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“The Memoranda of Understanding Between the United States and China
Regarding Prison Labor Products”

Members of the Commission and Staff, I would like to thank you for this opportunity to discuss the United States’ Relationship with the Peoples Republic of China as it relates to the Importation of Prison Labor products into the United States and the difficulties faced by law abiding Companies that comply with the laws of the United States by refusing to import products made in whole or part by forced and/or prison labor (“Prison Labor”). My comments predominately relate to Marck & Associates (“Marck”) attempt to investigate the unlawful importation of ceramic products made by Prison Labor into the United States and its efforts to stop the practice so that the competitive commercial market place is not lost. My statements reflect the experiences of Marck & Associates over the past three years in its attempt to shine light on ceramic products imported from Maolong/Luzhong related prison facilities.

Mr. Marck explained that Shandong Zibo Maolong Ceramic Factory (Maolong”) is the “front” for Luzhong Prison of Shandong Province (“Luzhong”). Luzhong is a state-owned prison facility that produces 70 million ceramic pieces per year.¹ The importation of ceramic products manufactured at a Prison Labor facility such as Luzhong offers a price advantage that cannot be met by Companies complying with the laws of the United States. The inability of the United State and legitimate companies to stop the importation of prison made goods undermines the long term stability of companies and the competitive market place in America.

In 2005, after Marck confirmed that one of its competitors was importing ceramic products produced by Prison Labor, it filed a lawsuit captioned *G.G. Marck & Associates, Inc. v. James Peng, Photo U.S.A. Corporation, North American Investments Corp., and Photo USA Electronic Graphic, Inc.*, In the United States District Court For the Northern District of Ohio, Western Division, Case No. 3:05-CV-07391. The primary competitive advantage obtained by the defendants was

¹ Laogai Handbook, 2005-2006, The Loagai Research Foundation, Washington, D.C., pg. 311.

that they obtained their ceramic products from Maolong below the price in which Marck could obtain and import a similar product from a legitimate factory. Although the Court awarded damages to Marck in excess of one and half million dollars including sanctions for defendants' willful violation of a permanent injunction related to various other unfair trade practices, it concluded Marck had not met its burden of proof that the ceramic products introduced into evidence came from Luzhong Prison.² The causal connection that the mugs introduced into evidence from Maolong where manufactured at Luzhong was frustrated by China's classification of this information as a "State Secret." Any witness brought to establish the connection would have been subject to being accused of disclosing classified information and would face criminal prosecution.

On August 9, 2006, Marck also made a formal request to the U.S. Customs and Border Protection to conduct an investigation into what it believed was the illegal importation of ceramic products manufactured at the Maolong Prison Labor facility into the United States from China for commercial use and resale in violation of 19 U.S.C. §1307. Marck is aware that U.S. Immigration and Customs Enforcement ("ICE") has requested information from the Ministry of Justice, P.R. China, on the relationship between Maolong and Luzhong Prison so that Customs can withhold the release of the prison made goods. As of the date of this hearing, it is Marck's understanding that the information has not been provided to ICE and it has not withheld the release of the ceramic products produced at the Maolong prison facility.

On April 5, 2007, Marck filed a third-party complaint with the Fair Labor Association ("FLA") alleging a code of conduct violation at the Maolong ceramic factory. Marck also asked that the FLA to initiate a certified independent factory audit to confirm the relationship between Maolong and Luzhong Prison. Marck outlined the facts supporting its contention that Maolong is the "front" for the Luzhong Prison. The FLA declined to accept Marck's complaint for review for procedural reasons unrelated to the merits of Marck's complaint because according to its charter a Category C Licensee is required to own or operate the factory. Despite the FLA concluding that at least one Category C licensee was being supplied by Maolong, it determined the complaint did not meet the requirements for initiating a Third Party Complaint.³ If Congress or American Companies are

² Maolong has one kiln in which it can produce ceramic products and defendants asserted that "all" of its mugs came from Maolong, not Luzhong Prison.

³ The FLA did inform the FLA's University Liaison, Heeral Coleman, so she could be in contact with relevant universities and colleges.

relying upon the FLA to monitor factories in China to comply with its code of conduct relating to prison labor, their trust is sadly misplaced.

Additionally, Marck requested the Workers Rights Consortium (“WRC”) to conduct an independent audit of the Maolong and Luzhong Prison to evaluate whether they are related entities. The WRC has conducted an investigation, but has not yet released its report. It is believed that the WRC has concluded that Maolong and Luzhong Prison are related entities.

As a direct consequence of Marck’s efforts to show the relationship between Maolong and the Luzhong Prison, the markings on the cartons of imported ceramic products are being falsified to obscure the factory in which the product has been manufactured. Marck has observed cartons that do not identify which factory produced the ceramic products, cartons in which the CCIB number does not match the factory labeled on the box⁴ or the use of CCIB numbers of factories no longer operating. It also appears that Trading Companies located in China are intentionally mislabeling ceramic products so that Maolong is no longer identified as the manufacturer or exporter.

Marck strongly favors increased enforcement efforts and makes the following recommendations to strengthen the United States ability to prevent the importation of prison made goods:

1. Prohibit the importation of any goods produced at a factory identified in the Laogai Handbook produced by the Laogai Research Foundation unless the importer of record comes forward with an independent certification that it is not a factory utilizing Prison Labor.
2. Require the importer of record to certify that goods were not made with Prison Labor.
3. Prohibit the importation of any goods from a factory that U.S. Customs is not permitted to inspect within 60 days of a request or that the Ministry of Justice, P.R. China, has not certified is not a “front” for a prison or related to the prison within 60 days.

⁴ The Memorandum of Understanding Between the Food and Drug Administration (“FDA”) and the Accreditation Administraton of the People’s Republic of China(“CNCA”) pertaining to the safety of ceramic Tableware Imported into the United States from China, requires a China Commodity Inspection Bureaus (“CCIB”) sticker certifying that the factory complies with the lead and cadmium levels permitted in ceramic products. The CCIB factory number is unique to each factory so that the FDA can recall the product and initiate an inspection at the factory in which the cadmium and lead levels exceed the acceptable safe levels permitted in ceramic products.

4. Grant to companies a “private right of action” to initiate and enforce custom regulations including the prohibition on the importation of goods produced with Prison Labor. Require the initiating party to notify the U.S. Immigration and Customs Enforcement Agency of the filing of the complaint and provide it with the right to take over the case within 60 days.
5. Require U.S. Custom and Immigration Enforcement to provide a governmental witness to certify that a factory is or is not related to a prison factory in any civil lawsuit.
6. After a preliminary showing that a factory utilizes Prison Labor, shift the presumption and burden of proof in any civil lawsuit to the importer to demonstrate that the factory is not related to a prison factory.
7. Require all factories to be identified on the carton and import documentation provided to Customs so that it can be checked against the Laogai Handbook or other applicable list of prison factories in China.

Domestic and foreign companies importing products into the United States through lawful means need immediate assistance to preserve the competitive market place and stay in business. American workers are competitive with foreign workers if the competitive market is not undermined by the importation of goods manufactured by Prison Labor. Swift and decisive action is required to preserve American jobs and industry.

Thank you for the opportunity to highlight some of the difficulties being faced by domestic companies in their efforts to compete in a global market place.