

**SECTION 301 PETITION AGAINST THE CHINESE GOVERNMENT**  
***Questions and Answers***

***What is the goal of the AFL-CIO's petition?***

The goal is to improve the lives of China's factory workers, by pressuring the Chinese government and global corporations to comply with internationally recognized workers' rights. Achieving such compliance will also level the playing field for international competition, so workers in other countries, from Indonesia to Mexico to the United States, will not unfairly lose their jobs to the illegitimate suppression of labor costs in China's factories. The exploitation of China's factory workers does damage to both Chinese and U.S. workers.

***What actions does the petition demand?***

The petition demands that the President implement a program of economic incentives for the Chinese government to improve its record on workers' rights. The President must impose temporary, WTO-consistent trade measures against the Chinese government, so long as the government fails to comply fully with internationally recognized workers' rights. The trade measures should then be incrementally lifted as the Chinese government and global corporations meet verifiable benchmarks of compliance. At the same time, the President must implement a system for verifying that the Chinese government and global corporations are improving their compliance with workers' rights. For purposes of meaningful verification, the President must enter into a WTO-consistent agreement with the Chinese government requiring that the Chinese government cooperate with verification, and must order corporations to disclose working conditions in their China-based affiliates and suppliers. Every six months, the USTR must assess the degree of compliance by the Chinese government and adjust the trade measures accordingly.

***What law gives the President the authority to take these actions?***

Section 301 of the Trade Act directs the President to impose trade sanctions and to use any other Presidential power to remedy "unreasonable trade practices" by a trading partner. The law also directs the President to monitor and verify that the unreasonable trade practice is phased out and eliminated.

***Why is the denial of Chinese workers' rights an "unreasonable trade practice"?***

Section 301 explicitly states that a trading partner's persistent denial of workers' rights is an unreasonable trade practice. By denying workers' rights, the Chinese government artificially reduces labor costs, causing an illegitimate increase in exports to the United States and the rest of the world, thereby displacing jobs in the U.S. and other countries. In effect, the suppression of labor costs acts as an illegal export subsidy. When Congress enacted the labor provisions of Section 301, Congress explicitly stated that economic

development overseas should benefit not just elites and corporations, but workers at home and abroad.

***Why is the AFL-CIO filing a new petition, two years after the President rejected a similar petition?***

The AFL-CIO indeed filed a similar petition two years ago. In rejecting that petition, the President did not dispute the AFL-CIO's overwhelming evidence that the Chinese government persistently denies workers' rights and that United States workers lose jobs as a result. Instead the President asserted that actions other than those demanded by the AFL-CIO would more effectively improve the Chinese government's compliance with workers' rights. Two years later, the record is indisputable: In the absence of the powerful economic incentives demanded by the AFL-CIO, the Chinese government's compliance with workers' rights has not improved, and in many areas has actually worsened. The new petition fully documents the failure of the Bush Administration to advance the rights of China's workers. The record of the last two years has therefore negated the President's only legal ground for rejecting the petition. The law dictates that he now accept the petition.

***What is the effect on U.S. workers of the Chinese government's unreasonable trade practices?***

The United States loses 930,000 manufacturing jobs and 1,235,000 total jobs as a result of the denial of workers' rights in China. These estimates are based on the most conservative estimates of the decrease in China's factory wages and unit costs caused by the repression of workers' rights. The estimated job loss is confirmed by four methodologies, including the model employed by the International Trade Commission.

***Which rights of China's factory workers are persistently denied?***

The Chinese government and China-based corporations persistently deny all of the internationally recognized labor rights listed in Section 301. The Chinese government and corporations

- comprehensively deny the right to organize unions and engage in collective bargaining – by blacklisting, detaining, imprisoning, and in some cases torturing workers who exercise their fundamental right of free association;
- violently suppress worker protests and deny workers' right to strike;
- employ as many as ten to twenty million child laborers;
- exploit several million forced laborers, many in export factories, through forced prison labor and bonded servitude;
- fail to enforce standards of occupational safety and health, generating the highest rate of worker injury and illness in world history, and
- fail to enforce minimum wage standards, resulting in wages as low as 15 to 50 cents per hour.

### ***How low are wages in China's factories?***

Hourly wages in China are as low as 15 cents to 50 cents per hour. Wages are 25 to 60 percent below the Chinese Government's own minimum wage standards, and 47 to 85 percent below the wage level that would prevail if China's factory workers enjoyed all five of the basic workers' rights set forth in Section 301. Workers often work ten or twelve or eighteen hour days, often for seven days a week, and are typically not paid overtime wages as required by law. Simply to get paid the wages they've earned, workers must engage in protests, risking detention or police violence. The result is that factories fail to pay workers a staggering two to three months wages on average, and workers often lose their unpaid wages if they quit or are fired. Conditions are so bad that many impoverished workers are now refusing to work in the factories, explaining the paradox of a "labor shortage" in the country with the most unemployed and underemployed workers in world history.

### ***What about recent press reports that labor shortages are causing increased wages in China?***

The reported labor shortages in China's richest coastal cities are *caused by* continuing, inhumane working conditions in the factories, rather than the *cause of* significantly improved conditions. Companies such as Wal-Mart do not permit their Chinese suppliers to increase costs and prices – so factories must continue to squeeze labor costs. Rosy reports of higher adult wages in some coastal cities fail to take account of the following facts: Factories have instead turned to cheaper child labor in increasing numbers; factories have moved to inland China where wages are half of wages in the coastal export zones; factories fail to pay several months of wages; factories require excessive hours without paying required overtime wages; and factories make innumerable deductions from monthly wages for room, board, water, and infractions of militaristic factory rules.

In any event, the petition shows that, *even adopting the highly optimistic assumption that factory wages have risen 10 percent in each of the last two years*, wages are still artificially suppressed by 47 to 85 percent, as a result of the violations of workers' rights enumerated above.

### ***Is the AFL-CIO making demands that are "protectionist"?***

No. The petition does not seek permanent tariffs. Rather, it seeks positive, WTO-consistent incentives to achieve compliance with workers' rights in China. The petition therefore seeks temporary economic penalties that will be incrementally lifted as the Chinese government and corporations improve compliance with workers' rights. These demands are no more "protectionist" than other economic sanctions designed to pressure foreign governments to improve their human rights records – such as current sanctions against the governments of Burma and Iran, and historic sanctions against apartheid-era South Africa.

***Will the actions demanded by the AFL-CIO unfairly interfere with China's legitimate "comparative advantage" in low-wage production?***

No. The petition does not challenge China's legitimate comparative advantage defined by standard trade theory. The petition does not deny that one reason why China has low wages is the large number of impoverished people in China. The petition challenges only the *additional, artificial* reduction of China's wages caused by the comprehensive denial of workers' rights by the Chinese government and corporations operating in China. For this reason, the petition in no way challenges the right of China's workers to seek a better life through factory work. Quite the contrary – the petition seeks to improve the lives of China's factory workers, not only by raising their wages but by affording them the fundamental human rights and dignity that workers of all countries claim as their birthright.

***Don't the world economy and the U.S. economy benefit from free trade with China?***

This question misses the point – in three important ways.

First, trade is not "free" when one country engages in illegal trade practices – such as artificially subsidizing its exports. When a country represses labor rights, it artificially reduces labor costs and thereby subsidizes its exports, in violation of the rules of free trade.

Second, as just explained, the petition does not demand protectionist tariffs but only temporary, WTO-consistent economic penalties to induce the Chinese government and China-based corporations to comply with basic workers' rights – akin to the many, non-protectionist programs of economic sanctions currently and historically implemented by the U.S. government. Once the basic rights of China's factory workers are secured, the economic penalties will be fully removed and "free trade" will go forward on a level playing field, without an artificial "labor-repression subsidy" for factories in China.

Third, the question fundamentally misunderstands Section 301. Under Section 301, the only relevant question is whether China's repression of workers' rights harms U.S. workers. The question is not whether trade with China benefits other actors in the United States or the world.

By analogy, consider two garden-variety cases under Section 301: (1) a U.S. corporation challenges a foreign government's subsidization of export producers that compete with the U.S. corporation, and (2) a U.S. corporation challenges a foreign government's failure to enforce the U.S. corporation's copyright or patent. In each of these cases, Section 301 mandates Presidential action if the corporation shows that *it and it alone* is damaged by the unfair trade practice. The foreign subsidy reduces the revenue and profit of the domestic producer that competes with the subsidized foreign producer; and the failure to enforce intellectual property rights reduces the revenue and profit of the domestic owner of the copyright or patent.

*It is irrelevant under Section 301* whether the foreign subsidy benefits consumers or producers other than the petitioning company, and it is irrelevant whether the

infringement of the copyright benefits consumers or other producers. Foreign subsidies and copyright infringements might very well benefit consumers and other producers by reducing prices (in just the way that artificially low labor costs may reduce prices), and in some circumstances those benefits might outweigh the cost to the petitioning corporation. But Section 301 does not, in economic jargon, call for a “general welfare analysis” of the effect of an unfair trade practice; that is, it does not call for a balancing of overall costs and benefits caused by the unfair trade practice. Rather, it calls for an end to the unfair trade practice.

By precise analogy, Section 301 asks only whether a trading partner’s denial of workers’ rights causes damage to U.S. workers. It does not ask whether China’s denial of workers’ rights helps consumers by reducing prices or helps other corporations that might supply the inputs to China’s factories. It does not ask for a “general welfare analysis” of US-China trade or China’s overall effect on the global economy. If a trading partner persistently denies workers’ rights and if that denial causes harm to U.S. workers, Section 301 requires the President to take effective action to stop the denial of workers’ rights. Period.

***Don’t U.S. consumers benefit from lower-priced goods produced in China?***

As just explained, under Section 301 it is irrelevant whether consumers in the United States benefit from low-cost production in China. Section 301 asks only whether the denial of workers’ rights in China reduces employment and wages for U.S. manufacturing workers. Section 301 does not ask whether other economic actors benefit from the exploitation of China’s factory workers. An unfair trade practice – in this case, the denial of workers’ rights -- is not excused by the fact that some parties, be they consumers or corporations, profit from the illegal and exploitative practice.

Equally important, the question assumes that when U.S. consumers buy goods made in China’s factories they experience no harm from the sweatshop conditions there or from the consequent loss of their own or their neighbor’s jobs and wages. But, again to use economic jargon, consumer’s “preferences” are not fully “revealed” by their purchase of goods made in Chinese sweatshops. When consumers buy goods made in sweatshops, they may “benefit” from cheaper prices, but they suffer the “cost” of buying goods that violate their own ethical “preferences” -- not to mention the cost to their own jobs and wages. Surveys repeatedly show that consumers would pay more for products if they could be assured that the products were not produced in sweatshops. But consumers know that, acting individually, they cannot change the labor policies of the Chinese government and corporations operating there. Each consumer knows that his or her individual choice not to buy from sweatshops won’t do any good unless other consumers do the same. (This is the economists’ classic problem of “collective action” or “free-riding.”) That is, consumers must coordinate their purchasing decisions through a broad-based consumer boycott if they are to implement their preferences against sweatshops – but such voluntary coordination is notoriously difficult. There is a solution to this coordination problem: the government must act, to coordinate consumers’ action in line with the democratic preferences of the community. Congress has taken just this action,

by enacting Section 301 of the Trade Act. The President must enforce the law, to enable consumers to buy products from China that are not made in sweatshops.

***Why does the petition single out China? Isn't this unfair to China?***

The petition is not directed at the people of China. It is directed at the Chinese government and the corporations that profit from exploiting China's people. The petition focuses on China because only the Chinese government (with the complicity of corporations) engages so comprehensively in denying the rights of its own workers, with such a large measurable impact on U.S. workers. The Chinese government is the only government in the world that *combines*: blanket prohibition of independent unionization; detention, imprisonment, and torture of workers who protest their working conditions; a majority of factory workers with "temporary" status, lacking the basic legal rights of permanent residents in the cities and towns where they migrate to work; tens of millions of child workers; several million forced laborers, including forced prison labor and bonded servitude; the highest rates of occupational illness and injury in world history; and wages far below minimum standards.

The petition does not seek to harm the *people* of China. To the contrary. The petition reaches out to assist Chinese workers who struggle courageously to gain basic rights. It is true that the petition aims to put pressure on the Chinese *government* (as well as U.S. corporations that profit from the exploitation of Chinese workers). The petition uses a legal tool enacted by Congress to ensure that economic development in foreign countries benefits not just corporate shareholders and a small political and social elite, but rather benefits the majority of ordinary people. The petition uses that tool to improve the working conditions of tens of millions of Chinese citizens who labor in "the world's sweatshop."

The petition also makes clear that *all countries*, not just China, must comply with workers' basic rights, so that *no country* is disadvantaged by uneven enforcement of workers' rights.

***What specific remedies does the petition seek against China?***

The petition demands that the USTR and the President take three actions:

***(1) Trade Remedies and Compliance Benchmarks -- Positive Economic Incentives to Enforce Workers' Rights.*** The USTR must implement a program of positive economic incentives to induce the Chinese government and corporations to comply with workers' rights. The petition seeks the immediate termination of practices in violation of internationally recognized workers' rights. If the Chinese government fails to bring its labor standards into conformity with internationally recognized workers' rights, the United States should pursue all available WTO-consistent remedies against the Chinese government. The USTR should then reduce the trade remedies incrementally, if the Chinese government meets specific and verifiable

benchmarks of enforcement of workers' rights. If the Chinese government backslides from specified benchmarks, the trade remedies should increase.

(2) ***Binding Agreement.*** If the USTR finds that China is not fully applying labor laws and enforcing basic internationally recognized labor standards, the USTR shall negotiate a binding, WTO-consistent agreement with the Chinese government. The agreement should stipulate that the Chinese government will cooperate with the program of compliance and verification. Every six (6) months thereafter, the USTR shall assess if the Chinese government is in full compliance with its workers rights obligations, and adjust remedies accordingly.

(3) ***Corporate Disclosure of Working Conditions.*** The President should implement rules that require U.S. corporations to disclose wages, hours, and working conditions of their affiliates and contractors in China. These disclosure rules are necessary to verify that the Chinese government and corporations are actually complying with workers' rights.

***If the United States imposes economic sanctions against the Chinese government, will that violate the rules of the WTO?***

No. Article XX of the WTO permits the United States to impose sanctions against countries that violate basic workers' rights. Sanctions against the Chinese government would constitute a non-discriminatory use of Article XX, since China's denial of workers' rights is uniquely comprehensive, as explained above.

But it is also critical to emphasize that Section 301 is the law that binds the President. The Constitution requires that the President faithfully execute the law of the land. At the time that Congress enacted legislation implementing the WTO agreements, both Congress and the President issued a legally authoritative document (called the "SAA") which states that the use of Section 301 to promote workers' rights is consistent with the WTO. The WTO itself has recognized that the SAA is an authoritative statement of U.S. law. If the President implements the remedies demanded by the AFL-CIO, the United States government will, in good faith, take measures it authoritatively believes to be consistent with WTO rules – as well as measures mandated by the law of the land. (And, as explained above, the measures would in fact be consistent with WTO rules.) If the President were to shrink from enforcing Section 301 because the Chinese government might file an objection with the WTO, he would effectively act as China's lawyer rather than Chief Executive of the United States.

***What if the United States imposes economic sanctions against the Chinese government and the WTO rules against the United States – won't the United States incur large penalties?***

No. As just explained, WTO rules permit the United States to impose sanctions to promote workers' rights. But even if the Chinese government filed a WTO complaint

and won the case, there would be no economic penalty against the United States. The WTO Dispute Resolution Mechanism cannot impose retroactive penalties. WTO remedies are only prospective, not retroactive. If the Chinese government won a case against the United States, the United States could then withdraw the sanctions without suffering any penalty whatsoever.

***If the United States imposes economic sanctions against the Chinese government, can't China retaliate against the United States?***

No. As just explained, WTO rules allow prospective penalties, not retroactive retaliation. If the Chinese government filed a WTO complaint against U.S. sanctions and won the case, China could not impose trade penalties against the United States to “compensate” China for the sanctions, so long as the United States withdrew the sanctions after the WTO decision. With or without a WTO ruling in its favor, the Chinese government would stand in violation of WTO rules if it imposed retaliatory trade measures.