

TRADING IN HUMAN RIGHTS:

Australia's policy position regarding trade and investment with China's forced labour prison camp system, the *Laogai*.

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Foreword

Let people not say that they do not know about the Chinese prison camp system as being like the gulags they used to have in the Soviet Union. Let people not say that they do not know about the detention and imprisonment of people who are deprived of their human rights in China. It is there for all to see. Many Australians understandably want to do business and trade with China – an entirely reasonable idea – but it should not be done while turning a blind eye to China’s human rights abuses.¹

Michael Danby, MP

22 November 2010, House of Representatives, Parliament of Australia

China’s ‘reform through labour’ camps, the *Laogai*, may indeed be there *for all to see*, yet Australia’s trade relationship with China continues to grow unabated. China is now Australia’s top two-way trading partner with total trade of combined exports and imports amounting to 120,229 million dollars for the 2011-2012 financial year.² The importance of this bilateral relationship to Australia’s economic prosperity cannot be argued.

While the Chinese Communist Party (CCP) has legislation stating that goods produced by prisoners of the *Laogai* will not be exported, China’s compliance with their own law has proven lax. *Laogai* prison enterprises often use a separate trading name, as distinct from their prison name; making the supply chain more opaque for international trading partners who may be unaware they are doing business with a *Laogai* enterprise. Furthermore, China does not consider goods produced by the *Laojiao*, ‘re-education through labour’ camps to be covered by this law. The *Laojiao*, is classed as a form of ‘administrative detention.’ In practice, conditions are much the same as the *Laogai*, however people can be detained for up to three years without ever having undergone any form of judicial process.³ *Jiuye* constitutes yet a third level of the forced labour camp system. *Jiuye* is a system of forced job placement, often used as a means to arbitrarily extend the sentences of prisoners who have been detained in the *Laogai* and *Laojiao*.⁴ For this discussion, ‘*Laogai*’ will be used to refer to China’s forced labour camp system in its entirety.

The purpose of this paper is not to challenge the strength of the China-Australia trade relationship but rather to provide a broader human rights context within which it may continue to evolve. If Australia’s economic fortune is tied to China, so too are its international human rights obligations to ensure that ethical sourcing policies are

¹ Parliament of Australia (2010). *Record of Proceedings (Hansard)*.

² Department of Foreign Affairs and Trade, ‘China Fact Sheet,’ <http://www.dfat.gov.au/geo/fs/chin.pdf> (accessed 13 January 2013).

³ Kempton, N; Richardson, N (eds), *Laogai: The Machinery of Repression in China*, 2009, p.75-78.

⁴ *Ibid*, p. 154.

applied to Chinese imports and that Australia is not in any way complicit in human rights abuses through trade or investment.

It will be argued here that Australia is not fulfilling its obligations and responsibilities as defined by international law and must legislate to prohibit *Laogai* imports in order to do so. Ongoing negotiations on a potential free trade agreement between Australia and China must also be framed in terms of international human rights law and explicitly ban the importation of *Laogai* goods. To further protect Australia from unwittingly obliging the *Laogai* system the level of scrutiny applied by the Foreign Investment Review Board (FIRB) to foreign investment proposals from China's State Owned Enterprises (SOEs) must be increased so that the government may satisfy itself that those enterprises do not exploit people imprisoned in the *Laogai*. Evidence shows that one of the most extreme forms of exploitation taking place in the *Laogai* is through the illegal practice of harvesting the organs of prisoners, fuelled in part by the international demand for organs. To ensure that Australians do not participate in this illicit trade of the *Laogai*, the government needs to also legislate to ensure that Australians do not travel to China as transplant tourists.

While the Chinese regime has been reluctant to comply with international human rights norms which it perceives as being dominated by western values, this does not mean that Australia should not uphold its own adherence to those values. The Australian government should defend these legislative changes as being designed to ensure that Australia is complying with its *own* international commitments to human rights by not engaging with any part of the Chinese economy that is powered by the *Laogai*.

1. What is the Laogai?

*I am still haunted by what I experienced during those nineteen dark years in the Laogai...As long as there are people suffering in the Laogai, I will feel this urgency, this desperate need to expose the atrocities occurring within those prison walls, with the hope, however dim, that ultimately the Laogai system will end.*⁵

*Harry Wu, Founder of the Laogai Research Foundation
Washington*

Modelled on the Soviet gulag prison camp system, the Chinese government began developing *Laogai* camps on a large scale and using prisoners as a captive labour force following the Communist Revolution. The civil war ended with Mao Zedong's creation of the People's Republic of China (PRC) on 1 October 1949. The camps served the dual purpose of locking up dissenters of the communist regime and fuelling China's programme of industrialisation using wage-free labour. Prisoners of the camps, criminal and political prisoners alike, endured punishing conditions toiling on major state projects such as rail and other vital infrastructure. The *Laogai Research Foundation* estimate that this vast network has since grown to approximately 909 camps with between 3 and 5 million people currently imprisoned in the *Laogai*.⁶ This number comprises members of the persecuted Falun Gong, Tibetans, Uyghurs, political dissenters and others deemed to have endangered 'state security'. One of the main differences in the *Laogai* prison camps of today, as opposed to those under Mao Zedong, is that goods manufactured by the forced labour of the state, are exported internationally; one of the export destinations is Australia.

The *Laogai* system is unlike the prison systems of other states where the aim is to serve society by ensuring criminals are incarcerated following a fair judicial process. The purpose of the *Laogai* is just as much about protecting and consolidating the dictatorship of the CCP by targeting those critical of the government and branding them as 'counter-revolutionaries'.⁷ The CCP states: 'The reform through labor of counter-revolutionaries and other criminals carried out by labor reform organizations should completely integrate punishment and thought reform, serving the purposes of both production and political education.'⁸ The accounts of those who have survived the

⁵ Kempton, N; Richardson, N (eds), *Laogai: The Machinery of Repression in China*, 2009, p. 54.

⁶ *Ibid*, p. 63.

⁷ Wu, H, *Laogai – The Chinese Gulag*, 1992, p.19.

⁸ Labour Reform Regulations, Beijing, September 7, 1954, article 4, cited in Wu, H, *Laogai – The Chinese Gulag*, 1992, p. 34.

Laogai include stories of long hours of forced labour with punishments including beatings, food deprivation and other types of physical and mental torture.⁹

The Universal Declaration of Human Rights has a number of articles of which China is in breach in relation to the *Laogai*. This includes the following: Article 4, ‘No one shall be held in slavery or servitude; Article 5, ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; Article 9, ‘no one shall be subjected to arbitrary arrest, detention or exile’; Article 18, ‘everyone has the right to freedom of thought, conscience and religion.’¹⁰ Furthermore, China gave a commitment on 5 Oct 1998 that it would ratify the International Covenant on Civil and Political Rights but so far has failed to do so.¹¹ In fact, just a few months later Jiang Zemin’s government established the ‘610 Office,’ named after its date of inception on 10th of June 1999, to target Falun Gong practitioners and incarcerate them in labour camps for thought reform. Zemin perceived the Falun Gong to be an ideological threat to the regime, and resolved to ‘solve the problem of Falun Gong’ by establishing the 610 Office under direct control of the CCP leadership.¹² Rather than moving closer towards a ratification of the International Covenant on Civil and Political Rights, which in Article 8 specifically prohibits forced or compulsory labour; China continues to operate its system of *Laogai* camps in direct opposition to this.

As a proponent of International law, in 1960 Australia ratified the International Labour Organisation (ILO) Convention C105 – Abolition of Forced Labour Convention, 1957. Article 1 states that: ‘Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour.’ The article specifically refers to using forced labour as a means of political coercion, education or punishment; as a labour force for the purposes of economic development; as a means of labour discipline and as a means of racial, social, national or religious discrimination. While China is not a signatory to this Convention, Australia is, and should therefore observe Article 2, which states that: ‘Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention.’¹³

Beate Andrews, Head of the Special Action Program to Combat Forced Labour, ILO, acknowledges that the ILO Convention against forced labour is one of the least understood.¹⁴ Forced labour relates not only to bonded labour or circumstances by which people may have been victims of human trafficking and held in contemporary forms of slavery; it also applies to state imposed labour, like that which is endured by

⁹ Kempton, N; Richardson, N (eds), *Laogai: The Machinery of Repression in China*, 2009, p.85.

¹⁰ United Nations General Assembly, *The Universal Declaration of Human Rights*, 1948.

¹¹ United Nations, *International Covenant on Civil and Political Rights*, (Status of Treaties)

¹² Cook, S; Lemish, L, ‘The 610 Office: Policing the Chinese Spirit’, *China Brief Vol. 11, No. 17, Sept 16, 2011*

¹³ International Labour Organization, C105 – Abolition of Forced Labour Convention, 1957

¹⁴ Walter, M, ‘Trade Agreements and Human Rights’, Panel Discussion, 12 September 2012, Palais de Nation, Geneva

detainees of the *Laogai* where people are forced to labour for both the economic development of the state and for the purposes of reform and political education.

Both the Australian state of Victoria and the Australian Capital Territory (ACT) has a Human Rights Charter. The Victorian Charter recognises the principles of ‘freedom from forced work;’ ‘right to liberty’ and ‘humane treatment when deprived of liberty.’¹⁵ The ACT Human Rights Charter is similar and the preamble notes that: ‘Setting out these human rights also makes it easier for them to be taken into consideration in the development and interpretation of legislation.’¹⁶ It is incumbent upon the Australian government, as per its international human rights obligations, in particular as a signatory to the ILO convention, to observe these human rights standards, as recognised in both the Victorian and the ACT Human Rights Charters. So as not to indirectly ‘make use of’ China’s forced labour and in order to take ‘effective measures’ towards securing the abolition of forced labour in China, the Australian government would need to introduce legislation prohibiting the importation of goods made by the forced labour of China’s *Laogai* system.

¹⁵ Parliament of Victoria, *Charter of Human Rights and Responsibilities Act 2006*, Act no. 43/2006

¹⁶ ACT Parliamentary Counsel, *Human Rights Act 2004*, A2004-5

2. Importation Laws

*If we accept the import of goods produced by political prisoners we then become accomplices, at least morally, to these crimes which we ought to be helping to eradicate.*¹⁷

*Fiorello Provera, Member of the European Parliament
23 September 2010, Strasbourg*

The use of intermediary companies to act as broker on behalf of *Laogai* enterprises makes identifying goods produced in the *Laogai* difficult, but not impossible. The *Laogai Research Foundation* has produced a report showing the extent to which internet sites act as middlemen on behalf of *Laogai* businesses.¹⁸ Since the report was produced, many of these sites have been removed. However, an enterprise trading as *Shanghai Bingluo Electric Machine Equipment Company* is featured on the world's leading e-commerce company, China's alibaba.com site.¹⁹ Alibaba.com boasted an estimated membership of 550,000 Australians as at June 2011 with membership growing at a rate of 20,000 per month. In the first quarter of 2011, suppliers based in China accounted for over 70% of Australian buyer enquiries.²⁰

Shanghai Bingluo Electric Machine Equipment Company records its registered address as: 'No. 2 Workshop, (Laogai Big Team) Tianshengzhuang, Qingsong Highway, Qingpu District, Shanghai'. Indeed, Qingsong Highway, Qingpu is home to Qingpu Prison (trading as Qingpu Farm); as well as Shanghai New Criminals Prison (trading name unconfirmed).²¹ The listing for this *Laogai* business on alibaba.com is attributed with 5 years gold supplier status so Australian importers and those in other countries can engage in transactions confident in the knowledge that the enterprise has undergone an 'authentication and verification process by a reputable third-party security service provider appointed by Alibaba.com'.²² There are dozens if not hundreds of other *Laogai* businesses taking advantage of e-commerce platforms such as Alibaba.com that are far more discreet than this example and are able to deal directly with Australian businesses, and individuals, unimpeded by any legislative restrictions prohibiting the importation of goods produced in the *Laogai*.

¹⁷ European Parliament, *Import of Laogai-made goods into the EU (debate)*, 23 September – Strasbourg.

¹⁸ Laogai Research Foundation, 'Not for Sale: Advertising Forced Labor Products for Illegal Export,' *Report on Laogai Enterprise Advertisements and Listings in English – February 2010*

¹⁹ Business Listing: http://lqt.en.alibaba.com/company_profile.html?domain_name=lqt.en.alibaba.com (accessed 13 January 2013)

²⁰ C. Jared-Perrin, 'Alibaba.com a hit in Australia', *International Business Times*, 1 June 2011 <http://au.ibtimes.com/articles/155429/20110601/australia-alibaba-com-china-cebit.htm>

²¹ Laogai Research Foundation, *Laogai Handbook 2007-2008*, p. 410-412.

²² Alibaba.com, *Gold Supplier*, <<http://static.alibaba.com/hermes/goldsuppliers.html>> (accessed 13 January 2013)

The World Trade Organisation (WTO) through Article XX (e) of the General Agreement on Tariffs and Trade (GATT 1994) makes provision for countries to impose trade restrictions against products of prison labour. This is designed to allow countries to protect themselves against an unfair competitive advantage from countries utilising prison labour to keep their costs of production down.²³ Australia may therefore also cite economic aims as a reason to introduce legislation. The United States has the Tariff Act of 1930, section 307 which prohibits prison labour imports. In relation to China specifically, there is a Memorandum of Understanding between the two countries on the prohibition of import and export trade in prison labour products signed in 1992 and a Statement of Co-operation on implementation signed in 1994.

In 2010, the issue of *Laogai* imports was debated extensively in the European Parliament and as at 8 August 2012 the Commission had in place an inter-service group continuing to review the EU's position. The EU acknowledges that the *Laogai* prison camp system violates provisions made in the international Covenant on Civil and Political Rights and have stated in the EU Parliament that they would not rule out an import prohibition on goods produced using forced prison labour.²⁴

Harry Wu, founder of the *Laogai Research Foundation*, was himself imprisoned for 19 years for expressing a political view during Mao's 'Hundred Flowers' campaign, when criticism of the CCP was openly sought. Wu visited Australia in 1993 and appealed to the Australian government at that time to immediately introduce a ban on the importation of goods from China's *Laogai*. In parliament, Christopher Pyne MP acknowledged that cheap prison labour has played an important part in China's surge into the world economy. He went on to say that:

Mr Wu does not support a trade boycott of China. Instead, he says that the West should not import items produced by *Laogai* blood. I am sure we all support ensuring this does not take place, and that Australia can continue to press for what will truly be a more open China. 30 Sep 1993.²⁵

Almost twenty years on and Australia has not legislated in this area. The issue was last addressed in Australia in any depth as part of a Tripartite Working Party on Labour Standards, producing a report in February 1996 called 'Report on Labour Standards in the Asia- Pacific Region'. In the report, the working party acknowledged that the circumstances of forced prison labour in China's *Laogai* were not due to poverty or lack of infrastructure but rather was: 'a direct human rights abuse and a clear violation by the State of an internationally recognised core labour standard'.²⁶ Despite this acknowledgement, the ultimate conclusion of the working party was that: 'an import ban on the products of forced prison labour would not be effective in combating the

²³ R. Wolfrum; P.T. Stoll; A.Seibert-Fohr (eds) *WTO: Technical Barriers and SPS Measures*, p. 134- 136.

²⁴ European Parliament, 'Answer to a written question – marketing of goods coming from the *laogai*', 8 August 2012.

²⁵ Parliament of Australia, *Record of Proceedings (Hansard)*, 1993

²⁶ Commonwealth of Australia. *Report on Labour Standards in the Asia Pacific Region, - Tripartite Working Party on Labour Standards, February 1996*, p. 73.

practice. It would have no noticeable effect on the level of prison production and is unlikely to place real pressure on the Chinese Government.²⁷

In short, the working party concluded that due to the difficulties of enforcement, a ban would be a symbolic gesture only, unlikely to result in genuine reform. However, a number of new facts have emerged since 1996 and it is timely that the issue be revisited. Firstly the conclusion of the working party was reached before the persecution of Falun Gong began in 1999; secondly, it was before China joined the WTO in 2001; thirdly it was before China began its 'going global' strategy, eagerly seeking resource investment opportunities with Australia; fourthly it was before the internet became an indispensable tool of business facilitating their ability to trade globally and fifthly, it was before Australia and China committed to closer relations in Customs matters with the signing of a Customs Strategic Partnership agreement in 2012. These facts do present a significantly different set of circumstances and with the Australia-China Free Trade Agreement having concluded its 18th round of negotiations it is important that the issue of China's *Laogai* exports be discussed in the context of the evolving trade relationship.

An Unfair Trade Advantage

If the Australian government is not compelled by legal or moral arguments to make legislative change to protect against potential involvement with the *Laogai*, then it may be more impressed by the economic argument. As previously mentioned, the WTO through GATT article XX (e) makes provision for countries to restrict prison-made imports in order to protect against an unfair trade advantage.

In its 2005 submission to the Department of Foreign Affairs and Trade concerning a possible China-Australia Free Trade Agreement (FTA), the Australian Manufacturing Workers Union (AMWU), outlined how China's denial of human rights allows them to exploit a comparative advantage in international trade. One of the core labour standards in the Declaration on Fundamental Principles and Rights at Work includes the elimination of all forms of forced or compulsory labour (conventions 29 and 105). It was the AMWU's view that: 'Australia should not enter trade agreements with countries that do not guarantee that parties subject to the agreement must observe the core labour standards contained in the International Labour Organisation's (ILO) Declaration on Fundamental Principles and Rights at Work'²⁸.

Put simply, if a business has no wages to pay, its products are able to be produced cheaply and thus compete 'unfairly' with those of other manufacturers. Compounding

²⁷ Commonwealth of Australia. *Report on Labour Standards in the Asia Pacific Region, - Tripartite Working Party on Labour Standards, February 1996*, p.74.

²⁸ Australian Manufacturing Workers' Union, *Submission to the Department of Foreign Affairs and Trade Concerning a Possible China-Australia Free Trade Agreement June 2005*, p.25.

this advantage is the fact that the CCP offer financial subsidies to prison enterprises for their operating expenses in addition to tax concessions.^{29 30}

As a prelude to entering into FTA negotiations with China, Australia granted China Market Economy Status (MES) in April 2005. This is something that the EU, the US and Canada have not been prepared to do owing to China's failure to live up to its WTO commitments. One of the main concerns is that of continued state interference in the market.³¹ In November 2012, the Australian government released a 'Review into Anti-Dumping Arrangements.' 'Dumping' occurs when an overseas supplier exports goods at a price below the normal value of those goods. Similarly, a 'countervailable subsidy' exists where a government is financially assisting an exporting enterprise. Where such actions are considered to have caused 'material injury' to a domestic industry, it is regarded as an unfair trade practice and the WTO allows countries to take anti-dumping and countervailing measures. The government review found that 'So long as countries such as the United States and Canada fail to recognise China as a market economy, Australia is likely to be a more attractive export destination for dumped products from of (sic) China.'³²

Australia's recognition of China as a full market economy demonstrates an enormous amount of economic goodwill which should be leveraged in support of an import ban on *Laogai* products and form part of FTA talks. *Laogai* exporting enterprises that do not have to 'bear' the cost of wages, receive tax cuts and enjoy subsidies might well be considered amongst those enterprises benefiting from countervailable subsidies. Allowing *Laogai* products access to the Australian market is not only out of step with Australia's commitment to upholding the principles of the international human rights regime and the ILO Declaration; it is to the detriment of Australia's manufacturing industry and the global system of free and fair trade.

²⁹ Kempton, N; Richardson, N (eds), *Laogai: The Machinery of Repression in China*, 2009, p. 68.

³⁰ Notice issued by Ministry of Finance and National Revenue Board Regarding Value-added Tax Collection Policy for prison enterprises and Laojiao, issued April 20, 1998. (See Appendix A for English translation courtesy of Laogai Research Foundation).

³¹ Australian Manufacturing Workers' Union, *Submission to the Department of Foreign Affairs and Trade Concerning a Possible China-Australia Free Trade Agreement June 2005*, p. 19-20.

³² Commonwealth of Australia, *Review into Anti-Dumping Arrangements, The Hon John Brumby, November 2012*, p. 30

3. Why not legislate?

As the great parliamentarian Edmund Burke said, "The only thing necessary for the triumph of evil is for good men to do nothing."

*President John F. Kennedy, 1961*³³

The absence of legislation in Australia banning *Laogai* imports cannot be said to be due to a lack of awareness. Knowledge of the *Laogai* has been made apparent at the highest levels of government in Australia. Not only have Federal MP's such as Michael Danby, who has served as Chairman of the Joint Standing Committee on Foreign Affairs, Defence and Trade and Christopher Pyne, a former minister in the Howard government, made reference to the *Laogai* in Federal Parliament but several petitions have also been presented on behalf of Falun Gong practitioners urging the government to address their unlawful detention in the *Laogai* with the Chinese regime. Five such petitions were tabled in the House of Representatives in 2012 alone, the last as recently as 26 Nov 2012.³⁴ More likely, the main impediments to the introduction of such legislation are concerns about how Australia's largest trading partner would react and the claim that a ban is impractical. These arguments will be addressed in turn.

Firstly, fears that introducing a ban would jeopardise Australia's relationship with China are simplistic. Since China began its 'Going Global' strategy, a US government report has found that: 'Australia has been the number one national destination for Chinese investment, with almost all of the investment going to the coal, gas, iron, steel and aluminum [sic] sectors,' which equates to a 38.4 billion dollar investment.³⁵ In the year 2011/2012 Australia ranked as China's 5th largest source of imports and while much of this consisted of iron ore, only Australia and Brazil produce the iron ore with an iron content in excess of 55% so sought after by China's steelmaking industry. Brazil is three times as far from China's shores than is Australia.³⁶ Australia is not an insignificant trading partner to China and as such, should reasonably be expected to defend its own agenda.

On 7 March 2007, the German parliament passed a resolution denouncing China's *Laogai* forced labour camp system, stating that although Germany had a vested interest in constructive relations with China, the government could not remain silent on the issue of the *Laogai*.³⁷ At the time, there were fears of a severe deterioration in Sino-

³³ J.F. Kennedy. *Address Before the Canadian Parliament in Ottawa, 17 May 1961.*

³⁴ Parliament of Australia (2012). *Record of Proceedings (Hansard)*

³⁵ U.S-China Economic and Security Review Commission (USCC). *An Analysis of State-owned Enterprises and State Capitalism in China*, 26 October 2011, p.87.

³⁶ Bloomberg News, 'Iron Ore Price to Rebound as China Seeks Cheaper Imports,' 23 Aug 2012

³⁷ German Bundestag Resolution 16/5146, Translation available as Appendix in *Laogai Research Foundation, Not for Sale: Advertising Forced Labor Products for Illegal Export*, Laogai Research Foundation, p. 32

German relations.³⁸ However, the United Nations Commodity Trade Statistics show that in fact, between 2005 and 2010, Germany's yearly exports to China almost tripled to a figure of \$71 billion in 2010 and China's exports to Germany were worth \$101 billion, making China the source of most German imports.³⁹ In 2011, of the EU27 countries, Germany was the EU's largest trading partner with China, accounting for 48% of total EU exports.⁴⁰ Like Australia, Germany is an important trading partner to China. The passing of this resolution in the German parliament did not result in an economic rebuke or a strain in bilateral relations.

Ethan Gutmann visited Australia in November 2012 as a member of an expert panel briefing Australian Parliamentarians on the organ harvesting of prisoners in China. During an interview on ABC Radio he made the point that it is often unrecognised the power position Australia is in *vis-a-vis* China. He believes that Australia could make a stand on the issue of organ harvesting for instance, with what he says would be: 'absolutely no consequences to the overall economic relationship.'⁴¹ Similarly, Professor Peter Bailey has said that Australia, as a smaller power can criticise China's human rights records without it having the same impact as if a great power such as the US did it.⁴² As the bi-lateral relationship evolves, Australia must be prepared to defend its own principles and beliefs and negotiate vigorously in support of its own agenda. Australia may not have the power to force China to follow international human rights law but it does have the power to ensure its own actions comply with international human rights standards and exert its influence that way.

Secondly, the argument that a ban on *Laogai* imports would be impractical and too difficult to enforce would seem to be in conflict with the spirit of the Australia-China Customs Strategic Partnership agreement, signed on 11 October 2012. The agreement has been designed to enhance co-operation on customs matters between Australia and China.⁴³ This new framework of co-operation provides an opportunity to implement a legislative ban. For instance, the schedule to the partnership agreement Action Item 3, refers to a successful trial conducted in 2010 on data exchange and determined that ongoing data exchange is technically feasible and a plan for further co-operation has been outlined to this end. Similarly, Action Item 1 outlines co-operation in identifying 'high-risk' goods in a port-to-port targeting trial. This involves: 'the exchange of information on high risk-goods including: brand name, type, standard, declared value,

³⁸ W. Reuter, 'Taking a Stand Against Forced Labor: German Parliament Condemns China's "Laogai" Camps', Spiegel Online, 14 May 2007.

³⁹ Li Fangfang; Lan Lan; Bao Chang, 'China top market for Germany', 9/9/2011, *China Daily European Weekly*.

⁴⁰ Directorate-General for External Policies – Policy Department, European Parliament, *Policy Briefing: Trade and economic relations with China 2012*.

⁴¹ E. Gutmann, *Australian Parliament Briefed on Chinese Organ Harvesting*, ABC Radio Australia, 30 November 2012.

⁴² P. Bailey, *Does China play by our rules: and how much does it matter?* Australian National University, 24 August 2009.

⁴³ Australian Customs and Border Protection Service, *Ministerial No: 106601 and Australia-China Customs Strategic Partnership agreement*, (Appendix B attached).

importer/exporter and consignor/consignee.’ This is the same type of data that would be required to successfully intercept goods produced by known *Laogai* exporters. The *Laogai Research Foundation* regularly produces a handbook which is a listing of all known *Laogai* enterprises including their address, products, and trading name where known.⁴⁴ If the two countries are able to co-operate on customs matters to identify what are described as ‘high-risk’ goods, then the same systems can be adapted to identify other types of goods.

Of concern in the new partnership agreement is Action Item 4 which outlines Customs and Border Protection’s willingness to work with China Customs to assess the feasibility of facilitating expedited clearance processes, including quick release and reduced examinations of goods from qualified Chinese Authorised Economic Operators (AEO’s). If this scheme is adopted, it could facilitate an increase in *Laogai* imports into Australia. Any legislation that reduces the transparency of goods entering Australia through expedited clearing processes ought to be accompanied by legislation ensuring that such a scheme is not made available to exporters of *Laogai* made goods which would serve to fast-track *Laogai* products into the country.

There is current legislation prohibiting the importation into Australia of diamonds from Cote D’Ivoire and conflict diamonds or blood diamonds that help fund violent rebel movements against legitimate governments. Unless rough diamonds are accompanied by a ‘Kimberley Process Certificate’ they are not permitted into Australia.⁴⁵ This demonstrates that legislating against the importation of targeted goods on human rights grounds is not without precedent and need not amount to a total boycott of a particular country’s goods.

In relation to the US experience in banning products and Australia’s position on the issue, Harry Wu had this to say:

‘I have been very disappointed with the Australian government, as with the US government. For the most part, the difficulties in enforcing the ban have to do with the lack of political will in the United States, as the law enforcement agencies in the US turn away from the law breaking behaviour in connection with importing such goods. It is not because of the ineffectiveness of the law, but that of the law implementation thereof (sic).’⁴⁶

In fact, where there has been the will, some successes have been achieved. For instance, US Customs successfully intercepted products produced by Tianjin No.2 prison (now Hexi prison), trading as Tianjin Malleable Iron Factory in 1996.⁴⁷ Goods could be identified by a distinct ‘HE’ trademark. The very same trademark which Tianjin Malleable Iron Works applied to have registered in Australia in 1989, and had approved

⁴⁴ Laogai Research Foundation. *Laogai Handbook 2007-2008*, The Laogai Research Foundation, Washington, 2008.

⁴⁵ Australian Customs and Border Protection, *Prohibited and Restricted Imports*, <http://www.customs.gov.au/site/page4369.asp#e1049> (accessed 13 January 2013)

⁴⁶ H. Wu. Email - personal correspondence dated 17 January 2013

⁴⁷ Laogai Research Foundation. *Laogai Handbook 2007-2008*, The Laogai Research Foundation, Washington, 2008, p. 461.

in 1991. The trademark was not removed from the register until 2007 due to the lack of payment on renewal fees.⁴⁸ The same type of malleable pipe fittings products that were stopped from entering the US market were clearly also intended for the Australian market.

In light of the new strategic partnership between Australia's and China's respective Customs agencies, it would be an opportune time for the two countries to develop a Memorandum of Understanding on the prohibition of import and export trade in prison labour products similar to that between China and the U.S and to discuss mechanisms for enforcement.

⁴⁸ IP Australia, Trade Mark: 503696

4.

Doing Business with China's State Owned Enterprises

'The Government, the Chinese Communist Party, and the State-owned Sector Are Aligned'

*US-China Economic and Security Review Commission Report to Congress, November 2012.*⁴⁹

The United Nations Global Compact seeks to align business operations with 10 universally accepted principles in the areas of human rights, labour, environment and anticorruption. Together with *Maplecroft*, a company that deals with global risk analysis, they have established a Human Rights and Business dilemmas forum which has examined the dilemma of working with SOEs. When the 'parent' state of an SOE has a poor record on human rights they warn that working with SOE's may expose foreign companies to higher risks of complicity in undermining human rights. Among the concerns is that SOEs are often driven by a non-commercial agenda and prioritise geo-political or strategic objectives ahead of a profit motive. SOEs are also likely to be less transparent and accountable and may in certain circumstances be subject to sovereign immunity.⁵⁰ China's SOEs operate in priority pillar industries; one of particular interest to Australia is iron and steel.⁵¹ In 2011-12, Australia exported 43,497 million dollars of iron ore and concentrates to China. As iron is the principle ingredient used in steel production, it is interesting to note that 16 out of the top 20 steel groups in China are 100 per cent owned and controlled by the Chinese government.⁵²

When considering foreign investment in Australia, SOEs and private companies alike, must pass a 'national interest' test set by the FIRB to ensure that the investment is going to have long term benefits for the nation and not expose Australia to undue risk. One of the 'test' markers requires that investment proposals be examined in light of the 'character of the investor' and whether the investor operates on a transparent commercial basis.⁵³ As outlined, SOEs by their very nature do not operate in a transparent way. Australia's Foreign Investment Policy does not include any human rights compliance conditions. This could perhaps be understood as being based on a presumption that operations on Australian territory will be subject to Australian

⁴⁹ U.S-China Economic and Security Review Commission. *2012 Report to Congress of the U.S-China Economic and Security Review Commission, November 2012*, p. 48.

⁵⁰ United Nations Global Compact and Maplecroft 'Working with SOEs', *Human Rights and Business Dilemmas*

⁵¹ U.S-China Economic and Security Review Commission (USCC). *An Analysis of State-owned Enterprises and State Capitalism in China, 26 October 2011*, p.103.

⁵² A.H.Price; C.B.Weld, 'China Deploys State Power to Dominate Global Steel industry', *Industry Today, Vol 14, Issue .1*

⁵³ Foreign Investment Review Board, *Australia's Foreign Investment Policy*, January 2012 (this version first released June 2010).

domestic law however it does not require any scrutiny of the foreign entity's operations in their country of origin. With approximately 45 of China's SOEs having invested in Australia since 2006, one is left to speculate on how much of the China based operation may be being fuelled by *Laogai* labour.⁵⁴

The United Nations 'Guiding Principles on Business and Human Rights' was submitted to the Human Rights Council in 2011. One of the key recommendations was that: 'States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts'. A further recommendation was that human rights due diligence should include consideration to the adverse impacts that a business may cause or contribute to not just through its own activities, but also those which may be directly linked to it by its business relationships.⁵⁵

If Australia is to continue doing business with China's SOEs and accept foreign investment, while ensuring that it is participating in an ethical venture, there would need to be a legislative requirement that a human rights impact assessment be undertaken before concluding contractual arrangements. A clause could be included giving assurance that no *Laogai* labour is being used in the China based operations of the SOE and no Australian exports derived from the project will be used by prisoners in forced labour camps, such as Australia iron ore being used in *Laogai* steelmaking plants. Australia has previously taken steps to enact standards in the live export trade, ensuring that Australian cattle are treated humanely once they have left Australian shores;⁵⁶ so too must the government endeavour to maintain an ethical supply chain upstream and be clear about where and how its minerals are being used. China's SOEs must be viewed as an extension of the CCP and as the CCP is responsible for the continuation of the *Laogai* forced labour camp system; particular care should be taken when dealing with them. Harry Wu has said that 'Without ... the guarantee to that particular effect, nobody or no government can be assured that the SOEs have nothing to do with *Laogai* labor.'⁵⁷

⁵⁴ KPMG and the University of Sydney China Studies Centre. *Demystifying Chinese Investment- China's outbound direct investment in Australia*, KPMG, August 2012, p. 8.

⁵⁵ United Nations, *Guiding Principle on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie to the Human Rights Council, 21 March 2011.

⁵⁶ J. Ludwig, *Gillard Government reforms live export trade*, Media Release, 21 October 2011.

⁵⁷ H. Wu, email - personal correspondence dated 17 January 2013.

Case study of Anshan Iron & Steel

It should be noted that SOEs in China are a breeding ground for future CCP leaders, and individuals move easily between the role of SOE executive and a role in government and vice versa. A perfect example is the Anshan Iron and Steel Group, China's fourth largest steel producer⁵⁸. Zhang Guangning, the current President, is also Secretary of its CPC Party Committee. From 2003 – 2010 he was Mayor of Guangzhou, Guangdong province and from 2010-2011 he was Guangzhou party chief.⁵⁹ While this system of interchange may be seen as a way of invigorating the Party, it can also act as a conduit for state intervention in the marketplace.⁶⁰

Also known as 'Ansteel' or 'Angang,' the Anshan Iron and Steel group is headquartered in Anshan, Liaoning, in North East China, bordering North Korea. Nicknamed the steel capital of China, Anshan is home to this gigantic SOE and its many subsidiaries operating under the 'Angang' brand. It has been remarked that it is hard to know where the government ends and the firm begins with the manipulation of enterprise boundaries and complex webs of affiliated subsidiaries allowing facilities to come and go from its organisational chart.⁶¹ A US government report also notes that identifying the subsidiaries of SOEs is difficult due to a lack of disclosure.⁶² The *Laogai Research Foundation* published a list of all forced labour camps listed in *Dun & Bradstreet* databases as at 19 June 2008. *Dun & Bradstreet* is an international credit rating agency and business information provider. Among the 314 listings, was 'Angang Attached Enterprise Rail Welding Processing Factory', located at the same address as Anshan Prison, a *Laogai* forced labour camp located at 102 Lingshan Road, Anshan.⁶³ The address and phone number of the camp now matches with a business continuing to trade under the name of 'Anshan Machine Tool Plant' or 'Anshan Third Machine Factory'. The business type is described as 'administrative institution.'⁶⁴ In Nov 2010, Angang reported having exported 10,000mt of heavy rails to Australia which would be used in the construction of the 83km railway from Morawa to the Karara iron ore mine in Western Australia.⁶⁵

⁵⁸ U.S-China Economic and Security Review Commission. *2012 Report to Congress of the U.S-China Economic and Security Review Commission*, November 2012, p. 60.

⁵⁹ China Vitae, 'Zhang Guangning', http://www.chinavitae.com/biography/Zhang_Guangning%7C1930 (accessed 13 January 2013)

⁶⁰ L. L.P. Gore. *China Recruits Top SOE Executives into Government: A Different Breed of Politicians? EAI Background Brief No. 661*, East Asia Institute, National University of Singapore, 30 September 2011.

⁶¹ Steinfeld, E.S. *Forging Reform in China- The Fate of State-Owned Industry*, 1998, p. 97-98.

⁶² U.S-China Economic and Security Review Commission. *2012 Report to Congress of the U.S-China Economic and Security Review Commission*, November 2012, p. 49.

⁶³ Laogai Research Foundation, *Laogai Forced Labor Camps Listed in Dun & Bradstreet Databases June 19, 2008*.

⁶⁴ Anshan Enterprise Yellow Pages, listing for 'Anshan third machine factory', <http://www.smzf.cn/anshan-gongsi15742.htm> (accessed 13 January 2013)

⁶⁵ SteelOrbis, *Angang Steel exports 10,000 mt of heavy rails to Australia*, 9 November 2010.

Australia now has a significant and direct relationship with Anshan Iron and Steel. On 8 May 2009, Australian Treasurer Wayne Swan approved an increase in Anshan Iron & Steel's (Ansteel) stake in Gindalbie Metals Ltd to 36.28 per cent. Ansteel is also a 50:50 Joint Venture partner with Gindalbie Metals in the development of the Karara Iron Ore project. Approval for this increased investment was conditional upon the facilitation of Australian involvement in greenfields ventures in Liaoning province. This was to include the development of a pellet plant in Yingkou, Liaoning to process Karara iron ore into pellets for use in steel mills as a 50:50 Joint Venture.⁶⁶ This represents a \$573 million investment by Ansteel in the Karara project and all iron products extracted from Karara are now exported directly to Liaoning.⁶⁷

Part of the massive Anshan Iron and Steel complex in the centre of Anshan city, are several company owned hospitals, at least one of which is alleged to have been involved in the illegal organ harvesting of prisoners, thought mainly to be Falun Gong practitioners. The Tiexi hospital of Anshan Iron and Steel, located at 166 Renmin Road is located within just metres of Anshan Labor Camp, at 182 Renmin Road.⁶⁸ The Epoch Times reported in April 2006 that:

A staff member of the Tiexi Hospital of Anshan Steel Company in Anshan City described how organs are used about two hours after they're received, and added, "We do about 40 or 50 transplants a year and have been doing it for more than two years. We cut it from the supplier alive."⁶⁹

Similarly, in an article taken from Falun Gong website clearwisdom.net, The Epoch Times reports a former Doctor's account of his time at the Urology department of the Tiexi Hospital of Anshan Iron and Steel. In preparation for one of his first kidney transplant operations where the recipient was an employee of Anshan Steel and the surgery was also being paid for by the company, Dr Hu Lumin described the following events:

On the morning of the scheduled surgery, an ambulance from the Tiexi Hospital of Anshan Steel Corp. waited outside the court. The prison police picked up the inmate and took him into the court. Not long after, the convict, now sentenced to death by the court, was pushed out, hands and arms bound behind his back. Before he was pushed into the prison vehicle which would take him to the execution ground, hospital anaesthetist Chen Xiaofei gave him a quick shot in his buttock through his pants. The medicine injected included two small bottles of heparin, used to prevent his blood from clotting so as to ensure the quality of the kidneys when taken out.⁷⁰

Therefore, not only does the Australian-China joint venture between Gindalbie Metals and state owned Anshan Iron and Steel result in Australia iron ore being exported to

⁶⁶ W.Swan, Press office, Media Release – Foreign Investment Decision, 8 May 2009.

⁶⁷ Gindalbie Metals Ltd, *Gindalbie: Karara and Beyond, March 2010*.

⁶⁸ Coalition to Investigate the Persecution of Falun Gong in China (CIPFG), *A List of 51 Labour Camps*.

⁶⁹ M. Silver, *Good Organs for Sale but you Have to Hurry*, The Epoch Times, 20 April 2006.

⁷⁰ Clearwisdom.net. *Grisly Revelations of Organ Transplant in China*, reprinted in The Epoch Times, 15 March 2006.

China, which may or may not be used in *Laogai* steel-making activity; but current regulations have allowed for the foreign investment of a State Owned Enterprise (SOE) without necessitating any scrutiny as to whether or not that SOE is directly engaged in exploiting prisoners of the *Laogai* either for their labour or their organs. Certainly in the case of Anshan Iron and Steel, there is enough evidence to suggest that at least one prison business has been or remains a part of its vast web of subsidiary enterprises according to *Dun and Bradstreet* and at least one of the company-owned Anshan Iron and Steel hospitals has questions to answer in regards to the allegations of organ harvesting. Legislation requiring closer scrutiny of SOE's in relation to their connection to the *Laogai* would need to be enacted in order for the government to make an informed determination on which foreign investment projects are to be approved, based on the 'character of the investor' and in order that Australia maintain the recommended 'domestic policy space' to allow it to meet its human rights obligations.

5.

Organ Harvesting and Transplant Tourism

*These camps are both arbitrary detention slave labour camps and vast live organ donor banks...Everywhere else patients wait for donors. In China, sources wait for patients. Once the patients are ready, the sources are killed.*⁷¹

David Matas, Nobel Peace Prize nominee

The detention and exploitation of detainees in the *Laogai* camps enable the lucrative trade in organ harvesting to flourish. Huang Jiefu, Chinese Deputy Minister of Health has stated that over 90% of transplanted organs are obtained from executed prisoners.⁷² The government claims that criminals sentenced to death give their consent prior to execution. However, there has been extensive research conducted and evidence to suggest that in fact, detained Falun Gong practitioners have specifically been killed for their organs. David Kilgour, a former Canadian cabinet minister and David Matas, an international human rights lawyer, first brought the issue into the mainstream with the publication of their report 'Bloody Harvest' in July of 2006.⁷³ Their extensive work details the Chinese cultural aversion to donating organs due to the belief that the body should be buried in-tact and the surge in the availability of organs since the persecution of the Falun Gong began in 1999. To this day it remains the case that torturing, killing and removing organs from Falun Gong practitioners does not even constitute a crime in China.⁷⁴ The Kilgour-Matas report led to the establishment of NGO, 'Doctors Against Forced Organ Harvesting' (DAFOH) and international demands for the Chinese regime to allow further investigation into the allegations. Their revelations led to the establishment of the Australian chapter of the Coalition to Investigate the Persecution of Falun Gong (CIPFG), with prominent members including Senator Barnaby Joyce and Labor MP Chris Bowen⁷⁵.

Despite calls for an investigation and widespread condemnation, no domestic laws were changed to prohibit Australians from travelling to China for the purposes of organ transplantation. Figures obtained from The Australia and New Zealand Dialysis and Transplant Registry (ANZDATA) show that from the year 2000 to 2011 inclusive, there were 42 *known* cases of Australians who travelled to China for kidney transplants and returned to Australia for post-operative ongoing care.⁷⁶ Figures for Australians travelling overseas for liver transplants are not retained by the Australian and New Zealand Liver Transplant Registry (ANZLTR) nor the Australian and New Zealand

⁷¹ D. Matas. 'Numbers' in *State Organs: Transplant Abuse in China*, 2012, p. 78 & 87.

⁷² *Ibid.* p. 77.

⁷³ D. Kilgour; D. Matas. *Bloody Harvest- Revised Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China*, 31 January 2007.

⁷⁴ E. Zhang, 'Organ Transplantation Issues in China' in *State Organs: Transplant Abuse in China*, 2012, p. 72-73.

⁷⁵ Falun Dafa, *Coalition to Investigate the Persecution of Falun Gong (US-Canada) is Formed*, 23 February 2007. <http://en.minghui.org/emh/articles/2007/2/23/82941p.html>

⁷⁶ ANZDATA statistics – obtained via email 16 December 2012. (see appendix).

Cardiothoracic Organ Transplant Registry (ANZCOTR) for heart and lung transplants. As these are the main 'retail' organs, it is reasonable to assume that the numbers may be similar. Given that Australia is but one country whose citizens are free to travel to China for organ transplants, the size of China's transplant tourism industry starts to become clear.

The Transplantation Society of Australia and New Zealand (TSANZ) are opposed to the transplantation of organs from executed prisoners. In a statement they say that 'in a prison environment it is impossible to ascertain whether prisoners are truly free to make independent decisions, and thus an autonomous informed consent for donation cannot be obtained.'⁷⁷ TSANZ have expressed concern that in China, the financial incentive for recovering organs from executed prisoners may become an incentive to increase the number of such organs available for transplantation. TSANZ also endorses the 2008 Declaration of Istanbul on Organ Trafficking and Transplant Tourism, which states as one of its key principles that: 'Organ trafficking and transplant tourism violate the principles of equity, justice and respect for human dignity and should be prohibited.'⁷⁸

Australian transplantation training programs no longer accept Chinese surgeons unless they sign a written contract to say that they will not perform transplants using the organs of prisoners once they return to China and an increasing number of medical journals are refusing to accept submissions from China on organ transplantation research unless the consent of the donor can be clearly established.⁷⁹ ⁸⁰ Yet despite this, government travel advisories on China do not warn Australians against unwittingly become involved in this internationally abhorred practice; Australian law remains silent on the matter of Australian citizens travelling to China for organ transplants, and Medicare continues to cover the aftercare of transplant recipients regardless of how they obtained their transplanted organ. Each of Australia's states and territories has legislation on tissue and organ procurement which explicitly prohibit trade. None of them mention international trafficking or transplant tourism.

China's claim that it will try to end its reliance on sourcing organs from executed prisoners within two years is an insufficient reason for legislative inaction.⁸¹ It is time that Australia enacts laws to *immediately* prevent its citizens from contributing to China's transplant tourism industry as part of a suite of measures to distance itself from being associated with the *Laogai* and its human rights violations.

⁷⁷ TSANZ. http://www.tsanz.com.au/downloads/organTx_executedPrisoners.pdf (accessed 13 January 2013)

⁷⁸ Declaration of Istanbul. <http://www.declarationofistanbul.org/> (accessed 13 January 2013).

⁷⁹ M.A.F. Singh. 'The Mission of Medicine' in *State Organs: Transplant Abuse in China*, 2012, p. 138

⁸⁰ G. Danovitch. 'How Should the Academic Community Respond to the Continued Use of Executed prisoners as a Source of Organs for Transplantation in China?' in *State Organs: Transplant Abuse in China*, 2012, p. 117.

⁸¹ Australia Network News, 22 November 2012. *China to stop sourcing organs from prisoners: reports.* <http://www.abc.net.au/news/2012-11-22/an-china-to-stop-sourcing-organs-from-prisoners/4387100>

Conclusion

If Australia's relationship with China is to truly evolve into one of mutual benefit and respect then the Australian government must strive to advance its own agenda and uphold its own values at every opportunity. As a country that has often boasted of its good international citizenship, Australia must live up to its international obligations in honouring its commitment to human rights and ensure that it is as far removed from involvement with the *Laogai* as possible.

With regard to banning *Laogai* imports, Australia has a duty as a signatory to the ILO convention to take effective measures that contribute to ending forced or compulsory labour. As a member of the WTO, Australia is entitled to enact such a ban in the interests of protecting domestic industry against the unfair competitive advantage that forced labour provides in the costs of production. Australia's relationship with China need not be compromised by introducing legislation banning *Laogai* imports. Diplomatically, China is in the interesting position of not being likely to admit that *Laogai* goods are being exported en masse, owing to their own laws prohibiting this practice. An Australian law that would prohibit the importation of *Laogai* goods into Australia and the inclusion of a clause to that effect in a Free Trade Agreement is therefore quite consistent with Chinese law.

In terms of implementation and enforcement of a ban, the newly signed Customs strategic partnership agreement between Australia and China ought to play a significant role. An Australia-China customs strategic advisory committee has been established 'to mutually select and approve particular activities, projects and arrangements to be carried out' and have undertaken to convene as needed, every two years as a minimum. Discussing co-operation on this issue should form part of the agenda.

Being able to achieve a greater level of transparency and scrutiny from China's SOEs is likely to be a very difficult task, but this should not dissuade the Australian government from insisting upon an assurance from the CCP that SOE's seeking to invest in Australia are not using *Laogai* labour in their domestic operations as a pre-condition for accepting their Foreign investment projects. At the very least it makes Australia's position on the issue clear and helps to mitigate the risk of being found complicit in human rights breaches.

The case for legislating against Australians travelling to China for the purposes of organ transplants is clear. The practice of removing organs from executed prisoners is at best in breach of the international standard of what constitutes 'free and informed consent' and at worst a process whereby prisoners are 'killed on demand' for their organs. This is a practice that has been condemned internationally and the absence of legislation simply supports the practice.

When Harry Wu visited the former Nazi concentration camp of Dachau in Germany, he was stunned to learn the slogan on the iron gate, 'ARBEIT MACHT FREI', translated to 'labour makes you free.' The slogan of the *Laogai* camps was 'labour makes a new

life.’⁸² As the full extent of the human rights violations in China’s *Laogai* begins to emerge it is worth reflecting on how many leaders vowed to ‘never again’ allow such atrocities to occur.

⁸² H. Wu. *I was sentenced to life in a Chinese labour camp. This is my story*. The Independent, 20 Sep 2009. <http://www.independent.co.uk/news/world/asia/i-was-sentenced-to-life-in-a-chinese-labour-camp-this-is-my-story-1790465.html>

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