

Forced Labor in China

Wednesday, June 22, from 10:00 to 11:30 AM

Rayburn House Office Building, Room 2255

Statement of

Jeffrey L. Fiedler

The United States negotiated a Memorandum of Understanding on Prison Labor in 1992 (MOU) with the People's Republic of China during the Bush Administration. The Clinton Administration then negotiated a Statement of Cooperation in 1994 (SOC). The texts of these documents are attached.

These agreements have not stopped the illegal trade in forced labor products from China. In my view, the motives of successive U.S. administrations have been more political than aimed at stopping the illegal trade. Specifically, the first Bush Administration was seeking to defuse the issue of Laogai products within the context of the debate about continuing China's Most Favored Nation trading status. The Chinese government also shared the concern and thus agreed to negotiate an agreement when it would have otherwise ignored U.S. entreaties on the subject. It is more than a little interesting to note that the MOU and SOC fail to use the term "forced labor" but rather use "prison labor." Words are important. The result of this was to leave the impression that the Chinese Laogai is similar to the U.S. prison system, an argument that was made repeatedly during the MFN debate. Nothing, of course, could be further from the truth.

Revelations of continued forced labor product exports by the Laogai Research Foundation in the years after the MOU was signed, Chinese government stonewalling implementation of the agreement, and the fact that implementation was a "must do" condition for the renewal of MFN forced the Clinton Administration to take action. Unfortunately, the action was more cosmetic than substantive. The SOC was signed just prior to the President's decision to renew China's MFN status. The fact that they had signed the SOC was presented as evidence that the Chinese were "cooperating." This struck us as cynical at the time, and history has proven us correct.

The most fundamental, and fatal flaw in both the MOU and SOC is that U.S. efforts to use them to enforce our laws is dependent upon the willingness of the Chinese government to provide evidence incriminating themselves. No one in America would be expected to do so, and the Chinese communists who want to profit from this trade certainly will not.

The reality is that U.S. attorneys are unwilling (and to a great extent, unable) to prosecute cases against American citizens based upon evidence gathered in China. The only exception to this is when another American citizen witness is willing to come forward to provide irrefutable eyewitness evidence. The Chinese Laogai camps and trading companies simply continue to do business only being forced to go a little further underground.

Current U.S. law concerning forced labor products is directed at punishing U.S. importers who "knowingly" import these products. While this is certainly justifiable, the real goal should be to end forced labor in China. To this end, our law should be designed primarily to punish the mainland Chinese companies which engage in this illegal trade. Under current law they escape punishment almost entirely. We must create a series of significant disincentives in our law which would have the effect of forcing the Chinese government to end the illegal trade. Such laws would be compatible with WTO rules.

By no means should we change the rules of evidence for prosecuting American citizens suspected of committing a crime. These thresholds should remain high. But, when it comes to providing the Chinese the right to send their products into the United States we should apply different standards, ones which recognize the reality of how easy it is for the communist government in China to circumvent and manipulate our legal system.

Representatives of the Customs Service and State Department have repeatedly testified before Congress about the problems of obtaining Chinese compliance with the MOU and SOC. The GAO published a report in 1995 detailing specific problems. Nothing has changed in the last decade. The agreements are effectively useless.

We propose that the United States abrogate the MOU and SOC and the Congress enact new laws which would:

1. Provide the Customs Service the administrative authority, based upon solid intelligence information, to ban entire categories of products from China if it is found that forced labor products of the same type are being sent into the United States. For example, if China is found to be sending in brake rotors from a Laogai camp, Customs would have the authority to ban all brake rotor imports from China for a set period of time. We suggest that a three year ban would be an appropriate period to create a strong disincentive. This would also take care of the current problem of the Chinese mixing Laogai products with legitimately produced products as a way of hiding the former.
2. Provide the Customs Service the administrative authority, based upon solid intelligence information, to ban all imports from the Chinese state trading company which cooperates in the illegal importation of forced labor products. For example, if MinMetals is sending in the brake rotors it can no longer do any import business with the United States. We have similar laws and regulations in effect for weapons proliferators. The Chinese company known as NORINCO is currently under U.S. sanctions which prevent it from exporting products to the U.S. and ban their subsidiaries from operating here.
3. Provide the State Department and/or the U.S. Citizenship and Immigration Services the authority to revoke the business visa of any PRC national working in the United States for a company or any of its subsidiaries which has been found by the Customs Service to be involved in the illegal trade in forced labor products. The State Department should further be required to deny the visa application of any PRC national from the company sent to replace the ones required to leave the United States. This would have the net effect of banning the company from operating a business in the United States.
4. Include in the legislation a ban on U.S. companies from doing business (buying, selling or establishing joint ventures) in China with any company or its subsidiaries or parents which has been found by the U.S. Customs Service to be dealing in forced labor products.
5. The Customs Service should institute a financial reward system for anyone who reports information to it regarding the export of Laogai products to the United States. Payment of the reward would be forthcoming only after the information is corroborated by other sources. It is my expectation that business people of all nationalities would provide information concerning their competitor's illegal practices. More than the money involved, such informants would likely have to be convinced that the U.S. government is serious about ending forced labor in China rather than simply appearing to be going through the motions.

Some would object by saying we would be punishing legitimate companies in China. This is true, but the Chinese have historically used "legitimate" companies to traffic in forced labor products and, we believe it is the only way to create the incentive inside China to abide by our laws. It also is narrowly focused on those products which on a case by case basis are found to be made by forced labor.

My proposal shifts the negotiating power to the United States in dealing with this problem, and replaces an

empty diplomatic agreement with real tools of enforcement directed at the source of the illegal trade. It removes from the process dependence on the Chinese government for information implicating itself, and it provides the means to combat Chinese evasions which the United States is currently powerless to combat. It also potentially creates substantial pressure on the Chinese government to end the practice of forced labor itself, especially if the United States were to enlist other of China's trading partners in this effort.

Thank you.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE PEOPLE'S REPUBLIC OF CHINA
ON PROHIBITING IMPORT AND EXPORT TRADE
IN PRISON LABOR PRODUCTS

The Government of the United States of America and the Government of the People's Republic of China (hereinafter referred to as the Parties),

Considering that the Chinese Government has noted and respects United States laws and regulations that prohibit the import of prison labor products, has consistently paid great attention to the question of prohibition of the export of prison labor products, has explained to the United States its policy on this question, and on October 10, 1991, reiterated its regulations regarding prohibition of the export of prison labor products;

Considering that the Government of the United States has explained to the Chinese Government U.S. laws and regulations prohibiting the import of prison labor products and the policy of the United States on this issue; and

Noting that both Governments express appreciation for each other's concerns and previous efforts to resolve this issue,

Having reached the following understanding on the question of prohibiting import and export trade between the two countries that violates the relevant laws and regulations of either the United States or China concerning products produced by prison or penal labor (herein referred to as prison labor products).

The Parties agree:

1. Upon the request of one Party, and based on specific information provided by that Party, the other Party will promptly investigate companies, enterprises or units suspected of violating relevant regulations and laws, and will immediately report the results of such investigations to the other.
2. Upon the request of one Party, responsible officials or experts of relevant departments of both Parties will meet under mutually convenient circumstances to exchange information on the enforcement of relevant laws and regulations and to examine and report on compliance with relevant regulations and laws by their respective companies, enterprises, or units.
3. Upon request, each Party will furnish to the other Party available evidence and information regarding suspected violations of relevant laws and regulations in a form admissible in judicial or

administrative proceedings of the other Party. Moreover, at the request of one Party, the other Party will preserve the confidentiality of the furnished evidence, except when used in judicial or administrative proceedings.

4. In order to resolve specific outstanding cases related to the subject matter of this Memorandum of Understanding, each Party will, upon request of the other Party, promptly arrange and facilitate visits by responsible officials of the other Party's diplomatic mission to its respective companies, enterprises or units.

This Memorandum of Understanding will enter into force upon signature.

DONE at Washington, in duplicate, this seventh day of August, 1992, in the English and the Chinese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA:

STATEMENT OF COOPERATION ON THE IMPLEMENTATION
OF THE MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE PEOPLE'S REPUBLIC OF CHINA
ON PROHIBITING IMPORT AND EXPORT TRADE
IN PRISON LABOR PRODUCTS

1. Summary: The statement of cooperation on implementation of the prison labor MOU was signed at 09:00 LT in Beijing March 14, 1994. Ministry of Justice Reform Through Labor Bureau Director - General Wang Mingdi signed for the Chinese side, Econ Mincouns Szymanski signed for the U.S. side. This message contains the final text of the document as signed and a background document distributed at Secretary Christopher's press conference where the signing of the document was announced. End Summary.
2. Final text of the statement of cooperation on implementation of the prison labor MOU, signed at 09:00 LT in Beijing March 14, 1994 follows:

BEGIN TEXT

As the Chinese government acknowledges and respects United States laws concerning the prohibition of the import of prison

labor products, and the United States government recognizes and respects Chinese legal regulations concerning the prohibition of the export of prison labor products;

As China and the United States take note and appreciate the good intentions and efforts made by both sides in implementing the "Memorandum of Understanding" signed in August 1992;

The Chinese government and the United States government agree that conducting investigations of suspected exports of prison labor products destined for the United States requires cooperation between both sides in order to assure the enforcement of the relevant laws of both countries. Both sides agree that they should stipulate clear guidelines and procedures for the conduct of these investigations. Therefore, both sides agree to the establishment of specialized procedures and guidelines according to the following provisions:

First, when one side provides the other side a request, based on specific information, to conduct investigations of suspected exports of prison labor products destined for the United States, the receiving side will provide the requesting side a comprehensive investigative report within 60 days of the receipt of said written request. At the same time, the requesting side will provide a concluding evaluation of the receiving side's investigative report within 60 days of receipt of the report.

Second, 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.

Third, the United States government will submit a report indicating the results of the visit to the Chinese government within 60 days of a visit by diplomatic officials to a suspected facility.

Fourth, in cases where the U.S. government presents new or previously unknown information on suspected exports of prison labor products destined for the U.S. regarding a suspected facility that was already visited, the Chinese government will organize new investigations and notify the U.S. side. If necessary, it can also be arranged for the U.S. side to again visit that suspected facility.

Fifth, when the Chinese government organizes the investigation of a suspected facility and the U.S. side is allowed to visit the suspected facility, the U.S. side will provide related information conducive to the investigation. In order to accomplish the purpose of the visit, the Chinese side will, in accordance with its laws and regulations, provide an opportunity to consult relevant records and materials on-site and arrange visits to necessary areas of the facility. The U.S. side agrees to protect relevant proprietary information of customers of the facility consistent with the relevant terms of the prison labor MOU.

Sixth, both sides agree that arrangements for U.S. diplomats to visit suspected facilities, in principle, will proceed after the visit to a previous suspected facility is completely ended and a report indicating the results of the visit is submitted.

Both sides further agree to continue to strengthen already established effective contacts between the concerned ministries of the Chinese government and the U.S. Embassy in Beijing and to arrange meetings to discuss specific details when necessary to further the implementation of the MOU in accordance with the points noted above.

Done at Beijing, in duplicate, this Thirteenth day of March, 1 992, in the English and the Chinese languages, both texts being equally authentic.

Representative Representative of the Chinese side: Wang Mingdi

of the United States side: Christopher J. Szymanski

3. The statement of cooperation was signed, for the Chinese side by Ministry of Justice Reform Through Labor Bureau Director - General Wang Mingdi and for the U.S. side by Econ Mincouns Christopher J. Szymanski.