

Testimony Presented to the Congressional-Executive Committee on China
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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 Federation 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 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 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 Confederation 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.

¹ The 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..."

² There 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.

³ One 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.

⁴ For 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."

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

⁶ See 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.

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

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

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

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

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