

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>75</sup> See Section VIII-A of this petition, below.

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

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

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

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

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

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

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

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

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

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