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CODES OF CONDUCT: U.S. CORPORATE COMPLIANCE PROGRAMS AND WORKING CONDITIONS IN CHINESE FACTORIES

ROUNDTABLE

BEFORE THE

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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CONTENTS

Page

STATEMENTS

Cahn, Doug, vice president, human rights program, Reebok International, Ltd., Canton, MA 2
Niepold, Mil, director of policy, Verité, Inc., Jersey City, NJ 5
van Heerden, Auret, director of monitoring, Fair Labor Association, Washington, DC 9
Rosenbaum, Ruth, executive director, Center for Reflection, Education, and Action, Hartford, CT 12

APPENDIX

PREPARED STATEMENTS

Cahn, Doug 32
Niepold, Mil 35
van Heerden, Auret 38
Rosenbaum, Ruth 44

CODES OF CONDUCT: U.S. CORPORATE COMPLIANCE PROGRAMS AND WORKING CONDITIONS IN CHINESE FACTORIES

MONDAY, APRIL 28, 2003

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The roundtable was convened, pursuant to notice, at 2:30 p.m., in room 2200, Rayburn House Office Building, John Foarde [staff director] presiding.

Also present: Mike Castellano, office of Representative Sander Levin; Karin Finkler, office of Representative Joe Pitts; Andrea Yaffe, office of Senator Carl Levin; Bob Shepard, office of Deputy Secretary of Labor D. Cameron Findlay; Susan O'Sullivan, office of Assistant Secretary of State Lorne Craner; Erin Mewhirter, office of Under Secretary of Commerce Grant Aldonas; Susan Roosevelt Weld, general counsel; Selene Ko, chief counsel for trade and commercial law; Lary Brown, specialist on labor issues; and William Farris, senior specialist on Internet and commercial rule of law;

Mr. FOARDE. Good afternoon and welcome to this issues roundtable of the Congressional-Executive Commission on China. My name is John Foarde. I am staff director. On behalf of Chairman Jim Leach and Co-Chairman Chuck Hagel, we welcome all of you this afternoon and appreciate not only your coming to hear and listen, but particularly to our panelists for coming to share their expertise with us this afternoon.

As anyone who has read our first annual report, which was published last October, can attest, our bosses care about the topic of corporate social responsibility. They asked us to look into it this year in a very intensive way. One of the first things we discovered, of course, is that not everyone agrees as to what "corporate social responsibility" means.

Certainly one of the responses of the business community has been to adopt codes of conduct to guide their own behavior as they invest and trade abroad. There are a number of codes, and not all of them say the same thing. So we thought, as a point of departure, that it would be useful to have several experts come in to talk about corporate compliance with codes of conduct. Do they make any sense? Do they work? We have succeeded beyond our wildest dreams by having four first-class panelists.

I will introduce all of them at greater length, but they are Doug Cahn, vice president, Human Rights Programs, Reebok International, Ltd.; Mil Niepold, director of policy, Verité, Inc.; Auret

van Heerden, director of monitoring, the Fair Labor Association [FLA]; and Dr. Ruth Rosenbaum, executive director, Center for Reflection, Education, and Action [CREA].

We are going to adopt our usual practice of going wall to window and begin over on this side with Doug Cahn. As vice president of Human Rights Programs, Doug oversees Reebok's corporate commitment to international human rights, both through the company's business practices and through its philanthropic endeavors. He joined Reebok in October 1991.

Doug leads the team that develops and implements Reebok's workplace code of conduct for factories making Reebok products. Under his direction, Reebok has been an early leader in innovative ways to apply codes of conduct to factories owned and operated by third parties, including the development of a child-labor-free soccer ball factory in Pakistan, human rights training programs, worker communication system, and assessment tools.

Doug Cahn directs the human rights grant-making effort at the Reebok Human Rights Foundation as well.

Doug, welcome and thank you for coming.

Let me review the ground rules here. We will let each panelist speak for 10 minutes. After 8 minutes, I will remind you that you have 2 minutes remaining. Any point that you can't get to in your presentation, we will try to pick up in the question and answer session, after all four panelists have presented. Each staff member here will get a chance to ask questions.

Doug, please.

STATEMENT OF DOUG CAHN, VICE PRESIDENT, HUMAN RIGHTS PROGRAMS, REEBOK INTERNATIONAL, LTD., CANTON, MA

Mr. CAHN. Thank you very much, and thank you for giving me and Reebok the opportunity to be with you here this afternoon.

For over a decade, Reebok International, Ltd., has implemented its code of conduct, the Reebok Human Rights Production Standards, in the independently-owned and -operated factories that make its products. We do this to ensure that workplace conditions meet internationally recognized standards and local law, to honor our corporation's commitment to human rights, to protect our brand reputation, and to benefit, most importantly, the lives of 150,000 workers—nearly half of whom live in China.

In recent years, an increasing focus of Reebok's monitoring work has been to encourage factory workers to participate in workplace decisions. This focus is born out of Reebok's experience that code of conduct compliance is enhanced when workers are involved in identifying workplace problems and resolving them in dialog with management.

The current movement of global brands to monitor factories has its limits. Professional monitors can do much good, but they cannot be present in every factory, all the time. This realization has caused us to recognize that a worker representation model—one in which workers participate in decisions that affect their lives—can speed our efforts to ensure that quality workplace conditions are sustained. Among our standards is the provision that Reebok will respect the rights of workers to freedom of association. With work-

er representation projects, we facilitate the development of this right, even when host country laws do not fully accept the covenants of the International Labor Organization [ILO] relating to freedom of association and collective bargaining. In China, as an example, we hope our worker representation projects will give greater meaning to this provision of our code of conduct.

In China, our worker participation programs have resulted in elections of worker representatives in two large footwear factories. While elections are not the only way of developing problem-solving mechanisms that include worker participation, they are permissible under the law in China and, as the level of participation in the two elections demonstrate, workers view these elections as acceptable methods to choose representatives who can defend their interests.

Our experiment began with the facilitation of the democratic election of worker representatives in the Kong Tai shoe factory [KTS] located in Longgang, China in July 2001. This athletic shoe factory is publicly listed on the Hong Kong Stock Exchange and employs just under 6,000 workers.

In the spring of 2001, we examined the existing union charter and Chinese labor law. Working with management and the then-appointed union, an affiliate of the All China Federation of Trade Unions [ACFTU], all parties agreed to a process that would be followed and on the underlying charter that would be its guide.

The previous union membership consisted of 19 committee members, of whom 18 were office workers or guards. We sought to avoid the preponderance of non-production line workers serving as union leaders by insisting on proportional representation. We wanted to ensure that a new union would truly represent all workers. Communication and outreach was the next important step. Workers needed to understand the process in order to be able to participate fully in it.

There were a variety of materials prepared in order to post on the walls and explain to workers what this process was about. Open forums were critically important at that point in order to provide the opportunity for workers to hear the purpose and the process for the union election.

Under the rules, candidates were to be self-nominated. And we were delighted that 62 candidates put their names forward. The voting was conducted in secret. On July 28, 2001, each worker received one colored ballot denoting their election zone, and the voting took place.

On the day of the election, there were 4,658 workers in the factory; 1,130 were on leave; 3,409 ballots were issued; 119 chose not to vote. There were 102 spoiled ballots, and 17 ballots were not returned.

During the election, 26 workers—16 women and 10 men—were elected to the committee out of 62 worker candidates. Of the 26 workers 15 were line workers, 7 were line leaders or supervisors, and 4 were office staff. Of the six former executive committee members who ran, four were re-elected.

Training was and continues to be an essential post election activity, so that the elected representatives can have a better understanding of what is possible under the law in China, and to help

them in the process of organizing themselves to become an effective voice for workers.

A second election was held in a Taiwan-invested factory in October 2002. The 12,000 workers at the Fu Luh Sports Shoe factory in Fuzhou, China voted for 192 candidates in 7 election zones. Although the Fu Luh factory had a union previously, there was no charter—nothing written down about the purpose or the structure of the union. So they had to start from scratch.

We began by bringing Fu Luh leadership to the first factory, the Kong Tai factory, the one I just mentioned, to view first hand the process and the outcome of the election that had been held there a year earlier. Representatives were then introduced to the Kong Tai charter during that visit and subsequently relied heavily on it for the development of their own charter document.

Workers were given the opportunity to self-nominate at the second factory, the same as the were in the first. Open forums preceded the nomination process and were meant to inform workers about the elections, explaining how this was different from the past; explaining the purpose, for instance, of the trade union; and encouraging workers' involvement.

Fu Luh has only one small dorm that houses a few of the factory's workforce. Most of the workers live offsite. So to ensure that workers would attend the open forums where the process of the elections was discussed, workers were required to attend and were compensated for their time. Open worker forums on this lasted for about an hour and a half.

The voting, again, was by secret ballot and took place in a fully transparent manner. A week following the election for the committee members, the chair and vice chair were elected from among the committee members, and the whole process with speechmaking and such was repeated.

Training is now the focus at the second factory, the Fu Luh factory, so that the worker representatives can have the benefit of the knowledge that comes with understanding how to organize information and how to conduct a meeting and such, the basic prerequisites that are necessary for workers to be able to adequately represent the larger workforce. Two training sessions have already occurred, and we expect an additional one in the future.

The elections at Kong Tai and Fu Luh are initial efforts to enhance the voice of workers in China in a way that will aid code compliance and lead, we hope, to a more sustainable model for improving workplace conditions.

These elections were fully consistent with Chinese law and were supported by the local ACFTU officials. We were pleased will the overall level of support we observed and we commend all parties, including ACFTU officials, for their forbearance and, in many cases, active support.

The guiding principles in the election process were self-nomination; transparency; proportional representation; and one person, one vote. Self nomination to stand as a candidate; transparency in the process, so that all would understand it with the same voice; proportional representation to make sure that each part of the factory was represented in the union committee; and one person, one vote by secret ballot.

In conclusion let me say this, to label the experiments as "successes" or "failures" is to try to put them in boxes where they don't necessarily fit. We view them as more steps in the right direction toward compliance that is more sustainable and that involves workers in the process.

We are pleased that all parties have cooperated to permit these elections to take place in a credible, transparent manner in which they were conducted. At Kong Tai, the union is still growing and developing. They have spent much of their time during the last year learning how to work together and how to be a voice for workers. They have routinely assisted workers to get approvals to take leave. They have fought for proper medical compensation for sick workers.

We hope these elections will demonstrate that an increase in worker participation can be achieved in an environment where fully independent unions do not exist. Our experience is that there is room for movement and progress within the confines of what unions are permitted to do today in China. It is our hope that through this example, other multinational brands and other factories will experiment with these and other ways to establish sustainable methods for achieving code compliance. In the end, we better implement our standards when we are willing to challenge ourselves, our factory partners and workers to find new, more sustainable ways to achieve internationally recognized workplace norms.

Thank you.

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

Mr. FOARDE. Doug, you are obviously an expert at this. You have come in exactly on time, and your discipline is commendable and appreciated.

We would like to come back to the many issues that you have raised in your statement in the Q and A. It is really very interesting.

Our next panelist is Mil Niepold, director of policy at Verité, Inc., and head of the Verité New York regional office. Verité is a nonprofit auditor of factory working conditions around the world, and has performed over 900 individual factory evaluations in 64 countries since 1995, including over 200 in China.

In 1999, Mil negotiated the selection of Verité as the monitoring body in the settlement of the Saipan lawsuit against 18 U.S. retailers. Before joining Verité, her work spanned both the private sector, Fortune 500 companies such as American Express, and the public sector, the United Nations, the European Union, as well as various NGOs and nonprofits.

Mil, welcome and thanks very much for coming. Please.

STATEMENT OF MIL NIEPOLD, DIRECTOR OF POLICY, VERITÉ, INC., JERSEY CITY, NJ

Ms. NIEPOLD. Thank you. I wanted to first thank the Commission for inviting Verité's testimony here today. In 1973, Zhou Enlai, Chinese Premier, said "China is an attractive piece of meat coveted by all . . . but very tough, and for years no one has been able to bite into it." The population is not the only part of this estimation that has changed 30 years later. Multinational corporations

[MNCs], global trading organizations like the World Trade Organization [WTO] and even a few inter-governmental organizations [IGOs] and non-governmental organizations [NGOs] have clearly "taken a bite." It is Verité's core belief, and one shared by many advocates, that respect for labor and human rights—the very same ones that are covered by this Commission's mandate and that China has quite often signed and ratified itself—comes only when workers themselves are an integral part of the process. Later, when I address examples of initiatives that have worked or might potentially work, the direct involvement of workers will be the common thread in each case.

So who is Verité? Over the past 8 years Verité has interviewed approximately 18,000 factory workers for the purpose of identifying the issues workers face in a newly globalized economy. Verité's mission is to ensure that people worldwide work under fair, safe, and legal conditions. Our pioneering approach brings together multinational corporations, trade unions, governments, non-governmental organizations, and workers, primarily, in over 65 countries for the purpose of identifying solutions to some of the most intractable labor rights violations.

Verité performs social audits—as you have said, to date, over 1,000 factory evaluations have been conducted—to analyze workplace compliance with local and international labor, health, safety, and environmental laws and standards. Unique as a nonprofit in the sector dominated by private sector firms, we go beyond monitoring to provide factories with specific recommendations on how to remedy the problems that we uncover. We also provide training for factory management and manufacturers. To address the needs of workers, Verité conducts education programs to teach workers their legal rights and entitlements in the workplace as well as "life skills."

In China, this program has been our greatest success. Verité has operated in China—our first and largest area of operation—extensively since 1995. We have conducted nearly 200 factory audits in China over the last 8 years. In the past 2 years alone, we have done 112.

Our findings, and those of others, are very disturbing. There are egregious health and safety violations. China's own Work Safety Administration reported 140,000 deaths in 2002. That is an increase of approximately 30 percent over the year before.

Chinese media sources reported 250,000 injuries in the first quarter of this year, 30,000 of them resulting death. This is all sectors combined.

The ILO ranks China as the world "leader" in industrial accidents. China estimates 25 million workers are exposed to toxins annually, with tens of thousands of them injured and incapacitated annually.

The Hong Kong Christian Industrial Committee recently reported that after 10 years of research on the toy industry—China manufactures 70 percent of the world's toys—a full 55 to 75 percent of toy factories are still classified as poor, meaning 80 to 100 hour workweeks are common. The majority of factories use triple or even quadruple books in order to mask the under payment or

non-payment of legally mandated overtime premiums, which range from 1½ to 3 times the base wage depending on the day.

In some instances it has taken even our most experienced teams days of research, and interviews, and analysis to really uncover the true extent of the problem.

Labor laws that are on balance quite robust—for example those requiring overtime premiums, or automatic machine shut-off devices—are in fact not enforced. Harassment and lengthy imprisonment are also common for those who report violations, peacefully demonstrate, or who try to associate freely.

Since 1998, Verité has organized an annual China Suppliers Conference that brings together factory owners and managers with government officials and non-governmental organization specialists with the purpose of exploring issues and solving problems.

Now to the topic for today, codes versus laws in China. While not unique to China by any means, there is a growing debate regarding the value of voluntary initiatives, such as codes of conduct, versus direct legal obligations within both national and international legal frameworks. For the purposes of this discussion, I will not cover this debate in any detail. However, as we are discussing codes of conduct and examples of best practices—with the aim of achieving improved labor rights compliance in China—I would be remiss if I did not at least touch upon the subject.

Direct obligations, i.e., those that are placed upon companies under international law, are certainly weaker than those that are indirect, those placed upon them by governments. Weaker though they may be, there is nonetheless a clear upward trend in their being extended to multinational corporate actors. Movements such as the International Right to Know Campaign, and the increasing use of U.S. courts to seek redress for perceived MNC complicity in overseas human and labor rights violations, for example Unocal and Saipan, to name a few, using the Alien Tort Claims Act, are examples of this trend.

So, for our purposes today, you may wonder why these distinctions between voluntary initiatives and direct obligations under international law are relevant? It is simply because, to quote the excellent report by the International Council on Human Rights Policy, we must go "beyond voluntarism." Codes are squarely in the camp of voluntarism and while they are a useful starting point for improving labor rights compliance, they are simply not enough to right the "imbalance of power" that exists today between multinationals and most governments.

Governments do not have the resources that multinationals do—resources that are in many places, including China, greatly eroded by endemic corruption. Limited resources greatly hinder labor rights enforcement, but they are not the sole issue. I am by no means suggesting that more laws and/or more enforcement are the only answer, but I am saying that rooting both voluntary codes and national laws in a strong international framework creates a ripple effect that will help enforcement in ways that merely increasing the number of labor inspectors cannot.

Violations of human and labor rights thrive in cultures of impunity. Take the example of slavery. While now outlawed in virtually every country of the world, this heinous practice continues, particu-

larly in countries where the rule of law is eroded. Just as corruption of government officials and police officers allows slavery to flourish, so too do labor rights violations.

Strengthening the rule of law in any given country is not a task merely for MNCs and their voluntary initiatives. This is a task for governments. Grounding all efforts in the international legal framework helps to achieve a few important things. It creates a climate that favors compliance by strengthening the effectiveness of voluntary initiatives and it strengthens the work of NGOs and workers' advocates and improves judicial efforts, both domestic and international.

Thus, it is incumbent upon those of us concerned with improving labor rights on the ground in China, as elsewhere, to use multi-layered approaches that draw on past successes. Each approach should also be aligned with a particular "sphere of influence" of the respective stakeholder. Historically, the greatest successes have come from governments working on the most macro-level legislative improvements, government-to-government consultations, technical assistance programs, and the like.

MNCs in turn have had success when they assert their considerable leverage primarily at the supplier/factory level but they should by all means continue to exert pressure on governments. One of the best examples of an MNC working on creative solutions would be the example that Doug Cahn has just spoken about, with the Kong Tai election, but there are others.

The Institute of Contemporary Observation launched an initiative recently, posting posters in factories and also setting up a worker hotline to report violations. There is also another coalition, the China Working Group, that nine corporations have joined.

It is very common to discuss the "sticks" when discussing human and labor rights. But, I find the "carrots" to be of greater interest. The examples cited above share a few things, most notably the inclusion of the workers in the process.

I wanted to close with a quote from Mao Zedong. Speaking of the population of China, he said, "On a blank sheet of paper free from any mark, the freshest and most beautiful pictures can be painted."

The picture for labor rights in China would have to include the following: harmonization of the multiple codes of conduct; a greater degree of responsibility on the part of multinationals for the havoc they wreak with their "just in time" delivery and price pressures; passage, or modification, of implementing legislation required under China's ratification of the International Covenant on Economic, Social, and Cultural Rights [ICESCR]; and finally, a direct contact mission from the ILO.

This would be a very beautiful picture indeed. Thank you.

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

Mr. FOARDE. Thank you very much. Also lots of food for thought and for a subsequent discussion in the Q and A.

I would like to continue now with Auret van Heerden. Auret represents the Fair Labor Association. The FLA is a unique collaborative effort to improve working conditions in factories around the world by working cooperatively with forward-looking companies, NGOs, and universities. The FLA has developed a workplace code

of conduct based on ILO standards, and has created a practical remediation and verification process to achieve these standards.

Auret van Heerden has a long history of labor activism in South Africa and is also an official of the International Labor Organization on loan—if I understand correctly—to FLA. It is a great pleasure to have you today, and thanks for coming.

STATEMENT OF AURET VAN HEERDEN, DIRECTOR OF MONITORING, FAIR LABOR ASSOCIATION, WASHINGTON, DC

Mr. VAN HEERDEN. Thank you. I would like to just start off just setting up what codes of conduct are not.

Codes of conduct are in no way, shape, or form a replacement or a substitute for national labor laws and their enforcement. Codes of conduct can never replace workers' organizations and collective bargaining.

The challenge we face is that, in many countries where FLA participating companies source, you do not have adequate enforcement of labor law. You do not have adequate penetration of trading and organization. You do not have collective bargaining agreements to regulate terms and conditions in the workplace.

The reasons for that are varying and many, and we do not have time to go into them now, but suffice it to say that we are working in a global marketplace which is increasingly unregulated. Right now, I see that trend still going in the wrong direction. This is despite the very noble efforts of the ILO to reinforce national labor administration to build up employer and worker organizations around the world. This is despite the fact that the global marketplace is subject to evermore public scrutiny by the media. Consumers are better informed than ever before.

Yet national level labor administration systems and labor relations systems continue to decline. There are a few rays of hope out there. Indonesia, for example, has undertaken major labor law reforms in recent years. But, those efforts are really only in their infancy, and in some cases, are throwing up new problems that we have to deal with. In Indonesia, for example, we have a massive proliferation of trade unions, creating chaos and confusion.

In China, we have a central government which is very aware of these challenges. In my previous work with the ILO, the Chinese Government explicitly asked the ILO to come in and help it reform its labor relations system in its special economic and export processing zones. They are also cognizant of the fact that they don't control the provinces and the cities. These are tremendous barriers in the application of these labor laws, and in many cases, non-application.

Mil has already made reference to the factor of corruption which undermines the consistent application of labor law in China.

The second challenge that the FLA participating companies face is that of global competition, because what you have in the global market place right now is a consistent demand by consumers for a cheaper product. Weave tailors shave the margin. Those pressures go all the way down supply chain. Everybody wants to reduce the price being paid for the article, but also to have shorter and shorter lead times, and quicker and quicker delivery.

Those price pressures accumulate on the suppliers at the bottom of the chain. Since many of them don't have the management capacity or the management tools to deal with them, they end up working harder rather than smarter. So, again, global competition in some ways is pushing factories into non-compliance.

FLA participating companies, together with the other stakeholders in the FLA, have come together and have tried to address this through codes of conduct and internal and external monitoring. I want to stress that it is not the monitoring itself which is designed to achieve the compliance. Independent monitoring or even the internal monitoring is simply a measurement of the progress that the brands have made in their internal development work in those factories.

Brand name companies are going back to those factories weekly, monthly, many times a year to not just identify the compliance issues in those factories, but to actively work with them on remediation programs. The monitoring conducted by the FLA is an assessment of the efficacy of those programs.

Doug Cahn spelled out the pioneering initiative they have in China to elect worker representatives. That is one example of how brand name companies can respond to a designated problem, namely freedom of association in China. Their monitoring is not to repeat that there is a problem with freedom of association, rather it is to help a company like Reebok assess where it has come in its remediation program and to help it improve, refine, or focus those remediation programs.

This is where I think that the FLA program becomes interesting, in two senses. One is that the brands are inside China. Unlike many other commentators and critics who are by definition outside, the brands are present inside China. They have access like you wouldn't believe to thousands of factories in China.

The second point is that they are remediating. They are concretely, practically, in a nuts-and-bolts fashion bringing about changes.

However, these efforts, as concerted as they, are face the same limitation that every labor administration system in the world faces—even here in the United States—you never have enough labor inspectors, or enough labor officials to go to enough factories on a frequent enough basis to bring about compliance. Compliance has to be something generated internally, organically within those workplaces. So, we need to somehow use this effort to kick-start, to catalyze processes in those factories that will allow them to regulate the terms and conditions.

The ILO in its 90 years of existence has always promoted worker organization, consultation, negotiation, and dispute resolution as a most effective way of doing that. I think that it is, to date, still the best option that we have. Again, the KTS example is an excellent one of how that can be progressively introduced in a context like China.

There are a number of other initiatives which we can work in parallel with, or in concert with in China—young labor lawyers are taking up cases of industrial accidents, seeking compensation under Chinese labor law—a very comprehensive law—seeking compensation for workers who are injured; young labor activists doing

workers' education so that they can elect their own representatives; groups working with young women workers, and many of the problems of discrimination and abuse that they face, particularly young migrants who come from far away.

There are initiatives within the group of Chinese employers who are trying to grapple with these international standards that they are now being held up to, and who are trying to develop their own policies, and their own management tools to be able to meet these standards. It is quite a shock to go to a Chinese footwear factory, and one of the first offices you come to has a sign on the door saying "Human Rights Officer." Now, that is clearly under pressure from brand name companies and codes of conduct, but it is a response. And it is a response which can be encouraged, can be guided, and which through capacity-building activities can start to contribute to that indigenous, organic process that we need to catalyze positive action within these factories.

The ILO clearly has a vital role to play in this as well, both at the central level, in helping the Chinese Government continue its labor law reform program, but also more importantly in the capacity building sphere. If you take a problem like hours of work, which Mil referred to, we went in initially and insisted on the maximum of a 60-hour work week. Factories simply could not cope with that. Competitive pressures required a lot more than that. Workers wanted to work a lot more than that in order to maximize their earnings.

So, as with any enforcement system, if you place the bar too high, people are obliged to evade it. So, they show us false books. If you then try to deal with that problem structurally, you realize that, in effect, you need to re-engineer those factories for them to have any hope of observing the 60-hour work week. That is still a long way short of Chinese labor law.

At the moment, there are very few organizations and institutions that can go in and do that kind of work in China. Brand name companies can certainly do it factory by factory, but it would add a lot of horsepower to that effort if the ILO could mount a far larger program with its partners in China. Teach factories how to schedule or how to re-engineer their production process. Teach them how to organize shifts, which a lot of them are not doing properly at the moment.

We can then monitor that process to ensure that it is making progress, and to ensure that those abuses are gradually being reduced. That combination of initiatives, the ILO working together with its partners, the Chinese Government, employers, trade unions, brand name companies, and monitoring organizations like the FLA, all of that requires resources which are very scarce at the moment. American brand name companies are going to China and investing in companies that are unknown. It is a unique situation. Brand name companies are helping workers form worker organizations. It is a unique situation, but then China is a unique environment in which to be working. So, I think for the time being it is justified, and is the most appropriate response we have at the moment. Thank you.

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

Mr. FOARDE. Thank you very much, Auret. Again, lots of meat for subsequent conversation.

Let us go on. Let me recognize Dr. Ruth Rosenbaum, founder and executive director for the Center for Reflection, Education, and Action [CREA]. The center is located in Hartford, CT. CREA is a social, economic, research, and education organization, unique in that it starts its analyses of social and economic systems from the perspective of their affect on the lives of the persons made poor or kept poor.

In addition to educational programs, CREA offers a multi-faceted service for individuals, organizational investors, and investment managers who are committed to socially responsible investment. Ruth is associate professor for research at the Labor Education Center at the University of Connecticut. She is also the coordinator of the New England Coalition for Responsible Investment, and has served as co-chair of the Global Corporate Accountability Issue Group at the Inter-Faith Center on Corporate Responsibility since its creation.

Ruth is the creator of the Purchasing Power Index [PPI], a transcultural measurement of the purchasing power of wages, used to determine what constitutes a sustainable living wage. Ruth, thanks very much for coming. I appreciate you sharing your expertise with us.

STATEMENT OF RUTH ROSENBAUM, EXECUTIVE DIRECTOR, CENTER FOR REFLECTION, EDUCATION, AND ACTION, HARTFORD, CT

Ms. ROSENBAUM. Thank you. I asked either to be first or last because the way we look at things at CREA really has to do with looking at things on a much more systemic basis. That is the way I would like to pose my comments this afternoon.

When we look at codes of conduct in China, we see their functioning as parallel to what has happened in every other country in which we have been involved. My comments are going to be based on that cumulative knowledge, and then we can specifically apply it to China.

The first thing I would say is there is a major question that needs to be asked, and that is why a company is in China in the first place? If the work situations are so bad, if the labor situations are so bad, if they violate, from the beginning, codes of conduct that corporations have, why are the companies there?

We need to be honest and acknowledge that underneath all the other issues affecting the decision of companies to be in China, there is the essential issue of cost of production. Companies are in China because the cost of production is cheaper.

When we examine the effect of this low cost of production, we see several related issues: First, the factory seeks to pay the lowest wages possible.

Second, the brands placing the orders seek an ever shortening turn around time, that is, the time between placing the orders and receiving the orders.

Third, in order to fill orders in the shortened turn around time, extended overtime becomes the norm within factories. And workers, seeking higher income, are often willing to work the extended

overtime simply because they need more income than their basic wages can provide.

To this gets added the "just in time" production system in which companies keep inventory to the lowest limit possible and then place orders when they need an item, again demanding the shortest turn around time possible.

There is this global reach for what we have said is a race toward the bottom in terms of wages. It is almost impossible to talk about raising wages above minimum wage. The corporations will say to us, "Well, we do what is legal." And we reply, "Well, we would expect that you would do what is legal." But that legal requirement is a floor, and not a ceiling.

We have asked workers in many, many countries, if you were paid more, would you want all of the overtime, and they say no because they have lives. They have lives with their friends. They have lives with their families. They have lives with something outside of work.

And so, again, the question to the corporations is, why are they in China in the first place?

The second issue is where does the power exist to bring about change? It should exist in the governments. If you read the paper that I presented for the meeting today, we talk about government extensively. Somehow, we have created a system where brand names have produced codes of conduct, and from that we are asking them to come up with systems of compliance.

The purpose of the code of conduct should not be just keeping the brand name out of trouble. For many corporations having a code of conduct and doing some kind of minimal compliance is simply to get the news media off of their back, and to get shareholders off of their back.

The purpose of the code of conduct realistically should be bringing about change for workers. However, that purpose is so low on the ladder of priorities for many corporations, that it doesn't even seem to exist. We have seen codes take the place of laws, and we believe that is absolutely critical that we take a look at this.

Somehow the production system in most industries has concluded that corporations bear the ultimate responsibility for the conditions under which their products are manufactured or assembled. We then expect them to become the creators of the standards for the factories and the enforcers of those standards. In other words, we have handed over to corporations the role of society and the role of government: making and enforcing standards of laws to the corporations we are holding accountable. It is a shift in power. It is a shift in responsibility. It is a shift in accountability. We believe that that is really dangerous for society as a whole.

If you go into most factories, you will see a multiplicity of codes. Some managers will say to us, which code are we supposed to be obeying? The highest? The lowest? Depending upon who is going to be inspecting us this week, or this month? Are standards supposed to change from day to day, or week to week? Who decides? It is an absolutely bizarre system.

Out of this we have created all kinds of systems of certification of factories, monitoring, inspecting, etc. The problem with all of that, even though some people are doing heroic work in trying to

improve the conditions in the factories, is that the power comes from outside the factory and outside the country. The money comes from outside the country, and outside the factory. When it is all over, the power and the money leave the factory, and leave the country.

So, we are not transferring power to the local community. We are not transferring power to the factory to really bring about the change that is expected.

For us at CREA, there are three central issues that we use to evaluate whether or not a code of conduct and whatever enforcing systems are in place, whether that factory or code is succeeding. The first measurement for us is absolutely basic, what has changed for the workers? Although it is a simple question, this should be the reason why we are looking at codes. It is the situation in the factory that we are trying to address. And we believe that it is absolutely critical that we see these codes and the situations they are trying to address not as an abstract thing, unchanged over time, but rather as the day-to-day reality that workers have to work within every single day of their lives around the world.

The second measurement that we use is how is the power of enforcement transferred back to civil society and other components of society in China and in other countries? If all the inspecting, certifying, all the monitoring, and all of the enforcing continues to come from outside the country, it will continue to be a system of putting out fires, and of presuming that if a small percentage of factories are OK, then they all are. There are simply not enough monitors and certifiers in the world to take care of all the factories that have to be monitored and certified.

And then the third measurement we have is: where does the money and the power attached to the money accumulate as a result of all the inspecting, and certifying, and monitoring? How do we have a transfer to the local communities so that they can govern themselves? We do that through education of workers. We do that through the education and the sharing of power with civil society. We also have to do it with the money that is being spent on all of this.

If you talk to monitoring groups or groups that are trying to do worker education around the world, one of the biggest problems they have is where do they get the funding to survive? I would suggest to you that the majority of that funding is being absorbed by organizations in the United States. We need to be honest about that. We need to learn to share this out.

Looking at the specifics of China today, we would like to suggest the following: First, that there is a need to start with recognition of the inherent dignity of each human being, so that workers are seen not only in terms of what they are able to produce.

Second, the need to look at ways of strengthening civil society in China. CREA presently is collaborating with the Institute for Contemporary Observation [ICO], and transferring our knowledge and our ability in terms of measuring a sustainable living wage to them so that they will be able to do that in their community.

Third, we believe that the CECC, corporations, any group working on the issue, again, needs take a look at why companies are

moving to China. What is it that they gain because of the labor situation there as compared to other countries?

Fourth, there needs to be a greater analysis of Chinese law related to labor, including occupational health and safety, wages, overtime, freedom of association and right the to organize, and systematic ways of addressing these. Again, coupled with the ILO standards that we have heard spoken about.

Fifth, we need to figure out a way to make it beneficial for factory managers to adhere to the standards. We have got to move from it being a punitive system to being a reward system.

Sixth, how do we provide support for collaborative efforts between corporations to enhance their power to bring about change as well as to create an equal standard? Now we see that happening in the apparel industry, and somewhat in the footwear industry. But we have the automotive industry, the electronics industry—there is not an industry out there to which this is not applicable. Somehow, they are not even on the radar screen in terms of the work that we are all doing.

On the last level, how do we get investors, the investment community including Wall Street and the other markets around the world to recognize that raising working conditions is a beneficial thing even if the costs of production are higher? How do we communicate that the continual drive to lowest cost of production contributes to the violation of the standards of performance and behavior that we are trying to raise in these codes?

I don't want anybody to think that we believe that any of this is simple. If there is anything that I have learned in doing this work, and it is over a decade that I have been involved in it, it takes at least 10 times longer to do almost anything than the time that—see everybody is smiling up here—at least 10 times, maybe 20 times longer. But I really believe that unless we continue at it, we are on a downward spiral from which there will be no return.

I think we have to salute and support the efforts of those who seek to promote, enforce, and report on codes of conduct and compliance. Even as we say there needs to be a better system for bringing about change. None of these efforts should be taken lightly. It is hard work. It is important work, and hopefully, we will be able to learn from the experiences of all of us who have worked and continue to work on these issues that these codes of conduct seek to address, and then to devise the methods for systemic change that remain before us. Thank you.

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

Mr. FOARDE. Ruth, thank you very much.

And thanks to all four of our panelists. Let's take a very brief breather and let me announce that our next staff-led issues roundtable will be here in this room, that is 2255 Rayburn, on Monday, May 12 at 2:30 p.m. Our topic will be public health in China. We will be looking at SARS, the transparency issues, and other issues that are quite current. So, I hope you will join us.

If you have not signed up yet for our roundtable and hearings announcement list on our Web site, we would like you to do that. Please visit us at *www.cecc.gov*.

I would like to go now to our question and answer session, and normally it is the prerogative of he who is chairing to ask the first questions. But I think today I am going to defer to my friend and colleague Bob Shepard from the Department of Labor to get us started, and then we will go around, and I will get a chance a bit later. Bob, please go ahead and ask a question or two. We are going to give you 5 minutes to ask a question and hear the answer, and then we are going to give everybody a chance to do as many rounds as we can before our time is up.

Mr. SHEPARD. Thank you, John. I would like to thank the members of the panel for very informative, very useful papers and presentations.

In describing the work that is going on, there is a sense that we are seeing what might generally be called the demonstration projects, and that we are hoping these projects will in some way spur the Government of China into some sort of action. I would like to ask if you could discuss or describe what the attitude to date of the Chinese Government has been with regard to these projects, for example, have there been barriers to entry to your groups' coming in? Have they required you to register? Has there been oversight of the activities of the monitors? Has there been feedback? Has there been pressure against you, or encouragement of your activities?

For example, I was curious. Mr. Cahn noted that you are pushing the principle of freedom of association within the workplace, whereas this is obviously not a principle that has received high regard nationally in China, and Ms. Niepold discussed how they had to dig very hard to get a lot of the data. This suggests some type of a conflict, and perhaps you could describe the relationship you have had with the Chinese Government or the authorities? We may have different answers from the provincial and the national levels.

Mr. CAHN. We have received cooperation and to a certain extent, collaboration from local and provincial authorities as we engaged in the two election experiments that have occurred to date. All parties at the local and provincial level were aware of what we were doing. These are large footwear factories where Reebok buys 100 percent of the capacity of those factories. We undertook these experiments in these two factories because we felt we had strong relationships with both management and workers in these facilities and it would be the ripest environment in which for us to attempt this experiment. As I say, we were fully open with the local authorities. We consulted through the process.

In the case of the first factory election, at the Kong Tai factory, the local ACFTU officials were aware and not integrally involved in the process. By contrast, the ACFTU officials at the second factory were much more involved in every aspect of the election process. So, slightly different levels of interaction, but one where there was a general sense of cooperation. People had different points of view from time to time, and there were lots of meetings, and more meetings, and more meetings, but at the end, there was a consensus on how the process should go forward.

We were very complimentary of that, and hoped that as a result that we would have the ability to experiment with this in other fac-

tories. We certainly are aware of the fact that others in government circles are knowledgeable about these experiments.

Ms. NIEPOLD. I would say also that Verité's experience in China, as I said was our first country—China was actually our first country because our executive director and founder was actually working in China as a sourcing agent when she had the wonderful idea to found Verité based on her experience in factories.

I should say that in the beginning, it is clear that—when we say "government," similar to what Doug has said, it means much more regional, municipal, and local level officials. I am not referring to national officials when I say "government," and by and large we were clearly not on their radar screen, but 3 years later when we had our first China supplier's conference, we were. You said collaboration; we were actually being spied on, and by the second year, we actually were somewhat more welcomed and had government officials present as panelists. So, that was quite a shift.

You asked the question of registration, and we are all clear that trade unions are not really a factor in China, but we should also be clear that NGOs really aren't either. You said it quite well. We have not been required to register. It is something, obviously, that has crossed our mind, but for the purposes of right now, we are not a registered NGO in China, because we simply cannot be one. But we have not been hindered, I should say, at all in our work. Our work has been very respectful. It is conducted only by Chinese in China. There are no Americans in China running these programs, and as such, I think it has been culturally and locally relevant and appropriate and has been quite successful.

The one last thing I would say is the government officials have run the gambit from very clear that they were bribed, to hiding the fact that they were bribed, to equally clear that they were unaware of what the laws were that they were supposed to enforce, to very clear that they were doing a very good job and that they were enforcing the laws. That level of frankness allowed us to actually have a great deal of success. And some of them have actually said that we were helping them do their jobs by informing them of what was really going on in factories. Thanks.

Mr. FOARDE. Even though we have run out of Bob's time allotment, I think this is such an important part of the question that if either of you or both of you had a comment on that question, please go ahead.

Ms. ROSENBAUM. Just one quick thing. I know that most of the time that we have been in the factory, it has really been because a corporation has facilitated entrance into the factory. I do know that there is a project that we are working on that involves several corporations, and it will be a collaborative project between the corporations. They are seriously concerned about whether the Chinese Government will permit it. So, since they are the ones who are doing the actual dialog with them, that just says to me there is some concern both on the local level and on higher levels.

Mr. VAN HEERDEN. I would just add that we have maintained contact with the Chinese Government at the central level and also in the provinces, and with the ACFTU and the China Employers Confederation [CEC]. All three have expressed tremendous interest in this work because they are well aware of the problem and they

would like to participate. They do want to have a plan for improving working conditions in China.

I'll just repeat one quote from a Chinese Government official who said to me that he was really worried that the poor conditions prevailing in factories and the labor relations problems arising from them could eclipse China's labor cost advantages.

Mr. FOARDE. Very interesting. Let's go on, and I should have said when I recognized Bob Shepard that he represents Deputy Secretary of Labor D. Cameron Findlay, one of our commissioners.

And now I recognize Erin Mewhirter from the Department of Commerce, who represents Under Secretary of Commerce Grant Aldonas, another one of the members of our Commission.

Ms. MEWHIRTER. Thank you. Code of conduct monitoring is not new. Has there been any quantifiable improvement in overall working conditions in China during the 10 years that auditing and corrective measures have been ongoing? And how should progress be measured?

Mr. FOARDE. Anybody that wants to step up to it, or all of you if you would like to.

Ms. MEWHIRTER. I apologize. Yes, anyone.

Mr. CAHN. I suppose to give a full answer to that question would take the next day and a half.

Ms. MEWHIRTER. OK.

Mr. CAHN. I know in our own work that there have been considerable improvement in factory workplace conditions over the last decade that are demonstrable and they are meaningful in terms of workers. Factories today—in particular, I am thinking of the large athletic footwear factories that make a great many Reebok shoes—these factories are healthier and safer. There are fewer volatile organic chemicals in the air. There are better communication systems between workers and management. There are fewer instances of harassment and abuse. Nonetheless, there are as there are in factories anywhere, many things that can be improved, and this is a continuous improvement model.

So, we have dozens of programs at play in Chinese factories today to continue the model of improvement that we have been able to put in place in the past decade. As to how to measure? It is an extraordinarily difficult question, because we are talking about a continuous improvement model, not an absolute model. Some things are easier to measure than others, and on those things were measurement is possible, it is possible to look at international norms, there are many standards that exist in the world. When we measure organic solvents and what is too much of a particular chemical, for instance, there are many internationally-recognized models. Both here in this country and in Europe, for instance, when it gets to the issue of discrimination, it becomes much more difficult, and what we are looking for are systems in a factory that can find the problems and solve them quickly so that these problems don't become larger problems or systemic problems that never seem to go away. So, there are certainly ways to do it, and they are difficult.

Ms. NIEPOLD. I would say that—I will take the second half of your question first. Verité does measure and track the degree of improvement very closely, but to answer your question, we—as

Doug has said—there are some things that are very hard to measure. So, our working benchmark is actually not at all scientific. It is the degree to which workers tell us that we have improved their lives.

Now, that is obviously not scientific, and it also is very messy when you get into things like voluntary overtime. When a worker tells you—the point was made earlier by the way the workers will say they have friends, they have lives, and the sad truth is if they are a foreign contract worker, our experience has been that they will say they do want excessive voluntary overtime. So to your point, that is the measurement that we use.

But to the other point, which is have things improved? Our experience is that things do improve in, unfortunately what we would call, the easier places. In other words, we have seen improvements in health and safety. We have seen improvements in posting codes of conduct. We have seen improvements in posting laws. We have seen improvements in toilets and bathrooms, and breaks. But guess what that means? We have seen aggravation in the most serious issues.

In the case of China, the top three issues—and I should also point out the State of California recently hired Verité to do a major undertaking to measure just this, and what we have found in the case of China, which came in last place of 27 emerging markets, was that the top three issues remain the top three issues, and we have seen very little improvement; those top three issues being freedom of association; health and safety; and wages and hours.

Mr. VAN HEERDEN. Our monitoring program has only been going for 1 year, in fact, the Fair Labor Association program. So, it is very early. We are obviously building on the work of a number of our participating companies who have been at this for a lot longer, but it is too early to talk about trends.

What I would support is what the previous speakers have said, and that is that under occupational health and safety and conditions of work areas, it is a lot easier to identify the problems and to remediate them. When we look at areas like freedom of association, discrimination, and harassment and abuse, it is both harder to detect the problems, to measure them, and to remediate them. And it is a process of continual improvement.

The other point I would just make, is the need for a critical mass. The FLA has 13 brand name companies out there doing this. There are some very big buyers who are not at any of the tables right now. With the best will in the world, they end up undermining our efforts, because there is no coordination.

So, if you just take volatile organic compounds that was just mentioned, if the three or four of the biggest importers of footwear from China could get together and come to an agreement on that basic standard and on how to remediate it, we could make a huge impact. So, there really is a need for coordination here.

Ms. ROSENBAUM. Just to add to that quickly, there is a big difference between the right to organize, and the right that is supposed to go with it, the right to engage in collective bargaining. We have the beginnings of the right to organize. We are waiting to see the ability of workers to engage in collective bargaining.

The second piece is that it depends on the industry. The really short answer is that it depends on the industry. The more brand names that you have in the factory, the harder it is to bring about change. In the footwear industry, because many times you have one single brand name in the factory, they have tremendous amount of leverage. In other industries, toys, apparel, etc., where you can have 5, 10, 15, 20 different brand names there in the course of the year, all with different standards, it is very hard to bring about the change.

Mr. FOARDE. Really useful. Thank you. I would like to recognize our friend and colleague, Andrea Yaffe, who represents Senator Carl Levin.

Ms. YAFFE. I have a question. I think this was somewhat touched upon, especially by Ms. Niepold. My question is how has the social climate changed since the passage of permanent normal trade relations [PNTR] and China's accession to the WTO? Has there been more pressure to change and to open up the transparency of their economy—compared to the standards of the rest of the world? I mean in the last 3 years, has there been any improvements?

Mr. CAHN. You know, it is our experience that there has been improvement, but I would say that the driver for that improvement has been the ongoing relationships that we have with those independently owned and operated factories in which we place orders, as opposed to the passage of PNTR or some other external development. Perhaps that helps define for you where that nexus of leverage or power is and our ability to educate a group of people about a different way of thinking about managing people. People, in this case, who make shoes or apparel. But that is certainly where we have had our almost sole focus and where we see the difference, it is based on those sets of relationships and where we are able to get people in a room and began to establish a common shared set of values and expectations over what workplace conditions should be.

Ms. NIEPOLD. I was actually going to echo what Doug said. I wouldn't—it almost feels a little too soon to say what PNTR might have done with regard to such a vast and complex country as China. I think all of the various and myriad facets of free trade, however, would definitely begin to start, I think, changing things a little bit over time, when you look at all the various issues around trade agreements in general, accession to the WTO, things like that, I think all of those are drivers toward a greater degree of transparency and openness.

But, truthfully, I think—it is just an educated guess—I am actually thinking that the greatest degree of change in China has occurred by the enlightened self-interest of managers who have seen the truth is a tired worker doesn't make a good product. They don't make it at a good price. They don't make it on time. They don't make it in a good quality way. Where we have seen sane and rational—as a client of mine calls them—overtime policies, we have seen improvements in all of those bottom line benefits. So, I think that those areas are where we are seeing the most change.

Mr. VAN HEERDEN. I would emphasize two different ways of looking at that. From the center, Chinese Government officials told me things like "We are joining the WTO, the global market, now we

have to play by the global rules." They are turning to organizations like the WTO and saying teach us what those rules are. Trade unionists are saying the same thing to us. They are saying "We are dealing with the market economy now, we need to learn a new way of operating that is appropriate to the conflict of interest that you have in a market economy."

From the ground upward, looking upward, I see workers striking in greater, and greater numbers than ever before over issues like late and non-payment of wages. Or the restructuring of state-owned enterprises and control over their severance pay and benefits.

I see crime emerging for the first time, that I never concerned myself with in China before. I unemployed workers who have been laid off from state-owned enterprises and who can't find jobs elsewhere, manifesting many forms of social dysfunction: drugs, alcohol abuse. I see violence in the streets. I see domestic violence. Signs that society is undergoing a painful transition with a lot more bubbling under the surface and with breakthrough erupting periodically. The Chinese Government is extremely aware of this.

Some Chinese Government officials have said to me that they will not make the mistake that Gorbachev made in the Soviet Union—China will not fall apart like the Soviet Union. That has implications as to the social climate.

Ms. ROSENBAUM. Just one quick thing to add to that. In the past workers migrated, worked in the factories for a number of years, and then went home. There is a major transition that is taking place, or that has taken place, and it is finally being recognized. That is that, they are not going back. They are staying. So, the whole social service dimension that needs to be created as we have larger populations in the areas where the factories are, and a decrease in the number of jobs to handle both the workers that want to stay, and the workers that are going to migrate, this is yet to be dealt with.

Mr. FOARDE. Thank you very much. I now go on and recognize our colleague, Susan O'Sullivan, who represents Assistant Secretary of State Lorne Craner. Do you have a question for the panel?

Ms. O'SULLIVAN. One. I think two of you, Ms. Niepold and Dr. Rosenbaum, talked about the efficacy of a carrot or reward system, at least, ensuring or encouraging compliance with codes and laws. I am wondering what you had in mind, and what you've used that you have found to be effective?

Ms. ROSENBAUM. Well, I am not sure what exactly I have in mind. I do know that in country after country, and certainly in China as much as any place else, fear of punishment doesn't bring about long-term change. It only brings about immediate change. The many levels of hiding of records—I don't even know how we can really know what is happening. There are so many levels of hiding.

So, what that says to me is even though we might be bringing about some small change in these heroic efforts in a few factories, we are not changing the system. It seems to me that the change needs to take place in a number of ways.

First, there has to be a reward system, probably a financial reward because it seems to be the only thing that works. But the

other is that there is a whole component in the production system that we don't pay attention to very much. That is the companies that own the factories. They are just almost invisible in this whole system. Those of us who work in this system know about them, but they don't get publicity. Nobody says to them, "What are you doing." Or demands that they can bring all the factories that they own, or where they place orders, up to standards.

We have to find a way to really involve them—the managers, the owners, the vendors—and also to reward them, and it is probably going to have to be financial. No, the question is, "Who ends up paying for it?" And I think that one of the things we need to make sure of is that it is not the workers on the bottom. In other words, that there is not further squeezing both of the factory managers and of the workers. That somehow bearing the cost of that is really throughout the system. That is going to involve Wall Street, and probably the factory owners. Maybe even before the factory owners. They are the hardest ones to bring to the table.

Ms. NIEPOLD. I think also the example I had in mind was possibly more organic, what I alluded to earlier, which were the gains in productivity and the presentation of all of these myriad labor rights compliance issues in a more positive framework. And it is odd how psychology works. But even when the brands are coming less at the punitive level and more that "We understand that we are partly to blame for this. By the way, how can we work together. Who can we bring in?"

The increasing influence of multi-stakeholder approaches, as Ruth made the point earlier, certainly complement initiatives that are done at the ground level involving community activists in their own communities, CSOs, NGOs, and the like. All of these rewards are not only the nuts and bolts, but there are also some psychological rewards that have gone along way toward shifting this problem.

But the specific things that I was really thinking of were increasing emphasis on the bottom line benefits of doing this. There are—here and there—somebody's presentation here today mentioned it. I think it was yours, Auret—the World Bank study about the gains from freedom of association. There was a very interesting study done last year by Princeton that looked at the Bridgestone/Firestone situation, and noticed that the shoddy tires were made during a period of labor strife.

There are my favorites. I have these five anecdotes that I trot around in my head, but the degree to which we all can begin to really, really crack this nut and say better factories make better products. Can we approach it from that angle and less beating them over the head with a stick kind of approach?

Mr. FOARDE. I would recognize our friend and colleague, Mike Castellano, who works for the other Levin on our Commission, Congressman Sander Levin. Mike.

Mr. CASTELLANO. Thank you, John. I thank you all for being here. I apologize for being late. I was at another engagement.

Actually, I just want to make a quick comment, following up on something that was just said, which is that we have seen, that is, the Ways and Means Democratic trade staff has seen personally, the impact that good labor relations can have on factories. We

visited Cambodia about a year and a half ago, where there is an innovative agreement in the textile sector. And one thing that even factory managers would concede is that the increasing rights and a better organized labor force actually resulted in less friction with workers and less down time. So, I definitely agree that that is borne out in practice, at least in my experience.

I want to ask a question, though. And I apologize that I wasn't here when the first several questions were asked, so if I am repeating something, answer whatever you feel that you haven't said that you want to say. But, if I am not repeating something, please answer the question, which is, I think my boss is of the view that out of all the core labor standards, the right of association is probably the most important one, because it is the one through which the other standards can be realized. If the workers can organize, they can make sure there is no child labor, forced labor, and ensure minimum wages and healthy working conditions, et cetera. I just wonder. The Commission's responsibility is to make recommendations later in the year to the Congress, basically, on what Congress can help do. Assuming that right of association is the most important right, or the key right, what would be the single best way for the U.S. Government, perhaps working through the codes of conduct or your organization to help promote that right in China?

Mr. VAN HEERDEN. If I could kick off on that one. This is what—I started an ILO project to do this in China in the special economic zones to improve labor relations. What we realized was that there were many structures provided for in Chinese labor law which were dormant or ineffectual. For example, every factory has to have a dispute resolution committee. That offered a tremendous vehicle for education, capacity building and point proving, consultation, negotiation, and dispute resolution in the factory.

Many, many factories have ACFTU branches. Now, whatever we think about the ACFTU, like any big organization it is not monolithic. I came across in many factories excellent ACFTU representatives who were really grappling with the problems that they were facing, downsizing for example. Nothing in their Chinese trade union education had prepared them for that. They were desperate for examples from Western countries.

So, I think there are vehicles. There are institutions with which we can work to promote capacity building, new skills, new perspective, new approaches to the labor relations issues that they are facing. The lower down the chain you go, the greater those opportunities become. If you reached out to the Guangdong ACFTU provincial branch now, you would find a group of people who are looking the market economy square in the face and saying, "How in the world do we deal with this?" And who are desperate for input.

So I am a great believer in engagement through capacity building and training. Clearly, there are tradeoffs in that. A question of legitimizing certain institutions. There are questions of compromises which need to be made. But, I think that working under the umbrella of the ILO, we can deal with most of those tradeoffs.

Mr. FOARDE. Anybody else on the panel? Doug, please.

Mr. CAHN. I certainly think that capacity building, as Auret articulates, is absolutely essential if we are to be successful on a broader scale. Companies like Reebok will have the opportunity

and take advantage of that opportunity to exercise their leverage with their business partners, the independently owned and operated factories that make our products. But we need those voices within China that can support the application of the laws to the extent that laws are not being adequately enforced, and that is the case in many instances. And there are many other companies that need to come to the table so that all of us in the business community are operating with a level playing field.

Mr. FOARDE. I would next recognize Susan Roosevelt Weld, who is the general counsel of the Commission. Susan.

Ms. WELD. As a lawyer I am interested in the ways in which the rule of law can help the position of workers in China. In general, help from top down can be useful. Reforming government organizations can be useful at the provincial and local levels, but the greatest help will come from empowering the workers to use the laws that exist, the codes that exist to demand better conditions for themselves.

So, you look at that problem, and you think, "Well, what do they need for that?" They need a practicing bar that is friendly and feels free. I am wondering in what ways can foreign corporations help that development? There might be a series of hotlines and so on. Can you give me your ideas? Perhaps we could put those in recommendations and see if U.S. corporations can be encouraged to furnish that kind of aid to the people at the bottom who want to assert their own rights?

Mr. CAHN. Well, I think there are many things that can be done. I know that there are an increasing number of cases being tried in the Chinese judicial system related to industrial accidents and getting judgments that weren't the case some 5 or 6 years ago. That is a trend that I think will—if it continues—allow the rule of law to be represented in the industrial South, for sure, where many of these cases are occurring. That is one way.

I think in general, you have a system in need of accountability. There must be—there will be many ways to be able to do that, starting with labor rights education and training for workers and for those who relate to the legal system. In other words, the creation of legal aid mechanisms so that workers and others have access to rule of law and to the institutions in China which need to be better accessible to those who are most in need of it. Those are simply lacking unless we or others, today, make certain that they are exercised. But it isn't automatic today.

And there are many efforts in south China—I am sure there are others on the panel who will be able to speak to some of them to create greater awareness of the legal mechanisms that are already available, and those will certainly lead to others.

Ms. NIEPOLD. A perfect segue. I was going to mention as a specific example, Verité has a program that has been around now for 2 years, which is a mobile van. I like to call it the "upward mobility project." We have reached 20,000 workers in the past 2 years. It is a van that is primarily operating in factories where we are invited by factory management, and obviously, at the behest of a lot of the major brands that have leverage there. But, it has also had the wonderful spillover effect of allowing us to reach workers who

work in factories where we are not welcome, whom we happen to find at a mutually convenient location.

Entering the second year, we now have begun a "train the trainers" process with the workers. So that has an exponential benefit. I noted that in your 2002 report, the Commission had the recommendation for further development of legal aid programs. I certainly think that that was an excellent recommendation. It is one that probably needs to be repeated until it is heard.

I know that in Verité's case, the curriculum of our van is done on a needs assessment basis. So, workers tell us they want to learn English. They want to learn sewing. They want to learn whatever, but the first and primary focus is workers rights education. I think that all the programs that draw on that, even if it then means referring them to legal aid societies or others, are very successful programs.

Mr. FOARDE. Do either of our other panelists have a comment on that? No. One of the things that we have done all along in these issues roundtables is to encourage the person who did all of the heavy lifting and organizing to sit up here at the panel table and be able to ask a few questions. And so, I would recognize my friend and colleague Lary Brown, with thanks for doing all of this today and getting these great folks here to share their knowledge with us. Lary.

Mr. BROWN. Thank you. In the 3 minutes remaining to us, I think the one thing that I would like to ask you is this: As companies that are going into China are setting up their supply chains, using factories, if they have good solid economic reasons for being there, and much of the code of conduct compliance has not brought about overall changes, what should they be doing that they are not doing now? How should a compliance program look? Anyone can comment?

Mr. CAHN. How should a compliance program look? Well, you come in with a strong code. That is the start, and something that a vast majority of companies do. They come in with—and there is considerable expertise now—human resources and a set of compliance benchmarks that would allow that company that wished to place orders to be able to communicate what standards were to be in place in that factory. There is a number of places to go to do this now if that capacity doesn't exist within that company placing the orders.

There has been, in the last 7 or 10 years, the growth of, in a sense, a cottage industry of people who are experts who understand how to do this, are knowledgeable about this and who can do this in Hong Kong; in the United States to a lesser extent, but still growing; and in China itself as is the case with Verité. I would make sure those conditions were in place before the first order is placed, which is at the greatest point of leverage. I would put in place systems within the factory for reporting back to the buyer of products on the progress so, that you require the factory to inculcate into its management systems a culture of compliance, rather than have to impose it from top down so to speak.

Then I think you are into a reasonably good start.

Ms. ROSENBAUM. I know of at least one corporation that demands certification of the factories before any orders are placed. It seems

to me, just picking up on what Doug said, that that is one of the most important things that can be done. Brands need to say to factories "before we come, before we put our orders here, you have to raise the standards." It is much, much harder to do it once you are in the factories. If we can get more corporations to do that—if that could become the norm, rather than the remedial afterthought, when you don't want to pull the orders because it is going to effect the workers, I think we would have a better chance of making this work on a broader basis.

Mr. VAN HEERDEN. I would just add to that that I think transparency would aid this process tremendously. I think that the monitoring programs should be transparent so that you can have this dialog with your stakeholders and constituents as to whether what you are doing is the right thing.

Ms. NIEPOLD. Just finally, I also agree greatly in the proactive approach, as opposed to a reactive one. Some of the work we have been doing recently, and we certainly encourage companies anywhere to do this would be sort of a risk mapping exercise within their supply chains. When Verité was founded in 1995, most of the people we ever spoke to in the corporate sector did not know who their suppliers were. And they continue not knowing to this day. In fact, we are quite often sent to factories only to find a factory manager who says, "Oh gee, we would love to get their business." They are not even a supplier.

So, the risk mapping has to be in tandem with knowing who your suppliers are, but more importantly—I don't know who said it earlier, but who owns the factories. These is where I see truly is more cutting edge. Knowing who your suppliers are and disclosing them is one thing, but trying to aggregate leverage within your own supply chain by looking at the ownership structures is another. Because we find very often that going into each of the respective factories is nothing compared to if you had sat us down from the beginning and let us tell you that 25 of them are owned by one guy in Turkey. We could have done a great deal by going to him and funneling those resources into remediation.

My pet peeve right now is spending all of one's money on monitoring, such that there is nothing left for remediation. I encourage brands increasingly to work together. I think the best example was the footwear industry, when they pulled together to find a water-based solvent—glue. Excuse me. I am not an expert, but you know what I mean. The point being that I thought it was an excellent example. I think brands should do more than that.

Mr. FOARDE. Good. Thank you. We are getting very close to the witching hour, but I would like to recognize, first Bob Shepard, and then Mike Castellano for our final questions. Bob.

Mr. SHEPARD. I think the general image I think a lot of people have in the United States is of China being a very difficult country that does not have a particularly good record on human rights, labor rights, but that things have been improving slowly. Mr. van Heerden has submitted a paper which certainly gives the impression that actually this may not be the case. That globally and perhaps within China, despite all the very good efforts on the part of monitors, we could be losing the race, too.

And certainly within China, there is some reason to believe that there are a lot of downward pressures. There is competition within provinces, between the companies. I was struck by—the last time I was in eastern China, there was concern about companies moving west because of high incomes, and because of monitoring and things like that. I was just wondering if maybe some of you could discuss the balance between our efforts and their efforts, even of the Chinese Government to improve things, while at the same time facing some of these downward pressures, how serious they might be?

Mr. VAN HEERDEN. I would draw a—you could take as an illustration of that dilemma two factors. The one is the Olympics in 2008. There is no way China intends to be embarrassed by inviting the world to visit China in 2008. That is a tremendous incentive to make positive change.

At the same time the Multi-Fiber Arrangement is due to expire on January 1, 2005, and a lot of additional apparel business is going to move to China and be sourced from China. So we are going to see factories expanding their operations very, very rapidly. We are going to see a lot of new investors opening up in China. A lot who are not used to doing things according to international standards.

So I think some of the, sort of, "wild west" nature in China is going to expand, and with the move westward, that is only going to be exacerbated. So we are going to see contradictory pressures.

Ms. ROSENBAUM. I think what Auret just said illustrates what I said before, on the question, why do companies go to China in the first place? If things were improving as much as we would like to see them improve based upon all the efforts that everybody is making there, than the move to China that almost all of us expect at the end of the Multi-Fiber Arrangement would not take place. It is just there. I think it says to us the depth of the work that we have ahead of us.

Mr. FOARDE. You want to make a comment? Doug, please.

Mr. CAHN. Yes. Just briefly to say that the vast majority—if I am not mistaken—will be factories that are foreign invested, and in those factories, there really does seem to be a trend toward compliance, as difficult and slow and sometimes zigzag as that trajectory is. I think there may be a distinction worth investigating as to whether there is a difference between the progress, as rough as it is, with foreign-invested companies and those that are not.

Ms. NIEPOLD. Just one last thing, we actually have tracked some of that within our limited framework, and we have found improvements are accelerating in the foreign-invested factories, but the vast "wild west," as you referred to it, truly are the domestic industries that are producing for domestic consumption. And I think that a greater spotlight needs to be shown there. And workers will frequently tell us that as bad as the conditions are in the foreign-owned factories, they do not compare to those that are domestically owned.

Mr. FOARDE. Mike.

Mr. CASTELLANO. Thank you. We are focusing on codes of conduct and I think there is an assumption that is fairly widely shared—it seems to me that because there are pressures, you

know, on capitalism, that a code of conduct effort is best able to be successful when there is a cost to consumer preferences for not having one. There may be a role for the U.S. Government to help increase that cost, require a transparency component, et cetera. Do you have any ideas for how the U.S. Government could help increase the cost and benefits of having a code of conduct program?

Ms. ROSENBAUM. Well, the question is who is supposed to benefit? It seems to me that it is corporations who have the code. I think that what the government can do, probably in a way that nobody else can, is put pressure on the Chinese Government to want compliance throughout the whole system.

As I said in my paper, it is unrealistic to ask corporations, essentially private actors in all of this, to bear the role and the responsibility that is the role of government and society. Now many corporations have stepped up to the plate and are doing that. But, I think one of the reasons why we see so little sustainable compliance is because it is a societal system that we are trying to change.

I don't think any corporation that comes from the outside has the ability to do that. I think they are trying to do the things that they are able to do, but we need a construct coming from a different approach. If China wants companies to do business in China, then it is their responsibility, to make sure that factories in their country are in compliance. Everything else is just trying to do something because that is not happening.

Mr. VAN HEERDEN. I would urge the U.S. Government to devote more resources to education and training in China. The education component of it—that is just understanding these rights, the ILO definition, in the sense of the ILO jurisprudence. More importantly, the ability to use those rights, and that involves skill sets which workers are just not getting at the moment. The ACFTU organizers are not getting it. So, even if we are able to promote freedom of association and collective bargaining, the ability to bargain cannot be taken for granted.

A Western market-based labor relations system is going to take a lot of getting used to in China.

Ms. NIEPOLD. I also—sort of in line with what Ruth was saying, if you look at the 10 core areas that are in every code of conduct and all the ILO conventions—it is sort of a silly habit of looking at what is the root of each of them. And truly what is the root of each of them is wages. Child labor boils down to wages. Are the parents being paid enough to live. Contract labor, which is the area that Verité works the hardest on with foreign, overseas workers boils down to wages as well.

So, if you ask a multinational corporation to go in and work on wages, that is impossible. So, when I look at the most egregious violations that are out there, and they boil down to wages, I am very clear that it really is at the feet of government to work from the top and then to have other efforts, which are sort of a category, pushing rocks up a hill to do something at the lower level. But, nonetheless, in the trenches initiatives are critical, because until there comes some enlightened day where governments do make a difference, in the mean time you are left with workers who really are dying, possibly on a daily basis, and you need to do whatever you can in the interim to work for them.

Mr. CAHN. Companies increasingly do take responsibility for workplace conditions in China and elsewhere around the world where products are made. They have the capacity to accept that responsibility and do much. But, as many of the panelists here have articulated, there are limits to that influence, and our efforts to implement that code of conduct will be infinitely enhanced by a Government which implements its laws, by a civil society that is there to support it, and by other companies who are at the table too exercising their influence as well.

Ms. ROSENBAUM. Could I just add one thing?

Mr. FOARDE. Please, go ahead.

Ms. ROSENBAUM. Only because this has just been sitting in my head the whole time that we were here. And that is, if we want China to do these things, we need to walk the walk ourselves in this country. I couldn't let this go by. We need to take a look at how we are de-constructing the right to organize and engage in collective bargaining in this country. We need to take a look at who is entitled to overtime pay and who is not. We need to take a look at the extension of the work week in this country. We really need to take a look at these things in our own country because that, then will give us the credibility when we are talking to China and other countries.

Thank you.

Mr. FOARDE. And with that word, let me thank each of our four panelists, Doug Cahn, Mil Niepold, Auret van Heerden, and Ruth Rosenbaum. On behalf of Chairman Jim Leach, and Co-chairman Chuck Hagel and all the members of the Congressional-Executive Commission on China.

We will convene again in 2 weeks, on May 12, a 2:30 p.m. to talk about public health in China. Thank you all for coming. I will see you on May 12. Good afternoon.

A P P E N D I X

PREPARED STATEMENTS

PREPARED STATEMENT OF DOUG CAHN

APRIL 28, 2003

INTRODUCTION AND BACKGROUND

For over a decade, Reebok International Ltd. has implemented its code of conduct—the Reebok Human Rights Production Standards—in the independently owned and operated factories that make its products. We do this to:

- ensure that workplace conditions meet internationally recognized standards and local law;
- honor our corporation's commitment to human rights;
- protect our brand reputation; and
- benefit, most importantly, the lives of the 150,000 workers who make our products.

In recent years, an increasing focus of Reebok's monitoring work has been to encourage factory workers to participate in workplace decisions. This focus is borne out of Reebok's experience that code of conduct compliance is enhanced when workers are actively involved in identifying workplace problems and resolving them in dialog with management. In fact, the first and primary finding of Reebok's Peduli Hak (Indonesian for "Caring for Rights") external monitoring experiment, released in 1999, was that "greater worker communication and understanding is at the heart of many solutions to the workplace problems identified."

The current movement of global brands to monitor factories has its limits. Professional monitors can do much good, but they cannot be present in every factory, all the time. This realization has caused us to recognize that a worker representation model—one in which workers participate in decisions that affect their lives—can speed our efforts to ensure that quality workplace conditions are sustained. Among our standards is the provision that Reebok will respect the right of workers to freedom of expression. With worker representation projects, we facilitate the development of this right, even when country laws do not fully accept covenants of the International Labor Organization related to Freedom of Association and Collective Bargaining. In China, as an example, we hope our worker representation projects will give greater meaning to this provision of our code of conduct.

WORKER PARTICIPATION MODEL

It is clear to us that sustainable code compliance is enhanced when strong internal problem-solving mechanisms are in place. Worker participation in problem-solving is a prescription for success. Monitoring as simple "policing" is increasingly not a way forward. Sustainable monitoring, that is, monitoring that emphasizes education and training and worker participation, is a model that holds promise for the future.

With worker participation:

- Workers feel more ownership of and commitment to the factory. Communications are improved. Problems are prevented.
- Management faces less unrest, although it must spend more time on communicating and negotiating with its workforce.
- Reebok sees more efficient production, less monitoring, and higher levels of code compliance that is more sustainably achieved.

In China, our worker participation programs have resulted in elections of worker representatives in two large footwear factories. While elections are not the only way of developing problem-solving mechanisms that include worker participation, they are permissible under the law in China and, as the level of participation in the two elections demonstrate, workers view these elections as acceptable methods to choose representatives that can defend their interests.

THE KONG TAI EXPERIMENT

Our experiment began with the facilitation of the democratic election of worker representatives in the Kong Tai Shoe factory located in Longgang, China in July 2001. This athletic shoe factory is publicly listed on the Hong Kong stock exchange and employs just under 6,000 workers.

KONG TAI: PRE-ELECTION

In the spring of 2001, we examined the existing union charter and Chinese labor law. Working with management and the then- appointed union,[1] an affiliate of the All China Federation of Trade Unions (ACFTU), all parties agreed that the process would be made more credible with a charter amendment to expand the union committee from 19 to 26 members, which allowed for the expansion of the mediation/arbitration committee. In fact, the previous mediation/arbitration committee existed in name only; its members were not active. The Kong Tai experiment did not benefit from the more concise and relevant PRC trade union law that became effective in October, 2001. The old law was of little guidance to potential practitioners of a more democratic, dynamic worker representative system within the factory.

The previous union membership consisted of 19 committee members of whom 18 were office workers or guards (not production line workers). We sought to avoid the preponderance of non-production line workers serving as union leaders by insisting on proportional representation. We wanted to ensure that a new union would truly represent all workers, especially production line workers. Some union members at that time were understandably upset that they would have to compete for future committee seats on a more level playing field.

Communication and outreach was the next important step. The newly amended charter was posted in production areas and common areas, where all workers would have access to them. A list of "frequently asked questions" was circulated as well. Questions we posed, like: "What are the purposes of a trade union?" "Who can be members of the labor union?" and "What are the duties and responsibilities of each of the committees or teams?" These and other questions were answered in detail.

Still, since a majority of workers could not be expected to study these documents on their own, open forums were critically important. Factory management and Reebok explained how newly elected representatives could be different from the previous union where workers were not free to select committee members or determine their working agenda. The forums started to convince workers that the factory management was serious about its intentions to permit a democratic election. Workers asked good questions. As a result of the open forums, all parties agreed to scrap the "one-year of employment requirement" for candidates. Newer workers wanted to join in.

Under the rules, candidates were to be self-nominated. We were pleasantly surprised when we learned that there would be 62 candidates. We thought it was possible that we would have an election that no one was interested in. Happily, we were wrong.

In every factory department, information about the department's candidates was posted, including a photo and general background like the workers' village of origin, length of service at the factory and age, and a short statement explaining why they wanted to be on the union committee. Information about all candidates was posted in one central location in the factory as well.

Campaign speeches were held on one night per election zone or factory department. Workers became more and more interested as the nights progressed.

KONG TAI: THE VOTING PROCESS

Voting was conducted in secret. A sample ballot and voting instructions were posted.

On election day, July 28, 2001, each worker received one colored ballot denoting their election zone (some election zones consisted of more than one production area—office workers, guards and maintenance staff, for instance, were all lumped together). Stitching, the largest production area was large enough that it was split into two zones. Each color represented a different voting zone.

On the day of the election, there were 4,658 workers in the factory; 1,130 were on leave (15 days off with base pay due to low orders); 3,409 ballots were issued; 119 chose not to vote. There were 102 spoiled ballots and 17 ballots were not returned.

During the election, 26 workers—16 women and 10 men—were elected to the committee out of 62 worker candidates. Fifteen were line workers, 7 were line leaders or supervisors, 4 were office staff. Of the 6 former executive committee members who ran, 4 were re-elected.

[1] The term "union" is used in China to describe factory level affiliates of the All China Federation of Trade Unions, a Chinese government institution. It is not possible at present for unions independent of the ACFTU to operate legally in China.

KONG TAI: POST ELECTION EDUCATION AND TRAINING

Training was and continues to be an essential post election priority for committee members. The local ACFTU told us that they did not have the resources to provide training. We then contacted two Hong Kong-based non-governmental organizations who agreed to conduct training. Training began with 6 half-day sessions in October and November 2001.

Original curriculum of the training included discussions on what is a Trade Union, the functions of Trade Union committee, strategies for reaching consensus, internal communication and organizing, how to manage complaints, event organizing and Trade Union administration.

This initial training was followed by several visits from outside groups, such as a delegation from the Swedish Trade Union Confederation. These contacts helped the workers at Kong Tai understand the larger context of their work.

The next training phase was an offsite retreat of the elected representatives over a long weekend in January, 2002 that focused on team building, communication amongst committee members, and self-evaluation. The offsite training was again conducted by the Hong Kong CIC and the LESN.

Today, the trainers are trying to work with the workforce at large to increase the understanding about what they can expect of their elected representatives.

THE FU LUH EXPERIMENT

A second election was held in a Taiwanese-invested factory in October 2002. The 12,000 workers at the Fu Luh Sports Shoes factory in Fuzhou, China voted for 192 candidates in seven election zones. Although the Fu Luh Sports Shoe factory had a union previously, there was no charter—nothing written down about the purpose or the structure of the union. They had to start from scratch.

FU LUH: PRE-ELECTION

We began by bringing Fu Luh leadership to the Kong Tai factory to view first hand the process and the outcome of the election that had been held there a year earlier. Representatives were introduced to the Kong Tai charter during their visit and subsequently relied heavily on it for the development of their own charter document.

In addition, in between the date of the Kong Tai election and the start of plans for an election at Fu Luh, the Chinese government ratified a new trade union law (in October 2001) eliminating the confusing and often irrelevant language for today's modern business environment. The law clearly defined the roles and responsibilities of unions. We found it helpful in our work at Fu Luh.

At the Kong Tai factory, local ACFTU officials were aware of the election and supportive of it but did not get involved in the details of the process. At the Fu Luh factory, local union officials were actively involved from the first conversations and remained involved throughout. They had different ideas from us on some issues such as the value of proportional representation and campaign speeches. They also pushed for the creation of a broader Congress in addition to the smaller union Committee to increase the number of workers who could be directly involved in the union's activities.

The union charter that was adopted for the Fu Luh factory was similar to the charter at Kong Tai. It allows for the recall of union members in the event, for instance, of mismanagement and the filling of posts of committee members who leave the factory. Workers were given the opportunity to self-nominate as was the case at Kong Tai. The principle of proportional representation was followed.

Open forums preceded the nomination process and were meant to inform workers about the elections, explain how this was different from the past, explain the purpose of the trade union and encourage workers' involvement.

Fu Luh has only one small dorm that houses a few of the factory's workforce. Most workers live offsite in rented rooms. To ensure that workers would attend the open forums, workers were required to attend and were compensated for their time. The forums lasted approximately an hour and a half.

The speeches were quite fun—workers laughed and enjoyed themselves (but also mercilessly ribbed people who were nervous or who lost their place in their speeches).

Workers only attended the speeches of candidates for their particular production room or election zone.

FU LUH: THE VOTING PROCESS

The voting was by secret ballot and the vote counting was conducted in a fully transparent manner.

A week following the election for the Committee members, the Chair and Vice Chair were elected from among them. Speeches were again given by all the candidates.

FU LUH: POST ELECTION EDUCATION AND TRAINING

The local ACFTU will provide an initial 2-day training program to elected representatives in mid-November, 2002. After this training, Reebok staff will meet with the new union members to assess their needs and look for additional ways to help meet them. Reebok remains open to new and innovative ways to assist in the education and training process of newly elected worker representatives.

DISCUSSION AND CONCLUSION

The elections at Kong Tai and Fu Luh shoe factories are initial efforts to enhance the voice of workers in China in a way that will aid code compliance and lead, we hope, to a more sustainable model for improving workplace conditions.

These elections were fully consistent with Chinese law and were supported by local ACFTU officials. We were pleased will the overall level of support we observed and we commend all parties, including ACFTU officials, for their forbearance and, in many cases, active support.

The guiding principles in the election process were transparency, proportional representation and "one person, one vote:"

- self nomination to stand as a candidate;
- transparency in the process (holding open forums so all workers would understand it, posting Frequently Asked Questions in the factory to answer concerns, and transparency in the vote-counting) to instill confidence;
- proportional representation to make sure that each part of the factory was represented on the union committee;
- one person, one vote by secret ballot. (In neither factory had all workers voted before, or voted in a secret manner.)

To label the experiments as "successes" or "failures" is to try to put them in boxes where they don't necessarily fit. We view them as steps in the right direction: toward compliance that is more sustainable and that involves workers in the process.

We are pleased that all parties have cooperated to permit these elections to take place in the credible, transparent manner in which they were conducted. At Kong Tai, the union is still growing and developing. They have spent much of their time during the last year learning how to work together and how to be a union. They have routinely assisted workers to get approvals to take leave, they have fought for proper medical compensation for sick workers.

We hope these elections will demonstrate that an increase in worker participation can be achieved in an environment where fully independent unions do not exist. Our experience is that there is room for movement and progress within the confines of what unions are permitted to do today in China. It is our hope that through this example, other multinational brands and other factories will experiment with these or other ways to establish sustainable methods of achieving code compliance. In the end, we better implement our standards when we are willing to challenge ourselves, our factory partners and workers to find new, more sustainable ways to achieve internationally recognized workplace norms.

PREPARED STATEMENT OF MIL NIEPOLD

APRIL 28, 2003

I would first like to thank the Congressional Executive Commission on China for inviting Verité's testimony today.

VERITÉ'S PERSPECTIVE

"China is an attractive piece of meat coveted by all . . . but very tough, and for years no one has been able to bite into it." Chinese Premier Zhou Enlai, 1973

Thirty years later, the population is not the only part that has changed—multinational corporations, global trading organizations like the WTO and even a few IGOs and NGOs have clearly "taken a bite." It is Verité's core belief, and one shared by many advocates, that respect for labor and human rights—the very same ones that are covered by this Commission's mandate and that China has quite often signed and/or ratified—comes only when workers themselves are an integral part of the process of enforcing these rights. Later, when I address examples of initia-

tives that have worked or might potentially work, the direct involvement of workers will be the common thread in each case.

WHO IS VERITÉ?

Over the past 8 years Verité has interviewed approximately 18,000 factory workers for the purpose of identifying the issues workers face in a newly globalized economy. Verité's mission is to ensure that people worldwide work under fair, safe and legal conditions. Our pioneering approach brings together multi-national corporations, trade unions, governments, non-governmental organizations (NGOs) and workers—in over 65 countries—for the purpose of identifying solutions to some of the most intractable labor rights violations.

Verité performs social audits (to date, over 1,000 factory evaluations conducted) to analyze workplace compliance with local and international labor, health, safety and environmental laws and standards. Unique as a non-profit independent monitoring and research organization, Verité, unlike private sector companies, goes beyond monitoring to provide factories with specific recommendations to remedy problems and training for factory management and manufacturers. To address the needs of workers, Verité conducts education programs to teach workers their legal rights and entitlements in the workplace as well as "life skills" (literacy, health education, math, English, and computer skills).

VERITÉ IN CHINA

Verité has operated in China—our first and largest area of operation—extensively since 1995. We have conducted nearly 200 factory audits in China over the past 8 years, including 112 in the past 2 years.

Our findings, and those of others, are disturbing:

1. Egregious health and safety violations
   a. China's own Work Safety administration reported 140,000 deaths in 2002 (an increase of approximately 30 percent over 2001)
   b. Chinese media sources reported 250,000 injuries and more than 30,000 deaths in industrial accidents in the first quarter of this year alone
   c. The ILO ranks China as the world "leader" in industrial accidents
   d. China estimates 25 million workers are exposed to toxins annually (with tens of thousands incapacitated annually)
   e. The Hong Kong Christian Industrial Committee (HKCIC) reported recently that, after 10 years of research on the toy industry (China produces 70 percent of the world's toys) that a full 55—75 percent are still classified as poor (80–100 hour work weeks, poor health and safety, not paying minimum wages)
2. Majority of factories use triple or even quadruple books to mask under payment or non-payment of legally mandated overtime premiums (which range from 1.5 to 3 times the base wage depending on the day of the week and whether or not it is a holiday). In some instances it has taken even our most experienced teams days of research, interviews and analysis to uncover the true extent of the problem.
3. Limited enforcement of labor laws that are on balance quite robust (for example those requiring overtime premiums, automatic machine shut-off safety devices, compensation for injury.
4. Harassment and lengthy imprisonment for those who report violations, peacefully demonstrate and or who try to associate freely.

Since 1998 Verité has organized an annual China Suppliers Conference that brings together factory owners and managers with governmental officials and non-governmental organization specialists to explore issues and solve problems related to labor compliance in China. (Last year's conference in Xiamen focused on three aspects of labor compliance: the changing role of unions in Chinese factories; health and safety compliance; and the comprehensive work-hour calculation system and its impact on overtime. Presenters included local government and union officials. This year's conference will provide Verité the opportunity to release a research report on the prevalence of excessive overtime and its impact on worker health and safety).

Verité's Worker Education Program, sponsored by Timberland, Eileen Fisher and New Balance, among others, operates in a mobile van which visits southern Chinese factories to provide information on workers' rights, labor law and health information (recently including updates on HIV, Hepatitis, and SARS); the Program has reached 18,980 workers since its founding in 2001.

Verité has facilitated direct communication between factory managers and local labor officials in 40 factories since 2001 by inviting labor officials to accompany auditors to the factories for joint training with factory managers on proper wage-calculation, recordkeeping, and employment-contract procedures.

CODES VS. LAWS

While not unique to China by any means, there is a growing debate regarding the value of voluntary initiatives (such as Codes of Conduct) versus direct legal obligations within both national and international legal frameworks. For the purposes of this discussion, I will not cover this debate in any detail. However, as we are discussing Codes of Conduct and examples of best practices—with the aim of achieving improved labor rights compliance in China—I would be remiss if I did not at least touch on this important subject.

Direct obligations—i.e. those placed upon companies through international law—are weaker than those that are indirect (those placed upon them by governments who themselves are fulfilling their obligations under international conventions, etc.). Weaker though they may be, there is nonetheless a clear upward trend in their being extended to corporate (MNC) actors. Movements such as the International Right to Know (IRTK) campaign (whose recent report includes various case studies, including one on McDonald's and toys made in China) and the increasing use of U.S. Courtrooms to seek redress for perceived MNC complicity in overseas human and labor rights abuses (for example Unocal, Saipan, and Shell, lawsuits, among others) using the Alien Tort Claims Act (ATCA) are examples of this trend.

So, for our purposes today, you may wonder why these distinctions between voluntary initiatives and direct obligations under international law are relevant? It is simply because, to quote the excellent report by the International Council on Human Rights Policy, we must go "beyond voluntarism." Codes are squarely in the camp of voluntarism and while they are a useful starting point for improving labor rights compliance, they alone are simply not enough to right the "imbalance of power" that exists today between major MNCs and most governments. Governments do not have the resources that MNCs do—resources that are in many places including China—greatly eroded by endemic corruption. Limited resources greatly hinder labor rights enforcement, but they are not the sole issue. I am by no means suggesting that more laws and/or more enforcement are the only answer, but I am saying that rooting both voluntary codes and national laws in a strong international legal framework creates a ripple effect that will help enforcement in ways that merely increasing the number of labor inspectors cannot.

Violations of human and labor rights thrive in cultures of impunity. Take the example of slavery. While now outlawed in virtually every country of the world, this heinous practice continues particularly in countries where the rule of law is eroded. Just as corruption of government officials and police officers allows slavery to flourish—so to do labor rights violations. Strengthening the rule of law in any given country is not a task merely for MNCs and their voluntary initiatives. This is a task for governments. Grounding all efforts in the international legal framework helps to achieve a few important things. It creates a climate that favors compliance by strengthening the effectiveness of voluntary initiatives and national legislation, it strengthens the work of NGO and workers' advocates and it improves judicial efforts, both domestic and international.

Thus, it is incumbent upon those concerned with improving labor rights on the ground in China, as elsewhere, to use multi-layered approaches that draw on past successes. Each approach should also be aligned with the particular "sphere of influence" of the respective stakeholder—thus historically, the greatest successes have come from governments working on the most macro level legislative improvements, government to government consultations, technical assistance programs and the like. MNCs in turn have had success when they assert their considerable leverage primarily at the supplier/factory level but they should continue by all means to exert pressure on governments as well to ensure that the rule of law is both upheld and strengthened. One of the best examples of an MNC working on creative solutions to the most challenging issue in China is the example that you have just heard about from Doug Cahn—the Kong Tai (or KTS) factory election of worker representatives. This initiative is exemplary and there are others:

- The Institute of Contemporary Observation recently launched an initiative that provides posters in factories that outline workers' rights under Chinese law and they provide a hotline for workers to call if they are the victims of violations
- A coalition of over 20 NGOs and SRIs (Socially Responsible Investors), including the International Labor Rights Fund, Global Exchange and Amnesty International USA started the U.S. Business Principles for the Human Rights of Workers in China. To date nine MNCs are participating in this China Working Group (3Com, Cisco, Intel, KLA-Tencor, Nike, Palm Computing, Reebok and Target) working to implement the Principles or similar Codes of Conduct.

It is very common to discuss the "sticks" when discussing human and labor rights. But, I find the "carrots" to be of greater interest. The examples cited above share

a few things—most notably the inclusion of the workers in the process—but most of all they are implicitly or explicitly capitalizing on the fact that there is competitive advantage to be gained from transparency, disclosure and good working conditions. If the industrial revolutions in the U.S. and the U.K. have shown us anything they have shown us that good factories make better products and over the longer term, that are more cost-effective.

CONCLUSION

"Apart from their other characteristics, the outstanding thing about China's 600 million people is that they are "poor and blank." This may seem a bad thing, but in reality it is a good thing. Poverty gives rise to the desire for change, the desire for action and the desire for revolution. On a blank sheet of paper free from any mark, the freshest and most beautiful pictures can be painted." Mao Zedong 1967

The picture for labor rights in China would have to include the following:

- Harmonization of the multiple codes of conduct (factory owners rightly complain that the profusion of codes is a confusing time-sink and with at times 40 audits a month by inexperienced CPAs, auditing as it is conducted by private sector firms is harmful to workers and disruptive to production cycles)
- A greater degree of responsibility on the part of MNCs who wreak havoc on factories through pressures to lower prices paid to factories and "just in time" delivery demands that inevitably lead to excessive, often forced, overtime
- Passage, or modification, of embodying legislation required under China's ratification (2001) of the ICESCR (International Covenant on Economic, Social and Cultural Rights and their membership in the ILO (specifically with regard to freedom of association and collective bargaining) and withdrawal of their reservations
- A direct contact mission from the ILO

This would be a beautiful picture indeed. Thank you.

PREPARED STATEMENT OF AURET VAN HEERDEN

APRIL 28, 2003

LABOR RIGHTS IN CHINA: THE ROLE OF PRIVATE LABOR RIGHTS INITIATIVES

By Auret van Heerden and John Salem Shubash, II

In the contemporary global marketplace, competition to produce goods quickly and inexpensively often leads to morally unacceptable conditions of work, where labor relations systems and labor rights have been sacrificed in the name of economic efficiency. A number of scholars have made similar observations. Sabel, et al argue, "It is a brute fact of contemporary globalization—unmistakable as activists and journalists catalog scandal after scandal—that the very transformations making possible higher quality, cheaper products often lead to unacceptable conditions of work" (Sabel, et al, 2000). In light of such troubling observations, the role of private labor rights initiatives, such as the Fair Labor Association (FLA), become crucial.

This paper is divided into six sections. First, we briefly outline why labor relations systems are breaking down, and why this is morally and economically troubling. Second, we discuss a number of theoretical strategies for coping with the current regulatory vacuum. Next, we argue that the FLA, along with other private initiatives, plays an important role in improving international labor rights and we briefly outline how the FLA complements public regulatory regimes. We then offer a brief discussion of labor rights in China, and argue that the relocation of global supply chains to China has out paced the government's ability to enforce labor rights, making industry self-regulation vital. Finally, we present a case study that demonstrates the effectiveness and potential of private initiatives in improving labor rights and in strengthening labor relations systems in China. We conclude that the FLA has gained a high level of access to factories and workers in China, and is uniquely placed to affect human and labor rights there.

THE BREAKDOWN OF LABOR RELATIONS SYSTEMS

The global economy has witnessed the development of global supply chains that have outstripped existing labor market regulations and enforcement mechanisms. Katherine V. Stone, a professor of industrial relations at Cornell University argues, "existing regulatory approaches are inadequate to ensure that the global marketplace will offer adequate labor standards to its global workforce" (Stone, 1999). Additionally, competition to reduce costs and the possibility of capital relocation has

resulted in the breakdown of traditional labor relations systems, where labor and business leaders negotiate collective agreements. The International Confederation of Free Trade Unions further articulated this finding, arguing, "Governments, made increasingly desperate to increase their countries' exports and attract foreign investment after the Asian crisis, are finding themselves in a buyers' market dominated by companies who can name their price. And that price all too often includes cheap labour, low standards and no trade unions" (ICFTU, 1999). This process has weakened the enforcement of labor laws and has allowed labor relations systems to breakdown. This has resulted in more persistent labor rights violations and more acute labor conflicts around the globe.

The fact that labor relations systems are breaking down and labor rights violations continue is troubling for both moral and economic reasons. Morally unacceptable working conditions, such as child labor, forced labor, discrimination, overly excessive working hours and the payment of starvation wages are far too common in global supply chains. The excessive exploitation of vulnerable members of society, such as children, women and the poor, for financial gain must be corrected for a morally acceptable global economy to be created.

A number of recent studies have outlined the positive correlation between high labor standards, and specifically coordinated labor markets, and macroeconomic performance. A recent World Bank report entitled "Unions and Collective Bargaining: Economic Effects in a Global Environment" found that countries with highly coordinated collective bargaining tended to be associated with lower levels of unemployment, lower earnings inequality, fewer strikes and generally better levels of macroeconomic performance (Aidt and Tzannotos, 2003:12). Similarly, a recent OECD study attempted to analyze the effects of labor standards on macroeconomic performance by comparing the economic indicators of countries that undertook major labor market reforms before and after the reform. The report, which studied the effects of labor market reforms on macroeconomic performance in 17 countries, found that on average, GDP grew at 3.8 percent per year before the improvement in labor standards and grew 4.3 percent afterwards. The OECD further argues, "Countries which strengthen their core labor standards can increase economic growth and efficiency by creating an environment which encourages innovation and higher productivity" (OECD, 2000). Maryke Dessing summarized the economic argument for labor standards, stating, "Labour standards in general can become the source of competitiveness and economic dynamism as they transform the production process. Labour standards aim at correcting market failures, internalizing social externalities associated with firms' activities, and thus improve factor allocation consistent with the general good" (2001:3). Given the moral and economic arguments in favor of labor standards, many actors stand to benefit from their implementation.

STRATEGIES TO IMPROVE LABOR STANDARDS

A number of strategies for improving labor standards internationally have been proposed. The strategies outlined in this paper are divided into two categories: (1) regulatory approaches; and (2) cosmopolitan approaches, which employ both public and private initiatives to improve labor rights.

Regulatory approaches attempt to find methods to improve the enforcement of core labor standards internationally. One such approach involves linking labor rights to trade negotiations. Proponents of this approach argue that the US-Jordan Free Trade Agreement, which has labor and environmental rights clauses and enforcement via a dispute settlement mechanism, should be a model for future trade negotiations (Ruebner, 2001). Similarly, others argue that labor rights should be included in the World Trade Organization (WTO). They argue that the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) sets a precedent for including legal frameworks for protecting rights in the WTO, and thus could easily be applied to labor rights (Wells, 2001). They argue that the dispute settlement mechanism of the WTO, and the possibility of applying trade sanctions on noncompliant countries, would be a distinct advantage of using the WTO framework.

Others argue that an enhanced international regulatory regime using the International Labor Organization (ILO) is the best method for improving labor standards. They say that the ILO system of "sunshine" (openness and transparency), "carrots" (assistance and rewards for labor rights compliance), and "sticks" (penalties for labor rights violations) forms the basis of an effective labor rights regulatory regime (Wells, 2001). The proponents of this view argue that the actions taken by member states to punish Burma for the use of forced labor shows the potential effectiveness of the ILO. Many critics, however, argue that the ILO is incapable of enforcing labor standards internationally, and that their "punishment" is often limited to bad pub-

licity. They argue that much more needs to be done to ensure labor standards are upheld. As outlined previously, the inability of regulatory regimes to keep pace with global economic change suggests that some other approach must be employed to complement the role of the ILO and other regulatory regimes.

Many intellectuals make the opposite argument, stating that labor standards in trade agreements are advocated by protectionist groups and by misguided NGOs, and that labor standards harm developing country workers (Bhagwati, et al, 1999). However, if a truly global approach is taken that improves labor rights across the globe, the negative competition that fuels labor rights violations can be altered, and more positive competition can be initiated to attract investment. Examples of positive competition for attracting foreign direct investment would include developing a skilled workforce, a strong infrastructure and more effective government institutions. Positive competition quickly breaks down with the absence of a globally coordinated strategy, however.

In an attempt to create such a global strategy, some argue that "cosmopolitan" approaches must be taken to address labor rights violations internationally. A "cosmopolitan" approach involves coordinating global responses to international problems and executing them locally, in coordination with local bodies. David Held articulates this strategy by arguing that two interrelated sets of transformations must take place to improve labor rights internationally. First, companies must adopt socially responsible rules, while public institutions at local, national, regional and global levels must enhance their regulatory regimes (Held, 2002). A similar sentiment is echoed by Amartya Sen, a Nobel laureate in economics and a leading development philosopher, who argues, "In dealing with conditions of working lives, as well as the interests and rights of workers in general, there is a similar necessity to go beyond the narrow limits of international relations: not just beyond the national boundaries but even beyond international relations into global connections" (Sen, 1999). This promising approach, which depends on building "global connections" and worldwide coalitions, reinforces the need for "private" labor rights initiatives to articulate and advocate the rights of workers on an international scale.

THE ROLE OF PRIVATE LABOR RIGHTS INITIATIVES AND THE FLA

Non-regulatory, or "private" approaches promote corporate social responsibility by allowing companies to adopt a code of conduct and promote adherence to that code. Critics argue that voluntary approaches are simply public-relations activities for the corporations, which do not change their behavior as a result of voluntary codes of conduct. All voluntary approaches are not the same, however.

Some voluntary approaches, such as the U.N. Global Compact, have been referred to as "learning networks," where companies can exchange ideas about corporate social responsibility and exchange ideas and "best practices." Although these networks have no inspection regimes and do not require the remediation of labor rights violations among their members, the open exchange of ideas has a number of potential benefits (Ruggie, 2002). Other voluntary mechanisms, and specifically the FLA, are much more demanding and effectively complement public labor rights regimes such as the ILO and national labor ministries.

The FLA has a workplace code of conduct, based on ILO principles, which brand-name multinational enterprises sign and agree to implement throughout their supply chains.[1] The Participating Companies (PCs), as they are known, agree (inter alia) to:

- inform factory managers and workers of the code,
- train their compliance staff in the code standards,
- internally monitor their production facilities to assess compliance and
- monitor progress, and remediate any non-compliance.

The FLA then conducts independent external monitoring of a random sample of those facilities to ensure that the PC is implementing its compliance program. It is important to note that the FLA independent external monitoring is unannounced and that the results are published. The process of internal and external monitoring involves consulting knowledgeable local sources, worker and management interviews, a review of wage and hour records and an inspection of the factory. In addition to the brand name PCs, there are 175 universities affiliated with the FLA. They require that their licensees join the FLA and implement compliance programs. There are presently some 4000 facilities in over 80 countries covered by the FLA program.

[1] Where there are discrepancies between the code and national law, the higher standard applies.

By consulting and working closely with local groups around the world, the FLA has participated in the formation of a global network dedicated to improving labor rights. By working globally and without national allegiances, the FLA takes steps to ensure that all workers in the PC supply chains, regardless of their country, experience the benefits of improved labor rights. This global approach helps prevent a "race to the bottom," and helps creates positive competitive pressures for suppliers engaged in business relationships with FLA PCs.

HOW THE FLA COMPLEMENTS REGULATORY REGIMES

Given the breakdown of labor relations and regulatory regimes and the national and international levels, "private" initiatives like the FLA attempt to fill this regulatory vacuum and create the "global networks" necessary to advocate improved labor rights. The FLA complements regulatory regimes in three principle ways: (1) because the PCs commit to a stringent monitoring and remediation process, and because the results of the process are published, they have strong incentives to correct labor rights violations in their supply chains; (2) because the FLA works in coordination with PCs and local NGOs, it has a large physical presence in China, where other efforts to address the human and labor rights situation have been limited; and (3) because of the economic leverage of PCs with their suppliers, remediation is negotiated from a position of relative power.[2] This process is particularly relevant in China, since the relocation of multinational enterprises to the country has taken place so quickly that the Chinese authorities cannot effectively enforce labor laws throughout the country.

The FLA is a framework for collaboration among different actors to improve respect for labor rights. By involving the participation of global brands, the FLA is able to bring attention to violations wherever they occur, and promote the accountability of brand-name companies for the protection of labor rights in their supply chains. The FLA also engages local groups in the monitoring and remediation process. By coordinating with PCs and local NGOs and targeting compliance efforts at specific factories, the FLA is well placed to respond to the speed of change in global sourcing. This is particularly advantageous in China, where the pace of global investment and sourcing has overwhelmed the regulatory regime.

In 2001, the FLA PCs had 497 factories in China. Of these 497 factories, the FLA conducted independent external monitoring visits at 53 factories, or 10.66 percent of the total. Although concern about human rights in China is high in the international community, an alarmingly few number of organizations have been able to conduct concrete, hands-on human and labor rights work there. Given the rare experience of the FLA in practicing human and labor rights work in China, the organization's various "people on the ground," and our unique access to factories and workers, the FLA is well placed to affect human and labor rights in China in a very practical and tangible way.

Given the economic leverage that FLA PCs have over their contractors, the FLA can negotiate with labor rights violators from a position of relative strength. While the FLA encourages PCs to "remediate rather than terminate," the possibility of losing an important business relationship is a powerful incentive for factories to work with PCs in order to address labor rights violations. Regulatory regimes, while possessing a great deal of moral authority, are seldom able to mobilize the financial resources of the FLA PCs.

Ensuring respect for international labor standards is a lengthy and complex process, highlighting the need for systematic efforts to monitor, remediate and verify compliance. The FLA participates in this process in an era when regulatory regimes, and particularly the Chinese authorities, cannot do it alone. While the FLA does not substitute for labor law enforcement and collective bargaining, the FLA serves as a complement to the efforts of regulatory regimes.

LABOR RIGHTS IN CHINA

According to the World Bank, China has a population of 1.272 billion people, a workforce of 706 million people, and is categorized as a lower-middle-income economy based on Gross National Income (GNI) per capita.[3] Given the size of the Chi-

[2] There are a number of reasons why companies sign on to the FLA or other private initiatives, such as improved brand reputation, improved and more efficient labor relations systems, and a lower likelihood of crisis following the discovery of a major labor rights violation.

[3] The World Bank classifications are: low income, $745 or less; lower middle income, $746–2975; upper middle income, $2976–9205; high income, $9206 or more. This calculations is based on GNI per capita. The entire list can be seen at *http://www.worldbank.org/data/countryclass/classgroups.htm.*

nese workforce and the relatively low costs of labor, companies have been relocating to China at an amazing pace; FDI has been flowing into China at an average of over $40bn for more than a decade, and in 2002, China became the world's largest recipient of foreign direct investment (FDI) (Economist, Feb. 13, 2003). This has fuelled a 116.2 percent growth in GDP since 1991, an average growth of 9.7 percent annually, making China the fasting growing large economy in the world (World Bank, Sept. 14, 2002).

Labor rights in China are defined in a very particular way, and critics argue that they have not kept pace with the growth in FDI and GDP. The Chinese Constitution guarantees Freedom of Association, but this right is subject to the interests of the State and the Communist Party. Only one trade union, the ACFTU, is recognized. It has traditionally seen its role as protecting the interests of the Party, the government, the employer and the worker. The shift from state-controlled to private enterprise is bringing about a reevaluation of that role, and many local union officials are adopting Western trade union techniques and adapting them to their circumstances. According to the ACFTU, there were 103 million trade union members in China in 2000, and 67,000 unions in foreign-invested enterprises, with a membership of 6 million workers. However, unofficial estimates of ACFTU presence in foreign-invested enterprises suggest that less than 10 percent are organized. It has been government policy to promote collective bargaining since 1995, and by the end of 2000, some 240,000 agreements had been registered with the Ministry of Labor and Social Security. Most of these agreements, however, are products of an administrative process rather than collective bargaining.

Although the right to strike was removed from the Constitution in 1982, more than 100,000 strikes take place each year, particularly over late or non-payment of wages, severance payments in cases of bankruptcy and lay-offs resulting from the downsizing of enterprises. In Freedom of Association Case #2031, the Committee on FOA noted that while the government of China believes that its laws guarantee the rights of workers to form and join organizations of their own choosing, the Committee concluded that many provisions of the Trade Union Act were contrary to the fundamental principles of FOA. The Committee also recalled that it had concluded in two previous cases (1652 and 1930) that the Trade Union Act prevented the establishment of trade union organizations independent of the Government and the Party.

Additionally, the China Daily reported a number of highly publicized industrial accidents recently. The latest statistics show that in the first 2 months of 2003 there were 1,639 deaths from 1,417 workplace accidents in industrial and mining enterprises, prompting the government to announce the formation of a new State Administration of Work Safety to promote safety at work. According to the paper the problem stemmed from the "prevailing ignorance among employers of working conditions resulting from irrational pursuit of profits" but the "main reason is that many local officials have tolerated some employers' malpractice in a bid to pursue economic development at the cost of work safety."

Given the rapid relocation of multinational corporations to China, the inability of the Chinese authorities to enforce existing labor laws, and the continued restrictions on freedom of association in China, industry self-regulation becomes vital. In the following section, two case studies that detail the positive impact of private labor rights initiatives and codes of conduct in China are presented.

CASE STUDIES

As mentioned before, China presents a unique set of remediation challenges for FLA PCs. In an attempt to address persistent health and safety and freedom of association violations that were reported by FLA independent external monitors, three FLA PCs, three Taiwan-based footwear manufacturers, and four Hong Kong-based labor rights non-governmental organizations (NGOs) developed a joint project to build the occupational health and safety (OHS) capacity of local groups in southern China. According to one of the companies,

> "Engaging workers in problem solving with management significantly reduced the amount of time spent on myriad small, recurring problems (e.g. mistakes made by factory administrative staff, miscommunications between management and workers). In a few cases where worker representatives acted in a sophisticated and professional manner, serious problems have also been attended to and resolved without Reebok's involvement. This emphasis represents the next generation of strategies to honor code commitments that respect the rights of workers to freedom of association."

Acting on the principle that an organized workforce can create a more sustainable system of labor relations and can improve a number of labor rights problems, the

stakeholders established plant-wide health and safety committees, drawn from workers and management, to develop action plans to help correct workplace health and safety hazards. By organizing the workers into such groups, the stakeholders have found a way to sustain improved labor relations and adherence to the FLA Code in China.

The international training team consisted of industrial hygienist Garrett Brown (from Maquiladora Health and Safety Support Network), health educators Pam Tau Lee and Betty Szudy (from the Labor Occupational Health Program at the University of California at Berkeley), as well as professor Dara O'Rourke (Massachusetts Institute of Technology). The project team worked with China Working Women's Network (CWWN), Asia Monitor Resource Center (AMRC), the Hong Kong Christian Industrial Committee (HKCIC), and the Association for the Rights of Industrial Accident Victims to develop the project.

CWWN and the project staff conducted group discussions with participating organizations prior to the training to assess the needs of the workers. They also held discussions with the labor practices managers of Adidas and Reebok in Hong Kong, and visited a 60,000-worker shoe complex in Dongguan City.

Using interactive, participatory techniques, the trainings covered topics such as identifying safety hazards, industrial hygiene controls, chemicals effects on the body, ergonomics, noise, machine guarding, and fire evacuation. The trainings also addressed workers' legal rights, and workplace inspection techniques. All training materials were translated into Chinese; English-speaking instructors had simultaneous translation for their presentation and activities. After the training, each factory's participants reunited to create a proposal for setting up the health and safety committee in their respective factories.

This pioneering effort involving cooperative efforts among brands, NGOs and factories has had a positive impact:

- Factory management have since come together to share their experiences in setting up the Health and Safety committees;
- NGOs have become more knowledgeable about health and safety issues;
- The worker-management committees are young, but they are functioning; and
- A democratically elected union now supports one committee.

In an interview with the AP, Garrett Brown argued, "Clearly the workers, supervisors and managers who participated learned a great deal and are now able to put that into real life practice in the plants." This case demonstrates the ability to improve labor rights in China, even when regulatory regimes are incapable of doing so.

CONCLUSION

Because of the inability of the Chinese authorities to monitor and remediate labor rights violations in the rapidly expanding industrial zones, labor rights in China are suffering. Consequently, private labor rights initiatives, such as the FLA, have attempted to fill the resulting regulatory vacuum. Although the FLA is no substitute for local, national, regional and global regulations, it does complement the regulatory process by using the economic force of PCs, which have committed to the rigorous FLA monitoring and remediation process in order to improve labor rights worldwide. Given the unique access of the FLA to factories and workers in China, the organization is capable of taking concrete steps to improve the human and labor rights situation in the country.

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PREPARED STATEMENT OF RUTH ROSENBAUM

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The function of codes of conduct in China needs to be placed within the larger context of codes of conduct and enforcement systems throughout the globalized world. We will see that what is happening in China is parallel to what has happened and is continuing to happen within the contract supplier system worldwide.

In countries with strong legal codes that recognize the rights of workers, including standards related to occupational health and safety, working hours, right to organize and engage in collective bargaining, etc., it is society as a whole that has established those standards. The standards themselves are expressed through the society's legal codes and enforcement systems. These give evidence that the societies hold themselves individually and collectively accountable for upholding the standards that they have devised. The standards include, of course, those standards to which corporations are held.

As production and assembly has moved from countries where such standards, legal codes and strong enforcement exist, to other countries, differences are readily apparent.

1. The standards to which factories are held by the society and its government vary from country to country. In fact, these standards are often much lower than those in the "home" countries of the corporations placing the orders in the factories.
2. The legal systems for the enforcement of standards range from non-existent to minimal at best.
3. The legal channels for addressing poor standards or violation of standards either do not exist—or the workers are in danger if they express concerns or raise issues.

For at least the past decade, if not longer, a steady stream of media reports have exposed the harsh realities within factories to consumers, investors, as well as to labor rights and human rights organizations. Different countries and the problems within factories in those countries rise to public consciousness as a result of media focus and then as the months pass, other countries have taken their place.

One of the mistakes within the varied responses to these exposes and reports has been to see the problems as isolated, the exception to the norm, etc. The responses have focused on a particular factory, a particular situation. Heroic work has been done by coalitions of organizations to bring about change in a particular factory—while the other factories in the same trade zone or province or country continue with similar patterns of behavior.

The underlying question within all of this is the following:

> Where does the power exist to bring about change within the factories as individual factories and within the supply chain components within any country, including China?

We need to keep in mind that for many industries, the factories of production or assembly are usually not owned by the corporations or the brand names with which we are all so familiar. They are contractors or vendors for the corporations. This lack of corporation ownership makes the power issue even more important.

Yet, the focus of the media has been on the corporations placing orders within the factory. In response, corporation after corporation have produced a standard for the work place, the factory; hence the Codes of Conduct as we know them today. Although called by many names, these codes were set forth as the standard for the factory or, another way to say it would be, the "laws" for performance in the factory.

We need to pay attention to what has taken place with this development. We have concluded that the corporations bear ultimate responsibility for the conditions under which their products are manufactured or assembled. We then expect them to become the creators of the standards for the factories and the enforcers of those standards.

In other words, we have handed over the role of the society and its governance—making and enforcing standards and laws—to the corporations we are attempting to hold accountable. It is a shift in power, a shift in responsibility and a shift in accountability.

When this plays out within the production system, we have the common phenomenon of almost any factory which accepts orders from numerous corporations, having a display wall with the various codes of conduct for these corporations framed and available for anyone who wants to take the time to read them. In theory, at least, these are the standards within which products are produced within the factory.

Careful examination of the various codes quickly exposes one of the major flaws of the role of codes of conduct in a production factory. The codes from the various corporations are not the same. So what is the standard to which the factory must adhere? Is it the common denominator or the higher standard or a combination thereof? Is it one standard one day and another standard another day depending on the product being produced and/or the corporation for which the product is being produced and/or the particular inspection, monitoring, certification team that is coming? How is the management of the factory to know, much less the workers?

Whose standard is it really? It does not matter which code of conduct we are using, it is still not the rule of law and governance of the community or country in which production is taking place. In fact, in many instances, the codes of conduct are higher that the legal standards within the country of production. This is certainly true in China—and so many other countries that could be named.

When codes are conduct are seen as something imposed from the outside rather than a standard of behavior that is adopted from within the society, for the benefit of all involved, it depends on an external enforcement system for adherence. Hence we have the various systems of monitoring, inspection, certification, etc. that have developed as means and method of enforcing the codes.

Again with most of the monitoring, inspection and certification, the power of enforcement comes from the outside: outside the community and often, outside the country of production.

For us at CREA, there are three central issues that we use to evaluate whether or not the code of conduct and whatever enforcement systems are in place for that factory/code are succeeding:

1. What changes for the workers? Although a simple question, this should be the reason why we are looking at codes. It is the situations in the factory that we are trying to address. It is critical that we see that we see these codes and the situations they are trying to address not as an abstract exercise but rather as the day-to-day reality for workers in China, most especially, but in any country where the assembly plant system works worldwide.

2. How is power of enforcement transferred back to civil society and other components of society within China—and within other countries? If all the inspecting, certifying, monitoring, enforcing continues to have to come outside the community, it will continue to be a system of putting out fires, of presuming that if a small percentage of factories are OK, that they all are.

3. Where do the money and the power attached to the money accumulate as a result of all the inspecting, certifying, monitoring, etc.? If we are looking at a system that can be sustained over time, there needs to be the transfer of sufficient funding and the associated power to the communities where the factories are located. The funding needs to remain within the community to support a sustainable economic system where appropriate governance can develop and function.

While all of this is applicable anywhere in the world, the specifics of China are our focus today. CREA suggests the following:

1. The need to start with recognition of the inherent dignity of each human being, so that workers are not seen only in terms of what they are able to produce.

2. The need to look at ways of strengthening civil society within China. Organizations such as the Institute for Contemporary Observation (ICO), with which CREA is collaborating on a project, need to be seen as equal partners. We need to find

ways to have work such as theirs seen as the ordinary, the way it should be done, rather than the exception or the extra-ordinary means of functioning.

3. The CECC, corporations, any group working on the issue, needs take a look at why companies move to China. What is it that they gain because of the labor situation there as compared to other countries? For companies moving production to China because of the lower costs and standards there, there needs to be the means of holding these corporations accountable.

For example, how does the issue of "Just in time" production and the on-going shortening of turn around time in relationship to orders being placed and demands placed on factories, resulting in abusive situations for workers?

4. There needs to be a greater analysis of Chinese law related to labor, including OHS, wages, overtime, freedom of association and right to organize, and systematic ways of addressing these. This needs to be coupled to an examination of the ILO standards relating to occupation health and safety, work hours, etc., followed by the examination of each of these codes of conduct and their enforcement systems. Again, the underlying issue is how to bring these together in order to improve standards for workers.

5. How do we make it beneficial for factory managers to adhere to the standards? At the present time we use a system of rewards and punishments based on the placing and withdrawal of orders to ensure compliance with the code of conduct. How do we move this reason for compliance to a standard that is beneficial for all factory managers to adhere to? How do we make adherence to codes the norm rather than the exception?

Within the Chinese governmental system, how do we make it possible for a factory to be singled out positively if its standards go beyond the legal?

6. How do we provide support for collaborative efforts between corporations to enhance their power to bring about change as well as to create an equal standard? How would the development of a collaborative code of conduct be constructed that would not be the lowest common denominator? And then, how do we provide a neutral space for a trial of this to take place and evaluated, without the spotlight or glare of publicity so that change for the workers could really take place.

7. On another level, how do we get investors, the investment community including Wall Street and the other markets around the world to recognize that raising working condition standards is a beneficial thing even if the costs of production are higher? How do we communicate that the continual drive to lower costs of production contribute to the violation of the standards of performance and behavior that we are trying to raise in these codes of conduct?

These systemic questions, and many others that could also be raised, focus the issue of codes of conduct on the global production system as it functions within society, most specifically in China. For more than a decade, members of CREA's staff have worked with numerous corporations on issues of code of conduct development, reporting mechanisms, monitoring and inspections; in fact, we continue to do so even as I speak here today about the need to look at the issues on a systemic basis. Without looking at the systemic issues, CREA is convinced that real change, sustained change, change that affects the lives of workers, and their communities cannot and will not take place. In the meantime, we salute and support the efforts of those who seek to promote, enforce and report on codes of conduct and compliance with them. These efforts should not be taken lightly. This is hard work. It is important work. Hopefully, we will be able to learn from the experiences of all of us who have worked and continue to work on the issues that these codes of conduct seek to address and devise the methods for system change that remain before us.

Thank you for your time and attention.

SUBMISSIONS FOR THE RECORD

PREPARED STATEMENT OF THE WEI JINGSHENG FOUNDATION

APRIL 28, 2003

STATEMENT ON U.S. CORPORATIONS' CODES OF CONDUCT IN CHINA

One of the major fields this Foundation works on regards workers' rights, as well as the codes of conduct and working conditions of the companies and factories that employ them, including those of foreign companies and joint ventures. Of course, the U.S. companies have a lot of investment and are doing a lot of business with China.

For these companies, naturally, their primary concern is profit. Most of them do not want to "interfere with the internal affairs" of China, nor do they want to care about Chinese human rights. On the surface, it seems very reasonable. In reality, it has helped the Chinese Communists to restrict and even suppress Chinese human rights, including the flow of information and free expression. Nevertheless, while these companies only focus on revenues and care about self-protection with their concern of offending the Chinese government, they have really done damage not just to Chinese human rights, but also their own interests.

What these companies have done has effectively reduced the pressure the international community has on the Chinese government. It is now time for these companies to review their moral and ethical codes. They should try to apply what they have in their own country to the factories and companies overseas, especially in China. Among them, these companies should build a moral standard of not protecting the interests of the suppressive Chinese government. They should not speak in favor of the Chinese government. They should not work on behalf of what the Chinese government wants yet is unable to accomplish itself, either in China, or in the United States, or elsewhere in the world.

Although we know these calls of conscience have their limited appeal, we want to point out that how these companies conduct themselves in China has not just helped the Chinese government to further damage human rights by allowing a poor standard of conduct in China, but also damaged their own interests and that of their employees. Their conduct has resulted in themselves and their employees being afraid to speak freely, not just inside China, but even overseas. (We have examples but are not submitting these cases and names until necessary, which involve top brand-name companies.) It also brings them the hazard of health, which could be life threatening.

Take the recent spread of SARS as an example. Due to the fact that the Chinese government restricted the truth, instead of spreading the necessary information, their obstacles have helped to spread the virus. The result is not just damaging the health and lost lives of our fellow Chinese inside China, but also the same threat to the rest of the world, including the health and lives of these companies.

Not long ago, a poor woman with diagnosed SARS was refused health care in the south and had to return to her home in the north. It was that fateful journey that made more people in the north get infected with the disease, before the poor woman died. Not any excuse should let the innocent citizens' lives be victimized, and expose the whole world to risk. It is time for us to realize that pressure must be brought to the Chinese government as much as we can. That is the responsibility of the whole world, for the welfare of all humanity. The U.S. companies must strengthen and enhance their own codes of conduct not just in the United States, but also in the rest of the world, including China. These companies have a choice between aligning themselves with the Chinese workers for their welfare, or aligning themselves with the Chinese government to exploit and suppress workers' rights and benefits altogether.

As a matter of fact, the poor workers' benefit protection has a long history. For more than a decade, there have been more than one hundred twenty million "peasant workers" from the countryside supporting almost all of the construction and service industry, especially the processing industry for export. In reality, they are "second class citizens" with no official "city registration." They live in terrible temporary shelters. Due to the lack of official "city registration," they do not have the social and economical benefits the city dwellers may have, and especially they lack health and life insurance. Under the health system that is guided by rules that refuse patients who do not have money, a sick "peasant worker" basically has nothing for protection even when he/she is very ill, like the woman who died of SARS that was mentioned in the last paragraph. The so-called "workers union" which is

paid by and works for the Chinese government, has done nothing beneficial for these miserable workers. The owners and enterprisers simply keep an attitude of "one eye open with one eye closed" in dealing with these problems, unless a dispute gets out of control.

One has to ask, for a government that does not care for the welfare of its own people and lied to protect itself, how could others including these companies trust this kind of government? How could you give assistance to this type of government in any form, or align your moral codes and ethical conduct with the allowance of this type of government?

It is time for the U.S. companies to act and raise their moral conduct in China, to what we expect of them in the United States. It is time for the U.S. government and Congress to act, on behalf of the freedom loving people instead of the profit seeking companies, to ensure the moral and ethical expectation of these companies.

Thank you very much for your attention.

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Report for Congress

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Workplace Codes of Conduct in China and Related Labor Conditions

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Workplace Codes of Conduct in China and Related Labor Conditions

Summary

This report provides an overview of U.S. interests and policies regarding China's labor conditions. It compares a cross section of labor codes of conduct utilized by U.S. corporations and their suppliers that manufacture toys, shoes, apparel, and other labor intensive merchandise in China for export. Many consumer goods imported from China to the United States are produced by Hong Kong, Taiwanese, and South Korean factories in China for U.S. brands. Serious labor rights abuses have been reported in many of these factories. All of the codes sampled in this report mandate labor standards that are consistent with International Labor Organization core covenants and China's Labor Law. The standards compared in this report pertain to: child labor, forced labor, disciplinary actions, discrimination, health and safety, and the environment. However, many of the codes do not provide extensive guidelines for monitoring and verifying compliance. This report will be updated as warranted.

Contents

U.S. Interests and Policies 1

Labor Conditions in China 2
Foreign Invested Enterprises 2

Labor Protections 3
The Official Labor Union 3
New PRC Legislation 3
Non-Governmental Efforts 4
ILO Conventions 4

U.S. Investment and Trade with China 5

Codes of Conduct 5

Comparing Codes of Conduct 7
Child Labor 8
Forced Labor 8
Disciplinary Actions 9
Discrimination 9
Health, Safety, and the Environment 9
Freedom of Association 9
Working Hours 10
Compensation 10
Compliance 11

List of Tables

ILO Core Conventions 4

Workplace Codes of Conduct in China and Related Labor Conditions

U.S. Interests and Policies

U.S. congressional objectives and concerns regarding Chinese labor include supporting labor rights in the People's Republic of China (PRC) and preventing the importation of goods from the PRC that were made from prison labor, child labor, or under conditions that violate internationally-recognized labor standards. P.L. 106-286, granting the President authority to extend permanent normal trade relations treatment to the PRC upon its accession to the World Trade Organization (WTO), established the Congressional-Executive Commission on China (CECC) to monitor the PRC's compliance with international human rights standards, including worker rights. The act also authorized the Department of Labor to conduct rule of law training and technical assistance related to the protection of worker rights in China. In the 107th Congress, H.R. 2782 was introduced that would require U.S. companies in foreign countries to implement corporate codes of conduct, while labor rights and corporate codes of conduct were highlighted in three bills criticizing China's human rights record.[1] In 2002, the CECC held two hearings on labor rights and working conditions in China and made a number of recommendations in its annual report, including expanding rule of law and legal aid programs for workers and promoting work health and safety councils, raising awareness among export companies in China of the importance of legal and fair working conditions to U.S. consumers, and raising the profile of labor issues in the U.S.-China bilateral dialogue.[2] Also in 2002, the congressionally-mandated U.S.-China Economic and Security Review Commission (USCC) recommended, among other actions, that Congress establish a corporate code of conduct for U.S. businesses operating in China.[3]

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[1] [S.1307.IS] China Free Enterprise Act of 2001; [H.Con.Res. 73.RH] Expressing the sense of Congress that the 2008 Olympic Games should not be held in Beijing; [H.R. 2782] To require nationals of the United States that employ more than 20 persons in a foreign country to implement a Corporate Code of Conduct.

[2] "Labor Rights and Conditions in China," Roundtable before the Congressional-Executive Commission on China, March 18, 2002; "Workplace Safety Issues in the People's Republic of China," Roundtable before the Congressional-Executive Commission on China, November 7, 2002; Congressional-Executive Commission on China, *Annual Report for 2002*.

[3] See *Report to Congress of the U.S.-China Security Review Commission*, July 2002. The USCC was authorized by P.L. 106-398, the National Defense Authorization Act for FY2001.

The United States supports labor rights and other rule of law programs in China through U.S. foreign operations[4] and other appropriations, including grants to the National Endowment for Democracy (NED) and the Asia Foundation. NED sponsors the American Center for International Labor Solidarity, which administers labor programs in the PRC through the *China Labour Bulletin* in Hong Kong. The Asia Foundation is engaged in activities related to legal development, civil society, and local governance in China through U.S. public and private financing, including legal aid and health programs for migrant women workers funded by the Levi Strauss Foundation.

In October 2002, the Department of Labor awarded a four-year, $4.1 million grant to a consortium of the Asia Foundation, Worldwide Strategies, Inc., and the National Committee on United States-China Relations for them to work on strengthening the PRC government's capacity to implement laws and regulations that protect internationally recognized labor rights, promote greater awareness of the law among Chinese workers and employers, and improve legal aid services to women and migrant workers. The Department of Labor also awarded a four-year, $2.3 million grant to the National Safety Council for efforts to improve safety and health conditions in Chinese coal mines.

Labor Conditions in China

Foreign Invested Enterprises

Many egregious forms of labor exploitation have been reported in foreign-owned or "overseas" factories in China's coastal provinces that are engaged in low-skill, labor intensive production for export. Most of these factories are owned by East Asian investors from Hong Kong, Taiwan, and South Korea, and much of their output of toys, shoes, and apparel is contracted by American companies. According to PRC official data, foreign invested enterprises (FIEs), including Hong Kong and Taiwanese companies, employ approximately 10% of the urban labor force or about 23 million workers — mostly women in their early 20s from impoverished rural areas of China's interior.[5]

The most severe and widespread labor rights abuses reported in these factories involve workplace conditions and work hours that are harmful to the physical health of workers, lack of fair compensation, and restriction of movement. During times of peak demand, work days of 12- to16-hours, no days off for several weeks, and managers' under-reporting of hours worked have been widely alleged. Most workers are reluctant to protest such treatment because they fear being fired and/or losing back wages, benefits, security deposits, or temporary residency permits that are

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[4] Total amounts for China rule of law and Tibet programs in the U.S. foreign operations budget: FY2000 — $1 million; FY2002 — $10 million (est.); FY2003 — $15 million (est.)

[5] Some U.S. experts estimate much higher numbers of workers in the foreign-owned export factories.

retained by the employer. Furthermore, many workers are unaware of their legal rights. Local Chinese reporters have estimated that each year, dozens of workers die of causes related to overwork.[6]

According to PRC government statistics, between 6,000 and 8,000 workers die annually in industrial accidents (not including mining). Each year, 13,000 new cases of occupational disease (industrial and mining) are reported.[7] Many foreign enterprises do not compensate employees for work-related injuries and medical care — or cover only partial costs — and have not paid taxes into government-sponsored accident and unemployment insurance funds. Other labor abuses reported in some foreign firms include verbal humiliation, physical punishment, and severe restrictions on movement.[8]

Labor Protections

The Official Labor Union

The PRC has been slow to address labor rights in China's burgeoning private sector. Since the late 1990s, the government has attempted to install branches of the official All China Federation of Trade Unions (ACFTU) in foreign-funded or overseas firms in order to help improve labor conditions and resolve labor disputes. PRC officials claim that enterprise unions have been set up in 40% of *newly founded* overseas companies. Although the ACFTU represents the interests of both labor and the state, and most enterprise union leaders are appointed by the Communist Party, it can serve as a potential check on abusive or illegal management practices. Both local officials and foreign investors have reportedly resisted government efforts at unionization.[9]

New PRC Legislation

In 2001, the PRC ratified the International Covenant on Economic, Social and Cultural Rights, which includes a section granting the right to organize and form independent trade unions. However, China reserved the right to interpret the covenant in a manner consistent with the PRC Constitution, the Labor Law, and the Trade Union Law, which permit only one trade union — the ACFTU. The covenant also provides for safe and healthy working conditions and for equality in the workplace. In 2001, the National People's Congress amended the Trade Union Law

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[6] Philip Pan, "Worked Till They Drop," *Washington Post*, May 13, 2002.

[7] Philip Pan, "Poisoned Back into Poverty,"*Washington Post*, August 4, 2002.

[8] Examples of physical abuse include being struck or slapped and ordered to kneel or stand on a stool. Some managers have reportedly prohibited employees from talking or using the toilet more than twice daily.

[9] In the private sector, only one-sixth of workers belong to unions. Unionization efforts have so far not resulted in significant improvements for workers. See Philip Pan, "When Workers Organize, China's Party-Run Unions Resist," *Washington Post*, October 15, 2002; "Union Drive Targets New Firms," *South China Morning Post*, August 13, 2002.

to enhance the ACFTU's role in defending workers' interests. In 2002, the National People's Congress (NPC) passed a Work Safety Law, Prevention of Occupational Disease Law, and handling of dangerous chemicals directive. In January 2003, the ACFTU issued its first "Blue Book of Chinese Trade Unions,"which publicizes and explains the rights and interests of Chinese workers.[10] However, local officials reportedly often downplay labor regulations as a way of attracting or keeping foreign or overseas investment.

Non-Governmental Efforts

The most important Chinese non-governmental advocates for workers in the PRC are the press, non-governmental or non-profit organizations, academic researchers, and labor rights attorneys. Zhou Litai, a labor rights and workers' compensation attorney, has represented 800 maimed migrant workers in Shenzhen, Guangdong province. He has reportedly won 30 out of 200 cases against various FIEs. However, while the central government often allows open criticism of individual companies, it suppresses debate on fundamental state policies and strenuously suppresses autonomous labor organization. Labor rights activists often face harassment by local authorities.[11]

ILO Conventions

Since 1919, China has ratified 23 conventions (of which 20 are still in force), including three of the International Labor Organization's eight core conventions. In 2002, China ratified three ILO conventions: No. 182 (core), Worst Forms of Child Labor; No. 167, Safety and Health in Construction; and No. 150, Labor Administration. China is reportedly preparing to ratify convention No. 111 (core), Discrimination. In May 2001, the ILO and the PRC signed a memorandum of understanding aimed at improving labor practices, reforming dispute settlement mechanisms, and strengthening ILO-PRC collaboration.

ILO Core Conventions

Core Convention		Ratified by China
No. 29:	Suppression of Forced Labor	
No. 87:	Freedom of Association and Protection of the Right to Organize	
No. 98:	Right to Organize and Collective Bargaining	
No. 100:	Equal Remuneration	11/2/90

[10] Li Jianghong, "China's Union Federation Issues "Blue Book" on Workers' Rights," *BBC Monitoring Asia-Pacific*, January 23, 2003.

[11] Elaine Kurtenbach, "Chinese Lawyer Faces off Against Bureaucracy for Right to Seek Legal Recourse for Maimed Workers," Associated Press Newswires, June 7, 2002.

Core Convention		Ratified by China
No. 105:	Abolition of Forced Labor	
No. 111:	Discrimination (Employment and Occupation)	
No. 138:	Minimum Age	4/28/99
No. 182:	Worst Forms of Child Labor	8/08/02

U.S. Investment and Trade with China

In 2002, China was the third largest source of imports to the United States, with imports valued at $125 billion. An estimated 44% of China's exports involve foreign companies.[12] The United States is the second largest single investor in China after Hong Kong.[13] U.S. companies have invested in many sectors including information technology, communications, finance, hotels, automobiles, and consumer goods. Observers have noted relatively good working conditions and comparatively high wages at American-operated manufacturing facilities offering skilled employment. However, much of the production in China of low-end goods for U.S. labels is contracted through other foreign investors. In 2002, toys, footwear, and apparel items made up about 25% of all U.S. imports from China, while the PRC was the top supplier of toys, footwear, and leather goods to the United States.[14] These export-oriented industries are dominated by East Asian manufacturers filling orders for U.S. brands according to their specifications, as well as home to serious labor rights abuses. Some policy-makers have argued that the United States can promote better labor conditions in China through these foreign suppliers to U.S. corporations.

Codes of Conduct

Many large U.S. brand companies and retailers that source in China have adopted codes of conduct for their suppliers in order to assure that goods bearing their companies' names are produced under acceptable working conditions. Lack of compliance with these codes may justify the termination of contracts by U.S. corporate buyers. These standards are based upon United Nations and ILO core labor conventions and U.S. Occupational Safety and Health Administration (OSHA) regulations. There are three broad categories: "multi-stakeholder" or external codes developed by non-profit organizations in consultation with labor and business

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[12] David Hale, "The Outlook for China Policy," *China Online*, January 15, 2003.

[13] See CRS Report RL31749, *Foreign Direct Investment in China*, by Dick K. Nanto and Radha Sinha and CRS Issue Brief IB91121, *China-U.S. Trade Issues*, by Wayne M. Morrison.

[14] United States International Trade Commission.

groups; individual corporate codes; and industry or sector codes.[15] Multi-stakeholder programs that not only monitor suppliers but also certify U.S. companies may generate additional public pressures on corporations to conform with international labor rights standards. Although codes vary somewhat, they generally mandate standards at or above the levels of national labor laws. China's labor laws meet international benchmarks in most respects. Often the main problem or variable is not the stringency of the standards but rather the level of enforcement. However, not all codes apply rigorous methods for monitoring and effecting compliance. Some experts argue that third party, non-profit auditors are more effective in monitoring compliance than in-house and for-profit auditors.[16] Independent monitoring organizations in China include Bureau Veritas, Global Social Compliance, Intertek Testing Services, and Verité.

Labor codes of conduct have reportedly produced improvements in some large factories that fear losing contracts to large U.S. corporations for violating labor standards.[17] However, some labor rights groups have found monitoring and verification problems stemming from insufficient transparency, including lack of unannounced audits, lack of input from workers through off-site, confidential interviews (without fear of retribution), and lack of accessibility or disclosure of audits and assessment scores.[18] Furthermore, large suppliers often subcontract further to smaller foreign or Chinese companies that have no code of conduct. Only one of the codes sampled in this report addresses the problem of subcontracting. The Disney Company's Code of Conduct forbids its manufacturers from using subcontractors without the company's written consent, in order to assure both acceptable labor conditions and product quality. According to some accounts, labor conditions in privately-owned PRC factories are worse than FIEs.

The financial incentives of suppliers in China to abide by codes of conduct — attracting or maintaining the business of U.S. corporations — are often negated by countervailing economic pressures. First, the overabundance of migrant labor from the Chinese countryside suppresses wages in low-skill and labor intensive, export-oriented industries. Since the late 1990s, real incomes in many rural areas have fallen while the PRC Ministry of Labor estimates that 20% of farmers are jobless or

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[15] See CRS Report RS20803, *Codes of Conduct for Multinational Corporations: An Overview*, by James K. Jackson.

[16] Some experts have suggested that conflicts of interest prevent private sector accountancy and auditing firms, such as Pricewaterhouse Coopers, from effectively monitoring working conditions for corporations. See the independent report, "Monitoring the Monitors: A Critique of Pricewaterhouse Coopers (PwC) Labor Monitoring," by Dara O'Rourke, Massachusetts Institute of Technology, September 2000.

[17] In 2001 and 2002, two Taiwanese-owned factories, along with local government and ACFTU officials, agreed to hold free elections for enterprise union representatives at the behest of Reebok, their U.S. buyer. The incentive for consenting to the experiment was fear of losing Reebok's business. See: Alison Maitland, "Sewing a Seam of Worker Democracy in China," *Financial Times*, December 12, 2002; Jasper Becker, "China's Exploited Toy Workers Still Toil in Toxic Sweatshops," *Independent*, December 23, 2002.

[18] See reports by China Labor Watch [http://www.chinalaborwatch.org], China Labour Bulletin [http://www.china-labour.org.hk], and Labour Rights in China.

redundant. Second, export manufacturing zones in China have proliferated, and competition for foreign investment has grown, thus pressuring local governments to keep labor activism to a minimum. Third, the global markets in these sectors have become more exacting. The Hong Kong Christian Industrial Committee reported, for example, that in the past decade, intense global competition in the toy industry has shortened delivery times that multinational corporations demand of their contractors by approximately 40%, and driven down prices by 30%, thereby exacerbating labor exploitation despite efforts to improve conditions. The committee recommended that international companies adopt fair buying practices and pay reasonable prices for their toys.[19]

Comparing Codes of Conduct

This section compares 11 codes of conduct: four multi-stakeholder codes — SA8000 (Social Accountability International), the Ethical Trading Initiative (ETI), the Fair Labor Association (FLA), and the Worker Rights Consortium (for producers of collegiate logo garments);[20] six company codes — Levi Strauss, Mattel, Nike, Reebok, Walt Disney, and Wal-Mart; and one industry code, the International Council of Toy Industries (ICTI) Code of Business Practices.[21] Some companies have both developed their own standards and signed onto one or more multi-stakeholder codes. The codes discussed in this report and participating U.S. companies represent only a sampling of all codes and companies that institute standards of conduct.

Finding Codes of Conduct Online:

SA8000: [http://www.cepaa.org/SA8000/SA8000.htm#StandardElements]
ETI: [http://www.eti.org.uk/pub/publications/basecode/en/index.shtml]
FLA: [http://www.fairlabor.org/all/code/index.html]
WRC: [http://www.workersrights.org/coc.asp]
Levi Strauss: [http://www.levistrauss.com/responsibility/conduct/guidelines.htm]
Mattel: [http://www.mattel.com/about_us/Corp_Responsibility/cr_global.asp]
Nike: [http://www.nike.com/nikebiz/nikebiz.jhtml?page=25&cat=compliance&subcat=code]
Reebok: [http://www.reebok.com/x/us/humanRights/pdf/ReebokHR_Guide.pdf]
Wal-Mart: [http://disney.go.com/corporate/compliance/code.html]
Walt Disney: http://disney.go.com/corporate/compliance/code.html]
ICTI: [http://www.toy-icti.org/mission/bizpractice.htm]

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[19] Chloe Lai, "Toy Factory Workers Face Exploitation," *South China Morning Post*, February 17, 2003.

[20] SA8000 signatories include Avon, Dole Food, and Toys R Us; Levi Strauss is a member of ETI; FLA licensees include Adidas, Eddie Bauer, Liz Claiborne, Nike, and Reebok.

[21] ICTI is an association of toy trade associations with members in China, Hong Kong, the United States, and other countries.

Child Labor

The problem of underage workers (under 16) in foreign invested enterprises (FIEs) along the coast is likely considerably less than in township and village enterprises (TVEs) and workshops in China's rural areas. The risks and costs of traveling and acquiring temporary residency permits in factory towns and the ample supply of legal-age labor reduce the incentives for employing underage labor in FIEs. However, the preference of many export-oriented factories for hiring youthful workers (late teens to early 20s) creates opportunities for underage Chinese to gain employment. Some reports describe teenagers using fake personal identification cards to work in foreign-owned assembly plants.[22]

The codes of conduct reviewed herein place restrictions on minimum age ranging from under 16 to under 14. Nike further prohibits the hiring of workers under the age of 18 for footwear. All codes apply a higher standard if either the legal minimum age or the age for completing compulsory education is higher. Social Accountability International (SA8000) and the International Council of Toy Industries (ICTI) would prescribe a minimum age of 14 where ILO Convention 138, Article 2.4 applies (developing country exception — members whose economies and educational facilities are insufficiently developed). The Mattel and Reebok codes stipulate that identity documents must be thoroughly checked and shall be accessible. Mattel and the Ethical Trading Initiative (ETI) require that employees under the age of 18 be exempt from hazardous duties. According to the PRC Labor Law, it is illegal to hire workers under the age of 16. "Young workers" — ages 16-18 — are accorded special treatment, including prohibitions on overtime and night work, regular health check-ups, and other protections.

Forced Labor

The codes universally proscribe several forms of forced labor, including prison labor, indentured labor, and bonded labor. Some codes provide more detailed prohibitions that apply specifically to involuntary labor practices in China, such as the withholding of wages, security deposits, and identity papers or the charging of "severance fees" by employers. The Mattel code requires a written document for each employee stating that employment and overtime are voluntary. The Reebok code forbids the use of "administrative detainees" in supplier factories.[23] The ICTI code stipulates that "workers are free to leave once their shift ends." The Labor Law of China states that a worker may terminate his employment, or repudiate his labor contract, if the employer compels a worker to work by the use of force, threat or by means of illegally restricting personal freedom, or if the employer fails to pay remuneration or provide working conditions as agreed upon in the labor contract.

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[22] "McDonalds Gets Minced," *Asian Wall Street Journal*, September 6, 2000.

[23] China maintains a system of "labor reeducation" (*laojiao*) camps for citizens who have committed socially disruptive but non-criminal acts. In these cases, no trial is granted, but sentences legally do not exceed three years.

Disciplinary Actions

Most of the sampled codes forbid corporal punishment as well as verbal harassment, sexual harassment, and psychological abuse, or simply declare that employees shall be treated with respect and dignity. The Reebok code adds that employers will not unreasonably restrain workers' freedom of movement including movement in canteens, during breaks, using toilets, accessing water or medical services. In China, it is illegal for employers to insult or punish workers physically.

Discrimination

In the codes examined, discrimination standards range from none at all, to requirements that personnel decisions be made on the basis of a person's ability to do the job, to more detailed regulations. Generally, the factors that are subject to protection from discrimination are age, ethnicity, gender, race, and religion. Other factors in some codes include disability, sexual orientation, and union or political affiliation. External codes — SA8000, ETI, FLA, and the Worker Rights Consortium (WRC) — go furthest in imposing discrimination standards. The Nike and ICTI codes do not contain provisions on discrimination. China's Labor Law prohibits discrimination on the basis of nationality, sex, race, and religious beliefs. The WRC and ICTI codes recognize the rights of pregnant women. The WRC standards provide the most extensive protections for women — forbidding pregnant women from being fired, proscribing forced or pressured use of contraception, demanding equal pay for women, and barring their exposure to hazardous materials.

Health, Safety, and the Environment

Health and safety areas and issues covered by the codes pertain to: the work environment, housing, and dining areas, injury and fire prevention practices, hazardous materials management, sanitation (including clean toilets and wash rooms), and potable drinking water. Applicable standards are the national health and safety laws of the government where the factory is located, the health and safety conventions of the International Labor Organization, and OSHA regulations. More comprehensive standards on some codes include safety features on machines, health and safety training, first aid stations, and regulations for exits, space, lighting, ventilation, temperature, and noise. Some codes also require health and safety professionals to be stationed on the shop floor and specify procedures for the documentation of injuries. Reebok has the most detailed health and safety codes. The Labor Law of the PRC entitles workers to refuse to engage in dangerous operations forced upon them by management in violation of relevant regulations, and allows them to criticize, inform or bring charges against the employer for acts that are harmful to life, safety, and personal health. Several of the codes sampled in this report encourage environmentally-safe practices and the assignment of trained personnel for managing hazardous waste.

Freedom of Association

The multi-stakeholder codes — SA8000, ETI, FLA, and WRC — and some company codes in this sample assert the rights of workers to join or form trade unions

of their own choosing and to bargain collectively without fear of retribution. The SA8000 code provides that where the law prohibits these freedoms, the employer shall facilitate the development of parallel means for independent and free association and bargaining. Mattel and Reebok also require that grievance procedures be set up. Some company codes surveyed either do not address these rights or state that workers may join *any* legally-sanctioned labor organization, which in China is the ACFTU. In the PRC, workers in most private and foreign invested enterprises lack any union representation while independent organization is not tolerated by the government. In some enterprises where unions exist, workers reportedly are not aware of them. According to the PRC Labor Law, collective contracts may be negotiated between the enterprise management and enterprise trade union or workers' congress. However, collective contracts apply mostly to large, state-owned enterprises, and decisions about workers' pay, working hours, health, welfare, and other issues are largely non-negotiable. In 2001 and 2002, Reebok was successful in urging two Taiwanese-owned suppliers in China to hold free elections for representatives of the official trade union, touted as first of its kind in China.[24]

Working Hours

Excessive work hours is one of the most common labor abuses and causes of sickness and accidents in Chinese factories. Many codes prescribe a maximum of 60 hours per week, including a maximum of 48 hours of regular time and voluntary overtime not to exceed 12 hours, or the legal maximum if it is lower. All codes require one day off per week. Some codes apply restrictions "on a regular basis" rather than unconditionally. Others provide an exception to maximum working hours under "extraordinary circumstances."[25] The SA8000 code allows mandatory overtime if it is part of a collective bargaining agreement. Mattel, Wal-Mart, and ICTI state that working hours shall comply with local laws. China's Labor Law mandates an average work week of 40 hours with one day off every seven days. It prohibits overtime work in excess of 3 hours per day or 36 hours per month, and stipulates that it must be voluntary.

Compensation

Although low relative to many other developing counties, wages in China's labor intensive, export-oriented industries continue to attract migrants from rural areas of China's interior, where unemployment is high and average incomes are comparatively low.[26] The baseline standards for compensation are wage and benefits

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[24] Frank Ching, "Hong Kong Companies, We Are Told, Now Employ 11 Million Factory Workers on the Mainland," *South China Morning Post*, December 28, 2002.

[25] Reebok defines "extraordinary circumstances" as situations "that could not have been anticipated such as natural disasters, political upheaval, or mechanical failures."

[26] In China, legal minimum wages vary by location. Calculating actual wages in labor intensive sectors can be difficult because workers are often paid by a combination of piece rates, hourly, and overtime wages. Estimated actual wages in low-skill, export-oriented industries range from US$50 to $95 per month, compared to an average rural income of $25

(continued...)

levels that comply with local laws or match "prevailing industry standards." Some multi-stakeholder codes — SA8000, ETI, and WRC — include "basic needs" or "living wage" clauses.[27] Some codes also require employers to provide written pay policies before employment contracts are signed and accurate pay statements or records (listing all calculations and deductions) for each pay period. Other additional standards in some codes include requiring the payment of "premium rates" for overtime work, prohibiting the withholding of wages for disciplinary purposes, and deducting "reasonable amounts" for food and housing. According to China's Labor Law, the overtime rate of pay is 150% of the regular rate; legal compensation for working on rest days is 200% of regular pay, while work on national holidays is compensated at 300% of the base rate.

Compliance

Although extensive compliance guidelines are a crucial element in making codes of conduct effective, some of the sampled codes do not provide for them to any significant extent. Some codes apply an auditing system consisting of assessment or grading standards and corrective action procedures. The Disney code mandates comparatively rigorous on-site inspections, declaring that they be *unannounced* and that they include *private* or confidential interviews with workers. By contrast, Nike requires inspections "with or without prior notice" and Wal-Mart only specifies "personal interviews." Few of the codes sampled in this report explicitly call for third party or independent auditors. Others refer to "designated" monitoring agencies or to internal auditors (self-monitoring).

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[26] (...continued)
per month. Generally, these figures do not include employer-provided room and board, but also do not indicate how much of the income might come from overtime. Average per capita urban incomes in China exceed $100 per month.

[27] WRC defines a living wage as providing for basic needs — housing, energy, nutrition, clothing, health care, education, potable water, childcare, transportation, and savings — of an average family unit divided by the number of wage earners.