STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

HOUSE COMMITTEE ON THE JUDICIARY

ON

FEDERAL PRISON INDUSTRIES – EXAMINING THE EFFECTS OF SECTION 827 OF THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2008

MAY 6, 2008

Mr. Chairman and Members of the Subcommittee –

My name is John Gage. I am the National President of the American Federation of Government Employees, AFL-CIO. On behalf of the more than 39,000 federal correctional officers and staff who work in the Bureau of Prisons (BOP) institutions, I thank you for the opportunity to testify today on the Federal Prison Industries (FPI) prison inmate work program, and its critical importance to the safety and security of federal correctional officers and staff, federal prison inmates, and the local communities surrounding our BOP institutions.

I. FPI Prison Inmate Work Program

As you probably know, the serious problems of prison inmate overcrowding and correctional officer understaffing are creating dangerous conditions inside the walls and fences of BOP correctional institutions.

More than 200,000 inmates are confined in the 114 BOP correctional institutions today, up from 25,000 in 1980, 58,000 in 1990, and 145,000 in 2000. By 2010, it is expected there will be 215,000 prison inmates incarcerated in BOP institutions.

This explosion in the federal prison inmate population is the direct result of Congress approving stricter anti-drug, anti-gun enforcement laws involving mandatory minimum sentences in the 1980s, as documented in the *History of Mandatory Sentences*, a study produced by the Families Against Mandatory Minimums Foundation (FAMM).

To make matters worse, the number of federal correctional officers and staff who work in BOP institutions is failing to keep pace with this tremendous growth in the prison inmate population. The BOP system is currently staffed at an 86.6% level, as contrasted with the 95% staffing levels in the mid-1990s. Moreover, the current 86.6% staffing level (or 34,098 filled positions) is <u>below</u> the 90% staffing level (or 35,444 filled positions) that BOP believes is the point where the safety and security of correctional officers and staff, as well as federal prison inmates, could be in jeopardy.

We at AFGE believe this inmate overcrowding and correctional officer understaffing is beginning to result in a significant increase in federal prison inmate assaults against correctional officers and staff, and against other federal prison inmates. On December 26, 2007, the BOP Intelligence Section of the U.S. Department of Justice issued a report documenting that a combined total of 1,780 inmate-on-inmate assaults (armed and unarmed) occurred during FY 2006, representing a 15% increase over the 1,541 reported in FY 2005. The report also documented that a combined total of 1,362 inmate-on staff assaults (armed and unarmed) occurred during FY 2006, representing a 6.0% increase over the 1,285 reported in FY 2006.

This increasingly unsafe environment in which our AFGE members work is the reason why we strongly support the FPI prison inmate work program. FPI is a self-supporting government corporation that provides work opportunities and job skills training to BOP prison inmates by producing goods and performing services for federal agencies. By statute, federal agencies are required to purchase from FPI any product listed in the FPI Schedule of Products – a sole-source requirement referred to as "mandatory source preference."

The FPI prison inmate work program is the essential management tool that federal correctional officers and correctional staff use to help deal with the huge increase in the FPI prison inmate population. This program helps keep 23,152 prison inmates – or about 18% of the eligible inmate population – productively occupied in labor-intensive activities, thereby reducing inmate idleness and the violence associated with that idleness. It also provides strong incentives to encourage good inmate behavior, as those who want to work in FPI factories must maintain a record of good behavior and must have completed high school or be making steady progress toward a General Education Degree (GED).

In addition, the FPI prison inmate work program is an important rehabilitation tool that provides federal inmates an opportunity to develop job skills and values that will allow them to reenter – and remain in – our communities as productive, law-abiding citizens. The Post-Release Employment Project (PREP), a multi-year study of the FPI prison inmate work program carried out and reported upon in 1996 by William Saylor and Gerald Gaes, found that the FPI prison inmate work program had a strongly positive effect on post-release employment and recidivism. Specifically, the study results demonstrated that:

- In the short run (i.e., one year after release from a BOP institution), federal prison inmates who had participated in the FPI work program (and related vocational training programs) were: (1) 35% <u>less</u> likely to recidivate than those who had not participated, and (2) 14% <u>more</u> likely to be employed than those who had not participated.
- In the long run (i.e., up to 12 years after release from a BOP institution), federal prison inmates who participated in the FPI work program were 24% <u>less</u> likely to recidivate than those who had not participated in the FPI work program. (*PREP: Training Inmates Through Industrial Work Participation, and Vocational and Apprenticeship Instruction,* by William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 24, 1996.)

Later in 1999, Saylor and Gaes published a follow-up paper to report further analyses of the PREP data which focused on the differential effect of the FPI prison inmate work program on the post-release recidivism of four groups: (1) non-Hispanic whites, (2) non-Hispanic blacks, (3) Hispanic whites, and (4)

Hispanic blacks. Their analyses revealed that the FPI prison inmate work program provides even greater benefit to the three minority groups that are at the greatest risk for recidivism (non-Hispanic blacks, Hispanic whites, and Hispanic blacks) than it does for the non-Hispanic white group. In general, the recidivism improvement rates for minority inmates who participated in the FPI work program compared to those minority inmates who did not participate were between 37% and 147% higher than the recidivism improvement rates for non-Hispanic white inmates who participated in the FPI work program compared to those non-Hispanic white inmates who did not participate. As Saylor and Gaes concluded:

> "Regardless of whether a minority was defined on the basis of race or ethnicity, and despite their being at a higher risk of recidivism, minority groups benefited more from [FPI work program] participation than their lower risk non-minority counterparts. While the absolute differences may not appear that large, the relative improvements [in recidivism rates] indicate a much larger program effect for minority program participants who are otherwise more likely to be recommitted to prison." *(The Differential Effect of Industries Vocational Training on Post-Release Outcome for Ethnic and Racial Groups,* William Saylor and Gerald Gaes, Office of Research and Evaluation, Federal Bureau of Prisons, September 6, 1999.)

II. Legislative and Administrative Initiatives to Modify the Application of the FPI Mandatory Source Preference – and Their Adverse Impacts on FPI Prison Inmate Employment

A. <u>Initiatives in 2002 and 2003</u>

FPI's statutory mission is "to provide employment to the greatest practical number of inmates confined within the Federal Bureau of Prisons" while minimizing "FPI's impact on private business and labor." Legislative and administrative initiatives to modify the application of the FPI mandatory source preference that occurred in FY 2002 and FY 2003 – the result of political pressures from private sector businesses and labor unions – have "had the effect of reducing the level of impact on the private sector (particularly in the FPI program's traditional industries of textiles and office furniture)", according to the *"Message from the Board of Directors"* in the <u>FY 2004 FPI Annual Report</u>.

However, in the process of "reducing the level of impact on the private sector," these legislative and administrative initiatives also have had the effect of causing the elimination of thousands of FPI prison inmate jobs in the past several years. This is a disappointing trend, especially considering the fact that the number of BOP prison inmates increased by tens of thousands during this same time period.

Legislative Initiatives

Section 811 of the National Defense Authorization Act for FY 2002 (P.L. 107-107) and Section 819 of the National Defense Authorization Act for FY 2003 (P.L. 107-772), the two sections that constitute the existing 10 U.S.C. Section 2410n, and appropriations language in both FY 2004 Consolidated Appropriations Act (P.L. 108-199) and FY 2005 Consolidated Appropriations Act (P.L. 108-447) altered the process by which DoD and civilian agencies purchase goods from FPI:

(a) Market Research:

- DoD and civilian agencies are required to conduct market research to determine whether an FPI product is comparable in terms of price, quality, and time of delivery to products offered by private sector suppliers.
- Determining comparability is a unilateral determination made at the discretion of the DoD and civilian agencies' contracting officials.

(b) Mandatory Source or Competition Procedure:

- If a contracting official determines that FPI's product *is* comparable, then FPI mandatory source procedures remain applicable. In other words, the DoD or civilian agency must purchase the product from FPI – or request an FPI waiver to procure it from private sector suppliers.
- Conversely, if a contracting official determines that FPI's product *is not* comparable, the DoD or civilian agency must implement competitive procurement procedures, and FPI must be given an opportunity to submit a competitive offer.

Administrative Initiatives

Upon its appointment in May 2002 by President Bush, the new FPI Board of Directors initiated several administrative measures "to ensure the FPI program fulfills its statutory mandate to limit competition with private industry and free labor," according to the *"Message from the Board of Directors"* in the FY 2004 FPI Annual Report. These initiatives included:

- Waiving mandatory source for all FPI products where the FPI program's share of the federal market is 20% or higher;
- Eliminating the FPI program's status as a mandatory source of federal agency supply for purchases valued at $2,500 or under;
- Granting all requests to waive FPI's mandatory source when FPI is unable or unwilling to meet the price of a comparable product offered by a private sector supplier;
- Terminating the business practice commonly referred to as "pass-through" in which the FPI program would purchase finished products

from its private sector partners for resale to its federal agency customers if circumstances prevented FPI from fulfilling an order.

- Ensuring that prison inmates in the FPI program do not have access to sensitive or personal information of any kind (such as credit card numbers, medical records, social security numbers, credit reports, or other personal information); and
- Requiring all products made by the FPI program to have at least 20% of their value added by prison inmate labor.

Initiatives Effect: Elimination of Thousands of FPI Prison Inmate Jobs

As the following table shows, at the end of FY 2000, 21,700 BOP prison inmates - or 25% of the FPI-eligible (sentenced and medically able) prison inmate population of 86,800 – worked in FPI factories. But the FPI employment situation in FY 2005 was strikingly different – a change that obviously began in FY 2002. At the end of FY 2005, 19,720 BOP prison inmates – or only 17% of the total FPI-eligible (sentenced and medically able) prison inmate population of 116,000 – worked in FPI factories. Thus, the number of BOP prison inmates working in FPI factories *decreased* by 1,980 between FY 2000 and FY 2005 while the total number of FPI-eligible (sentenced and medical able) prison inmates *increased* by 29,200 over that same time period. (The total number of BOP prison inmates *increased* by 42,120 between FY 2000 and FY 2005. The total BOP prison inmate population is larger than the more restricted “FPI-eligible” prison inmate population.)

Some FPI detractors have denied the adverse impact these legislative and administrative changes have had on the FPI prison inmate employment situation. They point to the increases in FPI’s prison inmate employment that began in FY 2005 and have continued in FY 2006 and FY 2007. However, the inmate employment numbers in these three fiscal years have been temporarily inflated as FPI responded to the Defense Department’s Iraq war product demands. Virtually all of FPI’s electronic sales, and the vast majority of FPI’s clothing/textile sales are in support of the United States’ Iraq war effort, according to the FPI annual reports between FY 2005 and FY 2007. Thus, the eventual end of the Iraq war will presumably result in decreased product sales and prison inmate jobs – all while the federal inmate population and the demand for FPI jobs continue to grow.

This disappointing situation is made even worse if one considers FPI’s failure since FY 2001 to meet the agency’s annual goal of employing 25% of the total FPI-eligible (sentenced and medically able) prison inmate population. For example, if FPI had met its 25% employment goal in FY 2007, 32,155 prison inmates – not 23,152 – would have worked in FPI factories. If FPI had met its 25% employment goal in FY 2007, 9,003 additional prison inmates would have been: (1) productively occupied in labor-intensive work activities, thereby reducing inmate idleness and the violence associated with that idleness, and (2) provided opportunities to develop job skills and values to help them reenter our communities as productive, law-abiding citizens.

FPI Prison Inmate Employment Data: FY 2000-2007
(data figures are as of September 30 of each fiscal year)

Fiscal Year	# of BOP prison inmates employed by FPI (actual)	% of eligible (sentenced, medically able) BOP prison inmate population employed by FPI	Total eligible (sentenced, medically able) BOP prison inmate population*	# of BOP prison inmates employed by FPI if 25% FPI employment goal had been met	# of additional BOP prison inmates needed to be employed by FPI in order to meet 25% FPI employment goal
FY 2000	21,700	25%	86,800	21,700	0
FY 2001	22,560	25%	90,240	22,560	0
FY 2002	21,778	22%	98,990	24,747	2,969
FY 2003	20,274	19%	106,705	26,676	6,402
FY 2004	19,337	18%	107,427	26,856	7,519
FY 2005	19,720	17%	116,000	29,000	9,280
FY 2006	21,205	18%	117,805	29,451	8,246
FY 2007	23,152	18%	128,622	32,155	9,003

Source: State of the Bureau, six annual BOP reports for FY 2000-2005; FPI Annual Report, seven annual FPI reports for FY 2001-2005.

***** The total BOP prison inmate population is larger than the more restricted FPI-eligible (sentenced, medically able) prison inmate population: FY 2000: 145,125; FY 2001: 156,572; FY 2002: 163,436; FY 2003: 172,499; FY 2004: 179,288; FY 2005: 187,245; FY 2006: 192,584; and FY 2007: 200,052.

B. 2007 Initiative

Section 827 of the National Defense Authorization Act for FY 2008 (P.L. 110-181) recodifies the 2003 and 2004 legislative initiatives contained in 10 U.S.C. Section 2410n by using the FPI Board's "significant market share" concept to structure the process for determining whether DoD should use competitive procurement procedures or the FPI mandatory source preference.

As explained above, the FPI Board adopted in 2003 a resolution that administratively ended the application of the mandatory source preference for those products where FPI's share of the Federal market exceeds 20%. Section 827 of the FY 2008 defense authorization measure ends the application of the FPI mandatory source preference with regard to DoD's purchase of FPI-made products for those products where FPI's share of the DoD market is greater than 5%.

Here is the new DoD process for purchasing FPI goods:

(a) Products for which FPI has a "significant market share" of less than 5 percent. - When DoD is considering a product for which FPI has a "significant market share" of less than 5 percent, DOD must conduct market research to determine whether the FPI product is comparable to products available from the private sector that best meet DoD's needs in terms of price, quality, and time of delivery. If DoD determines that a FPI product *is not* comparable in price, quality, and time of delivery to products available from the private sector, DoD shall use competitive procedures for the procurement of the product. But if DoD determines that a FPI product *is* comparable in price, quality, and time of delivery to products available from the private sector, then the FPI mandatory source preference remains applicable and DoD must purchase the FPI product.

(b) Products for which FPI has a "significant market share" of greater than 5 percent. – When DoD is considering a product for which FPI has a "significant market share" of greater than 5 percent, DoD may purchase a FPI product only if DoD uses competitive procedures for the procurement of the product. In conducting such a competition, DoD shall consider a timely offer from FPI.

This seemingly benign reduction in the "significant market share" from 20% to 5% for DoD purchases of FPI-made goods will have three significantly adverse consequences for the FPI prison inmate work program:

1. The significant reduction in the applicability of the FPI mandatory source preference with regard to DoD purchases of FPI-made products would necessarily result in a substantial decrease in the number of FPI prison inmate jobs - thereby *increasing* inmate idleness and the associated risk of inmate assaults on federal correctional officers and other inmates.

(a) Potential loss of FPI sales revenues: It was estimated last year that the reduction in the "significant market share" from 20% to 5% - and therefore the reduction in the applicability of the mandatory source preference – would result in a potential loss of up to $241 million in FPI sales revenues, or a 33.6% decrease from the FY 2006 FPI sales revenues of $717 million.

(b) Potential loss of FPI prison inmate jobs: The potential FPI sales revenue decrease of $241 million, in turn, would result in a potential loss of up to 6,500 FPI prison inmate jobs, or a 30.6% decrease from 21,205, the number of prison inmates employed by FPI in FY 2006. This estimate was based on the number of FPI prison inmates producing those products – primarily from the electronics and textiles/apparel sectors - that would be adversely impacted by the market share reduction from 20% to 5%.

2. The increase in FPI prison inmate idleness and the associated increased risk of inmate assaults on federal correctional officers and staff would necessarily require a substantial increase in BOP "Salaries and Expenses" account funding to pay for additional BOP correctional officers to deal with the increased risk of inmate assaults on federal correctional officers and other inmates.

It was estimated last year that 6,500 lost FPI prison inmate jobs would result in the need for 1,300 additional BOP correctional staff (based on a 5:1 inmate/staff ratio) for security and alternative programming. These 1,300 additional BOP correctional staff would require an additional $100 million in "Salaries and Expenses" account funding (based on one additional staffer costing an additional $77,000 in average salaries and fringe benefits).

3. Section 827's substantial reduction in the applicability of the FPI mandatory source preference with regard to DoD's purchase of FPI products would have a significantly adverse impact on the many private sector companies and non-inmate employees that supply FPI with raw materials, equipment, and services.

(a) Potential loss of private sector company sales: The potential FPI sales decrease of $241 million equates to a loss of $185 million in private sector sales of materials, equipment, and services. This $185 million loss is based on 77% of FPI revenue returning to the private sector in the form of FPI purchases of materials, equipment, and services. Moreover, $137 million of the $185 million loss in private sector sales would be from small businesses, including minority-owned, women-owned, and disadvantaged businesses.

(b) Potential loss of domestic private sector jobs: The potential loss of $185 million in private sector sales of materials, equipment, and services equates to a loss of 695 jobs in the domestic private sector. This jobs loss estimate is based on the Department of Commerce data on average output per worker for manufacturing.

III. Opponents' Arguments for Eliminating the FPI Mandatory Preference

Opponents of the FPI prison inmate work program often argue that the FPI mandatory source preference must be eliminated because: (1) FPI is a federal procurement behemoth, (2) this FPI federal procurement behemoth is adversely impacting private companies' sales and non-inmate workers' jobs, particularly in the office furniture and textile/apparel industries, and (3) therefore, eliminating the FPI mandatory source will significantly help private companies and non-inmate workers.

However, the existing evidence would seem to support the opposite arguments:

1. FPI is not a federal procurement behemoth because its total product sales, even its office furniture sales, are relatively small.

FPI opponents of FPI often contend that FPI is a federal procurement behemoth. For example, Rep. Howard Coble (R-NC), then-chairman of the House Judiciary 8Subcommittee on Crime, Terrorism, and Homeland Security, stated at his Subcommittee's July 1, 2005 hearing on H.R. 2965, an anti-FPI bill, that he is "proud to be a cosponsor of this legislation" because "[among other things] FPI is a large and growing Government-owned corporation. In 1998, FPI had total sales in excess of $534 million and employed 20,200 inmates. In 2004, [FPI] employed 19,337 inmates with total sales of $802 million."

But while Rep. Coble and others seek to portray FPI as this "large and growing" behemoth, the fact is that FPI's total sales represent only a very small percentage of the total federal procurement market. FPI's total sales in FY 2004 - $802,720,000 – were less than one quarter of 1% (.2350934% to be exact) of the total federal agency procurement market - $341,447,181,612. FPI's total sales in FY 2007 - $852,724,000 – were less than one fifth of 1% (.1926680%) of the total federal agency procurement market - $442,587,106,986. (Source: *"Federal Contract Actions and Dollars by Executive Department and Agency, FY 2004 and FY 2007"*, Federal Procurement Data System website.)

Similarly, FPI opponents who support the office furniture industry argue that the FPI office furniture business segment is an increasingly "large and growing" portion of the total U.S. office furniture market. For example, Rep. Pete Hoekstra (R-MI), the primary sponsor of H.R. 2965, the anti-FPI bill, who represents a Michigan congressional district heavily involved with the office furniture industry, testified at the July 1, 2005 House Crime Subcommittee hearing on H.R. 2965 that:

> "It [the FPI office furniture business segment] is not a minuscule part [of the U.S. furniture industry]. The furniture industry is about – probably somewhere in the neighborhood of a $12 to $14 billion industry, depending on exactly what year you're taking a look at. Office furniture in FPI was a $250 million business within the last couple of years. It was a fast growing industry. It was the fastest growing office furniture company in America as the office furniture industry was going through its tough times."

However, contrary to Rep. Hoekstra's testimony, the fact is that the FPI office furniture business segment is only a very small part of the total U.S. office furniture market. As the table shows below, FPI office furniture sales in FY 2005 (when Rep. Hoekstra testified) - $139,773,000 – were only 1.39% of the total U.S. office furniture market - $10,070,000,000. In addition, the FPI office furniture sales have been decreasing over the last couple of years, not increasing. FPI office furniture sales have decreased in absolute terms – dropping from $217,852,000 in FY 2002 to $115,993,000 in FY 2007 – and as a relative percentage of the total U.S. office furniture market – decreasing from 2.45% in FY 2002 to 1.02% in FY 2007.

FPI Office Furniture Sales and U.S. Office Furniture Market (2002-2007)

Fiscal Year	FPI Office Furniture Sales	U.S. Office Furniture Market	FPI Office Furniture Sales as % of U.S. Office Furniture Market
2002	$217,852,000	$8,890,000,000	2.45%
2003	$151,996,000	$8,505,000,000	1.79%
2004	$140,935,000	$8,935,000,000	1.58%
2005	$139,773,000	$10,070,000,000	1.39%
2006	$118,179,000	$10,820,000,000	1.09%
2007	$115,993,000	$11,420,000,000	1.02%

Sources: *"The U.S. Office Furniture Market, Statistics,"* compiled by The Business and Institutional Furniture Manufacturer's Association; <u>FPI Annual Report</u>, six annual FPI reports for FY 2002-2007.

(2) FPI is not the cause of the U.S. private companies' sales losses and non-inmate workers' job losses in the office furniture and textile/apparel industries. Instead these sales and job losses are being caused by foreign competition.

FPI's opponents argue the FPI mandatory source preference should be eliminated because the FPI prison inmate work program is adversely impacting private sector companies and non-inmate workers, particularly in the office furniture and textile/apparel industries. But FPI's opponents have failed to present hard evidence to substantiate their assertion that the FPI program is systemically causing such company sales losses and non-inmate worker job losses.

An example of this inability occurred at the July 1, 2005 House Crime Subcommittee hearing on H.R. 2965. then-Subcommittee Chairman Coble asked the following two questions of Mr. Paul Miller, Director of Government Affairs, Independent Office Products & Furniture Association: "A, has any member of your association experienced detrimental effects as a result of FPI programs? And B, have you had any small businesses that have been forced out of business as a direct consequence of competing with FPI?" In response, Mr. Miller said the following:

> "Let me answer the second question first. **To our knowledge, no, there has not been. We cannot point to a direct relationship of any business going out of business because of FPI.** But we do see our industry – the economy has struggled the last few years and our industry has struggled a great deal. We lost 30,000 jobs, our companies were losing business. So we do see a correlation that had they been able to compete with that Government business they may have been able to do a little bit better. They may not have had to lay employees off, or they may not have had to close down for work periods at a time, weeks at a time. So, we have been harmed, **but I can't say that we've closed our doors directly because of FPI.** It doesn't help." (Emphasis added)

Later at the same hearing, Rep. Dan Lundgren (R-CA) asked this question of Mr. Miller:

> "Mr. Miller, with all due respect, you've got to come and show me that this [FPI prison inmate work program] is really hurting the industry. I mean, to come here and say, well, I can't show you any loss of jobs anywhere and I can't show you any particular business going out of business but we know it hurts us, frankly is insufficient to convince me that we've got to do something. **Now, if you've got some real hard data to show how this [FPI] program is really hurting your industry in a substantial way, I'd like to hear it."** (Emphasis added)

In response, Mr. Miller failed to present any "real hard data" to show how FPI is adversely impacting office furniture companies and non-inmate workers "in a substantial way." Instead, he said his office furniture association has no problem with FPI "legitimately" making office furniture with prison inmate labor but is opposed to FPI's alleged use of the business practice referred to as "pass-through" in which the FPI program would purchase finished products from its private sector partners for resale to its federal agency customers if circumstances prevented FPI from fulfilling an order. (Contrary to Mr. Miller's statement, the "pass-through" issue was resolved administratively in 2002, and there is no evidence that FPI has employed the "pass-through" practice since that time.)

The reason why Mr. Miller and other FPI opponents have failed to present hard data to show that the FPI program is systematically causing losses of business sales and non-inmate worker jobs is simple. *The FPI prison inmate work program is not causing these losses.* These sales and job losses, particularly in the office furniture and textile/apparel industries, are being caused by foreign trade competition and the outsourcing of American jobs to other countries.

The very real adverse impact of foreign competition on the office furniture and textile/apparel industries has been documented again and again in federal government and trade association analyses, the office furniture and textile/apparel companies own stock reports to the Securities and Exchange Commission, and in the business media. For example, the U.S. Department of Commerce's comprehensive analysis of the health and competitiveness of the U.S. textile and apparel industries demonstrated how rising textile and apparel imports have caused substantial reductions in U.S. textile and apparel production as measured by the value of industry shipments, job losses and reductions in the number of textile and apparel establishments. *("The U.S. Textile and Apparel Industries: An Industrial Base Assessment,"* conducted by the U.S. Department of Commerce's Bureau of Industry and Security, as requested by the Joint Statement of Managers accompanying the Conference Report on the Consolidated Appropriations Resolution, 2003 (H.Rpt. 108-10.)

An example of both the adverse impact of foreign trade and the outsourcing of American jobs to other countries is a Business Week article on Haworth Furniture, a $1.4 billion Holland, MI-based maker of office furniture, and its increasing success in China. In addition to discussing how successful Haworth has been in moving a significant part of its manufacturing capacity to Shanghai, the August 22, 2005 article points out the adverse impact of Chinese imports on U.S. office furniture companies.

> "*What's particularly impressive is that Haworth is beating many Chinese manufacturers at their own game – and doing it on the locals' turf.* ***For the past five years, U.S. furniture manufacturers have been under siege from Chinese imports. Hundreds of U.S. furniture factories have shut, unable to compete with high-quality Chinese-made furniture costing 30% to 40% less.*** *Few U.S. furniture makers have even contemplated taking the fight to China by manufacturing there and selling to the domestic market.*
>
> *[But] the family-owned company has seen its Middle Kingdom sales grow 50% annually for the past three years. From its 250,000-square-foot factory in Shanghai, Haworth is selling more than 100,000 chairs a month, priced at $250 to $2,000 apiece, and around 100,000 office work stations, which go for up to $2,500 apiece." ("Sitting Pretty in Shanghai,"* Business Week*, August 22, 2005)*

So why the anti-FPI animus? U.S. office furniture and textile/apparel companies and labor unions, who have suffered tremendous sales and job losses, and the legislators who represent the congressional districts in which these companies reside, are attempting to mitigate these losses somewhat by gaining better access to federal procurement contracts and the relatively few jobs that FPI prison inmates perform. Mr. Miller explained this in his response to Chairman Coble when he said “We lost 30,000 jobs, our companies were losing business. So…had [we] been able to compete with [FPI, we] may have been able to do a little bit better. [We] may not have had to lay employees off…”

But it would seem to be wrong-headed, policy-wise, to legislate the elimination of the FPI mandatory source - thereby endangering a successful correctional work program that is both an essential prison management tool and an important prisoner rehabilitation tool - simply to gain a few federal contracts and jobs. It would be better public policy - and more helpful to those living in North Carolina and Michigan - to directly deal with the root causes for the tremendous losses in sales and jobs in the office furniture and textile/apparel industries – foreign trade competition and outsourcing of American jobs.

To be fair, there have occurred isolated instances over the past two decades in which the FPI prison inmate work program adversely impacted an individual business whose primary customer is the federal government. One example often presented is the Glamour Glove Company problem a decade ago, in which Glamour Glove’s production of gloves for the Department of Defense was being adversely impacted by FPI’s increased glove production. Glamour Glove and FPI, of course, were able to negotiate a reasonable compromise to ensure that FPI no longer threatened the company’s military glove production.

But again it would seem to be wrong-headed, policy-wise, to legislate the elimination of the FPI mandatory source - thereby endangering a successful correctional work program that is both an essential prison management tool and an important prisoner rehabilitation tool - when the isolated instances where the FPI program is adversely impacting individual businesses can be resolved administratively.

3. The legislative elimination of the FPI mandatory source preference will not significantly help private companies and non-inmate workers, even in the office furniture and textile/apparel industries. But it will have a significantly adverse impact on the many private companies and non-inmate workers that supply FPI with raw materials, equipment, and other services.

FPI’s opponents argue that eliminating the FPI mandatory source preference will significantly help those private companies and non-inmate workers, particularly in the office furniture and textile/apparel industries, who have suffered tremendous sales and job losses. But, since the FPI inmate work program is not a federal procurement behemoth, and the FPI program is not systemically causing the losses in U.S. business sales and non-inmate worker jobs, the elimination of the FPI mandatory source preference will *not* provide significant help to those companies and workers.

Ironically, most of the impact of the legislative elimination of the FPI mandatory source preference will be adverse and will fall on those private companies (and their non-inmate workers) that provide the materials and equipment FPI factories need to produce their products. In FY 2007, FPI spent $656 million, or 77% of its net sales revenue of $853 million, on purchases of raw materials, supplies, equipment, and services from these private sector companies. About 70% of those purchases – or $459 million – were from small businesses, including businesses owned by women, minorities, and those who are disadvantaged. In addition, FPI estimates that these contractual relationships have generated about 5,000 U.S. non-inmate worker jobs, many of which are unionized.

Each of these private companies has played by the rules, competing fair and square for the FPI contracts. They responded to solicitations issued by FPI and were awarded contracts through competitive procedures. In order to fulfill their contractual obligations, these companies often have hired law-abiding citizens as workers, added equipment, and some have opened entire new plants. These private companies and their non-inmate workers do not deserve to be on the receiving end of a wrong-headed, policy-wise, animus toward the FPI prison inmate work program.

IV. FPI Reform Proposal

AFGE has long opposed any legislative attempt to eliminate the mandatory source preference for FPI-produced goods because we believe it would result in the loss of countless numbers of FPI prison inmate jobs. This loss of inmate jobs, in turn, would seriously endanger the safety of our members – the federal correctional officers and federal correctional staff who work inside BOP institutions.

However, in the past couple of years of negotiations with the Anti-FPI Coalition and with Rep. Pete Hoekstra's staff, we have come to accept the idea of eliminating the FPI mandatory source if – and only if – a strong work-based training program is developed to supplement the FPI program. This strong work-based training program must necessarily create a sufficient number of new federal prison inmate jobs to replace the prison inmate job positions that would be lost if the FPI mandatory source preference is eliminated.

A reform proposal that we think has merit was included in the May 11, 2006 discussion draft of Rep. Hoekstra's H.R. 2965. This discussion draft established a strong work-based training program for federal inmates based on two authorities:

(1) The first authority would authorize a private business to train participating federal prison inmates by producing a product or performing a service, if such product or service is not produced or performed within the United States by non-inmate workers. However, this authority probably would not create enough new

prison inmate jobs to replace those lost FPI inmate jobs, given the harsh restriction of “not produced or performed within the United State by non-inmate workers.” Thus, the need for the second authority below.

(2) The second authority would authorize a private business to train participating federal prison inmates by producing a product or performing a service, if such product or service: (a) is being currently produced or performed outside the United States by or for the private business and (b) has been so produced or performed for a period of 36 months prior to the date such private business initially submits a proposal to FPI.

This second authority, which would probably create more federal prison inmate jobs than the first, would be intended to provide employment for the greatest number of federal prison inmates as long as (a) no single private industry is forced to bear an undue burden of competition from the products or services of federal prison factories or workshops; and (b) competition with private industry or private labor is reduced to a minimum.

If I were a private sector union president, I probably would be concerned about the possible uncompetitiveness of this “second authority” proposal. However, I think we can resolve this uncompetitiveness problem in the following two ways:

(1) The FPI Board of Directors, in consultation with the Departments of Commerce and Labor, shall not approve a “second authority” agreement if the Board determines that the introduction of the products or services of the proposed agreement into the commercial market could reasonably be expected to subject non-inmate workers employed by a company within the United States to unfair competition that would result in reduced hours of available work or loss of employment for such workers.

(2) The FPI Board of Directors shall be expanded and restructured to ensure that the “second authority” program’s competition with private industry and non-inmate labor is reduced to a minimum. Three Board members would represent private industry, instead of the current one member - and they shall, to the maximum extent practicable, include representation of firms producing goods and firms furnishing services, especially from those industry categories which FPI derives substantial sales – electronics and textiles/apparel. In addition, three Board members would represent labor, instead of the current one member - and they shall, to the maximum extent practicable, include representation from those labor unions whose members are likely to be most affected by the sales of FPI products and services.

This “second authority” program basically would be an expansion of the existing FPI commercial services program that repatriates back into the United States those services currently performed outside the United States for sale to domestic commercial customers. Under this program, FPI prison inmates are currently engaged in directory assistance call centers, data entry, packaging and mailing catalogs, etc.

This concludes my statement. I thank you for your attention and will be happy to answer any of your questions.