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Participants gather outside the Kunshan factory of the Chenfeng Group where the June 24 stakeholder forum was held.

Labor Law Reform in China: Opportunities and Challenges for Improving Workers' Lives

Fair Labor Association Stakeholder Forum

Kunshan City, Jiangsu, China

June 24, 2008

Meeting Summary

An FLA Stakeholder Forum titled “*Labor Law Reform in China: Opportunities and Challenges for Improving Workers’ Lives*” was held on June 24, 2008 in Kunshan city (near Shanghai, China) at the facility of the Chenfeng Group, an FLA-affiliated Participating Supplier. The forum was held in conjunction with the FLA’s first Board meeting in Asia and was attended by over 100 participants representing local and international non-governmental organizations (NGOs), companies, and universities. They came together to produce an unprecedented day of presentations and discussion on issues related to labor law reform in China.





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The FLA usually holds its summer Board meetings abroad with the objective of involving a wider and more diverse set of stakeholders. China's global significance as a trade power, its importance as a sourcing destination for FLA-affiliated companies, and the FLA's collaborative relations with Chinese organizations and companies on Corporate Social Responsibility (CSR) prompted the FLA to select China as the venue for its meetings this year. The FLA has been involved in several initiatives in China, including a project with the Chinese Chamber of Commerce for Import and Export of Textiles (CCCT) to pilot the FLA's sustainable compliance methodology.

The day-long forum began with welcoming remarks from Carol Bellamy, Chair of the Fair Labor Association Board of Directors and President and CEO of World Learning; Jiang Zhe, Vice President of CCCT; and Yin Guoxin, Chair of the Board of Directors of the Chenfeng Group. FLA President and CEO Auret van Heerden set the stage for the forum by providing background information on China's



Mr. Jiang Zhe of the CCCT

transition to a market economy and the labor law reforms that have been introduced to keep pace with the changing economy. The topic for the morning sessions was *“The New Labor Contract Law: Good or Bad for Investment, Employment and Working Conditions in China? and Highlights of legal provisions; impact on employers and workers; challenges in implementation and enforcement.”* The two panel discussions in the afternoon addressed the topic *“The Impact of Global Competitive Pressures on Labor Standards: Strategies for implementing labor standards in an increasingly competitive global environment.”*

The speakers in Session I focused on the content and implementation challenges of the new labor contract law. Prof. Qiao Jian, Associate Professor and Dean, Labor Relations Department of the China Institute of Industrial Relations - a part of the All China Federation of Trade Unions (ACFTU) - presented an overview of the labor law in China and its evolution over the past two decades. According to Prof. Qiao, the old system instituted in 1986 was found to be inadequate in meeting the demands of a market economy and the government's ultimate goal of the construction of a harmonious society. Prof. Qiao delineated a series of problems in implementing the old system, including a low rate of issuing written labor contracts; informal or illegal contracts; sub-contracting; and improper application of probation periods and fines. The labor contract law, which came into force on January 1, 2008, was introduced with the aim of addressing these problems. The specific objectives of the new labor contract law are: (1) improve the labor contract system; (2) specify the



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rights and obligations of the parties to labor contracts; (3) protect the legitimate rights and interests of workers; and (4) develop harmonious and stable employment relationships. Prof. Qiao also described the scope of the law and its potential impact on the human resource management function in factories. Some implications of the labor contract law he highlighted were: (1) more intense competition; (2) increase in labor costs; (3) a more formal employment model; and (4) increase in labor disputes and conflicts.

Commentary in this session was provided by Prof. Liu Cheng, Faculty of Politics and Law, Shanghai Normal University and Dr. Guo Peiyuan, General Manager, SynTao Co. Ltd. Prof. Liu emphasized the need for a larger role for trade unions in China. He voiced his suspicion about the detailed rules and guidelines that the Chinese government is scheduled to publish regarding implementation of the labor contract law and whether the new rules would conflict with the provisions stipulated in the law. While stressing the importance of the new law in protecting workers, he expressed concern about the increased costs resulting from violations of the law. FLA President and CEO Aurret van Heerden, the Chair of the forum, pointed out that while costs do have to be assessed in a nuanced way, the instability that has prevailed until now has undermined productivity but has never been captured as a cost, and the increased stability and productivity from implementing the new law could potentially offset law enforcement costs. Dr. Guo Peiyuan commented on the topic from a market perspective. He noted that there are many open questions regarding the applicability of the law, which will not be addressed until implementation guidelines are issued. Dr. Guo stressed the need for workers, especially migrant workers, to be educated about the law and its implications. He also highlighted the need for companies to assess their supply chains and evaluate the need for restructuring or technical upgrading to move up the supply chain in order to offset increased costs of implementing the new labor contract law. According to Prof. Qiao, the Chinese government is expected to publish guidelines to help clarify the provisions of the law in July 2008.

A panel of local NGOs focused on the impact of the labor contract law from the worker perspective. The discussion was moderated by Pharis Harvey, an NGO member of the FLA Board. Panelists, whose work takes them close to the lives of a wide range of workers each day, comprised the following representatives: Kan Wang, On Action; Chen Mingyu, Qingdao Xiaochen Hotline Center; Zhu Qiang, Shenzhen Zhiqiang Information Service Center for Migrant Workers Rights; and Suzanne Wu, Worker Empowerment. The NGO panelists described their organizations and their role in supporting worker rights. Key points made by panelists (including some findings from worker surveys) include: (1) the rate of labor disputes has increased since the enactment of the labor law in 1994; (2) increased participation foreseen through introduction of the labor contract law will bring workers, employers and government together; (3) awareness about the introduction of the law is high among workers; (4) workers find the new law to be more easily understandable than previous legislation; (5) more contracts are being signed, but in some cases the contracts were blank; (6) workers perceive that there are a greater number of protective clauses in the new law for workers; and (7) government penalties and fines against companies are increasing as some employers seek to thwart the intent of the law.



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An important issue that was discussed during this session is the social insurance law which is currently on the government's legislative agenda. The local NGO representatives drew attention to a big challenge Chinese workers face today – the “hukou” or the household registration system. As per this system, workers can gain social insurance benefits only in the hometown or area in which they are registered as a resident; these benefits cannot be transferred to worker's current area of residence or work. This poses a challenge, especially for migrant workers who relocate in order to gain employment. As a result, workers often do not have or have limited access to the social insurance benefits due to them. The NGO representatives strongly recommended the creation of a national social insurance system.

In his presentation titled “*Labor Law and Labor Market Reform in China: Moving the Chinese Economy to the Next Level?*” Mr. Changhee Lee, Senior Specialist on Industrial Relations and Social Dialogue in the ILO office for China and Mongolia, discussed the pieces of legislation that constitute Chinese labor law reform – the labor contract law, the employment promotion law, the law on mediation and arbitration of labor disputes, and the social insurance law (under development). He said that rising inequality and an increasing number of labor disputes are some of key concerns for the government in China, which led the government to make a policy shift. Mr. Lee described the various social and labor policy initiatives of the government to “build a harmonious society,” including reform of labor laws; gradual building of a unified labor market to replace the “hukou” or household registration system; unionization and increased collective bargaining; and domestic consumption as an engine of growth. Mr. Lee provided an overview of the contents of the labor contract law, which he admitted creates adjustment costs for enterprises in the short term. In the longer term, Mr. Lee contended, enterprises will find a new equilibrium by adjusting their human resource management policies to the new legal and institutional framework. He added that this would require government and social partners to work together to ensure a smooth transition during this period of reform. Mr. Lee raised a number of questions about possible future scenarios that could result from implementation of the labor contract law namely: (1) whether firms will focus on outsourced or dispatched workers; (2) whether better job security will lead to the “voice” rather than the “exit” option for workers; and (3) whether the requirement for increased consultation with workers and worker representatives will strengthen the role of trade unions. According to Mr. Lee, the interplay between the business coping strategy to ensure flexibility and cost reduction, the union strategy for implementation of the labor contract law, and the choices workers will make will gradually shape the future Chinese labor landscape and employment relations at the workplace.

Section II of the forum began with a panel discussion titled “*Global Competition and Labor Standards: Issues and Views.*” Mr. Jiang Zhe of the CCCT presented statistics on China's exponential growth since its economic reform and opening up of the economy to the outside world in the early 1980s, and China's entry into the World Trade Organization (WTO) in 2001. According to Mr. Jiang, the improved economic conditions in China have facilitated the formulation of the labor contract law, but improvement in working conditions continues to be an important challenge for the 72,000



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companies involved in the garment import and export sectors in China. The CCCT has set up an innovation and capacity building center in a building donated by the Chenfeng Group. Mr. Jiang added that the CCCT is continually working on deepening the understanding of Chinese companies about CSR, and among other plans, the CCCT plans to provide training on CSR at this center. Mr. Jiang called for the joint effort of both suppliers and brand-name companies to promote CSR.

The perspective of Indian exporters was presented by Vimal Kirti Singh, Secretary General of the Apparel Export Promotion Council (AEPC). Sponsored by the Ministry of Textiles, Government of India, AEPC is an industry association with over 6,000 supplier members, whose objective is to boost apparel exports and create a more level playing field for Indian manufacturers. Mr. Singh stressed the need for manufacturers to receive training and deepen their understanding about the labor compliance needs of buyers. He pointed out that civil society organizations and bodies such as the AEPC can play an important role in facilitating closer interactions between manufacturers/suppliers and buyers. The FLA has signed a Memorandum of Understanding with India's first Institute of Apparel Management (IAM) for cooperative development of educational content; IAM is being promoted by AEPC's Society for Human Resource Development under the aegis of the AEPC.

Alexandra Harney, author of *"The China Price"* and a former reporter for the Financial Times in Hong Kong, presented some insights from the research she conducted in China for her book. While at the Financial Times, Ms. Harney wrote an article in April 2005 revealing the increasing occurrence of falsified records in Chinese factories. In her talk at the forum, she made observations with regard to challenges and opportunities for the manufacturing sector in China: thousands of factories are going out of business, while others are moving up the value chain; many factories are moving inland; workers are becoming more aware of their rights; the price of raw materials is rising; costs of litigation are increasing, and a rise in healthcare costs is looming. Ms. Harney highlighted the cultural differences between young workers (born after 1980) and older workers: younger workers are hungry for education and training and a better quality of life in a relatively short time span, which could have a significant impact on their expectations of employers. As did other speakers at the forum, Ms. Harney emphasized the need for better management and human resource skills, which remain a significant gap in many factories in China. She pointed out that the companies that source from China play a critical role in determining the labor standards that are set in factories.



Left to Right: Panelists Caitlin Morris, Mike Posner, Alexandra Harney, and Vimal Kirti Singh.



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Caitlin Morris, Compliance Director, Integration and Collaboration provided Nike's perspective on compliance, which includes standards relating to labor, environment, and health and safety. Compliance is a key factor on which Nike bases its sourcing decisions; the others being price, quality and delivery. In Nike's view, companies that make sourcing decisions purely on the basis of FOB price are not only missing the point about broader profitability, but more importantly are operating on the basis of a purely cost-driven value proposition and may never fully embrace the value of labor rights. She stressed the need for global and local policies that protect workers to help create a level playing field. Ms. Morris discussed country-level and factory-level factors impacting competitiveness and highlighted Nike's strong belief in the power of the human resources function at the factory level. According to Ms. Morris, a fundamental shift is required in human resources from being a personnel function to a more strategic management function. An approach that emphasizes and accounts for the value of a satisfied work force is most likely to embed workers' rights into the factory's overall approach of doing business.

Mike Posner, President of Human Rights First, began his talk by providing the big picture view of globalization and internationalization of rights around the world. Over the past few decades, he argued, there has been recognition among governments about the collective responsibility of creating a floor of rights and protections; initially it was governments talking to one another and subsequently, the corporate sector and civil society organizations were brought into the dialogue. According to Mr. Posner, the extent to which civil society organizations are not allowed to operate in a country is a key factor in the enforcement of these rights and protections. In the CSR context, he highlighted the need for: (1) standards that are clear, precise, measurable, and enforceable; (2) a system of evaluation; (3) identification of issues and challenges as a basis for collective action; (4) transparency; and (5) sustainability. While encouraged by the tremendous progress of China, its increasing attention to CSR and the new voices of a growing civil society, Mr. Posner commented on the need for more robust conversations around the expression of worker aspirations and clear and meaningful systems of implementation that will make protection of workers rights consistent with the business reality in Chinese factories.

The final panel discussion on purchasing practices and their impact on labor standards, moderated by Marsha Dickson, University of Delaware Professor and President of Educators for Socially Responsible Apparel Business (ESRAB), commenced with a presentation by William Anderson, Head of Social and Environmental Affairs, Asia Pacific at the adidas Group. Explaining that his primary responsibility within the organization is worker protection, Mr. Anderson stressed the need for buy-in from the investment community and in turn a company's Board of Directors for implementation of labor rights and environmental standards. Labor compliance is one of the adidas group's key factors for determining which factories the company will source from; the other factors include price, delivery, quality, innovation, financial stability and flexibility. While the bigger brands have incorporated a number of these factors, including labor compliance, into their purchasing decisions, Mr. Anderson commented that many other companies continue to base their sourcing decisions only



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on the factors of price, delivery and quality, and these companies that have not yet integrated labor compliance into their sourcing decisions need to be engaged. He also remarked on the competition being faced within CSR programs to balance-off social concerns with the growing public concern over environmental issues, and in particular, climate change.

Vociferously describing the challenges faced by suppliers in an increasingly competitive marketplace, Pauline Ngan, Deputy Chairman and Managing Director of Mainland Headwear (approved at the subsequent FLA Board meeting as a Participating Supplier), emphasized the need for buyers to practice the same CSR standards they impose upon suppliers. Examples of some of the challenges faced by suppliers (like Mainland Headwear) include short lead times; a decrease in profits, especially



in light of currency appreciation; increasing cost of raw materials and salaries; greater competition for skilled labor; changes in the business model of buyers; and the need for more effective human resources management. In order to cope with these pressures, Mainland Headwear transitioned to a lean manufacturing model, which has resulted in efficiency improvements for the supplier, but continues to grapple with the pressures resulting from a rapidly changing market environment and buyer purchasing practices.

Left to Right: Panelists Doug Miller, Pauline Ngan, Ian Spaulding, Patricia Jurewicz, William Anderson, and moderator Marsha Dickson.

Patricia Jurewicz, Associate Director of the Corporate Social Responsibility Program at As You Sow, a nonprofit organization encouraging greater corporate accountability, presented a Strengths-Weaknesses-Opportunities-Threats (SWOT) analysis of buyer purchasing practices. She raised important issues that buyers should consider when making purchasing decisions, including the negative impact on workers and increased “Total Cost” when canceling orders or making last minute changes, getting buy-in for labor compliance at the top level of the organization, and rewarding positive changes in the compliance area. She highlighted the need for an assessment of all aspects of purchasing practices (including designing and forecasting) that have an impact on labor compliance efforts of suppliers.

Doug Miller, Professor in Ethical Fashion at the University of Northumbria in the United Kingdom, suggested that a pushback from labor in the coming years is imminent in view of the intense pressure being put on labor by high street retailers and the lack of returns trickling back to workers. Mr.



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Miller pointed out that a lot of the information about the effectiveness of purchasing practices work is anecdotal. Audit deception is a reality and is resorted to by suppliers as a survival mechanism to cope with the intense pressures they face. He stressed the need for brands to revalue labor and seriously consider factory ownership if they truly wish to achieve decent work in their supply chains.

Ian Spaulding, Managing Director of Infact Global Partners and consultant to the FLA, discussed what he called the social compliance industry's "inconvenient truth" – that social compliance programs that have been implemented in response to media pressure in the past decade are not as effective as they should be and gaming of the system is rampant. Mr. Spaulding classified companies in five categories based on their labor compliance programs and explained the need for companies to transition to the fifth category he outlined – the "revolutionaries" – those companies according to Mr. Spaulding that transform their buying practices, pay for compliance, work with strategic partners, and share sacrifices that need to be made in the production process. Encouraged by the fact that more companies are moving in this direction, Mr. Spaulding urged all brands and retailers to consider shifting from a model of compliance to one of continuous improvement, to require less auditing and provide more funds for capacity building, and to work at better alignment between the sourcing department and social compliance objectives.



A Q&A session followed the presentations and several members of the audience and local non-governmental organizations had an opportunity to ask questions and share insights from their work in China. In his summary of the day's discussions, FLA President Auret van Heerden pointed out that while governments do have the responsibility to adopt and enforce laws, they cannot do this alone; other players need to assume their responsibilities in a socially responsible way if a real and lasting contribution is to be made toward the improvement of workers' lives.

Auret van Heerden, President and CEO
Fair Labor Association