

# FREEDOM OF ASSOCIATION FOR CHINESE WORKERS

---

---

## ROUNDTABLE

BEFORE THE

### CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

---

JULY 7, 2003

---

Printed for the use of the Congressional-Executive Commission on China



Available via the World Wide Web: <http://www.cecc.gov>

---

U.S. GOVERNMENT PRINTING OFFICE

89-103 PDF

WASHINGTON : 2003

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

LEGISLATIVE BRANCH COMMISSIONERS

*House*

JIM LEACH, Iowa, *Chairman*  
DOUG BEREUTER, Nebraska  
DAVID DREIER, California  
FRANK WOLF, Virginia  
JOE PITTS, Pennsylvania  
SANDER LEVIN, Michigan  
MARCY KAPTUR, Ohio  
SHERROD BROWN, Ohio  
DAVID WU, Oregon

*Senate*

CHUCK HAGEL, Nebraska, *Co-Chairman*  
CRAIG THOMAS, Wyoming  
SAM BROWNBAC, Kansas  
PAT ROBERTS, Kansas  
GORDON SMITH, Oregon  
MAX BAUCUS, Montana  
CARL LEVIN, Michigan  
DIANNE FEINSTEIN, California  
BYRON DORGAN, North Dakota

EXECUTIVE BRANCH COMMISSIONERS

PAULA DOBRIANSKY, Department of State\*  
GRANT ALDONAS, Department of Commerce\*  
D. CAMERON FINDLAY, Department of Labor\*  
LORNE CRANER, Department of State\*  
JAMES KELLY, Department of State\*

JOHN FOARDE, *Staff Director*  
DAVID DORMAN, *Deputy Staff Director*

\* Appointed in the 107th Congress; not yet formally appointed in the 108th Congress.

# CONTENTS

---

	Page
STATEMENTS	
Hall, Amy, manager for social accountability, Eileen Fisher, Inc., and member, the advisory board, Social Accountability International, Irvington, NY ..	2
Fishman, Phil, assistant director for international affairs, AFL-CIO, Washington, DC .....	5
APPENDIX	
PREPARED STATEMENTS	
Hall, Amy .....	28
Fishman, Phil .....	32



## FREEDOM OF ASSOCIATION FOR WORKERS

---

MONDAY, JULY 7, 2003

CONGRESSIONAL-EXECUTIVE  
COMMISSION ON CHINA,  
*Washington, DC.*

The roundtable was convened, pursuant to notice, at 12:39 p.m., in room 2255, Rayburn House Office building, John Foarde [staff director] presiding.

Also present: David Dorman, deputy staff director; Sarah Dudley, office of Senator Max Baucus; Andrea Yaffe, office of Senator Carl Levin; Michael Castellano, office of Representative Sander Levin; Alicia O'Donnell, office of Representative Doug Bereuter; Robert Shepard, office of Deputy Secretary of Labor D. Cameron Findlay; Susan O'Sullivan, office of Assistant Secretary of State Lorne Craner; and Susan Weld, general counsel.

Mr. FOARDE. I would like to welcome everyone to this issues roundtable of the Congressional-Executive Commission on China. On behalf of Chairman Jim Leach and Co-chairman Senator Chuck Hagel, welcome to our panelists, as well as all of you who are attending today.

This afternoon we want to continue our look at freedom of association issues in China by looking specifically at the limits of freedom of association and its effect on Chinese working men and women.

To help us delve into those issues more deeply, we have two very distinguished panelists. Amy Hall is manager for social accountability at Eileen Fisher, Inc. She is here in her capacity as a member of the advisory board for Social Accountability International [SAI]. She is going to talk to us about representation, SA8000 industry standards, et cetera.

Phil Fishman joins us from Washington, where he is assistant director of international affairs at the AFL-CIO, and we look forward to hearing from Phil on Chinese union law and its impact on workers organized in China.

In keeping with the practices that we have had now for about a year and a half at these issues roundtables, we will give each panelist 10 minutes to make an initial presentation, understanding that you will not be able to cover everything. We will probably be able to pick up the points that you cannot get to initially during our question and answer session.

I will let you know when 8 minutes has elapsed. When there are 2 minutes left, that is your signal to wrap things up.

After both of you have spoken, then we will then open it up to the staff panel to ask questions and we will keep the conversation

going as long as it is interesting, or 4 o'clock, whichever comes first.

So with that, let me recognize Amy Hall. You can go ahead.

**STATEMENT OF AMY HALL, MANAGER FOR SOCIAL ACCOUNTABILITY, EILEEN FISHER, INC., AND MEMBER, THE ADVISORY BOARD, SOCIAL ACCOUNTABILITY INTERNATIONAL, IRVINGTON, NY**

Ms. HALL. Good afternoon. I am here, as John said, representing both Social Accountability International, where I serve on the advisory board, and women's clothing company Eileen Fisher, where I manage our Social Accountability Program.

Both roles have taken me to China several times in recent years to work with our clothing factories, non-governmental organizations [NGOs], and other brands on improving factory working conditions. Freedom of association is just one issue area where we have been challenged and where we see some rays of hope emerging.

I am sure we all agree that freedom of association and collective bargaining do not, in any meaningful terms, exist in China. Under Chinese law, workers may only form or belong to unions which are part of the All China Federation of Trade Unions [ACFTU], the sole official trade union organization.

The ACFTU is generally recognized as a conduit for the relay of policies from the Communist Party and the state to workers. Even the current Chinese President, Hu Jintao, has defined the ACFTU role in such a way.

Despite its being part of the state apparatus, the ACFTU appears to be organized in less than 5 percent of non-state-owned enterprises. Nevertheless, we feel it may be possible to work on improving workers' rights to freedom of association through active engagement at the factory level.

We are seeking to help create more opportunities for workers in China to learn about their voice and to access their rights. Recent developments on the ground in China indicate that there are openings for encouraging such opportunities, and I will give you three examples.

First, some worker rights groups—such as the Institute of Contemporary Observation in Shenzhen, and the Migrant Workers Centers in Beijing and Panyu—have become active in mainland China.

Second, there are indications that the ACFTU may be looking at how to become more effective as China continues its rapid transition from a planned economy to a market economy.

In October 2001, China passed a new trade union law, granting ACFTU more legal leverage to defend workers' interests. In January 2003, the official Xinhua News Agency reported that the ACFTU was conducting experiments to encourage the direct election of its union leaders at the factory level, particularly in small and medium-sized enterprises.

Third, some international companies have joined with NGOs to launch encouraging initiatives to promote worker representation in China. The most recent example is the direct election of union leaders at Taiwan-owned footwear factories in a process in which the

main buyer, Reebok, together with workers' rights groups, played a pivotal role.

According to SAI sources in China, Reebok gained positive comments from the ACFTU Guangzhou branch, which considered it "a model worthwhile to replicate." Doug Cahn of Reebok has briefly testified to the Commission on these cases.

Although it is unlikely that thorough democratic changes will occur from the top down anytime soon, these examples illustrate the limited space that is emerging in which international organizations can foster respect for workers' rights.

It is important to recognize the broader political challenges that these trends could face, while continuing to work directly with managers and workers on ensuring rights in the workplace.

At Eileen Fisher, we ask our suppliers to adhere to the SA8000 standard, and we are working with SAI and others on various factory-level training programs. For those who are not too familiar with SA8000, briefly, this standard is the result of a consensus-based drafting process by trade unions, NGOs, and business representatives from around the world.

The SAI advisory board, which is responsible for drafting SA8000 and advising on policies related to the certification system includes members from Amnesty International and the International Textile, Garment, and Leather Workers Federation [ITGLWF], among others.

The SA8000 standard covers eight core workplace issues: the right to freedom of association and collective bargaining, child labor, forced and bonded labor, discrimination, discipline, health and safety, working hours, and remuneration. The requirements in these eight areas are based on 12 International Labor Organization [ILO] conventions and other international human rights norms.

A ninth element consists of management systems needed to ensure ongoing compliance with the standard and to encourage continuous improvement.

In drafting SA8000 standards, the SAI advisory board agreed that we could not exclude Chinese factories from such a certification program. We saw direct engagement on workers' rights as crucial to fostering change and having an impact on the lives of millions of workers.

SA8000 encourages change by providing an incentive to achieve certification. At the same time, certification is an important means to enable workers and their advocates to file a complaint if they detect some failing in compliance with the minimums defined in SA8000.

Because there are legal restrictions on freedom of association in China, the SAI advisory board came up with the following requirement: "the company shall, in those situations in which the right to freedom of association and collective bargaining are restricted under law, facilitate parallel means in independent and free association and bargaining for all such personnel."

The chief purpose of parallel means is to ensure that workers in countries such as China have the means to address their concerns and seek solutions without fear of repercussion. This requirement draws on the spirit of the Sullivan Principles implemented by companies doing business in South Africa during the apartheid regime.

In the same way that the Sullivan Principles called for companies to implement parallel means for protecting human rights by providing a non-discriminatory environment within the workplace that they managed, the SA8000 standard adopts a similar approach.

Companies are encouraged to provide opportunities for workers and their factories to organize themselves, to assist communications between workers and management, and to work to assure compliance with Chinese law.

SA8000 requires companies to let workers know that they are free to organize and elect representatives in order to raise their concerns with management on key issues and, essentially, to negotiate solutions.

The company I work for, Eileen Fisher, uses eight factories in southern China, representing about 60 percent of our total production. We do not own or in any way manage these factories. In fact, our share of the total capacity in these factories ranges from 10 to 30 percent, depending on the season.

Many other brands use the same factories and apply their own labor standards to these facilities. All of the factories have agreed to adopt SA8000, and we engage in a program of monitoring, continuous improvement, and education to help facilitate this process.

Early in the process we realized that we cannot simply provide the standard and walk away. Neither the factory workers nor the managers have the cultural context with which to fully comprehend or utilize the elements of the standard.

After all, how can we expect a manager to eliminate all forms of unacceptable disciplinary practices or forced labor when the act of putting padlocks on women's dormitories is generally accepted practice in order to keep the female workers safe?

How can we expect a worker to voice concern about sexual harassment when she or he does not even recognize when it is occurring? How can we expect workers to speak up about anything when they are raised with such a deep-seated, Confucian respect for their elders, and when freedom of speech is limited?

In the cases I have been sharing where management facilitates parallel means to freely associate, we have found it difficult to encourage workers to make active use of worker committees.

This is likely due to some or all of the following reasons: the workforce is largely made up of migrant workers who fear they could be sent back to their provinces; management does not understand how to enable workers to form such committees; workers distrust management claims that such committees will be independent and unproblematic for workers who join them; workers are inexperienced in organizing and participating in such a dialog with management and lack prior experience with real change resulting from committee work; or, finally, payment structures may not allow workers to participate in worker committees without losing incentive-based income.

What is needed is change, not a "Westernization" of the cultural norms of the factory people, but a movement to foster greater understanding of their universally recognized rights, the ability to talk about those rights when they are being violated, knowledge of how these rights can be exercised, and the ability for managers to



respond to those comments in a compassionate, non-discriminatory, effective manner. This was not something we could leave in the hands of the managers to coordinate, nor was it something that could happen in a classroom on a single day.

We have been engaging in training programs for our managers and our workers through two organizations, SAI and Verité, a non-profit, U.S.-based research and monitoring organization.

I will not go into detail at the moment, but suffice it to say that these two programs have provided a wonderful foundation for the workers and the managers to begin to understand how to communicate with each other and how to recognize and understand their rights.

We are about to offer three of our factories to SAI to participate in a worker training program that they are creating in China, based on a program that has taken place already now in 12 other countries, to train workers on how to use codes of conduct as an additional tool to defend their rights and interests. This program will begin later this year, and I will be happy to tell people about it later on if they are interested.

In summary, we believe that for anyone concerned with worker rights, China certainly represents both risks and opportunities. We understand that substantial change will take time, but we must recognize the important role that all of us can play by fostering that change from within and from the bottom up.

We have a choice. We can walk away from this challenge, jeopardizing the jobs and livelihoods of millions of workers, or we can be a catalyst for something better, and we believe in the possibilities.

[The prepared statement of Ms. Hall appears in the appendix.]

Mr. FOARDE. You are admirably disciplined and you are right on time. Thank you.

Phil, please.

**STATEMENT OF PHIL FISHMAN, ASSISTANT DIRECTOR FOR  
INTERNATIONAL AFFAIRS, AFL-CIO, WASHINGTON, DC**

Mr. FISHMAN. Thank you. I thank you for the opportunity to present the views of the AFL-CIO of freedom of association in China and its effects on workers.

Let me emphasize at the outset that the AFL-CIO has been watching quite closely, and with an open mind, the efforts of some companies to more effectively apply their codes of conduct to workplaces in China.

We understand clearly the magnitude of change China has been undergoing for the past two decades and the challenges created by this change to international worker rights and labor standards.

We also have a growing awareness of the impact of such profound change on Chinese people. It is staggering that as many as 20 million people a year are leaving the rural areas of China for urban areas in search of work.

To put this in some perspective, a single year's inflow of new urban workers in China is equivalent to the entire manufacturing employment base of the United States, a manufacturing base which everyone in this room knows is shrinking, in part, because jobs are moving to China.

But it is not only the developed countries that are losing jobs to China. Developing countries are also losing a growing number of jobs to China, and this process is accelerating. There is a United Nations Development Program [UNDP] estimate, for example, that Bangladesh will lose more than a million jobs to China once the Multifiber Agreement [MFA] on Apparel expires in 2005.

For these reasons, we are watching with keen interest developments that may contribute to arresting the race to the bottom, as many have characterized the shifting of much of the world's production to China.

We see some opportunity in the efforts made by some companies to enforce their codes and we will continue to evaluate such efforts based on our knowledge of what the realities are for Chinese workers on the ground.

However, I want to emphasize that companies with codes are only a small proportion of companies doing business in China. Moreover, companies that take their codes seriously are, in our view, a very small subset of this already very small group.

Let me briefly turn to how the ILO defines freedom of association and the right to organize and bargain collectively. You can find these definitions, of course, in ILO Conventions 87 and 98.

The former has been ratified by 80 percent of the ILO's 176 member countries, while 87 percent has ratified the latter. Sadly, two of the countries that have refused to ratify Conventions 87 and 98 are China and the United States.

Decades of review and comment by the ILO standards enforcement machinery have defined what these words mean in real situations in countries and workplaces around the world. Based on this jurisprudence, it is clear beyond any doubt, as Amy indicated, that China's laws and practices are in fundamental contravention of both these core Conventions and the principles they embody. It is also clear that the notion of parallel means, in and of itself, does not satisfy the ILO definition of freedom of association.

There are differing views regarding the significance of the changes to the Trade Union Law introduced in 2001, and it is too soon for a definitive assessment. A couple of things seem clear.

First, the changes were designed to strengthen the role of the ACFTU in private sector workplaces. There are many reasons for this objective. Clearly, the old ACFTU, an ACFTU confined to dying state enterprises, was becoming an irrelevant organization.

Second, the government was clearly embarrassed by repeated stories of exploitation. Finally, and perhaps most importantly, the Communist Party needed a means to prevent the establishment of independent worker organizations and to combat the growing number of spontaneous work actions.

At the same time, the state and Party bolstered its hold on the ACFTU. The Trade Union Law, as amended in 2001, maintains the trade union monopoly enjoyed by the ACFTU—article 10—and strengthens the link between the ACFTU structure, the Chinese Communist Party [CCP], and the government, clearly identifying in more specific language than before the union's obligation to follow the leadership of the Communist party and to assist in maintaining the Party's monopoly of power.

Article 11 stipulates that the establishment of basic-level trade union organizations, local trade union federations, and national or local industrial trade unions shall be submitted to higher level trade union authority organizations for approval.

Not only is this article in clear violation of ILO Convention 87, which states that workers should be able to organize into unions of their own choosing, but is also a major obstacle to independent attempts to organize trade unions. The only way such efforts can succeed under the law is by submitting to the authority of the ACFTU.

This scheme is further strengthened by the fact that company-level unions are totally dependent on higher level ACFTU structures for income.

Companies are required to pay the equivalent of 2 percent of payroll in union dues to the higher ACFTU structure, which in turn is supposed to return a percentage back to the factory-level union, at least in theory.

So, under the current law, a factory union is wholly dependent on the higher level ACFTU to receive even a percentage of the dues paid by its own members.

In sum, the current trade union law specifically provides for a trade union monopoly in the ACFTU; the program and activities of the ACFTU are subordinate to the wishes of the Party and state; questions of affiliation to international trade union bodies are subject to the approval of the state; workers who attempt to organize independent trade unions or carry out what we would define as normal trade union activity, such as participating in protests; all of these things and many others, demonstrate the distance China must travel for freedom of association and free collective bargaining to be respected in both law and practice.

This is not to say that good, well-meaning people cannot be found in the ACFTU. It is to say, however, that institutionally the ACFTU is a creature of the Chinese state and the Communist party and is obligated by its own rules to act as a transmission belt for party and state policy.

I want to emphasize that the International Confederation of Free Trade Unions, which represents 158 million workers in 150 countries, shares this view. I also want to emphasize that differences among various trade union organizations do not focus on the nature of the ACFTU as a government entity. On this point, most are quite clear.

But on whether or not the ACFTU can be reformed, indeed, the fact that the ACFTU is widely viewed as a government entity is precisely why most codes of conduct have included in them the concept of parallel means.

With this in mind, let me turn to company efforts to enforce labor rights through their codes and through various monitoring schemes such as SA8000.

It is our view that the most effective way to monitor factory compliance with national law, international standards, and company codes is by empowering workers themselves to play this role collectively and independently in an atmosphere absent of fear and intimidation.

Workers have an obvious interest in ending abuses and violations as a way to improve their daily lives and can provide the daily continuity necessarily for monitoring to be truly effective. It is virtually impossible to monitor workplaces effectively without such continuity.

What meets standards in a factory one day can be quite different 3 months later, unless there is daily vigilance. This has been demonstrated by the fact that SAI and other monitoring groups have had to remove certification of several facilities when it was disclosed that they did not, in fact, meet the standards.

In most, if not all, of these cases, it was outside watchdog NGOs such as the National Labor Committee that uncovered the labor rights abuses, and only when they went public were the factories de-certified.

We find this troubling, especially when combined with the fact that over one-third of the factories certified under SA8000 are located in China and Vietnam, where freedom of association does not exist.

According to SAI, parallel means is designed to encourage nascent forms of worker self-representation in countries like China where independent unions are prohibited. While we look upon such efforts with interest, we remain skeptical as to where such effort actually lead.

Our experience in China suggests that if a parallel organization formed in China is to survive, let alone lead to real freedom of association, a sustained effort must be made to nurture the organization through the provision of training and a commitment to maintaining the space in which the parallel organization can operate.

We have not yet seen more than a handful of companies, such as Reebok, make such a commitment. It is unclear even then that they will succeed in individual workplaces, let alone influencing what happens outside of them.

I do want to note with particular interest the two elections in facilities producing for Reebok. While we see some problems, such as the insistence by the ACFTU at the second facility to provide all worker education and training rather than respected NGOs from Hong Kong, as was the case at the first facility, we hope that the empirical evidence begins to emerge that such experiments lead to freedom of association.

The experiences of countries such as South Korea and Indonesia suggest that workers became empowered only after both countries underwent fundamental political change, despite long-time support by the international trade union community.

So the value of parallel means is problematic for us, absent similar political change in China. Without empirical evidence that notions like parallel means leads to real freedom of association, it is our view that companies outside and inside China, with a code of conduct that includes freedom of association, are in fundamental violation of their own codes.

Furthermore, until such evidence begins to emerge, there will be a continuing concern that at the end of the day, improving labor standards without legitimate trade union representation is an acceptable, even preferred, outcome to companies involved in such schemes.

Let me conclude by saying that we believe that inevitably workers will win the right to freely associate in China. We do not expect this right to be handed to them by the business community. That has never happened. That has never been the case anywhere, as far as we know.

In Taiwan and Indonesia, workers won the right by challenging tired, old state-run organizations that neither had the energy or the interest to represent workers' interests. In China, we are seeing that happen now in the old state enterprise sector, where workers are challenging the ACFTU on almost a daily basis.

Similarly, representative groups are beginning to develop in the private sector, where workers are beginning to organize. American companies can help by finding effective ways to support these groups and resisting the temptation to adopt schemes that only pretend to meet the obligations of their own codes of conduct. Thank you.

[The prepared statement of Mr. Fishman appears in the appendix.]

Mr. FOARDE. Thanks very much, Phil. You have given us great food for thought and great grist for the question mill. So I think I will exercise the prerogative of the Chair and begin.

Picking up on something you said, Phil, about the presence of good people in the ACFTU, and not confusing the fact that they work for an organization that is an apparatus of the state or the Communist Party, how can people who care about freedom of association identify those people working at ACFTU at various levels and give them encouragement, either training or exchanges, whatever might work to help strengthen their hand. Is there anything that can be done?

Mr. FISHMAN. We have had our own experiences in other countries where freedom of association was challenged. I mentioned Indonesia, for example, and South Korea. In both of those situations, we were able to operate openly, with sufficient space to identify those people and to work with them.

The challenge that we face in China is that if the AFL-CIO would attempt to work inside China, the ACFTU would not allow us to identify those people and to work with them.

I base that comment not only our view of the fundamental lack of space to operate, but I also base it on the experience of many trade union organizations that have been, in fact, operating inside China for many years.

None of them say, as far as I know, that their years of experience have produced significant results in being able to identify and reach the more legitimate elements within the official structure, if in fact they do exist.

Mr. FOARDE. Amy, can you explain briefly why Eileen Fisher decided to go with SA8000? What was the logic in that?

Ms. HALL. Well, we are a medium-sized company. We are, in the whole scheme of things, not a very large company. At the time when we were exploring this question, we felt that there were so many options out there already. Why create another code of conduct?

We were invited to help develop SA8000, precisely because of the size of our company, to see if it could work for a smaller company.

Most of the companies that we know of out there who are involved in this tend to be larger, so you want to make sure that

companies of our size could afford doing this and that it could be applied to workforces of the smaller size that we tend to encounter.

That was initially why we got involved with SA8000. But having now gotten to know many of the other options out there, we feel that the management systems component is quite strong and really sets it apart from the other standards, because it creates an innate mechanism with which this system just perpetuates itself and continues to improve, where at least most of the other systems do not have it. Parallel means sets it apart, and living wage sets it apart as well. So, we felt, for all those reasons, it was a stronger option.

Mr. FOARDE. Well, could you venture an opinion about how well SA8000 has been received compared to the other standards? Are people flocking to it, or is it building momentum? Roughly how many companies are signed up for the SA8000 compared to some of the other standards?

Ms. HALL. They are not flocking to it, as they are not flocking to any of the other competing systems, with the exception possibly of WRAPP. I do not know if I am going to get into what all these are, but WRAPP is the Worldwide Responsible Apparel Production Principles.

I would say that a lot of companies are sitting back, waiting to see which one emerges as the successful option. That is my personal opinion.

How many companies are involved? I would say the ones that are actively involved as signatory members are probably fewer than 20. They are all over the world, European brands, American brands, and others. There are, I believe, about 250 certified facilities out there now.

I think that takes into account, as Phil mentioned, that several have been taken off the list because they lost the certification through discoveries made after they were first certified. So that gives me an idea that the number of certified facilities is growing consistently.

So I would say that, although it is not a hugely popular standard yet, it has definitely caught the attention of many organizations and companies around the world who are interested right now in looking at it.

Mr. FOARDE. Even if they have not actually signed onto it.

Ms. HALL. Right.

Mr. FOARDE. They are waiting to see what happens.

Ms. HALL. Yes. There is a lot of conversation happening out there. I think it is just going to wait and see.

Mr. FOARDE. All right. Thank you.

It is now my pleasure to recognize my friend and partner, Dave Dorman, representing our Co-chairman, Senator Chuck Hagel. David.

Mr. DORMAN. First of all, let me thank both of you for taking the time today to share your wisdom and knowledge on these important subjects. I know each of our commissioners will be very interested in this testimony and find it useful in building their understanding of the topic.

I have a short question for each of you. Phil, Amy made a very interesting statement I would like you to comment on. Amy quoted the Guangzhou branch or the Shenzhen branch of the All China

Federation of Trade Unions saying in early March that the Reebok initiative actually saying “this is a model worth replicating.” Am I remembering right, Amy?

Ms. HALL. Yes.

Mr. DORMAN. Phil, what would be your guidance to business leaders, NGOs, and this Commission? How do you interpret the ACFTU statement of support? Is this an opening we should pursue?

Mr. FISHMAN. I think it is clearly the case that the ACFTU has not been supportive of any of the hundreds of worker actions each year that take place throughout southern China, in particular.

Even in the Reebok example, the first facility that had an election brought in reputable NGOs from Hong Kong to do a lot of the training. That was stopped, we understand, by local security authorities who wrote to the company and said that it cannot go on any more.

We have also heard reports that the local ACFTU was involved in the decision to stop that kind of training. Indeed, when you take a look at the second facility, the ACFTU, as I said in my initial statement, has insisted that only it provide training.

So I think you have to take a look at what Reebok is doing in light of this. In fact, we are hearing stories now that even the second facility is causing some issues for Reebok and the training might be suspended. If that is the case, I would be very surprised to see the ACFTU rally to the defense of that experiment.

Mr. DORMAN. You made a comment, Ms. Hall, I believe, in your testimony concerning the necessity of worker collaboration to sustain these efforts. To what extent has SAI or Eileen Fisher been successful in building the collaboration across factories, across brands, and across NGOs that could make this happen?

Ms. HALL. In terms of SAI, I believe that the multi-stakeholder approach can be seen most in how it has been building its advisory board, to start with, because that is where a lot of the decisions are made as to how to implement the standard.

First of all, the advisory board was created with members of—I think I mentioned this—the International Leather, Textile, and Garment Workers Union. There are now members from another major union, as well as NGOs from Vietnam, and I want to say China, I believe, brand-new, brought on board.

So the idea is not only to expand into the NGO community, but also to make sure there is representation from all parts of the world, recognizing that this is a multi-industry standard that can be applied anywhere in the world.

In terms of carrying out its work, SA8000 is very interested in partnering with any NGO out there that has the relationships with factories. In terms of China, I mentioned this one that I had already mentioned in the testimony, the Institute for Contemporary Observation.

I believe the director has been brought on as an advisory board member, a representative from that organization. They have conducted some really interesting multi-stakeholder discussions, one that happened a couple of years ago in southern China, to address the topic of wages and hours, where we had members from the

ACFTU, members of the local labor bureau, and other small organizations around the area, as well as other brands.

They also work with other organizations, such as Business for Social Responsibility. So there is really an effort out there to work with these other organizations. There is a relationship now developing with the FLA, for example, or some discussion, we hope, to see if we can tackle some of these issues together.

The only organizations Eileen Fisher has directly dealt with are SAI, Verité, and the Chinese Working Women's Network, which is based in Hong Kong but does work solely in southern China on behalf of factory workers.

Mr. FOARDE. We will move on and recognize some of our colleagues who are personal staff members to our Commission members, beginning with Bob Shepard. Bob.

Mr. SHEPARD. Yes. I would like to ask a general question. Despite some amazing, broad changes in Chinese society and China's economy over the past decade and even longer, it sounds to me, from what has been said here and in other places, that there has been basically no progress nationally for China on freedom of association.

There are little pockets of change within companies. It is interesting, because even in the labor field generally there has been some heightened consciousness within China on issues like minimum wages, some recognition of the importance of safety and health in certain areas, and a number of other things.

It seems to me that the Chinese very consciously are trying to emulate what used to be called the Asian model. I think Mr. Fishman made some reference to this, where they tried to address workers' concerns by ramping up some of the economic benefits, making the economic side of things more comfortable, while continuing to keep workers out of the political side.

Both of you seem to indicate in some ways that you had some optimism that things might change. But in East Asia and Southeast Asia, they have been able to hold on to that model for an extremely long period. It is still going on in some countries.

Maybe you could speak a little bit about the chances that the Chinese Government has of implementing that type of model and keeping workers out of the political side of things, keeping freedom of association limited as it is.

Mr. FISHMAN. The major place where I think a country has been successful in holding on to that model is, I think, Singapore, at least in Asia. I would argue that Singapore is actually unique. It is a city state. There are aspects of Singapore that are not shared by any of its neighboring countries.

If you look even at a place like Taiwan, which is one of the few examples I can think of where you actually saw political liberalization before trade union liberalization or labor law reform, if there was an attempt on the part of the ruling party to hold onto restrictions or trade unions, it did not succeed.

In most other countries such as Korea, it was really the trade unions that led the way to push for change that obviously the authorities were resisting. In China, I just find it hard to believe that the authorities will be able to keep the kind of control that they want. I think we are already seeing indications of them losing hold.



The rising number of wildcat strikes, I think, is an indication of that dynamic.

This situation is fueled by continuing exploitation, despite the efforts made by some companies. The reality is that if you compare the labor standards in China to most other countries in the world, it is really quite shocking.

You hear stories all the time of workers who work 30 days a month without a day off. You hear stories all the time of workers working 16 hours a day. I think that this exploitation fuels a lot of the desperation and the anger that you see on the part of workers.

My argument would be that China has grown to the point where it could survive an independent trade union movement. I think, as a matter of policy, both national policy for the United States but also international policy, that this objective ought to be a major price to pay for China becoming a member of the international community.

They need to be told, effectively, that the price you have to pay for full admission to the WTO, for becoming a full, respected member of the family of nations, is to allow your workers to organize.

You might find out that when you do that, it will not be the political threat that you think it might be. It would certainly promote change. Workers will have a voice. We see that in a positive way. We hope some day that the authorities themselves will also see that in a positive way.

Mr. DORMAN. Amy, did you want to comment?

Ms. HALL. I do not think I have anything else to add.

Mr. FOARDE. We were just about out of time anyway, so let us go on. Next, representing Senator Max Baucus, our chairman last year, is Sarah Dudley. Sarah, it is good to have you here today. Do you have a question?

Ms. DUDLEY. Yes. I am actually a relative newcomer to some of these issues, but one of the things that struck me in Mr. Fishman's testimony was his comment that empowering workers to play the role of the day-to-day monitoring of continuity of conditions is a must in these factories. This is kind of a loaded question. How do you do that with such a void of institutional role models?

Mr. FISHMAN. Well, I think you have asked the most difficult question. I mean, that is really the issue: how do you empower workers in China to play not only the role of monitoring labor conditions, but effectively to represent their interests, both with employers and also with the government.

It is a very difficult question at this point. I can tell you that we are grappling with it. We are experimenting as part of the international trade union community, with all sorts of programs and approaches to try to address that question. We are very open-minded about it.

Whether we like it or not, China is the fundamental issue for workers around the world. Unless workers around the world figure out a way to arrest the downward spiral on labor standards and wages that China represents, then workers are going to be increasingly affected all over the world.

As I said, it is even true in developing countries where you are seeing a shift of jobs from very poor developing countries to China for all sorts of reasons.

So, I have trouble answering your question. I think that you have to try to do all sorts of things and you have to be open-minded and you have to experiment. But the measure at the end of the day is freedom of association. That is, I think, the key point.

What is required is that workers are able to represent themselves, as defined by the international community. I think we have to be careful not to allow that measure to slide into something else.

Ms. DUDLEY. Thank you.

Mr. FOARDE. Let us go on to Andrea Yaffe, who represents Senator Carl Levin.

Ms. YAFFE. I am wondering what role the American populace and American legislators can play in enforcing or encouraging freedom of association in China. I mean, would boycotting products help, or legislation and resolutions?

Mr. FISHMAN. Amy and I were actually talking about some of this before the hearing started. There clearly needs to be a much greater effort, I think, in the United States to educate consumers.

As the father of two teenage sons, it seems to me to be entirely reasonable to try to inculcate some sort of culture that they ought to be sensitive to how products are made around the world, that they do not need 10 basketball shorts, that three will do, and that those three might cost a little bit more. But in the process of them costing more, that these products could be produced under much more humane conditions.

You do not see that, and it is almost taboo to discuss. It has somehow been cast as being anti-free market to try to introduce that kind of education. I think it is tremendously important.

In a broader sense, again, I think there are all sorts of ways. We surely missed an opportunity when China joined the WTO, but I think the international community has to communicate to China that its behavior is unacceptable.

Until they change, there will be efforts at the U.N. Commission on Human Rights, there will be efforts at the ILO, and every international body to bring up the realities of the lack of freedom of association in China, and in fact the lack of other basic human rights.

I think the international community has not done its job in that regard, and I think in some ways the American Government has not done its job. I think there is much more that can be done in that regard.

Ms. HALL. I wish I knew what the U.S. Government could be doing. It is not easy to answer. But I would say that boycotts have never appealed to me. I feel that in terms of China, one of the reasons that Eileen Fisher produces in China is that we feel we can, as small as we are, have a small impact on workplace conditions there. We can somehow show that it is possible to do things a little differently.

From the little seeds that we might be planting, greater things can grow. If we were to boycott China and just let millions of workers flounder and lose the opportunities that we might offer—although Eileen Fisher is not working itself with millions of workers.

But similar to the experiences of other companies, if we were to leave them to figure this out on their own, change may not happen as quickly as it could happen with our influence. Now, we cannot do it alone. I do not know the answer to the question. I agree, actu-

ally, with what Phil said, that a lot of it has to come from the public, and perhaps the media, to educate everyone on what is going on.

Mr. FOARDE. We are out of time. We are going to go on to Alicia O'Donnell, who represents Congressman Doug Bereuter. Do you have any questions? Please go ahead and pose one.

Ms. O'DONNELL. I apologize for running late here today, so I have not heard your full testimony. But thank you for participating in this discussion. You may have covered this already, I do not know.

Can you tell us about some of the demographics of the people that you are working with the most and from where their interest stems? Who are they, what age groups? Are you reaching the younger workers? Are they interested and excited about organizing and working for workers' rights, or are they indifferent?

Ms. HALL. I guess I will start with that. Being a relatively small company, we use, right now, only eight factories in China, probably with a total of maybe 2,000 workers in them. It is not a huge number, but it can be looked at as kind of a model for what is possible.

On the whole, most of the workers are on the young side, probably around 20. Most of them are migrant workers—not all of them—which means they come from other parts of China and stay at the factory for 1 to 5 years, depending on their situation, to make money and go home and start their own business, or whatever it is, or start a family.

What was the rest of your question? That is the demographics.

Ms. O'DONNELL. Who you are working with in terms of working toward freedom of association.

Ms. HALL. Oh, right. Are they excited. Honestly, they did not understand what the concept was. They may still not completely. They probably do not still completely understand it because it just does not exist in their world.

That is why we felt it was important to provide some kind of education to them and not leave it up to the managers to take the SA8000 standard and figure it out for themselves. I could not figure it out for myself. I needed to be trained. So, of course, we felt we needed to facilitate that training and education.

Now that we have given them an opportunity to organize some worker committees, they are not too big on negotiating wages yet. We are not there yet. But they are self-designated worker representatives from the factories addressing issues that are relatively innocuous, things like dormitory conditions, cafeteria conditions, things like that. But at least they feel they have a voice. They are beginning to find their voice. I think that they are enjoying it.

We are helping them. They are keeping logs. I think they have seen the benefit of this approach. Now, when it comes time to negotiate things like wages and some of the other tougher issues, we will see what really happens.

Mr. FISHMAN. We have had a long relationship with some of the Chinese trade unionists in Hong Kong. Han Dongfang is an exiled trade unionist who was a leader of the Beijing Workers Autonomous Federation in Tiananmen Square in 1989. We supported many of his subsequent activities. There are NGOs in Hong Kong

that operate in southern China, do monitoring, do education. We have had a long relationship with them.

We have a relationship with the Hong Kong Confederation of Trade Unions [CTU], which is the largest independent trade union in mainland China. I might add that the CTU played a major role in organizing the demonstrations that took place in Hong Kong just the other day protesting the draft security law. That seems to have brought about a suspension of the effort by the government to push this bill forward.

We have relationships with some Chinese workers exiled here in the United States who continue to have relationships inside China, one of whom is based in New York named Li Qiang, who, up until a couple of years ago, actually was organizing underground unions in southern China. So, he's really the only union organizer that has come out.

Finally, as part of the international trade union network, we work closely within the International Confederation of Free Trade Unions, and the global union federation structure, on a variety of China issues. There is a China working party within the ICFTU structure. We are an active participant in those discussions.

The China working party has an office in Hong Kong. We support that office. That office is trying to do some research. They have a Web site, and we have played an active role in supporting their work.

Mr. FOARDE. Next, we will recognize our friend and colleague Susan O'Sullivan, who represents Assistant Secretary of State Lorne Craner, one of our commissioners.

Susan.

Ms. O'SULLIVAN. Well, thanks very much for your presentations. I would like to pick up a little bit on what Mr. Fishman touched on, on the problem of the enormous overtime that workers are working. I understand this is a significant issue that companies are facing.

It is sort of a two-part question. One, how do you deal with what must be falsification of information given over to companies, and what can companies do to get to the bottom of what is really happening in the factories that they are operating in and certifying.

Two, is whether or not the training programs that are being conducted have been successful at all in convincing factory managers that workers might in fact be more productive if they were not so overworked. Is that an issue that you are dealing with?

Ms. HALL. This is a big issue for our company, and for most apparel companies. I would not try to deny that fact. First of all, in terms of falsification of documents and weeding those out, here in the States, as well as in China, it is a big issue. The most we can do is look at all the different sources of information and try to verify back and forth between things. One of the most effective sources, of course, is to speak to workers themselves and find out how long they have been working and what they have been paid.

You hope, through doing this over a period of time, that you weed out those who have been coached also and provided false information for whatever reason, to protect themselves for whatever reason. It is an ongoing challenge, but that is why we have a number of different ways of tackling it.

We might look at these documents and speak to workers ourselves. We might hire an outside agency to do it. We might go on the advice of an NGO or somebody who has gone in to give us feedback that they have heard. All of that is welcome information.

Training programs can help with overtime. We were just talking about this earlier today. Overtime is not necessarily directly related to worker wishes or management wishes.

Here I am, representing an apparel manufacturer, and sometimes it is imposed by us, the brands, because of the amount of product that we need to have made within a very short period of time, the deadlines that we impose.

This is an ongoing discussion that we have internally, as well as with other brands in how to stretch that out so we are not forcing overtime on our own factories, the very ones we are asking not to have overtime.

But the training to help managers negotiate better with the brands to say, you know what? I cannot take that order now because you already gave me an order next week, and I cannot do it without having too much overtime.

Or I can instruct them in how to have a legitimate sub-supplier system with factories that are also engaged in these values. So, there can be a positive impact. We have not gotten that far in terms of training programs with this issue to know if it is going to be effective.

Mr. FISHMAN. Just a couple of brief comments on this. Obviously, the magnitude of the problem in China is so enormous, given the tens of thousands of factories that are producing.

We see a couple of possibilities that relate to the brands themselves. First of all, we think it would be helpful if the brands would make a commitment to consolidate their sourcing to a smaller number of companies. That would increase their own leverage with these companies.

Second, the companies should make their sourcing public so that NGOs and other independent organizations could actually go in and confirm whatever they are being told.

Third, there seems to be information that brands, on one hand, are demanding that the producers improve labor standards, but on the other hand, are unwilling to pay for it. So you find that some of these companies producing in China have to meet new demands, but not having, or claiming not have, the resources to do it.

I think it is important that brands themselves, to the extent that they take their codes seriously, take on the commitment of ending the squeeze on the producer companies inside China by providing the resources necessary to improve their labor standards.

Mr. FOARDE. Next, I would call upon our friend and colleague, Mike Castellano, who represents Congressman Sander Levin.

Mike.

Mr. CASTELLANO. Thank you very much. I apologize as well for arriving late.

We often talk about labor standards in the trade context as being an important aspect of international competitiveness in attracting foreign direct investment, and sometimes in trade directly, because those factories are building something and usually exporting it to other countries.

Do you think that is accurate? How big of a role do you think that the labor rights situation has played in China's ability to attract FDI, foreign direct investment? Has it helped it because it is a cheaper and "more docile" influence, or has it hurt it because of the negative perception attached to it? Is it as simple as helped or hurt?

Mr. FISHMAN. Well, I think there is no question that there is something that is attracting incredible amounts of investment and shifting of production away from other parts of the world to China.

Clearly, an aspect of that attraction is both the cheap labor costs—and China is not the cheapest place in the world. But when you combine the fact that China is a relatively inexpensive place to produce goods, together with the fact that China's infrastructure is surely much better than a place like Bangladesh, and the perception that there is some degree of political stability, it is a very attractive place.

I mentioned the expiration of the Multifiber Agreement. It is really a major concern that when this agreement expires, you are going to see garment industries in developing countries literally wiped out overnight.

You are going to see garment industries in countries such as the Philippines or Cambodia, where you have seen some progress made toward respect for workers' rights and labor standards, shift overnight to China, because it will be seen as a more attractive place to buy product.

So what the MFA has done—and I am saying this in relationship to your comments about the impact of trade—is force a distribution of production to various countries around the world. Many of these countries are, in fact, more democratic than China, and respect the rule of law, worker rights, and human rights.

As a result, progress has been made for their workers. That is all going to end to a great extent. I am sure you have seen the studies of what countries' industries might survive once the MFA expires.

We see that as not only tremendously tragic but also a vivid example of how both American trade policy and international trade policy can have a profound effect on promoting the rule of law and protecting human rights and worker rights.

Mr. FOARDE. Amy, do you want to comment?

Ms. HALL. My only thought when you asked the question, is that I feel there are probably many more companies, certainly many more companies that will invest in China but do not care a lot about labor rights than there are that do. I think that says a lot by itself. It is really not going to have much impact.

Mr. FOARDE. I would now recognize our colleague, Susan Roosevelt Weld, who is the general counsel for the Commission.

Susan.

Ms. WELD. Thank you. I am hearing some pessimism as to how much impact some of these efforts will have on conditions in China. Do you think other kinds of efforts would work better? For example, I would like to hear your opinions on whether the new Trade Union Law is better for workers, or worse. I think, Phil, you felt it may have been worse for workers in certain ways.

Would legislative changes by China or administrative changes within one of China's subunits, perhaps Shenzhen, smaller and more developed be effective? Is there some way that conditions could be improved by local action? Could the United States do anything that would foster those kinds of changes?

Mr. FISHMAN. Just a couple of comments. I think one has to be sober about trying to assess what is going to happen in the future. I think one of the points that I was trying to make is that these experiments that are taking place, some of which we see in a very hopeful light, are really only the beginning. We are only scraping the surface. Again, even the SA8000 scheme, affects only a very small percentage of workplaces in China.

So, I think we want to emphasize the point that this is really only the beginning, and we hope that it grows and we hope that it goes in directions that we find substantive and important, and we will continue to watch it.

But we are nowhere near that at this point. I do not want to convey a sense of pessimism. But I also want to put it within the perspective that I think it deserves.

We are at a situation where we are trying to find ways to encourage, and perhaps coerce, the Chinese authorities to accept things that they really do not want to accept. We have done that in this world. We have done that, surely, in the case of South Africa. Amy mentioned South Africa. We are trying to do that in the case of Burma. We have done that in the case of Pinochet's Chile.

We have to find a way not only to provide incentives but also to communicate to the Chinese Government that its behavior, is unacceptable, and if it continues there will be repercussions.

Because of the size of China and because it is such an attractive potential market, I think there has been a prejudice toward emphasizing the carrot and not emphasizing enough the stick. I think the Chinese understand that dynamic quite well and have taken advantage of that difference in emphasis.

Ms. HALL. I just wanted to mention something that is happening in Vietnam right now. I do not know if this is really going to directly answer your question or not, but I thought it was a good place to mention it.

Vietnam is encouraging the use of SA8000 throughout the apparel industry. I could be wrong on that, but I believe it is just the apparel industry.

As a result, SAI has just opened an office in Ho Chi Minh City to facilitate this process, to see if it can work to create sort of a national movement. Obviously, there are many challenges. It just started. The office just opened within the past few months. But it is something that is very promising.

I think Vietnam is large enough that, if this works—and it is going to take quite a long time for us to see if this is going to work—this possibly could be something to be looked at for a larger country such as China, for example.

Of course, how we would bring that to China, I have no idea. But maybe using the results of these smaller efforts that we are all undertaking now and showing them as a model that China could replicate, and showing Vietnam's success, we hope, would have an impact.

Ms. WELD. Vietnam—is that program being submitted through the parallel organization to the All China Federation of Trade Unions? They have a government union there in Vietnam, too, do they not?

Ms. HALL. That is a good question. I really do not have all the details. I know this is happening, but I do not know how exactly. I would have to tell you later. I would have to look into that. I do not want to give you wrong information on that.

Ms. WELD. One of my correspondents asked me to put this question to, I guess, to Amy. Does this effort on parallel representation in some essential way conflict with the SAI standards on freedom of association, or does it empty out the idea of freedom of association so that the whole standard slips? Will that have a future bad impact?

Ms. HALL. Well, it is only meant to apply to countries where freedom of association is legally forbidden. So until China changes—we hope there is a day when it does change—then this solution, to us, is the best solution.

When the moment comes that free association is legally allowed, then this will no longer apply, and perhaps it can be removed. This document is changed every 2 years and updated to reflect current needs, so I hope that the day will come when we do not need to talk about it.

Mr. FISHMAN. Can I make one comment on that? It is our understanding that parallel means has been applied to Bangladesh. Bangladesh is a country that does have freedom of association protected in its laws. So, that creates certain suspicions as to the use of parallel means. It is not only being applied, it seems, in countries that do not respect freedom of association.

For trade unions, there is always a concern of an effort on the part of companies and governments to create what we would call yellow unions, or fake organizations. We see that in Latin America and South America with the growth of the Solidarismo movement.

I think one of the challenges for SA8000 is precisely to find ways to satisfy those concerns, those legitimate concerns on the part of worker organizations around the world. And, of course, the proof of the pudding is in the tasting.

When there is enough evidence that emerges that parallel means actually translates into legitimate freedom of association as defined by the ILO, then I think you will see a lot more trade unions jump on board.

Again, I think the challenge for China is that we have not seen that happen elsewhere without a fundamental political change. So, I think it is going to be a very daunting task.

Mr. FOARDE. Let me continue, picking up on something that Phil just said and Amy brought up in her main presentation, and that is the Sullivan Principles. I think, to a man and woman, our commissioners are very interested in the experience of the Sullivan Principles in South Africa and wonder, and have asked me many times, whether we on staff think that there are any parallels or any way that Sullivan-type principles can be adopted for China. This is not a new question. It has been around for a number of years.



But I would like to hear from both of you on that question. What was it about Sullivan with respect to South Africa that made it—particularly in the context of labor and labor rights—is there any way that Sullivan Principles might be arrived at for China, for example?

Ms. HALL. What I am about to say will contradict something I said earlier. But SAI's feeling about this, explicitly, is that in the case of South Africa, the Sullivan Principles probably would not have been effective without divestment.

So if you were to translate that to China, we would therefore have to boycott, as well as implement parallel means, or whatever you want to call it. That would be, to me, the parallel model.

Mr. FISHMAN. I, too, want to emphasize some of the differences that make it difficult to apply Sullivan-like principles.

First, there was clearly an international movement that communicated to the apartheid regime in South Africa that its behavior was not acceptable. It had become a pariah state. I think that was the international climate in which the Sullivan Principles could become effective. Part of that is the divestment movement.

Second, even under the worst days of apartheid, there were black trade unions. There were trade unions that existed in South Africa, even under a repressive atmosphere, that do not exist in China. So, there were partners, both inside and outside, that were able to work together to make the Sullivan Principles work.

If that existed in China, then I think the Sullivan Principles, or something like them, should be looked at. But at this point, it just does not. So it is hard for us to imagine at this point that the Sullivan Principles, or an effort like it, would be very effective.

Mr. FOARDE. Dave, another question?

Mr. DORMAN. I have a two-part question. I'll start with Amy, and certainly Phil you are more than welcome to comment as well. Amy, you mentioned Eileen Fisher's working relationship with eight factories in China. To what extent have the owners of these factories realized economic benefit from adopting the SA8000 principles beyond, obviously, Eileen Fisher contracts? Have other brands been attracted to these factories because they adopted SA8000 principles?

A second part, and this goes back to a comment that Phil made. Obviously, Eileen Fisher has invested time, money, and personnel into developing a positive relationship with its factories in China. To what extent do you feel your consumer base in this country is aware of what Eileen Fisher is doing, and the purchases by these consumers are informed by that knowledge?

Ms. HALL. In terms of the first question, the factory managers realizing economic benefit from using SA8000, we actually used that as a reason for them to adopt it, initially, in convincing them that this was going to help them.

I mean, we really want them to adopt it because they believe in it, but in the beginning we had to kind of use every carrot we could think of. Honestly, I do not think it has made an impact on them yet.

I believe they probably spent more money than they have made in having had SA8000 there, and sometimes simply by losing work-

ers to interviewers every time somebody comes around to talk to them.

So, yes, so far I do not think there has really been a measurable advantage to SA8000. I think it is too early. But we believe there is one. Down the road, there will be one, ultimately.

As far as our own consumer base, we do not really talk about what we do in our factories a lot. We certainly are happy to talk about it if somebody asks us, but we do not broadcast it. It is available on our web site. We have a handout in the stores if somebody asked about it, but you would never find it, by just walking in.

We do get our share of letters from consumers asking about conditions. They are always interested in China. It is the one thing they always ask about. We are very open with what we have done, what has worked, what has not worked, et cetera.

We are looking at, long-term, how to communicate this more effectively, because we feel that consumers need to understand why we choose to stay in China and work for women, as well as manufacture here in the States. Whether or not this helps to sell clothing, it is just about helping move the movement forward, we think. But, anyway, we are just talking about that right now.

Mr. FOARDE. We are closing in on the end of our session this afternoon, but I would like to give the last set of questions to our friend and colleague, Bob Shepard.

Bob.

Mr. SHEPARD. Let me ask you a practical question. We in the U.S. Government, when we do programs in the labor area—working in the tripartite mode with business, government, and labor—in the case of China we are restricted from working with the ACFTU. The reasons are obvious. It is not an independent free trade union federation.

On the other hand, who else might we work with? I was curious to get your opinions on whether those restrictions should continue to be in place, and if so, who we should work with? Should we make any attempt to work with Chinese workers, or should we just focus on working with government entities?

Mr. FISHMAN. I guess that question is for me. Well, as you probably know, Bob, we played a major role in getting that language into the legislation. So, as a representative of the AFL-CIO, I would have to say to you that we believe in the notion that the American Government ought not to be supporting the ACFTU.

You raised an interesting question with your last comment. It is not clear to me that the best role for the American Government is, in fact, to try to reach out to workers directly, especially in the context of a country like China, to do education and training, or whatever.

Our experience has been that the people who do that the best are workers themselves. Surely that has been our experience in many of the countries where we work. We are quite immodest, I think, about our own effectiveness in providing worker education. Again, the challenge in China is, how do you gain access? That is very difficult.

I will say to you we do have discreet and indirect ways of reaching workers in workplaces through universities, through legal help clinics, through, as I said before, NGOs in China. We are trying to

expand our efforts to create space and to sort of develop support under the radar.

Again, if it becomes known that the AFL–CIO is working inside China, the ACFTU would, I think, very quickly and very actively attempt to either stop it or co-opt it.

Mr. SHEPARD. Do workers ever come to you, to SAI or to the companies, with questions about how they might play a stronger role with respect to organizing or with respect to reforming their branch of the ACFTU? Do they ever ask those questions?

Do you get any sense that there is consciousness about the whole notion of freedom of association, or are their questions or demands focused mainly on specific economic benefits?

Ms. HALL. Yes. They are not quite at that point where they have a big picture in their head. I think this training that we are hoping to undertake with SAI soon, this very long-term worker training, will create that consciousness for them. It is really going to put them in the context of the world as opposed to just in their factory and just making money to send back home. But, really, why are we all doing this?

So, anyway, that has not happened yet, and we will be restarting it later this year. I wish, if somebody had come forward or we would come forward, I think it would be wonderful. It has not happened yet.

Mr. FOARDE. Well, as we do have some time left, perhaps, Mike Castellano, do you have another question? Mike.

Mr. CASTELLANO. I have got a question. You mentioned that the Vietnamese Government had adopted this SA8000 standard on apparel. I was wondering whether or not you thought it was possible to adopt something like that in China. I wonder if you could just kind of think that through right now. What would be the clear difficulties that would first come to mind?

Ms. HALL. Well, a couple of things just jumped to mind right now. I mean, China already has an established economy going on. It does not need this. In fact, this is a huge fly in the ointment for them.

Vietnam is looking to gain a competitive edge and feels that, if it can get all of its factories to aspire to something great, greater than just the law, then they will attract business from all over the world. That is the reason why they are undertaking this.

So how do you create that need for China? I am not sure if it is possible because it is a huge economic expense, for them. It would be wonderful, but, honestly, I am not really sure how to make it practical. Perhaps to start it in one area of China, maybe a depressed area. I am just talking out loud. I really have no idea. But that might be a possibility.

I always wondered, one of the reasons there are so many issues going on in China—one of many reasons—is migrant labor causes so many issues all by itself. Why not open the factories where labor is? Why do we have to bring labor to the coastline all the time? So, maybe that is one way to address it.

Mr. CASTELLANO. Let me switch gears. We talk about raising consumer consciousness. How do we make it so more consumers make it an issue when they buy things, to consider the labor issues

innate in the goods. It seems to me there could be a role for government there.

I am wondering if you two have any thoughts about ways in which government can raise the profile of the issue, increase the information that is available to make it easier to make those choices, and other ways in which the government could help raise consumer awareness and make it more of a consumer choice issue.

Ms. HALL. I do not really have anything. Nothing is coming to mind.

Mr. FISHMAN. Clearly, I think there is a role that the government can play to provide more information on countries. I think the Department of Labor, at least under the previous administration, was moving in that direction, where there was an attempt to look at worker rights conditions in countries and to make that information more public. I think that would be valuable.

How to make that information accessible and attractive to consumers, I think, is the challenge. I think, with all the good work the Department of Labor had done in the past, there are not that many Americans who get online every day and look at the DOL Web site.

But I do think there is a role for government to provide education on the status of worker rights and labor standards in various countries, and to be positive about those countries that, in fact, have made progress or meet standards and make sure that consumers understand that.

I spent a fair amount of years in the Philippines. It is really quite remarkable that we are promoting a trade policy that will penalize the Philippines because it has made more progress in terms of democratization, in terms of rule of law, in terms of respect for human and worker rights. I think that is exactly the case. When you see 2005 come along, I would be surprised if the garment and apparel industry in the Philippines survives. I think it is going to end.

Mr. FOARDE. We have reached the magic hour of 4 o'clock. To avoid imposing upon the tolerance and good nature of our panelists any longer, we will bring this session to a close.

First, on behalf of our chairman and co-chairman, and all of our commissioners, thanks to Amy Hall and Phil Fishman; Amy, for coming all the way to Washington to share your views with us, and Phil, although you are here, we welcome having a AFL-CIO representative and our long association with some of your colleagues who are also here in the room.

Thanks to all of you for coming to attend. We will probably not have another roundtable now until September, after the August break, because we are going to have a formal hearing on Thursday, July 24, 2003.

I will send out a notice soon. If you are not on our notice list, you can sign up on our Web site. If you are, the exact time and place are unclear, as we are still negotiating over a room. It will be a full Commission hearing having to do with both freedom of religion and the new Chinese leadership.

So with that, let me thank everyone once again and bring this issues roundtable to a close. Good afternoon.

Thank you.

[Whereupon, at 4:03 p.m. the roundtable was concluded.]



## **A P P E N D I X**

---

## PREPARED STATEMENTS

PREPARED STATEMENT OF AMY HALL

JULY 7, 2003

## PROMOTING WORKER REPRESENTATION IN CHINESE FACTORIES—THE SAI APPROACH

As a member of the Advisory Board of Social Accountability International and as Manager of Social Accountability for clothing designer and retailer Eileen Fisher, I bring both the NGO and corporate perspectives to the table. On a personal level, I have studied and traveled extensively in China and have visited our clothing factories there several times.

But let me begin with a little background.

## OPPORTUNITIES FOR CHANGE

Existing legal barriers to forming independent trade unions in China notwithstanding, we feel it is possible to work on improving workers' rights to freedom of association through active engagement at the factory level. We are seeking to help create more opportunities for workers in China to learn about, voice, and access their rights. Recent developments on the ground in China indicate that there are openings for encouraging such opportunities, such as:

(1) Some worker rights groups have become active in mainland China recently, for example: the Institute of Contemporary Observation in Shenzhen and the migrant worker centers in Beijing and Panyu.

(2) There are indications that the All China Federation of Trade Unions (ACFTU), the Chinese official trade union, is looking at how to become more effective as the Chinese economy continues its rapid transition from a planned economy to a market economy. In October 2001, in a positive gain for the ACFTU, China passed a new trade union law granting the ACFTU more legal leverage to defend worker's interests. In January 2003, the official Xinhua News Agency reported that the ACFTU is conducting experiments to encourage the direct election of union leaders at the factory level.

(3) Some international companies have joined with NGOs to launch encouraging initiatives to promote worker representation in China. The most recent example is the direct election of union leaders at a Taiwanese-owned footwear factory, in a process in which the main buyer (Reebok)—together with workers' rights groups—played a pivotal role. According to SAI sources in China, Reebok's effort even gained positive comments from the ACFTU Guangzhou branch, which considers it "a model worthwhile to replicate." Doug Kahn of Reebok has previously testified to this Commission on these cases.

Although it is unlikely that thorough democratic changes will occur from the top down any time in the near future, these examples illustrate the limited space that is emerging in which international organizations can foster respect for workers' rights. It is important to recognize the broader political challenges that these trends could face, while continuing to work directly with managers and workers on ensuring rights in the workplace.

## PARALLEL MEANS OF FREEDOM OF ASSOCIATION: THE SAI APPROACH TO PROMOTE WORKER REPRESENTATION

We at Eileen Fisher are asking our suppliers to adhere to the SA8000 standard and are working with SAI and others on various factory-level training programs. The SA8000 standard is the result of a consensus-based drafting process by trade union, NGO and business representatives from around the world. The SAI Advisory Board, which is responsible for drafting SA8000 and advising on policies related to the SA8000 certification system, includes members from Amnesty International and the International Textile, Garment and Leather Workers' Federation (ITFLWF), among others (see attached). The SA8000 standard (also attached) covers eight core workplace issues: child labor, forced and bonded labor, discrimination, discipline, health and safety, working hours, remuneration, and the right to freedom of association and collective bargaining. The requirements in these eight areas are based on 12 ILO conventions and other international human rights instruments. A ninth element consists of requirements that focus on the management systems needed to ensure ongoing compliance with the standard and encourage continuous improvement



even after a factory is certified for having met the minimum requirements of the standard.

In drafting the SA8000 standard this group—now the SAI Advisory Board—agreed we could not exclude Chinese factories' access to such a certification program. We saw direct engagement on workers' rights as crucial to fostering change. SA8000 encourages change by providing an incentive to achieve certification. At the same time, certification is also an important means to enable workers and their advocates to file complaints if they detect some failing in the factories' compliance with the minimums defined in SA8000.

SA8000 does require additional efforts on free association for factories in countries like China where there are legal restrictions on free association. To that end, the SAI Advisory Board came up with the following requirement (clause 4.2 of SA8000):

The company shall, in those situations in which the right to freedom of association and collective bargaining are restricted under law, facilitate parallel means of independent and free association and bargaining for all such personnel.

The chief purpose of such “parallel means” is to ensure that workers in countries such as China have the means to address their concerns and seek solutions without fear of repercussions. This requirement draws on the spirit of the Sullivan Principles implemented by companies doing business in South Africa during the apartheid regime.

The experience of the Sullivan Principles in South Africa shows that in cases where a government policy restricts an international human right, companies are able to implement parallel means for protecting that right within the factory walls. Despite Apartheid, the Sullivan Principles stated in Principle that companies would promote: “Non-segregation of the races in all eating, comfort, locker rooms, and work facilities.” Compliance with the principles were audited by the consulting firm Arthur D. Little. Companies adhering to the Sullivan Principles in their South Africa operations during the apartheid era were able to make a strong statement against discrimination by providing a non-discriminatory environment within the workplaces they managed. The Sullivan principles helped to develop a movement of business leaders objecting to apartheid, who were thus able to raise an influential voice against discrimination.

The SA8000 standard adopts a similar approach, with companies providing additional opportunities for workers in their factory to organize themselves independently. SA8000 requires companies to let workers know they are free to organize and elect representatives in order to raise their concerns with management and, essentially, negotiate solutions.

#### EILEEN FISHER: A CASE STUDY

Eileen Fisher utilizes the services of eight factories in southern China, representing about 60 percent of our total production. (The balance is manufactured in the U.S.) We do not own or in any way manage these factories. In fact, our share of the total capacity in these factories ranges from 10 to 30 percent, depending on the season. Many other well-known brands use the same factories and apply their own labor standards to these facilities. All of the factories have agreed to adopt SA8000, and we engage in a program of monitoring, continuous improvement and education to help facilitate this process.

Early in the process, Eileen Fisher realized that we cannot simply provide the SA8000 standard and walk away. Neither the factory workers nor the managers has the cultural context with which to fully comprehend or utilize the elements of the standard. For example: How can we expect a manager to eliminate all forms of unacceptable disciplinary practices or forced labor when putting padlocks on women's dormitories is generally accepted practice in order to keep them safe? How can we expect a worker to voice concern about sexual harassment when she or he doesn't even recognize when it's occurring? How can we expect workers to speak up about anything when they are raised with such a deep-seated respect for their elders (a.k.a. managers, supervisors, teachers, parents, etc.) and freedom of speech is limited?

In the case of ensuring that management facilitates parallel means to freely associate, we have found it difficult to encourage workers to make active use of worker committees. This is likely due to a combination of reasons, including:

- Management not doing enough nor understanding how to enable workers to form such committees;
- Worker distrust of any management information that such committees will be independent and unproblematic for workers who join them;

- Worker inexperience in organizing and in participating in such a dialog with management (especially since many workers come from farming communities) and a lack prior experience with real change resulting from committee work; and
- Payment structures do not allow workers to participate in worker committees without losing incentive-based income.

What is needed is change—not a “westernization” of the cultural norms of the factory people, but rather to foster greater understanding of their universally recognized rights, how to talk about those rights when they are being violated, and how managers can respond to those comments in a compassionate, non-discriminatory, effective manner. This was not something we could leave in the hands of the managers to coordinate. Neither was this something that could happen in a classroom on a single day.

#### WORKING TOGETHER TO FOSTER CHANGE

Eileen Fisher engaged the services of SAI and Verité, a non-profit U.S.-based research and monitoring organization, to conduct SA8000 training for the managers of our China factories. This training is conducted annually or as needed, with an emphasis on specific issues that the managers face in achieving compliance to the SA8000 standard. Verité also provides training to our factory workers through its mobile worker training van program. The van brings educators to each of our three primary factories once a month to inform the workers on such topics as minimum wage calculation, occupational health and safety, and China’s labor law. All of these efforts are intended to lay the groundwork on which to build effective worker representation and worker-manager communication systems in each factory.

To illustrate how this process has impacted workers at our China factories, let me describe an experience in one factory that represents our experience across the board. When talking with the factory manager about parallel means of free association, we found that he was eager to facilitate the formation of worker committees. Initially, though, he offered to simply form the committees himself. (Why bother with an election when management already knows who will be chosen based on popularity of the workers?) When we explained that the process is not legitimate unless it entails an open worker election, he was skeptical. Surely he feared that this would lead to unrest among the worker population. When pressed, however, the manager gave in, knowing that our business relationship with the factory was at stake. Months later, when we returned to visit the factory, we were pleasantly surprised to find a well-functioning worker committee. Skeptical ourselves, we privately asked the worker reps about the process, and they told us that, yes, they were elected by their peers (from among their work groups) and that management does listen to their concerns. Issues raised have ranged from the quality of food in the cafeteria to complaints about co-workers being too messy. In every case, management has addressed the concern in a reasonable manner. And every issue was documented in a worker-controlled notebook. Time will tell if this committee continues to function effectively, through employee turnover and the simple passing of time. But we remain hopeful.

As an SAI Advisory Board member, Eileen Fisher has followed SAI’s worker training program with particular interest. Since 2001, SAI, in collaboration with the International Textile, Garment, and Leather Worker’s Federation, has been conducting a program in 12 countries to train 6,000 workers on how to use codes of conduct as an additional tool to defend their rights and interests (in countries where there is not restriction on freedom of association).

In 2003–2004, SAI will expand on this program to develop an innovative worker training for the Chinese context. The primary objectives of the program are to raise worker’s awareness of and to introduce skills to use all available opportunities, including the parallel means of freedom of association, to improve working conditions. Another important objective is to train a group of workers (who will be selected by their peer workers through secret ballot, multiple candidate elections) who have the potential and skills to serve as peer workers’ representatives. The group will possibly set up their own agenda for further activities, such as to train other workers on how to protect themselves, or to set up worker committee on issues of their own concerns. Managers will be also trained separately on how to take proactive action to address workers’ concerns and grievances.

Eileen Fisher has offered three of its factories to participate in the pilot of SAI’s China worker training program, to begin later this year. This program will be conducted with the assistance from local partners such as the Institute of Contemporary Observation, the and others. Both organizations have rich experience in training and working with workers in South China.

Both SAI and Eileen Fisher recognize that, in the case of the right to free association and collective bargaining, both training and ongoing assistance are needed. This support work needs to be done through a multi-stakeholder collaboration so as to foster a sustainable and credible process. U.S. brands can play a critical role, but they need to work in partnership with U.S. and international labor, NGOs, as well as local Chinese organizations.

In summary, SAI and Eileen Fisher believe that, for anyone concerned with worker rights, China represents both risks and opportunities. We understand that substantial change will take time. But we must recognize the important role that all of us can play by fostering that change from within. We have a choice: We can walk away from this challenge, jeopardizing the jobs and livelihoods of millions of workers, or we can be a catalyst for something better. We believe in the possibilities.

#### Social Accountability International—SA8000 Advisory Board

It is SAI's policy to balance its Advisory Board (AB) equally between business and non-business (non-governmental organizations, trade unions, socially responsible investors and government) members. Parentheses below indicate the geographic work location of the Advisory Board member.

#### **Affiliated with Non-Governmental Organizations, Trade Unions, Socially Responsible Investing and Government<sup>1</sup>**

Dorianne Beyer/David Zwiebel (alternate) ....	National Child Labor Committee (USA)
Jan Furstenborg .....	Union Network International (Switzerland)
Oded Grajew/Helio Mattar (alternate) .....	Abrinq Foundation for Children's Rights (Brazil)
Joseph Iarocci .....	CARE International (USA)
Neil Kearney .....	International Textile, Garment & Leather Workers Federation (Belgium)
Kaiming Liu .....	Institute of Contemporary Observation (China)
Alice Tepper Marlin .....	Social Accountability International (USA)
The Honorable William Thompson/Ken Sylvester (alternate).	Office of the Comptroller, City of New York (USA)
Morton Winston .....	Amnesty International (USA)
Lynda Yanz .....	Maquila Solidarity Network (Canada)

#### **Affiliated with Business<sup>1</sup>**

Ivano Barberini/Alessandra Vaccari (alternate).	Legacoop and Coop Italia (Italy)
Sylvain Cuperlier .....	Dole Food Company (France)
Tom DeLuca (Chair) .....	Toys "R" Us (USA)
Durai Duraiswamy/Robin Cornelius (alternate).	Prem Durai Exports (India) and Switcher SA (Switzerland)
Pietro Foschi/Andrew Kirkby (alternate) .....	Bureau Veritas Quality International Holding SA (United Kingdom)
Amy Hall .....	Eileen Fisher (USA)
Fitz Hilaire .....	Hilaire Associates (USA) (formerly of Avon Products, Inc.)
David McLaughlin/George Jaksch (alternate)	Chiquita Brands International (Costa Rica & Belgium)
Dr. Johannes Merck/Achim Lohrie (alternate)	OTTO-Versand (Germany)
Frits Nagel .....	WE Europe (The Netherlands)

<sup>1</sup>Affiliations are for identification only.

## PREPARED STATEMENT OF PHIL FISHMAN

JULY 7, 2003

Let me thank you for the opportunity to present the views of the AFL-CIO on Freedom of Association in China and its Effects on Workers. I realize that representatives of the AFL-CIO have participated in your discussions in the past and I want you to know that we greatly appreciate the fact that this Commission has solicited our opinions on a number of important issues for both workers in the United States and in China, and indeed for workers around the world.

I will try not to repeat what we have said in the past and I wish to cite the testimony provided by Mark Hankin from our Solidarity Center last year concerning the labor rights situation in China.<sup>1</sup> His comprehensive analysis continues to represent the views of the AFL-CIO today as we attempt to better understand the worker rights situation in China during these rapidly changing times and to develop and revise strategies to effectively support efforts by workers and their allies to gain effective union representation at the workplace.

I will focus today on three areas to supplement what has already been said. First, I want to spend a few moments looking at how the International Labor Organization defines Freedom of Association and the Right to Organize and Bargain Collectively given that these rights are included in most of the Codes of Conduct of U.S. companies operating in one manner or another inside China. Second, I will express our views as well as those of much of the international trade union community regarding the All China Federation of Trade Unions (ACFTU), again trying not to repeat what we have said already. A few comments about the 2001 amendments to the trade union law will be offered in this context. And finally, given that I am sharing this occasion with Amy Hall who represents a company that bases its social accountability monitoring on the SA8000 system, I will speak to the challenges posed and questions raised by such notions as "parallel means" contained in the SA8000 standards and guidance.

I wish to emphasize at the outset that the AFL-CIO has been watching quite closely and with an open mind the efforts by some companies to more effectively apply their codes of conduct to workplaces in China. We understand quite clearly the magnitude of change China has been undergoing for the past two decades and the challenges created by this change to international worker rights and labor standards. We also have a growing awareness of the impact of such profound change on China's people. It is staggering that as many as 20 million people a year are leaving the rural areas of China for urban areas in search of work. To put this in perspective, a single year's inflow of new urban workers in China is equivalent to the entire manufacturing employment base of the United States—a manufacturing base which everyone in this room knows is shrinking in part because jobs are moving to China.

But it is not only the developed countries that are losing jobs to China. Developing countries also are losing a growing number of jobs to China and this process is accelerating. There is a UNDP estimate, for example, that Bangladesh will lose more than a million jobs to China once the Multifiber Agreement on Apparel expires in 2005. For these reasons, we are watching with keen interest developments that may contribute to arresting "the race to the bottom," as many have characterized the shifting of much of the world's production to China. We see some opportunity in the efforts made by some companies to enforce their codes and we will continue to evaluate such efforts based on our knowledge of what the realities are for Chinese workers on the ground. However I want to emphasize that companies with codes are only a small proportion of companies doing business in China and these companies remain confined overwhelmingly to the soft-goods industries. Moreover companies that take their codes seriously are in our view a very small subset of this already very small number.

So let me turn to how the ILO defines Freedom of Association and the Right to Organize and Bargain Collectively, subjects with which I am intimately familiar given my years of membership on the Committee on the Application of Conventions and Recommendations at the ILO. You can find the definitions in ILO Conventions 87 and 98. The former has been ratified by 142 of the 176 member countries of the ILO or over 80 percent while 153 member countries or 87 percent has ratified the latter. I should note that the voluntary ratification of an ILO Convention such as C. 87 has the force of an international treaty. It obligates a country to adhere to the specific provisions of the ratified instrument in both law and practice and sub-

<sup>1</sup>Testimony presented by Mark Hankin, Coordinator for Program Development, American Center for International Labor Solidarity AFL-CIO, March 18, 2002.

jects it to the ILO's standards enforcement machinery. Sadly, two of the countries that have refused to ratify C. 87 and C. 98 are China and the United States.

I have attached to my written testimony a copy of C. 87 and C. 98, which like all ILO instruments were drafted on a tripartite basis with the full participation of government, worker and employer representatives. The language in both Conventions is quite simple and straightforward. C. 87 states that workers and employers, without distinction whatsoever, have the right to establish and to join organizations of their own choosing with a view to furthering and defending their respective interests. Such organizations have the right to draw up their own constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs. Public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise of this right. The organizations shall not be liable to be dissolved or suspended by administrative authority. Organizations have the right to establish and join federations and confederations which shall enjoy the same rights and guarantee. The Convention also provides for the right to affiliate with international organizations. The acquisition of legal personality by all these organizations shall not be subject to restrictive conditions. In exercising the rights provided for in the Convention, employers and workers and their respective organizations shall respect the law of the land. The law of the land and the way in which it is applied, however, shall not impair the guarantees provide for in the Conventions.

The key provisions of C. 98 focus on the need for workers to enjoy adequate protection against acts of anti-union discrimination, specifically against refusal to employ them by reason of their trade union membership and against dismissal or any other prejudice by reason of union membership or participation in union activities. This protection is extended in particular against acts designed to promote the domination, the financing or the control of workers' organizations by employers. C. 98 also call for measures to be taken to encourage and promote the development and utilization of voluntary collective bargaining to regulate terms and conditions of employment.

Decades of review and comment by the ILO's standards enforcement machinery<sup>2</sup> have defined what these words mean in real situations in countries and workplaces around the world. There is very little controversy or disagreement, therefore, over what C. 87 and C. 98 mean given the voluminous jurisprudence developed on a tripartite basis over the years. And taken together, conventions 87 and 98 comprise one of the four core areas of fundamental worker rights identified in the ILO's Declaration of Fundamental Principles and Rights at Work adopted in 1998.

Based on this jurisprudence, it is clear beyond any doubt that China's laws and practice are in fundamental contravention with both of these core labor conventions and the principles they embody. Freedom of association and the right to organize and bargain collectively as defined by the ILO simply do not exist in China. It is also quite clear that any notion of "parallel means" in and of itself does not satisfy the ILO definition of freedom of association.

There are differing views regarding the significance of the changes to the trade union law introduced in 2001 and it is too soon for a definitive assessment. A couple of things seem clear. First, the changes were designed to strengthen the role of the ACFTU in private sector work places. There are many reasons for this. Clearly the old ACFTU—an ACFTU confined to dying State enterprises—was becoming an irrelevant organization. Second the government was clearly embarrassed by repeated stories of exploitation, and finally, and perhaps most importantly, the Party needed a means to prevent the organization of independent worker organizations and a growing number of spontaneous work actions.

At the same time, the State and party bolstered its hold on the ACFTU. The trade union law as amended in 2001 maintains the trade union monopoly enjoyed by the ACFTU (article 10) and strengthens the link between the ACFTU structure, the Chinese Communist Party (CCP) and the government, clearly identifying in more specific language than before the unions' obligation to follow the leadership of the CCP (article 4) and to assist in maintaining the state's monopoly of power (article 5). Article 11 stipulates that "the establishment of basic-level trade union organizations, local trade union federations, and national or local industrial trade unions shall be submitted to higher-level trade union authority organizations for approval." Not only is this in clear violation of C. 87, which states that workers should be able to organize into unions of their own choosing but it also is a major obstacle to independent attempts to organize trade unions. The only way such efforts can "succeed" under the law is by submitting to the authority of the ACFTU. This is further

<sup>2</sup>The Committee on Freedom of Association, the Committee of Experts and the Committee on the Application of Conventions and Recommendations in particular.

strengthened by the fact that company level unions are totally dependent on higher-level ACFTU structures for income. Companies are required to pay the equivalent of 2 percent of payroll in union dues to the higher ACFTU structure, which then in turn is supposed to return a percentage back to the factory level union, at least in theory. So under the current law a factory union is wholly dependent on the higher-level ACFTU to receive even a percentage of the dues paid by its own members.

Even if you accept the view that there are provisions of the trade union law as amended that show some promise for the possibility of creating space for more independent and democratic worker representation, the actual practice in this regard suggests another picture. We should first remember the leaders of most units organized by the ACFTU in the private sector are management personnel. And the “collective bargaining agreements” that exist are documents that neither rank-and-file workers nor their democratically elected representatives have had any part in negotiating.

The well-known case of the workers in Liaoyang Province protesting widespread corruption is but the latest example that independent worker activity will not be tolerated. Two of the leaders of the large demonstrations that took place last year have been sentenced to 4 and 7 years in prison for “subverting the state.” Their appeals were just rejected last week in an opaque process not even their defense lawyers knew about. The ACFTU refused to play any role defending the interests of the Liaoyang workers or even to defuse tensions. One of its top leaders even called one of the worker leaders a “car bomber” which is a serious accusation post September 11.

In March of this year the Governing Body of the ILO adopted the report of the Committee on Freedom of Association in which serious abuses committed by the Chinese government were cited concerning its detention and prosecution of worker leaders in Liaoyang. The Governing Body called on the Chinese authorities to release all workers still in detention, drop any charges against them and institute an impartial and independent investigation into the detentions. These recommendations have been completely ignored despite the fact that China is a member of the ILO Governing Body.

That the ACFTU’s major preoccupation is to strictly enforce its trade union monopoly was clearly demonstrated regarding the establishment of at least two associations to assist migrant workers address work-related grievances such as non-payment of wages. Ruian city in the coastal province of Zhejiang has a migrant population of 230,000. Concerned that they did not have the structures to control and administer such a large number of “outsiders”, the local authorities allowed the setting up of what appeared to be a semi-independent labor association. The hope was that it could help to avoid or settle labor disputes between the migrant workers and their local employers before they became a threat to social stability. The association also hoped to head off major collective disputes by representing workers in cases of illegal fees charged by employers and wage arrears. Even the local police approved and the experiment was extended to the nearby city of Tangxia. While certainly not trade unions, these associations were viewed as a protector, if not representative of migrant workers and there are documented cases of them intervening on behalf of workers in at least three labor disputes. This sanctioned approach was initially greeted in the media with enthusiasm and a major newspaper in Guangdong ran an article headlined, “Setting Up of Autonomous Organizations by Migrant Workers Deserves Encouragement.” This was not a view shared by the Guangdong Federation of Trade Unions, the provincial arm of the ACFTU. It was reported in the international press including the Washington Post that both efforts were abandoned because the ACFTU objected to them citing the provisions of the trade union law that gave it the sole authority to approve of the establishment of any worker organization.

In sum, that the current trade union law specifically provides for a trade union monopoly to the All China Federation of Trade Unions, that the program and activities of the ACFTU are subordinate to the wishes of the party and state, that questions of affiliation to international trade union bodies are subject to the approval of the state, that workers who attempt to organize independent trade unions or carry out what we would define as normal trade union activity such as participating in protest—all of these things and many others demonstrate the distance China must travel in order for freedom of association and free collective bargaining to be respected in both law and practice.

This is not to say, of course, that good, well meaning people cannot be found within the ACFTU structure. It is to say, however, that institutionally the ACFTU is a creature of the Chinese State and Communist Party and is obligated by its own rules to act as a transmission belt for party and State policy. I want to emphasize that the International Confederation of Trade Unions, which represents 158 million

workers in 150 countries, shares this view. I am attaching the China section of the ICFTU's recently released 2003 Survey of Trade Union Rights Around the World. I also want to emphasize that differences among various trade union organizations do not focus on the nature of the ACFTU as a government entity—on this point most are quite clear—but on whether or not the ACFTU can be reformed. Indeed the fact that the ACFTU is widely viewed as a government entity is precisely why most codes of conduct have included in them the concept of “parallel means.”

With this in mind let me turn to company efforts to enforce labor rights through their codes and through various monitoring schemes such as SA8000. Wages in China's labor-intensive export sector are artificially depressed with no mechanisms for amelioration in place. Concerted action among employers, local government, police, the central government and the ACFTU unfortunately keeps wages depressed and insures work force discipline. This is precisely why foreign companies locate their production in China in the first place. Getting any lower—Haiti, Burma, parts of South Asia, for example—puts companies out of range of acceptable infrastructure and often into politically unstable situations. China has installed good infrastructure for exporting industries. This infrastructure together with depressed wages and apparent political stability attracts companies. Two features of China's labor market contribute to the depression of wages. First, workers do not have the unfettered right to exit from unacceptable employment situations. Second, workers have no voice mechanism for affecting wages and other conditions at work.

Chinese labor especially migrant labor is not free even in the minimal sense of being able to exit unacceptable employment. Residency (hukou) rules make the predominately rural migrant labor force in the export industries beholden to the employer so that freedom of movement is impeded. The employer will often keep the workers' papers. Without these papers, workers are subject to arrest. To this extent, the hukou system operates like the pass system in apartheid South Africa. Furthermore, most employers routinely withhold at least 2 months of wages (one sixth of the yearly wage). This keeps workers from leaving; they hope to get those wages back. Finally, workers cannot exert wage pressure via trade unions due to the absence of freedom of association. Despite this, workers in the export sector often strike simply because they have no legal way to remedy their situation. These strikes are brutally suppressed. We have no way to know how many strikes there have been because in China the lack of a free press means they are hardly ever reported.

In regard to monitoring, it is our view based on our own experience here in the U.S. as well as working to strengthen relations with workers in developing countries for many decades that the most effective way to monitor factory compliance with national law, international standards, and company codes is by empowering workers themselves to play this role collectively and independently in an atmosphere absent of fear and intimidation. The Fair Labor Association seems to have come to a similar conclusion stating in its recent report that “freedom of association is essential to the resolution of many other compliance problems, in that the most sustainable approach to compliance lies in developing the capacity of workers and employers to regulate their own workplaces.”<sup>3</sup> Workers have an obvious interest in ending abuses and violations as a way to improve their daily lives and can provide the daily continuity necessary for monitoring to be truly effective. It is virtually impossible to monitor workplaces effectively without such continuity. What meets standards in a factory one day can be quite different 3 months later unless there is daily vigilance. This has been demonstrated by the fact that SAI and other monitoring groups have had to remove certification of several facilities when it was disclosed that they did not in fact meet the standards. In most if not all of these cases reported in the press, it was outside “watchdog” NGOs such as the National Labor Committee that uncovered the labor rights abuses and only when they went public were the factories decertified. We find this troubling especially when combined with the fact that over one third of the factories certified under SA8000 are located in China and Vietnam where freedom of association does not exist and where independent NGOs with the freedom and wherewithal to contact workers are not tolerated.

<sup>3</sup>Fair Labor Association First Public Report: Toward Improving Workers' Lives, August 1, 2001—July 31, 2002.

According to SAI, “parallel means” is designed to encourage nascent forms of worker self-representation in countries like China where independent unions are prohibited.<sup>4</sup> While we look upon such efforts with interest, we remain skeptical as to where such efforts actually lead. The limited experience that we have in China seems to demonstrate that if a parallel organization formed in China is to survive, let alone lead to real freedom of association, then a sustained effort must be made to nurture the organization through the provision of training and a commitment to maintaining the space in which the parallel organization can operate. We have not yet seen more than a handful of companies such as Reebok make such a commitment and it is unclear even then that they will succeed in individual workplaces, let alone influencing what happens outside them. I do want to note with particular interest the two elections at facilities producing for Reebok. While we see some problems such as the insistence by the ACFTU at the second facility to provide all worker education and training rather than respected NGOs in Hong Kong, as was the case at the first facility, we hope that the empirical evidence begins to emerge that such experiments lead to freedom of association.

The experiences of countries like South Korea and Indonesia suggest that workers became empowered only after both countries underwent real political change despite long time support by the international trade union community. In other words, only when South Korea began to rapidly move toward democracy in the 1980s and transition from Suharto was well underway and irreversible did freedom of association for workers begin to emerge. So the value of “parallel means” absent similar such political change in China is problematic. Without empirical evidence that notions like “parallel means” leads to real freedom of association, it is our view that companies operating inside China with a code of conduct that includes freedom of association are in fundamental violation of their own codes. Furthermore, until such evidence begins to emerge, there will be continuing concern that at the end of the day improving labor standards without legitimate trade union representation is an acceptable, even preferred, outcome to companies involved in such schemes.

Let me conclude by saying that we believe that inevitably workers will win the right to freely associate in China. We do not expect that this right to be handed to them by the business community—that has never been the case anywhere. In Taiwan and Indonesia, workers won that right by challenging tired, old state-run organizations that neither had the energy or the interest in representing worker interests. In China we are seeing that happen now in the old State enterprise sector where workers are challenging the ACFTU on almost a daily basis. Similarly, representative groups are beginning to develop in the private sector where workers are beginning to organize. American companies can help by finding effective ways to support these groups and resisting the temptation to adopt schemes that only pretend to meet the obligations of their own codes of conduct.




---

<sup>4</sup>SAI has applied the notion of “parallel means” to factories in Bangladesh, a country that protects freedom of association in its labor code except in Export Processing Zones. This creates concerns that “parallel means” as a substitute for freedom of association rather than a process for advancing it as claimed.