twenty percent of workers in FIEs were unionized compared to the ninety percent of workers unionized in SOEs.\footnote{TRADE UNIONS OF THE WORLD 5th, supra note 60, at 65.} In February 1994, the ACFTU campaigned to raise membership, successfully unionizing thirty-one percent of workers in FIEs and twelve percent in privately owned domestic enterprises by the end of the 1990s.\footnote{id.}

\section*{B. Changes in the 2001 Amendment Create More Oversight and Enforcement Power for the ACFTU in Order to Allow the CCP More Control Over the Chinese Workforce}

The major changes in the 2001 amendment to the Trade Union Law show that the motivation behind the amendment came from a desire for trade unions to play a more active role in helping the CCP control workers and maintain social stability.\footnote{See infra Part III.B-IV.} The amendment increased ACFTU oversight of enterprise management and created more avenues by which to legally pursue employers involved in labor abuses and obstructing unionization.\footnote{See infra Part III.B-III.D.} After enacting the 2001 Trade Union Law amendment, the ACFTU increased trade union membership to 134 million in 2002, compared with 91.31 million in 1997.\footnote{Trade Unions Outline Priorities for Next Five Years, PEOPLE’S DAILY, Sep. 23, 2003, available at http://english.peopledaily.com.cn/200309/22/eng20030922_124703.shtml.} Local-level grassroots union organizations also gained members, reaching 1,713,000 members in 2002, compared with just 510,000 five years before.\footnote{Id.}

\subsection*{1. The 2001 Trade Union Law Amendment Does Not Provide Workers the Right to Strike and Requires Unions to Encourage and Protect Business}

The current Trade Union Law, last amended in 2001, does not expressly allow worker strikes, and requires the minimization of any interruption in production.\footnote{Trade Union Law, supra note 9, art. 27.} FIEs should not prematurely worry that trade unions will create unnecessary hurdles to management negotiations with
workers as the Trade Union Law also requires the ACFTU to work with enterprise management to encourage business.\textsuperscript{104}

The 1982 PRC Constitution, currently in force, does not expressly include the right to strike,\textsuperscript{105} and this right was not included in the Trade Union Law amendment in 2001.\textsuperscript{106} Instead, a union has the duty to protect the work unit’s normal production and work order.\textsuperscript{107} One provision of the Trade Union Law makes it possible for employees to take concerted action in the form of a stoppage or slowdown of work in order to pressure the enterprise to accept reasonable demands.\textsuperscript{108} Trade unions are required to represent workers with regard to workers’ reasonable demands toward the working enterprise.\textsuperscript{109} The enterprise then \textit{shall try} to accept the employees’ demands if they are reasonable.\textsuperscript{110} Noting that what constitutes a reasonable demand is unclear,\textsuperscript{111} William L. Keller and Timothy J. Darby also observe that it seems legal for employers to terminate striking employees for “‘engaging in disturbances which disrupt production, work or public order’ without good cause (such as opposition to dangerous working conditions)” even with trade union assistance.\textsuperscript{112} These provisions, while offering some option of concerted action, seem to negate any real protection by allowing enterprises to act in a retaliatory manner. In fact, despite the requirement that trade unions present worker demands, Article 27 does not expressly sanction slowdowns or stoppages.\textsuperscript{113} Instead, the article provides trade unions with a role in assisting enterprises in restoring production as soon as possible should such a situation occur.\textsuperscript{114}

2. \textit{The Trade Union Law Amendment Does Not Clarify the ACFTU’s Conflicting Objectives to Protect Workers’ Rights While Encouraging Business and Remaining Loyal to the CCP and the PRC as a Whole}

The current Trade Union Law attempts to more adequately address the needs of workers than previous versions of the law, but falls short of

\begin{itemize}
\item \textsuperscript{104} See infra Part III.B.1-IV.
\item \textsuperscript{106} Trade Union Law, supra note 9.
\item \textsuperscript{107} Id.; Keller & Darby, supra note 63, at 31-27.
\item \textsuperscript{108} Trade Union Law, supra note 9, art. 27.
\item \textsuperscript{109} Id. (emphasis added).
\item \textsuperscript{110} Id.; Keller & Darby, supra note 63, at 31-28.
\item \textsuperscript{111} Id. (citing Regulations on Rewards and Punishments for Enterprise Workers and Staff Members, effective April 10, 1982, art. 11 (sections 1 and 2)).
\item \textsuperscript{112} Id. (emphasis added).
\item \textsuperscript{113} Id. (emphasis added).
\item \textsuperscript{114} Id.
\end{itemize}
requiring unions to represent only the interests of workers.\textsuperscript{115} The 2001 amendment to the Trade Union Law states, “the basic duties and functions of trade unions are to safeguard the legitimate rights and interests of workers.”\textsuperscript{116} Article 2 also adds a clause stating that the ACFTU represents the workers and staff members and guards their legitimate rights.\textsuperscript{117} Article 6 of the Trade Union Law specifies methods such as equal consultation and collective contracts through which trade unions should achieve their goal of worker representation.\textsuperscript{118} Although the 2001 Amendment emphasizes the protection of Chinese workers, unions are also required to protect the interests of the CCP and enterprises.\textsuperscript{119}

Conflicting provisions in the Trade Union Law thwart any drastic change for workers or FIEs by requiring unions to protect business development and CCP objectives. Trade unions are charged with taking “economic development as the central task,” necessitating compromising with foreign enterprises and responding to dictates by the CCP.\textsuperscript{120} The CCP’s policy of encouraging foreign business is evidenced in Article 37, which states that trade union committees in FIEs “shall, in accordance with the provisions of laws, organize the participation of the workers and staff members in democratic management of the enterprises and institutions by ways appropriate to the enterprises or institutions.”\textsuperscript{121} Also, in the same article that charges trade unions with promoting economic development, unions are newly required to “uphold the socialist road, the people’s democratic dictatorship, leadership by the Communist Party of China, and Marxist-Leninism, Mao Zedong Thought, and Deng Xiaoping Theory.”\textsuperscript{122} Recently, in April of 2006, the ACFTU mounted a nationwide movement to “foster harmony between labor and management.”\textsuperscript{123} These actions and provisions require the ACFTU’s adherence to the mandates of the CCP and the ACFTU’s encouragement of business in line with any economic policy so promulgated.

\begin{thebibliography}{9}
\item \textsuperscript{115} See infra Part III.B.2-IV.
\item \textsuperscript{116} Id. art. 6.
\item \textsuperscript{117} Id. art. 2.
\item \textsuperscript{118} GALLAGHER, supra note 31, at 199 n.72 (citing Trade Union Law, supra note 9, art. 6 and Mary E. Gallagher \& Junlu Jiang, China’s Labor Legislation, CHINESE L. & GOV’T 35:6 (2002)).
\item \textsuperscript{119} See infra Part III.B.2-IV.
\item \textsuperscript{120} Trade Union Law, supra note 9, art. 4.
\item \textsuperscript{121} Id. art. 37 (emphasis added).
\item \textsuperscript{122} Id. art. 4.
\end{thebibliography}
3. The 2001 Amendment Provides More Enforcement and Oversight Power to the ACFTU over All Enterprises in China

The biggest change made by the 2001 amendment to the Trade Union Law was the addition of a final chapter entitled “Legal Responsibility,” which gives more enforcement and oversight power to trade unions should they choose to use it. In Article 19, instead of stating that a trade union has the right to “advance its opinion,” the Article now allows the trade union to “demand rectification” for acts in violation of Chinese law. This chapter also gives the ACFTU the power to bring a matter before the government or an action before a court if a worker’s rights are infringed upon. By creating multiple avenues of enforcement the CCP hopes to show enterprises that China is serious about unionization and encourage trade unions to more effectively advocate for Chinese workers.

These provisions also come with a new twist: enterprises may not stop trade union officials from organizing their workers. The Trade Union Law specifically states that “trade unions are mass organizations of the working class formed by the workers and staff members on a voluntary basis.” Under the 2001 Revision, however, Article 10 was changed from “a basic-level trade union committee may be set up in an enterprise” to “a basic-level trade union committee shall be set up in an enterprise.” Moreover, inserted in Article 11 is the right of trade union organizations at higher levels to “dispatch their members to assist and guide the workers and staff members of enterprises to set up their trade unions, no units or individuals may obstruct the effort.” This mandate of non-interference in organization was also added to Article 3 of the Trade Union Law, signifying that the CCP intends to rely on the trade unions, not workers or FIEs, to initiate organization. In fact, the chapter also threatens criminal prosecution for those attempting to obstruct workers and staff members “from joining or organizing of trade unions in accordance with law or the effort made by trade unions at higher levels to assist and guide the workers and staff members in establishing trade unions,” if “such means as violence

124 Trade Union Law, supra note 1, ch. VI.
125 Trade Union Law 1992, supra note 19, art. 19.
126 Trade Union Law, supra note 1, art. 19.
127 Id. arts. 20 (trade unions have the ability to take an action as far as the People’s Court if they are not satisfied with an arbitration ruling), 22 (primary ways rights are infringed upon), 49.
128 Id. art. 2.
129 Id. art. 10.
130 Id. art. 11.
131 Id. art. 3.
and threat in obstruction” are used. All other obstructions are referred to “the administrative department of labor to make rectification.” Foreign enterprises resisting unionization will now find themselves violating the Trade Union Law and will find the ACFTU better equipped to enforce the law’s provisions that ban the obstruction of unions.

To aid in the ACFTU’s attempt to add and retain trade union members, the CCP also created the right of the membership of a dissolved trade union to be retained by the ACFTU. Further, organizations or individuals cannot dissolve or merge trade unions at will. In this way enterprise closure does not cause a drastic decrease in trade union membership and a resulting loss of control by the CCP over workers. Finally, the former language of the 1992 Trade Union Law limited many articles to “trade unions in enterprises and institutions owned by the whole people or by the collective.” The new law makes no such distinction and expands its reach to all enterprises in China, not just SOEs.

C. The 2003 Constitution of Trade Unions Supports the 2001 Trade Union Law Amendment’s Aim

The Fourteenth National Congress of Trade Unions adopted an amendment to China’s 1998 Constitution of Trade Unions in 2003. The amendment stipulated for the first time that protection of trade union members’ rights is the “most important task of trade unions,” whereas before such protection was considered a “non-binding social function.”

The changes made in the 2003 amendment to the Constitution of Trade Unions are similar to the changes in the 2001 amendment to the Trade Union Law.
Union Law.\textsuperscript{140} The amendment to the Constitution of Trade Unions “was designed to make it possible for trade unions to play a greater role in improving industrial relations through protecting union members’ rights, thus facilitating social stability and economic development.”\textsuperscript{141} However, just like the 2001 amendment to the Trade Union Law, the Constitution seems to put more emphasis on improving industrial relations and economic development than protecting workers’ rights.\textsuperscript{142} The 2003 Amendment to the Trade Union Constitution further follows the 2001 amendment by requiring the ACFTU to protect union members’ rights without confrontation with employers.\textsuperscript{143}

Chinese trade unions benefit members by allowing workers to demand that trade unions give them protection “when their legitimate rights and interests are infringed upon.”\textsuperscript{144} However, the Constitution of Trade Unions also requires numerous duties of trade union members that are in line with the wishes of enterprise management and the CCP. These include making “great efforts to fulfill production and work assignments,” abiding “by the Constitution and laws,” upholding “social morality and professional ethics,” and observing “labour discipline.”\textsuperscript{145} Members must also “handle properly the relations among the interests of the state, the collective and individuals, and combat all conducts harmful to the interests of the state and society.”\textsuperscript{146} The Chinese socialist method works to teach workers to “accept their role as loyal employees.”\textsuperscript{147} These goals provide trade union members with masters similar to those of the trade unions themselves and encourage members to put the needs of the PRC before their individual demands.

The Constitution of Trade Unions requires trade unions to respect the development of business and to adhere to the values of the CCP. Article 28 states that “trade unions in foreign-funded enterprises and private enterprises shall . . . respect the legitimate rights and interests of the investors to seek for the development of the enterprises jointly.”\textsuperscript{148} The amended Constitution of Trade Unions also adopted the “Three Represents” as one of the ACFTU’s

\begin{itemize}
  \item \textsuperscript{140} Amendment Empowers, supra note 24.
  \item \textsuperscript{141} Id. (“Cited reasons for the changes included the delay of payment in wages for urban workers by employers across China in 2000, and for migrant workers as well as worker safety in private or overseas-funded plants.”).
  \item \textsuperscript{142} Id.
  \item \textsuperscript{143} Id.
  \item \textsuperscript{144} Constitution of Trade Unions art. 3 (adopted by the Nat’l Cong. of the Chinese Trade Unions, Oct. 24, 1998), translated at http://www.acftu.org.cn/constitu.htm (P.R.C).
  \item \textsuperscript{145} Id. art. 4.
  \item \textsuperscript{146} Id.
  \item \textsuperscript{147} GALLAGHER, supra note 31, at 92.
  \item \textsuperscript{148} Id. art. 28.
\end{itemize}
guidelines in operation, aligning itself further with the Socialist state and away from the westernization feared by the CCP. The “Three Represents” is the CCP’s oath to always stand for “the development trend of China’s advanced social productive forces, the orientation of China’s advanced culture, and the fundamental interests of the overwhelming majority of the people in China.” In this way, the interests of the CCP and ACFTU are furthered aligned in delivering a socialist message to the Chinese workforce.

D. The Draft Labor Contract Law, in Its Current Form, Provides Needed Protections for Workers Without Unduly Restricting Enterprise Management

China plans to adopt some form of the (draft) Labor Contract Law of China, which would allow unions more say in FIE management and reinforce the power given to the ACFTU in the 2001 Trade Union Law amendment. In the (draft) Labor Contract Law the CCP grants the ACFTU the authority to assist employees in the signing and performance of labor contracts. Article 5 of the law requires that any regulations or policies made by an employer that are directly related to the vital interests of employees shall be adopted through the trade union, workers’ congress, or workers’ representative assembly or by equal negotiation. These additions, taken together with the admonition that any regulations directly related to the vital interests of employees adopted by employers unilaterally shall be null and void, have caused concern in FIEs. The proposed law would also make laying off workers more difficult for companies, requiring

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150 Some Thoughts on the 2006 ACFTU Year Plan, supra note 4.
151 Id.
152 (draft) Labor Contract Law, supra note 10.
153 A Little Solidarity, supra note 5.
154 Compare (draft) Labor Contract Law, supra note 10, art. 35 (requiring an employer to notify the trade union before its rescission of any Labor Contract and “[t]he trade union shall have the right to give opinion if it considers the Employer’s decision is improper and require that the Employer correct its violation of any laws, regulations or the provisions of the Labor Contract.”), with Trade Union Law, supra note 9, art. 21 (requiring employers to “inform the trade union of the reasons [for dissolving the labor contract with an employee prior to the employers’ unilateral decision]; and, if the trade union considers that the enterprise violates laws, regulations or the contract in question and demands that it reconsider the matter, the enterprise shall study the opinion of the trade union, and inform the trade union of its final decision in writing.”).
155 (draft) Labor Contract Law, supra note 10, art. 7; Trade Union Law, supra note 9, arts. 6, 20 (also permit trade unions to assist in creating collective contracts); Barboza, supra note 25.
156 (draft) Labor Contract Law, supra note 10.
157 (draft) Labor Contract Law, supra note 10, art. 51.
many decisions that affect Chinese workers to be first approved by trade unions.\footnote{158}{(draft) Labor Contract Law, supra note 10, ch. IV. (draft) Labor Contract Law art. 33 states:

“In the event of any major change in the objective circumstances under which the Labor Contract was made has rendered such Contract incapable of being carried out, causing a need of laying off over fifty (50) employees by the Employer, the Employer shall be responsible for explaining the situation to the trade union or all its staffs in order to reach an agreement with the trade union or the workers’ representatives through negotiation. When laying off employees, the Employer shall offer on a preferential basis to keep employees who have been maintaining a relatively longer term of service with the Employer under Labor Contracts which shall remain valid for a comparatively long fixed term or non-fixed term. After an Employer has laid off employees as provided in the clause above, a list of the detailed number and names of such unemployed shall be submitted to the local administrative authorities in charge of labor protection under the people’s governments at county level. If an Employer recruits new workers within six (6) months after a labor layoff, it shall recruit the former laid-off employees on a preferential basis.”."
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Although the Labor Contract Law would affect all enterprises in China, it is targeted at FIEs and their suppliers.\footnote{159}{Barboza, supra note 25.} The law imposes burdensome fines on enterprises that violate the new law.\footnote{160}{Id.; (draft) Labor Contract Law, supra note 10, arts. 54-55.} “The principle is not to raise the labor standard dramatically,” stated Mr. Liu, the Shanghai lawyer who advised the government on the draft proposal, “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.”\footnote{161}{Barboza, supra note 25.} However, the current Trade Union Law already threatens criminal liability in some instances\footnote{162}{Trade Union Law, supra note 9, art. 50.} for violation of its provisions without any drastic deterrent effect. Moreover, punishment for violations can only occur through enforcement of the law—enforcement that has in the past been weak at best.\footnote{163}{GALLAGHER, supra note 31, at 85.}

With some of the most contested provisions of the (draft) Labor Contract Law already in force and the likelihood of strict enforcement still low, FIEs should not be concerned with the amount of oversight power given to trade unions. Instead, increased yet modest protections should for now be looked on favorably as greater worker protection is likely to provide more content workers under the control of the CCP for FIEs.
The new regulatory scheme provides the CCP with close control over the ACFTU in order to deliver the CCP’s socialist message to Chinese workers

The ACFTU is afforded power by the Trade Union Law to affect legislation contemplated by the CCP. Conversely, the CCP is given the power to report administrative measures and important work programs to the ACFTU and correspondingly to the working class. An addition to Article 5 of the Trade Union Law in 2001 promulgated the rule that “trade unions shall assist the people’s governments in their work and safeguard the socialist State power under the people’s democratic dictatorship . . . .” In order to accomplish this goal, the ACFTU is tasked by the CCP with greater unionization of FIEs.

A. The CCP Hopes for Greater Control Through the ACFTU

The history of the ACFTU has been one of almost complete alignment with the CCP’s changing political needs. The ACFTU was designed by the CCP as “a ‘transmission-belt’ between the [CCP] and the ‘masses’.” As the majority of unionized SOEs were closed or privatized, and foreign enterprises grew, trade unions dropped from the workforce. This change deprived the CCP of “its own network of cells in workplaces” and deprived the CCP of a way to directly influence Chinese workers in the Party’s goal to create social stability, stop independent unionization, and prevent the westernization of China. Presently, the CCP is using the ACFTU as a political tool in order to become a greater presence in the growing force of foreign enterprise. The CCP’s grant of more enforcement and oversight power to the ACFTU will result in an increase in trade-union membership and, the CCP hopes, greater worker allegiance to

164 Trade Union Law, supra note 9, art. 33.
165 Id. art. 34.
166 Id. art. 5.
168 See HONG & WARNER, supra note 44, at 36-37, 86.
169 Ding et al., supra note 43, at 434.
171 Id. (“[E]ach [cell] once had both a union and a party committee. Even if newly established private enterprises employed party members, such people often neglected to organize cells and fell out of touch with the party itself.”).
172 Id. (“[E]ach [cell] once had both a union and a party committee. Even if newly established private enterprises employed party members, such people often neglected to organize cells and fell out of touch with the party itself.”).
173 CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, supra note 82, at 12.
174 TRADE UNIONS OF THE WORLD 5th, supra note 95, at 65.
175 See supra Part III.B.3; Trade Union Law, supra note 1, art. 10; See Howell, supra note 62, at 9.
the CCP’s political and economic goals.\textsuperscript{176} With increased unionization and new party cells in FIEs, the CCP will be able to better spread its socialist message to workers.

B. \textit{The Structure of the ACFTU Provides for Unity with the CCP}

In reformulating a role for the ACFTU, the CCP encourages trade unions to play a more active role in unionizing workers\textsuperscript{177} while also emphasizing the need for more CCP officers to play larger roles in the ACFTU.\textsuperscript{178} Although the ACFTU and its trade unions work “independently,”\textsuperscript{179} they must also work within the other limitations of the Trade Union Law, the Constitution of Trade Unions and the laws of China that are promulgated under the influence of, if not directly by, the CCP.\textsuperscript{180}

The ACFTU both represents the interests of workers to the CCP and, importantly, spreads CCP directives directly to Chinese workers.\textsuperscript{181} The ACFTU is provided with the power to give its opinions to government departments where its concerns are directly related to the immediate interests of workers and staff members.\textsuperscript{182} Conversely, Article 34 of the Trade Union Law states that the CCP may “inform the trade unions at the corresponding levels of their important work programs and administrative measures related to trade union work, analyze and settle the problems as reflected in the opinions and aspirations of the masses of the workers and staff members conveyed by trade unions.”\textsuperscript{183} In this way, the CCP is kept informed of the issues crucial to its workers and is provided the means to implement any social or political directives it deems necessary.

\textsuperscript{176} Howell, \textit{supra} note 6, at 8 n.8.


\textsuperscript{178} \textit{Trade Unions Urged to Protect Rights of Workers}, PEOPLE’S DAILY, Dec. 22, 2003, available at http://english.peopledaily.com.cn/200312/22/eng20031222_130947.shtml (“Trade Union President Wang Zhaoguo urged trade unions to protect the rights of working people, by increasing the number of union members and further consolidating unions under the leadership of the Communist Party of China.”). For example, Wang Zhaoguo is also a member of the Political Bureau of CCP Central Committee, and also vice-chairman of the Standing Committee of China’s National People’s Congress.

\textsuperscript{179} Trade Union Law, supra note 9, art. 4.

\textsuperscript{180} Keller & Darby, \textit{supra} note 63, at 31-20; Trade Union Law, \textit{supra} note 9, art. 4.

\textsuperscript{181} Howell, \textit{supra} note 62, at 10.

\textsuperscript{182} \textit{See} Trade Union Law, \textit{supra} note 9, art. 33.

\textsuperscript{183} \textit{Id.} art. 34.
V. FIEs CAN RESPOND TO THIS NEW REGULATORY ENVIRONMENT BY WORKING WITH THE ACFTU AND CCP TO UNIONIZE IN CHINA WITHOUT FEAR OF A GREAT LOSS OF CONTROL OVER WORKERS

FIEs do not need to back away from business in China solely out of premature fears due to increased unionization, legislation, or greater oversight of enterprise management by trade unions. The CCP and ACFTU value harmonious relationships above striking workers and wish to create a stable society and economy through unionization and greater worker protection.\(^\text{184}\)

A. WITH THE CCP CONTROLLING THE ACFTU AND CHINESE WORKERS, FIEs SHOULD FEEL CONFIDENT BUSINESS WILL NOT BE HARMED BY TRADE UNIONS

Companies in China, especially FIEs,\(^\text{185}\) are concerned about the CCP’s grant of enforcement and oversight power to the ACFTU.\(^\text{186}\) The inability to lay off workers without first notifying trade unions,\(^\text{187}\) as proposed in the (draft) Labor Contract Law, has caused FIEs to warn that such burdensome requirements may reduce their current investments and growth in China, especially with energy and land costs on the rise.\(^\text{188}\) However, what FIEs demand is unilateral authority to manage their companies, as opposed to negotiations in order to appease the demands of Chinese trade unions.\(^\text{189}\) The US-China Business Council, in response to the (draft) Labor Contract Law, 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 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. . . . [sic] Final authority

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\(^\text{186}\) Id.; A Little Solidarity, supra note 5.

\(^\text{187}\) (draft) Labor Contract Law, supra note 10, ch. IV.

\(^\text{188}\) Barboza, supra note 25.

and responsibility for company policies should rest in the hands of the employer.\textsuperscript{190}

FIEs concerned with the amount of oversight power given to trade unions by the (draft) Labor Contract Law should recognize the CCP’s new willingness to discuss legislation with foreign business as a sign that the CCP, and ACFTU, are willing to work with FIEs to do what is best for business.\textsuperscript{191} Additionally, enterprise managers often serve as trade union officials, and the “labor union chairman often is a member of management,” making negotiations with trade unions entirely feasible for FIE managers.\textsuperscript{192}

FIEs should also acknowledge the stated purpose of Chinese unions, to uphold the values of the CCP and create worker harmony, outweighs the costs of worker protections to business, before condemning the law for its business interference. Meanwhile, FIEs are fighting an image battle in the U.S. as labor rights activists denounce American corporations for their opposition to more rights for Chinese workers.\textsuperscript{193} For example, Global Labor Strategies issued a report detailing major U.S. companies’ opposition to minimum labor standards being offered by the CCP—standards still well below those available in America.\textsuperscript{194}

Even with increased power, Chinese trade unions will not have the ability to create great change for workers through strikes and worker representation, as do unions in western countries.\textsuperscript{195} The ACFTU is closely affiliated with the CCP and, as stated in the \textit{Economist}, “[f]or all its Marxist pretensions, the [CCP] is still more interested in business than in the grievances of the proletariat.”\textsuperscript{196} The CCP is aware of FIEs’ contribution to China’s GDP and the importance of greater employment in the FIE sector to the economic development of the country. The CCP also believes that social stability in China is necessary for its economic development.\textsuperscript{197} The passing of the (draft) Labor Contract Law highlights the Party’s mounting uneasiness over social unrest and its need to regain control and stability.\textsuperscript{198} FIEs should

\begin{thebibliography}{9}
\bibitem{190} Id. at 5-6 (quoting Contract Comments, supra note 185, at 3-4).
\bibitem{191} See supra Part V.B.1.
\bibitem{192} Keller & Darby, supra note 63, at 31-22.
\bibitem{193} Barboza, supra note 25.
\bibitem{195} Id. at 5-6 (quoting Contract Comments, supra note 185, at 3-4).
\bibitem{196} Id.
\bibitem{197} See supra note 189.
\bibitem{199} Id. at 5-6 (quoting Contract Comments, supra note 185, at 3-4).
\bibitem{200} See supra Parts II-IV.
\bibitem{201} Id.
\bibitem{202} Barboza, supra note 25.
\end{thebibliography}
not prematurely fear the role of the ACFTU’s trade unions and the CCP branch committees within their companies.199

B. Better Control over Chinese Workers by the CCP, Aided by Unionization in FIEs, Will Help to Create a More Stable Chinese Society and Workforce

The unionization of Wal-Mart in China demonstrates that FIEs can work with the ACFTU to unionize their workforce. Chinese trade unions, as dictated by the CCP, strive to work with enterprise managers to establish control over Chinese workers as well as promote foreign business.200 Greater worker protection and social stability in China will only better the environment for FIE growth.201

1. China’s Unionization of Wal-Mart Confirms That the ACFTU Is Serious About Unionizing FIEs

The Chinese unionization of Wal-Mart provides an example of a strictly anti-union FIE unionizing and cooperating with the CCP profitably. Wal-Mart’s initial resistance to trade unions in China greatly protracted the mega-store’s unionization.202 Despite Chinese efforts to unionize Wal-Mart for two years, and Wal-Mart’s establishment of thirty-five stores in seventeen Chinese cities, not a single Wal-Mart store in China had unionized by 2004.203 Chinese authorities accused Wal-Mart of obstructing unionization in violation204 of the Trade Union Law that had, since 2001, made such obstruction illegal.205 In Shanghai, local Chinese authorities reacted to Wal-Mart’s refusal to unionize by limiting the mega-store’s ability to invest in Shanghai without first assenting to unionization.206 In addition, China’s President Hu Jintao spurred the ACFTU to unionize Wal-Mart207 through a written order in March demanding “a better job of building [CCP] organizations and trade unions in foreign-invested enterprises.”208 Hu’s

199 GALLAGHER, supra note 31, at 92.
200 GALLAGHER, supra note 31, at 92.
201 See supra Part II-V.
202 Walmart Says, supra note 1; Some Transnationals, supra note 3.
203 Some Transnationals, supra note 3.
204 A Little Solidarity, supra note 5.
205 See supra Part III.B.3.
206 Some Transnationals, supra note 3.
208 Id.
atypical involvement in working with FIEs likely helps explain the ACFTU’s ability to convince Wal-Mart to unionize in July 2006.209

China’s success in unionizing Wal-Mart was also supported by the fact that the mega-store “isn’t afraid of strikes in China,” as stated by a company spokesman.210 The spokesman further stated, “China’s unions are different from unions elsewhere. The goal of China’s unions is to build a harmonious society.”211 Wal-Mart believes, rightly, that the ACFTU is controlled by the CCP and will not do anything out of line with CCP objectives—objectives that still aim to encourage foreign investment, just not at the price of social instability. Moreover, Wal-mart’s desire to acquire Trust-Mart, a Taiwanese-owned supermarket chain and competitor (an acquisition that still required approval by Chinese authorities at the time of this writing), likely added further incentive for Wal-Mart to unionize.212

In August 2006, the ACFTU stated that twenty-six percent of China’s 150,000 FIEs were unionized213 and that the ACFTU aimed to unionize sixty percent of FIEs in China by the end of 2006.214 China’s success in unionizing Wal-Mart may compel other FIEs to follow suit and help with the ACFTU’s goal of increasing trade union members.215 Retailers such as Toys “R” Us, Home Depot, and Best Buy have announced plans to open outlets in China, proving that Wal-Mart unionization has not scared off all foreign business.216 Although Wal-Mart will now pay wage dues to the ACFTU,217 Wal-Mart benefits from unionization through its probable acquisition of Trust-Mart218 and from the socialist message imparted on its workers.

In July of 2006, the ACFTU held its Ninth Session of the Fourteenth Presidium in Beijing and passed the Regulation on Trade Union Work in Enterprise.219 The American Chamber of Commerce believes that the regulation is non-binding.220 However, early that same month Wang

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209 Id.
210 Walmart Says, supra note 1.
211 Id.
213 High-Level Push, supra note 207.
214 Id.
215 Walmart Says, supra note 1.
216 Barboza & Barbaro, supra note 212.
217 See A Little Solidarity, supra note 5.
218 Barboza & Barbaro, supra note 212.
Zhaoguo proposed an amendment to the Trade Union Law that would make it compulsory for foreign companies to unionize—marking an even greater push to force unionization in legislation and regulations. Even if the Regulation on Trade Union Work in Enterprise does not contain any similar mandates, and is, in fact, non-binding, the ACFTU’s active measures to unionize all FIEs make complying with the Trade Union Law, and cooperating with the CCP and ACFTU in unionization before legal action is taken, a smart and feasible move for FIEs.

2. **Minimal Increases in Worker Protections Will Help, Not Hinder, the Business Environment in China**

Through legislation, the ACFTU now has more power to defend workers rights. However, workers still do not have the right to strike, and trade unions have a split allegiance between workers and economic development in line with the goals of the CCP. Although the (draft) Labor Contract Law appears to create a less autonomous environment for FIEs from the CCP and ACFTU, many of the law’s provisions are already in effect in the 2001 Trade Union Law amendment. Furthermore, the release of the law’s draft language shows the ACFTU’s willingness to include FIEs when discussing changes in Chinese business regulation.

The ACFTU is a non-confrontational federation and desires to create harmonious relations with FIEs. Raising the standard of conditions in factories, and showing workers that the CCP is creating more worker protections, will reduce strikes and create social stability, in turn benefiting the Chinese economy and the business environment for FIEs. Many

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221 Foreign Companies to be Obligated to Unionize: Lawmaker, XINHUA GENERAL NEWS SERVICE, July 5, 2006.
222 Compare Trade Union Law 1992, supra note 19, with Trade Union Law, supra note 8, ch. VI.
224 See supra Part III.
225 Compare (draft) Labor Contract Law, supra note 10, art. 35 (requiring an employer to notify the trade union before its rescission of any Labor Contract and “[t]he trade union shall have the right to give opinion if it considers the Employer’s decision is improper and require that the Employer correct its violation of any laws, regulations or the provisions of the Labor Contract.”), with Trade Union Law, supra note 9, art. 21 (requiring employers to “inform the trade union of the reasons [for dissolving the labor contract with an employee prior to the employers’ unilateral decision]; and, if the trade union considers that the enterprise violates laws, regulations or the contract in question and demands that it reconsider the matter, the enterprise shall study the opinion of the trade union, and inform the trade union of its final decision in writing.”).
advantages to being in China remain, especially the opportunity to move into a growing market while sales are stagnant elsewhere. Importantly, FIEs are not likely to have a choice in unionization in the future, as the CCP and ACFTU are unlikely to back away from their goal of unionizing FIEs. With a reported goal of eighty percent unionization of FIES in 2007, the ACFTU is showing no signs of giving up on unionization any time soon.

VI. CONCLUSION

China’s transition from a planned economy to a market economy, and the country’s subsequent loss of benefits for many workers formerly employed by SOEs, as well as its growing unemployment problem and poor working conditions created agitated workers desperate for change. The CCP, also anxious for change, was poised to use the ACFTU to regain control of the Chinese workforce, increase social stability, and promote economic development. In order to combat many FIEs’ refusal to unionize and increase trade union membership, the CCP amended the Trade Union Law in 2001 to make obstructing unionization a crime and ensured compliance by giving the ACFTU more oversight over workers and greater enforcement power. This amendment and the proposed (draft) Labor Contract Law, taken together with the push to establish more trade unions in FIEs, represent an attempt by the CCP to preserve its control over Chinese workers by augmenting the role of trade unions in managing labor relations.

Although the 2001 Amendment provides more oversight of management, the amendment also gives the ACFTU competing masters and aligns trade union work with the goals of the CCP. Provisions in the Trade Union Law allowing FIEs to integrate their own managers into their companies’ trade unions and encouraging fulfillment of production by workers evidence a strong desire by the CCP to work with FIE managers. Likewise, new legislation, such as the (draft) Labor Contract Law, should not be seen as an attack on foreign business. Instead, laws providing needed protections for Chinese workers without unduly restricting business management should be recognized for their stated purpose of creating a stable business environment in China. FIEs can work with the ACFTU and CCP to negotiate FIE a plan for unionization that will fulfill both of their goals and thereby improve the business environment in China.