

LABOR RIGHTS AND CONDITIONS IN CHINA

ROUNDTABLE

BEFORE THE

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

MARCH 18, 2002

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

78-878 PDF

WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: 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

Senate

MAX BAUCUS, Montana, *Chairman*
CARL LEVIN, Michigan
DIANNE FEINSTEIN, California
BYRON DORGAN, North Dakota
EVAN BAYH, Indiana
CHUCK HAGEL, Nebraska
BOB SMITH, New Hampshire
SAM BROWNBACK, Kansas
TIM HUTCHINSON, Arkansas

House

DOUG BEREUTER, Nebraska, *Co-Chairman*
JIM LEACH, Iowa
DAVID DREIER, California
FRANK WOLF, Virginia
JOE PITTS, Pennsylvania
SANDER LEVIN, Michigan
MARCY KAPTUR, Ohio
NANCY PELOSI, California
JIM DAVIS, Florida

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

IRA WOLF, *Staff Director*
JOHN FOARDE, *Deputy Staff Director*

CONTENTS

	Page
STATEMENTS	
Opening statement of Ira Wolf, Staff Director, Congressional-Executive Commission on China	1
Hankin, Mark, Coordinator for Program Development, the American Center for International Labor Solidarity, AFL-CIO	2
Athreya, Bama, Deputy Director, International Labor Rights Fund	6
Freeman, Anthony G., Director, Washington Branch Office, International Labor Organization	11
APPENDIX	
PREPARED STATEMENTS	
Hankin, Mark	30
Athreya, Bama	34
SUBMISSIONS FOR THE RECORD	
Memorandum of Understanding for Cooperation Between the International Labour Office and the Ministry of Labour and Social Security of the People's Republic of China, submitted by Anthony G. Freeman	39
Briefing notes prepared by the ILO Washington Branch Office, submitted by Anthony G. Freeman	47

LABOR RIGHTS AND CONDITIONS IN CHINA

MONDAY, MARCH 18, 2002

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
U.S. SENATE,
Washington, DC.

The roundtable was convened, pursuant to notice, at 2:30 p.m., in room SD-215, Dirksen Senate Office Building, Mr. Ira Wolf (staff director of the Commission) presiding.

Also present: Mr. John Foarde, Deputy Staff Director; Ms. Holly Vineyard, U.S. Department of Commerce; Mr. Melvin Ang, Office of Senator Feinstein; Mr. Robert Shepard, U.S. Department of Labor; Ms. Jennifer Goedke, Office of Congresswoman Kaptur; and Mr. Dave Dettoni, Office of Congressman Wolf.

OPENING STATEMENT OF IRA WOLF, STAFF DIRECTOR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Mr. WOLF. Let us get started. I would like to welcome everyone to the second staff-led public roundtable of the Congressional-Executive Commission on China.

These roundtables were created by Senator Baucus and Congressman Bereuter, our chair and co-chair, in order to delve into the issues that the Commission is responsible for in greater depth than in larger hearings. Today, the topic is labor rights and labor conditions in China.

Next week, in this room, Monday, March 25 at 2:30, we will hold the third roundtable, which will be on the issue of religious freedom in China. I just want to note that on April 11, there will be a full Commission hearing chaired by Senator Baucus and Congressman Bereuter on human rights and legal reform. You can check our Web site at www.cecc.gov for further information about hearings and roundtables.

Today, we have three witnesses. First, we have Mark Hankin, who is program development coordinator for the American Center for International Labor Solidarity, and who has a long background in international labor concerns; Bama Athreya, who is deputy director of the International Labor Rights Fund; and Tony Freeman, who is director of the Washington office of the International Labor Organization [ILO].

Originally, we had a fourth witness, Jeff Fiedler, who is the former president of the Food and Allied Services Trade Department of the AFL-CIO. But because of a death of a very close friend and colleague, at the last minute Jeff had to cancel his appearance

today. We hope to have him at another session to bring his wealth of experience in China labor issues to the Commission.

The format today will be a 10-minute presentation by each of the presenters, and then the staff will each engage in 5 minutes of questions, and hopefully some interaction and discussion. We will continue until we have exhausted ourselves and exhausted the three of you.

So, Mark, if you do not mind starting. We are going to use these lights right in front of you, so after 9 minutes you will see the yellow light, then you will hear the ping at 10. You do not have to stretch 9 minutes of comments into the 10th minute.

Please, Mark, go ahead.

STATEMENT OF MARK HANKIN, COORDINATOR FOR PROGRAM DEVELOPMENT, THE AMERICAN CENTER FOR INTERNATIONAL LABOR SOLIDARITY, AFL-CIO

Mr. HANKIN. Thank you, Ira. I appreciate the opportunity to present our views on the labor rights situation in China and to comment on strategies that address labor rights violations there.

The discussion we are having today is an extremely important one. It will become more important in the future, not only to our Nation, but especially developing countries around the world who compete in the world economy with China now that China is a member of the World Trade Organization [WTO]. That is a long and complicated story and deserves a separate session all by itself.

There is little doubt that China has made amazing economic progress since 1978 when Deng Xiaoping opened the country to the outside world, and later initiated the first socialist market economic reforms.

With all of this good news then, why do many scholars talk about the possibility of China imploding?

Uniformly, they say that China is a nation where greed and corruption are endemic and where the rule of law means little or nothing. They tell us that it is a country where people have no institutions that represent their interests and which serve their social welfare needs.

When placed in these situations, people feel powerless. Suddenly, without warning, they explode. That is what we are glimpsing in China today.

Many years ago, the first president of the AFL-CIO, George Meany, uttered a simple truism: "There is no democracy without free trade unions and no free trade unions without democracy."

As the State Department's most recent annual report on human rights points out, there is neither democracy nor free trade unions in China. In the place of democratic unions, China has state-controlled organizations that have a monopoly on purporting to represent workers.

No one disputes that the Communist Party controls these unions. The Party dictates their mission, not workers. That is why the Politburo installed one of their own as the head of the All China Federation of Trade Unions [ACFTU].

I have referenced the State Department's annual human rights report because we believe it is generally an accurate report and a good baseline from which to start a discussion on labor rights.

Let us be clear. The report is by no means perfect. Part of the problem with the report, is it reflects a general misunderstanding of how democratic industrial relations systems work.

Fundamentally, democracy and democratic industrial relations are peas in the same pod. One cannot talk about collective bargaining without free trade unions.

I would urge the staff of this Commission, as it reviews the human rights report, to keep this in mind and not think that the thousands of so-called collective agreements that the Chinese Government now says are in existence are actually legitimate collective bargaining agreements.

I would also urge the Commission to look at the new trade union law to see whether it really expands the authority of the ACFTU to allegedly represent workers' interests in the private sector.

When you do, you will see it is an instrument that reflects the government's desire to control workers as much or more than it does to represent their social welfare interests. In that revised law, higher-level ACFTU organizations approve "workplace trade unions." These factory-level structures are also subject to their discipline.

For the record, there is no legal right to strike in China. The government uses forced labor in prisons. We see a rise in children working as the country's education system falls apart, and we know that discrimination against women workers is increasing, especially in the state enterprise sector.

Let us not forget. Worker leaders have been, and are being, arrested in China. The International Labor Organization, among others, has made pleas on their behalf, which are almost always ignored by the Chinese Government.

A real problem is that outsiders have almost an impossible time tracking these events, since word of them usually does not leak out to the outside world.

Any discussion on labor rights and standards in China is really a discussion of two separate economic sectors: the State enterprise sector, and for lack of a better term, the non-state sector.

Discussions of labor relations in the state sector center on broken promises to workers about the impacts of economic reform, corrupt managers who steal State assets for personal profit, and a lack of social safety nets (health, education, and housing) to replace traditional enterprise benefit structures that were paid for by the enterprise.

In the State sector, the so-called trade union was and is a cost of doing business to an enterprise. The trade union's role is to deliver recreational and some social services to workers.

Workers in the State sector did not expect their union to be an advocacy organization, and they certainly do not see it that way now.

The primary role now of the ACFTU in China's rust-belt cities is to help workers find new jobs. Long lines of workers seeking day jobs betray the fact that the unions are unable to fill this function. They do not have the resources, and the jobs simply do not exist.

The government has also charged the ACFTU with providing legal services to workers. Few ACFTU unions have taken this

charge seriously. The growing number of street demonstrations that occur on a daily basis in China testify to this fact.

The non-state sector in China employs workers in joint enterprises and township enterprises, and solely owned enterprises. This sector has become the main engine of economic growth in the country, and the employer of millions of migrant workers.

With limited resources and no experience, ACFTU branches have shied away from reaching out to workers in these enterprises, especially since foreign employers and their local partners have made it clear they are not wanted.

The employers view these unions as economic rent-seekers who offer little value. Their workers are already docile. Anita Chan, a keen observer of Taiwan-and Hong Kong-run and/or-owned factories, has described these plants as militarized facilities where there are strict rules and a series of set punishments.

Workers employed in these enterprises have no knowledge of their rights or the country's labor law. Not surprisingly, they have no understanding of what a union is.

I will not dwell in detail on the serious labor standards law violations that exist in these factories. They start with violations of occupational safety and health codes, include physical punishment of workers, non-payment of wages, forced overtime, and forms of bonded labor.

Nor need I tell you that embarrassed United States and European purchasing companies have been scrambling to find ways to protect their brand reputations from the charges that they source from Dickinsonian sweat shops in China.

China's newly revised trade union law has been praised by some as a step forward because it enhances the ability of the All China Federation of Trade Unions to enter into private sector factories.

How far local officials will go to allow ACFTU cadres to use the provisions of the new law to establish unions in private sector factories is unknown. Clearly, past practice indicates that, where local officials have an economic stake in the enterprise to either through hidden ownership or pay-offs, the ACFTU will be told to stay away.

While in this testimony I have pointed to the enormous problems in the labor rights area in China, I have not meant to imply that we are powerless to assist Chinese worker activists who are seeking to promote positive change. Indeed, the AFL-CIO has had a commitment to promote democratic change and labor rights in China for many years.

Now, let me turn to the opportunities we see for future work. In late January of this year, the Solidarity Center held a session with its partners and leading experts on China in Washington, DC to review strategies on China.

Participants at the meeting recognized that the Chinese Government has tried to put into place legal systems to ensure an orderly transition from a state-controlled to a market economy.

These new legal avenues present important opportunities for labor rights promotion. Discussions at the meeting pointed to the need to help educate Chinese workers about their rights under law.

Participants also agreed that it was vital to test newly developing spaces in China through these legal mechanisms to deter-

mine if worker rights can be advanced using such issues as occupational safety and health and gender discrimination as door-openers.

Meeting participants also acknowledged the continuing need for research on emerging trends in China related to worker rights, especially given China's economic reforms and entry into the WTO.

They also agreed that it was vital to build consensus in the international trade union community about how to approach the ACFTU and the Chinese Government concerning labor rights issues.

In particular, we feel it is essential to support worker rights advocacy and information dissemination about the labor rights situation in China. This information can be made more readily available to workers in the country and to other interested parties in and outside of China, including foreign trade unions, in an effort to stimulate creative ways to solve labor-related disputes.

In that regard, we strongly support the continuation of Radio Free Asia programming on labor subjects. We also believe that the use of new Web-based technologies should be expanding as a means to provide information to workers.

As I indicated earlier, the space that may now be available in the non-state sector to promote the development of independent worker organizations should be explored. This can be done in a variety of ways, including looking at the possibility of enlisting cooperation of U.S. companies and other foreign companies.

Also, support should be given to those organizations able to identify Chinese worker activists in the county, and through them information on labor rights and strategies to achieve these rights should be made available to rank-and-file workers.

Efforts should also be supported to build the capacity of law schools, lawyers, and legal aid workers, to respond to the growing demand among private sector workers for legal services dealing with labor and employment law issues.

This effort would also support training legal workers and would seek to move from individual to collective cases. It would also involve the establishment of outreach centers that offer social services, as well as rights information.

In addition, initial discussions must be broadened concerning labor and employment issues, occupational safety and health, and gender with key interlocutors in the State sector in the specific locations where restructuring State enterprises is occurring.

This would involve bringing United States experts to China. Pragmatic approaches would stress mechanisms that empower workers that take advantage of existing legal options.

Finally, there is a dearth of academics studying labor relations in China and our knowledge of what is going on inside the ACFTU is extremely limited.

While the ACFTU is not a trade union, there are people in the ACFTU that want to increase its advocacy role. Other individuals within the organization understand that a prosperous and stable China needs to have free trade unions as an essential actor in solving labor disputes.

Interested observers should reach out and encourage these individuals without conferring legitimacy on the overall organization.

Academics and academic institutions are best suited to play this role. Thank you.

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

Mr. WOLF. Thanks a lot, Mark.
Bama.

**STATEMENT OF BAMA ATHREYA, DEPUTY DIRECTOR,
INTERNATIONAL LABOR RIGHTS FUND**

Ms. ATHREYA. Thank you very much. Thanks very much to the Commission for the opportunity to present this statement today.

In the race to the bottom, China is the bottom. The most extreme cases of labor rights repression can be found in China, thanks to the fact that its enormous and desperate population of unemployed have no choice but to accept starvation wages and to suffer abuse.

With well over a billion people, of course China has the world's largest labor force. In addition, despite the GDP growth rates that appear on paper, there are nowhere near enough jobs, so most of these billion-plus people are barely surviving.

In the countryside, where 900 million of these people live, the land cannot support the growing population.

Even those peasants who had been getting by are now faced with competition from foreign agricultural markets, a result of expanded trade ties and China's recent entry into the WTO. That will put tens of millions more out of work.

These tens of millions will flee to urban areas to seek work. However, China's cities are also plagued with vast numbers of unemployed. Again, as a result of free market pressures, many of China's state-owned enterprises have gone out of business in recent years, and many more will be forced to shut their doors over the next few years.

This has already put an estimated 30 million workers—that is the Chinese Government's estimate, and very conservative—out of work, and according to a report by a major United States investment firm, approximately 40 million more will lose their jobs over the next 5 years. This may ultimately add up to 100 million or more unemployed and their families.

To make matters worse, these millions are unable to organize and mobilize for government protection or assistance. China remains a dictatorship, where any attempt to organize brings imprisonment, and possibly torture or execution.

What does this mean for those workers who are lucky enough to have jobs? It means they face every type of labor rights abuse. Child labor? China has it. Last year, an elementary school in a rural area exploded, killing and injuring several children.

The Chinese Government tried to cover up this story, claiming that a disgruntled former employee had planted a bomb in the school. Soon, however, the international press was able to reveal the true story. The school was a fireworks factory, where young children were forced to work under extremely hazardous conditions.

Worse yet, it was later exposed that this was far from the only school that was actually a factory staffed by child laborers. Shrinking resources for China's school districts had led to a central gov-

ernment directive to the schools throughout the country to find creative means of raising their own budgets.

This apparently had led many schools in China's countryside to set up their own businesses in recent years. Naturally, those businesses often turn to the most immediately available source of labor, the children who are not in any case being educated.

Although, in the wake of the exposes the Chinese Government did claim it would be putting a stop to this policy, there may be hundreds, or even thousands, of such factories still hidden away in China's countryside.

Prison labor? China has it. Indeed. It is China's official policy to punish prisoners in reform-through-labor programs. However, the Chinese Government may be turning a pretty profit on prison labor, which means there is quite an incentive to keep people in prison.

In 1998, a Chinese dissident who had been exiled to the United States revealed that, while he was in a China prison camp, he had been forced to make soccer balls for Adidas Corporation. Adidas management apparently had no idea that the factory from which it was sourcing was, in fact, a prison camp.

They claimed that they not only stopped sourcing in this particular factory, but also instituted more rigorous policies to monitor all of their factories in China.

Unfortunately, thorough monitoring may be impossible for most retailers, as many retailers have hundreds, or even thousands, of supplier factories and only a handful of monitoring staff.

Equally unfortunate, other multi-national corporations were apparently not deterred by the Adidas example and continue to source products from locations which they do not fully know, and some of which are prison camps.

Just 2 months ago, a Chinese refugee in Australia, for example, came forward to reveal that she had been forced to produce toy rabbits for Nestle Corporation in a Chinese prison. Nestle's defense was ignorance of the conditions of its supplier. China's lack of transparency provides a very convenient shelter for labor exploitation.

One could continue for hours to detail the litany of abuses routinely suffered by Chinese factory workers. For the moment, I would only like to note that my organization, the International Labor Rights Fund, has been in dialog with a number of multi-national corporations that are attempting to monitor their suppliers in China.

The companies themselves admit that the following chronic problems exist in their factories: Failure to pay minimum wage, failure to pay proper overtime, excessive hours of overtime, missing, blocked, or locked fire exits, improper deductions from wages, and failure to properly document the age of workers.

I would like to stress here the fact that these are apparently common problems among that small handful of companies that are actually trying to do the right thing and monitor labor standards.

We can only imagine that even worse abuses are suffered in factories among the vast majority of companies which are not trying to institute labor codes of conduct.

That there are problems, is indisputable. Therefore, the two real questions that this Commission now faces are, why should we care, and what can we do about it?

The short answer to the former question, is the U.S. Government should care because the U.S. public cares. The average United States citizen may benefit from labor repression in China in two ways. First, they benefit as consumers of cheap products. Second, they benefit as shareholders in companies that are invested in China.

A number of recent consumer actions and shareholder actions highlight the reality that the average U.S. citizen is not merely acting out of pure greed. Consumers do care about the production conditions connected with the products they buy. Investors do care about the ethical behavior of the corporations in which they invest. Both of these groups care about human rights.

I would like to mention just a few actions targeting major United States corporations as evidence of why neither United States companies, nor the United States Government, can afford to ignore labor rights abuses in China.

A very recent exposé of Wal-Mart's factories in China revealed excessively long working hours, failure to pay a living wage, and unsafe and unsanitary working conditions. . As a result of these reports, the Domini 400 Social Index removed Wal-Mart from its portfolio.

Another case. A Hong Kong-based human rights group investigated Chinese factories producing for Disney Corporation and found a similarly long list of labor rights abuses.

To quote from the report, the workers suffered "excessively long hours of work, poverty wages, unreasonable fines, workplace hazards, poor food, and dangerously overcrowded dormitories."

Now not only have Disney stores been the target of protests by concerned consumers, but Disney is also facing a shareholder resolution for its poor labor practices.

Shareholders are also broadly concerned with the actions of United States companies in supporting the Chinese Government. In the past several months, for example, AOL Time-Warner has been the subject of media criticism, and is also facing a shareholder resolution for its decision to invest in China.

Despite the fact that the company's flagship Time Magazine has been banned in China, apparently the issue of freedom of speech is not of concern for AOL Time-Warner.

According to a recent article in the Weekly Standard, "AOL is quietly weighing the pros and cons of informing on dissidents if the Public Security Bureau so requests; the right decision would clearly speed Chinese approval for AOL to offer Internet services and perhaps get a foothold in the Chinese television market."

There are numerous other examples of company practices in China that have generated shareholder concern here in the United States. Time constraints prevent me from describing all of these in detail, but I do want to call this Commission's attention to the fact that other U.S. companies in the high-tech sector, including Sun Microsystems and Cisco Systems are also facing shareholder actions based on the exposure of those companies' work to assist the Chinese police to develop surveillance capacities.

Companies whose very existence can be attributed to an environment that allows the free flow of ideas vital to innovation apparently have no difficulty profiting from suppressing those freedoms elsewhere. Fortunately, although Chinese workers cannot protest, United States shareholders can.

This is a panel about labor rights, so I do not want to venture too far into the overall themes of human rights and corporate responsibility. However, I bring up these latter cases because I want to stress the importance of ensuring that U.S. official rhetoric conforms with actual U.S. policy, and that is something this Commission is empowered to do.

The United States Government has claimed repeatedly in recent years that, by opening up China to United States business, we would be opening up China to democratic values as well.

President Clinton made this point in a number of speeches related to the promotion of normalized trade relations with China. Just last year, Secretary of State Colin Powell made a similar statement on the eve of a visit to China. Powell's statement claimed that United States businesses were bringing management and worker relations concepts, including improved health and safety practices, to China. As the above examples illustrate, this is a somewhat controversial claim.

There are several things the United States Government might do to truly promote better respect for labor rights in China. First of all, the United States Congress should revise the long-standing idea of a binding set of human rights principles for United States business in China.

The United States business community claims it is already promoting better workplace conditions and standards in China. As I have just noted, many U.S. officials are eager to be able to echo those claims.

Therefore, there should be no objection on any side to articulating clearly the labor rights standards which should be operational among all United States businesses in China, and United States companies should not have anything to fear from public scrutiny on these matters.

The idea of a legislative set of principles for United States business in China is not new. Many of you may be familiar with the "Miller Principles," first articulated by Congressman John Miller in 1991, also introduced in the Senate in the early 1990's by Senator Ted Kennedy.

The Miller principles won both House and Senate ratification in the early 1990's, although they never passed both Houses at once. It is time to update and reintroduce those principles and to ensure that they contain a public review component similar to those contained in the OPIC legislation.

Also on the subject of the United States Government rhetoric versus reality, I note that a number of United States officials publicly claimed that China's entry into the WTO would inevitably lead to better respect for rule of law in China. I am going to abbreviate my comments somewhat, since I see that my time is limited.

But I do want to note that that has not been the case in other countries. We have not seen that expanded trade ties necessarily lead to better implementation of labor rights protections, for exam-

ple, in Bangladesh, Malaysia, Indonesia, and the list goes on. Quite the opposite, they seem to have undermined labor standards.

Therefore, we should not assume that the WTO entry will automatically lead to better enforcement of Chinese labor protections. The U.S. Government can be a positive force for change in this area by advocating proactively for legal reform rather than simply waiting for the WTO to solve all ills.

The Chinese Government has recently passed a new trade union act, as my colleague Mark Hankin has mentioned, and a new occupational safety and health law. The United States Government should engage relevant Chinese Government officials to encourage further labor code revisions and that those labor code revisions be conducted with the input of international labor experts to ensure that reforms bring China into full conformity with ILO standards.

The United States Government can also encourage China to fully implement its commitments to the ILO's Declaration of Fundamental Principles and Rights at Work. While in many aspects China's labor laws already do conform to ILO standards, in two important areas, freedom of association and forced labor, they do not.

Rather than ignoring ILO recommendations, as it has done for several years, the Chinese Government should be encouraged to engage in a productive dialog with the ILO on the subject of legal reforms to bring its laws into full compliance with these international standards.

If I may be permitted, Ira, I would like to just continue with a few recommendations. It will take about another minute.

Mr. WOLF. All right.

Ms. ATHREYA. Thank you.

The United States Government should also independently support rule of law initiatives in China, not only the new Trade Union Act, but also China's basic labor code are in need of clarification in several areas, as, again, my colleague Mark Hankin has mentioned.

Assisting local labor advocates to bring test cases is one way in which the United States Government could help bring about clarification in this area, and also strengthen the network of lawyers and legal advocates who are capable of taking on such cases in China.

The United States Government should also advocate on behalf of those who are imprisoned each year for attempting to exercise their basic rights. There are a number of cases each year. Amnesty International has excellent documentation on these, as does John Kamm's Dui Hua Foundation, of labor leaders who are jailed for attempting to organize or attempting to otherwise speak out on the problem of labor rights abuses.

What is important here, is that United States officials not only bring up on a case-by-case basis the names of those jailed, but in their dialog with Chinese officials make clear the basis on which we understand these cases to be violations of fundamental internationally recognized labor rights, that these are not criminals, these are individuals who are attempting to organize rights which are recognized internationally.

Finally, I would like to note that the 2008 Olympic Games in Beijing will present another opportunity to influence the Chinese

Government. It should not be a given that, under any circumstances, the United States will participate in the 2008 Games.

I do want to note that we expect to have to keep an eye on things as the construction for the facilities of the Olympic Games continues, and it would be helpful if the U.S. Government did so as well.

Thank you very much to the Commission for accepting this statement.

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

Mr. WOLF. Thanks. Since we are keeping an official record, your statement will be printed and posted as well. We will put in whatever written statements you have, and other back-up documents as well.

Tony Freeman, please. Tony.

STATEMENT OF ANTHONY G. FREEMAN, DIRECTOR, WASHINGTON BRANCH OFFICE, INTERNATIONAL LABOR ORGANIZATION

Mr. FREEMAN. I want to express my appreciation also to the Commission for the opportunity to discuss ILO programs in China. I am not going to talk much about the conditions in China, but rather what our objectives are in China. Bama Athreya has already laid out the ILO's mandate. A good part of what we seek to do is what she has suggested.

I want to start, first, on the standards side because that is the oldest function of the ILO, standards setting, getting countries to ratify the standards, and then encouraging countries to comply with those standards in law and practice.

China has ratified a total of 23 conventions so far, of which 19 are still in force. Two of them are fundamental human rights conventions, one on equal pay for equal work, and the other a minimum age convention. The other ratified conventions are what we would call technical or social welfare conventions.

Hong Kong and Macao have a greater number of conventions than the People's Republic of China has accepted. Hong Kong is bound by 40 conventions, Macao by 30.

I have prepared more detailed background notes, which are available in the back of the room. I am going to just touch on highlights here in the 10 minutes that are available to me.

When a country ratifies an ILO convention, it is obliged to submit periodic reports to the Organization on how its law and practice meet the terms of the convention. There are various supervisory bodies in the ILO which regularly review these ratifications to see whether the commitment is actually being met.

Since China has not ratified either the core freedom of association conventions or the core forced labor conventions, we have other ways of trying to get at that. An important mechanism is the Committee on Freedom of Association which receives complaints, whether a country has ratified the conventions or not. There have been a number of China cases which I have sought to summarize in the background notes.

Basically, there has been sharp criticism from the Committee on Freedom of Association for the failure of Chinese law and practice to meet the requirements of the Freedom of Association Principles.

The committee has sharply criticized the arrests of workers who have tried to organize outside the official trade union movement, which is illegal in China. And there have been detentions or arrests, under the Education through Labor system, which the Committee on Freedom of Association finds to be a form of forced labor and unacceptable.

So, our principal problems, as Bama has laid out already, in the standards area in China are freedom of association and forced labor.

Nevertheless, China has accepted—in fact, voted for—and is bound by the 1998 Declaration of Fundamental Principles and Rights at Work, which declares it to be an obligation of membership in the ILO to respect, promote, and realize in good faith, in accordance with the constitution, the principles that lie behind the eight conventions that have been identified as fundamental conventions.

These principles are listed in the Declaration as being freedom of association and effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and elimination of discrimination in respect to employment and occupation.

We have been engaged with China now for about 10 years or so in promoting increased ratification and application by China of ILO conventions. There are eight conventions that have been ratified since the PRC took over the China seat in 1983.

Along with the Declaration principles comes a complicated set of so-called “follow-up” procedures which require new reporting by member states on all four of the principles that I have mentioned, whether the countries are able to ratify the relevant conventions or not.

The countries submit an annual report. It is a self-assessment, alongside of which however, trade unions and business organizations may submit their own critiques. That is to say, such organizations within the country and also international trade union and business organizations.

So, we are beginning to get a rich amount of information from and about China and we are also getting increased ratifications. China has been providing a fairly comprehensive amount of reporting and there has been a certain amount of labor law reform as China has proceeded with its notification of ILO conventions.

A good part of the advice that has been provided by the ILO over the last 10 years has to do with changing of law, and then monitoring implementation of those laws.

There has been an ILO technical cooperation program in China since the early 1980s. There was a pull-back after the Tiananmen Square events in 1989, but since 1996 there has been a renewal of assistance.

There were a number of projects between 1996 and 2001 in the area of urban employment promotion, rural employment promotion, small enterprise development, and a greater Mekong multi-country program for elimination of trafficking in women and in children.

In May of last year, our director general, for the first time, visited China, or at least the first time since the Tiananmen Square events, and inaugurated a new era in China-ILO relations with the signing of a Memorandum of Understanding [MOU] on a broad front of labor issues.

I do not want to say it was all peaches and cream during this visit. The director general and the Minister of Labor of China agreed to disagree on whether China was or was not in conformity with freedom of association and forced labor principles.

The ILO requested further information from China on the detention cases that had been raised in the freedom of association complaints that had been examined previously, including the whereabouts of trade union detainees and requesting that they be released.

The important thing about this new Memorandum of Understanding, is that China has agreed to the four principal objectives of what we call the ILO's Decent Work Agenda. Those four basic aims are: Promotion of the ILO Declaration on worker rights and principles and international labor standards; employment creation; social protection and improvement of social network; the promotion of tripartism and worker/employer/government cooperation.

So, these four things form an integrated package. There is a commitment on the part of the government to work on all four objectives, including, most importantly for us, the first objective, which is the fundamental rights and principles of work.

The program as I have already tried to illustrate, includes advice, consultations, and visits and the promotion of ratification and implementation of ILO conventions is part of that program.

Let me just read very quickly what the mutually agreed priorities in the MOU are under the first objective of promoting international labor standards and the ILO Declaration.

They are: (1) Activities to promote and realize the ILO Declaration; (2) to provide technical advice and assistance for ratification and application of ILO conventions, including the fundamental and priority conventions; (3) to provide assistance in the implementation of ratified ILO conventions; (4) to conduct information and educational activities to promote greater awareness of international labor standards; and (5) to strengthen the institutional capacity of labor inspections to promote the effective application of ILO conventions, taking into account the relevant conventions on labor inspection.

We have seen two new ratifications this year and we have two or three that China is working on which we expect to come to fruition shortly.

I have a statement that I have received from my headquarters today which states the following with regard to fundamental workers' rights.

China is in the process of ratifying Convention 182.

That is a convention on the worst forms of child labor.

It has already ratified Convention 100 and 138. Convention 100, as I said, is on equal work for equal pay, and 138 is on minimum age.

It is foreseen that work on discrimination will continue, leading in due time to the ratification of the corresponding instrument, Convention 111.

Given that there is a growing interest, in knowledge, and experience in collective bargaining for which workshops have been organized, it is possible to think that in China the road to an eventual recognition of the principles of freedom of association may lead to an increased practice of collective bargaining as the economy is restructured.

At this stage the ILO is pursuing this approach, which may in due time lead to ratification of Convention 98 on collective bargaining.

In the short run, no breakthrough on forced labor would seem to be imminent. The position of the ILO, as stated by the director general when the MOU was signed, is identical to that of the U.N. High Commissioner for Human Rights.

The ILO has underlined that it is ready to help the government to implement the principles of abolition of forced labor, including help with ratification of the relevant conventions.

In the area of employment promotion, a major initiative will be a major employment forum that will take place in October of this year, which will bring international experts together with China to discuss all aspects of the global employment agenda in China and develop a comprehensive plan of action.

We are also working on a comprehensive social security program which is vitally needed because of all of the layoffs that have begun as part of the structural reforms, massive layoffs which are going to get worse, not better, in the interim period of 18 months or so. There needs to be put in place an effective social security system, which they do not have.

Last, I want to touch on what is probably a critical issue, and that is the question of whether or not, and how, you deal with the official so-called trade unions in China, the ACFTU. It is a decision of the ILO to work with the official trade union movement. There is no doubt that there is no freedom of association currently in China. There is an official trade union monopoly established by law. Until such time as that official monopoly is removed we have violation of freedom of association.

Nevertheless, there is a statement of intent on the part of this institution, which at the current time is a part of the government system like any other government institution in China, to cease playing the role of transmission belt for the party and for the government and to become a more independent body. So, they are committed, this institution, to acting more in defense of the worker interests.

It remains to be seen to what degree they will fulfill that, but we are prepared to work with them. Our workers' activities branch, which is an independent or semi-independent branch of the ILO, which is run by the workers, of the workers, for the workers, has agreed to do this and has entered into an MOU directly with the ACFTU.

We have programs and projects which are aimed at working at the enterprise level, trying to get collective bargaining started there aimed at reforming the plant-level worker organizations into genuinely representative bodies more along the lines of the worker committees in European countries.

My time is up, so I will stop there. Thank you.

[The information submitted for the record by Mr. Freeman appears in the appendix.]

Mr. WOLF. Thanks. I am sorry, Mark, that you did not get a chance to squeeze out an extra 2 minutes, but you live and learn.

Mr. HANKIN. Well, we have plenty of time now.

Mr. WOLF. My first question is for you, Mark. In terms of AFL-CIO goals for labor inside China, are you looking at this from a perspective of American-based labor standards or from a perspective of internationally based labor standards?

Mr. HANKIN. Well, that is a simple one. We always look at it on the basis of international labor standards. We have never thought that our minimum wage should be adopted by China.

The ILO has basic, minimal standards. Those are always the ones that we look toward, especially in a developing country context. Now, obviously we would like people to be paid more than those minimal standards, but that is not where we are at.

Mr. WOLF. What about in areas other than pay?

Mr. HANKIN. Sure. The same thing goes with occupational safety and health, child labor. For example, the child labor standard that the ILO has is less than the U.S. standard, so that is the standard that we would go by. That is what we have always talked about. It cuts across all of the labor standards.

Mr. WOLF. This is a question for all three of you. I think everyone has read over the last week about the problems in the Daqing oil fields. Clearly, this type of problem about what to do with re-trenched labor is going to continue.

Is there any indication that senior elements in the Chinese Government who are concerned about this have begun a planning process to deal with similar types of unrest and potential instability in ways other than to crack down? In other words, do you see the beginning of any long-term planning on how to deal with the issue.

Ms. ATHREYA. I will start. Yes, I do think that we have some indication, just in looking at those statements that appear publicly, that there are senior China officials who would like to find a way to let the system let off steam.

The one thing that some of our friends in China tell us is happening, is there a real black-out on information on protests in a lot of different areas. The reason for that, we are told, is senior level officials are worried that if information starts to freely flow between one area and another, for example, with this recent Daqing oil field strike, that if workers in other areas found out too much about how workers were dealing in one place, that the problem might become too widespread to contain.

So, right now the containment strategy, the dealing-with-the-crisis strategy, is just to only isolate incidents and deal with one incident at a time.

On the other hand, I do think that, for example, senior labor ministry officials are floundering on, what do we do to deal with this? I think this is one reason why they are so interested in working with the ILO on a larger safety net program.

I also think that passage of the new Trade Union Act, which does contain some slightly more space, at least on the subject of bargaining and a little bit on the subject of organizing than the previous trade union law, that that is an attempt to vent off this steam.

Mr. FREEMAN. I would endorse that. Certainly there have been some changes in the law. We see signs of increased mediation/arbitration structures being put in place.

The government has recognized that the massive layoffs that are taking place which are creating a potential for social disruption in China, that there is a need to put in place a health insurance and social security insurance system that they do not have now.

The law is permitting more space, as Bama just said, for defending worker interests. There is something in the new law, the amendments of last year, about accepting which recognizes that there could be strikes or could be disruptions, and in which case it is the role of the trade unions to defend the workers' interests in trying to reach resolution.

Mr. HANKIN. Let me agree with much of what has been said and see if I can expand a little bit. First of all, I think there are two major problems in China. One, is what is happening in rural areas now where workers and peasants are in open revolt against excess taxes.

In the urban areas, in the State enterprise sector, clearly the authorities are very, very worried about these protests and do not have very many simple answers. That is why they are doing what Bama said, which is to take one at a time and buy off workers, and at the same time they are often arresting worker leaders.

In fact, we are seeing reports out of China all the time in which workers are now saying, we do not want to identify our leaders because we are afraid they will be arrested. So, that is one of the problems.

Now, this is a very poor country and it does not have a lot of resources to throw into social safety nets. That is a major issue for the Chinese, how they are going to deal with that.

Now, our friends, people that think about this a lot who are Chinese, tell us that one way to deal with that is to have negotiations between workers and authorities when these enterprises go out of business—to open up the process so workers see what is happening to the assets of these enterprises when they go out of business.

That is where the problem is. The Chinese Government is having a hard time, because of the nature of the government, because of the nature of the system, because of the lack of rule of law, of opening up the process.

Until they do that, Ira and the rest of you, I think there are going to continue to be these problems in China. I do not see any easy solutions.

As I alluded to in my testimony, the trade union is supposed to play a role in defending these workers' interests and helping them get new jobs. They do not have the resources to do that either. The trade unions were financed by these State enterprises. Those trade unions are going out of business right now.

Mr. WOLF. Thanks.

Next, is John Foarde, Deputy Staff Director of the Commission.

Mr. FOARDE. First of all, thank all three of you for sharing your expertise with us this afternoon. It is really interesting.

I have got a question that really any of you, or all of you, might want to address. That is, picking up on the labor unrest. I take it we do not have a good sense of the total number of incidents of labor unrest, say, in calendar year 2000. Do we have a sense of their geographic distribution? Are they more prevalent in part of the country or another?

Mr. HANKIN. Do you want me to take a crack at that? Certainly, as I tried to say in my testimony, there are really two Chinas. There is the old state enterprise sector, then there is the newer private sector.

Clearly, labor unrest is taking place most in the rust-belt cities where the State enterprises are going out of business. So, where you find those old enterprises going out of business, you are going to see a lot of unrest.

Now, people tell us that go to China that almost every day you can see a labor demonstration in a city. Oftentimes, it is from retired workers.

In the private sector, where you see a lot of the joint ventures, you see much less labor unrest or big demonstrations.

There are several reasons for that. For one thing, most of the workers in those enterprises are migrant workers. They are not a part of the communities, so it is harder for them to get out on the streets and demonstrate. In those rust-belt cities, you actually have the community supporting the workers.

So, that is where we see it. It is really hard to know how many of these disputes happen. It is funny. In the last several days, I have seen reports about demonstrations in China, three reports in the last week. That may be because of the major demonstrations we heard about in the oil fields, and the press is just picking up on it. So, it is really hard to know, but there is no doubt that they are increasing.

Mr. FREEMAN. I would just note official government statistics on that, for what they are worth. The Ministry of Labor reported for 2000 that there were 135,000 labor disputes, which, according to their statistics, was a 12.5 percent increase over the previous year.

Mr. FOARDE. I am going to shift gears just slightly with the time remaining and pick up on something, Bama, that you mentioned, and that is the Olympics.

We are very interested in the whole question of the Olympic Games in Beijing and the possible positive effect that they could have on human rights practices if everybody does some heavy lifting between now and 2008.

Do you have some specific things that you think ought to be done, just in the area of labor rights, that this Commission should do or that the U.S. Government should do that you would share with us?

Ms. ATHREYA. Thank you, John, for the opportunity to expand actually on what was sort of a footnote to my comments earlier. Yes, I think this is a tremendous opportunity.

We all, I think, are well aware of the political resources China put into winning this Olympic bid. This is an opportunity, from the point of view of the government, to step onto the world stage. They are interested in looking good, to sort of wrap it up very quickly.

We know that if we just look overall at the context for labor rights and construction facilities throughout China, there will undoubtedly be a migrant workforce that is largely involved with constructing the Olympic sites.

It is going to be a monumental project. There already have been forced displacements of villagers who lived on the sites that will

now become the Olympic facilities. So we think it is very important to keep an eye on this.

The point here is not to create a sort of labor paradise for this very small handful of workers who happen to be working on the Olympic facilities, but the point is really to use this as an opportunity to raise an issue in the context of the Olympics, which we know China will be paying attention to, and to then broaden, from looking at that one small subset, to saying, these sorts of problems plague workers through China and we hope that the standards that you apply to production and construction of these facilities will apply elsewhere as well to big public works projects.

Mr. FOARDE. Anybody else want to step up to that one, either of the other two of you?

Mr. HANKIN. Well, just very briefly, clearly, I think we have to look at those workers and others who are in prison and use meetings to raise those issues every time there is a meeting on the Olympics. Why can we not talk about prisoners, or what has happened to them, and seek access? I think those are the sorts of practical things we can do.

Mr. FOARDE. We have a number of other people who want to ask questions, so let us go on.

Mr. WOLF. Next, is Bob Shepard from the Labor Department.

Mr. SHEPARD. A number of you had discussed the need for outsiders to work on worker rights issues in China.

Who should outsiders be working with, specifically? Any of you.

Mr. HANKIN. Well, I mentioned in my testimony a couple of things. Let me just give you a little bit more detail. First of all, we talk about rule of law approaches in China. We know now that there are lawyers and law schools that are interested in taking up cases of workers.

They have little or no experience with labor and employment law. There is much that we could do to help them, and it is my impression that they are interested in getting that help. So, that is certainly one thing we can do.

I think there are authorities that are dealing with safety net areas that we have to look at seriously. We have to do it cautiously, but we should look at it and see what we can do in that area. The same thing goes for occupational safety and health. There are appalling problems in the coal mine industry. I think we have to look at it again.

I do not think it should simply be a transfer of technical assistance to agencies, but a way to empower workers to protect their health, because we all know who work in the labor area that the best way to protect a worker's health is to make the worker an advocate for his or her health in the workplace. So, those are some of the ideas that we have.

Let me add there are people inside China who would welcome information on labor rights and assistance. There are ways to do that, and I would be pleased to talk about that in a more private session with some of you. But I think that is possible. It has to be done cautiously.

Mr. SHEPARD. Bama or Tony.

Ms. ATHREYA. Sure. I would essentially agree with Mark's assessment. We know that there are lawyers' associations in China

and those could be potential partners. We do know there is a dearth of trained labor lawyers in China, so one thing that could be done is to work with existing lawyers and legal associations to provide training that would enable a core of labor lawyers to exist.

We also know that there are informal labor advocates, something that I would call barefoot lawyers, along the same lines as barefoot doctors, which are advocates that are springing up, particularly from what we understand in south China, to assist workers who are not really sure if they have a problem or not. They are not sure if their rights have been violated or if the law protects them in a particular case or not.

So, there are informal advisors who are providing, for a fee, services to such workers just answering questions. I think we could direct resources to strengthen those sorts of advocacy services as well, and do it in a way that would not conflict with formal policy priorities within China.

Mr. FREEMAN. Just to add to that. If the former Soviet Union is any guide, I would say it is important to keep an eye on the human resources that are in the official system, the think tanks. My recollection of the Soviet evolution was that a good part of the leaders of the independent trade unions came out of the think tanks of the official institutes. So, there is something there to keep an eye on.

Also, as I suggested earlier, work down at the grassroots level, if you can, with enterprises. Start at the enterprise level. This is where democracy hits the road. Under an emerging market situation, management needs to talk to worker representatives about conditions of labor. There are statements on the part of the official system that they want to work in this area, so we intend to work there.

Mr. SHEPARD. Bama, you stressed the importance of working with the U.S. companies. Do you think there are demonstration effect that will overflow to other companies, or do you think we will just end up by doing that bolstering worker rights within the U.S. companies and foreign investment companies?

Ms. ATHREYA. That is an important question. I do think there is a demonstration effect. But I think the trick is, what we have now, the current situation in which you have a half-dozen companies, United States companies that are trying to do the right thing, and the vast majority of United States companies are sort of free riders on the examples set by a few that end up freely feeding into this rhetoric that United States businesses are bringing good values to China.

I think one thing this Commission could do, one thing the United States Government could do, is effectively engage United States business in China in a much broader way. Capture more U.S. companies in the net, and you will find there is a significant demonstration effect on other companies as well.

Mr. SHEPARD. Tony, I have a question for you. You have been on both sides of this. I am curious as to your opinion on the relative advantages of working on worker rights issues, core labor standards, from a bilateral perspective versus working through multinational organizations. Which would be more effective and which would be more advantageous for us?

Mr. FREEMAN. Well, given the fact that I am currently representing the ILO, I obviously favor a multilateral approach. There was an earlier question about whether you wanted to impose U.S. standards or international standards. The answer to that is obvious.

You need to speak in terms of international standards, and there are international bodies that have jurisdiction over those standards that are an obvious vehicle for this.

Let me just go back to a question you asked Bama earlier. I am told that, while there is enormous resistance from China and other developing countries regarding the whole question of linkage of trade and labor standards, that there is a recognition of another side of the issue, which is that if these countries, including China, want to develop the United States as a market for their products, they need to be concerned about consumer attitudes. This is where you get into demonstration effects.

There is concern and interest in official Chinese circles in promoting the positive side of things because of their interests in promoting their products to the United States. I think it is worth reflecting further on that.

Mr. SHEPARD. Thank you.

Mr. WOLF. Thanks, Bob.

Jennifer Goedke, with Congresswoman Marcy Kaptur.

Ms. GOEDKE. Representing Congresswoman Kaptur, the Congresswoman is not only on the Commission, but she is also a member of the Appropriations Committee.

As we are looking to funding projects for the next fiscal year, we are looking at projects like NED and other government programs that support democracy and internationally recognized labor rights.

What do you think the priorities should be for domestic versus possibly China-based programs, either working with NGO's or working with ILO?

Mr. HANKIN. Just for the record, the Solidarity Center gets resources from NED. I must tell you that those monies have been especially helpful for organizations that want to work in or around China. I think each individual program has to be looked at on its merits. But I can tell you that, without those NED resources, there would not have been a major push on labor rights in China.

Han Dongfang is a leading workers rights advocate on China and has been supported throughout the years by the National Endowment. I think his work has been enormously important. To the extent that those programs can continue to be supported, I think it is very worthwhile.

Now, it is a difficult place to work, for sure. That means that no one approach is probably right, because you are always experimenting. But based on the small amounts of money that we have spent, they have been well-spent.

Ms. ATHREYA. I would say that, to the extent possible, it is highly desirable to fund programs that can find a way to work directly inside of China and with Chinese partners. It is extremely difficult to do.

I want to acknowledge the fact that you cannot fund things directly in China. You need to fund some international entity, wheth-

er it is the ILO, whether it is an NGO, whether it is an international trade union, to be the primary implementer of the project.

I also would stress the importance of really trying to diversify and support a number of different approaches. It is a huge country, I do not need to tell any of you. It is extremely complicated, as we have all discussed in this session, problems springing up everywhere and very different sorts of problems. So, we do not know what is going to work, so best, if possible, to try to spread the initiative around and let various approaches be tried.

Mr. FREEMAN. Just in answer to that, I should say that the ILO does have a commitment to the government of China to act in the area of resource mobilization. This program that I have laid out for you, the four-point program, calls for international resource mobilization. So, we are seeking funding from all of our member states, donor governments for the program in China.

Specifically in the area of democracy and human rights at the workplace, we have one program which is evolving and we are seeking funding for.

The exact shape it will take will be determined in discussions with the potential donors, including, possibly, the U.S. Government, through the U.S. Department of Labor.

Ms. GOEDKE. One quick question before our light goes yellow again. How can the administration try to engage their Chinese counterparts? I know that in recent years there has been some outreach, but how can we now take some more concrete steps?

Ms. ATHREYA. Yes. One thing we have been suggesting for a long time, is the Chinese Minister of Labor visited the United States, if memory serves me correctly, in 1999. A reciprocal visit was intended to be made in 2000, which did not happen for various reasons.

It is extremely important to have an exchange at that level. That means that the United States Secretary of Labor traveling to China. It is important because it is our belief that the dialog is not going to happen unless there is something that happens at that level that really is an opportunity to showcase opportunity that is going to get the dialog going.

I think that is why, for example, the ILO secretary general's visit was so important, just to get the dialog going and raise the issues at that level.

Mr. HANKIN. Can I say a few brief words? First of all, I would like to compliment a lot of the foreign service officers in China who I think are now more aware than ever of the centrality of labor rights issues in China. They need to be encouraged to continue to work on these issues, and be given time to work on these issues by the State Department. That has changed some. It needs to continue to change. People in the Chinese Government have to understand that this is an important issue to us.

That means, for example, on the forced labor agreement, an agreement that has never really been implemented, we need to pay more attention. We need to pay more attention to worker prisoners. There are things like that which can be done that I think are very, very important.

Ms. GOEDKE. Thank you.

Mr. WOLF. Holly Vineyard with the Commerce Department.

Ms. VINEYARD. Thank you. Thank you for your testimony today. I was wondering if you could comment on the longer term trends in terms of labor rights. One of the figures that we are often told, is that over the past couple of decades over 200 million people in China have been lifted from poverty. I was wondering with how that meshes with what you have seen in terms of what has been going on in labor rights.

Mr. HANKIN. It is hard for me to evaluate a figure like that, quite frankly. China is a very different country than it was before the opening to the west occurred. Early on, agriculture was freed from old constraints, and there was an enormous increase of incomes in agricultural areas. I am not sure that is happening any more.

I think we may see real problems in the future in agriculture, as Bama alluded to. Clearly, if you talk to people who are covered by safety nets, where there was the iron rice bowl, they are talking about their kids not being able to go to school, not getting medical services. There are real concerns here.

There has been some work done on women working in the south, and whether they are really making sufficient wages, being able to transfer that money back to villages. It is unclear what that data is right now.

Clearly, some people are doing very, very well in China. We just saw an article in the Washington Post, what was it, 2 days ago that talked about the new millionaires. I think one always has to look at this widening gap. I am not sure, because of the type of country it is, we really know. There are real questions, as someone said here today, about what the real growth rate in China has been over the last 10 or 12 years.

It is clearly less than the government has said. So, we have to watch these things very carefully and be skeptical with the numbers that have been reported out.

Ms. ATHREYA. I absolutely agree. I think it is impossible to do justice with these sorts of broad-brush figures to what is really happening in China. I would stress the point that Mark just raised about the widening income gap, the inequality that exists.

I would also stress the fact that, for example, we could say that the old Communist China effectively eliminated child labor. Well, child labor is reappearing in China. So, perhaps some people are getting richer, but some are also experiencing new forms of oppression that arguably did not exist maybe 15, 20 years ago. So, you cannot say things are worse, things are better. I do not think it is helpful, really, to go down that road.

I think the things that we can say, are we know there are a number of strikes, wildcat strikes, that take place every day. The figure that Tony cited, that was the first time I heard that figure of 135,000 disputes that were officially recognized last year. That is phenomenal.

We know that there is growing unrest. We know there is growing unemployment. We know that there is a huge problem in the State enterprises because they are shutting down and these millions of workers are being laid off.

I think it is more helpful to focus on and address those particular problems than to try to look and see if, in aggregate, people are better off or worse off. It is just impossible to say.

Mr. FREEMAN. I would not doubt it. I think that is a very comprehensive statement. For us, the figures show great strides, no questions about it, and GNP increases. But I remember this old saying in Brazil. They used to say, "the economy is going very well, but the people aren't doing so well." There is a difference between the gross GNP and what happens to individual people. There is no doubt that there is growing inequality in China.

But for the ILO, a major focus is on the fact that in the next 18 months, there is going to be enormous unemployment. There is going to be an unemployment crunch in China and we need to help China address that question.

Ms. VINEYARD. I have a question for Bama. You mentioned that you are working with several multinationals and working with their suppliers. Could you give us a little more detail or background on what it is you are doing with them, and if you are allowed to say who these companies are?

Ms. ATHREYA. Sure, I will name names. It is in the nature of a dialog. It is a working group, which is a term that, as you know, can apply to many different things.

But our idea was, it was very important for us to be able to raise and discuss our concerns with the very systemic, chronic sorts of labor rights violations that occur among suppliers for multinational corporations with the corporations themselves and see what sorts of practices they were willing to implement themselves on a sort of self-policing basis to address those problems.

It is a small handful of companies that we have been talking to that include Reebok, Intel, Target, Mattel, and there are one or two others. I am sort of blanking for the moment.

As I said, there are a half-dozen companies that have been willing to step up and say, yes, we are trying to self-monitor. We are going and looking in our factories and these are the sorts of problems we are finding, and we are not sure what to do about it. We have been discussing with them, what can you do about the fact that these suppliers are all chronically violating China's overtime laws.

Ms. VINEYARD. Thank you.

Mr. WOLF. We will have one more round of questions.

Other than the actual wording in the new trade law, do you see any empirical evidence of a change in attitude by leaders or the cadre within the ACFTU, or within the Chinese leadership outside of the ACFTU, that they want a change in the nature of the monopoly state-run union?

Mr. HANKIN. Listen, China has got a different economy than it had 10 years ago. Ten years ago, it was all State enterprise and very little employment outside of that.

All of these countries that moved from that sort of system into a market economy, or what may be described as something that is moving toward a market economy, have to deal with workers in this new economy, so the ACFTU and the Chinese Government is trying to do that.

So, there is clearly an attitude that there are all these workers that we have to direct our attention to, and service in some way or another. That is our role. That is what the state has assigned us to do, to represent workers' interests.

So, clearly, that attitude has changed. They know they have to fill this vacuum. At the same time, they have to do it because they are losing their base of support in the old sector. Resources are drying up. The ACFTU is an enormous bureaucracy. So, that is one reason they are moving now. They just have to. Someone has to fill those needs.

Second, I think the Chinese Government is embarrassed by some of the things that you see happening in the south and along the coastal areas where people are being killed in fires, where they find child labor.

I think they are embarrassed about it. It does not look good for a government that is supposed to be a workers' government to allow these things to happen. So, there is an attitudinal change there. They need to cover their flanks.

I do not think there is any change in attitude concerning whether they really want independent worker organizations to exist at the factory level. That does not mean that there are not people inside the ACFTU that do not think that is important at some point for whatever reasons. But the organization has not changed.

You have to understand that this is an organization where, more often than not, the factory manager may be the head of the union, or his brother may be the head of the union, although they have tried to change that in this new law, I guess.

This is a place where oftentimes the personnel manager is the head of the union, if there is even a head of the union. Sometimes workers do not even know that the union exists in the factory. So there has not been much change there, I do not think.

Mr. WOLF. Anyone else?

Mr. FREEMAN. Just to add to that. We do have anecdotal information that, at the factory level, there are cases where the Party, or more importantly, the ACFTU representative, does strike out and try to support workers in a dispute. We have some examples of that.

However, as we have heard, the system is very contradictory and they have a long way to go, and no one can predict whether they are going to make this or not. At the top level, the head of the ACFTU is still whatever he is, the third person in the Politburo. That is a contradiction in terms. So, at the top level there currently is no independence.

They have stated that they want to work in this direction. Whether they are going to make it or not, we do not know. But our view is, you need to get in there and work with the human resources that you have and cultivate the most progressive elements in the situation beginning especially at the enterprise level.

Mr. HANKIN. Can I just read a part of the law?

This is the new law. It says, "The trade union shall . . . take economic development as an essential task; uphold the socialist road, the People's Democratic dictatorship, the leadership by the Communist Party of China, and Marxist-Leninist Mao Tse-tung thought, and Deng Xiao-ping theory; persevere and reform in the open policy."

I mean, these are the central guidelines for "trade unions" in China. I agree with Tony, that there are people who have become advocates in the ACFTU. There are also people in their trade union

college who seem to understand that they have to move in different directions also. So one cannot say that every person in the organization is a flack. It is not true. But whether they represent organizational change is another question.

Mr. WOLF. John.

Mr. FOARDE. Tony, I am interested in how the Chinese Government participates in the ILO. Is the PRC an active participant in ILO?

Mr. FREEMAN. Yes. All three elements are active. The Chinese Government sends a large official tripartite delegation to the annual conference of the ILO. The ACFTU also had a seat on the governing body, I believe, but lost it.

What I have left out until now is the management side. There is a growing management organization which is an official organization, just like the ACFTU. But they, too, State that they understand the need to differentiate roles in the future. We are also trying to help them and they are becoming more active in the ILO. So, all three delegations are active.

Mr. FOARDE. Are the Chinese delegations principally ACFTU people or are they Ministry of Labor as well?

Mr. FREEMAN. Well, there are three delegations. There is a government delegation, an ACFTU delegation, and CEC, or whatever it is called, the employers' association delegation that comes.

Mr. FOARDE. Let me shift gears again and go back to a comment that you made, Bama, about companies that are and are not monitoring the labor practices, at the very least, of their suppliers in China.

Is there any difference between United States companies doing their own manufacturing in China under their own names and those who are principally using suppliers in how they handle that?

Ms. ATHREYA. There is a difference, although I am going to sort of caution you that my own statements are based on what is really anecdotal evidence. There have not been any systematic studies done of what the labor standards are in facilities that are wholly operated by the principal and facilities that are suppliers.

But, yes, at least in that sort of observational experience, you take a company like Intel, for example. They own and operate their own facilities in China and they are able to, on the subject of, for example, forced overtime, there is no forced overtime. They are able to verify that fairly effectively, but it is because they really have total control of the plant.

Whereas, if we look at some of the retailers who are sourcing through suppliers, it seems as though even though, in theory, they have these codes of conduct, in theory they have monitoring staff who go in once in a while to check, and they really do not seem to be able to control the problem.

Mr. FOARDE. Do you have any sense if this is an issue at all in service industries that are not manufacturing things?

Ms. ATHREYA. I have to confess, we do not look at service. We have really been primarily looking at the manufacturing sector.

Mr. FOARDE. All right. Thanks.

Mr. WOLF. Bob.

Mr. SHEPARD. In a lot of your comments, all of you have depicted workers' protests as being channeled often toward economic issues

or working conditions, and have all noted the usefulness of supported projects that help safety and health, mine safety and health, the workplace.

I do not have a good sense, and I am wondering if any of you could furnish a sense, of how much interest is there on worker rights within China, or how much of the protests—and I have seen the number Tony cited, 135,000 slow-downs—and most of the worker grievances local and directed at their specific work environment?

Mr. HANKIN. Let me just correct something. I think that the large number of disputes that were reported by the government are not collective disputes. They may be individual disputes over non-payment of wages, or something like that. I do not know what the number of collective disputes are in China. So, that is a number that you have to be careful about.

Now, you asked an interesting question that could go to any country in the world: How much is a worker concerned about the right of association and how much is he or she concerned about getting a decent wage, in getting some respect in the workplace and being treated fairly?

I would say that most Chinese workers want those things. They want a decent wage, they want to be treated fairly, and they want to know that they can provide for their kids.

The fact of the matter is, most Chinese workers who are demonstrating do not see a transparent process. They have seen the government promise certain things and that it has not kept its word.

They do not know about labor rights because, according to some Chinese worker activists that I have talked to, the Chinese Government has always told workers they are different. They have lived in a different country where the party in power is their party, so they are not to worry about these things.

Clearly, when you get into a factory and you start talking to workers about their conditions, we have seen this not only in China but in other places, then they start to get concerned about their rights.

Years ago in Indonesia, we did a survey of workers. Do you get paid minimum wage? Do you get paid social security? The first thing they did when they learned they did not do that, is they tried to form independent organizations where they could try to have some redress. I suspect in China we would see the same thing. That is what happened. Then they started to think about their rights. But they do not think about rights before.

Ms. ATHREYA. I would also add, and Bob, I think you have followed China long enough to know this, that there is no language really to even discuss human rights in China properly until this past decade.

I was a student in China two decades ago, and there was no term for “human rights” that was widely known as a vocabulary word. Now there is a term. Similarly, there is a term for labor rights.

Part of the answer to the question, is it is very hard to gauge that when there is no language to discuss it, and that is a problem.

Mr. SHEPARD. The underlying question that I wonder about is whether the Chinese Government is going to—and I think they are—try very hard, I think, to address the economic issues. They

seem to be trying to do that, while bypassing the more political issues.

That has been done with some success in some Asian countries, such as Singapore. I am kind of curious how successful the Chinese might be in trying to do that.

Ms. ATHREYA. I would argue, completely unsuccessful, because the nature of the economic problems is just so incredibly difficult, that it is not going to be Singapore.

Mr. SHEPARD. At least not soon.

There are enormous regional differences. Another question is the nature of enforcement around the country. The Chinese Ministry of Labor and Social Security has something like 250 people. It is tiny compared to our own Department of Labor.

Who is enforcing all of the controls over the workers? Is it done in the factories? Is it done by the local governments, by the Party, all of those, some of those?

Mr. HANKIN. What do you mean by "controls over workers?"

Mr. SHEPARD. The limits on protests, the limits on organizations of any type.

Mr. HANKIN. Well, let us take a dispute in a rust-belt city. What happens is, workers go out and protest, usually in front of a government agency, the city hall, whatever, and they demand to see an official or they tie up a rail line and then the police come out.

Someone gets upset in the government and they say, hey, we have got to talk to these workers and see what is going on. Then there is some sort of negotiation. Either that, or else someone is arrested and they are put into jail.

Or some sort of negotiation where the central government or the provincial government comes up with some money to at least buy people off for a while. So, there is really no one in charge. I mean, there is a system of arbitration committees. There are a local labor bureaus.

But these people are not used to doing this. They are befuddled by it, especially the trade unions. They are completely befuddled. This is not something they know how to deal with.

Mr. WOLF. All right. Holly.

Ms. VINEYARD. Dr. Supachi, who will begin his term as director general of the WTO later this year, has indicated that the best way for dealing with labor rights is within the ILO, not directly in the WTO itself, in general, and especially in terms for China.

What do you think about that?

Mr. FREEMAN. Do you want me to answer with my ILO hat on or off?

Ms. VINEYARD. Both.

Mr. FREEMAN. My answer is that getting compliance on labor rights is a very complex matter. The history of this is, no matter whether you are talking about positive measures or positive inducements complemented by some kind of sanctions system.

You can look at the history of the United States' implementation of GSP and CBI labor conditionality clauses. You have had a history now of, what, 10, 15 years of this. Each one of us could do our own analysis of how effective that kind of a system has been.

My personal assessment is that, whether you are talking about a positive system of inducements or a system that has some kind

of sanctions involved, you are going to find that you get so many years of progress, then something happens in the country and they go back again years into another cycle of deterioration, for example because of a change in the government. This is the history of the application of international labor standards.

The ILO official response, and the response of the official international community to the whole trade/labor standards debate, reflects the fact that a majority of countries do not accept a trade sanction system to enforce labor rights. So, the next best thing is to try to work on positive linkages. That is what this Declaration program is all about.

But the Declaration program is supposed to be assisted by resource mobilization. Frankly, the resource mobilization has not been there in adequate amounts for those countries that want assistance.

But, personally, I believe in both rewards and punishments. We live in a world where everything has some rewards and some punishments attached. But there is no easy solution to this question.

You are not going to get improvement in basic human rights or basic labor rights overnight in any country. It is not a question of economics alone. I mean, the whole labor rights debate has been tied to trade and economic issues, whereas, in my view, a major part of the issue has to do with political power in these countries. The labor laws and labor-management relations system of any country are closely tied to the political power structure of that country. This is what makes the labor relations system so sensitive in many countries. Of course the political power structure and economic power structure are interrelated. But if the labor rights you are trying to encourage are perceived by the country's power elite as directly challenging their power, there is no guarantee that the threat of economic sanctions or trade sanctions will work any better than the offer of positive inducements such as technical cooperation.

There are things besides trade and economics that motivate politicians. It is going to take a long time and a comprehensive international regime to nudge countries along to improve their worker rights and human rights situation using both rewards and punishments.

Ms. VINEYARD. Thank you.

Mr. WOLF. All right. Well, thanks very much on behalf of Senator Baucus and Congressman Bereuter. This was a very useful session.

I think it made a major contribution to the input we are looking for as we prepare our first annual report, which our commissioners will send to the President and to the Congress in October.

We appreciate the time, the preparation, and the active participation of all three of you. Thank you all for coming.

[Whereupon, at 4:02 p.m. the roundtable was concluded.]

APPENDIX

PREPARED STATEMENTS

PREPARED STATEMENT OF MARK HANKIN

MARCH 18, 2002

OVERVIEW

I want to thank you for the opportunity to present our views on the labor rights situation in China and to comment on strategies that address labor rights violations there. The discussion we are having today is an extremely important one. It will become more important in the future not only to our Nation but especially to developing countries around the world who compete in the world economy with China now that China is a member of the World Trade Organization. Simply put, our brothers and sisters in many developing countries have told us that they have already lost jobs to a China that flouts International Labor Organization Conventions. They expect to lose many more jobs in the future. And they tell us that employers from multinational companies make it clear to them that China is the baseline they want to use when talking about wages and working conditions. This is a long and complicated story and deserves a separate session all by itself.

There is little doubt that China has made amazing economic progress since 1978 when Deng Xiao-ping opened the country to the outside world and later initiated the first socialist market economic reforms. Today, China boasts thousands of joint ventures and private enterprises that produce for world markets. Chinese workers are now free to seek jobs in different parts of the country. In the process literally millions of workers have moved from villages, where they were underemployed farmers, to factories. Many of these jobs are located hundreds of miles away from where they live. In addition, the authorities have allowed many failing State enterprises to go out of business, in theory freeing up government funds once used for subsidies for more productive uses. We know that major multinational corporations are now operating facilities in China that are among the most modern in the world, bringing with them advanced training for Chinese workers and managers, some of whom have already left to form their own companies.

With all this good news why then do many scholars talk about the possibility of China imploding? Uniformly they say that China is a Nation where greed and corruption are endemic and where the rule of law means little or nothing. They tell us that it is a country where people have no institutions that represent their interests or which serve their social welfare needs. When placed in these situations, people feel powerless and suddenly without warning they explode. That is exactly what we are glimpsing in China today. Just last week for example we received a report that tens of thousands of retrenched workers participated in demonstrations to protest broken promises regarding pensions and severance pay. When they formed an independent "union," the authorities immediately declared it illegal and readied paramilitary troops to intervene. We are in the process of ascertaining the facts surrounding this particular incident. We do know that worker demonstrations are taking place all over China on a daily basis over issues such as these.

Many years ago the first president of the AFL-CIO George Meany uttered a simple truism: there is no democracy without free trade unions and no free trade unions without democracy. As the State Department's most recent Annual Report on Human Rights points out there is neither democracy nor free trade unions in China. China gets an F on the ILO core labor rights report card because of this central fact. In the place of democratic unions, China has state-controlled organizations that have a monopoly on purporting to represent workers. No one disputes the Communist Party control of these organizations. It is there plain and simple in the newly revised trade union law issued last October. To be clear, these organizations, grouped under the banner of the All China Federation of Trade Unions receive their legitimacy not from the workers but from the government and the party. The Party dictates their mission, not workers. That's why the Politburo installed one of their own as the head of the ACFTU.

I have referenced the State Department's Annual Human Rights Report because we believe it is generally an accurate report and a good baseline from which to start a discussion of labor rights. Let's be clear, the report is by no means perfect. Part of the problem with the report is that it reflects a general misunderstanding of how democratic industrial relations systems work. Fundamentally, democracy and democratic industrial relations are peas in the same pod. One cannot talk about collective bargaining without free trade unions. In China there may be workplace unions whose leaders were elected by workers and whose existence the All China Federa-

tion of Trade Unions tolerates. However, there is no real collective bargaining in China.¹ I would urge the staff of this committee as it reviews the Human Rights Report to keep this in mind and not think that the thousands of so-called collective agreements that the Chinese government now says are in existence are actually legitimate collective bargaining agreements. I would urge the staff to be highly skeptical of proposals aimed at helping ACFTU officials learn about collective bargaining. Despite what the new law says, the ACFTU is not ultimately responsible to those people on whose behalf it is negotiating. It is responsible to the party. Finally and most importantly, I would urge the committee to look at the new trade union law to see whether it really expands the authority of the ACFTU to allegedly represent workers interests in the private sector. When you do, you will see it as an instrument that reflects the government's desire to control workers as much or more than it does to represent their social welfare interests. In that revised law higher-level ACFTU organizations approve workplace "trade unions." These factory level structures are also subject to their discipline.

For the record, there is no legal right to strike in China.² The government uses forced labor in prisons. We see a rise in children working as the country's education system falls apart and we know that discrimination against women workers is increasing especially in the State enterprise sector.

Any discussion of labor rights and standards in China is really a discussion of two separate economic sectors: the State enterprise sector and for lack of a better term, the non-state sector.³ As I have indicated above, there is an absence of freedom of association in both sectors and occupational safety and health is a serious problem in each but there are many differences.

LABOR RIGHTS IN THE STATE SECTOR

Discussions of labor relations in the State sector center on broken promises to workers about the impacts of economic reform, corrupt managers who steal State assets for personal profit and the lack of safety nets (health, education, housing) to replace traditional enterprise benefit structures that were paid for by the enterprise. In the State sector, the so-called trade union was and is a cost of doing business to an enterprise. The trade union's role was to deliver recreational and some social services to workers. Workers in the State sector did not expect their union to be an advocacy organization and they certainly do not see it that way now. Han Dongfang, a worker rights advocate living in Hong Kong repeatedly talks via telephone to workers and union officials in China's State sector. His conversations reveal a sense of worker helplessness and frustration and a portrait of union officials who are trying to uphold the Party's line and stay out of the line of fire. The Chinese government is now privatizing many of these enterprises, and many are failing to make the transition. Some scholars think that ultimately 40 million Chinese will lose their jobs as a result of State enterprise reform when coupled with the impacts of China's membership in the World Trade Organization.⁴

A number of large State enterprises deemed important by the government are surviving. Some survive because of favors granted by officials that make it possible to protect their markets. Others have been given infusions of cash. These survivors appear to be operating in a traditional fashion and are performing many of the same welfare functions as in the past. Some of these enterprises have relationships with multinational firms. Not surprisingly, American multinationals complain fiercely that they are forced to take on excess personnel and shoulder undue welfare costs.⁵

The primary role of the ACFTU in China's rust-belt cities is now to help workers find new jobs. Long lines of workers seeking day jobs betray the fact the unions are unable to fulfill this function. They do not have the resources and the jobs simply

¹The new trade union law seems to enlarge the space for collective bargaining in China. At the same time, Article Four of the new law says the ACFTU should "take economic development as the central task, uphold the socialist road, the peoples democratic dictatorship, [and] leadership by the Communist Party of China. . . ."

²There is also no direct prohibition in law on the right to strike but clearly the ACFTU has not supported striking workers. Indeed, its job is to get them back to work as soon as possible. In a democratic industrial relations context, the right strike is defined by law. In China, there is no legal basis for workers to strike. The authorities may or may not tolerate a strike, based on their whim.

³One could add the public sector also. We are learning that public sector workers especially teachers are facing harsh times as local governments fail to pay their wages.

⁴For an example of the challenges facing China, see Willy Wo-Lap Lam's article on CNN.com, "Beijing Fears Argentinean-Style Unrest," January 2, 2002. Lam says, "at least 150 million peasants are either unemployed or severely underemployed."

⁵See the American Chamber of Commerce in China's website: www.Amcham-china.org.cn/publications/white/en-8.htm for its review of Labor and Benefits issues in China.

do not exist. The government has also charged the ACFTU with providing legal services to workers. Few ACFTU units have taken this charge seriously. The growing number of street demonstrations that occur on a daily basis in the China testify to this fact.⁶ Given the ACFTU's declining financial base in the State sector, it is problematic that the old style worker organizations will be able to service the needs of workers in the future despite party entreaties to do this work.

Several months ago, an article in the Washington Post described the story of a group of former State enterprise workers who lost their jobs and savings when corrupt officials stole the factory's assets after it went bankrupt. The story lays out in graphic detail the lack of legal channels available to workers to resolve their grievances. The article underlines the fact that workers feel that they have no organizations to represent them. More importantly, it reveals the fear they have of the authorities and their belief that efforts to create representative unions will ultimately lead to the arrest of their leaders.⁷ We know their fears are real. Worker leaders have and are being arrested in China. The International Labor Organization among others has made pleas on their behalf, which are almost always ignored by the Chinese government.⁸ A real problem is that outsiders have an almost impossible time tracking these arrests since word of them usually does not leak out to the outside world.

THE NON-STATE SECTOR

The non-state sector in China employs workers in joint ventures, in township enterprises and solely owned enterprises.⁹ This sector has become the main engine of economic growth in the country and the employer of millions of migrant workers. The industries in the private sector are generally low-tech. Many are assembly operations and either directly export their products or are a part of the "food chain" that supply the exporting factories. State-run worker organizations have largely ignored the needs of these workers in the past. With limited resources and no experience ACFTU branches have shied away from reaching out to workers in these enterprises especially since foreign employers and their local partners have made it clear that they are not wanted. The employers view these unions as economic rent seekers who offer little value. Their workers are already generally docile. Anita Chan, a keen observer of Taiwan and Hong Kong run-and/or-owned factories in China, has described these plants as militarized facilities where there are strict rules and a series of set punishments. Workers employed in these enterprises have no knowledge of their rights or the country's labor law. Not surprisingly, they have no understanding of what a union is. Random surveys show that they even lack knowledge of the role played by traditional Chinese-government run worker organizations.

I will not dwell in detail on the serious labor standards law violations that exist in these factories. They start with violations of occupational safety and health codes, include physical punishment of workers, non-payment of wages, forced overtime and forms of bonded labor. Nor do I need tell you that embarrassed U.S. and European purchasing companies have been and continue to scramble to find ways to protect their brand reputations from charges that they source from Dickensian-style sweatshops in China. While codes of conduct go back more than 25 years, they came into vogue when President Clinton called on companies to adopt voluntary standards following his decision to renew Most Favored Nation trading status for China soon after he was elected.

China's newly revised trade union law has been praised by some as a step forward because it enhances the ability of the All China Federation of Trade Unions to enter private sector factories.¹⁰ The law also says that the role of unions is to represent

⁶See for example Tim Pringle's paper, "Industrial Unrest in China- A Labour Movement in the Making?" delivered at the Forum on Industrial Relations and Labour Policies in a Globalizing World, Beijing, January 2002. Pringle puts the number of collective labor disputes at over 6,000 in 2000. According to the Hong Kong-based Centre for Human Rights and Democracy, there were 100,000 disputes in 1999; see "Fighting to Organize," Far Eastern Economic Review, September 6, 2001. Thus far the Chinese authorities have been able to keep the unrest from boiling over through a policy of providing some compensation to former State enterprise workers while arresting "trouble makers."

⁷"High Tide of Labor Unrest in China—Striking Workers Risk Arrest to Protest Pay Cuts, Corruption," The Washington Post, January 21, 2002.

⁸"Trade Unionists Still Detained in China as of the Last Examination of the Relevant Cases by the Committee on Freedom of Association," given to Jiang Zemin by ILO Director General Juan Somavia in May 2001.

⁹There are a small number of 100 percent foreign-owned enterprises from developed nations. They have a very limited impact on the Chinese economy.

¹⁰Some observers believe that it may also create space for workers to form bottom-up unions that are nominally affiliated to the ACFTU.

workers interests. The changes in the law are in part a response to the embarrassment Chinese government officials feel about the exploitation of workers in these factories. More ominously, they may be an effort to extend government control into private factories through the All China Federation of Trade Unions.

How far local officials will go to allow ACFTU cadres to use the provisions of new law to establish units in private factories is unknown. Clearly, past practice indicates that where these local officials have an economic stake in the enterprise through either hidden ownership or payoffs, the ACFTU will be told to stay away. In that regard the case of a labor lawyer, Zhou Litai, is instructive. Zhou has become famous for taking on the cases of industrial accident victims in Shenzhen, an economic zone next to Hong Kong. Most of his cases concern migrant workers employed in factories producing goods for export. Zhou angered local party officials who complained about his aggressive tactics and who feared he would drive away foreign investors. Their response was to shut down his legal practice.¹¹

OPPORTUNITIES TO ADVANCE LABOR RIGHTS IN CHINA

While in this testimony I have pointed to the enormous problems in the labor rights area in China, I have not meant to imply that we are powerless to assist Chinese worker activists who are seeking to promote positive change. Indeed, the AFL-CIO has had a commitment to promote democratic change and labor rights in China for many years. Given our country's already extensive and growing economic engagement in China we have moral and pragmatic reasons to support respect for the labor rights of Chinese workers. At the same time, I do not wish to overstate what we can accomplish. Now let me turn to the opportunities we see for future work.

Over the past 12 years, the Chinese government has tried to put into place legal systems to ensure an orderly transition from a state-controlled to a market economy. While one can point to some successes, for most Chinese these new laws are meaningless. Even if they are aware of their existence, they do not know how to use the law to their advantage nor do they have the money to advance their cases through the legal process. Very often, when workers seek to redress grievances in the courts, determinations are made on the basis of whim or who has the most personal influence. The reasons for this are many. Some are common to developing countries and include a widespread lack of understanding about how the rule of law operates, insufficient numbers of trained personnel available in the legal system, a lack of resources to run the courts and other dispute settlement organizations, and legal codes that are either vague or contradictory in nature.

Today the Chinese government is also permitting an expansion of some private legal activity. Legal aid clinics seem to have more flexibility to take labor and employment law cases, while private lawyers in growing numbers are willing to represent workers. Such representation is especially important for women workers who are often the first to be laid off and who make up the majority of workers in the country's export sector.¹² Law schools and law students are becoming more interested in labor and employment law issues.

As I have already indicated, in factories that produce for foreign buyers, changes in the Chinese trade union law make it easier for the ACFTU to insert itself into workplaces. It is unclear whether this will actually help curb current abuses. More importantly, there appears to be some space opening up for workers to organize groups independent of the ACFTU (such as plant-based worker safety committees) because of concerns by American and European brand name companies about being seen as socially irresponsible actors. This space is extremely limited and little testing has been done to see how far it can be expanded. Meanwhile, China's disastrous record in the field of workplace safety and health has become a national scandal prompting government leaders to reach out to a variety of international organizations and governments for help.¹³ The challenge here is to go beyond the transfer of technical information to government departments and toward empowering workers so they will be able to protect themselves from safety hazards. The Solidarity Center has, since 1991, supported efforts to both document the actual labor rights situation in China and to promote adherence to ILO core labor rights standards there. In the process, the Center has worked closely with the International Confed-

¹¹"China Tells Lawyer Who Aids Injured Workers to Close His Office," The New York Times, January 3, 2002.

¹²This may be one reason why the All China Women's Federation has become more interested in cases of women workers.

¹³The Chinese government has requested assistance from both the International Labor Organization and the U.S. Government.

eration of Free Trade Unions (ICFTU) and with a number of non-governmental organizations.

In late January of this year, the Center held a session with its partners and leading experts on China in Washington, D.C. to review strategies on China. Discussions at the meeting pointed to the need to help educate Chinese workers about their rights under law and that this could be done through a variety of different mechanisms. Participants also agreed that it was vital to test newly developing spaces in China through these mechanisms to determine if worker rights can be advanced using such issues as occupational safety and health and gender discrimination as door openers. Meeting participants also acknowledged the continuing need for research on emerging trends in China related to worker rights, especially given China's economic reforms and entry into the WTO. They also agreed that it was vital to build consensus in the international trade union community about how to approach the ACFTU and the Chinese government concerning labor rights issues.

In particular, we feel it is essential to:

- Support Worker Rights Advocacy and Information Dissemination

Information about the labor rights situation and rights of Chinese workers can be made more readily available to workers in the country and to other interested parties in and outside China including foreign trade unionists in an effort to stimulate creative ways to solve labor-related disputes. We strongly support the continuation of Radio Free Asia programming on labor subjects. We also believe that the use of new web-based technologies should be expanded.

- Promote Worker Rights at the Workplace Level

Space that may now be available in the non-state sector to promote the development of independent worker organizations should be explored. This can be done in a variety of ways including enlisting the cooperation of U.S. companies and other foreign companies, by making available information materials on labor rights to Chinese worker activists in the country and through them to educate workers on an informal basis about their rights under law.

- Promote the Rule of Law in the Non-State Sector of the Chinese Economy Related to the Enforcement of Labor and Employment Law

Efforts should be supported that build the capacity of law schools, lawyers and legal aid workers to respond to the growing demand among private sector workers for legal services dealing with labor and employment law issues. This effort would also support training legal workers, and would seek to move from individual to collective cases. It would also involve the establishment of outreach centers that offer social services as well as rights information.

- Promote the Rule of Law in the State Sector of the Chinese Economy Related to the Enforcement of Labor and Employment Law

Initial discussions must be broadened concerning labor and employment issues (occupational safety and health, and gender) with key interlocutors in the specific locations where restructuring of State enterprises is occurring. This would involve bringing U.S. experts to China. Programmatic approaches would stress mechanisms that empower workers to take advantage of existing legal options.

- Promote Scholarly Study of China's Labor Relations System Engaging All the Relevant Actors in China including the All China Federation of Trade Unions

There is a dearth of academics studying labor relations in China and our knowledge of what is going on inside the ACFTU is extremely limited. While the ACFTU is not a trade union, there are elements in the ACFTU that want to increase its advocacy role. Other individuals within the organization understand that a prosperous and stable China needs to have free trade unions as an essential actor in solving labor disputes. Interested observers should reach out and encourage these individuals without conferring legitimacy on the overall organization. Academics and academic institutions are best suited to play this role.

PREPARED STATEMENT OF BAMA ATHREYA

MARCH 18, 2002

CHINA'S LABOR RIGHTS PROBLEMS

In the race to the bottom, China is the bottom. The most extreme cases of misery and repression can all be found in China, thanks to the fact that its enormous and desperate population of unemployed have no choice but to accept starvation wages and suffer abuse. With well over a billion people, of course China has the world's largest labor force. In addition, despite the GDP growth rates that appear on paper, there are nowhere near enough jobs, so most of those billion plus people are barely

surviving. In the countryside, where 900 million of those people live, the land cannot support the growing population. Even those peasants who had been getting by are now faced with competition from foreign agricultural markets, a result of expanded trade ties and China's recent entry into the WTO, and that will put tens of millions more out of work. These tens of millions will flee to urban areas to seek work. However, China's cities are also plagued with vast number of unemployed. Again as a result of free market pressures, many of China's State owned enterprises have gone out of business in recent years, and many more will be forced to shut their doors over the next few years. This has already put an estimated 30 million workers out of work, and according to a report by a major U.S. investment firm, approximately 40 million more will lose their jobs over the next 5 years.

This may ultimately add up to 100 million or more unemployed and starving workers and their families. To make matters worse, these millions are unable to organize and mobilize for government protection or assistance; China remains a dictatorship where any attempt to organize workers brings imprisonment and possibly torture or even execution.

What does this mean for those workers who are lucky enough to have jobs? It means they face every type of labor rights abuse ever catalogued. Child labor? China has it. Last year, an elementary school in a rural area exploded, killing and injuring several children. The Chinese government tried to cover up the story, claiming that a disgruntled former employee had planted a bomb in the school. Soon, however, the real story leaked to the international press: the school was actually a fireworks factory, where young children were forced to work under extremely hazardous conditions. Worse yet, it was later exposed that this was far from the only "school" that was actually a factory staffed by child laborers. Shrinking resources for China's school districts, and a central government directive to the schools to find creative means of raising their own budgets, had apparently led many schools in China's countryside to set up their own businesses in recent years. Naturally, those businesses often turned to the immediately available workforce: children who were not going to be receiving an education, anyway. Although in the wake of the exposes, the Chinese government claimed it would be putting a stop to this policy, there may be hundreds or even thousands of such factories still hidden away in China's countryside.

Prison labor? China has it. Indeed it is China's official policy to punish prisoners in "reform through labor" programs. However, the Chinese government may be turning a pretty profit on prison labor, which means there is quite an incentive to keep people in prison. In 1998, a Chinese dissident who had been exiled to the United States revealed that while he was in a Chinese prison camp, he was forced to make soccer balls for Adidas Corporation. Adidas management apparently had no idea that the factory from which it was sourcing was in fact a prison camp, and following this expose, claimed that it had not only stopped sourcing from that factory, but also instituted more rigorous policies to monitor all its factories in China. Unfortunately, thorough monitoring may be impossible, as many retailers have hundreds, or even thousands, of supplier factories in China and only a handful of monitoring staff. Equally unfortunately, other multinational corporations were apparently not particularly concerned by the Adidas example, and continue to source products from prison camps. Just 2 months ago, a Chinese refugee in Australia came forward to reveal that she was forced to produce toy rabbits for Nestle corporation while in a Chinese prison. Nestle's defense was ignorance of the conditions of its supplier. China's lack of transparency provides a very convenient shelter for labor exploiters.

One could continue for hours to detail the litany of abuses routinely suffered by Chinese factory workers. For the moment I will only note that my organization, the International Labor Rights Fund, has been in dialog with a number of multinational corporations that are attempting to monitor their suppliers in China, and the companies themselves admit the following chronic problems: problems: failure to pay minimum wage, failure to pay proper overtime, excessive hours of overtime, missing, blocked or locked fire exits, improper deductions from wages, and failure to document properly age of workers. I'd like to stress the fact that these are apparently common problems among that small handful of companies that are actually trying to do the right thing and monitor labor standards. One can only imagine the even worse abuses suffered in the factories of the vast majority of companies, that are not even trying.

U.S. CONSUMER AND SHAREHOLDER CONCERN OVER CHINA

That there are problems is undisputable. Therefore there are two real questions this Commission now faces: why should we care, and what can we do about it?

The short answer to the former question is: the U.S. government should care because the U.S. public cares. The average U.S. citizen may benefit from labor repression in China in two ways. First, they benefit as consumers of cheap products. Second, they benefit as shareholders in companies invested in China. A number of recent consumer actions and shareholder actions highlight the reality that the average U.S. citizen is not merely acting out of pure greed. Consumers care about the production conditions connected with the products they buy. Investors care about the ethical behavior of the corporations in which they invest. Both these groups care about human rights.

I'd like to discuss just a few recent actions targeting major U.S. corporations as evidence of why neither U.S. companies nor the U.S. government can afford to ignore labor rights abuses in China. A recent expose of Wal-Mart's factories in China revealed excessively long working hours, failure to pay a living wage, and unsafe and unsanitary work conditions. As a result of these reports, the Domini 400 Social Index removed Wal-Mart from its portfolio.

A Hong Kong-based human rights group investigated Chinese factories producing for Disney corporation, and found a similarly long list of labor rights abuses. To quote the report, workers suffered "excessively long hours of work, poverty wages, unreasonable fines, workplace hazards, poor food and dangerously overcrowded dormitories." Not only have Disney stores been the targets of protests by concerned consumers, but Disney is now also facing a shareholder resolution for its poor labor rights practices.

Shareholders are also broadly concerned with the actions of U.S. companies in supporting an extremely repressive government. In the past several months, AOL Time Warner has been the subject of media criticism, and has also faced a shareholder resolution, for its decision to invest in China. Despite the fact that the company's flagship Time Magazine has been banned in China, apparently the issue of freedom of speech is not a concern for AOL Time Warner. According to a recent article in the Weekly Standard, "AOL is quietly weighing the pros and cons of informing on dissidents if the Public Security Bureau so requests; the right decision would clearly speed Chinese approval for AOL to offer Internet services and perhaps get a foothold in the Chinese television market."

There are numerous other examples of company practices in China that have generated shareholder concern here in the U.S.; time constraints prevent me from describing these in detail, but I do want to call this Commission's attention to the fact that other U.S. companies in the high-tech sector, including Sun Microsystems and Cisco systems, are also facing shareholder actions based on the exposure of those companies' work to assist the Chinese police to develop surveillance capabilities. Companies whose very existence can be attributed to an environment allowing the free flow of ideas vital to innovation, apparently have no difficulty profiting from suppressing those freedoms elsewhere. Fortunately, although Chinese workers cannot protest, U.S. shareholders can.

POSSIBLE U.S. GOVERNMENT ACTIONS TO IMPROVE LABOR RIGHTS IN CHINA

This is a panel about labor rights, so I do not want to venture too far into the overall area of human rights and corporate responsibility. However, I bring up these latter cases because I want to stress the importance of ensuring that U.S. official rhetoric conforms with actual U.S. policy. The U.S. Government has claimed repeatedly in recent years that by opening up China to U.S. business, we would be opening up China to democratic values as well. President Clinton made this point in speeches related to the promotion of normalized trade relations with China; and just last year, Secretary of State Colin Powell made a similar statement on the eve of a visit to China. Powell's statement claimed that U.S. business were bringing management and worker relations concepts, including improved health and safety practices, to China. As all of the above examples illustrate, this is a somewhat controversial claim.

There are several things the U.S. Government might do to truly promote better respect for labor rights in China. First of all, the U.S. Congress should revive the longstanding idea of a binding set of human rights principles for U.S. business in China. The U.S. business community claims it is already promoting better workplace conditions and standards in China. As I've just noted, U.S. officials are eager to be able to echo those claims. Therefore there should be no objection on any side to articulating clearly the labor rights standards which should be operational among all U.S. businesses in China, and U.S. companies should not have anything to fear from public scrutiny on these matters.

The idea of a legislated set of principles for U.S. business in China is not new; many of you may be familiar with the "Miller Principles," first circulated by Con-

gressman John Miller in 1991, and introduced also in the Senate by Senator Ted Kennedy. The Miller principles won both House and Senate ratification in the early 1990's but never passed both houses at once; it is time to update and reintroduce the principles, and to ensure that they contain a public review component, similar to that contained in the legislation authorizing OPIC.

Also on the subject of U.S. Government rhetoric vs. reality, I note that a number of U.S. officials publicly claimed that China's entry into the WTO would inevitably lead to better respect for rule of law in China. Apparently the very fact of WTO membership obligates China to implement some changes in its commercial laws, but this will not automatically lead to better implementation of all of China's laws. Indeed if evidence from other developing countries is any guide, increased trade ties may even lead to weakening of labor standards. The evidence from elsewhere in Asia illustrates that as countries compete to win foreign investment, they often adopt policies to keep their workforces weak and unorganized. To cite just a couple of examples, Bangladesh and Malaysia have laws on the books that prevent union organizing in export processing zones. The Cambodian government, when establishing its minimum wage, first researched wages in neighboring countries to make sure that Cambodian wages were lower than wages in competing economies. Moreover, investors also encourage the depression of labor standards; in Indonesia last year, employers' associations pressured the government not to implement a minimum wage hike.

Why, then, should we think that WTO entry will lead to better enforcement of Chinese labor protections? Until there is domestic pressure for better laws, and better implementation of existing laws, we are unlikely to see this sort of upward harmonization. However, the U.S. Government could be a positive force for change in this area, not by simply relying on WTO entry to solve all ills, but by advocating proactively for legal reform. The Chinese government recently passed both a new trade union act, and a new occupational safety and health law. While imperfect, both these new laws represent some improvement over previous laws, simply by virtue of the fact that they carry sanctions for violation. Reform of China's basic labor code is also under discussion; the U.S. government should engage relevant Chinese government officials to encourage that labor code revisions be conducted with the input of international labor experts, to ensure that reforms bring China into full conformity with ILO standards. The U.S. government can also encourage China to fully implement its commitments to the ILO's Declaration of Fundamental Principles and Rights at Work. While China's labor laws in many aspects already meet or exceed ILO standards, in two important areas, freedom of association and forced labor, they do not. Rather than ignoring ILO recommendations, as it has done for several years, the Chinese government should be encouraged to engage in a productive dialog with the ILO on the subject of legal reforms that would bring it closer toward full compliance with core international labor standards.

The U.S. government should also independently support rule of law initiatives in China. Not only the new trade union act, but also China's basic labor code are in need of clarification in several areas. Assisting local labor advocates to bring test cases is one way in which the U.S. government could help bring about this clarification, and also strengthen the network of lawyers and legal advocates in China who are capable of taking on such cases.

The U.S. Government should also advocate on behalf of those who are imprisoned for attempting to exercise their basic rights. In particular, there are a number of cases each year in which workers are jailed for attempting to organize unions and bargain for better working conditions. In the past few weeks, the case of the Daqing oil fields has been highlighted by the international press. At every opportunity, U.S. officials should impress upon Chinese officials the importance of allowing workers to organize and bargain freely. In cases where labor leaders are detained, in addition to simply advocating for their release, U.S. officials should make clear the basis on which we determine that such cases are not mere criminal cases, but violations of fundamental, internationally recognized rights.

Finally, the 2008 Olympic Games in Beijing will present another opportunity to influence the Chinese government. It should not be a given that under any circumstances U.S. will participate in Beijing 2008 games; there should be some markers of progress set down along the way. The Chinese government lobbied hard to host the games, and was extremely disappointed to have lost the bid for the 2000 games to Sydney. I mention this to highlight the fact that the Chinese government is invested in the 2008 games as a symbolic opportunity to show the entire world that China is a world leader, and thus the government is vulnerable to any pressure that might negatively affect that opportunity. On the other hand, I note with some disappointment that the International Olympic Committee squandered a valuable opportunity for influence by awarding the bid to China without noting even the few

human rights issue directly connected with construction of the Olympic facilities. Already, Human Rights in China has noted that the Chinese government has displaced thousands of villagers to clear the construction site, and given the overall labor rights situation, I have no doubt that cheap migrant labor will be used for construction of the facilities, probably under extremely hazardous conditions. At a minimum we are obligated to raise concerns with the development and construction of Olympic facilities under standards that conform with international labor norms; better yet, we ought to take advantage of this opportunity under the world's spotlight to push for better respect for fundamental freedoms in China.

Thank you very much for the opportunity to present this statement today.

MEMORANDUM OF UNDERSTANDING

For

Cooperation between

the International Labour Office

and

the Ministry of Labour and Social Security

Of the People's Republic of China

MEMORANDUM OF UNDERSTANDING

(A) Preamble

1. The purpose of this Memorandum of Understanding (MOU) is to launch a programme of cooperation between the International Labour Office and the Ministry of Labour Social Security of the People's Republic of China and (hereafter referred to as the Two Parties), based on the ILO goal of *Decent Work*, to support national reform in China and social progress worldwide.

2. The MOU sets out agreed policy priorities for future cooperation with each of the four strategic objectives of Decent Work. These objectives will be pursued in an integrated manner to ensure their effective realization in the context of China's needs and conditions.

3. It is recognized that the ILO is one of several development partners of the People's Republic of China, which has the sovereign right and obligation to coordinate its own development activities as a member state of the International Labour Organization. It is also recognized that the ILO is not a funding agency, and that the ILO will work in collaboration with the Ministry of Labour and Social Security to mobilize external

resources for the implementation of the activities foreseen in this MOU.

4. The present MOU relates to collaboration between the ILO and the Ministry of Labour and Social Security. It is recognized that the ILO will continue and develop cooperative programmes with Chinese workers and employers organizations.

(B) Mutually agreed objectives and priorities.

I. International Labour Standards and the ILO Declaration on Fundamental Principles and Rights at Work

1. Activities to promote and realize the ILO Declaration on Fundamental Principles and Rights at work.
2. To provide technical advice and assistance for the ratification and application of ILO Conventions, including fundamental and priority Conventions.
3. To provide assistance in the implementation of ratified ILO Conventions.
4. To conduct information and educational activities to promote greater awareness of international labour standards.
5. To strengthen institutional capacity in labour inspection to promote the effective application of ILO Conventions, taking into account the relevant Conventions on labour inspection.

II. Employment

1. To assist in integrating the employment dimension into macro-economic and social policies.
2. To develop an effective system to collect, analyse and utilize labour market information.
3. To formulate, implement and assess active labour market policies in both urban and rural settings.
4. To strengthen equal opportunity and treatment for all in employment and occupation.
5. To improve skills development and employment services, in order to match labour supply and demand, and to improve productivity and competitiveness.
6. To assist in designing programmes of retraining and job creation in the context of the restructuring of state-owned enterprises.
7. To promote entrepreneurship training, and the provision of cost-effective business development services and micro-credit, to medium-sized and small enterprises, including micro-enterprises in the informal sector, and community-based undertakings.
8. To assist in policy advice for all types of employment, including the informal sector.
9. To assist in designing and implementing employment-intensive investment policies and programmes, in both rural and urban areas, aimed at employment creation and poverty alleviation.
10. To assist in improving targeted training and employment programmes for the disabled and other disadvantaged groups.

III. Social Protection

1. To advise and assist on social security policy issues, including the revision of legislation, and the implementation of pilot programmes.
2. To promote the expansion of coverage of social security schemes, including improved social protection for vulnerable groups.
3. To improve the governance and administration of social security schemes, with particular reference to compliance; social insurance funds; and the delivery of benefits; and enterprise-based annuity schemes.
4. To rationalise and strengthen the unemployment benefit system, including the integration of the unemployment insurance scheme with active labour market policies.
5. To promote the reform of health insurance systems.
6. To advise and assist in strengthening national policies for occupational safety and health and conditions of work, aiming at prevention, protection and rehabilitation, with special attention to hazardous conditions of work.
7. To strengthen the provisions for employment injury insurance.
8. To support tripartite efforts to review and strengthen national safety and health programmes.

IV. Social Dialogue

1. To assist in the enhancement of tripartite consultation mechanisms at central and provincial levels.
2. To promote and improve the enterprise collective bargaining system.
3. To assist in improving labour contract legislation and collective contract practice.
4. To promote and improve the labour dispute settlement system, and enhance the capacities of labour arbitration personnel.
5. To assist in capacity-building of the social partners.

(C) Cooperation in other areas

I. Statistics

To improve national institutional capacity for labour statistics on the basis of international standards, including occupational safety and health statistics.

II. Sectoral activities

To provide assistance on social policy formulation and implementation in specific sectors of the national economy, as required.

III. Cooperation with the International Training Centre of the ILO in Turin

1. To integrate Turin Centre training activities with the ILO overall technical cooperation programme for China.
2. To improve the needs identification and planning process for courses.
3. To link training to the Ministry longer-term staff development programme.
4. To strengthen the training capacity of the training institutions.

IV. Cooperation with the International Institute of Labour Studies of the ILO

1. To promote the exchange of information and publications.
2. To cooperate in the development of research methodologies for Decent Work .
3. To provide assistance in international research networking, and in the organization of research activities.
4. To promote greater interaction between the ILO and China academic and research communities.

(D) Modalities of implementation

1. Following the conclusion of this MOU, the Two Parties undertake to establish a Joint Committee through which they will

i Formulate specific technical cooperation project proposals in the areas outlined above.

(ii) Mobilize resources for the implementation of projects

() Review and assess the implementation of this MOU.

() Consider such revisions to this MOU as may be deemed appropriate.

2. The Joint Committee shall meet once a year, alternatively in Beijing and Geneva or at any location which may be mutually agreed. The first meeting will be convened in 2001.

3. Any divergences of interpretation of this Memorandum arising in the course of implementation should be resolved through consultation, or by other mutually agreeable means.

The present Memorandum of Understanding is signed this **Seventeenth** day of **May** of the year two thousand and one in Beijing. This MOU is in two original copies, each of them in English and Chinese, both of them being equally authentic.

Juan Somavia

Zhang Zuoji

Director-General of

Minister of Labour and Social Security

the International Labour Office

of the People Republic of China



CHINA RELATIONS WITH THE ILO

Briefing notes for U.S. Congressional - Executive China Commission Roundtable on Labor Rights,
March 18, 2002, 2:30 p.m., SD-215 - prepared by the ILO Washington Branch Office

I. General Information Related to International Labor Standards

China has been a Member of the ILO since 1919. Although the ILO recognized the People's Republic of China as the legitimate government of the Chinese people in 1971, the PRC did not participate in the ILO until 1983. In 1984, the Chinese government declared null and void the ratification of 23 conventions (including C.105) which had been ratified by the Taiwanese government between 1949 and 1971. China has declared itself to be bound by 14 conventions ratified before 1949 (of which 3 are no longer in force) and 8 ratified since it resumed membership in 1983, including two fundamental conventions (100 and 138).

II. List of ratifications in force:

C. 11- Right of Association (Agriculture) Convention, 1921	(Ratified 1934)
C. 14- Weekly Rest (Industry) Convention, 1921 1936)	(Ratified
C. 16- Medical Examination of Young Persons (Sea) Convention, 1921	(Ratified 1936)
C. 19- Equality of Treatment (Accident Compensation) Convention, 1925	(Ratified 1934)
C. 22- Seamen's Articles of Agreement Convention, 1926	(Ratified 1936)
C. 23- Repatriation of Seamen Convention, 1926 1936)	(Ratified
C. 26- Minimum Wage-Fixing Machinery Convention, 1928	(Ratified 1930)
C. 27- Marking of Weight (Packages Transported by Vessels) Convention, 1929	(Ratified 1931)
C. 32- Protection against Accidents (Dockers) Convention, 1932 1935)	(Ratified
C. 45- Underground Work (Women) Convention, 1935 1936)	(Ratified
C. 80- Final Articles Revision Convention, 1946	(Ratified 1947)
C. 100-Equal Remuneration Convention, 1951 1990)	(Ratified
C. 122-Employment Policy Convention, 1964 1997)	(Ratified
C. 138-Minimum Age Convention, 1973 [Minimum age specified: 16 years]	(Ratified

- 1999)
 C. 144-Tripartite Consultation (International Labor Standards) Convention, 1976 (Ratified 1990)
 C. 150-Labor Administration Convention, 1978 (Ratified 2002)
 C. 159-Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (Ratified 1988)
 C. 167-Safety and Health in Construction Convention, 1978 (Ratified 2002)
 C. 170-Chemical Convention, 1990 (Ratified 1995)

In June 1997, the Government of China informed the ILO that when, in July 1997, it resumed sovereignty over Hong Kong as a Special Administrative Region of the People's Republic of China, 46 conventions would continue to be applied in Hong Kong. At last report, 40 conventions were listed as being currently applicable to Hong Kong, including Conventions 29, 87, 98, 105, 138, and 144. Similarly, the Government of China informed the ILO that it would resume the exercise of sovereignty over Macau as a Special Administrative Region of the People's Republic of China, effective December 1999. At last report, 30 conventions were listed as being currently applicable to Macau, including Conventions 29, 87, 98, 100, 105, 111, 138 and 144.

III. Further Ratification prospects and General comments

China has expressed its intention to ratify another fundamental convention, the Discrimination (Employment and Occupation) Convention, 1958 (C. 111) before the end of 2003 and it has under consideration the ratification of the Worst Forms of Child Labor Convention, 1999 (C. 182). The ILO is supporting China's accession to these and other international labor standards with seminars at the national and the provincial level, and with technical advice.

China ratified the (UN) International Covenant on Economic, Social and Cultural Rights on March 27, 2001, and submitted the following declaration:

"1. The application of Article 8.1 (a) of the Covenant [*Note: relating to freedom of association*] to the People's Republic of China shall be consistent with the relevant provisions of the *Constitution of the People's Republic of China, Trade Union Law of the People's Republic of China and the Labor Law of the People's Republic of China*;

2. In accordance with the official notes addressed to the Secretary-General of the United Nations by the Permanent Representative of the People's Republic of China to the United Nations on 20 June 1997 and 2 December 1999 respectively, the *International Covenant on Economic, Social and Cultural Rights* shall be applicable to the Hong Kong Special Administrative Region of the People's Republic of China and shall, pursuant to the provisions of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the Basic Law of the Macao Special Administrative Region of the People's Republic of China*, be implemented

through the respective laws of the two special administrative regions.”

Since the signing of the MOU between the International Labor Office and the Minister of Labor and Social Security in 2001 [see below], there has been further progress in the following technical international labor standards areas:

- (*occupational safety and health*): Discussion of ratification of the Occupational Safety and Health Convention, 1981 (C.155), the Occupational Health Services Convention, 1985 (C. 161), the Asbestos Convention, 1986 (C. 162), the Safety and Health in Construction Convention, 1988 (C. 167), and the Safety and Health in Mines Convention, 1995 (C. 176). [C. 167 has just been recently ratified].
- (*labor administration*): Support for the Labor Administration Convention, 1978 (C. 150). [C. 150 has just been recently ratified].
- (*seafarers*): Further advice and assistance with respect to the Merchant Shipping (Minimum Standards), 1976 (C. 147), the Seafarers’ Hours of Work and the Manning of Ships Convention, 1996 (C. 180), and the Seafarers’ Identity Documents Convention, 1958 (C. 108).

IV. Actions of the ILO’s supervisory machinery:

A. Committee of Experts on the Application of Conventions and Recommendations:

There are comments in various years on the application of all Conventions with the exception, so far, of C. 138 and C. 170. For more details, see:
<http://webfusion.ilo.org/public/db/standards/normes/appl/Art22byCtry.cfm?hdroff=1&CTYCHOICE=2650&Lang=EN>

B. Conference Committee on the Application of Conventions and Recommendations:

There was discussion on the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) at the International Labor Conference in 1994.

C. Cases Examined by the Committee on Freedom of Association (CFA):

[China is not party to either of the ILO’s two fundamental conventions on freedom of association, Convention No. 87 or Convention No. 98. However, the Committee on Freedom of Association regularly examines complaints whether a member state has ratified these conventions or not, without the consent of the government concerned being required. Like all ILO member states, in accordance with the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998*, China also has the obligation arising from the very fact of membership in the ILO, “to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions,” including: “(a) freedom of association and the effective recognition of the right

to collective bargaining.”]

1. CFA cases still pending

Case No. 2031: (Committee has asked to be kept informed of developments since June 2000). Complaint filed by the ICFTU in June 1999. Allegations relate to physical assaults and detentions of labor activists; imprisonment for attempts to establish independent trade union organizations or to carry out activities for the defense of workers' interests. The Government reply was that the allegations were unjustified and distorted and that certain individuals had been detained for violation of criminal law rather than for freedom of association. The Committee called for the amendment of sections 4, 5, 8, 9, 11 and 13 of the 1992 Trade Union Act for being contrary to the principles of freedom of association; called for the immediate release of certain named prisoners; requested an independent inquiry into allegations of torture and ill-treatment inflicted on one of these while in detention; urged the Government to respect the right of workers to peaceful demonstration to defend their interests; and suggested that the Government consider an ILO direct contacts mission. See 321st CFA Report, June 2000, paragraphs 140-176. The CFA in its 324th Report, March 2001, paragraphs 43-47, reported a communication received from the Government reiterating its view that sections 4, 5, 8, 9, 11 and 13 of the Trade Union Act do not contravene freedom of association principles, but indicating that sections 5, 8 and 9 were being revised so that they could be more consistent with the expressions used in international conventions. The Government also reiterated that six named individuals had been sentenced to imprisonment because of their breach of criminal law, some of them being repeat offenders, and that an investigation had found no maltreatment of one of the prisoners as alleged. The CFA reiterated its call for amending sections 4, 5, 8, 9, 11 and 13 in line with freedom of association principles and regretted that the Government merely repeated the information it had previously provided regarding the six individuals. The CFA last asked to be kept informed of any developments relating to this case in its 326th Report, November 2001, paragraph 180.

Case No. 1942 (Hong Kong): (Committee has asked to be kept informed of developments since November 1998). Complaint filed in November 1997 by the Hong Kong Confederation of Trade Unions (HKCTKU) concerning the enactment by the Government of the Hong Kong Special Administrative Region (HKSAR) of the Employment and Labor Relations (Miscellaneous Amendments) Ordinance, 1997 (ELRO), several provisions of which are not in conformity with Conventions 87 and 98, which the Government of China has indicated to the ILO apply in Hong Kong. ELRO repealed and/or amended three labor-related Ordinances that had been adopted by the previous Legislative Council of Hong Kong. The Chinese government responded that the three Ordinances in question had been rushed through during the final sitting of the previous Legislative Council of Hong Kong without due public consultation and full and proper scrutiny. The HKSAR contends that ELRO complies fully with Conventions 87 and 96. The Committee requested the Government to repeal section 5 of the ELRO which restricts union office to persons actually employed in the trade, industry occupation of the trade union concerned; repeal section 8 which subjects the use of union funds to the approval of the Chief Executive of Hong Kong and section 9 which institutes a blanket prohibition on the use of union funds for any political purpose;

requested the Government to review the Employment (Amendment)(No. 3) Ordinance, 1997, with a view to ensuring provision is made for protection against all acts of anti-union discrimination and for the right to reinstatement; and requested the Government to consider adoption of legislative provisions laying down objective procedures for determining the representative status of trade unions for collective bargaining purposes which respect freedom of association principles. See 311th CFA Report, November 1998, paragraphs 235-271. Extensive updates from the Government were reviewed by the CFA in November 1999, March 2000, March 2001, and November 2001. See 318th CFA Report, paragraphs 26-35; 320th CFA Report, paragraphs 44-53; 324th CFA Report, paragraphs 30-42; and 326th CFA Report, paragraphs 34-46, respectively. The last CFA Report noted efforts by the HKSAR Government to foster an environment conducive to collective bargaining at the enterprise and industry levels, to set up tripartite industrial committees, to debate the limits of the ban on the use of union funds for political purposes, and to amend the reinstatement provisions under the Employment Ordinance so that the Labor Tribunal may make an order of reinstatement, but the Committee reiterated its call for repeal of sections 5, 8 and 9 of the ELRO and requested the Government to give serious consideration to the adoption of appropriate provisions which respect freedom of association principles.

2. Other recent cases

Case No. 1930: (Interim conclusions adopted in June 1998; 310th Report, paragraphs 271-367). Complaint filed by the ICFTU in June 1997. Allegations relate to violations of freedom of association in national legislation, the persistent recourse to arbitrary, and sometimes secret, detention of trade unionists, the repeated use of “re-education through labor” sentences against workers for carrying out legitimate trade union activities, the torture of and denial of necessary medical treatment to detained unionists, the harassment and, in some cases detention, of unionists’ family members and the dismissal of workers for legitimate trade union activity. Some of the detentions go back to 1989 and relate to leaders and activists of the Workers’ Autonomous Federation (WAF), the Free Labor Union of China (FLUC), the Beijing Workers’ Autonomous Federation, and the Workers’ Forum in Shenzhen. The Government’s reply to the allegations was limited to certain elements of the national legislation and the status of certain detained individuals. The Committee asked the government to take the necessary steps to amend sections 4, 5, 8, 9, 11 and 13 of the Trade Union Act (establishing a trade union monopoly and other restrictions on freedom of association) and sections 79 to 83 of the Labor Law (which preclude the right to strike); to spell out the grounds permitted under section 34 of the Labor Law whereby the labor administration department was empowered to raise objections to the implementation of collective contracts); to effect the immediate release of certain named individuals and re-examine other detentions; to investigate allegations of torture and ill-treatment received by others; and to investigate whether others were dismissed from their jobs because of trade union activity. See 316th CFA Report, June 1999, paragraphs 341-378. CFA last requested to be kept informed of developments in its 321st Report, June 2000.

Case No. 1819: Complaint filed in January 1995 by the ICFTU. The case concerns violations

of human and trade union rights - through the oppression by the Government as well as by various manning agents and shipping companies - of Chinese seafarers serving on foreign flag ships. The Government responded that the allegations were a distortion of a labor dispute between a Chinese company and its employees and that the matter would be resolved in a court of law. The Committee urged the Government to refrain in the future from arresting and detaining Chinese seafarers who pursue their legitimate grievances through organizations of their choice; to guarantee and respect the rights of Chinese seafarers to form the unions of their choice and to affiliate with organizations freely chosen by them, including with an international organization if they so wish; and requested the Government to ensure that three seafarers in question be compensated for economic losses incurred during their nearly 2-1/2 years' detention (for having disclosed "state secrets") and that the money, seamen's documentation and qualifications confiscated from them at the time of their initial arrested be restored to them. See 304th CFA Report, June 1996, paragraphs 116-158. The CFA reported in its 308th Report, November 1997, paragraphs 29-31, that there were further communications from the Government, but no progress noted. CFA last requested to be kept informed of any developments relating to this case in its 310th Report, March 1998.

Case No. 1652: Complaint filed by the ICFTU in June 1992. (Interim conclusions adopted in March 1993; 286th CFA Report, paragraphs 674-728). Case concerns the Trade Union Act of April 3, 1992 and acts of pressure (including physical beatings) against independent trade union activists, the sentencing, detention and dismissal of workers and obstacles to the function of independent trade unions, in particular the Free Trade Union of China which announced its establishment in May 1992. As regards legislation and practice concerning labor dispute settlement, the Government stated that Chinese policy and legislation had been drawn up in accordance with the reform process and current opening up of the country and in light of experiments successfully carried out in other countries and advice provided by ILO experts. As regards the penalties contained in the Provisional Regulations of 1987, the Government responded that these apply to offenses and crimes which are not a matter of freedom of association, further pointing out that these regulations as they relate to labor dispute settlement in state enterprises were repealed on 1 August 1993 and replaced by the Regulations on labor dispute settlement in enterprises in the People's Republic of China, which no longer provide for penal sanctions for disruption of work production during a labor dispute on public safety grounds. The Government also provided information on certain individuals sentenced on charges of subversion and with regard to allegations that another was subjected to acts of pressure, including physical beatings. Regarding an allegation that the Communist Party has requested an in-depth inquiry to track down the Free Trade Union of China, the Government denied the existence of either the organization or of a directive ordering an inquiry into it. The Committee requested that the Government take the necessary steps to amend the Trade Union Act adopted in April 1992 so that it fully accords with the ILO's freedom of association principles. Noting that the 1993 regulations (article 37) continue to exclude recourse to strike as a means of defense of occupational interests and list a number of acts which are prohibited during the settlement of a labor dispute, the Committee asked the Government to take the necessary measures to enable

workers and their organizations to exercise the right to strike when they believe it necessary to support their claims. The Committee also requested cancellation of the expulsion order issued against Mr. Han Dongfang; and, while welcoming the release of three detainees, asked the Government to take the necessary measures to ensure that all the cases mentioned by the complainant be re-examined and that the persons concerned released. See 292nd CFA Report, March 1994, paragraphs 368-401. The Committee reported in its 295th Report, November 1994, paragraph 19, that the Government had informed it of the release of one trade unionist imprisoned for theft. The Committee reported in its 297th Report, March 1995, paragraph 25, that the Government had informed it of further releases and a reduction in the sentence of one of the prisoners.

Case No. 1500: Complaint filed by the ICFTU in June 1989 alleging extensive violations of freedom of association in connection with the Government's suppression of the Tiananmen Square pro-democracy demonstrations in May/June 1989. While reiterating that this case has nothing to do with freedom of association, but rather concerns violations of the country's criminal laws, the Government supplied extensive information on all the people mentioned in the complainant's various communications. Noting steps taken by the authorities to release certain people, the Committee urged the Government to put an end to the detention of workers still in custody; to refrain from taking measures of administrative detention and forced labor, such as the so-called system of "education through labor", against workers who have engaged in trade union activities; and to take the necessary steps to ensure that the right of workers to establish organizations of their own choosing and the right of these organizations to function freely are recognized in the country's legislation and guaranteed in practice. See 281st CFA Report, February 1992, paragraphs 68-83. For earlier interim conclusions, see also 268th Report (November 1989), paragraphs 668-701; 270th Report (February 1990), paragraphs 287-334; 275th Report (November 1990), paragraphs 323-363; and 279th Report (November 1991), paragraphs 586-641.

V. The Forced Labor Issue

China is not now party to either of the ILO's two fundamental conventions on forced labor (C. 29 or C. 105). However, China voted in favor of the *ILO Declaration on Fundamental Principles and Rights at Work* in 1998 which, as previously stated, declares that "*all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions*", including:

"(b) the elimination of all forms of forced or compulsory labor."

The Government of China has provided the ILO with a description of its rehabilitation programs for what it terms minor offences. The Government asserts that the principle of the elimination of all forms of forced and compulsory labor is recognized in China, and that no forced or

compulsory labor exists except for persons interned through labor.

The “follow-up” to the ILO Declaration, as it is known, is not a substitute for the ILO’s regular standards system or its supervisory mechanism, but rather a promotional political strategy aimed at encouraging ILO member state cooperation to comply with the requirements of the Declaration, including through the provision of ILO assistance if appropriate. In numerous exchanges with Government authorities, including at the time of the adoption of the ILO/China MOU (see below), the ILO has made clear that the use of “education through labor” is a form of using forced labor which the ILO considers unacceptable.

For example, following is an excerpt from the 310th Report of the Committee on Freedom of Association, doc. No. GB 272/7, June 1998:

358. Firstly, the Committee must recall that it has already considered that the “system of education through labor” with regard to persons who have already been released, constitutes a form of forced labor and administrative detention of people who have not been convicted by the courts and who, in some cases, are not even liable to sanctions imposed by the judicial authorities. This form of detention and forced labor constitutes without any doubt a violation of basic ILO standards which guarantee compliance with human rights and, when applied to people who have engaged in trade union activities, a blatant violation of the principles of freedom of association. [See Digest, op. Cit., para 67]

The following excerpt is from this year’s introduction by the ILO Expert-Advisers to the compilation of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (GB, 283rd Session, doc. No. 383/3/1):

36. The Expert-Advisers express their disappointment with the forced labor report prepared by the Government of China, the China Enterprise Confederation and the All-China Federation of Trade Unions, which states that there has been no change since the last report. In 2001 we expressed our concern with the persistence of forced labor for persons “who are interned for rehabilitation through labor” in that country. We would appreciate seeing, in future reports, detailed information and clarification from the Government of China with regard to efforts it has made since 2000 to respect, promote and realize the principle of the elimination of all forms of forced labor.

As per the procedures of the Declaration “follow-up”, a lengthy and detailed statement from the ICFTU challenging the Government’s official position on forced labor was published this year alongside the Government’s annual report.

VI. Statements by the Government of China on Technical Cooperation Needs related to the ILO’s Core Labor Principles

In its annual reports under the *Follow-up* to the *ILO Declaration on Fundamental Principles*

and Rights at Work for the years 2000, 2001 and 2002, the Government of China has made the following statements regarding ILO technical cooperation needed to assist it “to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions”:

A. With regard to freedom of association and the effective recognition of the right to collective bargaining:

In its (self) assessment of the factual situation, the Government stated:

According to the latest information provided by the All-China Federation of Trade Unions, at present, there are 103 million trade union members in China. By the end of 2000, 67,195 foreign-funded enterprises and 432,704 private enterprises had set up trade unions at the workplace, with a total membership of 5,921,202 and 7,889,900 respectively (*for the 2002 report*).

According to data provided by the Department of Labor Relations and Wages, in the Ministry of Labor and Social Security, by the end of 2000, the number of collective contracts signed and registered with the Ministry of Labor and Social Security exceeded 240,000. They covered more than 60 million workers (*for the 2002 report*).

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights:

The ILO carried out a series of technical cooperation projects with the Chinese tripartite members: in 1996, the ILO and Chinese Entrepreneurs' Association jointly organized in Dalian a seminar on skills for conducting collective bargaining; in September 1998, the ILO and Chinese Entrepreneurs' Association jointly organized in Beijing a training course on industrial relations; in July 1999, the ILO and China Enterprises' Federation jointly organized in Beijing and Zhejiang, respectively, seminars on labor legislation and practice in China; in 1999, the ILO and China Enterprises' Federation jointly organized in Xian and Shenzhen a training course on collective bargaining and consultation; in August 1997, the ILO and All-China Federation of Trade Unions jointly organized in Qingdao a seminar on collective bargaining and collective contracts; in December 1997, the ILO and All-China Federation of Trade Unions jointly organized a tour to Asian countries to study the issue of industrial relations; in April 1998, the ILO and All-China Federation of Trade Unions jointly organized a tour to European countries to study the issue of industrial relations; in December 1998, the ILO and All-China Federation of Trade Unions jointly organized a trainers' course on collective bargaining and collective contracts; in August 1999, the ILO and All-China Federation of Trade Unions jointly organized in Hefei a training course on training materials for collective bargaining; in August 1999, the ILO and All-China Federation of Trade Unions jointly organized in Harbin a trainers' course on wage negotiation. (*For the 2000 report*).

The conditions needed are an increase in the cooperation and exchanges with the ILO, accelerating the process of adopting the law on collective contracts and updating the relevant laws and regulations; in addition, it is necessary to improve the negotiation skills of government staff, managing personnel of enterprises and trade union representatives. (*For the 2000 report*).

With the cooperation of the ILO, the All-China Federation of Trade Unions organized a workshop on training for wage negotiators in March 2001, and held a high-level symposium on International Globalization, Labor Standards and Social Dialogue, in May 2001. (*For the 2002 report*)

With the cooperation of the ILO, the China Enterprise Confederation undertook a national survey on the role of employers' associations in tripartism, from January to June 2001. Based on the results of the survey, assessment seminars were held in Beijing and Shenzhen, covering a wide range of issues, such as ways in which to further build employers' associations in China, and to raise their status and improve their roles (*For the 2002 report*).

B. With regard to the elimination of all forms of forced or compulsory labor, after a lengthy description of Chinese law and the statement that "There exists no forced or compulsory labor in China except for the abovementioned persons interned for reform through labor", the Government of China reported for 2000 under "*Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*":

The ILO has held in China many seminars on international labor standards in which it promotes the principle of eliminating forced or compulsory labor..The Government will promote the relevant laws and regulations and raise people's awareness of these laws and regulations, so that they can know, observe and use the laws. At the same time, it will strengthen the enforcement of the laws, increase cooperation with the ILO and widely disseminate international labor standards.

C. With regard to the effective abolition of child labor, after a lengthy description of Chinese law which opens with the statement that "The principle of the effective abolition of child labor is recognized in the Constitution, legislation, judicial decisions, and collective agreements," the Government of China reported for 2002 under "*Efforts made or envisaged to realize the effective abolition of child labor*":

With regard to international cooperation, an ILO sponsored high-level tripartite seminar on Convention No. 182 was held in Beijing on 12-13 April 2001. Tripartite delegations from China participated in the Asia and Pacific Regional Meetings on child labor held over the last two years in Bangkok, Phuket, Dakar, Kathmandu...The Government does not work with any multilateral agencies other than the ILO, bilateral donors and/or other organizations to combat child labor.

For its 2002 submission, the Government made a general statement of its overall "*Priority needs for technical cooperation*" regarding child labor:

The Government sees a need for new or continued technical cooperation with the ILO to assist in the realization of the principle of the effective abolition of child labor. The types of technical cooperation needed, ranked in order of priority (1 being the most important):

1. Capacity building of responsible government institutions (e.g. labor inspection and administration).
2. Employment creation, skills training and income generation.
3. Social protection systems.
4. Special program for the elimination of the worst forms of child labor.
5. Strengthening capacity of employers' and workers' organizations.
6. Inter-institutional coordination.
7. Training of other officials (e.g. police, judiciary, social workers, teachers).
8. Awareness raising, legal literacy and advocacy.
9. Legal reform.
10. Policy advice.
11. Data collection and analysis.
12. Sharing of experience across countries/regions.

13. Cross-border cooperation mechanisms.

D. With regard to the elimination of discrimination in respect of employment, the Government for its 2000 submission, after stating that “The principle of the elimination of discrimination in respect of employment is recognized in China,” reported under “*Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*”:

The ILO organized in April 1999 in Beijing a seminar on the Employment and Occupation Convention, No. 111, and, in September the same year in Urumqi and Chongqing, respectively, other seminars on the same theme. The objectives of the Government are to further promote the principle of the elimination of discrimination in respect of employment and occupation, advocate equality and ensure the all round implementation of the laws of the country. The conditions needed are : further disseminate the domestic laws and the corresponding international norms, increase cooperation with the ILO, and develop the statistics of employment disaggregated by sex.

For the 2002 report under “*Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights*”, the Government stated:

With the cooperation of the ILO, the Chinese Government held regional seminars on ILO Convention No. 111 in Yinchuan, capital of Ningxia Hui, Autonomous Region, and Guiyang, capital of Guizhou Province, in September 2000. In September 2001, seminars on Convention No. 111 were held in Shanghai and Beijing.

VII. Brief Sketch of ILO Technical Assistance and Technical Cooperation Activities in China Prior to the Signing of the 2001 MOU

A. Until the Tiananmen events in 1989 there were substantial ILO technical cooperation activities in China, roughly half funded by UNDP and the other half from multi-bilateral sources. Areas of concentration included: social security, vocational training, rural development and cooperatives.

B. Following Tiananmen, the program shrunk to a virtual halt, except for China’s participation in a rural employment promotion project funded by Japan.

C. Beginning in 1996, the ILO renewed its technical cooperation activities in China, carrying out consultations, visits, studies and training under ILO Regular Budget programs. These have focused on:

- Labor market policies.
- Development of Small and Medium-sized enterprises (SMEs), especially micro-enterprises.
- Training and re-training of State-Owned Enterprises (SOE) laid-off workers.
- Poverty alleviation.
- Workshops, training and other activities related to safety and health.
- Workshops, surveys and technical advice related to social security system reform, focusing on unemployment insurance and displaced workers, social budgeting and statistics, and

technical advice on the Pilot Program on Improving China's Urban Social Security System launched by the State Council and on the formulation of the Social Insurance Law.

- Workshops, study tours and technical consultations on labor dispute settlement, collective bargaining, labor inspection and tripartism, especially within the Economic Protection Zones (EPZs).
- D. Technical cooperation projects initiated between 1996 and 2001 have included:
- CPR/96/504: Urban Employment Promotion Project, aimed at strengthening the Government- launched National Re-Employment Program, in which the ILO acted as the cooperating agency responsible for technical support and backstopping and advisory services.
 - The ILO/Japan inter-country project on Strategic Approaches towards Employment Promotion aimed at exploring policy options and mechanisms for rural employment promotion and poverty alleviation through employment.
 - CPR/96/513: Small Enterprise Reform and Development aimed at strengthening the capacity of the State Economic and Trade Commission (SETC) in formulating new policies and strategies on small, medium as well as large enterprise reform and development.
 - While China is not a formal participant in the IPEC program, the ILO since the summer of 2000 has been engaged with the All China Women's Federation (ACWF) in the Yunnan component of the Greater Mekong Sub-regional Project to Combat Trafficking in Women and Children. This projects works with the Governments and various NGOs in Cambodia, China, Laos, Thailand, and Vietnam.

VIII. The Memorandum of Understanding for cooperation between the ILO and the Ministry of Labor and Social Security of the People's Republic of China, May 17, 2001

The MOU sets out agreed policy priorities for future cooperation between the International Labor Office (ILO) and the Ministry of Labor and Social Security of the People's Republic of China in each of the four strategic objective areas of the ILO's "*Decent Work*" agenda, recognizing: that the People's Republic has the sovereign right to select its development partners and to coordinate its own development activities; that since the ILO is not a funding agency it will work with the People's Republic to mobilize external resources for the implementation of the activities foreseen in the MOU; and that the ILO will continue to develop cooperative programs with Chinese workers' and employers' organizations.

The four strategic areas for cooperation include:

- 1) International Labor Standards and the ILO Declaration on Fundamental Principles and Rights at Work.
- 2) Employment.

- 3) Social Protection.
- 4) Social Dialogue.

Other areas of cooperation include:

- 1) Statistics.
2. Sectoral activities.
- 3) Cooperation with the International Training Center of the ILO in Turin.
- 4) Cooperation with the International Institute of Labor Studies of the ILO.

The agreement envisions the establishment of a Joint Committee to formulate project proposals; mobilize resources for the implementation of the project; review and assess implementation of the MOU; and consider such revisions to the MOU as deemed appropriate.

IX. New programs under consideration or being implemented in cooperation with the Ministry of Labor and Social Security:¹

- A multi-bi proposal on Promoting Workplace Democracy and Improved Industrial Relations in China. The Ministry of Labor and Social Security, China Employers' Confederation (CEC) and the All-China Federation of Trade Unions (ACFTU) have all endorsed this proposal and funding is now being sought.
- A project on urban employment promotion, funded by Japan and underway, which is successor to the rural employment project cited earlier.
- A project on Improved Human Resources Development and Management in Chinese Economic Development Zones, funded by the Swiss Government and agreed to the day following the signing of the MOU in May last year.
- The development by the ILO of a comprehensive social security project for China which covers all the major areas of social security (administration, financing, extension of coverage, health, pensions, unemployment, insurance, etc.). The ILO is at an advanced stage of negotiation with the EU for funding of major portions of this project.
- The China Employment Forum will take place in Beijing on October 21-23, 2002, jointly organized by the ILO and MOLSS, to bring international and national policy experts together to develop a blueprint for promoting the Global Employment Agenda in China.
- The above list covers only major projects which are in an advance stage of implementation, development and funding prospects. There are many other initiatives which are being implemented which should eventually lead to major projects as well. For example, an exploratory mission combined with a tripartite sensitization seminar

¹*During the international donors' meeting held in Beijing in February 2002, the Chinese Deputy Minister of Labor stated that the MOU with the ILO constituted "the program of the Government of China in the labor and social fields."*

concerning HIV/AIDS at the workplace will be conducted in China during the second week of April. In addition, ILO workshops, advisory services, workshops and seminars are continuing on other subjects, funded through the ILO regular budget and with technical input from the East Asia Multidisciplinary Advisory Team based in Bangkok.

X. Cooperation with the All-China Federation of Trade Unions

As stated earlier, the ILO has been carrying out training activities with the ACFTU for a number of years, particularly in the area of wage negotiations. Parallel to the ILO's MOU with the MOLSS, the ILO's Workers Activities Branch (ACTRAV), signed a separate MOU with the ACFTU in May 2001 looking to strengthen the ACFTU's education and training capacity with regard to negotiations and collective bargaining. These programs, now underway, include training trainers on industrial relations practices and concepts in a free market system, with emphasis on the enterprise level at foreign-owned and joint venture companies in the EPZs. ACTRAV has also introduced information technology in union work, as well as arranging study tours for the ACFTU to observe and understand wage negotiations and industrial relations in other countries. ACTRAV has also been involved in a UNDP project to strengthen the ACFTU's capacity to cope with the new challenges posed by economic reform, WTO accession, etc., including the establishment of tripartite/social dialogue structures and helping the ACFTU support its members through employment-creation and micro-credit schemes in select provinces.

