

law show, and this is the worst thing, that we are not considered human beings....But the law is there to protect our security, to prevent us being treated as machines, to force the boss to follow moral rules....⁴⁶⁰

These Shenzhen workers petitioned for help from their own government, not from the United States, and surely when change comes to China's factories it will come from the insistence and courage of China's workers. But can there be any doubt that the resounding silence of the United States government, the most powerful actor in the international community, makes their struggle more difficult? Is there any doubt that intensive international scrutiny of China's workplaces, and powerful economic incentives tied to measurable improvements in compliance with workers' rights, would amplify the voices of strikers in Xianyang, protestors in Hebei, and petitioners in Shenzhen?

IX. Action by the President and the USTR

The President and the USTR should take three actions to remedy the extreme deprivation of workers' rights in China:

1. If the Chinese government fails to comply with internationally recognized workers' rights, the President and the USTR should impose all available WTO-consistent trade remedies to induce the Chinese government and global corporations to fully recognize and safeguard those rights. Every six months, the USTR should assess whether the Chinese government is in full compliance with internationally recognized workers' rights and should adjust the remedies accordingly.

2. If China fails to comply with internationally recognized workers' rights, the President and the USTR should negotiate a binding WTO-consistent agreement with the Chinese government that commits that government to fully cease its denial of workers' rights. The agreement should specify (a) precise indicators of compliance with workers' rights in China, (b) a transparent and rigorous method of verification of those indicators of compliance, to be implemented by the International Labor Organization, and (c) a plan for incrementally relaxing the trade remedies as the Chinese government achieves

⁴⁶⁰ Isabelle Thireau and Hua Linshan, "One Law, Two Interpretations," in Neil Diamant, et al., *Engaging the Law in China* (Stanford 2005) at p. 99.

benchmarks of compliance with workers' rights, and for strengthening those remedies if benchmarks are not met.

3. The President should mandate the following corporate disclosure requirements, to enable the U.S. and Chinese governments, the public, and China's workers to verify whether conditions in China's factories improve:

- (a) Corporations must disclose comprehensive data about wages, hours, and other working conditions in each of their Chinese affiliates and contractors;
- (b) The disclosed information must be made publicly available online, in a database that is readily searchable by name of corporation; name of affiliate or contractor; location of the affiliate's or contractor's facilities; wages; hours; and other useful categories of data.
- (c) Corporations must update the information on a monthly basis, to enable workers and the public to verify the reported wages, hours, and working conditions in "real time," rather than long after the fact when it is much more difficult to prove infractions.

These actions are fully within the scope of remedial actions authorized by section 301 of the Trade Act.

The Trade Act authorizes the USTR to take "all appropriate and feasible action...to obtain the elimination" of China's persistent denial of labor rights.⁴⁶¹ Those actions include the imposition of "duties or other import restrictions" against "any goods or economic sector without regard to whether or not such goods or economic sector were involved in the act, policy, or practice that is the subject of such action."⁴⁶² The USTR is also authorized to "enter into binding agreements" that commit the Chinese government to "eliminate, or phase out" the Chinese government's denial of workers' rights.⁴⁶³

The Trade Act also authorizes the USTR to take any "other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take."⁴⁶⁴ These include any actions "that are within the power of the President with respect to trade in any goods or services, or with respect to any other area

⁴⁶¹ 19 U.S.C. § 2411(b)(2).

⁴⁶² 19 U.S.C. §§ 2411(c)(1)(B), 2411(c)(3)(B).

⁴⁶³ 19 U.S.C. §2411(c)(1)(D).

⁴⁶⁴ 19 U.S.C. §2411(b)(2).

of pertinent relations” with the Chinese government.”⁴⁶⁵ The House Committee Report noted that this provision authorizes the President to use any of his “constitutional powers...to obtain a satisfactory solution.”⁴⁶⁶

In addition, section 306 of the Trade Act 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 under [Sections 301 and 302]....”⁴⁶⁷

This petition has shown that the Chinese government, with the complicity of global corporations, persistently denies basic workers’ rights in all sectors of manufacturing. In any event, the USTR may impose trade remedies against all manufactured exports from China “without regard to whether” any *particular* manufactured “goods or economic sector were involved” in the Chinese government’s denial of workers’ rights. The remedy for the Chinese government’s violations would be eviscerated if the trade remedy were imposed only on particular goods exported from particular factories where workers’ rights violations were documented. China-based producers, including U.S. multinationals, should not profit from the Chinese government’s authoritarian denial of access to information – the very denial that helps perpetuate its pervasive violation of workers’ rights. Trade remedies against all manufactured exports from China are therefore appropriate.

It is also appropriate that, if the Chinese government fails to comply fully with workers’ rights, the United States and Chinese governments enter into a binding WTO-consistent agreement requiring the Chinese government to cooperate in a program of rigorous verification of compliance with workers’ rights. The program should include semiannual assessments by the USTR of the Chinese government’s compliance with workers’ rights and commensurate adjustment of remedies.

This petition shows that the Chinese government has persistently and defiantly violated its international commitments to enforce its workers’ rights. The Chinese government today stands in violation of the core labor rights codified in the International Labor Organization’s 1998 Declaration of Fundamental Principles and Rights at Work,

⁴⁶⁵ 19 U.S.C. §2411(b)(2).

⁴⁶⁶ H. Rep. No. 100-40, Part I (1987) at p. 57.

which is binding on all members of the ILO. The Chinese government today stands in violation of workers' right of association protected by the International Covenant on Civil and Political Rights, which the Chinese government signed in 1998. The Chinese government today stands in violation of workers' right to form and join the trade union of their choice, enshrined in the International Covenant on Economic, Social, and Cultural Rights, which the Chinese government ratified in 2001.

In the absence of material incentives to enforce these international commitments, the Chinese government has broken them. If the Chinese government fails to comply fully with workers' rights, it is therefore appropriate to impose all available WTO-consistent trade remedies, both to provide such material incentives and to ensure that China-based producers do not profit from violations of their workers' fundamental rights.

The AFL-CIO's 2004 petition presented this argument, and it has been confirmed by the record since the President denied that petition. In rejecting that petition, the President did not dispute the petition's documentation of the violation of workers' rights in China. Nor did he dispute the petition's demonstration of the adverse effects on U.S. manufacturing workers. Instead, he asserted that alternative remedies would suffice to improve the Chinese government's compliance with workers' rights.

But as we have detailed in this new petition, noncompliance with the rights of China's workers has persisted and in many respects has worsened in the last two years – in the absence of powerful incentives for improvement and transparent verification of compliance. This negates the only legal grounds for the President's denial of the petition. The President is now obligated to act, and to act effectively.

The experience of the last two years has also substantiated beyond doubt that measurement and verification of compliance with workers' rights in China's factories is obstructed by the nearly total lack of transparency respecting working conditions and by corporations' complicity in both noncompliance and the concealment of noncompliance. There is simply no way to fully and accurately know the extent to which minimum wages are paid, occupational safety and health standards are implemented, forced labor is used, child labor is employed, and workers are permitted to freely form unions and engage in

⁴⁶⁷ 19 U.S.C. §2416(a).

collective bargaining unless corporations disclose the actual working conditions in their factories.⁴⁶⁸

Corporate disclosure is not only essential to verification and measurement of compliance with workers' rights. It will also heighten the incentives facing the Chinese government to achieve compliance with workers' rights. As explained and documented in this petition, corporations are complicit with the Chinese government in denying workers' rights. In the absence of remedies aimed at corporate complicity, corporations will resist compliance by the Chinese government. If corporations are required to fully and accurately disclose the working conditions in their Chinese affiliates and contractors, they will face incentives to improve at least the worst conditions -- in order to avoid public censure and potential damage to reputation and loss of revenue. They will therefore reduce their resistance to compliance by the Chinese government. Conversely, the Chinese government will face additional incentives to comply with workers' rights if it knows that corporations, in order to avoid public censure, will be more reluctant to invest in and source from China-based factories with horrendous working conditions. These incentives are maximized if workers and the public are able to track working conditions posted on an online database.

For these reasons, the requirements of corporate disclosure enumerated above are authorized by the Trade Act and indeed are essential to discharge the President's *obligation* under section 306(a) to "monitor the implementation of each measure undertaken" to remedy the denial of Chinese factory workers' rights.⁴⁶⁹ Under section 301 as well, corporate disclosure requirements are authorized and necessary to ensure that trade measures in fact achieve the measurable and verifiable "eliminat[ion] or phas[ing] out" of non-compliance with workers' rights. Hence, in sections 301 and 306, Congress has authorized the President to require corporate disclosure for purposes of fulfilling his statutory obligation to verify compliance with workers' rights.

This petition has shown that the Chinese government's unremitting repression of workers' rights continues to take wages, health, and dignity not only from China's

⁴⁶⁸ For these reasons, this petition has relied on the painstaking investigations and case studies undertaken at great risk by organizations and researchers devoted to workers' rights in China. Verification of compliance by the Chinese government and China-based corporations should not require such arduous methods.

workers. It continues to displace and impoverish workers – and their families and communities – in the United States and throughout the world. All countries, including China and the United States, face strong incentives to compete for mobile capital and jobs by cheapening the labor and debasing the lives of their working citizens. These incentives are created by global rules that protect rights of property and contract but not rights of personhood and labor.

More than seventy years ago, the United States rejected rules like these, in our domestic multi-state system. Congress concluded that trade across borders “was the means of spreading and perpetuating...substandard labor conditions among the workers of the several states.”⁴⁷⁰ In order to eliminate each state’s incentive to perpetuate substandard labor conditions, it was necessary to enforce labor rights at the federal level. All states must be concurrently bound by labor rights, or each state would seek competitive advantage by suppressing those rights.

Eighteen years ago, in section 301(d), Congress elevated the same policy from the interstate to the international level. Congress authorized the President and the USTR to enforce workers’ rights among our trading partners, for the sake of their workers and ours.⁴⁷¹

Nearly a century ago, Congress declared that “the labor of a human being is not a commodity or article of commerce.”⁴⁷² It is time that the United States used its extraordinary bargaining power to ensure that internationally recognized workers’ rights are given the same protection that is now given to rights of commerce.

⁴⁶⁹ 19 U.S.C. §2416(a).

⁴⁷⁰ *United States v. Darby*, 312 U.S. 100 (1941).

⁴⁷¹ See Section IV of this petition.

⁴⁷² Section 6 of the Clayton Act of 1914, 15 U.S.C §18.

Respectfully submitted,

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