

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

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

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

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

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

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<sup>79</sup> See Section VI-A of this petition, below.

<sup>80</sup> See Section VII-B of this petition, below.

<sup>81</sup> See Section VII-B of this petition, below.

<sup>82</sup> See Section VI-C of this petition, below.

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

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

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

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

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

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

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

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

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

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

Classical trade theory maintains that developing countries like China have a “natural” comparative advantage in labor-intensive, unskilled production owing to their large pool of impoverished workers in the countryside. Some cheerleaders of globalization postulate that the pitifully low wage earned by China’s export workers – as little as 12 to 50 cents per hour<sup>89</sup> – and the brutal treatment they receive are “legitimate,” owing to the workers’ lack of skill, their abundance, and their low level of productivity. In free labor markets, according to neoclassical economic theory, all workers earn (and deserve) their marginal productivity – that is, they earn what their output is worth.

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

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

<sup>89</sup> See Section VI-D of this petition, below.

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>96</sup> See Section VI-E below.

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

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

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

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

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

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

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

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

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

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

<sup>100</sup> According to a leading authority on China's control of internal migration:

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

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

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

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

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

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

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

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

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

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

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

<sup>105</sup> In August, 2004, Zhengzhou, in Henan Province, revoked its *hukou* reform.

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

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

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

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

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

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

<sup>107</sup> Id.

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

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

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

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

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

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

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<sup>109</sup> See Section VI-A of this petition, below.

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

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

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

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

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

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

<sup>113</sup> *Id.* (citing Chinese reports).

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

well as fundamental norms of fairness<sup>115</sup> -- is that China's factory workers could and would do significantly and measurably better if their basic rights were secured and if their alternative, subsistence earnings in the countryside were not so suppressed by government policy.

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>119</sup> Id.

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

<sup>121</sup> Dorothy Solinger, *Contesting Citizenship*, supra note 100, at p. 45.

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

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

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

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

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

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<sup>125</sup> See Section VI-D of this petition, below.

<sup>126</sup> See Section VI-C of this petition, below.

<sup>127</sup> Philip Pan, *Worked to Death in China*, supra note 123.

<sup>128</sup> See Section VI-D of this petition, below.

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