



January 17, 2007

Mr. James Zimmer
Chairperson
American Chamber of Commerce – China
China Resource Building, Suite 1903
8 Jianguomenbei Ave.
Beijing 100005

Dear Mr. Zimmer;

We understand the NPC Legal Affairs Committee has requested AmCham China provide comments on the second draft of the Labor Contract Law. This no doubt signals the importance they place upon the views of AmCham and its members. As such, Nike would like to share its position regarding the draft Labor Contract Law so that you may take this into consideration as the Chamber develops its response.

We understand AmCham must consider a diversity of industries as it formulates a response, and that this may or may not be aligned with our own. Therefore we would like to respectfully request being appraised of AmCham's comments prior to submission so we have time to understand how our positions may be aligned or differ.

Please do not hesitate to let us know if you require clarification about our comments that follow, or if you have concerns regarding our request. We are pleased to share the following opinion with AmCham and hope it is helpful.

Regards,

Kelly Lau
Corporate Responsibility Director

NIKE'S COMMITMENT TO DECENT WORKING CONDITIONS

Improving factory conditions and protecting workers' rights throughout our global contract factory supply chain is central to our corporate responsibility efforts and core to our business values. As such we support a regulatory environment that strengthens legal protections for workers and to promote decent working conditions, in China as well as in other countries where we operation.

Sound regulations complement our aggressive efforts to ensure our contract factories comply with local laws and Nike's standards. Four areas of particular focus for us are: 1) A work environment that allows for freedom of association; 2) Ensuring legal hours of work; 3) Accurate payment of wages; and 4) Respect for workers. To address these areas, Nike is introducing leading management and production practices that will drive positive change in our supply chain and in the industry.

We believe there is also an absolute need for stronger worker-management dialogue in our contract factories in China. In support of this, we facilitate training programs with factory management and workers to increase awareness of existing laws and improve communications. Recently we launched a collaborative Human Resources Management project to improve contract factory management systems based on international standards.

Nike also works with its contract factories to develop worker-management committees focused on specific issues, such as grievance processes, environment, health and safety. Last but not least, we have successfully partnered with contract factories to provide their workers access to education that will help them pursue advanced career opportunities.

SPECIFIC COMMENTS ON THE SECOND DRAFT LABOR CONTRACT LAW

This draft recognizes employee-elected committees as legitimate representatives of the workforce. We believe this will help protect workers' legal rights and would encourage the Chinese government to support enforcement with training and resources at a provincial level.

Enterprise Regulations

Nikes supports requiring employee consultation regarding new and significant workplace regulations. The more detailed description of significant issues is helpful. Further, we support the involvement of employee representation, whether it be through employee committees or other organization. In addition to the appeal process and requirement to comply with applicable laws, Nike suggests a standard process be outlined for managing grievances.

Confirmation of Labor Relationship

Nike believes written work contracts are fundamental to effective and responsible human resource management. We support the requirement of long-term labor contracts in the supply chain to reduce the abuse of short-term contracts, e.g., to avoid insurance and benefit provisions.

At the same time there is the need for some flexibility that allows for some employees to have shorter terms of employment. Enterprises often need to hire workers on a seasonal basis, who can be effectively protected under short-term contracts. Nike recommends the length of contracts be appropriate to work.

Employees currently without written work contracts should not be assumed to be long-term. We suggest a transition period for implementing this provision (e.g. six months) to allow larger enterprises an opportunity to review all employee contracts and adjust appropriately.

Conditions of Probation

The revised provision on probation is sound; however, Nike would propose that no probation periods be longer than three months for the first contract of one-year or more.

Mention of minimum wage as the lowest possible probationary wage is a positive means to protect workers. This provision indirectly supports the fundamental of good human resource management in our industry and is a reasonable requirement.

Non-fixed Term Contracts

Nike recognizes that not all workers can be long-term employees, and we support limiting the number of short term contracts to two renewals for each individual. However, given the prevalent use of false identification in China, this may be difficult to implement.

Order for Payment of Wages

Providing workers with a legal mechanism to seek back pay will no doubt prove beneficial for workers. It may be effective to also include penalties that are substantial enough to deter enterprises from illegally withholding wages.

Consideration should also be given to the reality that failure to pay full wages may not be driven by the employer only. Some workers accept lower wages to avoid contributing to social security benefits and to secure continued employment. Allowing workers to transfer social security benefits may be one of the most effective means to mitigate this practice.

Local education and enforcement resources, and better incentives for workers to pay full social security and insurance contributions would contribute significantly to the effectiveness of this provision.

Lay-offs

Nike agrees that large-scale lay-offs should be discussed with the workforce representatives, and priority given based on seniority. The process outlined is very reasonable; however, greater direction is needed on processes should the workforce and management fail to agree. Further clarification on justifiable business challenges would be helpful.

Collective Bargaining Agreements

Nike supports collective bargaining agreements as a tool to promote decent working conditions that are reasonable for business, and to compensate employees in the context of what is locally appropriate (not just by what is legally mandated). We also support having the national laws serve as a minimum standard for collective bargaining agreements.

Further clarification on the percentage the workforce that is required to be organized would be helpful. It is possible for only some workers to join the union, which would not then be representative of the general workforce. Details of acceptable methods for electing worker representatives in the absence of a trade union would be appreciated.

Labor Agency Contracts

Nike supports structured work agreements for agency workers. We believe that it is the responsibility of the agency to ensure correct registration and payment of its workers; however, enterprises are also responsible to only utilize agency workers where long-term employment is not suitable or practical.

The enterprise should also be responsible for providing a description of work as part of the agency contract to ensure roles and responsibilities are clear. This can serve as the basis for performance evaluation.

Nike supports the requirement for pay equity, and would like to suggest a reference to at least minimum wage levels to further mitigate the chances of worker exploitation.

One way to differentiate agency workers would be to provide an alternative benefits package that is still compliant with applicable laws.