

American Federation of Labor and Congress of Industrial Organizations



815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000
www.aflcio.org

JOHN J. SWEENEY
PRESIDENT

Gerald W. McEntee
Michael Sacco
M.A. "Mac" Fleming
Carroll Haynes
Robert A. Scardelletti
Sandra Feldman
Stuart Appelbaum
James P. Hoffa
Edwin D. Hill
Clyde Rivers
Leo W. Gerard
James Williams
Joseph T. Hansen

EXECUTIVE COUNCIL
RICHARD L. TRUMKA
SECRETARY-TREASURER

Morton Bahr
Frank Hurt
Patricia Friend
William Lucy
Andrew L. Stern
R. Thomas Buffenbarger
John W. Wilhelm
Capt. Duane Woerth
Joseph J. Hunt
Cecil Roberts
Melissa Gilbert
John J. Flynn
William H. Young

LINDA CHAVEZ-THOMPSON
EXECUTIVE VICE PRESIDENT

Gene Upshaw
Gloria T. Johnson
Michael Goodwin
Leon Lynch
Martin J. Maddaloni
Boyd D. Young
Elizabeth Bunn
Terence O'Sullivan
Cheryl Johnson, R.N.
Edward C. Sullivan
Edward J. McElroy Jr.
Baxter M. Atkinson
Frank Hanley
Clayola Brown
Sonny Hall
Arturo S. Rodriguez
John M. Bowers
Dennis Rivera
Michael J. Sullivan
Harold Schaitberger
Bruce Raynor
William Burrus
Ron Gettelfinger
John Gage

James J. Jochum
Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records Unit, Room 1870
Pennsylvania Avenue and 14th Street, NW
Washington, DC 20230

Re: AFL-CIO Comments in Response to the Federal Register Notice of May 3, 2004 and Notification of Intent to Testify at Hearing.

Dear Mr. Jochum:

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) submits these comments in response to the May 3rd, 2004 Federal register notice of hearing and request for comments with respect to China's interest in being designated as a market economy under U.S. anti-dumping law.

The AFL-CIO represents 13 million working men and women in 61 affiliated national and international unions. We have an urgent interest in ensuring that U.S. trade policy is fair to workers, and a particular interest in trade with China, given the large and growing U.S. bilateral trade deficit with China.

We believe that at this time, on key criteria, including currency manipulation, basic workers' rights protection, illegal subsidies, a non-functional banking sector, and extensive state intervention in the economy, China does not come close to the standards established for a market economy, and that therefore current negotiations between the U.S. and Chinese governments are premature.

Criteria

In determining whether a country is a market economy, the following factors must be considered:

- (i) the extent to which the currency of the foreign country is convertible into the currency of other countries;
- (ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,
- (iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,
- (iv) the extent of government ownership or control of the means of production,
- (v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and
- (vi) such other factors as the administering authority considers appropriate.

We would like to take this opportunity to offer our views on the first two criteria in particular – currency convertibility and wage setting.

Currency Convertibility

On the issue of currency convertibility, it is clear that the Chinese government is engaged in extensive manipulation of the yuan (or renminbi). It has maintained its currency at a fixed exchange rate with respect to the dollar since 1996. Underlying economic conditions (relative inflation and growth rates, among other things) have changed during that time, leading to a severe misalignment of the exchange rate, which can only be maintained through the Chinese government's massive accumulation of U.S. dollar reserves – now over \$400 billion.

Some estimates place the under-valuation of the yuan as high as 75 percent. We believe it is likely to be in the range of 40%.¹ A currency misalignment of this magnitude has enormous significance in the context of U.S.-China trade. While it is certainly not the only factor contributing to the massive U.S. trade deficit with China, it is a significant one, and one that ought to be addressed urgently.

Recommendation: Before the U.S. government seriously considers granting China market economy status, the Chinese government should undertake a major revaluation of its currency, on the order of 40%, and take significant steps toward removing currency restrictions and allowing its currency to reflect market values.

Workers' Rights Violations

Wages in China cannot be determined by “free bargaining between labor and management,” because workers are prevented by law from forming independent unions. The Chinese government uses all organs of state power – the Communist Party, the People's Liberation

¹ See Fair Currency Alliance, Chinese Currency Manipulation Fact Sheet (May 10, 2004).

Army, the People's Armed Police, the Public Security Bureau (political police), the Labor Department, and the state judicial, procuratorial, and penal systems -- to suppress workers' right of association, right of collective bargaining, and right to strike. The suppression is comprehensive, unremitting, and brutal.

In its 2003 annual country report on China, the U.S. Department of State concludes that China's regulations "prevent the formation of truly autonomous...labor organizations."² Similarly, the 2003 Annual Report of the Congressional-Executive Commission on China concludes:

The Chinese government continues to deny its citizens the right to freely organize and to bargain collectively and continues to imprison labor leaders and actively suppress efforts of workers to represent their own interests....The Chinese government denies its citizens the freedom to associate and forbids them from forming independent trade unions. The government has made no progress in the past year toward respecting this right.³

Denial of the Right to Strike. The International Labor Organization (ILO) recognizes the right to strike as a fundamental right of collective bargaining and free association.⁴ There is no right to strike in China.⁵ China's Trade Union Law requires the All-China Federation of Trade Unions (ACFTU) "to mobilize workers to complete their production duties"⁶ and to suppress strikes.⁷ Those who "disturb the order of production or work" risk internment in "reeducation-through-labor camps."⁸

The Security forces and the Army, also controlled by the central Party, violently crush labor stoppages and protests.⁹ They assault or detain not only workers participating in those activities, but also their spouses and children. Even journalists who report the activities are beaten and harassed by Public Security forces – in the hope of erasing the protests from public memory.

Denial of Free Association and Rights of Collective Bargaining. Chinese law prohibits workers from organizing independently of the ACFTU. The ACFTU is subordinate to, and is legally

² Department of State, Country Reports on Human Rights Practices 2003: China, supra note 29. Please note that this section (on workers' rights) is reproduced largely from the AFL-CIO's 301 petition, filed on March 16, 2004, claiming that China's violation of workers' rights is an unfair trade practice under Section 301 of the Trade Act of 1974. The full footnotes can be found in that document, which is available at our website, at: http://www.aflcio.org/issuespolitics/globaleconomy/upload/china_petition.pdf.

³ Congressional-Executive Commission on China, 2003 Annual Report, supra note 28, at pp. 23-24.

⁴ International Labor Organization, Committee of Experts, General Survey, Freedom of Association and Collective Bargaining: The Right to Strike, Report III, Part 4B, Para. 151-52 (1994) states that the right to strike is an intrinsic right of collective bargaining and free association. General prohibitions of the right to strike are permissible only in times of acute national crisis, such as war, insurrection, or natural disaster.

⁵ There is "still no officially accepted right to strike" in China. Department of State, Country Reports on Human Rights Practices 2003: China, supra note 29.

⁶ People's Republic of China, Trade Union Law, Article 7.

⁷ People's Republic of China, Trade Union Law, Article 27.

⁸ "The Right to Strike," at www.ihlo.org, quoted in HKCTU, Chinese Workers and the WTO, supra note 50, at p. 14 n.48.

⁹ The practices mentioned in this paragraph are detailed below, in the discussion of China's repression of independent union activities and the strikes and protests associated with those activities.

required to obey, the bureaucracy of the Chinese Communist Party (CCP). “The Chinese government...continues to use the [ACFTU] as a tool of Communist Party control of union activity.”¹⁰

At the enterprise level, union officers are dominated by managers and local Party officials. Indeed, in both State-owned Enterprises (SOEs) and Foreign-Invested Enterprises (FIEs), managers themselves typically serve jointly as ACFTU union officials – a startling indication of the subservience of the ACFTU to the Party’s objective of management-led development.¹¹ Where managers do not serve as union officers, managers nonetheless select union officers in agreement with local labor departments, which are tightly controlled by local Party officials.¹² The enterprise pays the union officers’ salaries. The enterprise also controls union finances. The government mandates that the enterprise forward 2 percent of its wage bill as union fees to the ACFTU, but enterprises often simply appropriate or fail to dispense that sum.¹³

Managers’ service as union officials, managers’ selection of union officers, and managers’ control of union finances are flagrant violations of international principles of free association and union autonomy.¹⁴

Party leaders’ relentless opposition to workers’ exercise of their right of association is motivated not only by concern for the interests of investors. They have long feared that, as in Poland, South Africa, Brazil, South Korea and elsewhere, worker organization will form the core of resistance to political autocracy and to strategies of economic development that benefit a small class of investors and Party cadres.¹⁵

For this reason, even though the Public Security Bureau authorizes protests by students, it closely screens student marches to ensure that they are not joined by workers.¹⁶ Indeed, at the time of the Tiananmen Square protests in 1989, Chinese workers in several cities organized the Workers Autonomous Federations (WAFs) in opposition to the ACFTU.¹⁷ The mounting participation of the WAFs in the pro-democracy demonstrations by students was a significant factor in the Communist Party’s decision to unleash the Army. In the aftermath of the massacre, worker-activists faced severe punishments, including death sentences and long-term imprisonment, for their support of democracy and free association.¹⁸

¹⁰ Congressional-Executive Commission on China, 2003 Annual Report, *supra* note 28, at p. 24.

¹¹ *Id.*, at p. 33; Chan and Nprlund, *Vietnamese and Chinese Labour Regimes*, *supra* note 97, at p. 192.

¹² Mary Gallagher, *The Transformation of Labor Relations in China*, *supra* note 62, at p. 26.

¹³ *Id.* at p. 33.

¹⁴ Article 2(2) of ILO Convention 98 on the Right to Organize and Bargain Collectively (1949) states that workers must be protected against acts intended “to promote the establishment of workers’ organizations under the domination of employers or employers’ organizations, or to support workers’ organizations by financial or other means, with the object of placing such organizations under the control of employers.” These acts also violate ILO Convention 87 (1948), Articles 2-6.

¹⁵ Malcolm Warner, “Chinese Trade Unions: Structure and Function in a Decade of Reform, 1979-89,” in Stephen Frenkel, ed., *Organized Labor in the Asia-Pacific Region* (ILR Press 1993).

¹⁶ *Id.*

¹⁷ Andrew G. Walder and Gong Xiaoxia, *Workers in the Tiananmen Protests*, *supra* note 98.

¹⁸ Malcolm Warner, *Chinese Trade Unions*, *supra* note 108. The death sentences were subsequently converted to long-term prison sentences or exile.

Since 1989, China's workers have made several more attempts to create independent organizations outside the aegis of the ACFTU – including the Preparatory Committee of the Free Labor Union of China (PCFLUC) in 1992; the League for the Protection of the Rights of Working People (LPRWP) in 1994; the Shu Pu Association for the Protection of the Rights of Laid-Off Workers in 1998; the China Workers Monitor in 1999; the Daqing Laid-Off Workers Trade Union in 2002; and others.¹⁹

The government responded to these exercises of the right of association with machine-gun fire, beatings, police harassment, forced labor, forced relocation to impoverished regions, detention without trial, psychiatric internment, forced electroshock treatment, forced medication, false criminal charges, show trials, and long-term imprisonments.²⁰ The tragic litany has been documented at great length by the ILO, the U.S. Government, and respected human rights organizations.²¹ The weapons of state terror are directed at rank and file workers, worker-leaders, workers' spouses and children, journalists reporting the protests, and lawyers providing counsel to the workers.²² In addition, the government "very commonly" delegates its police powers to private security guards, who do not hesitate to use electric batons and handcuffs against protesting workers.²³ In June, 2002, when 800 textile workers at a factory in Guangdong protested against physical abuse by security guards, the guards attacked them with steel pipes.²⁴

As recently as February 8, 2004, hundreds of officers of the People's Armed Police violently dispersed a peaceful protest by textile workers in Hubei Province.²⁵ The workers were seeking more than \$24 million in unpaid wages. The government placed three of the workers in "re-education through labor." Six others are being detained for "disturbing public order." They join the army of workers imprisoned in China for exercising their rights of association.

In sum, factory workers in China are wholly denied the fundamental rights of association and collective bargaining, by law and practice. Either the monopolistic ACFTU is present in an enterprise, or there is no union at all. Where the ACFTU is present, its role is to discipline the workforce on behalf of Party policies, local development strategies, and investor goals, not to assert worker interests and rights. Strikes are illegal in China, and the ACFTU is charged with the task of suppressing them. While there may be dissidents within the ACFTU who are worthy of support, they are overwhelmed by the Party's stringent control. When workers protest or associate outside the constraints of the ACFTU, they enter a whirlwind of state terror, of torture, beatings, forced labor, and long-term imprisonment.

¹⁹ See Department of State, Country Reports on Human Rights Practices 2003: China, *supra* note 29; Amnesty International, Labour Unrest and the Suppression of the Rights to Freedom of Expression and Association: People's Republic of China, *supra* note 97; Amnesty International, Detained and Imprisoned Labour Rights Activists: People's Republic of China, *supra* note 97.

²⁰ See Department of State, Country Reports on Human Rights Practices 2003: China, *supra* note 29; Ching Kwan Lee, "Pathways of Labour Insurgency," in Elizabeth J. Perry and Mark Selden, eds., *Chinese Society: Change, Conflict, and Resistance* (2d ed., Routledge 2000); Human Rights in China, China: Freedom of Association Regulated Away (June 1999); Dorothy Solinger, *Contesting Citizenship*, *supra* note 52, at p. 285.

²¹ See sources cited *supra* in notes 93-116.

²² See sources cited *supra* in notes 93-116.

²³ Dorothy Solinger, *Contesting Citizenship*, *supra* note 52, at p. 286.

²⁴ International Confederation of Free Trade Unions, *Global Survey: People's Republic of China*, *supra* note 97.

²⁵ The facts in this paragraph are reported in International Confederation of Free Trade Unions, "Letter to the ILO Regarding Detained Chinese Textile Workers," (March 5, 2004).

Recommendation: Before the U.S. government seriously considers granting market economy status to China, detailed and extensive institutional reforms must take place in China to ensure that the core workers' rights detailed in the ILO's Declaration on Fundamental Principles and Rights at Work are respected and implemented, in law and in practice. Most fundamentally, workers must have the right to form unions independent of their government and employer, and must have the right to organize and bargain collectively, without fear of imprisonment or physical attack.

Other Issues

The USTR's 2003 report to Congress on China's compliance with its WTO obligations documents the following problem areas, among many others: tax policies that favor domestic production; failure to implement obligations regarding retail, trading, and distribution rights as they apply to foreign investors or joint enterprises; failure to implement conforming customs regulations; failure to enforce intellectual property rights protections; systemic problems with biotechnology and sanitary and phytosanitary measures; and widespread allegations of illegal export subsidies in electronics, bio-medicine, textiles, steel, petrochemical, machinery, copper, and corn, among others. Together, these violations negate many of the promised benefits of China's WTO membership for American workers and companies.

In the area of subsidies, not only has the Chinese government failed to eliminate export subsidies as promised, it has failed even to submit the required notifications that *list* existing subsidies. It missed deadlines for notification in 2002 and 2003, so U.S. officials tasked with investigating subsidies must do so without crucial information.

Recommendation: Before the U.S. government seriously considers granting China market economy status, it should take all steps possible to ensure that China is at least complying with its basic WTO obligations, including eliminating export subsidies.

In conclusion, we would like to reiterate our strongly held views, that China has failed to take even preliminary steps toward reforming its economy, and respecting fundamental human rights and freedoms. While the "factors to be considered" under Section 771(18) of the Tariff Act of 1930 do not explicitly include democratic reforms, we believe that such reforms are a necessary pre-condition for a successful market economy. In that light, we believe negotiations toward granting China market economy status are premature and unlikely to yield useful results at this time.

In closing, I would like to request permission for Thea Lee to testify at the public hearing scheduled for June 3, 2004.

Respectfully submitted,

Thea M. Lee
Chief International Economist