

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, unremitting, 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 can 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 Gongsidi 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," *Shenzen 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.*