

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

TRADE POLICY STAFF COMMITTEE
GENERALIZED SYSTEM OF PREFERENCES (GSP)

SUBCOMMITTEE

2008 ANNUAL REVIEW FOR COUNTRY PRACTICES

PUBLIC HEARING

FRIDAY

APRIL 24, 2009

The Subcommittee met in Hearing Rooms 1 and 2 in the Office of the U.S. Trade Representative Annex, 1724 F Street, N.W., Washington, D.C., at 9:00 a.m. Marideth Sandler, Chairman of the GSP Subcommittee, presiding.

PRESENT:

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U.S. Agency of International Development

CORY O'HARA

U.S. Department of Agriculture
OMAR KARAWA

U.S. Department of Commerce
AMANDA WILSON

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U.S. Department of Labor
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U.S. Department of Treasury
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Mr. Md. Moshiul Azam (Shajal) Director BGMEA	
Sk. Jenefa Khanom Jabbar Compliance Consultant BRMEA	
Parikshit Datta Choudhury Joint Secretary (Labor)	
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1 P-R-O-C-E-E-D-I-N-G-S

2 9:00 a.m.

3 MS. SANDLER: I'd like to begin
4 this hearing. Again, I apologize for being a
5 few minutes late.

6 My name is Marideth Sandler. I'm
7 Executive Director of the Generalized System
8 of Preferences at the Office of the U.S. Trade
9 Representative, and I also chair this
10 Subcommittee of -- the GSP Subcommittee of the
11 Trade Policy Staff Committee.

12 I'd like to call this meeting,
13 this public hearing to order.

14 The hearing, its purpose is to
15 take public comment on petitions accepted for
16 the 2008 GSP Country Practice Review, and to
17 allow for interagency questions of the
18 witnesses.

19 The hearing was announced in the
20 Federal Register Notice, published on March
21 16th, 2009. I believe we provided copies of
22 the Federal Register Notice on the table

1 outside this room.

2 The petitions, as well as the
3 prehearing comments are available for public
4 review. We have a new system now where we
5 don't have a reading room, a physical reading
6 room, but we have posted all of the public
7 comments on www.regulations.gov, and they are
8 available in USGR's Docket 2009-0009.

9 As indicated in the Federal
10 Register Notice, posthearing written briefs,
11 statements and answers to questions posed
12 today, if witnesses would like additional time
13 or additional opportunity to answer questions,
14 are due to [regulations.gov](http://www.regulations.gov) by Friday, May 8th,
15 so that's two weeks from today.

16 If you have business confidential
17 versions of those of your responses, you need
18 to email those to us and those -- that email
19 address indicated in the Federal Register
20 Notice. It's the one we've used in the past
21 this year. It's FR0807@ustr.eop.gov.

22 If you're submitting a business

1 confidential version of your comments, your
2 posthearing comments or answers to questions,
3 you also need to make sure that you submit a
4 public version as well, and one that shows
5 which information has been redacted or, you
6 know, which information was in the business
7 confidential, but has been removed from the
8 public version.

9 We will post all public
10 submissions, posthearing submissions on
11 regulations.gov no later than Friday, May
12 15th. So, what we do is, you post them, or
13 you send them in to regulations.gov. You
14 should get a receipt.

15 We review them. We rename them so
16 that the title makes it more clear, that it's
17 from you and what the case is and such, and
18 then we repost them on regulations.gov. And
19 the ones -- as I said, the prehearing
20 information is already up and available for
21 review.

22 I'd like to introduce my

1 colleagues to my left and right. To my far
2 left is Omar Karawa from the Department of --
3 U.S. Department of Agriculture.

4 Next to him is Alejandro Mares,
5 who is from the Department of Treasury. And
6 next to me on my left is Ms. Anne Zollner from
7 the Department of Labor.

8 Continuing around is Laura Buffo,
9 my colleague here at USGR, who handles labor
10 issues. Her presence today and the fact that
11 we've got a special person on labor issues, I
12 think, helps -- we wanted to make sure that
13 we're really asking the right questions, up-
14 to-date questions as she's listening, we're
15 listening on labor issues, because of the
16 enhanced emphasis on the labor eligibility for
17 GSP countries.

18 And next to her is Anu Prattipati
19 from the Department of State. And next to her
20 is Doreen Parekh from the Department of
21 Commerce.

22 And to the far right is Cory

1 O'Hara. Cory, I'm going to call you Cody, so
2 -- for some reason it comes out that way --
3 who is a new member of our GSP Subcommittee
4 from the USAID, Assistance in International
5 Development?

6 MR. O'HARA: Agency for --

7 MS. SANDLER: International
8 Development.

9 And we felt that it was important
10 to add AID to our GSP Subcommittee because
11 what he's working on is what we're working on,
12 and he's resources and also has many people
13 out in the field so we can coordinate more
14 efficiently across the U.S. Government.

15 I'd like to remind our witnesses
16 of the hearing rules. Each witness panel is
17 limited to ten minutes of oral testimony given
18 by one person on your panel.

19 Following the oral testimony, the
20 U.S. Government Panel, we over here, will have
21 20 minutes to engage in conversation with you,
22 asking specific questions.

1 Oftentimes, in that 20 minutes we
2 don't get to all of the questions, so we will
3 email to each panel on a particular case, like
4 for Bangladesh we will email to both the
5 Government of Bangladesh, as well as to the
6 AFL-CIO, the questions that we asked of both
7 sets of witnesses, and you'll have the
8 opportunity to include those answers in your
9 posthearing comments which are due two weeks
10 from today.

11 Again, the -- where you submit
12 those comments is at regulations.gov, and the
13 Docket is 2009-0009.

14 Other rules, or other things I
15 just wanted to cover. Are there any members
16 of the press here joining us today? Okay.

17 And to witnesses, before, when you
18 come sit down before you begin your oral
19 statement, if you could introduce to us, and
20 to the -- those are here for the hearing who
21 is sitting with you.

22 As you probably know, the way

1 these microphones work is you press the button
2 on when you are going to speak, and be sure to
3 press it off when you're finished so that both
4 our recorder and our amplification folks can
5 make sure that everybody hears things. And I
6 will try to remember to do the same.

7 So, Agency Panel, if you have any
8 questions, if you could pass me a note so that
9 we don't confuse the recorder and such by
10 talking.

11 So, I'd like to introduce our
12 first panel from the Government of Bangladesh,
13 and I'd like to welcome Your Excellency
14 Secretary Ahmed and Ambassador Kabir.

15 So, if you'd like to join us at
16 the table.

17 One other thing: We should have
18 testimony -- copies of the testimony of each
19 of the witness panels on the table outside the
20 door, so if you don't have a copy, that's
21 where you'd find them. And if we run out of
22 copies, please let Monica He, who is our

1 Deputy Director of GSP, know. Thank you.

2 SECRETARY AHMED: Madam
3 Chairperson, Honorable Members of the GSP
4 Subcommittee, good morning.

5 I am Feroz Ahmed, Department
6 Secretary to the Ministry of Commerce,
7 Government of Bangladesh, and leader of the
8 delegation.

9 It is indeed an honor to be able
10 to participate in this hearing. I express my
11 sincere thanks to USGR, and the Government of
12 the USA for giving me the opportunity to
13 highlight the matters undertaken by government
14 as well as authorities like BEPZA and other
15 associations.

16 At the outset, I would like to
17 draw your kind attention to the fact that
18 Bangladesh is one of the least-developed
19 countries, with a population of about 140
20 million is striving hard to reduce poverty, to
21 create employment opportunities for millions
22 of eligible work force, and to reduce the

1 gender inequality by imparting womenfolk.

2 Bangladesh is following market
3 into the economy by the private sector is the
4 main driving force. Government's role is
5 primarily concentrated in facilitating the
6 growth process.

7 Trade is an integral part of this
8 development strategy. We are trying to
9 improve economic condition through enhanced
10 access to foreign markets.

11 The United States of America is
12 the single biggest market of Bangladesh
13 products, especially for apparel, frozen fish
14 and shrimps and others. Any measure that will
15 hamper exports to US will certainly have
16 serious repercussions in its development
17 efforts.

18 Madam Chair, now I will provide
19 the review of the initiatives undertaken in
20 export proceeding zone to implement the BEPZA
21 Workers' Association Industrial Relations Act.

22 BEPZA has successfully implemented

1 the EPZ workers association and Industrial
2 Relations Act, 2004. Elections for workers
3 who presented the welfare committees begun in
4 December 2004 and 177 workers represented in
5 welfare committees were registered on the
6 basis of elections often monitored by
7 representatives from the U.S. Embassy, the
8 AFL-CIO's Solidarity Centers and critical
9 parties.

10 BEPZA established two training
11 institutions to Chittagong and Dhaka EPZ to
12 provide job training services and raise
13 awareness among the workers about their rights
14 and responsibilities under labor law.

15 Bangladesh government has already
16 allowed the existing labor courts of the
17 country outside of BEPZA to dispose of
18 industrial disputes and try offenses of
19 represent workers by incorporating necessary
20 modifications in EPZ Workers Associations and
21 Industrial Relations Act, 2004.

22 This modification is now being

1 processed for submission as a bill in the next
2 session of the parliament. BEPZA also
3 established EPZ management system with
4 conciliator and arbitrators who can
5 investigate any work complaints to determine
6 whether they conform to the law or not.

7 Some 192 workers complaint cases
8 have been successfully resolved through BEPZA
9 conciliator. BEPZA officials meet with
10 Workers Right Welfare Committee members on
11 regular basis to receive feedback about the
12 labor level conditions of EPZ.

13 BEPZA also continues to have
14 routine meetings with US Embassy officials and
15 AFL-CIO Solidarity Center on the
16 implementation of labor laws in EPZ areas.

17 Under BEPZA's oversight there have
18 been significant improvement in the working
19 condition of workers, including increase in
20 wages of over 35 percent, and has benefits
21 covering overtime, leave, permanent fund
22 contributions, transportation, et cetera.

1 The salaries and wages have also
2 been increased in 2008 in consideration of the
3 price hike. BEPZA issued a letter of
4 instruction to all enterprises to permit the
5 establishment of workers' association, and
6 distributed necessary printed forms for
7 workers to request a referendum.

8 In developing the forms and
9 procedure, a number of meetings were held with
10 the AFL-CIO's Solidarity Center. Indeed,
11 workers have been seeking assistance and
12 support from a number of NU's, including the
13 Solidarity Center for advancing their welfare.

14 Referendum and elections on
15 workers' association, in 188 EPZ enterprises
16 have been completed up to 22 March 2009, and
17 this constitutes about 72.5 percent of the
18 eligible enterprises of total of 250
19 enterprises.

20 BEPZA is putting its best efforts
21 to complete their different elections in all
22 factories by December 2009. AFL-CIO has also

1 acknowledged the force of EBPZA in respective
2 workers right.

3 Officials of USTR and US
4 Department of Labor, Deputy Assistant
5 Secretary for Democracy, Human Rights, Labor,
6 His Excellency, the Ambassador of USA in
7 Dhaka, Executive Director of Solidarity Center
8 and other officials visited Dhaka and
9 Chittagong, EPZ to observe referendum and
10 elections.

11 Now, I'd like to mention about
12 some of the initiatives undertaken by BGMEA
13 and BKMEA. BGMEA, BKMEA have made significant
14 progress in complex standards of the industry
15 since the last hearing of October 2007.

16 Service book have been introduced,
17 and over 2 million copies have been
18 distributed and being monitored. As rigorous
19 implementation of minimum wages, appointment
20 letters and articles, significant improvement
21 has been made.

22 BGMEA and BKMEA have suspended

1 their service to factories that are not giving
2 minimum wages and have notified government.
3 30 cases have been filed against them in labor
4 courts for noncompliance of business.

5 The industry has introduced
6 programs that include education, labor
7 complaints, technical training centers to
8 provide training for workers, especially from
9 the poorest regions of Bangladesh.

10 With a democratically-elected
11 government in power now, fundamental rights
12 have been restored and registration of unions
13 and trade unions are allowed.

14 Madam Chair, at last I would like
15 to highlight some of the measures taken by
16 Bangladesh government the shrimp industries,
17 to address compliance issues in the fishery
18 sector.

19 Since last year in October 2007,
20 government has taken a number of regulatory
21 and enforcement measures in consultation with
22 leaders of the shrimp industry for due

1 compliance with related provisions of labor
2 law 2006.

3 Notable among these include
4 constructive engagement with Solidarity
5 Centers in Bangladesh and holding discussion
6 with them from time to time.

7 Launching of vigorous governance
8 campaign among stakeholders for compliance
9 with relative provisions to labor law 2006
10 with active participation of government
11 leaders, government agencies responsible for
12 enforcement of the provisions of labor law and
13 ILO, International Labor Organization.

14 Government has, through a
15 notification on November 17th, 2008 included
16 shrimp industry members for the minimum wage
17 board to fix minimum wage for shrimp industry.

18 Minister of Fisheries and
19 Livestock added an additional box of labor
20 compliance in the yearly evaluation format for
21 the renewal of license of the shrimp
22 processing plants.

1 Every plant has to secure
2 independently pass marks on labor compliance
3 box to get license renewal.

4 Successful elimination of child
5 labor from the premises of all exporting
6 factories, and introducing three shifts a day,
7 issuing ID cards to permanent workers,
8 installing complaint boxes at feasible
9 locations of all plants in the general offices
10 for ventilation of grievances of the workers,
11 if any.

12 Besides Bangladesh shrimp and fish
13 foundation has launched a project to develop
14 in shrimp processing plants, six in Khulna
15 region and four in Chittagong region as models
16 of labor standard compliance in collaboration
17 with shrimp industry under a project called
18 "Poverty Reduction by Increasing
19 Competitiveness of Enterprise Price Project,
20 Supported by USA."

21 Finally, I would like to mention
22 that in January 2009 a democratically elected

1 government has come to power through a free
2 and fair election. The new government is
3 fully committed to upholding the rights and
4 privileges of the workers as recognized in
5 labor laws and other relevant laws.

6 In recognition of our efforts that
7 I have mentioned, the Government of Bangladesh
8 requests the United States Trade
9 Representative to terminate the Annual Review
10 Proceedings and continue to accord GSP
11 facilities to Bangladesh to help in its
12 pursuit of growth and development as well as
13 in its fight against poverty.

14 Thank you, Madam. Thank you very
15 much.

16 MS. SANDLER: Thank you, Mr.
17 Secretary.

18 Monica, could you -- we do not
19 have copies of the testimony, so if you could
20 bring us -- bring eight copies. And if each
21 of the witnesses following, if you have
22 testimony that you developed just for today,

1 it's likely we don't have it.

2 So, if you could note that so we
3 can be sure that we have it up at the desk or
4 at this side of the desk. Thank you.

5 Okay. I'd like to ask my USGR to
6 start with our first question.

7 MS. BUFFO: You mention in your
8 brief that your government had already
9 extended the duration of the EPZ Worker
10 Association and Industrial Relations Act 2004,
11 No. 23, up until October 31, 2010.

12 However, you also mentioned that
13 the ratification process is still ongoing.
14 What is the legal effect of the extension, if
15 not in effect, how and how soon will it become
16 in effect?

17 SECRETARY AHMED: Actually, the
18 ordinance need to be ratified by the new
19 parliament within one month of the new
20 parliament's session. The ordinance which has
21 been promulgated during the Calcutta regime is
22 -- will be tabled in the next session of the

1 parliament, as I have mentioned in my brief.

2 And it is under process of tabling
3 it in the session.

4 MS. SANDLER: Department of
5 Commerce, please.

6 MS. PAREKH: Good morning. What
7 steps in the short term can we expect to see
8 from BMGEA and the RMG's industry that would
9 indicate that workers are being paid according
10 to MOU commitments?

11 SECRETARY AHMED: As we have
12 mentioned that minimum wages fixed by the wage
13 board is being paid by -- as per our figure
14 about 99.49 percent of the factories are
15 paying minimum wages to the factory workers.

16 The factories which are not
17 complying with this minimum wage regulations
18 are being deprived of by BZMEA in their
19 activities. They are referring their cases to
20 the Ministry of Labor for taking actions in
21 different forms.

22 MS. SANDLER: Did you want to

1 continue to --

2 SECRETARY AHMED: May I request
3 one of our delegates coming from BZMEA, a
4 representative of BZMEA, Mrs. Jenefa Jabbar,
5 to respond on this issue also.

6 MS. SANDLER: I think that would
7 be useful if you'd like to join us at the
8 table. And if you could be sure to introduce
9 yourself.

10 MS. JABBAR: Thank you. My name
11 is Jenefa Jabbar. I am the advisor for BGMEA.

12 Regarding the minimum wage issue,
13 minimum wage, there is a task force headed by
14 the Ministry for Commerce, and the minister
15 presides over, and it's called the Social
16 Compliance Forum, where NGO's, various other
17 stakeholders, union leaders, employers, all
18 sit together and they have two task forces,
19 one on labor welfare and the other on health
20 and safety.

21 There are 15 task forces of the
22 government which are monitoring the MOU

1 issues, including the minimum wage issues, and
2 BGMEA have 39 officials who are monitoring the
3 tripartite MOU issues, including the minimum
4 wage issues.

5 Now, the minimum wage -- as on 15
6 January 2008 I am going a little back, was
7 99.10 percent, and on 15 January 2009, it's
8 99.49 percent. So, minimum wage is more or
9 less is being paid by almost all the factories
10 right now.

11 And this can also be vetted by a
12 government official who are from the labor
13 department who is also with us in this
14 delegation because we visit together to the
15 factories to see whether all the tripartite
16 MOU issues and other additional compliance
17 issues are being met.

18 MS. SANDLER: And is it one
19 minimum wage level, or is it several?

20 MS. WILSON: There are gradations.
21 The lowest is grade seven, and then you go up.
22 Thank you.

1 MR. MARES: And if I could ask,
2 when the last adjustment to the minimum wage
3 was to the level of payment required?

4 MS. JABBAR: In 2006 the minimum
5 wage was reviewed and a new minimum wage scale
6 was announced in 2006, September, I think.

7 MS. SANDLER: Department of Labor,
8 please.

9 MS. ZOLLNER: We recognize the
10 Government of Bangladesh's responsiveness to
11 the GSP petition, in particular the formation
12 of the workers associations.

13 It was always considered that the
14 EWAIRA was an interim step towards full
15 freedom of association in the zones, and we're
16 curious what steps are being taken by the
17 Government of Bangladesh toward full
18 unionization and the right to collective
19 bargaining in the zones.

20 SECRETARY AHMED: May I request
21 you to allow our activity chairman of BEPZA,
22 Mr. Jamil Khan to give testimony on BEPZA on

1 this one.

2 MS. SANDLER: I think what would
3 be helpful is for you bring up all your people
4 so we can save time on this, if you're going
5 to be referring questions. I think that's
6 useful. You've brought so many people into
7 town but -- and it would be good to have them
8 at the desk right away, so that we don't run
9 out of time.

10 Are you the chairman of BEPZA.

11 MR. KHAN: Yes. My name is Jamil
12 Ahmed Khan. I'm the Executive Chairman,
13 Bangladesh, Export Processing Zone Authority,
14 in short BEPZA.

15 MS. SANDLER: Okay.

16 MR. KHAN: Thank you, ma'am.

17 MS. SANDLER: For the people who
18 are testifying in addition, which we're very
19 happy to have you and we welcome you. If you
20 could be sure to give the gentleman sitting
21 near the windows who is raising his hand
22 there, the spelling of your names and the

1 title -- no, no. Afterward, so that we can --
2 they'll get that correct for the transcript.

3 And let's continue.

4 So, go ahead, sir. Thank you.

5 MR. KHAN: My name is Jamil Ahmed

6 Khan. I'm the Executive Chairman, BEPZA.

7 Ma'am, could you please repeat the question.

8 I did not get your --

9 MS. ZOLLNER: Sure. I was just
10 acknowledging and recognizing the progress
11 that's made on the part of BEPZA to allow the
12 workers associations to form.

13 It was always viewed that the
14 EWAIIRA was an interim step towards full
15 freedom of association and the rights of
16 unions to form in the zones, including the
17 right to collective bargaining.

18 Can you speak to how that -- what
19 steps might be taken towards that, and then
20 your future, or how you might progress towards
21 full freedom of association in the sense.

22 MR. KHAN: Right. Ma'am, the

1 first thing that I come in with thanks to you.
2 This is just today's 24 April. I have
3 completed one year, right, today in my chair.
4 When I joined it, it was only 39 percent of
5 total industry conducted the WA elections, the
6 labor elections to the public and say within
7 one year it rose to 76 percent.

8 So, we have taken another step to
9 hold these elections, this one. The second
10 is, you know that the bill will be passed in
11 the next session of the parliament, and it
12 will be -- I had a talk with Honorable Pamish
13 and she has also taken keen interest to make
14 sure that the bill is passed in the
15 parliament, up to ten.

16 The government is new. It is a
17 democratic government, actively considering
18 to make it permanent, so that with the
19 discussion of AFL-CIO or not, if there is
20 anything that needs to be changed, so it is in
21 the active consideration of the present
22 government. Thank you, ma'am.

1 MS. SANDLER: Department of State.
2 And what I ask you to do is -- and I'll do
3 the same, is to move our mics up a little bit,
4 because it sounds like it is hard for people
5 to hear back there.

6 MS. PRATTIPATI: We understand
7 that the labor tribunals and appellate
8 tribunals under EWAIRA have not been
9 established, and that instead cases are
10 directed to the labor and judicial system.

11 What steps are being taken to
12 ensure that cases are moved expeditiously
13 through the labor courts, and when will the
14 labor and appellate tribunals be established
15 and how?

16 MR. RAHMAN: Thank you. This is
17 Azizur Rahman, ma'am, Joint Secretary and
18 Minister of Labor. In the export presence in
19 zones, if any matter is required to be
20 referred to the court, government has arranged
21 an interim management unless in the event
22 courts or civil courts are not established,

1 the existing level courts has given the
2 jurisdiction to -- to receive the allegation
3 against any sorts of violation of labor
4 standards.

5 SECRETARY AHMED: May I
6 supplement. On this point, actually, since a
7 number of cases in the EPZ may not be -- if we
8 establish permanent courts for EPZ area that
9 will not be economically justified.

10 That's why the trial case, as
11 trial case, the courts outside EPZ who are
12 empowered to deal with labor offenses, they
13 have been trusted with the responsibility of
14 trying offenses under EPZ level.

15 So, quotas there -- a quota has
16 been established and they are actually taking
17 cognizance of the offenses committed in EPZ
18 enterprises for violation of labor rights.

19 MR. KHAN: I would like to add
20 with -- I will give you a latest example, that
21 one of the workers -- oh, myself is Jamil
22 Ahmed Khan, Executive Chairman of BGMEA.

1 I will give you a latest example
2 of last week. One of the workers of the EPZ
3 went to the Court and he got the verdict in
4 his favor. This is basing on these acts which
5 we are now practicing in our country.

6 So, this is how they are going but
7 before that, in fact, the workers were
8 reluctant to go to the court because they get
9 status, as per the act of the law 2004 section
10 47 and 53.

11 They have got right to get the
12 settlement of their issues through the
13 conciliator and arbitrator. So, that is most
14 favored to them because they don't expend
15 money for that. They do not to go up to the
16 court. They get the cities from the DJR.

17 So, so far 201 worker complaints
18 have been settled by the conciliator and
19 arbitrator. This is also as per the law.
20 Thank you.

21 MS. SANDLER: Department of
22 Treasury, do you want to do a follow up on

1 minimum wage?

2 MS. PRATTIPATI: I think it's been
3 covered.

4 MS. SANDLER: Okay. Department of
5 Agriculture, please.

6 MR. KARAWA: First, thank you for
7 coming here. My question is somehow a follow
8 up. We understand that there continues to be
9 unrest in the ready-made garment sector of
10 wages and wages for government workers in
11 Bangladesh are among the lowest in Asia.

12 Are the BKMEA and BGMEA
13 considering responding to workers' request for
14 pay increases on gross pay, not base pay?

15 MS. JABBAR: I'm Jenefa Jabbar.
16 I'm the advisor for the BGMEA. Minimum wage
17 is being paid. Minimum wage is paid on the
18 gross wages.

19 The gross wage is divided into
20 basic, medical and house rent allowance, but
21 the payment is on the gross wages, and they
22 are getting at the end of the month the gross

1 wages.

2 Regarding enhanced -- our minimum
3 wage board is already set up and there is a
4 process undergoing where there will be a
5 review of the minimum wage in the garment
6 sector. I hope I have been able to answer.

7 MR. KARAWA: Yes, with the
8 emphasis that you intend to increase those
9 wages?

10 MS. SANDLER: The second part of
11 the question was -- can you repeat that, Omar?

12 MR. KARAWA: Yes. Responding to
13 workers' request for pay increases on those
14 minimum wages.

15 MS. JABBAR: Yes, of course. When
16 the review process is going, there is always
17 the likelihood is that there's going to be
18 increase in wages when the review takes place.

19 MS. SANDLER: And again, when do
20 you expect that to occur or to be completed
21 occurring and completed?

22 MS. JABBAR: That is something

1 that I can't answer. This is a government
2 issue, and the government business.

3 SECRETARY AHMED: May I respond.
4 I'm Feroz Ahmed. I am Department Secretary
5 and leader of the delegation.

6 Minimum wage is fixed by actually
7 wage board. This wage board are formed after
8 four or five years, normally, and in the peer
9 structure also for the government, the
10 Commission is set up to review the pays of
11 government staffs and officers, government
12 salary.

13 Likewise, wage board is also set
14 up for deciding what should be the minimum
15 wages at different scales of wages. A wage
16 board comprising of members to deal with the
17 BZMEA case of garment factories and meat
18 factories has been set up and once they
19 recommend -- recommend to the pay packages or
20 wage packages, government will consider.

21 Normally, it takes almost eight to
22 nine months, or even not more than one year,

1 to decide this case. This is normally the
2 situation. Thank you.

3 MS. SANDLER: Thank you. The
4 USAID.

5 MR. O'HARA: Thank you. I'd like
6 to direct the question to BEPZA. There was
7 some mention of the process for addressing
8 labor complaints, and I was specifically
9 interested in the process for addressing
10 worker intimidation, allegations of worker
11 intimidation, and how BEPZA addresses that,
12 and you can either provide examples now or in
13 your posthearing brief.

14 MR. KHAN: I am Jamil Ahmed Khan,
15 Executive Director BEPZA. Intimidation, in
16 fact, there is no example of having systematic
17 intimidation in BEPZA, however if there is
18 any, whenever we come to know immediately we
19 take a step.

20 We have got the legal estates, you
21 know, as per our act. We have conciliators,
22 arbitrator, and also our administration. So,

1 the moment we come to know this has taken
2 place or happened, immediately we interfere
3 and we solve the problem.

4 Any specific information given by
5 AFL-CIO, especially to me or to my -- anybody
6 in my administration, we take action
7 immediately. There is no -- we don't
8 compromise with this. Thank you.

9 MS. SANDLER: I think for our last
10 question, spoken question during the hearing
11 from the Department of Treasury, please.

12 MR. MARES: Thank you.

13 You indicated in your brief that
14 the Ministry of Labor and Employment is having
15 regular monthly meetings with exporter groups,
16 the BGMEA and BKMEA to review the
17 implementation status of the EWAIIRA.

18 What are the outcomes of those
19 meetings, if you have any comments in addition
20 to what you've already said about the progress
21 on that issue and does the Ministry hold
22 similar meetings or consultations with members

1 of workers associations as well as the
2 exporters groups and, if not, then why not,
3 please?

4 SECRETARY AHMED: I may respond.
5 My name is Feroz Ahmed. I am Department
6 Secretary the government. Regarding this
7 issue, I can say that actually government
8 Minister of Labor holds monthly meetings with
9 BZMEA and other stakeholders to improve the
10 situation and to assist the compliance level.

11 And we believe that for their
12 continued and untiring efforts, the situation
13 has improved a lot. As we have mentioned that
14 in minimum wages about 99.49 percent factories
15 have become compliant.

16 Regarding appointment later,
17 issuance of employment later, about 89.70 of
18 factories have been come compliant. And
19 regarding this issuance of ID card issue,
20 90.46 percent of the factories have become
21 compliant.

22 The figure was much less a year

1 before, and it is the outcome of this
2 continuous monitoring and vigilance made by
3 the vigilance team which actually resulted in
4 improvement, significant improvement in the
5 situation.

6 And we are hopeful that -- by the
7 by, I can also mention that 15 vigilance team
8 has been formed by Minister of Labor which
9 comprises of representation from BZMEA, BKMEA
10 and other stakeholders, labor association and
11 dues are also there.

12 Who actually visits these garments
13 factories to see the compliance issues,
14 especially with this eight issues like minimum
15 wage, appointment letters, ID cards, service
16 issue, leave issue, maternity leave issue,
17 these sort of things are looked into by this
18 vigilance team and these figures actually are
19 the observations of these teams are evaluated
20 in the monthly meeting held in the Ministry of
21 Labor. Thank you.

22 MS. SANDLER: Thank you very much.

1 Unfortunately, that's all the time we have to
2 ask your many Excellencies questions.

3 We will be sending you, emailing
4 both the questions we've asked today as well
5 as additional questions, and I think there
6 will be other questions that folks here are
7 thinking of.

8 Mr. Ambassador, I wanted to say a
9 special thank you for your time here and for
10 the opportunity to work with you over the
11 years. Thank you. Thank you.

12 And with that, I'd like to ask
13 AFL-CIO to come join us at the table. And
14 again, thank you very much for your -- for
15 coming here today.

16 SECRETARY AHMED: Thank you very
17 much.

18 MS. SANDLER: Did you -- do you
19 have anything new -- the same one. Okay.

20 If you'd like to introduce
21 yourself and begin.

22 MR. VOGT: Hello. My name is Jeff

1 Vogt. I'm the global economic policy
2 specialist for the AFL-CIO, and I want to
3 thank you all again for the opportunity to
4 testify, once again, on Bangladesh before this
5 Committee.

6 What I have to say is obviously
7 laid out already in the written testimony, so
8 I'm not going to read through eleven pages for
9 you now, but I'll do a brief summary of the
10 key highlights of the written comments and I
11 will be happy to respond to any questions
12 you'll have.

13 And just to start off in response
14 to the initial presentation of the government,
15 it is not the -- it has never been the purpose
16 of the AFL-CIO to try to remove preferences
17 for Bangladesh for the purpose of simply
18 removing preferences. And it's not our
19 interest to do so now.

20 Our interest is obviously to
21 improve working conditions in the country and
22 to see that Bangladesh uphold its legal

1 obligation to the United States through the
2 GSP program so that workers in that country
3 are able to capture their fair share of the
4 benefits that come from the exports to the
5 United States under the GSP program.

6 So, with that note, we highlighted
7 four sections in our original petition.
8 EPZ's, the shrimp industry, the ready-made
9 garment industry and the issue of security.
10 And I will touch on those four issues right
11 now.

12 As far as the EPZ sector, I think
13 this is the one sector where we've seen real
14 commitment on behalf of the BEPZA, General
15 Khan, and we are appreciative of that personal
16 commitment that he's given to labor relations
17 in this sector.

18 And, as mentioned, we've seen
19 worker associations elections in about 75
20 percent of the factories in the EPZ's. The
21 vast majority of those voting to go to form a
22 worker association, and that is progress we

1 don't believe we would have seen but for the
2 petition and for the personal commitment of
3 the Brigadier General.

4 But although there is undoubtedly
5 progress in the EPZ's, we do have some
6 outstanding concerns with this sector. The
7 first, obviously being the expiration of the
8 act that governs labor relations in the
9 sector, obviously this being one of the most
10 critical issues, and issues not raised only in
11 this petition, but in petitions going back
12 several years.

13 We were very surprised, especially
14 given the personal assurances of the
15 Ambassador here, personal assurances from the
16 government in Bangladesh, that the ordinances
17 issued by the interim government prolonging
18 the act would be acted upon immediately.

19 That was not done, and technically
20 right now there's a lapse in the legislation
21 and until June when the government claims that
22 they will take this up and ratify it.

1 I do believe the government's
2 claim that they do intend to ratify this, but
3 for now, we have, you know, an unexplainable
4 gap in the legislation. I do note, however,
5 they are acting as if the legislation is still
6 in effect, but the optics of the situation I
7 think is a bit troubling, that this act was,
8 in fact, allowed to lapse.

9 Another critical problem we're
10 seeing in the EPZ's is around the issue of
11 collective bargaining, although it's not
12 collective bargaining as such, but collective
13 negotiation.

14 The -- after the workers
15 associations are formed, obviously the next
16 step, now that you have an association is to
17 negotiate with your employer over the wages
18 and conditions of work.

19 What we are hearing, particularly
20 in the Chittagong EPZ is that many of these
21 WA's are now submitting their charter of
22 demand.

1 Basically what -- their offer on
2 collective bargaining and the conciliator
3 raising this issue that there are a couple of
4 instructions in Sections 1 and 2 that long
5 predate the EPZ law that set basic labor
6 standards in the EPZ's.

7 And they are claiming that workers
8 cannot bargain for anything above and beyond
9 what's in these instructions, which we read,
10 and I think are very explicit in the
11 instructions themselves, is these are the
12 minimum standards that apply and workers can
13 contract certainly above that, but workers are
14 being routinely told that any demands that
15 exceed the instructions are out of bounds and
16 are being struck from their charter of
17 demands.

18 The conciliator in the Chittagong
19 EPZ has been quite hostile to worker
20 associations and has refused actually to pass
21 along these charter demands to the employer.

22 And basically the rule of the

1 conciliator is just to do that, to be -- to
2 take the charter, you know, send it to the
3 employer and to mediate how the bargaining
4 process between the employer and the workers,
5 not to be making decisions as to what is up
6 for negotiation.

7 So, we think this issue obviously
8 needs to be addressed.

9 We have also heard a few cases in
10 which workers, especially officers of worker
11 associations have been suspended or fired and
12 they are listed in our petition. We have a
13 few examples. We are aware of others, but
14 these are ones we wanted the workers access to
15 specifically highlight.

16 One case actually involves a
17 worker association leader who submitted a
18 charter of demands, and was told, you know,
19 you don't do this. You'll be fired. And, in
20 fact, was -- that was the case.

21 We have another instance of a
22 worker association member who attended a

1 workshop outside the EPZ's on collective
2 bargaining practices, union practices, and
3 was, in fact, explicitly blacklisted in the
4 Chittagong EPZ because of his contact with a
5 union outside the zones. And obviously
6 there's a facial violation of the
7 international right of freedom of association.

8 And then there are a few
9 additional issues. As you mentioned, the
10 labor and appellate tribunals have now been
11 formed. The ordinances that created those
12 tribunals also lapsed with the EWAIRA, so
13 technically there's no access to the courts,
14 even though, again, for now they are acting as
15 if there is access to the courts.

16 Many of the worker associations
17 still do not have their own offices and many
18 do not have access to the original copies of
19 their foundational documents or their
20 registration certificate, their constitution.

21 On the shrimp processing sector,
22 we've seen certainly less progress here than

1 we have in the EPZ's. We do note that the
2 BFFEA and the BSFF have engaged with the
3 Solidarity Center on the ground, and there's
4 been certainly dialogue.

5 There has been conversation where
6 that had not happened before the filing of the
7 petition, and the issuance of the shrimp
8 report by the Solidarity Center last year.
9 So, those two documents certainly got the
10 attention of BFFEA and has provoked some
11 discussion.

12 That's positive. The BSFF has
13 undertaken some workshops and seminars on
14 labor issues in this sector, but when it comes
15 to many of the bread and butter issues, we
16 still don't see a real fundamental shift in
17 working conditions.

18 Some of the workers we talked to
19 did say well, now, after the petition we are
20 getting -- more of us are getting our
21 appointment letters, more of us are getting
22 gloves and protective masks. These are

1 directly employed workers.

2 But for many -- but some of them
3 still do not have these basic protections,
4 either the proof of their employment in their
5 letter, or the protective gear.

6 Many workers we talked to
7 complained of compulsory and uncompensated
8 overtime, working on the holy day, the Friday,
9 or women are prohibited to work night shift.

10 We did hear -- under law, and
11 heard of workers having to work night shift
12 and that the employers in some of these
13 processing plants using a process of getting
14 workers to sign onto a blank sheet of paper,
15 to which they attach a note saying "I consent
16 to overtime," when they clearly didn't, and
17 they were just -- had their signature on a
18 piece of paper and then this was used to -- as
19 evidence of their consent to overtime.

20 Inspections are a serious problem
21 in this sector. Every worker we talked to,
22 not one of them can ever remember having

1 talked to an inspector.

2 Universally workers told us that
3 when inspectors come, and they do come with
4 some frequency, whether it's from the Labor
5 Department or from the Fisheries Ministry,
6 they are cursory, ten minutes, in and out,
7 only in the management office, and then they
8 are kindly escorted out the front gates of the
9 processing plant without any conversation with
10 a worker, not really kind of an inspection of
11 the -- a proper inspection of the plant floor.

12 So, we're not -- we're not
13 expecting that many of the labor violations
14 were being -- out of time. Yes. Okay.

15 If I could move on just very
16 quickly to the ready-made garment sector, the
17 BGMEA has made much about the fact that they
18 have 99.49 percent compliance with minimum
19 wage laws.

20 I think this is almost laughable.
21 We don't have that kind of compliance here in
22 the United States, and I -- the workers we

1 talked to report that they are not being paid
2 a minimum wage, or if they are receiving the
3 general minimum wage, they are not receiving
4 the minimum wage for their job classification.

5 So, the 99.49 percent compliance
6 we find, and the brands we've talked to have
7 all found this -- this statistic to be
8 completely unrealistic, unreliable, and we see
9 no basis, in fact, for that claim.

10 So -- and one last point, I think,
11 freedom of association, now that the emergency
12 -- state of emergency has been lifted,
13 independent unions that we've been working
14 with have filed 30 petitions for recognition
15 as a union, not one of those has been acted
16 on, and we've had three of those rejected for
17 unclear reasons.

18 So, we are batting zero percent on
19 registration of unions. We've been told by
20 the Ministry of Labor that they have
21 registered unions since the state of emergency
22 has been lifted, not a single one that we are

1 -- have been associated with have been
2 accepted.

3 MS. SANDLER: Thank you, Jeff.

4 The first question is from USTR.

5 MS. BUFFO: In September 2005 the
6 U.S. consulted with the Government of
7 Bangladesh concerning the problems of
8 interference with workers access to the
9 Solidarity Center.

10 If you could describe what the
11 Government's response has been since this
12 consultation took place, and if workers are
13 now able to access the center without
14 hindrance.

15 MR. VOGT: In the EPZ certainly
16 there's been an improvement in the
17 relationship between the Solidarity Center and
18 the -- and EPZ's and solidarity assistance
19 with the creation of worker centers -- worker
20 associations are allowed and permitted. I
21 don't see hindrance in that regard.

22 We did receive reports from

1 workers in the shrimp sector, however, that
2 they knew that they were under surveillance by
3 their employers and that some workers were
4 subject to retribution for having gone to the
5 Solidarity Center office in Khulna.

6 Either they were not getting their
7 appointment letters after it was found out
8 that they had visited with the Solidarity
9 Center or other forms of retaliation for that.
10 So, the improvement in one sector, we still
11 need improvement in others.

12 MS. SANDLER: Thank you.
13 Department of Labor.

14 MS. ZOLLNER: Thanks, Jeff. Mine
15 is sort of a broad question. How would you
16 characterize any improvements in the right to
17 organize and bargain collectively as well as
18 collect back minimum wages in the ready-made
19 garment sectors since June of 2006?

20 MR. VOGT: Freedom of association
21 in the more constrained sense in the EPZ's, we
22 are obviously seeing that occurring. So,

1 that's positive, although obviously we have
2 been -- as referring to your question earlier,
3 we've been looking to see the EPZ law either
4 brought into compliance with the international
5 norms on freedom of association, or that their
6 general labor law applied to EPZ workers.

7 So, freedom of association in the
8 full sense still is not practiced in the
9 EPZ's. Outside the EPZ's in the ready-made
10 garment sector, again, 30 petitions that we're
11 aware of have not been acted upon, and three
12 have been rejected.

13 Petitions have not yet been filed
14 in the shrimp sector, but I know that those
15 are now being put together and we hope to see
16 that when those petitions are submitted in the
17 shrimp sector, that we will see those acted
18 upon expeditiously.

19 As far as back wages I'll have to
20 get back to you on exactly the extent to which
21 those have been paid.

22 MS. SANDLER: Thank you.

1 Department of State, please.

2 MS. PRATTIPATI: In your view, how
3 would the removal of the GSP benefits impact
4 Bangladesh and the AFL-CIO and the
5 government's efforts to reform labor and
6 improve labor laws?

7 MR. VOGT: As we, explicitly in
8 our testimony, our request, as it was the last
9 time, is not to remove the preferences. We
10 believe that the process of putting
11 essentially Bangladesh on probation over the
12 last year has been fruitful, particularly in
13 the EPZ's.

14 However, there's a lot of work
15 that needs to be done to address just the
16 issues that we raise in our petition and I
17 know that are most likely in your demarche of
18 last year.

19 So, I think now that we have a new
20 democratic government in place we would like
21 to see them have the opportunity to address
22 the remainder of the concerns we have in our

1 petition, use this time, this additional year
2 to, you know, allow -- you know, get
3 collective bargaining working in EPZ's to
4 figure out which way they're going in the EPZ
5 sector on bringing those workers full freedom
6 of association and collective bargaining
7 rights.

8 We need to see real substantial
9 work done in the ready-made garment sector.
10 That's one where I could say that we have seen
11 very little to no progress and in the shrimp
12 sector, obviously we have seen some
13 improvements and those are appreciated but
14 there's also a long way to go there.

15 So, giving them another year, we
16 come back and assess then. If they have
17 squandered this year, then -- then we look at
18 removal of the petitions.

19 I don't think they will squander
20 that this time, though, and I hope that
21 working together we'll be able to see real
22 progress for workers in all three of these

1 sectors.

2 MS. SANDLER: Thank you.

3 Department of Commerce.

4 MS. PAREKH: How have the workers
5 associations and unions in Bangladesh
6 responded to your petition?

7 MR. VOGT: This -- the initial GSP
8 petition was filed with the supports of the
9 workers in the EPZ's in the ready-made garment
10 sector.

11 With shrimp workers it was just
12 clearly explained, what we were doing, why we
13 were doing it, and this has been our practice
14 in our GSP petitions going back to the mid-
15 Eighties.

16 So, I think this, among
17 independents, trade unions, this petition
18 process continues to have full support and EPZ
19 workers are particularly appreciative of the
20 fact that this process has opened up an
21 opportunity where there were almost no worker
22 associations before the petition, and now we

1 have elections in 75 percent of the factories.

2 And we did visit with a worker
3 association in one of the factories in the
4 Dhaka EPZ. They have an office. They are
5 functioning. They are, you know, taking
6 worker grievances, taking them to the
7 management.

8 I mean, the labor relations
9 process is functioning in that factory, and
10 that's something that would not have happened
11 before. So, I think we still see the
12 appreciation and support of these workers that
13 we've outlined for this process.

14 MS. SANDLER: Thank you.

15 Department of Agriculture now.

16 MR. MARES: Thank you. How would
17 you describe the differences between workers
18 associations and workers unions?

19 MR. VOGT: Well, workers -- the
20 ILO, in its commentary years ago, and it's in
21 our postdeficient brief from the last cycle
22 outlines over a dozen points in which the EPZ

1 law and the international standards are not
2 consonant.

3 But, for example, workers and
4 worker associations are prohibited from
5 associating with any worker outside or union
6 workers outside of the export processing
7 zones, and that is obviously a facial
8 violation of freedom of association.

9 Until regulations are issued the
10 EPZ's are unable to form a federation of their
11 own worker associations. And we believe
12 that's important to consolidate the work of
13 these worker associations because, you know,
14 one here, one there, the bargaining power of
15 individual worker associations is quite small.

16 Once they're allowed to federate,
17 that, I think, will improve their ability to
18 bargain collectively and enhance labor
19 relations in entire zones.

20 I can point you later to more
21 specific examples of the ILO's, elaborated on
22 this issue.

1 MS. SANDLER: Department of
2 Treasury, please.

3 MR. MARES: Thank you. Do you
4 consider the legal framework in Bangladesh
5 outside of the EPZ's to be consistent with
6 international standards? If not, what areas
7 would need changing in order to bring them to
8 an internationally-recognized level?

9 MR. VOGT: I think the 2006 labor
10 law is generally a good labor law. There are
11 obviously exclusions for certain classes of
12 workers, but we have not raised the 2006 labor
13 laws at point of serious concern.

14 There may be points at which they
15 are not consonant with international labor
16 centers but frankly, that's not been an issue
17 we've pursued at this point.

18 But I know, for example,
19 agricultural workers, I believe, are outside
20 the scope of the labor law. I may be wrong on
21 that, but there is discussion now about
22 creating an agricultural workers labor law,

1 and they, obviously, agricultural workers form
2 a large percentage of the overall population,
3 working population in the country.

4 MS. SANDLER: Thank you.

5 Agency for International
6 Development, please.

7 MR. O'HARA: Thank you. AFL-CIO
8 filed a petition in relation to Bangladesh,
9 and I'm curious to get your comment to AFL-
10 CIO's position on whether that implies that
11 Bangladesh has significantly worse labor
12 conditions than other countries in South Asia,
13 where the AFL-CIO has not filed petitions.

14 MR. VOGT: I mean, we filed
15 several petitions in South Asia over the
16 years, and we have a pending one with Sri-
17 Lanka right now. And we filed numerous
18 petitions on Thailand, Pakistan, you know,
19 several over the years.

20 I think now -- I wouldn't say
21 Bangladesh stands alone, but certainly we do
22 see systematic problems within the country,

1 some of which are, I think, not unique. The
2 failure to pay minimum wage is not unique to
3 Bangladesh, and violations of freedom of
4 association also are not unique to that
5 country.

6 I think, you know, we've had a
7 long-term engagement in this country. I think
8 this is the fifth GSP petition we've filed
9 against Bangladesh, because with each petition
10 we see -- in the past, very, very small steps
11 forward. The petition was dropped. We filed
12 another one, another step. The petition was
13 dropped.

14 So, we're hoping to see an
15 opportunity for more sustained progress to
16 finally get worker rights really established,
17 entrenched, so we can move forward, so we're
18 not continually filing GSP petitions against
19 Bangladesh.

20 And we've had a very long-term
21 presence in the country with the Solidarity
22 Center going back a couple of decades. So,

1 it's been an important country for us.

2 MS. SANDLER: Thank you. Just to
3 point out, we're running about ten minutes
4 late, so those of you who are thinking that
5 Niger is going to be up momentarily, they will
6 probably be coming on about 10:20, so I just
7 wanted to let you know.

8 Now, my colleague at USGR.

9 MS. BUFFO: You detail in your
10 prehearing brief problems with Section 47 of
11 EWAIRA. What specific measures would improve
12 the EWAIRA in that regard as well as other
13 measures to improve the labor conciliation
14 process in general?

15 MR. VOGT: As I mentioned, I think
16 the -- there is -- there isn't a proper
17 understanding of what collective bargaining is
18 among the governments, and also I think as
19 they are -- as the government and BEPZA is
20 educating workers, I think they are giving
21 workers a misperception as to what their labor
22 rights are under the EWAIRA.

1 The role of the conciliator is
2 simply to accept the charter of demand, with
3 regard to collective bargaining, to accept the
4 charter of demands, pass those over to the
5 employer and then to act as a mediator in that
6 -- that process.

7 And if the employer refuses to
8 engage in the process, you know, they are to
9 compel the employer and mediate the process.

10 And the conciliator is taking an
11 interventionist approach here, telling worker
12 associations, well, these are your demands,
13 but I don't like that one, that one, and that
14 one.

15 That's clearly not the role of the
16 conciliator, particularly when the conciliator
17 is either inventing reasons why the charter
18 demands should not be accepted, which don't
19 exist in law or regulation, or they're saying
20 that somehow instructions one and two preempts
21 the demands that they're making.

22 I think there needs to be a clear

1 understanding in the government how the
2 process is supposed to work, that the
3 instructions one and two are not intended to
4 be preemptory and the EWAIRA Act is pretty
5 clear that workers have a right to bargain
6 collectively on wages and working conditions,
7 and if you say that those are already pretty
8 much off the table because these instructions,
9 you're eviscerating the Act.

10 So, I think there just needs to be
11 a common understanding as to what the EWAIRA
12 actually says and how the process is supposed
13 to work.

14 MS. SANDLER: Department of Labor,
15 please.

16 MS. ZOLLNER: In your experience,
17 do governments tend to statutorily limit
18 provisions of worker rights that has been done
19 in Bangladesh? Time limit, the statutory
20 provision of worker rights protection?

21 MR. VOGT: Usually worker rights
22 are covered by a general labor law that is a

1 permanent law. I think, again, the idea of
2 the EWAIIRA was that it was a stop gap, it was
3 a temporary measure, and that at some point
4 the government was going to either bring
5 worker associations, workers and EPZ's under
6 the general labor law or some other sort of
7 act that was consistent with the international
8 norms would be approved.

9 I don't think we've take a
10 position on which road they should go on.
11 Clearly, I think the easiest would be to bring
12 them under the general labor law and with the
13 proviso that worker associations already
14 formed would be converted into unions and not
15 have to have the workers kind of re-register
16 and go through the process all over again.

17 So, it does concern us that we
18 continue to hear from the government that they
19 want to make the current EWAIIRA permanent. I
20 think that is absolutely the wrong thing to do
21 and is locking in a substandard law for those
22 workers.

1 MS. SANDLER: Thanks. Department
2 of State, please.

3 MS. PRATTIPATI: What other NGO's
4 are operating in Bangladesh to improve worker
5 rights, and does the AFL-CIO work with them in
6 the same areas?

7 MR. VOGT: There are others, but
8 typically there are not many working on worker
9 rights. So, there are -- Bangladesh is the
10 Center for Worker Solidarity, which is kind of
11 a union, kind of an NGO, more union, I would
12 say.

13 We work with -- BIGUF is a union,
14 actually. But, I think the sensitivity of
15 worker rights, and obviously as is connected
16 to the GSP has put a tightened attention on
17 the Solidarity Center, and the Worker Rights
18 Consortium which also has an office in
19 Bangladesh.

20 Last year we had a very serious
21 problem with the Worker Rights Consortium.
22 The government had arrested the representative

1 of the Work Rights Consortium in the country,
2 was held incommunicado for quite some time and
3 after significant international pressure was
4 released.

5 So, yes, -- that, again, was under
6 the previous government. I don't expect to
7 see that thing happening under this
8 government, although I would note that the
9 Solidarity Center Office and others do
10 continue to have the continued presence of the
11 Special Branch Police monitoring the office
12 and tailing the Solidarity Center
13 representatives wherever they go.

14 And I, myself, during my visits,
15 could leave, but the Special Branch Police
16 Officer out of the back of our van who
17 followed almost the entire trip. So, that
18 kind of surveillance is not appreciated.

19 MS. SANDLER: Department of
20 Commerce, please.

21 MS. PAREKH: How does the
22 Solidarity Center help workers in terms of

1 informing them of their rights? Are there any
2 hand-out's on how those laws are being
3 translated into action?

4 MR. VOGT: Yes. The Solidarity
5 Center has offices in Chittagong and in --
6 outside the Shivar, the Dhaka Export
7 Processing Zone where workers are free to
8 meet, discuss issues, receive training on the
9 formation of worker associations, basic rights
10 under the EWAIIRA, other kind of capacity-
11 building.

12 Similarly, there's an office in
13 Khulna where a Solidarity Center has been
14 giving advice and support to shrimp workers
15 and under a grant, I believe, from USAID, that
16 project will be now extended to Koksia Bazaar
17 and Chittagong, which is good, very good.

18 And obviously there's an office in
19 Dhaka City itself, the main office, again,
20 where workers from whichever sector are given
21 primarily RMG, but whichever sector are given
22 support advice, legal support and training on

1 the rights.

2 MS. SANDLER: And for our last
3 question from the Department of Agriculture.

4 MR. KARAWA: You may have answered
5 part of this question before. BEPZA indicates
6 that it's now addressing all grievances of
7 workers, communicated with them. Would you
8 agree? If not, what improvements would you
9 recommend?

10 MR. VOGT: I trust the Brigadier
11 General Khan when he's saying that he's taking
12 the matters that are -- taking seriously the
13 matters that are presented to him. I question
14 whether all of the matters are actually being
15 presented to him.

16 But, no, as a line, we have some
17 discipline and discharge cases of worker
18 association officials that are still
19 unresolved. Other grievances.

20 And I would say the counselors --
21 EPZ created a counselor's position with
22 funding from the World Bank, and this was

1 basically to create a labor ombudsperson
2 available for disputes within the export
3 processing zones.

4 The unanimous critique of workers
5 about these counselors has been that they
6 really have no faith in these people to
7 represent their concerns, that they believe
8 either that the counselors are rejecting their
9 concerns out-of-hand or that they are -- have
10 a pro-management bias.

11 I think part of this is due to the
12 fact that once a -- you know, if a worker has
13 a grievance, it's taken to management, it's
14 not resolved, it goes to the counselor. The
15 negotiations on that worker complaint is only
16 between the counselor and the employer.

17 The worker is not actually part of
18 the process. So, the worker is obviously
19 naturally suspicious if the answer they get
20 back from the counselor is, "Well, sorry, we
21 couldn't do anything about that," or "I got
22 you something lesser than what you wanted, but

1 what about this."

2 So, a worker looking at this
3 subjectively is going to say, well, wait a
4 minute, you didn't properly, you know,
5 represent me in this grievance.

6 I think, obviously, opening up
7 that process so that workers are part of the
8 discussion, I think would relieve a lot of the
9 tension that exists now between workers and
10 the counselors, but I think it would be good
11 for their to be a tripartite discussion about
12 the counselor's program, figuring out if this
13 is something that is useful and if there is an
14 agreement that it is useful, that there's talk
15 about how to restructure that in such a way
16 that workers feel they have more buy-in to the
17 process and can trust the counselors to be
18 their advocates.

19 MS. SANDLER: Thank you very much.
20 We'll be sending you the unanswered -- or
21 these questions, as well as those we didn't
22 get to, and vice versa, for both panels.

1 Thanks.

2 I'd like to ask Mr. Amadou from
3 the Embassy of Niger to join us at the table.
4 Mr. Amadou will be speaking in French. We
5 have asked an interpreter to join him from the
6 State Department.

7 And there is -- a translation of
8 the testimony is at the table outside the
9 front door. If we could ask you to take your
10 seats, please.

11 How we're going to be handling
12 this is that the interpreter will be
13 whispering interpretation in English to our
14 witness, and then so, for the testimony, we
15 will be following in English, and then there
16 won't be any interpretation during that time.

17 But during the questions and
18 answers, we will make sure that our witness
19 understands the questions, and then we will do
20 a sequential -- sequential interpretation of
21 our witness's answers in French.

22 So, everybody has the testimony,

1 it looks like. Or, those who speak French --
2 and again, we welcome you. I'm looking
3 forward to your testimony.

4 And if you'd like to introduce
5 yourself and begin. Thank you.

6 COUNSELOR AMADOU (Statement
7 provided by the Government of the Republic of
8 Niger.)

9 MR. AMADOU: Bon jour, Madam,
10 Monsieur.

11 MS. SANDLER: We're okay on this,
12 because we have the testimony in English. So,
13 there's no need.

14 THE TRANSLATOR: However, the
15 witness is not presently reading the
16 testimony. He's saying "Good morning, ladies
17 and gentlemen."

18 MS. SANDLER: Okay. Thank you.

19 MR. AMADOU: (Introduction in
20 French).

21 MS. SANDLER: Doctor, do you want
22 to go ahead and --

1 THE TRANSLATOR: Yes. Before
2 joining the Foreign Minister, I was Division
3 Chief and the Foreign Minister for Asia and
4 the Americas and for visional integration in
5 Africa.

6 Before that I was First Secretary
7 of the Embassy in Ottawa, Canada. I have a
8 Master's in economic science and I also have
9 diplomas in economic planning and Africa
10 studies.

11 First of all, I would like to
12 present to you the regrets of our ambassador
13 who was very sorry not to be able to attend
14 this hearing and to personally defend Niger's
15 case here.

16 This is an important issue for us.
17 This issue is a very sensitive issue to Niger,
18 however the ambassador is in L.A. with the
19 First Lady of Niger, so he couldn't come.

20 MS. SANDLER: Thank you, Doctor.
21 I apologize for my confusion before.

22 THE TRANSLATOR: But I could also

1 make it faster because I could speak sort of
2 at the same time as he does, if you prefer.

3 Now, if you prefer consecutive, okay.

4 MR. AMADOU: Niger is one of the
5 most attractive countries of West Africa.
6 Wedged in the semiarid area known as the
7 Sahel, it shares its borders with Mali,
8 Algeria and Libya to the North, Chad and
9 Nigeria to the East, Benin to the South, and
10 Burkina-Faso.

11 The country is sprinkled in its
12 southwestern part by the Niger River. Niger
13 is the sixth largest country in Africa with
14 1,267,000 kilometers approximately three-
15 quarters the size of Alaska. The Capital is
16 Niamey, and the other large cities are Zinder,
17 Maradi, Tahoua, Dosso, and Agadez.

18 85 percent of the population live
19 in rural areas in extreme poverty conditions,
20 surviving with less than one dollar (US) per
21 day.

22 The populations are illiterate and

1 do not understand anything about legal modern
2 documentations. They live according to their
3 traditional and cultural behaviors and are
4 scattered in the different areas.

5 Difficult accessibility to the
6 rural areas because of poor roads conditions
7 or nonexistent roads to reach the different
8 areas.

9 As human rights are a universal
10 value, every initiative, every commitment to
11 defend and preserve them cannot but meet the
12 approval of my government.

13 Since the consideration of the
14 petition of the ILRF which cited violations of
15 worker rights and human rights in Niger, the
16 failure of the government to implement its
17 commitment to eliminate the worst forms of
18 child labor and forced labor, the government
19 now is taking actions to end the last remnants
20 of an unjust social organization.

21 The Embassy of Niger in
22 Washington, D.C. has forwarded to you a

1 statement on the situation of those practices
2 and laws and regulations which punish the
3 possible offenders.

4 The former Ministry of Justice,
5 keeper of the Seals, during the hearing held
6 on February 25, 2007 gave a detail data of
7 legal arsenal which punish the guilty persons.

8 After the hearing of February 15,
9 2007, the Government continued to make efforts
10 in particular by the realization of
11 investigation at a national level on the
12 problematic of forced labor, child labor and
13 all the other forms of slavery practices.

14 The National Committee of the
15 study on forced labor and child labor and all
16 other forms of slavery practices is an
17 independent multi-sectoral committee,
18 including all the components of the society.
19 It was set up by government Order 006/CNDHLF
20 of June 19, 2007.

21 The committee can call any
22 physical or moral person which competences are

1 necessary for the carrying out of the
2 international experts, embassies and
3 international organizations mission in
4 particular.

5 The report has come to the
6 following conclusion:

7 MS. SANDLER: Wait. Can you come
8 up to the -- thank you. Can you come up to
9 the desk, please, so we can -- we need to be
10 able to get you on the record, if you're going
11 to speak, but I think we are following the
12 testimony that you have provided us, the
13 translation in English.

14 So, -- wait. We have to have you
15 be at the microphone if you're going to say
16 something. So, you're welcome to do that,
17 because I know you are from the embassy as
18 well.

19 Welcome. And if you can introduce
20 yourself, and then say again what you were --
21 and I need to have you press the button on the
22 microphone, yes, and maybe pull that -- make

1 sure when you press the button it turns red.

2 There you go.

3 MS. IRO: Okay. My name is Mimuna

4 Iro and I'm the ambassador's assistant.

5 MS. SANDLER: Was there something

6 that you wanted us to know?

7 MR. IRO: I just wanted to mention

8 that when he had to translate -- some

9 mistakes, we followed -- I followed the

10 question that was sent by USTR, so when you

11 have the presentation of Niger in your

12 translation, English translation, then you

13 have the reminder. He did it, and then he

14 went -- then we have the action taken

15 underway.

16 So, instead of talking about the

17 action taking underway, he went to the summary

18 of the 2008. That's the only thing.

19 MS. SANDLER: So we are on the

20 summary of the 2008 report right now?

21 MS. IRO: I think so.

22 MS. SANDLER: Okay. So, that is

1 on page --

2 MR. IRO: Page four.

3 MS. SANDLER: Page 4.

4 MR. IRO: Yes.

5 MS. SANDLER: So, if he moves to a
6 different part, if you could let us know at
7 that time. So, if you could press the button
8 again and turn that off.

9 And, Mr. Sounna, if you could
10 press your button.

11 THE TRANSLATOR: Thank you.

12 MR. AMADOU: Niger has ratified
13 all of the conventions and treaties related to
14 slavery in particular:

15 The convention related to slavery
16 signed in Geneva on September 25, 1926 after
17 defining slavery as being "a state or
18 condition of a person on whom ownership rights
19 or some of them have been used."

20 MS. SANDLER: Ou etes vous?

21 THE TRANSLATOR: Slavery.

22 MS. SANDLER: Oui.

1 MR. AMADOU: It requires to the
2 states which adheres to shape their
3 legislation according to the convention to
4 take necessary measures to punish offenders by
5 heavy sentences.

6 The Nigerian Legislator has set up
7 norms in the New Penal Code through Law 2003-
8 35 of June 23, 2003, which fills a legal
9 vacuum in the criminalization of the slavery
10 in all its forms in accordance with the above-
11 mentioned convention.

12 It is important to keep in mind
13 that slavery as defined by the International
14 Conventions, the Charters and the Protocols
15 does not exist in Niger.

16 However, Niger does not deny that
17 certain ancestral customs resembling slavery
18 still linger in its society and continue to
19 take place in certain regions at the level of
20 certain communities.

21 This marginal phenomenon
22 characterized by isolated acts of certain

1 people and the Government has not been
2 standing idle by with folded arms.

3 The Convention related to forced
4 labor in its Article 2 stipulates that the
5 term "forced labor" will mean "any work or
6 service required from an individual under
7 pressure of penalty and for which the said
8 individual did not accept of his own will."

9 The survey includes that the
10 forced labor as defined by the Convention does
11 not exist on the entire National Territory,
12 but recommends sessions of information and
13 communication for the different persons for a
14 better understanding and definition of the
15 characteristics and texts that put down the
16 phenomenon.

17 MS. SANDLER: Excuse moi. We are
18 now on actions taken and on the way. So, go
19 back to the second page.

20 MR. AMADOU: The approbation of
21 the law related to the trafficking in persons
22 announced by the Minister of Justice on the

1 hearing of February 2007 is in review at the
2 level of an interministerial committee in
3 order to finalize it.

4 The ILO Convention 182 on the
5 elimination of the worst forms of child labor
6 is already ratified by Niger. The Ministry of
7 Labor is on the way to finalizing the review
8 of the government Order No. 96-036 of June 29,
9 1996 of Labor Code to take into consideration
10 the recommendation of the Convention 182.

11 The reform is already prevailing
12 in this Article 107 sanctions against all
13 kinds of child labor.

14 Imprisonment of six days to one
15 month, and a penalty of 50,000 to
16 100,000 FCFA. In case of repeat offense the
17 sentence can reach 15 days to one month of
18 imprisonment and a penalty of 1,000,000 FCFA
19 to 500,000 FCFA.

20 Once the review of the Government
21 Order 96-3036 is done, the Ministry of Labor
22 will continue its work in the statutory party

1 where a list of specific child labors will be
2 put in detail.

3 All the ILO 8 fundamental
4 conventions related to forced labor have been
5 ratified by Niger. In spite of this
6 ratification, Niger experiences difficulties
7 to their implementation and the use of them
8 which can only be explained because of
9 poverty, the sociocultural, heavy behavior,
10 the ignorance and the nonrespect of the legal
11 texts by the socioprofessional speakers.

12 To put down these difficulties,
13 Niger has requested and obtained from the ILO
14 the financing of supporting project to make
15 use of the ILO declaration on the fundamental
16 principles and rights of labor.

17 Activities have done by the
18 project for the creation of favorable
19 conditions for carrying out of the fundamental
20 principles and rights of labor.

21 A study was conducted in 2001 by
22 the ILO in collaboration with the Government

1 and the traditional authorities in order to
2 identify the forms, the facets, the causes and
3 the expressions of forced labor in Niger.

4 Following the study a National
5 Forum on forced labor was organized in
6 November 2001. Campaigning Workshops of
7 sensibilization were conducted by the
8 traditional authorities in the regions of
9 Tahoua, Tillabery and Agadez.

10 In order to push the fighting
11 against the forced labor, the Government has
12 set up a National Commission for the fighting
13 against the practice of forced labor in the
14 Ministry of Labor and has worked out an action
15 plan for five years.

16 This Commission has already
17 conducted several activities as follows:
18 Confection of guides, collections and books on
19 forced labor and discriminations (3,000
20 simplified guides, 3,000 simplified
21 collections of the laws and regulations for
22 the fight against the forced labor and

1 discriminations):

2 Realization Radio and TV missions
3 (30 broadcasting produced in each of the five
4 national languages, contracts for broadcasting
5 have been signed with 30 local radios;

6 Realization of supporting
7 documentary movie to the public debates and
8 broadcasted in 30 towns;

9 Caravans for information organized
10 through the most sensible regions;

11 Scholarization rate in the
12 sensible groups went up in the areas where
13 operations took place. (This rate reached 50
14 percent).

15 THE TRANSLATOR: Can I say
16 something? There's an addition. The witness
17 ad-libbed, and he says that first at the
18 beginning the Bill, the draft law or the bill
19 was to be drafted by just the Ministry of
20 Justice, but since the whatever text would
21 come out of this exercise concern several
22 Ministers -- Ministries, such as social

1 development, interior and others, it was
2 decided to instead create an interministerial
3 or interagency committee that would be charged
4 with drafting the bill which is in its final
5 stages now, in its final status and will be
6 soon out there.

7 MR. AMADOU: Moreover, the Niger
8 Justice has condemned Hadidjatou Mani's former
9 husband for one year imprisonment and
10 1,000,000 FCFA penalty.

11 Other actions have been taken in
12 the fighting against human trafficking. One
13 children trafficker was arrested in the region
14 of Dosso and handed to the Justice.

15 Identification in process of a
16 human trafficking network in the region of
17 Konni and on the border with Nigeria.

18 The two studies on child labor are
19 in process and the results will be published
20 soon.

21 MS. SANDLER: Oui. Continue.

22 MR. AMADOU: It appears that the

1 concepts "Children" and "the worst forms of
2 child labor," as defined by the ILO Convention
3 in relation with and the Labor Code do not
4 match with the ones described by the Nigerian
5 Society during the survey.

6 For this also, the document
7 recommends sessions of information and
8 communication in regard to the said phenomenon
9 and its characteristics (forms, reasons,
10 consequences, means of fighting) in order to
11 change that mentality.

12 Regarding the case of Hadidjatou
13 Mani, herewith the Legal Order of the ECOWAS
14 Justice Court which condemned the State of
15 Niger. According to that legal order the
16 Government of Niger has paid the requested
17 10,000.000 FCFA to Hadidjatou Mani as damages.

18 The Ambassador of Niger in
19 Washington, D.C. attend in person the Award
20 Ceremony where Hadijatou Mani was given an
21 award.

22 THE TRANSLATOR: He just read from

1 the ILO to child labor. The Minister just
2 read from ILO Convention 182 to Child Labor,
3 just that one paragraph he read it as is.

4 MS. SANDLER: When was that?

5 THE TRANSLATOR: August 4th, 2006
6 the plan was adopted.

7 Security forces. The separation
8 is not concluded. Security forces are
9 investigating the situation on the ground.

10 THE TRANSLATOR: I am at your
11 disposal for any questions.

12 MS. SANDLER: Merci beaucoup.
13 Thank you very much.

14 As our panel asks their questions,
15 if you could do it slowly to allow for the
16 whispered interpretation. Okay. Or, if you
17 think you want to do this in French. Okay.

18 MS. SANDLER: Our first question
19 is from the Department of USGR.

20 MS. BUFFO: Hello. I was
21 wondering if you could describe in more detail
22 the specific timeline for approving the

1 trafficking in persons law, and a little bit
2 more detail about that process as well.

3 MR. AMADOU: So, this bill dealing
4 with human trafficking was announced here at
5 the USGR in February 2007 by our Minister of
6 Justice, Keeper of the Seals.

7 At that time the Ministry of
8 Justice, alone in their competent offices had
9 been charged with drafting this bill. Just
10 the Minister of Justice. And when it came
11 time to discuss and perhaps vote on this bill,
12 it was discovered that the text was actually
13 not -- it was insufficient.

14 There were weaknesses on the text
15 because there were other ministries that were
16 interested directly on this issue that did not
17 participating in drafting of the text.

18 So, social development and child
19 protection, for instance, had to have a say on
20 drafting of the bill, the same thing regarding
21 the Ministry of Labor and Public Service.
22 They also needed to contribute to the drafting

1 of this document.

2 So, the Ministry of the Interior,
3 which is in charge of security in the country
4 and therefore, had to contribute in terms of
5 how this issue was going to be enforced so
6 they needed to be part of the drafting group,
7 too.

8 So, the decision taken by the
9 authorities in Niger at that time, in view of
10 the weaknesses was to create this interagency
11 commission or committee where all the
12 stakeholders could have a say in drafting this
13 law, including members of the civil society
14 and the hope is that the committee which is
15 already working on drafting this will come up
16 with a draft -- with a bill that will be
17 adopted.

18 The committee is working now. Of
19 course, they control their own timeline. I
20 couldn't tell you whether this is going to
21 last one, two, three days or longer.

22 Of course, we hope that they will

1 do this as fast as possible.

2 MS. BUFFO: I just wanted to ask a
3 follow-up to that. Once it comes out of the
4 committee, what then is the process and
5 timeline for approving the law, understanding
6 of course, that the committee is undergoing
7 its own process?

8 MR. AMADOU: The process is the
9 following: The Committee, the Interagency
10 Committee will -- is then charged with
11 drafting, so they do the technical work. They
12 put it -- they draft this project.

13 Once the bill is drafted and
14 issued by the Committee, it is sent to the
15 Administration, the Executive, which will meet
16 as what we call the Council or the Cabinet and
17 will review the draft. And if the draft is
18 approved by the first instance, then it goes
19 through the Council of Ministers, which we
20 Cabinet here.

21 And if the Council of Ministers
22 approves the draft, then it is forwarded to

1 the National Assembly for final adoption of
2 the text.

3 But, I must add, at this point,
4 and you probably know this, that this year is
5 a very special year in Niger. For instance,
6 our fiscal year starts in October, however, in
7 September all the elected officials come to
8 the end of their term in office, and in
9 October there will be elections therefore, in
10 Niger, and it will be the new lawmakers that
11 will then be reviewing this text for adoption.

12 MS. SANDLER: Merci.

13 MR. AMADOU: I asked the pertinent
14 authorities, and I have obtained the first
15 draft that was put together by the Ministry of
16 Justice, the one that was deemed insufficient,
17 and therefore led to the creation of the
18 Committee that I mentioned, and I have this
19 project in hand.

20 Of course, it's insufficient
21 because it doesn't take into account all the
22 aspects of trafficking in persons, forced

1 labor and child labor.

2 MS. SANDLER: Merci.

3 The Department of Labor, please.

4 MS. ZOLLNER: Good morning. Thank
5 you, firstly, for your mention and discussion
6 of certain ancestral customs resembling
7 slavery that still exist in certain parts of
8 society.

9 I think this is one of the
10 particular concerns of the petition. Thank
11 you also for the status of the National
12 Commission Against Forced Labor and
13 Discrimination.

14 I'm interested to know what the
15 status is of a fund that was to be established
16 for assistance for, and rehabilitation of
17 victims of slavery.

18 Has the Government of Niger
19 allocated resources for this part of the
20 National Commission's work?

21 MR. AMADOU: Thank you. I will
22 speak about the roles of the Government of

1 Niger concerning your question. During my
2 presentation here I really decided that I was
3 going to make it a very general description of
4 Niger.

5 The main issue here, when it comes
6 to that is the lack of resources of Niger.
7 Niger is a country where the needs are
8 enormous, immense, and the resources are very,
9 very, very limited.

10 So, the Government of Niger
11 established several small projects to help
12 victims of child labor, forced labor and human
13 traffic, and has funded these small projects.

14 And the idea is, of course, that
15 these projects would serve this population,
16 the victim population to free them for or
17 enfranchise them actually, and to allow them
18 to have a job that would, you know, integrate
19 them in the society.

20 So, for instance, among these
21 projects of the government there is one that
22 we call the Special Program from the Head of

1 State, and this program is made up of small
2 projects that aim at operating in the far away
3 parts of the country, in very remote areas of
4 the country.

5 And they are small projects that
6 allow the population to find an occupation to
7 work to get micro or mini credit to raise
8 livestock, because raising livestock is one of
9 the mainstays of the economy in Niger,
10 together with agriculture.

11 A lot of people raise livestock in
12 Niger, and this is a very important part of
13 our economy.

14 So, through these small projects
15 of the Head of State, these people who get
16 these funds then can buy small ruminants which
17 they -- you know, the bring up, and then sell
18 them and sell the products of their livestock,
19 and therefore make a little money.

20 The current national budget has
21 some items that -- line items in the budget
22 that aim this part of the population that had

1 been victimized by child labor, forced labor
2 and human traffic.

3 And, the budget lines therefore
4 aim at helping these victims as best we can.
5 But the resources are very limited in any
6 case, and that's when it's necessary for us to
7 have the help of our partners, be it technical
8 partners around the world or financial
9 partners, because things move very slowly.

10 There's a plan of action, and I
11 added to the document of my presentation here,
12 an annex with a list of projects. They are
13 all part of this plan of action, and several
14 or many of these projects have been
15 implemented already and they deal with either
16 livestock or agriculture.

17 MS. SANDLER: Thank you. I think
18 that the information you brought us was in
19 French, and so we'll have to figure out a way
20 to do some translation so that the Committee
21 can understand them, the projects and
22 information.

1 Agency for International
2 Development, please.

3 MR. O'HARA: I was interested in
4 whether you could provide some clarification
5 on the status of the antislavery provisions
6 which are currently -- I believe, currently
7 under the 2003 amendments to the penal code,
8 and the position of the government on whether
9 a new law will be implemented, or whether
10 those provisions -- the government's position
11 is that those provisions in the 2003 penal
12 code amendments are sufficient to cover
13 antislavery issues. Thanks.

14 MR. AMADOU: Okay. The situation
15 before 2003, there was, of course, the penal
16 code of 2003, and in that penal code slavery
17 was considered an offense that we could
18 consider like a misdemeanor. It was not
19 really criminalized. It was not a real
20 felony.

21 When the reform or the changes
22 were introduced into 2003, the government

1 intended to show its interest in fighting
2 against slavery, therefore, this practice has
3 been criminalized in the legal text.

4 In 2007, here at USGR during the
5 hearing, the Minister of Justice presented
6 specific cases of people have been prosecuted,
7 found guilty and condemned for practicing
8 slavery, including one case where the
9 defendant was condemned to the death penalty.

10 The intention of the Government of
11 Niger is to strengthen the laws that deal with
12 this practice, and the ultimate goal of the
13 government is to really eradicate the practice
14 of slavery, and therefore it's possibly
15 working and adding new legal provisions that
16 would allow the government and the society to
17 fight against and to lead to the disappearance
18 and the eradication of this.

19 Starting with the constitution,
20 the constitution is the starting point there
21 for us, and the constitution formally
22 prohibits the practice of slavery in Niger.

1 So, you know, any action, any
2 initiative that would lead to the rapid
3 eradication of slavery would be welcome by the
4 Government of Niger. I mean, the wishes of
5 the government is to get to that point to
6 eradicate.

7 So, the government is ready, as I
8 said during my reading here. We consider
9 human rights a universal value therefore any
10 initiative or engagement to fight against this
11 practice is welcome and approved by the
12 Government of Niger. The government is ready
13 for that.

14 MS. SANDLER: With that, we need
15 to conclude. We have many more questions
16 which we will provide to you and have those
17 translated so that you can answer those.

18 Thank you very much for the
19 information you've provided. It's been very,
20 very helpful.

21 MR. AMADOU: I would like to take
22 this opportunity to thank you for your

1 patience and to repeat once more, that the
2 Government of Niger, the Country of Niger are
3 ready to fight against human traffic, child
4 labor, forced labor throughout the national
5 territory.

6 However, as I said before,
7 resources are extremely limited, and that's
8 when I ask you for your understanding on one
9 hand and also your help, your help for us to
10 be able to go on with this struggle which is
11 a very salutary struggle, not only Niger but
12 for the whole world. Thank you.

13 MS. SANDLER: Thank you.

14 Is the representative from the
15 Government of the Philippines here?

16 (No response.)

17 MS. SANDLER: We will take a 15-
18 minute break and reconvene at 11:30.

19 (Whereupon, the above-entitled
20 matter went off the record at 11:15 a.m. and
21 resumed at 11:32 a.m.)

22 MS. SANDLER: Call the hearing

1 back in order. I apologize for our being
2 late, but this is a good chance to get
3 information.

4 And I'll ask the delegation from
5 the Government of the Philippines to join us.

6 While you're sitting here, let's
7 see. First of all, if you have new testimony
8 that you have -- will speaking from today, we
9 need a copy of it, as well as put the copies
10 -- if you could provide us eight copies, and
11 then have somebody put it on the table or give
12 it to the people in the audience.

13 Thank you.

14 As I said before, but I just want
15 to reiterate or say it again, we will -- after
16 your ten minutes' testimony, we will have
17 about 20 minutes to ask you questions.

18 We will invite you to answer those
19 questions here, as many as we can get through,
20 but we will also provide you the same
21 questions as well as the ones we didn't have
22 a chance to ask today, and any follow-up

1 questions that the agencies may wish to ask,
2 we'll provide that to your embassy and to you
3 probably Tuesday.

4 The comments, what's called
5 posthearing comments, the answers to the
6 questions and the like will be due two weeks
7 from today, which Friday, May 8th, and the
8 manner in which you provide those should again
9 be by regulations.gov, not by email to us.

10 I believe that outside on the
11 table is a copy of the Federal Register
12 Notice, which has those dates and the way to
13 get us the -- your follow-up information.

14 Let's see. I think that's it.
15 Again, I apologize for being late and keeping
16 you waiting. So, if you would like to
17 introduce yourself, as well as the members of
18 your delegation.

19 We have someone here -- two people
20 here who are recording and whatever, so it's
21 important for us to make sure we know who's
22 speaking.

1 And again, when you speak, please
2 press the button so that this turns red, and
3 then when you finish, press the button again
4 and turn it off. Thank you.

5 MR. LAGMAN: Thank you very much,
6 Madam Chair, and distinguished members of the
7 Panel of the USGR. May I introduce myself.
8 I am Under Secretary Romeo Lagman of the
9 Department of Labor, Philippines.

10 On my left, this is Attorney
11 Herminio Banico, the legal counsel of our
12 Secretary of Labor. We have here Attorney
13 Manlapit of our Consular office, and we have
14 on the far right Ms. Lorenda Herrera, our
15 Labor Attache.

16 Thank you very much for giving
17 again the GRP, an opportunity to further
18 elucidate specific issues related to the ILRF
19 Petition. The details of my presentation this
20 morning are contained in our latest prehearing
21 brief, which was submitted to this office on
22 April 2, 2009, covering the following areas:

1 A, adoption of rules and
2 regulations defining the jurisdiction of the
3 Secretary of Labor over labor disputes.

4 Second, educating workers in their
5 right to self-organization, especially in the
6 economic zones in the country.

7 Three, assessing the extent of
8 subcontracting arrangements in the country as
9 it impact on union rights.

10 Four, harassment and violence
11 against trade unionists within the larger
12 context of extra-judicial killings.

13 Next, addressing the military and
14 police presence in workplaces, as alleged in
15 the petition.

16 Then, the creation of a cabinet
17 cluster or committee for addressing not only
18 extra-judicial killings, but labor issues as
19 well.

20 And the last consideration of the
21 proposed Internal Labor Organization mission
22 to the Philippines.

1 All me now, Madam, to highlight
2 the main points of the GRP with respect to
3 these specific issues.

4 On the adoption of rules and
5 regulations defining the jurisdiction of the
6 Secretary, we recognize the importance of
7 reconciling the Philippine national standard
8 of "Indispensable to the national interest"
9 with the ILO's concept of "essential
10 services."

11 In the exercise of the assumption
12 and certification authority of the Secretary
13 of Labor over labor disputes. The issue of
14 defining the scope of this authority through
15 the adoption of rules and regulations has been
16 discussed extensively with our National
17 Tripartite Committee in the Philippines which,
18 for the information of the Panel, is a
19 sounding board where issues of national
20 concern are taken up.

21 And the composition of this
22 Council is that we have 20 representatives on

1 the mainstream unions, 20 representatives on
2 the Employer's Confederation of the
3 Philippines and 20 from the government.

4 This has been a citizen rights
5 following the Tripartite petition concept and
6 principle under the ILO charter where we have
7 been a member since 1953, I guess, or '48.

8 May we further point out in this
9 connection that we continue to seek consensus
10 with the stakeholders, specifically on some
11 legislative measures that are now pending in
12 congress where -- which includes a
13 determination of the essential services in
14 which the Secretary of Labor could exercise
15 his authority.

16 And these sectors include
17 hospital, electrical services, water supply
18 and services, communication and transportation
19 which are basically the essential services
20 under the ILO standards.

21 On the education of workers and
22 the right to self-organization, especially in

1 the economic zones, I guess we have done a lot
2 in this respect. During the period of 2006 to
3 2008, Distinguished Panel, our offices in the
4 three regions having the highest concentration
5 of ecozones conducted a total of 1,149 labor
6 education seminars with the attendance of no
7 less than 43,000 zone workers.

8 The existing legal and policy
9 environment effectively allows the union
10 organizing in these workplaces, including the
11 ecozones.

12 Over the years we have seen steady
13 while modest registration levels of
14 enterprise-based unions, operating in these
15 ecozones. In 2000, for instance there were
16 251 unions organized in the ecozones and
17 23,146 members. In 2008 we have registered
18 335 unions with 33,665 members in the ecozones
19 across the country.

20 So, on this issue, Distinguished
21 Panel, we are -- we are gaining grounds. On
22 the third issue, which is the extent of

1 subcontracting and its impact on union rights,
2 under existing laws and policies in the GRP,
3 really the right of any worker, whether they
4 are directly employed by the company or under
5 some contracting arrangements, are entitled to
6 organize themselves into a union.

7 So, within this policy context and
8 within the law, it is not correct to say that
9 contracting and subcontracting have
10 undermined the ability of workers in our
11 country to exercise their right of self-
12 organization because they have the right.
13 It's guaranteed in the Philippine constitution
14 and in our Labor Code.

15 The fact is that the number of
16 workers under this arrangement is
17 insignificant, to our mind, and therefore do
18 not make a clear case that workers' right to
19 self-organization has been compromised.

20 Look at this numbers, Madam Chair,
21 Distinguished Panel, for the period 2008 --
22 2002 to 2008, the number of contract workers

1 all over averaged annually at 60,000, or .37
2 percent only of our 16.4 million wage and
3 salary workers.

4 This indicates to us that for
5 every 270 wage and salary workers who are
6 regularly employed in companies, there was
7 only one contract worker during the past seven
8 years.

9 So what does this show? This, to
10 us, showed that contracting and subcontracting
11 arrangements have not really undermined
12 workers rights to self-organization, as
13 alleged in the petition.

14 Next on the harassment and
15 violence against trade unionists, within the
16 larger context of extra-judicial killings, the
17 various interagency agency initiatives, which
18 we have listed in our prehearing brief in
19 2007, and again recited in the prehearing
20 brief submitted to you on April 2nd.

21 We have pursued all of this
22 measures and they have shown positive results,

1 primarily manifested in the dramatic decline
2 in the number of incidents of extra-judicial
3 killings.

4 So, even the U.S. State Department
5 has acknowledged this positive development, by
6 noting that reforms have been taken and the
7 number of killings and disappearances have
8 dropped dramatically.

9 What are the other positive
10 developments in these issues? We have --
11 there is a reactivation of cases previously
12 archived.

13 Second, refiling of previously-
14 dismissed cases due to lack of witness or
15 evidence in the past, revival of cold cases
16 before the prosecution and filing them with
17 the court, and the revival of cases under
18 investigation and filing them before the
19 prosecution arm.

20 It is thus clear that the GRP
21 initiatives are bearing fruit and succeeding.

22 Now, we have listed some progress

1 also in the cases cited in the petition. For
2 instance the killing of Ricardo Ramos. This
3 Roderick de la Cruz was then a suspect, has
4 been at large for two years, but he has now
5 been arrested and under police custody.

6 Likewise, a warrant of arrest has
7 been issued against the other suspect, First
8 Class Private Romeo Castillo, and the next
9 hearing on this case is on May 5, 2009.

10 Now, with respect to the case of
11 Attorney Saladero, it's also been mentioned,
12 US entered charge before the regional trial
13 court branch 39 in Oriental Mindoro, together
14 with 71 other co-accused. But he has already
15 been released from detention and are now at
16 liberty.

17 Finally, on the request of the
18 Secretary of Labor, the Chief of Staff of the
19 Armed forces is directed, the commanding
20 general, Philippine Army Commander, Northern
21 Luzon Command, AFP Commander ISAFP to cause
22 the immediate investigation of the alleged

1 military intemperance in the international
2 wiring system. We are expecting an update on
3 the progress of their investigation.

4 On the presence of military and
5 police in workplaces, we want to iterate,
6 Madam Chair, that the country does not
7 establish military detachments or deploy
8 military police forces in workplaces.

9 The involvement of this personnel
10 is only limited for maintenance of peace and
11 order. And as we have provided some
12 information in our briefs, when there are
13 labor asserted action of labor like picketing
14 and -- the police are specifically prohibited
15 from interfering in these peaceful activities,
16 concerted activities and they are supposed to
17 dispense themselves within 50 meter ranges,
18 just to be ready if there is -- there develops
19 some violence in the picket line.

20 On the creation of a cabinet
21 cluster committee for addressing labor issues,
22 we have cited, Madam Chair, task force 211,

1 the composition of which is already more or
2 less on the cabinet level, because the
3 department of Justice is there and the
4 Department of National Defense. The
5 Department of Interior and local Government
6 which supervises -- which is civilian
7 authority supervising the national police in
8 the country.

9 The office of the National
10 Security Advisor which is directly reporting
11 to the president. The Office of the Political
12 Advisor, who is also reporting directly to the
13 president and their offices are in Malacañang.

14 The Office of the Presidential
15 Advisor in this process, this is the peace
16 process that the country has been pursuing for
17 the last many, many decades, who reports also
18 directly to the president.

19 The Presidential Human Rights
20 Committee which is another committee
21 established by the president to monitor civil
22 human rights violations, aside from the

1 Commission on Human Rights, which is an
2 independent body.

3 The Philippine Information Agency
4 attached to the Executive Branch, so the GRP
5 shall expand this cabinet level composition of
6 Task Force 211. We wanted to see that so that
7 we can effectively address all this regarding
8 issues on labor, not only here, but even in
9 the ILO can be probably effectively addressed
10 with the involvement of the Department of
11 Labor.

12 The Department of Foreign Affairs,
13 the Department of Trade and the Philippine
14 Economic Zone Authority.

15 So, hopefully this membership
16 expansion will expand the task force's mandate
17 and responsibilities to cover the labor
18 issues.

19 Finally, Madam Chair, Members of
20 the Panel, on the status of the ILO request
21 for the GRP accepting the ILO mission, may we
22 emphasize again that the GRP is not averse

1 accepting the ILO mission, even as it
2 continues to consult with concerned government
3 agencies and social partners, both in our
4 social -- in the workers group, organized
5 labor in the country and the employers sector.

6 The GRP intends to discuss this
7 high level mission issue with the ILO in the
8 context of the June conference that's coming
9 in June and is prepared to update the US
10 government on the result of these discussions,
11 Madam Chair.

12 In conclusion, the GRP reiterates
13 that it shall continue to enhance the policy
14 and institutional environment that will allow
15 the effective exercise of workers rights in
16 the Philippines.

17 So GRP remains committed to work
18 with the ILO and other institutions to
19 strengthen the application of international
20 labor standards, including Convention 87 in
21 the country.

22 On a final note, true to its

1 commitment, the GRP shall continue to provide
2 interim updates for the consideration of this
3 Honorable Office on matters pertinent to the
4 pending petition and its annual review.

5 Thank you very much for giving us
6 the time.

7 MS. SANDLER: Thank you, Mr.
8 Secretary. We'd like to begin our questions
9 with my colleague at the USGR who works on
10 worker rights, and I just wanted to emphasize
11 again that the reason why we have two people
12 from USGR is to, I think, in part reflects the
13 Administration's continued and perhaps
14 enhanced looking at these worker rights cases.
15 Thanks.

16 MS. BUFFO: Hello. Good morning.
17 You mentioned that you are planning to expand
18 the cabinet level composition of Task Force
19 211. I'm wondering if you could provide a
20 little bit more details as to when you plan to
21 do that and the process for moving forward
22 particularly with outlining the new mandates

1 and responsibilities under that Task Force and
2 when we might see that.

3 MR. LAGMAN: We will have to
4 consult with these, like the DFA, the other
5 agencies there that they want to incorporate
6 in the Task Force 211 and we hope that perhaps
7 within the next, what, -- within the year we
8 might be able to -- to do the expansion of
9 Task Force 211.

10 But we are serious in this -- we
11 will only have to need some time to really do
12 this, and then expand the functions of Task
13 Force 211 to address these specific issues.

14 MS. SANDLER: Thank you.

15 My colleague at the Department of
16 Labor.

17 MS. ZOLLNER: Good morning, sir.
18 I was interested to learn more about how you
19 made decisions to deploy military personnel in
20 the cases of strikes.

21 Specifically I'm interested in
22 hearing from you how frequently that happens

1 and then what measures are taken to ensure
2 that it's not perceived as intimidation of the
3 exercise that the workers have to exercise
4 their rights to strike.

5 I understand there's the 50 meter
6 rule, but who is there to ensure that the
7 military understands their limitations in
8 undertaking this peacekeeping role? Thank
9 you.

10 MR. LAGMAN: First of all, the
11 authority to deploy police authorities in the
12 strike borne areas resides with the Secretary
13 of Labor. Nobody else. And therefore, the
14 control is already there.

15 When there is a concerted action
16 like a strike, we have the National
17 Conciliation and Mediation Board which is one
18 of the attached agencies of the Department of
19 Labor that oversees the situation in the
20 strike area because they are mandated to
21 continue conciliating the labor dispute
22 between the company and the workers.

1 So they will be there always. And
2 if there is any untoward incident they report
3 immediately to the Secretary of Labor so that
4 this incident may be addressed.

5 Now your question as to who
6 decides whether the police will come in or not
7 at a given point in time -- at the given labor
8 strike area, that will really depend on the
9 police, because their instruction is very
10 clear.

11 We have a guideline that we have
12 submitted to the USGR that the -- if it
13 involves already some violence in the picket
14 line, then they are mandated by law to
15 intervene only for purposes of maintaining
16 piece and order.

17 But you see, even in the pretrial
18 -- in the prehearing brief of Secretary Brion
19 in 2007, he has informed this committee that,
20 as practiced in the United States, a strike,
21 a picket has to be a moving picket, and you
22 don't -- you don't block the pre ingress and

1 egress to and from the company.

2 But in our case, sometimes they do
3 block the gates. They even weld the gates in
4 some instances and therefore those employees
5 who may want to work during a strike cannot do
6 so.

7 So, that is the situation, and we
8 have cases where there will -- there are
9 really violence committed in the picket line,
10 so you know, when there is a violence, then
11 that's the only time we will summon the police
12 to go there. It may be too late. It may harm
13 even the picketers, or the people around in
14 the strike borne area.

15 You said how often are they
16 called. That will relate to the number of
17 strikes that we have. In 20 years ago, we had
18 an average of 500 strikes a year. Recently in
19 2007, I think we only had six or seven in
20 strikes. In 2008, only five.

21 Now, this year from January to
22 date, we only had one, because we have put in

1 place some measures where we give preference
2 to -- we give preference to the potential mode
3 of conciliation.

4 In fact, our continuing labor
5 education, as I have cited in the ecozone is
6 also working because even our constitution
7 provides that in settlement disputes the
8 preferential mode should be conciliation and
9 mediation.

10 So we are exhaustively using that
11 approach in our labor relations system and
12 policy, and it's working. So, we are happy
13 and I don't know if somebody's complaining
14 that because there are only lesser strikes
15 this time we are preventing the strike. No.

16 MS. SANDLER: Thank you for your
17 response.

18 Agency for International
19 Development, please. And, oh, for those who
20 are here for subsequent panels, we're running
21 about 20 minutes late, which I apologize for.
22 So, I just wanted to let you know.

1 MR. O'HARA: Thank you. You
2 referenced that the government would be
3 considering accepting an ILO mission and that
4 there would be discussions in June of this
5 year.

6 It seems like the idea of inviting
7 an ILO high mission has been discussed for
8 some time, and I'm curious to know beyond the
9 idea to discuss it in June whether the
10 government has a position, particular position
11 on whether or not to accept or invite an ILO
12 mission. Thank you.

13 MR. LAGMAN: Our discussion is
14 just a continuing discussion with the ILO,
15 because Ms. Doumbia-Henry who is the -- who is
16 on top of this in the ILO hierarchy, stopped
17 to ask in Manila some few months back to
18 discussed the matter, and we requested for
19 arbiters on the -- on the scope of the
20 mission.

21 And therefore when she wrote us
22 back that they wanted to talk to these

1 agencies of government and other sectors of
2 the Philippine society, we consulted all these
3 concerned agencies and sectors and we are
4 continually consulting.

5 So, our intention to talk to ILO
6 this coming June, anyway, is a matter of one
7 and a half months, we can probably discuss the
8 matter with ILO. Perhaps specifically on
9 really the parameter and the procedure that
10 the ILO would like to adopt if they do come in
11 the country with respect to the purpose of
12 their mission.

13 MS. SANDLER: Department of State,
14 please.

15 MS. PRATTIPATI: Thank you. You
16 mentioned in your testimony that you were
17 investigating some of the extra-judicial
18 killings and violence against trade unionists
19 that were going on in your country.

20 And also that there's been a panel
21 established with the Department of Justice to
22 investigate these -- these situations, these

1 killings and the violence.

2 Can you tell us more about the
3 panel itself and the establishment and how far
4 and what procedures they've been going through
5 to determine what's been going on?

6 MR. LAGMAN: We have established a
7 system, a judicial system whereby, since these
8 are -- these concerns, criminal action,
9 killing, disappearances, et cetera, we have
10 established a system where the prosecution arm
11 of the government, which is under the
12 Department of Justice prosecutes.

13 So, what do they do? If there is
14 a complaint the process the complaint. They
15 conduct preliminary investigation. They call
16 witnesses who may be knowledgeable about the
17 case, and then they, after concluding the
18 investigation, they come up with a decision
19 whether they -- there is a finding of probable
20 cause.

21 So, if there is probable cause
22 they file the case in court and if the

1 offenders are identified, the court will issue
2 warrants of arrest.

3 So, after this they find them, but
4 the prosecutorial arm of the country and the
5 Department of Justice where we have hundreds
6 of state prosecutors attending to -- not only
7 to, referred to extra-judicial killings, but
8 ordinary criminal cases, whether serious or
9 minor criminal cases.

10 And you said how far have they
11 gone. I guess we have in the pretrial -- in
12 prehearing brief of Secretary Brion, we have
13 made some statements there on the
14 investigation and progress of the individual
15 case, persons that were listed in the
16 petition.

17 What I want to underscore, Madam
18 Chair and distinguished members of the Panel
19 is that the petition made the general
20 statement, accusation that we are not -- the
21 GRP is not conducting investigation. That is
22 entirely false.

1 We -- our reps will tell you that
2 we have, through the prosecutorial arm of the
3 government, have been investigating. The
4 Commission on Human Rights has been
5 investigating. The Task Force also has been
6 investigating.

7 All the other measures that we
8 have put in place includes a portion where
9 they need to investigate, even the National
10 Bureau of Investigation. So, just to point
11 out to the Panel that we do investigate. We
12 are mandated by law to investigate.

13 MS. SANDLER: We have time for one
14 more question while we're here.

15 Department of Treasury, please.

16 MR. MARES: You mentioned in your
17 brief that your government has established a
18 strategic work plan to address alleged or
19 suspected extra-judicial killings.

20 Can you go into more detail on the
21 contents of this work plan and also let us
22 know if there -- which organizations outside

1 of the government, if any, have been
2 participating in the formulation of this
3 planning.

4 MS. SANDLER: If you could please
5 introduce yourself for our recorder, and write
6 out your name and position and give him the
7 end. Thank you.

8 MR. BANICO: Good morning. I am
9 Attorney Herminio Banico, Jr. I am the legal
10 advisor to the Secretary of Labor, and I have
11 a hand in the preparation of our prehearing
12 brief.

13 Under Secretary Lagman had
14 mentioned that from the incidents of killings,
15 the extra-judicial killings, ordinary killings
16 would follow a process, several steps of which
17 we have determined that there are strengths
18 and there are numerous weaknesses.

19 And the values, initiatives that
20 we have stated in our pretrial brief relates
21 to this process. For one, we, the
22 Philippines, the Mello Commission, as well as

1 the UN Special Rapporteur, Dr. Austin, had
2 cited the limited capabilities of the
3 Philippines for forensic and criminal
4 investigation.

5 And addressing that weakness, we
6 have requested a European mission to provide
7 us with technical assistance. So far, the
8 European mission -- the European Union has
9 sent two missions to the Philippines to study
10 and have come up with recommendations.

11 There is an agreement agreement,
12 in principle, to establish a justice
13 assistance mission that would strengthen not
14 only the criminal investigations capability of
15 the Philippines, but also other allied areas,
16 like the witness protection program.

17 We have enumerated the
18 anticriminal or justice watch program of the
19 Department of Justice, that provides rules for
20 the expedition preliminary investigations of
21 criminal cases leading to the filing of these
22 cases in court.

1 We have outlined initiatives
2 undertaken by our Supreme Court, which for
3 one, has provided a positive approach by
4 establishing two new remedies in the form of
5 the writs of imparo and writs for base data
6 that enables a person's constitutional right
7 is being violated to seek redress from the
8 court.

9 Previously the Supreme Court had
10 designated only 99 courts of justice as
11 special courts to try extra-judicial killings
12 with the introduction of these new innovations
13 and the Writ of Amparo and the base data.

14 All courts now are tasked to give
15 priority to extra-judicial killings, and
16 forced disappearances and are mandated to
17 ensure a speedy trial, as well as to provide
18 monthly reports on the status of these cases.

19 We have other executive options
20 ranging from initiatives taken by our armed
21 forces, the Philippine National Police, and
22 all other sectors, other concerned agencies of

1 the government.

2 So, all of these initiatives are
3 addressing what has been perceived as the
4 defects in our criminal justice system. These
5 are the efforts that have been taken by the
6 Government of the Philippines which
7 eventually, if I may add, would also somehow
8 help to establish the parameters of the
9 intended ILO mission.

10 Somehow they have a bearing on the
11 situation and cases being brought up to the
12 ILO. And these initiatives ought to be
13 considered, and somehow they limit what the
14 ILO needs to look into.

15 MS. SANDLER: Thank you.
16 Commerce, if you could just ask your question,
17 and then we'll end at that point.

18 MS. PAREKH: Hello. Could you
19 tell us what percentage of the interventions
20 by the government in compulsory arbitrations
21 were brought about by union request versus
22 requests from companies or management?

1 MR. LAGMAN: I think in the
2 posthearing brief, Secretary Brion, he said
3 that foreign intervention numbering about ten,
4 four of them comes from the employer sector,
5 one of them comes from the union, themselves.
6 I think that was expounded in the posthearing
7 brief of Secretary Brion.

8 MS. SANDLER: And that is a couple
9 of years ago. Has there been any change since
10 then?

11 MR. LAGMAN: In our brief of April
12 2nd, we said that -- 16, we have also cited
13 figures there. Numbers. Yes. 2008, Madam,
14 the Secretary of Labor intervened in only 16
15 cases which represented only 1.76 percent of
16 the total 907 strike notices and preventive
17 mediation cases.

18 While from January to March this
19 year the power was invoked in only three
20 cases, or 1.02 percent of the total 293 cases
21 of occurring from January to March.

22 MS. SANDLER: Thank you. And

1 maybe perhaps in your posthearing brief, if
2 you can just help us understand how many of
3 those were union-requested interventions
4 versus other -- maybe I'm just not reading
5 correctly, but that would be really helpful.
6 Thank you.

7 MR. LAGMAN: Yes, Madam, we will
8 do that.

9 MS. SANDLER: At this point we
10 will call a close on this particular witness
11 panel and ask the International Labor Rights
12 Forum to come up and testify. It will be on
13 the same case. Thank you very, very much.

14 MR. LAGMAN: Thank you, Madam,
15 thank you very much.

16 MS. SANDLER: Thank you, Brian,
17 for your patience. I know you've been here
18 quite a long time. Appreciate it.

19 MR. CAMPBELL: Okay. I'm Brian
20 Campbell from the International Labor Rights
21 Forum, and on behalf of the International
22 Labor Rights Forum, I'd like to thank the

1 Committee for providing us the opportunity to
2 update you about the situation in the
3 Philippines.

4 Since we filed the original GSP
5 complaint in 2007, we've seen little change in
6 the Philippines where labor rights continue to
7 be routinely violated by the Government of the
8 Republic of the Philippines, often at the
9 hands of the armed forces of the Philippines.

10 Impunity for these crimes remain
11 rampant and many workers live in fear of being
12 killed, tortured, kidnapped and arbitrarily
13 arrested.

14 After the ILO opened its inquiries
15 into labor and human rights violations in
16 2006, the UN Special Rapporteur released his
17 findings in 2007, and the U.S. Congress
18 conditioned continued military aid to the
19 Philippines on respect for human rights also
20 in 2007.

21 MS. SANDLER: Mr. Campbell, if we
22 can hang on, I think there's a dearth of your

1 testimonies up here. Our fault. Not yours.

2 So, Monica, if you could grab a
3 few for us, that would be great. And hang on
4 just one second.

5 Okay. Thank you.

6 MR. CAMPBELL: Okay. Sure. So,
7 after the ILO opened its inquiries into labor
8 and human rights violations in 2006, the UN
9 Special Rapporteur released his findings in
10 2007, and the U.S. Congress conditioned
11 continued military aid to the Philippines on
12 respect for human rights also in 2007.

13 There was an immediate precipitous
14 drop in the number of killings. Philippine
15 military generals even publicly, though
16 anonymously, proclaimed that the "Palparan
17 Solution" named after General Javito Palparan,
18 who stands accused of orchestrating some of
19 the most egregious human rights crimes was a
20 failure.

21 Sadly, the decline in human rights
22 abuses was short-lived, and in December 2008,

1 the Philippine Commission on Human Rights
2 noted a, quote "Resurgence of incidences that
3 violate the right to life, such as killings,
4 summary executions and forced disappearances
5 and other inimical acts."

6 Between 2007 and the end of 2008,
7 the Commission on Human Rights identified 142
8 cases of extra-judicial killings where almost
9 all -- this is a quote, "Almost all victims
10 were affiliated with certain activist groups,
11 labor organizations and other political
12 associations."

13 According to the U.S. Department
14 of State, the Commission on Human Rights
15 suspected personnel from the Philippine
16 National Police and the armed forces of the
17 Philippines in a number of the killings of
18 leftist activists operating in rural areas.

19 Chairwoman Leila de Lima also --
20 of the Commission on Human Rights also
21 described, quote, "A shift in methods on
22 silencing civil society. While the incidents

1 of extra-judicial killings has significantly
2 dropped, arrests and in force detentions have
3 increased."

4 As the Chairwoman further
5 explained, many suspected leftists are subject
6 to hastily-issued arrest warrants without the
7 full benefit of a fair and impartial
8 preliminary investigation.

9 "Upon arrest they languish in
10 jails, their detention protected by less than
11 expeditious trials, effectively removing them
12 from their advocacies."

13 Democratically-elected trade union
14 leaders continue to be targeted for killings,
15 death threats, harassments, arbitrary arrests
16 in 2008 and 2009.

17 According to the Center for Trade
18 Union and Human Rights, four labor leaders
19 were assassinated and two others survived
20 assassination attempts in 2008.

21 The military also intensified its
22 campaign of intimidation and harassment of the

1 democratically-elected trade unions, their
2 leaders and the communities in which they
3 live. 37 union leaders were arbitrarily
4 arrested and detained and 479 union leaders
5 have reported surveillance, threats and
6 harassment.

7 While unions affiliated with the
8 KUM Labor Center have borne the brunt of the
9 government's antiunion efforts, the military
10 abuses are not limited to the KUM-affiliated
11 unions.

12 Union organizers for the Alliance
13 for Progressive Labor, the BMP, the PM, the
14 Managgagawang and other independent unions are
15 experiencing military harassments.

16 Furthermore, the military's abuses
17 are not localized in one area, nor are they
18 the result of rogue elements within the ranks
19 of the military.

20 From the Cordillera Mountains in
21 the north to Mindanao in the south, the entire
22 military has implemented a coordinated

1 strategy to weaken unions seeking to organize
2 in many of the Philippines key industries,
3 such as electrical wiring manufacturing,
4 pineapples, sugar, banana, universities and
5 textiles.

6 All branches and units of the
7 military are working with other government
8 agencies to violate the rights of Filipino
9 workers.

10 This past fall we testified before
11 this Committee about ongoing military
12 harassments of union members at Dole Foods
13 Plantation and Processing Facility, which the
14 military has designated "infiltrated by" the
15 workers democratically-elected trade union,
16 who they accuse of being a front for armed
17 insurgents.

18 The experience at Dole Foods is
19 not unique, but rather indicative of standard
20 operating procedures by the military across
21 the Philippines.

22 In the Compostella Valley,

1 Mindanao, the military recently established an
2 organization called WIPER, or Workers for
3 Industrial Peace and Economic Reform. WIPER
4 is composed entirely of plain-clothes military
5 officers who canvass local towns to identify
6 the homes of local union leaders and their
7 families.

8 They conduct seminars in the
9 villages in an effort to get the local
10 communities to turn against the unions. WIPER
11 has also been conducting seminars inside
12 banana processing facilities where workers,
13 most of whom are union members, are forced to
14 listen to a bevy of accusations maligning the
15 union.

16 Trade union leaders in the remote
17 Compostella Valley have lived in constant fear
18 for their lives where killings occur
19 frequently.

20 In 2008 alone, the Center for
21 Trade Union and Human Rights reported two
22 trade union organizers were killed. One KMU

1 official near Davo has survived two
2 assassination attempts.

3 In Central Luzon, north of Manila,
4 Angie Ladera, vice president of the KMU and
5 former president of the democratically-elected
6 trade union at International Wiring Systems
7 was forced to seek asylum in Australia after
8 the military branded her an enemy of the
9 state.

10 Her brother-in-law, who is also
11 listed as a threat to national security was
12 assassinated by a sniper's bullet on the way
13 home from work.

14 The military then began visiting
15 her children's school and asking the security
16 guards at the school who her children were and
17 where they were.

18 The Australian government did not
19 hesitate in granting her asylum this past
20 December, yet military officers have continued
21 to regularly visit the homes of Ms. Ladera's
22 colleagues at International Wiring Systems,

1 threatening them with death and harm to their
2 families.

3 The military has also been holding
4 education seminars where the instruct the
5 union not to ask for too much in the next
6 collective bargaining agreement which is
7 currently being negotiated.

8 In Calabarzon, the conglomeration
9 of provinces south of Manila, the Philippine
10 military has been working with local police
11 and prosecutors to file politically-motivated
12 criminal charges as part of the legal offense
13 against dozens of leaders of civil society
14 groups.

15 Prominent among those targeted are
16 labor leaders and advocates from across the
17 region. In October last year Remigio
18 Saladero, chief legal counsel for the KMU,
19 chairperson of the Pro-Labor Legal Assistance
20 Center, and a member of the Free Legal
21 Assistance Group, which is based at the
22 University of the Philippines was arrested on

1 charges of murder.

2 After spending more than three
3 months in jail waiting for his first hearing,
4 Mr. Saladero and five others arrested were
5 released from jail on February 5th after the
6 court ruled that the prosecutor, the
7 Philippine government prosecutor had failed to
8 provide Mr. Saladero with due process.

9 Only days after he was released,
10 government prosecutors filed new charges
11 against him for a different crime in a
12 different place. He's currently still facing
13 those charges.

14 Despite direct requests by the
15 ILO, the Philippine government has not
16 responded to the ILO's queries concerning
17 ongoing harassments, intimidations and grave
18 threats by military and police forces.

19 They've not responded about the
20 militarization of workplaces, and they have
21 not responded about the deployment of police
22 and military elements under the pretext of

1 counterinsurgency operations.

2 This is not a part of the
3 discussion at the ILO. They have not
4 responded.

5 Currently the International Labor
6 Organization has at least three inquiries into
7 the ongoing human rights violations of trade
8 union leaders. The first in 2006, based on a
9 complaint by the KMU, which I know you all are
10 very familiar with.

11 The second was initiated in 2007
12 by PSLINK which represents public sector
13 workers on the use of criminal libel and
14 retaliation for filing corruption charges, and
15 the third, in 2008 by the International Wiring
16 System's workers union seeking protection from
17 death threats and other harassments by the
18 military.

19 Again, the Philippine government
20 has not responded to these complaints at the
21 ILO -- to the last complaint at the ILO.

22 As a result, the ILO has requested

1 permission to send a high-level mission to
2 investigate the abuses and provide technical
3 assistance to remedy the violations. And this
4 June the ILO will, once again, be examining
5 the continuing labor abuses in the
6 Philippines, where they will again seek
7 acceptance by the Philippine government of a
8 high-level mission to the Philippines

9 Trade unions from across the
10 Philippines, including the Trade Union
11 Congress of the Philippines, the KMU and many
12 others stand united in support of the ILO's
13 request.

14 This past February another seven
15 Philippine trade union federations sent a
16 letter to Secretary Roque with the Department
17 of Labor and Employment requesting again that
18 the government drop its opposition to the ILO
19 high-level mission.

20 Up until now, though, the
21 Philippine government has refused both the
22 ILO's and the Philippine Trade Unions'

1 requests, and we did not hear anything
2 different here today.

3 The ILRF requests at this time
4 that the USGR hold open the review until the
5 Philippine government accepts the ILO's
6 request for the high-level mission and
7 implements the resulting recommendations.

8 However, if the ILO high-level
9 mission is unable to conduct its assessment of
10 the ongoing freedom of association violations
11 in the Philippines we request that the USGR
12 begin considering partial withdrawal of trade
13 benefits beginning with industries where
14 freedom of association violations are
15 egregious and systematic. Thank you very
16 much.

17 MS. SANDLER: Thank you very much
18 for your testimony. One thing I'd ask, in
19 your posthearing comments, is if there's --
20 and it may be likely me who's not reading this
21 correctly, but if there are things that are
22 quoted in that footnoted, that would be very

1 helpful for us to understand context.

2 MR. CAMPBELL: Sure. I'll just
3 point out that many of the quotes are also in
4 the prehearing brief, and so I will put them
5 together and send them to you.

6 MS. SANDLER: Okay. Thank you.

7 Our first question will be from my
8 colleague from U.S. Trade Representative.

9 MS. BUFFO: Hi. You mentioned
10 partial relocation as a possible suggestion
11 for USTR of GSP in certain industries. Can
12 you -- are you prepared to expand on what
13 industries at this point those might be?

14 MR. CAMPBELL: At this point I'm
15 not prepared to expand, but we will continue
16 to discuss this. We would like to see
17 progress. And so, at this point, rather than
18 go on the record, we would like to see a
19 change in what's going on on the ground in the
20 Philippines and depending on that progress, I
21 think that the list will change constantly.

22 MS. SANDLER: Go ahead

1 MS. PRATTIPATI: So you're saying
2 that you'd rather see us hold open the review
3 and not revoke all of the benefits, but just
4 do maybe sort of a graduated -- I mean,
5 actually, this is related to the question, I
6 guess, I was asking -- I was supposed to be
7 asking later, or not so much.

8 But, in terms of the -- do you
9 think that -- does that mean that there has
10 been some progress with the Government of the
11 Philippines in this past year and, also, what
12 do you feel if we did revoke GSP, what would
13 happen?

14 MR. CAMPBELL: No, I don't feel
15 it's because there's been any progress. We're
16 asking for partial withdrawal because we feel
17 that currently a full withdrawal is pretty
18 much a blunt instrument. We don't want to
19 hurt workers. We want workers to benefit from
20 GSP. We want them to be able to receive these
21 benefits and help their families.

22 However, there is a point in time

1 where the violations, both human rights and
2 labor rights violations reach a point where
3 it's unacceptable.

4 We believe that it's gotten to
5 that point, but we would really like to see
6 some engagement, some change on the ground
7 which we haven't. The blunt instrument is
8 something that we would try to avoid at this
9 time, especially considering the economic
10 circumstances.

11 However, we are very concerned for
12 the safety of the trade union leaders in the
13 Philippines and at some point that has to be
14 addressed.

15 MS. SANDLER: Department of Labor,
16 please.

17 MS. ZOLLNER: Hi. My original
18 question had to do with a linkage, inquiring
19 whether there was a linkage between WIPER, the
20 Workers for Industrial Peace and Economic
21 Reform and the armed forces, and you already
22 addressed that.

1 So, feel free to expound on that,
2 or I was encouraged, maybe, to hear that the
3 essential services were being considered to be
4 limited by the Government of the Republic of
5 the Philippines, and I was curious if you all
6 knew any more about that from the ground
7 level.

8 MR. CAMPBELL: Okay. This is
9 actually the first I've heard of an effort,
10 but what strikes me about what they've
11 described as, there seems to be yet again
12 another legislative effort to change the
13 behavior of the Executive Branch.

14 Our concern here is the Executive
15 Branch and whether they are actually acting
16 within the confines of what they could. They
17 have the discretion to implement this law how
18 they wish.

19 There's nothing in the statute
20 that says that essential services means a
21 taxpaying entity. That's not in the statute.
22 That's the decision from the Department of

1 Labor that made that.

2 We've also heard from the
3 Philippine government in other context that
4 there's legislation against torture. There's
5 legislation against extra-judicial killings.

6 You know, I support those
7 legislative initiatives. I think that they
8 are important, but that is not what we're here
9 to talk about. What we're here to talk about
10 is what the Department of Labor and the
11 Philippine government, the executive branch is
12 doing on the implementation of their laws.

13 MS. SANDLER: Department of State,
14 did you want to comment? Department of
15 Commerce now, please.

16 MS. PAREKH: In your prehearing
17 brief you acknowledge that politically-
18 motivated killings declined in the latter half
19 of 2007, as well as in 2008. But in 2009, the
20 trend appears to be changing.

21 In your opinion, why has this
22 trend changed?

1 MR. CAMPBELL: I don't think
2 there's ever been political will, to begin
3 with to truly stop it. What we hear a lot is
4 these patchwork efforts, band-aids. There's
5 task forces set up over there. There's
6 commissions set up over here. They all get
7 together and talk for a couple of years, come
8 up with some recommendations.

9 You know, one thing I'd like to
10 emphasize is the Mello Commission was very
11 clear that there are violations and the
12 military is involved. They even pointed to
13 General Palparan as being a significant cause
14 of these.

15 Then later we hear from the
16 Philippine Supreme Court that there's clear
17 evidence that General Palparon was involved in
18 these killings in some manner, abductions, of
19 harassments. Yet, we've never seen an
20 investigation of any high-level military
21 officials, period.

22 And so, while there's task forces

1 and there's band-aids and there's discussions
2 going on, what we'd like to see is actual
3 change. We'd like to see the investigation
4 and prosecution of some of these military
5 officials, and we'd like to see an end to the
6 establishment of organizations such as WIPER
7 which are established by the military.

8 The political will from our
9 perspective, it's just not there. They are
10 not willing to take that next step and,
11 frankly, we don't know why.

12 MS. SANDLER: Department of
13 Agriculture, please.

14 MR. KARAWA: Thank you. It's
15 somehow a follow-up to the question. Can you
16 explain the discrepancy in the GRP and your
17 organization that the killings in 2007 and
18 2008, partly -- between 11 and 148, and also
19 are you aware of any initiatives taken by the
20 FRP to address these issues? Thank you.

21 MR. CAMPBELL: I'm sorry. Just
22 for clarification, to address which issues,

1 the ending of the killings?

2 MR. KARAWA: Yes.

3 MR. CAMPBELL: Okay. I think
4 there's like four numbers going around, four
5 or five. Everybody has a different number.
6 You know, the government numbers seem very,
7 very low. Other numbers seem very high.

8 I think the press even has their
9 own numbers. I think -- I can't explain it.
10 I don't know how Task Force usually comes up
11 with their numbers.

12 I can tell you that the research
13 that's done by the Center for Trade Union and
14 Human Rights has been very good, that they --
15 they go and investigate and look at all
16 different angles, but there may be
17 discrepancies within those numbers as well.

18 It's not a science. That's the
19 problem here. But, the fact is, people are
20 still being killed, and that is something that
21 we're really concerned about.

22 As for government efforts, I mean,

1 the Philippine government, I think, stated
2 very clearly what they believe were the
3 efforts to end it.

4 We've also heard efforts from the
5 Philippine Supreme Court who have done a great
6 job putting together what they call the Writ
7 of Amparo, which is actually to protect people
8 from the government, and I think that's
9 important to remember here, so that they can
10 resort to the court in order to receive
11 protection from the military.

12 Unfortunately, we haven't seen a
13 lot of efforts by the military, themselves, to
14 participate in that process.

15 We're also concerned that the
16 Commission on Human Rights has been unable to
17 successfully subpoena military officials, even
18 though they have the subpoena power. There's
19 been back room meetings between the Commission
20 on Human Rights and the military, but that's
21 -- that's something of concern.

22 The Supreme Court set up special

1 courts at one point, but those have since been
2 disbanded and they're trying to treat it
3 within their own court system with how they
4 have it.

5 And they have. They set up the
6 Mello Commission, and we hope that some day
7 they'll implement the findings totally of the
8 USIG, but Task Force USIG has had some mixed
9 results on their investigations.

10 Overall, though, I think that
11 these are patchwork efforts, and that there
12 hasn't been a real coordinated -- and when I
13 say "coordinated," I get concerned, because we
14 have seen a coordinated effort to sort of
15 attack labor rights. We have not seen a very
16 well-coordinated effort to end that. And
17 that's something that we would hope to see.

18 MS. SANDLER: Department of
19 Treasury, please.

20 MR. MARES: Has the ILO determined
21 that the Philippine statute on the assumption
22 of jurisdiction is in violation of

1 international law, or is it the judgment of
2 the ILRF that the Philippine statute fails to
3 meet standards that are elsewhere expressed by
4 ILO? This is in relation to prehearing brief.

5 MR. CAMPBELL: Sure. I think the
6 last 15 years the ILO has been writing to the
7 Philippine government telling them that their
8 statute is in violation of international
9 standards.

10 I'd be happy to forward to you
11 that information. That all can be found in
12 the decisions of the ILO Committee of Freedom
13 of Association.

14 MS. SANDLER: The Agency for
15 International Development, please.

16 MR. O'HARA: I was curious to get
17 your opinion on whether your perception or the
18 ILRF perception of labor rights enforcement in
19 the Philippines versus other countries who are
20 competing in these industries where you would
21 potentially advocate the revocation of GSP
22 benefits.

1 Are perhaps other countries in the
2 region that you have information on, in terms
3 of some of these issues? Thank you.

4 MR. CAMPBELL: That's a very good
5 question and very comprehensive, and hopefully
6 some day we can actually cover it fully.

7 I mean, we are concerned with
8 freedom of association in Asia, in the region.
9 There's no question. I think that there are
10 problems across the region in different
11 countries.

12 Something that really troubles us
13 with regards to the Philippines, that we
14 haven't seen at quite the level but still
15 exists in some areas is the role of the
16 military in really going after these trade
17 unions, as a part of a counterinsurgency
18 policy, and that does not exist in other parts
19 of Asia at this point.

20 But, there is a real heavy
21 military involvement in this. But, yes, we
22 are concerned about freedom of association in

1 many other countries. The egregiousness of
2 this one, though, is what's compelled us at
3 this time to be sitting here in front of you.

4 MS. SANDLER: Mr. Campbell, I have
5 -- hit your button -- question. The
6 Government of the Philippines gave us very
7 helpful figures, both for in the past and for
8 this year, this is on intervention in
9 compulsory arbitrations, for past years and
10 for through 2008 and early 2009, and one of
11 the questions we had was a two-part one.

12 One is, what is the number of
13 government interventions, and then, you know,
14 were they at the request of the workers or
15 management. And they seemed -- you know,
16 those figures showed that it was a very small
17 number of interventions.

18 My question would be: Would you
19 agree with those figures? Do you have a
20 sense, as one of my colleagues said, for on
21 the ground what the sense is about the
22 interventions versus compulsory arbitrations

1 being able to continue their work?

2 MR. CAMPBELL: With regards to the
3 numbers, I have not seen those numbers, so I'd
4 like to take a chance to look at those before
5 I delve too far into it.

6 I can tell you, though, that this
7 is what I've heard from many of the trade
8 union groups that we meet with, they push for
9 compulsory arbitration quickly, because they
10 know it's going to happen. It's going to
11 happen eventually.

12 And they want to start this
13 process fast because they want to get through
14 the court system. I mean, keep in mind, some
15 of the cases take seven, eight years in court,
16 and then there's the enforcement after the
17 court, and whether the Department of Labor is
18 actually going to enforce the court rulings
19 and so on.

20 And so, they're trying to speed up
21 the process so what they do is, they file
22 their strike notice and then immediately file

1 for the assumption of jurisdiction. In that
2 way they get over that initial hurdle.

3 And, you know, it's not something
4 that I think they like to do or that they
5 willingly do. Often it's done in the context
6 where the union is very weak. There's a very
7 strong management. The union isn't so strong.
8 They don't have a lot of resources. They
9 don't have a lot of ability to defend
10 themselves, so they go ahead and they try to
11 invoke this process.

12 That is something that they have
13 to do at this point. It's not something that
14 I think many of them willingly enter into.
15 While some do, and I will say there are some
16 unions that will willingly go to compulsory
17 arbitration, perhaps because it's not a
18 serious an issue as other unions see it as.

19 You know, trade unions are
20 different. All different trade unions have
21 different philosophies on how to engage. But
22 with regards to the overall numbers, I think

1 what really concerns us is, in some of these
2 industries, and I think Dole Philippines was
3 a great example.

4 It's a massive industry. I mean,
5 it's one of the largest exporting industries
6 from the Philippines. The union really didn't
7 even have a chance before their -- their
8 notice of strike was immediately assumed. So,
9 they didn't even get past go in their
10 negotiations in 2005.

11 And around that time is when the
12 military started hanging around, and started
13 harassing the trade union leaders saying that
14 you wanted to push Dole Philippines out of
15 business.

16 That's not what they wanted to do.
17 What they wanted was to capture a bit more of
18 the profits. And it's a highly-profitable
19 business for their families, for the workers.

20 But with that said, it was
21 immediate, it was fast and it was in these
22 major industries.

1 Something else that concerns us,
2 too, is it happens where there's political
3 connections, so if somebody's politically-
4 connected, then they're able to get this
5 assumption of jurisdiction much quicker.

6 We've seen that in some instances
7 in the Philippines, and I can brief you more
8 on that, but overall I would say the concern
9 here is that it's selective, it's with major
10 industries, and it's at the -- it's a
11 privilege to strike in the Philippines. It's
12 not a right.

13 And the government doles that
14 privilege out as it sees fit, and I think that
15 is something that we need to be concerned
16 about here.

17 MS. SANDLER: Thank you. One more
18 question?

19 We will send you these as well as
20 those asked by the last panel -- of the last
21 panel, and appreciate your being with us today
22 and the information you provided.

1 So, with that, if I may ask Eric
2 Schwartz to come up from IIPA. Thanks.

3 Eric, we just want to make sure we
4 have your testimony/prehearing brief. And we
5 appreciate your patience, and we did some
6 translation early on, and it is a -- it took
7 us a little bit longer.

8 Okay. If you would please
9 introduce yourself and then begin. Thank you.

10 MR. SCHWARTZ: My name is Eric
11 Schwartz. I'm counsel to the International
12 Intellectual Property Alliance. Thank you for
13 the opportunity to testify.

14 For those of you who are
15 unfamiliar with the IIPA and copyright issues,
16 let me begin with a quick history of us and
17 the issue, and then a snapshot of the current
18 state of copyright protection and enforcement
19 in Russia.

20 The IIPA is an alliance of seven
21 associations representing the copyright
22 industries, the motion picture business and

1 entertainment, software, recorded sound, music
2 and book publishing industries, collectively
3 about 1900 companies in the United States that
4 collectively make up somewhere in the
5 neighborhood of over five and a half percent
6 of the gross domestic product of the United
7 States economy.

8 We have been working on issues in
9 Russia on copyright for many years. I
10 personally have been working on issues of
11 copyright in Russia, and before that the
12 Soviet Union for 21 years.

13 This petition was filed in 2000
14 and accepted by the government in 2001, so
15 eight years, and I've testified numerous times
16 on this petition.

17 Russia receives somewhere in the
18 neighborhood of four to \$500 million a year in
19 GSP benefits. Last year, the first eleven
20 months, the Commerce Department statistics
21 show \$541 million.

22 That's about right. The last time

1 I testified in October of 2007, the 2006
2 numbers were \$512 million, so about a half-
3 billion dollars. At the same time our members
4 are losing somewhere in the neighborhood north
5 of probably \$2 billion as a result of piracy,
6 especially commercial piracy.

7 The GSP statute requires adequate
8 and effective protection. That's the quote of
9 Section 502 of the 1974 Trade Act. Now, the
10 benchmark for protection and enforcement in
11 Russia at the moment is the very comprehensive
12 November 2006 bilateral IPR Agreement, the so-
13 called side letter that was signed by
14 Ministers Gref and Ambassador Schwab.

15 It calls for, among other things,
16 meaningful enforcement. That's a quote.
17 While it's a road map for Russia's WTO entry,
18 it's also a freestanding trade agreement. In
19 short, Russia is not meeting the deadlines
20 that were set in the IPR Agreement for
21 implementation, deadlines that have either
22 slipped or been ignored now several years

1 later.

2 So, they are neither in compliance
3 with the IPR bilateral agreement, nor with the
4 existing WTO trips obligations for copyright
5 protection and enforcement.

6 We have essentially -- and this
7 has changed somewhat since the last time we
8 testified, I would say roughly four
9 priorities, if I was going to take a quick
10 snapshot for you of the issues, our issues in
11 Russia at the moment.

12 First and foremost is the rise of
13 internet piracy, and the absolute absence in
14 Russia of any sort of a comprehensive plan to
15 deal with internet piracy and enforcement in
16 Russia.

17 In fact, at the end of last year,
18 unlike years previously, Russia didn't even
19 provide the U.S. Government, nor the private
20 sector with any statistics on internet
21 enforcement, which is unusual.

22 Number two, and this has been

1 ongoing through our eight years of the
2 petition, is the lack of a comprehensive
3 criminal enforcement program in Russia.

4 The problems we are discussing are
5 not the types of problems of noncommercial
6 piracy, but the large-scale commercial piracy
7 operations of the production and dissemination
8 of materials throughout the country and
9 outside of the country.

10 Third, and this had been our
11 priority some years ago, and it still remains
12 a concern, but it's dropped down, I would say,
13 in importance sum is hard copy piracy. So, on
14 the one hand you have digital copies. On the
15 other, you have hard copies such as optical
16 disks.

17 There's still no clear licensing
18 and inspection system of the plants. This is
19 has been years in the discussion stage, and
20 with draft legislation and draft licensing
21 regulations, and especially there's no sort of
22 comprehensive attack against the problem of

1 now the CD-R, the recordable CD facilities
2 that have been created throughout Russia,
3 smaller enterprises in apartment buildings and
4 warehouses and retail establishments that
5 easily replicate material and distribute it as
6 opposed to what had been the problem some
7 years ago of more centralized, larger optical
8 disk plants.

9 But again, just to emphasize that
10 the hard copy piracy has slipped in importance
11 to internet piracy, which has just exploded
12 without any sort of a comprehensive strategy
13 and any statistics of real effect of
14 enforcement.

15 And then fourth and probably
16 fourth of four, are the legal reform issues,
17 the fact that Russia has not criminalized
18 camcording explicitly, camcording, for those
19 of you who don't know in the motion picture
20 industry is the taking of photographs in a
21 theater and the replication of those.

22 And I saw an interesting slide a

1 few days ago on the camcording -- this had
2 happened in Ukraine, actually, not Russia, but
3 it's the same problem -- of a motion picture
4 in 2008, and within one day that camcorded
5 tape had been translated, I believe, into six
6 languages and in one week into eleven
7 languages, and in one month, in something like
8 15 languages and distributed in over 30
9 countries.

10 So, it's the accelerated rate of
11 the production and distribution of that.

12 And then last on the legal reforms
13 is the collective licensing accreditation
14 problem. This is a problem that was worked
15 out in the bilateral IPR Agreement. Russia
16 adopted changes in its laws effective January
17 1, 2008.

18 The problem is that you have these
19 rogue collecting societies, organized crime
20 organizations that suggest that they represent
21 rightsholders, Russian and foreign
22 rightsholders for the collection of monies for

1 internet pay per download systems, when they
2 don't. They are in violation of all sorts of
3 international norms on these collectives.

4 And what Russia needs to do is to
5 both crack down criminally on the rogue
6 societies, crack down on the pay per download
7 sites and, more importantly, so you can
8 compete with pirates, accredit the legal
9 collecting societies, which is now over 15
10 months overdue from the promises, so that
11 those organizations can get established and
12 underway and collectively administer rights.

13 A quick snapshot, and then I'll
14 take your questions. There are progresses.
15 There has been some progress, as noted in our
16 filing in one particular area, so I wanted to
17 highlight it for you.

18 It is somewhat sui generis to the
19 business software industry because of the
20 nature of infringement of business software,
21 and that's end user piracy, where a business
22 or other establishment will buy or acquire one

1 legal copy and then replicate that multiple
2 times within the business.

3 There and only there are civil
4 enforcement actions effective against pirate.
5 And generally what it requires is a lawsuit or
6 a threatened lawsuit, and the resulting
7 flipping from illegal activity to legal
8 activity and legal purchase or licensing of
9 the software.

10 Additionally, in November -- or
11 October 2007, excuse me, the Ministry of
12 Education signed what's called the
13 Legalization Resolution in which it decided
14 and agreed with local and foreign
15 rightsholders to undertake a major flipping of
16 its educational system from illegal software
17 in the school system, 65,000 schools to legal
18 software.

19 Since the Government of Russia is
20 the largest user of software in the country
21 this was a major positive step forward, and it
22 is now being implemented to the benefit of

1 both U.S. and other foreign and local
2 rightsholders of legal software.

3 And that's the reason why you've
4 seen a significant decline in business
5 software piracy down 14 points in four years.

6 But the problems that the business
7 software industry face are the problems that
8 every other of our members face in criminal
9 enforcement.

10 In short, the deficiencies are
11 enforcement, enforcement, enforcement. There
12 were fewer actions undertaken last year by the
13 government than in years prior.

14 There has been a consistent
15 pattern of very few criminal convictions of
16 those engaged in large-scale commercial
17 piracy. This is just going for many years.

18 Eight years after they've passed
19 the criminal provisions that could have been
20 used against the optical disk plants, they
21 have never convicted an owner of an optical
22 disk plant under these provisions.

1 We -- I worked for something like
2 eight or nine years to get the provision just
3 into the law. That was eight or nine years
4 ago, and they've never used it against -- they
5 will go after some lower-level individuals at
6 the plants, but never against the owners of
7 the plants.

8 Piracy rates remain excessively
9 high for a country and an economy the size of
10 Russia, 65 to 80 plus percent piracy rates is
11 just excessively high, and no legitimate
12 businesses can compete with that.

13 And then last but not least,
14 coming full circle to my first point, there's
15 been essentially little or no action
16 undertaken against internet piracy, and that
17 really is our priority and our hope that we
18 can see some activity undertaken there.

19 With that, I think I'll stop at
20 this point and be happy to answer any
21 questions that you have.

22 MS. SANDLER: Thank you very much.

1 And I appreciate your revised, you know,
2 priority list. I'm interested -- I mean, the
3 responsibilities, obviously, as you talk about
4 it are, you know, for enforcement and for
5 legislation, are that of the government.

6 Tell us, with the piracy rate at
7 that level, 65 to 85 percent, what are
8 industry's actions that it's taking to try to
9 protect its -- its intellectual property?

10 I know you've spoken about some of
11 them, but if there's anything more that you
12 want, both in terms of actions that you -- I
13 mean, IIPA and the member industries are
14 taking, and then also others that might be
15 more useful, you know, if they were
16 partnership types of things with U.S.
17 Government or other governments.

18 MR. SCHWARTZ: Okay. Well, as I
19 said, taking a long view, and I've lived it,
20 I don't think it's true of the U.S.
21 Government, it's true of the U.S. and other
22 foreign rightsholders.

1 The activities in any country,
2 probably, are a three-step process, especially
3 where we were in, say, 1991, 1992. First are
4 the legal reforms, essentially the development
5 of a sound legal regime. You just have to
6 have the basic -- whatever the norms are at
7 that time.

8 You know, to some degree Russia
9 adopted many of them, but again many, not all
10 of the reforms are still stuck, you know, ten
11 or so years behind the curve.

12 Two is the implementation of
13 ratification or accession to the international
14 treaties, the relevant treaties. And while it
15 took a long time for Russia to do joint the
16 Berne Convention, Geneva Phonograms
17 Convention, the two digital treaties, they've
18 done that.

19 They've not fully implemented the
20 obligation, certainly not of the digital
21 treaties but they've, you know, joined the
22 treaties. So, you have the law, you join the

1 treaties.

2 Okay. That means you can protect
3 foreign works in the country. Third, and
4 that's where we've been stuck all these years
5 is enforcement. In there, while there was,
6 used to be more of a back-and-forth with the
7 Russian government, urging the rightsholders,
8 bring more civil actions.

9 I've heard less of that in the
10 last few years, and the reason is because it
11 doesn't make a lot of sense. We would no more
12 ask rightsholders in the United States in any
13 business to sue organized crime syndicates for
14 the illegal activity that they're conducting,
15 driving their businesses into the ground, than
16 we would ask U.S. rightsholders in Russia to
17 do the same.

18 But that's what the Russian
19 government used to ask us to do. And on that
20 score, the U.S. rightsholders did bring civil
21 actions, and they've tried. The problem is
22 the rule of law in Russia, the -- and we

1 detailed in our filing all of the obstacles,
2 the evidentiary obstacles, the -- just the
3 basic obstacles.

4 They don't have a good,
5 transparent system for ownership, for example,
6 of the optical disk plants. So, anyone who's
7 ever tried a civil case knows that the easiest
8 way to dismiss a suit is to simply say you've
9 sued the wrong party.

10 Well, when the rightsholders began
11 civil suits, they basically just got bogged
12 down in these procedural hurdles. Even if
13 they had been successful to move the case
14 forward, the penalties are -- and other
15 remedies are so insufficient, that goods or
16 materials would be seized, but there are very
17 low monetary damages that organized crime
18 syndicates would see that as a minor cost of
19 doing business.

20 What we are talking about and have
21 been talking about all these years is criminal
22 enforcement, effective criminal enforcement.

1 You go after the organized enterprises,
2 whether it's the rogue collecting societies
3 making millions of dollars, representing that
4 they own rights for all rightsholders who
5 never heard of them and never gave them
6 rights, or it's those producing and
7 distributing materials in Russia.

8 And you go after the heads of
9 those organizations and you go after them with
10 stiff penalties, actual sentences, not
11 suspended sentences, and that you do that in
12 a comprehensive way and with the
13 rightsholders' participation.

14 We have been, and we do continue
15 to participate with the government. They
16 undertake raids at warehouses and other places
17 and they seize material but, again, that's
18 just taking some of the material off of the
19 streets that the follow-up to that is what
20 they have engaged in some, and we point that
21 out, in fairness, but nothing like the
22 comprehensive manner that's necessary.

1 MS. SANDLER: Thank you.

2 Department of Labor, please.

3 MS. ZOLLNER: Hi. As it's been
4 mentioned, this has been a case for a number
5 of years. At this point, what's your opinion
6 on what would be the most effective step for
7 the Administration to take to encourage
8 progress by the Government of Russia?

9 MR. SCHWARTZ: I think, well, GSP,
10 the reason we're all here is one of many tools
11 in the arsenal of the U.S. Government and its
12 deliberations with the Russian Government.

13 And the relations between the U.S.
14 and the Russian Government is, to say the
15 least, complicated, and new and newly-forming
16 to some degree with the new Administration.

17 I think the answer would be to use
18 GSP strategically, and to that I would defer
19 to all of you with more expertise internally
20 on understanding what that means.

21 Example: In 2003 and four, I
22 believe it was, and if my memory doesn't fail,

1 we were pressing -- we, the U.S. Government
2 and the rightsholders were pressing the
3 Russian Government on an issue that dated from
4 the 1990's, which was a legal reform to
5 protect preexisting older materials.

6 Okay. This was something they had
7 promised in the bilateral trade agreement,
8 still, by the way, a good trade agreement
9 under which Russia gets Most Favored Trade
10 Status, the 1992 agreement.

11 And they never fulfilled that
12 obligation to provide protection for older
13 works. The U.S. Government let it be known,
14 not publicly, but privately or maybe quasi-
15 publicly, that the government was serious
16 about withdrawing some or all of the GSP
17 benefits of Russia if it didn't finally enact
18 these legal reforms.

19 Within, I believe it was six weeks
20 of my hearing about that -- and I heard it
21 from the Russian Government asking, you know,
22 was this for real, the second and third

1 reading in the Duma was accomplished of these
2 legal reforms, and it was done.

3 Now, that was one part of, you
4 know, a broader menu of issues that we had
5 with the Russian Government, and were asking
6 for enforcement then and now, was still a
7 priority, but it did show that at least the
8 treat of the withdrawal of benefit, if that,
9 at that time got the government moving, well,
10 that worked. And so that's why I would say
11 use this tool strategically.

12 MS. SANDLER: I'd like to
13 recognize the representative from the
14 Department of Commerce, and welcome her.
15 She's an IPR person. If you can introduce
16 yourself as well.

17 MS. WILSON: Thank you. My name
18 is Amanda Wilson from the International Trade
19 Administration.

20 I noticed that you have
21 prioritized internet piracy in your short
22 list, and I wonder if you would attribute that

1 as also corresponding to the priority of
2 losses that you account for, and also in our
3 attempt to address that issue in particular,
4 would you say that we're in the position now
5 to be focusing on enforcement as is necessary
6 in other areas, or for internet piracy do we
7 still need to be focusing on the legislation?

8 MR. SCHWARTZ: The answer is
9 existing law could, if effectively used, be
10 the tool to undertake enforcement against the
11 type of internet piracy which is prevalent in
12 Russia.

13 If pay per download, Russian law,
14 to my knowledge, back to the -- the Soviet law
15 of the 1970's, the civil code, had a straight-
16 out right of reproduction where the copyright
17 owner gets to control the making of copies of
18 his or her work.

19 Well, when unauthorized copies are
20 downloaded on a server for a pay per download
21 service, that's an infringement of that right.

22 There's nothing fancy about it,

1 and in terms of enforcement, what it takes is
2 criminal enforcement, since there are so many
3 pay per download websites in Russia of music,
4 film, entertainment software, business
5 software and book materials, literary
6 materials that are just available. Go after
7 those as a starting point.

8 Yes, there's also peer-to-peer
9 download, bit-torrent type of activities, and
10 those, you know, are likely covered by
11 existing law.

12 When I hear the Russian Government
13 and having heard it for so many years say,
14 "You're right and that's a problem we need to
15 attack, but it's more nuance than that. Let's
16 talk about legal reforms."

17 What I hear is delay, delay,
18 delay. Undertake the activity with the
19 existing law, come back and show why a court
20 threw out or wouldn't undertake effective
21 enforcement, and then I would agree with you,
22 but I don't think that's the case.

1 MS. SANDLER: Department of
2 Treasury, please.

3 MR. MARES: A little while ago you
4 referenced the successful pressure that had
5 been put on Russia through a tacit threat of
6 -- or tacit consideration of removing some
7 benefits.

8 What kind of risks do you see to
9 any of the progress on the legislative side if
10 GSP benefits were actually limited or
11 terminated? Do you see that there are risks
12 to that strategy as well?

13 MR. SCHWARTZ: You know, this is
14 where I say, you know, for those of you who
15 are much more knowledgeable than I in Russian
16 and U.S. Relations and policy, my experience
17 has been that when there are deadlines, when
18 there are -- I mean, it's always carrots and
19 sticks as with every government.

20 I think it's apples for apples,
21 what has happened -- I'm not telling you all
22 something you don't know, but that the GSP

1 consideration is generally part of a bigger
2 consideration of other geopolitical or other
3 issues that are not just about the Section 502
4 provisions of the 1974 Trade Act for IPR
5 protection and enforcement.

6 Were it to be apples for apples,
7 then I think the U.S. Government could use the
8 GSP or whatever else it is in its arsenal or
9 part of other trade relations to say, "This is
10 a priority for us." I don't think the Russian
11 government doesn't understand its priority.

12 But, for instance, the IRP
13 Agreement is seen by the Government of Russia
14 as a road map to WTO accession, and as that
15 deadline has slipped somewhat so, too, has the
16 immediacy of implementing the IPR agreement
17 obligations.

18 And so what is necessary are other
19 -- other instruments, other discussions. Do
20 I think that the Russians would spite the
21 United States and not pass legal reforms that
22 would benefit Russian businesses, European

1 businesses and U.S. businesses and increase
2 the tax base of Russia, because they would
3 feel that somehow they are meeting the GSP and
4 IPR obligations? Probably not.

5 But again, I think that this is
6 just something that happens both in the public
7 and the private forum in your discussions and
8 is best left to your decisionmaking, not mine.

9 MS. SANDLER: Agency for
10 International Development.

11 MR. O'HARA: Thank you. I was
12 just wondering if you could clarify with
13 related to the licensing and the inspection
14 process that you would like -- that you are
15 recommending and whether you believe that that
16 would be -- make a major contribution to
17 intellectual property protection in general.

18 MR. SCHWARTZ: Well, there are two
19 licensing issues. One is the accreditation of
20 collecting societies. That would make a major
21 difference, given the size and scope of
22 internet piracy.

1 If your reference is to the
2 optical disk plant licensing and inspection
3 system, as hard copy piracy has somewhat
4 diminished in importance in Russia because
5 it's been overtaken by internet piracy, the
6 answer is it has somewhat diminished
7 importance.

8 It's still important. What
9 happened is, as detailed in our filing,
10 probably more details than you ever wanted, as
11 part of the reorganization of the government
12 last year you have this multiple divisions of
13 labor of the one agency that can inspect
14 plants, but only plants that have received a
15 license.

16 So, if it finds a facility that
17 has no license that's not their bailiwick,
18 that's not in their inspecting authority. And
19 so they can't take any action against them.

20 And so what we've been talking
21 about, and we've offered the Russian
22 government over the years numerous times,

1 we've spent a lot of time working with the
2 government to sort of comprehensive optical
3 disk plant inspection and enforcement system
4 in which you tie the loss of a license to
5 illegal activity, and you tie criminal
6 penalties to unauthorized activity either by
7 a plant that was never licensed or a plant
8 that received a license but is engaging in
9 unauthorized activity.

10 And you prevent that plant, once
11 it has a license, from getting a new license.
12 Example that we give in the filing was a plant
13 last year that, now, five years into a
14 criminal investigation -- no, three years into
15 a criminal investigation, excuse me, was just
16 given a new five-year license after there are
17 ongoing criminal investigations against this
18 plant.

19 That's the type of thing we need
20 to see better regulated and enforced.

21 MS. SANDLER: Thank you, Mr.
22 Schwartz. I think at this point we'll switch

1 to Uzbekistan, and for those in the audience
2 who may be here for Lebanon, it will probably
3 be about 20 minutes before we get to that.
4 So, just to let you know.

5 MR. SCHWARTZ: Ready?

6 MS. SANDLER: Ready. Thanks.

7 MR. SCHWARTZ: For the record, my
8 name is Eric Schwartz from the International
9 Intellectual Property Alliance, here talking
10 about the 2000 IIPA Petition on Uzbekistan.

11 What's interesting, and I would
12 say anecdotally, at the beginning of my
13 testimony here is that I pulled out my notes
14 from October 4, 2007 on this country petition,
15 and what I'm going to use for purposes of my
16 presentation today are my October 4, 2007
17 notes.

18 Essentially nothing has changed,
19 and this is the frustration. This is, I
20 believe, the fourth time we have testified on
21 this petition.

22 At one of the hearings, and it may

1 have been around 2001, the government of
2 Uzbekistan promised that it would comply with
3 its obligations under its bilateral trade
4 agreement with the United States by no later
5 than 2003.

6 What I remember from that hearing
7 was a bit of an uproar that resulted in which
8 the U.S. Government panelists protested to the
9 Uzbek government that that was too long of a
10 window for them to meet their obligations
11 because that was, at that time, going to be at
12 least 18 months to two years from the time we
13 were all sitting in the room talking about
14 obligations that were already ten years
15 overdue.

16 Here we are six years later and it
17 never happened. In July of 2006, the Uzbek
18 government and parliament did adopt a new
19 copyright law.

20 It's pretty good, but
21 unfortunately, they did not, for some reason,
22 spend much time in consultation with U.S.,

1 European, WIPO or other copyright experts, so
2 it has a host of deficiencies that are laid
3 out in our filing, both for WTO accession
4 under the Berne Convention of 1971, and under
5 the Digital Copyright Treaties.

6 More frustrating, I suppose is the
7 fact that Uzbekistan has never joined the
8 Geneva Phonograms Convention. This is an
9 obligation of their bilateral trade agreement
10 with the United States of now fifteen years
11 ago.

12 As a result they provide no
13 protection for any U.S. or foreign sound
14 recording in Uzbekistan. If that doesn't meet
15 adequate and effective, I don't know what
16 might.

17 In addition, when they did join
18 the Berne Convention, they did so with a
19 reservation which experts at the WIPO, the
20 U.S. and Europe implored the Uzbek government
21 not to adopt because it's not in compliance
22 with the Berne Convention obligations.

1 Essentially what it means is that
2 no U.S. work, no film, no piece of software,
3 no book, no musical composition, no video game
4 that was produced before April of 2005 is
5 protected in Uzbekistan.

6 So, to repeat, no work before
7 2005, no sound recording at all is or are
8 protected in Uzbekistan at the moment.

9 There are many legal reform
10 deficiencies that we outlined in the 2005,
11 2007 and 2009 filings. In the early 2000's I
12 was asked by the U.S. Government at one of
13 these proceedings and then afterwards, to
14 spend time with the Uzbek government providing
15 them technical assistance from my experience
16 having worked at the U.S. Copyright Office
17 years ago.

18 And we -- U.S. Government and
19 myself and some of my colleagues spent an
20 enormous amount of time meeting with some very
21 intelligent and well-meaning officials from
22 the Uzbek embassy here in town to try to get

1 them to develop the legal reform steps needed.

2 What we were asked to do, among
3 other things, was to reduce the problem. And
4 we reduced it down to eight steps. Here we
5 are seven, eight, nine years later, and except
6 for the adoption of the copyright law, which
7 has its own deficiencies, seven of those steps
8 were never adopted, including the necessary
9 changes to the criminal code, civil code, the
10 customs code and the international treaties
11 deficiencies that I've already mentioned.

12 We have no reports of on-the-
13 ground enforcement in Uzbekistan, but it sort
14 of does not have much meaning when you don't
15 have the basic laws in place or the basic
16 treaty obligations back to my testimony on
17 Russia on the three-step process. They're
18 still back at step one.

19 So, it really is getting ahead of
20 ourselves to talk about enforcement in the
21 country, when they don't have just the basic
22 legal obligations, obligations that they

1 pledge to undertake, as I said, here with the
2 U.S. Government by the end of 2003, and before
3 that in the bilateral trade agreement in the
4 early 1990's.

5 With that I'll stop and be happy
6 to answer any questions you have.

7 MS. SANDLER: Thank you very much.
8 I've sat across from you on a couple of
9 occasions. And actually just to detail that
10 we, as the U.S. Government has done -- have
11 done, whatever, we did have some meetings with
12 the embassy here.

13 There was a TIFA, a Trade
14 Investment Framework Agreement, and we raised
15 it at that, and then also both here and -- I
16 guess it was here two years ago, and then
17 there last summer, I believe, and then we have
18 also met with the embassy here, and went
19 through a number of concerns which basically
20 parallel the list and, you know, did hear some
21 intent to try to address this issue, as well
22 as the embassy, our U.S. embassy there, you

1 know, is aware of the problem and has been
2 trying to engage the government there.

3 So, I just wanted to let you know
4 that we have been trying to do that. Do you
5 have -- as -- and you may have heard this, I
6 guess, from AFL-CIO and ILRF with regard to
7 their respective countries, Bangladesh and
8 Philippines.

9 Do you have a recommendation as
10 far as what the Administration should do at
11 this time?

12 MR. SCHWARTZ: This one is clear.
13 Withdraw all of their GSP benefits. I mean,
14 the numbers we are looking at by my count, \$3
15 million in GSP benefits in '06 and '07, and \$2
16 million in the first eleven months of last
17 year. So, three was the ultimate -- you know,
18 the final number.

19 So, it's not a significant amount,
20 I assume, even for the economy in Uzbekistan,
21 but it has great significance in terms of the
22 meaning of what we're all doing in this room

1 that if a country that provides no protection
2 to countries' works or sound recordings is
3 allowed to suggest that they are providing
4 adequate and effective protection, and
5 continue to enjoy GSP benefits, then Section
6 504 has no meaning whatsoever.

7 MS. SANDLER: Thanks. My
8 colleague at the State Department.

9 MS. PRATTIPATI: I think you've
10 made this pretty clear in your testimony, but
11 in terms of what's going on in Uzbekistan, how
12 much of the problem is due to a lack of
13 regulation, I guess, in the system, that they
14 don't have the laws in place, and how much of
15 the problem is due to so much as they're not
16 enforcing the existing laws that are there.

17 And it's more that's due that they
18 are not enforcing the laws that are there, is
19 it because they can't -- they are not capable
20 because the problem is so massive or just
21 because they don't have the will to do so yet?

22 MR. SCHWARTZ: These are legal

1 reform issues. The government of Uzbekistan,
2 in order to acquire Most Favorite Nation Trade
3 status, signed a bilateral agreement with the
4 United States Government.

5 In the interest of full
6 disclosure, I was the U.S. Government official
7 that worked on that trade agreement, and the
8 ones with Russia and the other former
9 countries of the CIS back in the early 1990's,
10 and before that with the Soviet Union in 1990,
11 signed by Presidents Bush and Gorbachev,
12 similar agreements.

13 So, all we were asking at the time
14 in that three-step process was essentially
15 take steps one and two. Pass the laws in your
16 copyright law, your civil code, your criminal
17 code, your criminal procedure code, just the
18 basic norms that other countries have to at
19 least provide the basic levels of protection
20 and to join the relevant treaties.

21 And all we're talking about all
22 these years later is the fact that they didn't

1 do that. We are not even pressing the
2 government on actually enforcing their
3 existing laws, just to get the legal reforms
4 in place and a first, and then join the
5 relevant treaties as a second step just to
6 enable enforcement to commence.

7 You can't even talk about
8 enforcement if you provide no protection for
9 sound recording in the country. Police
10 officials can't pick up any illegal material,
11 because it's not protected at all.

12 MS. SANDLER: Department of
13 Commerce, please.

14 MS. WILSON: Thank you. Would you
15 be able to quantify the harm that's accrued to
16 U.S. firms and individuals as a result of this
17 lack of institutional IP protection and
18 enforcement, or at a minimum, could you help
19 quantify the size of the potential market
20 that's at stake?

21 MR. SCHWARTZ: I don't have the
22 statistics with me, but I'd be happy to follow

1 up in writing.

2 MS. WILSON: Thank you.

3 MS. SANDLER: Please do so as part
4 of your posthearing. I'm not sure you were
5 here for this, but that's due two weeks from
6 today on regulations.gov, www.regulations.gov,
7 the public version, and that docket is 2009-
8 0009.

9 And if you wish to provide a
10 business confidential version, that would go
11 to our regular email address, which is
12 fr0807@ustr.eop.gov.

13 And, Eric, if you need that, I can
14 repeat it or --

15 MR. SCHWARTZ: No, that's fine.

16 MS. SANDLER: I'm trying to speak
17 slowly. Thank you, Commerce.

18 Department of Treasury, please.

19 MR. MARES: Could you give us an
20 idea if the IIPA's concern is primarily with
21 illicit competition in the domestic Uzbek
22 market or illegal exports to other regional

1 markets in Asia.

2 MR. SCHWARTZ: Well, problems of
3 piracy in the region are regional problems.
4 Material that's produced in one country or
5 produced locally and distributed throughout
6 the region as a result of poor customs
7 enforcement, you know, on either side of the
8 border between multiple countries, that's true
9 of hard copy piracy but, of course, internet
10 piracy just crosses the borders without those
11 issues being raised.

12 The problems in Uzbekistan are
13 probably a combination of both, in terms of
14 where the crime syndicates will operate.
15 They'll produce material in one country and
16 dub, for instance, films into Russian, and
17 then it's just, you know, DVD's and then they
18 are just sold regionally for all Russian
19 speakers, but it's also dubbed into multiple
20 languages.

21 So, it's -- you know, it's
22 production and distribution regionally. With

1 CD-R burning facilities, material can be more
2 readily produced locally but, again, we don't
3 have a lot of information in terms of the
4 enforcement problems in Uzbekistan because
5 we're just here talking about the legal reform
6 issues as a starting point.

7 MS. SANDLER: The Department of
8 Labor and then USDA.

9 MS. ZOLLNER: How does the lack of
10 protection in Uzbekistan compare to other
11 countries in the region kind of following on
12 from my colleague from Treasury's question?

13 MR. SCHWARTZ: Well, if you look
14 at our 301 filings, you'll see just sort of
15 the range of countries. If you're talking
16 about regionally about the former Republics of
17 the Soviet Union, the CIS countries, there's
18 sort of a range.

19 And down at the bottom, if memory
20 serves me, you'll find a country like
21 Turkmenistan that I believe has no copyright
22 law, period, and no -- not members of any of

1 the international treaties.

2 And then, you know, stepping up
3 you'll get -- not very many large steps up
4 you'll get a country like Uzbekistan that now
5 has a law of 2006 which is, as I said, pretty
6 good, but a little frustrating that, given all
7 of the consultations that we had with the
8 country, before they passed a law, and the
9 went dormant for a few years, that they went
10 ahead and passed the law, which the U.S.
11 Government didn't know about, and we didn't
12 know about until it was enacted, and so it had
13 deficiencies in it.

14 So, there are -- the answer to
15 your question is they are, you know, a couple
16 of steps ahead and in international treaties,
17 they have some treaty membership, but you
18 know, one step forward and two steps back on
19 Berne, and no steps forward on sound
20 recordings on Geneva Phonograms, and no steps
21 forward on the digital treaty -- digital
22 treaties, plural.

1 MS. SANDLER: I am just trying to
2 remember if Turkmenistan is a member of GSP.
3 I think one of -- I don't think it is Vicki,
4 I can't remember, but I don't think so, yes.

5 Department of Agriculture, please.

6 MR. KARAWA: Are you aware of when
7 the actions taken by other countries,
8 particularly the EU and Japan who faced
9 similar problems and to address this issue in
10 Uzbekistan?

11 MR. SCHWARTZ: I'm not. My
12 experience tells me, having done this for a
13 long time in this region and in other regions
14 of the world over the years, that other
15 countries, and especially the European Union
16 are wise enough to know that this is an issue
17 that will be taken care of by the U.S.
18 Government, and it needn't be something that
19 they need to expend much political capital on
20 taking.

21 That, being slightly facetious,
22 because certainly on some areas and in some

1 countries where they are having huge losses,
2 they will be -- the European Union, for one,
3 will be very much engaged with other
4 countries.

5 But particularly in this region, I
6 think, they defer to the U.S. knowing,
7 hopefully the U.S. -- you know, whatever law
8 is adopted, will be up to the international
9 norms if WIPO, U.S., any EU experts are
10 working with the drafters of the law, and they
11 join the relevant treaties, at least that's a
12 starting point.

13 MS. SANDLER: Any other questions
14 from my colleagues?

15 MR. O'HARA: I have a quick
16 question.

17 There's a -- I mean, I'm looking
18 in your noting that there hasn't been progress
19 in basically any of the eight steps minus the
20 Berne Convention.

21 If you were looking for a
22 demonstration of near-term progress and there

1 are still seven outstanding areas, including
2 portions of the eight, what would be the
3 priority for the industry?

4 MR. SCHWARTZ: If I had to pick
5 one, frankly, I would say these are all
6 obligations of the bilateral agreement,
7 package them into one bill, not to be cute
8 with my answer, and pass them all at the same
9 time.

10 Certainly, the accession to the
11 Geneva Phonograms Convention is a major
12 deficiency because they are providing no
13 protection for sound recordings, so I suppose
14 it would be that.

15 But, really, these are things that
16 can be packaged in an IPR bill to meet the MFN
17 bilateral trade agreement obligations as well
18 as the GSP benefits obligations into one grand
19 package, and it wouldn't be all that grand in
20 terms of what's necessary to meet the minimum
21 legal reform obligations and pass it as a
22 package.

1 I would say that with the one
2 caveat. If the government of Uzbekistan, is
3 listening, to please do that with consultation
4 with IPR experts from the U.S. and EU and the
5 WIPO, so that it's done right the first time,
6 and for your benefit and for ours.

7 MS. SANDLER: Thank you very much.

8 And I think our colleagues, Eric,
9 the other Eric is outside. No, you're here.
10 Okay. I'm sorry.

11 Thank you very much. Let's see,
12 just for the record, and I apologize. Bad
13 memory here. Or actually more phone
14 conversations than in person, so we moved to
15 now the witness representing the International
16 Intellectual Property Alliance concerning
17 Lebanon.

18 MR. SMITH: Yes. Thank you very
19 much. My name is Eric Smith, for the record.
20 We've very pleased to appear before you to
21 share our perspectives on Lebanon.

22 More than five years ago in 2003

1 -- and this is not unlike what's been
2 happening with the other countries you've just
3 heard about -- the U.S. accepted a petition
4 filed by IIPA as part of the country
5 eligibility practices review under GSP.

6 While some progress has been made
7 over those five years, five or six years,
8 unfortunately the government of Lebanon still
9 does not comply with the IPR eligibility
10 requirements for retaining GSP benefits.

11 And I'll just spend a minute kind
12 of going over the key issues. We do not
13 believe it is warranted at this moment to
14 suspend benefits under the GSP.

15 Lebanon has made some progress,
16 and we'd like you to keep that petition open
17 and ongoing and to urge the government of
18 Lebanon to take the further necessary steps to
19 address the ongoing piracy problems, modernize
20 its law to accord with the digital age, and
21 ensure that the incremental progress that
22 they've had to date continues in what is

1 obviously a pretty fragile place.

2 It certainly is in Lebanon's
3 interest, both economic and political to take
4 these steps and to maintain its eligibility.
5 Just by comparison, GSP provides something
6 like \$48 million a year, which is about half
7 of Lebanon's imports to the U.S.

8 So, it's pretty important. It's
9 not a lot of money, but it's important.

10 Losses of just two of the five copyright
11 sectors are about \$31 million, and if you were
12 -- if we had this year estimates for the other
13 industries, it would far exceed the GSP
14 number.

15 And in Russia the piracy rates are
16 between 60 and 80 percent. In Lebanon for the
17 two industries that have reported, 70 to 75
18 percent. So, it's a very serious problem
19 there. It is a small market, though, so we
20 need to put that all into context.

21 Our original petition noted three
22 major deficiencies in Lebanon. The first was

1 deficiencies in their copyright law, in the
2 legal infrastructure that they had there, and
3 they have a 1999 law which needs to be updated
4 to take into account the new realities of the
5 internet, et cetera, and I'll get to that in
6 a minute.

7 But the biggest problem, the one
8 we focused on most was the failure to enforce
9 criminal -- their criminal provisions which
10 are very clear in their law against 600 to 800
11 pirate cable systems.

12 And that involves U.S. audiovisual
13 works and that's been a serious concern. And
14 then finally, inadequate enforcement against
15 other types of piracy, music, books, video
16 games, et cetera.

17 These deficiencies, by and large,
18 remain unresolved, notwithstanding the
19 government's incremental progress in
20 legitimizing the market over this -- over that
21 five-year period, including in 2008.

22 Progress has been made on the

1 cable problem. There is no question about it.
2 I had heard yesterday from someone at the U.S.
3 Trade Representative's Office that the embassy
4 had reported that the cable systems are now 90
5 percent legal.

6 That does not accord with our --
7 with the reports we're getting locally. In
8 Beirut, we understand it's about 80 percent
9 and then it goes down pretty -- pretty steeply
10 in the other regions in Lebanon.

11 And what happened there was a
12 couple of the major pay TV services sued
13 civilly. They weren't getting any cooperation
14 from the government. They sued civilly and
15 managed to convince some of the cable systems
16 in Beirut to take a license and transmit those
17 program services legally.

18 And I sought over the last couple
19 of days to get the names of some of the U.S.
20 services -- U.S. services and a lot of
21 European services that are not being carried
22 legally.

1 So, the situation is improved, and
2 these two particular services are -- have,
3 through this civil lawsuit been able to get
4 license agreements with the cable systems.

5 But until the government lets it
6 be known that this is a serious problem and
7 cracks down, it's just going to be a long
8 process of frustration to try to legalize that
9 situation, and everybody in Lebanon knows
10 exactly what's going on.

11 And the government is just not
12 taking action to fix it. That remains
13 probably the biggest problem. And all the
14 government has to do -- they have a computer
15 crime and IPR bureau that could very well take
16 action against these cable systems.

17 They are taking action against
18 retail stores. They are not taking action
19 against these cable systems. That group is
20 doing a reasonably good job at the retail
21 level.

22 We want them to transfer some of

1 their resources into the cable area, but those
2 cable systems are powerful and it's very
3 difficult internally. So, that's probably our
4 biggest issue.

5 Recently there was a set of draft
6 amendments that was introduced to fix the 1999
7 copyright law and unfortunately, while there's
8 some significant improvements there, a lot of
9 the -- and Eric Schwartz talked about
10 implementation of the provisions of the
11 internet treaties, the digital treaties,
12 there's some of that in this new draft, but
13 it's not done properly and it's missing a lot
14 of things.

15 So, in terms of your work and
16 working with the government of Lebanon, that
17 draft has to see considerable improvement
18 before it can be -- before it can be adopted.

19 And piracy just remains a
20 significant hurdle in Lebanon, and it's true
21 for the record companies, motion picture
22 companies, publishers. There's commercial

1 photocopying outside the universities, inside
2 the universities.

3 There are wide exceptions for
4 software protection that -- and businesses are
5 using unauthorized software all over Lebanon
6 and there have only, I think, been four
7 criminal cases against companies using
8 unlicensed software and they see the results
9 have not been particularly satisfactory.

10 So, we have a continuing problem,
11 and I was listening to your questions with Mr.
12 Schwartz about two very large countries,
13 Ukraine and Russia, and, you know, I happen to
14 be involved back many years ago in working
15 with the Congress to draft the GSP statute,
16 and when we pulled IPR and trade preferences
17 together in that statute and then it's
18 continued from there.

19 And at some point we have to take
20 that statute seriously. I think the
21 legislative history says that these benefits
22 should not be provided to countries that do

1 not provide adequate and effective protection.

2 We've given Lebanon a lot of
3 leeway on this, and over the last few years
4 Lebanon's political situation, et cetera, has
5 improved significantly. There is really no
6 excuse any more for them not doing what they
7 need to do.

8 And while I -- as I said, we're
9 not seeking to remove benefits right now, if
10 we are to have our own rule of law in the
11 United States, at some point we have to pull
12 the trigger on GSP, and it hasn't been done
13 for quite some time.

14 So, back in the Eighties it was
15 done a number of times and achieved quite
16 remarkable results, and I think Mr. Schwartz
17 mentioned the times when a credible threat of
18 removal of GSP has had exactly that kind of
19 result.

20 And Lebanon, I think, is a place
21 where a pretty tough attitude by the U.S.
22 Government could secure some significant

1 benefits.

2 So thank you very much and I'll be
3 happy to answer any questions.

4 MS. SANDLER: Thank you, Mr.
5 Smith. I think you've defined fairly well
6 Lebanon's progress that it's made. We're
7 aware that there have been difficulties with
8 Lebanon having a government, having a
9 parliament that can come out of hiding to be
10 able to take votes.

11 And just the whole, the basic
12 structure of the government or of an operating
13 government has been quite difficult to
14 sustain. You know, since the current -- and
15 I am probably speaking correctly but, you
16 know, the current government, the current
17 formulation of government has been in place.

18 Have you seen any, you know,
19 changes from the past in terms of willingness
20 to deal with these problems? Have the A, B,
21 have the changes, let's say, in cable piracy
22 occurred recently --

1 MR. SMITH: Yes.

2 MS. SANDLER: -- recently or six
3 months, you know, or under a previous
4 formation of government? Thank you.

5 MR. SMITH: Sorry to interrupt you
6 but, yes, these two civil cases have had a
7 significant impact, and these two services --
8 and I don't remember exactly, but I think it
9 was Showtime and Orbit who brought those
10 cases.

11 They are now licensed by many of
12 the cable systems. And it just -- it's just
13 very difficult to expect these services to
14 bring 50 civil suits to try to accomplish the
15 same thing.

16 These particular services are
17 quite large. They are global, but that --
18 that was a significant improvement. The other
19 significant improvement was the creation of
20 this cyber crime intellectual property bureau
21 unit which is a specialized unit to deal with
22 IPR crimes.

1 Now, you know, by definition
2 almost, that shows that the government is
3 focused on this issue because they've created
4 a special unit. That's great. But when you
5 move -- and they've been taking raids against
6 street vendors, and that's -- but their focus
7 has been pretty narrow, and we'd like it
8 expanded across all the areas of piracy.

9 But then what falls apart, and you
10 heard it with Russia, and the story is not so
11 different in other countries. Where the
12 progress ends is when you go get to the
13 prosecutorial level and you get to the
14 judicial level.

15 And in Lebanon that's been a
16 significant problem. There just aren't a lot
17 of criminal cases that are prosecuted as
18 opposed to raids taken, products seized.

19 Unfortunately, that kind of action
20 doesn't provide the deterrents within a system
21 that you need. You need to take those next
22 steps.

1 And, you know, the reports are
2 from Lebanon that a particular problem is at
3 the judicial level. A lot of the judges are
4 very lenient on this. "Oh, we don't need to
5 worry about IPR. This is crazy."

6 But what they're forgetting, of
7 course, is that there's a large percentage of
8 the population that depends on this whole
9 sector of economic activity, whether it be
10 cable, some video stores, music, games.
11 There's a lot of employment there, and a lot
12 more employment were it a legal industry.

13 But judges just aren't aware of it
14 and we've had -- we've run a lot of judicial
15 trainings. PTO has run some judicial
16 trainings, and that has to continue. We have
17 to keep up that drumbeat on both the
18 prosecutorial side and the judicial side.

19 And it's not hopeless. I mean,
20 we've watched another country, for example,
21 the United Arab Emirates. They've driven
22 piracy rates down to 30 percent there. It's

1 a small country like Lebanon.

2 It obviously, their per capital
3 income is higher and it's much, much more
4 stable politically, but my point is that it
5 can be done with governmental, with political
6 will at the governmental level.

7 And part of what the U.S. can do
8 is provide the little push to have them
9 demonstrate that political will. And GSP is
10 -- it's a great tool. They don't want to lose
11 their GSP benefits.

12 MS. SANDLER: Thank you. No, it's
13 interesting because Lebanon has been a very
14 strong exporter under GSP during all -- if you
15 could turn off your mic, just hit the button.

16 Yes, so that has been a very
17 interesting and incredible thing that their
18 imports under -- our imports under GSP from
19 Lebanon have increased all through this time
20 of instability.

21 My colleague from Labor, please.

22 MS. ZOLLNER: Hi. Is there

1 evidence of pirated products entering or
2 leaving the country? And then, the other
3 questions I have are things you might have to
4 -- you might not have right at your
5 fingertips, but what percentage of available
6 product by categories is pirated, and then
7 what are your sources that establish that
8 percentage?

9 MR. SMITH: The first question
10 first. Yes, there is product coming in,
11 optical disk product which is -- there are
12 four plants in Syria, and we've been able to
13 source product in Lebanon from those Syrian
14 plants.

15 And, you know, the borders between
16 Syria and Lebanon are basically -- there
17 aren't any, and the stuff comes in. There's
18 one plant in Lebanon, and one of the things we
19 ask for is that plant be monitored very
20 carefully.

21 So far it is not -- it is not as
22 bad as the Syrian plants and there's some

1 piracy there, but -- and there's also product
2 coming in from Eastern Europe which probably
3 is -- a lot of it probably is Russian product,
4 and from China.

5 So, there is some, but I would say
6 most of it is local, locally-burned material.
7 As to exports, we haven't gotten any reports
8 of any major exports. The reason we want to
9 monitor the plant is that's where the exports
10 are going to come from, from the optical disk
11 factory if it starts going south on us.

12 Your other question was -- oh,
13 piracy rates. Unfortunately, we have
14 estimates of the rate of piracy for the record
15 industry. It's about 70 percent. Seven out
16 of ten copies in Lebanon are pirate copies.

17 The software industry, which has a
18 much more rigorous -- the record industry
19 basically looks at inventory in stores and
20 compares pirate inventory versus legitimate
21 inventory, and tries to do, you know, a basic
22 survey in the market.

1 And 70 percent, it could be off a
2 little bit here or there, but that's going to
3 be the order of magnitude what that market
4 looks like. With the software industry they
5 do a much more rigorous analysis by comparing
6 sales of software with PC penetration, and
7 there they -- I think the number is 74
8 percent, which is -- which -- I mean, there
9 other countries that are higher.

10 No question, so -- and I believe,
11 and if my memory serves me correctly,
12 Microsoft did a few years ago make a deal with
13 the educational system and -- to provide
14 software to students at low prices, and they
15 do that pretty regularly.

16 Unfortunately, the legal
17 infrastructure in Lebanon is not very good for
18 software, so there's some broad educational
19 exemptions in the law that allow copying of
20 software where that basically violates their
21 international treaty obligations.

22 So, I -- if I had better data I

1 would gladly give it to you. But, my guess is
2 that the numbers about the same in the other
3 areas. Certainly above 50 percent across the
4 board.

5 MS. SANDLER: Thank you. I think
6 we'll go to Commerce now.

7 MS. WILSON: Thank you. How are
8 you?

9 MR. SMITH: Good.

10 MS. WILSON: You've mentioned,
11 you've touched upon this already a little bit,
12 and I know that your submission goes into
13 further detail about the status of their legal
14 system, what's in place.

15 But I wonder if you could -- if
16 you feel inclined to elaborate on how well
17 Lebanon is meeting its international standards
18 for IP protection, especially in the areas
19 that you've been focusing on, and to what
20 degree has the government been willing to work
21 with your member organizations to meet those
22 standards?

1 MR. SMITH: I will have to refresh
2 my memory here on some of the specifics, but
3 obviously they are not a TRIPS member. They
4 are a member of, I believe, the Berlin Text of
5 the Berne Convention, and there's legislation
6 that's been pending for them to join the 71
7 Text.

8 I'm sorry. That's a little arcane
9 for most of you, but the 71 Text is the modern
10 text of the Berne Convention, and is
11 incorporated by reference in the TRIPS
12 agreement.

13 They have not joined the -- they
14 have not joined the internet treaties, and
15 they have a draft legislation that seeks to
16 implement the obligations in those treaties,
17 but inadequately at this point.

18 So we have commented on the draft,
19 and there are number of deficiencies there.
20 We weren't consulted on that draft. We have
21 a lawyer that works for one of our members who
22 is quite active with the government, and

1 rather close to some of the government
2 officials.

3 So, we have the ability to
4 influence it to some extent, but the draft we
5 saw is better, but it still has a number of
6 deficiencies in it. I don't believe, for
7 example, there's a point of attachment for
8 protection for sound recordings.

9 So, what the record industry does
10 to get protection is there's a doctrine of
11 what's called simultaneous publication, so if
12 you publish a sound recording in -- in a
13 country that has relationships with Lebanon
14 you can get protection, but there's no direct
15 protection.

16 The new amendments fix that, but
17 there's some overbroad exceptions in the
18 education area. I mean, very overbroad. It
19 basically says that students can photocopy as
20 much as they want. Teachers can photocopy any
21 book, any -- you know, it's quite broad, and
22 we've been trying to narrow that.

1 There's some overbroad exceptions
2 for computer programs to copy. Basically you
3 can make a copy of a computer program in an
4 educational environment without permission or
5 payment, and there are just a number of things
6 like that.

7 On the other hand, they have good
8 strong criminal penalties. They could use
9 that criminal law against cable piracy
10 tomorrow and it would be quite effective.

11 So, it's kind of a balance. I
12 would say that the deficiencies are not
13 horrible, but -- and they should be quite easy
14 to fix. And if USTR and state engages on this
15 new set of amendments, hopefully we'll be able
16 to get them back to where they ought to be so
17 that they can join the internet treaties, and
18 hopefully eventually get into the WTL.

19 MS. SANDLER: If I can just ask a
20 follow up. When you talked about for sound
21 recordings, the problem of protection could be
22 avoided or addressed by, you know, is what you

1 said, the concurrent release or the answer
2 said those words. Is that possible to do like
3 in Uzbekistan?

4 MR. SMITH: No, because they are
5 not a member of any of the -- they don't have
6 copyright relations basically with anybody, I
7 don't think. I do not -- I believe that's the
8 case.

9 The only way you can get
10 protection in Uzbekistan, I believe, is by
11 first publication in Uzbekistan, and that's
12 not going to happen. And, you know, there's
13 Uzbekistan, there's these trade agreements.
14 They are supposed to join these conventions.
15 They haven't done it, so -- but I have to
16 refresh my memory.

17 What I will do is, I will go back
18 and I will pinpoint an answer to that question
19 with respect to both Lebanon and Uzbekistan.

20 MS. SANDLER: That would be
21 helpful in terms of helping us differentiate--

22 MR. SMITH: Understand it, yes.

1 If you could hit your button, and I think it's
2 Treasury's turn.

3 MR. MARES: I suppose it's my turn
4 to ask the kind of recurring question, but how
5 much of the issues present in Lebanon are due
6 to the lack of regulation versus a lack of
7 enforcement?

8 One thing that you just mentioned
9 in your last answer was that, I believe you
10 said that criminal sanction is already well-
11 provided for in the law. Is that for
12 copyright generally, or --

13 MR. SMITH: Yes. The cable piracy
14 has been the big Magilla. That's been the one
15 that's been really onerous and, you know, it's
16 not a big market, but they've got 800 cable
17 systems after all, and this is -- so there's
18 a lot there.

19 Retail piracy is a big problem,
20 but it's not -- it doesn't rise to the level
21 of the cable piracy. The legal infrastructure
22 for just basic antipiracy enforcement is

1 there. No question about it. The penalties
2 are there. It's a matter of internal
3 organization and political will and
4 leadership.

5 Now, some of that's happened, as I
6 mentioned, they have this unit now. It's
7 sitting there. It's got 35 people. It could
8 expand its mission, add a few bodies and take
9 on all these issues much more aggressively and
10 work much harder with the prosecutors and get
11 some criminal cases done and get some
12 convictions out there, publicize them widely
13 and you'd see a drop -- believe me. You'd see
14 a big drop in piracy rates.

15 That's what happened in the UAE, a
16 different country, but same size, what, three,
17 four million people. That's how they did it.
18 They just got aggressive about it and 30
19 percent, 35 percent piracy rates. Lebanon
20 could do the same. It's not an impossible
21 job.

22 MS. SANDLER: Any questions from

1 my colleagues, any other questions?

2 You mentioned in UAE, as you said,
3 that they dropped 30 percent. As a result,
4 was there any positive investment? I mean,
5 was there a -- so that happened -- I mean, I'm
6 not saying that protection for protection's
7 sake is unimportant.

8 But, you know, what we've tried to
9 point out is if you protect intellectual
10 property, you know, it will tend to lead to
11 investment in more intellectual property and
12 other kinds of, you know, manufacturing.

13 Has -- there are other factors
14 operating in the UAE, but have you seen --

15 MR. SMITH: In our industry, many
16 of the licensees of motion picture studios,
17 record companies, game companies are
18 headquartered in Dubai. It's a place where --
19 where they can do business easily.

20 I don't have this at my
21 fingertips, but the sales of legitimate
22 product across the board in UAE with four

1 million people is higher than the sales of
2 legitimate product in Saudi Arabia with 27
3 million people, by a lot.

4 It just shows you what good
5 enforcement can do. Saudi Arabia is a --
6 quite a difficult place, and I don't mean to
7 take us off Lebanon, but just by -- it's just
8 by way of comparison. They are right next to
9 each other. They trade with each other, and
10 the difference is just so marked between.

11 And even countries that we have
12 free trade agreements with like Bahrain is
13 doing much better in terms of investment, the
14 payment of taxes, the setting up of legitimate
15 businesses and the advertising revenue, and
16 everything that goes, that follows a
17 legitimate business environment that adds
18 many, many dollars to an economy, compared to
19 a nontaxpaying underground pirate industry.

20 So, UAE has realized it's in their
21 interest to do this, and they -- people flock
22 there. They bring their headquarters there.

1 You have the software industry. You drive
2 down the main street and you see Microsoft,
3 Symantec. They're all there. IBM. You don't
4 see that in Lebanon. And part of it is
5 because of this, because they have not shown
6 that they are prepared to really be tough on
7 these issues.

8 MS. SANDLER: Thank you very much.
9 Appreciate it. And with that I will close
10 today's hearing.

11 (Whereupon, at 1:56 p.m., the
12 hearing concluded.)

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