

July 31, 2008

The Honorable ROBERT C. BYRD
President Pro Tempore of the Senate, Washington, D.C. 20510

The Honorable NANCY PELOSI
Speaker of the House of Representatives, Washington, D.C. 20515

DEAR SENATOR BYRD AND SPEAKER PELOSI:

We are pleased to transmit the record of our June 19, 2008 public hearing on “*The Memorandum of Agreement Between the United States and China Regarding Prison Labor Products.*” The Floyd D. Spence National Defense Authorization Act (amended by Pub. L. No. 109-108, section 635(a)) provides the basis for this hearing, stating that the Commission shall examine “...the degree of non-compliance by the People's Republic of China with agreements between the United States and the People's Republic of China on prison labor imports... and United States enforcement policies with respect to such agreements.” The agreements in question are a 1992 Memorandum of Agreement (MOU) that prison-made products will not be exported from China to the United States, and a subsequent 1994 Statement of Cooperation (SOC) that more explicitly defines the investigation and resolution procedures for alleged cases of prison-made goods.

The hearing was organized into two panels. The first panel focused on China’s prison labor system, commonly termed the *laogai* (“reform through labor”), and on the export of Chinese prison-made products to the United States. The panel featured testimony by Mr. Harry Wu, the Executive Director of the Laogai Research Foundation and himself a former political prisoner in the *laogai* system. It also featured testimony by Mr. Gary Marck, a businessman who professes first-hand knowledge of Chinese prison-made imports entering the United States, and Mr. Daniel Ellis of the law firm of Lydy & Moan in Toledo, Ohio, who is Mr. Marck’s legal counsel.

Mr. Wu offered a harsh assessment of the efficacy of the 1992 MOU and the subsequent 1994 SOC, stating that “...these bilateral agreements have done little to uphold United States law or to promote the respect of human rights as a key element of U.S. foreign policy. Rather, they have only served to provide the PRC with diplomatic cover that it can use to defend itself in the face of criticism regarding the export of prison labor products.” He went on to describe a long history of Chinese government obstruction of the implementation of the provisions of the MOU and SOC, including denials and lengthy delays in acting on U.S. government requests to inspect alleged prison factory facilities in accordance with the stipulations of these agreements. He also discussed a June 2008 report by the Laogai Research Foundation, titled *Laogai Forced Labor Camps Listed in Dun & Bradstreet Databases*. Mr. Wu stated that the report identifies 314 different prison facilities that are linked to commercial enterprises, thereby indicating a significant economic role for many of the prisons of the *laogai* network.

Following this, Mr. Marck and Mr. Ellis offered a case study setting out their views of how Chinese prison-made products enter the United States in violation of U.S. law, and of

the ways in which this can affect American businesses. Mr. Marck, who operates a wholesaling company that markets drinkware products, is involved in ongoing litigation with a competitor whom Mr. Marck has claimed was underselling him by importing ceramic coffee mugs produced at a Chinese prison factory. Mr. Marck conducted a private investigation that he said identified the Luzhong Prison in Shandong Province as the point of origin for the mugs in question, and he further identified a company named Shandong Zibo Maolong Ceramic Factory as a “front” company for the prison’s products. Mr. Marck claimed that this unfair competition had both negatively impacted his business and forced him to spend significant time and money pursuing his investigation and litigation.

Responding to questions from the Commissioners, Mr. Marck asserted that he had received very little assistance from agencies of the U.S. government, opining that U.S. Immigration and Customs Enforcement (ICE) of the Department of Homeland Security had insufficient resources and authority inside China to assist effectively with such cases. Mr. Marck and Mr. Ellis recommended that the burden of proof be shifted to U.S. importers, requiring them to certify that their imported products were not produced by prison labor. He further recommended that companies be granted a “private right of action” to pursue alleged customs violations by their competitors. Finally, he recommended that falsifications of product origin labeling be pursued and prosecuted as violations of the Lanham Act of 1947, which prohibits trademark infringement, trademark dilution, and false advertising. The Commission will conduct further research on these and other matters related to prison labor imports – particularly the recommendation of Mr. Ellis that Congress grant a “private right of action” – in order to more fully understand the complexities of these issues prior to providing policy recommendations in its annual report later this year.


The second panel examined the state of Chinese government compliance with the provisions of the 1992 MOU and 1994 SOC, and whether any changes to those instruments might be needed. This panel featured the testimony of Mr. James Ink, Deputy Assistant Director of the Office of International Affairs, ICE. (ICE is the federal agency that has been given primary responsibility for working with Chinese officials to investigate and resolve alleged cases of prison labor goods exported to the United States, although Customs and Border Protection (CBP) would be the responsible agency for actually issuing detention orders against any manufacturers identified as being involved in such activity.) The Commission also was very interested in having a representative of the U.S. State Department speak to the diplomatic aspects of this issue. Regrettably, however, despite repeated invitations extended through both informal and formal channels, the State Department declined to send a representative to participate in the hearing.

Although he did not directly characterize it as such, both Mr. Ink’s prepared statement and his answers to Commissioners’ questions revealed that Chinese government cooperation with the United States to fulfill the requirements of the MOU and SOC pertaining to prison labor products has been very poor. The 1994 SOC stipulates that “...if the United States government, in order to resolve specific outstanding cases, requests a visit to a suspected facility, the Chinese government will, in conformity with Chinese laws and regulations and in accordance with the MOU, arrange for responsible United States diplomatic mission officials to visit the suspected facility within 60 days of the receipt of a written request.” However, Mr. Ink indicated that there are currently 13 outstanding requests by ICE officials for on-site inspections of alleged prison labor facilities, dating back to 1994. He also

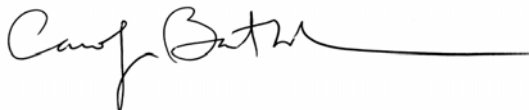
indicated that contacts between representatives of China's Ministry of Justice and ICE representatives in China have been sporadic in recent years. He stated that contacts halted in 2003 in the wake of the outbreak of Severe Acute Respiratory Syndrome (SARS), resumed from 2004 to 2006, stopped again for two years, and only resumed in June 2008. In response to Commissioners' questions, Mr. Ink also acknowledged that ICE maintains no central database of alleged prison labor product cases, but stated that local ICE offices maintain greater awareness of such issues within their geographical areas of concern. When asked directly whether he regards the prison labor MOU and SOC as effective, Mr. Ink responded that they could be if the 60-day timeframe for site inspections were actually observed, and he recommended continued diplomatic engagement as the best means to pursue progress on this issue. When asked whether or not he believes that private business interests should be granted a private right of action – as recommended by Mr. Ellis – Mr. Ink demurred, but suggested that private sector businesspeople could provide information to ICE that ICE could use to take action through government channels.

The prepared statements of the hearing witnesses can be found on the Commission's website at www.uscc.gov, and the complete hearing transcript also will be made available on the website. Members of the Commission are available to provide more detailed briefings. We hope the information from this hearing will be helpful as the Congress continues its assessment of U.S.-China relations. In its 2008 Annual Report that will be submitted to Congress in November 2008, the Commission will examine in greater depth these and the other issues enumerated in its statutory mandate.

Sincerely yours,



Larry M. Wortzel
Chairman



Carolyn Bartholomew
Vice Chairman

cc: Members of Congress and Congressional Staff