

III. Statute and Regulations Applicable to this Petition

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

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

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

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

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

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

⁶⁰ 19 U.S.C. § 2411(d)(3)(B)(iii).

⁶¹ 19 U.S.C. § 2411(d)(3)(C)(I).

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

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

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

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

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

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

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

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

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ 19 U.S.C. § 2411(b)(1).

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

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

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

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

⁶⁸ 19 U.S.C. § 2411(c)(3)(B).

⁶⁹ 19 U.S.C. § 2411(b)(2).

⁷⁰ 19 U.S.C. § 2416(a).

⁷¹ 15 U.S.C. § 2006.1(a)(8).

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

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

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

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

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

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

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