

**Before the Office
of
The United States Trade Representative**

**Section 301 Committee
Case No. ____**

**Section 301 Petition
of
American Federation of Labor and Congress of Industrial Organizations
U.S. Representative Benjamin L. Cardin
U.S. Representative Christopher H. Smith**

**John J. Sweeney
President, AFL-CIO**

**Richard L. Trumka
Secretary-Treasurer, AFL-CIO**

**AFL-CIO
815 16th Street, N.W.
Washington, D.C. 20006**

**Counsel:
Mark Barenberg
Professor of Law
Columbia University
435 West 116th Street
New York, N.Y. 10027**

**Benjamin L. Cardin
United States Representative
2207 Rayburn House Office Building
Washington, D.C. 20515**

**Christopher H. Smith
United States Representative
2373 Rayburn House Office Building
Washington, D.C. 20515**

Date Submitted: June 8, 2006

**Section 301 Petition
of
American Federation of Labor and Congress of Industrial Organizations
U.S. Representative Benjamin L. Cardin
U.S. Representative Christopher H. Smith**

Table of Contents

I.	Introduction and Summary	4
	A. The Linked Fate of Workers in the United States and China	4
	B. Two Years After Rejecting the AFL-CIO’s First Petition, the President Has Failed to Advance the Rights of China’s Workers.....	5
	C. The Denial of Workers’ Rights in China: An Overview	8
	D. Overview of this Petition	13
	E. The President’s Failure to Act – Six Stories.....	17
II.	Petitioners	34
III.	Statute and Regulations Applicable to this Petition	35
IV.	The Model of Economic Development Embodied in Section 301(d)	38
V.	The Regimentation of Factory Workers and Repudiation of Free Labor Markets by the Chinese Government and Global Corporations.....	41
VI.	The Chinese Government’s Persistent Pattern of Denying Workplace Rights and Standards	55
	A. Denial of Free Association and Rights of Collective Bargaining.....	56
	B. The Subclass of Migrant Factory Workers: Bonded Labor	68
	C. Failure to Provide Standards for Minimum Wages and Maximum Hours.....	81
	D. Failure to Provide Standards for Occupational Safety and Health ..	93
	E. Failure to Provide Child Labor Standards.....	101
	F. Failure to Enforce Rights Against Forced Labor in the Penal System	103
VII.	Background to the Burden on U.S. Commerce.....	106
	A. Unprecedented Job Loss in U.S. Manufacturing	106
	B. Escalating “Supply Shock” in China’s Manufacturing Sector	110

VIII. The Burden on U.S. Commerce.....	117
A. Introduction.....	117
B. The Empirical Question Presented by this Petition.....	121
C. Preliminary Analytic Distinctions	123
D. Estimated Job Loss Due to the Chinese Government’s Persistent Denial of Workers’ Rights.....	126
1. Aggregation of Firm-Level Data.....	126
2. Aggregation of Product and Sectoral Data.....	128
3. International Trade Commission Model	131
4. Bilateral Trade Elasticities and Implied Job Changes	153
E. The Burden on Displaced Workers and Communities	155
F. Conclusion	156
IX. Action by the USTR and the President	158
Appendix A – Trade Remedies to Enforce Workers’ Rights in China Are Required by U.S. Law and Do Not Violate WTO Rules.....	165
Appendix B – Unions Affiliated with the AFL-CIO	177

Petition

This petition requests that action be taken
under section 301 of the Trade Act of 1974, as amended.

I. Introduction and Summary

A. The Linked Fate of Workers in the United States and China

Although they are half a world apart, factory workers in China and the United States face some surprisingly common problems. In both countries the real wages of most manufacturing workers have stagnated and job security has diminished in the last decade, even while manufacturing productivity has increased rapidly. The problems are not only similar. They are linked. Global corporations from Wal-Mart to Proctor & Gamble to Delphi to Dell relentlessly squeeze labor costs in their Chinese affiliates and suppliers and use the threat of low-wage competition to roll back decades of hard-won gains in wages, benefits, and dignified treatment for workers in the United States. The severe exploitation of China's factory workers and the contraction of the American middle class are two sides of a coin.

Just as the petitioners AFL-CIO and U.S. Representatives Cardin and Smith use every legal tool at their disposal to fight domestically for the rights and wellbeing of United States workers, the linked fate of all manufacturing workers in today's harsh global economy dictates that we also use every legal tool to assist workers in other countries. Section 301(d) of the Trade Act is one such tool. Indeed, Congress enacted that law precisely to deter a low-road economic strategy in which global corporations play off workers in lower-wage economies against workers in higher-wage economies.¹ More specifically, Congress understood that corporate complicity in the denial of workers' rights overseas also damages the rights and wellbeing of workers at home. This petition seeks to enforce Congressional intent. Through this petition and many other domestic and international initiatives, the petitioners aim to assist workers in all countries, including Chinese workers, who struggle courageously and often against great odds to be treated with basic dignity and justice.

¹ See Section IV of this petition.

B. Two Years after Rejecting the AFL-CIO's First Petition, the President Has Failed to Advance the Rights of China's Factory Workers

On March 16, 2004, the AFL-CIO filed a petition under section 301, demonstrating that the persistent denial of basic workers' rights in China's export factories has severe adverse consequences for China's workers and for manufacturing workers in the United States. The petition demanded that the President impose WTO-consistent trade remedies against manufactured goods exported from China to the United States market, so long as the Chinese government failed to comply with internationally recognized workers' rights. The trade remedies would create powerful, positive incentives for corporations and the Chinese government to improve the plight of China's workers – since the measures would be incrementally lifted as China's workers gained the basic rights endorsed by the international community. For this reason, the trade remedies would not be “protectionist” but would rather be a remedial tool to assist Chinese workers who struggle for fundamental human rights.

On May 10, 2004, the President denied the petition.² The President did not dispute the AFL-CIO's voluminous documentation that the basic rights of China's export workers are persistently denied and that workers in the United States are adversely affected. The President nonetheless rejected the positive economic incentives proposed by the AFL-CIO on the ground that the Administration was undertaking unspecified “efforts” that would more effectively secure the rights of China's factory workers.³

Two years have passed since the President asserted that his efforts would do more for China's workers than the economic incentives proposed by the AFL-CIO. The President has nothing to show for his assertion, as this petition fully documents.

One month after the President's assertion, the U.S. Department of Labor signed Letters of Understanding with the Chinese government, promising “cooperation” in occupational safety and in wages and hours regulation.⁴ The Letters of Understanding

² As a formal matter, the AFL-CIO's petition was reviewed and denied by the United States Trade Representative (USTR). Since the USTR is an agent of the President in the conduct of his Executive responsibilities, we refer interchangeably to the President and the USTR in this petition.

³ 69 Fed. Reg. 26205 (May 11, 2004).

⁴ U.S. Department of Labor, “The U.S. Department of Labor and The People's Republic of China Signed Four Joint Letters of Understanding” (June 21, 2004). The letters included two Letters of Understanding

carefully avoided any commitments for actual changes in China's labor laws and policies which deny workers' rights. To the contrary: The United States pledged to "fully respect the national laws and legal provisions" of China. This is an astonishing promise, in light of the President's assertion, just one month earlier, that his alternative "efforts" would in fact change those very laws. The Letters of Understanding therefore turned section 301 on its head: Instead of negotiating a bilateral agreement to change the Chinese government's unreasonable trade practices as directed by section 301, the United States government signed bilateral agreements pledging to "fully respect" those practices.

Even apart from the executive branch's startling pledge to the Chinese government, the timing of the President's assertion that he was undertaking alternative "efforts" was not auspicious. According to the U.S. State Department, the Chinese government had just

announced that it was suspending its human rights dialogue with the United States in reaction to the U.S. decision to table a resolution critical of the country's human rights record at the U.N. Commission on Human Rights 2004 session. The U.S. did not agree to schedule a new round of dialogue with China because of the lack of sufficient concrete results from the last round, held in December 2002. The Government also terminated some legal reform cooperation with the United States and U.S.-supported organizations.⁵

Seven months after the President rejected the AFL-CIO's first petition, the Chinese government abruptly cancelled an international conference on the monitoring of workplace conditions.⁶ In its 2005 Annual Report, the Congressional-Executive Commission on China concluded bluntly that "the Chinese government has avoided discussions with the international labor community on Chinese workers' rights."⁷ This is not surprising, in light of the United States government's promise to the Chinese

Between the Department of Labor of the United States of America and the State Administration of Work Safety of the People's Republic of China (June 21, 2004), and one Letter of Understanding Between the Department of Labor of the United States of America and the Ministry of Labor and Social Security of the People's Republic of China (June 21, 2004). A fourth letter addressed cooperation on pension program oversight, a subject not covered by section 301 and the first AFL-CIO petition. Letter of Understanding Between the Department of Labor of the United States of America and the Ministry of Labor and Social Security of the People's Republic of China (June 21, 2004).

⁵ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2004: China (February 28, 2005).

⁶ Congressional-Executive Commission on China, 2005 Annual Report.

⁷ Id.

government that the United States would “fully respect” the very laws that violated workers’ rights.

Far from achieving improvement in the two fields of “cooperation” promised in the Letters of Understanding – health and safety, and wages and hours -- there has been deterioration in those areas, as this petition shows in detail. *Rates of illness and injury have never been higher in China’s manufacturing sector* -- as officials of China’s own Work Safety Administration conceded as recently as February, 2006.⁸ *Aggregate unpaid wages have risen to record levels*, setting off thousands of illegal demonstrations, labor shortages, and increased child labor – as adult workers increasingly refuse to accept such injustice. Workers who merely petition for payment of their wages are *increasingly met with violence by security police* and other local officials.⁹

In any event, the Letters of Understanding did not so much as mention the persistent denial of workers’ right to assert their grievances through exercise of *free association and collective bargaining* – the fundamental rights which, if secured, could enable China’s workers to protect their other workplace rights and interests. In the two years since the President rejected the AFL-CIO’s first petition, the suppression of labor demonstrations and all other “planned worker actions” has been “severe,” “swift,” and “violent.”¹⁰ Indeed the State Department itself reports that in 2004 and 2005 the Chinese government *increased* its already stringent controls and harassment against international monitoring of rights in China, and *increased* its already comprehensive repression of autonomous labor organizations – just the opposite of President Bush’s assertion that international monitoring would become increasingly effective.¹¹

Since the President’s sole legal ground for rejecting the AFL-CIO’s proposed remedies has now been negated by two more years of needless suffering by China’s

⁸ Reported in Cao Desheng, “Diseases at Work Haunt Migrant Workers,” China Daily (February 17, 2006).

⁹ A recent survey found that police and other agents of the state violently retaliate against fifty percent of petitioners. Human Rights Watch, ‘We Could Disappear at Any Time’: Retaliation and Abuses Against Chinese Petitioners (December 2005) (citing study by Professor at Chinese Academy of Social Sciences).

¹⁰ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

¹¹ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2004: China (February 28, 2005); U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

factory workers, the Trade Act leaves the President no choice but to take the effective actions that he rejected two years ago.

In addition, the last two years have highlighted (a) that the nearly total lack of transparency in China's workplaces obstructs accurate measurement and verification of compliance, and (b) that multinational corporations are fully complicit in the denial of basic workers' rights in their China-based affiliates and contractors. For these reasons, it is essential that the President implement a comprehensive program of disclosure and reporting about wages, hours, and other working conditions in the China-based affiliates and contractors of U.S. corporations. We therefore demand such a program of corporate disclosure, as detailed in Part IX of this petition.

C. The Denial of Workers' Rights in China's Factories: An Overview

Each year, millions of Chinese citizens travel from impoverished villages to take industrial jobs in China's export factories. Most are young and a large proportion are female. They go in search of wages to support themselves and supplement their families' rural income. They join an enormous submerged class of temporary factory workers denied full citizenship rights by the legacy of China's system of household registration.¹² Purported recent "reforms" to the Chinese government's control of internal migration have not altered that fundamental fact – according to all serious, independent analysts, as well as the Bush Administration itself.¹³ In October, 2005, the Western press gave much attention to the Ministry of Public Security's announcement that it was considering proposals to reform the system of internal migration – even though no actual proposal was put before the State Council.¹⁴ Almost no attention was paid when, one month later, the Ministry quietly rejected the idea, under intense pressure from provincial and local party officials and corporations that profit from the cheap labor system.¹⁵ In its most

¹² See Sections V and VI-B of this petition, below.

¹³ See Sections V and VI-B of this petition, below.

¹⁴ E.g., Joseph Kahn, "China to Drop Urbanite-Peasant Legal Differences," New York Times (November 3, 2006).

¹⁵ "Rural-Urban Split Remains," The Standard (November 28, 2005) (local pressure causes "quiet shelving" of any plans to allow ruralites to claim residency in cities and obtain urban household registration).

recent report on human rights in China, the U.S. State Department concludes concisely that the migrant factory workers remain “easy to exploit.”¹⁶

As recounted in the stories told below in Section I-E, when migrants enter the factory system they often step into a nightmare of twelve-hour to eighteen-hour work days with no day of rest, earning meager wages that may be withheld or unpaid altogether. The factories are often sweltering, dusty, and damp. Workers are widely exposed to chemical toxins and hazardous machines, and suffer sickness, disfiguration, and death at the highest rates in world history. They live in cramped cement-block dormitories, up to twenty to a room, with each worker’s space limited to a bed in a two-tiered bunk – comparable in space, discomfort, and privacy to prison cells in the United States. They typically face militaristic regimentation, surveillance, and physical abuse by supervisors during their long day of work and by private police forces during their short night of recuperation in the dormitories.¹⁷ Ten to twenty million workers in China are children. No one knows the precise number, because statistics of that kind are state secrets, and anyone disseminating such data is subject to criminal punishment. Another one to six million are detained without fair trial and forced to labor in China’s prison system, under threat of violence and torture.

Under legal regulations that have created deeply entrenched social norms, migrant workers are not permitted to seek better-paying jobs reserved for privileged urban residents, and are denied basic public services and civil rights. If they assert their rights, they may be detained or sent back to the countryside, or worse. Attempts to organize unions or to strike are met with discharge, denial of accrued wages, brutalization by riot police, summary detention, long-term imprisonment, and in some cases torture. Those who are enmeshed in bonded labor can leave their factory jobs only at great cost and peril, no matter how abusive the employer.

Migrant workers have minimal access to China’s legal system which, in any event, is pervasively corrupted by the local Party officials who extract personal wealth from

¹⁶ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

¹⁷ The working conditions summarized in this paragraph are described at length in Section VI of this petition. Some multinationals operating in China, under pressure from labor and consumer activists, have showcase factories that are well-lit and ventilated. But the vast majority of foreign-invested enterprises (FIEs) in China, as well as domestically owned enterprises, have no safety or health controls whatsoever.

factory revenue. As a result, their courageous resistance and protest are often expressed in desperate acts of violence. The high rate of attempted public suicide among migrant factory workers is a shocking indicator of workers' desperation.¹⁸ Three months after President Bush denied the AFL-CIO's first petition, twenty-three workers from Heilongjiang Province threatened mass suicide from the roof of a building near the Supreme People's Court in Beijing when their peaceful petitions for compensation led nowhere. They were imprisoned, and workers traveling to Beijing to support them were arrested.¹⁹

The Chinese government's unremitting repression of labor rights robs China's workers of wages, health, and dignity. By lowering wages by between 47 and 85 percent,²⁰ the Chinese government's labor repression also diverts millions of manufacturing jobs from countries where labor rights are not so comprehensively denied, increasing unemployment and poverty among workers in developed and developing countries.

Most serious empirical studies of the Chinese labor market conclude that real wages have fallen or remained flat for the majority of China's factory workers in the last fifteen years, even if there has been a modest increase for certain categories of skilled and technical workers in the last four years.²¹ Whether wages have fallen, remained flat, or (for a minority) risen modestly, there is no question that wages have not kept pace with rapid increases in productivity. Nor have actual factory wages risen in tandem with average urban incomes, even though central government directives mandate increases in minimum wages that match the percentage increases in average urban incomes.

Recent, optimistic journalistic reports that minimum wage standards have risen in China's big cities in the last two years ignore at least four fundamental facts: (1) real wages have risen for certain categories of skilled, technical, and managerial workers, but not for the majority of ordinary factory workers; (2) the actual pay of most factory workers remains below minimum wage standards set by local governments, (3) local minimum wage standards themselves are below central government directives, and (4) in

¹⁸ See Sections V and VI of this petition, below.

¹⁹ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2004: China (February 28, 2005).

²⁰ See Section VIII of this petition, below.

any event, the majority of China's factory workers are located outside the big cities where local minimum wage standards have risen, and factories are increasingly moving to the lower wage areas outside those big cities.

The purported labor shortage faced by some big-city factories has not led to predicted, large increases in wages for the vast majority of factory workers -- precisely because global corporations continue to squeeze China-based suppliers to reduce costs, and workers lack the basic rights to bargain for substantial increases. The (locally confined) labor shortages are the *result* of poor labor conditions, not the *cause* of improved conditions.

Equally important, even accepting the rosy assumption that actual factory wages have risen 10 percent a year for the last two years, *the percentage wage reduction caused by the denial of basic workers' rights remains as large in 2006 as it was in 2004.*²²

Highly conservative methodologies show that China's labor repression displaces approximately 1,235,000 jobs in the United States alone, and perhaps many more.²³ This remains true, even assuming that China's factory wages have risen 10 percent in each of the last two years.

China's current level of investment in new factories is unprecedented and will deliver an even greater supply shock to global industry in the next decade, producing even greater losses in U.S. manufacturing jobs and wages -- unless the President takes the decisive action he rejected two years ago. Developing countries such as Bangladesh and Indonesia stand to lose as many as one million manufacturing jobs to China, and Central American and the Caribbean may lose up to one half million jobs, in the textile and apparel sector alone.²⁴

China's workers, of course, are not to blame for the consequences of corporate managers' and government officials' failure to comply with fundamental workers' rights. To the contrary, workers in all countries have a common interest in promoting the human rights and working conditions of China's factory workers.

²¹ See Section VI-C of this petition, below.

²² See Section VI-C of this petition, below.

²³ See Section VIII of this petition, below.

²⁴ United Nations Development Program data, and ITGLWF data, reported at International Textile Garment and Leather Workers Federation (January 23, 2004) at www.itglwf.org.

Nor is this petition targeted against “free trade” or against China’s “comparative advantage” in global markets. Rather, this petition challenges the *artificial* and *severe* reduction of China’s labor costs below the baseline of comparative advantage defined by standard trade theory. Labor costs in China’s factories are reduced by a system of corporate and government-engineered labor exploitation on a scale that is unmatched in the present global economy. U.S. and other multinational corporations are fully complicit in the abuse of Chinese workers.

As this petition details, the regimentation of China’s young migrant factory workers has some elements that are similar to the control of black workers in apartheid-era South Africa.²⁵ Both systems use internal controls that prevent workers from moving their permanent residence from impoverished villages to factory towns and cities. Both systems subject temporary migrant workers to extreme deprivation of workplace and social rights. Both systems turn ordinary workers into highly exploitable outcasts in their own country. It is not exaggeration or condescension to call China’s factory workers a “subclass.” Han Dongfang, the now-exiled leader of the independent workers’ movement during the Tiananmen uprising of 1989, uses the same vocabulary.²⁶

The dark side of China’s “economic miracle” is that factory workers’ real wages have stagnated or risen only modestly, pension and medical benefits have vanished, job security has deteriorated, and urban unemployment and poverty have risen, even while manufacturing productivity and gross domestic product have risen dramatically. These trends result in part from factories’ wholesale replacement of better-paid urban residents with lower-paid migrants who are much more easily exploited for the reasons summarized above.²⁷ This process of replacement will continue for many years, and factory wages will continue to be artificially suppressed – unless China’s factory workers are afforded such basic rights as free speech and free association, enabling them to protest, unionize, and bargain for their fair share of China’s growing wealth.

²⁵ This similarity is detailed in Section V of this petition, below. Many scholars and human rights organizations have drawn this parallel. See note 100, below.

²⁶ See, e.g., China Labor Bulletin, “High Cost of Wage Recovery Deepens Sense of Futility in Legal Route” (November 10, 2005).

²⁷ See William Ward, “Manufacturing Productivity and the Shifting US, China, and Global Job Scenes – 1990 to 2005, Clemson University Center for International Trade Working Paper 052507 (August 4, 2005).

These developments seem inexplicable to free-market economists who cannot put aside their fantastical assumption that China's labor regime operates like an idealized competitive market, and who are mesmerized by the new wealth of China's urban managerial and technical class. Western economists' fascination with the urban wealth of cities like Shanghai and Beijing ignores the fact that the majority of China's factory workers labor in rural towns and villages, albeit typically not the villages where the workers' household is permanently registered. In any event, there is no competitive labor market in China's factory system, let alone rights of unionization, to ensure that workers' earnings grow with their productivity. The vast majority of factories refuse to pay one or more months of wages that are earned each year, and China's workers lack the means to enforce even this most basic right of a competitive labor market – the right to be paid.

D. Overview of this Petition

U.S. Representatives Cardin and Smith and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) – whose constituent unions represent more than nine million workers in the United States, including more than two million manufacturing workers -- file this petition under sections 301 and 302 of the Trade Act of 1974, as amended, seeking action by the President to end the Chinese government's unremitting repression of the rights of its manufacturing workers.

Section 301(d) of the Trade Act provides that a trading partner's persistent denial of workers' internationally recognized rights constitutes an unreasonable trade practice.²⁸ These basic workers' rights include: freedom of association; the right to bargain collectively; freedom from compulsory labor; freedom from child labor; and standards for minimum wages, hours of work, and occupational safety and health. This petition shows that the People's Republic of China (PRC) persistently denies these rights.²⁹

Section 301(b) authorizes the USTR and the President to take all appropriate and feasible action to end China's repression of workers' rights, if that repression burdens or

²⁸ 19 U.S.C. § 2411(d). The relevant statutory language is set forth in Section III of this petition, below.

²⁹ China's persistent denial of these rights is detailed in Section VI of this petition. The impact of these violations is worsened by China's overall suppression of free labor markets, through the system of internal migration controls that denies basic civil and political rights to manufacturing workers.

restricts United States commerce.³⁰ The Chinese government's repression of workers' rights burdens United States commerce by lowering the costs of China-based production and displacing more than a million United States workers.³¹

Congress first mandated that our trading partners enforce workers' internationally recognized rights in the mid-1980s.³² One explicit goal of Congress was to implement the Universal Declaration of Human Rights of 1948, which declares that unionization, employment, and adequate wages are fundamental human rights.³³ Even before the dramatic acceleration in the flow of manufacturing jobs to China in the last few years, Congress had concluded that "[t]he lack of basic rights for workers" in developing countries is "a very important inducement for capital flight and overseas production by U.S. industries."³⁴

Congress also recognized that the denial of workers' fundamental rights distributes the benefits of economic growth to "narrow privileged elites,"³⁵ thereby "retarding economic development."³⁶ Congress was right. Econometric analysis of cross-country data for a large sample of economies in the 1980s and 1990s confirms that the denial of labor rights reduces wages and economic growth, increases inequality, and hampers democratic development.³⁷

³⁰ 19 U.S.C. § 2411(b)(1), (2).

³¹ Section VIII of this petition, below, calculates the burdens on United States commerce that result from China's persistent denial of the workers' rights enumerated in section 301.

³² In 1984, Congress required that developing countries comply with internationally recognized labor rights as a precondition to receiving special trade benefits under the Generalized System of Preferences. 19 U.S.C. § 2461. In 1985, Congress required such compliance as a precondition to providing insurance to U.S. investors in foreign countries under the Overseas Private Investment Corporation Amendment Act of 1985. 22 U.S.C. § 2191. In the Omnibus Trade and Competitiveness Act of 1988, Congress amended section 301 the Trade Act of 1974 to impose similar conditions on all U.S. trading partners. P.L. 100-418, Title I, Subtitle C, Part I, § 1301, 102 Stat. 1164 (1988).

³³ H. Rep. No. 98-1090 (1984) (Ways and Means Committee) at p. 12, reprinted in 1984 U.S.C.C.A.N. 5101, 5112 (enacting labor rights provisions of the Generalized System of Preferences, a forerunner to the labor rights provisions of the Trade Act amendments of 1988).

³⁴ 130 Cong. Rec. E978-79 (March 14, 1984) (statement by congressional sponsor of workers' rights provision in Generalized System of Preferences).

³⁵ 130 Cong. Rec. E978 (March 14, 1984) (statement by congressional sponsor of workers' rights provision in GSP).

³⁶ H.Conf.Rep. No. 99-428 (1985) at p. 12 (conference report accompanying Overseas Private Investment Corporation Amendment Act of 1985, requiring foreign countries to enforce basic labor rights as a precondition to providing U.S. governmental insurance to investors), reprinted in 1985 U.S.C.C.A.N. 2583, 2584.

³⁷ Thomas Palley, "The Economic Case for International Labor Standards: Theory and Some Evidence," AFL-CIO Public Policy Department Economic Policy Paper E036 (1999); Thomas Palley, "Labor

The denial of workers' rights by the Chinese government and corporations operating in China is encouraged by a system of world trade and finance that fails to enforce minimum standards of decency at work. Low-wage countries compete for mobile capital. Even if political elites wish to raise the labor standards of their people, they face extreme pressure not to do so, in the absence of global standards that ensure that their competitors will do the same. Like the discredited laissez-faire regimes of the nineteenth century,³⁸ today's global rules protect rights of property, contract, and capital but not fundamental rights of personhood, community, and labor. Section 301(d) embodies an alternative model, in which human and social rights are the necessary precondition to democratic and equitable development.

The Chinese government has signed many international agreements requiring it to enforce workers' rights.³⁹ In the absence of material incentives to live up to its commitments, the Chinese government has broken them, with the complicity of corporations having affiliates and contractors in China. It is therefore appropriate that the USTR pursue all available WTO-consistent remedies against the Chinese government if it fails to come into compliance with workers' rights.

The purpose of the trade remedies is not protectionist -- the petition does not seek permanent, protectionist tariffs. The trade remedies are, rather, intended to bring about positive change for China's workers and to ensure that global competition is fair for workers everywhere. In this spirit, if the Chinese government fails to come into compliance, the USTR should also negotiate a binding, WTO-consistent agreement with the Chinese government, specifying incremental decreases in the remedies if the Chinese government increasingly complies with workers' rights, measured by specific and verifiable indicators. Every six months after entering into the agreement, the USTR should assess if the Chinese government is in full compliance with workers' rights, and

Standards, Economic Governance, and Income Distribution: The Cross-Country Evidence," AFL-CIO Public Policy Department Economic Policy Paper (2004).

³⁸ Today's global race to the bottom is precisely analogous to the domestic deadlock among the sister states of the United States, prior to the implementation of nationwide labor rights in the 1930s. Congress and the Supreme Court recognized that states wishing to protect labor standards are fearful of acting, without assurance that sister states will do the same. More specifically, their fact-finding concluded that capital and jobs move across borders to states with the lowest labor standards. When Congress enacted federal labor rights, the Supreme Court acceded and ended the laissez-faire constitution that protected rights of property and contract but not labor. *U.S. v. Darby*, 312 U.S. 100 (1941).

³⁹ See Section VI-A of this petition, below.

adjust remedies accordingly. To ensure that the Chinese government's compliance with workers' rights can be verified and to diminish corporations' resistance to compliance, the President should also mandate the disclosure of wages, hours, and working conditions of China-based affiliates and contractors of U.S. corporations, as detailed in Section IX of this petition.

If the Chinese government and China-based corporations fully protect the basic rights of China's workers, they can enjoy normal access to United States markets *and* create jobs that are not an affront to human dignity. In this sense, the remedy demanded by the petitioners is a classic, market-based incentive – imposing a tax on noxious conduct, relaxing the tax when the conduct improves, and mandating transparency to ensure that improvement is verified.

Two years ago, the President denied the AFL-CIO petition that made similar demands. The President did not dispute the petition's voluminous evidence that workers' rights are persistently denied in China's factories and that the consequent reduction in labor costs has a significant adverse effect on employment and wages in the U.S. manufacturing sector. The President instead denied the petition on the ground that other "efforts" would better remedy the damage to Chinese and United States workers.

The record of the past two years is conclusive. The President's ostensible efforts are a manifest nullity. As documented at length in this petition, the President's policies toward China have been utterly ineffective in encouraging global corporations and the Chinese government to comply with fundamental workers' rights. As recounted above in Section I-B, just one month after rejecting the first petition, the executive branch of the United States government pledged that it would "fully respect" the very laws of the Chinese government that violated workers' rights. Against the backdrop of that astonishing pledge, international monitoring and international dialogue over the enforcement of rights in China have diminished. Enforcement of wage and hour rules and health and safety standards has worsened. Increasing numbers of labor protests have been repressed. Child labor is on the rise in the manufacturing sector, as factories seek more pliable, cheap workers. Forced labor in the penal system, including forced labor for export, continues in defiance of the international community. Hence, the sole legal basis for the President's rejection of the petitioners' demands is negated. The Trade Act

therefore requires, as a matter of Congressional mandate, that the President implement those demands.

E. The President's Failure to Act – Six Stories

1. A story of one strike in Xianyang, China. Four months after the President asserted that he was undertaking effective “efforts” to improve the lot of China’s workers, nearly seven thousand workers, mostly young women, launched a strike in Shaanxi province against the Xianyang Huaran textile factory, newly acquired by a Hong Kong-based conglomerate. The workers demanded rights that are routinely unenforced in China even though promised on paper by China’s employment laws, including the basic right to a contract of employment. Han Dongfang, the renowned leader of worker protests during the Tiananmen uprising of 1989, lent his strategic support from his exile outside the Mainland.⁴⁰

A prominent Beijing attorney traveled to the factory to advise the workers about establishing a factory-level union affiliated with the government-controlled All China Federation of Trade Unions (ACFTU), in accordance with China’s Trade Union Law. Upon his arrival, the Public Security Bureau arrested the attorney on the ground that it was “forbidden to provide legal advice to Chinese workers.” When the police threatened him with grave criminal prosecution for “endangering state security,” he “voluntarily” withdrew from the case.⁴¹

Alarmed by workers’ initiative in organizing a union, peacefully striking, and seeking to bargain, the Xianyang city government, the Shaanxi provincial government, and the ACFTU itself closed ranks against the workers -- notwithstanding that the workers sought to lawfully establish their own factory-level affiliate of the ACFTU. After holding out for seven weeks, the strike was quashed by one thousand riot police. Twenty strike leaders were arrested.

Courageous protests by China’s workers and the violent repression of such protests are increasingly common. The estimated number of industrial conflicts rose

⁴⁰ China Labor Bulletin, “The Xianyang Textile Workers Strike” (undated).

⁴¹ *Id.*

from 154,621 in 2001 to some 300,000 in 2005.⁴² In 2005, there were more than 1,000 strikes in plants with more than one hundred workers in the province of Guangdong alone.⁴³

The strikes and protests continue this year. On February, 10, 2006, one thousand women workers in Shandong struck in protest of wages less than 15 cents per hour and were threatened with mass discharge.⁴⁴ On April 3, 2006, riot police in Shenzhen violently dispersed three thousand workers who peacefully protested work weeks of eighty-four hours without overtime pay and beatings by factory supervisors and security guards.⁴⁵ These are but two examples of the innumerable worker protests that convulse China's factories each week and each month.

But the Xianyang strike in the autumn of 2004 was remarkable in its scale, duration, and tactics. It may be "the longest recorded industrial action in China's post-1949 history,"⁴⁶ and the workers sought creatively – albeit in vain -- to work within the tight strictures of the government-controlled ACFTU.

What is especially notable from the standpoint of this petition is the U.S. government's utter silence, indeed obliviousness, in the face of such a landmark instance of workers' exercise of free association and such vivid and violent repression of that freedom. The story of the Xianyang strike shows the emptiness of the President's promise to take effective action on behalf of Chinese workers.

Imagine instead that prior to the strike the President had implemented the AFL-CIO's demand that, if the Chinese government fails to comply with workers' rights, the U.S. government impose WTO-consistent trade remedies against Chinese exports and that those remedies be incrementally relaxed when China meets verifiable benchmarks of compliance with workers' rights. The Xianyang workers still might not have succeeded in forming their own union and in peacefully bargaining with their employer – but there

⁴² Antoaneta Bezlova, "China: Grappling With the Dragon of Labour Unrest" Inter Press Service News Agency (April 7, 2006). These estimates are necessarily rough, in part because it is a crime in China to report on labor disputes.

⁴³ The Business Online, "China's Export Factories Hit by Labour Troubles" (February 5, 2006). This number is a rough estimate. It is a criminal violation of China's state secrets regulations to publish statistics about labor disputes.

⁴⁴ China Labor Bulletin, "Over 1,000 Textile Workers in Shandong Strike Against Low Pay" (February 28, 2006).

⁴⁵ China Labor Bulletin, "3,000 Workers Protest Inhumane Treatment" (April 4, 2006).

⁴⁶ China Labor Bulletin, "The Xianyang Textile Workers Strike" (undated).

is no doubt that their efforts would have been significantly aided by the international scrutiny and powerful economic incentives demanded by the AFL-CIO's first petition, as well as by this petition.

2. A story of one factory closing in Fremont, California. *Occupational safety and health rules are notoriously unenforced in China.⁴⁷ Indeed, it is a criminal violation of China's state secrets regulations to report on safety and health (and other labor topics) without government authorization.⁴⁸ United States manufacturers often move their production to China to evade the higher labor standards enforced in the United States – notwithstanding that the United State government is increasingly lax in enforcing domestic workers' rights. "One glaring example of this practice is the semiconductor manufacturer AXT, Inc,"⁴⁹ which closed its Fremont, California factory shortly after the President rejected the AFL-CIO's first petition. The workers at the California factory were themselves Chinese immigrants. The following account of AXT is from a Cornell University study on corporations that close United States plants and move the work to China:*

"AXT has been in the process of transferring all of its manufacturing, engineering, and R&D from Fremont, California to China since 2001. Before its move to China, [the AXT workforce] produced gallium arsenide wafers, made from an easily inhaled compound that turns to arsenic in the body. In 2000, U.S. government investigations found that, although AXT management knew that employees were being exposed to up to thirty-one times the permitted amount of arsenic, they did little or nothing to remediate the situation. Ventilation systems were found to be in disrepair, and proper procedures for decontamination were not followed, potentially exposing the workers' families to the toxin as well.

"Many former AXT employees developed cancer and other ailments. Employees were not given protective gear or trained in proper procedure for handling arsenide. At least one employee, after being forced to work without protection through her ninth month of pregnancy gave birth to a child with severe birth defects. After the 2000

⁴⁷ See Section VI-D below.

⁴⁸ See Section VI-A below.

investigation, AXT was issued forty-two citations by the State Division of Occupational Safety and Health (Cal-OSHA), which subsequently issued a fine to AXT. However, the company chose to fight the fines in court, and when AXT met with Cal-OSHA representatives in 2001, the company announced it would begin to transfer production to China. More than five hundred workers lost their jobs and remain uncompensated for health problems. As of July 21, 2004, the company was wrapping up business in Fremont. Now AXT will be able to expose workers to the same toxic chemicals without fear of OSHA investigations or media exposes.”

3. A worker’s story in Cedar Rapids, Iowa. *On March 3, 2006, President Bush said, “People do lose jobs as a result of globalization....[L]et’s make sure people are educated so they can find – fill the jobs of the 21st century....People in American should, I hope, maintain their confidence about the future.”*⁵⁰

Forty-six year old Pat O’Dell had a well-paying job at the Goss printing press factory in Cedar Rapids, Iowa, until the corporation moved its work to China. Here is the story of his struggle to “fill the jobs of the 21st century”:

“The hand-lettered sign on Pat Odell’s snow-covered lawn is testament to a man who’s trying to reinvent himself.⁵¹ Snow-shoveling, it reads. Light construction. Just call – cell phone or land line, it doesn’t matter. Just call. Up until two years ago, Odell had a good-paying job with full benefits making printing presses at the Goss factory in town. Then one day, Goss padlocked the gates of its factory and announced that its operations were moving to China.

“Now Odell’s shoveling snow at \$25 a pop, doing light construction work when he can and praying he doesn’t hurt himself because he no longer has any health insurance....[Odell is a member of Local 831 of the International Association of Machinists.] Layoffs and plant closings have trimmed membership [in the Local] from 2,800 in 2000 to 700 today. ...

⁴⁹ This account is taken verbatim from Kate Bronfenbrenner and Stephanie Luce, “The Changing Nature of Corporate Global Restructuring,” submitted to the US-China Economic and Security Review Commission (October 14, 2004).

⁵⁰ Peter Wallsten, “Bush Tackles Outsourcing Issue,” Los Angeles Times (March 4, 2006).

⁵¹ This account is taken verbatim from Lori Aratani, “Campaign 2004/Trade,” Miami Herald (January 25, 2004) at p. L2.

“[F]ewer than half of those who’ve lost jobs have found new ones. Those who have work for less than half of what they made before, often with no medical or retirement benefits. ...[Odell] landed at Goss in 1985 on the advice of a cousin who worked there and told him it was a place that offered good pay and benefits. Odell, a man who appreciates muscle cars and a good fishing spot, figured he was set for life.

“Now unemployed, his savings drained and his retirement gone, he’s trying to find work. It bothers him that the jobs he’s eligible for pay only what he made when he started out more than 20 years ago, but he doesn’t have much of a choice.”

4. The death of child laborers in Hebei, China. *The following report recounts violations of child labor, minimum wage, maximum hours, and forced labor standards, and police violence against peaceful demonstrators. It tells of the death of five child laborers at a factory in Hebei province – eight months after the President asserted that he would undertake effective action to improve workers’ rights in China. The children were asphyxiated after they started a coal fire to keep warm in their unheated, unventilated factory in mid-winter. The children worked seven days a week, twelve hours per day. They were not paid for their work. Because their pay was withheld altogether, they could not quit. And when the parents of the dead children joined seventy other families protesting child labor, they were detained, deprived of food, and assaulted in a local “welfare” station, formerly called a “custody and repatriation center.”⁵² Chinese government officials prevented local reporters from covering the story, which was reported only in May, 2005, by Human Rights in China, a New York-based organization.*

“Christmas was just two days away and snow was falling when the five factory girls finished their shift.⁵³ They'd been working for 12 hours, it was already after 1 a.m....One of them ran out to grab a bucket and some burning coal. The room warmed slightly. They drifted off to sleep. The next morning, none of them woke up. They had been poisoned by the fumes. But their parents believe at least two of the girls died much

⁵² See China Labor Bulletin and Human Rights in China, “Cover-up of Child Labor Deaths in Hebei,” (March 2, 2005).

⁵³ This narrative is taken from Ching-Ching Ni, “China’s Use of Child Labor Emerges from the Shadows,” Los Angeles Times (May 13, 2005).

more horrible deaths. They charge that the owner of the canvas-making factory was so impatient to cover up the fact that three of the unconscious workers were underage that he rushed the girls into caskets while some were still alive.

"‘You see the damage on the corner of the box, the bruises on the side of her head, and the vomit in her hair?’ said Jia Haimin, the mother of 14-year-old Wang Yajuan, pointing to pictures of her daughter lying in a cardboard casket stained with vomit and appearing to show evidence of a struggle. ‘Dead people can’t bang their heads against the box. Dead people can’t vomit. My child was still alive when they put her in there.’

“The case, made public months later by New York-based Human Rights in China, highlights this country’s often hidden problem of child labor. The Chinese government officially forbids children under 16 from working, but critics say it does little to enforce the law. Statistics are hard to come by, but in some estimates, as many as 10 million school-age children are doing their part to turn China into a low-cost manufacturing powerhouse. ...

"‘We know enough about the problem to know child labor is extremely widespread,’ said Robin Munro, research director at China Labor Bulletin, a Hong Kong-based labor rights organization. ‘The rural education system in many parts of the countryside is in a state of virtual collapse. There is a high dropout rate of children under 16....It is safe to assume most are engaged in some kind of work illegally.’

“Children, some as young as 4, roam China’s relatively prosperous coastal cities, begging on the streets or selling roses deep into the night, apparently victims of schemes that use youngsters as bait. Even infants are being rented out as maternal cover for women selling pirated porn movies on the streets.

“Things could get worse before they get better. Parts of southern China’s coastal areas are experiencing a sudden labor shortage. Low wages and poor conditions have left adults reluctant to take many of the jobs, and an increasing number would rather stay home on the farm than be exploited in the cities. That could drive up demand for underage workers. Already, children are victims of kidnappings and contract labor arrangements in which they are forced to work....

“[L]abor activists say a growing number of rural schools have contracted out entire classes of students to work in urban factories, supposedly to help defray part of their school costs. ‘They call it work study programs,’ Munro said. ‘Of course, it’s child labor, because the school was earning money from it....’

“In principle, China is committed to ending child labor. According to the International Labor Organization, China has ratified two ILO conventions on labor practices. Convention 138 forbids minors under 15 from working. Convention 182 bans the worst forms of child labor, including prostitution and slave labor. But this is a country where making laws is much easier than implementing them. Youths desperate to help their families or simply tired of village life can easily lie about their age and use fake identity papers. Employers eager to hire them for their nimble hands and low cost often don’t bother to check....

“Sun Jiangfen, the mother of another 14-year-old, Jia Wanyun, who died in December [said,] ‘In this village, every family has a child working in a factory. Some just 13’....Many rural girls drop out because their families can’t afford to pay more than one tuition. At about \$300 a head, two children in school would be too much for her migrant construction worker father and farmer mother.

“The 14-year-old was promised about \$100 a year in wages, but she hadn’t been paid a penny because she was still considered an apprentice, her mother said. The youngster had toiled 12 hours a day, seven days a week....

“‘She said she didn’t want to stay there anymore. The work was too hard and the food was terrible,’ said Wang [Shuhai, the father of another girl who died], holding up a school photo of a fresh-faced little girl with a ponytail. ‘I told her to stay, because if you leave you wouldn’t be paid. The child listened to me.’...

“‘Sure, there are still lingering doubts about how they died,’ Li [Wusi, a Beijing lawyer] said. ‘But what choices do their parents have? Farmers have very low status in Chinese society. Farmers’ daughters are the lowest of the low.’”

5. *From factory to factory in China.* *The following first person account, published on March 8, 2006, is by a worker who started in China’s factories as an illegal child laborer making artificial Christmas trees in Guangzhou, then worked at*

factories making toys in Chenghai, electronic equipment and ceramics in Dongguan, and clothing in Muyin. Her work ended at a Shenzhen garment factory where her hand was mangled in a pressing machine that lacked a proper safety guard. Between jobs, she and other migrants lived in railway stations or on the street. Her story vividly conveys many of the routine abuses suffered in both foreign-invested and domestically owned workplaces – including factories’ simple failure to pay months of wages earned by workers; factories’ refusal to return “deposits” or bonds paid by workers; factories’ holding workers against their will in factory compounds; factories’ denial of a day’s rest for months at a time; workdays lasting from 8 am until 11 pm or later; wages ranging from 11 cents to 52 cents per hour, and averaging as little as 25 cents per hour even in skilled and technical jobs – before deductions that typically lower wages by 10 to 25 percent; sweltering, smoke-filled factories, where workers are fully exposed to toxins and dangerous machinery; and fetid, cement-block “dormitories.”

“I left home and started working at the age of 15. ...The reason I did so was to be able to help my family.⁵⁴ I have a lot of sisters and I am officially considered to be ‘outside the quota’ [because her parents violated China’s one-child policy].

“I came to Guangzhou through a professional recruiter for this industry. He charged 250 yuan [US\$30] as a middleman’s fee or introduction fee. Being underage, I didn’t have an identity card at the time, so he wanted another 50 yuan which he said was to be used to get me an ID card. Then, he said that I would need another certificate of some sort when I started working at the factory and he took another 50 yuan for that. In fact, he never applied for any kind of ID for me. He just took my money and left. This factory made handicrafts and gift items. It has foreign money behind it. In the summer we made flowers and in the winter we made [artificial Christmas] trees.

“We worked seven days a week. We only had three days off a year. We worked overtime every day until 10 pm in the evening. In the beginning I was assigned to the hardware department. The working conditions were terrible. Every day we worked on the stands for the Christmas trees. We polished the stands using a cloth dipped directly into thinner. After we wiped the stands, we sent them to the kilns to be fired. The workshop

⁵⁴ This narrative is from China Labor Bulletin, “The Nine Lives of a Chinese Woman Migrant Worker” (March 8, 2006).

where we worked was always filled with smoke. It was so smoky you couldn't see very far. When you entered the room, your eyes would burn and tear, and you'd have difficulty breathing.... I lived in the factory dormitory....There was no such thing as maternity leave or marriage leave. If you got pregnant, you could only quit and go home. There was no union in this factory. This was a pretty big plant and it had branches in other places, I never heard anything about unions in those places, either. Later...I worked as the statistician, and you could say the working conditions were a bit better. I worked at that plant for about eight to nine months. I left there because I really had no choice. At that time when I was working as a statistician, the pay for that position was 1.80 yuan [22 cents] an hour. But they decided to pay the statistician who was hired after me only 1.70 yuan an hour....

“When I left home again and went back to work, I went to Chenghai city in Guangdong province, but I couldn't find a job in a garment factory, so I took a job in a toy factory. This was a small factory set up by a local man. The factories there are really small. They were a kind of cottage industry carried out in someone's home and they normally only employed a few dozen people or fewer, sometimes less than 10 people working there. ...The first floor was where we worked, the second floor was the dormitory and the third floor was where the boss and his family lived....[T]here were a lot of mosquitoes. After working there a few days, one's face would be covered with mosquito bites. There were only two shower rooms and we had to go to the river to fetch water and we washed our clothes in the river. As for the work, we had to put the screws in with our hands, and our hands swelled up as a result and we got lots of blisters....

“Someone from my hometown introduced me and my two cousins (a younger female cousin and an older male cousin) to a job in a handicrafts factory. This factory was in the city of Chenghai and employed between 20 and 30 people. The factory was on the ground floor of a normal low rise building. A second story had been created above the factory and we slept there. Someone tall like me couldn't even stand up on that floor. In the summer, it was really hot there, and there was no air conditioner or even a fan. You simply couldn't sleep. They put up a simple partition to separate the men and women. ...There was only one toilet with a shower for everybody. We had to line up to use the shower when we finished work which was at about 11:30 pm every day. This

factory used the piece rate system, but I didn't understand how they calculated. Our wages never seemed to match the amount that we produced. We had to buy our own food. We worked 14 hours a day, seven days a week. We worked there for about a month and then decided that it wasn't worth it. We only earned between 400-500 yuan a month [11 cents per hour to 14 cents per hour] and after deducting what we spent on food, we basically hadn't saved much money. ...So the three of us, me and my two cousins, all decided we didn't want to work there. ...The boss kept our IDs and wages. We didn't want to go to the Labour Dept but there was nothing we could do. We went to the Labour Dept and the official there told us that this was the practice in this area: If we quit after just one month, quit after the first month that is, we wouldn't get any wages. ...In the end, we didn't get any pay. Adding it all up, we didn't earn any money that month and we were out-of-pocket for all the money we spent on food.

“Law and order in that place [Chenghai] was really bad. We took one of those unregistered mini-buses from Chenghai to Dongguan. We paid them a lot and then they dropped us off in the middle of nowhere. When we got to Dongguan, we spent the first few days living in the train station and then the bus station.... In the end, I didn't go to work in a garment factory. I got a job in an electronics factory that made VCDs...This factory employed more than 200 people, most of whom were women. The first impression you got from this factory is that it was exceptionally clean. All the workers wore uniforms, and the workshops also were very clean. I worked in packaging in this plant. We were paid by the hour, 2.00 yuan [24.2 cents] an hour and 2.50 yuan [30 cents] for each hour of overtime. We didn't work overtime on weekends. It took me awhile to discover what was wrong with this place: I had nothing to do all day. I only earned between 200 and 300 yuan a month....I worked in this factory for four to five months, then I left because I couldn't earn any money there. I had to forfeit a month's wages when I left [thereby reducing her real wages by twenty percent]. According to the company's rules, you must work a full year before quitting to get a full settlement of your wages. That's to say, you only have one chance every year to quit.

“After I quit that job, I went to work in a ceramics handicrafts factory. The minimum monthly wage in this plant was 480 yuan. The overtime pay in the first three months was 1.00 yuan [12.1 cents] an hour. After you have worked for three months, you

would get a pay rise. The amount of the rise depended on the department head's assessment. The workers were divided into three categories, A, B and C. 'A' group was the highest and got a (daily) increase of eight yuan a day. 'B' group earned 7.50 yuan and 'C' group 7.00 yuan. The department head's assessment was based on your performance. We didn't really understand how she assessed us....If one didn't take any days off during the month, you could get 100 yuan in a bonus in addition to your monthly pay [yielding a maximum of 40 cents per hour for the best paid workers and 38 cents per hour for the worst paid workers, assuming a workday of 8 hours].... We worked seven days a week. The best situation would be not working overtime on Sunday. If we had to work overtime, we worked five more hours, from 6 pm to 11:30 pm. We were supposed to start work at 8 am, but actually we had to meet at the athletic field for exercises and running at 7:30 am. ...Ours was a technical unit, a higher skill level was required. ...If you encountered unfair treatment, you'd just have to grin and bear it. Nobody goes to the Labour Bureau....

“After that, I went to work in a clothing factory in Beijing. The plant was called Jiushan Garment Factory. It was in Miyun County, a district of Greater Beijing. The owner of the plant was from Anhui province and there were about 100 people working there. We worked nine-hour shifts and overtime work in the evenings was optional, but we never got a day off. They calculated wages using the piece method there. The minimum wage was 380 a month and they didn't count hours worked overtime as overtime, so there was no separate overtime pay. The conditions in this plant were really terrible, worse than any plant in Dongguan. There was only one shower room and no one was assigned to do the cleaning, so it really stank....At that time, the factory was three months behind in paying wages. ...It was just at that time that the other workers were asking the boss for their back pay....The assistant plant manager...said that they had an order for some cotton garments that was quite urgent and if we could get this order out first, then she'd see if we could be paid right after that. We worked on that order for two days and they still didn't pay us....The boss later wrote us a note saying that he was having a financial crisis. He also said that he would pay us in the future within a specified period of time. But we heard some news about the boss, the meaning of which was that we would have a hard time getting our wages. So we got the feeling that it was really

hopeless to try to get our back pay from him. We tried again, asking the factory manager for our salary and he said that if we wanted to leave, we should leave now. He could say that because he knew that we hadn't been paid in a long time and that we had no money to leave. We didn't even have the bus fare to get to Beijing!

“In the end we decided that we would leave, even without our pay, and we'd decide what to do when we got to Beijing. Usually, the factory locked the main gate to the compound. ... There was one guy who was working on our side of the plant and he'd stolen the key to the gate. After the gate was open, the guard couldn't hold us back. And that was how we all got away. At that time, we were really pleased with ourselves. We thought we had won some kind of victory. In fact, there were those in our group who had lost four months of wages. They all said I was lucky, because I had only lost one month's wages. ... You asked me why we needed a permission slip to get out the main gate. All factories have this kind of requirement. To leave the factory compound, you need a permission slip. ... If you don't have a permission slip, you wouldn't be allowed to take your suitcases. So you see, it was really difficult to leave on your own.

“[T]hen I went to Shenzhen and started working in a factory called Hongcheng Garment Factory. This one was set up with Taiwan money. They made things for children. There were 600 people in that plant. The set-up was half assembly line and the other half was done by hand. I paid a deposit of 80 yuan when I started working at the plant. They said that it was to process my staff card, the factory license and some other documents. I was put on one of the industrial sewing machines, and it was really hard work. We worked overtime every day and the earliest we would get off would be around 11 pm. Sometimes we would work until two or three in the morning, and we would have to go to work the next day as usual. We started at 7:30 am until 12 noon. They said that we had half an hour break for lunch and a rest, but in fact as soon as we finished eating, we would go back to work. There was no rest break. The best day was Sunday when we only had to work overtime until 9:30 pm. Really, we were exhausted. Some even fainted, because they were so tired. There were some people who got their fingers caught in the needle of the sewing machine, because they were so tired.... No matter how much you needed to take a rest, if they wouldn't let you then you still had to come to work. We worked on the piece rate method, and there was no overtime pay. But the wages were

high. The minimum was about 800 yuan a month [22 cents per hour] and the maximum could be as much as 2,000 yuan [53 cents per hour]. But later they set the highest pay for staff at 1,800 yuan a month [48 cents per hour], because the section chiefs were getting 2,000 yuan. The salary was good at this factory, but their system of fines was also pretty strict. We punched a time clock and they would dock one yuan for every minute you were late. They were always fining someone. If there was any problem with the quality of the work on the garments and they were returned to the factory, then we would get fined. If you talked back to the section head, you'd get fined. If the floor was dirty, you'd be fined. The food in that factory was OK....but most people didn't get up for breakfast, because they were too tired. They just wanted to stay in bed. There were 20 people in one room and there weren't enough showers and toilets for everyone. In the evening, there was no hot water. The workers weren't given any labour contracts at this factory. No one brought that up when we started working here....There was no trade union in this factory and we never heard anything about laws on labour protection and we never had any training in labour protection. I worked there for two months and then I quit. I was just too exhausted. ...According to the regulations in this factory, you had to work for at least three months before you could quit. So when I wanted to quit, they wouldn't let me. ...There was nothing I could do. I just kept on working.

“After I quit that job, I went immediately to a garment factory in Longgang District in Shenzhen, a place called New Horse Garment Factory. This plant was making well known designer clothing. I don't know who originally set up the plant. I think it was Hong Kong investors. I worked there for one year. I was a thread inspector, that is, the one who checks that there are no loose threads showing on the exterior of the garment. The usual working hours were eight hour shifts with two hours of overtime on Mondays, Wednesdays and Fridays. If we worked overtime on the weekends, we would get double pay. This job paid by the hour, and I got 2.77 yuan [33 cents] per hour. The wages were paid one month in arrears. The minimum pay was 700 yuan a month. You got an extra 7.00 yuan (85 cents) for working the evening shift. After working for three months, the factory put you on the piece rate method. This factory also gave us medical insurance and work-related injury insurance... Every month you had to pay 60-70 yuan toward that. There were eight to 10 people in every room in the factory dormitory.

“Later, I was transferred to the pressing department....That [pressing] machine had a shield or guard, but a screw was loose and the shield often fell off....On March 25, 2004, I was working the night shift and the shield fell off several times, so I stopped using it. At about 3 am, the accident happened. My hand was caught by the iron roller. Someone who was there at the time saw what happened and thought that the machine had jammed and turned off the machine. But my hand was still inside and I couldn't get it out....When the electrician released the pressure of the machine, then I got my hand out. The skin on my hand was already badly burnt...I went to the hospital by myself. Nobody went with me.... I was afraid at that time that this hand would be crippled or deformed later, so it was really a terrible time and I felt like jumping out of the window....

“While I was in between each of the nine jobs, I was effectively living on the street. We knew that the railway station would not kick us out, and that we could close our eyes for a while and rest there. ...The Labour Bureau did nothing to help us or protect us. All the Labour Bureau thinks about is moving along any worker that comes into its offices. They are not paid well either, so the less they have to do, the better they like it. If they are not pressured to take up a case, they won't and that is one less case for them to handle. And of course there is the relationship between the factory owners and the people in the Labour Bureau. The owners will invite the Labour Bureau people for dinners and so on.”

6. *Workers in Wisconsin and Dongguan, making the same appliance.* “The willowy teen might as well have marched as part of an army - a soldier among the estimated 150 million migrant workers who have left China's vast impoverished rural interior in the last two decades searching for entry-level pay.⁵⁵ This huge unrooted labor force - equal to more than half the population of the United States - has been absorbed easily by China's manufacturing juggernaut. And by all accounts, there is room for many more like Zhao Rong.

“From America's manufacturing heartland to Japan's rust belt and Mexico's *maquiladora* workshops, industrial laborers - and the companies that employ them - will

⁵⁵ This account is from John Schmid and Rick Romell, “China’s Economic Boom Hits Home,” Milwaukee Journal Sentinel (December 27, 2003).

feel 'tremendous pressure in the next 10 to 15 years' from the force of China's ascendancy, Dong Tao, Asian economist for Credit Suisse First Boston, testified this fall before a U.S. congressional panel. China's seemingly recession-proof economy, according to Beijing's government and experts at the World Bank, is on course to add another 20 million low-paying, entry-level factory jobs every year, year after year, at least through 2020....

"But the bigger workings of China Inc. don't concern Zhao Rong. ...Starting at 8:30 a.m., she works in a crowded concrete complex of 600 workers that clangs at capacity. Not counting breaks to eat, she puts in 10-hour days, six days a week, helping build kitchen appliances sold in U.S. stores under the Nesco brand.

"She makes 27 cents an hour.

"Halfway around the world in Wisconsin, in the Lake Michigan shoreline city of Algoma, sits another Nesco factory. This one is silent.

"Don Heider walks through dusty shafts of light in the plant. He ran it for a while, and he designed some of its tooling before that. The rambling structure covers 88,000 square feet, and Heider can discuss its features in detail. Here's where the furnace was. That's the old enameling booth. Over this way, the machine shop. Down that ramp is the fabrication area, where huge presses, some nearly two stories tall, shaped sheets of steel into pans for the electric cooking pot known as the Nesco Roaster.

"It was a busy place. Now, it's empty except for a handful of workers cutting scrap with torches. Heider was once the plant manager; his responsibility in these last days was to close and secure the factory. 'You feel numb,' he said.

"Wes Drumm didn't want to do it. He didn't want to take production to China. Folks don't come much more rooted in Wisconsin than Drumm, who runs The Metal Ware Corp., maker of the Nesco Roaster and other appliances. A century and a half ago, his great-grandfather settled in Manitowoc, and that's where Drumm remains today. 'Wisconsin's my state - period,' he says.

"But China is his manufacturing base. That's where the roaster is made now. These days, four China-based factories work under contract for him to make appliances. Metal Ware is a speck of dust in the global economy, but the winds that blew that speck to China are the same forces - frighteningly powerful forces, in Drumm's view - that are

sending the U.S. trade deficit soaring, decimating jobs across the Midwest and slashing prices at places such as Wal-Mart.

“The effects are widespread, from furniture companies heading overseas to tool-makers being driven out of business to suppliers of all sorts being forced to cut prices and jobs amid growing global competition. China isn't content to dominate DVD players, hiking boots, textiles and TV sets. Beijing is nurturing its stable of next-generation industries to mass-produce software, semiconductors and automobiles. Metal Ware, a small Wisconsin business, is a microcosm of how that national effort is playing out on two sides of the world.

“In a modestly furnished conference room at Metal Ware's headquarters in Two Rivers, Drumm, 75, perches on the edge of his chair, fidgets often, and talks about ‘the hollow pit’ that he gets in his stomach when he thinks of how abruptly his company's fortunes changed. As recently as 1999, Drumm had two factories in Wisconsin humming two and three shifts a day. He plowed profits back into the company that his father and other businessmen acquired in 1931.

“His signature product was as all-American as Thanksgiving Day - the roaster - the humble appliance of Drumm's Depression-era boyhood. He spent two decades building a thriving coast-to-coast market for the kettle-like appliance. It's a ‘Midwest product,’ Drumm said, that took off in the '30s with rural electrification and sold well for decades. Metal Ware acquired the Nesco name and tooling in 1981, and in the following 15 years, sales multiplied more than fivefold. Drumm responded with new machinery and assembly lines at the flagship Two Rivers plant. And he spent \$400,000 at the Algoma plant to install a computerized control for guns that sprayed the roaster pans with enamel at glass-melting temperatures. Algoma workers used the equipment for a year and a half.

“Precisely because Metal Ware was successful, competitors in China saw an opportunity; Drumm began to see perfect Nesco replicas at half the price. It started at the International Housewares Show in Chicago in 1998. Usually these trade fairs were a good time to build business contacts; in years past, Drumm rubbed elbows with Wal-Mart founder Sam Walton. This time was different. Drumm was tipped off that a Korean exhibitor was offering a cheaper product very similar to his prized Metal Ware roaster.

Drumm checked it out. It wasn't just similar; it was a perfect duplicate. In fact, recalled former Metal Ware executive Jim Polzin, who then ran the Algoma factory, the Korean knockoff even mirrored minor defects that were showing up in the Wisconsin pans because the dies in Algoma were being run almost continuously to meet demand. But the Nesco Roaster wasn't covered by patents, and the Korean firm wasn't violating any trademark laws. Drumm was angry, but he cut a deal with his upstart competitor. The two would join forces. The Korean company would continue manufacturing roasters and Metal Ware would sell them, as well as its own Wisconsin-made roasters, at less than the original price. Within a year, however, sales were plunging in the face of brand-new competition from still cheaper Chinese models.

“Facing business failure, Drumm felt he had no choice but to scrap the Korean arrangement and abdicate roaster production. Polzin was dispatched to China for six weeks, hunting for factories capable of making the roaster. He visited about 15 plants. Getting in was no problem; everyone wanted the business....In 2001, all roaster production went to China. ...

“Metal Ware employed 250 at its peak in 2000. Today, Drumm keeps on about 90, a little more than half in management and the rest in the Two Rivers factory. The Algoma factory is shut, and most of the Two Rivers shop stands idle. In the end, Metal Ware made 2,324,238 Nesco Roasters in Wisconsin. The once-slumping sales of the roaster, however, are soaring - up 150% in unit volume since 1999. But there's a catch. Revenue is up only 5%.

“The reason: Thanks to low-cost Chinese manufacturing and relentless market competition, prices have plunged. A non-stick roaster that four years ago sold for about \$80 now sells for just under \$40.

““And the politician says that's great for the consumer,’ Drumm said. But if the consumer doesn't have a job, ‘How can he buy it?’”

II. Petitioners

This petition is filed by United States Representatives Benjamin L. Cardin and Christopher H. Smith and by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). The AFL-CIO's fifty-three affiliated unions represent approximately nine million workers in the United States, including more than two million manufacturing workers.⁵⁶

Members of AFL-CIO unions work across the entire spectrum of U.S. manufacturing, including: aerospace, aluminum, appliances, automobiles, automotive parts, beverages, boilers, building components, chemicals, computers, confectionary, containers, electronics, energy, food processing, household products, kitchen equipment, machining, metalworking, paper, printing and publishing, petrochemicals, pharmaceuticals, pipe-making, plastics, railroad cars, shipbuilding, shoes, steel, stove-making, telecommunications equipment, tires, tool and die, and countless other sectors of manufacturing.⁵⁷

The AFL-CIO, its affiliated unions, and the members of those unions are “interested parties” under section 301(d)(9) and section 302(a)(1) of the Trade Act.⁵⁸ Their interests in jobs, wages, and benefits are directly affected by the Chinese government's persistent pattern of denying workers' rights in the manufacturing of goods for sale (in competition with U.S.-based producers) in the United States market, in China's domestic market, and in third-country markets.⁵⁹ This petition applies to all such manufactured goods.

Representative Cardin and Smith are “interested parties” by virtue of their representation of the interests of workers in their respective Districts.

⁵⁶ AFL-CIO unions with members in manufacturing include: Bakery, Confectionary, Tobacco Workers and Grain Millers International Union (BCTGM); Communications Workers of America/International Union of Electrical Workers (CWA/IUE); International Association of Machinists (IAM); International Brotherhood of Boilermakers (IBB); International Brotherhood of Electrical Workers (IBEW); Graphics Communications International Union (GCIU); Paper, Allied-Industrial, Chemical & Energy Workers International Union (PACE); Sheet Metal Workers International Association; United Automobile Workers (UAW); United Mineworkers of America (UMWA); United Steelworkers of America (USWA).

⁵⁷ See Appendix B.

⁵⁸ 15 CFR § 2006.0(b) provides that “a certified union or recognized union or a group of workers which is representative of an industry engaged in the manufacture, production or wholesale distribution in the United States of a product or service” affected by the “act, policy, or practice complained of” is an interested party.

⁵⁹ 15 CFR § 2006.1(1), (5).

III. Statute and Regulations Applicable to this Petition

Section 301(d)(3)(B)(iii) of the Trade Act provides that acts, policies, or practices of a trading partner are unreasonable if they constitute “a persistent pattern of conduct” that –

- (I) denies workers the right of association,
- (II) denies workers the right to organize and bargain collectively,
- (III) permits any form of forced or compulsory labor,
- (IV) fails to provide a minimum age for the employment of children, or
- (V) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers.⁶⁰

15 CFR 2006.1(b)(2)(v) provides that a petition addressing the enumerated workers’ rights shall:

- (A) Describe the rights or standards denied and provide information on the laws, policies and practices of the foreign country involved, if any, that relate to such rights or standards, and
- (B) Indicate, to the extent such information is available to petitioner, whether the foreign country has taken, or is taking, actions that demonstrate a significant and tangible overall advancement in providing these rights or standards.

Section VI of this petition shows that the Chinese government, throughout its manufacturing sector, persistently denies the workers’ rights and standards enumerated in Section 301(d). The Chinese government is showing no “significant and tangible overall advancement” in securing workers’ rights and standards “throughout the...country.”⁶¹ In its 2005 Annual Report, the Congressional-Executive Commission on China concluded:

The Commission finds no improvement overall in human rights conditions in China over the past year....The Chinese government does not recognize the core labor rights of freedom of association and collective bargaining. The government prohibits independent labor unions and punishes workers who attempt to establish them. Wage and pension arrears are among the most important problems that Chinese workers face....Chinese workers continue to struggle to collect wages and benefits because relevant agencies do not enforce the regulations. Workplace health and safety conditions are poor for millions of Chinese workers....Forced labor is an integral part of the Chinese administrative detention system, and child labor remains a significant problem in China, despite being prohibited by law.... Despite being a member of the ILO’s Governing Board, the Chinese government

⁶⁰ 19 U.S.C. § 2411(d)(3)(B)(iii).

⁶¹ 19 U.S.C. § 2411(d)(3)(C)(I).

has avoided discussions with the international labor community on Chinese workers' rights.⁶²

Similarly, the State Department's 2004 Country Report on Human Rights in China concludes: "The [Chinese] Government continued to deny internationally recognized worker rights, including freedom of association" – the identical conclusion reached in the State Department's 2003 Report, quoted in the AFL-CIO's first China petition.⁶³ And again in the 2005 Country Report, the State Department concludes that the Chinese government denies basic worker rights, including freedom of association, workplace health and safety, payment of wages, rights against forced labor, and rights against trafficking in children.⁶⁴ Peaceful labor protestors continue to face police violence, imprisonment, and torture.⁶⁵ The Administration itself therefore concedes that these fundamental facts have not changed since the President's assertion in 2004 that he would undertake measures to remedy the Chinese government's noncompliance. Indeed, according to the State Department, regulations aimed at suppressing autonomous labor organizations grew even more harsh in 2005.⁶⁶

Section 301(b)(1) of the Trade Act states that unreasonable trade practices are actionable if they burden or restrict United States commerce.⁶⁷ 15 CFR §2006.1(a)(7) states that the petition shall provide "information concerning:

- (i) The degree to which U.S. commerce is burdened or restricted by the denial of rights under a trade agreement or by any other act, policy, or practice which is actionable under section 301,
- (ii) The volume of trade in the goods or services involved, and
- (iii) A description of the methodology used to calculate the burden or restriction on U.S. commerce."

Sections VII and VIII of this petition calculate the degree to which the Chinese government's persistent denial of workers' rights in the manufacturing sector imposes a

⁶² Congressional-Executive Commission on China, 2005 Annual Report.

⁶³ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2004: China (February 28, 2005); Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2003: China (February, 2004)..

⁶⁴ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ 19 U.S.C. § 2411(b)(1).

burden on United States commerce, describe the methodologies used to calculate the burden, and set forth the volume of trade involved.

Section 301(b)(2) of the Trade act states that the USTR “shall take all appropriate and feasible action” within the scope of authority set forth in section 301(c), subject to the specific direction of the President. Section 301(c) states that the USTR may take action against any goods or economic sector, “whether or not such goods or economic sector were involved in the act, policy, or practice that is the subject of such action.”⁶⁸ Section 301(b)(2) also states that the USTR “shall take...all other appropriate and feasible action within the power of the President” that the President may direct the USTR to take, “with respect to trade in goods or services, or with respect to any other area of pertinent relations with the foreign country.”⁶⁹ Section 306(a) imposes the obligation on the President and the USTR to “monitor the implementation of each measure undertaken, or agreement that is entered into, by a foreign country to provide a satisfactory resolution” of a matter subject to investigation.⁷⁰ Section IX of this petition sets forth the actions of the USTR that are appropriate and feasible and within the power of the President, in order to eliminate the Chinese government’s persistent pattern of denying workers’ rights in China’s manufacturing sector.

As discussed in Section I of this petition above, on March 16, 2004, the AFL-CIO filed a previous petition under the Trade Act on the matters raised in this petition.⁷¹ New empirical research and analysis undertaken in the two years since that petition was rejected by the President only strengthen the conclusions reached in that petition – that multinational corporations and the Chinese government persistently deny the basic rights of China’s factory workers, and that U.S. workers suffer grave harm as a result. This petition incorporates that new research and analysis.

In addition, this petition shows conclusively that the President’s sole basis for rejecting the AFL-CIO’s first petition – his claim that “efforts” short of calibrated trade measures would more effectively secure the basic rights of China’s factory workers – was an empty assertion. There is no evidence whatsoever that the President has implemented

⁶⁸ 19 U.S.C. § 2411(c)(3)(B).

⁶⁹ 19 U.S.C. § 2411(b)(2).

⁷⁰ 19 U.S.C. § 2416(a).

⁷¹ 15 U.S.C. § 2006.1(a)(8).

policies that effectively vindicate those basic rights. To the contrary, one month after rejecting the first petition, the President pledged to “fully respect” the very laws of the Chinese government that violated those rights. In all areas of workers’ rights enumerated in Section 301(d), the appalling degree of noncompliance is unchanged or has worsened. The Administration has been oblivious to the continued, needless suffering of China’s workers and the continued, needless damage to the livelihood of U.S. workers. The record set out in this petition could not be more clear. The corporations operating in China and the Chinese government continue persistently to deny the basic rights of China’s factory workers.

The petitioners request a public hearing of the matters raised in this petition within thirty days after the USTR determines to initiate an investigation.

IV. The Model of Economic Development Embodied in Section 301(d)

Petitions under sections 301 and 302 are typically filed by United States corporations seeking to protect their commercial interests against unfair trade practices by foreign governments. Those unfair trade practices include barriers to imports from the United States, subsidies of exports to the United States, failure to enforce the intellectual property rights of United States companies, and many others.

The workers’ rights provisions of section 301 are distinctive in several ways. First, unlike other unfair trade practices enumerated in section 301, the workers’ rights provisions are aimed at safeguarding fundamental human rights. That aim cannot be dismissed as “protectionist.” The goal of those provisions, and of this petition, is not to deny jobs and economic advancement to China’s workers. To the contrary. The goal is to use the enormous economic leverage of the United States to induce positive change in China – to achieve respect for the basic rights of China’s factory workers. When the Chinese government safeguards basic workers’ rights, it will enjoy access to the United States market *and* create jobs that are not an affront to human dignity.

In 1984, when Congress first authorized the President to use this type of leverage, it made this purpose plain:

The United States has embraced labor rights, in principle, as well as political rights for all of the people of the world upon adoption of the Universal

Declaration of Human Rights in 1948. The Declaration specifically affirms for each person the right to a job, the right to form and join unions, and the right to an adequate standard of living.⁷²

Second, section 301 presupposes that securing the fundamental rights of China's workers is concordant with, and indeed a precondition to, protecting the fundamental rights of United States workers. Section 301 protects the rights of United States workers against erosion by unfair competition with overseas workers who are denied those rights. Congress knew that

the lack of basic rights for workers in many [less developed countries] is a powerful inducement for capital flight and overseas production by U.S. industries.⁷³

In evaluating the burden on United States commerce caused by the Chinese government's violations of workers' rights,⁷⁴ the USTR should therefore focus on the impact on employment, wages, and associational rights of United States workers – not on the revenue and profit of U.S. multinational corporations, which may indeed benefit from the exploitation of overseas labor. Under section 301, those profits are ill-gotten and cannot constitute a “benefit” that offsets the burden on United States workers. For the same reason, Congress could not have intended that the USTR count the cheaper price of United States imports produced by China's exploited workers as a “benefit” to United States commerce that offsets the burden on United States workers. In any event, United States consumers themselves do not wish to buy goods that are cheapened by shattered workers' rights in China and tainted by shattered working lives in the United States.⁷⁵

Third, the workers' rights provisions of section 301 are a sharp alternative to the model of globalization now embodied in the WTO. In the latter – the model of a laissez-faire constitution -- it is enough to protect global rights of property, contract, and investment. Congress, to the contrary, recognized that an economic constitution lacking

⁷² H. Rep. No. 98-1090 (1984) (Ways and Means Committee) at p. 12, reprinted in 1984 U.S.C.C.A.N. 5101, 5112.

⁷³ H. Rep. No. 98-1090 (1984) at pp. 11-12, reprinted in 1984 U.S.C.C.A.N. 5101, 5111-12.

⁷⁴ Section 301 authorizes the USTR to take action when overseas violations of fundamental workers' rights impose a burden on U.S. commerce. 19 U.S.C. § 2411(b)(1).

⁷⁵ See Section VIII-A of this petition, below.

social rights will not produce equitable and sustained economic development, whether for developing or developed countries:

[P]romoting respect for internationally recognized rights of workers is an important means of ensuring that the broadest sectors of the population within [developing countries] benefit from [access to U.S. markets]. The capacity to form unions and to bargain collectively to achieve higher wages and better working conditions is essential for workers in developing countries to attain decent living standards and to overcome hunger and poverty. The denial of internationally recognized worker rights in developing countries tends to perpetuate poverty, to limit the benefits of economic development and growth to narrow privileged elites, and to sow the seeds of social instability and political rebellion.⁷⁶

Again in 1985, Congress recognized that “[d]enial of worker rights in developing countries tends to...limit the benefits of economic growth to a narrow segment of the population, thereby retarding economic development....”⁷⁷

In the model of development embodied in section 301(d), the global integration of labor markets, capital markets, and markets in goods and services is not intrinsically a bad thing. If workers’ rights are vigorously enforced, then the impoverished and underemployed – whether in China, India, Indonesia, Mexico, or the United States -- may improve their standard of living and generate new domestic demand in a virtuous cycle of equitable development, while providing new markets for overseas investors and workers, including those in the United States.

If, however, the workers’ rights of one-half of the world’s manufacturing workforce are radically suppressed – as they in fact are, in China -- then labor conditions for the world’s unskilled and semiskilled workers are worsened; domestic and global demand is depressed; excess productive capacity is created; and a path of inequitable, unsustainable development is promoted.⁷⁸

And when the fundamental right of association is denied, a crucial pillar of democratic governance is lost. The right to form autonomous associations in civil

⁷⁶ H. Rep. No. 98-1090 (1984) at p. 11, reprinted in 1984 U.S.C.C.A.N. 5101, 5111.

⁷⁷ H.Conf.Rep. No. 99-428 (1985) at p. 12 (conference report accompanying Overseas Private Investment Corporation Amendment Act of 1985, requiring foreign countries to enforce basic labor rights as a precondition to providing U.S. governmental insurance to investors), reprinted in 1985 U.S.C.C.A.N. 2583, 2584

⁷⁸ See, e.g., Minqi Li, “Aggregate Demand, Productivity, and ‘Disguised Unemployment’ in the Chinese Industrial Sector,” *World Development* vol. 32, no. 3 (March 2004) at pp. 409-425.

society is a precondition to resisting state tyranny and to mobilizing citizens for participation in pluralist political institutions. In recent years, autonomous worker organizations helped democratize such countries as South Africa, Brazil, Poland, and South Korea – a fact that is not lost on leaders of the Chinese autocracy.⁷⁹

V. The Regimentation of Factory Workers and Repudiation of Free Labor Markets by the Chinese Government and Global Corporations

The Chinese economy is now moving up the technology ladder at a rapid pace, becoming an export power-house in such sectors as high-technology electronics and precision machinery.⁸⁰ Yet, in the post-Mao era of economic reforms, there is still nothing resembling a free labor market in the manufacturing sector. Quite the contrary. Through extraordinary exertions of state power, the Chinese government, with the complicity of corporate managers, created and perpetuates an enormous subclass of factory workers. The existence of the subclass is one of the preconditions of China's superheated investment in manufacturing.⁸¹ The real earnings of most members of this subclass have remained static or fallen throughout the unprecedented boom in capital investment, although wages of some categories of more skilled workers in some regions of the country have risen modestly since the 1990s.⁸² China will continue to serve as the World's Sweatshop, producing low-technology goods alongside high-technology goods for decades to come – unless the multinational and domestic corporations operating in China and the Chinese government radically reverse course and dismantle their regimentation of factory workers.

This Section provides a brief overview of China's factory workforce and the controls under which it labors. Section VI then details China's violations of the specific workers' rights enumerated in section 301(d) of the Trade Act.

There are more than 750 million workers in China -- more than the workforce of all OECD countries combined.⁸³ Recent analysis by U.S. researchers concludes that

⁷⁹ See Section VI-A of this petition, below.

⁸⁰ See Section VII-B of this petition, below.

⁸¹ See Section VII-B of this petition, below.

⁸² See Section VI-C of this petition, below.

⁸³ Ray Brooks and Ran Tao, "China's Labor Market Performance and Challenges," IMF Working Paper WP/03/210 (November 2003), Table 1.

China has approximately 80 to 100 million manufacturing workers – constituting *as much as half of all manufacturing workers in the world economy*.⁸⁴ This compares with approximately 14.2 million manufacturing workers in the United States and 30 million in the European Union’s twenty-five countries.⁸⁵ China’s manufacturing workers are employed in several different types of enterprises – privately invested enterprises (PIEs), joint-ventures, foreign-invested enterprises (FIEs), urban collectives and cooperatives, township and village enterprises (TVEs), and state-owned enterprises (SOEs).

To the extent that the Western media and public have any knowledge of these enterprises, they may be most familiar with images of large showcase factories owned by Western multinational corporations that have come under pressure from consumer and labor activists. But the vast majority of export workers labor in other facilities, out of public view, producing either directly for export or as subcontractors for larger export enterprises.

Large concentrations of manufacturing enterprises are located in the well-known coastal export regions of the Pearl River Delta (Guangdong) and Yangtze River Delta (Shanghai and Jiangsu). But literally hundreds of towns and cities throughout China have declared themselves export zones. Local officials compete for investment. They benefit personally by extracting revenue from enterprises and workers.

China has approximately 780 million peasants. Between 180 and 350 million are estimated to be “excessive” or in “dire poverty” and available for urban employment.⁸⁶ In 2005, approximately 200 million migrants from the countryside worked in China’s cities and towns.⁸⁷ The vast majority of manufacturing workers are rural migrants working temporarily in cities, towns, and villages where factories are located. Ten to twenty million peasants will enter the nonagricultural workforce each year during the

⁸⁴ See Judith Bannister, “Manufacturing Employment in China,” *Monthly Labor Review* (July 2005); William Ward, “Manufacturing Productivity and the Shifting US, China, and Global Job Scenes – 1990 to 2005,” *Clemson University Center for International Trade Working Paper 052507* (August 4, 2005), at p. 21.

⁸⁵ U.S. Bureau of Labor Statistics; William Ward, “Manufacturing Productivity and the Shifting US, China, and Global Job Scenes – 1990 to 2005,” *Clemson University Center for International Trade Working Paper 052507* (August 4, 2005), at p. 21.

⁸⁶ See Human Rights in China, *Institutionalized Exclusion: The Tenuous Legal Status of Internal Migrants in China’s Major Cities* (November 6, 2002) at p. 16; OECD, *China in the World Economy* (2003).

⁸⁷ Qiu Quanlin, “Laws Needed to Ensure Migrant Workers’ Wages,” *China Daily* (March 9, 2006).

next two decades.⁸⁸ That is, *every year*, China will add more nonagricultural workers than the *total* manufacturing workforce of the United States. In the next three to five years, China will add more workers to its urban workforce than the total manufacturing workforce of the U.S., the E.U, and Japan combined.

Classical trade theory maintains that developing countries like China have a “natural” comparative advantage in labor-intensive, unskilled production owing to their large pool of impoverished workers in the countryside. Some cheerleaders of globalization postulate that the pitifully low wage earned by China’s export workers – as little as 12 to 50 cents per hour⁸⁹ – and the brutal treatment they receive are “legitimate,” owing to the workers’ lack of skill, their abundance, and their low level of productivity. In free labor markets, according to neoclassical economic theory, all workers earn (and deserve) their marginal productivity – that is, they earn what their output is worth.

But the assumptions underlying this simple theory crumble against the hard realities of China’s political economy. *China’s inflation-adjusted wages for the majority of factory workers have fallen or remained flat in the last fifteen years and for a minority have risen modestly, while labor productivity has rapidly increased from year to year* – creating an enormous “wedge” between wage and productivity growth that flatly contradicts naïve economic theory.⁹⁰ Indeed, a survey by China’s Ministry of Labor, conducted after the President denied the AFL-CIO’s first petition, confirmed again that the nominal monthly wage of China’s production workers has remained “virtually

⁸⁸ China Daily, “300 Million Chinese Farmers to Enter Cities Amid Urbanization in Next Two Decades” (March 21, 2006).

⁸⁹ See Section VI-D of this petition, below.

⁹⁰ A recent survey by China’s Ministry of Labor reaching this conclusion is cited in Neil Gough, “Trouble on the Line,” Time Asia (January 2005). China’s National Development and Reform Commission reported the same conclusion in April, 2006. See “Rural-Urban Income Gap Continues to Widen,” Financial Times Information (April 17, 2006). In some categories of more skilled or technical work in some regions, wages may have risen slightly in the last four years, but still not as rapidly as productivity. On the stagnation of real wages in export manufacturing, see Minqi Li, Aggregate Demand, Productivity, and ‘Disguised Unemployment’ in the Chinese Industrial Sector, *supra* note 78, at pp. 409-425; Liu Kaiming, Migrant Labor in South China (2003); Hong Kong Confederation of Trade Unions, Reading the Signs: Chinese Workers and the WTO (January 2003) at p. 2; Anita Chan, “A ‘Race to the Bottom’: Globalisation and China’s Labour Standards,” China Perspectives no. 48 (March-April 2003) at p. 43; and wage data in the sources cited in Section VI-C below. For an analysis of China’s growth in nonagricultural labor productivity, ranging from a pessimistic estimate of 3.6 percent annual growth to an optimistic 6.1 percent, see Alwyn Young, “Gold Into Base Metals: Productivity Growth in the People’s Republic of China During the Reform Era,” Journal of Political Economy vol. 111, no. 6 (December 2003) at p. 1261.

frozen” for the last decade and has fallen by 30 percent when adjusted for inflation.⁹¹ Even more recently, in April 2006, China’s National Development and Reform Commission reported that the wages of migrant factory workers “remain[ed] static.”⁹²

The stagnation in real wages for most workers has continued despite recent reports of labor shortages in some of the exporting regions. The combination of labor shortage and falling or flat wages is paradoxical for economists who adhere to the simplistic assumption that China’s labor market functions as a competitive spot market. The paradox is dispelled, however, if one sets aside wishful theories and instead recognizes the glaring reality of labor allocation in China. The labor shortages are not the *cause* of improved labor standards. To the contrary, the reported labor shortages are, precisely, the *consequence* of poor labor standards and of repressive labor policies – by both corporations and the Chinese government – that obstruct the efforts of China’s workers to improve their lot. According to a recent survey conducted by the Chinese government itself, a key reason for the labor shortages is that “working conditions in local labor-intensive factories...were very bad, with long working hours and low wages, and many cases of employers withholding wages for several months.”⁹³ In its report released on March 8, 2006, the U.S. State Department reaches the same conclusion.⁹⁴ Many workers prefer to stay in the rural subsistence sector or in other non-factory jobs, because they and their family members now know from hard experience the inhumanities of the factory system.

Factories are under intense pressure from global brands and retailers to prevent labor costs and product prices from rising – and to push them even lower – thereby worsening working conditions and labor shortages. Wal-Mart, for example, requires its Chinese suppliers to lower the price paid by Wal-Mart each year; and, if Wal-Mart were a country, it would be the eighth largest importer of Chinese exports. This helps explain the widespread reports of a vicious cycle in China’s labor market, in which factory managers increase working hours without increasing monthly wages in order to fill

⁹¹ Reported in Neil Gough, “Trouble on the Line,” *Time Asia* (January 2005).

⁹² Reported in “Rural-Urban Income Gap Continues to Widen,” *Financial Times Information* (April 17, 2006).

⁹³ “Labour Shortage Arises in Province Exporting Most Migrant Workers,” *China Daily* (February 22, 2006).

increasing purchase orders without hiring more workers and without increasing unit labor costs – thereby worsening working conditions and making workers even less willing to enter the factory system.⁹⁵ One tragic symptom of this pathology is a widely noted increase in child labor in manufacturing – as managers seek new sources of cheap, pliable labor.⁹⁶

Wages and other conditions have failed to improve for most factory workers because *corporate and government policies prevent workers from bargaining for better conditions*, either as individuals or groups. This explains the double “paradox” -- that a factory labor shortage can exist in an economy with the largest pool of unemployed and underemployed workers in world history, and that the “market” has not responded to the labor shortage by significantly increasing factory wages.

Even if it were true – under assumptions of *full employment* and perfectly *competitive* labor markets – that wages grow at the same rate as productivity,⁹⁷ neither assumption holds in China. Hundreds of millions of destitute peasants are unemployed or underemployed. Equally important, workers are not allocated to China’s factories by a competitive market. China prohibits free individual and group bargaining, and enforces internal migration controls that create an enormous subclass of exploitable factory workers who are temporary migrants from the countryside.

Although, as detailed below, the migrants are barred from the high-paying technical and managerial jobs held by registered urbanites, they have in fact displaced urban workers in one sector – precisely, in unskilled, semiskilled, and even skilled factory work. This large-scale displacement is one of the factors explaining why real wages for most of China’s factory workers have stagnated in the last decade, even while

⁹⁴ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

⁹⁵ Liu Kaiming of the Institute of Contemporary Observation in Shenzhen makes this point in Jonathan Watts, “Toyland Workers Strike New Deal,” *The Guardian* (December 24, 2004).

⁹⁶ See Section VI-E below.

⁹⁷ This is not to concede that workers *deserve*, in some moral sense, to be paid the low wages that “free” labor and product markets may assign to their work under conditions of full employment. In economic theory, wages equal marginal *revenue* product – the increment to the firm’s revenue added by the marginal worker. That monetary value depends on contingent and shifting technological developments and market conditions, over which workers have no control. Workers are not morally blameworthy for the level of accumulated capital and technology in the workplaces of their country, or for the degree of consumer demand for the particular products they produce, or for the supply of workers from other countries, or for

productivity has risen. One important reason why productivity has risen is that inefficient state-owned enterprises have shed tens of millions of formerly privileged, better paid workers who hold permanent urban status. Some of the state-owned enterprises have been liquidated; some are restructured and remain state-owned; and some are privatized. In many cases, in the process of restructuring, strategically placed government officials stripped the enterprises of accumulated assets, including pension, welfare, and wage funds.⁹⁸ This accounts in part for the rise of China's newly wealthy class of well-connected managers and officials *and* for the explosion of protests by displaced workers who accurately perceive that corrupt officials are to blame for their unpaid wages and loss of pensions, medical funds, unemployment compensation, and severance pay. The same phenomenon explains, in part, why the wages of most factory workers have fallen or stagnated even with rising productivity and profits. When more efficient, restructured firms continue to operate or when privately owned factories open or expand, the jobs formerly held by high-paid urban residents entitled to health, pension, and welfare benefits are filled instead by legions of migrant workers who earn drastically lower wages and receive no such benefits.

Why are China's migrant workers so much more exploitable than the urban permanent residents they displace? Their vast numbers are one reason, to be sure. But another important reason is the Chinese government's system of internal controls on migrant workers, combined with the wholesale denial of rights to protest, organize, and bargain.

Under the *hukou* ("household registration") system enforced by the much-feared Public Security Bureau (security police), all Chinese citizens must live and work only in the place where they are permanently registered, unless they obtain special authorization to work temporarily in some other place. Their place of permanent residence is generally the village, town, or city where their mother or father was registered.⁹⁹ A Chinese citizen's place of permanent residence is therefore an inherited status. It is recorded in the "*hukou bu*," or registration booklet that all Chinese households must hold. The

their particular level of talent and skill, even though these and many other variables determine the workers' marginal revenue product.

⁹⁸ For a good summary of this process, see ICFTU, *Whose Miracle? How China's Workers are Paying the Price for its Economic Boom* (2005) at pp. 28-29.

hukou bu also designates each household as either rural or urban. In practice, the inherited distinction between rural and urban residents produces a deeply entrenched caste system. The Chinese system is not formally based on racial differences, but in practice migrant workers are distinguished by dialect and ethnicity; and the privileged class of permanent urban residents in fact treats migrant workers from the countryside as an ethnically inferior sub-caste.¹⁰⁰

The permanent residence of the vast majority of Chinese citizens, of course, is in rural villages.

The class order of China [compared to Latin American rural-urban migration] is clearly a function of government policy, as it is still fundamentally determined by

⁹⁹ Before 1993, a child was registered only at the place of the mother's *hukou*.

¹⁰⁰ According to a leading authority on China's control of internal migration:

‘[E]thnic’ division...is chiefly defined by place of origin. In these terms certainly extraprovincialites but even rural people from the same province are viewed as foreign....[I]n China language is the most significant source of difference where integration and mobility are concerned. Since many regions of China boast their own dialects, the language barrier people face when transporting themselves to new locales can segregate and subordinate them in relation to their host communities.

This sense of ethnicity is also apparent in the tendency of migrants to dwell separately in the cities, just as sojourners did in Chinese urban places historically, by provincial (or county or village) origin, and sometimes by occupation as well.

....
The essentially closed character of this class order is illustrated by the difficulty of marrying across its boundaries....For the most part city folk are not disposed to wed a ‘peasant,’ even a newly urban-based one....Inquiring of my transient respondents whether they hoped to marry an urbanite, I was met not infrequently with expressions of incredulity or embarrassed laughter.

Dorothy Solinger, “The Floating Population in the Cities,” in Deborah S. Davies, et al., eds., *Urban Spaces in Contemporary China* (Cambridge UP 1995) at pp. 120-21, 127. There are innumerable accounts of the *hukou* system and the caste system it creates, by academic researchers, human-rights organizations, and other NGOs. See, e.g., Fei-Ling Wang, *Organizing Through Division and Exclusion: China's Hukou System* (2005); Liu Kaiming, *Migrant Labor in South China* (Institute for Contemporary Observation 2003); Li Zhang, *Strangers in the City: Social Networks within China's Floating Population* (Stanford 2001); Dorothy Solinger, *Contesting Citizenship in Urban China: Peasant Migrants, the State, and the Logic of the Market* (Univ. of Calif. 1999) at p. 5; Sarah Cook and Margaret Maurer-Fazio, *The Workers' State Meets the Market* (Frank Cass 1999); Wang Fei-Ling, *From Family to Market* (Oxford 1998); Michael Dutton, *Streetlife China* (Cambridge 1998); Thomas Scharping, ed., *Floating Population and Migration in China* (Institut für Asienkunde 1997); Anita Chan, “A ‘Race to the Bottom’: Globalisation and China's labour standards,” *China Perspectives* no. 46 (March-April 2002) at p.44; Kam Wing Chan and Li Zhang, “The Hukou System and Rural-Urban Migration in China: Processes and Changes,” *China Quarterly* no. 160 (December 1999); Lincoln Day and Ma Xia, eds., *Migration and Urbanization in China* (M.E. Sharpe 1994); Tiejun Cheng and Mark Selden, “The Origins and Social Consequences of China's Hukou System,” *China Quarterly* no. 139 (1994) at pp. 1090-1104; Mobo Gao, “On the Sharp End of China's Economic Boom – Migrant Workers,” *China Rights Forum* (Spring 1994); Human Rights in China, *Institutionalized Exclusion*, supra note 86. Many of these accounts draw the parallel between the Chinese system and apartheid-era South Africa.

the state-imposed *hukou* system. Indeed, Chinese people are still subject to a finely graded ranking order, which classifies those with a *hukou* in the greatest metropolises at the top, and those with small, isolated rural-township *hukous* at the bottom. It is the urban *hukou* that provides the basis for all the perquisites that urbanites – and only urbanites – enjoy.¹⁰¹

Starting in the 1980s, peasants holding rural *hukou* entered China's manufacturing sector, through a governmentally controlled system of labor allocation. Peasants who obtained certifications from both sending and receiving provinces were permitted to migrate to manufacturing towns and cities – but only temporarily and only to fill designated jobs as laborers in factories, construction sites, domestic work for urban families, and assorted menial labor. They were – and still are -- prohibited by law and social prejudice from competing with people holding urban *hukou* for higher paying jobs in technical, administrative, professional, or managerial jobs.¹⁰² But, as mentioned above, they have displaced tens of millions of urban workers in the manufacturing sector. Permanent urban residents view the new class of temporary migrant factory workers with extreme prejudice, hostility, and disdain.¹⁰³

In the last decade, some localities initiated pilot projects allowing certain ruralites to gain urban household status, but in almost all cases the “reforms” have been irrelevant to factory workers. Almost all of the pilot projects enable only a small class of highly affluent ruralites to gain permanent urban status, thereby *excluding all factory workers*. In other cases, ruralites are redesignated “urban” but without gaining the substantive rights and benefits held by longtime urban-registered families, making the reform purely cosmetic.¹⁰⁴ And still other localities, such as Zhengzhou, have simply abandoned the paper “reforms” altogether.¹⁰⁵

¹⁰¹ Dorothy Solinger, *The Floating Population in the Cities*, supra note 100, at p. 126.

¹⁰² Fei-Ling Wang, *Organizing Through Division and Exclusion: China's Hukou System* (2005); Feng Wang and Xuejin Zuo, “Inside China's Cities: Institutional Barriers and Opportunities for Urban Migrants,” *American Economic Review* vol. 89, no. 2 (May, 1999) at pp. 276-280; Human Rights in China, *Institutionalized Exclusion*, supra note 86, at pp. 98-99.

¹⁰³ Dorothy Solinger, *The Floating Population in the Cities*, supra note 100, at p. 135.

¹⁰⁴ According to Professor Hu Xingdou of the Beijing Institute of Technology, “If we only change the rural residents' identities from agricultural *hukou* to non-agricultural *hukou*, the meaning of the household registration reforms is very limited. What is important is the benefits attached to *hukou*.” Chen Wen, “In Search of Equality,” *Beijing Review* (December 8, 2005).

¹⁰⁵ In August, 2004, Zhengzhou, in Henan Province, revoked its *hukou* reform.

As noted in the introduction to this petition, in October, 2005, the Ministry of Public Security announced that it was considering proposals to end the caste distinction in certain localities. But no proposals were actually forwarded to the State Council; and one month later, *in November 2005, the Ministry rejected the proposals entirely*, under pressure from local and provincial officials and corporations who profit from migrant labor.

Hence, the fundamental facts about the urban-rural caste system remain as true in 2006 as in 2004 when the AFL-CIO filed its first petition: *Low-paid factory workers who migrate from the countryside are still ineligible to change their rural household registration; they are still systematically excluded from better paying jobs in the cities; and they are still denied basic entitlements held by those with urban household status.*

This fundamental fact is confirmed by the State Department. Its reports on China in 2004 and 2005 state that while some localities have, on paper, relaxed their controls over migrants, other localities have intensified their controls – and, more important than the text of paper laws, the actual practice of the government continues to deny urban residence and basic social and political rights to migrant factory workers.¹⁰⁶ The State Department flatly concludes:

The Government retains the ability *to restrict freedom of movement through other mechanisms* [a euphemism, likely referring to the unbridled discretion of the state security police to detain, abuse, and expel migrant workers]. . . . *There remained a 'floating population' of between 100 and 150 million economic migrants who lacked official residence status in cities. . . . Further, migrant workers were generally limited to types of work considered least desirable by local residents, and they had little recourse when subject to abuse by employers and officials.*¹⁰⁷

Indeed, as recently as March 14, 2006, a deputy to the National People's Congress stated candidly, "The most fundamental cause behind the problems [of unpaid wages, excessive hours, and other abuses] is a lack of legal protection" for China's migrant factory workers.¹⁰⁸ His suggestion that the law should be changed to give migrant

¹⁰⁶ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006); U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2004: China (February 28, 2005).

¹⁰⁷ Id.

¹⁰⁸ Guan Xiaofeng, "Protection 'Needed' for Migrant Workers," China Daily (March 14, 2006).

workers “basic rights and social status, and protect their personal and property rights” was not taken up by the national legislature.

Hence, some China watchers’ wishful pronouncements of the demise of the rural-urban caste distinction remain premature, to this day. The *hukou* system has not been repealed even on paper. Moreover, even if the *hukou* system is fully abolished on paper at some future date, it is naïve to think that the legacy of decades of pervasive *de jure* discrimination and *de facto* prejudice based on rural status, dialect, ethnicity, and educational and economic deprivation will evaporate without arduous positive action by corporate managers and government officials – the very managers and officials who currently profit from the caste system. The historical legacies of Jim Crow in the United States and apartheid in South Africa are sad testaments to the durability of social caste rooted in highly discriminatory labor markets.

As we have noted, the language of neoclassical economics is not apposite when labor allocation is so heavily shaped by political and legal controls. Nonetheless, for purposes of explication, we can say that factory workers’ supply curve is artificially *shifted downward* – that is, workers offer their labor for lower wages -- by at least four sets of government policies that sharply curtail their bargaining power.

First, China’s manufacturing workers are not permitted to organize independent unions to defend their basic rights and raise their wages. They are not permitted to strike. The full force of state terror – intimidation, police harassment, beatings, imprisonment, psychiatric internment, and torture -- is routinely deployed against workers’ attempts to exercise their right of association.¹⁰⁹ This is as true in 2006 as in 2004, when the AFL-CIO filed its first petition. Indeed, the record on freedom of association has worsened in the last two years.¹¹⁰ This record is detailed in Section VI-A below.

Second, the internal migration system denies migrant workers other basic civil and social rights in their temporary urban life, further suppressing their bargaining power

¹⁰⁹ See Section VI-A of this petition, below.

¹¹⁰ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2004: China (February 28, 2005) (stating that limited experiments in 2002 and 2003 of giving workers a role in choosing local union leadership were terminated thereafter); U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006) (stating that government controls over attempts to establish autonomous labor organizations and other social advocacy organizations increased in 2005).

and wages.¹¹¹ As the State Department concisely concluded in both its 2004 and 2005 Reports, China's factory workers "are easy to exploit." These violations of basic rights are detailed further in Section VI-B below.

Third, as already mentioned, migrant factory workers are denied access to better-paying technical, administrative, and managerial employment options in the permanent urban sector. Migrant factory workers are frozen out of the better-paying urban labor market and overcrowded into the lower-paying rural and factory labor markets. If rural citizens were permitted to work in *any* urban job, not just in factories or on construction sites, factory wages would rise – even if the relative wages of permanent urban citizens who now have privileged access to higher-paying jobs outside the factory system might fall.

Fourth, the "reservation wage" of migrant factory workers is set, in part, by the level of subsistence in the countryside. That is, in order to attract the rural unemployed to migrate into unskilled factory production, employers need only offer a wage that marginally exceeds rural subsistence levels plus transportation costs, not a wage that adequately compensates the workers' productivity. There are innumerable reports of migrant workers who earn barely enough for food and shelter and are unable to save any money to send to their rural family.¹¹² There are also many reports that "most rural workers and their families were ignorant of these conditions when they set out from home."¹¹³ This is not to deny – as some critics of the AFL-CIO's first petition mistakenly charged -- that many factory workers earn more than the alternative of subsistence earnings in the countryside, and that many can send some of that increment back to their families.¹¹⁴ The relevant point – under Section 301(d) of the Trade Act, as

¹¹¹ See Human Rights in China, Institutionalized Exclusion, *supra* note 86, at p. 91; Dorothy Solinger, Contesting Citizenship, *supra* note 100, at p. 5.

¹¹² Dorothy Solinger, Contesting Citizenship, *supra* note 100, at p. 221 (citing Chinese reports).

¹¹³ *Id.* (citing Chinese reports).

¹¹⁴ Even this point, however, is more complex than simple economic theory suggests. Economists often assume that factory workers are choosing between subsistence labor in the countryside and factory work in the city; their choice of factory labor "reveals" that the latter maximizes individual wellbeing. But this analysis ignores the reality that the migrant workers are largely very young women or girls who were unemployed or underemployed in the countryside and who often are sent by patriarchal households to the factories. This may maximize household monetary income, but calculation of the *net benefit* must take account of the *increased cost* to the young women of moving from underemployment and close connection with their family to hard labor and disconnection from their loved ones. Migrant workers almost universally attest to the latter costs. Of course, there may also be benefits to women of increased

well as fundamental norms of fairness¹¹⁵ -- is that China's factory workers could and would do significantly and measurably better if their basic rights were secured and if their alternative, subsistence earnings in the countryside were not so suppressed by government policy.

The degree of destitution in the Chinese countryside – and, therefore, the level of wages that must be offered by factories in order to lure migrant workers from the countryside -- is anything but “natural” or “pre-political.” That is, the suppression of factory wages is linked closely to an array of government policies that have systematically reduced subsistence earnings in the countryside

In both the pre- and post-reform eras, economic development strategies systematically transferred resources from those holding rural *hukou* to those holding urban *hukou*. A recent OECD study concluded that, in the mid-1990s, the Chinese government transferred more than \$24 billion each year from the rural to the urban economy.¹¹⁶ Political scientists and economists have comprehensively mapped this fundamental fact of Chinese political economy.¹¹⁷ In the pre-reform era, “[t]he main enforcement mechanisms included the state control of agricultural production and procurement, the suppression of food-staple prices, and restrictions on rural-to-urban migration via a household registration system.”¹¹⁸ In the post-reform era, the government continued to undertake “massive transfer[s],” by means of large-scale government investments in city infrastructure and social services to urban elites, paid for in part by an inflationary tax borne principally by the peasantry, and in part by urban

independence from the family and village, but this too reflects how market theory misses many important factors that affect wellbeing.

¹¹⁵ See John Rawls, *A Theory of Justice* (1971) (arguing that widely accepted norms of justice require that the wellbeing of the worst off be maximized, even if that reduces the wellbeing of the best off).

¹¹⁶ OECD, *China in the World Economy* (2003) at p. 107.

¹¹⁷ According to an OECD study, “China’s rural sector has continuously transferred resources to the urban-industrial sector.” *Id.* at p. 106. These resource transfers include capital, food, industrial inputs, and labor. *Id.* at 106. See also Fei-Ling Wang, *Organizing Through Division and Exclusion: China’s Hukou System* (2005); Mark Selden, *The Political Economy of Chinese Development* (M.E.Sharpe 1993); Azizur Rahman Khan and Carl Riskin, *Inequality and Poverty in China in the Age of Globalization* (Oxford 2001); Dennis Tao Yang, “Urban-Biased Policies and Rising Income Inequality in China,” *American Economic Review* vol. 89, no. 2 (May 1999); Feng Wang and Xuejin Zuo, *Inside China’s Cities*, *supra* note 102, at pp. 276-280; Tiejun Cheng and Mark Selden, *The Origins and Social Consequences of China’s Hukou System*, *supra* note 100; Human Rights in China, *Institutionalized Exclusion*, *supra* note 86.

¹¹⁸ Dennis Tao Yang, *Urban-Biased Policies and Rising Income Inequality in China*, *supra* note 117.

subsidies channeled through the state-owned banking system.¹¹⁹ An urban *hukou* entitled one to public housing, health-care, pensions, and public education for one's children -- all denied to holders of rural *hukou*.¹²⁰ Moreover, peasants in China are still not entitled to own the land on which they work, discouraging rural investment and reducing rural incomes and wealth.

Hence, the plight of migrant factory workers can only be fully understood within a historical context in which they have been "confined within...the state's persisting imperative: to ally urban growth and productivity with cost-saving, and, as a 'socialist' state, to provide for the city dweller while preserving the ruralite as docile, disposable trespasser, and drudge."¹²¹ On top of these nationwide policies, local officials have supported themselves by imposing crushing taxes on rural citizens,¹²² driving peasants into factory work:

The economics are simple, residents said. People in Xiaoeshan eat most of what they grow, and by selling the rest they earn an average annual income of about \$25 each. But local officials demand about \$37 per person in taxes and fees. Several peasants who refused to pay last year were arrested.¹²³

Recent reductions in the "agricultural tax" leave intact the wide variety of other exactions imposed by local governments on peasants.

Recent years have also seen an enormous wave of brute eviction of peasants and appropriation of their land.¹²⁴ Frequently, local officials seize land, then resell at great profit. According to government studies, more than 40 million farmers have been made landless, often by illegal seizures. This is another source of impoverishment and downward pressure on the bargaining power of ruralites who enter the factory system -- and a source of growing protests.

* * * *

¹¹⁹ Id.

¹²⁰ E.g., Feng Wang and Xuejin Zuo, *Inside China's Cities*, supra note 102, at pp. 276-280.

¹²¹ Dorothy Solinger, *Contesting Citizenship*, supra note 100, at p. 45.

¹²² OECD, *China in the World Economy*, supra note 47, at p. 107.

¹²³ Philip P. Pan, "Worked to Death in China," *Washington Post Foreign Service* (Monday, May 13, 2002) at p. A01.

¹²⁴ According to the Ministry of Land and Resources, illegal appropriations of land since 1999 are greater than the total area of new construction. See "China Struggle Against Illegal Land Acquisitions," *Xinhua News Agency* (April 14, 2006).

In light of these various mechanisms for artificially suppressing workers' bargaining power, it is not surprising that China's factory workers often live under conditions that the workers and neutral researchers (and Chinese officials themselves) describe as "horrific" and "abominable."¹²⁵ Workers are often beaten and physically and verbally humiliated by supervisors and private security guards. They are typically paid far less than the legal minimum wage, which is itself set far below the minimum wages of countries at a comparable level of development.¹²⁶ Their wages are often arbitrarily withheld or unpaid altogether. Many work twelve to eighteen hour days, seven days a week, without a day of rest for months at a stretch. "Death by over-working" -- or *guolaosi* -- has become a commonly used term in contemporary China, and it is not used metaphorically.¹²⁷ Most firms implement few health and safety measures, exposing workers to death not only by exhaustion but by toxins and machinery as well. China's rates of industrial death and lost limbs exceed any in history.¹²⁸ Child labor is increasing, and reports of outright forced labor in private factories are increasingly common.

In increasing numbers, China's workers have courageously taken up both spontaneous and organized protests against exploitative employers and the government -- undermining the wishful hopes of corporate and government officials that factory workers would remain "docile." The protesting workers meet severe, implacable repression by managers, government officials, and riot police. Tragically, in the face of wholesale denial of free expression, free assembly, and free association, a startling number of workers take desperate, violent measures simply to draw attention to their plight -- from blocking roads and railways to self-immolation to violence against factory managers.¹²⁹

¹²⁵ See Section VI-D of this petition, below.

¹²⁶ See Section VI-C of this petition, below.

¹²⁷ Philip Pan, *Worked to Death in China*, supra note 123.

¹²⁸ See Section VI-D of this petition, below.

¹²⁹ See China Labor Bulletin, "High Cost of Wage Recovery Deepens Sense of Futility in Legal Route" (November 10, 2005); Anita Chan, *China's Workers Under Assault* (M.E. Sharpe 2001); HKCTU, *China's Workers and the WTO*, supra note 90.

V. The Chinese Government's Persistent Pattern of Denying Workplace Rights and Standards

The Chinese government's persistent pattern of worker-rights violations, constituting unreasonable practices under Section 301(d), has been fully documented by the International Labor Organization, the United States Government, and many well-reputed jurists and human rights organizations. In its reports on China in 2004 and 2005, the U.S. Department of State concludes: "The [Chinese] Government continues to deny internationally recognized worker rights"¹³⁰ – the same conclusion reached in the State Department's report of 2003, quoted in the AFL-CIO's first petition.

The violations, detailed in this section, include:

- a legal ban on trade unions, except a single "captive union" controlled by the leaders of the Communist Party as a means of disciplining workers rather than asserting their rights and interests;
- a legal ban on strikes and every other form of "planned worker action" or protest;
- police harassment, arrest, detention, lengthy imprisonment, assault, and torture against workers (and the wives, husbands, and children of workers) who assert their rights of association, attempt to organize unions independent of government control, or strike;
- a system of controls on internal migration that imposes fines, exactions, punitive threats, arbitrary detention, violence, and forced repatriation against tens of millions of workers who temporarily migrate from the Chinese countryside to work in export factories -- creating an enormous subclass, often working in bonded labor and even less able to exercise rights of association and assert other basic workers' rights;
- willful failure to enforce minimum wage, maximum hours, and occupational health and safety standards, producing a workforce that routinely earns as little as 12 to 50 cents per hour, often works twelve to eighteen-hour days and seven-day weeks, and suffers staggering rates of injuries, illness, and death;

¹³⁰ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2004: China (February 28, 2005); U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

- willful failure to enforce child labor standards, creating a population of child laborers that may be larger than the entire manufacturing workforce of the United States; and
- imposition of forced labor by violent means throughout China's vast penal system, where working conditions are even worse than in other enterprises.

A. Denial of Free Association and Rights of Collective Bargaining

The PRC uses all organs of state power – the Communist Party, the People's Liberation 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. Factory managers and security personnel collaborate with the Chinese government in suppressing these rights. The suppression is comprehensive, unrelenting, and often brutal.

In its 2004 and 2005 Reports on China, the U.S. State Department concludes that China's workers are "not free to organize or join unions of their own choosing. ... Independent unions are illegal."¹³¹ This is the same conclusion reached in the State Department's 2003 Report, quoted in the AFL-CIO's first petition.¹³² In this regard, nothing has changed for the better since the President rejected the first petition – and much has changed for the worse, as described below. Similarly, the most recent Annual Report of the Congressional-Executive Commission on China reaches the same conclusion as the 2003 Report cited in the AFL-CIO's first petition:

The Chinese government does not recognize the core labor rights of freedom of association and collective bargaining. The government prohibits independent labor unions and punishes workers who attempt to establish them....Strike leaders are subject to arrest by local public security authorities.¹³³

The Chinese government has not ratified two core Conventions of the International Labor Organization (ILO) on freedom of association and collective

¹³¹ Id.

¹³² U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2003: China (February 25, 2004).

¹³³ Congressional-Executive Commission on China: 2005 Annual Report.

bargaining.¹³⁴ As a member of the ILO, however, the Chinese government is nonetheless bound to respect, promote, and realize the underlying rights, by virtue of the ILO's 1998 Declaration of Fundamental Principles and Rights at Work.¹³⁵ The Universal Declaration of Human Rights of 1948 also secures the freedom of association and the right to form and to join trade unions.¹³⁶ The International Covenant on Economic, Social, and Cultural Rights (ICESCR), which the Chinese government ratified in 2001, also provides that every worker has the right to form and join the trade union of his or her choice – but the Chinese government lodged a reservation about that very provision.¹³⁷ The International Covenant on Civil and Political Rights (ICCPR), which China signed in 1998 but has not ratified, also codifies the right of association, including the right to form and join trade unions.¹³⁸

The Chinese government's denial of free association, rights of collective bargaining, and the right to strike flagrantly violate these internationally recognized workers' rights, and constitute unreasonable trade practices under section 301(d) of the Trade Act.

A detailed account of these violations follows:

Denial of the Right to Strike. The ILO recognizes the right to strike as a fundamental right of collective bargaining and free association.¹³⁹ There is no right to strike in China, as a matter of unequivocal policy and government practice, if not as a matter of formal law.¹⁴⁰ China's Trade Union Law requires the All-China Federation of

¹³⁴ International Labor Organization, Convention 87 on Freedom of Association and the Protection of the Right to Organize Convention (1948); Convention 98 on Right to Organize and Collective Bargaining Convention (1957).

¹³⁵ The United States, like China, has not ratified Conventions 87 and 98, but is bound by the 1998 Declaration.

¹³⁶ United Nations, Universal Declaration of Human Rights (1948), Articles 20(1) and 23(4).

¹³⁷ United Nations, International Covenant on Economic, Social, and Cultural Rights (1966, entry into force 1976), Article 8.1(a).

¹³⁸ United Nations, International Covenant on Civil and Political Rights (1966, entry into force 1976), Article 22(1).

¹³⁹ 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.

¹⁴⁰ "The law does not provide for the right to strike" in China. U.S. Department of State, Country Reports on Human Rights Practices 2005: China (March 8, 2006). According to workers' rights advocates in China, there is ambiguity about whether the law formally prohibits strikes. But there is no question that, as a matter of policy, the government "treat[s] worker protests as illegal demonstrations, indicating that there

Trade Unions (ACFTU) “to mobilize workers to complete their production duties”¹⁴¹ and to suppress strikes.¹⁴² Those who “disturb the order of production or work” risk internment in “reeducation-through-labor camps” – without trial or hearings of any kind.¹⁴³ The State Department’s two most recent reports on China confirm that these laws and policies have not improved since the President rejected the AFL-CIO’s first petition:

Neither the Constitution nor the Labor Law provides for the right to strike....[T]he Government continued to treat worker protests as illegal demonstrations, indicating that there was still no officially accepted right to strike. In addition no other types of planned worker action were allowed....[T]he Government took swift action to halt protests. Police detained protest leaders and dispersed demonstrations.¹⁴⁴

The Security forces and the Army, also controlled by the central Party, suppress labor stoppages and protests by intimidation and, if necessary, violence.¹⁴⁵ 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.

The Chinese government – including the ACFTU – censors information about strikes and other worker protests. Unauthorized publication or discussion about strike rates and labor disputes are criminal acts, subject to long-term imprisonment. This gives the government a pretext for imprisonment of workers, lawyers, and journalists even if a strike or protest is already publicly known. According to Human Rights in China (HRIC), the authoritative New York-based human rights organization:

Labor disputes [in China] have the dubious distinction of being triple-classified under state secret laws. Although already considered secrets controlled by the public security police, information on ‘incidents of public order’ is also protected by the MLSS [Ministry of Labor and Social Security], the ACFTU and its

was still no officially accepted right to strike.” U.S. Department of State, Country Reports on Human Rights Practices 2005: China (March 8, 2006)..

¹⁴¹ People’s Republic of China, Trade Union Law, Article 7.

¹⁴² People’s Republic of China, Trade Union Law, Article 27.

¹⁴³ “The Right to Strike,” at www.ihlo.org, quoted in HKCTU, Chinese Workers and the WTO, supra note 90, at p. 14 n.48.

¹⁴⁴ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (February 28, 2005); U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

¹⁴⁵ 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.

affiliates. Through the MLSS and ACFTU regulations, a wide range of legitimate behavior is stigmatized as ‘highly secret,’ including collective petitioning, strikes, marches and demonstrations. Correspondingly, state secrets regulations treat labor disputes similarly to social unrest, where information that may be widely known, publicly available, or having arisen from incidents occurring in the public domain can be reclaimed as a state secret [and therefore criminally punished].¹⁴⁶

Hence, the ACFTU not only participates in the suppression of strikes; it also joins hands with the Public Security Bureau to suppress public awareness that labor disputes exist.

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 required to obey, the bureaucracy of the Chinese Communist Party (CCP) – a continuing violation of internationally recognized labor rights, as noted in the 2004 and 2005 Reports of the State Department.¹⁴⁷ The 2005 Report of the Congressional-Executive Commission on China also reaffirms that this law and policy continued after the President rejected the AFL-CIO’s first petition in 2004:

The Chinese government recognizes the All-China Federation of Trade Unions (ACFTU) as the sole representative of Chinese workers...but the ACFTU cannot exercise internationally recognized labor rights. The Communist Party controls the ACFTU....The Party’s influence prevents the ACFTU from assisting workers in any way that violates Party guidelines. Moreover, Chinese workers are not allowed to freely elect their ACFTU representatives.¹⁴⁸

In 1998, the ILO Committee on Freedom of Association found that China’s Trade Union Law “prevented the establishment of trade union organizations that are independent of the public authorities and of the ruling party, and whose mission should be to defend and promote [the] interests of their constituents and not to reinforce the country’s political and economic system.”¹⁴⁹

¹⁴⁶ Human Rights in China and China Labour Bulletin, “Labor and State Secrets,” China Rights Forum no. 3 (2004) at 31.

¹⁴⁷ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2004: China (February 28, 2005); U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

¹⁴⁸ Congressional-Executive Commission on China, 2005 Annual Report.

¹⁴⁹ International Labour Office, “310th Report of the Committee on Freedom of Association,” Official Bulletin, vol. 81, Series B, no. 2 (1998). Other recent Reports of the ILO Committee on Freedom of Association containing detailed allegations, conclusions, and recommendations against China include: Report No. 330, Case No. 2189 (Complaint against the Government of China presented by the International Confederation of Free Trade Unions); Report No. 316, Case No. 1930 (Complaint against the Government

After the President's assertion in May, 2004, that he would undertake effective action to improve China's record on labor rights, the Chinese government repudiated the international community. In its 2005 Report, the Congressional-Executive Commission on China flatly concluded:

Despite being a member of the ILO's Governing Board, *the Chinese government has avoided discussions with the international labor community on Chinese workers' rights*. For example, in December 2004, government officials cancelled a conference involving representatives of the Organization for Economic Cooperation and Development (OECD) that sought to review socially responsible investment in China and the role of longstanding OECD investment guidelines for multinational companies.¹⁵⁰

This turn for the worse is part and parcel of the government's intensification of controls and harassment in 2005 against all social advocacy organizations, including labor unions, and the government's intensified campaign against all international monitoring of rights in China. As the State Department notes, the Chinese government has still not responded to an ILO complaint by the ICFTU for abuses committed in the Tieshu Textile Factory dispute.¹⁵¹

In 2001, the Party had already given its *unilateral* answer to the international community, in the aftermath of the ILO finding that the Chinese government stood in violation of core labor rights. The National People's Congress amended the Trade Union Law to *strengthen* the Party's monopolistic control over labor unions. The following provision was added to Article 4 of the Law:

Trade unions shall... take economic development as the central task, uphold the socialist road, the people's democratic dictatorship, leadership by the Chinese Communist Party, and Marxist-Leninism, Mao Zedong Thought and Deng Xiaoping Theory, persevere in reform and the open policy....¹⁵²

of China presented by the International Confederation of Free Trade Unions); Report No. 321, Case No. 2031 (Complaint against the Government of China presented by the International Confederation of Free Trade Unions).

¹⁵⁰ Congressional-Executive Commission on China, 2005 Annual Report (emphasis added).

¹⁵¹ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

¹⁵² This and other quotations are taken from the ACFTU's English-language translation of the 2001 Trade Union Law, available at www.ihlo.org. The quoted provision was added to the following language of Article 4 the Trade Union Law of 1992:

[T]rade unions shall observe and safeguard the Constitution, take it as the fundamental criterion for their activities and conduct their work independently in accordance with the Constitution of Trade unions.

Article 2 of the Trade Union Law was amended to include the following provision:

The All-China Federation of Trade Unions and all the trade union organizations under it represent the interests of workers....

The amendments preserved the following provisions of Articles 9 and 10:

Trade union organizations at various levels shall be established according to the principle of democratic centralism....A trade union organization at a higher level shall exercise leadership over a trade union organization at a lower level....

The All-China Federation of Trade Unions shall be established as the unified national organization.

Under Article 11, the formation of any trade union organization, whether local, national, or industrial, “shall be submitted to the trade union organization at the next higher level for approval.”

Hence, the 2001 Law reaffirmed that the ACFTU is the single authorized labor union in China, that all local unions must be affiliated to and controlled by the ACFTU, and that the ACFTU is controlled by the leadership of the Communist Party. None of this has changed since the President rejected the AFL-CIO petition in May, 2004.

The ACFTU has always been a weak and docile bureaucracy, afforded limited resources and subordinated to the powerful policy-making organs of the Party.¹⁵³ Indeed, in the early 1970s the Chinese Communist Party disbanded the ACFTU altogether. It was revived a decade later, but “[a]t every level of the bureaucratic hierarchy, [the ACFTU organs] were placed under the grip of the corresponding Party hierarchy.”¹⁵⁴ As discussed below, in 1989 the Party crushed workers’ efforts to form independent organizations during the Tiananmen protest movement.¹⁵⁵ In the aftermath of the

¹⁵³ Mary Gallagher, *Contagious Capitalism: Globalization and the Politics of Labor in China* (2005) at p. 83.

¹⁵⁴ Anita Chan and Irene Nprlund, “Vietnamese and Chinese Labour Regimes: On the Road to Divergence,” *China Journal* vol. 40 (July 1998) at pp. 173, 175. See also Amnesty International, *Labour Unrest and the Suppression of the Rights to Freedom of Expression and Association: People’s Republic of China* (April 30, 2002); Amnesty International, *Detained and Imprisoned Labour Rights Activists: People’s Republic of China* (April 30, 2002); International Confederation of Free Trade Unions, “Worker and Trade Union Rights in China,” at www.ihlo.org; International Confederation of Free Trade Unions, *Global Survey: People’s Republic of China* (10 June 2003).

¹⁵⁵ Andrew G. Walder and Gong Xiaoxia, “Workers in the Tiananmen Protests: The Politics of the Beijing Workers’ Autonomous Federation,” *Australian Journal of Chinese Affairs* no. 29 (January 1993).

massacre, Jiang Zemin, the new Party leader, took special pains to ensure that the ACFTU acted in strict “compliance with Party instructions” and “carr[ied] out its work under Party leadership.”¹⁵⁶

In any event, the ACFTU grew even weaker during the economic reforms of the 1980s and 1990s – as a result of the new priority given to managerial autonomy in the State-owned sector and the new proliferation of forms of enterprise outside that sector.¹⁵⁷ The ACFTU is now fully subordinated to the Party’s single-minded drive to create wealth for managers, investors, and the party cadre who batten on export enterprises.

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.¹⁵⁸ 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.¹⁵⁹ 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.¹⁶⁰

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.¹⁶¹ That these violations continue is also documented in the 2005 Report of the State Department.¹⁶²

¹⁵⁶ Anita Chan and Irene Nprlund, *Vietnamese and Chinese Labour Regimes*, supra note 154, at p. 184.

¹⁵⁷ Mary Gallagher, *Contagious Capitalism: Globalization and the Politics of Labor in China* (2005); Mary Gallagher, “Time is Money, Efficiency is Life: The Transformation of Labor Relations in China,” *Studies in Comparative International Development* (Summer 2004).

¹⁵⁸ *Id.*; Chan and Nprlund, *Vietnamese and Chinese Labour Regimes*, supra note 154, at p. 192.

¹⁵⁹ Mary Gallagher, *Contagious Capitalism*, supra note 157; Mary Gallagher, “The Transformation of Labor Relations in China,” supra note 157.

¹⁶⁰ *Id.*

¹⁶¹ 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.

¹⁶² U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices 2005: China* (March 8, 2006).

As the number of illegal strikes increased markedly in the 1990s and the early years of the new century, the Chinese government sought to ensure the workforce's discipline and stability by more actively installing the ACFTU in FIEs. In manufacturing regions, the ACFTU bureaucracy is fully integrated into the local government bureaucracy, whose goal is to promote economic development by attracting investment and serving the needs of enterprise managers. The establishment and functioning of local ACFTU branches is therefore guided by "the total developmentalist machine" of local government, which is "part administrator and part Chamber of Commerce."¹⁶³ Indeed, local government officials generally act as "partners" with foreign investors, or otherwise profit from exactions or corrupt fees drawn from enterprise revenue, and therefore have every incentive to ensure that ACFTU branches are subservient to managerial interests.

Many FIEs -- and domestically owned urban and rural enterprises, which comprise the bulk of private industry -- simply reject the ACFTU window-dressing altogether, in favor of autocratic, even militaristic management practices, notwithstanding the Party's mandate that the ACFTU establish branches in the FIEs.¹⁶⁴ State-owned enterprises, facing this new competition, increasingly mimic these despotic practices, which are described below.

In the late 1990s, it was evident that the ACFTU was failing as an instrument of workforce discipline. The number of illegal labor protests surpassed 200,000 in 1999, reached nearly 270,000 in 2000, and has increased every year since.¹⁶⁵ The Party has deployed two counter-strategies. First, it enacted the 2001 amendments to the Trade Union Law, quoted above, in an attempt to reaffirm and consolidate the ACFTU's mandate to impose managerial discipline. Second, the Party relies on intimidation, brute violence, and abuse of criminal process to quell worker protests and independent worker associations.

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

¹⁶³ Mary Gallagher, "The Transformation of Labor Relations in China," *supra* note 157; Mary Gallagher, *Contagious Capitalism*, *supra* note 157.

¹⁶⁴ *Id.*

organization will form the core of resistance to political autocracy and to strategies of economic development that benefit a relatively small class of investors, managers, and Party cadres.¹⁶⁶

For this reason, even though the PSB authorizes protests by students, it closely screens student marches to ensure that they are not joined by workers.¹⁶⁷ 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.¹⁶⁸ The mounting participation of the WAFs in the pro-democracy demonstrations by students was a significant factor in the CCP'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.¹⁶⁹ Han Dongfang, a nationwide leader of the WAFs, was imprisoned without trial. After contracting tuberculosis and near death, he was exiled. Wang Wanxing was incarcerated in a psychiatric hospital for thirteen years for his involvement in the WAF.¹⁷⁰ Others are incarcerated still.

In response to the Tiananmen protests, the Party leadership pointedly warned ACFTU cadres that their "number one mission" was to obey the Party.¹⁷¹ In turn, the President of the ACFTU, Ni Zhifu, reiterated that "China's trade unions must work under the leadership of the CCP and no trade unions opposed to the CCP are allowed to be established...Otherwise, we will miss the correct political orientation of trade union reform and construction, leading to great errors."¹⁷²

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

¹⁶⁵ International Confederation of Free Trade Unions, *Worker and Trade Union Rights in China*, supra note 154.

¹⁶⁶ 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).

¹⁶⁷ Id.

¹⁶⁸ Andrew G. Walder and Gong Xiaoxia, *Workers in the Tiananmen Protests*, supra note 155.

¹⁶⁹ Malcolm Warner, *Chinese Trade Unions*, supra note 166. The death sentences were subsequently converted to long-term prison sentences or exile.

¹⁷⁰ International Confederation of Free Trade Unions, *Global Survey: People's Republic of China*, supra note 154.

¹⁷¹ Anita Chan and Irene Nprlund, *Vietnamese and Chinese Labour Regimes*, supra note 154, at p. 184.

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; and the Daqing Laid-Off Workers Trade Union in 2002.¹⁷³ In the summer of 2005, 16,000 workers in Shenzhen took part in a week-long protest demanding the right to form an independent union.¹⁷⁴

The government responded to these exercises of the right of association with intimidation, 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.¹⁷⁵ The tragic litany has been documented at great length by the ILO, the United States Government, and respected human rights organizations.¹⁷⁶ In its 2004 and 2005 Reports on China the U.S. State Department confirmed that, after the President's rejection of the AFL-CIO's first petition, trade union activists continue to be incarcerated in mental hospitals, where "patients" are forcibly medicated and subject to electric shock treatment.¹⁷⁷ The weapons of state terror continue to be directed at rank and file workers, worker-leaders, workers' spouses and children, journalists reporting the protests, and lawyers providing counsel to workers.¹⁷⁸

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.¹⁷⁹ In June, 2002, when 800 textile workers at a factory in

¹⁷² Malcolm Warner, Chinese Trade Unions, *supra* note 166, at p. 79.

¹⁷³ See U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2003: China (February 25, 2004); Amnesty International, Labour Unrest and the Suppression of the Rights to Freedom of Expression and Association: People's Republic of China, *supra* note 154; Amnesty International, Detained and Imprisoned Labour Rights Activists: People's Republic of China, *supra* note 154.

¹⁷⁴ The Business Online, "China's Export Factories Hit by Labour Troubles" (February 5, 2006).

¹⁷⁵ See U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2003: China (February 25, 2004).; 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 100, at p. 285.

¹⁷⁶ See sources cited *supra* in notes 145-175

¹⁷⁷ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2004: China (February 25, 2005)

¹⁷⁸ *Id.*; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006). See also sources cited *supra* in notes 145-175.

¹⁷⁹ Dorothy Solinger, Contesting Citizenship, *supra* note 100, at p. 286.

Guangdong protested against physical abuse by security guards, the guards attacked them with steel pipes.¹⁸⁰ In April, 2006, thousands of workers in Shenzhen protested violence by security guards, before their peaceful protest was itself violently suppressed.¹⁸¹

The Chinese government's suppression of large-scale worker protests in Liaoyang in 2002 was one of the more widely publicized recent instances of the government's intolerance of independent worker activity.¹⁸² Two leaders of the Liaoyang protests, Yao Fuxin and Xiao Yunliang, were imprisoned and kept in round-the-clock isolation and surveillance. They were denied necessary medical care for conditions that worsened in prison. Yao is partially paralyzed. Xiao suffers pleurisy and blindness.¹⁸³ He is now under house arrest. His friends and family suffer continuous intimidation and harassment by Public Security officials.¹⁸⁴

On February 8, 2004, hundreds of officers of the People's Armed Police violently dispersed a peaceful protest by textile workers in Hubei Province.¹⁸⁵ 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 were detained for "disturbing public order." They joined 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. 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

¹⁸⁰ International Confederation of Free Trade Unions, Global Survey: People's Republic of China, *supra* note 154.

¹⁸¹ China Labor Bulletin, "3,000 Workers Protest Inhumane Treatment" (April 4, 2006).

¹⁸² See Amnesty International, *Labour Unrest and the Suppression of the Rights to Freedom of Expression and Association: People's Republic of China*, *supra* note 154; Amnesty International, *Detained and Imprisoned Labour Rights Activists: People's Republic of China*, *supra* note 154; International Confederation of Free Trade Unions, *Global Survey: People's Republic of China*, *supra* note 154.

¹⁸³ Human Rights In China, "Jailed Labor Activists Refused Medical Parole," Press Release Dated December 19, 2003.

¹⁸⁴ ICFTU, Media Release (May 1, 2006).

the constraints of the ACFTU, they enter a whirlwind of state intimidation and terror, of torture, beatings, forced labor, and long-term imprisonment. The PRC unremittingly represses rights of association and strikes in all sectors of manufacturing – textiles, toys, leather goods, footwear, electronics, auto, motorcycle, petrochemicals, metallurgical, machinery, paper, printing, plastics, and all other sectors.¹⁸⁶

Four months after the President asserted that he was undertaking effective “efforts” to improve the lot of China’s workers, nearly seven thousand workers, mostly young women, launched a strike in Shaanxi province against a Hong Kong-owned textile factory. The story of the strike -- “the longest recorded industrial action in China’s post-1949 history”¹⁸⁷ -- is told above, in the introduction to this petition. The police arrested twenty strike leaders as well as their attorney, and ultimately one thousand riot police squelched the strike.

Chinese workers have courageously undertaken tens of thousands, if not hundreds of thousands, of other strikes and protests in the last two years – although the precise number is unknown, since it is a criminal violation in China to compile or publish such numbers. The Chinese government and factory managers have unceasingly, and often violently, suppressed these exercises of workers’ right of association. The Bush Administration’s response to these dramatic events is utter silence.

The story of the violent suppression of the Xianyang strike – as well as the untold stories of the thousands of other strikes and protests -- shows the emptiness of the President’s promise to take effective action on behalf of Chinese workers. If instead the President had implemented the trade measures set forth in the AFL-CIO’s first petition, China’s workers still might not have succeeded in forming their own unions and in peacefully bargaining with their employers – but there is no doubt that their efforts would have been significantly aided by the international scrutiny and powerful economic incentives demanded by the AFL-CIO.

¹⁸⁵ 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).

¹⁸⁶ See sources cited *supra* in notes 145-175.

¹⁸⁷ China Labor Bulletin, “The Xianyang Textile Workers Strike” (undated).

B. The Subclass of Migrant Factory Workers: Bonded Labor and Further Impediments to Free Association

The vast majority of China's factory workers are temporary migrants holding rural household registration or *hukou*. Section V of this petition described the caste system created by China's policy of household registration – and documented that the fundamental components of that system continued in the last two years, after President Bush's rejection of the AFL-CIO's first petition. As recounted above, as recently as November, 2005, the Ministry of Public Security announced that it rejected proposals to end the *hukou* system. The limited local pilot projects that permit ruralites to change their status from rural to urban apply only to a small class of highly affluent ruralites, thereby excluding factory workers from eligibility.

Section V explained that Chinese citizens holding rural *hukou* who seek work in towns and cities without government permission are outlaws.¹⁸⁸ Even when migrant workers obtain temporary residence cards and work permits in the towns and cities, they remain ineligible for basic social services such as health care, public housing, food rations, and education for their children – as confirmed in the most recent State Department reports on China, showing that these policies continued after President Bush rejected the AFL-CIO petition in May, 2004.¹⁸⁹ They are subject to surveillance and control, and may at any time suffer arbitrary, summary expulsion by the Public Security forces.¹⁹⁰ In practice, they are unable to use legal process to enforce such basic rights as the payment of wages they have already earned.

This Section describes in further detail China's creation of a subclass of migrant factory workers, and explains how those policies constitute further violations of Section 301(d) of the Trade Act. The *hukou* system enmeshes many factory workers in a system of bonded labor, a form of forced labor that violates Conventions 29 and 105 of the

¹⁸⁸ As note above, under limited, specified conditions that vary from province to province and city to city, a person holding rural *hukou* can convert to urban status – but eligibility for such conversions is limited either to migrants seeking permanent residence in small towns, not larger towns and cities, or to the well-educated or propertied, not to the unskilled migrants who work in export industries. Ray Brooks and Ran Tao, China's Labor Market Performance and Challenges, *supra* note 83.

¹⁸⁹ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (February 28, 2005); U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

¹⁹⁰ Human Rights in China, Institutionalized Exclusion, *supra* note 86; Dorothy Solinger, Contesting Citizenship, *supra* note 100.

International Labor Organization.¹⁹¹ In addition, the system further disables factory workers from exercising rights of association, and further weakens workers' ability to enforce standards of minimum wages, overtime hours, occupational safety and health, and child labor.

In addition to the central government's regulations of migrant labor, each provincial, city, and local government has issued its own regulations concerning the fees and certificates that migrants must obtain in order to temporarily reside and work there. Local regulations on temporary residence and work are often complex, ambiguous, or simply unavailable to the public.

Regardless of the clarity or transparency of the substantive regulations, and regardless of experiments in streamlining such regulations in some localities, the regulations are administered arbitrarily and corruptly. Police extort payments from migrants or summarily expel them on the pretext that they fail to meet local regulations.¹⁹² Urban officials sporadically and violently "sweep" migrants out of cities and towns in large numbers – often in response to the demands of permanent residents who view the migrants as a criminal underclass.¹⁹³ For example, Beijing reported that it had taken 98,000 migrants into custody for lack of proper documentation and that 300,000 were "mobilized to leave the city" in 1997 alone.¹⁹⁴ Since the late 1990s, the reform of SOEs has accelerated, leading to greater unemployment among workers holding permanent urban *hukou* and therefore greater antipathy to migrant workers by urban authorities.¹⁹⁵

The "sweeps" against migrant workers have continued since the President rejected the AFL-CIO's first petition. The State Department's 2004 report on China concludes

¹⁹¹ International Labor Organization, Convention 29 on Forced Labor (1930), Articles 1(1) and 4(1), and Convention 105 on the Abolition of Forced Labor (1957), Article 1(b), (c); United Nations, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), Article 1(a).

¹⁹² Li Zhang, *Strangers in the City*, supra note 100, at pp. 34-37; Human Rights in China, *Institutionalized Exclusion*, supra note 86, at pp. 25, 84-86.

¹⁹³ Human Rights in China, *Institutionalized Exclusion*, supra note 86, at pp. 25-31.

¹⁹⁴ Beijing Municipal Yearbook, 1998.

¹⁹⁵ John Giles, "Is Life More Risky in the Open? Household Risk-Coping and the Opening of China's Labor Markets" (July 20, 2002), at www.msu.edu/~gilesj.

that “authorities in urban areas rounded up and detained...the unemployed, migrant workers, and those without proper residence or work permits.”¹⁹⁶

Throughout the 1980s and 1990s, local governments – relying on a 1982 law of the State Council, which authorized local governments to designate jobless migrants as “vagrants and beggars” – placed jobless migrants in detention, often assaulted and abused them, and forceably “repatriated” them to their place of permanent residence.¹⁹⁷ Local governments each year held tens of thousands of migrant workers in “Custody and Repatriation Centers.”¹⁹⁸

On March 20, 2003, Sun Zhigang, a college-educated migrant from Hubei Province, was beaten to death in a detention center in Guangzhou. In response to domestic and international criticism, the State Council with much fanfare announced the repeal of the 1982 law on vagrants and beggars. The State Council immediately replaced that law, however, with a new decree for managing “indigent vagrants and beggars in cities.”¹⁹⁹ The new decree changes the name of migrant detention centers -- from “Custody and Repatriation Centers” to “Aid Stations” -- but gives local officials authority that is nearly as broad as their authority under the 1982 law. (Tellingly, the central government also retaliated against the Guangzhou newspaper that reported Sun’s death.²⁰⁰)

In July, 2003, the Ministry of Civil Affairs promulgated rules implementing the new State Council decree.²⁰¹ The rules require “vagrants and beggars” to present the Aid Stations with “residency identification card or other proof of identity, place of household registration, and place of domicile.”²⁰² The migrant is then required to comply with “the rules and regulations of the stations,” including any rules that local government may

¹⁹⁶ U.S. Department of State, U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Report on Human Rights 2004: China (February 28, 2005).

¹⁹⁷ State Council, Measures for Custody and Repatriation of Vagrants and Beggars (May 12, 1982).

¹⁹⁸ For a detailed survey of the facts summarized in this paragraph, see Human Rights in China, Not Welcome at the Party: Behind the ‘Clean-up’ of China’s Cities – A Report on Administrative Detention under ‘Custody and Repatriation’ (September 1999).

¹⁹⁹ Measures on the Administration of Aid to Indigent Vagrants and Beggars in Cities, promulgated by the State Council on June 18, 2003 (effective August 1, 2003).

²⁰⁰ Joseph Kahn, “Police Raid China Newspaper,” New York Times (January 8, 2004) (online edition).

²⁰¹ Detailed Implementing Rules for the Measures on the Administration of Aid to Indigent Vagrants and Beggars in Cities, promulgated by order No. 24 (2003) of the Ministry of Civil Affairs (July 21, 2003) (effective August 1, 2003).

²⁰² Id., Article 3(1).

formulate regarding the jobless migrants' "daily schedule" in the Aid Station. After contacting the Public Security Department of the migrant's place of permanent registration, the Aid Station must transport the migrant to that place, at the migrant's expense if she has sufficient funds.²⁰³

In short, the "reformed" law on vagrants and beggars provides new authority for arbitrary repatriation by Public Security forces, under the guise of "aid" rather than "custody." As Chinese government advisers themselves have pointed out, it is unlikely that the very Public Security police who had abusively enforced the policy of "Custody and Repatriation" will act much differently simply because the central government has proclaimed that detention centers should give "aid" to migrants prior to repatriating them.²⁰⁴ "High level edicts [about workers' rights] are routinely ignored by local officials and employers."²⁰⁵ Indeed, the old Custody and Repatriation policy itself had been framed in language that is very similar to the new law.²⁰⁶ It too was cast as a "welfare measure" and for that reason was formally under the supervision of the Ministry of Civil Affairs -- even though, in practice, the Public Security apparatus ran the Custody and Repatriation system. The same Public Security apparatus continues its involvement in the renamed centers.

²⁰³ Id., Articles 10, 11.

²⁰⁴ Wang Sibin, a government adviser and sociology Professor at Peking University, stated:

Under the old system, beggars and vagrants were [considered] nuisances. How can the officials of the old custody centres change their basic values within a short time and treat these people as vulnerable groups who need help? Social work is a profession in Hong Kong. But on the mainland, there is no such thing. It will be impossible to find the right people to run these centres.

Quoted in Josephine Ma, "New Centers Lack Trained Staff," South China Morning Post (July 29, 2003) at p. 7.

²⁰⁵ E. Griggers-Smith, "Chinese Workers Pay Personal Price for Employer Noncompliance with Labor Safety Rules," International Journal of Occupational and Environmental Health vol. 9, no. 4 (October/December 2003).

²⁰⁶ The newly proclaimed policy is essentially identical to the official statement of the "repealed" Custody and Repatriation policy. The Ministry of Civil Affairs had proclaimed:

Custody and Repatriation is a forcible administrative apparatus under which the Civil Affairs departments and Public Security bureaus may send back to their places of *hukou* registration any persons whose homes are in the rural areas and who have entered into cities to beg; urban residents who are roaming the streets and begging; and other persons who are sleeping in the open or have no means of livelihood. This measure is employed by the state to provide relief, education and resettlement to those persons who are indigent and begging in the cities, so as to protect urban social order and stability and unity.

The evidence on local practices since the new regulations went into effect in August, 2003, confirms these expectations. Public Security forces in many cities, counties, and towns have successfully campaigned to maintain tight controls on migrant workers, along with the power to expel them to the countryside.²⁰⁷ It is “common in many counties” for officials to continue to detain and repatriate migrants “because [the local governments] lacked funds” to establish genuine aid centers.²⁰⁸ The tragic report from Hebei province in December 2004, recounted at length in the introduction to this petition, is not unusual: After public security officials suppressed a vigil by the families of child laborers, the officials detained several protestors without food in an “Aid” facility, where the police subjected them to further violent assault.²⁰⁹

Even if some local Public Security forces cut back on the most egregious practices of forced labor, beatings, and rapes that occurred in the Custody and Repatriation Centers (now renamed “Aid stations”), regulations of temporary residence and work are still in force. Migrants who fail to find jobs, who lose jobs, or who assert their labor rights remain subject to arrest, detention, fines, and (after processing in the aid stations) expulsion.

Cities facing shortages of factory labor may temporarily lighten registration fees and certification requirements or may reduce the level of police violence against migrants. Some local governments in China currently administer systems of temporary registration that reduce or waive *de jure* fees and that require migrants to carry and show their

Tong Yi, “Kidnapping By Police: Custody & Repatriation,” China Rights Forum no. 2 (2003).

²⁰⁷ Although migrants are supposed to be voluntarily processed by the aid centers under the new regulations, jobless migrants in Beijing, for example, are still being rounded up and expelled. Cui Feng and Wang Jianwei, *Jiuzhuzhan: Xianzhuang tuxian shehui wenti, liangxing yunzhuan xu shehui liandong* [Help centers: Currently emerging social problems, conversion to benign purposes needs cooperation from society], Chinese Academy of Social Sciences Working Paper, at www.cass.net.cn. Official and semi-official commentary on the ostensible new policy against Custody and Repatriation is overwhelmingly negative, particularly in the Guangdong newspapers that espouse the views of provincial officials – indicating that it is very unlikely that local officials have changed their abusive practices. *Chengshi qigai ye gao zhiyehua* [City beggars are becoming more professional], *Nanfang Ribao* (October 30, 2003); Han Yiming, *Liulangzhe gai bu gai you houdong jinqu?* [Should drifters be subject to movement restrictions?], *Nanfang Dushi Bao* (December 12, 2003). In some areas, local officials are simply using detention laws other than the old vagrancy laws. In Heilongjiang, for example, a woman who appealed a ruling against her son, an injured factory worker, was sentenced to 75 days of “detention education” under a local Custody and Repatriation law that applies to “unlawful petitioning.” Shen Xueyou, *Liang gongmin zhiyi ‘xinfang shourong’* [Two Citizens question ‘petition detention’], *Nanfang Zhoumou* (October 9, 2003).

²⁰⁸ Congressional-Executive Commission on China, 2005 Annual Report.

²⁰⁹ Human Rights in China, “Cover-up of Child Labor Deaths in Hebei” (March 2, 2005).

national identification cards rather than household registration booklets and other temporary permits. But, again, the underlying *hukou* system, regulatory controls over temporary residence and temporary work, and the strong opportunities and incentives for abuse by police and employers remain in place throughout China. Migrant workers still live in fear of being arbitrarily detained and repatriated by local Public Security forces.

The economic incentive for predatory local officials to treat migrants abusively remains unchanged, as does the weakness of independent checks on police abuses.²¹⁰ Alliances between locally entrenched interests and the Public Security Bureau strongly support the continuing denial of basic civil and social rights to migrants. As explained above, Party cadres have financial interests in the revenue produced by export enterprises, either as direct “partners” or as beneficiaries of exactions and extortion, and therefore have a strong interest in maintaining a cheap factory labor force.²¹¹ Local officials also benefit directly from the official or unofficial revenues produced by work and residence permits. These primary sources of local revenue have become even more vital since 2002, when the central government curtailed the financing of local governments by revenues from state-owned enterprises.²¹²

The AFL-CIO’s first petition, which cited these facts in March, 2004, was sadly confirmed in November, 2005, when the Minister of Public Security again rejected reform of the household registration system, in keeping with demands made by provincial and city officials.²¹³

Even if China formally ended the *hukou* system, China’s denial of other internationally recognized workers’ rights would impose a severe burden on U.S. commerce, as explained in Section VIII below. The *hukou* system, however, exacerbates China’s persistent pattern of denying the workers’ rights enumerated in Section 301(d) of

²¹⁰ The futility of asking the Public Security Bureau to investigate criminal charges against itself is illustrated by the Sun Zhigang case itself. After his death in detention, the Central Government ordered the “relevant authorities” to investigate and punish the perpetrators. After a secret investigation, the local police exonerated themselves and arrested Sun’s fellow detainees. “Few serious analysts take [the official police report] as much more than a whitewash.” Ti Yong, Kidnapping by Police, *supra* note 149.

²¹¹ Mary Gallagher, *Contagious Capitalism: Globalization and the Politics of Labor in China* (2005); Anita Chan, “Regimented Work in China’s Free Labour Market,” *China Perspectives*, no. 9 (January/February 1997).

²¹² Garrett Brown, “China’s Factory Floors,” *International Journal of Occupational and Environmental Health* vol. 9, no. 4 (October/December 2003) at p. 332.

²¹³ See *supra* note 15.

the Trade Act – and the discriminatory legacy of the *hukou* system will continue to have these consequences long after the day comes when the formal rules are abolished.

The *hukou* system – through both its *de jure* rules and *de facto* social norms -- has at least three consequences that are relevant to this petition: First, as a result in part of the *hukou* system, many temporary migrants work under conditions of bonded labor, a form of compulsory labor under Section 301(d)(3)(B)(iii)(III) of the Trade Act. Second, temporary migrants face systematic impediments to exercising their right of association under Section 301(d)(3)(B)(iii)(I), on top of the forms of repression detailed in the previous section. Third, the *hukou* system further reduces the bargaining power and therefore wages and working conditions of temporary migrants in *individual* employment contracts (in addition to the impairment of *collective* bargaining power). Migrant workers, due in part to their *hukou* status, are unable to assert rights to minimum wages, maximum hours, and the most basic protections against workplace hazards, under Section 301(d)(3)(B)(iii)(V). These three consequences of the *hukou* system will be explained in turn.

1. Bonded Labor. Bonded labor is a form of forced or compulsory labor that is well-recognized in international and domestic law.²¹⁴ Bonded labor exists when a worker can exit or quit employment only after payment of severe monetary penalties, repayment of a debt, or loss of a “bond” (or “deposit”) posted by the worker upon initial hire.²¹⁵ Because exit from the workplace is so costly, the worker is subject to highly abusive working conditions.

Among China’s export workers, the bond may be overt – when a new worker becomes indebted to an employer, or pays a deposit to the employer – or covert – when the employer drastically reduces wages or withholds wages altogether in the early period of the worker’s tenure.²¹⁶

²¹⁴ International Labor Organization, Convention 29 on Forced Labor (1930), Article 1(1), and Convention 105 on the Abolition of Forced Labor (1957), Article 1(b), (c).

²¹⁵ See, e.g., United Nations, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), Article 1(a).

²¹⁶ On wage arrears, see Section VI-C; see also Joan Chen, “Wage Arrears Fuel Discontent,” China Labour Bulletin (August 31, 2002).

Academic and human-rights researchers have detailed the mechanisms through which the Chinese government's *hukou* system produces bonded labor.²¹⁷ Workers arriving from the countryside must often pay substantial sums to local government officials, to labor brokers, and to employers as fees mandated by the *hukou* system, as "new-hire fees," or as deposits. Some of these payments are mandated by central and local law; some are "extra-legal" exactions by corrupt local officials and managers.²¹⁸ Deposits are as much as 4000 yuan, sometimes exceeding one year's wages.²¹⁹ These investments often exceed the migrant's life saving.²²⁰ To pay for them, migrants often incur substantial debt, often payable to their own employer.

In addition to the deposit and the debt to cover the deposit, employers frequently withhold one month to several months pay, which workers will also forego if they quit or assert their rights. Some enterprises respond to a worker's threat to leave the job by imposing severe monetary penalties on co-workers – especially on the friends who initially referred the worker.²²¹ Enterprise managers also seize workers' ID cards, residence permits, and work permits, making migrants more vulnerable still to arrest, fines, imprisonment, and repatriation if they leave the factory compound.²²²

The deposits paid to employers, the wages withheld by managers, the new-hire fees passed on to workers, the withholding of ID certificates and residence permits, the threatened penalties against co-workers, and the debt accrued by workers to pay both government officials and managers together constitute an effective system of up-front bonds posted by migrant workers at the start of their employment.²²³ As in classic bonded labor, a worker will lose her up-front payments and withheld wages and she will default

²¹⁷ Anita Chan, "Globalization, China's Free (Read Bonded) Labour Market, and the Chinese Trade Union," *Asia Pacific Business Review* vol. 6, no. 3-4 (Spring/Summer 2000); Anita Chan, *China's Labor Standards*, supra note 90; Human Rights in China, *Institutionalized Exclusion*, supra note 86, at p. 95-96.

²¹⁸ Some local governments require enterprises to pay "new-hire" fees, but managers pass those fees on to new workers as well. Institute for Contemporary Observation, *Chinese Women Migrant Workers*, at www.ico-china.org; Philip P. Pan, "Worked Till They Drop: Few Protections for China's New Laborers," *Washington Post Foreign Service* (May 13, 2002) at p. A01.

²¹⁹ Minghua Zhao and Jackie West, "Adjusting to Urban Capital," in Dong-Sook Gills and Nicola Piper, eds., *Women and Work in Globalizing Asia* (Routledge 2002) at p. 178.

²²⁰ Catholic Agency for Overseas Development, *Working Conditions in the Electronics Industry* (2003), at p. 32; Human Rights In China, *Institutionalized Exclusion*, supra note 86.

²²¹ Anita Chan, *Regimented Work*, supra note 211.

²²² E.g., Human Rights in China, *Institutionalized Exclusion*, supra note 86, at p. 94; Anita Chan, *Regimented Work*, supra note 211; Dorothy Solinger, *Contesting Citizenship*, supra note 100, at p. 221.

²²³ ICFTU, *Whose Miracle? How China's Workers are Paying for its Economic Boom* (2005), at p. 46.

on her debts, if she attempts to exit the employment relation. Chinese workers are acutely aware of the cumulative penalties they face if they quit or are fired for protesting.

Temporary migrants are highly vulnerable to managers' demands to post cumulative bonds in amounts that are sufficiently exorbitant to have a substantial lock-in effect -- for the alternatives to posting exorbitant bonds are even more costly to newly arriving migrants. A migrant who fails to accept the terms demanded by factory managers faces the loss of her investment in transportation costs from her home village to the factory -- and will incur the additional expense to travel home. Where local governments still require payments for exit permits from home villages and temporary residence permits in the factory town, the migrant risks losing that investment as well. If migrants do not quickly secure jobs, local officials may impose penalties such as fines, imprisonment, beatings, forced evictions, and expulsion from the export-processing area -- even where "custody and repatriation" regulations have been formally ended.

A "rationally self-interested" migrant will therefore be willing to pay up-front bonds required by managers in amounts up to the total monetized risk of potential imprisonment, beatings, fines, round-trip transportation, and penalties for default on debts incurred to travel to the factory city -- not to mention the risk of living in railway stations or on the street, and accepting alternative employment in sex work or other informal trades to avoid starvation should the worker fail to gain formal employment. And a young worker who fails to find and take work, even under harsh conditions, will also incur the "psychic cost" of disappointing her family's expectations -- a high cost indeed for many migrants. Because the total potential costs of not gaining immediate employment are so high, the migrant is quite vulnerable to managers' demands to post cumulative bonds that are exorbitant.

New migrants' acceptance of jobs on dismal terms and without contracts is a common sight in contemporary China. "New arrivals..., desperate to recoup the amount they have invested in transport expenses and in applying for the array of necessary documents and certificates before leaving home, will take any job available."²²⁴

The astonishing fact that factories are able to withhold *two to three months of wages, on average for all factory workers nationwide*, is comprehensible in the context of

²²⁴ Anita Chan, China's Labor Standards, *supra* note 90, at p. 46.

this radically asymmetric bargaining power between workers and managers. And in light of the various mechanisms for impeding workers' exit from enterprises, it is not surprising that a Report by a respected consultant in corporate social responsibility concludes, as recently as November 2005, that "*factories often simply ignore workers' request to resign*" in the face of intolerable working conditions, even when workers give proper advance notice.²²⁵ Some factories "prohibit workers from leaving until they have served six months or a year."²²⁶ What is surprising is that corporate "social auditors" do not name this phenomenon for what it manifestly is: *forced labor*.

2. *The Hukou System Further Impedes Freedom of Association.* The *hukou* system creates additional penalties – by government officials and by employers -- against independent union organization and strikes. Workers in China's export industries are well aware that if they participate in group protest, they may be evicted from their place of urban residence and expelled from factory towns, cities, and zones, in addition to arrest, imprisonment, beatings, and other governmental penalties described above.²²⁷ (Indeed, the People's Liberation Army has physically demolished thriving neighborhoods of temporary migrants, such as Zhejiang Village in Beijing, for fear that such communities *may* breed civic associations at some time in the future.²²⁸) That is, the *hukou* system provides the administrative infrastructure for enforcing area-wide blacklists of workers who assert their rights.

Employers, of course, are free in China to discharge workers for exercising their right of association. In addition to loss of their jobs, migrant workers face loss of their deposits, withheld wages, and other bonds that employers can impose by virtue of the *hukou* system.

3. *The Hukou System Further Diminishes Individual Worker's Bargaining Power and Assertion of Rights.* In light of migrants' justified fear of both employers and the authorities, migrants rarely seek legal recourse for workplace abuses.²²⁹ "[W]orkers who

²²⁵ Jass Yang and Chenyan Liu, "Turnover Rates at Chinese Factories," CSR-Asia Weekly, v. 1 no. 45 (November 9, 2005) (emphasis added).

²²⁶ Id.

²²⁷ Human Rights In China, Institutionalized Exclusion, supra note 86.

²²⁸ Li Zhang, Strangers in the City, supra note 100, at pp. 159-185.

²²⁹ China Labor Bulletin, "1.8 Million Workers Employed Without Labour Contracts in Zhejiang" (September 6, 2003).

seek redress for wrongs committed by their employers often face harassment and criminal charges.”²³⁰

The typical cost of an arbitration case is three times the average amount of the unpaid wages the migrant is seeking to recover, according to a 2005 study by the All-China Lawyers Association.²³¹ For this reason, arbitration cases are brought disproportionately by non-manual workers rather than by manufacturing workers.²³² The rare factory worker who uses the official arbitration and litigation systems – the official “venting” process for aggrieved workers -- often finds that China’s judges are corrupt Party officials with personal and financial ties to local enterprises and the PSB.²³³ Local labor department officials concede that their primary task is not to resolve individual or small-group disputes such as employers’ failure to pay wages. Rather, they will intervene only when worker grievances threaten to create a “social disturbance.”²³⁴ Zhou Litair -- hailed by the Western media as the sole attorney representing migrant workers in workplace injury cases²³⁵ -- was himself “repatriated” from Shenzhen to his home province in the northwest, ostensibly because he lacked proper registration.²³⁶ Shenzhen officials told Zhou that he threatened the investment climate by seeking worker compensation.²³⁷

The government’s harassment of lawyers who assist workers has not diminished since the AFL-CIO’s first petition. In November, 2005, the Beijing Bureau of Justice

²³⁰ Congressional-Executive Commission on China, 2003 Annual Report, at p. 1.

²³¹ All-China Lawyers Association, “Report on the Cost to Migrant Workers of Safeguarding One’s Rights” (September 29, 2005).

²³² Isabelle Thireau and Hua Linshan, “One Law, Two Interpretations: Mobilizing the Labor law in Arbitration Committees and in Letters and Visits Offices,” in Neil J. Diamant, et al. eds., *Engaging the Law in China* (2005) at p. 90.

²³³ The arbitration system “suffers from a lack of independence from local government and powerful enterprises. These problems often lead to decisions that favor enterprises over workers as well as delays in the enforcement of arbitral judgments.” Mary Gallagher, “Use the Law as Your Weapon,” Neil J. Diamant, et al. eds., *Engaging the Law in China* (2005); see also Philip P. Pan, “Chinese Workers’ Rights Stop at Courtroom Door,” *The Washington Post* (June 28, 2002) at p. A01.

²³⁴ *China Labor Bulletin*, “Workers Employed Without Labour Contracts,” *supra* note 229.

²³⁵ “Lawyer Takes on China’s Factories,” *USA Today* (June 19, 2002) at p. 4A.

²³⁶ Craig S. Smith, “China Tells Lawyer Who Aids Injured Workers to Close His Office,” *New York Times* (January 3, 2002) at p. A7.

²³⁷ E. Griggers-Smith, “Chinese Workers Pay Personal Price for Employer Noncompliance with Labor Safety Rules,” *International Journal of Occupational and Environmental Health* vol. 9, no. 4 (October/December 2003). Zhou has returned to Shenzhen but is not permitted to appear in court.

ordered attorney Gao Zhizhen to suspend his practice, including the representation of protesting workers.²³⁸

Not only do factory workers expect little from the legal system. They also face the risk of actual reprisal – from violence by employers to criminal prosecution by government officials – for merely petitioning the government with such routine complaints as factory managers’ failure to pay wages owed to workers, as documented in the State Department’s 2005 Report and in other recent studies.²³⁹ In light of the excessive cost of arbitration, most factory workers who wish to press complaints have no resort other than China’s centuries-old custom of “petitioning” government officials. But, as detailed in a 2005 report by Human Rights Watch, less than two in a thousand petitioners at the national level ever receive a response. And local officials resort widely to harassment and violence to prevent petitioners from taking their grievances to higher level officials:

[T]he worst aspect of the system is the retaliation that many petitioners experience. Petitioners are often beaten, intimidated, and even kidnapped for airing their grievances....[O]ver 50 percent of respondents reported that they had been beaten by state actors or agents.²⁴⁰

Temporary migrants, in short, are “denied basic civil and...human rights.”²⁴¹ Government policy -- the *hukou* system, and the plethora of government controls on temporary migrant workers in the manufacturing sector -- creates an enormous subclass of unskilled factory workers. Migrant workers effectively live in a Hobbesian state of anarchy, in which they are subject to intimidation, fraud, and violence, without recourse to protection by police or courts. Indeed, as already described, the Public Security police are themselves often the perpetrators of fraud, violence, and arbitrary exactions against migrants. Hence, if workers are abused by employers, their only recourse is to risk discharge or wage deductions by directly challenging managers, to escape the workplace,

²³⁸ China Labor Bulletin, “Beijing Orders Law Firm to Close for One Year” (November 7, 2005).

²³⁹ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

²⁴⁰ Human Rights Watch, “We Could Disappear at Any Time”: Retaliation and Abuses Against Chinese Petitioners (December 2005) (citing study by Professor at Chinese Academy of Social Sciences).

²⁴¹ Dorothy Solinger, *Contesting Citizenship*, *supra* note 100, at p. 5.

or to engage in desperate acts of protest – blocking roads and railways, threatening suicide, even self-immolation.²⁴²

Employers therefore have every opportunity to push wages down to nearly subsistence levels, to impose seven-day work weeks, to ratchet up work hours to twelve or more per day, to expose workers to occupational hazards, to physically beat and humiliate workers, to appropriate the migrant's up-front bond, and, frequently, to withhold wages altogether.

As mentioned above, a recent report concludes that factories often simply “ignore” workers’ “request” to resign in the face of intolerable hours, pay, and working environments. Some factories “prohibit workers from leaving until they have served six months or a year.”²⁴³ Practices like these clearly reduce workers’ power to make and enforce individual employment contracts in accordance with free market models.

Professor Anita Chan has identified yet another way in which the *hukou* system suppresses the labor standards of China’s manufacturing workers:

[T]he Chinese *hukou* system and the pass system under apartheid in South Africa generated quite similar outcomes. They produced a large, vulnerable, underclass living in constant insecurity, accompanied by daily discrimination, repression, hardship, and denial of their human dignity.

In light of these circumstances, it becomes possible to perceive how the Chinese *hukou* system can keep wages down more easily than in Mexico....[I]n Mexico the workers who produce for export are, as in China, largely migrants from the countryside, and the majority similarly are female. But there is a major difference. Almost all of the Chinese female migrant workers are single women in their late teens or early twenties who, because of the household registration system, cannot bring their families with them. Many factories make sure that only single women are recruited by asking to see their officially issued identity certificates, which in keeping with the Chinese state’s strict family-planning policy require that the marital and family planning status of each woman is listed. Since the workers are poor single women living in dormitories, management only needs to pay them enough for their individual survival.

In Mexico, the context is quite different. While most of the women workers in the maquiladoras are migrants from poorer regions, many of them have come with their families, since there is no pass system, and quite a number

²⁴² Threatening suicide and self-immolation are increasingly widespread in China’s export sector. Chinese have coined the phrase *tiaolou xiu* or “jump-protestors” for the widespread practice of suicides or threatened suicides in response to intolerable working conditions. E. Griggers-Smith, Chinese Workers Pay Personal Price for Employer Noncompliance with Safety Rules, *supra* note 237; see also Philip P. Pan, “Suicide Threats Rise as Employers Deny Wages,” *Washington Post* (February 13, 2003).

²⁴³ Jass Yang and Chenyan Liu, “Turnover Rates at Chinese Factories,” *CSR-Asia Weekly*, v. 1 no. 45 (November 9, 2005)

are single mothers. Very often these women workers are the sole bread-winners. Since they live with their families, a part of their waking hours has to be spent on “unproductive” chores (from management’s vantage point): in commuting, in household tasks such as cooking, taking care of the old and the young. No matter how ruthless, there is a limit to the amount of overtime that management can squeeze out of these Mexican workers – fewer hours than with the young single women in dormitories in China.²⁴⁴

The *hukou* system accounts in part for the fact, based on a conservative aggregation of the data from a variety of studies, that factory wages fell by 15 to 46 percent when temporary migrant workers – young, single, and bonded -- replaced permanent urban residents in factory jobs.²⁴⁵ It also helps explain why migrants’ wages fail to conform with the neoclassical economic assumption that wage growth tracks productivity growth – why, that is, the real wages of a majority of workers have fallen or remained flat in the last decade, while productivity has steadily risen.²⁴⁶ The absence of standards for wages, hours, and workplace safety in China’s manufacturing sector is described in the next two sections.

C. Failure to Provide Standards for Minimum Wages and Maximum Hours

The AFL-CIO’s first petition cited the 2003 Annual Report of the Congressional-Executive Commission on China, which concluded that China’s factory workers “continue to work hours well in excess of legal limits, and for wages that are frequently not calculated according to law.”²⁴⁷ The continuation of these violations is documented in the 2004 and 2005 Annual Reports of the U.S. State Department, which conclude that

²⁴⁴ Anita Chan, China’s Labor Standards, *supra* note 90, at pp. 47-48.

²⁴⁵ This range is a conservative average of the data in several studies. See Minghua Zhao and Jackie West, Rural Female Labour, *supra* note 219 (migrant workers earn 55% of urban residents in same enterprises); Li Shi, “Zhongguo nongcun laodongli liudong yu shouru zengzhen he fenpei” (The migration of rural labour in China and its income growth and distribution), *Zhongguo shehui kexue* (Social Sciences in China), no. 2 (March 1999) (finding 54% to 85% range); Chris Bramall, “The Quality of China’s Household Income Surveys,” *China Quarterly* no. 167 (September 2001) at p. 700; Feng Wang and Xuejin Zuo, *Inside China’s Cities*, *supra* note 102. Cf. Isabelle Thireau and Hua Linshan, “One Law, Two Interpretations: Mobilizing the Labor law in Arbitration Committees and in Letters and Visits Offices,” in Neil J. Diamant, et al. eds., *Engaging the Law in China* (2005) (manual employees earn 59 percent less than predominantly non-manual employees in Shenzhen). It is also highly suggestive that workers in rural TVEs earn only 62 percent of the wages of non-migrant workers in city factories. See Judith Banister, “Manufacturing Earnings and Compensation in China,” *Monthly Labor Review* (August 2005), at p. 26.

²⁴⁶ See *supra* note 50.

²⁴⁷ Congressional-Executive Commission on China, 2003 Annual Report at p. 26.

non-payment of wages continues to be “common” and that standards on hours and overtime pay continue to be “regularly violated.”²⁴⁸

As recently as March 9, 2006, Fang Chaogui, the Director of the Guangdong Provincial Labour Bureau – the person responsible for enforcing wage laws in China’s leading manufacturing province -- flatly conceded that wage violations against factory workers “*cannot be effectively prevented under current civil laws, labor laws or other administrative managements.*”²⁴⁹ According to Professor Chang Kai of the People’s University school of labor and human resources in Beijing, the Chinese government “has ignored the protection of laborers’ rights, especially migrant laborers’ rights. We have no clear system that says who must bear responsibility when wages aren’t paid, and how those responsible are to be punished.”²⁵⁰ Reebok’s director of labor monitoring throughout Asia states: “Who enforces Chinese labor law? Nobody. If it were enforced China would be a much better place for millions of people to work in. But it is ignored *more than in any other country I work in.*”²⁵¹ One factory worker summarizes her and other migrants’ experience when they sought assistance from the Labor Bureau in getting unpaid wages: “The Labour Bureau did nothing to help us or protect us.”²⁵² As explained above, a migrant worker on average needs to pay approximately three times the amount owed to her to attempt to recover her unpaid wages through administrative or judicial litigation – and even then, the worker has little assurance of winning the case, in light of the close and often corrupt ties between local enterprises and local government officials.²⁵³

²⁴⁸ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (February 28, 2005); U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

²⁴⁹ Quoted in Qiu Quanlin, “Laws Needed to Ensure Migrant Workers’ Wages, China Daily (March 9, 2006). Fang stated that criminal sanctions for wage violations might be effective, but do not exist.

²⁵⁰ Quoted in Anthony Kuhn, “China Turns to Back-Pay Issues,” Wall Street Journal (January 19, 2004).

²⁵¹ Associated Press Newswire (Hong Kong) (May 29, 2002).

²⁵² China Labor Bulletin, “The Nine Lives of a Chinese Woman Migrant Worker (March 8, 2006).

²⁵³ All-China Lawyers Association, “Report on the Cost to Migrant Workers of Safeguarding One’s Rights” (September 29, 2005).

The Chinese government's failure to enforce minimum wage and maximum hours standards violates International Labor Organization Conventions 1, 26, 47, 95, and 131 and constitutes an unreasonable trade practice under Section 301(d) of the Trade Act.²⁵⁴

Non-payment of wages is pervasive. The officially announced, nationwide total of unpaid wages amounts to a staggering two to three months of lost wages for every manufacturing worker in the country.²⁵⁵ Another 2006 survey confirms that the amount withheld equals approximately three months of wages for the average factory worker – a large sum for impoverished workers who subsist on current earnings.²⁵⁶ *Note that for workers who work one year at a factory and are unable to recoup three months of withheld wages, their hourly wages are effectively reduced by 25 percent.* According to another government survey, three out of four workers are unable to collect their pay as promised – and this is very likely an underestimate.²⁵⁷ An independent researcher found that “the illegal retention of workers’ wages for between one and three months exists in 80 percent of foreign-financed firms” in Dongguan.²⁵⁸ A majority of workers must resort to begging, intimidating, or illegally striking against their employers simply to get paid.²⁵⁹ In 2005, there were several widely reported cases of self-immolation, setting managers on fire, and stabbings of managers – after workers made futile attempts simply to get paid.²⁶⁰ Factory managers typically withhold wages not because of financial difficulty but rather from “deliberate malpractice,” permitted by the negligible bargaining power of China’s factory workers and the utter failure of Labor Bureaus to enforce

²⁵⁴ ILO Convention 131 on Minimum Wage Fixing (1970), Article 5; Convention 95 on Protection of Wages (1949), Articles 4.2(b), 8, 9, 10, 12.1, 14; Convention 47 on Forty-Hour Week (1935), Article 1; Convention 26 on Minimum Wage-Fixing Machinery (1928), Articles 1, 4; Convention 1 on Hours of Work (Industry) (1919), Article 2.

²⁵⁵ Reported in China Labor Bulletin, “High Cost of Wage Recovery Deepens Sense of Futility in Legal Route” (November 10, 2005).

²⁵⁶ Qiu Quanlin, “Laws Needed to Ensure Migrant Workers’ Wages, China Daily (March 9, 2006).

²⁵⁷ The survey is reported in Philip P. Pan, “Suicide Threats Rise as Employers Deny Wages, supra note 242.

²⁵⁸ Godfrey Yeung, “Foreign Investment and Social-Economic Development in China: The Case of Dongguan,” in Peter Nolan and Dong Fureng, eds., *Studies on the Chinese Economy* (Unsworth) at p. 171.

²⁵⁹ Official survey reported in Philip P. Pan, *Suicide Threats Rise as Employers Deny Wages*, supra note 242.

²⁶⁰ Reported in China Labor Bulletin, “High Cost of Wage Recovery Deepens Sense of Futility in Legal Route” (November 10, 2005).

minimum wage standards.²⁶¹ Factory workers fear that they will be discharged and lose their deposit, withheld wages, and other upfront bonds “if they pursue their wages.”²⁶²

It is true that the central Chinese government has formally promulgated guidelines for minimum wages and maximum hours. Local governments are ostensibly responsible for specifying and enforcing those laws. In practice, however, wage and hour rules are simply not enforced, as the Director of the Guangdong Labor Bureau himself concedes.²⁶³ To the contrary, local governments act as enforcers for enterprises’ all-out suppression of labor costs, for reasons detailed above.

The PRC Ministry of Labor, in 1993, directed local governments to set the minimum wages of factory workers within the range of 40 percent to 60 percent of the average income of permanent residents (who hold mostly non-factory jobs) in the locality.²⁶⁴ In 2004, these regulations were superseded by new Rules for Minimum Wages, but the new Rules similarly direct local governments to set minimum wages within the 40 to 60 percent range.²⁶⁵ Many localities simply violate this decree, setting minimum wages for factory workers well below the 40 percent floor.²⁶⁶ “China has set its minimum wage standards very low, to the point that it is even competitive with Vietnam and Cambodia, two countries where the cost of living is lower than China.”²⁶⁷ Indeed, the ratio of minimum wages of export workers to the average income of urban workers outside the factory system has fallen since 1993. Guangzhou and Shenzhen, the two leading centers of export production, have the lowest ratios – less than 30 percent since 1993, falling to 23.8 percent in 1999, and remaining in that range today.²⁶⁸

In July, 2005, the minimum wage in Guangzhou was raised to 684 yuan, and in Shenzhen to 690 yuan -- but only 580 yuan outside Shenzhen’s designated special zone, in the districts of Bao’an and Longgang, which have three times as many workers. While the Labor Bureau asserted that the legal minimum had increased significantly in the last

²⁶¹ Joan Chen, Wage Arrears Fuel Discontent, *supra* note 216.

²⁶² *Id.*

²⁶³ See quote above at n. 249.

²⁶⁴ Notice Concerning Regulations of Enterprises’ Minimum Wages, issued by PRC Ministry of Labor, November 24, 1993.

²⁶⁵ Rule on Minimum Wages, Decree no. 21, issued by the PRC Ministry of Labor (February 20, 2004), effective March 2004.

²⁶⁶ Anita Chan, China’s Labor Standards, *supra* note 90, at p. 42.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

two years, new rules implemented in December 2004 include social insurance taxes in the minimum wage rather than on top of the wage, as before -- so in fact the official increases since the AFL-CIO's first petition approximate the increase in consumer prices in Shenzhen. Moreover, each region throughout Guangdong province is permitted to select any of seven categories of minimum wage standards, ranging as low as 352 yuan per month. As investors move production to inland Chinese provinces, seeking wages even cheaper than those in the Southeast export zones, officials in the Southeast are under great competitive pressure to maintain local minimum wage standards that do not increase in inflation-adjusted terms.²⁶⁹

In 2006, the locally announced minimum wages in China's manufacturing regions remain 65 to 80 percent of the minimum wage required by the central government -- just as in 2004, when the AFL-CIO filed its first petition.²⁷⁰ *This estimate is based on the extremely conservative assumption that factory workers' average wages have risen 10 percent in each of the last two years.*²⁷¹

In any event, the function of the local minimum wage is simply to set the amount that employers falsely report to overseas buyers or the government.²⁷² Penniless workers from the countryside who are desperate to take a job cannot refuse employers' insistence on substandard wages. But the wages *actually paid* to workers are well below even this agreed, substandard wage.

In addition to violating basic minimum wage standards, manufacturers almost universally violate China's official standards on maximum hours and overtime pay, drawing no response from local Labor Bureaus or other authorities. Those standards set

²⁶⁹ Id. at p. 43; Liu Kaiming, Migrant Workers in South China, *supra* note 90. "Factories can save...half in wage bills just by relocating a factory half an hour's drive outside of Guangdong's capital city of Guangzhou." Judith Banister, "Manufacturing Compensation Earnings and Compensation in China," *Monthly Labor Review* (August 2005) at p.37

²⁷⁰ Anita Chan, China's Labor Standards, *supra* note 90; see also Liu Kaiming, Migrant Workers in South China, *supra* note 90.

²⁷¹ The central government directs local authorities to raise minimum wage standards at a rate equal to the increase in average urban earnings. Average urban earnings have increased 10 percent per year since 2004. Hence, factory wages would have to have increased 10 percent in the last two years simply to have avoided an increase in the gap between actual factory wages and minimum wage standards.

²⁷² Anita Chan, China's Labor Standards, *supra* note 90, at p. 42; Professor Mark Barenberg, Interviews with Asia Compliance Officers of Multinational Brands and Agents in Toys, Apparel, Footwear, and Retail, Hong Kong and Bangkok (May-June 2002).

a maximum of eight hours per day and forty hours per week.²⁷³ The standards allow an enterprise to impose overtime hours of one hour per day or, in special circumstances, three hours per day, but not to exceed thirty-six hours of overtime per month.²⁷⁴ Enterprises are required to pay 150 percent of the regular hourly rate for overtime hours worked on normal days, 200 percent for overtime hours worked on rest days, and 300 percent for overtime hours worked on national holidays. The law requires one day of rest per week. In fact, overtime in China's export sector frequently reaches 200 to 300 hours per month, as workers work 12 to 18 hour days without any days of rest.²⁷⁵ The overtime wage rate is seldom paid. Employers give workers misleading explanations of how their compensation is calculated and provide false wage and hour records, if any records are provided at all.²⁷⁶

As explained above in Sections V and VI-B, a large majority of China's export workers are young, single migrants who live in dormitories within the fences of company compounds – a simulacrum of the old Communist “work units.” (Between six and twenty workers sleep in the two-tier bunk beds of a single, small room measuring 8 to 20 square meters.) Workers are therefore under the surveillance of company security personnel not only on the factory floor but also in their place of residence. Many factories cross the line from surveillance to imprisonment. Workers are permitted to leave the factory compound only for brief periods each week, or, in some instances, not at all.²⁷⁷ In these circumstances, workers are captives of companies' private security forces

²⁷³ People's Republic of China, State Council Order Number 174, Decision on Amending the “State Council Provisions on Work Hours for Laborers,” enacted March 25, 1995, Articles 1 and 2; Labour Law of the PRC, promulgated by the Standing Committee of the National People's Congress, July 5, 1994, Article 36.

²⁷⁴ Labour Law of the PRC, promulgated by the Standing Committee of the National People's Congress, July 5, 1994, Articles 41 and 44.

²⁷⁵ Liu Kaiming and Shen Tan, *Kuaguo Gongsì de Shehui Zeren yu Zhongguo Shehui* [Corporate Social Responsibility in China], at pp. 85-88; Minghua Zhao and Jackie West, Rural Female Labour, *supra* note 219, at pp. 175-179. Many recent case studies belie optimistic reports that labor shortages have improved working conditions and pay, even in the Southeast regions that are the sites of the ostensible shortages. For example, as recently as April 3, 2006, workers in furniture factories in Shenzhen and Dongguan were violently assaulted by riot police and security guards when they protested wages less than 30 cents per hour and work time of 340 to 390 hours per month. See China Labour Bulletin, “3,000 Workers Protest Against Inhumane Treatment at Hong Kong-Invested Factory” (April 4, 2006).

²⁷⁶ See *supra* note 272.

²⁷⁷ Catholic Agency for Overseas Development, Working Conditions in the Electronics Industry, *supra* note 220, at p. 33. An example is the Kai Mao Zhi Pin Factory, located in Guangdong Province. Workers there are allowed to leave the steel-reinforced factory gates for five and a half hours per week – at Wednesday lunchtime from noon to 1:30 and on Sunday evening from 6 pm to 10 pm. Workers are fined for using cell

around the clock. They are therefore virtually helpless to resist employers' demand that they work limitless overtime hours. Reports in Shaanxi Province as recently as April, 2006, conclude that cases where workers "have been beaten, held against their will and not paid are more and more frequent."²⁷⁸

In sum, employers use an array of methods to reduce hourly compensation below minimum standards announced by the national government:

- Employers simply set wages far below the provincial or local minimum;
- Employers require workers to work overtime hours far in excess of official standards, at hourly wage rates far below standards for overtime pay or with no compensation at all, on the ground that production quotas have not been met or some other pretext.²⁷⁹
- Employers make many deductions from the basic wage:
 - up-front deposits;
 - months of withheld wages when workers quit or are fired;
 - fees for work and residence permits ostensibly purchased by the firm but often never received by workers;
 - exorbitant dormitory and meal fees;
 - fees for factory IDs, handbooks, and equipment;
 - payments to company stores within company compounds, from which workers' free exit is often severely restricted; and
 - penalties for missing production targets, for taking more than five minutes to use toilets, for missing work due to illness, for talking or laughing during work hours, during noon break, or during sleep time, for not marching in unison to and from work stations, for not making one's dormitory bed, for not staying in one's bed when

phones inside the factory compound. "Life on the Line at the Kai Mao Zhi Pin," *Shenzhen Shangbao*, reprinted in Pioneer Quarterly (Hong Kong) no. 59 (Spring 2001) online at www.china-labour.org.hk (China Labour Bulletin).

²⁷⁸ China Labour Bulletin, "30 Migrant Workers Enslaved in Shaanxi" (April 4, 2006).

²⁷⁹ Catholic Agency for Overseas Development, Working Conditions in the Electronics Industry, *supra* note 220, at p. 33. Li Qiang, "Footwear Made in China" (September 6, 2002).

lights are out, for drawing a curtain for privacy around one's dormitory bed, and for other infractions of militaristic rules.²⁸⁰

- Employers require workers to arrive at workstations one hour early for “preparation” and stay late for “cleanup” with no additional pay.
- Employers simply fail to pay workers their wages at all, ostensibly because the firm is financially strapped, but in fact because they can do so with impunity and workers lack the information, bargaining power, or legal recourse to challenge the managers' claim about company finances.²⁸¹
- Employers keep double, triple, or even quadruple sets of books – one for the formal record-keeping of local Labor Bureaus; another for the “social compliance” auditors of multinational corporations that have adopted labor codes; another for misrepresenting to workers the compensable hours they've worked; and another for the actual wages paid and hours worked.²⁸² Workers frequently do not know how the employer calculates wages.
- Employers fail to enter into written contracts with workers, disabling workers from asserting any legal entitlement to payment of verbally agreed-upon wages.²⁸³

The upshot of these practices is that workers are routinely paid a monthly wage not only below the legal minimum. The only real limits on wages and hours for most workers in China's factories are the physiological and psychological limits of the young women and men who work in that sector. Enterprises frequently push beyond those

²⁸⁰ See, e.g., Catholic Agency for Overseas Development, *Working Conditions in the Electronics Industry*, supra note 220, at p. 33; Stephen Frost, “Rules and Regulations in Chinese Factories,” *International Journal of Occupational and Environmental Health* vol. 9, no. 4 (October/December 2003); *Life on the Line at the Kai Mao Zhi Pin*, supra note 277 (workers paid Rmb 14 per day, from which Rmb 5.6 per day was deducted for room and board; workers were not permitted to rent rooms or take meals outside the factory compound).

²⁸¹ China Labour Bulletin, *Workers Employed Without Labour Contracts*, supra note 229.

²⁸² Congressional-Executive Commission on China, *Statement of Mil Niepold* (April 28, 2003).

²⁸³ A recent survey found that less than 20 percent of workers in medium-sized and small firms have employment contracts. (The reported survey does not give data for large enterprises.) The more than 80 percent without contracts are unable to seek enforcement of wage payments. Qiu Quanlin, “Laws Needed to Ensure Migrant Workers' Wages,” *China Daily* (March 9, 2006). Catholic Agency for Overseas Development, *Working Conditions in the Electronics Industry*, supra note 220, at p. 32.

limits, and workers spontaneously protest by fleeing the factory compound, by blocking roads and railways, or by engaging in illegal strikes and demonstrations. Many workers threaten or commit suicide.²⁸⁴ Even these sad protests are met with government repression. Public Security forces in many cities have implemented policies of detaining any worker who threatens to commit suicide as a means of collecting wages.²⁸⁵

Actual hourly wages and unit labor costs are therefore greatly suppressed. The wages and hours of China's factory workers are effectively unprotected by legal regulation or by contract. Factory workers are paid extremely low monthly sums – on conservative estimates, ranging from 200 to 1,800 yuan, and averaging 400 to 700 yuan - - in return for working as many hours as employers can extract from them.²⁸⁶ (Even highly inflated official data, released on April 17, 2006, conclude that average wages are as low as 500 to 800 yuan.²⁸⁷) They often work twelve to eighteen hours per day, with no days off for months at a time. They are rarely paid full overtime wages, and sometimes are not paid at all.

²⁸⁴ Chinese have coined the phrase *tiaolou xiu* or “jump-protestors” for the widespread practice of suicides or threatened suicides in response to intolerable working conditions. E. Griggers-Smith, Chinese Workers Pay Personal Price for Employer Noncompliance with Safety Rules, *supra* note 180; Philip Pan, Suicide Threats Rise as Employers Deny Wages, *supra* note 242; Li Qiang, “Footwear Made in China” (September 6, 2002) (reporting twelve suicides at single footwear factory), at www.chinalaborwatch.org.

²⁸⁵ Philip Pan, Suicide Threats Rise as Employers Deny Wages, *supra* note 242.

²⁸⁶ A recent survey of the Research Office of the State Council reported that 72 percent of migrant factory workers earn less than 800 yuan, “Rural-Urban Income Gap Continues to Widen” *China Daily* (April 17, 2006). As low as these figures are, they over-estimate wages, for the following reasons. Economists and other social scientists widely recognize that reliable large-sample data on Chinese economic and social life are extraordinarily difficult to obtain – precisely because China is an authoritarian, closed society. Much academic research on China must therefore rely on “ethnographic” descriptions, newspaper stories, and other anecdotal reports.

China's official wage data are inaccurate, because they rely on employers' reports of wages paid. Wage data provided by employers are utterly unreliable. As detailed in this Section, employers routinely report that they are paying minimum wages, when they in fact are paying much less. Employers routinely keep two or more sets of books for just this purpose. For this reason, the hourly and monthly wages publicly reported by Western multinationals that out-source their production to China are generally overstated. See, e.g., Professor Mark Barenberg, Interviews with Asia Compliance Officers of Multinational Brands and Agents in Toys, Apparel, Footwear, and Retail, Hong Kong and Bangkok (May-June 2002).

The most reliable wage data are obtained by researchers who painstakingly interview workers in order to reconstruct wages received, deductions from wages, regular and overtime hours worked, and production for piece-rates and quotas. This is painstaking, precisely because workers are often unsure about the employers' methods for calculating wages, and employers often wish to keep it that way. Workers are often paid months or even a year after the wages are earned, making it even more difficult for workers to prove the overtime hours or piece-work they accrued.

Manufacturing wages for female workers range as low as 12 cents to 44 cents per hour.²⁸⁸ Male workers earn approximately 10 or 15 percent more. The overall range of average factory wages is therefore 12 to 50 cents per hour. Many credible researchers – as well as factory managers, when they speak candidly -- agree that the inflation-adjusted wages of China's factory workers have remained flat or fallen for most workers in the last decade, or at best risen only modestly and only in the last four years for certain categories of more skilled workers in certain regions, even as productivity has risen rapidly.²⁸⁹ Indeed, this is the conclusion of a recent survey by the Ministry of Labor itself.²⁹⁰

How do these conclusions square with recent reports in the Western media of wages, under the pressure of labor shortages, rising to 80 dollars per month in low-wage work and 150 dollars per month in skilled work for Western multinationals?²⁹¹ First, it must be emphasized that these figures are for the highest wage cities in China. Inland factories, where most production is already located and where growth in production is accelerating, pay approximately half as much as factories in the highest wage cities. Second, when government and corporate sources cite higher hourly wages, these typically are based on monthly rates that do not account for forced overtime hours, deductions of fines and other payments required by managers, appropriation of one to three or more months of pay when workers quit or are fired, and simple non-payment of wages.²⁹²

²⁸⁷ The Research Office of the State Council reported its survey showing that 72 percent of migrant factory workers earn less than 800 yuan. "Rural-Urban Income Gap Continues to Widen" China Daily (April 17, 2006).

²⁸⁸ University of Iowa Center for Human Rights, Promoting International Worker Rights Through Private Voluntary Initiatives, Report to the U.S. Department of State 111 (January 2004) (reporting survey of nineteen factories in Guangdong).

²⁸⁹ See supra note 90. Speaking in late 2004, Jack Chiang, the chief executive of a large Taiwanese-owned shoe factory in Dongguan stated that in China's manufacturing sector "assembly-line wages have not risen in recent years nearly as fast as the cost of living." Edward Cody, "In China, Workers Turn Tough," Washington Post (November 27, 2004).

²⁹⁰ Reported in Neil Gough, "Trouble on the Line," Time Asia (January 2005).

²⁹¹ David Barboza, "Sharp Labor Shortage in China May Lead to World Trade Shift," New York Times (April 3, 2006)

²⁹² Furthermore, official monthly rates are often grossly exaggerated by managers – for the benefit of the Western media and social auditors sent by overseas buyers, and to inflate the unit prices demanded by factory managers. As recently as March 8, 2006, the U.S. State Department noted that "factories routinely falsified overtime and payroll records."

To see how hourly wage rates can be mistakenly inflated, consider the following hypothetical but entirely plausible (indeed conservative) example:

Suppose a factory worker in Shenzhen is paid the minimum wage rate of 690 yuan per month, or 83 dollars – the highest minimum wage rate in China. (Note that even the inflated official statistics show that 72 percent of factory workers earn less than 800 yuan per month.²⁹³ More accurate estimates, as noted, conclude that wages average between 400 and 700 yuan -- so our hypothetical wage of 690 yuan is a conservative example.)

If the worker works 8 hours per day for 22 days each month (4 weeks of five-day workweeks plus two more week days to round out the 30-day month), she works 176 hours and her hourly wage rate is approximately 3.9 yuan ($690 \div 176$) or 47 cents per hour – within the range of our estimates above. But now take the more realistic case where the worker works 10 hour workdays for 26 days each month (working six days per week, with a day of rest on Sundays), and is paid the same minimum wage of 690 yuan. She therefore works 176 regular-pay hours (8×22), plus 84 hours of overtime on weekdays and Saturdays ($(2 \times 22) + (10 \times 4)$). Under China's minimum wage rules, she *should* be paid 3.9 yuan for each of the 176 regular hours, and 5.85 yuan for each of the 84 hours of overtime on weekdays and Saturdays. She should therefore earn a total of 1181.4 yuan or 145 dollars.

Her actual pay is 58.4 percent of the pay required by local minimum wage laws ($690 \div 1181.4$). Her actual hourly wage rate is 2.65 yuan ($690 \div 280$) or 32 cents. Only those factories paying their workers 1181.4 yuan per month (or 145 dollars per month – the high-end wage cited by the optimists) are in compliance with minimum wage standards, and even those factories are paying only 52 cents per hour.

This example is conservative, because it assumes only ten hours of work per day with no work on Sundays. If our hypothetical worker instead worked two Sundays per month, then her actual hourly rate would be *29 cents per hour* and she would earn *only 51.6 percent of the pay required by local minimum wage laws*. The example is also conservative because it does not account for the fact that the local minimum wage standard is below central government directives, does not account for the various

²⁹³ “Rural-Urban Income Gap Continues to Widen” China Daily (April 17, 2006).

deductions from wages, and does not account for the pervasive non-payment of months of wages – which, as discussed above, can reduce wages by an additional 25 percent.

In light of this analysis, it is not surprising that official wage rates are belied by independent researchers' examination of actual wages paid and hours worked, based on careful interviews and documentary review in factory-level case studies – by far the most accurate data and, therefore, the source for wage rates used in this petition.

One of the more thorough recent studies of hourly wages in China, based on official Chinese government data, concludes that compensation in manufacturing averages 57 cents per hour – including both take-home wage and social insurance payments by employers.²⁹⁴ The study, released by the United States Bureau of Labor Statistics (BLS), also concludes that after stagnating for a decade, total compensation increased after 1998.

The BLS study confirms that hourly wages in China are quite low both in absolute terms and in comparison with China's western and Asian competitors. Even so, the study overestimates total compensation of factory production workers, because the study (1) includes permanent urban residents but does not include most lower-paid migrant factory workers, who comprise the vast majority of factory workers;²⁹⁵ (2) does not include smaller manufacturing units where wages are substantially lower than in larger units; (3) assumes that urban employers make social insurance payments to the government equal to 58 percent of workers' wages, when in fact these taxes are likely paid at lower rates; (4) assumes that work weeks are lower than the 60 to 80 hours routinely reported by investigators, which alone may decrease the estimated total compensation by up to 18 to 34 percent; and (5) does not take account of the wide variety of deductions from officially reported wage rates, including widespread non-payment of one to three months of wages, penalties for infractions, and other required payments by workers.

The BLS study candidly discusses the limitations of the official government wage data, and the non-existence of official data on hours worked and other variables necessary to arrive at estimates of actual hourly pay. This is one important reason why the

²⁹⁴ Judith Banister, "Manufacturing Earnings and Compensation in China," *Monthly Labor Review* (August 2005).

President must implement the corporate transparency requirements demanded in Part IX of this petition, for purposes of verifying compliance with workers' rights by the Chinese government and the affiliates and contractors of U.S. corporations.

According to the best available data, employers typically pay factory workers wages that range from 59 percent to 94 percent of the *locally* announced minimum standard – or 38.5 percent to 75 percent of the minimum wage standard officially required by the central government, including minimum pay standards for overtime work.²⁹⁶ These are very conservative figures. There are many well-documented reports of enterprises paying less than 50 percent of local minimum wages and less than 30 percent of the official minimum wage standard.²⁹⁷

D. Failure to Provide Standards for Occupational Safety and Health

In its 2003 annual report, the Congressional-Executive Commission on China concluded that “the Chinese government lacks the will or capacity to enforce” occupational and safety standards.²⁹⁸ In its 2005 Report, the State Department concludes that the “poor enforcement” of safety and health standards “continued to put workers’ lives at risk,” and that “[w]orkplace health and safety did not improve significantly” in 2005 – directly contradicting the President’s assertion two years ago that he would undertake effective measures to improve China’s record.²⁹⁹ Indeed, on February 17,

²⁹⁵ According to official data, migrants are nearly 70 percent of the factory workforce; and this already high percentage is almost certainly a gross underestimate, in light of the pervasive under-reporting of migrant labor by employers and local government officials.

²⁹⁶ These figures are calculated from a database that compiles the data in the dozens of case studies and surveys from 2004 - 2006 reported by China Labour Bulletin, China Labor Watch, Hong Kong Christian Industrial Committee, the Institute of Contemporary Observation (Shenzhen), the ICFTU, and Chinese and overseas press. As explained above, wage data reported by the Chinese government, by managers of Chinese factories, and by Western multinationals are systematically biased upward and are therefore not used in this calculation. The most accurate wage data come from the painstaking analyses contained in factory case studies – the data compiled and used in this petition.

²⁹⁷ See, e.g., AsiaNews, “Workers in Shenzhen Protest at Low Wages, Long Hours” (October 7, 2004) (workers paid fifty percent of minimum wage); Joseph Kahn, “The World’s Sweatshop: Ruse in Toyland” New York Times (December 7, 2003) (large toy manufacturer in Shenzhen pays less than 43% of regular and overtime wages required by local law).

²⁹⁸ Congressional-Executive Commission on China, 2003 Annual Report, at p. 1.

²⁹⁹ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

2006, the Chinese government's Work Safety Administration conceded that *occupational injuries and illness are increasing*.³⁰⁰

The Chinese government's failure to enforce occupational safety and health standards violates International Labor Organization Conventions 119, 136, 139, 148, 155, and 170 and constitutes an unreasonable trade practice under Section 301(d) of the Trade Act.³⁰¹

According to conservative reports, workplace accidents kill 140,000 workers in China each year.³⁰² At least 80 percent of workplace deaths occur among the migrant workers in the export sector.³⁰³ Another 250,000 reportedly lose fingers, hands, feet, arms, legs, and suffered other injuries -- in the absence of protective machine guards and other safety devices that are routinely used elsewhere in global industry.³⁰⁴ In the view of independent experts in occupational safety and health (OSH), as well as the candid views of Chinese government officials, the actual industrial carnage in China is several times as high as these estimates.³⁰⁵

Often working twelve to eighteen hours per day, and often under great intensity in order to achieve production quotas, China's young, inexperienced workers are especially prone to such serious accidents. Such long hours also expose workers to airborne contaminants, non-ionizing radiation, chemicals, and noise at rates far in excess of the Chinese government's regulatory guidelines, which are based on eight-hour days and forty-hour workweeks.³⁰⁶ Workers have limited recovery time for body metabolisms to excrete contaminants, making "adverse health consequences from such lengthy exposure

³⁰⁰ Report of the State Administration of Work Safety, reported in China Daily (February 17, 2006).

³⁰¹ ILO Convention 170 on Chemicals (1990), Convention 155 on Occupational Safety and Health (1981); Convention 148 on Working Environment (Air Pollution, Noise, and Vibration) (1977); Convention 139 on Occupational Cancer (1974); Convention 136 on Benzene (1971); Convention 119 on Guarding of Machinery (1963).

³⁰² Congressional-Executive Commission on China, Statement of Mil Niepold, *supra* note 282.

³⁰³ Hong Kong Christian Industrial Committee, "Impacts of Globalization in Contemporary China from Occupational Safety and Health Perspective" (December 2000).

³⁰⁴ *Id.*

³⁰⁵ Cited in China Labor Bulletin, *Deadly Dust: The Silicosis Epidemic among Guangdong Jewelry Workers and the Defects of China's Occupational Illnesses Prevention and Compensation System*, CLB Research Series No. 1 (December 2005).

³⁰⁶ According to the U.S. Department of State, "The poor enforcement of occupational health and safety laws and regulations continued to put workers' lives at risk [in China]....Many factories that used harmful products, such as asbestos, not only failed to protect their workers against the ill effects of such products, but also failed to inform them about the hazards." U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices 2003: China* (February 25, 2004).

times...highly probable.”³⁰⁷ Chemicals widely used in China’s export industries – such as methyl ethyl ketone, n-hexane, and methylene chloride – have no regulatory limits at all.³⁰⁸

The Chinese government’s inadequate standards are, in any event, simply not enforced. In December 2005, a comprehensive report on occupational illness in Guangdong province described “the widespread failure of local governmental and judicial authorities...to apply and enforce existing labor protection laws and regulations.”³⁰⁹ The report found that the denial of legal remedies to workers who contracted occupational illnesses “is often the result of collusion between business interests, local government, hospitals and the courts, which have a shared interest in downplaying the seriousness of the occupational health and safety situation.” The report found:

At each stage of the process, the workers concerned are likely to face deliberate stonewalling and obfuscation from their employers; rejection of their compensation claims by administrative tribunals and court bodies on the flimsiest procedural grounds; and sometimes even inaccurate or phony diagnosis of their condition by the medical authorities responsible for certifying occupational illness.³¹⁰

Zhao Tiechui, Deputy Director of the State Administration of Work Safety (SAWS), concedes that the Chinese government’s occupational safety and health system exists “in name only,” even in the most politically sensitive sectors, such as coal mining. “Documents issued from the central government are simply passed on to the next level of government and ignored.”³¹¹ Occupational safety and health standards promulgated by the central government have not been “communicated to – let alone implemented by – the relevant departments countrywide” – and, as two leading analysts dryly conclude, it is expected to be “some time” before that happens.³¹²

³⁰⁷ Garrett Brown, *China’s Factory Floors: An Industrial Hygienist’s View*, supra note 212, at p. 329.

³⁰⁸ *Id.* at p. 329.

³⁰⁹ China Labor Bulletin, *The Silicosis Epidemic among Guangdong Jewelry Workers*, supra note 305.

³¹⁰ China Labor Bulletin, *The Silicosis Epidemic among Guangdong Jewelry Workers*, supra note 305.

³¹¹ Tim E. Pringle and Stephen D. Frost, “The Absence of Rigor and the Failure of Implementation’: Occupational Health and Safety in China,” *International Journal of Occupational and Environmental Health* vol. 9, no. 4 (October/December 2003) at p. 314.

³¹² Tim Pringle and Stephen Frost, *Occupational Health and Safety in China*, supra note 311, at p. 311.

In most cases, responsibility for compliance with workplace safety and health standards is simply left to employers – the very employers who, in many cases, invested in China to escape regulatory requirements in search of lowest-cost production.

The plants [of FIEs producing for export] are set up with minimum planning and investment, for the pursuit of maximized, short-term returns.... Workers commonly suffer from long working hours, forced overtime, deprivation of rest days and sick leave, low wages, arbitrary penalties and dismissals, and denial of collective bargaining rights. [Health and safety] features very low in the investment and management priorities of these enterprises, if at all.³¹³

According to safety and health analysts with extended experience in Chinese workplaces, Chinese government reports significantly underestimate workplace health and safety problems.³¹⁴ Nonetheless, in July, 2002, local Guangzhou authorities reported that 96 percent of local workshops – in 8,410 enterprises – were in violation of OSH standards.³¹⁵ Another 2002 PRC report concluded that a large majority of TVEs – which account for 50 percent of industrial output and 40 percent of exports – had “minimal industrial safety measures.” Even the official newspaper, *Workers Daily*, concluded in 2000 that in many new, smaller enterprises, which account for the majority of manufacturing employment and output,

work conditions are abominable, workshops are small, low, and damp, dust and noise seriously exceeds standards, and toxic and hazardous tasks are not effectively regulated. After working in these abominable conditions for a long time, workers’ health is utterly devastated.³¹⁶

Independent researchers conclude flatly that health and safety personnel and resources “simply *do not exist* in small and medium enterprises *in any category*,” whether privately invested (PIEs), TVEs, FIEs, or SOEs.³¹⁷ A relatively small number of large FIEs, linked to foreign multinationals, have implemented health and safety systems in response to criticism of sweatshop conditions. However, “the core of China’s export-processing sector remains TVEs, PIEs, and FIEs based on Asian capital (Korean,

³¹³ Garrett Brown, *China’s Factory Floors: An Industrial Hygienist’s View*, supra note 212 at p. 333 (quoting Trini Leung).

³¹⁴ E.g., Garrett Brown, *China’s Factory Floors: An Industrial Hygienist’s View*, supra note 212, at p. 333.

³¹⁵ Reported in Hong Kong Christian Industrial Committee, “The Traps for Chinese Workers: Serious but Invisible Hazards in Foreign-Funded Enterprises” (November 2002).

³¹⁶ Garrett Brown, *China’s Factory Floors: An Industrial Hygienist’s View*, supra note 212, at p. 328.

³¹⁷ *Id.* (emphasis added).

Taiwanese, and Hong Kong) that are out of the public spotlight and largely unmonitored [for safety and health] by their ultimate retailers.”³¹⁸

One of the leading analysts of occupational safety and health in China’s factories concludes:

Economy-wide, there has been little or no monitoring of airborne chemical contaminants, noise, or non-ionizing radiation exposures; ergonomic risk factors and heat stress have not been investigated; and there are few audits of employee training programs and OSH management systems such as those typical of industrial hygiene evaluations of workplaces elsewhere....Lack of hazard evaluation, which extends to safety issues such as machine guarding, electrical safety, and fire prevention, has...resulted in limited efforts to control workplace risks to life and limb....

....

There is widespread personal and institutional corruption and collusion between employers (both domestic and foreign) and local authorities. Regulations requiring employee training, chemical exposure limits, and machine guarding, among other key safety requirements, *are simply not enforced*.

....

With the explosive growth of village and township enterprises, local authorities also have a direct financial stake – taxes, fees and illegal bribes – in the enterprises that they are supposed to be regulating.

In 2002, the national government decreed that local governments must now survive solely on their tax incomes, cutting them off from dividends previously collected from local SOEs. This means that any policies that ‘discourage foreign investment’ – such as regulatory enforcement – are economic suicide and political impossibilities for local government.³¹⁹

The same analyst concludes that the following substantive hazards are evident throughout the FIEs, TVEs, and SOEs:

- High rates of accident, injury, and illness
- Unmeasured and uncontrolled exposures to chemicals
- Unmeasured and uncontrolled exposures to high noise levels
- Unrecognized, unmeasured, and uncontrolled ergonomic hazards
- Unrecognized, unmeasured, and uncontrolled non-ionizing radiation hazards, both ultraviolet and radiofrequency
- Unrecognized, unmeasured, and uncontrolled heat-stress hazards (high temperatures, inadequate supplies of water, inadequate sanitation facilities and access)
- Uncontrolled safety hazards such as unguarded machinery, electrical shocks, working at heights without fall protection

³¹⁸ Id.

³¹⁹ Id. at pp. 326, 332 (emphasis added).

- Life-safety hazards, including uncontrolled fire hazards and inadequate evacuation, rescue, and medical treatment programs³²⁰

Other analysts conclude that China's reliance on untrained, uneducated, young migrant workers in the manufacturing sector "has, in the present circumstances, had a negative impact on OSH; a view overwhelmingly supported by statistics on deaths and injuries in those sectors."³²¹

The prospect for change is "seriously undermined by a complete lack of freedom of association [among workers] and a preoccupation on the part of OHS managers and managers in general with the 'quality' (*suzhi*) of their employees."³²² As detailed above, workers cannot organize unions to enforce health and safety standards; and individual workers rarely seek legal recourse for workplace injuries.³²³ The December 2005 report on occupational health in Guangdong province notes "the dismal failure of China's sole legally permitted trade union body, the All-China Federation of Trade Unions (ACFTU) to play a constructive role in either combating the current epidemic of workplace-related silicosis...or in supporting the efforts of workers who contract this deadly disease in seeking compensation from their employers."³²⁴

Before 2002, no general law set occupational safety and health standards in China. An ILO advisory team commented that existing law merely "stipulate[d] that management is responsible for ensuring workers' safety and health" and did "not specify the concrete measures needed for enterprise action."³²⁵ In 2002, the central government announced standards on Work Safety and Occupational Health.³²⁶ An organ of the central government, SAWS, is empowered to create new standards.

The Congressional-Executive Commission on China quotes a Chinese labor scholar who concludes that the 2002 Work Safety law "will, just like hundreds of other

³²⁰ Id. at p. 333.

³²¹ Tim Pringle and Stephen Frost, Occupational Health and Safety in China, *supra* note 311, at p. 315.

³²² Id.

³²³ See Sections V, VI-A, and VI-B of this petition, above.

³²⁴ China Labor Bulletin, The Silicosis Epidemic among Guangdong Jewelry Workers, *supra* note 305.

³²⁵ Quoted in Hong Kong Christian Industrial Committee, Occupational Safety and Health in China (November 2000).

³²⁶ Work Safety Law, enacted November 1, 2002; Law on the Prevention and Cure of Occupational Illnesses, enacted May 1, 2002.

laws in China...become another meaningless document sitting on the shelf while violations go from bad to worse.”³²⁷

The central government, however, set up no system for implementing, monitoring, or enforcing the OSH standards. The 2002 laws give no guidance whatsoever about which particular central or local government entities have responsibility for monitoring and enforcement, or how their various responsibilities might be coordinated.³²⁸ Indeed, as mentioned above, the government has not even *communicated* the substantive OSH standards to the countless government departments in the sprawling Chinese bureaucracies that might conceivably take up OSH monitoring and enforcement as their responsibility.

The 2002 Work Safety Law seems to presume that all local development officials have responsibility for monitoring OSH standards, in the course of their general activities of encouraging investment and authorizing enterprise operations. But the law itself makes clear that health and safety enforcement must yield to local interests in investment and management: “Under the socialist market economy, the government does not interfere with production as this is an area where market forces shall inform the necessary adjustments.”³²⁹ If this official statement were not enough, “there is clear evidence,” according to leading analysts,

that local governments are incapable of achieving a balance between development and OSH that enables both investment *and* a safe working environment. This point was recently elaborated upon in no uncertain terms...by a local [Party-controlled] trade union representative. In a discussion of the new laws, the latter pointed out that ‘all this talk about balance was so much hot air’ and that for the time being ‘development would take clear precedence over fairness.’...Moreover, the effective implementation of the new standards is closely linked to the planned reforms of government bureaucracies, which, interestingly, have been put on partial hold and thus further retarded the process. Giving form to this process [of creating a government system for enforcing OSH standards] is extraordinarily difficult, particularly when very few in China – even at senior levels – fully grasp it.³³⁰

China is experiencing “explosive growth in the electronics sector.” That sector has witnessed “increasingly well-documented cases of elevated cancer rates and adverse

³²⁷ Congressional-Executive Commission on China, 2003 Annual Report at p. 26 (quoting Trini Leung).

³²⁸ Tim Pringle and Stephen Frost, Occupational Health and Safety in China, *supra* note 311, at p. 311.

³²⁹ Quoted in *id.*, at p. 312.

reproductive outcomes in the semiconductor industry, and ergonomic injuries and solvent exposure-related illnesses in all sectors of the electronics industry.”³³¹

A study of 267,000 women in the Shanghai textile industry found a statistically significant increase in breast and uterine cancer for women working in the cotton, wool, mixed-fiber, and machine-manufacturing sectors.³³² The unique study, undertaken by a U.S.-based cancer research institute, was possible because old state-owned industries had fairly stable workforces, tracked cancer incidence, and kept records of exposure to dust, benzene, and other solvents.³³³ The transition to private enterprises with transient workforces and no accurate record-keeping diminishes the chance of undertaking this type of study in the future.³³⁴ More important, the new privately owned enterprises provide minimal or no health and safety protection, medical care, or worker compensation, in contrast to the old state enterprises. The historical cancer rates found in the state sector are therefore likely to rise considerably in the unregulated export sector. Indeed, “competitive pressures within the privatizing economy...undercut... health and safety performance” in the state-owned sector as well.³³⁵

580,000 cases of occupational pneumoconiosis had been officially reported in China, as of 2006.³³⁶ The death rate is 23.58 percent. The official figures do not include unreported cases, cases in small enterprises, cases in township and village enterprises that comprise the bulk of light manufacturing, or cases of workers who returned to their home villages after reporting the disease. Even putting aside these exclusions, the figures are gross understatements of the problem, as with all official data that casts a negative light on the Chinese government. A Ministry of Health official concedes that “the actual number of cases is ten times higher” than those just quoted.³³⁷

³³⁰ Tim Pringle and Stephen Frost, Occupational Health and Safety in China, *supra* note 311, at pp. 311-12.

³³¹ Boy Luthjie, “Why China Matters in Global Electronics,” *International Journal of Occupational and Environmental Health* vol. 9, no. 4 (October/December 2003).

³³² Janice E. Camp, et al., “Development of a Cancer Research Study in the Shanghai Textile Industry,” *International Journal of Occupational and Environmental Health* vol. 9, no. 4 (October/December 2003).

³³³ *Id.* at p. 351.

³³⁴ *Id.* at p. 355.

³³⁵ Garrett Brown, China’s Factory Floors: An Industrial Hygienist’s View, *supra* note 212.

³³⁶ Report of the State Administration of Work Safety, reported in *China Daily* (February 17, 2006). This is a large increase over the number of cases officially cited in 2002. Chan Ka Wai, “Health and Safety Problems in Foreign-funded Enterprises,” Testimony Before the Congressional-Executive Commission on China (November 7, 2002).

³³⁷ *China Labor Bulletin*, The Silicosis Epidemic among Guangdong Jewelry Workers, *supra* note 305.

Acute industrial poisoning as a result of chemical exposures is widespread, including “severe benzene poisoning in China’s shoe-making industry, resulting in widespread aplastic anemia, leukemia, and related health problems.”³³⁸ Monitoring of chemical exposures and effective ventilation are rare. One survey of county enterprises found that 40 percent of workers experienced exposures exceeding ten times the Chinese government’s regulatory limits.³³⁹

E. Failure to Provide Standards Against Child Labor

There are as many as ten to twenty million child workers in China – from one-eighth to one-quarter the number of factory workers. The problem of child labor has increased in recent years, including in the two years since President Bush rejected the AFL-CIO’s first petition.³⁴⁰ The rural family structure has been increasingly disrupted by high and increasing rates of landlessness and out-migration by young parents who themselves go to work in factories. At the same time, more and more rural families are unable to afford rising school fees; they instead send their children into factories. In a 2005 Report, a respected corporate social auditor concludes that there is increasing evidence of schoolchildren being hired out to local factories, and even bussed long distances, to earn income for schools and teachers.³⁴¹ In some instances, teachers act as labor brokers for factory owners.

And, as adults increasingly bridle at working under the abusive conditions in China’s export sector, enterprises have turned to more pliable children to fill the gap without raising wages, reducing hours, or improving workplace health and safety.

The ILO Minimum Age Convention of 1973 (no. 138) mandates that the minimum working age “shall not be less than the age of completion of compulsory schooling.” The ILO Worst Forms of Child Labor Convention of 1999 (no. 182) requires countries to ban child labor that is harmful to “the health, safety, or morals of children.”

³³⁸ Garrett Brown, *China’s Factory Floor: An Industrial Hygienist’s View*, *supra* note 212, at p. 334.

³³⁹ *Id.* at p. 334.

³⁴⁰ “Most commentators see [the number of child workers] as having increased in the last two years.” CSR-Asia Weekly (November 9, 2005); China Labor Bulletin, “As China’s Economy Grows, So Does China’s Labor Problem” (June 10, 2005).

³⁴¹ CSR-Asia Weekly (November 9, 2005).

China has ratified both Conventions. Schooling in China is compulsory through the age of sixteen.

China's minimum working age standard is very widely violated, and the Chinese government does little to enforce the standard. As the U.S. State Department stated in its 2005 Report on China, "The government continued to maintain that the country did not have a widespread child labor problem."³⁴² Once again, the problem is aggravated by local officials' competition for investment: "Local governments, in a headlong rush to woo manufacturers into their districts are often reticent to enforce regulations against child labor."³⁴³

Most enterprises do not check workers' age; and, for those that do, there is a thriving business in false IDs. Many enterprises actively seek out child workers, especially in sectors such as toy production, textiles, and light mechanical work. Managers in these sectors – and local government officials, who turn a blind eye -- commonly say that "child labor is particularly in demand because children have smaller hands and eyesight undamaged by years of labor, making them more desirable than adults for certain kinds of work."³⁴⁴ The problem is especially rife – and unpoliced – in local cottage industries and small- and medium-size enterprises in rural towns, and in cities outside the large conglomerations of the main export zones. These smaller enterprises often serve as subcontractors for exporting supply chains – and often escape whatever weak monitoring systems overseas buyers put in place.

But the problem is also severe in the main exporting zones as well. "For years, teenagers and even pre-adolescents from poorer regions of China have been drawn to the rapidly developing southern and coastal areas looking for work. For this army of juvenile laborers, employment is readily available in the workshops and factories that are at the heart of China's economic boom."³⁴⁵ Since a large part of the factory workforce is comprised of young women and men in their late teens and early twenties, it is no surprise that manufacturing enterprises readily hire fourteen and fifteen year olds, and

³⁴² U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

³⁴³ CSR-Asia Weekly (November 9, 2005).

³⁴⁴ China Labor Bulletin, "As China's Economy Grows, So Does China's Labor Problem" (June 10, 2005).

³⁴⁵ Id.; CSR-Asia Weekly (November 9, 2005).

even younger workers – especially at a time when managers complain of a labor shortage and when older workers increasingly protest inhuman working conditions.

There can be little doubt that China's persistent failure to enforce its own child labor standards reduces unit labor costs in China's export industries. Reports on child labor consistently show that the average wages of child workers are twenty to forty percent of those of adult factory workers, if not lower.³⁴⁶

F. Failure to Enforce Rights Against Forced Labor in the Penal System

Forced labor is pervasive in China's vast penal system. It is critical to emphasize that China's *forced labor* differs qualitatively from typical *prison labor* in other countries, however great the abuses in typical prison labor may be. The Chinese government oversees a system of forced labor, not prison labor. The Chinese government's compulsory labor is enforced by violence, torture, deprivation of food and sleep, and other physical coercion.³⁴⁷

It's very common to see inmates spitting blood and fainting from exhaustion in the workshops....Prisoners who fail to meet quotas or otherwise upset the authorities are handcuffed ...to high railings in the workshops, their feet barely touching the ground. 'We'd be working, and these people would be just hanging there next to us,' said one inmate. 'It was like a warning.' Another inmate said guards force prisoners to prop up heavy doors for days at a time, or torture them by binding their hands tightly with ropes. Guards also put troublesome inmates in six-foot-square solitary confinement cells infested with mosquitoes in the summer.³⁴⁸

The labor is typically unpaid. The forced laborers are chosen for incarceration by security police and other government officials, without due process and, in literally millions of cases, without any trial or hearing whatsoever. Once imprisoned, forced laborers have no meaningful recourse to judicial or other review of cruel and inhuman

³⁴⁶ Id.; China Labor Bulletin, "As China's Economy Grows, So Does China's Labor Problem," *supra* note 344; Ching-Ching Ni, "China's Use of Child Labor Emerges from the Shadows," *Los Angeles Times* (May 13, 2005).

³⁴⁷ Continuing widespread torture and violence against prisoners, including murder, have been recently reconfirmed by the UN Special Rapporteur on Torture and the U.S. State Department. See Torture and Other Cruel, Inhuman or Degrading Treatment, Report of the Special Rapporteur on the Question of Torture, Manfred Nowak (December 23, 2005); U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Report on Human Rights 2005: China (March 8, 2006).

³⁴⁸ Philip Pan, "China's Prison Laborers Pay Price for Market Reforms," *Washington Post* (June 14, 2002).

conditions. The system is readily used as a tool to suppress the exercise of civil rights by political dissidents, including advocates of labor rights.

These features of China's forced prison labor flagrantly violate international standards regulating prison labor.³⁴⁹ For this reason, in 2005 the U.N. Committee on Economic and Social Rights directed the Chinese government to "abolish the use of forced labor as a corrective measure."³⁵⁰ In a bipartisan resolution passed on December 16, 2005, the House of Representatives concluded that China's forced labor violates ILO conventions and many other international instruments.³⁵¹

The precise number of forced prison laborers is unknown. Estimates range from 1.75 million to 6 million and higher.³⁵² China's Ministry of Justice officially reports over 1.5 million in the 700 prisons that are part of the formal criminal justice system. But China also has from 250,000 to 5 million prisoners in "administrative detention centers" or "reeducation through labor (RTL) camps." The number of centers is estimated at anywhere between 300 and 1,100 RTL centers. These centers hold prisoners who were not criminally tried and convicted but were instead detained for periods up to four years by police or other government officials with no court or other proceedings.³⁵³

Until 1994, China's penal system was officially termed "laogai" or "reform through labor." Because "laogai" became synonymous with severe human rights violations, the government changed the name to "jianyu," which connotes simply "prison."³⁵⁴ Administrative detention centers retain the name "laojiao" or "reeducation through labor."

³⁴⁹ ILO Convention on Forced Labor no. 29 (1930); Universal Declaration on Human Rights; International Covenant on Economic, Social, and Cultural Rights.

³⁵⁰ Philip Pan, "China's Prison Laborers Pay Price for Market Reforms," *supra* note 348.

³⁵¹ H. Con. Res. 294 (December 15, 2005). The resolution passed on a bipartisan vote of 413 to 1.

³⁵² Evan Osborne, "Some Economics of Chinese Prison Labor," Wright State University and Osaka University Institute of Social and Economic Research (undated); Philip Pan, "China's Prison Laborers Pay Price for Market Reforms," *supra* note 348.

³⁵³ Officials can impose an initial term of three years, and automatically extend it by one additional year

³⁵⁴ At the time, the government made clear that the change was only semantic: "Our renaming of the Laogai is what our associating with the international community calls for, and it is favorable in our international human rights struggle. Henceforth, the word 'Laogai' will no longer exist, but the function, character, and tasks of our prison administration will remain unchanged." Quoted in Harry Wu, Testimony Before the Congressional-Executive Commission on China, Roundtable on Forced Labor in China (June 22, 2005).

The policy of forced labor applies to both prisons (“jianyu”) and reeducation through labor centers (“laojiao”).³⁵⁵ The two official goals of incarceration have long been “to generate wealth for the state” and to reform prisoners through hard labor and indoctrination. China’s prisons therefore contain their own factories, farms, and mines. Forced laborers who do not work for the prison’s own commercial facility may work instead for state or private manufacturing enterprises in the vicinity of the factory.³⁵⁶

Independent researchers, the Congressional-Executive Commission on China, and the U.S. House of Representatives confirm that goods produced in China by forced labor continued to be exported to the United States in 2005.³⁵⁷ In its 2005 resolution condemning China’s forced labor, the House of Representatives made the following findings of fact:

[P]risoners are forced to work long hours in appalling conditions, including mining asbestos and other toxic chemicals with no protective clothing, tanning hides while standing naked in vats filled with chemicals used for softening animal skins, and working in mining facilities where explosions and other accidents are common occurrence....[G]oods produced by forced labor in the Laogai system continue to be exported to the United States and the world....[T]he Chinese Government has continuously encouraged the export of goods produced through the Laogai prison system and relies on forced labor as an integral part of its economy.³⁵⁸

Harry Wu, a former forced laborer and now Executive Director of the Laogai Research Foundation, recently concluded that “the Laogai has benefited tremendously from the opening of China to international commerce. International trade provides the camps access to hard currency as they export their products – everything from socks to diesel engines, raw cotton to processed graphite. By trafficking its forced labor products in the international marketplace, the Laogai system has grown bigger and stronger.”³⁵⁹ At the same time, under the cost pressures of increased market competition, the working conditions for forced laborers have worsened.³⁶⁰

³⁵⁵ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices 2005: China (March 8, 2006).

³⁵⁶ *Id.*

³⁵⁷ Congressional-Executive Commission on China, Roundtable on Forced Labor (June 22, 2005).

³⁵⁸ H. Con. Res. 294 (December 15, 2005).

³⁵⁹ Harry Wu, Executive Director, Laogai Research Foundation, Testimony Before the Congressional-Executive Commission on China (June 22, 2005).

³⁶⁰ Philip Pan, “China’s Prison Laborers Pay Price for Market Reforms,” *supra* note 348.

Laogai prisoners are often forced to work extremely long hours, deprived of sleep and forced to take on a highly intensive workload. For instance,...prisoners at the Beijing Xin'an Female Labor Camp near Beijing were forced to work from 5 a.m. until 2 or 3 a.m. the next day to make toy rabbits....Reports of torture are common and include beatings with fists and cattle prods, exposure to extreme cold and extreme heat, sleep deprivation, shackling and starvation.³⁶¹

The prison facilities often have two names: a prison name and a commercial enterprise name. The products of forced labor are marketed for export under the commercial name.

VII. Background to the Burden on U.S. Commerce

Section VIII below calculates the burden on U.S. commerce due to the Chinese government's persistent violation of labor rights. This Section presents background information. Subsection A provides background on recent employment trends in the United States. Subsection B presents background on the supply shock caused by the Chinese government's export drive.

A. Unprecedented Job Loss in U.S. Manufacturing

China's exports to the United States grew by more than 534 percent in the decade from 1996 through 2005, and the U.S. trade deficit with China grew 596 percent – to the largest bilateral deficit in world history.³⁶² The growth of the trade deficit with China was responsible for the *entire increase* in the United States non-oil trade deficit in 2005.³⁶³ In January, 2006, the overall U.S. trade deficit in goods reached a record monthly level of \$73.4 billion, an increase of 4.6 percent in one month.³⁶⁴ The rate of growth of the bilateral deficit with China, which increased 9.9 percent in a single month, is currently *accelerating*.³⁶⁵

³⁶¹ Harry Wu, Executive Director, Laogai Research Foundation, Testimony Before the Congressional-Executive Commission on China (June 22, 2005).

³⁶² U.S. Department of Commerce, National Trade Data.

³⁶³ Economic Policy Institute, Trade Picture (February 10, 2006).

³⁶⁴ U.S. Department of Commerce, U.S. International Trade in Goods and Services (January 2006).

³⁶⁵ *Id.*

Since January 2001, the U.S. manufacturing sector has lost 2,892,000 jobs.³⁶⁶ A recent study published by the Federal Reserve Bank of New York found that approximately 3.8 million jobs were displaced by U.S. trade in manufactured goods as of 2003.³⁶⁷

This is not a cyclical phenomenon explained by the economy-wide recession that ended in November 2001. Even during the economic “recovery” of the last four years, 1,615,000 manufacturing workers lost their jobs.³⁶⁸ The ordeal of U.S. manufacturing workers continues amidst the most expansionary fiscal policies in memory. In the last two years -- since the President rejected the AFL-CIO’s first petition -- the real hourly and weekly wages of U.S. manufacturing workers have *fallen* 3 percent and 2.2 percent respectively.³⁶⁹ In 2005, the U.S. merchandise deficit rose 18 percent to \$782 billion; an additional 81,000 manufacturing jobs were lost in the U.S.; and real hourly and weekly wages fell another 1.8 percent and 1.3 percent – four years into the “recovery.”³⁷⁰

These numbers, as stunning as they are, represent only *net* decreases in manufacturing employment. They do not include the workers who have been discharged in the manufacturing sector and suffered the high costs of unemployment and transition to new manufacturing jobs. Workers can be discharged in small numbers or in “mass layoffs” of 50 or more employees. In the last four years – *after* the last recession -- there have been 69,400 *reported* mass layoffs with initial claimants totaling 7,338,870 workers.³⁷¹ The total of reported and unreported layoffs is much higher still.

³⁶⁶ Bureau of Labor Statistics, Employment, Hours, and Earnings from the Current Employment Statistics Survey (National).

³⁶⁷ Erica Groshen, Bart Hobjin, and Margaret McConnell, 11 Federal Reserve Bank of New York: Current Issues in Economics and Finance 5 (August 2005). The authors present these figures, but then state the startling opinion that the loss of 3.8 million jobs in manufacturing is not worrisome because, according to their analysis, international trade created 1.2 million jobs in services. Even on the heroic assumption that every one of these service jobs was filled by a trade-displaced manufacturing worker, this leaves a net trade displacement of 2.6 manufacturing workers. Nor does the Federal Reserve study’s sunny opinion take account of the loss of wages for manufacturing workers who move to lower-paying service jobs. In any event, as discussed below, the empirical inquiry mandated by section 301 is whether the abuses in China’s manufacturing sector displace jobs and wages in the U.S. Under section 301, it is irrelevant whether trade creates jobs in the service sector. Hence, the Federal Reserve’s finding that trade displaced 3.8 million manufacturing jobs as of 2003 is the relevant datum.

³⁶⁸ Bureau of Labor Statistics, Employment, Hours, and Earnings from the Current Employment Statistics Survey (National).

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ Bureau of Labor Statistics, “Mass Layoff Events, January 2004 - January 2006,” Table I.

The data on job loss by manufacturing sector are also staggering. Employment in textile mills fell from 480,400 to 209,500 between 1994 and 2006.³⁷² Jobs in apparel fell from 853,800 to 252,400 during the same period. In the textile and apparel sectors overall, employment fell by 65.4 percent, with a total job loss of 872,300 during the eleven years since December, 1994.³⁷³

In the last five years alone (through December 2005), employment in the computer and electronic products sector has dropped by 543,900 workers or 29.2 percent; employment in semiconductor and electronic components has fallen by 260,100 or 36.7 percent; electrical equipment and appliances has fallen by 152,500 or 26 percent; in vehicle parts 153,400 or 18.6 percent; in machinery 289,400 or 19.9 percent; in fabricated metal products 235,200 or 13.3 percent; in primary metals 144,800 or 23.5 percent; in transportation equipment 246,300 or 12.1 percent; in furniture products 58,500 or 13.4 percent; in textile mills 158,500 or 43.1 percent; in apparel 220,000 or 46.6 percent; in leather products 24,700 or 38.3 percent; in printing 159,300 or 19.9 percent; in paper products 122,600 or 20.4 percent; in plastics and rubber products 141,400 or 15 percent, in chemicals 94,900 or 9.7 percent; in aerospace 46,900 or 9.1 percent.³⁷⁴

The President's 2004 Annual Economic Report showcased six high-wage manufacturing sectors in which employment grew from 1950 to 2000.³⁷⁵ Tellingly perhaps, in the two years since the President rejected the AFL-CIO's first petition, the President has withdrawn that data from his Annual Reports. He does not report that all six showcase sectors have seen unprecedented free-fall in employment in the five years since he took office, as shown in Chart 1. And, as the next Subsection shows, these are all industries in which the growth of Chinese production and exports to the United States have accelerated, and in which China's superheated capital spending will deliver a still greater supply shock in the next three years.

Employment data for specific manufacturing occupations are available only through November, 2004, and therefore do not reflect the continued hemorrhaging of

³⁷² Bureau of Labor Statistics and MGB Information Services.

³⁷³ *Id.*

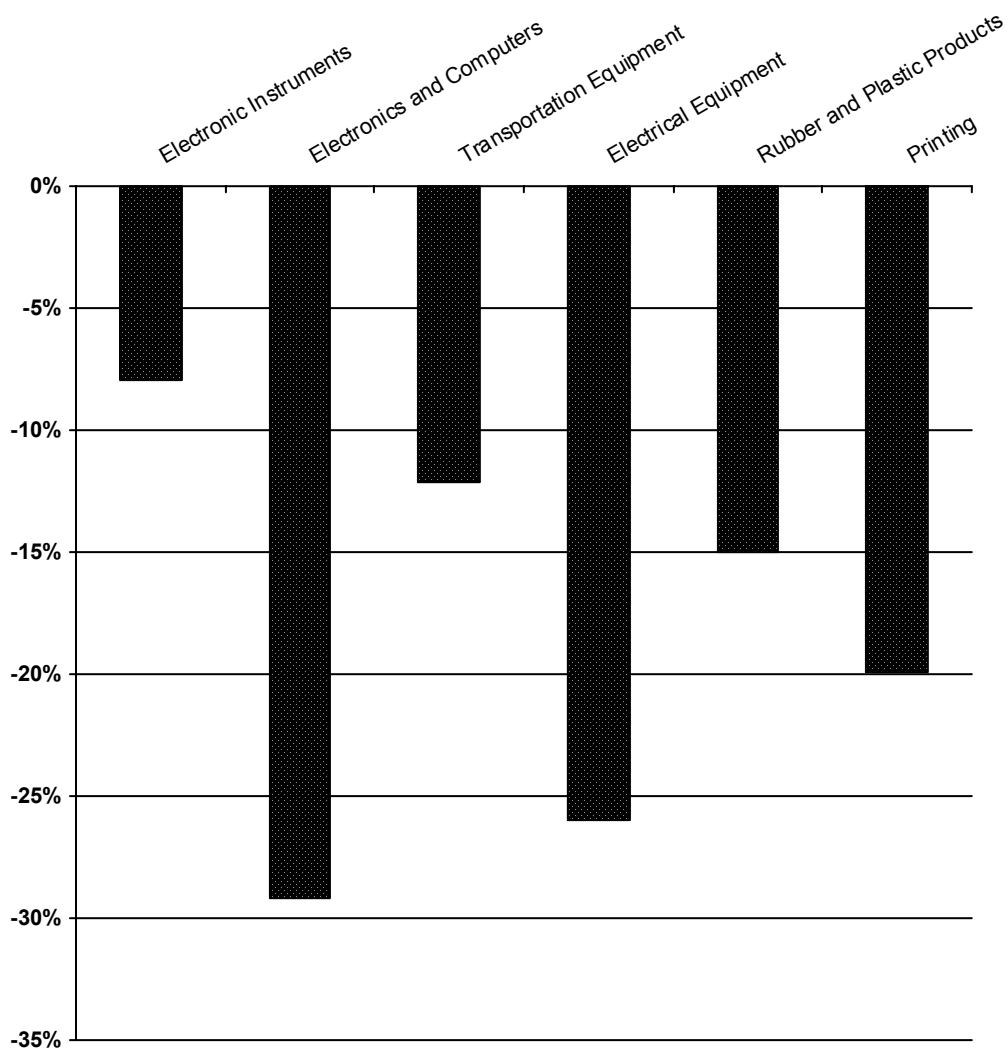
³⁷⁴ Bureau of Labor Statistics, Employment, Hours, and Earnings from the Current Employment Statistics Survey (National).

³⁷⁵ Economic Report of the President 2004, transmitted to the Congress February 2004, H. Doc. 108-145, Table 2-1, at p. 70. The President's Report appears to aggregate these six sectors into four categories.

manufacturing jobs across many sectors through 2005. The data through November 2004 are grim enough. In just five years – from fourth-quarter 1999 to November 2004, *three*

Chart 1. High-wage Industries Showcased in the President's Economic Report: The Employment Record Dec. 2000 – Dec. 2005

President Bush's 2004 Economic Report identified six U.S. manufacturing sectors as exemplars of job creation. His Report provided data on employment in these sectors from 1950 to 2000. This chart provides the record in the last five years. **Source: Bureau of Labor Statistics**



full years into the economic recovery – the number of electronics assemblers in the U.S. fell from 457,260 to 260,060.³⁷⁶ The number of textile machine operators dropped from 247,120 to 140,320, and the number of sewing machine operators fell from 403,770 to 244,300. Employment of machinists fell from 419,800 to 364,130; engine assemblers fell from 85,570 to 49,000; computer-controlled machine tool operators from 168,170 to 130,600; tool and die makers from 132,350 to 99,420; welders from 478,720 to 396,380; cutting and press machine operators from 353,300 to 257,500; machine tool setters, operators and tenders in metal and plastics from 322,830 to 172,780; shoe and leather workers from 17,060 to 12,550; woodworking machine operators and furniture finishers from 141,690 to 116,610; inspectors, testers, sorters, samplers, and weighers from 577,650 to 505,100; general assemblers from 1,302,820 to 1,237,700; production helpers from 584,060 to 504,440; and production supervisors from 760,050 to 685,510.

B. Escalating “Supply Shock” in China’s Manufacturing Sector

While U.S. manufacturing workers have faced catastrophic losses, China’s manufacturing output, exports, and productive capacity have grown at unprecedented, accelerating rates – and are poised to grow even more explosively in the next ten years. According to the vice chairman of the U.S.-China Economic and Security Review Commission, we are witnessing “the actual transfer of U.S. national manufacturing capacity [to China] and the export back of the goods.”³⁷⁷ In light of China’s currently escalating capital spending, the transfer of U.S. manufacturing capacity to China will accelerate in the next decade. The President should act now to prevent the imminent, irreversible loss of U.S. jobs and wages due to the complicity of multinational corporations and the Chinese government in the illegitimate exploitation of China’s factory workers. Both the illegitimate exploitation of Chinese workers and the resulting loss of jobs and wages in the United States have continued in the two years since the President denied the AFL-CIO’s petition, in the absence of effective remedies for the violation of those workers’ fundamental rights.

³⁷⁶ The data in this paragraph are from the Bureau of Labor Statistics, National Employment and Wage Data from the Occupational Employment Statistics Survey by Occupation, 1999 and 2004.

Although official statistics show that China became the fourth largest economy in 2005, more realistic data would already put China ahead of Germany and behind only the United States and Japan.³⁷⁸ The Chinese government has reported annual growth rates of approximately 10 percent per year over the last quarter century, but economists believe that actual growth in 2005 was as high as 15 percent.³⁷⁹

Even though China is still in a relatively early stage of industrialization, it is already the second leading exporter to the United States, surpassed only by Canada. China's exports to the United States now exceed the exports of such industrial powerhouses as Japan, Germany, and the United Kingdom, and, at current growth rates, will surpass even Canada's in two years.³⁸⁰ China's exports to the United States also exceed those of Mexico, the low-wage export platform immediately across our border.

Unlike Mexico and other emerging export platforms, China has made "the crucial leap" to producing not just electronic and other consumer goods for global and domestic markets, but also manufacturing the components for those goods, including the fabrication of computer chips.³⁸¹ Guangdong Province encompasses the largest such production base for electronics in the world.³⁸²

China now leads the world in the production of televisions, refrigerators, cameras, bicycles, motorbikes, desktop computers, computer cables and other components, microwave ovens, DVD players, cell phones, cigarette lighters, cotton textiles, and countless other manufactured products – and China's lead is growing at an *accelerating* pace.

³⁷⁷ Richard D'Amato, Vice Chairman, U.S.-China Economic and Security Review Commission, quoted in Rudolph Bell, "The Challenge of China," Greenville News (January 11, 2004).

³⁷⁸ Keith Bradsher, "China Reports Another Year of Strong (or Even Better) Growth," New York Times (January 26, 2006).

³⁷⁹ The government has under-reported growth in recent years to reduce political pressure from industrialized countries to revalue China's currency and to remedy other unfair trade practices, including those set out in this petition. Keith Bradsher, "China Reports Another Year of Strong (or Even Better) Growth," New York Times (January 26, 2006).

³⁸⁰ Economic Policy Institute, Trade Picture (February 10, 2006).

³⁸¹ Dara O'Rourke and Garrett Brown, "The Race to China and Implications for Global Labor Standards," International Journal of Occupational and Environmental Health vol. 9, no. 4 (October/December 2003) at p. 299.

³⁸² Boy Luthjie, Why China Matters in Global Electronics, *supra* note 331, at p. 345.

In 2005, China's production of computers grew by 42.8 percent.³⁸³ Its production of mobile communication equipment grew by 108.2 percent; of motor vehicles by 33 percent; of semiconductors by 36.6 percent; photocopiers by 38.4 percent; fax machines by 33.8 percent; chemical fiber by 33.9 percent; electrical instruments by 27.7 percent; television sets by 22.8 percent; aluminum by 44.2 percent; steel products by 17.4 percent.

In the year 2005 alone, China's *total* exports grew by 28.4 percent.³⁸⁴ China's production and export of *manufactured* goods have similarly grown at unprecedented rates in recent years. Over the *decade* of the 1990s, China's manufacturing production grew by 422.65 percent and its manufacturing exports grew by 384.2 percent.³⁸⁵ In the last five years, China's manufacturing production grew another 91.3 percent.³⁸⁶

Since the late 1990s, despite the global recession, China's *annual* rates of growth in manufacturing output and manufacturing exports have *accelerated* from levels that were already astonishingly high. In 1999, China's manufacturing output grew by 11.58 percent and manufactured exports grew by 7.2 percent.³⁸⁷ In 2005, China's manufacturing output grew by 16.4 percent and exports of "new and high technology products" grew by 31.8 percent.³⁸⁸

China's merchandise exports *to the United States* grew by more than 534 percent in the decade from 1996 through 2005, and the U.S. trade deficit with China grew 596 percent.³⁸⁹ The annual merchandise deficit of \$201.6 billion with China is the largest bilateral deficit the United States has ever had with any country. Imports of high-tech goods from China account for the United States' entire trade deficit in advanced technology products.³⁹⁰ As already noted, the growth of the trade deficit with China in 2005 was responsible for the entire increase in the United States' non-oil trade deficit;

³⁸³ PRC National Bureau of Statistics, Output of Major Industrial Products (December, 2005)

³⁸⁴ PRC National Bureau of Statistics, Statistical Communiqué on the 2005 National Economic and Social Development (March 3, 2006).

³⁸⁵ China Statistical Yearbook 2001, Table 17-4 at p.587.

³⁸⁶ OECD, Indicators for OECD non-member countries (March 10, 2006); China Statistical Yearbook ch. 14.

³⁸⁷ China Statistical Yearbook 2000, Table 13-4 at p. 409; China Statistical Yearbook 2001, Table 17-4 at p. 587.

³⁸⁸ PRC National Bureau of Statistics, Statistical Communiqué on the 2005 National Economic and Social Development (March 3, 2006); PRC National Development and Reform Commission, Report to the Fourth Session of the Tenth National People's Congress: China's Economic and Social Development Plan (March 5, 2006).

³⁸⁹ U.S. Department of Commerce, National Trade Data.

and the growth of the U.S.-China bilateral trade deficit in goods is currently *accelerating*.³⁹¹ The rate of growth was 9.9 percent in the single month of January, 2006,³⁹² and the trade surplus in March, 2006, was the highest monthly surplus on record, with the exception of October, 2005. The ratio of the U.S.-China trade deficit relative to the U.S. trade deficit with the rest of the world has risen from 22.4 percent in 1994 to 26.3 percent in 2005.³⁹³

In the decade from 1995 through 2005, U.S. merchandise imports from China exceeded U.S. merchandise exports to China by a cumulative total of more than one trillion dollars.³⁹⁴ In that decade, U.S. imports of electrical machinery and equipment from China exceeded exports in that category by a cumulative total of more than \$208 billion. The cumulative deficit is \$194.7 billion in textiles and apparel; \$136.9 billion in toys and sporting goods; \$ 83.5 billion in furniture and bedding; \$24.1 billion in iron and steel products; \$25.8 billion in plastic products; \$15.6 billion in vehicles and parts; \$8.4 billion in wood products; \$16.6 billion in optical equipment; \$10.2 billion in tools and cutlery; \$9.6 billion in ceramics; \$6 billion in rubber products; \$5.6 billion in chemicals; \$4.4 billion in glassware. Last year alone, knitted apparel exports from China to the United States grew by 60.3 percent; non-knit apparel by 54.6 percent; wool fabric and yarn by 162.1 percent; synthetic fibers and fabrics by 130.8 percent; knitted fabrics by 134.6 percent; aluminum products by 67.6 percent; pharmaceuticals by 96.8 percent; rubber products by 51.2 percent; plastic products by 27.8 percent; iron and steel by 34.3 percent; chemicals by 35.7 percent; electronic equipment by 23.8 percent; machinery by 20.2 percent.³⁹⁵

In 2005 China's export of goods to the United States grew much faster – both in percentage terms and in absolute amounts -- than any of the other six leading exporters to the United States. China's export of goods to the United States grew by \$46.76 billion or 23.8 percent – compared to Japan's increase of \$8.5 billion or 6.6 percent; Mexico's increase of only \$14.35 billion or 9.2 percent; the United Kingdom's increase of \$4.66

³⁹⁰ Economic Policy Institute, Trade Picture (February 19, 2006).

³⁹¹ *Id.*

³⁹² U.S. Department of Commerce, U.S. International Trade in Goods and Services (January 2006).

³⁹³ U.S. Department of Commerce, National Trade Data.

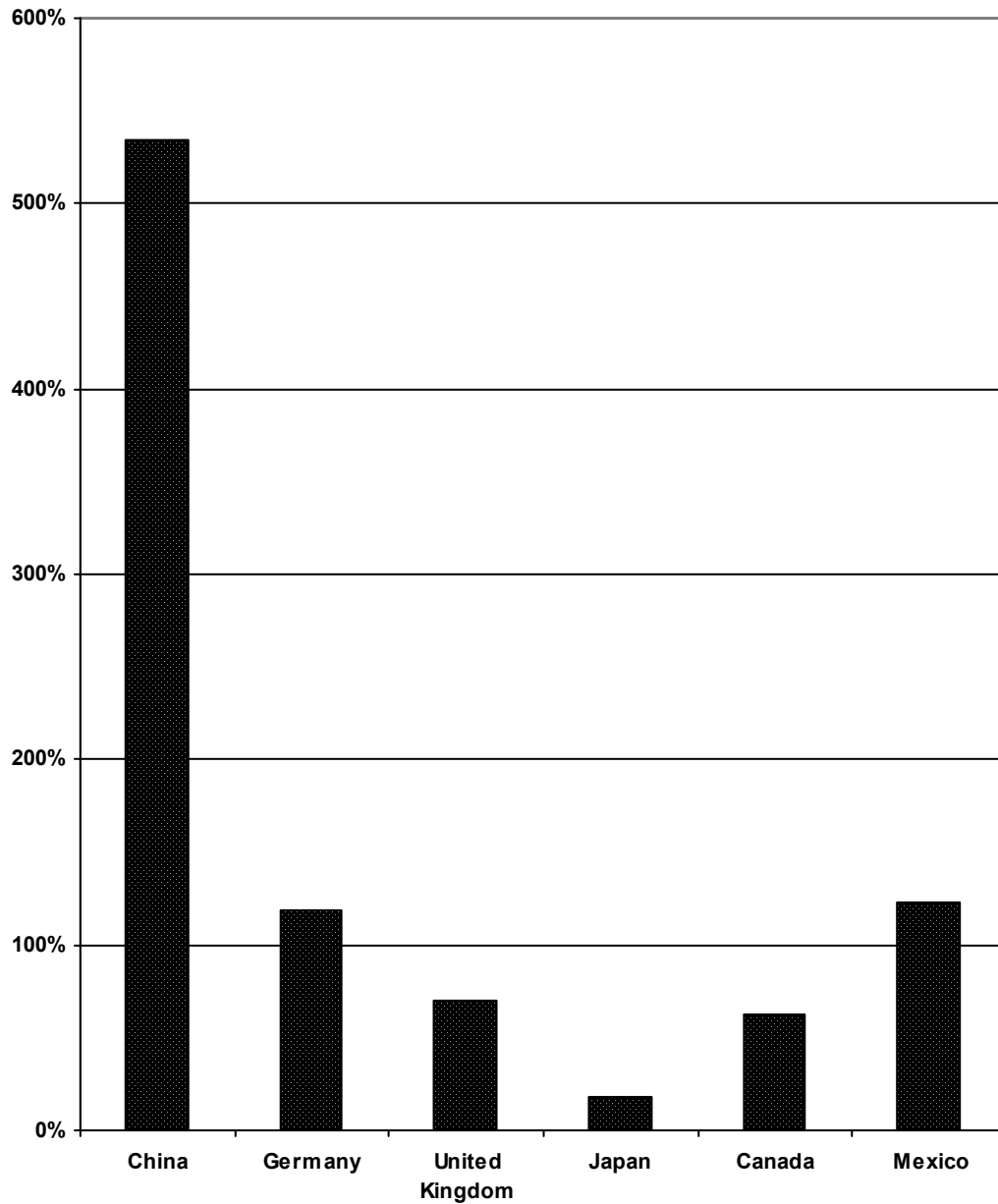
³⁹⁴ MBG Information, at www.uscc.gov.

³⁹⁵ U.S. Department of Commerce, 2005 Merchandise Imports from China.

billion or 8.4 percent; Germany's increase of \$7.58 billion or 9.8 percent; and Canada's increase of \$ 31.94 billion or 12.5 percent.³⁹⁶ Chart 2 shows the comparative record for

**Chart 2. Growth in Manufacturing Exports to the United States
1996 – 2005**

Source: U.S. Department of Commerce



³⁹⁶ Id.

the last decade.

As unprecedented as the upsurge in China's manufactured output and exports has been in recent months and years, the "major supply shock to global industry" from China's recent and ongoing capital spending has not yet been fully registered.³⁹⁷ The figures cited above on actual manufacturing output are just a fraction of China's manufacturing capacity.³⁹⁸

The supply shock to global industry will be felt over the next five to ten years.³⁹⁹ William Ward, a former World Bank economist and current director of the Center for International Trade, concludes that China's creation of excess productive capacity will "dramatically increase the competition that American producers feel, both in the U.S. market and in the global markets."⁴⁰⁰

China's capital expenditure is approximately 38 percent of GDP, nearly double the rate of countries such as India, Brazil, and Mexico.⁴⁰¹ In 2003, the year before the AFL-CIO filed its first petition, China's overall capital spending increased by 26 percent to \$662 billion.⁴⁰² In 2005, new capital spending in manufacturing increased by 38.6 percent – an accelerating pace of growth.⁴⁰³ Last year, capital spending grew by 77.3 percent in metal products; by 80.1 percent in furniture production; by 81.6 in general equipment; by 51.1 percent in transport equipment; by 44.9 percent in electrical machinery; by 47.3 percent in apparel; by 38 percent in textiles; by 42.1 in plastic products; by 33.7 percent in chemical products.

³⁹⁷ Both William Ward, a former World Bank economist and current director of the Center for International Trade, and Dao Tong, Credit Suisse First Boston's chief economist for non-Japan Asia, use the phrase "supply shock." See Rudolph Bell, *The Challenge of China*, supra note 377 (quoting Ward); "Worrying About China," *Business Week Online* (January 19, 2004) (quoting Dao Tong).

³⁹⁸ Compare the output and capacity tables for major manufactured products, Tables 13-23 and 13-34 in the *China Statistical Yearbooks 2000 – 2002*. See also Minqi Li, *Aggregate Demand, Productivity, and 'Disguised Unemployment' in the Chinese Industrial Sector*, supra note 78, at pp. 409-425.

³⁹⁹ Dao Tong, Credit Suisse First Boston's chief economist for non-Japan Asia, concludes that the "major supply shock to global industry" will be felt within two or three years. See *Worrying About China*, *Business Week Online*, supra note 397 quoting Dao Tong).

⁴⁰⁰ William Ward, Center for International Trade, Clemson University, quoted in Rudolph Bell, *The Challenge of China*, supra note 377.

⁴⁰¹ World Bank, *Country Profile Tables*, at www.worldbank.org.

⁴⁰² Figures are for January through November, 2003. See National Bureau of Statistics of China, "Investment in Fixed Assets by Industry" (2003.1-11) at www.stats.gov.cn.

⁴⁰³ National Bureau of Statistics of China, "Investment in Fixed Assets by Industry" (2005.01-12).

Foreign direct investment (FDI) to China increased from \$46.8 billion in 2000 to \$60.3 billion in 2005 -- or \$100 billion including Hong Kong.⁴⁰⁴ This is more than 1500 percent higher than the flows into India, more than 1000 percent higher than flows into Japan, more than 600 percent higher than the FDI inflows to Brazil, and nearly 600 percent higher than the FDI inflows to Mexico. Indeed, China's inflow of FDI is almost as large as the FDI inflows into the United States, the longtime leading destination of global capital.

State-owned banks in China feed the current "frenzy of factory construction" and the blind drive to over-capacity in Chinese manufacturing.⁴⁰⁵ According to credit agencies, Chinese bank lending is driven by corruption and political influence -- most notably, the influence of local government officials seeking to maintain the rent-seeking opportunities afforded by their local "developmentalist" machines.⁴⁰⁶

This decentralized competition for bank lending and capital investment -- driven by local officials' short-term rent-seeking -- produces a classic prisoner's dilemma. According to both economists and business executives, "factories are built with little attention to whether similar plants are being constructed elsewhere, or how low prices will fall if all of them start churning out the same products at the same time."⁴⁰⁷ As recently as March, 2006, Chinese Premiere Wen Jiabao bluntly warned the annual meeting of the national legislature that "[t]he problem of excess production is getting worse...causing greater potential financial risks."⁴⁰⁸

The impending supply shock in global manufacturing is closely connected to the extreme exploitation of labor by corporations and the Chinese government. As explained above, China's extraordinary capital expenditure is fueled by policies that suppress the wages and social benefits of factory workers. First, suppressed labor costs attract new capital, both domestic and foreign, seeking competitive advantage. Second, suppressed labor costs increase the factor share of capital, allowing greater reinvestment by existing

⁴⁰⁴ Data in this paragraph is from UNCTAD, "Table: FDI inflows, by host region and selected host economy, 2003-2005," at www.unctad.org.

⁴⁰⁵ Keith Bradsher, "Is China the Next Bubble?" New York Times (January 18, 2004).

⁴⁰⁶ Mary Gallagher, The Transformation of Labor Relations in China, *supra* note 157.

⁴⁰⁷ Keith Bradsher, Is China the Next Bubble?, *supra* note 405

⁴⁰⁸ Andrew Browne, "China Vows Countryside Help, Wall Street Journal (March 6, 2006); see also Henny Sender, "China Fights Excessive Lending That Fuels Overcapacity, But Is It Enough?" Wall Street Journal (May 1, 2006).

enterprises. Third, the Chinese government's repressive labor policies transfer capital from the countryside to the urban industrial sector.⁴⁰⁹

VIII. The Burden on U.S. Commerce

Section VI of this petition presented detailed information about the Chinese government's persistent denial of internationally recognized workers' rights. In this Section, we calculate the burden on United States labor markets caused by the Chinese government's denial of workers' rights.

A. Introduction

The persistent denial of workers' rights by corporations and the Chinese government gives China-based producers an unfair cost advantage. This *artificial and illegitimate* cost advantage enables firms located in China to out-compete firms located in the United States and elsewhere, whether those firms are producing for U.S., Chinese, or third-country markets. United States workers, workers in other developed and developing countries, and Chinese workers are all injured by the Chinese government's repression of workers' rights.

The most visible consequence is an unprecedented and accelerating shift of manufacturing jobs from the United States to China by U.S. multinational corporations. But United States jobs are also lost when U.S.-based companies lay off workers in the face of new or expanded China-based production by firms other than U.S. multinationals. And United States workers lose further jobs, when U.S.-based companies fail to create new jobs in the face of competition from China-based production.

If not for the repression of workers' rights in China's factories, the extraordinary losses in United States manufacturing jobs and wages would be significantly curtailed. Elementary economic theory teaches that prices and wages are determined on the economic margin. And on the economic margin, labor repression in China's factories is undeniably the proximate cause of substantial job and wage loss. It is a palpable fact that, every month, U.S.-based manufacturers that have competed successfully for years reach a

⁴⁰⁹ See Section V of this petition, above.

tipping point at which they can no longer maintain jobs in the face of the cost advantage of China-based production.⁴¹⁰ The repression of labor standards in China's factories substantially lowers the tipping point and increases the job loss.

Hundreds of thousands of well-paying, middle-class jobs are eliminated, and the communities that depend on those jobs are shattered, as a direct result of the Chinese government's repressive policies. And – as predicted by basic economic theory and confirmed by many empirical studies – the vast majority of displaced United States workers fortunate enough to find alternative work are paid lower wages as a result, in significant part, of competition from production that takes advantage of China's extremely exploited workers.

By the same token, if the Chinese government's labor repression were ended, jobs moving to China to take advantage of *legitimate* comparative advantage would afford Chinese workers better wages, better working conditions, and the fundamental human right of association. Higher wages for Chinese workers would generate greater mass purchasing power in the Chinese domestic market. That purchasing power would benefit both China-based firms producing for the domestic market and U.S.-based firms exporting to China.⁴¹¹ Enforcement of basic rights of association in Chinese civil society would promote a path of development that is more democratic, equitable, and sustainable – compared to the current path of sweated labor, which disproportionately benefits investors, government officials, and urban elites, and generates excess productive capacity that threatens the stability not only of the Chinese economy but of the global economy as well.

The labor-repression cost advantage of China-based production also diverts production and jobs from developing countries that seek the path of higher wages and democratic development. This diversion directly damages economic development in those countries. It also places competitive pressure on their governments to diminish social rights and democratic processes. And, in impairing the purchasing power of workers in those countries, it further harms United States workers who produce for export.

⁴¹⁰ The firm-level instances are legion. Many are compiled in Pilot Study Report, Impact of U.S.-China Relations on Workers, Wages, and Employment, Submitted to the U.S.-China Security Review Commission/U.S. Trade Deficit Review Commission (June 30, 2001).

* * * *

Using four different methodologies, this Section shows that the Chinese government's labor repression accounts for the loss of approximately 973,000 manufacturing jobs and approximately 1,235,000 total jobs in the United States, and perhaps many more – based on conservative assumptions about wage, price, and output effects.

The first methodology aggregates firm-level data on U.S. corporations that move pre-existing U.S. jobs to China. The second methodology aggregates product and sectoral data on jobs displaced by increases in imports from China. The third uses the COMPAS model of the U.S. International Trade Commission to estimate the displacement of U.S. jobs by the cost advantage conferred by the Chinese government's persistent denial of workers' rights. The fourth uses bilateral trade elasticities to estimate the same phenomenon.

Neither the United States government nor any other organization collects comprehensive firm-level data directly showing U.S. job losses caused by overseas violations of workers' rights. Independent experts advising the U.S.-China Economic and Security Review Commission have called on the United States government to require U.S. corporations to disclose such data.⁴¹² Petitioners join in that call. Pursuant to this petition and the powers vested in the President under section 301(b)(2) of the Trade Act, the USTR and the President should require such disclosure.

Nonetheless, existing data and trade models enable us to generate estimates of the burden on United States commerce with a degree of accuracy that is similar to estimates of the burden on commerce in other cases under section 301 and under other provisions of U.S. trade law.

As with all calculations of the impact of unreasonable trade practices, there is a margin of error in estimating the precise quantitative effect of the Chinese government's repression of workers' rights. The margin of error, of course, provides no ground for the USTR to refuse to investigate. Quite the contrary. The House Committee Report on

⁴¹¹ See, e.g., Minqi Li, Aggregate Demand, Productivity, and 'Disguised Unemployment' in the Chinese Industrial Sector, *supra* note 78, at pp. 409-425.

⁴¹² Pilot Study Report, Impact of U.S.-China Relations on Workers, Wages, and Employment, *supra* note 410.

section 301 stated that “[d]etailed information may not be available to petitioners on...domestic actions a foreign country may be taking to afford worker rights. Therefore, a petition may be filed and an investigation initiated based on *alleged* denial of worker rights and/or standards.”⁴¹³ Obviously, if Congress anticipated that investigations would proceed even if petitioners could not precisely specify the violation of workers’ rights, then Congress anticipated that investigations would proceed in the absence of precise estimates of the quantitative impact of those violations.

The *fact* that U.S. jobs are displaced by the suppressed labor costs of China-based manufacturing is not in doubt -- whatever the margin of error in calculating the quantitative impact of the Chinese government’s labor repression. In its 2003 Annual Report, the Congressional-Executive Commission on China concluded:

Amidst rising concern in the United States about the loss of U.S. manufacturing jobs to China, the ability of Chinese employers to avoid the expense of meeting international labor standards has continued to be a factor in China’s competitive advantage.⁴¹⁴

Alan Greenspan, former Chairman of the Federal Reserve Board, stated, “Competition from abroad has risen to a point at which developed countries’ lowest skilled workers are being priced out of the global labor market.”⁴¹⁵

Equally important, the evidence presented in this petition shows that the supply shock from China’s superheated capital spending will be fully felt only in the next three to five years.⁴¹⁶ Whatever the margin of error in estimating the past loss of jobs, inaction by the USTR and the President will guarantee that many more jobs are irreparably displaced by the Chinese government’s violations of workers’ rights in the years ahead.

⁴¹³ H. Rep. No. 100-40, Part I (1987) at p. 68 (emphasis added).

⁴¹⁴ Congressional-Executive Commission on China, 2003 Annual Report, at p. 25.

⁴¹⁵ Bloomberg Press (January 26, 2004).

⁴¹⁶ See Section VII-B of this petition, above.

B. The Empirical Question Presented by this Petition

The House Committee Report on section 301 stated that the “injury” requirement -- the requirement that the unfair practice burden or restrict United States commerce -- “is liberally interpreted and varies from case to case.”⁴¹⁷

The only empirical question raised by this petition is whether there are United States workers who suffer significant losses in employment or wages as a proximate result of the Chinese government’s persistent violation of workers’ rights. It is irrelevant whether U.S. consumers, U.S. corporations, or even other categories of U.S. workers gain from the Chinese government’s violations. Ill-gotten gains cannot counter-balance wrongful losses.

Economists have held lively exchanges about the degree to which international trade explains the recent declines in economic equality, manufacturing employment, and wages in the United States. Economists sometimes ask the question: “Would we be better or worse off, if the U.S. moved to a position of autarchy (that is, if the U.S. eliminated all imports and exports)?”⁴¹⁸ Other economists pose the question: “Would we be better or worse off if we ended the trade deficit, either by raising imports to the current level of exports, or by reducing exports to the current level of imports?” Still others ask “Would we be better or worse off if exports and imports remained at the levels of some specified date in the past?”

These questions are interesting and important, but they are not the questions raised by this petition. Indeed, for purposes of this petition, it is not necessary to inquire whether U.S. trade *with China* causes an increase or decrease in the United States’ *overall* GDP or in some other comprehensive measure of U.S. social welfare. Nor is it necessary to show that *the Chinese government’s persistent violation of workers’ rights*

⁴¹⁷ H. Rep. No. 100-40, Part I (1987) at p. 58 (House Ways and Means Committee report on H.R. 3, which became the 1988 Omnibus Trade and Competitiveness Act). The Report also stated: “For example, lost sales due to foreign import restrictions can be sufficient to demonstrate burden even though the U.S. industry’s general health is good.” This example supports our view that U.S. job losses resulting from China’s suppression of labor rights constitute a burden on U.S. commerce regardless whether U.S. multinationals profit from the suppression, regardless whether output is rising in U.S. manufacturing, and regardless whether U.S. consumers benefit in a narrow economic sense from goods cheapened by such illegitimate labor exploitation.

⁴¹⁸ See, generally, Susan M. Collins, ed., *Imports, Exports, and the American Worker* (1998).

causes an *overall* reduction in U.S. GDP or social welfare.⁴¹⁹ The inquiry into the “burden on commerce” is not an exercise in welfare economics.

By analogy, a U.S. company or a group of U.S. companies that claims it is harmed by a foreign government’s unfair trade practice under section 301 – whether it be the foreign government’s failure to enforce intellectual property rights, the foreign government’s obstruction of imports from the U.S., the foreign government’s subsidizing of exports, or the foreign government’s resort to slavery – need only show that *it* is harmed by that practice. It need not show that the practice causes a decline in overall GDP or consumer welfare or that ending the practice would increase GDP or consumer welfare. Indeed, when U.S. entertainment companies seek to protect intellectual property rights, they are seeking to raise prices of their products for foreign and U.S. consumers, rather than allow U.S. consumers to buy less expensive knock-offs of their product. Similarly, when U.S. businesses seek to end foreign subsidies to a competitor, they seek to increase the price of the product that U.S. consumers must pay. *The loss to consumers is not weighed against the gain to the petitioning business.*

Enforcing labor rights overseas may indeed cause increases in consumer prices in the United States – just as enforcing intellectual property rights or ending unfair foreign subsidies may raise consumer prices. But under section 301, U.S. consumers have no entitlement to buy goods that are cheapened because made under severely exploitative conditions – particularly when the ostensible benefit to consumers comes at the cost of the shattered working lives and communities of fellow citizens, as well as working conditions in China’s factories that could be much better than they are. In any event, the vast majority of U.S. consumers do not want to buy such goods and reap such foul “benefit.”⁴²⁰ Economists may attribute to consumers the narrow-minded “preference” of

⁴¹⁹ In fact, there is substantial economic literature showing that enforcement of workers’ rights in China would more likely than not increase overall economic growth and social welfare in both China and the U.S. Stated conversely, China’s persistent failure to enforce workers’ rights diminishes overall economic wellbeing for both China and the U.S., and therefore burdens or restricts commerce. See sources cited in notes 37 and 78, *supra*.

⁴²⁰ A survey published in 2003 by the National Bureau of Economic Research concludes that 81 percent of consumers are “willing to pay more for an item if assured it was made under good working conditions” and would pay 28 percent more for a ten dollar item and 15 percent more for a \$100 item. Kimberly Ann Elliot and Richard Freeman, “White Hats or Don Quixotes: Human Rights Vigilantes in the Global Economy,” in Richard Freeman, et al., eds., *Emerging Labor Market Institutions for the 21st Century* (Univ. of Chicago for NBER 2003).

minimizing the prices they pay for goods. But U.S. consumers themselves feel that their actual preferences are maximized by buying goods made under decent working conditions, even if they pay a higher price.⁴²¹

Nor should the USTR counterbalance the loss to U.S. workers by any gain in profit or sales that may accrue to U.S. corporations from production in China. As we have shown in Section IV above, Congress intended to *prevent* United States corporations from moving jobs offshore to take advantage of foreign countries' violations of workers' rights. It would flout Congressional intent if the USTR were to count the ill-gotten sales or profits from such production as a "benefit" to U.S. commerce that offsets the burden on U.S. workers. The profits of wrongdoing do not count against the injuries caused by wrongdoing.

The only empirical question raised by this petition, therefore, is *whether there are U.S. workers who suffer losses in employment or wages as a result of China's persistent violation of workers' rights*.

C. Preliminary Analytic Distinctions

For purposes of analyzing the available data, five analytic distinctions should be kept in mind. These five distinctions are orthogonal to each other. That is, each distinction cross-cuts the other four.

⁴²¹ It is true, of course, that consumers actually buy goods that are cheapened by reason of labor-rights repression, even though consumers overwhelmingly say that they prefer not to buy such goods. This petition, after all, might not be necessary if consumers acted on their stated preferences. There are at least three reasons, however, why consumers are unable to act on their stated preferences. First, consumers lack information about the working conditions in the factories that produce the goods offered for sale in the United States. Second, it is difficult to find consumer goods that are not made in countries with poor labor-rights records, precisely because of the race to the bottom. All producing countries feel strong pressure to lower labor standards in their competition for mobile capital – including their competition with China, a country that comprehensively denies labor rights. Third, individual consumers know that their *individual* decision not to buy goods from a particular company will have no impact on working conditions. Their buying decision will only have an impact if it is coordinated with the buying decisions of millions of other consumers. There is presently no such coordinating body – other than Congress, that is. In enacting Section 301(d), Congress assigned the USTR the task of implementing the preferences of U.S. citizens, by using the *collective* buying power of U.S. consumers as a lever to achieve human rights for workers in producing countries.

Distinction I. The popular image of U.S. multinationals moving work to China to produce goods for export back to the U.S. is, in fact, only one of the ways in which U.S. workers are burdened by the illegitimate cost advantage of China-based production.

The relevant overall question is, instead, *whether U.S.-based production is displaced by China-based production regardless of the global destination of the product* – regardless, that is, whether the production is for sale in China’s domestic market, the U.S. domestic market, or third-country markets.

Hence, China-based production may displace (1) U.S. workers who would otherwise produce for the U.S. domestic market, (2) U.S. workers who would otherwise produce for export to the Chinese market, or (3) U.S. workers who would otherwise produce for export to third-country markets. For purposes of exposition, the discussion below refers to these three categories as I(1), I(2), and I(3), respectively.

In the case of I(1), the job loss in the U.S. will coincide with increased imports from China to the U.S., but no change in U.S. exports to China or to third-country markets. In the case of I(2), the job loss in the U.S. will coincide with decreased exports from the U.S. to China, but not increased imports from China to the U.S. In the case of I(3), the job loss in the U.S. will coincide with no change in bilateral trade between the U.S. and China, but instead with a decrease in U.S. exports to third-country markets and an increase in Chinese exports to third-country markets.

Hence, data showing increased imports from China to the U.S. may capture job displacement through mechanism I(1), but not through mechanisms I(2) or I(3). Data showing decreased exports from the U.S. to China may capture job displacement through mechanism I(2) but not through mechanisms I(1) or I(3). Data showing decreases in U.S. exports to third-country markets attributable to increases in Chinese exports to the same markets may capture job displacement through mechanism I(3) but not through mechanisms I(1) or I(2).

Distinction II. New China-based production that displaces U.S. production may be undertaken not only (1) by U.S. multinationals that open or expand in China, but also (2) by Chinese-owned or third-country-owned enterprises that open or expand facilities in China. In case II(1), of course, U.S. companies layoff U.S. workers or fail to create new jobs in the U.S., and open or expand facilities in China. In case II(2), U.S. companies

layoff U.S. workers or fail to create new U.S. jobs but do not open or expand facilities in China.

Firm-level data on U.S. firms that move existing work from the U.S. to China will only capture job displacement that takes the form of II(1). That data will not capture job displacement that takes the form of II(2).

Distinction III. The third distinction is between (1) China-based production that causes the layoff or discharge of U.S. workers, and (2) China-based production that prevents the creation of new U.S. jobs.

Once again, firm-level data on U.S. firms that move existing work from the U.S. to China will only capture job displacement that takes the form of III(1). That data will not capture job displacement that takes the form of III(2). Similarly, trade data showing a fall in U.S. exports from a baseline of existing U.S. exports to China or to third-country markets (categories I(2) and I(3) above) will capture III(1) but not III(2). Trade data showing an increase in Chinese exports to the U.S. will capture both III(1) and III(2).

Distinction IV. The fourth distinction is between (1) U.S. job displacement caused by the Chinese government's persistent violation of workers' rights, and (2) U.S. job displacement that would have occurred even in the absence of the Chinese government's violations of workers' rights. Gross data on U.S. jobs displaced by China-based production will include both categories IV(1) and IV(2).

Distinction V. The fifth distinction is between (1) jobs that are directly displaced by production in China, and (2) jobs that are displaced by multiplier effects of direct job displacement. Multiplier effects include jobs lost in U.S.-based factories that formerly supplied U.S. plants that closed as a result of the Chinese government's labor repression, jobs lost to businesses that formerly served displaced manufacturing workers, and wage loss to workers who make bargaining concessions under the threat of further job loss. Databases that aggregate reports of plant closings or sectoral employment losses in the U.S. typically capture only V(1). Calculations of implied job losses from bilateral trade deficits also typically capture only V(1).

D. Estimated Job Loss Due to the Chinese Government's Persistent Denial of Workers' Rights

1. Aggregation of Firm-Level Data.

There is only one national database of shifts in production from the United States to China. The database was created in two studies commissioned by the U.S.-China Economic and Security Review Commission ("Commission Studies").⁴²² The Commission Studies were undertaken by economists and labor-relations specialists at Cornell University and the University of Massachusetts. The database is a compendium of firm-level decisions to lay off workers in the United States and move production to China in the seven month period from October 1, 2000 to April 30, 2001 and the three-month period from January 1, 2004 to March 31, 2004. The Commission Studies also undertook a macroeconomic analysis of the U.S.-China trade balance.

The Commission Studies conclude that between 70,000 and 100,000 jobs are moved each year from the United States to China, and that the number of jobs moving to China *accelerated after 2001*. The Studies indicate that job shifts to China caused the loss of 1,160,000 jobs between 1992 and 2006.⁴²³ The 2001 Study found that production shifts ranged across electronics, electrical equipment, chemicals, petroleum products, household goods, toys, textiles, plastics, sporting goods, wood and paper products, and other manufactured goods. The 2004 Study finds that China's manufacturing has become increasingly comprehensive and now also encompasses industrial equipment and machinery, metal fabrication and production, aerospace, and plastic and rubber products.

The Commission Studies find that the majority of production shifts to China are intended to serve not only China's domestic market, but U.S. and third-country markets as well. The Commission database, in other words, appears to include all three categories -- I(1), I(2), and I(3) -- in Distinction I above.

⁴²² Pilot Study Report, Impact of U.S.-China Relations on Workers, Wages, and Employment, *supra* note 410; Kate Bronfenbrenner and Stephanie Luce, "The Changing Nature of Corporate Global Restructuring," submitted to the US-China Economic and Security Review Commission (October 14, 2004).

⁴²³ This total number is obtained by combining the conclusion of the first study -- that 760,000 jobs were displaced between 1992 and 2001 -- with the conclusion of the second study -- that as of the year 2004,

However, the Studies do not reach the full range of firm-level data of interest to this petition.⁴²⁴ The Studies' database is *underinclusive* in three critical respects:

First, the database includes only cases in which a particular U.S. multinational reduces employment in the U.S. and concurrently begins or increases production in China. The database therefore does not include the opening or expansion of Chinese-owned or third-country-owned facilities in China, generating China-based production that displaces U.S. workers without a "shift" of work to China by a U.S. multinational. Nor does the database include cases in which a U.S. multinational begins or expands production in China, causing a reduction in employment by another company based in the U.S. That is, the Commission database includes category II(1) but not category II(2) above.

Second, the database includes only cases in which existing jobs in the U.S. are terminated. It does not include cases in which potential U.S. jobs are not created in the face of actual or threatened competition from China-based production. That is, the Commission database includes category III(1) but not category III(2).⁴²⁵

Third, the database includes only cases of direct job loss, defined by category V(1), not cases of indirect job loss resulting from multiplier effects defined by category V(2).

At the same time, the Commission database is *overinclusive* in one key respect. The database includes all cases of production moving to China. It does not distinguish between shifts in production owing to the Chinese government's persistent violation of workers' rights – category IV(1) – and shifts in production owing to other competitive advantages of China-based production.

100,000 jobs are moved each year to China. The total of 1,160,000 assumes that 100,000 jobs were moved each year from 2002 through 2005.

⁴²⁴ This is in no way intended to criticize the Commission's excellent Studies. The firm-level data aggregated in the Studies are simply not aimed at the particular empirical question raised in this petition, namely, to what degree is U.S.-based production displaced by repression of workers' rights in China-based production? The Studies asked the question: To what degree have U.S. firms shifted existing U.S. production to China? The latter question is important because it focuses particularly on the Chinese economy's impact on U.S. workers and communities that have come to rely on existing jobs. As important as that question is, however, it does not capture the other forms of job displacement discussed in this petition.

⁴²⁵ Although the Commission's firm-level database does not include category III(2), the Commission Studies' macroeconomic analysis may have picked up some of the cases in that category. The macroeconomic analysis assumes that imports from China in excess of U.S. exports displace U.S. production.

The three other methodologies set forth below suggest that the *underinclusiveness* of the Commission database is quantitatively more significant than its *overinclusiveness*. That is, the Commission Studies' conclusion – that the U.S. loses between 70,000 to 100,000 existing jobs per year to China, yielding an aggregate job loss of 1,160,000 – is a conservative estimate of all U.S. jobs displaced by the Chinese government's persistent repression of workers' rights.

2. Aggregation of Product and Sectoral Data

The President's Economic Report of 2004 included a special section defending the trade relationship between the United States and China. The Report was effectively a legal brief on behalf of the economic interests of the Chinese government and the multinational corporations that have made an export platform there. This was an odd exercise. Congress and the Constitution charge the President with defending the interests of the United States – the interests of *all* the citizens of the United States -- not the interests of the global investors who have set up shop in China. In any event, the President's *apologia* for offshore production in China fails. The Economic Report states:

[J]ob losses in U.S. manufacturing have been mainly in industries in which imports from China are small. For example, the computer and electronic equipment industry accounts for 15 percent of all manufacturing job losses since January 2000, but imports from China were only 8 percent of U.S. output in 2002....⁴²⁶

It is unclear why the President (or his economic advisers) considered this analysis compelling. Since January 2001, the U.S. computer and electronics industry has lost 29.2 percent of its workforce, or 543,900 workers, constituting 18.8 percent of the 2,892,000 manufacturing jobs lost in the U.S. During the same period, imports of computers and electronic products from China increased by 327 percent to \$79.72 billion – exceeding 18.5 percent of the value of U.S. production at the start of the period.⁴²⁷ Hence, jobs displaced by imports from China are as many as 63.6 percent (18.5 percentage points out

⁴²⁶ Economic Report of the President, *supra* note 375, at p. 66.

⁴²⁷ U.S. production figures are from the Current Industrial Reports of the U.S. Census Bureau.

of 29.2) of the jobs lost in the computer and electronic products sector alone, or 345,920 jobs.

The President and his advisers may think that the loss of more than 345,000 jobs in a single sector of manufacturing is negligible. The workers affected, and their families and communities, do not.

And, of course, the computer and electronics sector is far from the only one to which the President's methodology could be applied. Since January 2001, the U.S. electrical equipment and appliances industry has lost 152,500 workers or 26 percent of its workforce. During the same period, imports of electrical equipment and appliances from China increased by 101 percent to \$17.34 billion – exceeding 15.1 percent of the value of U.S. production at the start of the period.⁴²⁸ Hence, jobs displaced by imports from China are as many as 58 percent (15.1 percentage points out of 26) of the jobs lost in the electrical equipment and appliances sector alone, or 88,450 jobs.

China's exports of fabricated metal products to the United States increased 170.93 percent in the last five years, while U.S. employment in this sector fell by 235,200 or 13.3 percent. In 2005, China's exports of fabricated metal products grew to \$48 billion or 3.75 percent of U.S. production at the start of the period. Hence Chinese imports displaced as much as 28.2 percent of the lost jobs in fabricated metal (3.75 percentage points out of 13.3), or up to 66,326 jobs.

China's exports of vehicle parts to the United States increased 452.88 percent in the last five years, while U.S. employment in this sector fell by 153,400 or 18.6 percent. In 2005, China's exports of vehicle parts grew to \$1.99 billion or 1.07 percent of U.S. production at the start of the period. Hence Chinese imports displaced as much as 5.75 percent of the lost jobs in vehicle parts (1.07 percentage points out of 18.6), or up to 8,820 jobs.

China's exports of primary metal products to the United States increased 355.4 percent in the last five years, while U.S. employment in this sector fell by 144,800 or 23.5 percent. In 2005, China's exports of primary metal products to the U.S. grew to \$4 billion or 2.9 percent of U.S. production at the start of the period. Hence Chinese imports

⁴²⁸ U.S. production figures are from the U.S. Census Bureau, Annual Survey of Manufacturing.

displaced as much as 10.3 percent of the lost jobs in primary metal products (2.9 percentage points out of 23.5), or up to 14,914 jobs.

China's exports of plastic and rubber products to the United States increased 163.1 percent in the last five years, while U.S. employment in this sector fell by 141,400 or 15 percent. In 2005, China's exports of plastic and rubber products to the U.S. grew to \$6.64 billion or 3.9 percent of U.S. production at the start of the period. Hence Chinese imports displaced as much as 26 percent of the lost jobs in plastic and rubber products (3.9 percentage points out of 15), or up to 36,764 jobs.

China is now the world's largest producer of textile and apparel. China's exports of apparel to the United States increased 493 percent in the last five years, while U.S. employment in the apparel sector has fallen by 220,000.⁴²⁹ 46.6 percent of the jobs in the U.S. apparel sector were eliminated. In 2005, China's exports of apparel to the United States grew to \$38.68 billion or 70.84 percent of U.S. production at the start of the period.⁴³⁰ Hence, Chinese imports displaced as many as 100 percent of the lost apparel jobs (70.84 percentage points exceeding 46.6 percentage points), or up to 220,000 jobs. What this means, of course, is that Chinese imports were greater than the lost output flowing from the absolute decrease in U.S. apparel employment. That is, Chinese imports were sufficient to displace not only the lost output and employment of the last five years but also additional output and employment displaced in previous years or the potential output and employment that would otherwise have been created in the United States in the last five years.

Hence, using the President's own methodology, China's imports displaced up to 781,194 U.S. workers in just seven sectors – electronics, electrical equipment, apparel, fabricated metal products, vehicle parts, primary metal products, and plastic and rubber products. Even these figures account only for the displacement of pre-existing jobs – and not for potential new U.S. jobs that were not created by reason of competition from China-based production.

⁴²⁹ U.S. Department of Commerce, National Trade Data; Bureau of Labor Statistics, Employment, Hours, and Earnings from the Current Employment Statistics Survey (National).

⁴³⁰ Import data are from the ITC trade database. Production data are from the U.S. Bureau of the Census, M3 Series, "Manufacturers' Shipments, Inventories, and Orders" (August 2003).

Nor do the figures on job losses in these sectors take account of the many more U.S. jobs that stand in imminent jeopardy from China-based production in the near future. As noted above, in recent years China's capital spending in manufacturing has been approximately 40 percent of production and is far higher in several of the sectors analyzed above.

Perhaps for these reasons, the President's Annual Economic Report of 2006 simply deletes this methodology which, as noted above, was trumpeted in his 2004 Report.

Like the firm-level data aggregated in the Commission Studies discussed above, the product and sectoral data do not distinguish between jobs lost due to the Chinese government's violation of workers' rights and jobs lost due to the other competitive advantages of China-based production. The methodologies in the next two sections make this distinction.

3. International Trade Commission Model

The U.S. International Trade Commission has developed several economic models for use in estimating the economic impact of unfair trade practices, including foreign import dumping, subsidies, and import surges. These so-called COMPAS models are fully applicable to this case. Using a set of highly conservative assumptions detailed in this Subsection, the COMPAS models show that the Chinese government's labor repression has resulted in the loss of between 143,000 and 973,000 manufacturing jobs in the United States, and the loss of up to 1,235,000 total jobs in the United States.

In order to apply the COMPAS models, we follow three steps. First, we estimate the average percentage decrease in manufacturing wages caused by the repression of workers' rights in China's factories. Second, we estimate the percentage decrease in total production costs caused by that decrease in manufacturing wages. Third, we apply the COMPAS model, in order to generate estimates of the loss in U.S. manufacturing jobs caused by the illegitimate cost advantage afforded corporations in China.

1. Estimate of Decrease in Chinese Wages caused by the Chinese Government's Repression of Workers' Rights. There is a wealth of economic research that enables us to make accurate estimates of the decrease in Chinese wages caused by the Chinese

government's repression of workers' rights. For ease of exposition, we ask the counterfactual question: What increase in wages would China's manufacturing workers enjoy if the Chinese government ended its persistent repression of workers' rights? The increase in wages can be disaggregated into the following four components:

a. *Increase in wages if minimum-wage, child labor, forced prison labor, and occupational safety and health standards were enforced.* The data presented in Section VI-C of this petition show that average manufacturing wages in China range from 38.5 percent to 75 percent of minimum wage standards. To achieve minimum standards, wages must therefore increase between 33.33 percent and 159.74 percent. In other words, a worker paid 30 cents per hour should instead be paid 40 cents to 80 cents per hour. This is a quite reasonable estimate. Recall that the estimated decrease in wages below legal minima is the *combination* of all of the following *well-documented, pervasive* violations: local governments' failure to set standards that meet the central government's directives; enterprises' failure to stipulate basic wage rates that meet local government standards; enterprises' failure to pay (higher) minimum wage standards for overtime hours; enterprises' illegal deductions from wages; enterprises' withholding of wages, which employees lose when they quit or are discharged; and enterprises' simple failure to pay months of wages due.

These estimates, which are the same as those in the petition filed two years ago by the AFL-CIO, remain accurate two years later. The official minimum wage standard promulgated by the central government requires that minimum factory wages rise by the same percentage as average urban incomes. According to official statistics of the Chinese government, average income of urban residents has risen approximately 10 percent in each of the last two years.⁴³¹ Hence, China's minimum wage laws require that minimum wage standards increase by 10 percent in each of the last two years. As we have shown above, real factory wages have in fact remained flat or, in some categories of skilled work, have risen modestly – and, hence, the percentage gap between actual wages and minimum wage standards has actually increased. But even on the rosiest assumption that average wages for all factory workers have risen 10 percent in each of the last two

⁴³¹ PRC National Development and Reform Commission, Report to the Fourth Session of the Tenth National People's Congress: China's Economic and Social Development Plan (March 5, 2006).

years, the percentage gap between actual wages paid and central government standards for minimum wages would remain the same. Hence, our estimate that the percentage gap has not changed in the last two years is quite conservative.

There is no question that child labor and forced prison labor diminish unit labor costs for a significant portion of China's manufacturing exports. We know that the combined number of child and forced laborers in the Chinese economy is the same order of magnitude as the entire manufacturing workforce of the United States. The President is therefore obligated to take effective action to remedy those violations.

However, solely for purposes of estimating the impact on U.S. manufacturing employment, we will not attribute any additional decrease in unit labor costs to the large-scale violations of child labor and forced labor standards in China's manufacturing sector. There is a particularly wide range of estimates of the number of child laborers and forced prison laborers both in the overall economy and in the manufacturing export sector; and there are wide-ranging estimates of the wage suppression among child laborers and forced laborers. Therefore there is great uncertainty about the consequent decrease in labor costs in the export sector. The wide range is due to the nature of these violations, and to the Chinese government's and global corporations' extreme resistance to international monitoring of these problems. A very strong argument can be made that the Chinese government should not benefit from its own secrecy, and that analyses such as ours must simply use best estimates or the full range of estimates. Nonetheless, in order to avoid extremes in both the *uncertainty* and *range* of estimated effects on U.S. employment, we err on the most conservative side and simply exclude the range of data points on child labor and forced prison labor.

The degree to which occupational safety and health (OSH) standards increase manufacturing costs is highly contested. Surveys of business executives conclude that net costs are substantial. These estimates may be exaggerated, for purposes of advocacy and lobbying for deregulation. Some proponents and practitioners of OSH standards conclude, to the contrary, that OSH standards reduce the costs of employee turnover and worker compensation, and that these benefits outweigh the capital and operating expenses of safety systems. These proponents argue that business executives' opposition to OSH standards is motivated by the short-term net costs rather than the long-term net benefits of

OSH standards. In light of the uncertainty in this field, we will make the conservative assumption that net costs of implementing OSH standards are zero, adding *no increment* to the prices of manufactured goods.

We wish to reemphasize that our use of these conservative assumptions in no way means that the President should not undertake effective remedial measures to ensure that corporations and the Chinese government enforce these internationally recognized standards. As noted above, Congress has made clear that empirical uncertainty regarding the consequences of unfair and unreasonable trade practices provides no grounds for ignoring the practices. This is especially true in light of the fact that workers' incapacity to enforce OSH, child labor, and forced labor standards is in part the result of violations of other basic workers' rights, including the denial of free association, which have large measurable effects for U.S. workers. The estimated burden on U.S. commerce caused by child labor, forced prison labor, and occupational safety and health violations in China's factories is properly a subject for close examination during the USTR's investigation of the unreasonable trade practices identified in this petition.

b. Increase in wages if workers could bargain as free individual employees – that is, if manufacturing workers were not held in bonded labor and not otherwise limited in mobility by the *hukou* system. Section VI-B above showed that factory wages fell by 15 percent to 46 percent when permanent urban workers were replaced by bonded migrant workers. If migrant workers achieved a work status not burdened by bonding and other constraints of the *hukou* system, their wages would therefore increase between 18 percent and 85 percent.

c. Increase in wages if rights of association were enforced, and workers could therefore credibly threaten to engage in collective action. This is the so-called “threat effect” or “rule of law effect” – as distinguished from the “union wage effect” estimated below. If a country shifts from a state of wholesale repression of workers' rights to organize and strike (state 1) to a state of vigorous enforcement of workers' rights to organize and strike (state 2), workers' bargaining power and wages will increase even if no actual unionization occurs. The reason for the increase is that in state 1, workers' *threat* to organize and strike is either non-existent or much less credible than in state 2. In the language of transaction-cost economics, a country that enforces

labor rights thereby reduces the transaction costs of collective action by workers and increases the credibility of workers' explicit or implicit threat of collective action, during bargaining over wages with employers.

This effect can be estimated from two bodies of empirical research. The first is the "union threat effect" literature, which measures the phenomenon of non-unionized employers paying their workers higher wages in response to explicit or implicit threats to unionize, in countries that protect workers' right to organize and strike. Examining firm-level data, this research shows that the "threat effect" increases non-unionized workers' wages by 10 percent to 20 percent.⁴³² Because this estimate includes increases in wages but not increases in benefits, it is highly conservative.

This estimate is conservative for a second reason. It assumes that the effect of credible threats to unionize is linear – an assumption that is almost certainly inaccurate, for the following reason. The rule of law effect is the increase in non-union workers' bargaining power and wages that results from (1) the shift from violent repression, torture, blacklist, and discharge against nonunion workers who wish to unionize, to full legal protection against such reprisals. The threat effect measures the increase in non-union workers' bargaining power and wages that results from (2) a marginal increase in actual rates of unionization in a country that already provides full legal protection against anti-union reprisals by employers and the government. Our use of estimates of the threat effect as a proxy for estimates of the rule of law effect is conservative in light of the evident non-linear nature of the rule of law effect, noted by several researchers – that is, the large-scale structural shift (1) is manifestly more important than the marginal shift (2).⁴³³ The empirical studies of the union threat effect cited above measure only the latter phenomenon.

The second body of research uses country-level data, and tests for correlations between enforcement of workers' rights and wage levels across countries. These studies

⁴³² For the classic conceptualization of the threat effect, see Ashenfelter, Orley, George E Johnson and John H. Pencavel, "Trade Unions and the Rate of Money Wages in United States Manufacturing Industry," *Review of Economic Studies* 39 (January 1972) pp 27-54, and (3) Sherwin Rosen, "Trade Union Power, Threat Effects, and the Extent of Organization," *Review of Economic Studies* 36 (April 1969) at pp 185-196. See also Richard B. Freeman and James L. Medoff, *What do Unions Do?* (1984) at p. 153.

⁴³³ For a good conceptualization of the non-linear nature of the threat effect, see Lawrence Mishel and Matthew Walters, "How Unions Help All Workers," *Economic Policy Institute Briefing Paper No. 143* (August 2003).

therefore directly measure a “rule of law effect” that is indirectly related to the “threat effect.” To repeat: The “threat effect” measures the increase in wages enjoyed by non-union workers in a single country that already provides fundamental labor rights – the increase in wages, that is, relative to the implicit baseline of wages that would be earned in individualized labor markets that afford a weaker “threat” to unionize. The “rule of law effect” measures the increase in wages that results from a shift from a labor market that affords no opportunity to organize collectively to one that does, due to a shift from worker-rights repression to worker-rights compliance. The leading econometric study of this kind, analyzing cross-country data from a sample of approximately seventy economies, finds a strong positive correlation, with high statistical significance.⁴³⁴ In that study, countries are ranked on a 4-point scale of worker-rights enforcement. The Chinese government easily falls into the lowest ranking. The study concludes that wages will rise by as much as 60 percent in a country that moves from the lowest ranking to the highest ranking of worker-rights enforcement. To err on the conservative side, we will use the firm-level data showing that the legal capacity to unionize and strike raises wages of non-unionized workers by 10 to 20 percent – even though the higher estimates of the rule of law effect capture more directly the phenomenon at stake.

d. Increase in wages if workers unionize (“union wage effect”).

There is much economic literature devoted to estimating the percentage increase in wages caused by unionization on a country-by-country basis – in both developed and developing countries. The studies use firm-level data to compare the earnings of unionized and non-unionized workers of similar productivity within each country. The post-1990 findings for emerging and developing economies range from 31 percent in Ghana to 42 percent in India to 123 percent for black male workers in South Africa.⁴³⁵ No such study exists for China, of course, since independent unionization and collective bargaining are prohibited. The data for South Africa seem especially relevant, in light of the similar history of controls over temporary workers in South Africa and China – systems which radically

⁴³⁴ Thomas Palley, *Labor Standards, Economic Governance, and Income Distribution: The Cross-Country Evidence*, *supra* note 37.

⁴³⁵ P-C Michaud and D. Vencatachellum, “The Union Wage Premium for Blacks in South Africa” (October 15, 2001) at www.commerce.uct.ac.za; S. Madheswaran and K.R. Shanmugam, “Econometric Analysis of Trade Unions and Wages: Evidence from India,” paper prepared for the European Econometric Conference

suppress labor costs relative to productivity, allowing the subsequent intervention of wage-raising institutions such as unions to have amplified effects. Also relevant, perhaps, are historical studies of the union wage premium in the early phases of industrialization in the now-industrialized economies. Studies of U.S. manufacturing workers in the 1890s found union wage premiums of 34 percent.⁴³⁶ The estimated wage increase from independent unionism in China is between 30 percent and 123 percent.

e. Aggregating the Four Components. The distinct components capture distinct mechanisms for increasing wages. The first mechanism would raise wages to their statutory minimum. The second mechanism would raise wages above the statutory minimum through individual bargaining and individual mobility in the labor market. The third would raise wages above the level set in an individualized labor market, by means of the threat to engage in collective action. The fourth would raise wages above the non-union collective-threat level, by means of actual unionization. Hence, the percentage increase caused by each mechanism might plausibly be compounded at both the high and low ends, to obtain an overall range of estimated increases in labor costs.

To err on the conservative side, however, we will assume that the first and second mechanisms are not subject to compounding in this way. We will instead assume that the statutory minimum wage would play no independent role in raising wages if individual bargaining power would suffice to raise wages above the statutory minimum; and that individual bargaining power would play no independent role if it would not suffice to raise wages above the statutory minimum. Treating the first and second mechanisms in this way yields wage increases ranging between 33.33 percent and 159.74 percent. This range represents the combined effect in the individual labor market from enforcement of the minimum wage and termination of the system of bonded labor. Note that this conservative method of aggregation effectively gives no weight to the wage increases that would result from ending China's system of bonded labor, since the minimum-wage effects dominate the bonded-labor effects. Hence, the estimates presented here will still

(August 2001); Paul Schultz and Germano Mwabu, "Labor Unions and the Distribution of Wages and Employment in South Africa," 51 *Industrial and Labor Relations Review* 680 (1998).

⁴³⁶ Barry Eichengreen, "The Impact of Late Nineteenth-Century Unionism on Labor Earnings and Hours: Iowa in 1894," *Industrial and Labor Relations Review* vol. 40, no.4 (July 1987) at pp. 501-15.

be sound (a) even if the Chinese government formally abolishes the *hukou* system – a reform which, it should be reemphasized, the government rejected decisively as recently as November, 2005 – and (b) even if the *de facto*, discriminatory legacy of the *hukou* system were miraculously dispelled.

Combining this wage increase in the individual labor market with the rule of law effect and the union wage effect yields a total range of between 90 percent and 595 percent increase in wages if the Chinese government ends its persistent repression of workers' rights.

Stated conversely, the *Chinese government's labor repression lowers manufacturing wages by 47.4 percent to 85.6 percent.* This depression of wages is large. But the figures are highly plausible. Indeed, they are quite conservative. Recall that credible researchers have found that many export workers are underpaid by 45 to 59 percent relative to local minimum wage standards – a degree of suppression that does not take account of additional wage suppression owing to: the failure of local minimum standards to meet central government standards; noncompliance with occupational safety and health, child labor, and forced labor standards; bonded labor; the rule of law effect; and the union wage effect.

2. *Estimate of Decrease in Price (Overall Cost) of China's Manufactured Exports Caused by the Chinese government's Persistent Repression of Workers' Rights.* Labor costs account, on a weighted average, for 13 percent of the total price (or overall cost) of final manufactured goods in China.⁴³⁷ This figure rests on the extremely conservative assumption that all intermediate inputs used to manufacture those goods are imported. It assumes, that is, that none of the inputs include value-added by Chinese labor. This is a conservative assumption, in light of the fact that China has recently developed large networks of enterprises producing components, in apparel, computers, electronics, auto parts, and many other sectors.⁴³⁸ If labor costs rise in the range estimated above, then *the price (overall cost) of manufactured goods will rise by 11.83 percent to 77.35 percent* if the Chinese government ceases its persistent denial of workers' rights.

⁴³⁷ China Statistical Yearbook 2005.

⁴³⁸ See Section VII-B of this petition, *supra*.

Stated conversely, the *Chinese government's labor repression reduces the price (or overall cost) of Chinese manufactured exports by 10.6 percent to 43.6 percent.*

These estimates are consistent with raw data about price changes in imports to the United States. According to the President's 2006 Annual Economic Report, "[b]etween 1997 and 2004, real prices fell for an array of highly trade goods, such as audio equipment (-26%), TV sets (-51%), toys (-34%), and clothing (-9%)."⁴³⁹ Indeed, in the first *three months of 2005 alone*, wholesale prices of cotton pants and tops plummeted *20 to 40 percent* after the end of quotas on China's exports of those products.⁴⁴⁰ These numbers should not be surprising: Recall that up to half of global manufacturing employment is in China, and that extraordinary low-paid migrant workers are still replacing higher-paid urban residents in China's factories.

To reiterate here the highly conservative assumptions underlying this estimate of the cost advantage resulting from the Chinese government's repression of labor rights:

1. We have used highly conservative estimates of the shortfall in Chinese wages below China's own minimum wage standards, including the estimate that real factory wages have risen ten percent in each of the last two years, notwithstanding the considerable evidence that wages for most factory workers have remained flat and that wages have risen only for some categories of skilled workers and only in some exporting regions.
2. We have assumed that the Chinese government's failure to enforce child labor laws, prison labor laws, and occupational safety and health standards gives no labor-cost advantage to China-based production (although this purely heuristic assumption in no way absolves the President of responsibility to take effective action to ensure compliance with these standards, and only heightens the urgency of careful examination of this empirical issue by the USTR, during the investigation of the unreasonable trade practices identified in this petition).
3. We have assumed that China's bonded labor and other forms of discrimination against migrant factory workers add no cost advantage to that obtained by the Chinese government's failure to enforce minimum wage

⁴³⁹ U.S., Economic Report of the President 2006, at p. 156.

⁴⁴⁰ Tracie Rozhon, "A Tangle in Textiles," New York Times (April 21, 2005).

standards – even though there is much empirical support for the conclusion that controls over migrant workers depress wages by 15 to 46 percent.

4. We have used highly conservative estimates of the increase in workers' bargaining power and wage gains that would result from the "rule of law effect" – that is, from the end of violence, imprisonment, torture, discharge, blacklist, and other reprisals against workers who assert their rights.
5. We have assumed that all inputs used to produce China's manufactured exports are imported into China; that is, we have applied the percentage reduction in labor cost only to the value-added in final manufacturing and not to the value of inputs.

3. *Applying the COMPAS Models.*⁴⁴¹ The COMPAS models assume that imports and domestic products are imperfect substitutes, and that the relevant markets can be characterized by certain basic assumptions about market structure and initial import shares.⁴⁴² The models are used to estimate the impact of dumping or subsidies on the output, price, and revenues of domestic producers, unfair imports, and other foreign sources of imports.

a. *The Conceptual Model.* The model developed here recognizes that imports and domestic products are generally close but imperfect substitutes for a variety of well-known reasons. The markets for imports and domestic products are therefore treated separately, but the demand for each product is linked to the prices and quantities prevailing in the other market. In particular, *the supply of imports affects the demand for the domestic like product*: if import supply increases, this causes demand for domestic like products to be reduced. Figures 1a and 1b depict the structure of the markets for the imported and domestic products, respectively.⁴⁴³

⁴⁴¹ The following economic analysis, explaining and applying the ITC model, was undertaken by Robert Scott, Ph.D., of the Economic Policy Institute, Washington, D.C.

⁴⁴² See section IV of "Armington Models," in H. Keith Hall and Joseph F. Francois, "Partial Equilibrium Modeling," in Joseph F. Francois and Kenneth A. Reinert, eds., *Applied Methods for Trade Policy Analysis: A Handbook* (Cambridge University Press 1997) at pp. 122-147.

⁴⁴³ Non-subject imports constitute a third market that could also be analyzed separately. These markets are not considered in this section for clarity of exposition

Equilibrium prices and quantities are determined by the intersection of the supply and demand curves in these diagrams.⁴⁴⁴ In this model, we assume that repression of workers' rights in China reduces production costs (providing a cost advantage), which lowers the prices of Chinese exports. Such a cost advantage is illustrated in Figure 1a, which compares prices and quantities of import products with and without the cost advantage. A cost advantage increases the supply of imported products, causing the import supply curve to shift down and to the right. The first effect of the cost advantage is to reduce the equilibrium price of the Chinese imports in the domestic market, as shown on the vertical axis of Figure 1a. Second, greater quantities of the subject imports are purchased at the lower price, as shown on the horizontal axis.

The decline in subject import prices in turn causes a reduction in the demand for domestic manufactured goods. The demand for domestic products shifts down and to the left, as shown in Figure 1b. The decline in demand for domestic products then reduces the equilibrium prices and quantities of competing domestic goods. Domestic prices, shown on the vertical axis in Figure 1b, fall from the price without cost advantage to the price with cost advantage. The quantity of domestic shipments is also reduced, as shown on the horizontal axis.⁴⁴⁵

The results in Figures 1a and 1b assume that all other factors that affect supply and demand for the subject products (such as the business cycle, interest rates, and domestic consumption) are held constant. In reality, the demand for consumer goods and

⁴⁴⁴ Demand for imports and domestic manufactured products both depend on the prices of each product, and on income and other macroeconomic determinants of demand in the U.S. market, such as interest rates and government spending. The supply of imports is a function of the costs of production (e.g. wages, material and energy costs), installed capacity, and the pricing behavior of foreign suppliers (including dumping, if any), less the value of subsidies. The supply of domestic products is determined by cost factors and production capacity in the U.S.

⁴⁴⁵ The decline in price of the domestic products would have a secondary impact on the demand for imports, shifting the demand for the latter slightly down and to the left, as shown in sources cited in note 447, below. This secondary shift is generally regarded as small in magnitude and is omitted from Figure 1a for clarity of exposition.

Figure 1a
Conceptual Model: Effect of a Cost Advantage
(Suppression of Workers' Rights)
on U.S. Market for Chinese Imports

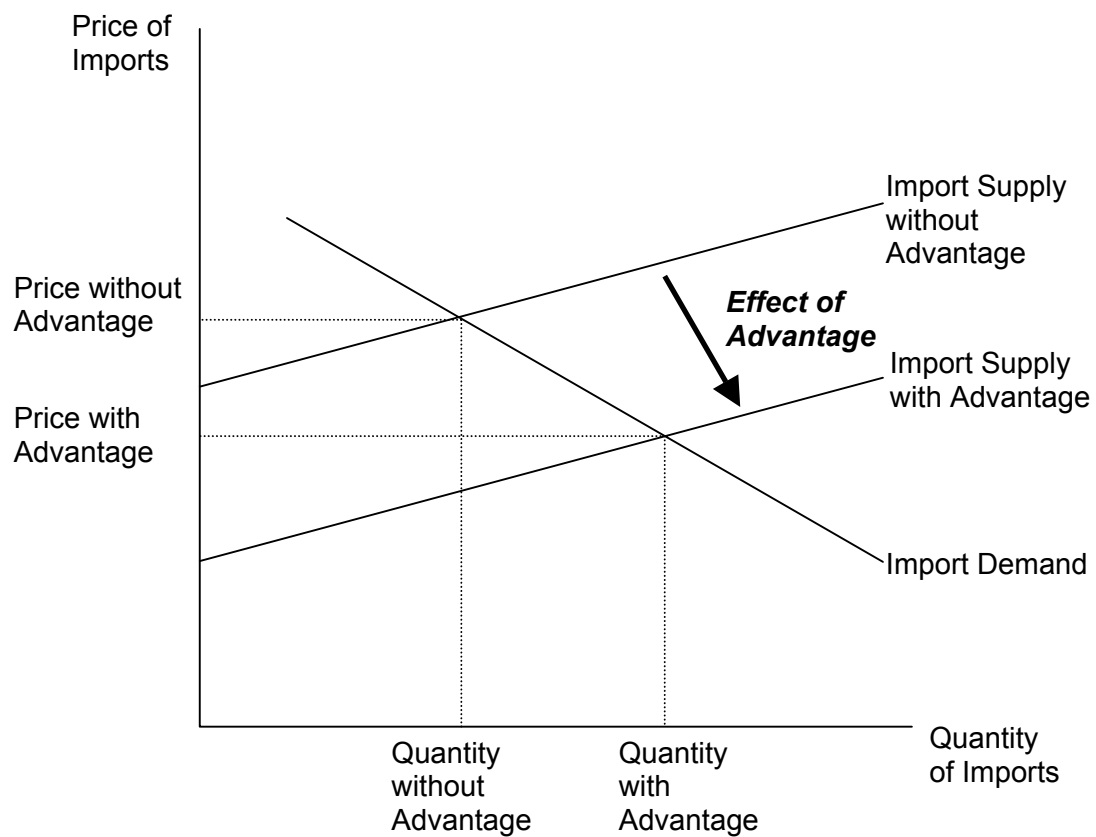
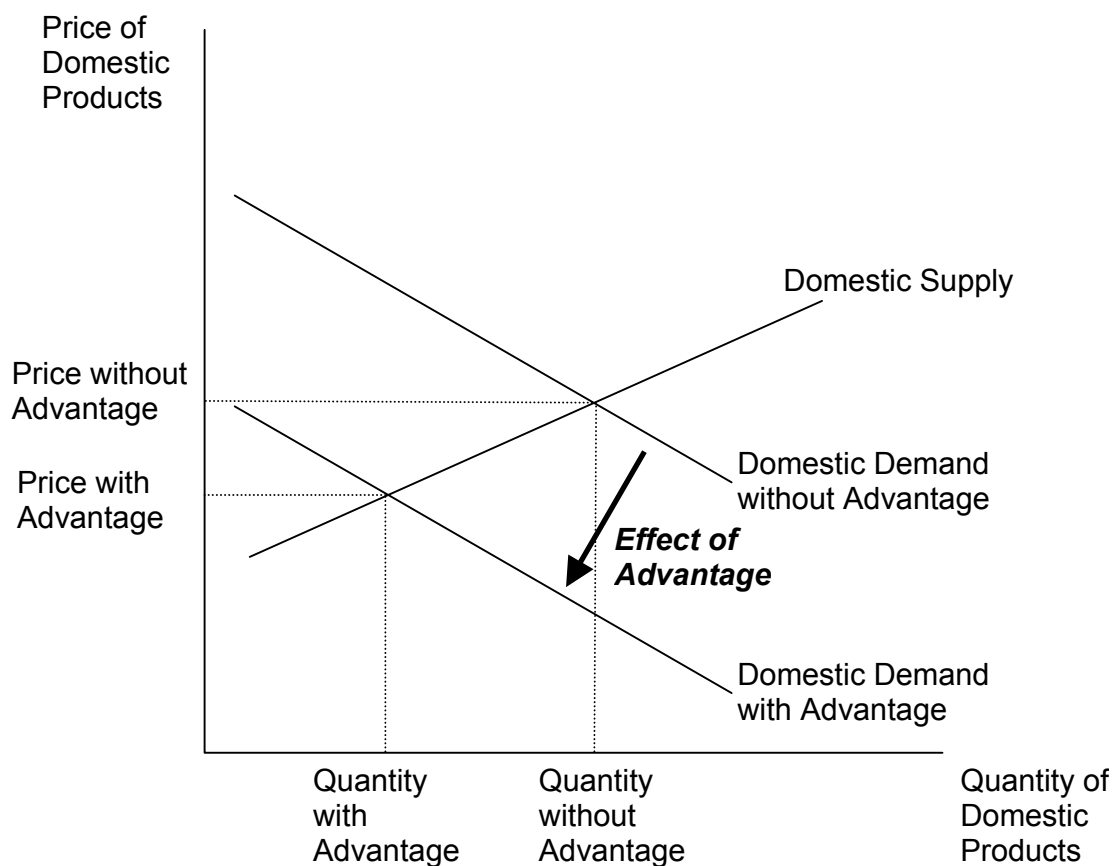


Figure 1b
Conceptual Model: Effect of a Cost Advantage
(Suppression of Workers' Rights)
on U.S. Market for Domestic
Manufactured Goods



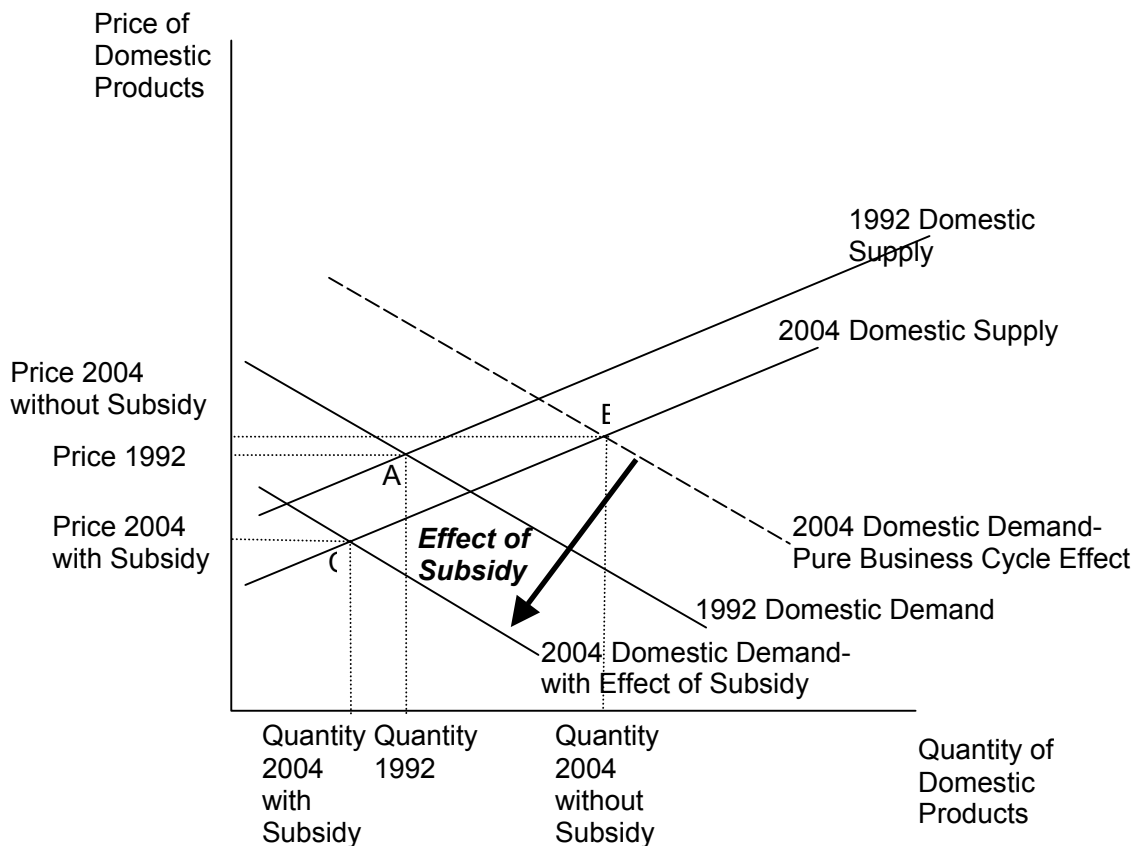
industrial intermediates has grown significantly over the past decade.⁴⁴⁶ Therefore, we need to consider trends in demand and supply in order to obtain a complete picture of how the increasing supply of unfairly traded subject imports affected the domestic market for the like products.

Figure 2 depicts the impact of the increased supply of unfairly traded subject imports on the domestic market for domestic producers, taking into account the other shifts in demand discussed above. This analysis explains conceptually how domestic workers were injured in spite of the growth of overall demand. The initial price and quantity of the domestic products are determined by the intersection of the supply and demand curves at point A in Figure 2. The increase in demand is reflected in a shift up and to the right of the demand curve for domestic products between 1992 and 2004 (to the dashed line labeled 2004 Domestic Demand: Pure Business Cycle Effect in Figure 2). Note that this dashed line shows what the demand would have been in 2004, except for the effects of increased supplies of unfairly traded imports.

A significant increase in domestic demand (in the absence of the Chinese cost advantage in 2004, i.e., the pure business cycle effect demand curve) should have led to a new market equilibrium at point B in Figure 2. Relative to actual prices in 2004, the price of the domestic like products should have been substantially higher at point B than at point A. As a result, total domestic revenues (price times quantity) would have been substantially higher. Quantity levels should also have increased much more significantly

⁴⁴⁶ Real gross domestic product in manufacturing industries increased 40.3% between 1995 and 2005. Bureau of Economic Analysis “Services and Goods Sectors Both Strong Despite Slowdown in 2005: Advance Estimates of Gross Domestic Product (GDP) by Industry” at <http://www.bea.gov/bea/newsrel/gdpindnewsrelease.htm>, and “Gross Domestic Product by Industry Data,” at http://www.bea.gov/bea/dn2/home/annual_industry.htm.

Figure 2
Trends Analysis of the Effects of
Increased Supply of Subsidized (Labor
Rights Suppressed) Chinese Imports on
Domestic Producers of Manufactured
Goods



between 1992 and 2004 than they actually did, as shown on the horizontal axis. (See the 2004 prices and quantities without cost advantage in Figure 2.)

Increasing supplies of Chinese products, aided by an artificial cost advantage (resulting from the suppression of workers' rights) significantly altered this picture, by reducing demand for domestic producers of manufactured goods. This is shown by the solid line labeled 2004 Domestic Demand with Effect of Advantage in Figure 2, which lies significantly below and to the left of the pure business cycle effect demand curve for 2004 (dashed line). Actual equilibrium prices and quantities of the domestic like products in 2004 are determined by the intersection of the 2004 supply curve and the 2004 domestic demand with cost advantage, which occurs at point C in Figure 2. The actual price in 2004 is significantly lower than it would have been without the increased supply of unfairly traded imports. The actual quantity of domestic manufactures in 2004 is also significantly lower than it would have been without the cost advantage, as shown on the horizontal axis.

The increase in Chinese imports aided by the cost advantage was clearly responsible for the observed decline in demand for manufacturing workers and the relatively slow growth of manufacturing output in a period when domestic apparent consumption was rising. Thus, the increased supply of unfairly traded imports results in a substantial decline in prices, output, and employment over the past decade. This is illustrated by the comparison between the actual 2004 point C with the hypothetical 2004 point B that would have prevailed if not for the increased supply of Chinese imports resulting from their artificial cost advantage. In the absence of this cost advantage, both domestic prices and output would have been substantially higher than they actually were.

b. Estimation. Extensive economic research has determined that the overall demand for U.S. imports is moderately inelastic to slightly elastic,⁴⁴⁷ in

⁴⁴⁷ H.S. Houthakker and Stephen Magee, "Income and Price Elasticities in World Trade," *The Review of Economics and Statistics* vol. 51, no. 2 (May 1969) at pp. 111-125 report estimates of the price elasticity of demand for imports, using various techniques, of -.54 (Table 1), -1.25 (Table 5), and -.88 (Table 6, calculated). Mordechai E. Kreinin, "Price Elasticities in International Trade," *The Review of Economics and Statistics* vol. 49, no. 4 (November 1967) at pp. 510-16 estimates that the price elasticity of demand for imports was -1.107. Robert C. Feenstra and Clinton R. Shiells, "Bias in U.S. Import Prices and Demand,"

part because of the lack of availability of substitutes for manufactured products in general. Hence, in this estimate, we assume that the price elasticity of demand ranges between -0.1 and -1.5, to bracket all available estimates.

In contrast, domestic and imported products are relatively good substitutes for one another. However, they are not perfect substitutes because of limitations in production capacity and differences in patterns of comparative advantage for various products. Hence, researchers have estimated that the elasticity of substitution between domestic and imported products ranges between -3.3 and -5.5.⁴⁴⁸

The elasticity of supply of domestic producers is relatively high because of the relatively low level of capacity utilization in the domestic industry producing manufactured goods. We therefore assume that the domestic supply elasticity falls between 5.0 and 10.0 in this case.

Supply of other imports is also relatively elastic because other exporters around the world have substantial amounts of excess capacity to produce manufactured goods to the United States. We therefore also assume that the elasticity of supply for other imports ranges from 5 to 10.⁴⁴⁹

It is assumed here that the Chinese cost advantage in these cases could be offset by a tariff of 10 percent, 43 percent, or 77 percent, based on the estimate explained above

Cambridge, MA: National Bureau of Economic Research, Working Paper No. 4841 (August 1994) report estimates of the price elasticity of demand for imports, using various techniques, of -.979 to -1.23 (Table 3). Menzie D. Chin, "Doomed to Deficits? Aggregate U.S. Trade Flows Re-examined," National Bureau of Economic Research, Working Paper No. 9521 (February 2003) reports estimates of the price elasticity of demand for imports, using various techniques, of -1.31 to -1.467, but the only statistically significant estimate was found at -.295. Note that Chin's estimates are for non-computer imports only, and that he finds a large, statistically significant, positive (hence nonsensical) price elasticity estimate for computer imports, presumably due to the use of hedonic pricing in that sector.

⁴⁴⁸ H.B. Junz and R.R. Rhomberg, "Prices and Export Performance of Industrial Countries, 1953-1963," International Monetary Fund Staff Papers (July 1965) at pp. 224-271 (cited in Kreinin *supra* note 447, at p. 511).

⁴⁴⁹ Modifying our supply elasticity assumptions to make domestic supply more elastic and import supplies less elastic results in relatively greater estimated quantity effects and relatively smaller estimated price effects in our COMPAS runs, with generally similar total revenue effects. Changing these supply elasticity assumptions therefore does not change the overall result of significant burden caused by the cost advantage given to Chinese exports through its repression of workers' rights.

in this petition. Market share data, and sources of those data, are shown in Table 1. In particular, it is important to note that Chinese imports captured 8.1 percent of total apparent consumption of manufactured goods in the U.S. in 2004. Other foreign

Table 1
Data for Compas-China Analysis--2004
(billions of U.S. dollars)

A	US manufacturing trade-equivalent output (BEA, GPO) (M*N)	1,803
B	US world manufacturing general imports***	1,214
C	US world manufacturing domestic exports***	642
D	US general imports from China***	192
E	ROW imports (World - China)	1,022
F	Domestic market (Production - Exports + Imports)	2,375
<u>Market shares</u>		
G	Domestic share ((production - exports)/domestic market)	48.9%
H	China share domestic market	8.1%
I	ROW share domestic market	43.0%
K	Export share of domestic production (row C over row A)	35.6%
L	Domestic share of domestic market (Row A over Row F)	75.9%
<u>Background Data</u>		
M	U.S. manufacturing value added in 2004*	1421
N	Ratio of total jobs to manufacturing jobs, imports from China, 2003**	1.27

Sources:

*Bureau of Economic Analysis, Gross-Domestic-Product-by-Industry Accounts,
<http://www.bea.gov/bea/industry/gpotables>

**Scott, Robert E. 2005. "U.S. China Trade, 1989-2003:
Impacts on jobs and industries, nationally and state-by-state". Washington, DC
Economic Policy Institute, Working Paper # 270, <http://www.epinet.org/content.cfm/wp270>)

***U.S. International Trade Commission, "ITC Trade DataWeb"
<http://dataweb.usitc.gov/>

Table 2
Estimated Impacts of Implicit Chinese Labor Cost Advantage
On U.S. Domestic Manufacturing Industries
(prepared using USITC COMPAS models)*

	low	high
10% tariff		
price	-0.1%	-0.7%
output	-1.0%	-3.5%
revenue	-1.2%	-3.9%
employment**		
manufacturing	-143,000	-501,000
total	-182,000	-636,000
43% tariff		
price	-0.7%	-1.4%
output	-3.8%	-6.8%
revenue	-4.6%	-8.1%
employment**		
manufacturing	540,000	973,000
total	690,000	1,235,000
77% tariff		
price	-1.4%	-1.4%
output	-6.1%	-6.8%
revenue	-8.1%	-8.1%
employment**		
manufacturing	873,000	973,000
total	1,108	1,235,000

*Assumes aggregate demand elasticity between -0.1 and -1.5

Total domestic production for the domestic market:

**Assuming average manufacturing

employment of 14.315 million in 2004

and that ratio of total employment to manufacturing

employment for imports from China equals 1.27,

based on Scott, Robert. 2005. "U.S.-China Trade 1989--2003

Impact on jobs and industries, nationally and state-by-state."

(Washington, DC: Economic Policy Institute). January:

<http://www.epinet.org/content.cfm/wp270>

producers provided 43 percent of goods consumed in the U.S., while domestic producers had a market share of only 48.9 percent. It was also assumed that the weighted average tariff rate on all U.S. imports was 3 percent.

Using the margins listed above, and the reasonable elasticity assumptions specified here, along with the market share information shown in Table 1, the COMPAS model was used to estimate the impacts of the cost advantage provided by the suppression of workers' rights in China. Tables 2 through 4 summarize the results for domestic, other foreign, and Chinese producers of manufactured goods in the U.S. if the implied Chinese cost advantage were eliminated. Table 2 indicates that prices of U.S. domestic manufacturing industries were reduced by 0.1 percent to 0.7 percent, if we assume that China-based producers benefited from a 10 percent cost advantage. Output and employment in domestic manufacturing production would fall by 1.0 percent to 3.5 percent under these assumptions. As a result, domestic employment in manufacturing would fall by 143,000 to 501,000 workers. Total employment, including non-manufacturing workers would decline by 182,000 to 636,000.⁴⁵⁰ The total revenues of domestic producers fall by 1.2 percent to 3.9 percent, substantially reducing domestic profits.

Similarly, if China-based producers enjoyed a 43 percent cost advantage, this reduced domestic prices by 0.7 percent to 1.4 percent, reduced output by 3.8 percent to 6.8 percent, and domestic revenues by 4.6 percent to 8.1 percent. Manufacturing employment was reduced by 540,000 to 973,000 workers, and total employment was reduced by 690,000 to 1,235,000 workers. If China-based producers enjoyed a 77 percent cost advantage, this reduced domestic prices by 1.4 percent, reduced output by

⁴⁵⁰ This analysis includes the direct effect of unfair suppression on employment in manufacturing, and the indirect effects on employment in other industries that supply non-manufacturing inputs (e.g. accounting, legal and programming services) to manufacturing industries. As shown in Row N or Table 1, 1.27 total jobs are displaced for each manufacturing job displaced by unfair imports from China in 2003 (latest data available). In other words, .27 jobs in supplier industries are supported by each job supported by trade in the manufacturing industry. This ratio is based on unpublished data from Scott, Robert E. 2005. "U.S. China Trade, 1989-2003: Impacts on jobs and industries, nationally and state-by-state". Washington, D.C. Economic Policy Institute, Working Paper # 270, <http://www.epinet.org/content.cfm/wp270>).

6.1 percent to 6.8 percent, and domestic revenues by 8.1 percent. Employment effects of a 77 percent cost advantage are shown in Table 2.

Other foreign suppliers were also injured by reason of China-based producers' unfair cost advantage. As shown in Table 3, they suffered price reductions of -0.2 percent to -1.4 percent, output reductions of 1.0 percent to 6.8 percent, and revenue reductions of 1.2 percent to 8.1 percent. Since the total number of manufacturing workers employed in other countries is not known, employment impacts cannot be calculated. However, other foreign producers' share of domestic production was similar to the share of U.S producers, so employment impacts were likely similar as well.

Table 3
Estimated Impacts of Implicit Chinese Labor Cost Advantage
On Other Foreign Suppliers
(prepared using USITC COMPAS models)*

	low	high
10% cost advantage		
price	-0.2%	-0.7%
output	-1.0%	-3.4%
revenue	-1.2%	-3.9%
43% cost advantage		
price	-0.4%	-1.4%
output	-3.8%	-6.8%
revenue	-4.6%	-8.1%
77% cost advantage		
price	-1.4%	-1.4%
output	-6.8%	-6.8%
revenue	-8.1%	-8.1%

*Assumes aggregate demand elasticity between -0.1 and -1.5
Total domestic production for the domestic market:

Table 4 summarizes the impacts of China-based producers' artificial cost advantage on China's domestic producers. Price impacts ranged from -8.1 percent to -27.6 percent or more. It is important to note that for the case in which China-based producers have a 43 percent or 77 percent cost advantage, most of the subject products would be unable to compete but for the labor-cost advantage resulting from the denial of labor rights – in other words, these products would be uncompetitive in the domestic market but for the implicit subsidy. Chinese output of manufactured exports to the U.S. was increased by 29.7 percent to essentially all of China's exports. In other words, in the “excluded” cases shown in Table 4, China-based producers would not be able to compete in the U.S., were it not for the artificial cost advantage provided by its suppression of labor rights.

Table 4
Estimated Impacts of Implicit Chinese Labor Cost Advantage
on China-Based Suppliers
(prepared using USITC COMPAS models)*

	low	high
10% cost advantage		
price	-8.1%	-8.1%
output	29.7%	57.4%
revenue	19.1%	45.6%
43% cost advantage		
price	-27.6%	excluded**
output	189.2%	excluded**
revenue	109.5%	excluded**
77% cost advantage		
price	excluded**	excluded**
output	excluded**	excluded**
revenue	excluded**	excluded**

*Assumes aggregate demand elasticity between -0.1 and -1.5

Total domestic production for the domestic market:

**In the absence of this cost advantage, Chinese imports would be excluded from the U.S. market.

The estimates generated by the COMPAS model show clearly that the Chinese government's labor repression, and the artificial cost advantage it provides, place a substantial burden on U.S. workers.

Significantly, the range of estimates is consistent with the firm-level database presented in the Commission Study summarized above. As with the firm-level database, the macroeconomic estimates presented in Table 2 are *underinclusive* in at least one respect. The estimates capture only those cases in which U.S. workers lose jobs as a result of production in China for sale in the United States. The estimates do not include cases in which U.S. workers lose jobs as a result of production in China for sale in China's domestic market or in third-country markets. The estimates also rest on the five other, highly conservative assumptions listed in the previous subsection.

To repeat our results: Even with these five highly conservative assumptions, the Chinese government's repression of labor rights is estimated to displace up to 973,000 manufacturing jobs and 1,235,000 total jobs in the United States. These estimates take full account of the increase in exports to the United States from third-party countries if the Chinese government ceased its persistent denial of workers' rights.

4. Bilateral Trade Elasticities and Implied Job Changes

The results obtained from the International Trade Commission model in the previous subsection can be checked against implied job changes derived from estimates of the price elasticities of U.S. imports in bilateral exchange models.⁴⁵¹

If the price of Chinese imports to the U.S. were to rise by a specified amount, the resulting decrease in the quantity of U.S. imports can be calculated from the price elasticity of U.S. import demand. A given decrease in imports, in turn, corresponds with an implied job change – that is, the change in U.S. employment that results from increased production in the U.S.

There is a long literature in international economics on the responsiveness of import and export flows (the elasticities of import and export demand) to changes in

⁴⁵¹ The following economic analysis, explaining and applying the ITC model, was undertaken by Josh Bivens, Ph.D., of the Economic Policy Institute, Washington, D.C.

relative prices. One of the most comprehensive studies estimates relative price elasticities for bilateral imports and exports across a large panel dataset containing 21 countries over 20 years.⁴⁵² This study is especially useful because it controls for third-country effects in estimating bilateral trade flows. The study finds that the price elasticity of imports ranges between .3 and .8. These numbers are lower than those found in other studies of bilateral elasticities, mostly because they take into account these third-country effects.

Estimate of Decrease in Chinese Imports to U.S. if the Chinese Government Complied with Workers' Rights. To obtain an estimate of the decrease in imports to the U.S. that would result from the Chinese government's compliance with workers' rights,

Table 5: Implied Change in U.S. Manufacturing Jobs from Compliance with Workers' Rights in China

	imports	exports	trade balance	balance ch	implied jobs change
Current*	\$243,463	\$41,837	\$201,626		
	<i>Forecasts based on medium, high, & low estimates of price elasticity of U.S. net exports</i>				
Medium					
10%	\$227,638	\$41,837	\$185,801	\$15,825	183,571
43%	\$175,415	\$41,837	\$133,578	\$68,048	789,355
77%	\$121,610	\$41,837	\$79,773	\$121,853	1,413,496
High					
10%	\$223,986	\$41,837	\$182,149	\$19,477	225,933
43%	\$159,712	\$41,837	\$117,875	\$83,751	971,514
77%	\$93,490	\$41,837	\$51,653	\$149,973	1,739,688
Low					
10%	\$236,159	\$41,837	\$194,322	\$7,304	84,725
43%	\$212,056	\$41,837	\$170,219	\$31,407	364,318
77%	\$187,223	\$41,837	\$145,386	\$56,240	652,383

⁴⁵² Tamim Bayoumi, Estimating Trade Equations from Aggregate Bilateral Data, Centre for Economic Policy Research, Discussion Paper No. 1970 (September 1998).

we apply the estimated price increase derived above – ranging from 11.83 percent to 77.35 percent -- to the price elasticity of U.S. imports. In order to present a range of estimated changes in imports, Table 5 sets out estimates based on elasticities of .3, .65, and .8, and on price increases ranging from 10 percent to 43 percent to 77 percent.

Estimate of Increase in U.S. Jobs if the Chinese Government Complied with Workers' Rights. The final column in Table 5 presents the “implied job changes” from the import price and quantity effects of labor rights compliance in China.⁴⁵³ The estimated increases in U.S. jobs range from the most conservative forecast of 85,000 – based on the lowest estimate of import price increases and the lowest estimate of the price elasticity of U.S. imports – to the upper-end forecast of 1,739,688.

The estimates generated by the International Trade Commission model fall within the range of estimates generated by the bilateral trade elasticities. The two methodologies are therefore mutually corroborating. Both methodologies are based on the highly conservative assumptions listed in the previous Subsection. Both control for increased imports into the United States from third-countries. The ITC model yields an estimate of up to 973,000 manufacturing jobs and 1,235,000 total jobs displaced by the Chinese government’s labor repression. The bilateral exchange methodology yields an estimate of up to 1,739,688 jobs displaced. To err on the conservative side, we take the estimate generated by the ITC model as our best estimate.

E. The Burden on Displaced Workers and Their Communities

Workers who lose jobs as a result of import competition have low rates of re-employment. Even before the precipitous loss of manufacturing jobs in the last five years, twenty-five percent of displaced workers in import-intensive industries remained unemployed six months after losing their jobs.⁴⁵⁴ Those fortunate enough to find new jobs had difficulty recovering their earnings. Two-thirds earn less on their new job.⁴⁵⁵

⁴⁵³ The ratio of changes in implied jobs to changes in value of trade flows is from Rob Scott, “China and the States,” Economic Policy Institute Briefing Paper No. 92 (EPI 2000).

⁴⁵⁴ Lori Kletzer, *Job Losses from Imports: Measuring the Costs* (Institute for International Economics (2001) at p. 40.

⁴⁵⁵ *Id.*, at Table 3.3.

One-quarter suffer wage losses of more than 30 percent.⁴⁵⁶ Manufacturing workers with long tenure suffer particularly high wage losses.⁴⁵⁷ During periods of rapid change in the composition of industrial sectors – such as the current period – wage losses are amplified, since workers who shift from one sector to another suffer greater losses than workers reemployed in the same sector.⁴⁵⁸

The effects of job loss, of course, go well beyond the monetary costs of unemployment and re-employment at lower wages, as crushing as those costs may be. Job dislocation is associated with markedly higher rates of heart disease, divorce, depression, and suicide.⁴⁵⁹ The distress radiates beyond families, sapping economic and social vitality from communities in ways that can only be fully conveyed in stories that are as many and particular as the workers who have lost their jobs. The story of Pat O'Dell, recounted in the introduction to this petition, is but one.

F. Conclusion

Four different methodologies, using highly conservative assumptions, estimate that the Chinese government's persistent denial of workers' rights displaces as many as 973,000 manufacturing jobs in the United States and as many as 1,235,000 total jobs, and perhaps many more. These estimates plainly suffice to show that the Chinese government's unreasonable trade practices impose a burden on U.S. commerce and warrant an investigation by the USTR under section 302(a) of the Trade Act.

There is no doubt that the impact of those violations on U.S. workers is substantial. Equally important, the estimated impact is a forewarning of the supply shock from China-based production that has yet to be felt. Once that shock is felt, the damage will be irreparable. The Chinese economy is now undergoing the quickest and largest industrialization in world history, underwritten in part by the most comprehensive and

⁴⁵⁶ Id..

⁴⁵⁷ Duane Leigh, *Assisting Workers Displaced by Structural Change* (Upjohn 1995) at p. 5.

⁴⁵⁸ William Carrington, "Wages Losses for Displaced Workers," *Journal of Human Resources* vol. 28 (Summer 1993) at pp. 571-92.

⁴⁵⁹ See, e.g., Jefferson Cowie and Joseph Heathcott, eds., *Beyond the Ruins: The Meanings of Deindustrialization* (ILR Press 2003); Louis Jacobson, et al., *The Costs of Worker Dislocation* (Upjohn 1993); Barry Bluestone and Bennett Harrison, *The Deindustrialization of America* ch. 3 (Basic Books 1982).

large-scale violations of workers' rights in the current global economy. The USTR and the President must act immediately to stop the Chinese government's repression of factory workers and prevent further hemorrhaging of U.S. manufacturing caused not by China's legitimate comparative advantage but by violations of internationally recognized workers' rights.

Two years ago, the President rejected the AFL-CIO's first petition. The President did not dispute the overwhelming evidence that China's factory workers are persistently denied internationally recognized worker rights. Nor did the President dispute the fact that the denial of workers' rights in China has adverse consequences for U.S. manufacturing workers and their communities. Instead, the President asserted that he would undertake more effective measures than those demanded by the AFL-CIO.

The record of the last two years is clear. China's factory workers are still denied the right to organize into unions that are independent of the one-party state. They are still barred from striking – or engaging in any other “planned action.” They are denied minimum wages. They are unprotected against child labor, forced labor, and workplace hazards.

Resisting these deprivations, China's factory workers have bravely risen up to assert their rights in increasing numbers. They have gotten no help from our President. The President was silent when forty-six thousand workers in Shenzhen demanded the right to establish an independent union. The President was silent when a thousand riot police in Xianyang ended the longest strike in the history of the PRC – and when police put down tens of thousands of other labor demonstrations, protests, and strikes. The President was silent when countless workers and their family members were beaten, detained, and imprisoned for asserting such basic workers' rights as the right to be paid wages they have earned. The U.S. government was silent when workers in Shenzhen sought elemental rights in desperate appeals such as these:

Come and save us! If we go on like this, we are going to die from being too tired here in Shenzhen where no compassion is shown. We cannot stand it anymore and this is why we write to you, to beg you to come and help us!...We work in a garment factory 14 hours a day, with 65 minutes' rest only for the two meals together....More than 80% of the workers have health problems....We are not very clear about the Labor Law but we heard on the radio that we should work 48 hours a week. In addition, wages are paid very late....All these violations of the

law show, and this is the worst thing, that we are not considered human beings....But the law is there to protect our security, to prevent us being treated as machines, to force the boss to follow moral rules....⁴⁶⁰

These Shenzhen workers petitioned for help from their own government, not from the United States, and surely when change comes to China's factories it will come from the insistence and courage of China's workers. But can there be any doubt that the resounding silence of the United States government, the most powerful actor in the international community, makes their struggle more difficult? Is there any doubt that intensive international scrutiny of China's workplaces, and powerful economic incentives tied to measurable improvements in compliance with workers' rights, would amplify the voices of strikers in Xianyang, protestors in Hebei, and petitioners in Shenzhen?

IX. Action by the President and the USTR

The President and the USTR should take three actions to remedy the extreme deprivation of workers' rights in China:

1. If the Chinese government fails to comply with internationally recognized workers' rights, the President and the USTR should impose all available WTO-consistent trade remedies to induce the Chinese government and global corporations to fully recognize and safeguard those rights. Every six months, the USTR should assess whether the Chinese government is in full compliance with internationally recognized workers' rights and should adjust the remedies accordingly.

2. If China fails to comply with internationally recognized workers' rights, the President and the USTR should negotiate a binding WTO-consistent agreement with the Chinese government that commits that government to fully cease its denial of workers' rights. The agreement should specify (a) precise indicators of compliance with workers' rights in China, (b) a transparent and rigorous method of verification of those indicators of compliance, to be implemented by the International Labor Organization, and (c) a plan for incrementally relaxing the trade remedies as the Chinese government achieves

⁴⁶⁰ Isabelle Thireau and Hua Linshan, "One Law, Two Interpretations," in Neil Diamant, et al., *Engaging the Law in China* (Stanford 2005) at p. 99.

benchmarks of compliance with workers' rights, and for strengthening those remedies if benchmarks are not met.

3. The President should mandate the following corporate disclosure requirements, to enable the U.S. and Chinese governments, the public, and China's workers to verify whether conditions in China's factories improve:

- (a) Corporations must disclose comprehensive data about wages, hours, and other working conditions in each of their Chinese affiliates and contractors;
- (b) The disclosed information must be made publicly available online, in a database that is readily searchable by name of corporation; name of affiliate or contractor; location of the affiliate's or contractor's facilities; wages; hours; and other useful categories of data.
- (c) Corporations must update the information on a monthly basis, to enable workers and the public to verify the reported wages, hours, and working conditions in "real time," rather than long after the fact when it is much more difficult to prove infractions.

These actions are fully within the scope of remedial actions authorized by section 301 of the Trade Act.

The Trade Act authorizes the USTR to take "all appropriate and feasible action...to obtain the elimination" of China's persistent denial of labor rights.⁴⁶¹ Those actions include the imposition of "duties or other import restrictions" against "any goods or economic sector without regard to whether or not such goods or economic sector were involved in the act, policy, or practice that is the subject of such action."⁴⁶² The USTR is also authorized to "enter into binding agreements" that commit the Chinese government to "eliminate, or phase out" the Chinese government's denial of workers' rights.⁴⁶³

The Trade Act also authorizes the USTR to take any "other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take."⁴⁶⁴ These include any actions "that are within the power of the President with respect to trade in any goods or services, or with respect to any other area

⁴⁶¹ 19 U.S.C. § 2411(b)(2).

⁴⁶² 19 U.S.C. §§ 2411(c)(1)(B), 2411(c)(3)(B).

⁴⁶³ 19 U.S.C. § 2411(c)(1)(D).

⁴⁶⁴ 19 U.S.C. § 2411(b)(2).

of pertinent relations” with the Chinese government.”⁴⁶⁵ The House Committee Report noted that this provision authorizes the President to use any of his “constitutional powers...to obtain a satisfactory solution.”⁴⁶⁶

In addition, section 306 of the Trade Act imposes the *obligation* on the President and the USTR to “monitor the implementation of each measure undertaken, or agreement that is entered into, by a foreign country to provide a satisfactory resolution of a matter subject to investigation under [Sections 301 and 302]....”⁴⁶⁷

This petition has shown that the Chinese government, with the complicity of global corporations, persistently denies basic workers’ rights in all sectors of manufacturing. In any event, the USTR may impose trade remedies against all manufactured exports from China “without regard to whether” any *particular* manufactured “goods or economic sector were involved” in the Chinese government’s denial of workers’ rights. The remedy for the Chinese government’s violations would be eviscerated if the trade remedy were imposed only on particular goods exported from particular factories where workers’ rights violations were documented. China-based producers, including U.S. multinationals, should not profit from the Chinese government’s authoritarian denial of access to information – the very denial that helps perpetuate its pervasive violation of workers’ rights. Trade remedies against all manufactured exports from China are therefore appropriate.

It is also appropriate that, if the Chinese government fails to comply fully with workers’ rights, the United States and Chinese governments enter into a binding WTO-consistent agreement requiring the Chinese government to cooperate in a program of rigorous verification of compliance with workers’ rights. The program should include semiannual assessments by the USTR of the Chinese government’s compliance with workers’ rights and commensurate adjustment of remedies.

This petition shows that the Chinese government has persistently and defiantly violated its international commitments to enforce its workers’ rights. The Chinese government today stands in violation of the core labor rights codified in the International Labor Organization’s 1998 Declaration of Fundamental Principles and Rights at Work,

⁴⁶⁵ 19 U.S.C. §2411(b)(2).

⁴⁶⁶ H. Rep. No. 100-40, Part I (1987) at p. 57.

which is binding on all members of the ILO. The Chinese government today stands in violation of workers' right of association protected by the International Covenant on Civil and Political Rights, which the Chinese government signed in 1998. The Chinese government today stands in violation of workers' right to form and join the trade union of their choice, enshrined in the International Covenant on Economic, Social, and Cultural Rights, which the Chinese government ratified in 2001.

In the absence of material incentives to enforce these international commitments, the Chinese government has broken them. If the Chinese government fails to comply fully with workers' rights, it is therefore appropriate to impose all available WTO-consistent trade remedies, both to provide such material incentives and to ensure that China-based producers do not profit from violations of their workers' fundamental rights.

The AFL-CIO's 2004 petition presented this argument, and it has been confirmed by the record since the President denied that petition. In rejecting that petition, the President did not dispute the petition's documentation of the violation of workers' rights in China. Nor did he dispute the petition's demonstration of the adverse effects on U.S. manufacturing workers. Instead, he asserted that alternative remedies would suffice to improve the Chinese government's compliance with workers' rights.

But as we have detailed in this new petition, noncompliance with the rights of China's workers has persisted and in many respects has worsened in the last two years – in the absence of powerful incentives for improvement and transparent verification of compliance. This negates the only legal grounds for the President's denial of the petition. The President is now obligated to act, and to act effectively.

The experience of the last two years has also substantiated beyond doubt that measurement and verification of compliance with workers' rights in China's factories is obstructed by the nearly total lack of transparency respecting working conditions and by corporations' complicity in both noncompliance and the concealment of noncompliance. There is simply no way to fully and accurately know the extent to which minimum wages are paid, occupational safety and health standards are implemented, forced labor is used, child labor is employed, and workers are permitted to freely form unions and engage in

⁴⁶⁷ 19 U.S.C. §2416(a).

collective bargaining unless corporations disclose the actual working conditions in their factories.⁴⁶⁸

Corporate disclosure is not only essential to verification and measurement of compliance with workers' rights. It will also heighten the incentives facing the Chinese government to achieve compliance with workers' rights. As explained and documented in this petition, corporations are complicit with the Chinese government in denying workers' rights. In the absence of remedies aimed at corporate complicity, corporations will resist compliance by the Chinese government. If corporations are required to fully and accurately disclose the working conditions in their Chinese affiliates and contractors, they will face incentives to improve at least the worst conditions -- in order to avoid public censure and potential damage to reputation and loss of revenue. They will therefore reduce their resistance to compliance by the Chinese government. Conversely, the Chinese government will face additional incentives to comply with workers' rights if it knows that corporations, in order to avoid public censure, will be more reluctant to invest in and source from China-based factories with horrendous working conditions. These incentives are maximized if workers and the public are able to track working conditions posted on an online database.

For these reasons, the requirements of corporate disclosure enumerated above are authorized by the Trade Act and indeed are essential to discharge the President's *obligation* under section 306(a) to "monitor the implementation of each measure undertaken" to remedy the denial of Chinese factory workers' rights.⁴⁶⁹ Under section 301 as well, corporate disclosure requirements are authorized and necessary to ensure that trade measures in fact achieve the measurable and verifiable "eliminat[ion] or phas[ing] out" of non-compliance with workers' rights. Hence, in sections 301 and 306, Congress has authorized the President to require corporate disclosure for purposes of fulfilling his statutory obligation to verify compliance with workers' rights.

This petition has shown that the Chinese government's unremitting repression of workers' rights continues to take wages, health, and dignity not only from China's

⁴⁶⁸ For these reasons, this petition has relied on the painstaking investigations and case studies undertaken at great risk by organizations and researchers devoted to workers' rights in China. Verification of compliance by the Chinese government and China-based corporations should not require such arduous methods.

workers. It continues to displace and impoverish workers – and their families and communities – in the United States and throughout the world. All countries, including China and the United States, face strong incentives to compete for mobile capital and jobs by cheapening the labor and debasing the lives of their working citizens. These incentives are created by global rules that protect rights of property and contract but not rights of personhood and labor.

More than seventy years ago, the United States rejected rules like these, in our domestic multi-state system. Congress concluded that trade across borders “was the means of spreading and perpetuating...substandard labor conditions among the workers of the several states.”⁴⁷⁰ In order to eliminate each state’s incentive to perpetuate substandard labor conditions, it was necessary to enforce labor rights at the federal level. All states must be concurrently bound by labor rights, or each state would seek competitive advantage by suppressing those rights.

Eighteen years ago, in section 301(d), Congress elevated the same policy from the interstate to the international level. Congress authorized the President and the USTR to enforce workers’ rights among our trading partners, for the sake of their workers and ours.⁴⁷¹

Nearly a century ago, Congress declared that “the labor of a human being is not a commodity or article of commerce.”⁴⁷² It is time that the United States used its extraordinary bargaining power to ensure that internationally recognized workers’ rights are given the same protection that is now given to rights of commerce.

⁴⁶⁹ 19 U.S.C. §2416(a).

⁴⁷⁰ *United States v. Darby*, 312 U.S. 100 (1941).

⁴⁷¹ See Section IV of this petition.

⁴⁷² Section 6 of the Clayton Act of 1914, 15 U.S.C §18.

Respectfully submitted,

Mark Barenberg
Professor of Law
Columbia University
435 West 116th Street
New York, N.Y. 10027
(212) 854-2260

APPENDIX A

Trade Remedies to Enforce Workers' Rights in China Are Required by U.S. Law and Do Not Violate WTO Rules

Introduction and Summary

This petition demands that the USTR and the President impose WTO-consistent trade remedies against the Chinese government, under section 301 of the Trade Act of 1974, as amended, if the Chinese government does not fully comply with internationally recognized workers' rights. The purpose of the trade remedies is to induce the Chinese government to stop violating its workers' fundamental rights and to prevent the irreparable displacement of U.S. manufacturing jobs caused by the Chinese government's violations. The petition marshals overwhelming evidence that hundreds of thousands of U.S. jobs are displaced by the Chinese government's violations of workers' rights. Based on this showing, the Trade Act requires the USTR and the President to take action.

This Appendix explains that trade remedies designed to achieve a trading partner's compliance with workers' rights do not violate rules of the World Trade Organization (WTO), and that Congress and the President have so declared. The trade remedies sought by petitioners are non-discriminatory since they are directed against conditions that are unique to China. For this reason, trade remedies against the Chinese government would not violate the most-favored-nation rules of Article I of the General Agreement on Tariffs and Trade (GATT) or the national treatment rules of Article III of the GATT. Moreover, Article XX of the GATT immunizes such trade remedies, since they serve public morals and human life and health.

But there are two critical points to bear in mind, even if there were uncertainty about whether the WTO might find trade remedies against the Chinese government to conflict with WTO rules. First, even if the U.S. imposed trade remedies and the Chinese government subsequently won a WTO case against those remedies, the U.S. could then simply remove the remedies when ordered by the WTO. Neither the Chinese government nor the WTO could impose any retaliatory measures against the United States. The WTO could order only prospective measures (that is, an end to the remedies by the U.S.), not retrospective penalties (such as compensation to the Chinese government or permission for the Chinese government to impose compensatory or retaliatory tariffs).

The second point is equally critical: Even if there were uncertainty about whether trade remedies against the Chinese government violate WTO rules, the Executive branch would flout its constitutional duties if, anticipating a possible WTO challenge by the Chinese government, it refused to enforce the Trade Act. In legislation implementing the Uruguay Round Agreements establishing the WTO, Congress and the President authoritatively declared that the dispute resolution procedure of the WTO does not apply to trade remedies designed to enforce workers' rights. That is, they declared that such trade remedies are WTO-consistent. Section 301(d) is the law of the land, is consistent with international law, and binds Executive action. The Constitution requires

the President to “faithfully execute” section 301(d). If China subsequently challenges section 301(d) before the WTO, the President’s constitutional obligation is to vigorously defend section 301(d) – that is, to defend the WTO-consistency of the trade remedies. Congress has given the Executive a weapon to achieve fair trade and has directed him to wield it. The Constitution does not permit him to unilaterally disarm.

1. The Constitution Requires the Executive Branch to Faithfully Execute Section 301(d) of the Trade Act and to Defend the WTO-consistency of Trade Remedies Designed to Enforce Workers’ Rights – Regardless Whether the Chinese Government May Later Challenge U.S. Law under WTO Rules.

The U.S. Constitution requires the President to faithfully execute the laws of the United States.⁴⁷³ This is the Executive’s most fundamental constitutional obligation. It is the Executive’s job to enforce domestic law and to act as a vigorous advocate of U.S. interests if a foreign power later challenges U.S. law before the WTO.

In the 1988 Amendments to section 301 of the Trade Act of 1974, Congress directed the Executive branch to take action to end trading partners’ violations of internationally recognized workers’ rights.⁴⁷⁴ Congress wanted to end the “powerful inducement for capital flight and overseas production by U.S. industries” flowing from “the lack of basic rights for workers.”⁴⁷⁵

When Congress enacted legislation implementing the WTO agreements in 1994, Congress explicitly stated that section 301 remained the law of the land, without alteration. Section 102(a) of the Uruguay Round Agreements Act (URAA) states:

No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect...*Nothing in this Act shall be construed ... to limit any authority conferred under any law of the United States, including section 301 of the Trade Act of 1974, unless specifically provided for in this Act.*⁴⁷⁶

The Executive branch, of course, may not repeal these acts of Congress. Nor may the Executive decline to enforce them. The Executive must faithfully execute them – regardless whether a foreign power may at some future date claim that these statutes stand in violation of international rules.

⁴⁷³ The President “shall take Care that the Laws be faithfully executed.” U.S. Constitution, Art. II, § 3.

⁴⁷⁴ 19 U.S.C. § 2411(d)(3)(B)(iii).

⁴⁷⁵ H. Rep. No. 98-1090 (1984) at pp. 11-12, reprinted in 1984 U.S.C.C.A.N. 5101, 5111-12 (Committee Report to the workers’ rights provisions in the Generalized System of Preferences, the direct statutory forerunner of the Section 301 workers’ rights provisions).

⁴⁷⁶ 19 U.S.C. § 3512(a), entitled “Relationship of the [Uruguay Round] Agreements to United States Law.” (emphasis added).

In the U.S. constitutional scheme, international trade rules have binding force in the U.S. domestic legal system and preempt existing legislation only when Congress says so. Hence, WTO rules override Congressional statutes only if Congress has so declared. Conversely, if Congress declares that domestic statutes override international rules, domestic statutes unquestionably prevail and bind the Executive.

In section 102 of the URAA quoted above, Congress declared that, in the event of conflict between section 310 and WTO rules, section 301 prevails.

More important for our purposes, the petition, by its terms, demands only trade remedies that are WTO-consistent. And, as explained presently, both Congress and the President have declared that trade remedies designed to enforce workers' rights are WTO-consistent. The question facing the Executive branch, then, is whether it will implement and defend trade measures undertaken by the United States in the good faith understanding that the measures are WTO-consistent – even if the Chinese government may later challenge the measures before the WTO.

When Congress enacted the URAA, Congress also approved the President's Statement of Administrative Action (SAA).⁴⁷⁷ The SAA, by its own terms, "represents an authoritative expression by the Administration concerning its views regarding the interpretation and application of the Uruguay Round agreements...."⁴⁷⁸ The only WTO dispute panel to address section 301 ruled that the SAA is indeed the authoritative statement of U.S. domestic law that binds the USTR and the President in section 301 cases.⁴⁷⁹

The SAA confirms that both the President and Congress intended to preserve the Executive's authority to impose unilateral trade remedies of the kind sought by the petitioners – and that the President and Congress understood that such trade remedies are WTO-consistent. The SAA states:

*Neither section 301 nor the DSU [Dispute Settlement Understanding of the WTO] will require the Trade Representative to invoke DSU dispute settlement procedures if the Trade Representative does not consider a matter involves a Uruguay Round agreement. Section 301 will remain fully available to address unfair practices that do not violate U.S. rights or deny U.S. benefits under the Uruguay Round agreements and, as in the past, such investigations will not involve recourse to multilateral dispute settlement procedures....For example,...[s]ection 301 will...remain available to address persistent patterns of conduct by foreign governments that deny basic worker rights and burden or restrict U.S. commerce.*⁴⁸⁰

⁴⁷⁷ The Uruguay Round Agreements Act: Statement of Administrative Action, Sept. 27, 1994, reprinted in 1994 U.S.C.C.A.N. 4040.

⁴⁷⁸ Id. at 4040.

⁴⁷⁹ WTO Dispute Panel Report, 99-5455, United States – Sections 301-310 of the Trade Act of 1974 – Report of the Panel, WT/DS152/R (22 December 1999) at ¶¶ 1.110-1.113.

⁴⁸⁰ 1994 U.S.C.C.A.N. at 4320 (emphasis added).

The SAA clearly states that, not only under section 301 *but also under the Dispute Settlement Understanding of the WTO*, trade remedies of the kind sought in the petition *do not trigger the WTO dispute resolution machinery*.

As discussed in the next Point of this Appendix, the WTO dispute panel that addressed section 301 noted that the SAA constrains the discretion of the USTR when a petitioner asks the USTR to determine that a trading partner's conduct is *inconsistent with that country's WTO obligations to the U.S.* In such cases, the SAA requires that the USTR make no determination until the WTO's multilateral dispute machinery renders a final determination. However, the SAA does not constrain or limit the USTR's authority in petitions challenging a trading partner's conduct *on grounds other than inconsistency with WTO obligations to the U.S.* The petition does not ask the USTR to determine that the Chinese government has violated its WTO obligations to the U.S. Instead, the petition asks the USTR to determine that the Chinese government has persistently violated the internationally recognized workers' rights set forth in section 301(d). In the language quoted above, the SAA explicitly preserves the USTR's authority and duty to make unilateral determinations in cases such as this. The SAA also declares that the WTO's dispute resolution procedure is inapplicable, as a matter of WTO rules – that is, that trade remedies of the kind sought in the petition are WTO-consistent.

In sum, Congress has clearly declared – in the URAA and in the SAA -- that the use of section 301 to remedy a trading partner's denial of basic workers' rights is the law of the land and is consistent with WTO rules. The rules of section 301 bind Executive action in this case. (This would also be true, of course, even if the substantive worker-rights rules of section 301 conflicted with the substantive rules of the WTO – that is, even if WTO rules barred member states from unilaterally imposing trade remedies for another member state's violation of workers' rights.⁴⁸¹ In the URAA, Congress has provided that section 301 prevails over any conflicting WTO rules.)

Hence, even if the USTR and the President anticipate that the Chinese government may ask the WTO to rule that the trade remedies demanded by the petitioners violate WTO rules, this is no grounds for the Executive branch to refuse to impose the remedies mandated by Congressional statute. As the next two Points explain, any such WTO challenge by the Chinese government would fail. Congress and the

⁴⁸¹ Note that the SAA, discussed above, would not limit the USTR's authority to act, even assuming that WTO rules barred member states from imposing trade remedies for another state's violation of workers' rights. The SAA says that the USTR will not use section 301 to find that *a trading partner* has acted inconsistently with its *substantive WTO obligations to the United States*, unless and until the WTO dispute machinery has so found. The SAA does not say that the USTR will not use section 301 in a manner that violates the substantive *WTO obligations of the United States* to one of its trading partners. To the contrary, the SAA states that the USTR's authority under section 301 remains fully intact in investigations of a trading partner's alleged denial of basic workers' rights. Hence, assuming *arguendo* that WTO rules prohibited member states from imposing unilateral trade remedies against countries that violate basic workers' rights, the statutory language of section 301 would take precedence over those WTO rules, as a matter of domestic law binding the USTR and the President. But, as argued in this Appendix, that assumption is incorrect, as Congress and the President have stated.

President have correctly declared that the workers' rights provisions of section 301 do not conflict with WTO rules.

The USTR and the President should not embrace the Chinese government's self-serving and incorrect interpretation of WTO rules as a reason for Executive inaction. If the President did so, he would effectively be acting as the Chinese government's attorney rather than as the Chief Executive of the United States.

2. *The WTO Has Never Ruled Against the Use of Section 301 to Induce Our Trading Partners to Enforce Workers' Rights*

Section 301 of the Trade Act authorizes the USTR and the President to impose trade remedies against foreign countries in order (1) to enforce trade agreements with those countries, including WTO agreements,⁴⁸² or (2) to induce our trading partners to cease certain unreasonable, discriminatory, or unjustifiable trade practices even if the practices do not violate trade agreements.⁴⁸³ The petition falls in the second category. Section 301 states that a trading partner's persistent denial of basic workers' rights is an unreasonable trade practice, wholly apart from whether those rights are incorporated in a trade agreement with that country.⁴⁸⁴

As mentioned in Point 1 above, the dispute settlement mechanism of the WTO has decided only one case challenging section 301 – in a dispute panel report of December 1999.⁴⁸⁵ That decision addressed only the provisions of section 301 related to the first category of section 301 cases. The WTO panel explicitly stated that its decision had no bearing on the second category of section 301 cases – that is, section 301 cases challenging a trading partner's conduct on grounds other than inconsistency with WTO obligations.

The WTO's dispute panel decision on section 301 arose from a complaint filed by the European Communities (EC). The EC challenged the provisions of section 301 authorizing the USTR to determine whether a trading partner engaged in conduct inconsistent with the trading partner's WTO obligations.⁴⁸⁶ The EC claimed that those provisions violated the WTO's Dispute Settlement Understanding (DSU), because the provisions gave the USTR discretion to unilaterally determine that a trading partner's conduct was inconsistent with WTO rules, prior to the multilateral determination by the WTO whether the trading partner's conduct was inconsistent with WTO rules.

The WTO dispute panel stated:

⁴⁸² 19 U.S.C. §§ 2411(a)(1)(A), 2411(a)(1)(B)(i).

⁴⁸³ 19 U.S.C. §§ 2411(a)(1)(B)(ii), 2411(b)(1).

⁴⁸⁴ 19 U.S.C. § 2411(d)(3)(B)(iii).

⁴⁸⁵ WTO Dispute Panel Report, 99-5455, United States – Sections 301-310 of the Trade Act of 1974 – Report of the Panel, WT/DS152/R (22 December 1999).

⁴⁸⁶ Id. at ¶¶ 1.3 & 1.29

We are not asked to make an overall assessment of the compatibility of Sections 301-310 [of the Trade Act of 1974] with the WTO agreements. It is not our task to examine any aspects of Sections 301-310 outside the EC claims. We are, in particular, not called upon to examine the WTO compatibility of US actions taken in individual cases in which Sections 301-310 have been applied. Likewise, *we have not been asked to address the WTO consistency of those provisions in Section 301-310 relating to determinations and actions taken by the USTR that do not concern the enforcement of US rights under the WTO Agreement, including the provisions authorizing the USTR to make determinations as to whether or not a matter falls outside the scope of the WTO agreements.*⁴⁸⁷

The dispute panel ruled that the challenged statutory language of section 301 – giving the USTR discretion to determine whether a trading partner’s conduct is WTO-inconsistent -- creates a *prima facie* violation of the U.S. commitment to use the multilateral mechanisms of the WTO to make such a determination.⁴⁸⁸ But the dispute panel ruled that that *prima facie* violation was removed by the SAA submitted by the President to, and approved by, the Congress.⁴⁸⁹ As explained in Point 1 above, that SAA precludes the USTR from making unilateral determinations prior to the WTO’s multilateral determinations, *in cases alleging that trading partner’s conduct is inconsistent with that country’s WTO obligations to the United States.*⁴⁹⁰

The petition asks the USTR and the President to impose trade remedies against the Chinese government for that government’s violations of internationally recognized workers’ rights. The petition does not ask for remedies against the Chinese government’s violation of that government’s WTO obligations to the U.S. Therefore, the WTO dispute panel decision on section 301 simply does not address whether WTO rules preclude the trade remedies demanded in the petition. As quoted above, that decision explicitly does not address “those provisions in section 301-310 relating to determinations and actions taken by the USTR that do not concern the enforcement of U.S. rights under the WTO Agreement.” Nonetheless, as explained above, the WTO dispute panel decision *does* recognize that the SAA is an authoritative statement of the domestic law binding the USTR. And the SAA explicitly states that the multilateral rules of the WTO have no effect on section 301 investigations addressing violations of basic workers’ rights by foreign governments.

Nor does the WTO Appellate Body’s 2004 ruling in the case of the European Communities’ Generalized System of Preferences (GSP) bear on the use of section 301 to promote workers’ rights in China.⁴⁹¹ The EC’s GSP granted special tariff benefits to developing countries that were not granted to developed countries – an otherwise

⁴⁸⁷ Id. at ¶ 7.13 (emphasis added).

⁴⁸⁸ Id. at ¶ 7.109.

⁴⁸⁹ Id. at ¶¶ 1.110-1.113.

⁴⁹⁰ The Uruguay Round Agreements Act: Statement of Administrative Action, Sept. 27, 1994, reprinted in 1994 U.S.C.C.A.N. 4040, 4320.

⁴⁹¹ European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries, WT/DS246/AB/R, April 7, 2004.

“discriminatory” policy authorized by special WTO rules contained in the so-called “Enabling Clause” authorizing GSP programs. The EC denied those special benefits to developing countries that failed to implement adequate policies against drug trafficking. India challenged this conditionality, arguing that if the EC or other developed countries granted special tariff benefits to developing countries, WTO rules require that those benefits be granted to all developing countries without condition. The Appellate Body ruled that conditionality would be permitted if the EC could show that it applied uniform criteria to all developing countries (in that case, uniform criteria regarding drug trafficking) and that the conditionality “responded positively” to the country’s particular “developmental needs.” The Appellate Body did not address the question whether a developed country’s denial of special benefits based on a developing country’s non-compliance with workers’ rights would meet the latter test – that is, whether enforcement of labor rights may promote the developmental needs of particular countries. In any event, the India-EC case is clearly inapplicable to trade sanctions against the Chinese government under section 301 – since such sanctions have nothing to do with the withdrawal of special benefits granted to a developing country under a GSP program. That is, the India-EC decision rested entirely on an interpretation of the WTO “Enabling Clause” which authorizes GSP programs. If the U.S. imposes trade sanctions against China under section 301, the “Enabling Clause” will not be at issue.

Hence, neither the WTO’s section 301 decision nor its GSP decision precludes unilateral action by the United States in this case. As explained in the next section, if the U.S. imposed such trade remedies and the Chinese government subsequently challenged them, WTO rules and precedents dictate that the remedies be upheld.

3. *Trade Sanctions Against the Chinese Government to Enforce Workers’ Rights Do Not Violate WTO Rules.*

The trade remedies demanded in the petition do not violate WTO rules. Since the trade remedies are non-discriminatory, they violate neither the most-favored-nation rules of Article I of the GATT nor the national treatment rules of Article III of the GATT. Even if the trade remedies violated those Articles, they would be immunized by Article XX of the GATT, which authorizes unilateral trade remedies to enforce public morals and human life and health.

The most-favored-nation rules of Article I of the GATT require that the U.S. treat the products of one trading partner the same as “like products” of other trading partners. That is, the U.S. may not discriminate among its trading partners. The trade remedies sought by the petitioners do not violate this principle, since trade remedies against the Chinese government are based on that country’s uniquely comprehensive and unrelenting denial of workers’ rights. The goods produced in China are “unlike” the goods produced in any other country, because only China’s exports are produced under the uniquely harsh labor policies that prevail in China. The condition under which goods are made is one of

their distinguishing characteristics – as much as the physical characteristics of the goods themselves.⁴⁹²

The petition demonstrates at great length that the scope, scale, intensity, and methods of the Chinese government's labor-market controls are unmatched anywhere in the current global economy. No government but China's imposes internal migration controls that allocate workers to factory jobs and create a sub-caste of factory workers stripped of basic civil and political rights. (This method of control was used in apartheid-era South Africa, but was dismantled when apartheid fell. It is significant that trade sanctions were deployed against that regime, were nearly universally endorsed by the global community, and were effective in promoting human rights.) No government but China's combines such internal controls with widespread bonded labor among factory workers. And no government but China's combines both of these with relentless, violent suppression of free association among factory workers. Trade remedies targeting these practices do not discriminate against the Chinese government, because no other government engages in this combination of practices.

For similar reasons, the trade remedies sought by the petitioners do not violate the national treatment rules of Article III of the GATT. The national treatment standard requires that the U.S. not discriminate between goods produced in the U.S. and "like products" made in other WTO member countries. Goods manufactured in the United States are not produced under policies of internal pass controls, bonded labor, and long-term imprisonment and torture of union organizers and strikers. Goods manufactured in China are produced under such conditions. The petitioners are not asking the USTR and the President to hold Chinese goods to higher standards than U.S. goods.

Even if trade remedies demanded by the petitioners violated most-favored-nation rules and national-treatment rules, Article XX of the GATT immunizes the trade remedies against any complaint the Chinese government might bring to the WTO. Article XX(a)-(b) provides that WTO members may impose unilateral trade remedies if

⁴⁹² Opponents of trade measures serving labor and environmental purposes sometimes assert that one product is "like" another – and therefore cannot be treated differently under Articles I or III -- if the two products have the same physical characteristics even if they are made under different working or environmental conditions. John Jackson observes that the Appellate Body (AB) of the WTO has not squarely addressed the distinction, and predicts that the asserted distinction will not and should not prevail in WTO law. John Jackson, "The Limits of International Trade: Workers' Protection, the Environment and Other Human Rights," 94 *American Society of International Law, Proceedings* 222, 224 (2000). Indeed, the AB recently put the distinction into question. WTO Appellate Body Report on *European Communities – Measures Affecting Asbestos & Asbestos-Containing Products*, WR/DS135/AB/R (March 12, 2001) at ¶¶ 88-102. In the Asbestos ruling, the AB ruled that the meaning of "like products" will vary from case to case, will depend on many circumstances apart from physical characteristics, and must be judged functionally, in terms of the purposes of avoiding domestic regulations that give unfair advantage to domestic products over foreign products. The petition, of course, seeks to secure fair competition, not to undermine it. It does not seek to impose higher labor standards on Chinese products than on United States products.

There is no logical or practical grounds for the asserted distinction between product and process regulations. For the definitive analysis, see Robert Howse and Donald Regan, "The Product/Process Distinction – An Illusory Basis for Disciplining 'Unilateralism' in Trade Policy," 11 *European Journal of International Law* 249 (2000).

necessary to serve “public morals” or “human life and health.” Remedies designed to enforce workers’ rights are included in these broad categories.⁴⁹³

The Appellate Body (AB) of the WTO has ruled explicitly that Article XX authorizes WTO members to “condition[] access to a Member’s domestic market on whether exporting Members comply with, or adopt, a policy or policies unilaterally prescribed by the importing Member” – so long as the policies in question fall within the categories enumerated in Article XX.⁴⁹⁴ In that decision, the AB ruled that a member state may refuse to import goods from countries that fail to enforce environmental controls (in the production process) that meet standards set by the importing country.⁴⁹⁵ Clearly, under Article XX, unilateral remedies may be directed at the exporting country’s policies pertaining to production processes.

The Appellate Body of the WTO has further ruled that the categories of public policy enumerated in Article XX must be interpreted in an evolutionary fashion – “in light of the contemporary concerns of the community of nations....”⁴⁹⁶ For example, Article XX(g) permits WTO members to impose unilateral measures “in relation to...the conservation of exhaustible natural resources.” Invoking that provision, the United States unilaterally prohibited imports of shrimp from countries that did not protect endangered sea turtles during the process of producing shrimp. Several WTO members challenged the measures on the ground that, when Article XX was adopted in 1947, the term “exhaustible natural resources” referred only to finite, non-living resources such as minerals, not to living species. In 1998 and again in 2001, the AB explicitly rejected the view that the meaning of “exhaustible natural resources” was frozen at the time the GATT was negotiated.⁴⁹⁷ The AB ruled instead that the terms of Article XX(g) must be

⁴⁹³ This proposition is fully endorsed by eminent international law scholars, including strong defenders of the WTO system. See, e.g., Robert Howse, “The World Trade Organization and the Protection of Workers’ Rights,” 3 *Journal of Small and Emerging Business Law* 131 (1999).

⁴⁹⁴ WTO Appellate Body Report on U.S.- Import of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (October 12, 1998) (“Shrimp/Turtles I”) at ¶ 121. In its subsequent ruling in the same case, the AB affirmed that the quoted language “was central to our ruling.” Report of the Appellate Body, U.S.- Import Prohibitions of Certain Shrimp & Shrimp Products; Recourse to Article 21.5 of the DSU by Malaysia, WT/DS58/AB/RW (October 22, 2001) (“Shrimp/Turtles II”) at ¶ 138. The preamble (or “chapeau”) of Article XX also requires that sanctions be applied in a manner that does not constitute “arbitrary or unjustifiable discrimination between countries where the same conditions prevail....” As explained above, the sanctions against China sought by the petitioners are non-discriminatory, since working conditions and labor policies prevailing in China are uniquely harsh.

⁴⁹⁵ In *Shrimp/Turtles I*, the AB found that a U.S. import ban -- on shrimp from countries that did not enforce regulations protecting sea turtles during the production of shrimp -- fell within Article XX(g), which authorizes members to impose unilateral trade measures “in relation to...the conservation of exhaustible natural resources.” The AB went on to rule that the U.S. had applied this otherwise valid trade measure in a discriminatory manner, by enforcing it more strictly against some countries than against others. The United States corrected this defect, and the AB subsequently upheld the U.S. policy in *Shrimp/Turtles II*.

⁴⁹⁶ *Shrimp/Turtle I* at ¶ 129 (referring to contemporary understandings of Article XX as of 1994, when Article XX was re-codified in the WTO agreements).

⁴⁹⁷ See *supra* note 494.

interpreted in light of evolving understandings of international environmental law and policy.⁴⁹⁸

This evolving interpretation of Article XX is mandated by the language of the WTO agreements. The 1994 Dispute Settlement Understandings state that WTO rules must be interpreted “in accordance with customary rules of interpretation of public international law.”⁴⁹⁹ The customary rules of interpretation, in turn, are codified in part in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.⁵⁰⁰ The Vienna Convention provides that the text of international agreements is to be interpreted in light of their “context.” Although Article XX was originally negotiated in 1947, it was re-codified in the WTO agreements of 1994. This re-codification constitutes a new “founding moment” and places Article XX in an entirely new “context” – as the AB recognized in the Shrimp/Turtle precedents.⁵⁰¹

In accordance with the WTO text and these AB precedents, the meaning of “public morals” and “human life and health” must be interpreted in light of evolving understandings of international labor rights, particularly the understandings of the 1990s, when Article XX was newly embedded in the aborning WTO system.

Subsequent to 1947 and before 1994, when Article XX was placed in the new context of the WTO agreements, the global community adopted three United Nations instruments that constitute the “International Bill of Human Rights”: the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (entry into force 1976), and the International Covenant on Economic, Social, and Cultural Rights (entry into force 1976). These three instruments announce that workers’ rights are universal human rights.

These internationally recognized workers’ rights include, among others: freedom of association,⁵⁰² the right “to form and join trade unions” of the worker’s own choosing,⁵⁰³ freedom from forced labor,⁵⁰⁴ the right to “just and favorable remuneration,”⁵⁰⁵ the right to “reasonable limitation of working hours,”⁵⁰⁶ the right to

⁴⁹⁸ WTO Appellate Body Report on U.S.- Import of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (October 12, 1998) (“Shrimp/Turtles I”) at ¶ 135; Report of the Appellate Body, U.S.- Import Prohibitions of Certain Shrimp & Shrimp Products; Recourse to Article 21.5 of the DSU by Malaysia, WT/DS58/AB/RW (October 22, 2001) (“Shrimp/Turtles II”).

⁴⁹⁹ Understanding on Rules and Procedures Governing the Settlement of Disputes, April 15, 1994, Art. 3.2, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, Legal Instruments – Results of the Uruguay Round vol. 31, 33 I.C.M. 1125, 1127 (1994).

⁵⁰⁰ Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

⁵⁰¹ For a more detailed treatment of this issue, see Robert Howse, “The Appellate Body Rulings in the Shrimp/Turtle Case: A New Legal Baseline for the Trade and Environment Debate,” 27 Columbia Journal of Environmental Law 489 (2002).

⁵⁰² Universal Declaration of Human Rights, Article 20.

⁵⁰³ Universal Declaration of Human Rights, Article 23(4); International Covenant on Economic, Social, and Cultural Rights, Article 8(1); International Covenant on Civil and Political Rights, Article 22.

⁵⁰⁴ Universal Declaration of Human Rights, Article 23(1); International Covenant on Civil and Political Rights, Article 8.

⁵⁰⁵ Universal Declaration of Human Rights, Article 23(3).

“[s]afe and healthy working conditions,”⁵⁰⁷ and the general right to “just and favorable conditions of work.”⁵⁰⁸

In addition, in 1998, the International Labor Organization (ILO) -- the UN agency responsible for promulgating international labor rights -- enacted the Declaration of Fundamental Principles and Rights at Work. All ILO members, including China, are bound to respect the principles underlying the core workers’ rights enumerated in that Declaration.

There is no question that the “context” in 1994 -- when Article XX was re-codified in the WTO agreements -- and the “evolving understandings” of international labor rights to the present date, weigh decisively in favor of interpreting “public morals” and “human life and health” to include core workers’ rights. Interpreting Article XX, the AB upheld the U.S. ban on imports of shrimp produced in ways that are harmful to sea turtles, in part because “the vast majority” of nations have now adopted the policy goal of protecting sea turtles.⁵⁰⁹ It is unthinkable that the WTO will find that the vast majority of nations have adopted the policy goal of protecting sea turtles but not workers.

This result is reinforced by other fundamental principles of public international law. These principles require that the WTO interpret Article XX to minimize interference with sovereign domestic laws such as Section 301:

[One fundamental principle of public international law,] established in the *Lotus* case [of 1927], is that the sovereignty of states is plenary in the absence of specific legal constraints to the contrary. One does not presume, or presume lightly, that the sovereignty of states is restricted. Moreover, in the *Nicaragua* case, the International Court of Justice held that there was no rule of customary public international law that prevented a state from taking economic measures in response to the policies of another state. In the circumstances, the anti-judicial-activism principle would weigh against imposing on the United State any legal constraint on its sovereignty not clearly authorized by the GATT treaty. Thus, in the presence of controversy over the limits of Article XX, a conservative judicial body would...adopt[] the interpretation that supposes the least interference with the sovereignty of the U.S.⁵¹⁰

⁵⁰⁶ Universal Declaration of Human Rights, Article 24.

⁵⁰⁷ International Covenant on Economic, Social, and Cultural Rights, Article 7(b).

⁵⁰⁸ Universal Declaration of Human Rights, Article 23(1).

⁵⁰⁹ WTO Appellate Body Report on U.S.- Import of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (October 12, 1998) (“Shrimp/Turtles I”) at ¶ 135.

⁵¹⁰ Robert Howse, “The Appellate Body Rulings in the Shrimp/Turtle Case: A New Legal Baseline for the Trade and Environment Debate,” 27 *Columbia Journal of Environmental Law* 489 (2002) at pp. 517-18 (citations to cases omitted). In this quotation, Professor Howse is writing in defense of unilateral trade measures serving environmental goals under Article XX(g). The argument is equally applicable to measures serving worker rights under Article XX(a), (b).

The international community has exhausted alternatives to trade measures as a means to induce the Chinese government to comply with workers' rights. For more than a decade, petitioners have supported the persistent efforts of the International Confederation of Trade Unions to hold the Chinese government accountable for workers' rights violations in the International Labor Organization. The Chinese government has stonewalled those efforts and many other international campaigns supporting the rights of China's workers. The President of the United States maintains that he has undertaken alternative remedies to improve compliance with workers' rights by the Chinese government. As detailed in the petition, those alternatives have yielded nothing. China continues to violate the ILO's Declaration of Fundamental Principles and Rights at Work, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.

In light of these persistent international efforts to induce the Chinese government to enforce basic workers' rights, and the Chinese government's equally persistent resistance to those efforts, the trade remedies demanded by the petitioners are necessary to serve public morals and human life and health. Hence, under Article XX of the GATT, the remedies sought by the petitioners do not violate WTO rules.

Appendix B

Unions Affiliated with the AFL-CIO

Air Line Pilots Association (ALPA)

Amalgamated Transit Union (ATU)

American Federation of Government Employees (AFGE)

American Federation of Musicians of the United States and Canada (AFM)

American Federation of School Administrators (AFSA)

American Federation of State, County and Municipal Employees (AFSCME)

American Federation of Teachers (AFT)

American Postal Workers Union (APWU)

American Radio Association (ARA)

American Train Dispatchers Department (ATDD)

Associated Actors and Artistes of America (4As)

Actors' Equity Association (AEA)

American Federation of Television and Radio Artists (AFTRA)

American Guild of Musical Artists (AGMA)

American Guild of Variety Artists (AGVA)

Hebrew Actors' Union Inc.

Screen Actors Guild (SAG)

The Guild of Italian American Actors (GIAA)

Bakery, Confectionery, Tobacco Workers and Grain Millers International Union (BCTGM)

Brotherhood of Railroad Signalmen (BRS)

California School Employees Association (CSEA)

Communications Workers of America (CWA)

Flight Attendants, Association of CWA (AFA-CWA)

Farm Labor Organizing Committee (FLOC)

Federation of Professional Athletes (Professional Athletes)

Glass, Molders, Pottery, Plastics and Allied Workers International Union (GMP)

International Alliance of Theatrical Stage Employes, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada (IATSE)

International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (Iron Workers)

International Association of Fire Fighters (IAFF)

International Association of Heat and Frost Insulators and Asbestos Workers

International Association of Machinists and Aerospace Workers (IAM)

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (IBB)

International Brotherhood of Electrical Workers (IBEW)

International Federation of Professional and Technical Engineers (IFPTE)

International Longshore and Warehouse Union (ILWU)

International Longshoremen's Association (ILA)

International Plate Printers, Die Stampers and Engravers Union of North America

International Union of Allied Novelty and Production Workers (Novelty and Production Workers)

International Union of Bricklayers and Allied Craftworkers (BAC)

International Union of Elevator Constructors (IUEC)

International Union of Operating Engineers (IUOE)

International Union of Painters and Allied Trades of the United States and Canada (IUPAT)

International Union of Police Associations (IUPA)

Marine Engineers' Beneficial Association (MEBA)

Professional Airways Systems Specialists (PASS)

National Air Traffic Controllers Association (NATCA)

National Association of Letter Carriers (NALC)

Office and Professional Employees International Union (OPEIU)

Operative Plasterers' and Cement Masons' International Association of the United States and Canada (OP&CMIA)

Seafarers International Union of North America (SIU)

Sheet Metal Workers International Association (SMWIA)

Transport Workers Union of America (TWU)

Transportation Communications International Union/IAM (TCU/IAM)

United American Nurses (UAN)

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (UA)

United Automobile, Aerospace & Agricultural Implement Workers of America International Union (UAW)

United Mine Workers of America (UMWA)

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union (USW)

United Transportation Union (UTU)

United Union of Roofers, Waterproofers and Allied Workers (Roofers and Waterproofers)

Utility Workers Union of America (UWUA)

Writers Guild of America, East Inc. (WGAE)