CHINA, THE WTO, AND HUMAN RIGHTS

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CHINA, THE WTO, AND HUMAN RIGHTS

Wednesday, December 8, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL
OPERATIONS AND HUMAN RIGHTS,
Committee on International Relations,

WASHINGTON, D.C.

The Subcommittee met, pursuant to notice, at 1:35 p.m. In Room 2118, Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the Subcommittee) presiding.

Mr. SMITH. The Subcommittee will come to order. Good afternoon. The unrest in the streets of Seattle this past week suddenly focused the world's attention on the activities of the World Trade Organization. The protests raised many important questions about the way that the WTO conducts its affairs and the nature of economic globalization.

At a time when so many of the premises of the World Trade Organization are being reexamined, it is particularly appropriate that the Congress examine the potential impact that WTO membership might have on one of the world's fastest growing trade powers and most egregious violators of fundamental human rights, the People's Republic of China.

For the past several years, the Beijing regime has made accession to the WTO a top priority, hoping to gain permanent MFN status from other WTO members, most notably from the United States. On November 15, the possibility of China's accession became more likely when the Clinton administration and PRC officials announced, with smiles and champagne, that the two countries had reached a bilateral trade agreement. I, for one, saw no reason to cheer.

The question before this Subcommittee and the Congress is whether, at this moment in history, bringing the PRC into a permanent and more privileged trading relationship with the United States and other WTO members will make it act more humanely toward its own people. Sadly, this year of so-called progress toward PRC accession to the WTO has also been another year of significant regression for human rights in China.

In quarterly reports, tracking the seven human rights policy goals that President Clinton publicly announced before his 1998 trip to Beijing, Amnesty International found a complete lack of improvement in all categories. Amnesty rated Beijing in all seven areas and gave the regime seven Fs.

Here are the specifics: Release of all prisoners of conscience and Tiananmen Square prisoners: total failure; Regression. Review of

all counterrevolutionary prison terms: Total failure; no progress. Allow religious freedom: Total failure; no progress. Prevent coercive family planning and harvesting of organs. No progress. Fully implement pledges on human rights treaties: No progress. Review the reeducation through labor system: Total failure, no progress. End police and prison brutality: Again, total failure, no progress.

The Communist government of the PRC blatantly and systematically violates basic human rights on a massive scale. It does not allow significant political dissent. It continues to repress the China Democracy Party, whose representatives appeared before us at a hearing earlier this year. As of October, some 30 CDP leaders remained in government custody, some of them having received stiff sentences of up to 13 years for their pro-democracy activities.

According to the State Department, the PRC, and I quote, "continues to restrict tightly worker rights and forced labor remains a problem," close quote. The Department's latest country report on human rights practices in China states that, and I quote again, "independent trade unions remain illegal within China. The government has attempted to stamp out illegal, "that is, independent," "union activity,". The administration also admits that Beijing's compliance with the U.S.-China memorandum of understanding, or MOU, on prison-made goods has been inadequate in all the cases, they write, of U.S. inspection requests in 1998; the ministry of justice refused the request, ignored it, or simply denied the allegations made without further elaboration. In addition, poor enforcement of occupational safety and health regulations continues to put workers' lives at risk.

The deplorable state of workers' rights in the PRC not only means that Chinese men, women, and children in the work force are exploited and put at risk, but also that U.S. workers are severely hurt as well by profoundly unfair advantage that go to those corporations who benefit from these heinous labor practices. Human rights abuses abroad have a direct consequence of robbing Americans of their jobs and their livelihoods right here at home.

As we will hear today from Charlie Wowkanech, the president of the New Jersey State AFL–CIO and I quote him, "Chinese economic policy depends on maintenance of a strategy of aggressive exports and carefully restricted foreign access to its home market. The systematic violation of internationally recognized workers' rights is a strategically necessary component of that policy. Chinese labor activists are regularly jailed," he writes, "or imprisoned in reeducation camps for advocating free and independent trade unions, for protesting corruption and embezzlement, for insisting that they be paid the wages that they are owed, and for talking to journalists about working conditions in China. In January 1999, police attacked a group of retired factory workers in Wuhan, who were protesting unpaid wages and pensions. Many of the retirees were beaten," close quote.

The PRC also imprisons religious leaders, ranging from the 10-year-old Panchen Lama to the elderly Catholic Bishop Su of Baoding province. It summarily executes political and religious prisons in the Xinjiang Uighur Autonomous Region. It harvests and sells the internal organs of executed prisoners. It forces women who have unauthorized pregnancies to abort their children and to

submit to sterilization. It continues to brutalize the indigenous peoples of Tibet and Xinjiang. It uses slave labor to manufacture products for export.

The most obvious deterioration in the situation in China has been the Chinese government's massive crackdown on Falun Gong, a nonviolent meditative spiritual practice with millions of adherents in China and elsewhere. Since the group was banned in July of this year, thousands of ordinary citizens from all over China have been jailed for refusing to give up their practice of Falun Gong. There have been many credible reports of torture and inhumane treatment of detained practitioners, including a report that a 42-year-old woman was tortured by the Chinese government to death. Numerous practitioners have been sentenced to labor camps without trial, and thousands have lost their jobs or been expelled from schools. In hearings closed to the public, adherents have been sentenced to up to a dozen years in prison for using, as they say, "an evil cult to obstruct the law". The Beijing regime has publicly declared its intention to, quote, "smash" Falun Gong.

The utter failure of the administration's current policy of constructive engagement with China should come as no surprise. While the rulers of the Chinese Communist Party may be ruthless and despotic, they are not stupid. If there are no costs associated with the brutality that keeps them in power, then they have no incentive to become less brutal. In fact, they will become bolder, as they have.

China has suspended its human rights dialogue, for example, with the United States. Recently, the Chinese ministry of foreign affairs has even stopped accepting diplomatic protests from the United States regarding human rights issues. According to yesterday's Washington Post, and I quote, "The State Department must now issue the protests in Washington, a significant change in diplomatic protocol."

According to many accounts, if China were to accede to the World Trade Organization, the U.S. would be required to either grant Beijing permanent MFN status or to lose the benefits of WTO agreements with China. As it stands today, China's most-favored-nation trading status with the U.S. is reviewed, as we know, annually. Although that status has been renewed in recent years by Presidential waivers of the Jackson-Vanik freedom of Emigration requirement, the annual debate and the possibility of MFN revocation are arguably the most important leverage that the U.S. still has to influence the human rights situation in China. Surrendering that leverage to Beijing would send exactly the wrong message at the wrong time.

Of course, when we begin talking about conditioning trade and economic benefits on basic respect for human rights, we provoke the predictable litany of responses from business interests: Sanctions don't work. Unilateral actions are counterproductive. And so on.

But when big business and the Clinton administration really want to change Beijing's conduct, such as in the effort to get China to respect international copyrights or intellectual property rights, what do they do? They use the credible and imminent threat of economic sanctions, the very same sanctions they say would be coun-

terproductive as a means of promoting political and religious rights and freedom in China. On at least three occasions since 1991, the U.S. trade representative has threatened to impose billions of dollars in sanctions to vindicate U.S. intellectual property interests. In each of those cases, when faced with sanctions, the Chinese government changed its behavior.

The WTO dispute settlement moreover relies on the same kinds of sanctions as the primary mechanism to enforce the WTO agreement. Under article 22.2 of the WTO's understanding on rules and procedures governing the settlement of disputes, the final means of vindicating a claim against a noncomplying member is the imposition of unilateral, retaliatory sanctions by any other nation that may choose to impose such sanctions.

By their actions, big business and the Clinton administration show their faith in sanctions. By their reactions, Chinese leaders show the effectiveness of sanctions as well. Thus, the question before us is not: Can economic sanctions work? It is, why do we use sanctions to protect software but not human life? To protect musical recordings but not the rights of religious believers, or workers rights or political prisoners? We will do it to stop movie piracy, but we won't do it to stop torture. I have yet to hear a real answer to that question. I have posed that time and time again to administration witnesses and others who have come before our Committee and before the Full Committee.

Unless someone can give me another plausible explanation, I must reluctantly conclude that some business interests and U.S. officials understand full well that sanctions, and the threat of sanctions, can and do work to change the conduct of the PRC and similar governments. But they also know that sanctions may be subject to the law of diminishing returns. For example, if a certain punitive tariff rate were already in effect because of egregious human rights violations, then it would no longer be useful to threaten the same punishment in order to vindicate intellectual property rights. Big business would prefer to conserve the limited resource of trade leverage for their own uses, and the rules of the WTO attempt to turn this preference into international law. The selective use of rhetoric denouncing unilateral sanctions hides an implicit prioritization of profits above fundamental human rights.

That is wrong. We must not abandon the American ideals of freedom and democracy for the sake of marginally cheaper consumer goods and access to cheap labor. We must condition expanded trade relations upon at least minimal respect for fundamental human rights. American interests and American values demand no less.

I would like to yield to my good friend from California, Mr. Rohrabacher, for any opening comments he might have.

Mr. ROHRABACHER. Thank you very much. I certainly want to associate myself very closely with the remarks that you just made, and I appreciate you calling this hearing in order to put the demonstrations that took place up in Seattle in a perspective. Obviously this, what is going on in our country, is not a left-right conflict when you have the two of us siding with some of the demonstrators that were making their feelings very well known in the streets of Seattle.

The WTO is an organization which it seems the business community wants to invest a lot of authority in because the business community feels that they are in control and will be in control of the decisions of the WTO. That is that. I am someone who believes that centralized authority and centralized decisionmaking is contrary to American tradition and contrary to certainly of the beliefs that I hold dear, of trying to let people at the lowest level of government make the decisions that are important for them as well as right on down the line. At least everybody is involved with the decisionmaking.

From what I see, the WTO is not going to be a democratic institution. Where are all the elections that are going to be determining the WTO and the decisions and reaffirming the decisions that are made there? It is totally contradictory to me for an American citizen to want to give up this type of authority, especially when what we are really talking about is the legal use of economic pressure. Are we going to indeed invest all of the power to exert economic pressure and force on nations into a world organization? If we are indeed going to do that, why are we permitting the Communist Chinese to become part of that organization?

It makes a mockery out of the United Nations to have the world's worst human rights abuser have a veto power in the Security Council of the United Nations. It is a mockery. What can you do for the cause of human liberty when you have got the world's worst human rights abuser with a veto power? Here we have people in the West, especially the United States of America, literally begging the Communist Chinese to get involved with what would be considered an international chamber of commerce. What do you want the local gangster to become involved in the chamber of commerce for? What is that all about?

They have got some businessmen who may know how to run their own business but don't have much sense and certainly have no loyalty to the values that we Americans hold dear when it comes to liberty and justice and human decency. They are there to make a profit. That is what business is supposed to be for, make a profit. We will listen to them about making a profit, but the heck if we are going to let them make our decisions about what the moral values and the moral standards and the standards of liberty and justice will be for the United States of America. That is left up to the people of this country, and we are not going to vest that power in a World Trade Organization that will tell the people of Boston or the people of some community that they cannot boycott Burma or some other country because of horrible human rights abuses that are going on in that country.

We as Americans believe that people have a right to exercise decisionmaking. That is why people threw the tea in Boston harbor. That is what that was all about. I do not want to set up a scenario where we have the Communist Chinese and the Burmese and the Nigerians and the people from Sudan who run Sudan, and other countries like that, dominating a World Trade Organization that we have vested with power and authority. Our businessmen have pushed us into that policy and then find out that these other countries end up calling the shots 10 years down the road. That is exactly the direction this will go, mark my words.

If we let this happen, we will have people who hate everything that the United States stands for, people who despise us, people who have no concept of human rights in their own country, people who despise democracy and think of it as a threat. Criminals and crooks who control these countries will now find themselves in a position of leverage and authority in a new world trading organization that has been granted authority to make these type of decisions as to what type of economic pressure can be put on various regimes.

I don't believe that you should only use military force or do nothing. I think economic pressure is and should be an alternative the United States of America has, and it should be something that local communities and States have as well. If a State legislature wants to say no, nothing will be purchased by this State government from some outrageous genocidal regime like the SLORC regime in Burma, more power to them. I think that is a great statement for the world to hear, and it is their right as Americans to declare that.

So we have got to nip this thing in the bud right now. We have got to let the American people know what the drawbacks are to WTO and the fact that China, they are begging China to get in—pardon me for being so blunt about it—the tongues of our people are sore from licking the boots of these dictators. It is embarrassing.

So today we say "wake up, America". We are going into the holiday season where we celebrate our most cherished religious values, Christians and Jews and others, and Ramadan is about to happen as well. Let us recognize that there are some fundamental values on this planet that are worth more than just making money in the short run. That is what we are trying to reaffirm here today. I thank you very much, Mr. Chairman.

Mr. SMITH. Thank you for that very eloquent defense of human rights. You have been indefatigable in your efforts, particularly in Asia, to try to promote human rights there, in Burma and elsewhere. I appreciate your comments. I would like to welcome our witnesses and ask them to take their seats. The record will reflect a fuller bio of each, but just let me introduce each of our witnesses today.

Beginning with Ms. Lori Wallach, who is the director of Global Trade Watch, a division of Public Citizen, the organization founded by Ralph Nader in 1971. A graduate of Wesley college and Harvard law school, Ms. Wallach is also a founder and board member of the Citizens Trade Campaign. She has spoken and written extensively on NAFTA, GATT, and other trade issues and is considered truly an expert in those fields.

Mr. Stephen Rickard is the director of the Washington office of Amnesty International USA. Previously, Mr. Rickard served as the senior adviser for South Asian affairs in the Department of State, as well as a professional staff member for the Senate Foreign Relations Committee Subcommittee on Near Eastern and South Asian affairs. Thank you, Mr. Rickard, for being here.

Mr. Charles Wowkanech has served as the president of the New Jersey State AFL–CIO since his election in January 1997. He has been an active labor leader for the past 25 years. Before that, he

served as secretary treasurer and as assistant to the president for that organization. A longtime participant in health care reform efforts, Mr. Wowkanech was also the chairman of the New Jersey Individual Health Coverage Program board which was established by law to implement insurance reforms and regulate the New Jersey health insurance market. Mr. Wowkanech, his wife Lu Ann, and their two sons, Charles and Michael, reside in Ocean City, New Jersey.

Harry Wu is the executive director of the Laogai research Foundation. Harry has spent 19 years as a prisoner in the Chinese laogai in 12 different forced-labor camps. Released in 1979, Mr. Wu came to the United States in 1985 as a visiting professor at the University of California at Berkley. Mr. Wu was arrested while attempting to reenter China in the summer of 1995. Mr. Wu was arrested by the Chinese government, held for 66 days, and sentenced to 15 years in prison before being expelled from the country as a result of an extensive international campaign launched on his behalf.

Finally, Mary Beth Markey is the director of government relations for the International Campaign for Tibet, a nonprofit organization providing information on the situation in Tibet and urging a negotiated political statement of Tibet's status. A graduate of the College of William and Mary, Ms. Markey served for 8 years on the staff of the Senate Foreign Relations Committee, where she monitored human rights and refugee issues.

Ms. Wallach, if you could begin with your testimony.

STATEMENT OF LORI WALLACH, PRESIDENT, GLOBAL TRADE WATCH

Ms. WALLACH. Thank you, Mr. Chairman, and thank you for holding this hearing.

I am joined by a distinguished panel of experts on why granting permanent MFN for China as well as China's accession to WTO is a bad idea, so I am going to focus on the how and the what. Specifically, I am going to aim at what are some big misconceptions, I would say also some outright mendacities as to the role of Congress regarding this decision.

The bottom-line reality of Chinese accession to WTO is there is simply no requirement that the U.S. Congress grant permanent most-favored-nation status to China either as a condition for China entering WTO or, if China has entered WTO, as a condition for the U.S. obtaining the potential reciprocal benefits of that agreement. As a legal matter, this decision as to what a country must do is set forth rather explicitly in the actual GATT, and it is updated in the agreement establishing the World Trade Organization. The language is unambiguous; it must be unconditional, most-favored-nation treatment reciprocally. There is simply nothing about the duration of that grant.

Explicitly, to be very clear, neither in GATT nor in WTO is there a single rule that requires anything about duration nor specifically permanent most-favored-nation, nor does such a thing exist in GATT jurisprudence. In fact, the U.S. could choose to give weekly, hourly, daily, annual, biannual, 5-year, permanent, you choose it. It cannot cease and it cannot be conditioned on what, in GATTese,

is called "noncommercial performance requirements," i.e., you cannot write a statute that says we will check these three things and then extend. But you can do an annual review that is on all issues and give annual grants.

Now, the reason I mention this is because the boosters of permanent MFN to some degree, I suspect, see WTO admission of China as an excuse to obtain what they really want, which is to stop the congressional reviews, as compared to how it is sold to the rest of us, which is the other way around, i.e., what a wonderful thing WTO admission, small little thing as permanent MFN.

I believe that the reason, as a political matter, why the U.S. Congress must consider and review its legal options as to what kind of status to grant is because the record of Chinese noncompliance with its international, commercial and other agreements is an extreme and long one, not the least of which is the 1993 memorandum of understanding on prison labor, a whole series of intellectual property agreements. So for the U.S. Congress to have the leverage of having an annual review even with removing any explicit condition of continuation of MFN as a matter of obtaining some possibility of compliance with the agreement is very important.

To this end, I want to add as another legal clearup point the threats by the Chinese Ambassador to the U.S. that China would deny the U.S. the benefits of the WTO deal absent a grant by the U.S. Congress of permanent most-favored-nation status is, depending on how you look at it, either, A, a meaningless threat or, B, if it were carried out, would be China's first violation of WTO rules. Because as a matter of fact, to the extent the U.S. grants reciprocal MFN and China does back, China cannot unilaterally decide to deny any terms of WTO to the U.S.

Finally, two more technical correction points to add to the debate. The issue of accession. As a matter of the WTO and GATT procedures, at a point where the executive branches of the 135 WTO countries by a majority of two-thirds approve a country's accession, a country is in. However, it is a totally separate decision what are the bilateral relations between any of those 135 WTO members, which is why it is vital for the Congress to understand that separate from the issue of Chinese entry to WTO is the free will of Congress to determine the extent of duration of U.S. grants of trade benefits.

Finally, on accession, all of those commitments that we have been told will get lost if the U.S. does not do as it is being requested by China, all of those commitments will be multilateralized. They will be part of the binding agreement of accession. All the countries of the WTO will get that benefit, or none of them will. It is not a special thing for the U.S. to do in payment for permanent MFN.

Then finally, a little bit about the WTO provisions, and again we have heard a lot about how they could undermine the U.S. ability if China were to be a member to take action on human rights and religious freedom. I would like to be very explicit about what we are talking about. GATT article 1, most-favored-nation treatment: you may not treat another country differently according to its conduct relating to human rights, proliferation, et cetera. GATT article 3: like products must be treated alike. That means physically simi-

lar products. This means you cannot distinguish things that are made with slave labor, with prison labor, with child labor. A shoe is a shoe no matter where it is made, in the PLA or in the U.S. in a union shop.

The third key point to know is the agreement on government procurement to the WTO. These are the provisions under which the Burma case you have both mentioned arose. It explicitly forbids any country in spending its own tax dollars from considering any noncommercial consideration such as human rights, labor rights, religious freedom, et cetera.

So, although there is still an outstanding question about what the Congress could do, not about MFN but about China's entry into WTO, you need to be very clear what the U.S. would be giving up. Under WTO rules, as we saw with the Japan case relating to Kodak film, once China is in WTO, the U.S. has lost its ability to use unilaterally any kind of sanction; and this includes all the issues WTO does not cover. You cannot change any tariff or quota that is bound by WTO even on issues such as in the Kodak case where it has to do with personal relationships between individuals and rules not covered. That is done. So a little bit of technical update and now I will enjoy listening to this distinguished panel on the merits of why. Thank you very much.

Mr. SMITH. Thank you, Ms. Wallach, for that excellent testimony and look forward to hearing your answers to some questions in a few moments.

[The prepared statement of Ms. Wallach appears in the appendix.]

Mr. SMITH. Mr. Rickard.

STATEMENT OF STEPHEN RICKARD, DIRECTOR, WASHINGTON, D.C. LEGISLATIVE OFFICE, AMNESTY INTERNATIONAL USA

Mr. RICKARD. Mr. Chairman, it is an honor to have the opportunity to testify before your Committee today and specifically before you and Mr. Rohrabacher. Both of you have been among the most stalwart friends of human rights victims around the world for many years, and it is an honor to be here today. We are grateful to you for holding this timely and important hearing on the human rights in China and the issue of China's admission to the World Trade Organization. I would reciprocate Ms. Wallach's comment about being on the panel. I certainly appreciated very much her remarks and look forward to hearing from the other distinguished panelists as well. With your permission, my full statement would be included in the record and I will present a shorter version.

Mr. SMITH. Without objection, it will be a part.

Mr. RICKARD. As recent events in Seattle make clear, there is widespread concern about the World Trade Organization. Human rights activists are struck by many things about the WTO. For instance, we are amazed to see the United States enthusiastically embrace the World Trade Organization where U.S. laws can be judged and sanctioned by little understood panels while at the same time it refuses to support an international criminal court where the worst criminals in the world would be judged under procedures modeled on the Bill of Rights. Frankly, it is hard to under-

stand why it is easier to protect copyrights than human rights. Why is there a court to protect Disney's rights to "The Little Mermaid" but no court to protect little children?

Into this maelstrom comes the U.S. deal with China. Consider, at the same time that China is pledging to embrace the rule of law for commerce, it is waging a merciless and highly arbitrary campaign of repression against tens of thousands of peaceful Falun Gong adherents. The Information Center for Human Rights and Democratic Movement in China has reportedly estimated that as many as 35,000 Falun Gong practitioners have been detained. Many of them are being funneled into the reeducation-through-labor system, an administrative process with no due process rights.

Amnesty has received reports of Falun Gong practitioners who have been beaten to death, tortured with electric cattle prods and by other means, and raped in custody. In a disturbing echo of Soviet practices, some have been taken to mental institutions. A copy of our report on the individual Falun Gong cases is attached to my testimony.

I should be clear that Amnesty International takes no position on trade sanctions against any country as a matter of Amnesty policy. We neither oppose them nor support them and have never taken a position for or against extending most-favored-nation status to China. We do believe, however, that effective human rights policies require consistency and credibility, and credibility means being willing to pay a price to stand up for human rights victims. It is almost never a question of whether U.S. officials care about human rights. It is a question of whether they care enough to be willing to pay a price and to be willing to fight for the victims.

This explains why the annual effort to condemn China's human rights record at the human rights commission in Geneva and the annual debate in Congress over the human rights record in China continue to be important even when the ultimate vote goes in China's favor. They demonstrate to the Chinese government and to human rights victims in China that the human rights issue will not go away. In light of China's ferocious campaign against Falun Gong, its unrelenting repression against Tibetans and Uighers, and its failure to move forward in any meaningful way on the human rights promises it has already made, such as implementing international human rights treaties, Congress is clearly entitled to be skeptical about assertions that China's admission to the WTO will herald the dawning of a new age in China.

I think it is significant and probably wise that U.S. Trade Representative Charlene Barshefsky has been very circumspect in making any such claim. For instance, she was quoted in the New York Times as saying, "I am cautious in making claims that a market opening agreement leads to anything other than opening the market. It may, it could have a spillover effect but it may not. We have got to understand that."

In other words, there is nothing inevitable about trade or the WTO leading to human rights progress. Frankly, the recent news is not encouraging on the human rights front or any other. According to reports out of China, Chinese political officials recently severely beat a democracy activist because he spoke to a U.S. human rights official. Even on the trade front, Chinese leaders have

rushed to tell other Asian governments that once China is admit to the WTO, it will stand with other Asian governments to reject and resist Western trade proposals.

In other words, China tells the U.S. that engagements and friendship requires the U.S. work to have China admitted to the WTO while at the same time telling Asian governments that once admitted to the WTO, China will become a stalwart opponent of U.S. proposals. Without question, however, the period between now and the congressional debate on the China deal represents an opportunity for the Clinton administration to demonstrate that the tree of engagement can bear fruit.

There are three steps that the Chinese government could take or at least set in progress immediately to demonstrate a genuine commitment to the rule of law and to fulfilling international commitments. First, the Chinese government could announce that it will review the convictions of every person serving a prison sentence for counterrevolutionary offenses. These are offenses no longer even on China's statute books, having been replaced by a new national security law.

Second, China could announce that it will dismantle the reeducation through labor system. It is simply impossible to claim a commitment to the rule of law and simultaneously maintain a system that sentences hundreds of thousands of people without due process. Third, the Chinese government could move forward to ratify and fully implement international human rights treaties. All three of these steps go directly to the credibility of China's international commitments and its commitment to the rule of law.

Now, there are of course many other critical human rights issues in China. Religion continues to be severely repressed throughout China. Just as the repression of Tibetans and Uighers and Christians has already demonstrated, the campaign against Falun Gong shows how extraordinarily fearful Chinese authorities are of any form of organized entity, however peaceful. To be frank, and speaking just for myself, I shudder when I read that implementing the U.S.-China trade agreement may cause millions of people to become unemployed in China. One western diplomat was quoted in the Washington Post saying that if China fails to create a social safety net for the unemployed, quote, "things could get extraordinarily ugly," close quote. Indeed.

I don't believe that governments can maintain social stability in the long run by cutting themselves off from the rest of the world and maintaining bloated state enterprises. But when painful change comes in a democratic society, the unemployed and the poor can hold leaders accountable and demand government policies that ameliorate their suffering. In China, the answer may instead be the cattle prod, the firing squad, or the one-way ticket to the Laogai. Remember, China is a country where people have literally been given the death penalty and shot for counterfeiting tax receipts.

Mr. Chairman, you have many distinguished expert witnesses on human rights in China testifying today so I will not prolong my remarks. I look forward to hearing their testimony and answering any questions you or others may have. I have brought with me several recent Amnesty reports on human rights conditions in China

including the campaign against Falun Gong, the situation in Tibet and in Xinjiang and others; and with your permission I would ask that they be made a part of the record of the hearing.

Mr. SMITH. Mr. Rickard, they will be made a part of the record, and I do thank you for your excellent testimony and the great work that Amnesty does in China and elsewhere around the world.

[The prepared statement of Mr. Rickard appears in the appendix.]

Mr. SMITH. Mr. Wowkanech.

STATEMENT OF CHARLES WOWKANECH, PRESIDENT, NEW JERSEY STATE AFL–CIO

Mr. WOWKANECH. Yes. Good afternoon, Mr. Chairman and members of the distinguished panel. Before I start my official remarks, I would like to say that I have given my testimony for the record. I plan to deviate from that somewhat today with some materials that I have brought from our home state of New Jersey. But before I start, I would like to congratulate you on the fine job that you have done over the years in your fight for the social and economic justice and human rights of workers around the world. I think it is unprecedented. I am deeply honored to be here in your presence, along with your colleague and Mr. Wu, and the other people here on the panel.

With that, I would just like to say thank you, Mr. Chairman, and members of the Subcommittee, Mr. Rohrabacher, for allowing me to present the views of the New Jersey state AFL–CIO and the 1 million workers that we represent on the inclusion of China into the World Trade Organization and the effect this and other U.S. trade policies would have on New Jersey.

New Jersey's trade, economy, and the jobs of hundreds of thousands of New Jerseyans are threatened by China's impending accession into the WTO. China should not be allowed to capitalize on its human rights, worker rights, and environmental failings to the detriment of New Jersey working families. In 1998, the U.S. had a $57 billion trade deficit with China. In that year, U.S.-China trade yielded a grossly skewed import-export ratio with $71 billion in Chinese goods entering this country and only $14 billion in U.S. exports. This was a direct result of the normalized trade relations between China and the U.S.

New Jersey has been particularly hit hard by the recent U.S. free trade agreements. In 1996, manufacturing employment in New Jersey fell below 500,000 for the first time since 1930. Free trade agreements with Canada, Mexico, and Europe have resulted in the loss of hundreds of thousands of American jobs, as businesses have relocated to exploit weak or nonexistent labor and environmental protections. In the wake of these agreements, corporate profits have grown while high-paying American jobs have been lost.

The wage gap for American workers has widened. According to Business Week, in 1998, the average pay of an American CEO was 419 times that of an average factory worker. When is enough enough? While corporate profits continue to grow, the working people of New Jersey are struggling to pay their mortgages, send their kids to college, and improve their overall economic standing. I would say for the record that back in 1995 and 1996 while all this

was going on, New Jersey was No. 1 in mortgage foreclosures, and New Jersey was ranked No. 1 in our Nation in businesses that were filing chapter 11. That is a direct correlation with the companies that I am going to talk about that are on that map of our great state of New Jersey that have left New Jersey for good.

So while all this corporate world has been prospering, many have suffered. I want to state for the record that I am not a protectionist. I want to state for the record for those that do not know me in my position with the state federation, I have developed a fairly good reputation with the business community in our State. I work very hard with the casino industry in achieving a better regulatory climate for them to do business in our State. I have most recently worked with our congressional delegation here, with our shipping companies in our great port of Newark. I have worked with Continental Airlines with their quest for some $2.6 billion expansion in New Jersey. In 1985, I proudly worked alongside with the telecommunications executives in our state to make New Jersey the first state in the Nation to become wired for fiberoptics so that we could attract industry to our state and maintain the business that we had.

So in my remarks, when I say some maybe-not-so-kind things about corporate America, I just wanted to enter that for the record that I am not a protectionist; I am not a person that goes around thinking that the working people should have everything and the business community should have nothing. I think I have demonstrated in my 10 years in this position that I have not been that way. The North American Free Trade Agreement has resulted in the loss of 400,000 American jobs in its first 5 years. New Jersey alone has lost more than 28,000 to increased trade deficits. New Jersey's 1993 to 1996 NAFTA deficit was $2 billion. During the same period, wages in New Jersey dropped from $13.07 to $12.55 while inflation was on the rise. Again, this situation will only get worse upon China's acceptance into the WTO.

At this time I would like to ask the panel as well as the members on the Committee to focus on the map. I don't know if you can see it, but this is a map that shows the spillage of blood of New Jerseyan and American workers in our state that started since 1985. The statistics that I am going to share with you today are not from Charlie Wowkanech or from the AFL–CIO. They are from the New Jersey Department of Labor under the administration of Governor Christine Todd Whitman.

In 1995 when our Department of Labor started to keep track of what was going on, 109 companies left our state for good, affecting some 11,752 workers. From that year on in each successive year, the number of companies has climbed and the number of workers out of work has gone up. In 1995 we totaled 388 companies from 109 and 34,700 workers lost their jobs that year. Because of this map, as you can see, and the wear and tear on it—we have used it extensively in our state on these issues—our present administration decided to disband this department and not release these numbers anymore. But through our own internal monitoring, we would take an educated guess to indicate to you at this time in 1999 at the dawn of the new millennium that we are upwards of 500,000, and 3,500 companies.

I want to direct your attention, Congressman Smith, Mr. Chairman, from New Jersey, because these names will ring a bell, and for Mr. Rohrabacher, they might as well. I want to start at the dawn of the century. A great individual by the name of Thomas Edison founded an incredible device called the light bulb. Here at the dawn of the new millennium, we cannot find a light bulb made in America. It is very difficult.

Anheuser Busch, the king of beers, American eagle as its emblem, most recently decided to purchase $200 million and more, $200 million worth of their bottles from Mexico because of NAFTA. The immediate effect was two plants, one by the name of Ball Foster in Millville, New Jersey; and the other plant I don't have right now, but was in the state of Texas. In New Jersey, 2 weeks before Christmas, the employer came and told the 300 plus workers, "We're closing the plant down. That was it."

Anheuser Busch decided to go with workers in Mexico who are going to be paid $7.50 a day as opposed to $18 an hour with health care benefits and pension. We cannot go on. We cannot go on like this. The garment industry, one of the industries that we think will most come under attack under China's acceptance into the WTO in New Jersey, presently our New Jersey Department of Labor indicates that we have 27,000 employees within this industry. That is also business owners, people who pay real estate taxes; most of these workers, these garment workers, are single mothers who work for decent employers, who provide health care and do those kind of things. They cannot compete. They cannot compete with China with the situations that you have heard described from this body, with the egregious offenses that are taking place. It is going to wipe this industry out.

This is going to have a cascading effect on unemployment, on welfare, on the tax base. We now have towns in our State which I am sorry to admit to you here in Washington D.C. where the principal industry is hospitals and police stations and jails.

This has gone far enough.

One final note. As indicated in your opening remarks, the father of two children, a 5-year-old and a 7-year-old son who I want the same great things for as you-all do, and my father and mother for me. Both boys are fans of the United States Navy and big ships. So my wife and I thought it would be appropriate this summer, not only to make the connection to their education and to the history of our great country, nothing would be more fitting than to take them to the United States Naval Academy where you see the father of our Navy, John Paul Jones, who was entombed in the chapel. You see the flags and artifacts, cannons and swords from great battles. When they take you on the 2-hour walking tour, they tell you about the Academy and it develops the leaders of the future, both intellectually and morally, and the history of our country and the honor and the duty to serve.

At the end of the tour, they bring you to the gift shop, like most tours, and you have tears in your eyes and you are looking at other people in the tour and you just can't believe how proud you are to be an American and what has taken place in our country. Then you see hats and shirts and beach bags and coffee mugs that are all made in China, El Salvador and anyplace that you can imagine.

But I stayed there for an hour and couldn't find anything made in the United States of America.

I say to this Committee, that has to stop. This can't go on.

Also for the Committee, I would have brought a lot more, but I have shirts and other garments that are produced in our own great state of New Jersey, and I am embarrassed to show this to you. You can go on a New Jersey Turnpike or the Garden State Parkway, and again you can stop in a gift shop and you can purchase a baseball cap just like this one here and the ones I have in front of you, that the State of New Jersey buys, that when you flip over the tag you see "Made in China," no codes, no FTC regulations. We have no idea where this stuff comes from in China, if they are from indentured workers or prison workers. It sells, here's the price tag, for $14 dollars.

I can't believe a New Jersey-based company or an industry that has 27,000 workers cannot produce these hats. They can.

It is an issue of corporate greed. The situation has gotten out of control, and I would ask this Committee to consider some of the recommendations that I am going to put before you this afternoon, as well as my own great President, John Sweeney, of the national AFL–CIO, because I am troubled. I am troubled by getting calls from workers in our State—a wife will call me and tell me her husband has committed suicide because their industry is gone, they have gone through retraining, and they can't find a job. They realize that when they are told this is a global marketplace we must compete in, they don't want to compete against kids. They don't want to compete for 17 cents an hour. They don't want to compete against the Mexico bottle workers for $7.50 a day.

So I offer these suggestions to you for your consideration. One, the State of New Jersey and I think the Federal Government, as Mr. Rohrabacher has said—I think the United States of America and the Federal Government must lead the way. We are the nations' leader, the most industrialized nation in the world. As we see in New Jersey with the purchase of these goods with taxpayers' money, I say the Federal Government, right here in the Capitol building in its souvenir shop or at our national parks or anything else that the United States of America owns, there should be some prevailing wage concept. As we have in the building and construction arena, where it creates not protection, it creates a level playing field where people who are bidding on these types of garments for the State of New Jersey or for the U.S. Government know that they can't buy these goods where they are manufactured with these type of egregious conditions. I think that is something for your consideration.

I also would ask that something to the effect of an international advisory council. I watch on TV with great interest that the U.N. is allowed to go in behind the scenes and look at the reduction of arms. We are fighting the same war. It is not about missiles and chemical warfare. It is an economic warfare. Somehow a commission must be formed with human rights leaders, with labor leaders, with corporate America at our side as partners, that must look at what is taking place; and if these countries do not want to live up to a standard and level playing field, then they should not be allowed to do business here. We should not open our marketplace.

I know the political reality of that is difficult to achieve, but that is by far the most simplest thing to stop this thing right now.

But I think another suggestion worthwhile looking into—and again to my good friends on the other side of the aisle in the corporate board rooms who have shown through their own efforts that they cannot police themselves, that the situation is out of control, that it is more important at 4:30 this afternoon what the closing is on the New York Stock Exchange, as opposed to what is going on inside their factories and plants, I think there has to be some sort of a Federal industrial retention commission to look at these violators, whether they be United States companies or not, that intentionally move companies from United States soil and New Jersey and move them to foreign shores to exploit workers. They leave towns and communities in total devastation, and they leave the taxpayers of that state to pick up charity care for health care because now people don't have health care. The welfare rolls, unemployment, I think that these companies have to be held accountable. They can't police themselves. We can't let this go on.

So I offer those suggestions to you with the hopes that out of this meeting and subsequent meetings I know you plan to have, Mr. Chairman, that some sort of Federal guidelines or legislation incorporating all of the things that this panel is going to offer us today would be something that we all could get behind to support and stop China from achieving acceptance into the WTO, and most assuredly we oppose their Most Favored Nation clause, and we would do anything to work with you or any of these constituency groups around here to deny that happening within this administration.

So at this time I yield to my great friend, Mr. Wu, and would be open for questions at any time.

[The prepared statement of Mr. Wowkanech appears in the appendix.]

Mr. SMITH. Mr. Wowkanech, thank you very much for your testimony. You have raised a number of action items that we will very seriously consider and try as best we can to act on in the coming months. Looking at your chart—when you brought that into my office this morning, the thought that occurred to me was that if a battlefield commander—who often, as we know, puts flags on a map where the different troops might be—had those kinds of losses, he would be fired. That may just be New Jersey, but that speaks for every one of the 50 States throughout our country. Hopefully, Americans will begin to see that while humanitarianism in and of itself should be enough to make us sensitized to these egregious abuses around the world, like in China, there is also a direct impact and a very negative one on their livelihoods and on their jobs and on their quality of life.

There is some self-interest that needs to be gotten out there so that the American public takes ownership of the human rights issue, because it does negatively affect them both medium- and long-term; and that certainly makes the case, I think, very dramatically, and I thank you.

Mr. Wu.

STATEMENT OF HARRY WU, EXECUTIVE DIRECTOR, LAOGAI RESEARCH FOUNDATION

Mr. WU. Mr. Chairman, Congressman and ladies and gentlemen, it is my honor to testify before your Subcommittee.

Today, we are standing at a historical crossroads. Down one path lies a United States chasing after market access in China and talking about human rights, but only acting on trade deals. Down the other path is the chance to have a principled foreign policy in relation to Communist China, one based on American values and national interest.

For the most part, the United States has been moving steadily down the first road, kowtowing to the business interests and using all of the U.S.'s negotiating abilities to push for business deals. The WTO agreement is supposed to be a major milestone on this road. It has long been fashionable to think, "What is good for Wall Street is good for the United States,". But we must also realize that this deal gives a timely boost to the Chinese Communist leadership. This blood transfusion to a dying Communist regime is both unwise and unnecessary.

Faced with a stagnating economy and sagging exports, the Chinese Communist Party desperately needs increased foreign investment and guaranteed access to foreign markets, with no threat of bilateral sanctions. This deal gives just that to the Chinese dictators, increasing their authority and claims to legitimacy.

The Chinese leadership has not proven to be a reliable partner in its international dealings. Its human rights abuses violate the United Nations treaties it has signed, and it continues to violate trade agreements by dumping and by exporting forced labor products. Mr. Chairman, I promise you that in the next spring I will come back here to tell the American people what is the truth of the forced labor products imported into the United States.

The current crackdown on the Falun Gong is a sad but perfect example of how the Chinese Government treats its common citizens. The Beijing government actually supported Falun Gong when it first started to flourish in China. The Communist Party realized that China is facing an ideological crisis: the people do not have faith in the party as they once did. Falun Gong seemed like a harmless way to fill this ideological vacuum. Let them meditate. It is much better than meeting to discuss politics or Christianity or unemployment. Then slowly, the Falun Gang yellow book became more popular than Mao's the red book. It seems that millions of Chinese today have found a new bible; the yellow replaced the red.

But Falun Gong quickly became a nationwide and organized movement, and that, the Beijing government could not tolerate. The Chinese Communist Party does not allow any organization except itself to have nationwide structures, regardless of the organization's purpose. For example, if you want to collect matchbooks in New Jersey, you can organize an institution. If someone has the same purpose, same interest, you can have an institution in California, but you cannot have a nationwide institution to just collect match books. It is not allowed by law.

So, in retaliation, the Beijing government declared Falun Gong a cult and is arresting members by the thousands on charges of spreading superstition or subverting the government. Now, if you

look into the yellow book, it does not discuss subverting the government, and it does not advocate any violence. It does not say that the end of the Earth is coming. Rather, it is talking about an individual's spiritual health and demonstrates how to do proper breathing exercises.

Like any totalitarian regime, the Chinese Government is paranoid. It considers these people a threat and will treat them as it does any threat, by cracking down quickly and completely. Lawyers in China today have been instructed not to represent these people, showing that the Chinese Government will easily break its own laws.

But remember, there are many American academics today talking about legislative reform in China. It seems to them this is a kind of good progress.

The members of Falun Gong were detained, tortured and sent to the labor camps, and it is reported that over 35,000 people have been detained since the crackdown began in July. Today, a new crackdown is starting on another group that practice traditional breathing, Zhong Gong. So far 100 members have been detained. These arrests continue even as China receives the Secretary General of the United Nations. This is another shame of this United Nations organization.

The Chinese Government just released a new law, declaring that any gathering, baseball games or basketball games or any concert, if there are over 200 people, must be approved by public security. The law was issued November 24, 1999. The Chinese Communist Party is fundamentally threatened by any popular group, students who want an end to corruption, workers who want their pensions or independent unions or even middle-aged women practicing meditation exercises in the park.

The Chinese Communist Party will grow richer and stronger from—if approved for WTO membership. Part of its new wealth will go to upgrading its instruments of authority: the police, the military and the labor camps. Foreign investment will help them crack down on the Falun Gong more efficiently, and it will help them harvest organs from the death row prisoners with better technology.

There is also the question of national security. Congress should, when it considers permanent NTR status for China, put this agreement under a national security microscope. The relationship between a lack of democracy, economic growth and Chinese military expansion is a serious one and must be closely examined.

From a human rights standpoint, granting China permanent NTR will give them the green light, a green light to continue the abuse their citizens. That action will tell the dictators in China that the United States will ignore the horrible way the Chinese people are treated as long as markets are open to trade and foreign investment.

Perhaps 1 day the U.S. Government will try to promote human rights in China with the same zeal that it runs after market access. I hope so. Maybe 1 day a President of the United States will use his or her private line, red line, with the Chinese Communist leader to promote human rights, to show that the United States is

serious about freedom and democracy. Today, that responsibility rests with the Congress.

Thank you.

Mr. SMITH. Mr. Wu, thank you very much for your very incisive testimony, and for making the considerable effort to get here, having been in Korea just recently and having changed your plans to come and appear before the Committee. We are very appreciative of that.

[The prepared statement of Mr. Wu appears in the appendix.]

Mr. SMITH. Before I go to Ms. Markey, I would like to just recognize that Eni Faleomavaega is here, and if you have any opening comments, I say to my friend——

Mr. FALEOMAVAEGA. Mr. Chairman, I don't have an opening statement, but I do want to thank you for your leadership. It has always been the case in our workings of the Committee, of the Subcommittee, and it is quite unusual, given the fact that the members are not here. But I am really, really happy that you were able to call this Committee and have our friends from the NGO's.

Unfortunately, none of the administration people could make it to the hearing, but hopefully maybe next month we definitely will call them up to consider more examination of what happened at the WTO meeting in Seattle. We definitely will be following up on this, and I do look forward in hearing from them.

My apologies for those witnesses who have already testified, but I am going through their statements and really appreciate their input in the process.

Mr. SMITH. I want to thank my friend and just point out that events don't wait on the congressional schedule, and one of the nice things about this Subcommittee is that we meet all 12 months, and when events so dictate. Certainly the imperative that we now face with regard to the massive effort that has been announced again, as recently as yesterday, by the administration and business leaders for permanent MFN requires this meeting.

Ms. Wallach, I think, pointed out some very, very important myths that need to be gotten out there with regard to whether or not permanence in MFN is actually required, and that is something we will get into during the Q and A.

Mr. FALEOMAVAEGA. If the Chairman would yield further, in the 10 years that I have served as a member of the International Relations Committee, again I want to commend you, Mr. Chairman, for your leadership and especially on the issue of human rights, not only in substance and depths of what we have tried to do over the years with China, but as well as other countries of the world. I think now we are beginning to see at this most critical moment how not just the more prosperous countries but every country of the world, there has got to be a sense of greater equity and fairness in the process when we talk about economics and trade; and I am very, very concerned, if this is the way that we are to proceed.

But more than anything, Mr. Chairman—again, I want to thank you sincerely for your leadership on the issue of human rights; I think there is no other Chairman in my experience in serving on this Committee who has provided that kind of leadership. It has not only sensitized our national leadership, but certainly leaders of other countries to know that we are dead serious about this, even

though in the past years we have somewhat waffled. Sometimes we think about human rights, sometimes we don't.

But with your leadership, Mr. Chairman, I want to commend you, and I certainly will continue to give you all the support I can as a member of this Subcommittee, because it touches on every aspect. When we talk about social economic issues, we cannot neglect human rights, and I think this is something we ought to pursue. I look forward to continue working with you along those lines.

Mr. SMITH. Thank you very much for those comments.

Ms. Markey.

STATEMENT OF MARY BETH MARKEY, DIRECTOR OF GOVERNMENT RELATIONS, INTERNATIONAL CAMPAIGN FOR TIBET

Ms. MARKEY. Thank you, Mr. Chairman, for the opportunity to testify before the Subcommittee this afternoon. It is always a pleasure to hear your edifying remarks on human rights, and if my memory serves me, Congressman Faleomavaega, you are one of the small number of Members of Congress who have made that difficult journey up to Dharmsala, India. I think it may have even been during the monsoon that you went up there. That is the seat of the Tibetan Government in exile, and I am sure that was an exciting experience for you. I hope my remarks on Tibet will be interesting in that light.

Like many of our fellow activists in the labor, environmental and human rights communities, the International Campaign for Tibet believes that the World Trade Organization has both the potential internationally to liberalize economies, a good thing; and to promote an ethic based on the accumulation of transnational corporate wealth which ignores democratic principles, hard-won economic safeguards and basic human rights, which is very bad, and the basis of our opposition to an unregulated WTO and to China's accession at this time.

The International Campaign for Tibet calls on the U.S. Congress to see the coming debate on China's WTO membership and permanent NTR status as an opportunity to consider carefully the WTO's potential and proclivity to address human rights abuses and then to use this opportunity of maximum leverage to extract meaningful human rights concessions from China.

The Congress need not be a rubber stamp for this administration's investor-based trade priorities, especially with regard to the China market. Our Nation has many serious concerns with China, human rights and the situation in Tibet being just two that are systematically dismissed by Beijing. The U.S.-China human rights dialogue is shut down, as Chairman Smith has pointed out, although other countries continue to meet bilaterally to discuss human rights. The Washington Post reported yesterday, as Chairman Smith pointed out, that Beijing will not even accept our human rights demarches and, as a new protocol, insist that they must be delivered to the embassy here in Washington.

Appeals to Chinese leaders from heads of state the world over to begin dialogue with His Holiness the Dalai Lama are routinely answered with Chinese histrionics.

In Tibet the use of prison labor in economic development is openly stated policy. Prisoners forced to work in prison greenhouses fall

ill from pesticide exposure. Torture is routine. Patriotic reeducation continues in monasteries.

Popular resistance against hard-line policies on religion and against the Dalai Lama continues. In Lhasa in October, Tashi Tsering who attempted to raise the banned Tibetan flag during the national minority games, was severely beaten and died of his injuries in detention.

Tibetan homes are routinely searched for evidence of "splittist activities." officials demand loyalty to the unity of the motherland and caution against the infiltration and sabotage of foreign hostile forces.

Ngawang Sandrol, a nun first arrested when she was just 13 years old, is serving her 10th year in prison and has just received a third term extension, which means she will serve a total of 21 years in prison for singing songs of her love for Tibet and His Holiness the Dalai Lama. According to the Tibetan Information Network in London, a female prisoner in Lhasa's notorious Drapchi prison, based on current information for records with adequate data, has a 1 in 20 chance of not surviving the consequences of imprisonment.

China is silent to requests from U.N. Officials and agencies and from numerous government, religious and humanitarian delegations to meet with the young Panchen Lama. This little boy, held captive since he was 6 years old, goes missing—an alarming report on a Chinese Internet site suggested that he died in Gansu province and was cremated in secrecy. For 4½ years, since May 1995, the United States has raised his case with Beijing. Assistant Secretary for Human Rights Harold Koh has requested to see him as part of the resumption of the bilateral human rights dialogue.

Here, Mr. Chairman, I beg your patience to address a terrible flaw in the U.S. position on the Panchen Lama that is germane to this discussion today. While the issue of religious freedom has been elevated to a priority among rights in our State Department, an ambassador at large and a commission on religious liberty named, our government has taken an equivocating position with regard to the authority of the Dalai Lama to recognize the reincarnate Panchen Lama. The Panchen Lama is referred to by our foreign policy establishment as the, quote, "Panchen Lama recognized by the Dalai Lama." since the Chinese Communist Party leadership chose another boy to replace the kidnapped child, our government refers to him as the, quote, "Panchen Lama appointed by the Chinese."

Of course, the Chinese Communist Party has no right of primacy on any religious issue. Nonetheless, the administration is providing Beijing cover with its ambiguous approach. This is wrong. Would we hesitate to recognize the choice of a Pope by the College of Cardinals in Rome? Is a mullah not a mullah because we quibble with his politics? How can we, the United States, advocate on behalf of religious freedom and accept that the Communist Party, the antithesis of a religious body, has a legitimate role in naming the eleventh Panchen Lama of Tibet?

It is precisely this kind of conflicting signal that doomed to failure the 1993 executive order on MFN, and we should guard against mixed signals with respect to permanent NTR.

Whether we fight the NTR battle annually or permanent NTR is phased in as China moves into compliance with WTO rules, the Clinton administration and the Congress must accept the challenge of devising a tandem human rights/permanent NTR strategy and commit together to its implementation.

U.S. business, which has failed utterly to use its privileged access to China and Chinese leadership to promote human rights principles, will likely not ally itself to this strategy. However, it is past time for them to play a responsible role in exporting the commodity of democratic values.

Mr. Chairman, the International Campaign for Tibet, with the support of several environmental groups, has for the past months been engaged in a battle with the World Bank over a plan to move some 58,000 mostly Chinese settlers onto the Tibetan plateau. The World Bank project, if implemented, threatens to do serious damage to Tibet's fragile high altitude ecosystem and will further dilute the Tibetan population and culture. The Bank has argued from the beginning that the politics of this project are not the Bank's responsibility; in other words, the transfer of large numbers of Chinese farmers onto traditional Tibetan lands, hastening the sinocization of Tibet, need not be considered by Bank project planners in Beijing or Bank headquarters here in Washington. Fortunately for the Tibetans in the project area, there is a mechanism for redress at the Bank, the Inspection Panel, and the International Campaign for Tibet has submitted a claim against the project on their behalf.

Destructive environmental decisions from the WTO have similarly been interpreted as outside the scope of the WTO's responsibility. A platform for labor rights is being resisted as well, and unlike the World Bank, there exists no mechanism for transparency and redress. It is therefore not difficult to imagine development or natural resource exploitation in Tibet made possible by the politics of sinocization and giant transnational corporations that Tibetans would oppose, but are powerless to stop.

Though China's membership in the WTO might eventually pressure the leadership to open its doors to outside monitoring, there is currently no WTO mechanism to perform oversight and certainly little evidence to support the hopeful position that China would accommodate it. Opening Tibet to unregulated foreign investment more likely would promote more Chinese migration into Tibetan areas and challenge efforts for appropriate development designed to benefit the Tibetan people.

Mr. Chairman, Tom Hayden, a former protester of some renown, suggested that the new generation of activists that protested in Seattle represent the breakthrough of their generation into a public effort to challenge the systems. The International Campaign for Tibet has seen how our own movement has been propelled by young people. Their priorities, by nature, are hopeful and forward looking. It is very much a new world order they seek. While they may have only shut down the WTO meeting for a short while, I am confident that they will be back and ready to play an active role in the debate early next year on permanent NTR for China. I would caution big business not to declare victory as yet.

Finally, Mr. Chairman, I hope the Congress will look into how the Seattle protesters were treated by the police during the demonstrations and in custody. As an American who speaks out against the atrocities perpetrated by Chinese police and security officials against peaceful Tibetan demonstrators, I was appalled by what I saw on television and heard from some of the protesters themselves. Again, I take note of John Pomphret's piece in yesterday's Washington Post. In response to U.S. warnings that a resolution critical of China might be introduced at the U.N. Human Rights Commission in Geneva, Pomphret quoted a Chinese official as saying, quote, "After what happened in Seattle, how could you do this with a straight face?" end quote. Thankfully, those protesters in Seattle have recourse through the legal system and public opinion. That would be my answer to the Chinese official, but it was still a shameful display of intolerance and abuse of power.

Thank you again for this opportunity, Mr. Chairman.

Mr. SMITH. Than you very much, Ms. Markey, for your excellent testimony.

[The prepared statement of Ms. Markey appears in the appendix.]

Mr. SMITH. Let me make just a couple of points and then go to a couple of questions. We had invited some other witnesses to be here, including some from the administration. Ms. Barshefsky had been asked and admittedly was on relatively short notice, and she was obviously very busy with the events leading up to and then certainly in Seattle. We will renew that request and hopefully hear from the administration, from Mr. Roth and from Secretary Harold Koh as well.

They were all invited to be here, and they chose not to be, but again giving the benefit of the doubt, perhaps it had something to do with fatigue having been part of that whole process in Seattle,and we will renew that invitation to them.

We also invited Wei Jingsheng, who is out of the country, but he did send a letter. I will read a portion of it because I think it is very, very powerful. As we all know, he was a leader of the democracy movement, and like Harry Wu, spent a significant portion of his life behind bars because of his belief in human rights and human freedom.

"Dear Congress: Make no mistake about it, the current mistake in China is very grave," he writes. "as witnessed by the recent Falun Gong crackdown, the ongoing suppression of religious freedoms, the oppression of independent labor unions and the continued imprisonment of democratic activists like myself, whose only crime was to openly express their opinions, the Chinese Communist regime continues to trample on the human rights of the Chinese people.

"Following America's profuse and repeated apologies for the bombing of the Chinese embassy in Belgrade last May, the Communist Party leadership has only increased its attitude of defiance. Chinese language newspapers have published sources stating that in a recent meeting with Chinese military officials, President Jiang Zemin ordered an increase in the speed of military development and scoffed that a so-called close strategic partnership with the United States was impossible.

"He said this at a time when the United States should choose to award the Communist regime with a sweetheart deal to join the WTO is utterly inconceivable. WTO membership, obviously a goal coveted by the Chinese regime, is a bargaining chip that should not be given away without receiving significant concessions on human rights, financial sector reform, workers' rights and freedom of speech.

"It appears this administration is more worried about getting its name in the history books than about promoting the principles of democracy.

"With the entry of China into the WTO now appearing inevitable, the U.S. must find a way to continue the annual debate on China's NTR status. If NTR were made permanent, the U.S. Would forfeit its final effective weapon for applying pressure on the Communist government, who would then be free to violate the human rights of the people unhindered by the threat of U.S. sanctions.

"As one who has spent more than 17 years in Chinese prisons, I can tell you that international pressure has a direct impact on human rights in China. When in jail, I could always judge the current state of affairs because there was a clear and inverse relationship between my treatment and the state of American-Chinese relations. The more tense things became, the better I was treated in prison. The friendlier things became, the worse I was treated.

"As the leaders of the democratic world, it is your duty," he writes, "and in your best interest to promote democratic principles around the world. You must not forsake the friends of democracy in China by giving away WTO membership and permanent NTR status to dictators who continue to violate their citizens' human rights. Wai Jingsheng, December 8, 1999."

I would like to begin by asking Ms. Wallach, in looking at your statement—and it is probably one of the most provocative things that will come out of this hearing, and that is the shattering of the myth based on your legal analysis that permanent MFN is not required for the U.S. to benefit from China's WTO accession. You spoke of the issue of duration as opposed to the annual versus permanent. I have read three separate analyses by two different authors from the Library of Congress who suggest that permanent MFN is required. The President's assumption, and I assume his legal assumption, or that of his legal counsel, is that permanent MFN is required, although no one has said absolutely at the White House. So maybe they are just saying this is the chance to slam-dunk it under the guise of the WTO agreement.

Could you perhaps elaborate on that issue, if you would, and any of the other panelists who might want to speak to it? Are there any other countries who are members of the WTO that do not have permanent MFN that would be an example underscoring your point?

Ms. WALLACH. What the GATT agreement requires in Article I:1 is, with respect to customs duties and charges of any kind imposed on, or in connection with, importation, exportation, blah, blah, blah, any advantage, favor, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product. That is the only language, "immediately and unconditionally," as to the grant of Most Favored Nation status. As

a factual matter, the record in history, there are two points. First, in fact there has been no jurisprudence when there have been annual grants saying that that is not allowed; and second, there have been annual grants of MFN to GATT members.

The untested case is, what about an unconditional annual grant. The U.S., for instance, has granted annual MFN to all of the previous Soviet satellite states as they have come into GATT. Romania still has it, et cetera, and the former Yugoslavia came in that way. Currently, Czechoslovakia still has it, but it was done under a waiver provision because it was done as a waiver of Jackson-Vanik.

If the U.S. Congress either amended the Jackson-Vanik amendment to take out the clause that requires a conditionality based on freedom of immigration or, alternatively, Congress, as a free-standing piece of legislation, simply granted a year of Most Favored Nation status to China with a renewal process that would not allow for it to expire in between—i.e., like we do now where there is notice there is a month overlap and absence to vote it just goes on for another year—there is nothing in the GATT rules, the WTO rules, nor literally the precedents and history of the institution that would forbid that. I have seen those memos, and those are basically memos that are putting arguments with no legal, factual, WTO law basis to what is clearly a political push for a particular outcome, but there is no legal or factual basis to that, and in fact, there is precedent to the contrary.

Mr. SMITH. I appreciate that insight. Would any other panel members want to touch on that? I mean, that is something we need to look at very, very seriously.

As a practical matter, while Jackson-Vanik is very narrowly written with regard to freedom of immigration, going back to the years of Romania especially—because I was one of those who led the effort to try to suspend MFN to Romania because of Ceausescu's horrific record on human rights, torture and religious persecution, as a matter of practice—we were able to expand the consideration even though technically it only applied to immigration.

So your point to that, if that were out, it wouldn't necessarily mean that we don't look at the whole spectrum of human rights with a microscope, and I think it is room for some very serious thought as to how we might proceed.

It is also important, I think, to shatter that myth, because I didn't find citations to back up the Library of Congress Permanet MFN analysis I kept looking for footnotes that would go into further detail and they weren't there. Hopefully, the news media will take note of this because the administration is making it as if it is a given, an absolute given, that permanent MFN is the prerequisite to WTO affording the benefits between the U.S. and the PRC; and I think you have held up a stop sign and said, wait a minute, the law doesn't say it. That is very, very helpful.

Ms. WALLACH. If I may just add.

Mr. SMITH. Yes, please.

Ms. WALLACH. The political fact of this legal reality is that the U.S. Congress could take a step that would make sure that whatever benefits might accrue commercially under WTO accession by China would be fully obtained by U.S. interests, while at the same time maintaining the leverage that they currently have unlimited,

though not added to, which you and others have suggested would be necessary; but you would preserve the status quo by being able not literally to condition continued MFN on a particular thing, but rather the knowledge that every year the Congress, the press, the U.S. public will have a look, and there is that possibility, but meanwhile, all the commercial benefits would be allowed.

Mr. SMITH. Let me ask you about point No. 5, in your testimony. You know Harry Wu and everyone here have spoken out against prison labor very effectively. Harry actually suffered, as we all know, in the laogai. You point out that a technical, legal consideration about China and WTO is the new powers and rights China would obtain as a WTO member, as against the U.S.

Most simply, WTO rules forbid countries from banning goods made with child or forced labor and also forbid countries to treat other WTO members differently according to their human rights, weapons proliferation and other noncommercial behavior. If this all happens the way the administration would like, it is your view that if we wanted to ban the importation of child-made goods or if the Smoot-Hawley provisions on prison-made goods were being effectively implemented, that that would all become moot?

Ms. WALLACH. In fact, the way to look at the WTO, as compared to the GATT with the WTO, is it sets constraints on government action in a wide array of areas, and in the areas laid out in my testimony, particularly the ability of policymakers to differentiate goods not on the basis of where they are from, no, you must not discriminate, but on how they were made has also been taken away under Article III and now 12 years of jurisprudence.

It is the same jurisprudence that, for instance, the U.S. lost our Marine Mammal Protection Act. Tuna is tuna. It doesn't matter if it is caught in a way that kills dolphins or in a way that is dolphin safe; and to be very explicit about the child labor point, in fact, in 1993, when the Uruguay Round was being debated, U.S. Senator Metzenbaum and I believe, at that point, U.S. Senator Harkin had the Congressional Research Service review a piece of legislation they were about to introduce after the State Department had informed me that their child labor ban, implementing the existing rules of the ILO for the U.S. market, was a violation of GATT; and there is a CRS memo of 1993 making very explicit that in fact such government actions are forbidden.

To add to it—it is a complicated matter—there is under an exception generally of GATT relating to national security some specifically enumerated things on which you can take actions that would otherwise violate the World Trade rules; and because child labor, forced labor, slave labor is not specifically enumerated, while many other things are, the interpretation in the trade bar, as well as by the CRS, is that those things are specifically permitted.

Mr. SMITH. So a perverse outcome of this could be that the Chinese Government or other governments that routinely use sweatshops, underpay their people, don't have any kind of working conditions that would even come close to comporting with international, ILO-type standards, they would be in the offensive/protagonist position of bringing action against the United States or any other power or country that sought to protect basic human rights, which makes this issue even more ominous than some of us have realized.

I mean, that final point that you make, I have been introducing child labor bills with sanctions for years, only to have the administration say they just, as a matter of policy, disagree with sanctions. But now you are saying that we would be liable to activity under the auspices of the WTO. That is frightening.

Ms. WALLACH. I will submit for the record the CRS memo. I have also done a more detailed legal analysis of it, but by way of extension, for instance, the ILO treaty, I have to mention this because this wins the hypocrisy of Seattle award. The ILO treaty that was signed with great trumpets and banners on the abuse of forms of child labor at the Seattle ministerial, the implementation of it is a violation of the WTO; and in fact, the Government of Pakistan has an informal demarche; not an actual filing at WTO, but a state-to-state cable of some legal significance has noted that if the U.S. were to ban importation of child labor products, it would take action.

The way that this works, as some of my colleagues have mentioned, is, the WTO is simply an enforcement body for what are now 800 pages of regulations. The GATT is now just one of 18 of the agreements that is enforced, and the WTO's enforcement system operates such that any government who is a member—which if China were to be admitted, would now include China—may challenge the law of any other member government as going beyond the permitted constraints of the WTO rules; and that decision is then made before a tribunal of three trade lawyers.

There are no basic due process rules. There is no conflict of interest rules for the judges. There is no outside appeal. Unlike any other international institution where typically decisions are made by consensus to move forward, so you sacrifice sovereignty but you are not bound unless you agree, under WTO, these tribunals' decisions and automatic trade sanctions for countries who refuse to remove the laws these tribunals say are WTO violations, occur absent unanimous consensus to stop, which means 135 countries—136 if China were to come in—including the country that is just one sacking some U.S. child labor ban, has to agree to stop, or automatically, the WTO procedure puts in trade sanctions against the country that tries to keep a ban on child labor.

So from a public citizen's perspective, we say that China should not be allowed into the WTO, and in fact as one of the organizations that helped organize for the past year toward Seattle, we have organized nongovernmental organizations around the world because the WTO actively undermines the status quo ante as compared to empowering improvements.

Mr. SMITH. This is going to bear, I think, much more scrutiny rather than the very quick knee jerk—let us go out and ratify all of this—that we are getting from the administration. I mean, to this date, I have yet to see the fine print. I have only read summaries that CRS was able to garner from the administration about what the agreement actually is—perhaps you have seen it, but I have been unable to get it—and yet we are being told that the mobilization to try to politically get this fully moved forward by Congress in terms of permanent MFN is being mounted without a scintilla of information about what the consequences will be for child

labor, prison labor, workers rights, human rights and all of the rest.

This is really a cauldron that has to be very, very carefully inspected, and I think your testimony and all of your testimonies have been very, very helpful in that regard.

Let me just ask with regard to independent trade unions—and again, any of our witnesses who might want to respond, and Mr. Wowkanech, you might want to respond as well—there have been petitions to establish new and free trade unions. Beijing has not approved any. What are the prospects for the establishment of independent unions, and will there be any impact of WTO membership will that help, hinder, or be neutral? Does it actually embolden the hard-liners that now they have even less to worry about in terms of international repercussions, or are trade unions more or less likely?

Mr. Wowkanech.

Mr. WOWKANECH. I think that the establishment and the right for people to form unions is one of many issues that the labor community is looking at. We are kind of partners here with the rest of the environmentalists, the human rights people and everyone else. It is not just a take-one-component and forget about everything else—prison labor, child labor. I think that what we favor is that a minimum code of international ethics be put together encompassing all these issues, and the right to form or be a member of the union is just one of many of the staples that must be in the package.

Mr. SMITH. Ms. Wallach.

Ms. WALLACH. As a legal matter, under the 18 agreements in force by the WTO, there is no floor of conduct regarding human rights or labor rights; there are only ceilings. So there is no treatment of workers that is too squalid to require a trade sanction. But if a government tries to go above what is permitted and in the instance, of banning child labor and keeping the product out of market access, it is totally, you can't do any of that.

Right now in the WTO, the Government of Canada is at WTO challenging the Government of France, which has now implemented a worker safety ban on asbestos; and under WTO rules in GATTese, the Technical Barriers in Trade agreements, under the TBT agreement. In fact, a country's international right to deal with asbestos does not include a ban, but only includes regulation in labeling. So Canada is using the WTO rules. So say that this fundamental worker safety right in France is a violation, and if in fact the tribunal just goes straight on what the rules are, the French law, which many countries have will be struck down. If they take a political approach to let off steam, maybe they will let it slide, but in almost any area of worker safety, of organizing, et cetera, there is a ceiling of activity.

As a practical matter, if you wanted, instead of having a ceiling, to have a floor, it is really quite simple what you would do. You would set up as a condition of market access for goods in international trade a system of conduct. So, in the same sense that for intellectual property you cannot bring something into this market unless it has a certificate of compliance with the trade-related intellectual property agreement, you would have to have a certificate

of compliance of, for instance, the basic ILO agreements, the multilateral agreements on environmental agreements, et cetera. It would just be a Customs matter to set the floor, and it would be a condition of market access.

Mr. SMITH. Let me ask Mr. Wu. The MOU which we have all roundly criticized and have hoped would be beefed up and made real for years, it began as we all know under the Bush administration as however well intended, certainly a Swiss cheese-type of document that allows the Chinese government to do the investigations, to tell us when and if we can actually investigate a laogai for prison-made goods that are exported, and unfortunately the subterfuge continues under the Clinton administration. As I pointed out in my opening comments, we have had no compliance really.

I myself was actually in Beijing Prison Number One with Frank Wolf. We raised the issue of what we actually got from that, as jelly shoes and some socks that were being exported and made by Tiananmen Square activists who were in that prison. Yes, they took action, but we very seldom have access to these sites, and the information is so hard to get. Your Laogai Research Foundation has done so much to try to document this. What do you see as the progress that is being made to rewrite that MOU so that it is stronger and has real teeth, and how is that effort threatened by this WTO fight that we're undergoing right now?

Mr. WU. Mr. Chairman, there are two memorandum of understandings between the United States and Communist China. Actually, there are no real teeth over there. In particularly the last couple or 2 years, no activities have happened. The American Government from my view does not want to see anything to disturb the relationship between the United States and China. They just want to ignore that. In my statement, I very clearly said that we will come back over here to tell the truth. We can give you so many examples. So many products I could show you, like baseball caps, all kinds of things that continually come to the United States. Today, the American administration did not take any serious action to try to enforce or implement the law. I think according to WTO principle forced labor should be a major issue. I would say while the memorandum of understanding—we use the word MOU—we say this is meaning of useless. Thank you.

Mr. SMITH. Let me ask Mr. Rickard: Amnesty is forever trying to accurately and tenaciously report on abuses, and you always have some positive thing that you hope will happen if the brass ring is seized; and you did it again in this testimony when you stated, without question, that the period between now and the congressional debate on the China deal represents an opportunity for the Clinton administration to demonstrate that the tree of engagement can bear fruit.

You named three specific things that you hope might happen—I am sure there are many others you hope might happen as well: Review the convictions of every person serving a prison sentence for counterrevolutionary offenses, dismantle the reeducation-through-labor system, and ratify and implement international human rights treaties. Could you expound on that optimism? Do you have a realistic hope? Do you think the administration will say now we are serious?

Yesterday, it was pointed out in one report that we have threatened to get tougher in our report on human rights. That would probably be in the country reports on human rights practices. We may bring a resolution at Geneva. But you wonder whether or not rhetoric now has any currency with the Chinese. You mention three very specific things. Do you think the administration will try?

Mr. RICKARD. I am sure the administration will try. In response to the question of whether or not there is reason for optimism, in candor very little. Quite the contrary, for at least two reasons. One—I defer to other members of the panel who are real experts on China—but it certainly seems to me that there has been a pattern of the Chinese government actually going out of its way to make very public points that cannot be ignored, that we want to make it clear we are not doing anything on human rights to move forward. We want to do this so obviously, so publicly that you can't really fudge the issue.

I think during the period in which the President's executive order linking human rights to most-favored-nation status was in effect, it really did seem like the Chinese government was saying, we really want you not to be able to say with a straight face that any progress at all has taken place. I must say, the one thing about that whole debacle that you have to give a certain amount of credit to the administration for was that in fact they did not try and fudge that and they said, no, there really has not been any progress; and if we were going to implement the executive order, we would have to revoke MFN, and so instead we are just going to back down. They were up front about it.

But I think when the Chinese government arrests dissidents just before or even during high-level state visits; when they tell the President of the United States whether or not he can or cannot bring with him as part of his official delegation senior State Department officials, the President's representatives like the director of the policy planning department who is also his designated special representative on Tibet; when the Chinese government says in a very public way what reporters can and cannot accompany the President on his trip; when Chinese police arrest and severely beat someone for speaking with an American human rights official right at the moment that this issue is being considered, it is either an unbelievable series of coincidences or there is a concerted effort to say both externally and perhaps more importantly internally, Don't think we're loosening up or we're giving anything away about this.

The second reason why I do not think there is a lot of reason for optimism, one hopes and it is a moment when there ought to be some leverage, but the other reason is that as I mentioned in my testimony there is some reason to think that the Chinese government knows very well that in order to live up to its end of the commercial bargain here, there is going to be tremendous social disruption within China. They are going to have to cut tariffs; they are going to have to face at least some more competition from external competitors.

It is precisely the moment that the Chinese government is going to be less willing than ever to tolerate independent entities, the independent trade movement. So the perverse effect is that in the short to medium range, there is every reason to think that there

is a powerful incentive for the Chinese authorities to clamp down as tight or tighter than ever because they are anticipating a period of social disruption and unemployment.

We have seen in many other circumstances with international financial institutions, the International Monetary Fund, the fact is—I don't think really anybody disputes this—that some of the things that the IMF requires of governments are painful medicine and they cause social disruption. When you have to cut back subsidies on bread and fuel and cooking fuel, things like that, people are going to be very unhappy about that. In many countries around the world, dictatorial governments and military dictatorships are in a much better position to do the things that the international financial community and business community is asking of them, and it can be very destabilizing for democratic governments in some of these situations.

Just to make a last point and then stop. I think Mary Beth's point about the World Bank having a procedure where some of these issues can be raised is very profound, because it took a decade, and the World Bank fought the idea that environmental considerations had any relevance whatsoever to their mandate. "this is totally outside of our mandate. You want us to use our financial power to achieve other objectives." and what do they say now? They say, "Environmental considerations is a part of good banking. If we don't take these things into account, we're going to make bad loans that don't promote sustainable development and that don't actually add overall to the productivity." .

This is, in fact, a very important consideration, and they are beginning to have that rubric about governance issues. What is the point of loaning a government $2 billion if at the same time that they are supposed to be putting it into hydro projects or whatever, they are out purchasing $2 billion worth of additional arms with which to repress their own people? That is not good banking. You wouldn't make that kind of lending on commercial terms.

So the question is, why is it that in the World Trade Organization this idea that anything other than these commercial terms are absolutely anathema? I just have to say, particularly in light of Lori's testimony, that the more I hear about the World Trade Organization, the more I am astonished about it, particularly as someone who went through the wars this past year over the proposed international criminal court. The proposed international criminal court has unbelievable safeguards, unbelievable conflict of interest rules, appeal rights left and right, opportunities to confront witnesses, et cetera, et cetera. Everything is public, et cetera.

There is a difference, of course, between a commercial governmental entity and a court that is deciding on criminal penalties for individuals, and it is appropriate that there be very, very high safeguards. But they are there and they were fought over. Even with all of those, many people find it unacceptable. The idea that three judges with no public disclosure, no conflict of interest rules can make determinations that effectively circumvent the collective judgment of the Congress is, and again speaking outside my Amnesty portfolio, astonishing to me as an American citizen.

Mr. SMITH. Ms. Wallach.

Ms. WALLACH. The only thing I would add to that is as a legal matter to the extent that there is some moment from this whole opportunity to use leverage to extract some concrete progress, it is actually on the making of the bilateral accession agreement. So for any country to get into WTO, there are two different processes. There are negotiations bilaterally between the big WTO members and the new entrant as to the terms, almost all of which are multilateralized. They become part of the legal document of that country's commitments and obligations under the WTO.

But also, as we saw, there are some side deals: we will buy X bushels of grain, or whatever, as a sweetener. It is at that moment, basically, to obtain the support of a country in the vote to have a country accede that a variety of different potential objective accomplishments can be demanded. In fact, I suspect that the crowds in Seattle increased by 20 to 30 percent merely on the talking, the talk about we are going to put human rights and labor rights, a human face in the global economy, in contrast to the moment having come, gone and been missed of the administration. Having that short moment of leverage to list your three things, a handful of others just did not do anything when the talk had to turn into walk.

Mr. SMITH. I will yield to my good friend in 1 second. You have seen the U.S. WTO summary. Have you been able to look at, any of you, the actual agreement? The way I read it—and I looked at all the bullets in the summary—is provide full trading and distribution rights, cut tariffs from an overall average of 22.1 percent to 17 percent, establish a tariff rate quota system. Obviously there is nothing in here about human rights. It is a missed opportunity even tangentially to have brought in what Mr. Rickard had said on those issues. There was a moment of opportunity that seems to have been squandered, and that is most unfortunate.

Ms. WALLACH. To add to that, I think part of the reason why—and my friend from labor could speak to this with an official position—but from having read, as many of us have, in the press and also in the statements of the AFL–CIO president, Mr. Sweeney, the big issue about China and the WTO is to the extent the WTO can ever be fixed, pruned back in its excesses and some balance in human rights and labor rights added in. It is not going to happen when you have China, which has avowed if it enters, to make sure it is the 800-pound guerilla that stops any such thing. It will never happen.

Mr. SMITH. Like a computer virus getting into the system, they will then be proactively trying to excise human rights and workers' rights for themselves and anyone else.

Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. With all the problems that we have all been informed through the media and the press concerning the recent WTO ministerial meeting in Seattle, I like to think that there is a blessing in disguise. The WTO has also exposed to the international community some very fundamental issues, that either the countries have neglected to address or just simply put it under the table, not wanting to discuss these fundamental issues. I think there have been some pluses as far as the WTO is concerned.

I know members of this Committee and other members of this body have debated quite actively the concepts of free trade and fair trade. I can say for quite a number of my good friends and colleagues here on the Committee who are great advocates of free trade, but when you add the word "fair" to it, then it changes the whole picture as far as what free enterprise is all about. There is also a perspective I think to consider about the golden rule: he who has the gold makes the rule. I like to think that on the WTO, you have the European Union, you have the United States, you have got NAFTA with Mexico, we have Japan and we have China. I suppose because of other serious situations with India and Russia added, you get into a real interesting situation.

I would like to ask the members of the panel for their perspective. How do you tell corporate America not to go to not just China, any third world country that pays 10 cents an hour in labor wages and suggest that corporate America goes over there because this will help the economy of that country? Does it really? I raise the question, because I think at the heart and soul of the very issue, that really has never been properly exposed all these years for the GATT, and what Ms. Wallach has stated, now is at the forefront.

We are talking serious environmental issues; we are talking serious labor issues; we are talking serious about slave labor, about child labor issues. In addition to China, with these 135 member countries that supposedly make up the WTO, how are they going to resolve these fundamental issues before even talking about trade? We are talking about trade, but we have not even gotten to the meat of the issues that some of you have raised quite eloquently here this afternoon.

I for one am very concerned. We can talk about free trade and the principles of capitalism, to say that millions of Americans are stockholders to Wall Street and every other stock exchange that we have here in our country. With a $1.7 trillion budget a year that is no comparison to almost all other countries of the world. How do you bring a sense of fairness and equity if we are ever to look at WTO as the organization that is going to give or respond or answer some of these fundamental issues that I have raised?

I want to thank Ms. Markey. That was one of the most eventful experiences in my life. To drive for 3 hours to Dharmasala is not my cup of tea, if you will, but it was a real experience that I have had in meeting personally with the Dalai Lama, getting a real sense of spiritual understanding and appreciation of what the Dalai Lama and the good people of Tibet are having to struggle with. I appreciate your mentioning that. I would like to have some expertise on this.

Mr. WOWKANECH. With all due respect, I don't know how much expertise; it is more of just a recommendation that has been developed over some 7 or 8 years, which I indicated in my testimony that we have lost close to half a million jobs, primarily from American companies, doing exactly what you are talking about. I think the situation that we are faced with here today, again in my own opinion, nothing official, is that there is not one magic brush that is going to cure all these ills. I think a number of things have to be put in place, an international code of ethics.

You are right. The workers in China and Burma and the other countries, they are not going to come up to the type of livable wage that Americans need in this country, but the Americans I think would understand that. I think if there were some type of a percentage where the percentage of the American livable wage or minimum wage was the same in China, at least it would be fair competition. But I think what the Americans want to do, or the American government, should be to raise the boats of all countries to our level, not to take what our parents and our parents before them have built up, so that now we are in a position where we now have to go down to that level. We cannot do that and pay our taxes, our health care bills, send our kids to college. We cannot do that. That is catastrophic for us.

So I think it is a number of things. I think some sort of an international code of ethics, basic thresholds, have to be established in terms of a living wage, human rights, environmental rights, health and safety standards. But the other suggestion that I had for the chairman—and I don't know if you had missed it in my testimony—attempts to address your question on American companies. As I said in my testimony, I am not a corporate killer. I have worked with every major corporation in our state to make sure that they stay there. I believe that we must be a partner with the political community as well as the business community and that we are kind of all in this together. Once you try and do something on your own, you are in trouble. But I have seen firsthand as you have seen by the corporate salaries and the packages and the things that are going on in this country today, that it is kind of like the honor system in West Point. It did not work. The honor system in corporate America is not working.

I think there has to be some public policy developed, and I offered the suggestion to this Committee of something that we developed in New Jersey, that would be called a Federal Industrial Retention Commission. The commission would be empowered to review and investigate any plant closings, mass layoffs of American companies due to relocation of jobs in these other countries. If it is proven that they have gone just to circumvent paying the wages and exploit other workers in other countries who have no human rights, who have no right to belong to a union, who have no health and safety, have no environmental concerns, then that company must pay restitution. Because what we have seen—and if you could see our map of our State of New Jersey—we have seen entire communities where this American company was the major employer between property taxes, payroll taxes, health care to the employees. All of a sudden they are gone.

We just had that situation with Anheuser-Busch, who shut down a plant in our State, 300 workers, less than 2 weeks notice before Christmas. They are paying workers in Mexico $7.50 a day to make bottles that come back in this country for American consumption.

So I think the idea could be critiqued with some of your expertise and the panel's. We need some sort of commission that says if you are going to do that and decimate a community and load up the welfare rolls of the State, and all those workers who had health care do not have health care—and in our State we call it charity care, which is paid for by a variety of surcharges based on the peo-

ple that are still working—there has to be restitution. These companies cannot get off scot free.

That is probably only two things. There needs to be other things that are put in place, but I think that is a big one. As I said, the honor system did not work in West Point, and it is not working in corporate America. The most important thing is that about 45 minutes from now on the stock exchange, when they hit the bell for the last time, their number is higher than it was the day before, and that is the sad truth of what is going on here.

Ms. WALLACH. First, just to put some numbers to your observation, the 5-year record of the WTO in effect has actually resulted in increased income in equality as between countries but also as within countries, and that is data from the World Bank. That is not data from some progressive institution on economics. As well, the U.N. reported that for the countries, developing countries, that have most quickly adopted WTO rules, their real wages have dropped most severely even while their macroeconomic growth has increased.

So if you look at not the external indicators like a stock market but what it is doing to people's lives, in a broad sense this particular version of rules, because this clearly isn't free trade, you would have one page that says no barriers. Someplace Ann Smith and David Ricardo are rolling in their graves because this is managed trade, but it is just one version of it.

There are two approaches to fix it. This is a broad brush of it, but the WTO needs to be pruned back to eliminate its constraints on existing capacity over the national, State, and local government to take action to deal with these issues and then it is a smorgasbord of different policy options, many of which are not currently allowed under WTO rules but, for instance, to set up nondiscriminatory, i.e., you treat foreign and domestic goods the same but process standards, i.e., environmentally sensitive ways of production. That is the rule; that is the floor. Or no child labor, that is the rule.

Each country has the right then to set the terms for the access into its own market, with the basic trade principle that has been in existence for 50 years of GATT, that you do not discriminate just because of where it is made but rather on the set of values that you are going to regulate your market on, and then you hold your same producers to the same standard. But under the current system, as we have heard from our friend from labor, the guy who does it right, i.e., the company that wants to pay a wage, pay benefits, et cetera, gets clobbered. They are going to go out of business or they are going to have to go overseas.

I have heard that time and again from the owners of companies, many of whom have been generation after generation in this country and under this set of rules are put in a no-win competition. So we can prune back the WTO so as to facilitate countries being able to take those measures. Alternatively, there can be things added to the WTO to set up within the WTO a floor of conduct that becomes an international standard as a condition for market access. As I had described before, how you would do that is literally the model to use intellectual property rules. You literally would have to have a certification of meeting X, Y, or Z criteria; and then it is enforced

as a customs matter, which to the extent that the U.S. has ever attempted to enforce through GSP or anything else, any labor rights, you end up doing it as a customs certification.

I think that as a matter of international politics, the likely next step is the pruning-back option, where both the developing countries and the rich countries would be reempowered to make more decisions on their own according to their people's needs and would be liberated somewhat from the constraints of the WTO as compared to, for me, there are many sovereignty issues raised. If you try and actually change the country's conduct, it is a different matter if you are changing the conduct relating to a good in international commerce. Thus, a Malaysian fisherman who in his boat gets 2 pounds of shrimp to take to his local town's market would not be required to comport with the international environmental agreements, that, for instance, would be put on the shrimp trawler, a factory trawler that the Malaysian government has purchased, to send exports to whatever other markets. That is certainly a first step, would be to prune back, whether or not down the road it is possible to add a floor.

But absent that, the trends are on the rule are very clear and to the extend there was so much passion in Seattle, it is because the outcomes are simply intolerable. In the U.S. we have an enormous amount of job creation, but our Department of Labor lists the top four categories of job creation as cashier, waiter/waitress, janitor, and retail clerk. We haven't caught up in the U.S. with real wages since 1972, and we are theoretically the winner. When I meet with my coalition partners from around the world in Seattle and they say, we're taking it in the shorts but at least you guys are doing well, I say, look at this data. This whole system needs to be replaced.

Mr. FALEOMAVAEGA. Thank you very much. Mr. Chairman, I appreciate it very much. Mr. Chairman, Mr. Rickard has a comment. I realize it is easy for me to ask the question, realizing also the complications that every one of those 135 countries have different sets of economies; you have got a different standard of living, you have got a different governmental system. I am sure my good friend, Mr. Rohrabacher, who was here earlier, would have said we are giving up a lot of our sovereignty through the WTO, which I fully agree; and to a large extent I don't want a separate organization telling my country what to do, especially if it involves our national interest in some of those areas.

You can talk about fishing too. I just wanted to see if perhaps those who were advocating very strong for WTO, at least gives them a chance to see where they might end up in their dialogue. Quite obviously, the haves and the have-nots do not agree on some of those fundamental issues and the reason for the collapse. I tend to agree with Ms. Wallach, that maybe we ought to start piecemeal. I think we are trying to grab too much at one time. That may be in some instances, in some form of categorizations in terms of how each country's economies are functioning and maybe work it through that kind of a system; but it all comes down to the simple word of "fairness." how do you draw the line? What is fair for one country may not necessarily be fair for our country.

So our country having the highest standard of living, highest cost of living, highest everything, does not necessarily mean that our people working here are getting the best deal. I think that is something that certainly I am sure the Chairman is quite cognizant of, and that we are trying to find solutions to these very fundamental and basic issues. I want to thank the members of the panel and thank you, Mr. Chairman.

Mr. SMITH. I thank my distinguished friend from American Samoa for his faithfulness to the human rights issue in general and for doing all that he can. Whether it be Indonesia, China, or any of the countries that we deal with, he is always in the front.

Let me just make one final comment, and you might want to respond to it or just leave it as a comment. One of the aspects of political life—and I have been in this 19 years as a Member of Congress—I have really no respect for and zero tolerance for, is self-serving theater. We saw it when Jiang Zemin came in. First when he made his trip to the United States he stated that they were going to sign the International Covenant for Civil and Political Rights, he got kudos ad nauseam for that statement. But there has been as you pointed out, Mr. Rickard, no implementation. It was a very cynical gesture thus far. It brought them an enormous amount of good will. There are many politicians, Republicans and Democrats, who engage in that kind of practice as well.

Not to make this a stretch, but I have a cynical sense about the signing, the ill-timed signing of the abusive forms of child labor during the Seattle conclave. As we all know, that was agreed to 6 months ago, approximately half a year ago; and it doesn't take effect until the requisite number of countries accede to it, then I think it waits a year. We should have been the first out of the blocks with pen in hand to agree to that. Yet it waited until there was a venue that lent itself to some political outcome.

I am not sure if it was done to cloak or for sheer political selfishness, but it is that kind of thing that I think gives human rights a bad name, especially if, as has been pointed out, which I did not realize until this hearing, the perverse outcome of this WTO agreement could completely undermine that convention and any other like-minded treaty or obligation.

You might want to comment or not, but it is just an observation from the chair at least that that kind of thing has got to stop, whether it be done by Republicans or Democrats. Do not be so cynical. If this was a political deal, let us know it. Do not try to give a highfalutin veneer to it because there are kids who are suffering every day from child labor, anywhere from 100 to 200 million kids. Their lives and futures should never be played with in such a cynical way. Mr. Rickard.

Mr. RICKARD. I don't think that there is much doubt that the administration saw it as a good opportunity to talk about that convention at a high-profile setting where there was going to be a lot of criticism of globalization. Now, at the same time I have to say that it is not every day of the week that the administration rushes through to move forward on a really, really good human rights development; and I have to say that I think that the new ILO convention on the elimination of the worst forms of child labor is a good development.

I think one of the reasons it was able to be done so quickly was because the convention enjoyed—the ILO in general and the convention enjoyed the very strong support of Chairman Helms, which we unfortunately have not been able to move other human rights treaties like the women's convention which have languished before the Senate Foreign Relations Committee for more than 5 years now. But this was one where there was very broad bipartisan support.

Senator Hatch, who has always been a big supporter of the ILO for understandable reasons, the ILO is one of the reasons why the solidarity movement survived in Poland. Yes, I think the signing of that in Seattle, the high profile that was given was part of political theater. At the same time it is a very good agreement. It did not go as far as Amnesty and others would liked to have seen in addressing the issue of recruitment of child soldiers but at least did take a positive step in that direction prohibiting coercive recruitment. It still permits voluntary recruitment below the age of 18. Yes, it was theater but at least—it is an ill wind that blows no good, a good human rights treaty that moved very quickly.

One point I would like to identify with is Ms. Markey's comments about what went on in Seattle. Amnesty just completed a yearlong campaign on human rights issues in the United States. I think we do need to be aware of the fact that there are tremendous excesses and abuses of power in this country as well. So I completely agree with that, and it is something that needs to be looked into. At the same time I am sure she will join me in disgust at the Chinese government's saying what happened in Seattle in any way remotely equates with what happened in Tianamen Square or what happens virtually every day of the week in Tibet, in Xinjiang, in other parts of China.

So my response would be if you ever get to the place where you have the kind of abuses that took place in Seattle but people have the freedom to organize, the freedom to protest, where there is going to be the kind of investigations and followup that there will be in Seattle, where groups like Amnesty, Public Citizen, and the International Campaign for Tibet are free to raise these issues and come before Congress and challenge the behavior of the Seattle Police Department, we will continue to complain about what happened in Seattle; but we will throw a party for you because you will have made astonishing progress to have gotten to that point.

Mr. SMITH. The point is excellent and well taken. Are there any further comments from our witnesses?

I would like to thank you for your very, very insightful comments to the Committee. I think now more than ever we need to get this information out so that there was not a quick and a cursory review of what the issues are and the implications from those issues, the consequences of which, Ms. Wallach, I think you pointed out so well. There are things that all of us are in a learning curve on. That is why we have hearings like this. The information will be widely disseminated among the members. I do think it will have a very, very real impact on the outcome as we go forward.

I want to thank you for the very, very timely information that you have imparted to us, and the counsel and wisdom that you have given us. Thank you. The hearing is adjourned.

[Whereupon, at 3:55 p.m., the Subcommittee was adjourned.]

A P P E N D I X

DECEMBER 8, 1999

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Statement of Rep. Christopher H. Smith
Chairman, Subcommittee on International Operations and Human Rights
December 8, 1999

Hearing on China, the WTO, and Human Rights

The unrest in the streets of Seattle this past week suddenly focused the world's attention on the activities of the World Trade Organization. The protests raised many important questions about the way that the WTO conducts its affairs and the nature of economic globalization. At a time when so many of the premises of the World Trade Organization are being reexamined, it is particularly appropriate that the Congress examine the potential impact that WTO membership might have on one of the world's fastest growing trade powers and most egregious violators of fundamental human rights, the People's Republic of China.

For the past several years, the Beijing regime has made accession to the WTO a top priority, hoping to gain permanent Most Favored Nations status from other WTO members, most notably the United States. On November 15, the possibility of China's accession became more likely when the Clinton Administration and PRC officials announced -- with smiles and champagne -- that the two countries had reached a bilateral trade agreement. I, for one, saw no reason to cheer. The question before this Subcommittee and the Congress is whether, at this moment in history, bringing the PRC into a permanent and more privileged trading relationship with the United States and other WTO member states will make it act more humanely toward its own people.

Sadly, this year of so-called progress toward PRC accession to the WTO has also been another year of significant regression for human rights in China. In quarterly reports tracking the seven human rights policy goals that President Clinton publicly announced before his 1998 trip to Beijing, Amnesty International found a complete lack of improvement in all categories. Amnesty rated Beijing in all seven areas and gave the regime seven "F"s. Here are the specifics:

- Release all prisoners of conscience and Tiananmen Square prisoners: "Total failure, Regression"
- Review all "Counter-Revolutionary" prison terms: "Total failure, no progress"
- Allow religious freedom: "Total failure, no progress"

- Prevent coercive family planning and harvesting of organs: "No progress"
- Fully implement pledges on human rights treaties: "No progress"
- Review the "Re-education through labor" system: "Total failure, no progress"
- End police and prison brutality: "Total failure, no progress"

The Communist government of the PRC blatantly and systematically violates basic human rights on a massive scale. It does not allow significant political dissent. It continues to repress the China Democracy Party (CDP), whose representatives appeared before us at a hearing earlier this year. As of October, some thirty CDP leaders remained in government custody, some of them having received stiff sentences of up to 13 years for their pro-democracy activities.

According to the State Department, the PRC "continue[s] to restrict tightly worker rights, and forced labor remains a problem." The Department's latest Country Report on Human Rights in China states that: "Independent trade unions remain illegal within China. . . .The Government has attempted to stamp out illegal [that is, independent] union activity." The Administration also admits that Beijing's compliance with the U.S.-China Memorandum of Understanding (MOU) on prison-made goods "has been inadequate. . . . In all the cases [of U.S. inspection requests in 1998], the Ministry of Justice refused the request, ignored it, or simply denied the allegations made without further elaboration." In addition, "poor enforcement . . . of occupational safety and health regulations continues to put workers' lives at risk."

The deplorable state of workers' rights in the PRC not only means that Chinese men, women, and children in the workforce are exploited and put at risk, but also that U.S. workers are severely hurt as well by the profoundly unfair advantage in trade realized by competitors who benefit from these heinous labor practices. Human rights abuses abroad have the direct consequence of robbing Americans of their jobs and livelihoods here at home.

As we will hear today from Charlie Wowkanech, the President of the New Jersey State AFL-CIO: "Chinese economic policy depends on maintenance of a strategy of aggressive exports and carefully restricted foreign access to its home-market. The systematic violation of internationally recognized workers' rights is a strategically necessary component of that policy. . . . Chinese labor activists are regularly jailed or imprisoned in reeducation camps for advocating free and independent trade unions, for protesting corruption and embezzlement, for insisting that they be paid the wages that they are owed, and for talking to journalists about working conditions in China. In January of 1999, police attacked a group of retired factory workers in Wuhan, who were protesting unpaid wages and pensions. Many of the retirees were beaten."

The PRC also imprisons religious leaders, ranging from the 10-year-old Panchen Lama to the elderly Catholic Bishop Su of Baoding Province. It summarily executes political and religious prisoners in the Xinjiang Uighur Autonomous Region. It harvests and sells the internal organs of executed prisoners. It forces women who have "unauthorized" pregnancies to abort their children

and submit to sterilization. It continues to brutalize the indigenous peoples of Tibet and Xinjiang. It uses slave labor to manufacture products for export.

The most obvious deterioration in the situation in China has been the Chinese government's massive crackdown on Falun Gong, a nonviolent, meditative spiritual practice with millions of adherents in China and elsewhere. Since the group was banned in July of this year, thousands of ordinary citizens from all over China have been jailed for refusing to give up their practice of Falun Gong. There have been many credible reports of torture and inhumane treatment of detained practitioners, including a report that a 42-year-old woman was tortured to death by Chinese officials. Numerous practitioners have been sentenced to labor camps without trial, and thousands have lost their jobs or been expelled from schools. In hearings closed to the public, adherents have been sentenced to up to a dozen years in prison for "using an evil cult to obstruct the law." The Beijing regime has publicly declared its intention to "smash" Falun Gong.

The utter failure of the Administration's current policy of "constructive engagement" with China should come as no surprise. While the rulers of the Chinese Communist Party may be ruthless and despotic, they are not stupid. If there are no costs associated with the brutality that keeps them in power, then they have no incentive to become less brutal. In fact, they will become bolder, as they have. China has suspended its human rights dialogue with the United States. Recently, the Chinese Ministry of Foreign Affairs has even stopped accepting diplomatic protests from the United States regarding human rights issues. According to yesterday's Washington Post: "The State Department now must issue the protests in Washington, a significant change in diplomatic protocol."

According to many accounts, if China were to accede to the World Trade Organization, the United States would be required either to grant Beijing permanent MFN status, or to lose the benefits of WTO agreements with China. As it stands today, China's Most Favored Nation trading status with the United States is reviewed annually. Although that status has been renewed in recent years by Presidential waivers of the Jackson-Vanik freedom-of-emigration requirement, the annual debate and the possibility of MFN revocation are arguably the most important leverage the United States still has to influence the human rights situation in China. Surrendering that leverage to Beijing would send exactly the wrong message at the wrong time.

Of course, when we begin talking about conditioning trade and economic benefits on basic respect for human rights, we provoke the predictable litany of responses from business interests: Sanctions don't work. Unilateral actions are counterproductive. And so on.

But when big business and the Clinton Administration really want to change Beijing's conduct -- such as in the effort to get China to respect international copyrights – what do they do? They use the credible and imminent threat of economic sanctions – the very same sanctions they say would be counterproductive as a means of promoting political and religious freedom in China. On at least three occasions since 1991, the U.S. Trade Representative has threatened to impose billions of dollars in sanctions to vindicate U.S. intellectual property interests. In each of those cases, when faced with sanctions, the Chinese government changed its behavior.

The WTO's Dispute Settlement system relies on these same kinds of sanctions as the primary mechanism to enforce WTO agreements. Under Article 22.2 of the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes, the final means of vindicating a claim against a non-complying member is the imposition of unilateral, retaliatory sanctions by any other nation that may choose to impose such sanctions.

By their actions, big business and the Clinton administration show their faith in sanctions. By their reactions, Chinese leaders show the effectiveness of sanctions. Thus, the question before us is not "Can economic sanctions work?" It is, "Why do we use sanctions to protect software, but not human life; to protect musical recordings but not the rights of religious believers, workers, and political prisoners; to stop movie piracy, but not torture?" I have yet to hear a real answer to that question.

Unless someone can give me another plausible explanation, I must reluctantly conclude that some business interests and U.S. officials understand full well that sanctions (and the threat of sanctions) can and do work to change the conduct of the PRC and similar governments. But they also know that sanctions may be subject to a law of diminishing returns. For example, if a certain punitive tariff rate were already in effect because of egregious human rights violations, then it would no longer be useful to threaten the same punishment in order to vindicate intellectual property rights. Big business would prefer to conserve the limited resource of trade leverage for its own uses --- and the rules of the WTO attempt to turn this preference into international law. The selective use of rhetoric denouncing "unilateral sanctions" hides an implicit prioritization of profits above fundamental human rights.

That is wrong. We must not abandon the American ideals of freedom and democracy for the sake of marginally cheaper consumer goods and access to cheap labor. We must condition expanded trade relations upon at least minimal respect for fundamental human rights. American interests and American values demand no less.

I look forward to hearing the observations and insights of our witnesses on these important subjects.

Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

Testimony of Lori Wallach
Public Citizen's Global Trade Watch
December 7, 1999

Myths and Realities about Permanent MFN and China's Admission into the WTO

Mr. Chairman and members of the committee, on behalf of Public Citizen and its members nationwide, thank you for the opportunity to testify on the the issue of China's admission to the World Trade Organization (WTO) and related matters regarding U.S. congressional action concerning Most Favored Nation treatment for China.

My name is Lori Wallach. I am the director of Public Citizen's Global Trade Watch. Public Citizen is a consumer advocacy group founded in 1971 by Ralph Nader. My testimony today is also endorsed by the Citizens Trade Campaign of which Public Citizen is a member group along with hundreds of other consumer, labor, religious, environmental, family farm and other citizens groups across the country. The combined membership of the Citizens Trade Campaign member organizations is over 7 million nationwide.

There have been numerous misconceptions — as well as a certain amount of outright mendacity — regarding China WTO and congress' role. Given I am joined on this panel by people who will speak to the reasons *why* granting China permanent MFN is a terrible idea, I will focus on clarifying *what* Congress' role really is on this matter — and Congress' options. I will start by clearing up some myths and misconceptions:

1. Permanent MFN Is Not Required for the US To "Benefit" from China WTO Accession

Proponents of granting China permanent MFN suggest that China could not enter the World Trade Organization (WTO) *unless* the U.S. Congress granted it permanent Most Favored Nation (MFN) status. Contradicting their first point, proponents of permanent China MFN also claim that if China entered the WTO and the US Congress does not pass permanent MFN for China, the US would be denied WTO benefits as regards China. (ie. the the claim that Congress' refusal to grant permanent MFN for China would mean that only the US was excluded from WTO treatment from China while other countries enjoyed it.) Both claims are entirely false.

The reality is that the U.S. must maintain "unconditional" reciprocal MFN with its WTO

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partners[1], but it can provide this MFN treatment on the basis of any time duration it desires — on an annual, quarterly, permanent or other basis — as long as the status does not lapse. The claims that permanent MFN is required between WTO members is a self-serving fiction created by interests who would prefer permanent MFN status for China. There simply is no GATT or WTO text nor any GATT or WTO case law precedent of requiring that MFN be granted for a specific period of time. What the GATT and WTO rules require is that there be no conditionality for such grant. Thus, arguably giving continual annual waivers of Jackson-Vanik's requirements regarding free immigration satisfies the GATT-WTO rules. Certainly if the provisions of the Jackson-Vanik amendment requiring immigration status to be reviewed is eliminated, grants of annual MFN to China is certainly within the GATT-WTO requirements.

Thus, maintaining the status quo of annual MFN extensions for China, the U.S. would fully comply with its WTO obligations towards China and would thus qualify for all reciprocal WTO "benefits" from China[2]. As long as the U.S. provides continuous MFN, action by China to limit US WTO benefits in retaliation for the U.S. not providing *permanent* MFN would constitute a Chinese violation of its WTO commitments.

Indeed, that the threat made by corporate and Administration supporters of permanent MFN for China that the U.S. would not obtain any WTO benefits from China without a U.S. grant of permanent MFN is a total fabrication is quite revealing; absent this argument, which does not stand up to scrutiny, there simply is no reason for a change from the status quo of annual MFN for China.

Moreover, threats being made by permanent MFN supporters that China would walk away from WTO admission if the U.S. Congress fails to grant permanent MFN now calls into question the true intentions of permanent MFN supporters. If China's true goal with WTO membership is locking in WTO benefits regarding other countries, than it does not matter whether those benefits regarding the U.S. are extended annually or are granted on a longer basis as long as they do not terminate — at which point China would have WTO rights to retaliate.

It seems that instead of the U.S. access to the Chinese market which touted as the gain of the WTO accession agreement, the real agenda is to use a WTO accession by China as an excuse to fight for permanent MFN — a long time goal of U.S.-based multinationals. Such permanent MFN would limit corporate uncertainty concerning their decisions to relocate to China production of goods for sale in the U.S. given it would further lock in the right for such goods to enter the U.S. market for sale.

2. The Legal Case for Why Annual MFN Can Be Continued for China

The MFN requirements as between WTO members are set forth explicitly in 1947 General

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[1] General Agreement on Tariffs and Trade, Article I-1. "With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer pr payment for imports and exports... any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country *shall ne accorded immediately and unconditionally to the like product* originated in or destined for the territories of all other contracting parties. (emphasis added)

[2] Note that under the status quo annual extension process, MFN treatment never lapses. Absent a resolution passed in both House and Senate within a set short time period prior to the termination of the previous year's grant of MFN, MFN automatically extends another year once the President requests it.

Agreement on Tariffs and Trade (GATT) text as updated by the GATT of 1994 and in the Agreement establishing the WTO contained in the GATT Uruguay Round text.[3] The WTO is silent on the duration of MFN grants, requiring only that MFN not be conditioned on any extraneous factor. Thus, the specific obligation is either:

- to provide the entering country with unconditional MFN treatment which absent any other exceptions (ie. a country excludes certain service sectors from WTO rules) then qualifies both countries to full reciprocal WTO benefits

- or to give notice prior to a new country's admission to WTO of intent not to grant MFN or to deny other WTO benefits bilaterally between the existing Member and the newly entering Member

Under WTO rules annual grants of MFN are sufficient to fulfil US WTO obligations under WTO rules. Such annual grants could be accomplished by eliminating the provision of the current "Jackson-Vanik" amendment that requires review of immigration policy for non-market economies (ie. eliminate the condition regarding freedom to leave the country) or by passing free standing legislation simply granting China MFN for one year or for the duration of the five year phase in of the accession agreement or for whatever duration Congress chooses.

3. The Political Case for Why Annual MFN Must Be Continued for China

Many in Congress who would support China's WTO admission do not support a grant at this time of permanent MFN status for China — either because of China's unmitigated pattern of failing to meet its international commercial and other obligations[4] or because the accession agreement signed by the Clinton Administration failed to deal with the list of key items set forth in advance by congressional leaders (enforcement, human rights, labor rights, the trade balance, etc) requiring either further negotiations with China or evidence of improvement in these areas over time.

A win-win solution is for Congress to continue annual MFN grants to China during minimally the five year phase-in period of China's WTO accession agreement. Such a path would provide China with the full WTO membership it seeks and guarantee the U.S. any benefits Chinese WTO accession provides. Alternatively, Congress could grant China five years of MFN with some annual reporting built in At the end of the phase-in, Congress could agree to review China's compliance with its WTO commitments, as well as progress on narrowing the US-China trade deficit and improvements in China's human and labor rights and nuclear and missile proliferation practices.

4. Demystifying the WTO Accession Process

The first step for any country to join the WTO is an international one: specific terms for accession to the WTO are negotiated between the applying country, the WTO and key WTO member countries. The

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[3] GATT Article I-1 on Most Favored Nation; GATT Article XXXIII on Non-Application and the Agreement Establishing the World Trade Organization Article XII.

[4] For instance, the U.S. has signed intellectual property agreements with China forbidding the use by the Chinese **government** of pirated U.S. computer software on a nearly annual basis — as each year it becomes apparent that China is not following its commitments under the previous agreement. As well, the Bush Administration signed a 1993 Memorandum of Understanding with China forbidding trade in prison labor-made goods, a practice which continues unabated despite the agreement.

US-China agreement on the terms of China's WTO membership that the Clinton Administration announced will be multilateralized — which means they will become part of China's binding commitments to WTO and will apply as between China and all other WTO countries. Thus, China has committed under the WTO Telecommunications Agreement that foreigners will be limited to only owning 50% (not a controlling share) of telecom companies providing services in China. (Some other WTO countries allow 100% foreign ownership, others permit different combinations.) Similarly, the U.S. sought an exception regarding the WTO rules on textiles and failed to obtain it: the US sought a ten year phase in of the WTO textile rules which are the terms to which all other WTO countries agreed. China refused and instead will have 100% quota-free access to the US market in 2005. Under WTO rules, a formal document memorializing these terms, called a protocol of accession, must then be approved by a 2/3 vote of WTO member countries. Once such an accession protocol is approved, a country has obtained accession.

The second step is the grant by other WTO member countries of unconditional MFN status to the new entrant. This is the step Congress will face in deciding whether to continue granting China MFN annually or for a longer block of time or permanently.

5. WTO Rules Would Empower China to Attack US Human Rights, Labor, Non-Proliferation Policies

One final technical, legal consideration about China and WTO is the new powers and rights China would obtain as a WTO Member as against the U.S. Most simply, WTO rules forbid countries from banning goods made with child or forced labor and also forbid countries to treat other WTO members differently according to their human rights, weapons proliferation or other non-commercial behavior.

If the U.S. sought to use trade sanctions against China — or for that matter to grant preferential trade benefits to other countries to reward progress on non-commercial issues — China as a WTO member would have standing to bring the U.S. to WTO dispute resolution wherein three trade officials would decide if the U.S. action was within China's WTO rights. If not, the panel — which include private trade attorneys, has no conflict of interest rules for judges and no outside appeal — could order the U.S. To either change the law or face trade sanctions.

The WTO rules of note in this regard are:

GATT Article III: which requires national treatment meaning "like products" must be treated equally whether domestically made or foreign made. The past decade of GATT and WTO jurisprudence has interpreted the ban on discriminating on the basis of *where* a product is made to also forbid treating good differently on the basis of *how* they are made. Thus, a shoe is a shoe regardless if it is coming from forced labor in People's Liberation Army factory in China or from a union shoe craftsman cooperative in Maine.

The Agreement on Government Procurement (AGP): which is one of the 18 underlying agreements enforced by WTO requires that no non-commercial considerations are used in choosing bids for goods and services to be purchased by governments. Obviously, directing the use of one's own tax dollars has been a significant tool of human rights activism, for instance regarding preferential procurement policies concerning South Africa's apartheid regime.

GATT Article 1: which require Most Favored Nation treatment meaning that a country cannot be treated differently from all other countries on the basis of that country's non-commercial conduct — for instance nuclear proliferation or human rights atrocities.

Amnesty International Testimony

HUMAN RIGHTS IN CHINA

Before the Subcommittee on International Operations and Human Rights

Presented by

Stephen Rickard
Director, Washington Office
Amnesty International USA

December 08, 1999

Human Rights in China

Testimony of Stephen Rickard
Legislative Director, Amnesty International USA

December 8, 1999

Mr. Chairman, it is an honor to have the opportunity to testify before your committee today. We are grateful to you for holding this timely and important hearing on human rights in China and the issue of China's admission to the World Trade Organization (WTO).

As the recent events in Seattle make clear, there is widespread concern about the World Trade Organization. People across the ideological spectrum are asking hard, sometimes contradictory questions about the WTO – how it functions, what its effect will be on their lives and their livelihoods.

Human rights activists are struck by many things about the WTO. For instance, we are amazed to see the United States enthusiastically embrace the World Trade Organization, where US laws can be judged and sanctioned by little understood panels, while at the same time it refuses to support an International Criminal Court, where the worst criminals in the world would be judged under procedures modeled on the Bill of Rights. Clearly WTO procedures can be used to bring frivolous claims or to score political points, but this has been a major complaint about creating the ICC. At the same time that WTO panels have already handed down decisions which reject important pieces of US legislation, like fuel economy standards for autos, the mere *possibility* that any American citizen might be called before the International Criminal Court is considered anathema to many.

Frankly, it's hard to understand why it's easier to protect *copy*rights than *human* rights. It's hard to understand why there is an international court with the power to order economic sanctions for violating Disney's rights to the "Little Mermaid", but there's no such court to sanction governments for violating the rights of little children.

Into this maelstrom comes the US deal with China. Consider: at the same time that China is pledging to embrace the rule of law for commerce it is waging a merciless and highly arbitrary campaign of repression against tens of thousands of peaceful Falun Gong adherents. The Information Center for Human Rights and Democratic Movement in China has reportedly estimated that as many as 35,000 Falun Gong practitioners have been detained. Many are being funneled into the "reeducation through labor" system through an administrative process with no due process rights. Amnesty has received reports of Falun Gong practitioners who have been beaten to death, tortured with electric cattle prods and other means and raped in custody. In a disturbing echo of Soviet practices, some have been taken to mental institutions. A copy of our report on these individual Falun Gong cases is attached to my testimony. While it is difficult to verify all of these reports given China's adamant refusal to permit human rights monitoring, they are consistent with the fact that torture is endemic throughout China and the fact that more than a *quarter-million* people are already in the re-education through labor system.

I should be clear that Amnesty International takes no position on trade sanctions against any country as a matter of policy. We neither oppose them nor support them, and have never taken a position for or against extending Most Favored Nation (MFN) status to China. By comparison, the Chinese government has repeatedly threatened trade sanctions of its own against companies and governments that have angered Chinese officials.

We do believe, however, that effective human rights policies require consistency and credibility, and credibility means being willing to pay a price to stand up for human rights victims. It's almost never a question of whether US officials "care" about human rights. It's a question of whether they – and above all, whether President Clinton – care *enough* to be willing to fight for human rights.

This explains why the annual effort to condemn China's human rights record at the Human Rights Commission in Geneva, and the annual debate on China's human rights record in the Congress, continue to be important even when the ultimate vote goes in China's favor. They demonstrate, to the Chinese Government and to human rights victims in China, that the human rights issue will not go away, that it will remain a serious deterrent to better relations and that there is a diplomatic price to be paid for flaunting the human rights standards that have been universally accepted by nations from every continent, including Asia.

In light of China's ferocious campaign against Falun Gong, its unrelenting repression against Tibetans and Uighers and its failure to move forward in any meaningful way on the major human rights promises it has made, such as implementing international human rights treaties, Congress is clearly entitled to be skeptical about assertions that China's admission to the WTO will herald the dawning of a new age in China. I think it is significant, and probably wise, that US Trade Representative Charlene Barshefsky has been very circumspect in making any such claim. For instance, she was quoted in the New York Times saying, "We have to be realistic about the prospects for

change in China because there are elements of the country that will never change.... I am cautious in making claims that a market-opening agreement leads to anything other than opening the market. It may – it could have a spillover effect – but it may not. And we've got to understand that." In other words, there is nothing inevitable about trade or the WTO leading to human rights progress.

And frankly, the recent news is not encouraging on the human rights front or any other. According to reports out of China, police officials there recently severely beat a democracy activist because he spoke with a US human rights official. Even on the trade front, Chinese leaders have rushed to tell other Asian governments that once China is admitted to the WTO, it will stand with other Asian governments to reject and resist Western trade proposals. In other words, China tells the US that engagement and friendship requires the US to work to have China admitted to the WTO, while at the same time telling Asian governments that once admitted to the WTO China will become a stalwart opponent of US proposals.

Without question, however, the period between now and the Congressional debate on the China deal represents an opportunity for the Clinton Administration to demonstrate that the tree of engagement can bear fruit. There are three steps that the Chinese government could take or at least set in progress immediately to demonstrate a genuine commitment to the rule of law and to fulfilling international commitments.

First, the Chinese government could announce that it will review the convictions of every person serving a prison sentence for counter-revolutionary offenses. These offenses are no longer even on China's statute books, having been replaced by a new National Security law. This is a step China could announce on its own, saying that it is simply making an effort to fully implement its own laws.

Second, China could announce that it will dismantle the "re-education through labor" system. It is simply impossible to claim a commitment to the rule of law and simultaneously maintain a system that sentences hundreds of thousands of people without due process.

Third, the Chinese Government could move forward to ratify and implement international human rights treaties. All three of these steps go directly to the credibility of China's international commitments and commitment to the rule of law.

There are, of course, many other critical human rights issues in China. Religion continues to be severely repressed throughout China. Just as the repression of Tibetans, Uighers and Christians has already demonstrated, the campaign against Falun Gong shows how extraordinarily fearful Chinese authorities are of any form of organized entity – however peaceful. To be frank, and speaking just for myself, I shudder when I read that implementing the US-China trade agreement may cause *millions* of people to become unemployed. One Western diplomat was quoted in the Washington Post saying that if China fails to create a social safety net for the unemployed, "things could get extraordinarily ugly." Indeed. I don't believe that governments can maintain social

stability in the long run by cutting themselves off from the rest of the world and maintaining bloated state enterprises. But when painful change comes in a democratic society, the unemployed and the poor can hold leaders accountable and demand government policies to ameliorate their suffering. In China, the answer may instead be the cattle prod, the firing squad or a one-way ticket into the *laogai*. Remember that China is a country where people have literally been given the death penalty and shot for making counterfeit tax receipts.

Mr. Chairman, you have many distinguished expert witnesses on human rights in China testifying before you today, so I will not prolong my remarks. I look forward to hearing their testimony and to answering any questions you or other members of the Committee may have. I have brought with me several recent Amnesty reports on human rights conditions in China, including the campaign against Falun Gong, the situation in Tibet and in Xinjiang, and others, and with your permission, I would ask that they be made a part of the record of the hearing.

Thank you.

Public

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PEOPLE'S REPUBLIC OF CHINA

REPORTS OF TORTURE AND ILL-TREATMENT OF FOLLOWERS OF THE FALUN GONG

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PEOPLE'S REPUBLIC OF CHINA
REPORTS OF TORTURE AND ILL-TREATMENT OF FOLLOWERS OF THE FALUN GONG

Amnesty International is deeply concerned by reports that detained followers of the Falun Gong have been tortured or ill-treated in various places of detention in China. In early October 1999, one member of the group, a 42 year-old woman, was reportedly beaten to death in police custody in Shandong province. Many followers of the group remain in detention across China and it is feared that they may be at risk of torture or ill-treatment. Many Falun Gong practitioners are middle-aged or elderly people, with a large proportion of women among them.

The Falun Gong - a movement which combines teaching of meditation and exercises as a method to improve health and moral standards - was banned by the Chinese government in July 1999. The government, apparently concerned by the large number of followers in all sectors of society - including government departments, declared it was a "cult" and a "threat to stability" and launched a nationwide propaganda campaign against it. The campaign was described as an important "political struggle". Thousands of Falun Gong followers who attempted to protest peacefully against the ban or who continued to practice exercises were arbitrarily detained across China in the days and weeks which followed the ban. Many were reportedly beaten by police in the process. At least hundreds are believed to remain in detention. Some are now being brought to trial on politically motivated charges. They are likely to be sentenced to long prison terms after unfair trials.

The following are some of the reports of torture and ill-treatment of Falun Gong practitioners received by Amnesty International. Some are accounts of police brutality against people arrested in the immediate aftermath of the ban on the Falun Gong in July 1999. Many other cases have been reported. While in the current climate of repression it is difficult to verify these reports, they contain specific and often detailed information about the places and circumstances in which torture is reported to have occurred, including the names and details of many of the alleged victims, and in some cases their photograph. Most of these reports describe patterns of torture which are known to be common in China. They contain serious allegations which should be impartially investigated. Under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which China ratified in 1988, China has the obligation to investigate all reports and complaints of torture, bring those responsible for torture to justice and compensate the victims.

While this document focuses on reports concerning the Falun Gong, Amnesty International is also concerned by other recent reports of torture in China, some of which concern Tibetans arrested or imprisoned for political reasons. Amnesty International is particularly concerned by reports of the death due to torture of Tashi Tsering. A 39 year-old Tibetan, Tashi Tsering is reported to have died in early October 1999 of injuries sustained during beatings by People's Armed Police at the time of his arrest. He had been arrested in Lhasa on 26 August 1999 after trying to replace the Chinese flag by the Tibetan flag in a public place. (For further information, see T.I.N. News Update and TCHRD press release, both of 13 October 1999). Another Tibetan, who had been repeatedly tortured in prison after his arrest in 1996, died earlier this year shortly after he was released from prison "on medical parole" in a critical condition. (See Amnesty International's "Open Letter to the President of the People's Republic of China", 27 September 1999, AI Index: ASA 17/50/99).

These recent reports add to a wealth of evidence that torture of criminal or political suspects and convicted prisoners remains widespread in China. While torture is prohibited by Chinese law, the law is routinely ignored, many cases of torture are covered up, and few of those responsible for torture are punished.

THE DEATH OF ZHAO JINHUA:

Zhao Jinhua, female, a 42 year-old farmer from Zhaojia village, Zhangxing county, Shandong province, is reported to have died on 7 October 1999 in a police station of Zhangxing county. A Falun Gong practitioner since 1995, Zhao Jinhua had been taken away by Zhangxing county police on 27 September 1999 while she was working in the fields. While in police custody, she was reportedly put under pressure to renounce her Falun Gong practice and repeatedly beaten with clubs and electric batons when she refused to do so. On 7 October, she was sent twice to the county hospital for emergency recovery, but she was dead before arriving at the hospital the second time. On 11 October 1999, a police spokesman in Zhangxing county confirmed her death but declined to comment on the cause, according to an Agence France Presse report from Beijing on that day.

Unofficial sources report that local police informed Zhao Jinhua's family of her death on 8 October, warning them not to discuss it. According to the sources, an autopsy carried out on 8 October by medical experts from Zhaoyuan city and Yantai city found that Zhao Jinhua had wounds and haematoma on many parts of the body, except the head. The

autopsy report indicated that her death had been caused by beatings with blunt instruments. It appears that the police or other authorities arranged for her body to be cremated immediately after the autopsy. Her ashes were given back to her family on 9 October. The speed with which the body was cremated suggests that the authorities were trying to cover up the circumstances of her death, as is often the case with deaths in custody in China.

Another Falun Gong practitioner detained in Liaoning province, **Zhu Shaolan**, reportedly died on 7 October 1999 several days after going on hunger strike to protest at her arbitrary detention. Zhu Shaolan, a 50 year-old woman from Jinzhou city, had been detained on 28 September together with other Falun Gong practitioners who had collected signatures for an appeal to the authorities against the ban on the group. While in police custody, 40 of the detained practitioners reportedly went on hunger strike on 29 September, including Zhu Shaolan. She reportedly soon became very weak and started to vomit after being on hunger strike for four days. On 5 October, police sent her to hospital and she is reported to have died there on the morning of 7 October. As far as is known, there has been no public enquiry into the circumstances of her death.

OTHER REPORTS OF TORTURE:

Most of the allegations cited below come from Falun Gong (FLG) sources in various places in China.

- **Dalian city, Liaoning province:**

In Dalian city, as in other places, groups of FLG practitioners were arrested on various dates in the past three months for appealing against the ban on the FLG or practising FLG exercises in public parks. Many were held for 15 days of "administrative" detention - a punishment imposed by police under public order regulations. Some were reportedly tortured or ill-treated in police custody. The following cases concern people detained at the Yaojia Detention Centre, located in Nanguanling in Dalian, in late August and September 1999.

Zhang XiaoHong, a 38 year-old woman from Dalian, was arrested on 30 August 1999, when she was practising the exercises in Youjia Village of Shahekou District. She was charged with "disrupting social order by using feudal superstition", served with a 15 day detention order and detained at the Yaojia Detention centre. On 9 September, when she asked permission to do FLG exercises, she was reportedly tied to another practitioner with handcuffs and they had to sit back to back on a hard bench for 23 hours. During that period, they were not allowed to eat, sleep or go to the toilet. When they were untied in the evening

of 10 September, they were handcuffed individually with their hands tied behind their back, remaining tied in this fashion until 14 September. During that period, they could lie on their sides but could not sleep, because the handcuffs had automatic tightening devices, and tightened and cut into the skin if they fell asleep. They had to rely on the help of fellow inmates to eat and pass stool. On 14 September, the handcuffs were moved to the front. They were released on 15 September.

Sun Lanfang, a 28 year-old woman from Dalian, who was also detained in September at the Yaojia Detention Centre, is reported to have been tortured because she practised FLG exercises in her cell. She was reportedly shackled in a device known as the "Di Lao" (meaning literally "underground prison"), which includes a pair of handcuffs and foot-shackles linked together with crossed steel chains. Such instruments, which make it very difficult and sometimes impossible to walk or sit down, are known to have been used in prisons in various places in China. In Sun Lanfang's case, the device was reportedly further tied to a steel plate, so that she could not move for about 99 hours.

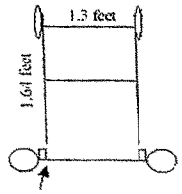


Fig. 1

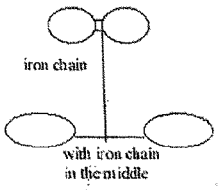
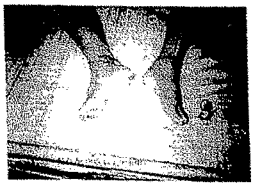


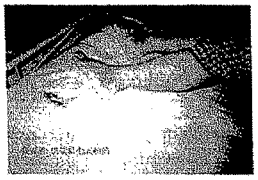
Fig. 2

Diagram showing two types of "Di Lao"

Zhang Chunqing, a 58 year-old woman from Dalian, was arrested on 3 September 1999 for practicing FLG exercises in a public park and detained for 15 days at the Yaojia Detention Centre for "disturbing public order". While held there, on 5 September, she was reportedly shackled in the "Di Lao" device when she said that she wanted to practice FLG exercises. According to an account she gave after her release, she could not walk with the device and had to crawl back to her cell when it was put on her. She remained shackled in this way for two days and nights and was put in the device again on 9 September when she and other women



were found doing the exercises in their cell at night. According to her account, on 10 September, 30 of the women detained were beaten when they started reciting passages from a FLG book. Many of them were handcuffed to window bars in the corridor for many hours, while others were handcuffed in pairs back to back. They were freed from the handcuffs on 11 September.



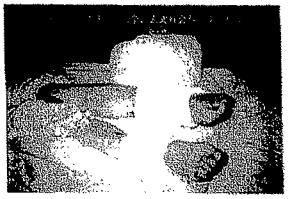
Sa Yusong, a 36 year-old woman held at the Yaojia Detention Centre in Dalian in September 1999, was reportedly tied with handcuffs to a pipe of the heating system from 11 am on 4 September till 8 am the next day; then she was tied to a window rail until 4 pm on 5 September. Considered by police to be stubborn, she was reportedly handcuffed again with her hands tied behind her back from 9 September until her release on 11 September.

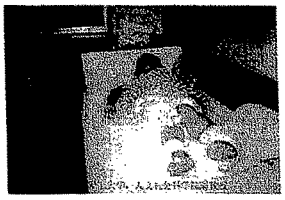
Yi Xingqin, a 34 year-old woman who had also been detained in Dalian on 30 August 1999, was reportedly made to stand up for 21 hours handcuffed to a window rail from 8 to 9 September 1999. She was then tied back to back with another practitioner for about 24 hours on 9-10 September. Following this, she reportedly continued to be handcuffed at night until her release on 15 September.

Yang Xiujian, a 33 year-old woman detained in Dalian on 30 August 1999 and held at the Yaojia detention Centre, was reportedly handcuffed to a window rail on 4 September and made to stand up tied there continuously for about 30 hours, after she told the guard that she wanted to do FLG exercises. As she later repeated the request, on 8 September she was reportedly put in the "Di Lao" device (see above), sitting on bricks in a cell until the evening of 9 September. Her menstrual period started that evening but she was not allowed to change or removed from the "Di Lao" device. Instead, she was reportedly made to walk fast by the guard from one cell to another while wearing the device which poked a hole on her foot. In the evening of 10 September, the "Di Lao" was removed, but she remained handcuffed until she was released.

Zhu Hang, female, an Associate Professor at the Department of Humanity and Social Sciences of Dalian University of Science and Technology, was arrested when practising the FLG exercises in a park on 30 August 1999, charged with "disrupting social order with feudal superstition" and detained at the YaoJia Detention Centre. She too was reportedly tortured by being shackled in a "Di Lao" device in such a way that she could not move. As a result, she was not able to use the toilet or feed herself. She reportedly started fasting

because she did not want to make difficulties for other detained practitioners and there was not enough food for everyone. Seven days later, the detaining authorities apparently started to worry about possible "life accidents", and ordered several guards to force feed her by pricking her mouth open with spoons, which caused severe injury in her mouth. Later, they reportedly installed a pipe in her nose to feed liquid in her. She eventually lost consciousness and was sent to the People's No. 2 Hospital of Dalian City for recovery. Because of the shackles, her left foot had become swollen to almost double its normal size and she had injuries on her right foot. She could not open her mouth properly and had difficulties speaking.





Huang Hongqi, male, a 29 year-old doctorate student from the Dalian Mechanical University in Liaoning province, was taken into police custody with 10 other FLG practitioners on 28 August 1999 for doing exercises in a park in Dalian. He was held without charge for two weeks. In an interview with the news agency Agence France Presse (AFP) after his release, he reported that they were beaten on several occasions in detention. The first time was on 6 September when they did their exercises at night in their cell. "The guards took our trousers down and gave each of us 15 lashes with a leather whip. Our buttocks were covered in blood," he reported to AFP. According to his account, on 12 September, the guards also forced them to take off their shoes and hit them in the face before handcuffing them to a window for hours. Two days later, they were beaten with rubber coshes, he said. He was released after his university intervened (AFP, Beijing, 6 October 1999).

In a separate account which largely confirms the one above, **Wang Renguo**, male, another FLG practitioner from Dalian who was detained as the same time as Huang Hongqi, reported that he and five other practitioners were beaten with rubber sticks when they tried to talk to the director of the detention centre. They were also slapped on the face with shoes and tied to a window for five hours, he said, while another FLG practitioner held on a different floor was chained for four or five days for doing FLG exercises.

- **Hunan province:**

When the FLG was banned in July 1999, police in Hunan province reportedly enrolled people described by dissident sources as "thugs"into the Joint Defence Teams, to assist in the searches of the numerous FLG teaching centres and practice sites in the province and in the arrest of key FLG members. Many incidents of violence reportedly occurred during the searches and arrests. The following allegations have been made in connection with such incidents:

On 22 July in Changsha city, a Special Police Unit of the Changsha Public Security (police) Bureau, escorted by an armed police unit, raided the FLG General Assistance Centre of Hunan Province and reportedly beat and injured all the FLG contact persons present there.

On 24 July in Yueyang city, during a police raid on a publishing company which had printed FLG books, the owner of the company, identified as Mr. **Yu Hanxin** from Hubei province, allegedly had his legs broken on the spot by a senior officer from the Yueyang Public Security Bureau.

On 25 July in Anhua county, Ms. **Li Juhua**, a FLG practitioner at the Meicheng Town practice site of Anhua County, was allegedly taken away by the local Joint Defence Team and raped by members of the team, suffering severe mental trauma as a result.

On 25 July in Changde city, **Zhou Zhi**, male, a FLG practitioner at the practice site of Dingcheng District in Changde City, was allegedly brutally beaten by police when he argued with them while they were searching his home. All his money and other belongings were reportedly taken away by police.

On 26 July in Xiangtan city, Mr. **Yang Junhua**, the contact person of the FLG Shaoshan practice site in Xiangtan City, was allegedly beaten and injured by members of the No. 7 Joint Defence Team of Xiangtan City.

- **Changchun city, Jilin province:**

In Changchun, FLG practitioners detained in late August 1999 at the Yushu County Detention Centre were allegedly beaten with electric batons, kicked in the stomach, shackled, and forced to swallow dirty water. Details about those reportedly subjected to such treatment are not available. Several hundred FLG practitioners were reportedly still held in various detention centres in Changchun in early October.

- **Jiaozhou city, Shandong province:**

Over 50 FLG practitioners were taken into police custody in Jiaozhou city on 8 September 1999. Some among them were allegedly beaten, deprived of sleep for five days and of food for three days, to dissuade them from appealing to Beijing against the ban on the FLG and force them to "confess" their wrongdoings. Before being released, they were reportedly warned by police against telling others about their treatment in custody.

Some FLG practitioners in Jiaozhou were allegedly sent by police to a mental hospital and held with mental patients. Two of them have been identified as Wei huayu, an employee of the Jiaozhou Accounting Firm, and Tan Guihua, a worker at the Third Shoe Factory of Jiaozhou. Both were allegedly forced to take sedatives in the hospital where they were held for over 20 days.

- **Beijing municipality:**

Many women, practitioners of the FLG who had gone to Beijing in August 1999 to appeal to the authorities against the ban on the group, were reported to be detained in late August and September in the women's section of the Qiliqu Detention Centre, Changping county, Beijing. Some 60 of them reportedly started a hunger strike on 7 September and were punished as a result in the following days. On 9 September, having fasted for two days, some were forced to stand in the burning sun and were reportedly beaten when they could not stand up any more. One woman identified as Ms Zhang Xihong, after ten days on hunger strike, reportedly had her feet and hands chained closely together so that she could only walk bent double. Ten other women were reportedly handcuffed for three days. Others were beaten with belts and various objects, or forced to stay for long periods with their body bent at a 90 degree angle and their arms raised high behind their back. One woman, identified as Ms Guo Fenren, was reportedly beaten on the face with a string of keys until blood covered her face.

Gao Shanshan, a 16 year-old girl from Qiqihaer, in Heilongjiang province, was reportedly detained in Beijing on 24 September 1999 after being denounced to the police for possessing a FLG book. In an appeal which circulated in early October, her mother, Zhou Yingjie, said her daughter had come to Beijing from Qiqihaer on 20 September in order to meet her. Zhou Yingjie was on a visit to Beijing from Japan, where she resides. The mother alleged that the young girl had been ill-treated by police, including by having food in which some unidentified substance was mixed poured down her throat while her hair was being pulled back by a policeman. The appeal indicated that Gao Shanshan was still being arbitrarily detained as of 2 October. It also said that her father, Gao Deyong, a 50 year-old

engineer in Qiqihaer and FLG practitioner, had been illegally detained in that city since 23 September 1999.

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Amnesty International is calling on the Chinese authorities to launch without delay impartial investigations into the reports of torture and ill-treatment cited in this document and other reports or complaints of torture. It is also calling on the authorities to publicly disclose the results of the investigations, to punish those found responsible for torturing or ill-treating detainees, and to take measures to ensure that people who remain in detention are protected from torture and other cruel, inhuman or degrading treatment.

KEYWORDS: RELIGIOUS GROUPS1 / TORTURE ILL-TREATMENT1 / WOMEN1 / DEATH IN CUSTODY / TORTURE TECHNIQUES / FORCIBLE FEEDING / FARMERS / ACADEMICS / STUDENTS / JUVENILES / PHOTOGRAPHS

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Testimony of Charles Wowkanech
President
New Jersey State AFL-CIO
Before the Subcommittee on International Operations and Human Rights of the
House Committee on International Relations
on the Inclusion of China into the WTO

December 8, 1999

Thank you, Mr. Chairman and members of the subcommittee for allowing me to present the views of the NJ State AFL-CIO on the inclusion of China into the World Trade Organization (WTO) and the effect this, and other U.S. trade policies would have on New Jersey.

New Jersey's trade economy, and the jobs of hundreds of thousands of New Jerseyans, are threatened by China's impending accession into the World Trade Organization. China should not be allowed to capitalize on its human rights, workers' rights and environmental failings to the detriment of New Jersey's working families.

In 1998, the U.S. had a $57 Billion trade deficit with China. In that year, U.S.- China trade yielded a grossly skewed import/export ratio, with $71 billion in Chinese goods entering this country, and only $14 billion in U.S. exports. This is a direct result of the normalized trade relations (NTR) between China and the U.S. Granting China permanent or annual NTR status will only serve to worsen that ratio.

New Jersey has been particularly hard-hit by recent U.S. free trade agreements, already. In 1996, manufacturing employment in New Jersey fell below 500,000 for the first time since the 1930's. Free trade agreements with Canada, Mexico, and Europe have resulted in the loss of hundreds of thousands of American jobs, as businesses have relocated to exploit weak or non-existent labor and environmental protections. In the wake of these agreements, corporate profits have grown while high paying American jobs have been lost, and the wage gap for American workers has widened. According to *Business Week*, in 1998, the average pay of an American CEO was 419 times that of an average factory worker! While corporate profits continue to grow, the working people of New Jersey are struggling to pay their mortgages, send their kids to college and improve their overall economic standing.

The North American Free Trade Agreement resulted in the loss of 400,000 American jobs in its first

five years. New Jersey alone has lost more than 28,000 jobs to increased trade deficits. New Jersey's 1993 to 1996 NAFTA trade deficit was $2 Billion. During the same period, the median hourly wage in New Jersey dropped from $13.07 to $12.55. Again, this situation will only get worse upon China's acceptance into the WTO.

Chinese economic policy depends upon maintenance of a strategy of aggressive exports and carefully restricted foreign access to its home-market. The systematic violation of internationally recognized workers' rights is a strategically necessary component of that policy. Chinese goods are made without the additional cost of a living wage or humane conditions for workers, and in some cases the goods become even cheaper because workers are never paid at all. China's actions with respect to workers' rights currently violate existing provisions of U.S.-China agreements. WTO accession while China continues to exploit its own workers and U.S. consumers could only function as an endorsement of that country's horrendous human rights record.

China flagrantly abuses prison labor, and denies its workers freedom of association and the right to organize and bargain collectively. Human rights abuses in that country are increasing rather than declining. While the United States continues to romance China as a trade partner, religious and political persecution against the Chinese people has worsened. Chinese labor activists are regularly jailed and imprisoned in reeducation camps for advocating free and independent trade unions, for protesting corruption and embezzlement, for insisting that they be paid the wages that they are owed, and for talking to journalists about working conditions in China. Conflict between worker activists and the Chinese police frequently end in violence. In January of 1999, police attacked a group of retired factory workers in Wuhan, who were protesting unpaid wages and pensions. Many of the retirees were beaten. Attacking people for speaking out is contrary to our most fundamental American values, yet it is a regular occurrence in China.

In 1996, in Singapore, the WTO committed themselves to observing such core labor standards as freedom of association, the right to organize and bargain collectively and prohibiting child labor, prison labor and other forms of employment discrimination. Now, the WTO is preparing to sacrifice those commitments to human rights, workers' rights, and environmental protections to satisfy the greed of multinational corporations. Acceptance of China's deplorable human rights, labor, and environmental action in global trade will not only ensure that these atrocities will continue, but will make it even more difficult for other nations to compete in the global economy without sacrificing labor and environmental standards, and the freedom and welfare of their citizens.

In order to prevent that sacrifice, the NJ State AFL-CIO urges the United States, the greatest industrialized nation in the world, to take the lead in protecting human rights, workers' rights and our environment. To that effect, we suggest that an independent body, led by the United States, develop an International Code of Ethics which countries seeking to trade with us must meet. The Code should establish a minimum set of standards identifying basic human rights, workers' rights to a living wage and to organize and bargain collectively, and environmental concerns. The Code should include tough enforcement mechanisms, including the denial of trade with the United States when a country is found to have violated or not met the established standards.

Second, the NJ State AFL-CIO also recommends that a Federal Industrial Retention Commission be created. The Commission should be empowered to review and investigate any and all plant closings or mass layoffs at American companies due to the relocation of jobs to other nations to determine whether the relocation was due to employer attempts exploit reduced wages and benefits, weak labor standards with respect to organizing and workplace safety, or weak environmental or human rights standards. If so, the Federal Government would be authorized to enforce powerful economic sanctions against the offending company.

Third, as a condition of accession to the WTO, China, like any other nation, must be required to meet its responsibility to the global economic community. China must be required to abide by core labor and human rights standards: free all jailed human rights and labor activists; allow workers to freely associate and organize; and agree to support integration of enforceable workers' rights rules into the WTO.

Fourth, the WTO must revise the commercial terms under which they are willing to accept China. The U.S. must be safeguarded from unpredicted import surges, and market disruption caused by import volume. Multilateral surveillance measures, including periodic and acurate reviews, should be implemented as part of a program of general safeguarding of commercial trade measures. Unions and other concerns should have standing to sue if the U.S. government fails to act, and should be guaranteed access to the accurate and complete information necessary to make a complaint. The WTO should establish a review process for determining when China's "non-market economy" status will end. A longer and more practical phaseout period for Chinese textile quotas should be established.

These terms are necessary and essential protections for the workers of China, but also for the working people of New Jersey and the rest of the United States. Our workers cannot afford China's accession into global trade, or the forfeiture of the United States' ability to sanction trade on the basis of human rights. Nor can we afford to forfeit the use of U.S. trade measures to remedy unfair trade practices. U.S. manufacturing and other businesses should not, and **cannot**, function and succeed in a global economy that enforces the rights of *some* of its workers, while sacrificing the rest. American workrs will continue to lose their jobs and their livelihoods until all U.S. trading partners are held to internationally recognized trading standards.

Business and industry must behave responsibly toward American working families and our communities. The shockwave of insecurity ripping through our communities must be countered by aggressive worker and government measures demanding that corporations be responsible and liable for the devastation they cause in the pursuit of corporate greed.

Thank you, Mr. Chairman and members of the committee for your time.

The
Laogai
Research Foundation
勞改基金會

STATEMENT OF HARRY WU
Executive Director, Laogai Research Foundation
before the
Subcommittee on International Operations and Human Rights
of the
House Committee on International Relations
December 8, 1999

We are standing today at a historical crossroads. Down one path lies a United States chasing after market access in China, talking about human rights but only acting on trade deals. Down the other path is the chance to have a principled foreign policy in relation to China, one based on American values and national interest.

For the most part, the United States has been moving steadily down the first road, kowtowing to business interests and using all of the U.S.'s negotiating abilities to push for business deals. The WTO agreement is supposed to be a major milestone on this road. It has long been fashionable to think, "What is good for Wall Street is good for the United States." But we must also realize that this deal gives a timely boost to the Chinese Communist leadership. This blood transfusion to an obsolete and dying regime is both unwise and unnecessary.

Faced with a stagnating economy and sagging exports, the Chinese Communist Party desperately needs increased foreign investment and guaranteed access to foreign markets, with no threat of bilateral sanctions. This deal gives just that to the Chinese dictators, increasing their authority and claims to legitimacy.

The Chinese leadership has not proven to be a reliable partner in its international dealings. Its human rights abuses violate the United Nations

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treaties it has signed, and it continues to violate trade agreements by dumping and exporting forced labor products.

There are those that will argue that economic progress will bring political openness to China. Of course this argument was not applied to the Soviet Union. Regardless, we have seen this "dollars to democracy" theory fail over the past twenty years. The Chinese people may have more brands to choose from at the store, but they still risk arrest, torture and imprisonment because of their political beliefs or their faith. China continues to imprison political dissenters and labor activists, to repress religious freedom, to execute more of its citizens than any nation in the world, and to violate the rights of women in its population control policy.

The current crackdown on the Falungong is a sad but perfect example of the how the Chinese government treats its common citizens. The Beijing government actually supported Falungong when it first started to flourish in China. The Communist Party realized that China is facing an ideological crisis: the people do not have faith in the Party as they once did. Falungong seemed like a harmless way to fill the ideological vacuum. Let them meditate. It's much better than meeting to discuss politics or Christianity or unemployment. Slowly the yellow book became more popular than the red book. It seemed that millions of Chinese had found a new bible.

But Falungong quickly became a nationwide and organized movement, and that the Beijing government could not tolerate. The Chinese Communist Party does not allow any organization except itself to have a nationwide structure, regardless of the organization's purpose. So in retaliation, the Beijing government declared Falungong a cult, and is arresting members by the thousands on charges of spreading superstition or subverting the government. If we look in the yellow book, it does not discuss subverting the government, it does not advocate violence, it does not say that the apocalypse is coming. Rather, it talks about an individual's spiritual health and demonstrates how to do proper breathing exercises.

Like all totalitarian regimes, the Chinese government is paranoid. It considers these people a threat. And will treat them as it does any threat, by cracking down quickly and completely. Lawyers in China have been instructed not to represent these people, showing that the Chinese government will easily break its own laws.

The members of Falungong are detained, tortured, and sent to labor camps. It is reported that over 35,000 people have been detained since the crackdown began in July. Today a new crackdown is starting on another group that practices traditional breathing, Zhong Gong. So far 100 members have been detained. These arrests continue even as China receives the Secretary-General of the United Nations.

The Chinese government just released a new law, declaring that any gathering of over 200 people must be approved by public security. The Chinese Communist Party is fundamentally threatened by any popular group–students who want an end to corruption, workers who want their pensions or independent unions, or even middle-aged women practicing meditation exercises in the park.

The Chinese Communist Party will grow richer and stronger from if approved for WTO membership. Part of its new wealth will go to upgrading its instruments of authority: the police and the military. Foreign investment will help them crackdown on the Falungong more efficiently, and it will help them harvest organs from prisoners with better technology.

There is also the question of national security. Congress should, when it considers permanent NTR status for China, put this agreement under a national security microscope. The relationship between a lack of democracy, economic growth, and China's military expansion is a serious one and must be closely examined.

From a human rights standpoint, granting China permanent NTR will give them a green light to continue to abuse their citizens. That action will tell the dictators that the United States ill ignore the horrible way the Chinese people are treated as long as markets are open to trade and investment.

Perhaps one day, the U.S. government will try to promote human rights in China with the same zeal that it runs after market access. Maybe one day a President of the United States will use his or her private line with the Chinese President to promote human rights, to show that the United States is serious about freedom and democracy. Today, that responsibility rests with the Congress.

Testimony
Mary Beth Markey, Director of Government Relations
International Campaign for Tibet
December 8, 1999
House Committee on International Relations
Subcommittee on International Operations and Human Rights
U.S. House of Representatives
Hearing on China, the WTO and Human Rights

Thank you, Mr. Chairman, for the opportunity to testify before the Subcommittee this morning. It is a great honor and always a pleasure to see you, sir. My name is Mary Beth Markey and I am the Director of Government Relations at the International Campaign for Tibet, a non-profit, membership organization advocating for the rights of the Tibetan people and a negotiated political solution for Tibet.

Like many of our colleagues in the labor, environmental and human rights communities, the International Campaign for Tibet believes that the World Trade Organization has both the potential internationally to liberalize economies -- a good thing -- and to promote an ethic based on the accumulation of transnational corporate wealth which ignores democratic principles, hard-won environment safeguards, and basic human rights -- which is very bad and the basis of our opposition to an unregulated WTO and to China's accession at this time.

The International Campaign for Tibet calls on the US Congress:-- to see the coming debate on China's WTO membership and permanent NTR status as an opportunity to consider carefully the WTO's potential and proclivity to address rights abuses; and then, to use this opportunity of maximum leverage to extract meaningful human rights concessions from China.

The Congress need not be a rubber-stamp for this administration's investor-based trade priorities, especially with regard to the China market. Our nation has many serious concerns with China, human rights and the situation in Tibet being just two that are systematically dismissed by Beijing. The U.S.-China human rights dialogue is shut down, although other countries continue to meet bilaterally to discuss human rights. The Washington Post reported yesterday that Beijing will not even accept our human rights demarches and, as a new protocol, insists that they must be delivered to the Embassy here in Washington.

Appeals to Chinese leaders from heads of state the world over to begin dialogue with His Holiness the Dalai Lama are routinely answered with Chinese histrionics.

In Tibet the use of prison labor in economic development is openly stated policy. Prisoners forced to work in prison greenhouses fall ill from pesticide exposure. Torture is routine. "Patriotic Re-education" continues in monasteries.

Popular resistance against hard-line policies on religion and against the Dalai Lama continues. In Lhasa in October, Tashi Tsering who attempted to raise the banned Tibetan national flag during the National Minority Games was severely beaten and died of his injuries in detention.

Tibetan homes are routinely searched for evidence of "splittist activities." Officials demand "loyalty to the unity of the motherland" and caution against "the infiltration and sabotage of foreign hostile forces."

Ngawang Sandrol, a nun first arrested when she was just 13 is serving her 10th year in prison and has just received a third term extension, which means she will serve a total of 21 years in prison -- for singing songs of her love for Tibet and His Holiness the Dalai Lama. According to the Tibetan Information Network in London, a female prisoner in Lhasa's notorius Drapchi prison, based on current information for records with adequate data, has a 1 in 20 chance of not surviving the consequences of imprisonment.

China is silent to requests from U.N. officials and agencies and from numerous government, religious and humanitarian delegations to meet with the young Panchen Lama. This little boy, held captive since he was 6-years old, goes missing -- an alarming report on a Chinese internet site suggested that he died in Gansu province and was cremated in secrecy. For 4-1/2 years, since May 1995, the United States has raised his case with Beijing. Assistant Secretary Koh has requested to see him as part of the resumption of the bilateral human rights dialogue.

Here, Mr. Chairman, I beg your patience to address a terrible flaw in the U.S. position on the Panchen Lama. While the issue of religious freedom has been elevated to a priority among rights at our State Department, an ambassador-at-large and a Commission on religious liberty named, our government has taken an equivocating position with regard to the authority of the Dalai Lama to recognize the reincarnate Panchen Lama.
The Panchen Lama, is referred to by our foreign policy establishment as the "Panchen Lama recognized by the Dalai Lama." However, since the Chinese Communist Party leadership chose another boy to replace the kidnapped boy, our government refers to him as the "Panchen Lama appointed by the Chinese."

Of course, the Chinese Communist Party has no right of primacy on any religious issue. Nonetheless, the administration is providing Beijing cover with its ambiguous approach. This is wrong. Would we hesitate to recognize the choice of a Pope by the College of Cardinals in Rome? Is a mullah not a mullah because we quibble with the politics? How can the United States advocate on behalf of religious freedom, and accept that the Communist Party, the antithesis of a religious body, has a legitimate role in naming the 11th Panchen Lama of Tibet?

It is precisely this kind of conflicting signal that doomed to failure the 1993 Executive Order on MFN, and we should guard against mix signals with respect to permanent NTR.

China's intransigence on human rights forces Congress to make good use of the NTR debate. Whether permanent NTR is conditioned to specific, achievable actions on the part of China, as was the case when MFN was conditioned by Executive Order in 1993, or whether permanent NTR is phased in as China moves into compliance with WTO rules, the Clinton administration and the Congress must accept the challenge of devising a tandem human rights/permanent NTR strategy and commit together to its implementation.

U.S. business, which has failed utterly to use its privileged access to China and Chinese leadership to promote human rights principles, will likely not ally itself to this strategy. However, it is past time for them to play a responsible role in exporting the commodity of democratic values.

Mr. Chairman, the International Campaign for Tibet, with the support of several environmental groups, has for the past months been engaged in a battle with the World Bank over a plan to move some 58,000 mostly Chinese settlers onto the Tibetan Plateau. The World Bank project, if implemented, threatens to do serious damage to Tibet's fragile high-altitude ecosystem and will further dilute the Tibetan population and culture. The Bank has argued, from the beginning, that the "politics" of this project are not the Bank's responsibility. In other words, the transfer of large numbers of Chinese farmers onto traditional Tibetan lands, hastening the sinocization of Tibet, need not be considered by Bank project planners in Beijing or Bank headquarters here in Washington. Fortunately for the Tibetans in the project area, there is a mechanism for redress at the Bank -- the Inspection Panel, and the International Campaign for Tibet has submitted a claim against the project on their behalf.

Destructive environmental decisions from the WTO have similarly been interpreted as outside the scope of the WTO's responsibility. A platform for labor rights is being resisted, as well. And, unlike the World Bank, there exists no mechanism for transparency and redress. It is, therefore, not difficult to imagine development or natural resource extraction in Tibet, made possible by the "politics" of sinocization and some giant transnational corporation, that Tibetans oppose but are powerless to stop.

Though China's membership in the WTO might eventually pressure the leadership to open its doors to outside monitoring, there is currently no WTO mechanism to perform oversight and certainly little evidence to support the hopeful position that China would accommodate it. Opening Tibet to unregulated foreign investment more likely would promote more Chinese migration into Tibetan areas and challenge efforts for appropriate development designed to benefit the Tibetan people.

Mr. Chairman, Tom Hayden, a former protester of some renown, suggested that the new generation of activists that protested in Seattle represent the breakthrough of their generation into a public effort to challenge the systems. The International Campaign for Tibet has seen how our own movement has been propelled by young people. Their priorities by nature are hopeful and forward looking -- it is very much a new world order they seek. While they may have only shut down the WTO meeting for a short while, I am confident they will be back and ready to play an active role in the debate early next year on permanent NTR for China I would caution big business not to declare victory as yet.

Finally, Mr. Chairman, I hope the Congress will look into how the Seattle protesters were treated by the police during the demonstrations and in custody. As an American who speaks out against the atrocities perpetrated by Chinese police and security officials against peaceful Tibetan demonstrators, I was appalled by what I saw on television and heard from some of the protesters themselves. Again, I take note of John Pomphret's piece in yesterday's Washington Post. In response to U.S. warnings that a resolution critical of China might be introduced at the U.N. Human Rights Commission in Geneva, Pomphret quoted a Chinese official as saying, "after what happened in Seattle, how could you do this with a straight face?" Thankfully, those protesters in Seattle have recourse through the legal system and public opinion. That would be my answer to the Chinese official, but it is still a shameful display of intolerance and abuse of power.

Thank you again for the opportunity to be here today.

A Statement Regarding:
China, WTO, and Human Rights

By Wei Jingsheng
December 8th, 1999

Dear Honorable Congresspeople and Friends:

Make no mistake. The current situation in China is very grave.

As witnessed by the recent Falun Gong crackdown, the ongoing suppression of religious freedoms, the oppression of independent labor unions, and the continued imprisonment of democratic activists like myself whose only crime was to openly express their opinions, the Chinese Communist regime continues to trample on the Human Rights of the Chinese people.

Following America's profuse and repeated apologies for the bombing of the Chinese Embassy in Belgrade last May, the Communist Party leadership has only increased its attitude of defiance. Chinese language newspapers have published sources stating that in a recent meeting with Chinese military officials, President Jiang Zemin ordered an increase in the speed of military development and scoffed that a so-called "strategic partnership" with the United States was "impossible" (*Shijie Ribao*, Nov. 15, 1999).

That at this time the United States should choose to award the Communist regime with a sweetheart deal to join the WTO is utterly inconceivable.

WTO membership, obviously a goal coveted by the Chinese regime, is a bargaining chip that should not be given away without receiving significant concessions on Human Rights, financial sector reform, Worker's Rights, and Freedom of Speech. It appears this administration is more worried about getting its name in the history books than about promoting the principles of Democracy.

With the entry of China into the WTO now appearing inevitable, the U.S. must find a way to continue the annual debate of China's NTR status. If NTR were made permanent, the U.S. would forfeit its final effective weapon for applying pressure on the Communist government, who would then be free to violate the Human Rights of the people unhindered by the threat of U.S. sanctions.

As one who spent more than 17 years in Chinese prisons, I can tell you that international pressure has a direct impact on Human Rights in China. When in jail, I could always judge the current state of affairs because there was a clear and inverse relationship between my treatment and the state of American-Chinese relations: the more tense things became, the better I was treated in prison; the friendlier things became, the worse I was treated.

As the leaders of the Democratic World, it is your duty and in your best interest to promote Democratic principles around the world. You must not forsake the friends of Democracy in China by giving away WTO membership and permanent NTR status to dictators who continue to violate their citizens' Human Rights.

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Wei Jingsheng
December 8, 1999

December 2, 1999

The Honorable William J. Clinton
The White House
Washington, DC

Dear President Clinton:

We are writing to you about the issue of awarding China permanent "most-favored nation" trading status in conjunction with China's accession to the World Trade Organization. Rather than appease the Chinese government in this way, now is a crucial time to influence them.

Our concern – as a Chinese democracy advocate and U.S. Congressmen – is that once the U.S. accords China permanent most-favored-nation trading status, the U.S. will lose the best leverage we have to influence China to protect human rights, enforce fair trade regulations, ensure international security, expand worker rights and stop the use of forced labor.

Once a member of the WTO, with all the privileges accorded to members, China can be expected to use the WTO process to thwart attempts to protect and extend worker rights everywhere in the world. This will halt efforts of other countries and non-governmental organizations to expand worker rights. China's own domestic record of worker rights and human rights abuses provides ample reason to predict that they will use their WTO negotiating and voting privileges to suppress those rights. It is a fact that China maintains a forced labor system known as Laogai. What could be expected of China when the topic of forced labor is raised by another, likely smaller member of the WTO? How would the constellation of multinational corporate forces, which view China as both a lucrative export platform and potential consumer market, align themselves if China defined the "race to the bottom" in terms of wages, workplace safety conditions and forced labor? How then would other countries, which must themselves confront pressures from those multinational corporations, align themselves at the WTO?

Of course, we could naively assume that China would exert a positive influence on the WTO, and that the WTO would exert a positive influence on China. But to do so would require that we ignore the recent history of China-U.S. agreements. That history is marked by Chinese promises to improve worker rights, followed by their reneging on those promises, and finished by U.S. failure to use the leverage of access to the U.S. market to enforce those bilateral agreements. That is precisely the sequence of the 1992 Memorandum of Understanding between the United States and China on prison labor, when China agreed to take measures to halt the export of products made with forced labor. According to a recent U.S. State Department report, "In all cases [of forced labor

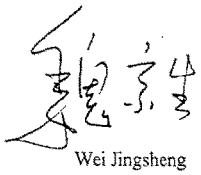
identified by U.S. Customs], the [Chinese] Ministry of Justice refused the request, ignored it, or simply denied the allegations without further elaboration."

The U.S. government ought to be able to conclude from this that the current Chinese regime is completely incapable of reform on its own. In fact, China's foreign policy has actively sought to unify the European Community against the U.S. These are not good conditions for a strategic partnership and permanent MFN . But if ever there were conditions for improving worker rights in China, they exist now, before China receives permanent MFN. That is because the U.S. buys about 35 percent of China's exports, making it a consumer with a lot of clout. As you know, the U.S. federal government frequently uses its clout as a large consumer to influence the marketplace and benefit taxpayers, and it is the use of such market power that led the U.S. automakers, followed by the world's, to incorporate airbag technology in passenger cars. The U.S. has shamefully allowed China to break promises of worker rights reforms without losing access to the U.S. market as a penalty. But once China is given permanent Most-Favored-Nation status, the U.S. will not even be able to condition access to the U.S. market on the achievement of gains in worker rights. China will be free to attract multinational capital on the promise of super low wages, medieval workplace conditions, and prison labor.

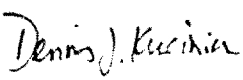
By giving China permanent MFN status, the U.S. will be giving up the best and only real leverage it has to influence China to enact worker rights and protections. This will send an unmistakable signal to Chinese dissidents, in China and the U.S., that worker rights and human rights in China are permanent afterthoughts to commercial considerations. Once awarded permanent MFN status, the world's largest systematic abuser of human and worker rights will be able to use its coerced comparative advantage among the world of free-trading nations. Is that what globalization is to finally and undeniably mean?

We ask that China not be given permanent MFN status, and that instead, Congress continue to review China's trade status on an annual basis. We believe that that is perfectly legal and consistent with U.S. WTO obligations. We look forward to a response.

Sincerely,



Wei Jingsheng



Dennis J. Kucinich
Member of U.S. Congress

Christopher H. Smith
Member of U.S. Congress

Congressional Research Service • The Library of Congress • Washington, D.C. 20540-7000

July 15, 1993

TO : Hon. Tom Harkin
Attention: Jim Sweeney

FROM : American Law Division

SUBJECT : Whether Legislation Authorizing Restrictions on the Importation of Goods Produced by Child Labor Is Consistent with the GATT

This memorandum responds to your request for an analysis of whether legislation that would authorize a prohibition on imports of goods produced by any industry that is identified as employing child labor conflicts with United States obligations under the General Agreement on Tariffs and Trade (GATT). It would appear that the imposition of a ban under the statute would be inconsistent with GATT articles prohibiting quantitative restrictions on imports and requiring national and most-favored-nation treatment of imported products and that, further, it may be difficult to justify a ban under GATT exceptions. Similar problems would appear to arise with respect to legislation that would ban the importation of items produced or exported in violation of foreign law. Among possible GATT-consistent approaches to minimizing or eliminating international trade in child labor may be the use of labelling laws and, as provided in the legislation, the negotiation a multilateral agreement on the matter.

Proposed legislation. The proposed legislation, S. 613, 103d Cong., 1st Sess. (1993), would take both a multilateral and unilateral approach toward restricting trade in the products of child labor. First, the President would be urged to seek an agreement with governments that conduct trade with the United States for the purpose of securing an international ban on trade in these items [*Sec. 3*]. Second, the Executive Branch would be authorized to identify countries and industries that use child labor and, once these are identified, would be required to prohibit imports from these sources except in enumerated circumstances. Specifically, the Secretary of Labor would undertake periodic reviews to identify any foreign industry and its host country that "utilizes child labor in the export of products and 'has on a continuing basis exported products of child labor to the United States" [*Sec. 4(a)*]. Any person may also petition the Secretary to identify a particular industry and its host country [*Sec. 4(b)*]. In making identifications, the Secretary is to take into account information obtained from consultations with designated federal agencies and public comment [*Sec. 4(c)*]. The Secretary is to promptly publish, *inter alia*, the name of each foreign industry and its host country formally identified under this

provision and any previously identified foreign industry and its host country for which an identification is revoked [*Sec. 4(e)*]. The legislation specifically authorizes such revocations, provided procedural requirements are met [*Sec. 4(d)*].

With some exceptions, the legislation would require the Secretary of the Treasury, during the effective identification period, to prohibit the entry of "any manufactured article that is a product of that foreign industry" [*Sec. 5(a)(1)*].[1] The import prohibition would not apply to the entry of a manufactured article if any the following conditions are met:

> (1) the Secretary is satisfied, through documented evidence, that the importer of the article has undertaken reasonable steps to ensure, to the extent practicable, that the article is not a product of child labor;
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> (2) the product is entered under subheadings of the Harmonized Tariff Schedule of the United States relating to personal exemptions (IV or VI or ch. 98); or
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> (3) the product was exported from the foreign industry and its host country and was en route to the United States before the first day of the effective identification period for such industry and its host country [*Sec. 5(a)(2),(b)*].

Civil and criminal penalties would be imposed for attempts to enter any manufactured article subject to the prohibition during the effective identification period [*Sec. 6*].

A "manufactured article" would be deemed to be "any good that is fabricated, assembled, or processed" and includes "any mineral resources (including any mineral fuel) that is [sic] entered in a crude state." [*Sec. 8(7)*].[2] A second definition of "manufactured article" defines what is to be deemed an article that is a product of child labor. A manufactured article would be treated as such if it:

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[1] As indicated in the text, the legislation contains two definitions of "manufactured article": one focusing on the nature of the article itself and the other defining what would constitute a manufactured article produced by child labor. As the legislation would require that the importation of "any manufactured article" of an industry found to use child labor be prohibited, and the legislation does not appear to indicate which definition would apply to the prohibition, it is unclear how broad the potential import restriction is intended to be. For purposes of this analysis, however, we assume that only those items that are actually determined to have been produced by child labor would be prohibited.

[2] A mineral resource will qualify as having been processed if at the time of entry it "has been subjected to only washing, crushing, grinding, powdering, levigation, sifting, screening, or concentration by flotation, magnetic separation, or other mechanical or physical processes" [*Sec. 8(7)*].

(A) was fabricated, assembled, or processed in whole or in part;
(B) contains any part that was fabricated, assembled or processed, in whole or in part; or
(C) was mined, quarried, pumped, or otherwise extracted,

by one or more children who engaged in the fabrication, assembly, processing, or extraction --

(i) in exchange for remuneration (regardless to whom paid), subsistence, goods or services, or any combination of the foregoing'
(ii) under circumstances tantamount to involuntary servitude; or
(iii) under exposure to toxic substances or working conditions otherwise posing serious health hazards [*Sec. 8(1)*].

A child is defined as "an individual who has not attained the age of 15" [*Sec. 8(2)*]. The legislation also defines the term "foreign industry" as "any entity that produces a manufactured article in any possession or territory of a foreign country. [*Sec. 8(5)*]. "Host country" is defined as "any possession or territory of a foreign country that is administered separately for customs purposes and on which a foreign industry produces a manufactured article" [*Sec. 8(6)*].

GATT requirements. The General Agreement on Tariffs and Trade, at Article XI:1, contains a general prohibition on import restrictions, providing as follows:

> No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses, or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any products destined for the territory of any other contracting party.[3]

A prohibition on the importation of a product originating in the territory of a GATT member that might be imposed under S. 613 would ostensibly constitute a quantitative restriction on an import, and would thus be inconsistent with

[3] Exceptions are provided in Article XI:2 for import restrictions related to the marketing of commodities and import restrictions on agricultural and fisheries products necessary to enforce governmental measures that operate to restrict the sale of like domestic products, to remove temporary domestic surpluses, or to restrict the production of animal products whose production is dependent on the imported commodity if the domestic production of the latter is relatively negligible. Exceptions are also provided in Article XII for import restrictions aimed at safeguarding a Party's balance of payments, and in Article XIX for the temporary suspension of GATT obligations in the event of seriously injurious import surges that result from a Party's GATT obligations, including tariff conces These exceptions would not appear to be relevant to the proposal at hand.

United States obligations under Article XI:1.[4] In the alternative, however, it might be argued that the prohibition is an internal regulation governed by Article III:4 of the GATT.[5] If inconsistent with either of these obligations, the prohibition would apparently need to be justified under a GATT exception, as discussed below.[6]

National treatment for internal regulations. Since products of child labor may not be sold in the United States, it might be argued that, to the extent an identical definition of child labor is used for domestic and imported products, any restriction imposed under the legislation would in fact constitute an internal regulation applied equally to all products sold in this country.[7] As the relevant GATT article – Article III:4 – is concerned with national treatment of *like* products, however, the proposal in question would appear to pose problems both under that Article as well as under the general GATT most-favored-nation (MFN) obligation. Similar problems have arisen in connection

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[4] *See, e.g.*, "United States - Prohibition on Imports of Tuna and Tuna Products from Canada," GATT, 29th Supp. Basic Instruments and Selected Documents (BISD) 91, ¶ 4.4 (1983)[hereinafter cited as *U.S./Canada Tuna Case*](prohibition on entry from consumption or withdrawal from warehouse for consumption of tuna and tuna products from Canada constituted a prohibition in terms of Article XI:1).

[5] A note to Article III, the national treatment article of the GATT, provides that "any law, regulation or requirement that applies to an imported products and a like domestic product and is ... enforced in the case of the imported product at the time or point of importation, is, nevertheless to be regarded as ... a law, regulation or requirement of the kind referred to in [Article:1] ... and is accordingly subject to the provisions of Article III." GATT, Ad Art. III. Article III:1 states that Parties "recognize that ... laws, regulations, and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products ... should not be applied to imported or domestic products so as to afford protection to domestic production."

[6] *See, e.g.*, United States arguments in "United States - Restrictions on Imports of Tuna," Report of the Panel, DS21/R, 3 Sept. 1991; panel pleadings reprinted in *Inside U.S. Trade*, Sept. 6, 1991, at S-2 [hereinafter cited as *Tuna/Dolphin Report*]

[7] The United States, under § 12 of the Fair Labor Standards Act, as amended, currently prohibits producers, manufacturers or dealers from shipping or delivering for shipment in commerce "any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed." 29 U.S.C. § 212(a). The Act also prohibits employers from "employing any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce." 29 U.S.C. § 212(c). "Oppressive child labor" is generally defined as a condition of employment under which (1) any employee under the age of 16 is employed by an employer (with certain exceptions) in any occupation or (2) any employee between the ages of 16 and 18 is employed by an employer in any occupation which the Secretary of Labor finds to be "particularly hazardous for the employment of children" between those ages or "detrimental to their health or well-being." 19 U.S.C. § 203(l). In order to carry out the statutory prohibitions, the Secretary of Labor is authorized to require employers to obtain from any employee proof of age." 29 U.S.C. § 212(d). Section 12 is inapplicable, however, to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than a state, the District of Columbia, Puerto Rico, and various other enumerated territories and possessions. 29 U.S.C. § 213(f).

with proposals to restrict imports of goods made by polluting processes, where, as in the instant case, the restriction would not be based on a characteristic of the good but rather on the means by which it was produced.[8]

Article I:1 of the GATT provides that with respect to, *inter alia*, all internal taxes and regulations (to the extent they are covered under national treatment obligations set forth in Article III:2 (internal taxation) and Article III:4), any advantage granted by a contracting party to a product originating in the territory of another contracting party is to be accorded "immediately and unconditionally" to the like product originating in the territories of all other contracting parties. The national treatment article of the GATT, at Article III:4, requires GATT Parties to accord imported products "treatment no less favourable that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."

Thus, if country A enacted a statute prohibiting the sale of any foreign and domestic goods manufactured by child labor, it may nonetheless violate its national treatment obligation under Article III:4, as follows. Suppose that country A prohibited the sale of a particular product manufactured in a foreign country because child labor was use in its production, but the sale of the like domestic product, which was not a product of child labor, was not restricted. In such case, country A would be according the imported product less favorable treatment with respect to its sale than it accords the like domestic product and would thus be acting inconsistently with its Article III:4 obligation.

Because it also focuses on the treatment of like products, the unconditional MFN obligation set forth in GATT Article I:1 would also appear to pose problems with respect to trade restrictions based on the manner in which a good is produced. Under the MFN principle, if country A allows the sale of a product imported from country B, it must accord the same advantage to the like product imported from any other GATT Party. Thus, were country A to restrict the importation of that product from country C, country C may allege that it is being denied a benefit accorded the like product of country B (and other GATT Parties) and thus that it is being denied MFN treatment. Further, if country A banned the importation of the same product from all GATT Parties, thus according all Parties equal treatment, it could be argued that the ban acts as a disincentive to countries that do not use child labor, as these countries would effectively be penalized for having adopted the labor policies the legislation seeks to encourage.

A labelling law, on the other hand, would not appear to present these difficulties. For example, a law may provide that the term "not a product of child labor" or a similar phrase could be used only if certain statutory criteria were met and may penalize the use of such a phrase if actual production of the

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[8] *See generally* Kirgis, "Pollution Control in Industrial Countries: International Economic Disincentives, Policy Responses, and the GATT," 70 Mich. L. Rev. 860 (1972); J. Jackson, *The World Trading System* 208-210 (1989)[hereinafter cited as Jackson].

item did not conform to these criteria. Conformance might be determined by a certification procedure, such as that provided for in § 5(a) of S. 613, under which the Secretary must be satisfied, through documented evidence, that the importer of the article has undertaken reasonable steps to ensure, to the extent practicable, that the article is not a product of child labor. Were the law to apply no less favorably to imported products that it did to like domestic products, and to be applied on an MFN basis -- that is, equally to products from all GATT Parties -- it would appear to comport with GATT obligations.

The consistency of a labelling law with GATT requirements arose in the recent GATT *Tuna/Dolphin* proceeding, discussed below, where Mexico also challenged a provision in the Dolphin Protection Consumer Information Act[9] that makes it a violation of § 5 of the Federal Trade Commission Act -- that is, an unfair trade practice -- for any producer, importer, exporter, distributor or seller of tuna or tuna products to include on the label of that product the term "Dolphin Safe" or any other term falsely suggesting that the tuna was harvested in a manner not harmful to dolphins.[10] The statute sets forth two situations in which unsafe harvesting would occur. Disagreeing with Mexico's contention that the law discriminated against Mexico in violation of the MFN obligation in Article I:1, the panel found that the provision did not restrict the sale of tuna products, that it did not condition a government-conferred advantage relating to the sale of tuna on compliance with the labelling law, and that the law was applied on an MFN basis -- that is, to all countries whose vessels fished in the areas named in the statute.

GATT general exceptions. The general exceptions to the GATT listed in Article XX allow Parties to impose measures for enumerated policy reasons even though the measures may be inconsistent with their GATT obligations, provided the measures are "not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade."[11] GATT panels have construed exceptions narrowly, placing the burden on the party invoking it to justify doing so.[12] The exceptions do not specifically provide for measures related to child labor. The Article XX exception for measures "relating to the products of prison labor" (Art. XX(e)) would not appear to be available to justify restrictions on imports produced by individuals below the age of 15 unless those individuals were so incarcerated.

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[9] Pub. L. No. 101-627, § 901(d).

[10] *Tuna/Dolphin Report, supra* note 6, ¶¶ 5.41-5.44.

[11] *See generally* Jackson, supra note 3, at 206-208 (1989).

[12] "Canada - Administration of the Foreign Investment Review Act," GATT, 30th Supp. BISD 140 (1984) [hereinafter cited as *Canada FIRA Case*]; "United States - Section 337 of the Tariff Act of 1930," GATT, 36th Supp. BISD 345, ¶ 5.27 (1990); "EEC - Regulation on Imports of Parts and Components," GATT, 37th Supp. BISD 132, ¶ 5.14-5.18 (1991)[hereinafter *EEC Parts Case*].

While Article XX(b) allows for measures "necessary to protect human ... life or health," a recent GATT panel report indicated that this provision was intended to allow a Party to impose measures necessary to protect life or health within the territory of the Party imposing the measure and would not justify a measure that sought to protect life or health extraterritorially. In the so-called *Tuna/Dolphin* report, a GATT panel determined that the United States had acted inconsistently with its GATT obligations in imposing an embargo on tuna from Mexico that was not harvested in accordance with Marine Mammal Protection Act (MMPA) requirements regarding the incidental taking of dolphin.[13] The panel reasoned that an import restriction on a product that was not produced according to methods prescribed by the importing country, where these methods were unrelated to a characteristic of the product, in effect prescribed an extraterritorial environmental standard – that is, it prescribed a rule of conduct for actors and activities outside the territory of the prescribing country, here the United States.

First, the panel determined that the import restriction in the MMPA could not be characterized as a mechanism to enforce an internal regulation applied equally to the sale of domestic and imported tuna, as might ordinarily be allowed under Article III. The contested measure was found to govern the harvesting of tuna as it affected the taking of dolphin and thus did not concern itself with the inherent characteristics of tuna (*e.g.*, color or weight). As such, it did not regulate the sale of tuna as a product and thus did not qualify as an internal regulation for purposes of that Article.

Further, the MMPA restriction could not be justified under GATT exceptions for necessary health and safety measures (Article XX(b)) or measures related to the conservation of exhaustible natural resources (Article XX(g)). While these exceptions recognize the legitimacy of national health and safety and conservation objectives, they do not, in the panel's view, go so far as to allow a Party to apply standards furthering those objectives "extrajurisdictionally." As the panel generally observed, a GATT Party "may not restrict imports of a product merely because it originates in a country with environmental policies different from its own."[14] While the panel report has not

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[13] *Tuna/Dolphin Report, supra* note 6; *see generally id.* at Part 5, "Findings." Since the issuance of the report, the Parties have chosen to resolve their dispute without further recourse to GATT proceedings. *See* 57 Fed. Reg. 33549 (Aug. 25, 1992).

[14] In its concluding remarks the GATT panel summarized the scope of permissible activity *vis a vis* a Party's GATT obligations as follows:

> ... [T]he provisions of the General Agreement impose few constraints on a contracting party's implementation of domestic environmental policies. ... [U]nder these provisions , a contracting party is free to tax or regulate imported products and like domestic products as long as its taxes of regulations do not discriminate against imported products or afford protection to domestic producers, and a contracting party is also free to tax or regulate domestic production for environmental purposes. As a corollary to these rights, a contracting party may not restrict imports of a product merely because it originates in a country with environmental policies different from its own. *Tuna/Dolphin Report, supra* note 6, at ¶ 6.2.

not been adopted by the Contracting Parties and thus would neither bind the Parties to the dispute as to the specific measures complained of in the proceeding, nor stand as a formal statement of the Contracting Parties as a whole as to how the GATT should be interpreted, the panel's reasoning might be followed in future GATT proceedings raising similar issues.[15] A GATT panel is currently examining MMPA requirements as they apply to secondary embargo countries in light of United States GATT obligations.[16]

Article XX(d) provides an exception for measures that would otherwise be inconsistent with the GATT but that are "necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of ... [the GATT], including those relating to customs enforcement, the enforcement of monopolies ... , the protection of patents, trademarks and copyrights, and the prevention of deceptive practices." Given that the GATT does not prohibit national laws that restrict the use of child labor (indeed it does not appear to address the issue at all),[17] a statute prohibiting child labor in the United States would not be appear to be inconsistent with the GATT and thus could arguably be enforced, where necessary, by GATT-inconsistent measures (*e.g.*, a quantitative restriction on exports)..

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[15] *See generally* Jackson, *supra* note 8, at 88-91; P. Pescatore, W. Davey & A. Lowenfeld, *Handbook of GATT Dispute Settlement*, Part I at 68 and Part II at 9-10 (1992). It is generally agreed that the rule of *stare decisis*, or precedent, does not apply in international law. W. Bishop, *International Law* 39 (3d ed. 1971); *cf.* Statute of the International Court of Justice, Art. 59, 59 Stat. 1055, 1062 ("The decision of the Court has no binding force except between the parties and in respect of that particular case."). At the same time, practice under an international agreement may be considered binding if it "establishes the agreement of the parties regarding its interpretation" (Vienna Convention on the Law of Treaties, Art. 21:3(b)) and, as noted by various commentators, such agreement may develop through the dispute settlement practice and other joint action carried out under a trade agreement. *See* Jackson, *supra* note 8, at 88-90; E. McGovern, *International Trade Regulation* 5-6 (1982)[hereinafter cited as McGovern]. The United States is not a party to the Vienna Convention on the Law of Treaties, but has acknowledged the Convention to be an "authoritative guide to current treaty law and practice." *See Treaties and Other International Agreements: The Role of the United States Senate*, 98th Cong., 2d Sess. 41-43 (1984)(Comm. Print).

[16] Office of the U.S. Trade Representative, "Establishment of Dispute Settlement Panel Concerning U.S. Import Restrictions on Certain Tuna," 57 Fed Reg. 38549 (Aug. 25, 1992)(panel requested by the European Community and the Netherlands, on behalf of the Netherlands Antilles).

[17] GATT panels asked to examine whether Article XX(d) may justify a complained-of measure have, *inter alia*, noted that few areas of national laws and regulation are expressly mentioned in Article XX(d) ("United States - Imports of Certain Automotive Spring Assemblies," GATT, 30th Supp. BISD 107, ¶ 53 (1984)[hereinafter cited as *Spring Assemblies Case*]); assumed with discussion that a law or regulation was consistent with the GATT for purposes of examining whether a compliance measure fell within the exception (*EEC Parts Case*, *supra* note 12, at ¶ 5.13); assumed without discussion that a national law was consistent with the GATT (*Canada FIRA Case*, *supra* note 12, at ¶¶ 5.19-5.20)); and concluded that Article XX(d) covers only measures related to the enforcement of obligations under GATT-consistent laws or regulations, as opposed to a broader reading that would allow a Party to impose measures necessary to ensure the attainment of the *objectives* of GATT-consistent laws and regulations (*EEC Parts Case*, *supra* note 12, at ¶¶ 5.14-5.18).

At the same time, a law that authorized restrictions on imports produced by child labor may well be found to fall outside the scope of the exception, possibly posing the same problems that arose in the *Tuna/Dolphin* case, referred to above. If an actual import restriction were challenged, a GATT panel might determine that the exception did not apply because the complained-of measure was not a measure necessary to secure compliance with a GATT-consistent law or regulation, but rather was an import restriction prohibited by Article XI and thus a GATT-inconsistent law or regulation.[18] Alternatively, a panel might conclude that the import restriction was an attempt to impose a labor standard extraterritorially; that, as determined in the *Tuna/Dolphin* report with respect to Articles XX(b) and XX(g), Article XX(d) has a domestic focus; and that thus the restriction could not be justified under this exception.[19]

Prohibiting imports in violation of foreign law. If the United States law were to prohibit the importation of goods produced or exported in violation of a foreign child labor law, the law would appear to be faced with the same GATT problems discussed above -- at the outset, for example, the law would appear to constitute a quantitative restriction in violation of GATT Article XI:1. Were the United States to argue in a GATT challenge that, even if the law were inconsistent with the GATT, it could be justified as a measure necessary to protect human life or health, as allowed under Article XX(b), a panel may again find, as it did in the *Tuna Dolphin* report, that this exception may be successfully invoked only where a challenged measure is necessary to protect health and safety within the territory of the party imposing it.

It might also be argued that the measure falls within Article XX(d) as a measure necessary to secure compliance with a GATT-consistent law or regulation -- here, a foreign child labor law. For example, federal law currently provides for enforcement of this type, prohibiting the importation of wild mammals and birds taken, killed, possessed, or exported to the United States in violation of foreign law, a provision enacted as part of the Tariff Act of 1930.[20]

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[18] This would mean that any GATT-inconsistent measure used to enforce the import prohibition could not be justified under Article XX(d).

[19] If the panel did so, it would seemingly imply that a GATT panel proceeding is not the proper forum in which to obtain a ruling on international child labor policy. For example, in the *U.S./Canada Tuna Case*, *supra* note 3, at ¶ 4.15, the Panel emphasized that "its findings and conclusions were relevant only for the trade aspects of the matter under dispute and were not intended to have any bearing whatsoever on other aspects including those concerning questions of fishery jurisdiction." A similar approach was taken by the *Tuna/Dolphin* panel, which suggested that if GATT Parties were to allow trade measures of the type employed by the United States in this case, "it would be preferable for them to do so not by interpreting Article XX but amending or supplementing the provisions of the General Agreement or by waiving obligations thereunder. Such an approach would enable the Contracting Parties to impose such limits and develop such criteria." *Tuna/Dolphin Report*, *supra* note 6, at ¶ 6.3.

[20] Tariff Act of 1930, ch. 497, § 527, 19 U.S.C. § 1527. *See* H.R. Rep. No. 7, 71st Cong., 1st Sess. 181-82 (1929). While the Senate ultimately agreed to its enactment, the Senate Finance Committee had stricken the provision from the tariff bill, stating that it "[felt] that this provision partakes of the nature of an attempt to enforce the laws of foreign countries in respect of matters

This particular law, however, may be of little practical consequence in assessing the prohibition in question in light of GATT obligations: even though the United States did not appear to claim "grandfather rights" for this provision as prior legislation inconsistent with the GATT,[21] the United States has since entered into a widely-adopted multilateral agreement regarding trade in endangered plants and animals – namely, the Convention on International Trade in Endangered Species of Wild Fauna and Flora.[22] If presented with a measure that prohibited the importation of illegally produced or exported items, a GATT panel might find that Article XX(d) was not intended to enable one GATT party unilaterally to enforce the laws of another. While there does not appear to be a GATT case dealing with the precise situation posited here, at least one GATT panel has noted that Article XX(d) is directed at "measures taken by a contracting party to secure compliance with *its* national laws or regulations."[23]

Multilateral activities to restrict trade in products produced by child labor. The *Tuna/Dolphin* panel noted that its report would not affect the right of GATT Parties to address environmental concerns multilaterally, whether by harmonizing environmental standards or by considering trade-related solutions to environmental problems.[24] While the proposed legislation contains provisions for unilateral action regarding trade in goods produced by child labor, it also encourages a multilateral solution to the problem in urging the President to seek an international agreement to ban trade in these products.

A unilateral/multilateral approach to a specific trade-related problem was employed in the Omnibus Trade and Competitiveness Act of 1988 (OTCA) with respect to imposition of an import surcharge for trade adjustment assistance (TAA) programs, a measure that would ordinarily violate Article II of the GATT, requiring Parties not to impose import charges that exceed negotiated tariff rates. A Presidential waiver, however, allowed the President to refrain from imposing the fee, and, if one assumes that such a fee would be considered

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of their internal policy, and while it may not be proper to encourage any such violation, to take such drastic measures as contemplated by the House provision extends beyond the proper purpose of the bill." S. Rep. No. 37, 71st Cong., 1st Sess. 76 (1929), *reprinted in* 71 Cong. Rec. 3373, 3399 (1929).

[21] Such rights may be claimed under Article 1(b) of the GATT Protocol of Provisional Application, the agreement under which the United States and other signatories became parties to the GATT. Article 1(b) provides that Part II of the GATT, which includes Articles III and XI, is to be applied by the Parties "to the fullest extent not inconsistent with existing legislation." *See* J. Jackson & W. Davey, *International Economic Relations* 301, n. 23 (1986) for a list of laws for which the United States has claimed this exemption.

[22] *But see infra* notes 28-29 and accompanying text.

[23] *U.S. Spring Assemblies Case, supra* note 17, at ¶ 53 (emphasis added).

[24] *Tuna/Dolphin Report, supra* note 6, at ¶ 6.4.

contrary to this country's GATT obligations, to obviate a possible GATT challenge to the measure.

The OTCA directed the President to undertake negotiations to achieve changes in the GATT that would authorize imposition of a small uniform fee of no more than 0.15 % on all imports to fund domestic TAA programs, and to enter into negotiations with this country's free trade agreement partners to obtain their consent to the same.[25] Congress also authorized the imposition of a small uniform *ad valorem* fee on imports for TAA programs, requiring the President to impose the fee if no GATT agreement were reached within two years after the date of enactment, unless the President determined that the fee was not in the nation's economic interest and Congress did not subsequently disapprove of this determination in a joint resolution of disapproval considered under "fast-track" procedures and enacted into public law.[26] A GATT agreement was not reached, President Bush made a determination in 1990 against imposing the fee,[27] and no disapproval resolution was introduced.

It should also be noted that even were an international ban on trade in child labor to be negotiated and implemented, a question may remain regarding the legal interaction of the trade provisions of that agreement with parties' GATT obligations, an issue has recently arisen in connection with multilateral environmental agreements.[28] In general, if two or more countries decided by international agreement to establish a binding international definition of child labor and to ban trade in items so produced, there is little, if any, likelihood that a treaty party who was also a GATT member would complain under the GATT if another party banned the importation of its products, even though the GATT contains a prohibition on quantitative restrictions on imports. It might be argued, for example, that GATT Parties have waived their GATT rights on this matter by entering into the subsequent agreement. At the same time, those GATT members who were not parties to the child labor agreement may complain that, because they have not agreed to the international standards and restrictions in that agreement, any restriction imposed on their imports would

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[25] Pub. L. No. 100-418, § 1428(a).

[26] *Id.*

[27] Presidential Determination No. 90-34 of August 23, 1990, 55 Fed. Reg. 34889 (1990).

[28] One of the items on the agenda of the Group on Environmental Measures and International Trade, convened by the GATT Council in 1991, is an examination of trade provisions contained in multilateral agreements as they relate to GATT principles and articles. GATT, *Focus*, Oct. 1991, at 1. Multilateral environmental agreements containing trade provisions include the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Montreal Protocol on Substances That Deplete the Ozone Layer, and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

constitute an infringement of their GATT rights and would thus be a matter for GATT dispute settlement and all available remedies thereunder.[29]

As noted in the *Tuna/Dolphin* report, the GATT might be amended to permit trade-restrictive measures that advance non-trade goals or GATT parties may waiver particular GATT obligations by joint action.[30] The fact that either a unanimous or a two-thirds vote of GATT Parties is needed to approve a GATT amendment, with amendments possibly requiring national legislative approval,[31] would appear to render this a difficult option to pursue. While a two-thirds vote (which must consist of at least a majority of GATT members) is also needed to grant a waiver of GATT obligations,[32] this process appears to have been used more readily by GATT Parties.[33]

We hope that this memorandum is helpful to you and that you will call on us if you have any additional questions.

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[29] Article 34 of the Vienna Convention on the Law of Treaties provides that "[a] treaty does not create either obligations or rights for a third state without its consent." *See generally* GATT, "Trade and Environment; Factual Note by the Secretariat," L/6896, Sept. 18, 1991.

[30] *See supra* note 24.

[31] GATT Art. XXX:1 requires a unanimous vote on amendments to certain provisions of the GATT (including Articles I and II, governing MFN treatment and tariff concessions) and a two-thirds vote on amendments to other articles. *See generally* Jackson, "Changing GATT Rules" (memo dated November 7, 1991), printed as an annex to his "World Trade Rules and Environmental Policies: Congruence or Conflict?" 49 Wash. & Lee L. Rev. 1227, 1268 (1992)(hereinafter cited as Jackson Memo).

[32] GATT, Art. XXV.

[33] Jackson Memo, *supra* note 31, at 1271; McGovern, *supra* note 15, at § 1.153. A recent GATT report on trade and the environment notes, however, that "[t]he prevailing view is that waivers are to be granted only exceptionally and for a limited period of time, and that they are not a substitute for revisions of the rules." GATT Secretariat, *Trade and the Environment*, GATT/1529, at 12 (1992).