Testimony Presented to the Congressional-Executive Committee on China

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

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

I will focus today on three areas to supplement what has already been said. First, I want to spend a few moments looking at how the International Labor Organization defines Freedom of Association and the Right to Organize and Bargain Collectively given that these rights are included in most of the Codes of Conduct of U.S. companies operating in one manner or another inside China. Second, I will express our views as well as those of much of the international trade union community regarding the All China Federation of Trade Unions (ACFTU), again trying not to repeat what we have said already. A few comments about the 2001 amendments to the trade union law will be offered in this context. And finally, given that I am sharing this occasion with Amy Hall who represents a company that bases its social accountability monitoring on the SA 8000 system, I will speak to the challenges posed and questions raised by such notions as “parallel means” contained in the SA 8000 standards and guidance.

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

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

small proportion of companies doing business in China and these companies remain confined overwhelmingly to the soft-goods industries. Moreover companies that take their codes seriously are in our view a very small subset of this already very small number.

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

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

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

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

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

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

At the same time, the state and party bolstered its hold on the ACFTU. The trade union law as amended in 2001 maintains the trade union monopoly enjoyed by the ACFTU (article 10) and ***strengthens*** the link between the ACFTU structure, the Chinese Communist Party (CCP) and the government, clearly identifying in more specific language than before the unions' obligation to follow the leadership of the CPP (article 4) and to assist in maintaining the state's monopoly of power (article 5). Article 11 stipulates that "the establishment of basic-level trade union organizations, local trade union federations, and national or local industrial trade unions shall be submitted to higher-level trade union authority organizations for approval." Not only is this in clear violation of C. 87, which states that workers should be able to organize into unions of their own choosing but it also is a major obstacle to independent attempts to organize trade unions. The only way such efforts can "succeed" under the law is by submitting to the authority of the ACFTU. This is further strengthened by the fact that company level unions are totally dependent on higher-level ACFTU structures for income. Companies are required to pay the equivalent of 2% of payroll in union dues to the higher ACFTU structure, which then in turn is supposed to return a percentage back to the factory level union, at least in theory. So under the current law a factory union is wholly dependent on the higher-level ACFTU to receive even a percentage of the dues paid by its own members.

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

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

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

That the ACFTU's major preoccupation is to strictly enforce its trade union monopoly was clearly demonstrated regarding the establishment of at least two associations to assist migrant workers address work-related grievances such as non-payment of wages. Ruian city in the coastal province of Zhejiang has

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

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

This is not to say, of course, that good, well meaning people cannot be found within the ACFTU structure. It is to say, however, that institutionally the ACFTU is a creature of the Chinese state and Communist Party and is obligated by its own rules to act as a transmission belt for party and state policy. I want to emphasize that the International Confederation of Trade Unions, which represents 158 million workers in 150 countries, shares this view. I am attaching the China section of the ICFTU's recently released 2003 Survey of Trade Union Rights Around the World. I also want to emphasize that differences among various trade union organizations do not focus on the nature of the ACFTU as a government entity – on this point most are quite clear - but on whether or not the ACFTU can be reformed. Indeed the fact that the ACFTU is widely viewed as a government entity is precisely why most codes of conduct have included in them the concept of "parallel means."

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

Chinese labor especially migrant labor is not free even in the minimal sense of being able to exit unacceptable employment. Residency (hukou) rules make the predominately rural migrant labor force in

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

In regard to monitoring, it is our view based on our own experience here in the U.S. as well as working to strengthen relations with workers in developing countries for many decades that the most effective way to monitor factory compliance with national law, international standards, and company codes is by empowering workers themselves to play this role collectively and independently in an atmosphere absent of fear and intimidation. The Fair Labor Association seems to have come to a similar conclusion stating in its recent report that "freedom of association is essential to the resolution of many other compliance problems, in that the most sustainable approach to compliance lies in developing the capacity of workers and employers to regulate their own workplaces."[3] Workers have an obvious interest in ending abuses and violations as a way to improve their daily lives and can provide the daily continuity necessary for monitoring to be truly effective. It is virtually impossible to monitor workplaces effectively without such continuity. What meets standards in a factory one day can be quite different three months later unless there is daily vigilance. This has been demonstrated by the fact that SAI and other monitoring groups have had to remove certification of several facilities when it was disclosed that they did not in fact meet the standards. In most if not all of these cases reported in the press, it was outside "watchdog" NGOs such as the National Labor Committee that uncovered the labor rights abuses and only when they went public were the factories decertified. We find this troubling especially when combined with the fact that over one third of the factories certified under SA 8000 are located in China and Vietnam where freedom of association does not exist and where independent NGOs with the freedom and wherewithal to contact workers are not tolerated.

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

The experiences of countries like South Korea and Indonesia suggest that workers became empowered only after both countries underwent real political change despite long time support by the international trade union community. In other words, only when South Korea began to rapidly move toward democracy in the 1980s and transition from Suharto was well underway and irreversible did freedom of association for workers begin to emerge. So the value of "parallel means" absent similar such political change in China is problematic. Without empirical evidence that notions like "parallel means" leads to real freedom

of association, it is our view that companies operating inside China with a code of conduct that includes freedom of association are in fundamental violation of their own codes. Furthermore, until such evidence begins to emerge, there will be continuing concern that at the end of the day improving labor standards without legitimate trade union representation is an acceptable, even preferred, outcome to companies involved is such schemes.

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

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[1]Testimony presented by Mark Hankin, Coordinator for Program Development, American Center for International Labor Solidarity AFL-CIO, March 18, 2002.

[2] The Committee on Freedom of Association, the Committee of Experts and the Committee on the Application of Conventions and Recommendations in particular.

[3] Fair Labor Association First Public Report: Towards Improving Workers' Lives, August 1, 2001 – July 31, 2002.

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