

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE U.S. TRADE REPRESENTATIVE

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PUBLIC HEARING

FOR

U.S. GENERALIZED SYSTEM OF PREFERENCES (GSP)

REVIEW OF GSP ELIGIBILITY

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June 4, 2013  
9:00 a.m.

Office of the U.S. Trade Representative  
1724 F Street, N.W.  
Rooms 1 and 2  
Washington, D.C.

GSP SUBCOMMITTEE:

- MR. WILLIAM JACKSON, Deputy Assistant U.S. Trade Representative for GSP and Chair of the GSP Subcommittee
- MR. OMAR KARAWA, International Economist, Office of Agreements and Scientific Affairs, Foreign Agricultural Service, U.S. Department of Agriculture
- MS. DOREEN PAREKH, International Trade Specialist, Office of Multilateral Affairs, International Trade Administration, U.S. Department of Commerce
- MS. ANDREA CORNWELL, International Trade Specialist, Office of Intellectual Property Rights, International Trade Administration, U.S. Department of Commerce  
(select panels only)

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GSP SUBCOMMITTEE (cont.):

MR. MICHAEL O'DONOVAN, International Economist,  
Office of Trade and Labor Affairs,  
Bureau of International Labor Affairs,  
U.S. Department of Labor

MS. ANDREA CAMERON, Economic-Commercial Officer,  
Office of Multilateral Trade Affairs,  
Economic and Business Bureau,  
U.S. Department of State

MR. CHARLES DeLUCA, International Economist  
Office of Trade Policy  
U.S. Department of the Treasury

ALSO PRESENT:

MARIN WEAVER, USTR

TAMEKA COOPER, USTR

A P P E A R A N C E SBurma**Panel 1: Government**

H.E. DR. PWINT SAN, Deputy Minister  
Ministry of Commerce, Nay Pyi Taw

H.E. THAN SWE, Ambassador,  
Embassy, Washington, D.C.

MR. AUNG SO, Director,  
Ministry of Commerce, Nay Pyi Taw

DR. MAUNG MAUNG LAY, Vice President,  
Chamber of Commerce and Industries, Nay Pyi Taw

**Panel 2: Herzfeld & Rubin, P.C.**

MR. ERIC C. ROSE, Counsel,  
Herzfeld & Rubin, P.C., New York, NY

**Panel 3: International Intellectual Property Alliance**

MR. MICHAEL SCHLESINGER, Counsel,  
IIPA, Washington, D.C.

**Panel 4: Earth Rights International,  
U.S. Campaign for Burma, and the Burma Fund**

MS. JENNIFER QUIGLEY, Executive Director,  
U.S. Campaign for Burma, Washington, D.C.

MR. JONATHAN KAUFMAN, Legal Advisor Coordinator,  
Earth Rights International, Washington, D.C.

DR. SEIN WIN, Chairman,  
The Burma Fund, Rockville, MD

A P P E A R A N C E SLaos**Panel 5: Government**

H.E. SENG SOUKHATHIVONG, Ambassador,  
Embassy, Washington, D.C.

MR. THONGMOON PHONGPHAILATH, First Secretary,  
Embassy, Washington, D.C.

MR. NANTHANAKONE KEOVONGVICHITH, Third  
Secretary, Embassy, Washington, D.C.

**Panel 6: International Intellectual Property  
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MR. MICHAEL SCHLESINGER, Counsel,  
IIPA, Washington, D.C.

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P R O C E E D I N G S

(9:00 a.m.)

CHAIRMAN JACKSON: Good morning. My name is Bill Jackson. I am the Deputy Assistant United States Trade Representative for the Generalized System of Preferences and the Chair of the GSP Subcommittee of the interagency Trade Policy Staff Committee.

The purpose of today's hearing is to receive public testimony regarding the eligibility of the Union of Burma and the Lao People's Democratic Republic for GSP trade benefits. This hearing was announced in a *Federal Register* notice published on April 16, 2013.

All public submissions for this hearing are available for public review on [www.regulations.gov](http://www.regulations.gov) under the country-specific docket number listed in the *Federal Register* notice. A written transcript of this hearing will be posted in the same location on [regulations.gov](http://regulations.gov) approximately 7 to 10 business days after the hearing.

As indicated in the *Federal Register*

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1 notice, post-hearing briefs and statements must be  
2 submitted electronically to that same website by  
3 5:00 p.m., on Tuesday, June 25th, in the appropriate  
4 country-specific docket.

5           The post-hearing brief or submissions  
6 provide an opportunity for witnesses to expand on  
7 their testimony or respond to testimony by others.  
8 Parties appearing at today's hearing may also  
9 receive additional post-hearing questions from  
10 myself and my colleagues on the Subcommittee in  
11 about a week or so. Your responses to these  
12 questions, which will also be posted on  
13 [regulations.gov](https://www.regulations.gov), should be included in your  
14 post-hearing brief.

15           This hearing is open to the press. Is  
16 there anyone from the press who is present today?  
17 It doesn't look so at the moment.

18           Each witness today is limited to five  
19 minutes of oral testimony, summarizing or expanding  
20 on their pre-hearing brief. Following the oral  
21 testimony, the U.S. Government panel will ask  
22 questions of the witnesses for up to 30 minutes.

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1           After the hearing, if you would like to  
2 provide a written response to a question asked by  
3 the panel or to a question for which the panel has  
4 asked for a response, please file it as part of your  
5 post-hearing statement.

6           I would now like to introduce the  
7 U.S. Government officials who are joining me on the  
8 panel today. From my far left is Mr. Omar Karawa  
9 from the U.S. Department of Agriculture, Mr. Michael  
10 O'Donovan from the U.S. Department of Labor,  
11 Mr. Charles DeLuca from the Department of the  
12 Treasury, Ms. Doreen Parekh from the Department of  
13 Commerce, and Ms. Andrea Cameron from the  
14 U.S. Department of State.

15           Some members of the panel may change during  
16 the course of the day in order to allow Agency  
17 representatives to participate who are most familiar  
18 with the issues in a particular case. There are  
19 also a number of U.S. Government officials in  
20 attendance today. In particular, I would like to  
21 acknowledge Marin Weaver and Tameka Cooper from the  
22 Office of the United States Trade Representative,

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1 who played a key role in organizing today's hearing.  
2 And I believe we also have some of our colleagues  
3 from the U.S. International Trade Commission with us  
4 today.

5           Our first witnesses this morning are a  
6 panel from the government of Burma. At this point,  
7 I would like to invite the Ambassador and his  
8 delegation to come to the witness panel. And,  
9 Mr. Ambassador, you can then introduce your  
10 colleagues and begin with your statement.

11           AMBASSADOR THAN SWE: Mr. Chairman and  
12 esteemed members of the Subcommittee, good morning  
13 and mingalabar. First of all, allow me to introduce  
14 members of my delegation. My name is Than Swe, and  
15 I am Ambassador to the United States.

16           At my right is Dr. Pwint San, our  
17 delegation leader, the Deputy Minister for Commerce.  
18 Next to him is Mr. Aung So, Director General from  
19 the Ministry of Commerce. On my left is Dr. Maung  
20 Maung Lay, Vice President of Burma Chamber of  
21 Commerce and Industries, FCCI.

22           Mr. Chairman, my delegation thanks the GSP  
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1 Subcommittee for the opportunity to provide to the  
2 Myanmar delegation to speak at this hearing. In  
3 addition to our initial submissions, allow me to  
4 summarize and add as follows.

5         In my capacity as the representative of the  
6 Republic of the Union of Myanmar, I and my  
7 delegation come before you to formally request the  
8 reinstatement of the GSP for Myanmar, which has been  
9 suspended since 1989. In light of the changes and  
10 progress being made in Myanmar and in bilateral  
11 relations between the two countries, Myanmar deems  
12 that it is timely for both countries to again have a  
13 close trade and investment opportunity and ties.

14         Within the past two years, Myanmar has made  
15 great strides with its reform process. Along the  
16 way, we have received many support and encouragement  
17 from international communities including the United  
18 States.

19         Certainly, it will take some time to reach  
20 our final goal, but our political will, government  
21 leadership, and collective efforts of all  
22 stakeholders and international community support

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1 will create an enabling environment to achieve our  
2 desired goals.

3           Although there remain some challenges, our  
4 reform is a systematic and peaceful process. I want  
5 it to be noted as a good example and a model for  
6 other transitions.

7           While the country is in transition period,  
8 poverty must be alleviated and eradicated to narrow  
9 the development gaps, to empower the people, to  
10 resolve longtime political, social, and economic  
11 issues. And a possibility to promote trade with the  
12 United States will be conducive to early achievement  
13 of those goals, especially when Myanmar is also  
14 re-establishing economic ties with other Western  
15 countries. There is no doubt for a country in  
16 transition, there are many things remain to be done  
17 to catch up with the rest of the international  
18 community. But if we work together, nothing is  
19 impossible.

20           Myanmar reform gives a variety to national  
21 reconciliation, building peace, and promoting  
22 economic development to fulfill the expectation of

1 our people.

2           Within the last two years, amnesty was  
3 granted to over 30,000 prisoners, including  
4 political prisoners, election laws are amended for  
5 all-inclusiveness, peace agreements are made with  
6 the armed troops. New laws are enacted to promote  
7 economic development and to attract the foreign  
8 investment.

9           Reviews are being made to the existing  
10 laws, rules, and regulations. Some of them are  
11 being amended, revoked, and new laws are enacted to  
12 support the reform process or to bring them in line  
13 with international standards.

14           Departures from the past are that new  
15 organizations such as the Human Rights Commission  
16 and Rule of Law Commission are established to  
17 promote and protect human rights and rule of law.  
18 Human rights dialogues are held in collaboration  
19 with the United States and Japan. The OHCHR is in  
20 process of opening the office in Myanmar.  
21 Relaxations of the media law further gives the  
22 people a voice to express their opinions and rights

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1 in Myanmar today.

2           Regarding the issues of forced labor, many  
3 developments have been taken since we started our  
4 close collaboration with the ILO. An agreement has  
5 been reached between the ILO and Myanmar to appoint  
6 an ILO liaison officer in Myanmar starting from  
7 2002. The agreement is extended up to 2014.

8           In March 2012, Myanmar and the ILO signed a  
9 memorandum of understanding on elimination of forced  
10 labor in Myanmar by 2015. As a result, the 101st  
11 Session of the ILC in 2012 lifted or suspended most  
12 of the sanctions imposed on Myanmar by the ILO  
13 between 1999 and 2000.

14           Also, domestic labor laws are also being  
15 widely reviewed. Up to date, 17 labor laws were  
16 amended, and new laws are also being enacted or in  
17 process. Since the enactment, many labor  
18 organizations are founded in the country, such as  
19 523 certificates issued to 492 labor organizations,  
20 1 labor federation, 18 organizations of employer, 11  
21 township level organizations, and 1 employer  
22 federation.

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1           The next important development is the  
2 progress of bilateral relation between the United  
3 States and Myanmar. Starting from the last two  
4 years, we began with many groundbreaking steps.  
5 Myanmar government is enacting an all-encompassing  
6 reform process. The U.S. Government demonstrates  
7 its support with historical visit of President Obama  
8 to Myanmar, and recently the Myanmar president  
9 visited the United States. At this moment, our  
10 bilateral relation reaches peak for the first time  
11 in many years.

12           Relaxing of some sanctions by the United  
13 States and signing the TIFA also paved the way for a  
14 closer economic opportunity for both countries.  
15 Those opportunity need to be followed with complete  
16 action to make them work. The GSP is one example of  
17 such action.

18           Mr. Chairman, Myanmar is relatively  
19 lucrative in the shoes market area surrounded by the  
20 three dynamic economies, China, India, and ASEAN.  
21 Myanmar is a soil-rich country with enormous  
22 economic potential. Nevertheless, due to previous

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1 self-imposed isolation and economic sanctions by  
2 some countries, 26 percent of the Myanmar people,  
3 around 15 million, live under the poverty line.

4           We must work together to feed these people  
5 to free from poverty. Moreover, about 3 million  
6 Myanmar people are also spilling over to the  
7 neighboring countries looking for jobs. If we can  
8 create labor and business in the country, we can  
9 bring these people back home. This will also be a  
10 win-win situation not only for the Myanmar, also for  
11 the foreign investor and the neighboring countries.  
12 The GSP will play an important role to make that  
13 happen.

14           In the last two years, many world leaders  
15 have come to Myanmar with this new reform process  
16 and gave tremendous support to it, such as  
17 provisions of development assistance by many  
18 countries and international financial institution.  
19 Also, relaxing of sanction by the United States and  
20 lifting of sanction by European Union. The EU will  
21 reinstate their GSP on Myanmar in the very near  
22 future.

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1 Myanmar feels it also deserves favorable  
2 reconsideration by the United States in order to  
3 create the win-win situation that I have mentioned  
4 above.

5 Thank you, Mr. Chairman. I and my  
6 delegation are happy to take questions and will  
7 respond to the best of our ability with  
8 anticipation. That submitted will be given Myanmar  
9 a careful and true consideration. And thank you.

10 CHAIRMAN JACKSON: Thank you,  
11 Mr. Ambassador. As you had mentioned in your  
12 statement, Burma had been previously eligible for  
13 GSP but was suspended from the program in 1989 on  
14 the basis of worker rights concerns. So many of the  
15 questions that we will have for you today relate to  
16 worker rights issues.

17 But given the span of time that has passed  
18 since Burma was last eligible for GSP, we will also  
19 have some questions related to other GSP eligibility  
20 considerations, including intellectual property  
21 rights.

22 So with that I'd like to turn to my

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1 colleague from the Department of Labor to ask the  
2 first question.

3 MR. O'DONOVAN: Good morning,  
4 Mr. Ambassador, and thank you for your testimony.  
5 In your written submission, you note that since the  
6 labor law went into effect in, excuse me, since the  
7 labor organization law went into effect in  
8 March 2012, a number of labor unions have registered  
9 through those processes. We understand  
10 approximately 540 labor unions have registered.

11 Can you describe to us, please, the process  
12 of union registration? Is registration of a  
13 qualifying union automatic, or does the registering  
14 official have some discretion in this process?

15 And also if you could mention whether the  
16 regional registration office is described in the law  
17 itself in place and operational? Thank you.

18 MR. AUNG SO: Thank you very much, for your  
19 questions, very interesting about Myanmar labor-  
20 union situations.

21 As you know, the withdrawal of the GSP  
22 preference to Myanmar is mainly because of the not

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1 in line with the international organized workers'  
2 rights. So since after that, about 2002, we are  
3 very closely related to the International Labour  
4 Organization, and we established liaison officer,  
5 and also the other year we extended our relation  
6 with the ILO by the SU [Supplementary  
7 Understanding], we are signing the SU.

8 So SU said that we are known already from  
9 the enacted labor union laws. And according to this  
10 law, any labor can form the labor association or  
11 labor union freely. That means that is freedom of  
12 association; we are implementing that.

13 And from the basics, factory level, factory  
14 level you can form the labor association or labor  
15 union, and the second step is we have the township  
16 level. And then we have the district level and the  
17 federations. So according to this step by step, we  
18 have the formation, the structure. But one  
19 important thing is labor. Who want to form a union  
20 or the associations, they have the freedom and right  
21 to form the associations. That is why the  
22 Ambassador mentioned that a lot of, more than 500

1 basic labor associations or the labor unions have  
2 already formed. Two labor federations, the highest  
3 federations already form according to our labor  
4 union laws.

5           There is a brief explanation about the  
6 freedom of association, but we will submit details.  
7 According to the law, we will submit detail in the  
8 post-hearing briefing, the formations of the labor  
9 union associations, and correct and exact number who  
10 have already formed. We will submit to you.

11           DR. MAUNG MAUNG LAY: So, in addition, we  
12 have been facing a lot of practically from Chambers  
13 of Commerce, many from far and near coming, and they  
14 were pointing out that even the ILO is quite  
15 impressed by the fact that the formations have been  
16 so dramatic. And we were being warned by some of  
17 our neighboring countries from the ASEAN that we  
18 have to be careful that, for example, in a factory  
19 like in some countries nearby with 1,000 workers,  
20 there are about 8 unions. And very unproductive,  
21 they were warning us.

22           And the workers were demanding so much and,

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1 as such, they were warning us to be careful and very  
2 unproductive. And some of the factories in the  
3 neighboring countries, they will be shifting to  
4 Myanmar, Indonesia, and other countries. And the  
5 labor unions were demanding so high with 1,000  
6 workers, with 8 labor unions, and so many demands  
7 were there. So that was we have been warned also by  
8 certain labor organizations. And, of course, the  
9 ILO is very much impressed by the way that we have  
10 done the business. Thank you, sir.

11 MR. O'DONOVAN: Thank you. And we will  
12 take you up on your offer to ask the question in  
13 post-hearing, in the public post-hearing questions  
14 with some specificity. Again, we are interested in  
15 the question of automaticity. When a union sends in  
16 its registration papers, is that registration  
17 automatic, or is there any discretion on the part of  
18 the registering official? Again, we'll send that  
19 in, in the post-hearing questions.

20 But I wonder if I could ask a follow-up, or  
21 rather the second part of that question had to do  
22 with whether the regional registration offices have

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1 been stood up, whether they have been established  
2 and whether they are operating? So before I get to  
3 the follow-up, I wonder if you could touch on that.

4 MR. AUNG SO: We have already formed the  
5 chief registrar. Under the chief registrar, there  
6 are the district, township, and the basic registrar.  
7 So any labor who want to form the labor union has to  
8 register at the registrar office.

9 MR. O'DONOVAN: And those offices have been  
10 established?

11 MR. AUNG SO: Yes.

12 MR. O'DONOVAN: And they are functioning?

13 MR. AUNG SO: Yes, functioning there.

14 MR. O'DONOVAN: Thank you. And as a  
15 follow-up to this question, despite the significant  
16 progress in the union registration, in the numbers  
17 of unions that have been able to register, the  
18 AFL-CIO, among others, has reported that many  
19 employers do not recognize these unions for purposes  
20 of collective bargaining.

21 I wonder if you could share with us how  
22 many collective bargaining agreements have been

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1 signed to date?

2 MR. AUNG SO: That collective bargaining  
3 and solve the problem? Well, many cases, we have  
4 already solved. But the detail, the exact number,  
5 we will submit at the post-hearing briefing, yes.

6 MR. O'DONOVAN: Thank you very much.

7 MS. PAREKH: Good morning. And thank you  
8 for joining us today. There have been reports of  
9 discriminatory action taken against workers as a  
10 result of forming or joining a union.

11 What is your government doing to help  
12 combat discriminatory action taken against union  
13 members and to facilitate collective bargaining?

14 DR. MAUNG MAUNG LAY: In fact, there are no  
15 restrictions or inhibitions regard pertaining to it,  
16 and the government does not take action regarding  
17 the collective bargaining. And sometimes these  
18 collective bargainings can be much more, become more  
19 aggressive, and even they tried to lock the Director  
20 General inside the room.

21 So this form of, as you understand that we  
22 have been cave dwellers for almost 49 years, and in

1 fact now the openings were such that people were  
2 demanding in the collective bargaining, and they  
3 managed to obtain what they demand, that is what we  
4 have noticed. So it is, as such, so encouraging.  
5 And that is the reason why the European Board of --  
6 European, the banking, and they wish to lend us a  
7 hand and be sort of well-wishers and development  
8 partners. The director from the European Investment  
9 Bank came, I think, with the ILO chief, so they were  
10 very impressed by the way that the government and  
11 the labor organizations are doing and following.  
12 And, of course, being under -- being a sort of a  
13 pariah state and behind the bamboo curtains, we have  
14 started to learn the sort of thing that a civilized  
15 country has to obey. So things are going, moving  
16 very impressively, and the ILO is quite very, they  
17 were impressed by it. Thank you.

18 CHAIRMAN JACKSON: Thank you for that  
19 response. If maybe I could ask members of the  
20 government delegation if you're aware of any cases  
21 in which workers had been dismissed on the basis of  
22 allegations that they were union members and if the

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1 government has followed up on those cases to  
2 investigate?

3 MR. AUNG SO: Yes. Updated information, I  
4 think there is no case of the dismissals because of  
5 all cases, nearly 100 percent of all cases of  
6 collective bargaining and win-win situation already  
7 solve peacefully. And there is no factory, the  
8 closed factory because of the labor problem. There  
9 is no factory because of the labor problem, all  
10 factory, the striking, the demonstrating, all the  
11 bargaining from the labor, so we are very peacefully  
12 solving, and they all are running conditions.

13 Some, a few cases who doesn't want to work  
14 continually, according to the histazare (ph.), the  
15 workers' fasare (ph.), the owner has to pay it, the  
16 compensate, according to the rules and regulations,  
17 according to the law, although there may be a few  
18 cases. Other detail, if you want interest, I will  
19 submit.

20 As you know, now during these days in  
21 Geneva, there is ILO, the Governing Commission, and  
22 also Myanmar delegation also attending. From the

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1 associates, you can get also the information, but  
2 also we would like to submit before June 25th, we  
3 will submit detail. If there is dismiss problem, we  
4 can submit the courses and the results.

5 DR. MAUNG MAUNG LAY: The media is quite  
6 open. And those who wish to do on the contrary is  
7 quite jittery and fearful of the media. The media  
8 is quite surprisingly quite open. So they then dare  
9 not practice this sort of thing, that to dismiss  
10 them.

11 MR. O'DONOVAN: Thank you. And just to  
12 come back to the follow-up question of the Chairman  
13 and the prior question of the Department of  
14 Commerce, we would be very interested in hearing  
15 what that process is for investigating, for example,  
16 unfair labor practices or any form of  
17 discrimination, and how many specific cases have  
18 been undertaken, including any prosecutions in the  
19 courts. Thank you.

20 MR. AUNG SO: According to my prior  
21 presentations, together, industrial peace, we have  
22 already brought tripartism, owners, laborers, and

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1 from the government side. We have already formed at  
2 the township, state level, district level, and the  
3 central level, there is a committee. So every case  
4 is dispute between the labor and the owners have  
5 reached to the township level, the settlement,  
6 district settlement committee consists of three  
7 stakeholders. So according to the problem solving  
8 mechanisms, I think there is nearly 100 percent all  
9 will be settled at that stage.

10 Above the district level and up to central  
11 level, there will be a few cases, but exactly you  
12 want to know, we will submit, because I am not  
13 specialized in that figure. I am from the Commerce.

14 MR. O'DONOVAN: I appreciate that. And  
15 thank you very much for that. I think the question  
16 had more to do with what happens when a case cannot  
17 reach the dispute settlement because a worker is  
18 fired before it ever gets to the dispute settlement  
19 process?

20 MR. AUNG SO: Oh, it is very easy; we're  
21 very transparent. The worker feels he was not  
22 illegally or equivalent according to the labor law,

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1 he must be dismissed, he can report to the township  
2 level, township level union or the township level  
3 dispute settlement committee at once after they get  
4 the information. We will handle this case  
5 immediately. He can report to the township level or  
6 the basic level union and also the dispute  
7 settlement committee.

8 MR. O'DONOVAN: Thank you for that. That  
9 helps a little bit. And maybe in our post-hearing  
10 questions, we'll ask about how many cases have you  
11 discovered and at what process those cases are right  
12 now.

13 MR. AUNG SO: Yes.

14 MR. O'DONOVAN: Thank you again.

15 MR. AUNG SO: Yes, sure.

16 MR. DeLUCA: Good morning. And, again,  
17 thank you for the testimony and your follow-up  
18 comments. The Settlement of Labour Disputes law  
19 went into effect in March 2012 to create a dispute  
20 resolution system through the creation of local and  
21 national tripartite arbitration bodies. The  
22 AFL-CIO, however, has reported that some employers

1 have been unwilling to submit to arbitration and  
2 that there are concerns of penalties against those  
3 who violate worker rights are not sufficiently  
4 deterrent.

5           We would like to know what the government  
6 is doing to ensure that employers submit to  
7 arbitration and that those who violate worker rights  
8 are subject to deterrent penalties. Thank you.

9           MR. AUNG SO: So according to the  
10 penalties, there are two cases. One case is  
11 according to the report of the workers who are not,  
12 in their mind there is not a fair charge by the  
13 dispute settlement committee, he has the right to  
14 submit their case to the high level.

15           And some, very dishonestly, they want to  
16 get more accommodations from the dispute committee.  
17 It is what we can solve according to the rules and  
18 regulations. But some cases, from the owner's side,  
19 it is unfair, and some cases from the labor side,  
20 they are unfair.

21           But we can handle all these cases  
22 peacefully in the dispute settlement rules and

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1 regulations. But some cases, workers break the  
2 rules and regulations, rules of the law, they  
3 destroy the material, they insult physically, these  
4 cases are under the, we can charge with criminal  
5 laws. But the disputes, we can solve according to  
6 the rules and regulations.

7           These rules and regulations are according  
8 to the new, the act during the 2012, very effective  
9 and very, I think, efficient laws. According to the  
10 laws, we can solve the problem peacefully.

11           MR. DeLUCA: Thank you. Could you just  
12 explain briefly what penalties or deterrent  
13 penalties exist for employers who do violate worker  
14 rights laws?

15           MR. AUNG SO: According to the new laws, if  
16 the owners violate the rules and regulations, there  
17 is the punishment, maybe according to the  
18 administrative procedure or maybe the fine or maybe  
19 the imprisonment. That is according to the law.

20           But the updated information, not to the  
21 imprisonment, only just the administrative rules and  
22 regulations, we can the warning, the last warning,

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1 or we can fine them with cash.

2 CHAIRMAN JACKSON: The government  
3 delegation had stated that your goal is to eliminate  
4 forced labor in the country by 2015. And I believe  
5 you indicated, Mr. Ambassador, in your testimony  
6 that you have a memorandum of understanding with the  
7 ILO towards that end.

8 Could you describe in a little bit more  
9 detail what your government is doing practically to  
10 achieve this goal? Is there a strategy, or are  
11 there particular actions that you are undertaking to  
12 eliminate forced labor, to implement that  
13 commitment?

14 DEPUTY MINISTER PWINT SAN: So there are a  
15 lot of measures reducing the forced labor. So  
16 according to the instruction by the government, so  
17 every region there is some forced labor, they will  
18 report to the government. Government will solve  
19 directly to that area. Nowadays very few report, so  
20 almost nothing come out for the forced labor,  
21 because even they use the government for the worker,  
22 they will pay the charges for them. So that's why

1 nowadays there is no case, almost nothing in the  
2 forced labor cases in Myanmar now.

3 MR. AUNG SO: Forced labor is cited as the  
4 reason for the suspension of the GSP in 1989. So  
5 let me point out that many developments have taken  
6 place on the issue of the forced labor in Myanmar  
7 since 1989. Myanmar is closely cooperating with the  
8 International Labour Organization for eliminating of  
9 forced labor in the country. In 2002, an agreement  
10 was reached and signed between Myanmar and ILO under  
11 Convention 29, Forced Labour Convention, to appoint  
12 an ILO liaison officer in Myanmar to eliminate  
13 forced labor.

14 This was later extended yearly,  
15 Supplementary Understanding. Under the SU,  
16 Supplementary Understanding, a complaint mechanism  
17 was established for lodging complaints of forced  
18 labor. The complaints were investigated by a  
19 committee headed by Ministry of Labour. Its members  
20 are the ILO liaison and other 11 ministries. The SU  
21 is still very active and it is extended to 2014.

22 On March 16, 2012, Myanmar and ILO signed

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1 the MOU on strategy for elimination of forced labor  
2 in Myanmar by 2015. In 2015, there will be no  
3 forced labor in Myanmar. We have already signed MOU  
4 with the ILO. Therefore, a plan of action is being  
5 implemented to meet the targeted goal by 2015 or  
6 earlier. As a result, ILO high-level mission,  
7 headed by Chairman of ILO Governing Body, paid a  
8 visit to Myanmar, in 2012. And later at the first  
9 session of the ILO conference in 2012, most of the  
10 sanctions imposed by the ILO between 1999 and 2000  
11 were lifted or suspended.

12 Now, during the Myanmar delegation also  
13 attending the ILO Convention in Geneva, they are  
14 there for the same answer, and I think they are now  
15 answering the questions in the convention, yes.

16 CHAIRMAN JACKSON: Mr. Minister, in your  
17 post-hearing follow-up, it would be helpful if you  
18 could provide an example of how that mechanism  
19 worked. It sounds like it is a very good mechanism  
20 for taking on complaints related to forced labor.  
21 But give us an example of how it was used sometime  
22 in recent years to enforce the law. That would be

1 helpful. Thank you.

2 MS. CAMERON: Good morning. We have seen  
3 reports that the military contributed to forced  
4 labor through its self-reliance policy. What steps  
5 have been taken to address the concerns raised about  
6 this policy? Please describe any military orders  
7 issued against the use of forced labor and any  
8 prosecutions of military officials who have been  
9 involved in the conscription of forced labor as well  
10 as associated penalties.

11 DEPUTY MINISTER PWINT SAN: Now, within the  
12 army, they have an internal instruction to all their  
13 regiment, several in the region, not to use the  
14 forced labor. So this is the internal instruction  
15 for the [military] purpose or other purpose. Like  
16 sometime in the past, we have some volunteer work  
17 for the development work, like the road  
18 construction, dam construction. Now they know there  
19 is no such a case using the labor by force.

20 So in that case, if we have a project, we  
21 are going to use the proper [inaudible] that is the  
22 real situation. If you need any further details, we

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1 will submit in detail at the post-hearing report.

2 DR. MAUNG MAUNG LAY: The fear by the  
3 people have disappeared. It is quite surprisingly.  
4 And they will report any cases to the media. This  
5 is surprisingly very -- we were wondering where the  
6 fear has gone. So the media is the part that  
7 always, and the people also report it if there is a  
8 -- they wish to, they don't want any sort of an  
9 infringement regarding their rights and so on, so  
10 forth. And the people have realized their rights,  
11 also. This is the beauty of it. Thank you.

12 MR. AUNG SO: From an administrative point  
13 of view, from our central government already order,  
14 issues the order up to rural level that there should  
15 not be forced labor mechanism. If that is the  
16 practice, the action will be immediately upon who  
17 violated the instructions. We have already, since  
18 about two years ago, but that mechanism is very  
19 effective. And anybody, anyone can submit a  
20 complaint according to the unfair working conditions  
21 in the forced labor. They can submit to that  
22 complaint mechanism unit. So at the rural area,

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1 even at the rural level, we have already instructed  
2 and given order not to use that kind of forced labor  
3 mechanism.

4 MR. O'DONOVAN: I have a follow-up question  
5 to that, please. You described that anyone can  
6 complain through the forced labor mechanism and that  
7 oftentimes, and I think implicit in the question,  
8 oftentimes this would have occurred in very rural  
9 areas.

10 I'm wondering what processes exist to  
11 publicize the availability of the complaints  
12 mechanism. How do people in villages know that this  
13 exists, and how do they know how to contact it?

14 MR. AUNG SO: Your question is very good  
15 question. Even villager at the rural level,  
16 villagers know the mechanisms because the ILO  
17 liaison officer, Steve Marshall, he is now living in  
18 Yangon for more than one decade. He is very  
19 effective, and the mechanism composed of the  
20 officials from the labor ministry and other relevant  
21 ministries, and even from the civil society. They  
22 form the unit and committee up to the rural level.

1 They distribute that, disseminate the information  
2 how to complain at that level, even villager or even  
3 one body who can submit complaint to that unit.  
4 They have the message and they have the information  
5 channel how to get that message.

6 So I will also submit the complaints, how  
7 many complaints they already got year by year, and  
8 how many percentage reducing the complaints from the  
9 rural area. We will submit, yes.

10 MR. O'DONOVAN: Thank you. And I think we  
11 have seen those numbers of complaints through the  
12 forced labor mechanism. What might be more useful  
13 to us, please, is if you could include what  
14 processes exist to publicize that information.  
15 Exactly how does this information get out and the  
16 villagers become informed about the process? Thank  
17 you.

18 MR. KARAWA: Good morning. And I extend my  
19 thanks for attending these hearings today. My  
20 question is regarding intellectual property rights.  
21 We understand the new foreign investments law, which  
22 is not yet in force, prohibits 100 percent foreign

1 ownership in certain sectors, including business  
2 that affects the traditional culture and customs of  
3 the national races of your country.

4 Please explain how this law will affect the  
5 abilities of creative industry, such as film, music,  
6 publishing, and software to do business in your  
7 country. Thank you.

8 DR. MAUNG MAUNG LAY: Regarding the  
9 intellectual property rights, the WIPO is conducting  
10 programs from Switzerland, and they came regularly  
11 to Myanmar to implement these. And pertaining to  
12 the new investment law, they are most open to  
13 foreign investments. That is the reason why many  
14 U.S. companies, and from far and near, and even  
15 those who have ostracized us from the West, are now  
16 flocking into Myanmar to take part in their business  
17 ventures here.

18 And now, you know, even Madeleine Albright  
19 is there in Myanmar now, currently. And they are  
20 overseeing whether we are taking the right path on  
21 our part to democracy. So these intellectual, we  
22 are the early signatories of the GATT and WTO, and

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1 we are considering signing the Madrid Protocol as  
2 well.

3           So pertaining to, reverting back to the  
4 Foreign Direct Investment Law, I think there will be  
5 no restrictions regarding the creative industries,  
6 that we are tackling all these through different  
7 sources. And frankly speaking, we do not possess a  
8 sort of an ability to do such, as we were  
9 hibernating for almost 49 years. That is the reason  
10 why that we are not in the ability to do that sort  
11 of, but the rule of law is being, together with  
12 Aung San Suu Kyi, the icon and our member of the  
13 Parliament, and we are working on implementing the  
14 rules and law, law and order in our country.

15           DEPUTY MINISTER PWINT SAN: I'd like to add  
16 some more information regarding the IPR. We noticed  
17 IPR is the one important issue for the GSP. So we  
18 are working closely with WIPO. We have some law  
19 regarding the IPR in the Myanmar copyright in 1949  
20 relating to this copyright protection, also specific  
21 law and that of the television and video law.  
22 Another law is painting and design was introduced

1 since 1939.

2           As you said, in the Foreign Investment Law,  
3 we cannot cover fully, especially for the IPR. We  
4 are drafting the specific law for the IPR, like  
5 copyright, industrial design, and another one is  
6 trademark. So at the same time we are drafting  
7 carefully like a TRIPS standard, also a central  
8 standard to be in line with these. Now already  
9 there are 10 drafts. Very soon, we are going to  
10 send our Parliament. So that is why in the near  
11 future the IPR protection in Myanmar will improve  
12 significantly. Thank you.

13           MR. KARAWA: If I may follow up, maybe you  
14 could provide more details in your post to explain  
15 how that addresses this question of 100 percent  
16 prohibition in these new laws.

17           DEPUTY MINISTER PWINT SAN: Thank you. We  
18 will include it.

19           MS. PAREKH: Could you explain or provide  
20 details with regards to if your government has a  
21 plan of action to fight the establishment of optical  
22 disc production plants intending to produce pirated



1 materials?

2 DEPUTY MINISTER PWINT SAN: For the pirate  
3 material, even we do have a very specific law.  
4 According to the existing law, we are taking action  
5 by the administrative way. So most of the key is  
6 like a video, something like this, so that's the  
7 key. We are taking action. So that's why we are  
8 trying to promote this activity. We are drafting  
9 the law to include all the things to be the  
10 international standard. Thank you.

11 MS. PAREKH: And also you mentioned that  
12 you have a close relationship with WIPO. Does your  
13 government have plans to ratify the Berne Convention  
14 or the WIPO Internet treaties?

15 DEPUTY MINISTER PWINT SAN: I think it is  
16 already signed, so we are going to approve in the  
17 report. Because this is the work of the Ministry of  
18 Science and Technology, I will confirm, and I will  
19 include in the report.

20 MR. DeLUCA: As you may know, one of the  
21 GSP eligibility criteria involves nationalization or  
22 expropriation of property owned by U.S. citizens or

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1 corporations. Are you aware of any cases or  
2 complaints in your country involving the  
3 expropriation of property owned by U.S. citizens or  
4 corporations?

5 DEPUTY MINISTER PWINT SAN: So far we don't  
6 have any information. According to our constitution  
7 and also according to our Foreign Investment Law, we  
8 have already there will be no nationalization.

9 CHAIRMAN JACKSON: Mr. Ambassador and  
10 Mr. Deputy Minister, the rest of the delegation, we  
11 appreciate, especially those who came from capital,  
12 we appreciate your coming from such a distance to  
13 participate in the hearing today. That concludes  
14 our questions for you.

15 As you know, we have already posed a number  
16 of questions for you for elaboration in your post-  
17 hearing brief, and we will be sending you an  
18 explicit list of questions for that within the next  
19 week or so. So, again, thank you very much for your  
20 participation in the hearing.

21 And as the delegation returns to their  
22 seats, I'd like to ask Mr. Eric Rose of Herzfeld and

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1 Rubin to come to the panel. And once you get  
2 settled, feel free to begin your presentation.

3 MR. ROSE: Good morning, Mr. Chairman and  
4 members of the Subcommittee. Thank you for allowing  
5 us to present our paper, as well as these comments  
6 today. And I would like to, in particular, thank  
7 Marin for all the assistance that she has given us  
8 in setting this up.

9 Before actually starting my formal  
10 comments, I have a couple of very good news frankly  
11 coming out of Myanmar. In my paper, I say that  
12 there were 10 out of 11 major groups under arms that  
13 have settled either through peace treaties or  
14 through ceasefire with the central government.

15 Over the weekend, under the leadership of  
16 Minister Aung Min, the KIO/KIA, the Kachin  
17 Independence Organization, has entered into a  
18 framework agreement for the first time with the  
19 central government. So, as of right now, all 11  
20 major groups under arms are at peace with the  
21 central government.

22 That doesn't mean that there are still not

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1 skirmishes in the outlying areas. That doesn't mean  
2 that there is a permanent peace treaty in place.  
3 But it is a tremendous achievement that for the  
4 first time there is a framework for a permanent  
5 treaty between the central government and the Kachin  
6 Independence Organization.

7           The second thing comes out of this morning  
8 frankly out of Coca-Cola, that they have just opened  
9 the first plant in Myanmar, in Burma, and they have  
10 committed over \$200 million of investment into the  
11 country. They will be opening a second plant soon.  
12 And they will be generating in excess of 25,000 jobs  
13 in the country, which is frankly the largest  
14 American investment in Myanmar ever, to my  
15 knowledge, and that includes Unocal, which used to  
16 have the oil operations there before it was acquired  
17 by Chevron.

18           As you probably know, the total investment  
19 of the United States in Myanmar is barely a quarter  
20 billion dollars.

21           I will not go over the technical aspects of  
22 what I have already submitted in writing, but I will

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1 welcome your questions.

2           What I want to do is to sort of outline a  
3 scenario that takes a hypothesis of what will happen  
4 if GSP is granted to Myanmar. In order to  
5 understand that, I would like to actually take you a  
6 little bit on a memory lane.

7           Myanmar, or Burma, is the 24th largest, by  
8 population, country in the world. There are 60  
9 million people there. In 1948, when they gained  
10 their independence -- which happens to also be not  
11 as significant a date as the day when my law firm  
12 was created back in New York -- was the wealthiest  
13 country in Southeast Asia, the largest producer of  
14 rice, the largest exporter of rice, one of the  
15 largest manufacturers of textiles.

16           And it is a signatory of the GATT and then  
17 of a number of international treaties. And what  
18 happened since 1962 is that the country went into a  
19 tailspin and it became, unfortunately, 65 years  
20 after that, one of the world's poorest countries and  
21 in particular in Asia. Its total GNP is \$40.5  
22 billion.

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1           And I want to use the garment industry,  
2 even though garments are not, I mean textiles and  
3 garments are not a category that is mostly favored  
4 by GSP; in other words, most products are not  
5 imported.

6           I want to take you to a neighboring  
7 country, which is Cambodia, and see what happened  
8 once the GSP was granted to Cambodia, because I  
9 believe it is relevant in seeing an extraordinarily  
10 poor country, an LDBDC that in 1997 was nowhere, and  
11 suddenly today has over \$2.6 billion worth of  
12 exports to the United States, the majority of which  
13 are in the textile industry. And it all started in  
14 1997 when Cambodia was granted GSP status.

15           The textile industry is an industry where -  
16 - and I don't represent any group that is in the  
17 textile industry. I am just using it for purposes  
18 of example for the President to be able to  
19 understand what actually can happen in Burma, in  
20 Myanmar, once this status has been granted, once  
21 this country is allowed to become a normal country  
22 again.

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1           The textile industry has an advantage of  
2 being able to set up very quickly new factories and  
3 expand current factories in 12 to 18 months. The  
4 Burma textile industry, which has been decimated by  
5 the sanctions that we have imposed, in 2002, before  
6 the last round of sanctions was imposed, Burma  
7 exported 75 percent of its textiles to the U.S.  
8 Mind you, the GSP status had been suspended in 1999,  
9 so they were doing that without GSP.

10           And once those sanctions were imposed, more  
11 than 300 factories were closed in a very short span  
12 of time. Eighty thousand people lost their jobs.  
13 By reference, you take 80,000 people who are the  
14 main breadwinners and you multiply that by a typical  
15 Burmese family of 5 to 8, and you can see the  
16 extraordinary effect that those sanctions have had  
17 on the people of Burma.

18           Yet, today, the textile industry is  
19 reviving. Their main customers, their clients are  
20 in Japan and Taiwan, which are very, very quality  
21 oriented, and their wages are higher than  
22 Bangladesh. Bangladesh, as you know, is the second

1 largest producer after China of textiles. Their  
2 wages are between \$85 to \$110 a month, including  
3 overtime and bonuses, compared to Bangladesh about  
4 \$60 a month. In addition to which, Burma, which  
5 used to have literally the best universities in  
6 Southeast Asia, people from all over Southeast Asia  
7 were sending their children to Rangoon, today their  
8 universities are a challenge, and they have to  
9 really catch up with the rest of the world again to  
10 become the shining universities that they had.

11           But they still have a very, very well-  
12 educated workforce, and it is an English-speaking  
13 workforce or foreign language speaking workforce,  
14 the best one frankly, to my knowledge. And I was  
15 the guy who put the first American Standard  
16 investment team in Vietnam in 1995, when the  
17 sanctions were dropped, and the factory is still  
18 there 20 years later and created thousands of  
19 middle-class jobs. I know that area very, very  
20 well. They have the best language skills as well as  
21 training. Their product quality and range is better  
22 than in other Southeast Asian countries primarily

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1 because, as I said, their clients are in Japan and  
2 Taiwan, and their lead times are better than South  
3 Asia and at par with the rest of Southeast Asia.

4           Even so, so you'll understand that I am not  
5 speaking here for the manufacturers, the  
6 manufacturers are not up to speed as to what their  
7 competitive costs are because they are cut and make  
8 costs. Their CM costs are below five cents per  
9 minute. That means that a Burmese factory, even  
10 though it pays higher wages to its employees,  
11 substantially higher wages than in Bangladesh, it is  
12 actually receiving less than a factory in  
13 Bangladesh.

14           And primarily they are hampered by lack of  
15 capital. In order for them to be able to expand and  
16 be able to be competitive, they need to have  
17 capital. Their banks are in very poor shape,  
18 severely undercapitalized. The international  
19 community still cannot open banks in Myanmar, which  
20 is something that the government is working towards,  
21 maybe towards 2015. And the distribution is being  
22 done by third party middlemen who are providing the

1 raw materials, but they are taking most of their  
2 profits.

3           Finally, there is substantial lack of  
4 political integration in the business, and the  
5 productivity also sucks, frankly. But the  
6 manufacturers, oddly enough, don't even know that  
7 they are paying these middlemen much more than their  
8 competitors in Bangladesh do and end up actually  
9 being squeezed and having a lack of capital for  
10 themselves.

11           So being that Burma is one of the 49 least  
12 developed countries in the world -- and I have a  
13 nice graph for that; let's look at Cambodia, if I  
14 may. And I know I may take more than five minutes.  
15 I'm trying. Just stop me whenever you, you know.  
16 You get a guy like me, to stop talking -- I never  
17 stop.

18           CHAIRMAN JACKSON: If you could just make  
19 your final points?

20           MR. ROSE: Sure. Once Cambodia received  
21 the GSP, it started in 1997, its exports from  
22 Cambodia to the U.S. were \$103 million. By 2011-12,

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1 there were approximately \$2.7 billion. In the  
2 textile industry alone, the growth has been  
3 remarkable. After the granting of the GSP, even  
4 though most of the products don't qualify, the  
5 growth has been from 1850 factories to 3900 [sic]  
6 factories, and from 187,000 employees to 335,000  
7 employees. There were more than quarter million new  
8 employees that have been created because of the  
9 granting of the GSP and in 1999 the Bilateral  
10 Textile Agreement between the United States and  
11 Cambodia.

12           It is a remarkable thing that once you  
13 grant a country GSP and is being considered okay to  
14 go start investing, USAID, Ex-Im Bank, and other  
15 agencies of the United States will come in. There  
16 may be a bilateral treaty in the future. But it  
17 will allow this country to be able to be competitive  
18 and be able to re-enter the family of nations.

19           So I'll stop there.

20           CHAIRMAN JACKSON: Thank you, Mr. Rose, for  
21 that information. It was very illuminating.

22           I would ask my colleague from the

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1 Department of Agriculture to start with the  
2 questions.

3 MR. KARAWA: Thank you again.

4 My question is related to workers' rights.  
5 Do you represent companies currently investing or  
6 operating in Burma? If so, have any of your client  
7 friends concluded collective bargaining agreements  
8 at this time?

9 MR. ROSE: The answer is no. And the  
10 reason the answer is no is because collective  
11 bargaining has only been introduced, in effect, in  
12 the last year. The law, by the way, that I believe  
13 several of you have asked about provides for  
14 penalties for lack of a collective bargaining  
15 agreement. The penalties are very small, however,  
16 if they are being sent to a tribunal.

17 The bottom line, however, is there is a  
18 lack of rule of law. If you have an enforcement,  
19 frankly, if you have an employer who just denies the  
20 rights of the employee, the employee may go to this  
21 conciliation and then further to an arbitration  
22 tribunal. But the bottom line is people still have

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1 to believe that their rights are going to be  
2 defended and that is where the rule of law has to  
3 start taking place.

4           One of my colleagues, Woodrow Ho (ph.), who  
5 was the primary lawyer for the NLD, is a remarkable  
6 individual, together with some of his colleagues,  
7 who are defending people who are actually denied  
8 their rights, including their labor rights. But  
9 that is a process in which the employees have to be  
10 educated that there is a way for them to be able to  
11 actually seek redress.

12           And that redress is, by and large, through  
13 going through the procedure, knowing what their  
14 rights are, being informed to what their rights are,  
15 and then if necessary go to court, which is by the  
16 way what we do over here. It isn't like we are  
17 leaving our workers out there for the government to  
18 solve all the problems. There is recourse available  
19 in the courts, in the United States. But this is  
20 the type of thing that will have to be educated into  
21 the workforce in Burma.

22           If I may take one other point, there is a

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1 gentleman whose name is Maung Maung, not Dr. Maung  
2 Maung Lay, but Maung Maung. He is the Chairman of  
3 the Federation of Trade Unions of Burma, which has  
4 operated for a long time out of Thailand. He has  
5 now returned back to Burma. And he has been in  
6 contact, he has won a whole bunch, a slew of awards  
7 with the AFL-CIO and the ILO and so on, so forth,  
8 over the years. And he is also in favor of being  
9 able to have a re-entry of the rule of law in the  
10 relations between labor and management, where you  
11 don't give just one party the rights, but it will be  
12 bilateral.

13           Final point, the United States government  
14 has imposed certain restrictions, re: a code of good  
15 conduct, on American investors. That will mean  
16 something because, again, it will be an example to  
17 other manufacturers of how things should be done as  
18 opposed to how maybe in the past it had been done.

19           CHAIRMAN JACKSON: Mr. Rose, in your  
20 submission, you stated that your contact with the  
21 Myanmar Garment Manufacturers Association has led  
22 you to believe that the textile industry of Burma is

1 ready and willing to ensure that factories are  
2 compliant with building codes and work safety  
3 regulations.

4           Are you aware of any steps that the MGMA  
5 has taken to ensure safety? And what role does the  
6 association play in ensuring workplace safety in the  
7 industry in Burma?

8           MR. ROSE: Our relationship with the  
9 Manufacturers Association is evolving. We have  
10 entered into discussions in advising them regarding  
11 the setting up of committees which will specifically  
12 come up with draft regulations, let's call them  
13 again good conduct, for their members to obey by.  
14 And more important, the current leadership is very  
15 committed to continue working with the ILO in  
16 implementing rules that will allow for Myanmar to  
17 become very competitive in the garment market.

18           In a nutshell, it is a work in progress.  
19 Has it been done? No. Is it going to be done? My  
20 belief it is, yes. And it is primarily because if  
21 you take out Bangladesh, which has become now a  
22 dirty word on the retail side for a number of

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1 reasons that we all are aware of, and you look at  
2 the fact that China is pricing itself out of the  
3 market, you then have the next items in line are  
4 Cambodia, Vietnam, and Indonesia. They are all  
5 running out of capacity.

6           So if you want to set up a factory and you  
7 set it up in Vietnam, Cambodia, and Indonesia, all  
8 of which have substantially higher wages and have  
9 some of the same constraints of lack of power,  
10 natural gas, and so on, so forth that Myanmar has,  
11 there is very little reason not to set it up in  
12 Myanmar. In addition to which, except for  
13 Indonesia, you also have a very large population  
14 which is very hungry for better quality garments,  
15 which will then raise the question that was asked  
16 earlier having to do with the IP rights.

17           MR. O'DONOVAN: Thank you, Mr. Rose, for  
18 your testimony.

19           The government reports that Burma has no  
20 child labor. However, an ILO report that has noted  
21 the discharge of underage soldiers would seem to  
22 suggest otherwise. Are you aware of the use of

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1 child labor in Burma, in garments or any other  
2 sector? If so, how pervasive is that problem, in  
3 your view, and what industries would it be  
4 concentrated in? And, finally, are you aware of any  
5 government or industry programs to address those  
6 issues?

7 MR. ROSE: Let me start with the last  
8 point, which is the answer is absolutely yes. The  
9 government has become extraordinarily sensitive to  
10 this subject. And their reaction and frankly the  
11 mutual reaction of the ILO are a very good  
12 indication of where things are going in terms of  
13 child labor. They also are a signatory of the Child  
14 Labour Convention back in 1955. So they don't have  
15 to implement any new rules, frankly; they just have  
16 to enforce the ones that they have.

17 There is a gentleman whose name is  
18 David Birnbaum, who is frankly a specialist on the  
19 garment industry in developing countries and  
20 specifically in Burma. The answer to your question  
21 is do I have firsthand knowledge of child labor?  
22 The answer is no. Have I been in factories that use

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1 child labor? The answer is no. However, he talks  
2 about the employment of underage children as  
3 apprentices, not as employees; excessive overtime,  
4 sometimes reaching 12 hours a day and sometimes  
5 7-day workweeks.

6           So there is still -- we are looking at a  
7 snapshot. This has started a few months ago. Are  
8 there a number of factories that are still doing  
9 business the old-fashioned way? Yes. Do I have any  
10 personal knowledge of that? The answer is no.  
11 However, my colleagues know of such events. Are  
12 they disappearing? Yes, they are, because by and  
13 large, once we come in, if we come in, but if once  
14 we come into this mix, things will change, as they  
15 have changed in a number of different parts of the  
16 world.

17           And I can use my own personal example in  
18 Vietnam 20 years ago. I can use my own personal  
19 example in Romania, in Eastern Europe back where we  
20 set up our European office in Bucharest. Once you  
21 get involved, once you get Westerners, Americans  
22 being involved and doing the investment, that is the

1 time when you will have a favorable reaction from  
2 the locals, primarily because they have to do it.  
3 It isn't like it is an optional thing. You're  
4 either going to do business with me and here are the  
5 rules by which you are going to do business or  
6 you're not going to do business.

7 MR. O'DONOVAN: Thank you.

8 MS. PAREKH: Mr. Rose, could you provide  
9 your assessment of the state of IPR protection in  
10 Burma? Have your clients or your contacts in the  
11 private sector discussed a need for any specific  
12 legal changes or enforcement actions to ensure  
13 adequate IPR protection?

14 MR. ROSE: If there is a weak spot frankly  
15 in the legal environment in Burma today, that's  
16 where it is. It's not because they don't care. As  
17 a matter of fact, if I may answer, you know, it may  
18 be off the top of my head and I may be beaten to a  
19 pulp by somebody, but I don't believe that there are  
20 any disc manufacturing operations in Burma because  
21 frankly that is very high technology, and in many  
22 cases all of this comes from Thailand or Malaysia,

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1 right next door, and it is bootlegged over the  
2 border.

3           The question is from a legal standpoint,  
4 what is the legal framework today? The legal  
5 framework today dates to the British Empire. And  
6 that legal framework is badly outdated. Let me give  
7 you an example. If you have a trademark that you  
8 have to, quote/unquote "register," there is an  
9 office where you are going to register it, but  
10 that's the end of it. You cannot enforce it. You  
11 have to publish it again and again, every three to  
12 five years, in order to make sure that that  
13 particular trademark is in the public eye.

14           So it isn't like you are having a legal  
15 system where if you have the law, you can then go  
16 and enforce it. You first have to have the law.  
17 And that is one thing in which I believe that they  
18 are working very hard to bring a state of the art or  
19 close to state of the art set of laws up. And then  
20 you have to enforce them in a court of law.

21           That part will still take some time  
22 because, again, the mentality of the people isn't

1 there yet that you are going to be running because  
2 you trust the courts. It is still incipient, but  
3 it's getting better. And it is getting better at a  
4 very, very fast pace, which is absolutely mind-  
5 boggling. I have not seen this anywhere, not even  
6 in Eastern Europe. It is extraordinary how these  
7 changes of mentality, of freedom, the ability of  
8 looking for your rights and enforcing those rights  
9 and looking for where you are going to be enforcing  
10 those rights has changed in the last 18 months.

11 CHAIRMAN JACKSON: Thank you, Mr. Rose.  
12 That concludes our questions of you today. I  
13 appreciate your coming and participating in this  
14 hearing. We may have additional questions for you  
15 in the post-hearing.

16 MR. ROSE: Thank you.

17 CHAIRMAN JACKSON: And I'd now like to  
18 invite to the panel, Mr. Schlesinger from the  
19 International Intellectual Property Association --  
20 Alliance, rather.

21 And, Mr. Schlesinger, you may begin your  
22 presentation whenever you're ready.

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1           MR. SCHLESINGER: Thank you, Mr. Chairman.  
2 Thank you to the committee for providing the  
3 opportunity for IIPA, representing the U.S.  
4 copyright-based industries, to testify this morning  
5 on the initiation of reviews to consider designation  
6 of Burma as a beneficiary developing country or  
7 least developed beneficiary country under the GSP  
8 program.

9           We understand the government of Burma has  
10 recently informed USTR of its interest in being  
11 considered for designation as eligible for GSP trade  
12 benefits and, of course, we heard from them this  
13 morning.

14           IIPA does not oppose granting BDC or LDBDC  
15 status to Burma under the GSP trade program. At the  
16 same time, IIPA notes several areas in which Burma  
17 may not fully meet the eligibility criteria. IIPA  
18 requests that one year after the President  
19 designates Burma as a BDC or LDBDC for the purposes  
20 of the GSP program, a review should be scheduled to  
21 determine whether Burma has made progress in fully  
22 meeting its eligibility criteria sufficient to

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1 continue to enjoy GSP benefits.

2 Over the years, IIPA has supported the  
3 Generalized System of Preferences Program of the  
4 U.S., which provides unilateral, nonreciprocal,  
5 preferential duty-free entry for thousands of  
6 products from the over 100 designated beneficiary  
7 countries and territories for the purpose of aiding  
8 their economic development through preferential  
9 market access.

10 IIPA has supported the program as one  
11 avenue to protect the interests of U.S. copyright  
12 owners around the world. This aim is achieved  
13 through eligibility criteria, which include taking  
14 into account (1) the extent to which such country  
15 has assured the United States that it will provide  
16 equitable and reasonable access to the markets of  
17 such country; (2) the extent to which such country  
18 is providing adequate and effective protection of  
19 intellectual property rights; and (3) the extent to  
20 which such country has taken action to reduce or  
21 eliminate barriers to trade and services.

22 IIPA notes two general criteria which

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1 should be more carefully examined to determine if  
2 Burma is eligible for BDC or LDBDC status under the  
3 GSP program. These are intellectual property rights  
4 protection and market access and barriers to trade  
5 in copyright-related goods and services.

6 Burma, like its Southeast Asian neighbors,  
7 has the potential for migration into its territory  
8 of the sources of production of piracy which could  
9 include optical disc plants. The existence of a  
10 rogue optical disc production plant has been  
11 previously reported by IIPA in the past. The  
12 possibility of production in Burma, but also the  
13 important transshipment and sale in the country of  
14 pirated materials, including high quality  
15 counterfeits, gives rise to our collective concern.

16 In IIPA's 2013 Special 301 Report, we  
17 reported that high quality, counterfeit DVDs,  
18 Blu-ray discs, and elaborate box sets continue to be  
19 manufactured in China and find markets in Southeast  
20 Asia with unlikely entry points such as into  
21 Thailand from Cambodia and Burma.

22 IIPA also reported in 2013 that the

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1 Thailand malls and red zones are replete with  
2 vendors openly selling infringing copies of  
3 copyright content, including films consisting of  
4 DVDs and Blu-ray discs manufactured in China and  
5 imported through Burma. These pirated materials  
6 have a huge impact on the legitimate market in  
7 Thailand, selling for approximately \$1 per DVD and  
8 \$8 for Blu-ray, and many pirated DVDs are local  
9 dubbed versions which are sourced back to illegal  
10 camcording.

11           The market is also marred by illegal music,  
12 largely burned CD-Rs with mp3 files, but also  
13 Chinese imports again transshipped through Burma,  
14 priced at 100 to 300 Thai baht: software, games, and  
15 also published materials.

16           Burma has a 91-year-old colonial era  
17 copyright law that is largely ignored. It is  
18 positive that the Burmese government is currently  
19 undertaking a comprehensive legal reform process.  
20 And IIPA has weighed into this process providing  
21 comments on the draft copyright bill to MOST.

22           Burma has been a WTO member since 1995 and

1 a WIPO member since 2001. It is not, however, a  
2 member of the Berne Convention, nor has it ratified  
3 or implemented the WIPO Internet treaties. Burma's  
4 WIPO membership makes it eligible for WIPO programs  
5 and support. UNESCO has held a seminar on copyright  
6 protection in Burma, in 2005, and there has been  
7 limited cooperation and participation by the  
8 government of Burma in WIPO and ASEAN-related  
9 activities in the area of intellectual property.

10 As can be discerned from our past reports,  
11 enforcement efforts against piracy, including  
12 transshipments from China, are severely lacking.

13 Let me turn to the second concern. Market  
14 access in Burma is also almost entirely nonexistent  
15 for the creative industries today. As can be seen  
16 from a recent report of the United Nations' Economic  
17 and Social Commission for Asia and the Pacific,  
18 ESCAP, in December 2012, Burma has one of the most  
19 restrictive markets in Asia, if not the world. Its  
20 GATT score for openness for services is extremely  
21 low with a score of zero in the area of recreational  
22 cultural services.

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1 Foreign direct investment in creative or  
2 cultural-based industries is essentially not  
3 permitted, with a nontransparent permit system  
4 essentially stymieing any attempts by foreign right  
5 holders to do business in the country. The trade  
6 facilitation infrastructure for creative goods and  
7 services, including electronics and internet, remain  
8 in their infancy. Trade sanctions imposed by the  
9 United States for many years also played a role in  
10 the lack of market access in the country.

11 All this said, there is a new Foreign  
12 Investment Law, which, while not in force yet, thus  
13 the 1988 law remains in effect today, may result in  
14 some market opening. The ESCAP report indicates  
15 that foreign ownership will be discretionary under  
16 the new law, but also notes that there remains a ban  
17 on 100 percent foreign ownership of certain sectors,  
18 as you have mentioned earlier today.

19 The listing of sectors in the law for which  
20 foreign investment is prohibited or restricted is  
21 vague, but includes, quote, "business which can  
22 affect the traditional culture and customs of the

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1 national races within the union," end quote. It is  
2 highly unclear what any of the new restrictions will  
3 mean for creative industries, but we believe that  
4 once the law is in force, part of the GSP review for  
5 Burma should include gaining an understanding of how  
6 Burma will provide creative industries, including  
7 film, music, games, books and journals, and  
8 software, the ability to do business in the country.

9 We were interested to hear the answer of  
10 the officials earlier this morning on this issue and  
11 understand that they will be following up with more  
12 information on the 100 percent ownership ban for  
13 foreigners.

14 IIPA appreciates the opportunity to provide  
15 the GSP Subcommittee with this testimony related to  
16 the possible designation of Burma for GSP. And we  
17 would be pleased to try to answer any questions you  
18 may have. Thank you.

19 CHAIRMAN JACKSON: Thank you,  
20 Mr. Schlesinger. We will start our questions from  
21 the Department of State.

22 MS. CAMERON: Good morning. Thank you very

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1 much.

2 MR. SCHLESINGER: Good morning.

3 MS. CAMERON: In your testimony, you stated  
4 that the IIPA has weighed in on the process of the  
5 draft copyright bill. How responsive has the  
6 government been to your comments? And are you aware  
7 of how responsible the government has been to other  
8 external parties' comments?

9 MR. SCHLESINGER: To answer your second  
10 question first, I am not aware of how responsive  
11 they have been to other external parties who have  
12 weighed in on the process, but I do know that there  
13 have been certain efforts by other stakeholders to  
14 weigh in, in the process.

15 And my belief is that the government is  
16 listening carefully to both the advice of the WIPO,  
17 and I think you heard that from the delegation this  
18 morning, as well as from the various stakeholders  
19 who frankly know what their business model is and  
20 know how best they will be able to operate and what  
21 legal standards should be in place to create an  
22 inviting commercial environment for them.

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1           As to our comments specifically, we have  
2 only just submitted them, so we are very, very  
3 hopeful, obviously, that the government of Burma is  
4 receptive to our comments and listens carefully.  
5 One thing I can say is that the WIPO internet  
6 treaties, as an example, now have 91 and 90 members,  
7 respectively, and there is a lot of experience on  
8 how to implement those measures to create an  
9 inviting environment for legitimate services and  
10 copyright creative goods. And so we have a lot of  
11 experience, and we think that that experience is  
12 reflected in the comments that we have submitted.

13           Many of the changes that we are asking for  
14 in the copyright draft are frankly relatively minor  
15 changes that could be made with a few words to a  
16 provision here or there but that would have real,  
17 significant, commercially positive benefits to that  
18 law once put into place.

19           MS. PAREKH: In your view, what are the  
20 most pressing legal changes or enforcement actions  
21 needed to ensure adequate IPR protection?

22           MR. SCHLESINGER: Thank you for the  
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1 question. Certainly, in the legal structure in  
2 Burma today, as we have heard, their copyright law  
3 is a bit outdated. It is not to say that there  
4 aren't provisions in that old law that could be used  
5 to address copyright infringements were the  
6 government to establish the capacity and enforcement  
7 infrastructure to deal with them. But, obviously,  
8 modernization and changes in technology require  
9 changes to the legal structure.

10           Some of the key areas that we have focused  
11 on in the IIPA comments to the government include  
12 dealing with the protection of technological  
13 protection measures, or TPMs, which are used by  
14 right holders to facilitate the creation of  
15 legitimate models for distribution of creative  
16 content.

17           A second key area would be in the area of  
18 enforcement mechanisms. To date, in the draft, it  
19 doesn't appear to us that there is any provision for  
20 either civil or administrative remedies. So we have  
21 gone through kind of a laundry list of areas which  
22 should be covered, including TRIPS Article 45

1 measures which would be providing for adequate  
2 compensation for the injury suffered by the right  
3 holder due to infringement of copyright,  
4 presumptions of ownership, and other presumptions  
5 such as presumptions of subsistence which can aid in  
6 the court processes.

7           I think the previous speaker, Mr. Rose,  
8 actually put it well, that it's one thing to pass a  
9 modern copyright law; it's another thing to then  
10 have the enforcement structure capacity and  
11 infrastructure in place, including not only  
12 enforcement officers and adequate capacity, but also  
13 a court system which actually follows the rule of  
14 law. And presumptions, compensation provision --  
15 adequate compensation provisions in the civil area  
16 and also administratively, injunctive relief,  
17 providing for inaudita altera parte, again this is  
18 TRIPS Article 50, but ex parte civil searches, and  
19 the possibility of pre-established damages,  
20 statutory damages, these are the types of things  
21 that we look for in a mature enforcement system.  
22 And, obviously, the ground rules for those are set

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1 in the copyright law at the outset.

2 MR. DeLUCA: As you consider the various  
3 markets for copyright works, including music, film,  
4 business software, and others, where do you see the  
5 greatest potential for the improved protection and  
6 enforcement of intellectual property in the  
7 relatively near term?

8 MR. SCHLESINGER: I'm sorry. Are you  
9 asking for a regional comparison or in Burma itself?

10 MR. DeLUCA: In Burma.

11 MR. SCHLESINGER: Okay. I'm not quite sure  
12 that I understood the question.

13 MR. DeLUCA: I think to put it another way,  
14 what can the government of Burma do to improve IPR  
15 enforcement in the near term?

16 MR. SCHLESINGER: Okay, all right. Okay,  
17 in the near term. So, obviously, I mean the first  
18 step I think they are already undertaking, which is  
19 the legal reforms in the area of the copyright law.  
20 And we have identified certain areas of substantive  
21 protection of copyright, also enforcement measures  
22 in the area of copyright that need to be put into

1 place.

2           Other things that I didn't mention are  
3 ensuring that there is a full panoply of rights that  
4 are covered under both civil liability, but also  
5 criminal liability, ensuring for the future that  
6 internet-based rights such as communication of the  
7 public and transmission -- public transmission rates  
8 are fully covered both for works and also for  
9 related rates.

10           But then, you know, obviously that's a  
11 short-term passage of a copyright law. Whatever  
12 changes then are necessary to criminal law, to  
13 border protection, it was mentioned this morning the  
14 film and television law, I can only imagine that  
15 that law also needs to be modernized, including  
16 protecting against the unauthorized decryption of  
17 encrypted signals or the unauthorized distribution  
18 of decrypted signals. So there is a whole host, I  
19 think, of legal measures that need to be put into  
20 place.

21           But then I think the next step is  
22 enforcement capacity. And for enforcement capacity,

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1 I mean it really starts with, it starts with law  
2 enforcement, and it starts with ensuring that law  
3 enforcement is well aware that the unauthorized use  
4 of software or the unauthorized copying or  
5 distribution of music, movies, illegal camcording,  
6 illegal circumvention of TPMs is an actionable  
7 offense, and then having the enforcement capacity  
8 and structure to actually attack it within the  
9 country.

10 We mentioned transshipment a couple of  
11 times within our testimony, so it would be very  
12 important for the government of Burma to put into  
13 place mechanisms at the border to ensure that  
14 transshipments of high quality counterfeits or  
15 pirated materials coming in from China or elsewhere  
16 are, you know, if they come into the border at  
17 Burma, that they are subject to seizure.

18 I don't want to leave out market access  
19 concerns, however, because all of these legal  
20 infrastructure changes can be made to create a  
21 modern copyright law, to begin to build capacity for  
22 enforcement and for rule of law, and the court

1 changes to the court system to ensure that there are  
2 expert judges and expert prosecutors. But if we  
3 don't have access to the market for our creative  
4 materials, it is going to be very, very difficult to  
5 do business in the market.

6 So that is definitely an important short  
7 and mid-term step. And through the investment law,  
8 what we are hoping to see, and through the GSP  
9 review, is clarification of how copyright owners,  
10 how creative businesses have access to the Burmese  
11 market for their creative products and services.

12 CHAIRMAN JACKSON: We understand that there  
13 may be more than one copyright draft that is  
14 circulating now. Are you aware of that? And if so,  
15 do you have views on the relative merits of the  
16 different drafts?

17 MR. SCHLESINGER: I have heard that there  
18 may be more than one draft. The draft that we have  
19 reviewed is the one that we understand MOST is most  
20 seriously considering, although I mean I don't know  
21 if I am mistaken about that. But that is the one  
22 that IIPA has commented on and provided comments to

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1 MOST.

2           So, you know, obviously, the government is  
3 going to be receiving input from various different  
4 sources, including as they mentioned this morning  
5 from WIPO. And I guess the advice from our  
6 perspective is to listen carefully, obviously, to  
7 all stakeholders, but to be mindful that the  
8 commercial interest of our 72 trade associations,  
9 our 3,200 companies gives us some knowledge of what  
10 is going to work commercially in Burma, as in other  
11 markets in Southeast Asia. We have that experience.  
12 And so our comments are very tailored towards the  
13 real commercial concerns that we would face when  
14 entering the market. And the solutions that are  
15 outlined in our comments are aimed at actually  
16 addressing real commercial issues.

17           MR. KARAWA: The United Nations has  
18 designated Burma as a least developed country. In  
19 your view, how does its IPR laws and approach to IPR  
20 protection compare to that of or those of other  
21 LDCs?

22           MR. SCHLESINGER: Well, I mean I would say  
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1 that as of right now, that Burma is behind even  
2 other LDCs. So now is it playing quick catch-up?  
3 It may be. I mean we'll see how quickly the legal  
4 infrastructure can be altered. We'll see how  
5 quickly the government can mobilize to create basic  
6 capacity to enforce that law, to create rule of law.  
7 And then we'll see how quickly issues such as  
8 judicial reform may take hold. But right now I  
9 would say that they are still, even compared with  
10 LDCs, but certainly with DCs or BDCs, they are  
11 lagging behind.

12 CHAIRMAN JACKSON: Mr. Schlesinger, that  
13 concludes our questions for you today. Thank you  
14 for your participation. Maybe we can punch your  
15 frequent witness card on the way out.

16 MR. SCHLESINGER: Thank you very much.

17 CHAIRMAN JACKSON: We are also running a  
18 little bit behind. But what I'd like to do right  
19 now is take our mid-morning break and come back in  
20 about 10 minutes, so that would be at about 10:50,  
21 and then we will resume the last panel on Burma.  
22 Thank you.

1 (Off the record at 10:39 a.m.)

2 (On the record at 10:54 a.m.)

3 CHAIRMAN JACKSON: Okay, we will resume our  
4 hearing. And I'd like to invite the representatives  
5 from Earth Rights International, the U.S. Campaign  
6 for Burma, and the Burma Fund to come to the front  
7 table.

8 Thank you for participating in the hearing  
9 today. I would just ask if you would introduce  
10 yourself, and then maybe you can each in turn  
11 introduce yourselves. And then, Ms. Quigley, I  
12 believe that you were going to begin the testimony.  
13 Thanks.

14 MS. QUIGLEY: Jennifer Quigley, Executive  
15 Director for the U.S. Campaign for Burma.

16 MR. KAUFMAN: I am Jonathan Kaufman, a  
17 legal advocacy coordinator at Earth Rights  
18 International.

19 DR. SEIN WIN: I am Sein Win from Burma  
20 Fund, Chairman of the Burma Fund.

21 MS. QUIGLEY: Chairman Jackson and members  
22 of the Subcommittee, thank you for allowing me to

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1 address you today on the subject of determining the  
2 suitability of granting Burma beneficiary developing  
3 country status.

4           We do not support reinstatement of GSP for  
5 Burma at this time. Burma does not yet have  
6 safeguards in place to protect citizens' rights and  
7 assure rule of law, especially in resource-rich  
8 minority regions. Labor rights and other human  
9 rights violations will likely get worse, not  
10 improve, if trade preferences are granted before  
11 rights protections, especially for minorities, can  
12 be assured.

13           Over the past two years, great attention  
14 has been paid to the atypical reforms that the  
15 government of Burma has undertaken. These reforms  
16 have taken many by surprise. Hoping to capitalize  
17 on the unusual openness of the Burmese government,  
18 many countries have lifted sanctions and pursued  
19 economic relationships with the Burmese government  
20 and business community.

21           Scant attention has been paid to the  
22 alarming rise in human rights violations connected

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1 to the economic pursuits of the Burmese government,  
2 military, and business community. Land  
3 confiscation, forced displacement, forced labor,  
4 torture, arbitrary arrest and detention, and  
5 conflict-related sexual violence and extrajudicial  
6 killings by the Burmese government, military, or  
7 their business cronies are ongoing human rights  
8 violations committed in pursuit of their own  
9 economic interests.

10 In April 2012, then Secretary of State  
11 Clinton announced the U.S.'s intention to relax some  
12 of the financial investment sanctions against Burma.  
13 The U.S. Campaign for Burma, along with eight other  
14 human rights and labor organizations, sent the  
15 administration a letter concerned that if  
16 precautions are not taken, new U.S. business  
17 activity permitted under the relaxation may directly  
18 benefit individuals and entities responsible for  
19 human rights abuses, who contribute to corruption,  
20 or are otherwise acting to obstruct political  
21 reform.

22 We urge that any further movements to relax

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1 the current financial transactions and investments  
2 bans be sequenced and timed in a manner that  
3 reflects actual additional progress towards the  
4 necessary political reforms and progress to improve  
5 human rights in Burma.

6           President Obama recognized our concerns  
7 were warranted and renewed the national emergency on  
8 Burma in May 2012 and again in May 2013, stating  
9 despite great strides that Burma has made in its  
10 reform effort, the situation in the country  
11 continues to pose an unusual and extraordinary  
12 threat to national security and foreign policy of  
13 the United States.

14           "The political opening is nascent, and  
15 concerns persist regarding remaining political  
16 prisoners, ongoing conflict and human rights abuses  
17 in ethnic minority areas, and the country's  
18 continued military relationship with the Democratic  
19 People's Republic of Korea. For this reason, I have  
20 determined that it is necessary to continue the  
21 national emergency with respect to Burma."

22           The political and human rights situation

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1 has quite a long way to go. Troubling trends have  
2 emerged over the past year that correlate with the  
3 relaxation of sanctions by the international  
4 community. Land confiscation has become pandemic  
5 throughout Burma.

6           Reform of land tenure rights should be  
7 considered one of the most essential needs to  
8 guarantee political and economic rights for the  
9 people of Burma. But the government of Burma has  
10 taken legal steps in the opposite direction,  
11 enacting two additional pieces of legislation, the  
12 Farmland Law and the Vacant, Fallow, and Virgin Land  
13 Law, to strengthen their legal authority to  
14 confiscate land from local farmers.

15           Nearly 2 million acres have been  
16 confiscated in recent years, a trend that is in  
17 rising correlation with potential foreign investment  
18 partnerships. Government officials, the military,  
19 and business cronies have confiscated land to make  
20 way for special economic zones, industrial parks,  
21 extractive industry projects, plantation  
22 agriculture, and development projects. Farmers and

1 communities have little to no recourse to contest  
2 the loss of land and livelihood.

3 Provisions in the new land laws require  
4 complaints be registered with a politically  
5 appointed government committee and not the judicial  
6 system, a redundancy considering the judicial system  
7 is also not independent.

8 Given the lack of legal recourse and loss  
9 of livelihood, farmers have attempted to protest,  
10 resulting in numerous arbitrary arrests and torture.  
11 In a recent high profile case, less than two weeks  
12 after President Obama lifted the import ban in  
13 November 2012, the Burmese police raided a camp of  
14 sleeping protesters in the middle of the night near  
15 the Monywa copper mine. The police brutally  
16 attacked 100 protesters, burning several of them  
17 with the chemical weapon white phosphorus.

18 What had they done to deserve being  
19 attacked with a chemical weapon? The Letpadaung  
20 Mountain communities objected to being displaced and  
21 raised concern about the environment impact  
22 regarding the expansion of a copper mine that is a

1 joint venture between a state-owned enterprise and a  
2 Chinese company.

3           Photos of badly burned protesters,  
4 including monks, spread quickly throughout Burma and  
5 gave rise to solidarity protests in other cities.  
6 These protesters were quickly arrested. To quell  
7 the growing anger at the crackdown, the government  
8 announced it would appoint a commission to  
9 investigate the copper mine project and the  
10 crackdown on protesters. Three months later, in  
11 March 2013, the commission released its findings:  
12 the copper mine project will move forward, the  
13 farmers must move, and no police were held  
14 accountable for the crackdown on protesters. Now, I  
15 ask, should copper from this mine be imported to the  
16 U.S. under GSP?

17           In Burma's ethnic minority areas, the  
18 consequences of joint economic ventures between  
19 Burmese state-owned enterprises or crony businesses  
20 and a foreign partner are even greater. The Burmese  
21 military clears out the intended project area by  
22 force, displacing villagers, engaging in armed

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1 conflict if the area is territory of one of the  
2 ethnic minority armed groups, committing numerous  
3 human rights abuses along the way, including sexual  
4 violence, extrajudicial killings, forced labor, and  
5 destruction of property.

6 Pursuit of potential economic gains has  
7 recently led to the breakdown of a fragile ceasefire  
8 signed only a year ago. In February, the government  
9 announced a new Chinese-backed dam project was to  
10 begin construction near the west bank of the Salween  
11 River, an area belong to the Shan State Army-North,  
12 according to their ceasefire agreement.

13 The Burmese army began reinforcing troops  
14 in the area, and in March the army began attacks  
15 against the SSA-N, which still rage on today. The  
16 army has captured villagers to use as porters,  
17 forced villagers to walk ahead as landmine  
18 detectors, and shot at villagers with machine guns.

19 The displaced Shan now face a humanitarian  
20 crisis. This case is not unique to the Shan or  
21 hydropower projects. Numerous ethnic minority  
22 communities continue to face similar human rights

1 and humanitarian crises as a result of the Burmese  
2 government, military, and their crony business  
3 partners' pursuit of the lucrative natural resources  
4 and fertile land in ethnic minority territory.

5           Burma's strategic position on the Andaman  
6 Sea, offering a vital sea-land route from the Middle  
7 East and South Asia to China and Thailand, puts  
8 numerous minority and rural communities in the path  
9 of pipelines, railways, and highways to facilitate  
10 economic activity. Already communities have been  
11 displaced, had land confiscated, have been used as  
12 forced labor, and been subjected to other abuses.

13           These cases represent a small portion of  
14 those being documented by brave civil society  
15 organizations across Burma. Lack of transparency  
16 particularly in the natural resources sector  
17 exacerbates the continuation of the business-  
18 military nexus and related human rights abuses.

19           Revenue Watch Resource Governance Index  
20 recently gave Burma its lowest possible rating.  
21 Revenue Watch attributes Burma's abysmal performance  
22 against its criteria to the overall lack of coherent

1 legislation and the government's unwillingness to  
2 disclose information about state-owned enterprises.  
3 The report further states almost no information is  
4 available on the management of the extractive  
5 sector. Myanmar has no freedom of information law,  
6 and environmental and social impact assessments are  
7 not required.

8           The U.S. Campaign for Burma believes that  
9 the government of Burma has not yet created an  
10 enabling environment within which people's rights  
11 and workers' rights can be respected. Crony  
12 capitalism, a lack of transparency, ongoing  
13 conflict, and land grabs are problems indicating  
14 that rule of law, which guarantees and protects  
15 rights, has yet to take hold in Burma. Such  
16 circumstances warrant the need for a continued  
17 cautious approach to all U.S.-Burma economic  
18 activity.

19           Now my colleague, Jonathan Kaufman, from  
20 Earth Rights International, will elaborate on our  
21 shared view of how to safeguard human rights in the  
22 GSP process.

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1           MR. KAUFMAN: Chairman Jackson and members  
2 of the Subcommittee, thank you very much for the  
3 opportunity to address you today. Ms. Quigley has  
4 spoken about the ongoing human rights abuses,  
5 including labor rights and land rights violations,  
6 in the export-oriented sectors in Myanmar. And I  
7 have provided further information in my pre-hearing  
8 brief on these issues.

9           There is a legitimate concern that  
10 promoting exports through the GSP program will  
11 exacerbate these problems, particularly in the oil,  
12 gas, mining, and plantation agriculture sectors. I  
13 would like to focus on the authority and the options  
14 this committee and the President have at their  
15 disposal to manage these concerns pursuant to the  
16 Trade Act and consistent with the foreign policy  
17 this Administration has pursued under the  
18 International Emergency Economic Powers Act, or  
19 IEEPA.

20           In particular, I'd like to draw the  
21 committee's attention to the recently finalized  
22 Responsible Investment Reporting Requirements. I

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1 believe Mr. Rose referred to these as the code of  
2 conduct for U.S. business, which is not true. There  
3 is no code of conduct that is imposed on U.S.  
4 business.

5           They are reporting requirements that are  
6 intended to ensure that U.S. investors are aware of  
7 and speak on their procedures and policies to avoid  
8 contributing to human rights abuses and conflict in  
9 Myanmar. They also are intended to support  
10 Myanmar's reform efforts, including by promoting  
11 inclusive economic development.

12           As I argued in my pre-hearing brief, the  
13 committee has the authority to take similar steps to  
14 manage the human rights impact of promoting Myanmar  
15 exports through the GSP program by virtue of the  
16 Trade Act labor rights provisions and the  
17 President's responsibility to take into account  
18 other economic factors.

19           The Administration could also delegate  
20 authority to the committee under IEEPA to carry out  
21 these measures, but that is unnecessary. Rather,  
22 the steps the Administration has taken under IEEPA

1 should guide the committee in order to ensure a  
2 coherent policy toward economic reengagement with  
3 Myanmar.

4           There is also a strong argument that  
5 conditioning GSP eligibility on human rights  
6 assurance is important for U.S. economic interests.  
7 Under the reporting requirements, all U.S. persons  
8 investing in Myanmar are required to report on their  
9 human rights performance, flag contracts with  
10 Myanmar's state-owned oil company, and publish their  
11 payments to the Myanmar government.

12           It makes little sense to create an uneven  
13 playing field for U.S. investors by exempting  
14 importers from mechanisms to assure responsible  
15 conduct. This would suit neither our economic  
16 interest in promoting foreign investment, nor our  
17 imperative to manage the human rights and conflict  
18 situation in Myanmar.

19           Fortunately, the committee has two points  
20 of entry through which it can act to manage the  
21 impacts of the GSP program on human rights,  
22 including labor rights. If Myanmar's GSP status is

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1 reinstated, the committee can first use its powers  
2 to limit that designation in order to require  
3 certification and perhaps reporting for all  
4 importers and trigger periodic reviews.

5           And, second, the committee can use its  
6 power to limit and withdraw the designation of  
7 particular high-risk articles, to exclude them from  
8 the designation, and establish a procedure for  
9 vetting progress on human rights concerns in those  
10 sectors.

11           Importers should be required to certify  
12 that they have conducted human rights due diligence  
13 consistent with U.S.-endorsed best practice, such as  
14 the U.N. Guiding Principles on Business and Human  
15 Rights and the OECD Guidelines for Multinational  
16 Enterprises, and that to the best of their knowledge  
17 there have been no violations of internationally  
18 recognized human rights and worker rights in  
19 connection with the articles they import.

20           An alternative or additional mechanism to  
21 ensure responsible conduct would be to require  
22 persons who import goods from Myanmar into the U.S.

1 to report on their human rights policies and  
2 procedures, including labor, environmental, and land  
3 rights, and to provide all other information to make  
4 such reports consistent with the Responsible  
5 Investment Reporting Requirements.

6 In addition, as many of my colleagues have  
7 noted and as I believe the Intellectual Property  
8 Association suggested, the food situation in Myanmar  
9 makes it incumbent that the committee conduct a  
10 yearly review to ensure that the nation is making  
11 progress toward meeting its commitments on labor  
12 rights and other human rights issues.

13 Benchmarks for progress could include  
14 ratification and implementation of core ILO  
15 conventions and the core U.N. human rights  
16 conventions; the absence of credible allegations of  
17 human rights abuses with relation to the Myanmar  
18 military, especially in minority ethnic areas; the  
19 eradication of forced labor and other serious human  
20 rights violations on pipelines, mines, and  
21 plantations; a halt to the practice of arresting and  
22 otherwise harassing lawyers and activists who are

1 advocating for communities that resist land-grabbing  
2 and destructive economic projects; and the enactment  
3 of a land rights regime that provides access to an  
4 effective remedy and protects traditional usage  
5 rights.

6           The President should also use his powers  
7 under the Trade Act to withhold eligibility for oil,  
8 gas, mining, and plantation agriculture products  
9 from Myanmar due to the unusually high incidence of  
10 human rights abuses in those sectors, including  
11 well-documented incidents of forced labor along all  
12 sections of the Shwe pipeline and extrajudicial  
13 killings near the section of the pipeline that runs  
14 through Shan State.

15           Of course, GSP benefits are not meant to be  
16 used as a weapon, but rather as an incentive and a  
17 tool to improve compliance with international  
18 standards. For this reason, the Trade Act calls for  
19 a review of each GSP-eligible article.

20           Therefore, the committee, with the  
21 assistance of the International Trade Commission,  
22 should hold periodic public hearings to review these

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1 sectors in an effort to provide a roadmap for the  
2 reinstatement of GSP eligibility for Myanmar oil,  
3 gas, mining, and plantation products.

4           To conclude, Earth Rights International  
5 takes no position on whether the suspension of  
6 beneficiary developing country status for Myanmar  
7 should be ended. However, we are concerned that  
8 without the proper safeguards and limitations,  
9 reinstatement of GSP benefits could exacerbate the  
10 already existing connection between foreign  
11 investment and human rights abuses, including labor  
12 rights and land rights.

13           The U.S. is already taking cautious steps  
14 to manage the role its investors play in that  
15 dynamic, and it should coordinate its trade policy  
16 to do the same, lest it undermine its own foreign  
17 policy on economic reengagement with Myanmar. Thank  
18 you very much.

19           DR. SEIN WIN: Mr. Chairman, members of the  
20 committee, first I would like to express my  
21 gratitude for giving me the chance to testify.

22           And first I would like to say that we

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1 support a peaceful democratic transition and  
2 consciously recognize positive changes in Burma  
3 under the current quasi-civilian government led by  
4 Thein Sein, one of the top commenters and most  
5 senior and responsible member of the military junta,  
6 which ruled the country under a different name until  
7 2011. We strongly support Aung San Suu Kyi and the  
8 National League for Democracy for their selfless  
9 participation in the ongoing democratic reform  
10 process in Burma.

11           At this point, I should bring your  
12 attention to our recent comments on the country's  
13 democratic transition. She openly said that no  
14 tangible changes have been made over the past three  
15 years. She also mentioned that issues of military  
16 drafted 2008 constitution ethnic conflict and the  
17 rule of law remain key to Burma's democratic  
18 transformation.

19           We deeply appreciate the United States'  
20 unwavering support for Burma's democratic  
21 transformation and understand its active engagements  
22 and normalization of relation with the Burmese

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1 regime. We are sure that the American values are  
2 ingrained in the United States policy towards Burma,  
3 including trade and investment policy.

4 We simply hope that the United States'  
5 approach to promoting democratic reform, economic  
6 development, and peace in Burma will not enrich and  
7 empower former and current military authorities,  
8 their family members, and cronies, who are actively  
9 involved in rampant corruption, bribery, and abuse  
10 of power. In some cases, their business activities  
11 are connected with drug lords and money laundering.

12 We have accurate information, evidence, and  
13 undeniable facts some of them are still on the  
14 Special Designated National list, SDN, published by  
15 the Office of Foreign Assets Control of the United  
16 States Department of Treasury.

17 Mr. Chairman, unfortunately, we are very  
18 discouraged by the untimely withdrawal of sanctions  
19 by the European Union and risky easing of United  
20 States restrictive measures against Burma. We are  
21 also very concerned about exploitation and  
22 monopolization of U.S. policy towards Burma,

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1 especially a strategy of matching action for action  
2 by the Burmese government, its military, and  
3 cronies.

4           We think that the international community  
5 is rushing too fast to reward Burma's Burmese  
6 authority and their cronies too much. We are not  
7 sure whether the international community really  
8 understands the nature and mindset for former and  
9 current military authorities. We strongly believe  
10 that granting preferential treatment benefit to  
11 Burma and the GSP program will mostly benefit former  
12 and current military commanders and their cronies.

13           So I would like to give one example about  
14 the garment industry. Prior to U.S. sanctions in  
15 2002 and 2003, the total value of exports from Burma  
16 to the United States was \$347 million, of which the  
17 garment export value was \$334 million. At that  
18 time, military-owned UMEH and MEC and its affiliated  
19 companies monopolized about 21 percent of garment  
20 exports. Garment factories and companies  
21 owned/operated or controlled by drug lords are also  
22 part of garment export to the United States.

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1           The military has a most favored place in  
2 the country's social, economic, and political life.  
3 During his recent state visit to the United States,  
4 President Thein Sein said Obama took a calculated  
5 risk to appease former and current military leaders  
6 by saying that the military will always have a  
7 special place in Burma.

8           When it comes to doing business in Burma,  
9 it will be extremely hard for any person or entity  
10 to avoid those powerful elements. And then here  
11 just an example, for example, Britain's Vodafone and  
12 China Mobile pulled out of the battle to win a new  
13 business license in Burma last week. Vodafone said  
14 following the publication of the final license  
15 condition on 20th May, the Vodafone-China Mobile  
16 consortium has reached a decision not to proceed  
17 with the process as the opportunity does not meet  
18 the strict internal investment criteria to which  
19 both Vodafone and China Mobile adhere.

20           So we think it is ethically wrong and in  
21 some cases legally very complicated for the United  
22 States to conduct business transactions in Burma.

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1 We ask for some careful concerns, you know. And all  
2 this I said is evidence we can give.

3           And then last part of my presentation is  
4 that for us, we have to take our opposing views  
5 based on the following requirements of the United  
6 States on the GSP program eligibility with respect  
7 to Burma. A GSP beneficiary may not aid or abet by  
8 granting sanctuary from persecution any individual  
9 or global that has committed an act of international  
10 terrorism.

11           At this point, I would like to say about Wa  
12 State Army, UWSA in Burma is one of the biggest drug  
13 producing and trafficking organizations in the  
14 world, according to the United Nations. On May 29,  
15 2003, the United States designated the UWSA as a  
16 narcotic trafficking organization. On November 3,  
17 2005, the U.S. Department of Treasury, Office of  
18 Foreign Assets Control, listed 11 individuals and 16  
19 companies that were part of the financial and  
20 commercial network of designated significant foreign  
21 narcotic trafficker Wei Hsueh-kang of the United Wa  
22 State Army.

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1           The United Wa State Army based in northern  
2 Shan State in Burma has a peace or ceasefire  
3 agreement with the Burmese government and is  
4 operating freely without any major interference by  
5 Burmese authorities. The UWSA has more legitimate  
6 business interests. Aik Hauk, the son-in-law of the  
7 founder, Bo Yiouxang, owns Yangon Airways, which  
8 exemplifies tight nexus between the black market  
9 operator and the legal economy, said the Qatar-based  
10 news agency, Al Jazeera.

11           According to the U.S. Congress Research  
12 Service, in 2010, it is estimated that Burma's drug  
13 export trade to be worth between U.S. \$1 billion and  
14 \$2 billion per year.

15           So you see all the narcotic peoples are  
16 there and also all the government relation with  
17 them. So what we want to say is that narcotics  
18 cannot be separated from the terrorist,  
19 international terrorist. Narcotic trafficking is  
20 all over the world, so that is what we are saying.

21           And then we are also very concerned about  
22 the issue of child soldiers in Burma. It is one of

1 the worst forms of child labor. According to the  
2 new report of the United Nations Security Council  
3 last month, the Burmese military continued to target  
4 unaccompanied children often found in workplaces,  
5 streets, bus and train stations, ferry terminal,  
6 markets, and their home village. The International  
7 Labour Organization received hundreds of complaints  
8 of underage recruitment into the military. Many  
9 cases were verified.

10 Under these circumstances, Burma should not  
11 be entitled to preferential trade benefit under GSP  
12 program of the United States until necessary actions  
13 are taken seriously and practically to fulfill her  
14 international obligations and meet with the United  
15 States mandatory criteria.

16 I will be very happy to take your question.  
17 Thank you very much, Mr. Chairman.

18 CHAIRMAN JACKSON: Thank you to all three  
19 of our panelists. We have a number of questions for  
20 you, and we will start with my colleague from the  
21 Department of Commerce.

22 MS. PAREKH: Ms. Quigley, I believe in your  
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1 pre-hearing brief you cited an August 2012 report by  
2 the Physicians for Human Rights that says the  
3 military in the Karen state has contributed to  
4 forced labor through its self-reliance policy.

5 Do you have any updates on whether this is  
6 still continuing? Or if it has abated, what actions  
7 need to be taken by the government to ensure that  
8 the military stops or does not revert to  
9 contributing to forced labor?

10 MS. QUIGLEY: Yes. The situation that was  
11 reported in the PHR report could be considered sort  
12 of updated by the KHRG report that we also  
13 referenced that came out this year, shows that that  
14 is actually still the ongoing policy of the Burmese  
15 military in Karen state, regardless of the  
16 potential, sort of preliminary ceasefire that was  
17 signed in January of 2012. There has been no change  
18 whatsoever to the Burmese military self-reliance  
19 policy.

20 And to your question about what the  
21 government can do, this is considered to be the most  
22 difficult issue to deal with in Burma because the

1 2008 constitution guarantees the military authority  
2 over the government, not government authority over  
3 the military. So the government actually legally  
4 doesn't have the authority to sort of make changes.  
5 They don't have authority over the military's  
6 budget. They don't have authority over the actions,  
7 command. The ceasefires issues by the president,  
8 himself, actually are sort of more recommendations  
9 because he's not the commander-in-chief and he  
10 doesn't have authority over the commander-in-chief.

11           So the issue of getting at how are you  
12 going to change the military's behavior goes to  
13 changing the authority structure inside Burma. It  
14 goes to revisions to the constitution, and you can't  
15 revise the constitution without the military  
16 agreeing because of the way that they wrote it. So  
17 you get into a situation where if you're going to  
18 change what the military does, you actually need to  
19 change the constitution.

20           CHAIRMAN JACKSON: Thank you. Some of your  
21 submissions report sectors in which forced labor  
22 reportedly continues, such as agriculture and the



1 extractive industries.

2           What are your sources or evidence for this  
3 information on forced labor? It seems to be at  
4 variance with what we've heard from the previous  
5 panels with relation to work that the government and  
6 the ILO have been doing in the country.

7           And have you seen any trends or changes in  
8 the use of forced labor in the industries that you  
9 identified? What legislative or enforcement actions  
10 do you believe are needed to eliminate forced labor  
11 in these areas? And I pose that question to the  
12 entire panel.

13           MS. QUIGLEY: So there are Burmese civil  
14 society organizations that operate throughout Burma  
15 in which one of their primary purposes is  
16 documentation. And so KHRG is one example. It's  
17 the Karen Human Rights Group. There are examples of  
18 this throughout every region of the country. And so  
19 we publish -- they publish information and then we  
20 also publish.

21           We have two maps on our website that we  
22 update every single day. One is a conflict of human

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1 rights abuse map, and then we have one that is a  
2 development and displacement map, and it shows all  
3 these different individual cases in which you're  
4 looking at forced displacement or sexual violence or  
5 forced labor.

6           So we haven't seen any change when it comes  
7 to the use of forced labor in particularly regards  
8 the military, right? So most of the ILO praise for  
9 progress that has been made is in relation to  
10 civilian authority or businesses and their  
11 publication of forced labor, their issue of  
12 complaints regarding forced labor, it doesn't really  
13 get at the heart of the military. The military is  
14 the most prolific user of forced labor inside the  
15 country, and there has not been progress made on  
16 that front.

17           As it pertains to the ILO and its complaint  
18 mechanism, one of the biggest problems that we have  
19 seen over the years has been the ability not just of  
20 people to know about it, but people to have the  
21 ability to get a complaint to Rangoon. And so this  
22 becomes an issue.

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1           If you've got a forced labor complaint in  
2 Shan State, that doesn't necessarily mean that that  
3 person has access to the ILO representatives based  
4 in Rangoon. So that is of particular concern is,  
5 one, getting at the issue of military's use of  
6 forced labor. The second is the fact that the  
7 forced labor complaint mechanism, while there is a  
8 concern about publishing its existence, there also  
9 is the fact that like traveling throughout Burma is  
10 not something that people who are subjected to  
11 forced labor have that opportunity.

12           The ILO officers that are based in Rangoon  
13 do not have free movement around the country. They  
14 regularly have to apply to be able to travel. They  
15 are regularly denied that access, particularly in  
16 relation to their child soldier investigations, like  
17 they are not allowed to just show up at a military  
18 base or a military camp or at recruitment centers.

19           And so if you want to address the issue of  
20 child labor, they sign -- the government signed a  
21 memorandum of understanding that they would end the  
22 use of child soldiers by the end of December 2013.

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1 The issue with that is that there have only been 66  
2 cases in which children have been demobilized. If  
3 the ILO doesn't have access to military bases or  
4 recruitment centers, how are they going to even  
5 evaluate if they are able to demobilize child  
6 soldiers, as well as stop the recruitment of child  
7 soldiers in which we have confirmed reports that  
8 there are actually, currently, more than 5,000  
9 children under the age of 18 who are currently  
10 serving in the Burmese military.

11 And so, you know, it always comes back to  
12 the issue then of freedom of movement, independent  
13 access for verification of this, as well as the  
14 heart of the problem which is that the Burmese  
15 military is the major perpetrator of forced labor,  
16 child labor, and human rights abuses in the country.

17 MR. KAUFMAN: Thank you for your question.  
18 In reference to our own sources, some of them  
19 actually come from fact-finders who either have a  
20 direct affiliation with Earth Rights or local  
21 organizations that we work with. Some of the  
22 information about what's happening in Shan State

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1 along the Shwe pipeline comes from the Ta'ang  
2 Students and Youth Organization, TSYO.

3           But I would also point out that the  
4 U.S. Government's own sources point to the same  
5 direction. If you look at the State Department's  
6 Trafficking in Persons Report from 2012, the  
7 U.S. Government itself recognizes the persistence of  
8 forced labor and child labor, especially as Jennifer  
9 mentioned in connection with the military child  
10 soldiers, and also forced portering and those kinds  
11 of -- and also forced guiding, which sometimes  
12 involves the drafting of villagers to guide people  
13 through minefields. So this is something that is  
14 ongoing, and it is certainly not at odds with what  
15 the U.S. Government itself is saying.

16           In terms of the policy changes that we  
17 would like to see and that need to be seen to change  
18 this, part of the problem, and again it all comes to  
19 the lack of civilian control over the military, is  
20 that at least some of the mechanisms that exist to  
21 raise human rights and labor concerns in the country  
22 don't actually cover the military. The Myanmar

1 Human Rights Commission does not have jurisdiction  
2 over complaints that might involve the Burmese  
3 military.

4 I'm not completely familiar with all the  
5 aspects of the judicial system, but I think it is  
6 worth asking the question, and Jennifer may actually  
7 know the answer. I don't think you can bring a  
8 civil complaint, and you probably can't bring a  
9 criminal complaint, when the military is involved,  
10 in the civilian justice system.

11 MR. KARAWA: Thank you for coming. What  
12 challenges do trade unions particularly face in the  
13 agricultural sector? What steps are needed to  
14 better align wage rates and enhance working  
15 conditions in the sectors, especially in light of  
16 increasing investments?

17 MR. KAUFMAN: Well, one thing that has been  
18 reported to us, and I have not been able to confirm  
19 this, is that the new Social Welfare Law is going to  
20 cover the industrial sectors but not the  
21 agricultural sectors. So that leads to a disparity  
22 in which whatever social benefits may exist when it

1 comes to form of employment are not going to be  
2 applicable in the agricultural sector. I sort of  
3 pass on this information that has been spoken to me,  
4 but it is not something that I have been able to  
5 independently confirm.

6           One thing that I'd just like to highlight,  
7 though, particularly about the agriculture on the  
8 plantation, the agricultural sector, is that one of  
9 the largest problems is that we're thinking of  
10 agriculture plantation as when this is created, it  
11 is a job created as an economic motivator. But, in  
12 fact, what we are seeing and what we are really  
13 concerned about is that the economic impact of  
14 starting a new plantation often starts with the land  
15 grabbing and the removal of sometimes thousands of  
16 people from their land, losing livelihoods.

17           Some of these people may become day  
18 laborers or informal workers on the plantation that  
19 is created; but, of course, if it is mechanized  
20 agriculture, that is not necessarily the case.

21           And to speak to, for example, the Cambodian  
22 experience, after the granting of GSP, it is hard to

1 draw correlations between GSP and economic  
2 development and human rights issues. But one thing  
3 that we have seen, for example, through Europe's  
4 Everything But Arms arrangement in which tariff-free  
5 imports are allowed from a wide range of sectors  
6 including agriculture, is a huge increase in land  
7 grabbing and landlessness, and therefore people who  
8 previously were able to provide for themselves being  
9 driven into poverty actually as a result of the  
10 trade arrangements that have been created as trade  
11 preferences.

12 MS. QUIGLEY: What I would just add is  
13 that, you know, so in the case of agriculture, I  
14 mean, yes, the majority of Burma's population is  
15 engaged in subsistence agriculture, and we are  
16 facing this sort of pandemic issue of their land  
17 being taken away for this plantation agriculture or  
18 development projects. And so the concern that most  
19 of those Burmese have is they want to form  
20 collectives, associations, so it is less about labor  
21 unions and more about wanting a farmers' association  
22 to be able to collectively fight the government when



1 it comes to the issue of land confiscation.

2           But we're finding that there is, you know,  
3 like I sort of mentioned in my testimony, the issue  
4 of they don't really have a place to go to complain  
5 that isn't sort of basically politically motivated  
6 and so, therefore, which is connected to their  
7 economic interest, and so the concern about  
8 collective organizing has much more to do with the  
9 need for them to be able to associate as a farmers'  
10 collective, as well as having complete mechanisms  
11 that are considered an effective legal recourse for  
12 them.

13           MR. KARAWA: Are you aware of any labor  
14 unions in the agricultural sector, or could you  
15 provide this afterwards?

16           MS. QUIGLEY: Yes, we can get back to you  
17 with that.

18           MR. DeLUCA: Thank you for your testimony.  
19 You have already spoken to child labor or the use of  
20 children in the military. This is a question  
21 specifically about the use of child labor in  
22 particular industries and sectors.

1           The government, in its testimony, says that  
2 there is no child labor currently in Burma. Are you  
3 aware of the use of child labor in certain sectors?  
4 How pervasive is the problem, if it does exist? And  
5 are you also aware of any programs to combat the use  
6 of child labor, and to what extent is the government  
7 involved in these programs?

8           DR. SEIN WIN: I am not aware of the  
9 government program. When they start saying there is  
10 no problem, no child labor, how can you start  
11 thinking about the program, but when you go there,  
12 of course I have not been there for many, many  
13 years, but to know that when you go there, the child  
14 labor is rampant, rampant in tea shops and many  
15 other places. So this, of course, is also connected  
16 with the economic situation and the economic  
17 situations where they said about poverty  
18 alleviation. But what we are seeing is the wages  
19 are going out. That's why there is workers' problem  
20 cropping up. And then how they deal with the  
21 workers' problem is not to solve the problem, but  
22 just to keep it that way and make people difficult.

1           So we can send you the report, if you like,  
2 and we can see how, because the laws are there.  
3 Many laws are there. But we need implementation of  
4 the law. Who is going to implement the law? The  
5 laws are there. You can say the labor rights and  
6 child rights and so on. And then when you want to  
7 go to the root cases, you have to be talking about  
8 that. But President Thein Sein now is not talking  
9 about child labor when they denied it or about the  
10 education, and these laws are really connected with  
11 the military, as we all know now.

12           MR. KAUFMAN: The specific reports that I'm  
13 familiar with of child labor are related to the  
14 jadeite and ruby mines, which are of course still  
15 covered by the import ban.

16           MS. QUIGLEY: At least until the end of  
17 July.

18           MR. KAUFMAN: At least until the end of  
19 July. But this highlights, again, the suggestion  
20 that you really do need to look at particular  
21 sectors, and one possibility is to do a sectorial  
22 approach. Mining and extractive industries in

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1 general may well merit that extra look for child  
2 labor.

3 MS. QUIGLEY: Yes, I mean I was just going  
4 to second. That's exactly what we are also familiar  
5 with is the gem mining and the use of child labor in  
6 gem mining.

7 Also, when you look at the military's use  
8 of forced labor, for instance, one of the ways in  
9 which they do forced labor is they say that a family  
10 has to give one member of that family for, say,  
11 three months for forced labor. And so sometimes you  
12 wind up in a situation where the mother is pregnant  
13 or the father is ill, and so a child has to be the  
14 member of the family that goes and gives that  
15 voluntary service to the military for forced labor.  
16 As well as you see a lot of child labor in more  
17 informal, economic activities, as Dr. Sein Win  
18 talked about, sort of somewhere in the urban areas  
19 like tea shops and stuff. That is something that  
20 you see the prevalent use of child labor.

21 MR. O'DONOVAN: Thank you to all the  
22 members of the panel for your testimony. My

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1 question is really for all three of your  
2 organizations.

3           In what areas, if any, do you believe  
4 Burma's labor law falls short of international labor  
5 standards? What legislative or regulatory actions  
6 are necessary to bring the labor law up to  
7 international standards?

8           MS. QUIGLEY: I mean I think we're all  
9 going to have to get back to you. I'm not an expert  
10 in international labor law, and so I would have to  
11 do that research and do the comparison between the  
12 two. I think we'd all be happy to do that for you.

13           MR. KAUFMAN: The one area that I would  
14 reiterate is, if it is actually true, then the  
15 disparity in the Social Welfare Law between  
16 industrial and agricultural workers would seem to be  
17 a problem.

18           MS. CAMERON: The AFL-CIO states in its  
19 submission that unions have not been recognized by  
20 employers for purpose of collective bargaining. And  
21 it points out that only one agreement has been  
22 reached.

1           To what do you attribute this failure and  
2 lack of agreements? And if you have any thoughts of  
3 what the government of Burma could do to more  
4 effectively enforce its labor laws, we would  
5 appreciate hearing that. Thank you.

6           MR. KAUFMAN: I think one thing that you  
7 have heard running through the testimony both of  
8 people who are very positive about reinstating GSP  
9 and those who have concerns about it is this lack of  
10 enforcement and rule of law. You really do still  
11 have a situation in Myanmar where the judiciary has  
12 a very serious lack of capacity, often is  
13 politically influenced, and corruption is rife.

14           And under those circumstances, it is quite  
15 difficult for ordinary laborers to feel that they  
16 have any leverage through the official channels.  
17 And, therefore, there are few to no consequences to  
18 violating labor laws. And at the same time, we are  
19 also seeing continued intimidation of lawyers who  
20 represent farmers who are bringing land grabbing  
21 claims, of workers who are bringing labor rights  
22 claims. It is maybe not as systematic as it was in

1 the past, but in fact just earlier this week we  
2 heard reports of an attorney, who had been involved  
3 in representing people who were arrested after the  
4 mine protest, that was attacked, that was what  
5 Jennifer mentioned, had been arrested --

6 MS. QUIGLEY: For the seventh time.

7 MR. KAUFMAN: For the seventh time. This  
8 is someone who had just been given his lawyer's  
9 credentials back and suddenly is in jail. So in a  
10 situation where advocates are being intimidated and  
11 prevented from assisting the powerless, and  
12 corruption remains such a tremendous problem, one  
13 very quick fix would be stop arresting the lawyers,  
14 stop arresting the advocates and the activists.

15 MS. QUIGLEY: I mean this gets us to one  
16 issue where we haven't actually seen such reform,  
17 which is the independence of the judiciary. I know  
18 that this hearing doesn't sort of deal with, you  
19 know, we're seeing a lot of violence in Burma, a lot  
20 of anti-Muslim violence arise, Buddhist nationalism.  
21 But one of the biggest problems in Burma is that  
22 after decades of military rule, we haven't seen

1 efforts towards justice and accountability.

2           And so people in Burma, whether they be  
3 farmers who are losing their land or villagers who  
4 are being used for forced labor or child soldiers,  
5 there is no mechanism that they can turn to, to seek  
6 any justice and accountability. And so there needs  
7 to be reform.

8           So this goes for employers can ignore  
9 collective bargaining because what can the workers  
10 do? The only thing they can do is strike, and the  
11 strike will be suppressed, or they'll just get other  
12 workers. And so the issue becomes that there is not  
13 a place in which people can bring complaints and  
14 ensure that there would actually be some  
15 accountability for people who are violating their  
16 rights or not allowing them to exercise their  
17 rights.

18           MR. O'DONOVAN: And one follow-up question  
19 to your last statement. So there is in the law a  
20 dispute settlement process in place. Is your  
21 contention that that process is not implemented or  
22 that that process is not sufficient?

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1 MS. QUIGLEY: Both. Both. My issues would  
2 be that not only do you see it as ineffective, but  
3 at times it is politically motivated. And so,  
4 therefore, I mean if you heard the government panel,  
5 you'd think as if the employers were these angels  
6 and workers were these vigilantes who want to drive  
7 them into the street and beat them.

8 And so the issue here is that workers are  
9 the bad guys and employers are these wonderful, kind  
10 people who are offering these jobs, offering them  
11 these jobs.

12 MR. KAUFMAN: One question that I think you  
13 have to ask yourself is when there are -- when there  
14 is one collective bargaining agreement and few  
15 disputes being raised to these dispute resolution  
16 panels -- and I am not familiar with their  
17 composition. Again, we are a bit more familiar with  
18 the land issue, and certainly the panels that have  
19 been constituted under the land laws are completely  
20 under the domination of the government. They are  
21 appointed by the government at each level, town,  
22 district, and national. And I can't compare the

1 land laws because I'm not as familiar with them, but  
2 we can look into it and get back to you.

3 But when there are few complaints, there  
4 are sort of two possibilities. One is that there  
5 are a few problems, and the other is that people  
6 have no confidence in the system. And I think you  
7 have to ask the question and weigh the probabilities  
8 in this particular case.

9 MS. QUIGLEY: Just one last point I wanted  
10 to raise: The ILO's memorandum of understanding  
11 with the government only focuses on forced labor and  
12 child labor; they actually don't have a memorandum  
13 of understanding that encompasses these other type  
14 of issues.

15 And so when I was in Burma in March and I  
16 met with labor activists, one of their biggest  
17 complaints was that they actually don't have an  
18 international supporter that is there arguing for  
19 this increased legislation, increased enforcement,  
20 independence of the judiciary. There is not a body  
21 there that is actually working on this.

22 And so something to consider is maybe

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1 looking for expansion of the ILO memorandum of  
2 understanding to actually incorporate issues of  
3 workers' rights beyond forced labor and child labor.

4 CHAIRMAN JACKSON: Okay, thank you very  
5 much. That concludes our questions for this panel.  
6 We appreciate your contributions, and we may be  
7 posing some additional questions for you in the  
8 post-hearing. And I think that you had committed to  
9 provide additional information in response to some  
10 of the questions. So thank you.

11 And as this panel leaves the table, I would  
12 like to invite the representatives of the government  
13 of Laos to come forward.

14 Good morning, Mr. Ambassador, and your  
15 delegation from the embassy. I'll just say a few  
16 words first because I don't think you were here at  
17 the beginning this morning.

18 My name is Bill Jackson. I chair the GSP  
19 Subcommittee from USTR. And let me just introduce  
20 my colleagues: Omar Karawa from the Department of  
21 Agriculture, Michael O'Donovan from the Department  
22 of Labor, Charles DeLuca from the Department of

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1 Treasury, Andrea Cornwell from the Department of  
2 Commerce, and Andrea Cameron from the Department of  
3 State, just noting also that Ms. Cornwell is joining  
4 us for this particular session.

5           As we had indicated earlier, we would  
6 invite you to make an opening statement of  
7 approximately 5 minutes or so, after which we will  
8 begin questioning for up to 30 minutes or so. Laos  
9 has not previously been eligible for coverage under  
10 the GSP program, and so we are looking at all of the  
11 different eligibility criteria under the program.

12           If there are questions that you can't  
13 answer today that you need to refer to capital,  
14 that's fine. We would ask that you provide those  
15 responses in your post-hearing submission, as well  
16 as any responses that you may have to questions that  
17 we will be posing to you in the coming week or so,  
18 additional questions from today's hearing.

19           And with that, Mr. Ambassador, I would  
20 invite you to introduce your delegation and make  
21 your opening statement. Thank you.

22           AMBASSADOR SOUKHATHIVONG: Thank you,  
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1 Mr. Chairman. My name is Seng Soukhathivong. I am  
2 Ambassador of Laos to the United States. From my  
3 right, Mr. Thongmoon Phongphailath, the First  
4 Secretary, and from my left, Mr. Nanthanakone  
5 Keovongvichith, the Third Secretary. So may I start  
6 my remarks?

7 Mr. Chairman, distinguished members of the  
8 committee, ladies, and gentlemen, as I said, my name  
9 is Seng Soukhathivong, Ambassador of the Lao  
10 People's Democratic Republic to the United States of  
11 America.

12 I would like to begin by thanking the USTR  
13 and the GSP Subcommittee of the Trade Policy Staff  
14 Committee for organizing this public hearing on GSP  
15 designation for Lao PDR. On behalf of the  
16 government of the Lao PDR, I wish to take this  
17 opportunity to request the U.S. Government to  
18 designate to Lao PDR as a beneficiary developing  
19 country and as a least developed beneficiary  
20 developing country under the U.S. GSP program.

21 Two, as we have stated in our letters,  
22 getting GSP eligibility is very crucial for Lao PDR.

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1 This program offers an opportunity for us to expand  
2 our trade with the United States, build lasting  
3 trade partnership between our industry, and promote  
4 Lao PDR's continued growth and development.

5           Three, this is a long-awaited moment, and  
6 Lao PDR meets the statutory criteria to be  
7 designated as BDC and LDBDC. In light of the  
8 existing U.S.-Lao PDR bilateral Trade Agreement and  
9 Lao PDR's recent membership of the World Trade  
10 Organization, along with other international  
11 organizations, Lao PDR has made steady progress in  
12 meeting the expectation and requirement of the  
13 international community in the area of economic  
14 integration.

15           Four, thanks to assistance from bilateral  
16 and multilateral donors, Lao PDR has reviewed and  
17 enacted over 90 laws and regulations from 1997 to  
18 2012, intended to bring the country into compliance  
19 with global standards on trade law.

20           These laws have covered various areas,  
21 including trading rights, import licensing, custom  
22 evaluation, investment, sanitary and phytosanitary

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1 measures, technical barriers to trade, and  
2 intellectual property rights. The elected laws and  
3 regulation are fully in conformity with WTO rules.

4 I am pleased to highlight the assistance  
5 extended by the United States and particularly the  
6 United States Agency for International Development  
7 through the so-called "LUNA-Lao Project" in  
8 supporting Lao PDR to develop its new law on  
9 intellectual property, modernize its judicial  
10 procedures, strengthen institutional capacities, and  
11 create several other programs and laws to improve  
12 Lao PDR trade, legal, and regulatory framework. We  
13 are proud of the partnership we have enjoyed with  
14 the United States over the years and of the  
15 tremendous success that we have achieved to date.

16 Five, on IP law, I want to highlight to the  
17 Committee that in order to make commitments under  
18 the WTO's Agreements on Trade-Related Aspects of  
19 Intellectual Property Rights, Lao PDR passed an  
20 amended IP rights law in 2011 and issued  
21 implementing regulations in September 2012,  
22 including copyright, trademarks, and patents.

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1           We understand that proper law also needs  
2 proper enforcement, and we are working exhaustively  
3 with our law enforcement agencies to ensure law  
4 implementation.

5           Six, the BTA and WTO membership are  
6 excellent guides for the reform we need in Lao PDR,  
7 and we have been privileged to see the benefits of  
8 these reforms. Our country has experienced a  
9 protracted period of sustained growth rate of its  
10 economy, above seven percent on average over the  
11 last decade. The World Bank has projected about  
12 eight percent growth rate for this year.

13           Foreign direct investment has increased  
14 from \$25 million in 2002 to almost \$3 billion in  
15 2011. Over the same period, its exports have gone  
16 up from \$300 million to almost \$2 billion, and the  
17 imports from \$446 million to almost \$2.5 billion.

18           Seven, the U.S.-Laos economic relation is  
19 growing rapidly and has considerable promise for the  
20 future. The U.S. goods trade surplus with Lao PDR  
21 was recorded at \$8 million in 2012, shifting from a  
22 deficit of \$33 million in 2011. The U.S. goods

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1 export in 2012 was \$33 million, up 27.5 percent from  
2 the previous year.

3           Eight, while international and U.S. trade  
4 indicators show that Lao PDR is working its way up  
5 towards a better economic future, it is also clear  
6 that we need the support and assistance from the  
7 international community. For example, U.S. imports  
8 from Lao PDR were only \$25 million in 2012, down  
9 57.5 percent. Lao PDR is only the 176th largest  
10 export market for U.S. goods.

11           Eligibility as LDBDC into the U.S. GSP will  
12 provide better economic opportunity for our people,  
13 help attract investment, and grow our country's  
14 exports.

15           Nine, Lao PDR's joining the multilateral  
16 trading system and preparation for the ASEAN  
17 economic community has greatly contributed to  
18 improvements to the business environment and create  
19 facilitation. In 2012, Lao PDR launched the  
20 so-called Lao Trade Portal, an online resource that  
21 seeks to provide all trade-related information from  
22 Laos' government agencies on a single site. So here

1 is your [www.laotradeportal.gov.la](http://www.laotradeportal.gov.la).

2 Ten, with regard to workers' rights, Lao  
3 PDR clearly has taken steps to afford workers in our  
4 country with internationally recognized workers'  
5 rights. Our officials have worked closely with the  
6 International Labour Organization, and Lao PDR has  
7 ratified several ILO conventions, which include a  
8 Convention 1919 on night work for women, Convention  
9 1930 on forced labor, and other conventions.

10 Eleven, I am pleased to inform you that  
11 experts are currently working on revision to Lao PDR  
12 labor law and making improvements where necessary to  
13 ensure full conformity with internationally  
14 recognized labor standards.

15 Twelve, there is no doubt that the  
16 implementation of Lao PDR's commitment under WTO's  
17 Agreement on Trade-Related Aspects of Intellectual  
18 Property Rights, as well as under the provision of  
19 the U.S.-Lao PDR bilateral Trade Agreement on  
20 intellectual property rights, is a complex task,  
21 especially as Lao PDR has relatively few government  
22 officials trained in managing international trade

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1 agreements.

2           Taking into account these human resource  
3 constraints, we are still in need of technical  
4 assistance from the U.S. Government to make the best  
5 use of this agreement to trade investment and  
6 services activities for the benefit of both our  
7 peoples, and to foster good and friendly relations  
8 between the two countries.

9           Thirteen, I would like to close my remarks  
10 by reiterating Lao PDR's appreciation for due  
11 consideration of the GSP scheme designation to Lao  
12 PDR. Getting Lao PDR's GSP eligibility will be  
13 another step in the right direction towards  
14 maintaining a strong and deep partnership between  
15 our countries for the years ahead.

16           Mr. Chairman, ladies and gentlemen, if you  
17 have any questions, my team will be pleased to  
18 provide you any clarification, or we will submit to  
19 my capital to send it in to you. I thank you so  
20 much, Mr. President.

21           CHAIRMAN JACKSON: Thank you very much,  
22 Mr. Ambassador.

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1 I'll ask my colleague from the Department  
2 of Agriculture to begin the questions.

3 MR. KARAWA: Thank you again,  
4 Mr. Ambassador, for attending today. My question is  
5 does your government have plans to ratify the ILO  
6 convention on freedom of association and collective  
7 bargaining? If yes, when does your government plan  
8 to do so; and if not, why not? Thank you.

9 AMBASSADOR SOUKHATHIVONG: Thank you for  
10 your question. Until now, we don't have this yet.  
11 So I will submit your question to my country to  
12 consider.

13 MR. KARAWA: And I have a follow-up on the  
14 same subject. Does your government currently allow  
15 or have laws that permit these activities of freedom  
16 of association and collective bargaining?

17 AMBASSADOR SOUKHATHIVONG: Based on the Lao  
18 constitution, we have. We allow the private sector  
19 to have the union or the organization. But under --  
20 the activities should be under the national law of  
21 Laos.

22 MS. CORNWELL: Thank you for your

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1 statement. Please describe efforts by your  
2 government to address child labor in the country.  
3 Has the government taken any specific measures in  
4 recent years to eliminate child labor, including  
5 passage of laws? And do you have any data related  
6 to how widespread the problem is and the extent of  
7 your government's enforcement efforts?

8           AMBASSADOR SOUKHATHIVONG: Thank you for  
9 your question. The Lao government pays attention to  
10 child or to the labor of the children. We don't  
11 allow the teenager under 18 to work in factories or  
12 wherever. So we respect, strictly respect the  
13 national law of labor and also the international  
14 law. So until now we don't have the problem with  
15 child labor.

16           MR. O'DONOVAN: Mr. Ambassador, thank you  
17 very much. Just as a quick follow-up to that  
18 question, is your contention that there is no child  
19 labor or that your government is able to effectively  
20 enforce your laws? And if that is your contention,  
21 then can you tell us a little bit, please, about the  
22 process. How does your government enforce those

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1 laws? Is there some unit in a ministry that is  
2 responsible for enforcing child labor laws?

3           AMBASSADOR SOUKHATHIVONG: In Laos, we have  
4 the Ministry of Labour and Social Welfare that takes  
5 care of this child labor. As you may know, in a  
6 developing country or in my country that is one of  
7 the least developed countries, the remote area, of  
8 course, they work, especially the farmer, you know,  
9 sometimes they ask their children to join the  
10 parents' work for their own family.

11           But in the factories, we don't allow. So  
12 this is why the Ministry of Social Welfare seriously  
13 takes care of this issue. So, of course, we have  
14 also the trade union, which is responsible for this  
15 issue, too.

16           MR. O'DONOVAN: And, Mr. Ambassador,  
17 another question. You mentioned in your testimony  
18 that Laos is considering some reforms to its labor  
19 laws. Could you provide us with an update on the  
20 status of these reforms and particularly whether you  
21 have asked the ILO for assistance in ensuring that  
22 reforms are consistent with international labor

1 standards? Thank you.

2           AMBASSADOR SOUKHATHIVONG: May I ask my  
3 colleague to answer your question.

4           MR. PHONGPHAILATH: Thank you for your  
5 question. In addition to my Ambassador's remarks,  
6 I'd just like to add my view that in preparation as  
7 to the economic community, we need to improve the  
8 current labor law. We are now working -- the  
9 experts of Laos looking on the law, is looking  
10 closely with the ILO expert to amend the current law  
11 to comply with the international standard of labor  
12 laws.

13           So we will provide more information on this  
14 question after the hearing.

15           MR. O'DONOVAN: Thank you.

16           CHAIRMAN JACKSON: Mr. Ambassador, are  
17 workers in the Lao PDR, are they able to form and  
18 join unions of their choice consistent with  
19 international standards? If not, are there types of  
20 restrictions that are in place regarding the  
21 formation and operation of independent unions? Are  
22 there any cases that you're aware of in which an

1 application for a union has been denied?

2           AMBASSADOR SOUKHATHIVONG: Mr. Chairman, in  
3 my country, we have the trade union. They work  
4 freely according to their program. They can work  
5 with international organization. Lao PDR,  
6 especially the trade union, is also member of the  
7 International Trade Union, so they can cooperate  
8 with other international organizations. But as I  
9 said, the activities should be under national and  
10 international law. I don't know whether I answered  
11 your question.

12           CHAIRMAN JACKSON: Well, maybe in the post-  
13 hearing response, if you could ask of capital if  
14 you're aware of any instances in which applications  
15 for unions have been denied and for what reason,  
16 that might be helpful to know.

17           AMBASSADOR SOUKHATHIVONG: Okay.  
18 Mr. Chairman, I will inform my capital.

19           MS. CAMERON: Hi. My question is about  
20 intellectual property rights. In your testimony,  
21 you mentioned that your accession to the WTO has  
22 brought about major changes in laws governing IPR



1 protection.

2           Is the Department of Intellectual Property,  
3 DIP, is that department tasked with coordinating  
4 training for officials who enforce IPR?

5           AMBASSADOR SOUKHATHIVONG: In Lao PDR, we  
6 have the Ministry of Commerce and Industry and the  
7 Ministry of Finance who are looking in this area.  
8 As you may know, the Lao PDR has been member of the  
9 World Intellectual Property Organization in 1995,  
10 and since then Lao PDR passed and amended IPR law,  
11 as I said, in late 2011.

12           And what we implement is that the customs,  
13 which belongs to the Ministry of Finance, we take  
14 care or we protect the IPR at the borders, because  
15 Laos has come on border with China, Vietnam,  
16 Cambodia, Thailand, and Myanmar. So the customs  
17 officers work in the border crossing with our  
18 neighbor countries.

19           And inside the country, we call the  
20 economic police, who belong to the Ministry of  
21 Public Security, who will take care of what happens  
22 in the country. So we have two ministries who are

1 taking care in this issue.

2 MR. DeLUCA: Thank you, Mr. Ambassador.  
3 Does the government have a plan of action to fight  
4 the establishment of optical disc production plants  
5 intending to produce pirated materials? And,  
6 second, what steps is the government taking to  
7 increase market access for legal, cultural  
8 industries, such as motion pictures, television  
9 programs, music, etc.?

10 AMBASSADOR SOUKHATHIVONG: Yes. It is one  
11 of the areas that Lao PDR are working on, because as  
12 we know the disc or the music nowadays, you know,  
13 they are private --

14 UNIDENTIFIED SPEAKER: Piracy.

15 AMBASSADOR SOUKHATHIVONG: Private piracy  
16 still happen, but we work on this to comply with the  
17 international standard. So I can say that it will  
18 take time for my country, because the least  
19 developing country, so we have many, many issue.  
20 But, anyway, we will work on this. I don't know if  
21 I have answered your question.

22 MR. DeLUCA: Again, perhaps in the post-  
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1 hearing submission, you can articulate the actions  
2 that your government has taken to enforce the  
3 compliance with these IPR laws that would prohibit  
4 the type of pirating of optical disc production  
5 plants, so we'll ask that in the follow-up. Thank  
6 you.

7           AMBASSADOR SOUKHATHIVONG: I will inform my  
8 country to consider and provide you some more  
9 information, but as I see it now, we are working to  
10 prevent these issues.

11           CHAIRMAN JACKSON: Thank you,  
12 Mr. Ambassador. And, again, we frequently hear on  
13 our Subcommittee about the laws that countries have  
14 in place with respect to things like intellectual  
15 property rights. But what we are especially  
16 interested in beyond the law is the enforcement of  
17 the law and specific steps that have been taken.

18           And so if you can pose that question to  
19 your ministries in capital about to give us some  
20 examples of steps that have been taken specifically  
21 to enforce intellectual property rights, the laws  
22 that are on the books?

1           And then I believe the last question that  
2 we have for you today is, as you may know, one of  
3 the GSP eligibility criteria involves  
4 nationalization or expropriation of property that is  
5 owned by U.S. citizens or corporations. Are you  
6 aware of any cases or complaints in your country  
7 involving the expropriation of property owned by  
8 U.S. citizens or U.S. corporations?

9           AMBASSADOR SOUKHATHIVONG: Mr. Chairman,  
10 until now, we didn't have any information relating  
11 to this issue. But I will report to my capital.

12           MR. PHONGPHAILATH: I'd just like to add my  
13 comment to amending the labor law. We heard that  
14 the draft is ready to submit to the National  
15 Assembly by the end of this year, so we will inform  
16 you.

17           MR. O'DONOVAN: Did you say by the end of  
18 this year?

19           MR. PHONGPHAILATH: Yes.

20           CHAIRMAN JACKSON: Okay, Mr. Ambassador,  
21 that concludes the questions that we have for you  
22 today. We appreciate you coming and representing

1 your government at this hearing. And as mentioned  
2 before, we may have some additional questions for  
3 you in the post-hearing that we will be providing to  
4 you within the coming days.

5 And so with that, I would invite our last  
6 panelist, Mr. Schlesinger, to come forward. Thank  
7 you.

8 MR. SCHLESINGER: Thank you. Good morning,  
9 Mr. Chairman. Again, thank you to the committee for  
10 providing the opportunity for the IIPA, representing  
11 the U.S. copyright-based industries, to testify this  
12 morning on the initiation of reviews to consider  
13 designation of Laos as a beneficiary developing  
14 country or least developed beneficiary country under  
15 the GSP program.

16 We understand the government of Laos has  
17 recently informed USTR of its interest in being  
18 considered for designation as eligible for GSP trade  
19 benefits, and we were obviously happy to hear from  
20 them today.

21 IIPA does not oppose granting BDC or LDBDC  
22 status to Laos under the GSP trade program. At the

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1 same time, IIPA notes several areas in which Laos  
2 may not fully meet the eligibility criteria.

3 IIPA requests that one year after the  
4 President designates Laos as a BDC or LDBDC for the  
5 purposes of the GSP program, a review should be  
6 scheduled to determine whether Laos has made  
7 progress in fully meeting its eligibility criteria  
8 sufficient to continue to enjoy GSP benefits.

9 Over the years, IIPA has supported the GSP  
10 program of the United States, which provides  
11 unilateral, nonreciprocal, preferential duty-free  
12 entry for thousands of products from the over 100  
13 designated beneficiary countries and territories for  
14 the purpose of aiding their economic development  
15 through preferential market access.

16 IIPA has supported this program in part as  
17 one avenue to protect the interests of U.S.  
18 copyright owners around the world. This aim is  
19 achieved through eligibility criteria, which include  
20 taking into account (1) the extent to which such  
21 country has assured the United States that it will  
22 provide equitable and reasonable access to the

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1 markets of that country; (2) the extent to which  
2 such country is providing adequate and effective  
3 protection of intellectual property rights; and  
4 (3) the extent to which such country has taken  
5 action to reduce or eliminate barriers to trade and  
6 services.

7 IIPA notes two general criteria which  
8 should be more carefully examined to determine if  
9 Laos is eligible for BDC or LDBDC status under the  
10 GSP program. These are intellectual property rights  
11 protection and market access and barriers to trade  
12 in copyright-related goods and services.

13 Laos' location has long given rise to  
14 concerns regarding the potential migration of  
15 optical disc plants from neighboring Southeast Asian  
16 countries where illegal overproduction and export  
17 has been a significant problem in the past.

18 The copyright market in Laos is at or near  
19 a 100 percent piracy level. Copyright protection is  
20 reportedly currently governed under the Intellectual  
21 Property Law 2011, which amended the 2007 law, and  
22 as we heard this morning, through implementing

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1 regulations of September 2012.

2           I would note here that in response to the  
3 testimony of the Ambassador this morning, that I  
4 have checked the WIPO and WTO websites, although  
5 admittedly not the latter in great detail, but there  
6 does not appear to be in English, or other  
7 languages, on the WIPO or WTO website the actual  
8 submission of the law and the regulations, so that  
9 would certainly be something that would be very  
10 helpful to stakeholders to have transparent  
11 understanding of what is contained in both the  
12 Intellectual Property Law of 2011, which amended the  
13 2007 law, and also the regulations of September  
14 2012, the 2007 law as well; all of those would be  
15 appreciated.

16           There is little enforcement activity  
17 currently in Laos, although the Department of  
18 Intellectual Property, Standardization, and  
19 Metrology, DISM, is apparently tasked with  
20 coordinating training enforcement officials.

21           And the Ministry of Education, the  
22 Department of Customs under the Ministry of Finance,

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1 Department of Interior Trade under the Ministry of  
2 Commerce, and the Department of Economic Police  
3 under the Ministry of Public Security are all  
4 apparently tasked with different aspects to respond  
5 to specific industry complaints and decide what  
6 course of action to take.

7           We were obviously pleased to hear word from  
8 the Ambassador today on work towards enforcement  
9 efforts and your intention to seek further  
10 information about specific enforcement actions taken  
11 to protect intellectual property rights in Laos.

12           Laos joined the WTO on February 2, 2013, so  
13 it is now bound by the provisions and obligations of  
14 the TRIPS Agreement. Laos' Working Party Report  
15 describes in greater detail Laos' progress towards  
16 substantive and its, as such, compliance with the  
17 TRIPS Agreement by virtue of the laws indicated  
18 before and indicated in its Working Party Report.

19           The United States and Laos also signed an  
20 agreement on trade relations in 2003, which includes  
21 a chapter on intellectual property rights. That  
22 agreement went into force in late 2004, when the

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1 U.S. Senate approved extending normal trade  
2 relations to Laos.

3           The Laotian government should consider  
4 adopting measures designed specifically to improve  
5 its border enforcement authority, as well as  
6 consider measures to control any optical disc  
7 production currently occurring or contemplated in  
8 the country. Also, under the trade agreement, the  
9 government of Laos is obligated to protect U.S.  
10 works and sound recordings and should take steps to  
11 implement its obligations as soon as possible.

12           Laos is a member of the World Intellectual  
13 Property Organization, WIPO, and Laos joined the  
14 Berne Convention in December 2011, effective  
15 March 14, 2012. Laos is also a member of the  
16 Universal Copyright Convention from September 1955,  
17 providing even earlier an alternative point of  
18 attachment for U.S. copyright subject matter.

19           Laos has not joined the WIPO Internet  
20 treaties, the WCT and WPPT, which are the baselines  
21 for protection of copyright on the internet, and the  
22 government of Laos should be encouraged to join

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1 those treaties as soon as possible.

2           Market access in Laos remains extremely  
3 limited for cultural industries. Laos' WTO Working  
4 Party Report confirms that this is so through its  
5 inclusion in its list of controlled businesses, or  
6 its negative list, the category information and  
7 communication, which includes book publishing,  
8 publishing of newspapers, journals and periodicals;  
9 motion picture, video, and television program  
10 production activities; motion picture, video, and  
11 television program post-production activities;  
12 motion picture, video, and television program  
13 distribution activities, particularly key for the  
14 companies and associations under the IIPA umbrella;  
15 sound recording and music publishing activities;  
16 and, very important, radio broadcasting, television  
17 broadcasting; leasing programs via cable, satellite,  
18 and other; wired telecommunications activities,  
19 wireless telecommunications activities, satellite  
20 telecommunications activities, and other  
21 telecommunications activities.

22           We believe strongly that market access

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1 barriers, investment barriers, and discriminatory  
2 treatment make it impossible for U.S. copyright  
3 holders to compete on a level playing field in Laos,  
4 and all efforts to crack down on piracy will be  
5 unavailing if legitimate products and services  
6 cannot be brought into the market to meet consumer  
7 demands.

8           Thus, the reduction of market access  
9 impediments is a key component of ongoing efforts to  
10 combat piracy in Laos and should be part of any  
11 review of Laos in the GSP context.

12           IIPA once again appreciates the opportunity  
13 to provide the GSP Subcommittee with this testimony  
14 related to the possible designation of Laos for GSP  
15 benefits. And we would be pleased to answer any  
16 questions you have. Thank you.

17           CHAIRMAN JACKSON: Thank you for your  
18 testimony. I would like to ask my colleague from  
19 the Department of Labor to begin the questions.

20           MR. O'DONOVAN: Thank you, Mr. Schlesinger,  
21 for your testimony. What are some of the most  
22 effective actions the government can take to fight

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1 the establishment of optical disc production plants  
2 intending to produce pirated materials?

3 MR. SCHLESINGER: Well, as indicated in my  
4 testimony, we had some evidence that there was some  
5 optical disc production occurring in Laos, the  
6 product of which was then being exported outside the  
7 country to other markets in Southeast Asia.

8 So obviously the two key components to  
9 protect against the possible re-advent of this  
10 problem would be a regulation to license any person  
11 or any company wishing to engage in the manufacture  
12 of finished or blank optical discs; in other words,  
13 it's a relatively suspect business which is subject  
14 to overcapacity worldwide and is subject to  
15 potential abuses, so therefore licensing is  
16 warranted. Along with creating a licensing  
17 structure therefore, so that a company wishing to  
18 engage in production of optical discs would not be  
19 able to do so without a license, would come some  
20 further obligations such as the use of source  
21 identification code, allowing the enforcement  
22 authorities to inspect facilities suspected of

1 engaging in production of optical discs without a  
2 license or in breach of the license provisions, with  
3 a set term of years for the license so that there  
4 would be renewability but that the license would not  
5 be granted and then automatically renewed. It would  
6 be subject to an ongoing time review and sunset of  
7 the license.

8           And then I think the second aspect of that,  
9 once an adequate regulation is put into place, is  
10 ensuring that the border measures are such that both  
11 in terms of piratical imports or transshipments,  
12 which we have noted in other previous reports, but  
13 also the export monitoring would also occur with  
14 respect to any physical product located in Laos  
15 which is then being shipped outside of the country.  
16 Thank you.

17           MR. KARAWA: Mr. Schlesinger, thank you  
18 again. My question is as you consider the various  
19 markets or market access for copyright works,  
20 including music, film, business software, and  
21 others, where do you see the greatest potential for  
22 the improved protection and enforcement of

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1 intellectual property in the relatively near term?

2 MR. SCHLESINGER: Regionally you mean, or  
3 in the country? Yes, well, again, I believe that  
4 the steps that have been outlined in our testimony,  
5 which would include creating an adequate legal  
6 structure through the passage of a modern copyright  
7 legislation -- and it appears that the government  
8 has passed legislation in 2011 and regulations in  
9 2012.

10 We'd like to take a look at those to see  
11 where they match up in terms of their protection for  
12 copyrighted works, in terms of their protection for  
13 sound recordings and related rights, in terms of  
14 their protection of internet-based rights, whether  
15 there is a communication to the public right, and  
16 also dealing with both hosted internet  
17 infringements, but also non-hosted infringements.

18 But then it is from there, establishing  
19 capacity, enforcement capacity in the form of,  
20 obviously, beginning with law enforcement, but also  
21 creating a structure whereby rights can be afforded  
22 and protected through the courts.

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1           I think even more crucially in Laos is  
2 ensuring that the marketplace is open to legitimate  
3 business, because right now with the status of the  
4 negative investment list, no matter how many steps  
5 we take to address the piracy problem in the  
6 country, without there being availability of  
7 legitimate product and legitimate services to meet  
8 the consumer demand, we're not going to fully be  
9 able to address piracy and also not able to fully  
10 service the potential legitimate commercial market  
11 in Laos.

12           MR. DeLUCA: Thank you for your testimony.

13           MR. SCHLESINGER: Thank you.

14           MR. DeLUCA: The United Nations has  
15 designated Laos a least developed country. We're  
16 interested in knowing how Laos' IPR laws and its  
17 approach to IPR protection measure up or compare to  
18 other LDCs.

19           MR. SCHLESINGER: Well, certainly before  
20 this latest round of legislation, Laos probably  
21 measured behind other LDCs in terms of its  
22 development of its intellectual property system,

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1 both in terms of legal reform, in terms of  
2 enforcement capacity. I think I would withhold  
3 judgment until we have a chance, until the  
4 international community and stakeholders have a  
5 chance to review not only the 2011 law, but the 2012  
6 regulations to see where Laos stacks up.

7           Certainly, it is ahead of some other LDCs  
8 in the fact that it has passed a present-day  
9 copyright law, which purportedly takes on the  
10 obligations of the TRIPS Agreement and purportedly  
11 also takes on some of the advice of international  
12 organizations such as the World Intellectual  
13 Property Organization.

14           And then just, I know you didn't ask this  
15 question, but in terms of Laos' per capita GDP,  
16 obviously it is a little bit slightly above where  
17 some of the other LDC countries are, which may place  
18 it more along the lines of the developing countries  
19 in terms of how we look at developing the market and  
20 how we look at consumer demand.

21           MS. CORNWELL: Thank you for your  
22 testimony. During its WTO accession, Laos requested

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1 and received a four-year transition period ending  
2 December 31, 2016, to address various issues  
3 identified in its action plan, to obtain technical  
4 assistance, and to fully implement the obligations  
5 of the TRIPS Agreement.

6 As reflected in the WTO Working Party  
7 Report, Laos confirmed that if a transition period  
8 were granted, any change made in its laws and  
9 regulations during this period would not result in a  
10 lesser degree of consistency with the TRIPS  
11 provisions than existed on the date of accession.

12 To the extent of your knowledge, has Laos  
13 complied with these commitments to date?

14 MR. SCHLESINGER: Well, and so I apologize  
15 for obviously my error in terms of the date and the  
16 transition being the end of 2016. But to my  
17 knowledge, since the regulations went into force in  
18 September 2012, I do not believe that there have  
19 been any changes since that time. So whatever is in  
20 place through the 2011 intellectual property law,  
21 which again we would like to be able to review in  
22 greater detail, and whatever is in place through the

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1 regulations of September 2012, that's what we  
2 believe to be the legal system today. So the stand  
3 still holds.

4 MS. CORNWELL: And if I could just follow  
5 up, what weight, if any, should we give the  
6 four-year transition period in considering IIPA's  
7 suggestion for the one-year review?

8 MR. SCHLESINGER: Well, as we know in other  
9 trade programs, such as Special 301, there is  
10 language dealing with the TRIPS Agreement which has  
11 a certain level of linkage, but not entire linkage.  
12 So what we're really looking for in the GSP program  
13 is the eligibility criteria within that statute, and  
14 the eligibility criteria within that statute is  
15 adequate and effective.

16 So, certainly, I think some weight should  
17 be given by the committee to the fact that there is  
18 a transition period to 2016, but I do not think that  
19 that would absolve Laos of its obligation to meet  
20 the eligibility criteria to receive GSP benefits.

21 CHAIRMAN JACKSON: In acceding to the WTO,  
22 as we just heard, Laos agreed to a multi-part action

1 plan. Are you able to comment on any of the  
2 progress that the country has made to date on any of  
3 the elements of that plan? And I have a list of  
4 some of the things, but you may be familiar with it.  
5 Shall I?

6 MR. SCHLESINGER: Yeah, it would be great,  
7 actually.

8 CHAIRMAN JACKSON: Enhancing public  
9 awareness on the protection of IPR; upgrading  
10 computerization in the Ministry of Science and  
11 Technology; training for users; development of an  
12 information brochure and a training program; and  
13 training on copyrights, industrial property, and  
14 plant variety protection for enforcement  
15 authorities.

16 MR. SCHLESINGER: Well, so what I can tell  
17 you from the stakeholder vantage point is that we  
18 don't have any specific information about  
19 significant public awareness programs or significant  
20 training that has occurred since say February 2013,  
21 the date of accession to the WTO.

22 So the only thing that I would say is that

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1 we are here in Washington, D.C., but we also have,  
2 our member associations do have representatives  
3 located in Asia, and we would be very pleased to  
4 engage further with the government to work on  
5 implementation of the statute, of the 2011 law, and  
6 the 2012 implementing regulations, and also to the  
7 extent feasible, to participate in any of the  
8 outreach or training activities that are occurring  
9 or planned.

10 MS. CAMERON: As also reflected in the WTO  
11 Working Party Report, Laos confirmed that if a  
12 transition period was granted, the government would  
13 ensure from the date of accession that existing  
14 rates of infringement would not significantly  
15 increase and that any infringement of intellectual  
16 property rights would be addressed immediately using  
17 existing enforcement provisions and remedies, and it  
18 would be in cooperation with affected rights  
19 holders.

20 So I have a two-part question. To the  
21 extent of your knowledge, have existing rates of  
22 infringement significantly increased? And have

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1 affected rights holders raised existing infringement  
2 matters with the Laotian administration, and have  
3 the authorities worked to address these problems  
4 using existing enforcement provisions?

5 MR. SCHLESINGER: Thank you. So the answer  
6 to the question, obviously the first part of the  
7 question is that given the lack of market access and  
8 the existing infringement -- the existence of  
9 infringement in the country, there was already a  
10 relatively high level of copyright infringement in  
11 the country, including software piracy and including  
12 music and movie piracy, two areas where at least we  
13 have some measure. So it would be hard to say that  
14 it has significantly increased. On the other hand,  
15 we have not necessarily seen significant improvement  
16 in the piracy levels since that time.

17 Secondly, our associations and our  
18 companies make commercial and also enforcement  
19 decisions in terms of allocation of resources. And  
20 right now we don't have significant enforcement  
21 resources devoted to the Laotian market. So we  
22 don't have the capacity and we're not in a position

1 to report on any specific steps taken to raise  
2 complaints with the government.

3           Of course, under the WTO regime, as it is  
4 transitioned in, the government will take on the  
5 obligation to provide expeditious remedies and  
6 remedies which constitute a deterrent to further  
7 infringements. And this, while one aspect of those  
8 TRIPS obligations does relate to civil enforcement  
9 and administrative enforcement, which presumably  
10 would be complaint based, there are also aspects to  
11 the enforcement obligations which may not be  
12 complaint based but would involve measures to detain  
13 infringing goods, whether internally or at the  
14 border, and also measures to undertake criminal  
15 enforcement as well. Thank you.

16           CHAIRMAN JACKSON: Well, thank you. That  
17 concludes our questions for this panel and also  
18 concludes our hearing for the day. So thank you  
19 very much to all those who participated, and I now  
20 declare this hearing closed.

21           (Whereupon, at 12:39 p.m., the meeting was  
22 closed.)

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C E R T I F I C A T E

This is to certify that the attached  
proceedings in the matter of:

U.S. GENERALIZED SYSTEM OF PREFERENCES (GSP)

REVIEW OF GSP ELIGIBILITY

June 4, 2013

Washington, D.C.

were held as herein appears, and that this is the  
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