



ST. MARY'S
UNIVERSITY

The Scholar: St. Mary's Law Review on Race
and Social Justice

Volume 11 | Number 2

Article 2

12-1-2009

China's Labor Enforcement Crisis: International Intervention and Corporate Social Responsibility.

Dana C. Nicholas

Follow this and additional works at: <https://commons.stmarytx.edu/thescholar>



Part of the [Law Commons](#)

Recommended Citation

Dana C. Nicholas, *China's Labor Enforcement Crisis: International Intervention and Corporate Social Responsibility.*, 11 THE SCHOLAR (2009).

Available at: <https://commons.stmarytx.edu/thescholar/vol11/iss2/2>

This Article is brought to you for free and open access by the St. Mary's Law Journals at Digital Commons at St. Mary's University. It has been accepted for inclusion in The Scholar: St. Mary's Law Review on Race and Social Justice by an authorized editor of Digital Commons at St. Mary's University. For more information, please contact egoode@stmarytx.edu, sfowler@stmarytx.edu.

CHINA'S LABOR ENFORCEMENT CRISIS: INTERNATIONAL INTERVENTION AND CORPORATE SOCIAL RESPONSIBILITY

DANA C. NICHOLAS*

Abstract	156
I. Introduction.....	156
A. Global Concern over China's Current Labor Conditions	156
B. Objectives	159
II. China's Existing Labor Landscape	161
A. Pressure to Stimulate Economic Growth	161
1. The Economic Pressures of China's Industrial Power	161
2. Incentive to Western Companies	162
3. Children Being Exploited at the Expense of Growth	163
4. Western Companies Growing Initiative to Take Accountability	164
B. China's Domestic Policies	167
1. Union Organization Is Prohibited	167
2. Chinese Labor Regulations Currently in Place ...	168
3. Fair Wages and Hourly Regulations Lacking Proper Enforcement	170
4. China, Communism, and Sweatshops.....	173
III. International Labor Standards.....	175
A. International Labour Organization (ILO) Norms.....	175
B. International Court of Justice	176
C. Other International Agreements	177
IV. Global Economic Pressure	178
A. The Strain for China to Meet Demands	178
B. Chinese Internal Economic and Government Pressures.....	179

* University of San Diego School of Law, Candidate for Juris Doctorate, May 2009; University of California at San Diego, B.S., Management Science, December 2004. The author would like to thank her family for their encouragement and support. Additionally, the author would like to thank Professor Orly Lobel and Kate Hershman for their guidance.

V. Possibilities for Reform	181
A. Code of Conduct for Investing Businesses.....	181
B. Internal Chinese Labor Reform	186
C. Analysis of Changes	190
D. The Challenges	193
VI. Conclusion	194

ABSTRACT

International concern has been highlighted over China's labor policies in recent years. China's emergence as an international superpower of manufacturing and production by Western-owned and operated companies spotlights China's labor practices as a human rights issue. The reasons for China's lack of enforcement of labor laws likely stems from economic pressure for high output at low cost to producers. Manufacturers in China must choose sacrificing labor conditions to maintain lucrative production contracts. Corporate social responsibility has become a conscious effort by Western companies to ensure labor standards in China are in compliance, however, these efforts may not be enough. This Note focuses on the existing conditions in China's labor industry and the challenges faced by China domestically, international influence, and corporate involvement.

I. INTRODUCTION

A. *Global Concern over China's Current Labor Conditions*

The reliance on China's labor market to exploit child labor to maintain a steady output of manufactured goods is of great concern in the terms of human rights violations. Both the rural provinces and densely populated cities in China deal with child labor violations, but little is done to make changes because the Chinese government is preoccupied with the country's economic growth.¹ There are labor regulations present in China, but the concern the Chinese government has for economic development creates an atmosphere where enforcement of lawful labor conditions is not a priority.² With enforcement not being at the forefront of the country's mind, there is little incentive to end oppressive child labor conditions plaguing factories in China. The reality is that current Chinese labor regulations are deeply rooted in today's economic tone in China, which en-

1. Howard W. French, *Fast-Growing China Says Little of Child Slavery's Role*, N.Y. TIMES, June 21, 2007, at A4 (arguing because China is so focused on making economic progress, many times regulators turn the other way when faced with labor standard issues because that way they are not blamed or penalized if employers lose business).

2. *Id.* (discussing how companies that come into the poorer regions of China are treated like gods and little respect is paid to the laws that are in place to protect against child labor abuses).

velops “a combination of capitalism, socialism, feudalism, and slavery.”³ The lack of regulation in China’s child labor market is astounding and rapidly wreaking havoc amongst China’s international relations. Chinese labor conditions are under intense scrutiny by human rights advocates as well as Western companies that are heavily invested in the Chinese labor markets.⁴ In particular, human rights activists want to prevent China’s acceptance into the international economic community until China improves its labor and human rights conditions.⁵ The economic stability of China is rooted in large amounts of inexpensive labor supply. Western nations have taken advantage of this labor market and many industries have flourished with its use.⁶ However, the conditions of China’s labor market violate human rights standards at the cost of promoting economic advancement.

This Note examines the current state of Chinese child labor conditions while looking at overall international labor guidelines and delving into the economic intentions of China’s lack of labor regulation. Such a lack of enforcement results in below standard conditions for workers and excessive child labor infractions. In order to align with human rights standards, China, along with Western companies invested in China, will need to make changes regarding the way manufacturing occurs in China.

There is pressure within China to maintain a high output of goods while maintaining low costs. This stress is amplified by Western companies who seek to get the most for their money in manufacturing costs. The juxtaposition of the human rights violations along with the excessive and persistent economic pressures of China’s industry creates a labor market which exploits workers.

3. Howard W. French, *Fast-Growing China Says Little of Child Slavery’s Role*, N.Y. TIMES, June 21, 2007, at A4 (quoting Hu dinou, a professor of economics at the University of Technology in Beijing); see also John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 LAW & INEQ. 193, 218 (2001) (asserting codes of business conduct that contain strong provisions of monitoring and compliance are more effective than those that are lacking safeguards for communicating abuses going on in factories).

4. See John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 LAW & INEQ. 193, 194 (2001) (focusing on the need for improvement in Chinese human rights conditions).

5. *Id.* (introducing the labor rights activists’ main goals in allowing for China to increase its presence in the international economic community).

6. *Id.* (focusing on the primary reason that American-based companies are moving their factories to China and other developing nations).

Objectionable labor conditions receive publicity that ignites concern of the Chinese workers.⁷ However, this exposure and attention rarely results in change. For example, recent reports of arrests and charges of slave-like conditions in China's Shanxi Province horrified Chinese citizens, but the concern quickly dissipated.⁸ The scrutiny of labor conditions seems to be an issue in China's booming economy, but the prosperity of the nation clouds society's judgment to initiate change.

Concurrently, Western companies are realizing they owe a social responsibility to Chinese laborers, and are taking steps to ensure that improved labor conditions are a priority for human rights concerns.⁹ In fact, since the corporate responsibility movement began in 1971 there have been over 3600 businesses signing on to the United Nations Global Compact, a voluntary initiative to enact standards for corporations maintaining human rights.¹⁰ While corporate social responsibility is ultimately helping to end horrible labor conditions, the initial incentive may have been to increase corporate shareholder value.¹¹ Still, China will have to make labor changes while balancing the explosive economic pressures of keeping labor costs low to satisfy Western business investors. Inexpen-

7. See, e.g., Howard W. French, *Fast-Growing China Says Little of Child Slavery's Role*, N.Y. TIMES, June 21, 2007, at A4 (examplng an outrage over child slavery in Chinese manufacturing).

8. *Id.* (describing the events that took place in Shanxi Province where child labor is practiced). “[A]fter a torrent of unusually blunt and emotionally charged news reports and editorials, the matter drops from view, ensuring the larger issue goes unresolved.” *Id.*

9. Jonathan Dee, *A Toy Maker's Conscience*, N.Y. TIMES, Dec. 23, 2007, § 6 (Magazine), at 34 (stating that the task of the I.C.C.A was to focus on child labor). Specifically, the I.C.C.A. mission was to focus on working conditions, paying special attention to child labor and prison labor. *Id.* “[T]he global principles are all about protecting workers” and even one corporation, Mattel, was concentrating on “prevent[ing] the systemic abuse of many tens of thousands of factory workers.” *Id.* Western companies are beginning to come under scrutiny for “corporate social responsibility,” to help rectify the epidemic of child labor conditions. *Id.*

10. *Id.* (“Corporate social responsibility, which was a fringe movement . . . in 1971, has moved into the business mainstream. More than 3600 businesses have signed onto the United Nations Global Compact, the largest voluntary corporate social-responsibility initiative in the world . . .”).

11. *Id.* (stating that corporate social responsibility has made labor conditions better). Specifically, one former Mattel employee responding to Mattel's corporate code of conduct in 2000 said that “[t]he changes we made in the living conditions in China were extraordinary.” *Id.* But it is important to note that a company's intent is to have an economic boost in its shareholder value while also being viewed publicly as a company concerned with social problems and taking responsibility for its actions. *Id.*; see John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 LAW & INEQ. 193, 202 (2001) (noting that the American labor movement is not acting with altruistic desires in regards to the Chinese laborers, nor the American buyers).

sive labor has been the cornerstone of China's economic growth over the past few decades.

The purpose of this paper is to show the current state of conditions in China and how Chinese regulations are currently ineffective because of economic pressures placed on Chinese manufacturers. Additionally, this paper will examine the international guidelines, which are in place to address labor conditions and specifically child labor standards to maintain minimum requirements by manufacturing countries. Finally, this paper will address another factor that has facilitated changes in child labor conditions: the "corporate social responsibility." This responsibility puts the accountability on corporate entities to ensure that labor conditions are not exploited at their gain.¹²

In order to make changes in the child labor conditions of China, several important steps should be taken. First, Chinese regulations need to be enforced by officials in order to instigate change. Second, the international guidelines must provide repercussions to ensure that standards are adhered to because if international principles are not followed, sanctions should be given. Third, "corporate social responsibility" should be a widespread policy for Western companies dealing with factories in China.

B. Objectives

This Note explores the present conditions of Chinese child labor, international guidelines, and industry intervention in enforcing labor standards.

Part II looks at China's existing labor landscape; exploring pressures for economic growth; China's current domestic policy; and compares international labor standards. China is a huge industrial power, and unfortunately, child workers are being exploited so Western companies can enjoy prosperous gains. Surging economic countries like China are desperate for foreign investment that could improve economic and living conditions.¹³

Part III explores the international body of guidelines for ending exploitation of children labor practices, which are promulgated by the International Labour Organization and the International Court of Justice. The

12. Julia Fisher, Note, *Free Speech to Have Sweatshops? How Kasky v. Nike Might Provide a Useful Tool to Improve Sweatshop Conditions*, 26 B.C. THIRD WORLD L.J. 267, 286 (2006) ("Many corporations have adopted [anti-sweatshop] codes, often after negative publicity generated by the anti-sweatshop movement, in an effort to show consumers that they do care about sweatshop conditions.").

13. *Id.* at 282 ("They compete with other developing nations to attract investment by offering incentives such as economic subsidies and minimal regulation of labor safety. Thus, despite treaties requiring these nations to enforce certain labor standards, few countries do so for fear of competitive disadvantage with other developing nations.").

International Labour Organization has established minimum guidelines that China has ratified. Furthermore, the International Court of Justice reviews guideline disputes and is the “principle judicial organ of the United Nations.”¹⁴ However, such international guidelines, while helpful, are not subject to any type of enforcement—resulting in a lack of compliance. Instead, the information regarding labor rights violations must be specific and unambiguous in order for international scrutiny to have an impact.¹⁵

Part IV discusses the global economic pressures on China’s industry to provide a mass quantity and quality of products to Western companies. Essentially, China has pressure to produce affordable goods at an inexpensive cost. Expectation on factories to deliver goods is so extreme that many manufacturers violated labor standards in order to avoid loss of contracts with Western companies. Complying with labor standards is expensive for rural factories, and often not a priority.

Part V analyzes courses of action to remedy the child labor issues in China’s industrial manufacturing and applies established international principles. In doing so, this section explores the increasing importance of corporate social responsibility in Western companies. It also discusses internal Chinese labor reform options as empowering the average Chinese worker and how such options are also imperative to initiate change.¹⁶ Further, this section will address how these changes will affect China and industry globally as China may need to tackle any negative repercussions of applying more stringent labor regulations.

Finally, part VI summarizes the needed reform to child labor standards that will appease both economic advocates and satisfy human rights concerns. Western companies, internal Chinese government officials, and international bodies need to make efforts to initiate change in Chinese industry in order for results to occur.

14. John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 *LAW & INEQ.* 193, 212 (2001) (footnote omitted) (beginning the discussion of enforcement treaties by various international bodies).

15. *Id.* at 223 (highlighting the need for collecting very specific facts regarding violations of labor laws, so as to successfully pique the interests of international enforcement agencies).

16. *Id.* at 216 (discussing the difficulties inherent in the Chinese system regarding unionizing and the ability to strike in order to symbolize the Chinese worker’s perception that their rights are being violated). “[O]mission from Chinese law of any protections for the right to strike drastically impairs workers’ ability to express their dissatisfaction.” *Id.*

II. CHINA'S EXISTING LABOR LANDSCAPE

A. *Pressure to Stimulate Economic Growth*

1. The Economic Pressures of China's Industrial Power

The low cost of Chinese labor has resulted in Chinese domination over the global manufacturing market. This low cost labor is exploited primarily in manufactured supplies, which are then delivered at a low cost to foreign-based companies, particularly Western-based companies. In fact, many companies seeking out inexpensive labor go directly to the rural Chinese factories as labor costs in China in 2004 were a mere 67 cents per hour as compared to the United States averaging a much higher rate at \$22.87 per hour.¹⁷

However, by stimulating its economic growth with cheap labor, China may face backlashes such as pollution in the near future.¹⁸ As such, China's government has a history of lacking economic predictability and the government has been known to pass regulations resulting in unintended economic impact.¹⁹ Another concern is China's aging population. China's working population is aging quickly and a labor shortage may

17. Dennis M. Horn & Kai Yang, *Riding the Chinese Juggernaut: Rewards and Risks*, 21 *PROB. & PROP.*, 8, 9 (Sept.-Oct. 2007), available at <http://www.hklaw.com/id24660/PublicationId2319/ReturnId31/contentid49947/> (describing that China's export-led growth is sustained by cheap labor along with the education system).

Is it any wonder that the U.S. media is full of enthusiastic predictions about China's economic power? China has been very successful in obtaining foreign investment. China's National Development and Reform Commission estimates that China has attracted \$383 billion in overseas investment in the five years ending in 2005 achieved by offering low-cost capital, cheap labor, often subsidized plant facilities, and few controls on exports. *Id.*

18. *Id.* (arguing this trade-off of using cheap labor, land, and resources is typical of many developing countries).

China's economic growth has been very uneven, with much of the wealth creation concentrated along China's waterways and in China's largest cities. China's growth relies on a dangerously high level of output from energy-intense, polluting industries. As a consequence, China is set to become the world's largest producer of greenhouse gases in 2009. China's air and waterways are heavily polluted to the point where some of China's major river systems are not fit to sustain aquatic life. China's social safety net is poorly developed. There is no equivalent to the U.S. Social Security system and only 17% of workers have pensions; a mere 14% of workers are covered by unemployment insurance. *Id.*

19. *See id.*

Although China has been very successful in launching its export-based economy, it has been notably unsuccessful at controlling its unintended consequences, including rampant speculation and an increasing gap between the rich and the poor. Efforts to restrict the flow of information, for example, by restricting the sites that Google can provide to Chinese nationals, also may have the unintended side effect of limiting entrepreneurial innovation.

soon be a relevant issue for China's labor force.²⁰ China built its economic explosion in part on an abundance of cheap labor.²¹ However, a repercussion of the introduction of China's one-child policy in 1979²² may result in the cheap labor surplus coming to a halt.²³ As a result, China's increased labor costs would be passed on to foreign companies.²⁴ The subsequent effect will be foreign companies taking their business to other neighboring countries with an excess of cheap labor.²⁵ In response to an impending shift, there is more pressure on children in the workplace to maintain China's reputation and status as a country for cheap and effective labor.

2. Incentive to Western Companies

Many Western companies, in particular American companies, turn to Chinese suppliers to manufacture items and keep costs of production as low as possible. For example, Wal-Mart cuts costs to better compete with

China's economic unpredictability was a big concern for a U.S. company senior executive based there. *Id.*

20. See Howard W. French, *As China Ages, a Shortage of Cheap Labor Looms*, N.Y. TIMES, June 30, 2006, at A (cautioning that China's overall population is "getting older in a hurry" and "may soon face manpower shortages").

21. See *id.* ("The world's most populous nation, which built its economic strength on seemingly endless supplies of cheap labor, China may soon face manpower shortages."); see also Keith Bradsher, *Wages Are on the Rise in China as Young Workers Grow Scarce*, N.Y. TIMES, Aug. 29, 2007, at A1 (noting the connection between China's population and labor force). "For decades, many labor economists said that China's vast population would supply a nearly bottomless pool of workers." *Id.* This logic is based on the assumption that wages could be kept low because many people would be trying to find work at one time. *Id.* "So many people would be seeking jobs at any given time, this reasoning went, that wages in this country would be stuck just above subsistence levels." *Id.*

22. See Tara A. Gellman, *The Blurred Line Between Aiding Progress and Sanctioning Abuse: United States Appropriations, the UNFPA and Family Planning in the P.R.C.*, 17 N.Y.L. SCH. J. HUM. RTS. 1063, 1063 (2001) (debating U.S. funds appropriations to foreign programs that commit human rights violations). Coercive measures used to implement China's one-child-per-family program have been a source of concern for Congress. *Id.*

23. See Howard W. French, *As China Ages, a Shortage of Cheap Labor Looms*, N.Y. TIMES, June 30, 2006, at A ("An aging population also poses difficult political issues for the Communist government, which first encouraged a population explosion . . . and then reversed course and introduced the so-called one-child policy a few years after the death of Mao in 1976.").

24. *Id.* (reporting that with a decrease in working-age population, China's labor costs will become much less competitive). With parents limited to only being able to have one child, the great surplus of laborers may soon change as China's population decreases in the coming decades. *Id.* China has traditionally had a great deal of laborers available because of its immense population, but the effects of this initiative may soon be apparent. *Id.*

25. *Id.* (showing that surrounding countries' supply of cheap labor will cause companies to shift operations to those countries). "[I]ndustries in places like Vietnam and Bangladesh will start becoming more attractive." *Id.*

larger retailers, in an effort to keep prices low.²⁶ Wal-Mart turned to factories in China with lower pay and weaker protections for their goods.²⁷ Also, because companies are reluctant to deal with union organizations, Chinese corporations are additionally attractive as Chinese in-house unions are forbidden to engage in collective bargaining.²⁸ China's policies and lack of regulation provide a scapegoat for Western companies to glean cheap and effective labor at the cost of trivializing Chinese workers' human rights.

3. Children Being Exploited at the Expense of Growth

Child labor exploitation is a growing problem in the Chinese labor market. Children are routinely kidnapped and forced to work in factories under brutal conditions.²⁹ There is speculation there could be a government-business alliance typical in these rural areas to conspire to kidnap children.³⁰ The purpose of forcing children to work is to ensure quotas are met, and the more workers who are able to produce, the faster the output is completed and the higher the quantity produced. Forced labor and child labor are illegal under the current laws of China; however, local governments often do not enforce these regulations.³¹ And the problem has been the subject of very recent scrutiny not only in China, but in

26. Bob Ortega, *Behind the New Face of Wal-Mart*, 39 CONN. L. REV. 1271, 1276 (2006) (describing Wal-Mart's initiative since its early days to cut costs in buying and distribution in an effort to squeeze the lowest prices out of suppliers). However, as Wal-Mart grew in size, its efforts to obtain the lowest price from suppliers forced suppliers to shut-down and lay off thousands of United States workers. *Id.* As a result, Wal-Mart turned to countries, including China, in order to maintain their supply needs. *Id.*

27. *Id.*

28. *Id.* at 1278 (recognizing that Wal-Mart will deal with unions in countries where laws are strongly enforced such as Mexico, Germany, and England). The actions of these unions have placed Wal-Mart's business practices under intense scrutiny to the public. *Id.*

29. Howard W. French, *Child Slave Labor Revelations Sweeping China*, INT'L HERALD TRIB., June 15, 2007, available at <http://www.ihl.com/articles/2007/06/15/news/china.php> (arguing how kidnapped children are scantily clothed, unpaid and often given little more than steamed buns and water).

30. *Id.* (arguing how the local police are unwilling to help parents who are looking for their kidnapped children). "Outside one factory, they demand bribes." *Id.* "Other reports have said that the local authorities, including labor inspectors, have taken children from freshly closed kilns and resold them to other factories." *Id.* "In some cases, parents have also banded together to try to rescue their children, placing little stock in the local authorities, who have sometimes turned parents away from the factories in collusion with the kiln owners." *Id.*

31. *Id.* (arguing how government officials claim that the location of the factories in isolated areas makes it hard to crack down on the illegal activity); see John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 LAW & INEQ. 193, 207 (2001) (discussing that while there are regulations in China that comply with international labor standards on

those Western markets who utilize China's inexpensive labor to supply their businesses.³² In June 2006, the American Federation of Labor and Congress of Industrial Organizations (A.F.L.-C.I.O.) filed complaints against China, asking President Bush to penalize the country for its labor practices.³³ The A.F.L.-C.I.O. claims China violates workers' rights by suppressing strikes, curbing independent unions, and allowing factories to ignore minimum wage standards and child labor laws.³⁴ The United States involvement in possible sanctions or penalties for China is an important sign that China's labor standards are no longer an internal matter. Western nations and companies, who have a great deal of capital invested in China's industry, recognize the need for reform in enforcement of Chinese labor standards.

4. Western Companies Growing Initiative to Take Accountability

Even though the United States is taking notice of the human rights problems in China, some Western companies do not realize the magnitude of this problem. There is growing American ambivalence towards labor exploitation abroad because of the loss of United States jobs in manufacturing to Chinese suppliers.³⁵ This view exemplifies a fear of too much government intervention and is in favor of Western company intervention to raise labor standards.³⁶ Workers in countries that are not in-

child labor, minimum wage, maximum work hours, and the rights to unionize and collectively bargain, China minimally enforces these laws).

32. *Today in Business*, N.Y. TIMES, June 9, 2006, at C2 (describing a complaint recently filed to have the United States penalize China for labor violations).

33. *Id.* ("The A.F.L. - C.I.O. filed a trade complaint asking President Bush to penalize China, asserting that it violates workers' rights by suppressing strikes, barring independent unions and letting factories ignore minimum wage and child labor laws.").

34. *Id.* (showing how negative publicity over worker treatment is creating a growing dissent).

35. Annette Burkeen, *Private Ordering and Institutional Choice: Defining the Role of Multinational Corporations in Promoting Global Labor Standards*, 6 WASH. U. GLOBAL STUD. L. REV. 205, 209-210 (2007) (contributing to this view is the perception of U.S. job loss and guilt from profiting off of human exploitation). Global standards proponents further argue that, without government intervention, wealthy nations will benefit much more and income disparities between poorer nations will grow. *Id.* at 210.

36. *Id.* at 210 ("Conversely, free trade advocates contend that global economic growth will improve working conditions, thus alleviating the need for additional governmental intervention."). This view espouses the idea that multinational corporations will better develop and enforce safety conditions, wages, and hourly standards through their continual business relations with suppliers. *Id.*; see John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 LAW & INEQ. 193, 218 (2001) (maintaining that corporations are uniquely interested in working conditions, insisting on implementing their own internal regulations to protect their workers rights, and suggesting that stories about any abuses are greatly exaggerated in order to raise the value of their self-policing).

dustrialized are vulnerable to human rights abuses.³⁷ Groups in favor of uniform global labor standards maintain the best way to enforce these standards would be through trade sanctions.³⁸

Human rights advocates have put pressure on Western companies to make changes to ensure acceptable standards for laborers. These companies have begun to make efforts to encourage improvement in foreign labor standards. The latest concerns for child labor and exploitation of workers can be attributed to wealthy Western businesses.³⁹ For example, in surprise inspections of factory conditions, audits on average had eighteen violations per factory visited.⁴⁰ The main problems in Asian countries, as in China, relate to working hours and wages of employees.⁴¹ One of the biggest problems faced by Chinese employees is that local governments refuse to enforce their own rules regarding labor regulations.⁴²

37. Annette Burkeen, *Private Ordering and Institutional Choice: Defining the Role of Multinational Corporations in Promoting Global Labor Standards*, 6 WASH. U. GLOBAL STUD. L. REV. 205, 210 (2007) ("The competition of developing countries for a portion of the economic benefits of globalization creates downward pressure on the wages of unskilled workers worldwide."). Globalization has provided the United States and many multinational corporations to influence costs, resulting in increased competition among developing countries to promote inexpensive labor and cheaper regulatory schemes. *Id.*

38. *Id.* (describing an opposing theory whereby free trade proponents believe that with the continued economic growth, the working conditions will begin to improve, with no need for additional government intervention). This view suggests the multinational corporations are in the best position to enforce human rights concerns over wages, hours, and safety conditions of laborers. *Id.* Conversely, there is evidence that supports the idea that unrestricted private ordering within multinational corporations initiates a "race to the bottom." *Id.*

39. See Richard Milne, Hugh Williamson, Jenny Wiggins & Elizabeth Rigby, *Retailers to 'Face Scrutiny over Workers'*, FIN. TIMES, June 19, 2006 (arguing that various Western European retail companies, such as Inditex, were accused of having used suppliers which hired child laborers).

40. *Id.* (arguing that there are claims that very big high-street brand names are doing nothing to improve working conditions). There is no due diligence by companies to make changes. *Id.* According to Aurret van Heerden, the president of the Fair Labor Association (FLA), many retailers are a long way from monitoring conditions in their suppliers' factories. *Id.* The audits show that there is very little effort to make the necessary changes. *Id.*

41. *Id.* (analyzing how the unannounced audits, which lasted about ten days, helped to determine the main problems in Asian countries).

42. *Id.* (explaining how the Fair Labor Association, because of the failure of governments to enforce labor regulations, is trying to get multinational companies to do what governments have not done in regards to labor abuse); see John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 LAW & INEQ. 193, 197 (2001) (bringing forth the allegation that although Chinese regulations regarding labor practices exist, they are not being adequately enforced, particularly for children). "Timberland shoes are made in China by 16 and 17-year-old girls forced to work up to 14 hours a day, seven days a week putting in a 98-hour workweek earning 22 cents an hour often in factory temperatures reaching more than 100 degrees Fahrenheit." *Id.*

With this lack of enforcement, convincing multinational corporations to demand that factory owners conform to regulations is challenging, but slowly making progress.⁴³ Business involving human rights issues will bring awareness and ideally responsiveness to labor standards.

China is aware of the growing concern over its lack of labor standard enforcements and the resulting economic repercussions of inevitable increased in labor costs. Additionally, China realizes the intense scrutiny it is under with its labor force, especially in the wake of several product liability issues.⁴⁴ China's value comes from cheap labor, which results in low standards and lack of human rights.⁴⁵ This added examination by Western companies and nations into the management of Chinese factories has resulted in China facing increased criticism.⁴⁶ Chinese officials know changes must be made in order to comply with expectations of Western companies and demands of human rights activists.

43. Richard Milne, Hugh Williamson, Jenny Wiggins & Elizabeth Rigby, *Retailers to Face Scrutiny over Workers*, FIN. TIMES, June 19, 2006, (stating that various retail companies have “signed up to the Ethical Trading Initiative comprising companies, non-governmental organizations and trade unions whose code does not allow child labor”). Cf. Jonathan Dee, *A Toy Maker's Conscience*, N.Y. TIMES, Dec. 23, 2007, § 6 (Magazine), at 34 (illustrating the corporate responsibility idea becoming an integral part of Mattel's business plan to draft ethical principles after an investigation of Mattel toys being assembled by under-age workers in an Indonesian factory). Specifically, Mattel created a “detailed [seventy-five] page checklist for quantifying conditions inside every one of Mattel's factories and vendor plants.” *Id.* Additionally, “each Mattel factory overseas is audited on a three-year, rotational basis, but additional, unannounced visits are made to those facilities whose performance on the regular audit has been particularly poor.” *Id.*

44. Editorial, *Thai Editorial: 'Scandals' Affecting Chinese Products May Offer Trade Opening*, BBC INT'L REP. (Asia), Aug. 17, 2007 (“[T]he scope of recent product recalls will force the world's fastest growing economy to face some of the same scrutiny applied to exporters in other countries.”). The poor quality of certain exported goods has already resulted in deaths. *Id.* Products ranging from cough syrup to tires have been recalled to prevent further deadly consequences. *Id.*

45. *Id.* (discussing the complaints competing firms have had for years about China's cheap labor, low standards and deficiency of human rights).

46. *Id.* (“Although stockbrokers may salivate over China's red-hot economic engine, the recalls and increased inspections clearly show how the atmospheric growth levels are coming at the expense of consumers, workers and the environment.”); see Howard W. French, *Reports of Forced Labor at Brick Kilns Unsettle China*, N.Y. TIMES, June 16, 2007, at A3 (describing the unfolding labor scandal that involves kidnapping and forced child labor at brick kilns in central China). Despite the stories that are spreading across the [i]nternet and newspaper headlines, local authorities are often of little help. *Id.* “[R]eports have said that local authorities, including labor inspectors, have taken children from freshly closed kilns and resold them to other factories.” *Id.*

B. *China's Domestic Policies*

1. Union Organization Is Prohibited

China has adopted international guidelines to set standards for labor conditions within its borders. However, China, while claiming to agree to these ideals, may not necessarily be adhering to them on a daily basis. China is obligated to conform to international standards, and the country ratified regulations to uphold workers' rights as a member of the International Labour Organization.⁴⁷ By 2008, China is expected to reform both its national laws and local regulations to comply with international standards.⁴⁸ These laws and regulations also need to be more effectively enforced by China's local governments.⁴⁹

Another concern of the international human rights community is the inability of Chinese workers to make labor regulatory changes.⁵⁰ Chinese law prohibits workers from organizing independently and only one organization, the All China Federation of Trade Unions (ACFTU), can represent Chinese workers.⁵¹ Because only one union can represent Chinese workers, there is little ability for workers to organize and de-

47. *Human Rights and the 2008 Olympics in Beijing-Business and Labor Rights*, HUMAN RTS. WATCH, Oct. 24, 2008, <http://www.hrw.org/campaigns/china/beijing08/labor.htm> (noting that the "rosy picture" of China's Olympics and its membership to the International Labour Organization is "tainted by the restrictions imposed by Chinese law and policy on the rights of Chinese workers . . ."). "The International Labour Organization (ILO) is a U.N. agency that promotes international standards on human and labor rights." *Id.*

48. *Id.* (stating that Chinese workers lack minimal workers rights despite all ILO member states being required to uphold to ILO standards).

49. *Id.* ("All Olympic sponsors should press the Chinese government to revise its laws so that they conform to the standards of the ILO and to implement them."); see John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 *LAW & INEQ.* 193, 197 (2001) (asserting that the current enforcement of China's labor regulations is inadequate and results in many violations by Chinese factories).

50. See Erick Eckholm, *China Accepts UN Advice to Help Ease Labor Strife*, N.Y. TIMES, May 19, 2001, § 1, at 15 ("China's restrictive union rules violated basic principles of free association — principles that are seen by most labor experts worldwide as crucial to the protection of worker's interests.").

51. *Human Rights and the 2008 Olympics in Beijing-Business and Labor Rights*, HUMAN RTS. WATCH, Oct. 24, 2008, <http://www.hrw.org/campaigns/china/beijing08/labor.htm> ("China's national laws prohibit workers from organizing independent unions, and do not explicitly protect the right to strike."). While many workers have organized protests and demonstrations to improve conditions or demand compensation, they have been unsuccessful. *Id.* The ACFTU's local offices are controlled by the Chinese Communist Party committees and the local authorities. *Id.* "The ACFTU has never spoken out against laws and regulations routinely used to justify imprisoning independent labor activists." *Id.*

mand better working conditions.⁵² Those who do organize are faced with repercussions including imprisonment.⁵³

With workers not being allowed to organize unions in China, the result is very little outcry from workers for improved labor conditions. The Chinese worker, especially a child Chinese worker, does not have a voice to complain about the low standards practiced in China. Since an average Chinese worker faces imprisonment for organizing trade groups, there is very little upheaval from workers in rural Chinese factories at this point in time. These workers are poor and in need of the little income they make from working in Chinese factories. Working class children are particularly vulnerable because often they are needed to assist in providing for their families.⁵⁴ Thus, without incentive or opportunity for workers to organize, factory owners are able to exploit child labor to increase output of goods.

2. Chinese Labor Regulations Currently in Place

Despite common misconceptions, China does have in place specific labor regulations similar to those of most other industrialized countries. While many Chinese laws facially protect many labor rights, abuses of such rights continue in spite of the law because of lack of enforcement.⁵⁵ In 1994, China adopted general policies regarding labor conditions and employment practices.⁵⁶ The general provisions state the goals are to protect the rights and interests of laborers as well as “promote economic

52. *Id.* (“Because they lack the right to organize independently, Chinese workers also lack effective ways to resolve these problems in the workplace.”).

53. *Id.* (“[T]hose who have demanded unpaid wages and unpaid pensions and severance pay have faced severe state repression.”).

54. *Id.* (explaining that many Chinese workers are forced to work long hours, with some contract workers going unpaid). Chinese workers also lack sufficient health, and safety protections in the workplace. *Id.*

55. John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 *LAW & INEQ.* 193, 194 (2001) (laying the foundation that regardless of the number of Chinese provisions enacted over the past several years to protect the Chinese laborer, there is little actual enforcement of these provisions by the authorities).

56. *See* Labour Law (promulgated by the Standing Comm. Eighth Nat’l People’s Cong., July 5, 1994, effective Jan. 1, 1995) (P.R.C.) (stating that these laws were made, in conjunction with the Constitution of the People’s Republic of China (P.R.C.), in order to “readjust labor relationships” and promote a safeguarded labor system “suited to the socialist market”). These laws apply to all economic units (either individuals or organizations) within the P.R.C. *Id.* art. 2.

In accordance with these laws, all those who are employed have the right to be employed on an equal basis, choose occupations, obtain remuneration for their labor, take rest, have holidays and leaves, obtain protection of occupational safety and health, receive training vocational skills, enjoy social insurance and welfare, and sub-

development and social progress.”⁵⁷ Additionally, the legislation bans recruiting minors for work under the age of sixteen.⁵⁸ However, juvenile workers are defined as laborers up to sixteen years old, but below eighteen years old.⁵⁹ A caveat though does exist for art, sports, and special-skill units that allow for recruitment but also mandate the right of the juvenile to receive compulsory education.⁶⁰ China explicitly included regulations for labor standards explicitly targeted at female and juvenile workers.⁶¹ Chinese regulation forbids underage workers to be exposed to harmful or intensely physical work.⁶² This legislation is the framework for China’s labor laws and the basis for local government enforcement of labor standards.

Since the legislation has been enacted, enforcement has become the key problem. For these laws to be effective, they need to be imposed on Chinese officials and manufacturing companies. Child workers are not supposed to be employed under Chinese law, but enforcement of Chinese regulations are not followed by government officials. One approach of

mit applications for settlement of labor disputes, and other rights relating to labor as stipulated by law. *Id.* art. 3.

The subjects covered in this group of laws are the promotion of employment, labor contracts, work hours and vacations, wages, occupational safety and health, special protection for women and child workers, vocational training, social insurance and welfare, labor disputes, supervision, and legal responsibility. *Id.* chs. 1–12.

57. *Id.* at ch.1 art.1 (explaining the exact goal of the Labour Laws of the People’s Republic of China).

58. *Id.* at ch.2, art 15 (forbidding any employment units from seeking children under the age of sixteen as employees). While there are exceptions for juvenile workers, chapter seven of the P.R.C.’s Labour Laws deals specifically with juvenile protections, particularly with dangerous conditions for children under sixteen. *Id.* ch. 7. Juveniles are not permitted to work in hazardous conditions and must be provided with regular physical examinations. *Id.* art. 64–65.

59. *Id.* at ch.7, art. 58 (stating the definition of a juvenile under employment law in the P.R.C.).

60. *Id.* at ch. 2, art. 15 (“Units of literature and art, physical culture and sport, and special arts and crafts that need to recruit juveniles under the age of 16 must go through the formalities of examination and approval according to the relevant provisions of the State and guarantee their right to compulsory education.”).

61. *See* Labour Law (promulgated by the Standing Comm. Eighth Nat’l People’s Cong., July 5, 1994, effective Jan. 1, 1995), ch. 7 (P.R.C.) (“The State shall provide female workers and juvenile workers with special protection.”). Some of these provisions include the prohibition of women and juveniles from intensely physical work and “other work that female workers should avoid,” the prohibition of women from working “high above their ground, under low temperature, or in cold water” during their menstrual periods, entitlement of women who have just given birth ninety days of maternity leave, and the mandatory provision for regular physical examinations of juvenile workers. *Id.*

62. *Id.* at ch. 7, art. 64 (“No juvenile workers shall be arranged to engage in work down the pit of mines, work that is poisonous or harmful, work with Grade IV physical labor intensity as stipulated by the State, or other work that they should avoid.”).

formal regulation is called, “command and control.”⁶³ The “command and control” method is the idea of the regulator having rules and addressing the social problems prompted by regulatory intervention.⁶⁴ However, “the complexity of social relations and the scarce resources available to regulate agencies” makes it difficult to implement this method.⁶⁵ In addressing the lack of accomplishment, labor law has described alternative regulatory approaches to cope with the concerns of “command and control.”⁶⁶ This is an effort by regulators to fix these labor problems while addressing enforcement concerns faced by Chinese officials. There is constant economic pressure for factories to perform well, and this pressure, coupled with lack of enforcement of labor regulations by regulatory agencies, has resulted in a seemingly ineffective change in labor standards.

3. Fair Wages and Hourly Regulations Lacking Proper Enforcement

Chinese labor laws mandate fair wages, hourly regulation, and other standards for employers to follow. In an effort to perpetuate these standards in 1995 the People’s Republic of China Labor Law initiated wage regulations.⁶⁷ The current Chinese law “mandates a maximum workweek of [forty] hours.”⁶⁸ In addition, the “[m]inimum wages are established locally, and wages cannot be deducted or delayed without reason.”⁶⁹ However, in practice, many Chinese workers are forced to work much more and are required to work overtime.⁷⁰ Some Western companies

63. See Sean Cooney, *Making Chinese Labor Law Work: The Prospects for Regulatory Innovation in the People’s Republic of China*, 30 *FORDHAM INT’L L.J.* 1050, 1082 (2007) (reporting China’s heavily favored “approach to formal (or State-based) regulation”).

64. See *id.* (describing the regulators powers to control a situation and prevent adverse affects); see also Robert Marquand, *China Faces Growing Labor Unrest*, *CHRISTIAN SCI. MONITOR*, Mar. 25, 2002, at 6 (discussing how labor protests involved up to ten thousand laid-off workers from heavy industry that were once the pride of China’s command and control economy). “[F]actory employees marched to government offices, braving police and demanding living allowances that they say stopped months ago.” *Id.*

65. See Sean Cooney, *Making Chinese Labor Law Work: The Prospects for Regulatory Innovation in the People’s Republic of China*, 30 *FORDHAM INT’L L.J.* 1050, 1082 (2007) (discussing the barriers in making the “command and control” methods achievable).

66. See *id.* (explaining other causes of making the “command and control” strategy ineffective and unachievable).

67. Robert J. Rosoff, *Beyond Codes of Conduct – Addressing Labor Rights Problems in China*, *CHINA BUS. REV.*, Mar. 2004, <http://www.chinabusinessreview.com/public/0403/rosoff.html> (“The 1995 PRC Labor is comprehensive, covering labor contracts, working hours, wages, worker safety, child-labor, and labor disputes, among other subject”).

68. *Id.*

69. *Id.* (giving examples of government regulations that have been put into place to provide better working conditions for workers in foreign countries).

70. *Id.*

have unilaterally forced Chinese companies to reduce the number of infractions committed.⁷¹ These Western companies, in order to comply with corporate social responsibility (CSR), have adopted codes of conduct to deal with labor standards in countries like China.⁷² However, while these codes are beneficial, they are often left unenforced in China.⁷³ For example, China's labor laws are poorly enforced and the expense associated with factories implementing these standards has contributed to noncompliance by factory owners.⁷⁴

A common issue for scrutiny is the sweatshop model of factories which is ubiquitous in Asia, especially in rural China. While Western companies and nations have reacted to sweatshops in outrage, many Asian families would not be able to survive without them. Unfortunately, the existence

In practice, however, the rights of Chinese workers are routinely violated. Workers are often required to work far more than 40 hours a week, have few days off, are paid below the minimum wage, and are not paid required overtime. Improper deductions from wages are common. Some Chinese workers must pay a large sum of money as a "deposit" to their employer, and they may have to pay a "recruitment fee" in order to be hired. These payments can prevent workers from leaving jobs where their rights are violated. Physical abuse of workers, and dangerous working conditions, are also common. *Id.*

71. *Id.* (stating that a number of Western companies doing business with foreign countries have few violations since they are strong believers in the importance of compliance with labor laws). While generalizations are difficult, these were made based on evidence of labor rights abuses in the People's Republic of China factories. *Id.* Factories with direct investment from Western companies tend to have lower violations because the companies stress compliance with labor law. *Id.* Additionally, Western companies with a great deal of business and money invested will have greater leverage to make changes and improvements to labor conditions. *Id.* At times, Western companies can work together to gain the leverage needed to initiate change in factories to demand acceptable treatment of workers. *Id.*

72. See *Growth of Global Firms Benefit China: Report*, ASIA PULSE, Feb. 25, 2008 (Nationwide International News) ("[T]ransnational corporations are taking increasing social responsibilities in China because they transplant their principles in corporate social responsibilities overseas to China.").

73. Robert J. Rosoff, *Beyond Codes of Conduct – Addressing Labor Rights Problems in China*, CHINA BUS. REV., Mar. 2004, <http://www.chinabusinessreview.com/public/0403/rosoff.html> (analyzing the reasons why the codes of conduct of foreign companies are only marginally enforced, if enforced at all, in China).

74. *Id.* (citing additional reasons for the lack of code enforcement in factories). Reasons include the fact that China has a vast supply of migrant workers who are unaware of their rights and are willing to work under harsh conditions; the Chinese government forbids independent trade unions; and Western companies put undue pressure on factories to deliver goods at low prices and within short deadlines. *Id.*

Although China has an adequate labor law, it is poorly enforced. Codes imposed on factory owners raise costs, so owners have a financial incentive to ignore code requirements. Factory owners are becoming increasingly adept at circumventing inspections, through practices such as double bookkeeping and coaching workers. As a result, inspectors are often deceived and "clean" audit reports often do not reflect reality. *Id.*

of sweatshops has contributed to China's industrial revolution.⁷⁵ Even so, a common reaction to sweatshop conditions by Westerners is to boycott.⁷⁶ However, the better approach to improve sweatshop conditions is to continue to purchase items made in them.⁷⁷ If the products made by sweatshop factories are boycotted by foreign consumers, sweatshops would inevitably close down. The closure of sweatshops would only perpetuate the lowered labor standards because workers would be unemployed and seeking employment elsewhere. With the economic explosion of China's industry being attributed in part to sweatshop output, other ways of recourse must be used to ensure raising labor standards.

China has been working in the past years to turn around its reputation for labor infractions. Recent actions by China on the domestic level include setting up a legal system to protect the rights of children.⁷⁸ Finally, China established a State Council's Committee on Women and Children to serve as a mechanism to monitor children's affairs.⁷⁹ Local levels of China's provinces have set up coordinating groups as well.⁸⁰ Finally, "[t]he Programme for Children's Development . . . set forth goals and specific measures in the areas of health, education, legal protection and

75. See Nicholas D. Kristof & Sheryl WuDunn, *Two Cheers for Sweatshops*, N.Y. TIMES, Sept. 24, 2000, § 6 (Magazine), at 70 (pointing out that "beneath their grime, sweatshops are a clear sign of the industrial revolution that is beginning to reshape Asia"). Most Asians see the Western revolt against sweatshops as a threat to their only means of earning money and supporting their family. *Id.* Due to sweatshops, many Asian families have been able to actually buy food and are thus puzzled by the disgust Americans express toward sweatshops. *Id.* "Nothing captures the difference in mind-set between East and West more than attitudes toward sweatshops." *Id.*

76. See *id.* (asserting that Asian workers would be appalled to learn that Americans might protest sweatshops by boycotting certain products, which essentially translates to a boycott against many Asians' only means to earn a living). As the sweatshops grew and created more output, the result was an explosion of wealth in those areas where the sweatshops were located. *Id.* The effect of sweatshops in the Chinese economy contributed to China's economic rising in the past few years, resulting in China's per capita output doubling every ten years. *Id.*

77. See *id.* (finding that in the past decades, factory conditions in sweatshops have begun to improve, the wages of workers have increased exponentially, and improved education has been put in place for children).

78. See Hu Qian, *Chinese Practice in Public International Law: 2005(I)*, 5 CHINESE J. INT'L L. 459, 473 (2006) (detailing the steps that China has made for a legal system to protect the rights of children).

79. All China Women's Federation, National Working Committee and Women Under the State Council, http://www.womenofchina.cn/Agencies_Organizations/Government_Agencies/14805.jsp (last visited Jan. 26, 2009) (describing its mission to help promote the rights and interest for women and children).

80. Hu Qian, *Chinese Practice in Public International Law: 2005(I)*, 5 CHINESE J. INT'L L. 459, 473 (2006) (stating that China's provinces have also set up programs to defend the rights of children). "At the local level, coordinating groups had been set up in 29 provinces, autonomous regions and municipalities." *Id.*

the environment.”⁸¹ The effort made by China’s government illustrates an attempt to make a public stand to ensure better labor conditions for rural Chinese workers.

4. China, Communism, and Sweatshops

The buyer-driven commodity of many Western chains has resulted in the sweatshop proliferation around China and many Asian countries.⁸² Basic safety standards are often violated and result in injury or death.⁸³ The repercussions of these violations originate with regulatory problems of China’s factories.⁸⁴ China does have a structured and progressive labor law.⁸⁵ However, the “[r]egulatory agencies lack the resources to police the law,” and the factories often produce false documents or coach workers to show they are in compliance with regulation standards.⁸⁶ Although after nearly a decade of working on reforms, worker abuse is still happening in many Chinese factories.⁸⁷ Unfortunately, the cost of labor

81. *Id.* (describing China’s efforts to set goals for important aspects of a child’s life).

82. See Sean Cooney, *A Broader Role for the Commonwealth in Eradicating Foreign Sweatshops*, 28 MELB. U. L. REV. 290, 295 (2004). The interrelation of buyer-driven commodity chains and buyer-driven production chains has created an abusive workplace environment. *Id.* at 293-97.

83. *Id.* Employers commonly engage in discriminatory and militaristic practices. *Id.* at 297. At times, workers are even required to labor “extreme hours,” working for several months at a time without a day off. *Id.*

84. *Id.* (stating that many factories have turned into sweatshops, subjecting workers to long hours, low wages, and dangerous conditions).

85. *Id.* (finding that while there is a structural labor law standard in place, these standards are often undermined by the legal structure). “There are many gaps and inconsistencies in the . . . written law” that result in exploitation of the rules. *Id.* China has a system in place, between employers and employees, to enter into voluntary agreements which incorporate a minimum standard of workers’ rights. *Id.*

86. *Id.* (finding equal pay and equal opportunity discrimination against female workers and workers who lack residency status). “Even though [a migrant worker] may work in [factories in one of China’s prosperous cities] for up to [twenty] years, these workers are treated as a huge casual workforce.” *Id.* at 297. Moreover, most of the employees who are viewed as replaceable are female workers under the age of thirty-five. *Id.*

87. David Barboza, *Reform Stalls in Chinese Factories*, N.Y. TIMES, Jan. 5, 2008, at C1 (emphasizing that despite a decade of attempting to improve workers’ conditions in China, workers are still commonly abused in Chinese factories). Labor right groups postulate that “Chinese companies routinely shortchange their employees on wages, withhold health benefits and expose their workers to dangerous machinery and harmful chemicals, like lead, cadmium and mercury.” *Id.* American and European consumers are preoccupied about things like whether or not their children will be harmed from being exposed to Chinese-made toys that are covered in lead, but Chinese workers face much more threatening hazards. *Id.* In one area of China alone, Chinese workers break or lose approximately 40,000 fingers a year due to hazardous work conditions. *Id.*

standards is one of the reasons why regulations are not changing.⁸⁸ Western companies are constantly trying to get the best price for Chinese supplies while also insisting that factories comply with labor standards.⁸⁹ There may be additional obstacles on the horizon as new labor laws were recently enacted that will inevitably increase labor costs if factories comply with them.⁹⁰

Even with new regulatory laws, compliance will be difficult because, in China, if the demand is present, so is the supply. There is a huge amount of migrant workers in China, especially in the rural provinces.⁹¹ There are between 80 million to 100 million workers, and accordingly, the supply of labor is abundant.⁹² Migrant workers are in such excess that jobs are a scarce commodity, and therefore many people will work for little money. Because of this, China's supply issue has workers willing to work in horrible labor conditions, for low wages, and often includes employing children in order to reach product demands.

In fact, the conditions are worsening in China. The first current concern is the military influenced management of sweatshop factories.⁹³ Fac-

88. *See id.* (asserting that “[m]any labor experts say part of the problem is cost: Western companies are constantly pressing their Chinese suppliers for lower prices while also insisting the factory owners spend more to upgrade operations, treat workers properly and improve product quality”). Corruption may be another force behind why labor regulations are not changing. *Id.* Although some companies spend millions of dollars on hiring auditors, there is still bribery and corruption that undermine the effectiveness of the audit. *Id.*

89. *Id.* (pointing out that factory owners have trouble finding adequate labor, but Western companies still push for improved labor conditions). This is a difficult task for Chinese factory owners to meet since there are rising costs of raw materials in China. *Id.* The manufacturing process is getting more and more expensive and the Western companies still are demanding results and profits. *Id.* Central to the problem is the fact that the Chinese labor system depends “on young migrant workers, who often leave small rural villages for two-or three-year stints at factories.” *Id.*

90. *See id.* (establishing that a new labor law, that took effect on January 1, 2008, “makes it more difficult to dismiss workers and creates a whole new set of laws that experts say will most certainly increase labor costs”). Despite this law, human rights groups may have more difficulty in investigating whether or not the new standards are implemented. *Id.* Some experts argue the only way that corporate social responsibility will work is if Western companies leave China, since it is unrealistic that factories will make the necessary labor standard changes to comply with Chinese regulations. *Id.*

91. Sean Cooney, *A Broader Role for the Commonwealth in Eradicating Foreign Sweatshops*, 28 MELB. U. L. REV. 290, 297 (2004) (describing the remoteness of Chinese rural factories and the surplus of migrant workers there).

92. *Id.* China has a large migrant workforce, primarily from areas of low employment, which seek a means for employment. *Id.* This influx of laborers creates an overabundance of available labor for businesses to choose from. *Id.*

93. Anita Chan & Hong-Zen Wang, *Corporate Social Responsibility and Missing Links – Vietnam and China Compared* (Mar. 21, 2003) (paper presented at the Labor Reform: Employment, Workers' Rights, and Labor Law in China, University of Michigan), www.global-standards.com/Resources/ChinaVietnam-ChanHongZen.doc (describing the

ories have been influenced by political regimes in their country.⁹⁴ For example, countries like China and Vietnam also have sweatshop problems that are partial to Communist bias. A second problem affecting changes in sweatshop practices is gender discrimination.⁹⁵ Women rarely procure positions in management, and men receive preferential treatment including better training.⁹⁶ As such, many regulatory bodies are not empathetic to women or children's issues regarding labor standards.⁹⁷ Specifically, child labor is not dealt with as it is typically not a priority for local governments to address. Local governments are more concerned with perpetuating economic growth and creating positions for people within their provinces.

III. INTERNATIONAL LABOR STANDARDS

A. *International Labour Organization (ILO) Norms*

A main body of regulation in the global labor realm, which China has recognized, is the International Labour Organization (ILO). The ILO's 1998 Declaration on Fundamental Principles and Rights at Work is a guideline for labor norms on the global level.⁹⁸ The Declaration of the

use of a "militaristic" style management method with Chinese workers). Interviews conducted by the co-author, Hong-Zen Wang, and other Taiwanese scholars of Taiwanese managers showed the contrast between their management styles when they were located in China as compared to when they located in Vietnam. *Id.* "You can't even touch the Vietnamese workers, let alone abuse them. When we began our operations in China, we frequently resorted to punishment. Physical punishments were very common, including even hitting, like in the military." *Id.*

94. *Id.* ("The fact that they behave differently in different host countries attests to the fact they can indeed be influenced to adjust their behavior, and shows, too, that they very noticeably take into account the policies taken by the host state.").

95. See Margaret Y. K. Woo, *Biology and Equality: Challenge for Feminism in the Socialist and the Liberal State*, 42 EMORY L.J. 143, 144 (1993) ("Women workers have not fared well under [economic] reforms. Overwhelmingly, they are last to be hired and the first to be laid off. Even when hired, women are segregated into specific lower paid light industries."). The article goes on to note that the barriers presented to Chinese women in the workforce are imposed to uphold the goals of nationalism and sustained economic development. *Id.*

96. See *id.* (describing inequalities faced by women in the Chinese workforce).

97. See *id.*

98. Annette Burkeen, *Private Ordering and Institutional Choice: Defining the Role of Multinational Corporations in Promoting Global Labor Standards*, 6 WASH. U. GLOBAL STUD. L. REV. 205, 208-209 (2007) (defining the ILO and its purpose). The ILO is important in order to identify current global labor norms in existence. *Id.* at 208. The ILO is an influential source in determining these global labor standards. *Id.* at 208-09.

ILO stated four main principles that all countries should uphold.⁹⁹ Those principles are (1) “freedom from forced labor,” (2) “nondiscrimination in the workplace,” (3) “the effective abolition of child labor,” and (4) “freedom of association and the right to organize and bargain collectively.”¹⁰⁰ While ILO’s Declaration addresses principles of labor standards, it is flawed because it fails to provide measures for enforcement.¹⁰¹ Even though China recognizes international labor concerns, the enforcement issue has resulted in the perpetuation of labor infractions as local Chinese governments are easily influenced to turn their heads in order to maintain economic stability and low labor costs.

B. *International Court of Justice*

The International Court of Justice (ICJ) is the main judicial entity of the United Nations.¹⁰² The ICJ was created before there were transnational corporations and international non-governmental organizations.¹⁰³ The use of the ICJ to resolve labor disputes can also be utilized because it

99. *Id.* at 209 (“The ILO’s promulgation of these four principles, also described as ‘core labor standards,’ does not end the debate on global labor standards; rather, it merely focuses it.”).

100. *Id.* (“Conversely, free trade advocates contend that global economic growth will improve working conditions, thus alleviating the need for additional governmental intervention.”). This view espouses the idea that multinational corporations will better develop and enforce safety conditions, wages, and hourly standards through their continual business relations with suppliers. *Id.*

101. See John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 *LAW & INEQ.* 193, 211 (2001) (explaining that the U.N. “Global Compact,” based on principles drawn from the ILO Declaration, contains no provisions for monitoring compliance with those principles). The “Global Compact,” announced by Secretary General Kofi Annan in January 1999, encourages member states to adhere to nine principles of conduct derived from the ILO Declaration and the Universal Declaration of Human Rights, as well as other U.N. documents. *Id.* at 210–11. The Compact addresses issues within businesses’ “sphere of influence,” including the environment, labor rights, and broader human rights concerns. *Id.* at 211. Because the Compact contains no mechanisms for enforcement, members are only asked to voluntarily comply. *Id.*; see also Annette Burkeen, *Private Ordering and Institutional Choice: Defining the Role of Multinational Corporations in Promoting Global Labor Standards*, 6 *WASH. U. GLOBAL STUD. L. REV.* 205, 210 (2007) (pointing out that the ILO pays attention to some of the more exploitive labor practices, but in other respects it does not address critical labor issues). The ILO does not address the need for living wages, overtime pay, maternity leave, occupational safety, minimum wage, maximum work hours, or holiday leave. *Id.*

102. John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 *LAW & INEQ.* 193, 212 (2001) (noting nations that are parties to the United Nations and that have recourse through the ICJ for treaty disputes).

103. *Id.* (“[O]nly states may be parties in cases before the Court.”).

is a judiciary body, which if a nation submits to its jurisdiction, the decision will be binding.¹⁰⁴ However, a major obstacle to overcome is convincing countries to submit to the jurisdiction. Along with the ILO, the ICJ could be a helpful tool to combat child labor violations in China.

C. *Other International Agreements*

In early 2000, China signed an accord with the United Nation's International Labor Office to improve the labor conditions of its workers.¹⁰⁵ However, while China refused to sign a treaty barring forced labor, China agreed to adopt a policy on child labor, discrimination, and safety in its workforce.¹⁰⁶ A major area of concern is the reality that workers are not able to collectively bargain or organize.¹⁰⁷ China's system, designed to promote Communist ideals, allows for a worker to join only a union controlled by the government.¹⁰⁸

China has not ignored the pressures to conform to international labor standards. In response to growing international concern over China's child labor conditions, a delegation of China officials outlined the country's efforts.¹⁰⁹ The delegation stated China has ratified the Convention

104. *Id.* (describing the nature and role of the International Court of Justice, or ICJ). Only states may appeal to the ICJ to resolve treaty disputes; transnational corporations (TNCs) and international non-governmental organizations have no such recourse. *Id.* While states submit voluntarily to the ICJ's jurisdiction, they may not opt out of compliance with ICJ orders once they have joined. *Id.*

105. Erick Eckholm, *China Accepts UN Advice to Help Ease Labor Strife*, N.Y. TIMES, May 19, 2001, § 1, at 15 (explaining that China has agreed to a program of cooperation with a large international labor agency to improve the conditions of the Chinese labor force).

106. *Id.* (stating that the ILO condemned China's reliance on labor from forced labor camps and prisons). China also utilizes re-education programs which force laborers as well. *Id.* "China has declined to sign a treaty, promoted by the Geneva office, that bars forced labor, though it plans to adopt conventions on child labor, discrimination and safety and health." *Id.*

107. *Id.* ("Under Chinese law, devised to enforce stability and the primacy of the Communist Party, workers may join only the single, government-controlled trade-union federation. Independent groups, even where the official union is corrupt or fails to protect workers, have been crushed and rebellious labor leaders have been jailed.").

108. John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 LAW & INEQ. 193, 212 (2001) (claiming that the Chinese "labor unions that do exist are simply arms of the government, 'serving to control workers by playing the part of hired thugs and public security in workplaces'").

109. See Hu Qian, *Chinese Practice in Public International Law: 2005(I)*, 5 CHINESE J. INT'L L. 459, 473 (2006) (stating that China has discussed its plans for improvement in children's rights before the Commission on Human Rights). "On 8 April 2005, the delegation of China elaborated China's efforts and opinions in the field of protecting children's right before the Commission on Human Rights." *Id.*

on Rights of the Child and the International Labour Organization's Worst Forms of Child Labour Convention.¹¹⁰ In addition, China has also signed the Hague Convention on Protections of Children and Co-Operation in Respect to Intercountry Adoption and the Optional Protocol on the involvement of children in armed conflict.¹¹¹ China is facing its critics by adopting international guidelines; however, without enforcement those guidelines do not have much of an effect.

In an effort to create a habit of enforcement, Chinese officials need to move beyond economic pressures. By signing the various international agreements, they have pledged to take steps to end child labor and the abuse of children in the work force. The international community needs to insist on improvement. If the agreements have been signed by China, international groups should expect to see change and results. If there is not change in practice, there is little point of the treaties and conventions.

IV. GLOBAL ECONOMIC PRESSURE

A. *The Strain for China to Meet Demands*

Recently, Western companies realized instead of contributing to the labor problem, they are in a position to initiate change. The effect of their efforts is yet to be seen. Western companies adopted codes of conduct for foreign factories to maintain a standard for worker's conditions.¹¹² However, this practice is arguably contradictory because companies place intense pressure on foreign factories to deliver supplies.¹¹³ "Thus, despite treaties requiring these nations to enforce certain

110. *See id.* at 473 n.52 (stating the various ratifications that China has recently made to help protect the rights of children). "China had ratified the Convention on the Rights of the Child, the Optional Protocol on the sale of children, child prostitution and child pornography and the ILO Worst Forms of Child Labour [sic] Convention, 1999 (No. 182)." *Id.* (footnote omitted).

111. *See id.* (outlining that the Chinese delegation affirms that China is taking steps to ensure protection of children because China has adopted and recognizes international policies combating the worst form of child labor and protection of children).

112. Robert J. Rosoff, *Beyond Codes of Conduct – Addressing Labor Rights Problems in China*, CHINA BUS. REV., Mar. 2004, <http://www.chinabusinessreview.com/public/0403/rosoff.html>.

A Western company with a good code of conduct will have greater success implementing the code in factories over which it controls a significant amount of the factory's output, because it will have more negotiating leverage over factory owners. If a Western company does not control a significant amount of a factory's output, it can act together with other companies that use the factory to demand acceptable treatment of workers. *Id.*

113. *Id.* (stating that China has a large supply of migrant workers that are willing to work under any kinds of workplace conditions, regardless of the codes of conduct, because they are simply unfamiliar with the rights that they are guaranteed under Chinese laws).

labor standards, few countries do so for fear of a competitive disadvantage with other developing nations."¹¹⁴ Factory owners face the reality of losing large and lucrative orders from Western companies at the expense of workers' conditions, which do not comply with labor standards.¹¹⁵

B. Chinese Internal Economic and Government Pressures

In 2003, the Supreme People's Court of China enacted regulations on the labor management of the foreign-funded enterprises (FPEs) to deal with the rights and interests of foreign enterprises based in China and their employees.¹¹⁶ The FPEs may not recruit employees "still employed by other employers and are forbidden to use child laborers."¹¹⁷ These regulations also allow for trade unions to conclude collective contracts on behalf of employees with FPEs in an effort to loosen strict rules on Chinese labor unions.¹¹⁸ Additionally, the FPEs must provide for "old-age,

114. Julia Fisher, Note, *Free Speech to Have Sweatshops? How Kasky v. Nike Might Provide a Useful Tool to Improve Sweatshop Conditions*, 26 B.C. THIRD WORLD L.J. 267, 282 (2006) (describing the difficulty of enforcing labor standards on countries that rely on that labor for economic advantages).

115. Robert J. Rosoff, *Beyond Codes of Conduct – Addressing Labor Rights Problems in China*, CHINA BUS. REV., Mar. 2004, <http://www.chinabusinessreview.com/public/0403/rosoff.html>.

Western companies' sourcing practices can contribute to the problem when, for example, large orders are made with short deadlines, the lowest possible prices are demanded, and orders are changed at the last minute. Factory owners are afraid to lose business if they refuse orders, even if they have to violate the law to complete an order. *Id.*

116. Regulations on the Labor Management of the Foreign-Funded Enterprises § 1 (promulgated by the Ministry of Labor & the Ministry of Foreign Trade & Econ. Cooperation, Aug. 11, 1994) (P.R.C.), available at http://en.chinacourt.org/public/detail.php?id=3175&k_title=labor&k_content=labor ("The regulations are formulated in line with State laws and administrative regulations to guarantee the legal rights and interests of the foreign-funded enterprises (FPEs) and their employees and establish, maintain and develop stable and harmonious relations between the FPEs and the employees.").

117. *Id.* § 5 (emphasizing the restrictive regulations that apply to FPEs regarding employed individuals and prohibiting the use of child labor). The FPEs are allowed to recruit individuals from local areas or if under the guidance of the labor administrative departments from other regions. *Id.* The FPE does get to decide on its own times, conditions, and manners of employment, as well as the number of employees as long as it conforms to State laws and administrative regulations. *Id.*

118. *Id.* § 8.

Labor contracts are concluded in written form between individual employee and the FPEs. Trade unions (elected worker representatives if no such unions are available) may conclude collective contracts with the FPEs on behalf of the employees through consultations and negotiations with regard to matters like their remuneration, working time and vacation, labor safety and hygiene condition and insurance and welfare. *Id.* The content of the contracts should conform with applicable State laws and administrative regulations. *Id.*

unemployment, medical, on-job injuries, child bearing and other social insurance for their employees.”¹¹⁹ With regard to enforcement of these regulations, the Supreme People’s Court stipulate that if a FFE violates the regulations the local labor department may impose a fine of five to ten times the employee’s monthly pay on the FFE.¹²⁰ Furthermore, regulations are to be interpreted by the Chinese Ministry of Labor.¹²¹ If the occasion arises where there exists a conflict between these and past labor arrangements, the current regulations will dominate.¹²² As such, the enactment of this policy decision is a step forward for Chinese enforcement to begin to emerge in Chinese industrial labor matters.

Labor markets in China were believed to have an unlimited supply of workers because laborers were in such need of work they were willing to work for little or no money. Currently, wages are on the rise due to a shortage of young workers.¹²³ With the onslaught of higher wages, the result is higher prices for the United States and other foreign custom-

119. *Id.* § 17 (quoting the insurance obligations of the FFEs to which they owe their respective employees by law). The FFEs are responsible for paying premiums on time and in accordance with applicable State regulations established by the local governments. *Id.* The employees are also responsible for their old-age premium as required by relevant regulations. *Id.*

120. *Id.* at § 28 (reiterating the severe penalties that can be imposed on the FFEs for violations of the regulations). In addition to fines, Article 29 goes on to state that if the wage paid to the FFEs employee is less than the local minimum wage standard the local labor department can order a correction within a set time. *Id.* 29. The FFE could also be required to “pay the employee a compensation fund in the amount of 20-100 [%] of the difference between the actual wage paid and the minimum standard.” *Id.* If the FFE still fails to pay the fine, an additional fine can be imposed, which are “[1] to [three] times the make-up and the compensation fund.” *Id.*

121. Regulations on the Labor Management of the Foreign-Funded Enterprises § 36 (promulgated by the Ministry of Labor & the Ministry of Foreign Trade & Econ. Cooperation, Aug. 11, 1994) (P.R.C.), available at http://en.chinacourt.org/public/detail.php?id=3175&k_title=labor&k_content=labor (reiterating that the Ministry of Labor has the interpretative power regarding the Regulations on the Labor Management of the Foreign Funded Enterprises).

122. *Id.* (“These regulations come into force upon its promulgation and shall dominate should there be any conflict between the regulations and the past labor management regulations concerning FFEs.”).

123. See Keith Bradsher, *Wages Are on the Rise in China as Young Workers Grow Scarce*, N.Y. TIMES, Aug. 29, 2007, at A1 (suggesting reasons for raise hikes in China). “There is a shortage of workers willing to accept the low wages that prevailed in the 1990s.” *Id.* The factories desire younger workers because they think they will be better able to handle the long hours and sub-standard working conditions. *Id.* More and more young Chinese are choosing to go to universities after high school instead of factories. *Id.* “[F]actory owners and experts who monitor the nation’s labor market say that businesses are having a hard time finding able-bodied workers and are having to pay the workers they can find more money.” *Id.* As a result, factory owners are having to provide double-digit raises to maintain their supply of young workers. *Id.*

ers.¹²⁴ One reason for the shortage of young workers is the effect of the Chinese one-child policy.¹²⁵ This new problem of a labor shortage will likely result in a labor crunch China's policymakers will have to confront.¹²⁶ A decrease of labor could result in catastrophic problems for China's government. A labor shortage would be devastating, with China having such a dependency on inexpensive and bountiful labor

V. POSSIBILITIES FOR REFORM

A. *Code of Conduct for Investing Businesses*

Corporate social responsibility is growing to be an important part of global business practices not only in China, but all over the world. With companies beginning to take responsibility for their production, there is growing awareness of necessitated labor standards in developing nations. For example, Petrobras, a global petroleum company based out of Brazil, is investing \$200 million per year in corporate social responsibility.¹²⁷ Petrobras recognizes the importance of investing in the community and is working to end child labor, among many other issues, in Brazil.¹²⁸ Pe-

124. See *id.* (explaining how the increase in wages is affecting the global market). "Chinese companies are already passing along some of their higher costs to overseas customers." *Id.* Although prices of Chinese goods have been declining for several years, they saw record increases in 2007. *Id.* Because of higher wages, the United States was forecasted to see higher prices "at the mall, at the grocery, even at the gas pump." *Id.*

125. See Howard W. French, *As China Ages, a Shortage of Cheap Labor Looms*, N.Y. TIMES, June 30, 2006, at A (arguing that regardless of the detrimental effect the one-child policy is having on China's workforce, a change in policy is unlikely because it would admit that the "signature program" was a failure).

126. See Keith Bradsher, *Wages Are on the Rise in China as Young Workers Grow Scarce*, N.Y. TIMES, Aug. 29, 2007, at A1 (noting the lack of labor regulation in China). For many decades economists believed China would have an endless supply of labor and wages would remain constant. *Id.* However, now with a shortage of young workers, wages are rising, which will result in increased prices in the United States and other foreign markets. *Id.* With little regulation, some workers are being abused. *Id.* "Labor regulation is weak in China, as shown most vividly this year by the discovery that brick kilns in the north of the country had kidnapped and enslaved hundreds of children and mentally disadvantaged adults, working them under brutal conditions with little or no pay." *Id.*

127. Carrie Hall, *Are Emerging Market TNCs Sensitive to Corporate Social Responsibility Issues?*, COMPACT QUARTERLY, Nov. 2006, http://www.enebuilder.net/globalcompact/e_article000688480.cfm?x=B11,0,w ("Today, Petrobras is investing US \$200 million per year on corporate social responsibility and environmental programs that span 1200 related projects."). Petrobras is currently the largest petroleum company operating in Brazil and spans over twenty-one countries, many of which have unstable social infrastructure or severe political unrest. *Id.*

128. *Id.* ("At home, Petrobras recognizes the importance of community investment and has extensive programs underway related to poverty reduction across Brazil ('Zero Hunger'), education, child labor and child sexual abuse, and fundamental rights for people with special needs, among many other issues."). The report appropriately sheds light on

trobras also maintains corporate social responsibility efforts in other countries in which it conducts business in order to ensure overall community impact.¹²⁹ Specifically, in China, “the nation’s largest power transmission company, has released its first guidelines on corporate social responsibility.”¹³⁰ The company will place energy supplies in rural communities to ensure progress.¹³¹ Corporate social responsibility promotes corporate accountability for actions committed in countries in which they conduct business. Additionally, corporate accountability focuses on actions in regards to business practices and human rights. For example, it is a commonly agreed upon standard that child labor is unacceptable in order for compliance and perpetuation of corporate social responsibility.

Further, corporate social responsibility is not a new idea. In 1971, corporate social responsibility came to the forefront of the minds of business executives dealing in foreign markets.¹³² In fact, a market research firm estimates that ninety-one percent of chief executives believe corporate social responsibility creates shareholder value.¹³³ However, this belief is not necessarily supported by evidence¹³⁴ as corporate social responsibility firms only make up a small percentage of mutual funds in the United

responsible emerging [transnational companies], such as Petrobras, that take positive measures to help rectify the dismal state of corporate citizenship and the manner in which they impact the global emerging market. *Id.*

129. *Id.* (“The company also has corporate responsibility programs ongoing in foreign countries or communities emerging from or still suffering from conflict and violence.”). For example, the case study illustrates Petrobras’ efforts in Angola to reconstruct social infrastructure through humanitarian programs by focusing on schools, day-care centers, hospitals, and rural communities. *Id.* In addition, “[e]xamples of Petrobras’ initiatives in Nigeria include donation of supplies to schools that educate 12,000 pupils, provision of food and blankets to orphanages in the Lagos region, and an HIV/AIDS prevention campaign in [forty] secondary schools in coordination with a local civil society organization.” *Id.*

130. *In Brief- CSR*, CHINA DAILY, Jan. 4, 2008, at 14, available at http://chinadaily.com.cn/cndy/2008-01/04/content_639321.htm (detailing plans to further develop China power grids to provide better resources and security).

131. *Id.* (“It will also focus more on ultra-high voltage power projects and power supply in rural areas.”).

132. Jonathan Dee, *A Toy Maker’s Conscience*, N.Y. TIMES, Dec. 23, 2007, § 6 (Magazine), at 34 (asking the question of what could be expected “in the moral realm, from the conduct of multinational corporations, in China or elsewhere”). Specifically, corporate social responsibility “was a fringe movement . . . in 1971” and “has moved into the business mainstream.” *Id.*

133. *Id.* (“According to a poll by Nima Hunter, a marketing research firm, [ninety-one] percent of chief executives believe that a good corporate social-responsibility program creates shareholder value.”).

134. *Id.*

States.¹³⁵ Big business may desire to make the world a better place, but occasionally those big businesses seemingly support the conflicting desire to maintain the status quo by refusing to support Chinese measures to have more open policies.¹³⁶ In fact, critics are also calling corporate social responsibility as the “back-patting” of the world’s economic elite who are looking for the cheapest labor they can find and calling it a humanitarian rights efforts.¹³⁷

While a Western company’s influence promotes foreign factory compliance with labor standards, there still needs to be a proper course of action to implement the labor standards.¹³⁸ One possibility is democratic elections of union representatives.¹³⁹ The simple goal is to allow workers to have an independent voice, and thus, result in reduction of labor violations.¹⁴⁰ There may be more of an involvement of Chinese workers if they are empowered with the ability to implement changes.

135. *Id.* (“So-called socially responsible investing firms are more and more in vogue but still account for only about [two] percent of total assets in mutual funds in the United States.”). One prime example is Mattel, who has “one of the highest corporate social-responsibility profiles,” which received “no positive press coverage in any of the lead-paint stories for their strong performance on labor standards.” *Id.* This demonstrates that “there’s a limit to what [a socially responsible investing firm] can protect you from in terms of lawsuits, regulatory threats, brand loyalty or unfavorable press.” *Id.*

136. John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 *LAW & INEQ.* 193, 218 (2001) (alleging that corporations have a financial interest in limiting the availability of public information regarding human rights abuses in the Chinese labor industry). Indeed, when American corporations do acknowledge labor rights violations in Chinese factories, they insist that these unverifiable anomalies would not occur in their own factories. *Id.* Most of these corporations contend that their own codes of conduct sufficiently protect workers’ rights, while American labor unions allege the opposite. *Id.* American labor unions, interested in protecting American labor from foreign competition, contend that conditions in Chinese factories are abominable in an attempt to encourage American consumers to buy American-made products. *Id.* Inevitably, then, there is uncertainty as to which special interest’s portrayal of Chinese labor rights is more accurate. *Id.*

137. Jonathan Dee, *A Toy Maker’s Conscience*, *N.Y. TIMES*, Dec. 23, 2007, § 6 (Magazine), at 34 (believing that although there is a sense that “corporate social responsibility seems mostly genuine,” it appears that it “encourages a lot of back-patting among the world’s economic elite”). These members “seem able to discern, in their own hunt for the cheapest possible work force, a humanitarian aim.” *Id.*

138. Robert J. Rosoff, *Beyond Codes of Conduct – Addressing Labor Rights Problems in China*, *BUS. REV.*, Mar. 2004, <http://www.chinabusinessreview.com/public/0403/rosoff.html> (discussing new strategies focusing on abuse in the labor rights sector of China).

139. *Id.* (describing new democratic standards being implemented by large foreign-based companies in allowing the workers to vote for the union representatives).

140. *Id.* (discussing the importance of allowing workers to have a strong and independent voice when choosing and electing officials responsible for the union rights of workers). Allowing workers to have an independent voice promotes the reduction of labor

Other courses of action include educating workers about China's Labour Law.¹⁴¹ Several Western companies have already begun to advertise the main provisions of China's Labor Law and contact information for enforcement concerns.¹⁴² Another suggestion is to protect those Chinese labor advocates who are imprisoned for their efforts.¹⁴³ When workers organize and protest, the Chinese government will arrest leaders and send them to prison and pay workers to go back to work.¹⁴⁴ Many Western companies realize their influence and have convinced the Chinese government to release these protest leaders.¹⁴⁵ Finally, another

rights abuse. *Id.* Also, a repercussion of democratic trade representative elections would be for a greater loyalty of workers to the factory thereby resulting in better business relations. *Id.*

141. John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 *LAW & INEQ.* 193, 233 (2001) (proposing the Internet as perhaps the most promising tool for encouraging Chinese workers to seek greater rights). International labor unions, sympathetic NGOs, and Chinese workers may all utilize the Internet in facilitating the flow of information to workers. *Id.* In addition, the Internet may be the most useful means for Chinese workers to communicate with one another in order to organize and collectively bargain for enhanced protections. *Id.* at 223–24. Particularly because the Internet can reach a broad audience quickly, it enables anonymous communication that moves faster than censors. *Id.* at 224.

142. Robert J. Rosoff, *Beyond Codes of Conduct – Addressing Labor Rights Problems in China*, *CHINA BUS. REV.*, Mar. 2004, <http://www.chinabusinessreview.com/public/0403/rosoff.html> (reporting on the actions taken by Western companies in promoting the labor rights of workers and methods of bringing action). Some of the companies who have implemented this advertising campaign of China's Labour Law include Nike Corp., Adidas-Solomon AG, Reebok, and Sears Roebuck & Co. *Id.* In 2003, posters were placed for the workers to see in their factories and a call center established to receive any calls from factory workers. *Id.* The intent is the more Chinese workers know about their rights the better able for them to make complaints and initiate changes. *Id.*

143. *Id.* (discussing the steps taken by the Western companies in order to ensure that the workers have a voice in regards to their labor rights and not be wrongfully imprisoned for speaking out).

144. *Id.* (discussing the restrictions placed by the Chinese government and how protest leaders are arrested in order to stop the protests).

145. *Id.* (discussing actions taken by large companies in protecting the rights of protesters when there is an abuse of the labor rights). For example, John Kamm has proven the Chinese government will respond to Western pressure to free these labor protestors. *Id.* Kamm worked in 1990 as vice president of Occidental Chemical and as president of the American Chamber of Commerce in Hong Kong. *Id.* Kamm publicly called for release of Yao Yongzhan, a student detained after the Tiananmen Massacre. *Id.* Shortly after, Yao was released. *Id.* These examples show that Western companies can take action against the Chinese government's wrongful imprisonment of labor protestors while not impacting company business. *Id.*

course of action is having the Chinese business community participate in making these changes.¹⁴⁶

Convincing small business enterprises to comply with Chinese Labour Law in exchange for Western company's to utilize them is the ultimate goal.¹⁴⁷ With China's recent entry in the World Trade Organization, more scrutiny is on the country to comply with labor efforts and concerns of corporate social responsibility.¹⁴⁸ Proponents believe building awareness of CSR will help to improve poor labor conditions.¹⁴⁹ If foreign companies, specifically powerful Western companies, can make changes to initiate concern over labor standards improvements will be made. Western companies need to balance their need for cheap and effective labor with the reality of the conditions in industrial China.

Since China has an inability, or at times aversion, to comply with improving sweatshop conditions, there is a push to look at regulations elsewhere.¹⁵⁰ However, it may be necessary to look at the other side of the supply chain as corporations are not actually acting with corporate accountability.¹⁵¹ Many corporations have adopted corporate codes of conduct to show consumers they care about sweatshop conditions,¹⁵² but

146. *Id.* (discussing efforts made by large Western companies in attempting to reach out to small to midsize companies to comply with the labor rights set out by the PRC).

147. Julia Fisher, Note, *Free Speech to Have Sweatshops? How Kasky v. Nike Might Provide a Useful Tool to Improve Sweatshop Conditions*, 26 B.C. THIRD WORLD L.J. 267, 283 (2006) ("This failure of the international community to deal with the problem of sweatshops hassled many activists to try to use the American court system to hold U.S.-based corporations accountable for labor rights abuses abroad.").

148. Robert J. Rosoff, *Beyond Codes of Conduct – Addressing Labor Rights Problems in China*, CHINA BUS. REV., Mar. 2004, <http://www.chinabusinessreview.com/public/0403/rosoff.html> (discussing the growing concern exhibited by other nations and how it has increased in recent years). By entering the World Trade Union, China is under more intense public debate over how their standards compare globally on labor conditions and human rights. *Id.* China can gain credibility by showing corporate social responsibility is a priority. *Id.*

149. Robert J. Rosoff, *Beyond Codes of Conduct – Addressing Labor Rights Problems in China*, CHINA BUS. REV., Mar. 2004 <http://www.chinabusinessreview.com/public/0403/rosoff.html> (discussing the effects of a growing awareness regarding labor rights in China and how it could affect labor conditions).

150. Sean Cooney, *A Broader Role for the Commonwealth in Eradicating Foreign Sweatshops*, 28 MELB. U. L. REV. 290, 297 (2004). In the event Chinese businesses choose to follow labor laws, competition would likely re-structure at an international level, causing consumers to look elsewhere. *Id.*

151. *See id.* at 298 (discussing that, in light of the current political and economical environment, the most firms can do for sweatshop workers in order to improve working conditions is to engage in trades and negotiate with those workers' contractors or employers).

152. Julia Fisher, Note, *Free Speech to Have Sweatshops? How Kasky v. Nike Might Provide a Useful Tool to Improve Sweatshop Conditions*, 26 B.C. THIRD WORLD L.J. 267,

forcing a company to take responsibility and control over who they out-source to for business purposes is a difficult task.¹⁵³ Furthermore, a firm may not be able to initiate change if it lacks the clout to demand the changes in labor standards.¹⁵⁴

Change will occur by making the top of the supply chain liable and culpable for labor standards. This liability forces companies to look at the effects of their choices and face the scrutiny of human rights groups. Specifically, companies are being looked at in regard to their involvement in perpetuating negative labor standards. The theory is if the top of the supply chain makes the changes and does not contract with those manufacturers that are known to have low labor standards, then the result will be an overall improvement. The more companies who take on this role, the better the labor standards in economically industrializing countries will become. The result of this has been corporate social responsibility becoming an important aspect of Western business practices.

B. *Internal Chinese Labor Reform*

A possible remedy for implementing necessary labor laws in China could be to increase the power of enforcement by the state agencies, which regulate labor standards.¹⁵⁵ However, the suggestion has faced opposition because these agencies have a history of weak enforcement capability.¹⁵⁶ In response, it has been suggested that increasing power to state agencies may result in greater responsiveness to local labor conditions and making the necessary changes to improve conditions.¹⁵⁷ It may be

286 (2006) (describing how corporations try to improve their public image with such anti-sweatshop codes).

153. See Sean Cooney, *A Broader Role for the Commonwealth in Eradicating Foreign Sweatshops*, 28 MELB. U. L. REV. 290, 299 (2004) (discussing the different factors that influence firms' choices of pursuing different avenues of competition and distinguishing dependent firms from independent firms). Critics argue the amount of control a company has over a consequential supply chain could be limited depending on the industry. See *id.* The most important factor to consider is probably the firm's market position. *Id.* The more significant and powerful the firm, the better position for changes to be implemented. *Id.*

154. *Id.* at 298 ("Sweatshops are perhaps a necessary evil on a country's path to economic prosperity.").

155. See Sean Cooney, *Making Chinese Labor Law Work: The Prospects for Regulatory Innovation in the People's Republic of China* 30 FORDHAM INT'L L.J. 1050, 1087 (2007) (offering more effective sanctions and "changes to the institutions responsible for implementing the laws").

156. See *id.* (analyzing the suggestion of the increasing the power of labor bureaucracy). Not only is the suggestion weak, but also considered controversial and it "fail[s] to outweigh the economic incentives to flout the law." *Id.*

157. See *id.* (affirming the benefits of bolstering enforcement of the labor regulators through the command and control approach, despite the deficiencies). Alternatively, giv-

surprising to see a socialist country, like China, allow its workers' to be taken advantage of by foreign investors.¹⁵⁸ The reason for these poor conditions is the collusiveness with the government and foreign-operated companies.¹⁵⁹ The oversight of these factories is done by persons who aid in the abuse instead of enforcing labor protections.¹⁶⁰ The best way for the labor departments to adequately implement is to have a publicly known strategy for enforcement.¹⁶¹ Lower cost strategies like warnings and persuading companies to make changes can be used against firms who are initially compliant.¹⁶² However, if met with opposition the regulating bodies need to have the authority to make effective fines and penalties in order for company owners to realize the severity of their violations.¹⁶³

Sanctions must have visible consequences to companies to be an effective tool to address labor standard conditions, in particular child labor. Fines and imprisonment are standard punishments for companies and individuals that Chinese regulators could employ when absolutely necessary to punish violators. However, because Chinese regulators are enticed by the economic gain of maintaining business and therefore overlook enforcement of labor standards, these penalties may be insufficient. Without the guarantee of sanctions being used, they become an ineffective tool. The penalties imposed on employers must be convincing enough for them to initiate change. For this to happen, Chinese officials cannot use their position of power to manipulate economic gain in the country at the expense of labor standards and child labor infractions.

ing more power to state agencies could lead to a greater downturn in labor standards, due to state agencies currently using what power they have to exploit workers. *Id.*

158. Anita Chan, *Workers' Rights Are Human Rights*, HUMAN RIGHTS IN CHINA, Mar. 31, 1991, <http://iso.hrichina.org/public/contents/article?revision%5fid=3184&item%5fid=3183> ("One might ask why a so-called 'socialist' country can allow its own workers to be thus abused by foreign investors.").

159. *Id.* ("The answer is that there is extensive collusion between local government and foreign capital.").

160. *Id.* ("Many of the Chinese partners of joint ventures are actually government organs and departments, or their affiliates.").

161. See IAN AYRES & JOHN BRAITHWAITE, *RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE* 35 (1992) (discussing the use of different models for responsive regulation). "[C]ompliance is most likely when an agency displays an explicit enforcement pyramid." *Id.*

162. See *id.* at 35–36 (discussing the base of the pyramid model for responsive regulation which includes a warning letter). "Most regulatory action occurs at the base of the pyramid where attempts are initially made to coax compliance by persuasion. The next phase of enforcement escalation is a warning letter" *Id.*

163. See *id.* at 36 (discussing the use of different models for responsive regulation). If the fines are not effective to induce change, then there is little incentive for factory owners to make alterations in their practices. See *id.*

Further, trade unions must be able to organize freely and collectively bargain to ensure conditions will improve. Freedom of trade unions may not be an easy feat to accomplish because of the political situation in China at the current time.¹⁶⁴ The unions need to be able to have to power to strike if the conditions are not up to the standards that are acceptable.¹⁶⁵ Strikes rarely occur in the current condition, but if the trade unions were able to organize, this would legitimize and regulate strikes in the Chinese labor market.¹⁶⁶

Another possibility to enhance labor union reform would be to take away the control of trade unions by the private companies.¹⁶⁷ The management of migrant workers is often oppressive and there are feeble attempts at mediating issues which have not resulted in positive changes for workers.¹⁶⁸

In order for them to be effective at battling child labor conditions in China, trade unions need to have the freedom to collectively bargain without influence from political authorities. There needs to be in place an incentive for trade unions to implement changes and demand for improvements to occur. Ultimately, to be successful in altering current labor conditions, trade unions must not succumb to political biases.

Without the solidarity and organization of the workers, there will not be enough pressure on Chinese labor officials and on Western companies to alter their practices with regard to labor standards. The workers in the

164. *See id.* (observing China's inability to conform to the "ILO conventions on the right to organize and to bargain collectively" because of its political circumstances currently).

165. *See* Sean Cooney, *Making Chinese Labor Law Work: The Prospects for Regulatory Innovation in the People's Republic of China*, 30 *FORDHAM INT'L L.J.* 1050, 1089 (2007) (describing ways the Chinese unions can be legitimized and regulated).

166. John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 *LAW & INEQ.* 193, 216 (2001) (asserting that unequivocal recognition of the right to strike is probably not on the horizon in China). As the Chinese government steadfastly contends that striking is not a worker's right, some form of external influence in the matter will be necessary to change labor conditions. *Id.* at 216–17. Under the current system, striking against state-controlled employers is considered treason, and labor rights activists are targeted by police as part of a wider campaign to silence dissent. *Id.* at 217.

167. *See* Sean Cooney, *Making Chinese Labor Law Work: The Prospects for Regulatory Innovation in the People's Republic of China*, 30 *FORDHAM INT'L L.J.* 1050, 1089 (2007) (considering a move that would leave trade unions unhindered from firm management). The ideal scenario would be for the Trade Union Law to be amended and require unions to be independent from private firm management. *Id.* at 1089–90.

168. *See id.* at 1090 (arguing that the organization's current approach is, "at best, irrelevant to" migrant workers).

Chinese manufacturing industry have begun to demand changes, after nearly twenty years of dormant wages and poor labor conditions.¹⁶⁹

The Internet in China could also be a way for communication amongst workers regarding human rights violations.¹⁷⁰ The World Wide Web is comparable to a library of readily available documents for workers to utilize.¹⁷¹ While “[t]he Chinese government has attempted to restrict Internet use, they have only been partially successful.”¹⁷² The use of the Internet for Chinese workers may be a pivotal tool to combat unfair labor practices.

China’s working population has realized the power of their voice to enact alterations in how employers operate their businesses in rural factories. Often times, migrant workers are not aware of the security that is afforded to them by Chinese labor standards. Violations may not be as prevalent if Chinese workers can gain increased education of the rights the Chinese legislation has given them. If a migrant worker in China knew his or her employer had to adhere to certain minimum labor standards and the employer failed to comply with the standards, the worker

169. Kathleen E. McLaughlin, *Labor Shortages Push Wages Up*, WOMEN’S WEAR DAILY, Oct. 2, 2007, at 1, available at <http://www.wwd.com/media/issues/2007/10/02/issue-80976.pdf> (“After nearly two decades of stagnant wages and poor labor conditions, China’s manufacturing workers have started demanding higher salaries, pushing up the price of production nationwide.”). The report observed that Chinese economists are noticing better working conditions, higher wages, and better benefit packages as a result of the labor shortages across China. *Id.* More to the point, Cai Fang, “director of the Institute of Population and Labor Economics at the Chinese Academy of Social Science recently completed a study on rising wages and labor shortages, said that from 2003 to 2006, the average salary of manufacturing laborers, including those in textile and apparel, rose by [twenty-one] percent.” *Id.* Analysts assert these increases are long overdue particularly because the last twenty years saw relatively no increases in wages as China’s laborers poured into factory towns as economic expansion and reform roared across China. *Id.* at 2.

170. John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 LAW & INEQ. 193, 214 (2001) (noting consensus among parties interested in labor and human rights abuses in China that the Internet must be part of the solution). According to U.S. State Department estimates, nearly nine million Chinese had Internet access in 1999, up from only 200,000 in 1997. *Id.* Though the Chinese government has attempted to censor and restrict use of the Internet, it has only been partially successful, largely because the very nature of the Internet makes it resistant to such intrusions. *Id.* at 215.

171. *Id.* (“The [World Wide] Web is . . . comparable, from the readers’ viewpoint, to both a vast library including millions of readily available and indexed publications and a sprawling mall offering goods and services.”). As noted by the United States Supreme Court in *Reno v. ACLU*, a landmark First Amendment free speech case, because no single person or entity can restrict the publishing of information on the Internet, any person can reach a global audience via the online medium. *Id.* at 214–15.

172. *Id.* (pointing out that despite China’s best efforts to censor the Internet, the Chinese online market is still one of the largest in the world).

could take action to ensure these standards are met. Labor conditions can improve if Chinese workers can couple increased awareness of the standards for labor conditions along with the availability of sanctions to enforce.

The command and control regulation is the commonly used form of instruction utilized by the Chinese officials to enforce regulation of labor standards, but as stated earlier, this method is difficult to implement since action by government officials is often clouded by the pressures of social relations.¹⁷³ While “command and control” in theory has beneficial results, in practice these results are rarely accomplished; instead, another option is to address the social problems that call for regulations which are encouraged by local democratic deliberation and which allow the democratic process to intervene.¹⁷⁴ The intent of intervention is to tackle the child labor and labor standard issues in a democratic way. Lastly, an option is to make sure local communities experiment with responding to social concern and create ongoing improvements to the labor standards.¹⁷⁵

C. *Analysis of Changes*

China’s industrial market structure has caused many problems, many of which have resulted in China’s current labor standard issues. While China appears on the surface to be a booming, industrializing economy, there are underlying problems China must deal with to perpetuate change. For example, China’s economic boom over the past decades has been marked with a stock market slump in the last few years.¹⁷⁶ The Shanghai composite index “has fallen by more than fifty percent from its

173. Robert J. Rosoff, *Beyond Codes of Conduct – Addressing Labor Rights Problems in China*, CHINA BUS. REV., Mar. 2004, <http://www.chinabusinessreview.com/public/0403/rosoff.html> (discussing the difficulties of implementing the labor rights set forth by the Chinese government). It has been presumed that violations of labor rights exist in almost every factory in China. *Id.* Western owned factories tend to exhibit much better implementation of the labor rights and stress its importance. *Id.* This in turn is exhibited in subcontractors since many times the larger companies will send inspectors to determine whether smaller companies are following proper labor rights. *Id.*

174. *Id.* (reporting on the effects of democratic principles brought into the workers’ environment when electing union representatives).

175. *Id.* (discussing the benefits of the influence of Western companies over small to midsize companies in China). By having some ongoing adjustments in the labor mechanisms, it will allow for the process to be constantly improving and for regulators to realize what is beneficial and what is ineffective. *Id.*

176. Geoff Dyer, *Stock Market: Dealing with Serious Structural Difficulties*, FIN. TIMES, Nov. 7, 2005, available at http://us.ft.com/ftgateway/superpage.ft?news_id=fto110720051208565946 (explaining the irony of China’s transition to capitalism is that “while the economy has been growing at a rate that has left the world gaping with amazement, the country’s stock market has been in a four year slump”). Rather than seeing the stock

high in 2001.”¹⁷⁷ An explanation for this stock market downturn is the inherent structural problems.¹⁷⁸ These structural problems may have attributed to the labor conditions worsening in China's manufacturing industry.

Thus, an evident issue that must be addressed is the shareholder structure of Chinese companies.¹⁷⁹ The culture of financial firms has changed because of this market slump and there is no longer an assumption of a guaranteed upward moving market.¹⁸⁰ Adding to this attitude is the emergence of a shortage in labor due to repercussions of the one-child policy implemented by the Chinese government.¹⁸¹ However, the Chinese government recognizes a need for change and in the past few years has proposed initiatives to address the economic policy concerns.¹⁸² Such

market as a form of financing new companies, the authorities often used the stock market to inject cash into weak state-owned companies. *Id.*

177. *Id.* (mentioning that the fifteen percent plunge occurred in the Shanghai composite index with a drop of near ten percent in 2005).

178. *Id.* (discussing how the management of the companies affects China's slumping stock market). Some analysts theorized part of the problem is the low quality of the listed companies on the Shanghai index. *Id.* Experts estimate more than half of the companies are weak, state-owned companies which are not managed efficiently. *Id.* Since Chinese companies were allowed to list on the Hong Kong exchange in 1997, many of the country's leading groups have shunned Shanghai in favor of an overseas listing. *Id.* Nearly fifty professional fund management companies are unable to buy shares in some of the best local companies. *Id.*

179. *Id.* (mentioning that more than half the Chinese companies are not traded). The state controls most of these companies and the shareholders' equity is not traded. *Id.* This means that owners and controllers of a company have little incentive to ensure the company performs well, since they have no equity at risk. *Id.* Experts believe this is one of the main reasons for little or no corporate governance. *Id.*

180. *Id.* (stating that the structure of the financial markets create an understanding that there will be a continuous downward turn in the market without any indication that the market will rise). China faces pressing challenges that make the creation of a strong domestic capital market necessary. *Id.* A deeper and less regulated equity market will spur China's private sector growth. *Id.* In turn, that will promote job creation and long-term equity investment as long as there is a move to more high valued-added areas other than basic manufacturing. *Id.*

181. See Keith Bradsher, *Wages Are on the Rise in China as Young Workers Grow Scarce*, N.Y. TIMES, Aug. 29, 2007, at A1 (discussing how the one-child policy in China has affected the supply of workers). “Plant owners' refusal to hire blue-collar workers over 35 or 40 is colliding with the demographic reality of China's one-child policy.” *Id.* The policy complicates the results of younger workers choosing higher education over labor. *Id.* “[T]he International Labor Organization projects that workers in this age range will edge slowly downward through at least 2020.” *Id.*

182. Tom Mitchell & Geoff Dyer, *Heat in the Workshop: China Prices Rise*, FIN. TIMES, Oct 14, 2007, available at http://us.ft.com/ftgateway/superpage.ft?news_id=fto101420071417148301&page=1.

changes may be a beginning to making changes in the economic infrastructure to improve labor conditions.

The United States Labor Department has taken an active role in combating child labor in various countries, including China. The Bureau of International Labor Affairs (ILAB) announced available funds are being awarded to qualifying organizations who promote the elimination of child labor.¹⁸³ This program explicitly targets education funding to deter children from being forced to enter into the labor markets.¹⁸⁴ There is increased attention directed towards making these changes by the United States becoming more involved in adding incentives to countries and organizations aimed at abolishing child labor. The more approaches taken to the abolition of child labor the more effective the efforts will be. With the involvement of the U.S. Department of Labor there is an increased scrutiny of how countries are combating child labor. The United States is sending a message to other countries that it will not tolerate child labor violations by explicitly targeting child labor conditions. This added attention will likely aid in the efforts to make changes in China regarding treatment of child workers.

The efforts to end child labor in China will come eventually but throughout the efforts there will be negative implications that accompany the positive results. For example, if children are unemployed in factories there will need to be accommodations made to educate them. The Chinese educational system may not be prepared for an influx of students that are usually in the workforce. Many Chinese families will be struggling to survive on their wages with children not working. This could lead to other avenues for income including children entering prostitution in order to help provide for their family. There is a balance between protecting children from harsh labor conditions and ultimately exposing them to even more harmful situations. These negative possibilities need to be addressed and prepared for in order for child labor to effectively be abolished. Educational requirements will need to be enacted and protec-

183. Combating Exploitive Child Labor Through Education, 72 Fed. Reg. 32,869 (June 14, 2007) (stating that the Bureau will award up to \$46 million through various Cooperative Agreements to one or more qualifying organizations). Projects funded under this solicitation will seek to achieve this goal by withdrawing children from, and preventing children from entering, exploitative child labor through the provision of direct educational services, including education and/or training programs, and improving the capacity of target countries to address exploitive child labor. *Id.*

184. *Id.* (describing that in order to receive the grants, the groups must identify needs and opportunities that could be addressed and also propose what the direct beneficiaries will be for the grants). The goal of these grants is to try and provide for long-term withdrawal of children from entering exploitative child labor practices. *Id.*

tion from child prostitution will need to be a priority in order to prevent these negative consequences.

Another economic concern is the decrease of the cheap labor supply, resulting in an increase of labor costs. China's booming economy has been growing exponentially under the premise of cheap and effective labor. If child labor is eventually abolished, there could be a backlash of increased costs of labor. These increased costs would be passed on to Western companies, who while they may prescribe to "corporate social responsibility," they also are motivated by making profits. Companies may move elsewhere to maintain their costs and still reap excessive profits with an increase in the cost of labor available in China. This effect will show if Western companies are truly concerned with remedying human rights violations, or if the economic disincentive is too great a risk.

D. *The Challenges*

The argument may be posed that these changes will be impossible to implement. And even if they are carried to fruition, they will not result in a higher standard of labor practices. Some critics may argue that Western companies have little or no incentive to make changes in the way they operate their businesses. This skepticism can be attributed to the reality that most Western companies handsomely profit from the inexpensive labor of China. However, while profit does motivate these companies, stock prices can be tied to negative publicity. If a company is well-known to utilize a manufacturer with horrible labor conditions, then negative publicity could result in a decrease of their value. This alone is incentive for companies to adopt methods to curb the use of child labor. While this incentive is motivated by profit, its result is still beneficial to labor standards.

International regulations are in place with regard to the standards of labor conditions. Some critics may argue enforcement is not a possibility and would fail to create a difference. They may maintain that while the United Nations and ILO are powerful entities they cannot create punishments for non-compliance. However, these entities are able to make a difference. While they have no regulatory power, if they are aware of infractions they can use this knowledge to penalize the offending nation. Creating a stigma that a nation will have to overcome will likely result in a shift to compliance to avoid the punishment.

And creating changes within the domestic policies of China is also a very real possibility. Opponents may argue that China's government has no reason to more closely monitor its labor standards. They may predict there is no possibility for enforcement to occur. However, there is mounting pressure internationally and from Western industrial companies. Chinese officials will work to maintain business coming to China for

manufacturing. And while now they are turning a blind eye to maintain this economic prosperity, if the threat of loss of business is powerful, changes will likely occur. Pressure on domestic Chinese enforcement issues could remedy the shortcomings.

VI. CONCLUSION

Many changes to policy need to occur in order to eradicate unfair child labor practices in China. There needs to be an overwhelming effort from multiple entities, both domestic and international, to address from every angle the child labor problem. China needs to enforce its current structure of labor standards for child laborers. China needs to also adhere to the international labor conventions it has pledged to support. The commitment of China to improve labor standards cannot waver because of intense economic pressure or foreign market demands.

The economic pressures perpetuating China's lack of enforcement with internal labor standards needs to be addressed. China does have labor standards, including strict child labor guidelines. However, little is being done to adhere to the legislation because there is a lack of enforcement by Chinese officials. Chinese officials can regulate properly once the economic pressures of bolstering China's economic image are addressed. The sanctions and penalties Chinese regulators currently use are ineffective. Any type of penalty for labor infractions is an empty threat to factory owners, without repercussions. Thus, for regulatory changes to be made there must be more strength behind the enforcement.

Western companies who outsource to China need to also make an effort to initiate change in Chinese industry in order for a transformation to occur. The development of "corporate social responsibility" in companies to address human rights concerns within global industry will be beneficial to combating labor concerns. Although corporate social responsibility may be motivated by improving shareholder value, whatever the reason, the effects will be advantageous to a human rights perspective. Labor standards will likely improve if companies would take an active role in overseeing production facilities and exercising some control when dealing with manufacturers. The Western companies, Chinese internal regulations, and human rights groups will all need to take action to ensure child labor ends in China and conditions for workers improve with little economic repercussions.

The labor practices in China are under intense media scrutiny. China is a powerful player in international manufacturing and is relied upon by many wealthy Western industrial giants. With a concerted effort by internal China domestic policy, international organizations, and business entities invested in China, labor practices can be improved.