

Senate Democratic Policy Committee Hearing

“Do China’s Abusive Labor Practices Encourage Outsourcing and Drive Down American Wages?”

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I’m a Professor of Law at Columbia University in New York City. I’ve held that position for 16 years. I specialize in international law, labor law, and constitutional law. My current focus of research is international labor rights. In addition to my legal training, I have a Masters degree from the London School of Economics, in the field of economic development.

I also have experience in China. In 1995 and 1996, I was a visiting professor at Beijing University, and I did fieldwork in China on the conditions of factory workers there. I visited many factories and interviewed their managers and workers.

Last year, I served as an independent expert for the International Labor Organization, which gave me the opportunity to interview many managers who monitor the working conditions of their factories in China, in the footwear sector, and in textiles, apparel, toys, and other retail goods. The managers were speaking under a pledge of anonymity, so I got a rare inside story about factory operations in China.

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Last week the AFL-CIO filed a petition with the United States Trade Representative under Section 301 of the Trade Act of 1974, asking the Trade Representative to take action to promote the human rights of China’s factory workers. I’m the principal author of that petition.

The petition shows, first, that China persistently denies the fundamental rights of its factory workers. And, second, that China’s violation of worker rights lowers wages and production costs in China and, as a result, displaces hundreds of thousands of manufacturing jobs in the United States. The Trade legislation enacted by Congress requires the President to take action.

The AFL-CIO demands that the President impose trade sanctions against China, and phase out those sanctions as China increasingly enforces basic worker rights. These material incentives are necessary, because for many years the international community has urged China to respect worker rights, but China has stonewalled.

The action demanded by the AFL-CIO does not violate the rules of the World Trade Organization – as I'll explain at the end of my remarks.

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I got involved in this project because I was distressed by what I saw during my research in China, what I heard from the workers and the corporate managers doing business there, and by what I've learned over the years from academic researchers and from human rights organizations. I also got involved because I'm distressed by what I see happening to working families in our country.

I learned that factory workers in China who make sealants for shoes are exposed to open vats of toxic chemicals that overflow onto factory floors where they work in bare feet. The United States corporation that ran that factory had laid off its U.S. workforce and moved its equipment from the United States to China -- but didn't bother to bring along the safety controls. When the workers in China became severely ill and complained, they were simply fired and sent back to the countryside, and Chinese authorities did nothing.

At another U.S.-owned factory in China, I saw workers making magnetic devices who were exposed to moving machine parts without machine guards that are used throughout global industry. China's workers suffer the highest rates of lost limbs from industrial accidents in world history – lost fingers, hands, arms.

I interviewed managers of major U.S. multinational corporations who produce their goods in Chinese factories, who told me – on condition of anonymity -- that 80 percent of their contractors keep double or triple books, to hide the fact that they're not paying minimum wages, not paying overtime, and breaking China's maximum hour laws. In their official statements, these same corporate managers say they're paying minimum wages, and the media and think-tank researchers often take these official statements at face value.

The factory workers are typically young women from the countryside – very young: eighteen, twenty, twenty-two-years old. They're sent by their parents into the factories, to supplement their family income. They've never held a job before. They live in cramped cement-block barracks, eight to a room, or twenty to room. If the factory managers demand that they work twelve hour days or eighteen hour days, with no day of rest for months at a time, they have no choice.

When they come to the factories, the migrants have to pay the factory owners to get a job – they pay for work permits, they pay so-called deposits that range up to one year's salary, their salary is withheld for months at a time, the factory takes their national ID cards. They go into debt to the factories. If they quit work, they lose this money or go into default on their debts. As a result, they're locked-in to their jobs. They become bonded laborers, a form of forced labor under international law.

I talked to workers who were not paid for six months or a year at a stretch, and when they *were* paid, they got half of what they were promised. That's routine in China. As I've said, U.S. corporations and other factories often say that they pay minimum wages in China. But when you calculate the overtime hours, the wages withheld, the wages that are simply less than what was promised the workers, the money deducted as penalties and excessive fees for room and board, you find that factory workers in China typically make significantly less than China's own minimum wage.

The factory workers have little recourse against these abuses. If they complain, they'll be fired. They lose the deposit they had to pay their employer when they started work. They lose the wages withheld by the employer. They risk being thrown in jail by the Public Security Forces (China's political police). Then they might have to pay a ransom to get out of jail. After ransoming themselves out of jail, the police might send them back to their impoverished village, since China's internal pass system denies them civil and political rights when they're jobless in the factory regions.

Last year, Sun Zhigang, a college educated migrant, was swept into the Public Security's detention system and was beaten and killed. A newspaper reported the story. With much fanfare, the central government repealed the authority of local governments to detain jobless migrant workers and send them back to the countryside.

But without as much fanfare, the central government issued new regulations that give local governments new authority to forceably send jobless workers back to the countryside. In practice, today, local governments are still detaining and repatriating migrant workers who lose their jobs or make trouble by complaining about abuses in the factories. And the government is harassing the newspaper that dared to report the story of the migrant killed in detention.

It's become more and more common for China's factory workers to threaten to commit suicide simply to get the pay they've earned. This is so widespread that the Chinese have coined the phrase "tiaolou xiu" – which means jump-protestors – referring to actual or threatened suicides in response to intolerable working conditions.

Astoundingly, many local governments have made it a crime to threaten to commit suicide in order to get paid. This shows just how unremitting is the denial of worker rights in China's factories.

Of course, I wasn't permitted to talk to the many workers who are serving long prison sentences for exercising their right of association – for trying to organize a group protest about their working conditions, or trying to organize a free trade union that isn't controlled by the Communist Party. Many are held in psychiatric prisons. Many are denied medical care. Many are beaten. Many are given electrical shocks or other torture.

Let me quote one manager who *wasn't* speaking anonymously. This is the manager at Reebok who's in charge of labor conditions throughout Asia. She says (quote):

“Who enforces Chinese labour 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.” (unquote).

More than in any other country she works in. China’s record of enforcing its own labor laws is worse than any other Asian country in which Reebok operates.

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U.S. workers today have to compete with factory workers who are forced to work under these lawless working conditions. The United States has lost 2.8 million well-paying manufacturing jobs since President Bush took office. This is a staggering number – completely unprecedented.

President Bush released his Annual Economic Report last month. In that Report, he says that U.S. manufacturing is in fine shape. To prove the point, the President lists six manufacturing sectors that are high-tech and pay especially high wages, and the President says that jobs in these six sectors have grown at a good pace. (The sectors include rubber and plastic products, electronic products, electronic equipment and instruments, transportation equipment, and printing.¹)

But, astoundingly, the President’s Report only gives data in those sectors going up to the year 2000. This Chart shows the jobs record in the President’s showcase sectors since 2001 – the record on jobs in the high-wage sectors that the President himself listed as the model of economic success. As you can see, jobs have fallen between 10 and 30 percent in all the sectors, in just three years.

China has now become an export powerhouse in high-tech computers and electronics and machine parts, not just low-tech toys and garments. But even while productivity rose rapidly in China in the last decade, the real wages of China’s factory workers stagnated. The manufacturing boom in China has not been a train carrying China’s workers into the middle class. China’s workers can’t bargain for higher wages because they lack basic worker rights.

The United States trade deficit with China is now the largest trade deficit the United States has ever had with any country. Last year, China’s exports of goods to the United States grew not only at an historically high rate (nearly 22 percent) but at an accelerating rate. This Chart shows that China’s explosive growth in manufacturing exports is far greater than even the industrial powerhouses of Germany and Japan, and it’s even greater than the export growth of our two neighbors, Canada and Mexico, who historically had dominated U.S. trade.

¹ The President’s Report states that he has redefined the sectors. He appears to have taken the six sectors in my Chart and aggregated them into five sectors. I use the definitions of the six sectors for which standard data is published by the Bureau of Labor Statistics.

The President's Economic Report defends the trade deficit with China. He says that China still doesn't produce enough computers and electronic equipment to do much damage to American workers. But the facts tell a different story. Since the President took office, the electronics and computer sector has lost more than half a million jobs – half a million U.S. jobs in just three years in one high-tech manufacturing sector. And imports from China equal almost half of the loss in U.S. output – which means that up to a quarter million jobs are displaced by China's imports in one crucial sector alone – electronics and computer. The President may think that the loss of a quarter million good jobs is negligible. The workers affected, and their families and communities, the members of AFL-CIO unions, feel differently.

The President also neglects the fact that China's capital spending – for new factories that will come online in the next three to five years – is going through the roof. In electronics, for example, China's investment in new factories grew by nearly 50 percent just in the last year. In metallurgy, China's investment grew by over 100 percent. We still haven't felt the full supply shock from China's manufacturing boom and the excess capacity that's being created there.

China's frenzy of factory building is closely connected to China's all-out denial of worker rights. Investors flock to China to take advantage of the low labor costs. And China's manufacturers have more revenue to roll-back into new factory investment, since their workers get so little of the pie.

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Worker rights are included in the basic human rights set out in the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and the International Labor Organization's Declaration of Fundamental Principles and Rights at Work.

These international instruments contain specific worker rights, and in 1988, Congress incorporated several of them into Section 301 of the trade. Congress said that it's an unreasonable trade practice if one of our trading partners persistently denies:

- Workers' freedom of association
- Rights to organize and rights of collective bargaining
- Freedom from all forms of compulsory labor
- Freedom from child labor
- Standards for minimum wages, maximum hours, and safety and health

Even before the enormous loss of jobs to China in the last three years, Congress recognized that the denial of basic worker rights overseas was the cause of capital flight and loss of U.S. jobs, and Congress directed the President to act to stop it.

The AFL-CIO petition shows overwhelmingly that the two preconditions for Presidential action under Section 301 are met: First, China persistently denies the basic rights of its workers. And, second, the denial of those rights adversely affects U.S. workers.

The President has 45 days to decide whether to accept the petition and launch an investigation. If he denies the petition, he must publicly state his reasons. He must publicly declare either that China doesn't persistently violate its workers' rights, or that China persistently violates its workers' rights but that this has no effect on U.S. jobs. Either declaration would contradict the overwhelming evidence presented in the AFL-CIO petition. Indeed, Section 301 authorized the President to take action on his own initiative even before the AFL-CIO filed its petition, but he hasn't enforced Congress's will.

That China persistently denies internationally recognized workers rights has been found

- by the State Department
- by the Congressional-Executive Commission on China
- by Human Rights Watch
- by Amnesty International
- by the International Confederation of Free Trade Unions
- and by countless academic researchers

The AFL-CIO petition shows that China's violations of worker rights gives manufacturers a cost advantage ranging between 10 percent and 43 percent of overall production costs. That illegitimate cost advantage displaces approximately 727,000 jobs in the United States.

These are very conservative estimates. They're calculated from the trade model used by the International Trade Commission, and they use the most conservative assumptions at every step of the calculation. China's illegitimate cost advantage probably displaces many more than 727,000 jobs.

And the burden on U.S. workers goes far beyond the number of jobs lost. Twenty-five percent of displaced workers in the U.S. don't find new ones within six months after losing their jobs. Those who are fortunate enough to find new jobs suffer big losses of income. Two-thirds earn less on their new jobs. And these figures on lost wages are from the years before the bottom fell out of the labor market for U.S. manufacturing workers in the last three years, when it's become even more difficult to transition into decent-paying jobs.

And beyond lost jobs and wages, workers displaced by China's violation of worker rights lose their homes because they can't keep up with mortgage payments, they lose their health insurance, they lose their pensions. They suffer increased rates of heart disease, of divorce, depression, and suicide.

There's a myth about China in the United States. The myth is that wages in China are set by a free market, and wages are low only because there are so many impoverished peasants who want to work in the factories. This simple story is comforting to the multinational corporations that do business there, and it's comforting to think-tank experts and commentators who are cheerleaders for unrestrained globalization.

But there is no free labor market in China. China's regimentation of its factory workers is comprehensive. China's labor market is fully engineered by the government.

It's true, of course, that there are tens or hundreds of millions of underemployed workers in China's countryside. Even if China fully enforced worker rights, wages would be low. But they wouldn't be nearly as low as they are now.

The AFL-CIO's petition doesn't challenge China's comparative advantage as defined by classical trade theory. China has a number of competitive advantages apart from its all-out denial of worker rights.

But China's all-out denial of worker rights gives China an additional increment of cost advantage in its manufacturing sector. And that increment is an illegitimate advantage. It's illegitimate under universal norms of human rights. And it's illegitimate under Congressional legislation.

If I can speak in a less lawyerly way: It amazes me when corporations and think-tanks say that wages are "almost nothing" in China only because of the laws of supply and demand, the free market. A worker who's paid half of what she bargained for and dares to assert her rights will be fired, lose up to a year's wages, be thrown in jail, be forced to return to her village, and be blacklisted from factory jobs. If she tries to organize her fellow workers to protest or form a labor union, she's imprisoned after a fake trial or no trial at all, beaten, and tortured. Could these government practices have no effect on the bargaining power and wages of the worker? It would be astonishing if they didn't.

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Section 301 authorizes the President to take any actions within his Constitutional powers to enforce fair competition and worker rights overseas. The AFL-CIO petition demands that the President take three actions to remedy China's persistent denial of worker rights:

First, the President should impose trade measures against China that are sufficiently large to induce China to enforce worker rights and to stop the unfair competition caused by China's violations. The AFL-CIO is not asking for protectionist barriers. If China enforces the basic worker rights announced by the international community, then it can enjoy normal access to U.S. markets, and it can create jobs that don't assault human dignity.

Second, in that non-protectionist spirit, the AFL-CIO demands that the President negotiate an agreement with China, to phase out the trade measures in incremental steps,

as China complies with benchmarks of compliance with worker rights – benchmarks that are specific, and verifiable by the International Labor Organization, the United Nations agency responsible for promulgating and supervising international labor rights.

Third, the AFL-CIO demands that the President enter into no new trade agreements until all members of the WTO are required to comply with core worker rights, as a precondition to enjoying the benefits and privileges of WTO membership. If China alone is forced to comply with labor rights, it will complain that its producers are put at a competitive disadvantage against other countries. If China is not forced to comply, other countries will complain that enforcing labor rights will put them at a disadvantage.

Global rules should concurrently and fairly enforce basic worker rights – to end the race to the bottom.

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Some opponents of the AFL-CIO petition have asserted that the AFL-CIO can't be serious about the petition, because trade sanctions against China would violate WTO rules.

That assertion is simply erroneous.

Trade sanctions to enforce labor rights do not violate WTO rules. They would not discriminate against China, because no other country has the combination of labor controls that are unique to China: the allocation of workers by an internal pass system, combined with widespread bonded labor, combined with violent suppression of workers who try to organize outside the union controlled by the Communist Party. Since the sanctions are non-discriminatory, they don't violate the most-favored-nation or national-treatment rules of the WTO. Even if the sanctions violated those rules the sanctions are immunized by Article XX of the GATT, which authorizes WTO members to impose unilateral sanctions to enforce public morals and human life and health. Worker rights are included in public morals and human health. Quite recently, this point was publicly endorsed by several eminent WTO scholars who are strong defenders of the WTO system – when Congress considered imposing trade sanctions to promote labor rights in Burma. I've written a Memo explaining this, which I'm happy to provide the Committee if it wishes.

But I must emphasize two points. Even if there were uncertainty on the question of whether trade sanctions would conflict with WTO rules, that would provide no basis for the President to refuse to impose sanctions.

First, the worker rights provisions of Section 301 are the law of the land. When Congress enacted legislation implementing the WTO agreements in 1994, Congress explicitly stated that Section 301 was in no way altered by the WTO legislation. I don't have to tell you that international rules only override domestic statutes if Congress says so, and in this case Congress has said just the opposite: Section 301 is the law that binds the

President, not the WTO rules that allegedly conflict with the statute. It's the President's constitutional obligation to faithfully execute Section 301. And if China challenges us at the WTO, it's the President's obligation to act as a vigorous advocate of our sovereign law. Congress has given the President this weapon to enforce fair trade and Congress has directed him to wield it. He's not permitted to unilaterally disarm if he thinks a foreign power may object to our binding laws.

Second, even if China challenged U.S. sanctions and the WTO agreed with China, the United States could then withdraw the sanctions and face no penalty whatsoever from the WTO or from China. The WTO cannot order backward-looking remedies. The United States would not have to compensate China, and China would not be permitted to retaliate against the United States.

In any event, as I've said, trade sanctions to enforce worker rights are permitted by WTO rules. The WTO issue is a complete red herring.

The President must enforce the worker rights provisions of Section 301, as Congress has directed him to do.