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International Labor Rights Forum
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Thank you, Chairmans Brown and Smith for providing me the opportunity to share some ideas for tools the U.S. Government can employ that will help bring an end to the terrible abuses facing factory workers in China and in other countries.

As was well documented in China Labor Watch's report and testimony, though sweatshops are the result of complex, modern business practices by Multi-National Enterprises (MNEs), the reasons sweatshops exists are not complicated. Sweatshops are the result of high-stakes, intense cost and production pressures placed on local companies by multi-national enterprises. Unfortunately, during peak production season, the demands of the buyer can lead directly to coercive management policies, and, in many cases, forced labor to meet production demands. For example, in the case of Mattel Electronics Dongguan and Zhongshan Coronet factories, CLW documented how workers who initially voluntarily¹ came to work for the company eventually found themselves unable to leave during the peak season without having to leave behind wages they were already legally owed. International law and U.S. law prohibit any person, including companies and MNEs, from exacting labor from any person "under the menace of a penalty" and "for which they did not offer themselves voluntarily." Faced with the prospect of losing more than a month's wages, which is often the difference between dire poverty and making ends meet, some workers will simply walk away; others grudgingly accept that they have no choice but to keep working or lose their already hard earned pay. Migrant workers are particularly vulnerable, as they also risk losing their social insurance payouts, pensions, and health insurance payouts if forced to return to their home province. For many others, the menace of management's wrath and the loss of their wages lead to total loss of hope and suicide. In all situations, while the initial decision to work making, assembling, or packaging toys for MNEs such as Mattel was voluntarily, this voluntary labor was transformed into more sinister labor during the peak season in order to meet the contractual demands established by the buyers.

With such dire consequences for workers, it is vital that the U.S. and Chinese government work closely together using all the tools at their disposal to bring an end to the root

¹ ILO Convention No. 29.

causes these labor abuses. In doing so, it is important that we remember two immutable facts that must inform any course of action.

First, unless workers can access a legally-binding remedy, they stand to lose if they raise complaints, use grievance processes, or take other actions to protect their rights. As is clearly demonstrated in China Labor Watch's report, workers are the most vulnerable person in the supply chain; they are simultaneously unable to protect themselves from management retaliation and from the economic hit caused by loss of business when companies use CSR policies incorporated into supplier contracts to rescind the contracts.

Second, Global Multi-national Enterprises and the companies that comprise them, like Mattel and Fisher-Price, exist by virtue of a grant of authority from governments and legislatures like our Congress, which endowed them with one overarching legal duty defining the very nature of the corporate "person's" character: a fiduciary duty to maximize profits on behalf of shareholders. As a result, business practices employed by companies like Mattel, such as lean production times and CSR programs, are designed primarily to achieve the singular legal duty to protect shareholders interests, even if other ancillary benefits may result from time to time. Viewed through this lens, it is no surprise that workers are treated as commodities, and high wages are viewed as a threat to MNEs everywhere².

In order to strike a new balance between the myopic, profit-maximizing nature of the corporate "person" and the human beings impacted by their business practices, the U.S. and Chinese governments have already taken an important step by endorsing the United Nations Guiding Principles on Business and Human Rights. In line with OECD Guidelines for Multi-national Enterprises, the Guiding Principles provide a mutual framework for addressing human rights violations in global supply chains that cross national borders that are based on three core principles. First, governments have a duty to protect human rights by ensuring the fulfillment of "fundamental freedoms"³, which include freedom from forced labor; Second, MNEs have a responsibility to respect human rights and *all* "applicable laws"⁴, which are, significantly, enforceable in courts; Third, victims, such as exploited migrant workers, have a right to a meaningful, "effective" remedies⁵.

² Bama Athreya and Brian Campbell. "No Access to Justice: the Failure of Ethical Labeling and Certification Systems for Worker Rights", in Workers' Rights and Labor Compliance in Global Supply Chains: Is Social Label the Answer?, ed. Jennifer Bair et al. (Routledge 2013).

³ United Nations Guiding Principles on Business and Human Rights, General Principles. Accessed December 2014: http://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_en.pdf

⁴ Ibid.

⁵ Ibid.

However, in order to implement the “respect, protect, and remedy” framework, Congress must pass necessary laws and regulations, including amending already existing legislation, to reflect these principles and ensure that effective remedies are in place for victims. And every agency of the U.S. government must take on their share of this work. This includes such agencies as the Securities and Exchange Commission, which is partly responsible for ensuring corporations fulfill their legal duties to shareholders, and the Department of Homeland Security, which ensures that companies in violation of labor laws like the prohibition against forced labor, do not profit from those crimes.

First, Congress must ensure that all companies, including companies under contract by the Department of Defense or the State Department to supply video games, toy games, and other electronics, are prevented from importing goods made with forced labor into the United States. Currently, the Tariff Act of 1930 prohibits the importation of goods made with forced labor, however most products made outside of the United States are exempt from the law because they are not also made domestically in sufficient quantities to meet consumptive demand. As a priority, Congress must remove the “consumptive demand exception,” to the Tariff Act of 1930, which is a significant hurdle to enabling the Department of Homeland Security to work with their Chinese counterparts on bringing an end to the routine use of forced labor during peak production times, as described in the China Labor Watch report. When doing so, DHS must also update its regulations and procedures to improve internal coordination between Immigration and Customs Enforcement, which investigates the crime, and Customs and Border Protection, which enforces the law at the port.

Second, Congress should pass H.R. 4842 - Business and Supply Chain Transparency Act⁶. This important piece of legislation is a vital first step towards ensuring that MNEs implement their responsibility to respect, or “do no harm”, by legally mandating companies to report on their diligence requirements, to include clear remedies for communities and populations impacted by a company’s business practices.

Third, as the largest consumer of goods in the world, the U.S. Government must enact strong protections for its own supply chains to ensure that tax dollars do not support sweatshops and, if they are found to do so, that companies provide *effective*, legally enforceable remedies to victims. Soon, the Obama Administration will be issuing new, stronger procurement regulations requiring certain companies that supply goods to U.S. government contractors to abide by compliance plans in order to prevent *as well as* remedy any abuses⁷. It is important that Congress ensure that the Obama Administration

⁶ H.R.4842 - Business Supply Chain Transparency on Trafficking and Slavery Act of 2014, Accessed December 2014: <https://www.congress.gov/bill/113th-congress/house-bill/4842/text>

⁷ Proposed Rule. 78 FR 59317 (September 23, 2013).

issue the final regulations and that when implemented, the regulations will provide our government the tools necessary to stop not only forced labor but also sweatshop conditions and other business practices often accompanying or enabling forced labor.

Fourth, Congress must ensure that the U.S. Department of State's National Contact Point for the OECD Guidelines has the mandate and the resources to fully implement the recommendations of the NCP's Stakeholders Advisory Board, which are necessary to ensure the office is providing effective mediation and other forms of dispute resolution when requested through complaints brought by victims of human rights abuses caused by business practices of U.S. Multi-national Enterprises⁸.

Finally, it is vital that Congress work closely with human rights victims, their advocates, the business community, and the President toward the administration's goal that was announced this past September to build a comprehensive National Action Plan of laws, regulations, policies, and programs that to implement the UN Guiding Principles and the OECD Guidelines.

⁸ Report of the U.S. State Department Stakeholders Advisory Board (SAB) on Implementation of the OECD Guidelines for Multinational Enterprises, February 24, 2014. Accessed December 2014: <http://www.state.gov/e/eb/adcom/aciep/rls/225959.htm>