

OFFICE OF THE U.S. TRADE REPRESENTATIVE

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PUBLIC COUNTRY PRACTICE HEARING
U.S. GENERALIZED SYSTEM OF PREFERENCES (GSP)

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THURSDAY
JANUARY 30, 2020

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The hearing convened at the Office of the U.S. Trade Representative, 1724 F Street N.W., Washington, D.C., Rooms 1 and 2, at 10:00 a.m., Laura Buffo, Chair of the GSP Subcommittee, presiding.

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1 P-R-O-C-E-E-D-I-N-G-S

2 10:03 a.m.

3 CHAIR BUFFO: Good morning and welcome
4 to USTR. So I now call this public hearing to
5 order.

6 Hi. My name is Laura Buffo, and I am
7 the Deputy Assistant U.S. Trade Representative
8 for the Generalized System of Preferences. I am
9 also the Chair of this GSP Subcommittee of the
10 Interagency Trade Policy Staff Committee.

11 So I have very recently taken over
12 this position as my predecessor who many of you
13 might know, Erland Herfindahl, is currently --
14 literally today -- en route to Brussels, where he
15 will be the senior trade representative for the
16 U.S. mission to the EU. And while his timing is
17 impeccable, we do wish Erland well.

18 And so it's a pleasure to be here
19 today, and particularly to have the honor of
20 participating in the largest GSP hearing in
21 decades, with over 40 witnesses and over 90
22 written submissions.

1 As most of you know, GSP is the United
2 States' oldest and largest trade preference
3 program, providing duty free access to the U.S.
4 market for thousands of products from 119
5 countries and territories. However, GSP benefits
6 are not automatic. Congress has established a
7 set of 15 eligibility criteria that beneficiary
8 countries must meet if they are to receive GSP
9 benefits.

10 And these criteria include, but are
11 not limited to, the extent to which a beneficiary
12 country has assured the United States that it
13 will provide equitable and reasonable access to
14 the beneficiary's market, acting in good faith in
15 enforcing arbitral awards, taking steps to afford
16 internationally recognized worker rights,
17 implementing commitments to eliminate the worst
18 forms of child labor and providing adequate and
19 effective protection of intellectual property
20 rights.

21 Today we will be reviewing the
22 following eight countries and whether they are

1 meeting the GSP eligibility criteria. Thailand
2 for GSP market access criterion. Ecuador for the
3 GSP criterion to act in good faith in enforcing
4 arbitral awards. Azerbaijan, Kazakhstan and
5 Georgia for the workers' rights criteria.
6 Uzbekistan for the worker rights and child labor
7 criteria. South Africa for intellectual property
8 rights, and Indonesia for both intellectual
9 property as well as market access criteria. The
10 Committee is also reviewing Laos for designation
11 into the GSP program, but it is not represented
12 in the hearing.

13 We will be hearing today from many
14 witnesses and various perspectives. While the
15 issues vary for each country, for all of the
16 reviews, we are trying to answer one key
17 question: whether or not the country is meeting
18 the GSP eligibility criteria.

19 Now let me take a moment to go over
20 some of the logistics. So this hearing was
21 announced in the Federal Register Notice, which
22 was published on November 19th, 2019. And all

1 public submissions for this hearing, including
2 the original petitions are available for public
3 review on regulations.gov. A written transcript
4 of the hearing will be posted approximately two
5 weeks after the hearing.

6 Now witnesses today will have the
7 opportunity to expand on the testimony or respond
8 to testimony presented by others through a post-
9 hearing brief.

10 So witnesses may also receive
11 additional questions from the panel here, and we
12 would ask that you also include the answer to
13 those questions in the post-hearing brief.

14 As indicated in the Federal Register
15 Notice, post-hearing submissions must be
16 submitted electronically to regulations.gov by
17 11:59 p.m. on February 28. And we would kindly
18 ask that when filing the submissions that you
19 make sure to put them in the appropriate docket
20 numbers. And for your convenience there is a
21 list of those docket numbers on the table in the
22 hallway.

1 So given the very packed schedule
2 today, we kindly ask witnesses to keep it to the
3 five minute limit for oral testimony following
4 which the panel, which you see before you, will
5 ask questions of the witnesses. So I'd actually
6 now like to ask the U.S. Government officials
7 joining me on the panel today to introduce
8 themselves.

9 MS. CACKOSKI: Hi. I'm Caitlyn
10 Cackoski from the U.S. Department of Agriculture.

11 MR. MCGEE: Hi. I'm Brett McGee with
12 the Department of Commerce.

13 MR. PAJUSI: Tom Pajusi with the State
14 Department.

15 MS. ANDERSON: Lisa Anderson from
16 USTR.

17 MS. LAURY: Good morning. I'm Emma
18 Laury from the U.S. Department of Labor.

19 MS. RESNICK: Good morning. I'm
20 Bonnie Resnick with the U.S. Department of
21 Treasury.

22 CHAIR BUFFO: Thank you very much.

1 And I would also like to acknowledge Claudia
2 Chlebek as well Yvonne Jamison, for all their
3 hard work in organizing this hearing today.

4 And with that, I'd like to turn to Mr.
5 Pisan, the Deputy Permanent Secretary of the Thai
6 Ministry of Agriculture and Cooperatives, for
7 your statement. Welcome.

8 MR. PONGSAPITCH: Thank you, Chair.
9 Good morning, Chair and department members. I am
10 Pisan Pongsapitch, the Deputy Permanent Secretary
11 of the Thai Ministry of Agriculture and
12 Cooperatives. The Royal Thai government greatly
13 appreciates the opportunity to testify in front
14 of the GSP Subcommittee today, and we thank you
15 for your ongoing commitment to GSP.

16 The United States and Thailand have
17 intensified their cooperation on pork and pork
18 products since early 2018. I am pleased to be
19 back here again to highlight the progress we have
20 made during this period.

21 The Thai government particularly
22 appreciates the opportunity to work with the

1 U.S., including in the context of the risk
2 assessment we have undertaken on the ractopamine.

3 Thailand, like all states, has the
4 sovereign responsibility to protect the health
5 and safety of its people, including by means of
6 food safety standard. It is common practice for
7 countries to impose import measures based on
8 health and safety.

9 Regulations like these should not be
10 simply mischaracterized as an illegitimate
11 restraint of trade. Ractopamine-enhanced pork is
12 of critical concern to consumers in Thailand
13 marketplace. The traditional Thai diet regularly
14 makes use of pork offal such as lungs, liver,
15 kidneys, stomach and intestine, where higher
16 concentrations of ractopamine residue have been
17 found.

18 Given the potential health effects to
19 the Thai population and potential increased
20 exposure due to unique diets, Thailand has held a
21 zero tolerance policy on the use of all beta
22 agonists, including ractopamine, for over 25

1 years.

2 So by law, the use of ractopamine at
3 farm level is prohibited. And the presence of
4 ractopamine residue in meat and meat products are
5 also prohibited. In order to lift the
6 prohibition of ractopamine in Thailand, thorough
7 risk assessment must demonstrate the absence of
8 adverse health effect to consumer.

9 According to the agreed outcome of the
10 2018 TIFA, Thailand has undertaken a risk
11 assessment of ractopamine in pork for Thai
12 consumer with the U.S. for support.

13 In this regard, an independent risk
14 assessment team was established in Thailand in
15 mid-2018 to conduct the risk assessment. The
16 progress of the work was discussed in the U.S.
17 Thailand Joint Working Group every one to two
18 months by DVC. The result of the risk assessment
19 was reported to and discussed in the 2019 TIFA.
20 The final report of the study in both Thai and
21 English version was shared with the United
22 States.

1 The quantitative result of the risk
2 assessment showed that the acute intakes of the
3 ractopamine for the consumer of certain edible
4 pork offal were higher than the accepted
5 parameter. The study concluded that if
6 ractopamine is used in swine production, the
7 health risk to the Thai population will be
8 unacceptable. Thailand appreciates the U.S.
9 cooperation, including scientific inputs and
10 comments to the study, and we welcome the
11 opportunity for further discussion and
12 cooperation.

13 Like most other countries, Thailand
14 maintains a regulatory approval process for the
15 import of meat and meat products. The United
16 States made an official request for the import of
17 pork into Thailand. I am happy to report that
18 the request is in progress and is currently at
19 step four of our nine step process. All
20 countries that export product of pork into
21 Thailand have to follow this process. The import
22 meat inspection fee is applied uniformly for all

1 meats across our country and reflecting the
2 actual inspection costs borne by our authority.

3 Let me reiterate our appreciation for
4 the assistance and cooperation of the United
5 States. We appreciate the U.S. GSP program and
6 respect its criteria. But we do not see the use
7 of our legitimate health and safety measures are
8 against the rules of the GSP program. That
9 concludes our testimony in the support of the
10 Royal Thai government. Thank you, again, and we
11 welcome your questions. Thank you.

12 CHAIR BUFFO: Thank you very much, Mr.
13 Pisan, for your testimony. We will now turn to
14 members of the panel to ask questions. Thank
15 you.

16 MS. CACKOSKI: Mr. Deputy Permanent
17 Secretary, Thailand has effectively banned U.S.
18 imports of pork since 2012, has not adopted Codex
19 maximum residue levels for ractopamine, and only
20 initiated a risk assessment for ractopamine in
21 2018. How does Thailand view its policy to ban
22 the importation for U.S. pork for eight years as

1 conforming to the GSP criterion to provide
2 equitable and reasonable access to Thailand's
3 market?

4 MR. PONGSAPITCH: Okay. Thank you for
5 your question. Yes, I also explained this one
6 two years ago in the testimony that before 2018
7 we have just only some data and information. We
8 had not done the risk assessment yet, but the
9 primary information at that time showed possibly
10 health effect to the Thai consumer on this.

11 So that's agreed by TIFA in 2018. So
12 we start the risk assessment and have the
13 cooperation with the U.S. team and support for
14 this one. And starting from mid-2018 until March
15 of 2019, that we finished the risk assessment,
16 and then the result of the risk assessment come
17 out. And we will have also discussed the result
18 of the risk assessment with USTR by DVC and also
19 by the 2019 TIFA.

20 MS. RESNICK: Thank you for your
21 presentation. Oh, I'm sorry. Are there follow-
22 ups? Okay. Thank you for your presentation.

1 Thailand states that it is currently
2 reviewing the pork market access request
3 submitted by the United States in May 2018 and
4 that Thailand is only at step four of a nine step
5 process of reviewing the U.S. request for pork
6 market access.

7 Can Thailand comment further on when
8 it will conclude this process and given that the
9 U.S. submitted its request over 18 months ago,
10 how Thailand's process avoids undue delay?

11 MR. PONGSAPITCH: Thank you also for
12 the question. Actually, we have put in the
13 policy of the Department of Livestock on the
14 request for market access of the meat product.
15 And we notified this procedure to WTO for our
16 country to recognize this.

17 Actually, the nine steps of the
18 process, there are no specific timelines. The
19 timelines depend on how quick the exporting
20 country responds to each step. For example, the
21 step four that the U.S. is currently at, the step
22 four is directly tied to the questions sent to

1 the U.S. So currently U.S. have replied to some
2 questionnaire and still the discussion of the
3 information for questionnaire is ongoing.

4 So for example, currently we have
5 about 18 countries request for market access.
6 And just to let you know that the process for
7 United States is quite quick because according to
8 the country submit for the request in 2018, the
9 U.S. is among the four countries submit. And the
10 other three countries are only at step two, and
11 the U.S. is currently at step four. So it's
12 quite quick compared to other countries. Thank
13 you.

14 MS. ANDERSON: I have a follow-up
15 question to that. On the animal health
16 questionnaire that the U.S. submitted, well the
17 response to Thailand's animal health
18 questionnaire, that response was I think over six
19 months ago, and we haven't heard back. Can
20 Thailand comment on when it might be responding
21 to the U.S.'s response on the animal health
22 questionnaire?

1 MR. PONGSAPITCH: Let me just discuss
2 with my Department of Livestock colleague. So
3 thank you for your question. Actually there are
4 two questionnaires.

5 One is the animal health that the U.S.
6 already provide information to the Department of
7 Livestock. And the Department of Livestock just
8 informed me that the answer to the information is
9 on process, considered by the Committee on Risk
10 Assessment. And the other questionnaire on food
11 safety already sent to U.S. last month.

12 MS. ANDERSON: So the food safety
13 questionnaire, I know that we have and that we
14 are responding to. So my understanding of your
15 response is that Thailand's follow-up on the U.S.
16 response to the animal health questionnaire will
17 be addressed in your next committee meeting,
18 which is in -- when will that be? Is that
19 correct and when will that next committee meeting
20 be?

21 MR. PONGSAPITCH: Yes. Actually it's
22 already considered by the committee. And then

1 the committee passes to the working group to
2 consider in detail. Now it's under consideration
3 of the working group.

4 But in detail when it's going to
5 finish, that we can send the information or
6 answer to you later when the Department of
7 Livestock check it correctly.

8 MS. ANDERSON: All right. We would
9 very much welcome Thailand's answer as to when we
10 can expect a response to our core submission on
11 the animal health questionnaire.

12 MR. PONGSAPITCH: Okay, sure.

13 MS. ANDERSON: All right.

14 MR. PONGSAPITCH: Sure.

15 MR. PAJUSI: Good morning, sir.

16 Ractopamine has been used safely for over 20
17 years in the United States. And ractopamine
18 maximum residue levels have been established in a
19 large number of countries with high functioning
20 food safety systems, including Canada, Japan,
21 South Korea, Australia, New Zealand, Brazil and
22 others.

1 Now I note in your opening remarks you
2 did refer to this risk assessment process, but I
3 do have a question. Given the extensive research
4 that informed the regulatory decision-making in
5 the United States and these other countries as
6 well as the Codex Alimentarius, could you explain
7 what is the basis for Thailand's statement that
8 the effects of ractopamine remain entirely
9 unknown?

10 MR. PONGSAPITCH: Thank you for the
11 question. The last sentence that you mentioned
12 is in our paper, but it's the background
13 information a few years that at that time the
14 effect for human health is not so clear because
15 of the data considered by international
16 organization like Codex is quite limited at that
17 time.

18 But at that meeting, the Codex can be
19 able to set the standard, the maximum residue
20 limit specifically for tissues of the pork, one
21 for meat, one for fat and for liver and kidney.
22 But for the other organs, there is not adequate

1 information supplied to submit to Codex to be
2 able to set the standard.

3 And later on, Thailand conducted a
4 risk assessment for all organs of the pork,
5 because in Thailand we consume every part of the
6 pig. And then we consider the available
7 scientific data, and it showed that the risk for
8 the consumer that consumes some certain organ of
9 the pork have a really high risk.

10 MR. PAJUSI: Thank you very much.

11 MR. PONGSAPITCH: Thank you.

12 MS. ANDERSON: Thailand states that
13 there are several countries that ban the domestic
14 use of ractopamine in animal production.
15 However, some countries that ban the domestic use
16 of ractopamine allow the importation of pork and
17 pork products that meet Codex standards for
18 ractopamine. Could this model be useful for
19 Thailand, and why or why not?

20 MR. PONGSAPITCH: Actually each
21 country, they base their decision on the
22 scientific information and the pattern of the

1 consumption in that country.

2 So some countries, apart from
3 Thailand, like China or EU, they also have their
4 own risk assessment and their information showed
5 that it wasn't safe for their consumers. And so
6 I think that our risk assessment is along the
7 line with this country, so at this moment we
8 conclude that it's not safe for the Thai
9 consumer. Thank you.

10 MS. LAURY: Good morning. In your
11 testimony you described a risk assessment that
12 you're performing on ractopamine. And I wondered
13 what steps is your government taking to make sure
14 that appropriate risk management decisions are
15 based on valid risk assessment that reflects
16 realistic conditions?

17 MR. PONGSAPITCH: Sorry. You mean our
18 risk management measure that's based on the
19 current risk assessment, right?

20 MS. LAURY: Yes.

21 MR. PONGSAPITCH: Okay. Actually our
22 risk management, I mean the regulations have been

1 set many years ago. I mean the regulation by
2 Department of Livestock that they prohibit the
3 use of ractopamine, and the regulation by
4 Ministry of Public Health, the Thai FDA, that
5 they accept the zero tolerance for the residue.

6 So once that we concluded our risk
7 assessment last year, then we submit the report
8 of the risk assessment to this to, how can I say,
9 send it to the Department of Livestock and the
10 Thai FDA and ask them to consider whether they
11 should review or to retain anything on their
12 regulation. So currently these two organizations
13 are on the process of considering the regulation.

14 CHAIR BUFFO: I think we have time for
15 one more question.

16 MR. PONGSAPITCH: Okay.

17 MR. MCGEE: Mr. Deputy Permanent
18 Secretary, the Codex standards for ractopamine
19 are based on a thorough risk assessment conducted
20 by the Joint Expert Committee on Food Additives.
21 This Committee used the assumption that a person
22 on a high meat diet would only be exposed to the

1 maximum residues of ractopamine at an only 15
2 percent of the calculated acceptable daily
3 intake.

4 Importantly, Codex maximum residue
5 levels also incorporate safety factors to ensure
6 the safety of consumers globally. Thailand
7 states that the pork from pigs treated with
8 ractopamine is a critical concern based on
9 consumption patterns in Thailand. Could you
10 please explain why Thailand's assessment differs
11 so dramatically from the international guidance
12 on this?

13 MR. PONGSAPITCH: Thank you. Thank
14 you for your question. Actually I also
15 participated in the Codex meeting at that period
16 of time. During that time, the meeting discussed
17 a lot on this issue in several years. Some
18 countries less about the issue of the other
19 edible offal of pork like lungs, stomach or
20 intestine. But Codex definitely can conclude for
21 the only two edible offal, the liver and kidney,
22 that are adequate information submitted to JECFA,

1 the Joint FAO.

2 So the meeting of Codex concluded that
3 if the specific country have specific information
4 or risk assessment on the other part of pork,
5 they can do it by their own risk assessment and
6 they can also set their own standard on the other
7 part, or the other measure, but that's only for
8 tissue of the pork that Codex can conclude on
9 this standard. Thank you.

10 CHAIR BUFFO: Thank you very much for
11 your testimony, Mr. Pisan, and particularly for
12 traveling all the way from Thailand to be here
13 with us today.

14 We'd like to call up the second panel
15 with the petitioner and stakeholders. And as
16 they are coming up, could I also ask if there's
17 any -- so this proceeding is open to the press.
18 Could I ask if there's any press present today if
19 they could introduce themselves? Please stand up
20 and introduce yourselves please. Thank you very
21 much.

22 (No audible response.)

1 MR. PONGSAPITCH: Thank you very much.

2 CHAIR BUFFO: Thank you very much. So
3 welcome to our panelists. I'd like to introduce
4 the next panel.

5 We have Maria Zieba, director -- did
6 I say that right -- Director of International
7 Affairs from the National Pork Producers Council,
8 Mr. Daniel Anthony, Vice President of The Trade
9 Partnership, and Mr. Nate Herman, Senior Vice
10 President of the American Apparel & Footwear
11 Association. So we'll start with Ms. Zieba's
12 remarks. Thank you very much.

13 MS. ZIEBA: Good morning. Thank you
14 so much for asking us to be part of this panel in
15 joining and bringing everyone together this
16 morning. I appreciate the opportunity to
17 represent the National Pork Producers Council at
18 today's hearing.

19 NPPC is a national association
20 representing 42 state producer organizations. It
21 represents the federal and global interests of
22 over 60,000 U.S. pork producers. The United

1 States is one of the top global exporters of
2 pork, shipping nearly 2.5 million metric tons,
3 valued at over \$6.4 billion to over 100 countries
4 in 2018.

5 While Thailand consumes more than 1
6 million metric tons of pork annually, it imported
7 no U.S. pork in 2018 and very little in 2019 from
8 the data that we have available. That's because
9 Thailand effectively maintains a ban on U.S.
10 pork. It defends its unwarranted ban on uncooked
11 pork and other pork products by pointing to the
12 use of ractopamine by some of our producers.

13 Ractopamine hydrochloride, or
14 ractopamine or racto as I may refer to it, is a
15 feed additive approved for the use in the United
16 States for swine and beef cattle. In swine, it
17 is used to increase weight gain, feed efficiency
18 and carcass leanness in finishing swine.

19 Thailand maintains a ban on imports of
20 pork produced with racto despite the approval by
21 the Ministry of Health for Domestic Use. After
22 an extensive risk assessment by the U.S. Food and

1 Drug Administration, it approved ractopamine for
2 the use of hogs in 1999, and no human adverse
3 health problems have been reported since.

4 In 2012, as was mentioned earlier, the
5 Codex Alimentarius recognized safety of
6 ractopamine, establishing a maximum residue
7 level, or MRL, for the product. At least 27
8 other countries have also approved the use of
9 ractopamine in pork production, and an additional
10 75 countries permit the import of pork produced
11 with ractopamine. Both the United States
12 Government and the private sector have had
13 discussions dating back to 2010, requesting a
14 Thai government risk assessment for ractopamine.

15 After 10 years of discussions,
16 Thailand continues to maintain its ractopamine
17 ban. The country promises to take action
18 allowing imports of pork produced with
19 ractopamine that clearly are a delaying tactic.
20 It is equally clear that the Thai government has
21 no intention of adopting Codex maximum residue
22 limits any time in the foreseeable future.

1 Thailand's ban on U.S. pork is even
2 more inexplicable when you consider that it
3 accepts pork from other international suppliers,
4 including the European Union, Brazil and South
5 Korea. It has erected these trade barriers and
6 others, such as the refusal to grant import
7 licenses for U.S. pork.

8 The Thai government has also never
9 provided a rationale for arbitrarily refusing
10 import permits. So that's another issue we have.
11 This is astonishing, especially when you consider
12 that the U.S. pork producers provide over 26
13 billion pounds of safe, wholesome and nutritious
14 meat protein to consumers worldwide and to over
15 100 countries as I mentioned earlier.

16 We urge USTR to press Thailand to
17 remove all non-tariff barriers to trade, and that
18 they accept pork from all USDA approved
19 facilities. Based on the longstanding
20 restrictions on U.S. pork described, NPPC
21 respectfully requests that actions be taken to
22 withdraw or significantly reduce Thailand's

1 eligibility for GSP benefits.

2 Thailand unjustifiably restricts U.S.
3 pork for years, and has severely impeded U.S.
4 pork sales to an otherwise promising market.
5 Thank you for the opportunity to present this
6 testimony, and I look forward to your questions.

7 CHAIR BUFFO: Thank you very much for
8 your testimony, Ms. Zieba. I think we'll go
9 through all of the testimonies and then save
10 questions for the end. So with that, Mr.
11 Anthony. Thank you.

12 MR. ANTHONY: Thank you. My name is
13 Dan Anthony. I'm here from the GSP Action
14 Committee. The Action Committee is an initiative
15 from the Coalition for GSP, which since 1992 has
16 been the predominant U.S. business community
17 voice advocating for GSP renewal.

18 Our members are U.S. companies and
19 associations that import under the program. And
20 we're organized to help policymakers and others
21 fully appreciate the important benefits to U.S.
22 companies, workers and consumers of the GSP

1 program that you administer on a daily basis.

2 Our members know firsthand the
3 benefits of the GSP program to American companies
4 and workers. By lowering costs for raw
5 materials, components and machinery, GSP helps
6 American manufacturers and workers compete in a
7 tough global economy. By lowering costs for
8 consumer goods and food products, many of which
9 are not available in the United States, GSP
10 increases product choices and helps American
11 families stretch paychecks further.

12 There are two main points I want to
13 emphasize today, one general and one specific to
14 this review. The general point is that American
15 companies and workers are the primary
16 beneficiaries of the GSP eligibility for
17 Thailand. The corollary, of course, is that
18 American companies and workers will suffer as
19 much, if not more, than anyone else if GSP
20 benefits for Thailand are suspended as a result
21 of this review.

22 We have lots of both anecdotes and

1 data to back that up. The GSP Subcommittee
2 should place great weight on these U.S. impacts
3 as they make their decisions. The one example I
4 always remember is a husband and wife run a
5 company in California. It spent 10 years growing
6 its business to reach 10 employees. Then GSP
7 expired in 2013, and they started paying \$15,000
8 per month in new tariffs.

9 Cash flow suffered. They couldn't
10 fill orders. The bank called in the loan. And
11 ultimately they were forced to sell their naming
12 rights to a brand that I guess a bunch of people
13 in this room actually know but we can't say, and
14 after 10 years didn't even make a profit.

15 They were just in such a bad place
16 because, you know, again a 10 person company that
17 gets hit with \$15,000 a month, those are costs
18 that can't just be made up. And so 10 years of
19 their lives are gone. And that's something that
20 I think we always need to remember as we think
21 about taking away tariffs. Those tariffs were
22 refunded eventually to the company that purchased

1 them. So even temporary tariffs have incredible
2 long lasting damages are possible.

3 We've got another small business
4 member in North Carolina. They paid about
5 \$700,000 during a two year GSP lapse. In the
6 first year after renewal, they hired 17 full-time
7 workers. They went from 25 to 42 employees while
8 also buying equipment and also increasing worker
9 benefits. Today they employ 70 workers. And
10 their imports under GSP from Thailand have grown
11 commensurate. They are not in any position to
12 keep that sort of growth going if they have to
13 start paying \$50,000, \$60,000, \$70,000 per month
14 on products coming from Thailand.

15 While we know the pain inflicted by
16 higher tariff costs on American companies, what
17 do we know about the impacts on foreign
18 exporters? GSP eligibility criteria have often
19 been viewed through the lens of providing a
20 carrot and stick. But how appealing is the
21 carrot?

22 In the case of Thailand, a little

1 under 15 percent of its exports to the U.S.
2 received GSP preferences so far in 2019 through
3 November, which is the most recent we have. A
4 third of that is already slated to lose GSP
5 benefits in April under the labor rights review.
6 That means a decision here at most affects one
7 out of every \$10 in Thai exports to the U.S., and
8 about one out of every \$100 in Thai exports
9 globally. It's a pretty small carrot when you
10 view it through that lens.

11 Perhaps more importantly, the
12 potential loss of GSP is very small compared to
13 shocks to global supply chains that are currently
14 occurring. It's well known that companies are
15 trying to move supply chains out of China due to
16 Section 301 tariffs imposed over the last year
17 and a half. GSP countries in Asia, including in
18 Thailand, appear to be among the biggest
19 beneficiaries of the U.S.-China trade war.

20 We like to do lots of stuff with data,
21 and so we grouped GSP imports from Thailand
22 according to whether they're hit with 25 percent

1 tariffs if imported from China, 15 percent
2 tariffs, or no tariffs. And when you look at
3 this last year, the products hit with the highest
4 tariffs when coming from China have increased 17
5 percent. Those subject to 15 percent tariffs
6 have increased 8 percent. And those where
7 there's been no sort of change to the status quo
8 in China have declined by 20 percent.

9 So what we're seeing here, and this
10 holds across other countries -- this isn't just
11 Thailand -- is that what's driving change and
12 growth in the program has nothing to do with GSP.
13 It has to do with other things happening in the
14 rest of the world, which further decreases that
15 ability to use this program as leverage to get
16 other countries to do things.

17 India is a case that we went into
18 great detail using data on what happened since it
19 lost benefits. You see that exact same breakdown
20 with products on Lists 1, 2 and 3 up about 40
21 percent from India despite the fact that it lost
22 GSP.

1 These aren't GSP decisions that are
2 being made. And I think that we need to realize
3 that in terms of effectiveness of using this
4 program as leverage, there's a lot more going on
5 that is wholly outside of this that will have a
6 much bigger impact on actual trade flows
7 occurring.

8 I realize I'm running a little long
9 here, so I will be very quick on one major
10 change, I think, that is very Thailand specific
11 to this review, and that's the change in sort of
12 U.S. industry practices as it relates to
13 ractopamine. When the review was filed, it
14 seemed like most U.S. pork used ractopamine. In
15 October, JBS, the second largest U.S. pork
16 producer, decided that it was going ractopamine-
17 free both internally and from all contract
18 buyers.

19 Two weeks later, Tyson's, which is the
20 third largest pork producer said the same thing.
21 If you look at various estimates on slaughter
22 capacity, it could be upwards of 75 percent of

1 U.S. pork is now being processed at facilities
2 that are wholly ractopamine-free.

3 This provides a great opportunity.
4 We're in a very different place as it relates to
5 Thai rules on ractopamine preventing U.S.
6 exports. And I don't think this is -- it's an
7 opportunity that shouldn't be squandered.

8 And so we have expressed our interest
9 to the Thai government that they should be doing
10 everything in their power to make sure that those
11 U.S. ractopamine-free exports are, you know,
12 expeditiously allowed into Thailand. But that is
13 -- it's one of those things that we've gotten an
14 opportunity here, and we shouldn't waste it. We
15 shouldn't punish the U.S. companies that use it
16 now and in the future over rules that affected us
17 primarily in the past. Thank you.

18 MR. HERMAN: Thank you. And I
19 appreciate the opportunity this morning to
20 testify here. My name is Nate Herman. I'm the
21 Senior Vice President for Policy at the American
22 Apparel & Footwear Association. AAFA is the

1 trusted public policy and political voice of the
2 apparel and footwear industry and our 4 million
3 American workers. Please note that the Travel
4 Goods Association, the national association of
5 the travel goods industry, also fully supports
6 this testimony.

7 Together our members span the industry
8 of U.S. companies that make, market and sell
9 travel goods, which we define broadly as luggage,
10 handbags, backpacks, wallets and related
11 accessories. We recognize the underlying worker
12 rights and pork issues with Thailand. In fact,
13 we have had numerous conversations with the Royal
14 Thai government to urge them to effectively
15 address these important issues.

16 But as Mr. Anthony noted, the
17 situation has changed, and we would also urge
18 that you take that into account. But today I
19 want to talk about the negative impact withdrawal
20 of GSP benefits for Thailand would have on us,
21 American companies, American workers and American
22 consumers. Over 99 percent of all travel goods

1 sold in the United States today are imported.
2 Travel goods are no longer made in the United
3 States and have not been for decades.

4 Yet through the power of global value
5 chains, the travel goods industry directly
6 employs 100,000 U.S. workers in such diverse
7 areas as design, compliance, marketing, IT and
8 retail. Until July 2017, when President Trump
9 declared all eligible U.S. travel goods imports
10 duty free from all GSP countries, China's share
11 of the U.S. market was 85 percent. Companies and
12 the travel goods industry had few viable options
13 for large scale commercial production outside of
14 China. Much of the industrial capacity, not just
15 for the assembly, but for the materials and
16 components has been concentrated in China for
17 years.

18 Long-term development of specialized
19 skillsets, especially for more complex or
20 technical items, and convenience shipping only
21 added to China's advantage. Finally, the
22 industry's relatively small size, compared with

1 industries like apparel, footwear, toys and
2 electronics, made it difficult for travel goods
3 producers to develop factory capacity in other
4 countries.

5 Making travel goods eligible for GSP
6 duty free benefits in countries such as Thailand
7 changed all that. Our members pay a high tax on
8 travel goods imports. We effectively pay an
9 average duty rate of 12.7 percent on our imports,
10 with most duties being in the range of 17.6 to
11 20 percent. Compare that with duties on all U.S.
12 imports, the average effective rate is 1.4
13 percent. In September 2018 that duty burden got
14 a lot worse. For the last 17 months, our members
15 have paid a huge additional punitive tariff on
16 imports from China -- 25 percent punitive
17 tariffs, in fact.

18 And those punitive tariffs will remain
19 in place for the foreseeable future. So that
20 means for most of our products, we went from an
21 average duty rate of around 17.6 percent to a
22 duty rate of 42.6 percent overnight. These

1 tariffs are not paid by other countries. These
2 tariffs are a tax on Americans -- a huge hidden
3 tax paid by American consumers in the form of
4 higher prices and American workers in the form of
5 lower wages and lost jobs.

6 Duty free access in GSP gave the
7 industry its first real opportunity to diversify
8 away from China to build factory capacity and
9 skills in other countries and to mitigate the
10 crushing duty we're in -- a burden paid by
11 American businesses, American workers and
12 American consumers alike.

13 Since July 2017, China's share of the
14 U.S. travel goods market has dropped from 85
15 percent to 68 percent, and it continues to drop.
16 Meanwhile, the percentage of U.S. imports from
17 travel goods from GSP countries has grown
18 significantly, from 5 percent before GSP to
19 almost 14 percent today, and it's still growing.

20 And American consumers and American
21 workers have benefitted because GSP has helped
22 companies to mitigate the impact of the 25

1 percent punitive China tariffs. Being in a very
2 price sensitive industry, where higher prices
3 directly translate into lower sales, GSP has
4 enabled companies to temper the price increases,
5 enabling them to continue to employ and in some
6 cases even expand their American workforce.

7 Thailand plays a key role in the
8 transition to GSP countries. Thailand has long
9 been a player in the luggage business. The
10 addition of travel goods to the GSP program put
11 Thailand back on the map as a major supplier.
12 Today Thailand is the 11th largest supplier of
13 travel goods to the U.S. market and the 6th
14 largest supplier of luggage, with growth rates in
15 2019 of 83.5 percent and 127.2 percent
16 respectively. That means Americans bought more
17 than 10 million travel goods items from Thailand
18 in 2019. As a result, the loss of GSP for
19 Thailand would hurt U.S. travel goods firms,
20 their American workers and their American
21 consumers.

22 Talking with one small luggage

1 manufacturer, for example, who employs 12 workers
2 with a significant amount of their sourcing from
3 Thailand, withdrawal of GSP benefits would be
4 devastating for their company because they would
5 either have to charge higher prices and lose
6 business, which means they would have to lay off
7 workers, or they would have to try and absorb the
8 higher duties, which means laying off workers.
9 This company's experience would be replicated
10 throughout our industry.

11 In addition to hurting American
12 workers, the removal of GSP for Thailand would
13 quite literally be a tax that everyday Americans
14 would have to pay. It would hit their wallets.
15 It would hit their handbags. It would hit their
16 luggage, and it would hit their backpacks.

17 For these reasons, we urge that GSP
18 for travel goods be left intact for Thailand.
19 Thank you again for the opportunity to testify.
20 I would be happy to take any questions.

21 CHAIR BUFFO: Thank you very much to
22 all of our panelists for your testimonies, and I

1 will turn to my USTR colleagues for questions.

2 Thank you.

3 MR. MCGEE: Yes. I have a question
4 for Ms. Zieba. In the government of Thailand
5 submission, they make reference to the fact that
6 many countries like Thailand restrict or ban the
7 use of ractopamine.

8 Does the U.S. pork industry export
9 products to any countries that make use of --
10 that impose ractopamine bans in their domestic
11 production? And if so, how does that work?

12 MS. ZIEBA: Okay. Yes. A really good
13 example of a country that prevents use of
14 ractopamine domestically but imports U.S. pork
15 without any sort of segregation is the
16 Philippines. In 2018, we exported over \$100
17 million worth of pork and pork products to the
18 Philippines.

19 And I would say it's a really good
20 comparison because of the standard of living, and
21 its location in Southeast Asia. And it's a very
22 similar type of country. And we've been able to

1 really flourish in that country and export
2 without many restrictions, and we don't see that
3 restriction on ractopamine. So I would say that
4 is one of the biggest examples that I can point
5 to.

6 And I also would like to mention that
7 when it comes to the MRL standard that was
8 established by Codex, when they were doing those
9 testings, they were looking at livers. They were
10 looking at kidneys. That's how that MRL standard
11 was established on the offal product.

12 And based off of that, those MRLs were
13 designated. You'd have to consume 15 kilos or 33
14 pounds of liver every day and still not meet the
15 MRL limit. So there's a lot -- it's very
16 interesting to hear that that's the reason that
17 we're being given for restricting that market
18 access when the evidence proves that there is
19 negligible risk.

20 MS. ANDERSON: This is a question for
21 Ms. Zieba. Thailand noted in its submission that
22 the U.S. tolerance for ractopamine residues in

1 pork is higher than Codex standards. Are there
2 options available to the U.S. pork industry that
3 would address the Thai government's concerns
4 regarding ractopamine residue levels in U.S.
5 pork?

6 MS. ZIEBA: Thank you for that
7 question. The U.S. pork industry uses
8 ractopamine following the U.S. label for
9 residues. And the U.S. label is actually lower
10 than the Codex standard. So even though the FDA
11 standard is higher, the U.S. label that producers
12 follow is lower than that Codex standard. So we
13 are meeting that Codex standard. And that's why
14 we are proposing and have been for years the
15 adoption of Codex standards internationally, not
16 only for ractopamine but for a number of other
17 vet drugs.

18 MS. ANDERSON: Thank you.

19 MS. LAURY: I have a question for Mr.
20 Herman. In your testimony this morning, you
21 described how the GSP program has benefitted the
22 U.S. travel goods industry, and that this should

1 be taken into consideration. Can you describe a
2 little bit more about how you believe sourcing
3 strategies for companies that you represent would
4 change if Thailand lost additional GSP benefits?

5 MR. HERMAN: As everyone here knows,
6 and we've testified on it previously, is that the
7 current trade war with China has had a huge
8 impact on the U.S. travel goods industry, again
9 the 25 percent punitive tariffs that remain in
10 place today and will do so for the foreseeable
11 future.

12 With such a high concentration of
13 travel goods, in China the options for
14 alternative suppliers are very few that have the
15 capacity to do that. And so the timing with GSP
16 coming online for travel goods provided us a
17 great opportunity. It wasn't just one country or
18 two countries. We would look at a variety of
19 countries. And because of Thailand's history in
20 the luggage industry in particular, it provided a
21 great opportunity to look back at that market
22 where we already had long-term relationships and

1 expand production in Thailand.

2 If you take Thailand away, a lot of
3 the expertise and luggage outside of China is in
4 Thailand. While Thailand might be able to
5 produce other travel goods, say handbags or
6 backpacks, the experience and the expertise to
7 produce luggage is not available in many other
8 countries outside of Thailand and China, and so
9 it makes the process a lot more difficult.

10 The only other alternative is Vietnam,
11 which is already beyond capacity. And again, the
12 travel goods industry is competing with much
13 larger industries in Vietnam, including
14 electronics, toys, furniture, apparel and
15 footwear. And so we're getting priced out and
16 pushed out of that opportunity.

17 MR. PAJUSI: Mr. Anthony, I have a
18 question for you. Could you just discuss whether
19 the loss of GSP eligibility for other beneficiary
20 countries -- you mentioned India earlier --
21 prompted your members to look for new sourcing
22 options in beneficiary countries that have

1 retained GSP eligibility?

2 MR. ANTHONY: We haven't really heard
3 it so far. So some are much more nimble in
4 ability, you know, have that ability to shift
5 fairly quickly. They tend to be the larger
6 players. But for them, I mean to be very blunt,
7 the largest companies are the ones who are least
8 impacted by things like GSP. They've got also a
9 global view of things. You know, they're
10 probably importing from China. They're probably
11 importing from 10 or 20 countries. Where we've
12 seen the challenges is on the very small
13 businesses who are very invested in a certain
14 place.

15 And so for example, on the India case,
16 we've got a member who was bringing in organic
17 food products, you know, like rice type products,
18 derivative products that were very specific to
19 what they wanted to do. They couldn't raise
20 prices, and what happened is they just got
21 dropped. Their customers who are supermarkets
22 dropped them. The market evaporated with the

1 prices.

2 And what they've said is yes, we'll
3 look to Thailand. But then, you know, I'm here
4 testifying today on Thailand, and I'll be here
5 tomorrow testifying on Indonesia, which makes
6 this really difficult. If you're in one place,
7 you can't go to China, which is the natural.
8 Your other two or three alternatives are also
9 under review and may be out of the program by the
10 time you get there.

11 And that's, I think to Mr. Herman's
12 point, is, you know, part of this struggle.
13 Travel goods were very well-positioned for the
14 China tariffs, as well as they could be, because
15 those investments started in 2017 when GSP
16 benefits were extended. So they were a year into
17 the process of finding new suppliers, expanding
18 capacity, things like that.

19 In a place like Thailand, you're now
20 four years into investments on travel goods based
21 on decisions from 2017. It's harder to undo that
22 and just say we're going to jump to Indonesia.

1 And again, because Indonesia is also under review
2 and you've got GSP lapsing at the end of this
3 year, so you've got congressional
4 reauthorizations, if you've only got five people
5 or 10 people in your company, you don't want to
6 have one of those people spend a full year
7 vetting new suppliers to not have benefits at the
8 end of that time anyways.

9 MR. PAJUSI: Thank you very much.

10 MS. CACKOSKI: This question is for
11 Ms. Zieba. How would NPPC respond to the
12 statement that revoking GSP benefits for Thailand
13 based on market access concerns afforded to U.S.
14 pork products may negatively impact a large share
15 of U.S. Thailand trade for the sake of increasing
16 access for a single product?

17 MS. ZIEBA: Thank you for that
18 question. As the Chairwoman pointed out earlier,
19 we are here to discuss equitable access. I think
20 that the integrity of the program and why we have
21 these reviews is to make sure that countries give
22 that equitable access to our products, and that

1 they aren't just taking advantage of the United
2 States. And I would say that's why we're here.

3 It's unfortunate that we have to be
4 here, and this process has dragged on for nearly
5 a decade. That is not our choice. This is
6 essentially the last stance and the last position
7 that we have. And you know, we're asking that
8 the rules be followed. We have to follow the
9 rules internationally, and we ask that other
10 countries treat us the same as we treat them.

11 MS. CACKOSKI: Thank you.

12 CHAIR BUFFO: Thank you very much. I
13 think we have time for one more question. I'll
14 go ahead and ask the final question for Mr.
15 Anthony.

16 So the United States has pursued a
17 targeted approach with Thailand in addressing the
18 issue of pork market access, repeatedly raising
19 the issue in bilateral and multilateral fora.
20 However, the United States has seen limited
21 success in gaining pork market access.

22 Can you please comment on what you

1 believe is the most effective way that the U.S.
2 could work with beneficiary countries to ensure
3 that they meet GSP country eligibility criteria?

4 MR. ANTHONY: Thanks. So this is the
5 inherent challenge. It's the push and pull. And
6 I think that on a very fundamental level, I
7 agree. If Congress didn't want eligibility
8 criteria to be followed, they wouldn't be in
9 there. But if they didn't want the tariff
10 benefits in place, they wouldn't have the program
11 at all.

12 And so there needs to be this constant
13 balance between what is achievable? Is GSP the
14 right means to achieve it? And I can use the
15 India example. None of our members would say
16 there are no concerns with India. Most of the
17 companies that work with India have their own
18 challenges working in India. That happens in
19 every country. But what is a country willing to
20 do in terms of health and safety standards for
21 its people, real or perceived, so that some U.S.
22 companies don't pay extra tariffs is a whole

1 other question.

2 U.S. companies are going to be
3 knocking down Thai manufacturers' doors right now
4 because of the China trade war. What happens
5 here today does not change the global dynamics.
6 And so there's a question of effectiveness and
7 sort of fruitfulness of going down a path where
8 you know you're not going to get the outcome that
9 you want. So spending GSP is not going to change
10 things on the Thai market access. It's not a big
11 enough thing.

12 And a lot of these challenges exist.
13 And it's on all the different countries. But
14 there's a real question of what do you want to
15 achieve, and what's the best way of doing it?
16 And in my experience over the years, and so I've
17 been doing GSP specific stuff for 15 years.
18 Before any of these reviews started in 2018 on
19 the market access for any of those countries,
20 we've had numerous countries tell us in the
21 renewal context on multiple occasions that GSP is
22 just economically not important to them.

1 It's a rubberstamp of good faith. You
2 know, it's a look. We're all team players here
3 in the global club of we get along with the
4 United States. But economically those impacts
5 aren't there. And that means that you can only
6 ask them to change so much to keep that sort of
7 stamp of good faith.

8 And the flip side of that is we know
9 lots of people who lay off workers in the U.S.
10 We're not talking about laying off Thai workers.
11 We're talking about laying off U.S. workers when
12 those benefits go away. So if your goal is to
13 push in the right direction, I don't think GSP is
14 necessarily useful.

15 On the market access for pork, I think
16 it's a challenge. Because, again, China has
17 similar rules in effect. The EU doesn't allow
18 exports of pork with ractopamine. U.S.
19 producers, if the market is large enough, find a
20 way to meet the rules.

21 The shift on JBS and Tyson, Smithfield
22 was already doing it. It's not about the rules.

1 If a market is big enough, they will find a way
2 to meet the rules. And U.S. pork producers have
3 done it in other countries that do not allow
4 ractopamine by exporting ractopamine-free pork.

5 The industry doesn't appear to want to
6 do that on Thailand. They would prefer to just
7 not have the rules that they follow in China
8 apply to their rules in Thailand because it's a
9 smaller market. It's not worth it. I understand
10 that. But that's a question of choice not so
11 much a question of not being possible.

12 And like I said, I hope the recent
13 shift of many U.S. producers to ractopamine-free
14 provides an opportunity to sort of eliminate some
15 of these problems. But it shouldn't be ignored
16 that the racto issue seems like something from
17 two years ago. It's wholly different than the
18 market today.

19 CHAIR BUFFO: Thank you very much.
20 And I'd like to thank all of the panelists for
21 your participation today. It's been a very
22 interesting and robust discussion. And I'd like

1 to invite our representatives from the government
2 of Ecuador to now come up to the table. Thank
3 you very much.

4 (Whereupon, the above-entitled matter
5 went off the record at 11:05 a.m. and resumed at
6 11:08 a.m.)

7 CHAIR BUFFO: So thank you very much.
8 We'll start with our second panel beginning with
9 the government of Ecuador. I'd like to please
10 welcome Ms. Claudia Salgado, who is the Director
11 of International Affairs and Arbitration of the
12 Office of the Attorney General. Thank you very
13 much. Welcome, Ms. Salgado.

14 MS. SALGADO: Ms. Laura Buffo, Deputy
15 Assistant U.S. Trade Representative for the
16 Generalized System of Preferences and Chair of
17 the GSP Subcommittee of the Trade Policy Staff
18 Committee, distinguished members of the GSP
19 Subcommittee, it is a great honor to be here
20 today.

21 I will be commenting about arbitral
22 awards, and more specifically, I will show that

1 Ecuador has always acted in good faith in
2 recognizing as binding and enforcing applicable
3 arbitral awards.

4 However, before commenting on this
5 topic, I would like to emphasize how the GSP has
6 produced a positive impact to small and medium
7 enterprises in Ecuador, mainly in the
8 agricultural sector where in the last decade, it
9 has helped to reduce rural poverty from 61
10 percent to 38 percent.

11 Having said that, I will now
12 demonstrate that Ecuador meets the eligibility
13 criterion regarding arbitral awards for at least
14 three reasons.

15 First, and foremost, Ecuador has an
16 exemplary record of compliance with arbitral
17 awards and, of course, it intends to maintain
18 this clean record.

19 Dear USTR colleagues, Ecuador has
20 faced several investment arbitration cases. Since
21 2002, 21 treaty cases have been already
22 concluded.

1 Of these 21 cases, 7 cases ended with
2 an adverse award against Ecuador and all of these
3 7 cases have been complied in full satisfaction
4 of claimants. And the U.S. Council for
5 International Business should have been aware of
6 those cases since six of seven cases involved big
7 U.S. companies.

8 Just to give you an example, two
9 arbitration cases were brought by Occidental
10 Exploration and Production Company. Ecuador
11 complied in full satisfaction and paid more than
12 \$1 billion.

13 One arbitration case was brought by
14 Burlington. Ecuador complied with the award,
15 which was approximately \$337 million.

16 Also, it has to be recalled the former
17 treaty arbitration brought by Chevron, where it
18 received more than \$112 million in full
19 satisfaction.

20 Therefore, Ecuador is demonstrating
21 with concrete facts that it has a clean record in
22 recognizing as binding and in enforcing arbitral

1 awards in good faith.

2 Reason number two, Congress made
3 compliance with arbitral awards a condition of
4 eligibility, but it did not intend and could not
5 have included non-final awards within its scope.

6 The decision issued on Track II of the
7 arbitral proceeding cannot be considered as a
8 final decision under the U.S. system at least for
9 three reasons.

10 First, the validity of this decision
11 has been challenged before Dutch courts in
12 December 2018. This decision is thus subject to
13 change.

14 This review made by the courts on the
15 seat of arbitration is a legal remedy, which was
16 available for both parties to the arbitration.
17 Ecuador exercised its right.

18 This, however, cannot be understood as
19 an intention to evade its international
20 obligations or as if Ecuador was unwilling to
21 implement the Tribunal's orders in good faith.

22 Second, the arbitral Tribunal is still

1 ongoing. The proceeding is still ongoing. And
2 the Tribunal has not yet issued a final award
3 that will put an end to this lengthy procedure.

4 Third, the decision is also not
5 enforceable before the U.S. courts. This is
6 because under the New York Convention, a district
7 court lacks authority to confirm arbitral awards
8 that are not final awards.

9 The key case on this point is
10 Kerr-McGee Ref. Corp. v. M/T Triumph. Therefore,
11 as a general rule under the U.S. system, if an
12 award is only addresses liability, it is not a
13 final award. And this approach is consistent
14 also with ICSID Rule 54.1, which states that each
15 contracting state shall recognize as binding and
16 enforce the pecuniary obligations imposed by the
17 award.

18 Finally, my last point, even if non-
19 compliance with interim awards were an
20 eligibility requirement, the statute excuses good
21 faith non-compliance. Ecuador has always acted
22 in good faith in order to accommodate the

1 Tribunal's concerns.

2 For all these reasons, Ecuador
3 complies with the specific criterion requiring
4 the beneficiary country to act in good faith in
5 recognizing as binding or in enforcing applicable
6 arbitral awards. Thank you very much.

7 CHAIR BUFFO: Thank you very much, Ms.
8 Salgado, for your testimony and for traveling to
9 be here with us today.

10 I would like to now turn to my State
11 Department colleague for the first question.

12 MR. PAJUSI: Good morning. Ms.
13 Salgado, in regards to the interim awards, how do
14 you respond to Chevron's argument that the Dutch
15 Supreme Court rejected all challenges to these
16 awards in its April 2019 decision and thus there
17 is no basis to resist immediate compliance?

18 MS. SALGADO: All right. The
19 reference made by Chevron concerns other awards.
20 Nowadays we have a merit award, a liability
21 award, which has been challenged before the Dutch
22 court. The proceedings started in 2018 and only

1 in March 2020 we will have a hearing for both
2 parties to present the arguments.

3 So one award, the award that is not
4 final, is being challenged nowadays before the
5 Dutch courts.

6 MR. PAJUSI: Thank you.

7 MR. GHARBIEH: Thank you. To pick up
8 on -- I think you mentioned in your presentation,
9 I wanted to invite you to respond more
10 specifically to one of the arguments that Chevron
11 has made on the argument that a set aside
12 proceeding, such as the action in Dutch courts
13 with respect to the Track II arbitral award, does
14 not impact that award's enforceability and would
15 note in making the argument in its pre-hearing
16 submission, Chevron referenced the U.S. District
17 Court decision in commercial cases, UNCITRAL
18 rules and the text of the Ecuador-U.S. BIT.

19 MS. SALGADO: Excuse me. Could you
20 repeat a little bit. I'm not sure I completely
21 understood. Sorry.

22 MR. GHARBIEH: Yes. So the question

1 is just to invite a response to Chevron's
2 argument that a set aside proceeding, such as the
3 one initiated by Ecuador against the August 2018
4 Track II arbitral award, does not impact that
5 award's enforceability. It's binding and
6 immediately enforceable.

7 MS. SALGADO: Of course, it impacts
8 because it's under review under the Dutch court.
9 The Dutch court can thus change this award. It
10 is not a final award. It has been under review.
11 And on March 2020, we will have a hearing and
12 briefly later we will have a result. And the
13 award may be changed.

14 It may be reviewed by the Dutch court.
15 Results may be different. So that's why it's not
16 a final award and that's why it's not binding.
17 Sorry, it's not enforceable, and it's not even
18 enforceable in the United States.

19 As I mentioned, the case, Kerr-McGee,
20 liability awards are not considered final in
21 order to be enforced under the New York
22 Convention. Thanks.

1 MS. RESNICK: Thank you. Your pre-
2 hearing brief states that Ecuador undertook
3 immediate steps in order to comply with the
4 Tribunal's decisions, which have not been subject
5 to challenge before Dutch courts and proceeds to
6 explain the notifications.

7 Can you explain which decisions in the
8 Track II arbitral award Ecuador accepts and why?
9 And also can you explain the reason why Ecuador
10 does not accept the remaining decisions?

11 MS. SALGADO: Of course. After the
12 Track II partial award was notified to the
13 parties, Ecuador undertook immediate steps in
14 order to comply with the Tribunal's order, which
15 have not been subject to challenge.

16 These orders are the ones that concern
17 communication abroad regarding the Track II
18 award. Therefore, Ecuador submitted letters to
19 all of the countries where execution of the
20 judgment of Lago Agrio was being challenged. And
21 it sent letters to Argentina and to Canada, to
22 state authorities, that there was an award to

1 inform authorities that the award had found
2 procedural fraud within the Lago Agrio judgment.

3 MS. RESNICK: Thank you.

4 MR. GHARBIEH: Yes. On the issue of
5 the notifications to the Canadian and Argentine
6 courts, as well as Ecuador's constitutional
7 court, we note that those are referenced in the
8 footnotes, Footnotes 32 through 35, of Ecuador's
9 pre-hearing brief. And we were wondering if you
10 could provide the substance of those
11 notifications, the notifications themselves.

12 MS. SALGADO: Yes, of course. If you
13 prefer, I could send an attachment on the post-
14 hearing brief, attaching the letters that we have
15 sent.

16 MR. GHARBIEH: Okay.

17 MS. SALGADO: And we can provide the
18 translation, of course.

19 MR. GHARBIEH: Right. That would be
20 very helpful. And also just interested, you
21 know, now in terms of, you know, was this just a
22 mere kind of, you know, please see attached or

1 how the notification was framed and whether there
2 were any instructions or if there was any
3 commentary on the impact of the award.

4 MS. SALGADO: The information
5 contained the decisions of the arbitral Tribunal.
6 And, of course, Ecuador said that the decision
7 has been challenged before the Dutch courts. But
8 it contained the whole orders of the Tribunal and
9 it contained an attachment with the CD with the
10 decision, which is 350 pages.

11 And we know that Canada received this
12 letter and introduced it in the proceeding of
13 enforcement that was taking place in Canada. We
14 know that because of the docket. It says
15 communication of the Attorney General's office
16 received and submitted to the parties in order to
17 make comments.

18 MS. CACKOSKI: Chevron alleges that
19 the Lago Agrio plaintiffs have threatened to
20 launch potentially dozens of new enforcement
21 actions in other jurisdictions throughout the
22 world. What is Ecuador's response to that

1 assertion?

2 MS. SALGADO: Well, this has never
3 happened. Since 2011 Chevron is afraid of this,
4 and it has never happened. It has never launched
5 any enforcement procedure besides Canada, which
6 didn't go through and Argentina, also, which was
7 dismissed and Brazil. Therefore, it's not a
8 justified fear. Thank you.

9 I'm sorry. If I can add something
10 else. In any jurisdiction in order to enforce an
11 award, you will have to see it doesn't go against
12 public policy. And if it's found that a judgment
13 has been produced by fraud, of course, no
14 jurisdiction will be able to enforce this award,
15 this judgment, sorry.

16 MR. GHARBIH: Thank you. I wanted to
17 ask about the ongoing arbitration, the Track III
18 proceeding, regarding the quantum of damages.

19 You know, you note that the briefing
20 is ongoing but also that one of the arbitrators
21 has withdrawn. I wanted to, you know, see if we
22 could hear more about that and what the

1 procedural status is going forward given that
2 development.

3 MS. SALGADO: Yes, in fact, we
4 received recently a notification that the
5 arbitrator has withdrawn for health issues. And
6 now the parties have been given names of possible
7 of chair, of president, of the arbitration.

8 And on the 31st, the two arbitrators
9 will decide who will be the chairman of the case.
10 And the proceeding will be ongoing.

11 MR. GHARBIEH: So you're saying
12 tomorrow they're --

13 MS. SALGADO: The Tribunal will be
14 constituted, yes.

15 MR. GHARBIEH: Okay.

16 MS. SALGADO: And Ecuador has to
17 submit its counter memorandum for the 28th
18 February and everything is in place.

19 MR. GHARBIEH: And the hearing date is
20 anticipated to be --

21 MS. SALGADO: In May 2021.

22 MR. GHARBIEH: May 2021.

1 MS. SALGADO: Yes.

2 MS. LAURY: We would welcome any other
3 examples of how Ecuador plans to comply with the
4 Track II arbitral award decisions including, but
5 not limited to, the orders highlighted in
6 Chevron's pre-hearing brief.

7 MS. SALGADO: Yes, in fact, as I was
8 saying, Ecuador has complied with all of the
9 orders, sending notifications as the Tribunal
10 requested and also sending notifications to the
11 constitutional court as Chevron requested.

12 And we are expecting the review of the
13 award by the Dutch court by March or maybe late
14 this year in order to see how we implement the
15 other orders if they are not reviewed.

16 On the post-hearing brief, I can
17 explain a little bit more on that order.

18 CHAIR BUFFO: Thank you very much. We
19 really appreciate the time of the government of
20 Ecuador and being with us today. As I had
21 mentioned in my opening, the Panel may have
22 additional written questions for you, which we

1 will, if we do have additional questions, aim to
2 get to you within one week. And we would ask
3 that you answer those in your post-hearing brief.

4 Again, thank you very much for your
5 participation, and we'll invite the next panel of
6 stakeholders and petitioner. Thank you.

7 MR. ROMERO: I believe you have hard
8 copies of my testimony? Very good. Madam Chair,
9 members of the GSP Subcommittee, good morning.
10 My name is Andres Romero. I am managing counsel
11 for special litigation with Chevron Corporation.

12 I am accompanied by Mr. Doak Bishop to
13 my right, a partner with the law firm of King &
14 Spalding, and lead counsel in the arbitration
15 against Ecuador.

16 On behalf of the shareholders and
17 employees of Chevron, including more than 21,000
18 workers around the country, we appreciate the
19 opportunity to be heard in connection with our
20 petition.

21 The question before the Subcommittee
22 is a simple one, whether or not Ecuador has

1 failed to act in good faith recognizing as
2 binding or enforcing arbitral awards. That's the
3 language in the statute.

4 The answer is that Ecuador has clearly
5 failed to do so. As a result, the GSP statute
6 provides that the President shall withdraw or
7 suspend Ecuador's GSP preferences.

8 Ecuador has failed to act in good
9 faith to recognize as binding or enforce four
10 arbitral awards in favor of Chevron. These
11 awards require Ecuador to take immediate steps to
12 prevent enforcement of a \$9.5 billion judgment
13 against the company.

14 As Chevron has conclusively proven,
15 this judgment was procured through fraud, bribery
16 and corruption. In the award on the merits, the
17 Tribunal found that the evidence of fraud was
18 overwhelming and noted that short of a signed
19 confession, it must be the most thorough proof of
20 fraud ever put before an arbitral Tribunal.

21 Yet Ecuador has taken no action to
22 suspend enforcement of this fraudulent judgment.

1 As a result, Ecuador plainly fails to satisfy the
2 requirements under the GSP statute while the
3 plaintiffs continue to threaten further action to
4 enforce the corrupt judgment against Chevron.

5 Since the Subcommittee's November 2018
6 hearing, the grounds for suspension of the GSP
7 preferences have become even stronger. Ecuador
8 testified at that hearing that it was reviewing
9 how it could bring itself into compliance with
10 the awards.

11 However, Ecuador has continued to
12 violate the arbitral awards and the GSP statutes
13 since then. And this is despite the fact that in
14 April of 2019 the Dutch Supreme Court rejected
15 Ecuador's petition to annul the first three
16 arbitral awards, which were issued in 2012 and
17 2013.

18 Since 2012, Ecuador has consistently
19 argued before the Subcommittee that no action
20 should be taken while their application in the
21 Netherlands was pending. Now that the Dutch
22 Supreme Court has finally ruled against Ecuador,

1 this argument has been shown to be nothing more
2 than a pretext.

3 In the course of affirming the
4 Tribunal's orders, the Dutch courts rejected many
5 of the excuses that Ecuador has offered this
6 Subcommittee for its non-compliance.

7 Among other things, the Dutch court
8 rejected Ecuador's argument that human rights
9 obligations prevented it from complying with the
10 Tribunal's awards. It also rejected Ecuador's
11 claim that compliance would violate the
12 separation of power, the independence of the
13 judiciary and Ecuador's sovereignty.

14 Ecuador has also argued that the
15 awards are not final because they are interim or
16 partial awards as you heard from Ms. Salgado a
17 second ago. However, as the text of the
18 US-Ecuador BIT, the applicable UNCITRAL Rules and
19 the awards themselves make clear the awards were
20 final and binding at the time they were issued,
21 and Ecuador has an obligation to carry out those
22 award without delay. And I am quoting language

1 from both the BIT and the UNCITRAL Rules.

2 The Subcommittee should be aware also
3 that Ecuador has taken conflicting positions in
4 different fora on this issue of finality.

5 To this Subcommittee, Ecuador claims
6 that the 2018 award on the merits, the Track II
7 award, is not final. However, Ecuador's Attorney
8 General wrote a letter to the arbitral Tribunal
9 on November 1, 2018, in which he stated that it
10 is undisputed between the parties that the second
11 partial award on Track II is the final and
12 binding decision. I'll read that again, final
13 and binding decision of the arbitral Tribunal on
14 the issues adjudicated there. Of course, we
15 agree with that assertion.

16 Ecuador has therefore accepted that
17 the Track II award is final and binding, yet it
18 remains in non-compliance.

19 Ecuador's other excuses for
20 non-compliance are equally meritless. First,
21 Ecuador invokes the recent resignation of the
22 President of the BIT Tribunal and the Tribunal

1 recommendation that Ecuador and Chevron consider
2 the possibility of suspending the arbitration to
3 allow for a conciliated settlement of the
4 remaining issues.

5 But Ecuador did not agree to that
6 recommendation, and Chevron declined, observing
7 that in the 16 months since the issuance of the
8 Track II award, Ecuador has not taken any actions
9 to comply with the Tribunal's orders, and
10 therefore has not put in place a solid foundation
11 for a productive dialogue. And as Ms. Salgado
12 explained a minute ago, the process for
13 deployment of their replacing the Chair is
14 underway.

15 Second, nor can Ecuador rely on letter
16 from its Attorney General to authorities in
17 Argentina and Canada and to its constitutional
18 court. These perfunctory communications do
19 nothing more than acknowledge the contents of a
20 publicly available award without acknowledging
21 the binding effect.

22 The question was made as to whether

1 they characterized the award in any way,
2 recognizing that binding is unenforceable, it
3 does no such thing. To the contrary, it tries to
4 undermine the awards by pointing out that set
5 aside proceedings have been brought against them
6 in the Netherlands. This falls short of good
7 faith compliance with any of the arbitral awards.

8 Finally Ecuador's argument that the
9 Subcommittee should consider it's purported
10 record of compliance with other awards in other
11 cases should also be rejected.

12 This is irrelevant to the fact that in
13 this case Ecuador has failed to comply with four
14 arbitral awards during a period of eight years.
15 Ecuador cannot obscure its non-compliance by
16 pointing out the settlements with other parties
17 in the past in separate cases, particularly when
18 its actions here reflect a systematic lack of
19 good faith.

20 Ecuador has enjoyed the benefits of
21 preferential duty-free GSP exports to the United
22 States that have now grown to \$458 million in

1 2018 alone.

2 While benefitting from these
3 preferences, however, Ecuador has ignored the
4 requirements of U.S. law by failing to recognize
5 and enforce four arbitral awards in good faith.
6 Rather Ecuador has taken affirmative steps to
7 support enforcement of this corrupt judgment to
8 the detriment of a U.S. company.

9 Chevron respectfully submits that the
10 time has come to cease entertaining Ecuador's
11 excuses for non-compliance and to bring an end to
12 its efforts to enjoy preferential access to U.S.
13 markets as it flouts its obligations to U.S.
14 persons and to the U.S. Government.

15 Chevron appreciates that the U.S.
16 Government has a myriad reasons for maintaining
17 strong ties with Ecuador. However, continued
18 failure to withdraw or suspend Ecuador's trade
19 benefits is contrary to U.S. trade policy.

20 Ambassador Lighthizer has repeatedly
21 emphasized that trading partners must live up to
22 their end of the bargain in order to retain

1 access to trade preferences. The criteria set
2 out in the GSP statute defines the contours of
3 that bargain for countries like Ecuador.

4 Chevron has demonstrated that Ecuador
5 is in flagrant breach of that bargain and also of
6 its international legal obligations. Ecuador has
7 the means and the opportunity to come into
8 compliance with the GSP statute by recognizing
9 and enforcing the arbitral awards. But Ecuador
10 has made a political decision not to do so,
11 refusing to comply with the rule of law.

12 Accordingly, Chevron respectfully
13 urges this Subcommittee to do that which the law
14 requires, recommend immediate withdrawal or
15 suspension of Ecuador's GSP eligibility to the
16 President. Thank you for your time, and I look
17 forward to your questions.

18 CHAIR BUFFO: Thank you very much.
19 And I'd like to now turn to Mr. Donnelly, the
20 Vice President of the -- I'm sorry -- of
21 Investment and Financial Services, the U.S.
22 Council for International Business. Welcome.

1 MR. DONNELLY: Thank you, Madam
2 Chairman and members of the Subcommittee. We
3 appreciate the opportunity to testify again on
4 these issues related to Ecuador and with respect
5 for arbitral awards.

6 The U.S. Council for International
7 Business is a leading U.S. business association
8 devoted to promoting private sector driven
9 economic growth and development here at home and
10 around the world through open trade and
11 investment in pro-market economic policies.

12 We and our member companies have long
13 been strong supporters of the U.S. Government's
14 program for GSP for eligible developing
15 countries.

16 We believe the GSP program has
17 benefitted both the U.S. economy, companies and
18 workers, and has also promoted development of
19 ineligible developing countries. We expect those
20 benefits to continue. GSP is a real win-win
21 program.

22 The GSP program has been, and in our

1 view should continue to be, run with integrity,
2 discipline and transparency. A well run
3 disciplined program with careful attention from
4 the interagency group to the country and product
5 eligibility criteria laid out in the statute is
6 critical for maintaining the necessary support
7 for GSP from the American Congress, the business
8 community and the general public.

9 GSP tariff preferences were never
10 intended to be, nor have they been, an
11 entitlement for any developing country. GSP
12 benefits are a privilege extended unilaterally by
13 the U.S. Government to developing countries who
14 earn it, who meet the strict eligibility criteria
15 laid out in the statute.

16 There are several important criteria
17 in the statute. I'll focus on the question of
18 acting in good faith and recognizing as binding
19 or in enforcing applicable arbitral awards.

20 These are not new issues for the
21 Committee or for us at USCIB. We have been
22 submitting comments and testifying to the GSP

1 Subcommittee on the subject of Ecuador and
2 arbitral awards for nearly a decade.

3 There are some important general
4 issues that touch on very important principles
5 and precedents for our organization and our
6 member companies.

7 The government of Ecuador's
8 performance on the key eligibility criteria of
9 respect for arbitral awards, specifically on
10 arbitral awards and decisions under investment
11 agreements has long been inadequate.

12 We continue to believe that the
13 government of Ecuador still falls far short of
14 any reasonable standard on recognizing and
15 enforcing arbitral awards.

16 And the record is clear,
17 unfortunately, that American investors, including
18 the one we've heard from today, which originally
19 filed this case, continue to suffer from
20 Ecuador's failure to meet the GSP standards.

21 We at USCIB strongly support the
22 request that Ecuador's GSP eligibility be

1 suspended until they come fully into compliance
2 with the applicable standards laid out in the
3 statute.

4 Ecuador has had more than sufficient
5 time and opportunities to demonstrate compliance.
6 And they have continued to fall short. The
7 Committee has had this case before it for nearly
8 seven years. It's time for action.

9 So for us at USCIB, there are three
10 broad principles that I laid out in my pre-
11 hearing brief that I just want to touch on.

12 One, international investment.
13 Investment is very important to economic growth
14 in the developing countries, but also for us here
15 at home. Bilateral investment treaties are an
16 important tool and need to be used effectively
17 and implemented.

18 Anti-corruption is a second important
19 principle touched on in this case.

20 Unfortunately, as this case has unfolded in
21 international arbitration as well as in related
22 court cases in Ecuador and in the U.S.,

1 overwhelming evidence has emerged that the
2 Ecuadorian plaintiffs and their legal team
3 obtained a multibillion dollar judgment against a
4 U.S. company through corruption, bribery and
5 related criminal behavior.

6 At considerable cost and great effort,
7 the U.S. company involved was able to expose this
8 evidence of intimidation, bribery and extortion
9 against it. The government of Ecuador took no
10 effort to investigate or remedy the fraud,
11 choosing instead to enable and support it at
12 every step of the way.

13 And the third important principle for
14 us is the idea of rule of law. International
15 relations, including economic relations, trade
16 and investment need to be based on the principle
17 that all parties respect the rule of law. And in
18 our strong view, the government of Ecuador has
19 and continues to fall short in several important
20 areas.

21 Some may argue that the problems are
22 in the past, that the current government of

1 Ecuador inherited this problem, and its
2 performance has been better than the previous
3 government. Some may see improvement.

4 But the key point for us is that the
5 statute does not talk about improved performance
6 or movement toward resolution with respect to
7 arbitral awards.

8 We're not grading on a curve here.
9 The statute is clear. To act in good faith and
10 recognizing as binding or in enforcing applicable
11 arbitral awards. That's the standard by which
12 Ecuador and every other GSP country is to be
13 held. And we are of the view that until Ecuador
14 meets that standard, their eligibility for GSP
15 should be suspended.

16 This case was originally filed in
17 2013, seven years ago, and the aggrieved U.S.
18 company certainly did not rush to file the case.

19 Ecuador has had more than enough time
20 to come into compliance. They have in our strong
21 view not done so. Actions or lack of actions
22 have consequences.

1 Beyond the policies, practices,
2 principles, we also care about precedent. Other
3 countries watch how the U.S. deals with these
4 countries which violate established or statutory
5 standards.

6 Failure to effectively enforce
7 disciplines against those who violate U.S. laws,
8 regulations or standards, to look the other way
9 and treat the offenders the same as those
10 countries that are fully complying only
11 encourages bad behavior.

12 We continue to believe that Ecuador,
13 like other eligible developing countries, must
14 earn its access to GSP privileges. GSP should
15 not be an entitlement for Ecuador or any other
16 country.

17 For now they continue to fall short.
18 But we look forward to a day that Ecuador earns
19 its way back to GSP privileges. Thank you very
20 much.

21 CHAIR BUFFO: Thank you, Mr. Donnelly,
22 and thank you as well, Mr. Romero, for your

1 testimony. I'll now turn to my U.S. Government
2 colleagues for questions. Thank you.

3 MR. MCGEE: Mr. Romero, in regards to
4 the August 2018 Track II award, the Tribunal
5 labeled the award as a partial award, not a final
6 award and not a partial final award.

7 Can you please elaborate on your
8 argument that the partial award is final in
9 nature?

10 MR. ROMERO: I will be happy to do so.
11 We have addressed this extensively in our written
12 submissions, and this is a black letter law
13 issue.

14 I'll direct your attention first to
15 the text of the Bilateral Investment Treaty.
16 Between Ecuador and the United States. Article
17 6, Subsection C, states that any arbitral award
18 rendered pursuant to this Article shall be final
19 and binding on the parties, final and binding.
20 And each party undertakes to carry out without
21 delay the provisions of any such award. There's
22 no exception here made for pending annulment

1 applications at the seat of the arbitration,
2 number one.

3 The text of the UNCITRAL, the
4 applicable rules which are 1976 UNCITRAL Rules,
5 is similar and provide also that in addition to
6 final rules, the arbitral Tribunal can issue
7 interlocutory partial awards. In any event, the
8 award shall be made in writing and shall be final
9 and binding on the parties, which is the case
10 here, of course. And the parties undertake to
11 carry out the award without delay.

12 In addition, as I mentioned in my
13 opening, this is a matter that Ecuador has
14 accepted elsewhere. It's not a matter that it
15 can dispute in good faith in this proceeding
16 before this Subcommittee because the Attorney
17 General wrote to the Tribunal that it is
18 undisputed between the parties that the Track II
19 award is an award that is final and binding on
20 the matters that it resolved, which are the
21 matters of the dispute.

22 Mr. Bishop, would you like to add to

1 that?

2 MR. BISHOP: I think you've covered it
3 very comprehensively that all the rules, the BIT
4 itself, say that this is a final and binding
5 award. U.S. courts do enforce partial awards
6 when they are final as to the issues they
7 adjudicate.

8 Ecuador has accepted that fact. And
9 Ecuador, as Mr. Romero said, has said that the
10 Track II award is final and binding on the issues
11 adjudicated in it. I think that answers the
12 question. Thank you.

13 MR. MCGEE: Thank you.

14 MS. LAURY: I have another question
15 for Mr. Romero. With respect to your argument
16 that Ecuador's application to set aside the Track
17 II arbitral award does not impact the award's
18 immediate enforceability, are there examples you
19 can provide regarding instances where a country
20 has complied with orders similar to those
21 contained in the Track II award, notwithstanding
22 the pendency of a set aside action or annulment

1 proceeding?

2 MR. ROMERO: We would be happy to
3 address that in our post-hearing brief, and we
4 will find examples for you. The same provisions
5 that I reference in response to the question from
6 the representative from Commerce addresses this
7 issue here as well.

8 Both the UNCITRAL Rules that apply in
9 this case, which are the 1976, demand and require
10 that the parties immediately carry out, without
11 delay, the obligations on the award and provide
12 that they are final and binding.

13 The BIT, very clearly, provides
14 exactly the same. And it is undisputed that as a
15 matter of law that an application for an
16 annulment, which is an extraordinary remedy, is
17 not an appeal.

18 I think that's clear. It's granted
19 verbally in very rare circumstances. It does not
20 entail a stay of the arbitration. It does not
21 grant a suspension of the obligations under the
22 arbitration.

1 Ecuador has not applied or requested
2 the Dutch courts to grant that and has not
3 obtained it. And so this is a question that is
4 very clear under both international law, under
5 Dutch law as well, and it could not be otherwise.

6 From a very practical perspective and
7 a common sense perspective, the position that
8 Ecuador is taking is even though there have been
9 findings that are uncontroverted, they are not
10 challenged in the set aside application pending
11 in the Netherlands, that the judgment is a
12 judgment that was bought and paid for, that was
13 obtained corruptly for bribes, for corruption,
14 for fraud throughout the proceedings, that
15 judgment, if it were otherwise, what that would
16 mean is that during the six or seven years that
17 it will take to go through the various instances
18 in the Netherlands, then the company should be
19 required to comply with the \$9-1/2 billion
20 judgment and make the payments despite the fact
21 that there's a binding award in effect that
22 provides exactly to the contrary.

1 Mr. Bishop, do you want to elaborate?

2 MR. BISHOP: Yes. I would like to
3 elaborate. I agree with everything that Mr.
4 Romero just said. I would point you to the fact
5 there are examples, and we will provide briefing
6 on it.

7 One of those examples comes from
8 Ecuador itself in the City Oriente v. Ecuador
9 case. It was a contract case, but it was an
10 investment case. There the Tribunal issued an
11 interim award against Ecuador requiring it to
12 withdraw certain criminal proceedings against the
13 executives of the company. And Ecuador, in fact,
14 did that while the case was pending.

15 As I remember, the Supreme Court of
16 Ecuador said that its interim award was a legal
17 impediment to going forward, and it did comply
18 with that award while the case was pending.

19 I just want to add one other thing
20 very quickly. And that is we should keep in mind
21 in this case the factual context. There is no
22 question that this Tribunal and the American

1 courts, the federal courts in New York in the
2 Second Circuit, have held that this particularly
3 judgment was obtained by fraud and by corruption.

4 It is a \$9-1/2 billion award obtained
5 by bribing the judge. Now any prudent government
6 I would think would want to suspend the
7 enforceability of that judgment as this Tribunal
8 has asked it to do until all court proceedings
9 are finished. But Ecuador has refused to do
10 that.

11 And that's what brings us here today
12 and that's why enforcing the eligibility criteria
13 of the GSP is important for us in this particular
14 context. Thank you.

15 MR. MCGEE: My question is for Mr.
16 Donnelly. How would you respond to Ecuador's
17 assertion that its notifications regarding the
18 Track II arbitral award made to the Argentine and
19 Canadian courts as well as Ecuador's
20 constitutional court provide evidence that it's
21 acting in good faith?

22 MR. DONNELLY: Well, I'm not an

1 attorney, and I'm not working for Chevron. I
2 came here today more to address the general
3 principles. And I think in a common sense
4 approach, the record is pretty clear that the
5 government of Ecuador has failed to carry out its
6 obligations.

7 As to the specific question of what
8 sort of notification, I'd be inclined to defer to
9 people from Chevron who might know more about
10 that. But my understanding is that the
11 government of Ecuador has not shown a consistent
12 pattern of recognizing and complying and
13 enforcing. So in my judgment, they fall short.

14 MR. ROMERO: I'll be glad to take that
15 on.

16 MR. DONNELLY: Thank you.

17 MR. ROMERO: The Track II award
18 imposes a number of obligations of result on
19 Ecuador. They include removing the status of
20 enforceability of the corrupt \$9-1/2 billion
21 judgment, which is the same obligation under the
22 2012 and 2013 awards.

1 It requires Ecuador to take actions to
2 wipe out all of the consequences of its
3 international wrongful conduct, including all of
4 the fraud in Ecuador. And it further requires it
5 to enjoin the Lago Agrio plaintiffs from
6 profiting and benefitting in any way from their
7 corruption by collecting on this judgment.

8 Ecuador has done none of those things.
9 They point out to a perfunctory ministerial step
10 that was taken, as I mentioned in my opening, a
11 letter that falls well below any good faith
12 standard, informing courts of an award that the
13 company had already affirmed and put in the
14 record and that was already in the public domain.

15 So it was a de minimis step that falls
16 well short of any good faith effort to come into
17 compliance with the very significant substantial
18 obligations imposed under the award and which are
19 common sense actions that should be taken in the
20 presence of overwhelming evidence of fraud.

21 Ecuador should not need an
22 international Tribunal to come and tell it stop

1 the enforcement of a judgment that has been found
2 to have been obtained for bribery and corruption
3 that was ghostwritten by the plaintiffs. It was
4 based on -- it was issued by a judge that was
5 bribed. It was based on an expert report that
6 was bribed in which the presiding judge was
7 extorted.

8 That is a matter that Ecuador, if it
9 were acting in good faith and had not made a
10 political decision to support the plaintiffs in
11 this case, again, in extortion attempts against
12 the company, they would have on their own
13 undertaken, and in effect the Tribunal noted that
14 Ecuador had failed to investigate and take action
15 on the overwhelming evidence of fraud.

16 But the fact is there are orders of
17 the Tribunal that are in effect. They provide
18 the results that are demanded from Ecuador. And
19 Ecuador has made no meaningful effort to comply
20 with any of those orders.

21 MR. BISHOP: Under the circumstances
22 of this case, the only step that they could take

1 that would be good faith would be withdrawing the
2 enforceability of the judgment. That's what they
3 were ordered to do.

4 That would withdraw the threat to
5 Chevron, but they have refused to do that. And
6 simply sending notices is just a small and
7 perfunctory step. It does not rise to the level
8 of good faith in these circumstances.

9 MR. GHARBIEH: Thank you. This
10 question is for Mr. Andres Romero. How would you
11 respond to Ecuador's argument that the
12 legislative history to the relevant provision of
13 the GSP statute, Section 2462(b)(2)(E) supports
14 its view that the provision only encompasses non-
15 compliance with an award that puts an end to the
16 arbitral procedure?

17 MR. ROMERO: Well, it's a matter of
18 black letter law that if the statutory language
19 is plain it must be enforced according to its own
20 terms. I can provide you the cite.

21 It's a 2015 Supreme Court decision and
22 can be verbal. And it said very clearly the kind

1 of interpretation that applies here we have plain
2 language in the statute.

3 It says that the requirement is to
4 recognize as binding for enforcing arbitral
5 awards in good faith, and Ecuador has done
6 nothing of the like.

7 Now your question is whether the
8 intent and the legislative history supports a
9 view that it applies only to, you said, final
10 awards. The Ecuador position that really should
11 apply only to final awards.

12 We have briefed very clearly that the
13 legislative history does nothing of the sort. It
14 does not support that interpretation. And we can
15 refer to it or brief it in our report -- if you
16 think that that would be helpful.

17 But more significantly, even if you
18 were to take the position that it requires a
19 final award, as I've already explained under the
20 text of the BIT, under the text of the 1976
21 UNCITRAL Rules, this is a final and binding
22 award. It's final in the sense that it's not an

1 award that -- in the sense that it's used by the
2 relevant legal language, in the sense that it's
3 not subject to any appeals.

4 Mr. Bishop, would you like to
5 elaborate?

6 MR. BISHOP: Just very briefly. I
7 think Ecuador takes a very formalistic position
8 in this regard. But as Mr. Romero has said, all
9 the rules, the BIT itself, say that this award is
10 final and binding on the parties.

11 The GSP statute does not say final
12 awards. It says arbitral awards, the same thing
13 that the New York Convention says. But under the
14 New York Convention and in U.S. courts, interim
15 awards and partial awards are final as to the
16 subject matter that they deal with, and they are
17 enforceable. And that's the situation with this
18 award.

19 And as Mr. Romero pointed out, Ecuador
20 itself has written to this Tribunal saying its
21 undisputed that this Track II award is a final
22 and binding decision of the Tribunal on the

1 issues adjudicated therein.

2 And finally it's simply you have to
3 look at the context of this case. A \$9-1/2
4 billion judgment obtained by bribery. And the
5 Tribunal simply asks them to remove the
6 enforceability of it.

7 If they want to appeal to the Dutch
8 courts, they can. But they need to remove the
9 enforceability so that there is no threat to
10 Chevron in the interim. And that's what we're
11 asking for at this point. Thank you.

12 MR. ROMERO: I would just add that
13 Ecuador has been coming for years to this
14 Subcommittee saying repeatedly that the awards
15 issued in 2012 and 2013 should not be final until
16 the Dutch proceedings, the set aside proceedings,
17 conclude or rule on that as a matter of law.
18 That's incorrect.

19 But even under that flawed standard
20 that Ecuador has articulated, then now those
21 awards are final, and there's no further excuses
22 to continue to delay compliance with awards.

1 The Supreme Court of the Netherlands
2 issued its decision in April of last year. And
3 what this is showing in my mind is that it's time
4 for the Subcommittee, I would respectfully
5 submit, to hold Ecuador to its representations,
6 the representations it has been making for years
7 in here.

8 I'll read for example what they said
9 just in 2018, one of the most recent filings,
10 their post-hearing brief in 2018. They said
11 whether the interim awards are confirmed or
12 bifurcated by the Dutch courts will determine not
13 only their validity but also their finality.

14 Well, we have a final decision from
15 the Dutch Supreme Court. And now the question of
16 their validity and their finality can no longer
17 be disputed or questioned under any possible
18 argument.

19 MR. GHARBIEH: Thank you. I think it
20 would be helpful to, you know, address the
21 legislative history in the argument in greater
22 detail in the post-hearing brief and, you know,

1 say that it's a challenging aspect of this case
2 that you have an arbitral proceeding that has
3 gone on for some time. It's continuing. And
4 it's trifurcated in nature. So, you know, how do
5 you understand the meaning of a statute in that
6 context?

7 MR. BISHOP: We'll be glad to brief
8 it.

9 MR. GHARBIEH: Yes. I would hope that
10 both sides would address that. And then, you
11 know, one of the other issues you touched on that
12 I think would be helpful for both sides to
13 address is, you know, considering the Dutch
14 Supreme Court decision of April 2019, it would be
15 helpful to kind of compare the issues and
16 arguments that were raised in that set aside
17 proceeding with the newly initiated set aside
18 proceeding with respect to the Track II award to
19 see whether it's really relitigation of the same
20 issues or if there's some basis to distinguish.

21 MR. ROMERO: We'll be glad to do so.
22 There is a great deal of overlap. There's also a

1 great deal of overlap with the arguments that
2 Ecuador has been raising for a long time in here
3 that you're familiar with, that legislation
4 doesn't allow them to comply with the award
5 independence of the judiciary, sovereignty, human
6 rights, et cetera.

7 MS. CACKOSKI: This question is for
8 Mr. Romero. We understand from Chevron's pre-
9 hearing brief that other than the Lago Agrio
10 plaintiffs pending appeal to the Supreme Court of
11 Argentina to reinstate their case in Argentine
12 courts, Chevron is not currently defending
13 against any attempts to enforce the Lago Agrio
14 judgment.

15 Can you please confirm whether this is
16 correct and provide any other updates on
17 Chevron's defense of enforcement actions outside
18 of Ecuador?

19 MR. ROMERO: It is true that to date
20 there have been three recognition enforcement
21 actions filed, those in Argentina, Brazil and
22 Canada. The ones in Canada and Brazil have been

1 resolved. The one in Argentina, there's an
2 appeal pending to the Supreme Court.

3 The second time the case went to the
4 Supreme Court, I will note a number of things.
5 One, those cases took in excess of six or seven
6 years to litigate at great cost and expense.
7 Plaintiffs continue to announce publicly that
8 they will be bringing additional recognition
9 enforcement actions.

10 Just this week, two days ago, Mr.
11 Donziger, who is the key architect of the fraud,
12 the lead counsel in the United States, in an
13 appeal against his house arrest and electronic
14 monitoring in a criminal contempt case against
15 him in connection with this case, he argued that
16 in a court filing that he will continue bringing
17 actions seeking the recognition and enforcement
18 of the corrupt and fraudulent judgment outside of
19 the United States.

20 He did this through affidavits
21 submitted under oath by his counsel in that
22 matter to the Second Circuit. This is consistent

1 with public statements being made also by their
2 lead counsel in Ecuador, Pablo Fajardo, the
3 person that the Tribunal found to have personally
4 been bribing judges and former judges and experts
5 by handing them envelopes with cash.

6 That person is also constantly in the
7 media threatening and emphasizing that they're
8 looking and considering into where their next
9 recognition and enforcement action is going to be
10 filed. And this is only possible, this threat is
11 only possible because of Ecuador's refusal to
12 comply with the award and enforcement of the
13 award.

14 In the meantime, in addition to that,
15 we also face the continuous allegation from the
16 executive branch of the Ecuadorian government,
17 contrary to the factual findings of the Tribunal,
18 falsely blaming the company for the remaining
19 environmental conditions in Ecuador on a daily
20 basis.

21 So not only are they disregarding the
22 orders and injunctions of the Tribunal but also

1 failing to recognize as binding and valid the
2 factual findings of the Tribunal on the merits of
3 the environmental case, which found that TexPet,
4 the local subsidiary, complied, fully complied,
5 with its environmental obligations and was
6 released after completing a thorough \$40 million
7 environmental remediation plan that was approved
8 by the government of Ecuador.

9 MS. CACKOSKI: Thank you.

10 CHAIR BUFFO: Thank you very much.

11 I'd like to thank the panel for your
12 participation today as well as thank our
13 representatives from the government of Ecuador.

14 With that, that will conclude the
15 country practice review of Ecuador. I'd like to
16 take a five minute break and then we'll call up
17 the government representatives from the
18 government of Azerbaijan to initiate that review.
19 Thank you very much.

20 (Whereupon, the above-entitled matter
21 went off the record at 12:04 p.m. and resumed at
22 12:13 p.m.)

1 CHAIR BUFFO: Hello. Thank you. We
2 will now begin the Country Practice Review for
3 the Azerbaijan Worker Rights Criteria. We'd like
4 to welcome you.

5 So we have with us today for oral
6 testimony from the government of Azerbaijan Mr.
7 Karimov, the Deputy Minister of Labour and Social
8 Protection.

9 Welcome. You may begin.

10 As I'll remind folks, we would ask you
11 to keep your testimony to five minutes and we
12 will then have time for questions. If there's
13 any additional information you feel that you
14 would like to provide, you'll have opportunities
15 to do that in the question and answer period as
16 well as in the post-hearing brief. Thank you.

17 MR. KARIMOV: Thank you very much.
18 Good afternoon distinguished members of GSP
19 Subcommittee. It's a pleasure to deliver this
20 statement on behalf of the government of
21 Azerbaijan in response to concerns regarding
22 Azerbaijan's compliance with GSP's workers'

1 rights criterion.

2 In order to address all these concerns
3 in my statement I will focus on the following
4 matters: Labor market and wages reforms, labor
5 market regulations, freedom of associations for
6 workers, protection of worker rights, and I will
7 talk about new labor institutions and I'll also
8 touch upon way forward for the upcoming reforms.

9 First, I would like to brief update on
10 broad social reforms that were initiated by
11 President Ilham Aliyev in Azerbaijan last year.
12 These reforms were unprecedented and aimed to
13 improve living of 40 percent of population of
14 Azerbaijan. These increases in social protection
15 will require additional financing of
16 approximately 2 billion U.S. dollars.

17 The changes included minimum pensions,
18 minimum wages, social allowances, waves of public
19 sector officials, student scholarships,
20 restructuring of bad loans and et cetera. So in
21 overall the minimum wages was increased by 92
22 percent in 2019 and affected 1,350,000 employees

1 providing them with better living standard and
2 decent earnings.

3 As a result of this increase
4 Azerbaijan currently holds the second place in
5 CIS based on the purchase power parity of minimum
6 wages. Also wages of employees working in the
7 public sector were increased by up to 50 percent.

8 Last year a new employment entity
9 under Labour Ministry was established to hire and
10 provide with jobs for 47,000 persons, mostly in
11 rural areas and persons without higher education.
12 Following the reforms a decrease in informal
13 employment was observed and the number of hired
14 workers increased by more than 10 percent last
15 year.

16 The total amount of wages were
17 increased by 42 percent, average monthly wage was
18 increased by 16 percent, and most importantly,
19 median wage as a major indicator of social
20 justice was increased by 52 percent.

21 Regarding labor market regulation,
22 Azerbaijan has one of the highest ILO Convention

1 ratification rates in the region. Until now 57
2 Conventions were ratified including 8 fundamental
3 Conventions, 45 technical Conventions. So with
4 support of ILO, the National Employment Strategy
5 for '19-'30 was develop and approved, enabling
6 better management for Azerbaijan labor resources,
7 employment and social protection.

8 Azerbaijan was one of the first
9 countries to engage with U.N. SDG Mainstreaming
10 Acceleration and Policy Support platform, which
11 focused on inclusive labor market.

12 Promoting decent employment
13 opportunities and quality jobs, improving social
14 protection and working conditions have been
15 identified as country priorities and they were
16 reflected in ILO's Decent Work Country Program
17 for 2016-2020.

18 Work Bank Doing Business Report for
19 2020 commended Azerbaijan for flexibility in
20 employment regulation and redundancy cost.
21 According to the report Azerbaijan improved
22 pertaining to the notice period for redundancy

1 dismissals and severance payments.

2 Coming to freedom of association for
3 workers, to ensure the right to organize trade
4 unions Azerbaijan ratified fundamental
5 Conventions of ILO on freedom of association and
6 protection of the right to organize and right to
7 organize and collective bargaining. Azerbaijan
8 also ratified European Social Charter including
9 Article 5, the right to organize, and Article 6,
10 the right to bargain collectively.

11 I would like to emphasize that
12 employees in Azerbaijan are entitled to voluntary
13 set up trade union at their choice. They are not
14 required to apply for permission and they may
15 freely engage in trade unions. The trade unions
16 are independent from state bodies, enterprises,
17 political parties and they are not required to
18 report to them.

19 Ninety-five percent of hired workers
20 in Azerbaijan are members of trade union
21 organization and this shows the broad coverage of
22 trade union in Azerbaijan. Trade Union

1 Confederation is a supreme representative body of
2 the trade unions and over 25 sectoral trade
3 unions are currently operating.

4 I would like also to share some recent
5 developments. Social dialogue between workers
6 and employees is conducted through the Tripartite
7 Commission that operates as a permanent body with
8 secretariat and it consists of representative of
9 Labour Ministry, which represents the government,
10 National Confederation of Entrepreneurs that
11 represent employers, and Confederation of Trade
12 Unions, that represent workers. It's a major
13 platform for discussion and coordination of joint
14 action on labor matters.

15 Coming to protection of worker rights,
16 in response that in some cases employment
17 contracts are not signed. I would like to stress
18 that as per labor law employment contracts are
19 not required to be signed in paper to be
20 effective. So it's efficient to register them
21 with online electronic platform of the ministry.
22 And since immediate confirmation is obtained

1 employees can start actual employment.

2 That electronic registration system is
3 also efficient for prevention of informal
4 employment and was recognized by special award by
5 International Telecommunication Union.

6 With regard to concerns regarding non-
7 regulation overtime hours, it should be noted
8 that overtime is permitted only with consent of
9 the employee and there is a statutory limit for
10 overtime work, which is four hours during two
11 consecutive days. Employees in particular
12 difficult and hazardous workplaces may not be
13 engaged in overtime work.

14 In accordance with labor regulations
15 the employer must keep accurate records of
16 working hours and overtime working hours of each
17 employee. As a rule is paid doubled.

18 Coming to suspension of labor
19 inspection it should be mentioned Azerbaijan has
20 ratified the fundamental Conventions of ILO on
21 labor inspection in industry and labor
22 inspection. Similar to some CIS countries the

1 scheduled labor inspection are suspended in the
2 field of entrepreneurship until 2021. The
3 suspension period is used to identify the risk
4 groups, and after suspension to switch from on-
5 site inspection to risk-based inspections and e-
6 audits.

7 With support of international experts
8 major steps are being undertaken. Labour
9 Ministry currently implements a joint project
10 with IFC and is financed by Swiss Cooperation
11 Officer. The two-year project started last year
12 purports to improve the risk-based inspection
13 laws and procedures and to develop the capacity
14 of labor inspectors.

15 Despite the current suspension
16 inspection may still be conducted in cases that
17 may endanger life or health of citizens. In case
18 of violations the workers may address their
19 complaints to State Labour Inspectorate.

20 Despite the suspensions the
21 enforcement mechanism is effective supported by
22 the following statistics: The total amount of

1 imposed fines in 2019 increased by 60 percent.

2 Total number of imposed fines increased twice.

3 Regarding electronic labor system
4 automatically detects workplaces where children
5 aged 15-18 years are employed and relevant
6 preventive measures are enforced in such
7 workplaces. There's a special resolution by the
8 government which lists the jobs where application
9 of labor of children under age of 18 is
10 prohibited.

11 In 2019 the Labour Inspectorate
12 detected seven cases of child labor incidents and
13 imposed respective fines. Nine children between
14 ages 13-15 were involved in these incidents in
15 the areas of transport, car repair, trade and
16 leisure.

17 With regard to the concern about
18 forceful involvement of people in cotton
19 harvesting in the region I would like to inform
20 that in order to combat all forms of forced labor
21 the country already joined the ILO fundamental
22 Conventions on forced labor and abolition of

1 forced labor. The practice of forced involvement
2 of people to collect cotton existed only during
3 the Soviet period and is not currently existent.
4 Also there is no formal or informal quota for
5 cotton harvesting in the country.

6 With regard to the reported
7 participation of 100 students of Azerbaijan State
8 Agrarian University in cotton harvesting it
9 should be stated that it was done for training
10 purposes. This involvement of students in cotton
11 harvesting was a result of academic oversight in
12 the educational process. It's not an established
13 practice among students.

14 All necessary measures have been taken
15 in order to avoid involvement of students and
16 schoolchildren from any educational institution
17 in cotton harvesting, and as a result this effort
18 no such case was recorded last year.

19 Regarding new labor institutions in
20 September 2019 the State Occupational Safety Fund
21 was establish. The fund is financed by 10
22 percent contributions for mandatory occupational

1 accident insurance. The fund is expected to
2 focus on financing developing norms, standards,
3 regulations, scientific research, awareness
4 raising in the field of occupational safety.
5 Also last year a new center with support of
6 European Union was established and is the first
7 such center in CIS region. It's called National
8 Observatory on Labour Market and Social
9 Protection. It aims to assess and monitor the
10 current situation in the labor market.

11 Now the way forward. In 2020 the
12 social reforms will continue. To support them
13 the share of social expenditures for the year
14 2020 will be the highest in Azerbaijan
15 independence history. It will comprise 40
16 percent of state budget.

17 The conducted reforms are recognized
18 by international partners and organization.
19 According to the World Bank Doing Business Report
20 Azerbaijan is among the top reformist countries
21 globally, ranked 34th place. As per World
22 Economic Forum's Global Competitiveness Report

1 Azerbaijan is ranked 21st in labor market
2 component, being the top performer in CIS.

3 The ministry program on combating
4 informal employment received the Good Practice
5 Award for Europe of the international Social
6 Security Association in May 2019.

7 An important direction for reforms in
8 legislative amendments and adoption of new
9 standards. Last year the ministry initiated
10 approximately 300 normative amendments including
11 70 changes in legislation. Also Labour Ministry
12 closely works with AmCham, American Chamber.

13 Last year white paper was prepared for
14 amendments to labor legislation. Currently work
15 is ongoing to ratify ILO Convention on
16 occupational safety and health. At the same time
17 introduction of flexible labor regimes is
18 expected such as home-based work, distant/remote
19 work, telecommuting.

20 Another important direction for
21 reforms is transparency and social justice.
22 Introduction of electronic services is fast

1 growing. The ministry created electronic
2 platform with 16 sub-systems. There are 120,000
3 users currently who can easily access their labor
4 contract information, social allowances, pension
5 capital, rehabilitation services, employment
6 opportunities.

7 In conclusion I would like to
8 reiterate that Azerbaijani government considers
9 GSP as an important program to promote bilateral
10 trade and investment and to develop economic and
11 business ties between two countries. GSP program
12 also helps to support Azerbaijan to promote
13 greater economic and export diversification and
14 provides improved employment opportunities in the
15 export-oriented sectors including agriculture and
16 manufacturing industries. GSP program is an
17 important tool for supporting U.S. importers,
18 small and medium business exporters of Azerbaijan
19 and stimulating B2B relations and attracting
20 mutual investments.

21 The Azerbaijani side is willing and
22 ready to work with USTR through the dialogue to

1 clarify all claims and is fully committed to the
2 process. Thank you very much.

3 CHAIR BUFFO: Thank you very much for
4 your testimony and for traveling far to be with
5 us today.

6 I will turn to my U.S. Government
7 colleagues to ask some questions.

8 MR. PAJUSI: Mr. Karimov, thank you
9 for statement.

10 In the context of internationally-
11 recognized labor standards the ability to form
12 and join unions of workers' own choosing is a
13 fundamental right and includes the choice of
14 higher level federations. In Azerbaijan the law
15 appears to allow for multiple higher-level
16 associations, however, only one confederation,
17 the ATUC, has ever existed.

18 The AFL-CIO testimony claims that
19 freedom of association is restricted and that
20 organizations that are independent of the
21 government have difficulties operating freely.
22 Sorry this is such a long question.

1 What steps have you taken to ensure
2 that workers are aware of their rights to form
3 independent unions and to demonstrate that the
4 government will protect those rights?

5 MR. KARIMOV: Thank you very much for
6 your question. I will understand your concern,
7 but also you have to put this matter into the
8 context that Azerbaijan is relatively small
9 country. It's a population of 10 million and
10 size of Austria.

11 So basically when we're talking about
12 the labor force, we're talking about 1,600,000
13 labor force whose labor contracts are registered.
14 So the trade union confederations that is
15 currently operating is quite broad organization.
16 It represent approximately 13,000 organization
17 and already represent 95 percent of the hired
18 persons.

19 What comes to the government
20 commitment to ensure that this right is fully
21 ensured is a statutory requirement to establish
22 such union was decrease and currently it only

1 requires seven people to come together.
2 The second mitigation for them is that they don't
3 need to ask for state permission. And third also
4 is that after even establishment they are not
5 required to submit any reports to the state
6 entities, to any political party's organization.
7 Those are kind of the legislative frameworks that
8 the government lately has provided for the trade
9 unions.

10 MR. PAJUSI: And can I just ask, are
11 you aware then of any actual attempts or
12 instances in which workers have attempted to form
13 and register a union independent of the ATUC?
14 And if so, what happened?

15 MR. KARIMOV: Okay. I can provide
16 information about that attempt maybe later,
17 but --

18 MR. PAJUSI: Sure.

19 MR. KARIMOV: -- the state authority
20 responsible for that is Ministry of Justice. I
21 only can share information that there was an
22 attempt in the transnational companies operating

1 in Azerbaijan, but lately probably due that quite
2 good benefits in those organizations those
3 attempts didn't come to a conclusion.

4 MR. PAJUSI: Thank you.

5 MS. PIOTROWSKI: So we understand that
6 your government supports the Tripartite
7 Commission for Social and Economic Affairs at a
8 national level. What steps has the government
9 taken to ensure that participant organizations
10 reflect a diverse range of views including those
11 critical of the current policies?

12 MR. KARIMOV: Actually this body is
13 quite new. It was establish in 2016 and it
14 consists of about 15 member. So there are three
15 parties. So ministry, the confederation of
16 employers and confederation of trade union. Each
17 has five representatives in that commission. And
18 ministry doesn't have any leverage who should be
19 allowed to be presented or to the members who
20 should represent these different parties.

21 It has a secretariat that takes care
22 of organization and each of those parties is

1 responsible for chairmanship. So every three
2 years each of them will take the chairmanship and
3 will convene the meetings of this commission.
4 And this year the Labour Ministry started the
5 chairmanship, so despite -- and we're now
6 discussing with our parties the agenda for 2020,
7 and it's formulated based on the quite open
8 dialogue and discussions. And all the parties
9 has equal rights to be represented.

10 And maybe one important point, the
11 representative of different parties is not paid
12 from the state budget. It's a social work for
13 them. So they're fully independent to be in that
14 committee as they don't have financial
15 connections or bound with the government.

16 MS. CACKOSKI: Mr. Deputy Minister,
17 you discussed in your testimony allegations of
18 forced and child labor during the cotton harvest.
19 Could you tell us more about what steps the
20 government is taking to monitor and enforce
21 prohibitions on forced and child labor during the
22 cotton harvest and what measures the government

1 has taken to increase the public and authority's
2 understanding of forced labor and to encourage
3 reporting of incidents?

4 MR. KARIMOV: Okay. I have to make
5 one important clarification, is that reported
6 case, it didn't include the child forced labor in
7 cotton harvest. It was forced labor. It wasn't
8 child labor, because those were students already
9 over 18, and that was in 2018. That was a part
10 of Agrarian University. Is the second biggest
11 city of Azerbaijan, which is Ganja.

12 So basically the government has a new
13 program for cotton harvesting because they try to
14 develop the agricultural sector. So historically
15 Azerbaijan was very strong in the cotton
16 production. So cotton was regarded as one of the
17 potential area for the agricultural production.
18 So these universities, basically they try to
19 combine some academic classes also with practical
20 training where they can show the students how the
21 cotton should be harvested. But probably that
22 was a failure on their part because there was

1 certain kind of forced engagement.

2 But after that last year the labor
3 inspectorate for example conducted approximately
4 60 awareness events for different kind employers.
5 So it's almost one awareness event per week.
6 Basically if we look to the result of 2019, we
7 wouldn't see any accident of that forced labor.

8 And surely there's very strong
9 legislative framework for them including ILO
10 standards. And according to Azerbaijani
11 constitution, the international norms that
12 prevail over the local laws. So once these
13 Conventions are ratified, they become a part of
14 the local legislation.

15 MS. CACKOSKI: Thank you.

16 MR. MCGEE: Mr. Karimov --

17 MR. KARIMOV: I'm sorry for
18 interruption. My colleague is reminding me that
19 according to the latest statistic in Azerbaijan;
20 maybe I also should share this information, 93
21 percent of the cotton harvesting in Azerbaijan is
22 done by the machinery. And if you look to the

1 acquired equipment for last 15 years, we acquired
2 33,000 agricultural equipment to Azerbaijan.

3 Only in 2019 we acquired 50 cotton harvesting
4 machinery. In 2018 Azerbaijan acquired even from
5 United States 100 cotton harvesting machine,
6 which is called John Deere machines. So this all
7 shows attempts that the cotton harvesting should
8 be more automatized and machinery should be used.
9 Thank you.

10 MS. CACKOSKI: Thank you.

11 MR. MCGEE: All right. So you touched
12 on this in your opening statement a little bit,
13 but your government recently extended a
14 moratorium on labor inspections which prohibits
15 unannounced inspections through 2021. What is
16 the purpose of the moratorium and how does the
17 government propose to enforce labor rights in
18 their absence? What steps are your government
19 taking to resume labor inspections at the end of
20 2021?

21 MR. KARIMOV: Thank you very much.

22 Maybe I should give also the background for the

1 suspension. First, the suspension started in
2 2017 for two years and it was following the
3 devaluation of national currency. So the
4 government tried to give a certain kind of
5 support to development of private sector. And
6 that's why the scheduled inspections were only
7 suspended. Only scheduled inspections.

8 So all inspection Azerbaijan should be
9 in advance registered, which means through
10 Justice. So all employers they know in advance
11 there will be inspection. But still if there is
12 any endanger for the health or environment the
13 inspections may be continue. Plus the employees
14 has a right to complain. And in that case the
15 labor inspectorate will investigate.

16 For 2019 we have 8,500 such complaints
17 from citizens, so it once again shows that
18 there's efficient mechanisms that citizens still
19 can invoke these procedures. And in
20 approximately 650 cases labor inspectorate impose
21 fines.

22 This investigation is done in two

1 cases: First they investigate the complaint.
2 And secondly, they may contact the company to
3 obtain additional information about that.

4 In parallel with that since there is
5 very strong construction going in Azerbaijan, we
6 have a separate one-stop agency for public
7 services which is called ASAN. ASAN itself is
8 also conducting monitoring of employees' right in
9 construction sectors. So once identified those
10 violations, they also provide information to us,
11 to Labour Ministry.

12 MR. MCGEE: Just to follow up on that,
13 once the moratorium on inspections expires in
14 2021, what kind of labor inspection system do you
15 plan to implement and how are you planning to
16 resume labor inspections at that time?

17 MR. KARIMOV: Okay. Basically we have
18 this experience that inspections were conducted
19 to all companies, but now with consultation with
20 the best practices and with expert from IFC we
21 see that all companies may be categorized in
22 three groups: High group, medium and low-risk

1 group. And if a company is compliant, then it's
2 not required to conduct inspection every year.
3 But before 2017 it was inspection may have
4 happened annually. So they could have caused
5 some disruption, business disruption.

6 From 2021, now we're establishing new
7 procedures where first we can do the inspection
8 based on risks and IFC expert now helping us to
9 formulate those procedures, and actually four
10 documents already have been formulated: the
11 checklist for inspections, the procedures and
12 also the state bodies that can conduct those
13 inspection.

14 Secondly, we'll also try to introduce
15 electronic audits for our inspectors. They don't
16 have to visit the offices. They can do
17 electronically these audits.

18 MR. MCGEE: Thank you.

19 MS. LAURY: Thank you for your
20 testimony this afternoon.

21 So despite this moratorium, in your
22 testimony you stated that the state labour

1 inspection service may still visit workplaces if
2 it receives a complaint.

3 MR. KARIMOV: Sorry for interruption.
4 They are not allowed to visit the offices of the
5 companies. What they can do actually is they
6 investigate the complaint. They may request
7 additional information and based on the collected
8 information they can impose a fine or may issue a
9 sanction.

10 MS. LAURY: So even in the case of a
11 complaint from a worker they cannot enter the
12 workplace? Only ask questions?

13 MR. KARIMOV: Actually they have to
14 deliver the decision based on the data collected
15 on the investigation.

16 MS. LAURY: Okay. So what is the
17 process by which workers can make complaints to
18 the SLIS?

19 And also you mentioned previously that
20 the one-stop shops conduct monitoring in the
21 construction and that they also may make
22 complaints to the state labor inspectorate or the

1 Ministry of Labour. What does that process look
2 like?

3 MR. KARIMOV: Okay. Basically the
4 complaints are done under the law on complaints
5 from citizen and they have to review it within
6 the statutory period, which is usually 30 days.
7 So within 30 days the labor inspector has to
8 react and review and deliver his decision. The
9 fines for violation of a labor code is one of the
10 highest in Azerbaijan. It varies in terms of
11 U.S. dollars probably 15 to 17,000 U.S. dollars,
12 which is quite high fines for violation.

13 Regarding the ASAN, the public body,
14 usually they're doing monitoring, but they cannot
15 impose sanctions them self. So basically they
16 convey the information regarding the violation
17 and it's the labor inspector who delivers
18 decision on the violation.

19 MS. LAURY: And just one follow-up
20 question. So how does a worker make a complaint
21 to the state labor inspectorate?

22 MR. KARIMOV: It's quite easily. I

1 mean it's a regular complaint describing the
2 situation, the rights and they provide -- they
3 may dispatch it electronically to the labor
4 inspectorate or they can deliver it in paper with
5 all supporting documents.

6 MR. O'DONOVAN: Just a quick follow-up
7 on that question. Are there any protections in
8 the law for workers that may make a complaint to
9 the state labor inspectorate?

10 MR. KARIMOV: Can you elaborate more?
11 What do you mean?

12 MR. O'DONOVAN: Sure. For example, if
13 I'm a worker and I make a complaint to the state
14 labor inspectorate about working conditions at a
15 construction company, let's say, and the state
16 labor inspector then investigates that claim,
17 that complaint, in many parts of the world the
18 worker would become vulnerable to retaliation by
19 the employer. Could be terminated, could be
20 fired for having made a complaint, unless it's
21 anonymous. So are anonymous complaints possible
22 or are there protections in the law for workers

1 who complain to the state labor inspectorate?

2 MR. KARIMOV: Okay. Anonymous
3 complaints are not permitted, but once such
4 complaints are made, the labor inspectorate may
5 impose some temporary sanction and they may also
6 impose a permanent sanction. So those temporary
7 sanctions may also help to protect the rights of
8 employee during the investigation.

9 CHAIR BUFFO: Thank you. I'd like to
10 thank you, Mr. Karimov, for your testimony today.

11 And with that I believe we don't have
12 any further questions, also given the time. But
13 again, I've indicated earlier, if there are any
14 other areas that you would like to expand in your
15 testimony, you may do that in the post-hearing
16 brief.

17 MR. KARIMOV: Thank you very much.
18 It's great pleasure and we'll provide also post-
19 hearing statement where we in detail describe
20 because I understand I touched off many issues,
21 but I will try to provide more detailed
22 information for your kind consideration.

1 CHAIR BUFFO: Thank you. And thank
2 you again for your participation.

3 (Whereupon, the hearing was recessed
4 at 12:43 p.m. to reconvene later this same day at
5 2:04 p.m.)

6 CHAIR BUFFO: Good afternoon.
7 Welcome. Since we have quite a few new people in
8 the room, we'll go over a few things that we went
9 over at the opening of this hearing, starting
10 with introductions.

11 So my name is Laura Buffo. I am the
12 Deputy Assistant U.S. Trade Representative for
13 the Generalized System of Preferences and also
14 the Chair of this GSP Subcommittee of the
15 Interagency Trade Policy Staff Committee. It is
16 a pleasure to be here today with you.

17 I'd like to also have my U.S.
18 Government colleagues on the Panel introduce
19 themselves.

20 MS. MITCH: Thanks very much. I'm
21 Sage Mitch and I'm here from Treasury.

22 MR. MCGEE: Hi, I'm Brett McGee with

1 Department of Commerce.

2 MR. PAJUSI: Tom Pajusi with the
3 Department of State.

4 MR. O'DONOVAN: Michael O'Donovan with
5 USTR Labor Office.

6 MS. LAURY: Good afternoon. My name
7 is Emma Laury and I'm from the U.S. Department of
8 Labor.

9 MS. PIOTROWSKI: Alexandra Piotrowski,
10 Department of Homeland Security.

11 CHAIR BUFFO: This proceeding is also
12 open to the press. Could I ask if there are any
13 press in the room? And if you could stand and
14 introduce yourselves.

15 (Off-mic introductions.)

16 CHAIR BUFFO: And one more piece of
17 logistic --

18 PARTICIPANT: Wait, one more person.

19 CHAIR BUFFO: Oh.

20 (Off-mic introductions.)

21 CHAIR BUFFO: Thank you very much.

22 And we understand that it's hard to hear in the

1 back, so I'll ask everyone to please speak
2 closely into the microphones. And those of you
3 in the back, if you're having a hard time hearing
4 us, please, please let us know so we can adjust
5 accordingly.

6 So we have a full schedule in this
7 hearing. If there is information that we don't
8 get to or additional information that the
9 panelists would like to provide subsequently, we
10 do have the opportunity for you to file a post-
11 hearing brief. In addition, there may be many
12 questions that either we don't get to our follow-
13 up questions that the Panel has. So just to
14 remind all of the panelists that you will have
15 that opportunity, that we may also may be
16 providing some additional written questions and
17 we'd ask you to answer those questions in your
18 post-hearing brief.

19 So with that I'd like to welcome our
20 first panelist, the Honorable Minister of
21 Employment and Labor Relations from Uzbekistan.
22 Thank you.

1 MR. KHUSANOV: Dear ladies and
2 gentlemen, first and foremost I would like to
3 thank the Office of the U.S. Trade Representative
4 and our international partners for organizing an
5 event of such a high level.

6 Collaboration with USTR is one of the
7 most important directions in which the Uzbek and
8 American trade and economic relationship is
9 developing and I'd like to draw your attention to
10 the fact that the GSP program is viewed by us as
11 powerful tool that supports the economic
12 development of our country. It is also a
13 powerful tool for dissemination and spread of
14 American values of freedom and democracy in
15 Central Asia.

16 According to USTR, in 2018 compared to
17 the previous year the trade turnover of our
18 countries increased twofold. January 24th our
19 President addressed the new government, and in
20 particular the deputies of the parliament, and he
21 emphasized specifically how much attention we're
22 going to pay to the development of political and

1 trade and economic ties with the United States.
2 It's the area of priority for us. He also
3 identified joining the WTO as one of the priority
4 goals. It is very important because this is what
5 will be a major factor for the economic
6 development of our country.

7 The international community, including
8 not only the governments but also representatives
9 of the non-profit organizations, international
10 organizations acknowledge the fact that we have
11 benefited significantly from successful use of
12 the GSP program.

13 Based on the recommendations generated
14 by the Department of State we have conducted a
15 number of efforts. A number of important changes
16 took place. In particular those were the efforts
17 to strengthen the protection of the rights of our
18 employees and putting an end to the practice of
19 forced labor, child labor. The use of child
20 labor in the cotton fields has been completely
21 eradicated. We have almost completely -- well
22 very significantly eradicated massive cases of

1 compulsory labor for adults, and actually the
2 scale of that phenomenon in most of the regions
3 has been reduced to individual cases. We openly
4 acknowledge that a lot still needs to be done in
5 order to ensure that the forced labor, the use of
6 forced labor during cotton harvesting campaigns
7 is eradicated once and for all from the life of
8 our society.

9 I'd like to briefly cover some of the
10 statistics as to what has been done last -- what
11 was done last year to eradicate forced labor in
12 the country.

13 First and foremost we have developed
14 a roadmap that was based on the Department of
15 State recommendations as well as the input
16 provided by the NGOs such as Cotton Campaign and
17 others. This roadmap encompasses 33 items, each
18 of which is addressing the issue of forced labor
19 and its eradication.

20 Firstly, according to the requirements
21 stipulated in the roadmap, we have improved our
22 legislative base. We have ratified three ILO

1 Conventions that have to do with regulation of
2 labor inspections that are conducted in the
3 industry and in the agriculture as well as we
4 joined the Protocol P029 on eradication of forced
5 labor.

6 Significant attention was paid to the
7 issue of labor inspectors. The number of labor
8 inspectors changed drastically. In 2018 we had
9 200 inspectors. By the end of 2019 the number
10 doubled to 400.

11 We have also done a lot to improve the
12 labor inspection activities. In particular, a
13 hotline was instituted with a brief telephone
14 number that's easy to remember for people to call
15 and report violations that happened on around-
16 the-clock basis. We have an online labor
17 inspection service that's -- that can be accessed
18 through a special website. The site is for
19 citizens as well as for private companies,
20 enterprises, to leave their complaints or
21 recommendations. Very importantly we guarantee
22 the anonymity for those who contact us with their

1 complaints.

2 For the first time we have involved
3 citizens who are civil activists. We involve
4 them in the monitoring of what is going on during
5 the Cotton Harvesting Campaign. Those civil
6 society activists were even issued special
7 badges. So not only did we attract them to this
8 work, but we also issued them special badges so
9 that they can access the actual sites, visit the
10 fields without encountering any impediments.

11 So 259 from government officials were
12 subjected to penalties due to violations in the
13 labor field. That's based on the activities our
14 labor inspectors and also civil society
15 activists. In fact 132 of them were specifically
16 having something to do with the cotton
17 harvesting. There are 18 mayors and their
18 deputies among those people who were sanctioned.

19 Also special instructions were issued
20 to 225 organizations. So we actually issued 225
21 notices to comply and 25 remedial actions and 16
22 warnings. We also introduced changes in the

1 administrative code of our country and increased
2 the amounts of which people are penalized
3 significantly.

4 Also the roadmap envisioned
5 introduction of criminal liability for violations
6 in the sphere of labor. And actually the
7 necessary amendments were incorporated in the
8 criminal code of our republic and the amendment
9 went through Parliament successfully and were
10 approved by the Senate.

11 On January 22nd our President signed
12 a decree enacting those changes and signing them
13 into law penalizing -- envisioning criminal
14 liability for systemic violations of labor law.
15 Actually forced labor was penalized, was
16 subjected to administrative penalty one time. If
17 there is a repeat violation, the penalty -- the
18 sentence can be up to two years in correctional
19 facilities. This -- the duration of time in
20 correctional facilities is extended to three
21 years for those who engage underage young people.

22 Based on our success of last year

1 involvement of the civil society activists we
2 plan to continue working with them this year, not
3 only monitoring the situation with cotton
4 harvesting, but other fields as well.

5 We're also grateful to the Cotton
6 Campaign which has kindly accepted our invitation
7 and currently they are visiting the country and
8 meeting with their counterparts. They will
9 participate in the special training program and
10 also in the other events that are organized on
11 the auspices of ILO that will take place in the
12 near future.

13 The roadmap also incorporated changes
14 on -- that are required in our agricultural
15 sector. Mostly it has to do with Cotton Area 2.
16 This has to do with the fact that actually cotton
17 harvesting is one of the primary sources for
18 forced labor in the country. Minister of
19 Agriculture has published a special strategy on
20 eradication of forced labor. We identified a
21 number of efforts that need to be enforced.

22 One of the main requirements,

1 Requirement No. 1, was to take out government
2 from the cotton sector, have no government
3 involvement. That is being done through the
4 creation of clusters comprising enterprises. We
5 created 200 -- there were 218 -- I'm sorry. I
6 have to backtrack.

7 In 2018 the number of clusters was 15
8 and we have 93 clusters now. So a lot has been
9 done in that regard. So clusters will have full
10 control over all cotton fields by May of this
11 year. There will be no government involvement
12 whatsoever. Thus we completely eliminate the
13 involvement of the government in this area.

14 The second -- that was Stage Number 1.
15 Stage Number 2 is government is not going to be
16 involved in the price setting for cotton. It may
17 establish the minimal price, but it will never be
18 involved in anything else. You may ask why we
19 want to maybe have an opportunity to identify the
20 minimal price. Well, this is done to protect the
21 rights of NGOs and of the private companies. The
22 government also will not be involved in

1 determining where the cotton or wheat will be
2 planted.

3 Thirdly, there was work that had to be
4 done in terms of allotment of land, the way the
5 land use was distributed, so an electronic portal
6 was created for the auction that will be enabling
7 -- using this auction type mechanism will enable
8 the farmers to select the land for their use.

9 And finally, the government used to
10 subsidize those activities of those clusters, but
11 now they can directly contact the banks and get
12 the necessary financing for their business. By
13 doing all of this we completely take the
14 government out from the process of regulating
15 this sector.

16 I understand that there's a time
17 pressure; we're limited in terms of how much time
18 we have today, so this is why I just told you
19 about what we have done in a nutshell today. I'd
20 like to emphasize that our government led by our
21 President will continue everything there is to be
22 done to improve the situation in this area and

1 eradicate the forced labor.

2 CHAIR BUFFO: Thank you very much,
3 minister, for your very fulsome and detailed
4 presentation.

5 I'll now turn to my Panelists for a
6 couple questions.

7 MR. MCGEE: Yes, sir. Your testimony
8 notes that 63 percent of cotton in 2019 was
9 produced as a part of a cotton cluster and that
10 the state hopes to increase this proportion to
11 100 percent by 2022. As we understand the
12 cluster concept this is a vertically aligned
13 facility that produces value-added or finished
14 goods such as garments made from internally-
15 sourced materials. However, it sounds like
16 farmers are contracted to a single buyer and
17 remain under production targets much as they were
18 under the state's monopsony.

19 In such a model don't economic
20 pressures from the cluster, including production
21 targets, simply replace the economic pressures of
22 the state, and how does this change relieve

1 pressure to resort to forced labor?

2 MR. KHUSANOV: We don't really see any
3 pressure in here because the farmers have a
4 freedom to choose which cluster they want to work
5 with. It's still way up to them. We have
6 encountered this already this year. So the
7 government established a minimal pay for picking
8 cotton. Let's say it was 1,000 som. Some
9 clusters were given 1200; some were paying 1400
10 per kilo. So the farmer could choose which
11 cluster he wants to work with. We have already
12 run through this and we think it works.

13 MR. MCGEE: Thank you. Just one
14 follow-up. The ILRF notes that government
15 officials have economic interest in a number of
16 these clusters. Do such partnerships exist? If
17 so, what protections exist to ensure that local
18 officials cannot exercise state authority in
19 their own interest?

20 MR. KHUSANOV: Government has no
21 involvement in the clusters at all. Those are
22 strictly private organizations. Some people have

1 this opinion because we used to have in various
2 regions of the country large storage facilities
3 for storage of cotton. Currently those private
4 storage facilities are being privatized and
5 they're opened up for private ownership.

6 I think that there is some erroneous
7 thinking that has to do with the fact that --
8 just people think that this used to be
9 government-run and they still think this way, but
10 this is not the case.

11 MS. LAURY: Thank you for your
12 testimony and participation today.

13 As ILO has previously written one of
14 the changes that has led to the dramatic decrease
15 in forced labor has been a significant increase
16 in wages over the last two harvests including the
17 differentiation in wages both geographically and
18 based on the stage of the season that the pickers
19 are working. However, as we understand it these
20 increased labor costs are not always possible for
21 farmers to pay and have in some cases been
22 subsidized by the state. Is this understanding

1 correct? And if so, how do farmers access the
2 money and does the state plan to continue to
3 subsidize these wages?

4 MR. KHUSANOV: Okay. So if we talk
5 about direct subsidies, farmers' activities are
6 partially subsidized, but let me explain to you
7 somewhat.

8 So for example, we know that one of
9 the major sources of forced labor in cotton
10 industry is insufficient number of equipment
11 pieces, and the lack of equipment is causing the
12 forced labor. So this is where the government
13 subsidies come in, because we have a special
14 program for cotton picking -- the cotton picking
15 machines. When they're being purchased, 15
16 percent is subsidized by the government.

17 So if a farmer has to resort to
18 leasing the automobile and equipment park, then
19 the subsidies comprise 30 percent of the lease.
20 That actually is done to prevent the forced labor
21 from happening.

22 And there is one more topic that I

1 wanted to touch upon in view of us speaking about
2 the subject. We have 1.4 million unemployed in
3 the country at this time. Those people mostly
4 reside in remote areas. They are involved in the
5 areas where agriculture is the dominant industry.
6 More than 50 percent of these people are women.

7 We know the textile industry is the
8 quickest way to create new jobs. We have great
9 experience in the country that has to do with the
10 creation of textile enterprises and factories, so
11 we create new small businesses with the number of
12 employees ranging between 100 and 300 people to
13 work in this industry. And the government is
14 providing funding to train those people who want
15 to gain employment in this industry.

16 So currently we have come to a
17 situation when we have well-equipped enterprises
18 that have good equipment in their disposal. They
19 also have some trained workforce, but they have
20 no market for their products. So we think that
21 there is 300,000 to 400,000 people who could be
22 engaged in this area at this time.

1 And the government is ready to extend
2 the offer of beneficial funding, financing to get
3 the necessary loans in order to purchase the
4 agricultural equipment. That's to individual
5 farmers as well as to the clusters. Well, of
6 course those are loans that need to be paid off,
7 and in order to do that the farmers need to have
8 the market to sell their goods so that they can
9 pay off the loans.

10 So this is why we need access to the
11 world brands in this industry, because we do have
12 very good resources. We have the base. We have
13 good resources and we have excellent workforce.
14 In fact that will enable us to speed up the
15 process of eliminating forced labor in the
16 country even faster.

17 CHAIR BUFFO: Thank you, Mr. Minister.
18 And if it's okay with you, we do have some more
19 questions, but we will send them to you in
20 writing for you to address in your post-hearing
21 brief, in the interest of time.

22 So with that we thank you again for

1 your participation in this panel and for
2 traveling such a long way to be here with us
3 today.

4 And we'll call up our next panel.

5 Thank you very much.

6 MR. KHUSANOV: Thank you.

7 CHAIR BUFFO: Welcome. So for our
8 next panel we have Ms. Judy Gearhart, the
9 Executive Director of the International Labor
10 Rights Forum, and Mr. Kevin Cassidy, Director and
11 Special Representative to Bretton Woods, the
12 Multilateral Organizations of the International
13 Labor Rights Organization. International Labor
14 Organization. Excuse me.

15 Welcome to both of you. We'll go
16 ahead and go through both of your testimonies and
17 then ask questions after. So starting with Judy.

18 MS. GEARHART: Okay. Good afternoon,
19 distinguished members of the GSP Subcommittee.
20 I'm Judy Gearhart, the Executive Director of the
21 International Labor Rights Forum. Thank you for
22 the opportunity to testify.

1 I want to thank the ILRF's Cotton
2 Campaign allies, our partners, including those on
3 the ground in Uzbekistan who helped to compile
4 the information for today's hearing. ILRF houses
5 the Cotton Campaign, which is a multi-stakeholder
6 coalition of civil society investors and unions
7 from across the world.

8 In 2007 ILRF filed a GSP complaint as
9 part of the Cotton Campaign challenging state-
10 sponsored forced and child labor in Uzbekistan's
11 cotton sector. This is an update since our last
12 testimony in November 2018 to the Subcommittee.

13 We acknowledge the government has made
14 significant progress and reforms and we recognize
15 President Mirziyoyev's leadership in this process
16 and want to personally acknowledge the
17 Ambassador's outreach to civil society and the
18 Cotton Campaign over the past couple years.

19 To be clear, we are not asking for GSP
20 benefits to be revoked here, but for Uzbekistan
21 to remain under review in order to both give time
22 for several of the more recent reforms to take

1 hold and for additional reforms to be made.

2 We commend the reforms initiated to
3 address forced labor. I'll list out a few of
4 those. They include high-level public commitment
5 to ending forced labor, increased pay for cotton
6 pickers, an end to systemic child labor and the
7 use of university students in cotton picking, a
8 reduction in the numbers of health and education
9 employees forced to pick cotton, increased
10 penalties for forced labor, which we've just
11 heard about, increased number of trained labor
12 inspectors. These are all important.

13 And we also really commend the
14 government's meaningful engagement with
15 stakeholders. The government reported that its
16 roadmap includes policy measures outlined in the
17 Cotton Campaign's recommendations. Our
18 colleagues who are on the ground in Uzbekistan
19 now have reported positively on their meetings
20 this past week. I look forward to going at the
21 end of March myself.

22 While these changes are positive,

1 several of the core factors leading to forced
2 labor still need to be addressed in order for
3 these reforms to take root, and we'll focus on
4 four of these.

5 Abolishing the imposed quota system.

6 We commend the commitments to end state
7 involvement in cotton production, but this takes
8 time. We note that the agriculture development
9 strategy which was adopted in October of 2019
10 sets the target date to end this practice as of
11 the first quarter of 2023. So this would mean
12 farmers may be required to allocate land for
13 cotton production for the next three harvests.

14 Notably the quota system for the
15 production of cotton, which is allocated among
16 districts and individual farmers, has continued
17 to hold government officials responsible for
18 fulfilling regional quotas. They can lose their
19 jobs or face other consequences. The
20 relationship between quotas and forced labor has
21 been well documented both by Cotton Campaign
22 partners and the ILO.

1 Our second concern relates to the
2 cluster system which has been framed as an effort
3 to end forced labor. The government has taken a
4 fast-paced privatization of the cotton sector in
5 order to create clusters under which companies
6 will control all aspects of the textile value
7 chains. However, research and findings from the
8 2019 harvest show that the process is still a
9 little rocky. Clusters enter into contracts with
10 farmers to produce contracted amounts,
11 effectively mimicking the quota system, as was
12 noted.

13 Farmers have little autonomy or
14 protection and face penalties for failure to meet
15 the contract amounts including threats of losing
16 their land from the hokims. The management of
17 cluster contracts is often under the supervision
18 of the prosecutor or other government officials
19 and has serious weaknesses including a lack of
20 transparency in how cluster operators are
21 selected. And the Uzbek-German Forum monitors
22 have documented some forced labor mobilization on

1 some of the cluster farms.

2 Third, we note the lack of meaningful
3 accountability mechanisms. This still needs some
4 work. The government has strengthened penalties
5 for officials who use forced labor and they're
6 considering legislation to make forced labor a
7 criminal offense. However, the feedback
8 mechanisms still remain weak and lack public
9 trust because people who call the hotlines are
10 required to give full contact details when they
11 register a complaint. Given the history in the
12 country that's still something that could be a
13 deterrent.

14 Also inspections usually don't go up
15 the chain of command, but they've targeted low-
16 level officials and supervisors who themselves
17 are pressured to provide cotton pickers, and they
18 often don't have anything to do with the cotton
19 sector as was documented in 2018 and we've seen
20 cases this year. So this still needs to be
21 worked on.

22 My fourth and final point is about the

1 ongoing persecution of activists and how that
2 undermines reforms. Civil society is an integral
3 part to ensuring transparency and accountability.
4 Citizens play an important role in documenting
5 and reporting violations. While the government
6 has committed to allowing independent monitoring
7 of the cotton harvest, persecution of labor
8 rights monitors and human rights defenders has
9 not ceased and people wrongfully charged have not
10 yet been exonerated. The message that comes
11 across is still that people can face consequences
12 for speaking out.

13 In closing I wish to commend the
14 government of Uzbekistan again on the progress
15 made and to encourage its leaders to finalize the
16 reforms still needed as outlined above. We
17 recommend that the GSP Committee keep the country
18 practice review open. We believe it can be a
19 very constructive process.

20 ILRF looks forward to continuing to
21 work with all of the Cotton Campaign members, the
22 Uzbek Society, government of Uzbekistan, and of

1 course the GSP Subcommittee. We're ready to
2 accompany this process and to support both the
3 improvement of accountability mechanisms and the
4 protection of civil society freedoms and the
5 development of Uzbekistan's economic sector.
6 Thank you for your time. I look forward to
7 questions.

8 CHAIR BUFFO: Thank you, Ms. Gearhart.
9 Mr. Cassidy?

10 MR. CASSIDY: Dear Chairperson and
11 members of the GSP Subcommittee, as members of
12 the Committee are aware, in 2015 the ILO began
13 implementing the Third-Party Monitoring Project
14 supported by a multi-donor trust fund established
15 by the World Bank with support from the European
16 Union, United States and Switzerland. The
17 project aims to carry out activities that support
18 that support the elimination of child labor and
19 forced labor in the cotton sector in Uzbekistan
20 and to strengthen the capacity of state and non-
21 state institutions to ensure the sustainability
22 of cotton production and agricultural reform in

1 general.

2 Though forced labor in Uzbekistan
3 cotton continues to be a concern, it is clear
4 there has been demonstrable political commitment
5 and tangible action on the part of the government
6 to fully eliminate child and forced labor. In
7 our most recent public report published in April
8 of 2019 and covering the 2018 cotton harvest, we
9 found that for the first year child labor could
10 no longer be considered a serious concern. We
11 also found that though there had been significant
12 reductions in forced labor, forced labor cases
13 were still observed and legacy systems conducive
14 to the extraction of forced labor had not been
15 fully dismantled.

16 The ILO's 2019 monitoring and analysis
17 continues to show significant year-on-year
18 improvement in the situation of forced labor in
19 cotton harvesting in Uzbekistan. At the same
20 time the rate of decline of forced labor cases
21 appears to have slowed highlighting the need to
22 continue to focus efforts on addressing forced

1 labor to fully implement legal changes that will
2 strengthen enforcement and help address the root
3 causes of forced labor and to ensure that changes
4 set in motion by the capital are followed through
5 at the district level.

6 Our report on the 2019 harvest with
7 detailed informations on these findings to be
8 publicly released on the 5th of February in
9 Tashkent at a roundtable of local officials,
10 human right activists, employers and workers'
11 organizations. I will submit the new report to
12 this Committee after the roundtable and make
13 myself available to answer any further questions
14 to make the findings as part of a post-hearing
15 brief on the report when it is public.

16 And although I'm not able to release
17 all the specific findings, I'd like to note a few
18 overarching points that I can share with you
19 today on the monitoring of the 2019 harvest.

20 The ILO has a comprehensive and well-
21 documented monitoring methodology which
22 represents the principles of independence and

1 confidentiality and the need to protect
2 vulnerable persons and groups. The methodology
3 was approved by an international independent
4 review board and steps have been taken to ensure
5 that there is fully-informed and voluntary
6 participation by those interviewed for either
7 monitoring or the surveys.

8 In terms of the ILO approach, all
9 field interviews are unaccompanied, unannounced
10 and confidential. ILO monitoring teams consisted
11 of local Uzbek human rights activists. Human
12 rights activists who were also part of the ILO's
13 monitoring teams and were also free to conduct
14 their own independent monitoring without
15 restrictions from the ILO or the government.

16 No government representatives were
17 involved in the ILO's monitoring and to ensure
18 the highest possible level of integrity the ILO
19 generated randomly and only communicated to the
20 ILO experts the GPS coordinates just before their
21 departure.

22 In 2019 the ILO Third-Party Monitoring

1 Project conducted more than 7,000 interviews
2 across all projects and districts of Uzbekistan.
3 This included gathering qualitative and
4 quantitative data.

5 Qualitative data was conducted in
6 interviews by ILO monitoring teams which
7 consisted of four international monitors and 17
8 Uzbek human right activists. Qualitative data
9 collection was conducted by over 6,000 phone
10 interviews as well as data from 1,282 reports of
11 forced labor submitted to the government's
12 feedback mechanism.

13 Some of the observations of the 2019
14 harvest is that, as the conclusions of our 2018
15 report indicated, there continues to be no
16 systemic use of forced -- of child labor. In
17 2018 we noticed that there was significant
18 progress, where approximately 170,000 victims
19 remained in situations of forced labor. This
20 represented a 48 percent decline over 2017.

21 Our 2019 report will document further
22 reductions in forced labor, though the rate of

1 decline, as I indicated, has slowed. This
2 reinforces the continued need to focus on forced
3 recruitment of adults, not only at the central
4 high political level, but at the provinces
5 throughout the country. Anecdotally, it has been
6 communicated by ILO officials and monitors that
7 people involved in the picking have a greater
8 awareness of what constitutes forced labor and
9 are more vocal about their conditions.

10 Our 2019 report will give much greater
11 detail on the specific numbers, rates and areas
12 of ongoing concern. We observed that there was
13 no systemic recruitment of students, teachers,
14 nurses and doctors. Overall we observed declines
15 both in the overall number of pickers in the
16 fields in 2019 versus 2018 and the percentage of
17 those pickers that were in forced labor.

18 I've submitted my statement to you.
19 I'm just going to go over some of the highlights
20 here just in the effort to claw back some time,
21 please.

22 In regard to the pickers the

1 composition, wages and conditions, I'd like to
2 note some of the following findings in 2019.
3 Fifty-nine point three percent of the pickers
4 were women; forty point seven percent were men.
5 Seventy-five percent were from rural areas;
6 twenty-four point five were from urban areas.
7 For 50 percent of the pickers the wages
8 represented up to 25 percent of their annual
9 income and 38 percent of the pickers said the
10 wages represented 100 percent of their annual
11 cash income.

12 A majority of the cotton pickers
13 interviewed said that working conditions had
14 improved since 2018, although three percent of
15 workers said that conditions were worse. Clean
16 drinking water and lunch were provided in 86
17 percent of the cotton fields and toilets were
18 available in 35 percent of those cotton fields.

19 Overall the ILO has continued to have
20 a constructive cooperation with the government,
21 which we have also observed that continues with
22 the local and international civil society

1 activists in a number of areas.

2 As the government noted in its
3 prehearing briefing of the Third-Party Monitoring
4 Project supported, we have trained approximately
5 250 journalists on international labor rights.
6 During the 2019 harvest we continued to see
7 consistent and clear political commitment from
8 the national government including efforts to
9 increase the number of labor inspectors,
10 significantly increasing financial penalties for
11 the perpetrators of forced labor and take steps
12 to criminalize forced labor with significant
13 penalties including the imprisonment of
14 perpetrators. However, there still continues to
15 be gaps at local levels where instances of forced
16 labor are still being reported.

17 I'd like to just skip to the end
18 looking at labor market governance reform, and
19 again I will submit the full statement in
20 electronic form.

21 In addition to our work on child and
22 forced labor, the ILO has also been supporting

1 efforts to revise its labor code to the
2 international standards, and during 2019
3 Uzbekistan ratified a number of ILO Conventions,
4 the Tripartite Consultation Convention, the Labor
5 Inspection Convention, and the Labor Inspection
6 Convention in Agriculture. All will enter into
7 force this year. And as part of the ILO's
8 continuing work we will provide technical advice
9 on how to develop, implement and enforce national
10 legislation that is consistent with these
11 provisions and of the international Conventions.

12 On the 30th of July in 2019 the
13 President of Uzbekistan also signed a decree to
14 improve the human trafficking and forced labor
15 convention system and to establish a national
16 Human Trafficking and Forced Labor Prevention
17 Commission. Once these reforms are fully
18 realized we believe that it will not only
19 contribute to the sustainability of gains made in
20 the eradication of child and forced labor, but it
21 will also increase the likelihood that wider
22 economic reforms undertaken by the government

1 will contribute to the gradual realization of
2 decent work for all in Uzbekistan.

3 Chair, the work is not finished, but
4 it clearly addresses the concerns outlined in the
5 original complaint in a number of key areas. We
6 continue our engagement with the Uzbek government
7 as well as the workers' and employers'
8 organizations, local and international human
9 right activists, journalists, as well as the
10 World Bank and the donor community to strengthen
11 the realization of labor rights. Also the World
12 Bank has recently extended the Third-Party
13 Monitoring Program until May of 2021 so that the
14 2020 harvest can also build on the progress that
15 is mentioned above. Thank you for your time and
16 attention.

17 CHAIR BUFFO: Thank you very much, Mr.
18 Cassidy, and thank you to both of you for your
19 testimony today.

20 So I'd like to turn to my colleagues
21 for questions beginning with our representative
22 from the Treasury Department.

1 MS. MITCH: Thanks very much.

2 My question is for Ms. Gearhart.

3 Could you just please expand on your concern
4 regarding the imposition of production targets in
5 the privatized cotton clusters and what interests
6 do you believe the government has in setting high
7 production targets for private businesses?

8 MS. GEARHART: Thank you for your
9 question. We are still in the process of
10 finalizing the monitoring from our end and we
11 will have a report shortly after in February.

12 The production targets, because it
13 mimics the quota system, is creating pressure. I
14 can't really speak right now to the incentives
15 created. I don't want to overstate that. I
16 think this is a lot of -- a lot about growing
17 pains and transitions and really figuring out how
18 to make this work right. I don't want to
19 conclude prematurely that there is ill intent. I
20 think this is all about figuring out how to do it
21 right, if that answers your question.

22 But I think the privatization process,

1 because it's going quickly, there's some more
2 thought that needs to be going into what do
3 production targets look like, how are they going
4 to be managing the economy and their development
5 strategy?

6 MR. O'DONOVAN: Thank you very much
7 for this. This next question is for Mr. Cassidy,
8 and I would pose to you very much the same
9 question. The Petitioner ILRF has expressed in
10 its submission some concern about private
11 investors and vertically integrated model
12 replacing the state as a single buyer. Does the
13 ILO share this concern at all? And if so, is
14 there a continued risk of forced labor in this
15 model?

16 MR. CASSIDY: Since I'm not an expert
17 on the ground, what I will say is that generally
18 with the ILO we take a holistic approach starting
19 with the total abrogation of rights in which
20 child labor and forced labor would represent.

21 In terms of the private sector the ILO
22 works directly with employers' organizations and

1 the workers themselves in order to generate
2 dialogue between the two groups and to have
3 workshops to de-escalate any of the problems that
4 may arise.

5 Certainly the wider issues of workers'
6 rights and voice and those conditions and wages
7 that are being paid are of concern to the ILO.
8 And certainly we'd have liked to have addressed
9 all of those in a more strategic and holistic
10 fashion, but at the time our intervention was to
11 go in and to work with the Uzbek government and
12 the local entities to eliminate child labor and
13 forced labor.

14 I think we are showing very
15 significant improvements in those areas and will
16 continue to be engaged because the ILO is always
17 on the ground in the countries that are members
18 to the organization itself.

19 MR. PAJUSI: Ms. Gearhart, the ILRF
20 remains a partner in the Cotton Campaign which
21 has sought for years to leverage a private sector
22 boycott of Uzbek cotton. Today many in

1 Uzbekistan are calling for an end to the boycott
2 and calling for increased investment by socially
3 responsible Western firms.

4 What is your view on this and do you
5 envision an end to the boycott?

6 MS. GEARHART: I believe if the
7 reforms continue apace, that is in the future.
8 We are in the process of discussing both within
9 the Cotton Campaign and with the Uzbek government
10 and other actors on the ground what the future
11 looks like. When there's a delegation of the
12 Cotton Campaign that will be going at the very
13 end of March, early April, we will bring some
14 apparel companies with us. The reinvestment by
15 the apparel sector tends to take a while.

16 And the cotton pledge to which you
17 refer, there are discussions within the Cotton
18 Campaign. I cannot speak as to what those
19 decisions will be. We're waiting for the reports
20 to come out both from the ILO as well as from the
21 Uzbek-German Forum monitors on the ground, but
22 there certainly are discussions as to, how do we

1 accompany this process going forward? And I
2 think that's the bottom line of what I'm asking
3 the Subcommittee to continue to accompany this
4 process. Thank you.

5 MR. PAJUSI: Thank you very much.

6 CHAIR BUFFO: Thank you very much. In
7 the interest of time, we'll conclude this panel.
8 I'd also like to thank our previous panel, the
9 Minister of Uzbekistan for his time as well.

10 So with that I'd like to invite the
11 panel from the government of Kazakhstan to come
12 to the table. Thank you again.

13 So we'll actually take about a five-
14 minute break.

15 (Whereupon, the above-entitled matter
16 went off the record at 3:08 p.m. and resumed at
17 3:12 p.m.)

18 CHAIR BUFFO: Hello and welcome. So
19 we'd like to open our next session on Kazakhstan
20 related to the worker rights GSP criteria, and
21 it's my pleasure to welcome the Vice-Minister of
22 Labour and Social Protection.

1 Just a couple housekeeping notes: so
2 we are somewhat limited on time and I have a very
3 busy agenda, so we'd ask you to keep your
4 testimony to five minutes, also taking into
5 consider translation, of course.

6 Thank you very much. With that,
7 please, Vice-Minister.

8 MR. SARBASSOV: Hello and on behalf of
9 the Ministry of Labour and Social Protection
10 please allow me to greet you.

11 I'd like to inform you of the work
12 that has been done in the last two years. In May
13 of 2018, we received a high-level delegation from
14 International Labour Organization, and as a
15 result of that visit we signed a roadmap that has
16 to do with the comments about Kazakhstan non-
17 compliance with Convention 87.

18 Today we have over 6 million contract
19 workers and over 50 percent of them are members
20 of labor unions. And we have over 600 labor
21 unions in the country. As part of the
22 implementation of the roadmap we analyzed many of

1 our labor laws and we did that in taking into
2 account the comments that we got and we developed
3 recommendations on changes that needed to be made
4 to our labor laws.

5 We took into account all 15 comments
6 that were mentioned in the roadmap, and based on
7 those comments we developed the bill that in July
8 2019 was proposed -- was presented to the lower
9 chamber of our parliament. We carefully studied
10 all the recommendations that we received from the
11 international labor organizations and jointly
12 with the representatives of the labor unions we
13 came up with the proposals that were included in
14 the bill.

15 As one of the key changes or key
16 amendments to the law that we excluded or we got
17 rid of the requirement where lower-level unions
18 had to be part of the higher-level unions. This
19 law has been in operation since 2014 and the
20 system allowed us to strengthen the system of
21 unions in the country. And now we have a strong
22 system of social partnerships. Now we are

1 getting rid of these norms.

2 And so the other key point is that we
3 simplified the norms and the requirements for
4 registration of the labor unions, and that has to
5 do with the requirements and the timeline. The
6 timeline now went from six months to one year.
7 We also made changes to the labor code and to the
8 criminal code, specifically to Article 402 of
9 criminal code, where certain violations were
10 downgraded and therefore the punishment was also
11 less strict.

12 There was a lot of work done in the
13 lower house of our parliament. Over 10 working
14 groups considered the bill and as a result of all
15 these considerations the bill was adopted on
16 December 18, 2019. Our parliament has two
17 chambers and according to the timeline in the
18 constitution my expectation is that this bill
19 will become a law within the next few months.

20 I'd like to underscore one more time
21 that the bill was developed in close consultation
22 with the ILO in Geneva. We worked in the

1 framework of their conference and my expectation
2 is that once this bill becomes the law, we will
3 be able to defend the rights of workers and
4 represent their rights as part of the labor
5 unions more effectively. Thank you.

6 CHAIR BUFFO: Thank you very much, Mr.
7 Vice-Minister, for your concise but very
8 informative testimony. We'd now like to turn to
9 questions.

10 MR. O'DONOVAN: Thank you again for
11 your testimony, your participation here today.

12 Your testimony describes a bill that
13 would simplify union registration procedures and
14 eliminate requirements to affiliate with higher-
15 level unions. You anticipate in your comments
16 that that law may pass in the next few months, I
17 believe you said. Are there still opportunities
18 for amendment and stakeholder consultation in the
19 interim period?

20 MR. SARBASSOV: Yes, the law was
21 adopted in its first reading and according to our
22 laws the changes and amendments can be made at

1 this point as well until it is adopted by the
2 higher chamber. This is the right of our
3 lawmakers.

4 MS. LAURY: Thank you very much for
5 your testimony. I have another question about
6 the draft trade union law. I wonder does the
7 draft address concerns about the requirement that
8 higher-level unions have a certain number of
9 members and member organizations in a certain
10 number of oblasts and cities in Kazakhstan? If
11 so, what's the rationale for maintaining the
12 geographical requirements?

13 MR. SARBASSOV: Thank you for your
14 question. I remember you. We met in December
15 and talked about the draft law.

16 So as far as the requirements for the
17 labor unions that you're mentioning and
18 specifically for the industry, those requirements
19 were simplified. It used to be that we had two
20 criteria for the higher-level labor union to be
21 registered. They had to include more than half
22 of the workers in the industry and they also had

1 to include members of the organizations in the
2 lower level of the hierarchy. And those base
3 labor unions could have at least three people.

4 And these requirements are being
5 simplified and we're taking away the requirement
6 that over 50 percent of the workers in the
7 industry have to be part of it. It is very
8 important to us that the labor unions actually
9 represent their industry and they represent their
10 workers. And that's why we had these
11 requirements. That's it.

12 MS. MITCH: Thank you very much. In
13 your submission, you've stated that unions are
14 permitted to cooperate with international
15 organizations and per Decree Number 177 are
16 permitted to accept grants from a list of
17 recognized international organizations including
18 the ILO. However, the criminal code and the law
19 on public associations appear to forbid unions
20 from obtaining financing from foreign entities,
21 punishable by seven years imprisonment. Does
22 your government intend to amend these provisions

1 to allow unions to accept funding for in-country
2 projects from international union organizations?

3 MR. SARBASSOV: There is a
4 constitutional requirement and we talk about that
5 in the roadmap. And we also work with the labor
6 unions to explain to them what rights they have
7 as far as receiving aid from the international
8 organizations in the form of grants and other
9 forms of aid. And there's no limitations right
10 now. As a matter of fact we have a list of 80
11 international organizations that are allowed to
12 provide aid to our labor unions, and ILO is one
13 of them.

14 And as an example, the Federation of
15 Labor Unions in our country has conducted over
16 100 events involving international organizations.
17 And moreover, in the bill that is being
18 considered right now we are clearly stating that
19 the international -- that our labor unions have
20 the right to cooperate with the international
21 organizations and to conduct joint activities and
22 joint events with the purpose of improving the

1 situation with the workers in the country.

2 MR. O'DONOVAN: If I could just ask a
3 quick follow-up question. You've described that
4 certain forms of cooperation will be permitted in
5 the new law. On the other hand other forms of
6 cooperation or direct -- more direct financing
7 from international labor organizations can result
8 in up to seven years in prison.

9 You've described that you have
10 trainings for what constitutes the difference
11 between acceptable and criminal activities. I'm
12 wondering if you plan to draft regulations or
13 laws to make clear the objective criteria so that
14 workers can be certain that they are not
15 inadvertently on the wrong side of the law.

16 MR. SARBASSOV: Yes, thank you very
17 much for your question. And as part of the law
18 and as part of the roadmap, we will be preparing
19 the guidance that will clearly describe what
20 types of cooperation and what types of assistance
21 is acceptable.

22 MR. PAJUSI: Vice-Minister, the AFL-

1 CIO petition alleges harassment of independent
2 union leaders. What steps are you taking to
3 build the trust of workers to ensure that they
4 feel free to form and join independent unions?

5 MR. SARBASSOV: Our system of
6 interaction with the labor unions is based on the
7 principle of non-interference of government into
8 the activities of the labor union. Our
9 interaction with them is based on the agreements
10 that are signed and these are usually three-way
11 agreements. And as part of the implementation of
12 the roadmap we have committed to certain
13 measures.

14 For example, we have created a working
15 group jointly with the Ministry of Justice that
16 deals with issues that a labor union might
17 encounter while trying to register a labor union.
18 We also implemented a trust line as part -- a
19 phone line that is part of the Ministry of
20 Labour. And we also have another working group
21 that deals with the issues of labor unions that
22 meets once a month.

1 And I'd like to underscore one more
2 time that as of right now if we take the existing
3 unions, we have three republic level unions, 20
4 industry level, 20 based on the regions and then
5 300 local unions, there are no issues, no
6 problems that have to do with the registration or
7 otherwise activity of the unions. And at the
8 Ministry of Labour we're very closely monitoring
9 what is going on there.

10 MR. PAJUSI: Thank you.

11 MR. MCGEE: Hi, Mr. Vice-Minister.

12 Following the implementation of the 2014 trade
13 union law, workers were alleging that they were
14 being denied union registration even though
15 meeting the requirements for minor flaws such as
16 grammatical errors or just arbitrarily.

17 My question for you, how does your
18 government to plan to ensure that work
19 organizations that meet requirements under the
20 amended law are able to successfully register?
21 And does the registrar help these applicants fill
22 out their forms correctly and resubmit them?

1 MR. SARBASSOV: As far as registration
2 of a legal entity is concerned that happens
3 according to the base law on legal entities that
4 applies to any new judicial person or legal
5 entity, not just the labor unions. And after the
6 new law on labor unions was adopted in 2014, and
7 then also according to the roadmap, there was a
8 big influx of applications and information that
9 had to be verified.

10 And in order to deal with the issues
11 that came up as a result of that, the working
12 group was created between our ministry and the
13 Ministry of Justice. And on our end I'm the head
14 of this working group and the Vice-Minister of
15 Justice is the head of the working group on their
16 end. And we're making sure that no issues like
17 what you've described are going to happen now and
18 in the future. And I can assure you that as of
19 right now we are not encountering any technical
20 problems of the kind that you have described.

21 As of right now the norms that are
22 included in the bill, they have to do with the

1 status of the labor union. Also we increased the
2 time line from six months to a year. We've
3 included an algorithm for how they need to submit
4 their applications to make sure that they meet
5 all the requirements. And also there are no
6 limits as to how many times they can apply. So
7 if they were denied an application once, they
8 could submit it as many times as necessary.
9 Resubmit.

10 MR. MCGEE: Thank you.

11 MR. O'DONOVAN: Can I ask a short
12 follow-up question? You describe that there's a
13 working group between the Ministry of Labour and
14 the Ministry of Justice to verify some of the
15 information. Now that the draft law will
16 simplify the registration requirements, what
17 would the purpose of the working group be?

18 MR. SARBASSOV: The working group was
19 created based on the law of 2014. Our hope is
20 that when the new law is adopted we're going to
21 have -- we don't -- we're not going to have as
22 many issues to deal with, but still we're going

1 to keep the working group to monitor the
2 situation and make sure that any issue that
3 requires joint input from both of our ministries
4 that have to do with the registration of new
5 unions will be taken care of.

6 CHAIR BUFFO: Thank you again. So if
7 it's okay with you, vice-minister, in the
8 interest of time we do have some additional
9 questions, but we'd like to submit those to you
10 in writing and ask that you kindly answer them in
11 our post-hearing brief. Also to remind you, if
12 there's any additional information that we did
13 not get to today or any information that you
14 would like to add in response to the next panel,
15 please feel free to do so as well in the post-
16 hearing brief.

17 And with that we would like to thank
18 you for your participation today, and in
19 particular for traveling from very far away to be
20 here with us. Thank you very much.

21 MR. SARBASSOV: Thank you very much
22 and we'll be sure to answer all the questions

1 that you'll submit to us and provide written
2 answers to you.

3 CHAIR BUFFO: Thank you very much.

4 And we'd now like to invite Ms.
5 Cassandra Waters from the AFL-CIO to please come
6 forward. Thank you.

7 MS. WATERS: Good afternoon.

8 CHAIR BUFFO: Welcome, Ms. Waters. So
9 you may begin with your testimony. Thank you
10 very much for coming today.

11 MS. WATERS: Chairwoman Buffo and
12 members of the Subcommittee, thank you so much
13 for the opportunity to testify today.

14 The government of Kazakhstan is not
15 taking steps to afford internationally-recognized
16 worker rights. Indeed, it actively restricts the
17 rights to freely associate and to bargain
18 collectively in both law and practice.

19 Following a wave of strikes in the gas
20 and oil sector in 2011 the government mounted an
21 increasingly aggressive campaign against
22 independent unions. Since 2014 the government

1 has dissolved over 600 independent union
2 organizations including the Confederation of
3 Independent Trade Unions of Kazakhstan and all of
4 its largest affiliates.

5 The government has criminalized
6 strikes and engaged in politically-motivated
7 arrests and prosecutions of trade union leaders
8 and workers. Decertified unions have been
9 pressured or forced to join government-controlled
10 entities like the Federation of Trade Unions of
11 Kazakhstan, the FPRK, or Amanat. The FPRK's
12 leadership is appointed and at times removed by
13 the government. It was recently suspended from
14 the International Trade Union Confederation due
15 to lack of independent leadership.

16 Numerous international bodies
17 including the ILO, the European Parliament and
18 the United Nations Committee on Economic, Social
19 and Cultural Rights have repeatedly drawn
20 attention to the dire situation in the country
21 and have found a sustained lack of progress with
22 respect to worker rights and other human rights.

1 The campaign against independent
2 worker organizations and activism is part of a
3 broader crackdown on civil society with the
4 judicial system in particular being used to
5 stifle dissent rather than uphold the rule of
6 law. The government of Kazakhstan has erected
7 numerous legal obstacles that prevent workers
8 from exercising their right to freely associate.

9 In July 2019 the government introduced
10 legislation to amend portions of the labor code
11 ostensibly to respond to a road map developed by
12 the ILO. While the proposal makes some modest
13 progress, it maintains many of the barriers that
14 prevent workers from exercising their rights.

15 The proposal does not remove the --
16 sorry. Excuse me. The proposal does remove the
17 requirement that trade unions affiliate with
18 regional and national bodies, however, the
19 proposed law contains other requirements on the
20 internal structure of trade unions including
21 onerous membership requirements for national and
22 sectoral unions and would still allow the

1 government to liquidate unions that do not
2 conform to these structures. Further, local
3 unions would be required to notified territory
4 unions and in some cases also local government
5 officials before they engage in collective
6 bargaining with an employer.

7 The proposal does not introduce any
8 significant changes to the registration process.
9 Independent union registrations were repeatedly
10 and systematically denied for frivolous reasons
11 such as the union's proposed name, translation
12 discrepancies or failing to include a sketch of
13 the union's logo in the application, if they were
14 given reasons at all. The proposal offers no
15 remedy for this issue. We have little confidence
16 that the government would register new
17 independent unions if these proposed amendments
18 were enacted. The proposal does not touch other
19 provisions of Kazakh law that criminalize leading
20 or joining unregistered unions or other public
21 associations.

22 Changes to the legal code in 2014 made

1 it very easy for courts to declare a strike
2 illegal and impose stiff penalties including jail
3 time and fines for participating in or even
4 simply advocating for an illegal strike. There
5 is no proposal to meaningfully amend these
6 restrictions on free speech and the right to
7 strike. The draft law maintains criminal
8 sanctions and includes the possibility of prison
9 time and even compulsory labor as punishment.
10 These laws continue to be deployed against
11 workers attempting to exercise their rights.

12 In February 2019, 20 oil workers were
13 detained for participating in a strike. The
14 current legal framework does not afford
15 internationally-recognized worker rights and
16 meaningful reform is desperately needed, however,
17 legal reforms alone are not sufficient to address
18 the current crisis in Kazakhstan.

19 The government continues to target
20 trade union leaders and activists with arrests,
21 prosecution, arbitrary detention, fines and
22 prohibitions on participation in public life.

1 This climate of fear prevents worker organizing
2 and is a serious affront to internationally-
3 recognized worker rights. There is a clear
4 pattern of independent union leaders being
5 charged with criminal conduct and then convicted
6 without due process.

7 Larisa Kharkova, the former President
8 of the Confederation of Independent Trade Unions
9 of Kazakhstan, has now exhausted all domestic
10 avenues to overturn her sham conviction in 2017.
11 As we discussed in the last hearing, Ms. Kharkova
12 was convicted of abuse of office in proceedings
13 riddled with irregularities. The prosecution was
14 never able to present any material evidence of
15 misconduct and the key witness against her stated
16 she was pressured into filing charges.

17 Nevertheless, Ms. Kharkova has
18 sentenced to four years of restricted freedom of
19 movement. Funds from both her personal bank
20 account and the confederation's account have been
21 seized and she is banned from holding a
22 leadership position in any organization for five

1 years. Ms. Kharkova and her son remain under
2 state surveillance and she continues to be
3 subjected to harassment and intimidation.

4 Yerlan Blatabai, leader of the Energy
5 Workers Union, is currently in prison. He was
6 convicted of embezzling union funds in another
7 sham trial. He was briefly released following an
8 international pressure campaign and offered a
9 commutation, but on the condition that he admit
10 guilt, which he refused to do. He is banned from
11 trade union activities for seven years.

12 Leaders Amin Eleusinov and Nurbek
13 Kushakbaev have been released, but they are both
14 barred from participating in trade union
15 activities for two years.

16 In November 2018 union leader Dmitry
17 Senyavskii was attacked in his home days before
18 he was to meet with an international trade
19 delegation. Kazakhstani authorities classified
20 the incident as hooliganism and have not
21 identified any suspects.

22 The deliberate attempt to stifle

1 independent unions and their leaders is
2 completely inconsistent with the internationally-
3 recognized right to freedom or association and a
4 grave affront to the fundamental human rights of
5 the individuals involved.

6 The government of Kazakhstan has not
7 taken steps to afford internationally-recognized
8 worker rights including the rights of association
9 and the right to organize and bargain
10 collectively.

11 The AFL-CIO urges USTR to suspend
12 benefits if the government does not take
13 immediate and effective steps to afford
14 internationally-recognized worker rights. This
15 must include labor law reform consistent with the
16 recommendations of the 2017 ILO report.

17 Expungement of all criminal charges levied
18 against trade unionists for participation in a
19 strike or other trade union activities and an end
20 to the harassment of trade union leaders and
21 their associates with assurances that they will
22 receive their full rights consistent with due

1 process.

2 The CITUK and other independent unions
3 that lost legal status must be allowed to re-form
4 and register as fully functioning trade unions.
5 Longer-term technical assistance and monitoring
6 may be required to ensure that Kazakhstan comes
7 into compliance and that workers can fully
8 exercise their rights.

9 Thank you so much and I'm happy to
10 take questions.

11 MR. PAJUSI: Ms. Waters, I have a
12 question for you. You note that -- in your
13 statement that the draft law requires local
14 unions to notify territorial unions of their
15 intent to collectively bargain regardless of
16 union affiliation. Could you explain, how do
17 these restrictions or requirements inhibit
18 freedom of association and collective bargaining?

19 MS. WATERS: So the right to freedom
20 of association and the right to organize and
21 collectively bargain includes the ability of
22 trade unions to internally organize their own

1 affairs and to decide independently how best to
2 advance their members' interests. The collective
3 bargaining process is something that really needs
4 to be an internal union process.

5 I think it's problematic on its face
6 regardless of the nature of the entity that
7 they're required to report it to, but I think
8 particularly in this case there's additional
9 barriers because most territorial unions, as we
10 mentioned, are strongly associated with the
11 government, which effectively requires
12 notification to the government before you start
13 bargaining, and that impedes the ability of
14 unions to fully engage and direct their own
15 activities, which is like a fundamental
16 principle, freedom of association.

17 MR. PAJUSI: Thank you.

18 MS. LAURY: Thank you for your
19 testimony. The government stated in its
20 testimony today that it had consulted employers
21 and worker organizations in the development of
22 its draft reforms to its trade union law. Did

1 your local partners participate in the tripartite
2 consultations and were their views incorporated
3 into the draft?

4 MS. WATERS: They did not. The only
5 unions that were involved in the consultations
6 were the unions that we mentioned: the
7 government-dominated unions, the FPRK and other
8 associated with Amanat. None of the independent
9 unions that lost status are allowed in tripartite
10 consultations anymore because they're not
11 recognized as legal entities.

12 It is my understanding that there were
13 two civil society representatives; I believe they
14 were human rights lawyers, that were invited as
15 observers, but I don't think that they had the --
16 I don't think they had full participation. And
17 that's obviously one of our big concerns is that
18 having lost legal status they don't have any sort
19 of official role in tripartite consultations.

20 MS. LAURY: And could you expand a bit
21 on some of the areas of the reform that you think
22 are improvements to the 2014 law?

1 MS. WATERS: So I mean I think the
2 main improvement is that there is no requirement
3 to affiliate. That seems to be the primary thing
4 that has changed. I think a lot of the -- and
5 that is unquestionably better, although I think
6 it's important to stress that the articles that
7 sort of used to contain the requirements to
8 affiliate to higher-level bodies have -- they've
9 already been used to strip most independent
10 unions of their operating status.

11 So even bringing the laws into
12 conformity isn't going to be enough. We need
13 assurances that the independent unions can
14 register and operate, because they've already
15 been used to -- they're not going to bring the
16 unions back and like just those little tweaks are
17 not going to bring the unions that have lost
18 status back, independent of more far-reaching
19 changes.

20 MS. MITCH: Thank you. In your
21 testimony you expressed concern about the
22 prosecution of several former members of

1 independent labor unions. Three of these cases
2 reportedly involve financial mismanagement of
3 union funds by these union presidents, so why do
4 you believe specifically that these cases are
5 without merit and what message do you believe the
6 government intended to send with these
7 prosecutions?

8 MS. WATERS: Well, so primarily we
9 believe they're without merit because the
10 government was never able to prove financial
11 misconduct in any of its cases and there were
12 often fairly extreme procedural irregularities
13 that accompanied these prosecutions. Most of the
14 -- a lot of it was -- a lot of the financial
15 questions also revolved around the fact that
16 these -- there were -- we have de-registered
17 entities that have been declared illegal, and
18 there was a lot of chaos resulting and the
19 independent unions were trying to figure out how
20 to protect the assets of the workers. And they
21 have all since been seized for the most part.

22 I think the message is very clear that

1 operating an independent union is being treated
2 as a crime. It is meant to send a message to
3 anybody else who would try to organize workers
4 and to other potential leaders who would try and
5 step up and lead these unions. Once the top
6 officials have been tried it makes it very, very
7 difficult for anyone to assume a leadership
8 position or to carry the work going forward,
9 particularly since in every case the prosecution
10 has -- the sentencing has involved banning people
11 from participating in public life for years.

12 MS. MITCH: Thanks. So related to
13 that what do you recommend the government could
14 do now to ensure it has the confidence of labor
15 leaders moving forward?

16 MS. WATERS: Well, I think it needs to
17 be a combination of expungement of criminal
18 charges in cases where there are clear due
19 process violations, to go back and look at the
20 underlying charges to see whether or not there's
21 been any credible allegations alleged. We don't
22 think in any of these cases there have been. And

1 I think a re-hearing on the merits would show
2 that.

3 And I think that that expungement has
4 to come without condition. Often, as I said, we
5 have at least one case where a leader has been
6 offered a commutation, but they had to admit
7 guilt. That's not the same thing as actually
8 looking at the underlying charges and determining
9 whether or not they have merit.

10 Going forward we also need changes to
11 the law to ensure that leading an unregistered
12 entity is not treated as a crime. And there are
13 several other provisions of the law that we
14 identify in our brief. And I can go through and
15 expand on that a bit in the prehearing brief, but
16 there are several provisions of the law that
17 criminalize various activities associated with
18 leading or even simply participating in an
19 unregistered entity. Unions are supposed to
20 operate without pre-authorization from the
21 government to begin with under basic freedom of
22 association principles, so that's really

1 critical.

2 CHAIR BUFFO: Thank you very much, Ms.
3 Waters, for your testimony.

4 With that we'd also like to thank the
5 government of Kazakhstan for your earlier
6 testimony.

7 And with that we'll take a two-minute
8 break as we invite the representatives from the
9 government of Georgia to come forward. Thank you
10 very much.

11 (Whereupon, the above-entitled matter
12 went off the record at 3:57 p.m. and resumed at
13 4:02 p.m.)

14 CHAIR BUFFO: Good afternoon. So we'd
15 like to welcome our distinguished representatives
16 from the government of Georgia and to please be
17 reminded to try to stick to the five-minute time
18 limit. But I will say, just to remind you, if
19 there's information that you don't feel like you
20 get to today or additional information you would
21 like to provide after you hear the next panel,
22 you will have an opportunity to do so in the

1 post-hearing brief.

2 So with that, we'd like to turn it
3 over to the Deputy Minister of Economy and
4 Sustainable Development, Mr. Genadi.

5 Thank you very much for coming today.

6 MR. ARVELADZE: Thank you, Dear Chair,
7 ladies and gentlemen, honorable members of the
8 Committee. It's great pleasure for me to be --
9 to present the brief about ongoing reforms in
10 labor issues in Georgia. GSP with the United
11 States represents an important instrument in
12 promoting Georgia's international trade. GSP
13 serves as a significant trade preference program
14 providing opportunities for local entrepreneurs
15 and export companies to enjoy the facilitated
16 tariff preferences thus increasing and
17 diversifying their export opportunities. To
18 demonstrate in figures, Georgia's exports to the
19 U.S. market under GSP have grown from 17.3
20 million USD dollars in 2002 to more than 156
21 million USD dollars in 2018.

22 On behalf of the government of Georgia

1 I have the honor to present the measures the
2 government of Georgia has undertaken to ensure an
3 adequate protection of Georgian workers at
4 workplaces.

5 In line with its international
6 commitments Georgia has made significant progress
7 in adopting legislative changes and implementing
8 policy reforms to promote safety at work and
9 establish an effective enforcement mechanism,
10 labor inspection.

11 In 2018 Georgia passed legislation to
12 provide occupational safety and health protection
13 for workers employed in hazardous industries and
14 adopted a law on occupational safety. The law
15 entered into force on the 1st August 2018. In
16 order to give full effect to the OSH protection
17 the parliament of Georgia adopted a new organic
18 law of Georgia on occupational safety.

19 Transforming OSH law into an organic law makes it
20 more resilient to political interference,
21 fluctuations and guarantees establishment of
22 effective labor rights protection system.

1 New law extends a mandate of labor
2 inspectors which implies that they are entitled
3 to conduct unannounced inspections in enterprises
4 in all economic sectors and impose sanctions on
5 identified violations which entered into force on
6 September 1, 2019 and applies to all workers
7 including public sector and public officials.

8 In 2019 number of labor inspectors
9 increased from 25 to 40. Two divisions were
10 established: Inspection Division and Monitoring
11 and Supervision Division. The labor inspection
12 budget doubled in 2020 and government of Georgia
13 adopted a decree to further increase the number
14 of labor inspectors to 100.

15 Even though ILO has recommended to
16 have the 80 labor inspectors for Georgia,
17 countries like Georgia now that is in transition
18 economy which intends one labor inspector per
19 20,000 workers. But instead of this we have
20 adopted the decree that increases the number up
21 to 100 inspectors. And the budget is already
22 approved for this. So the recruitment also

1 process have been started for new inspectors.

2 Labor inspectors are being constantly
3 trained and retrained while the institution is
4 being gradually developed. International
5 certificates in OHS have been granted to the
6 inspectors. Besides the capacity building
7 activities for the labor officials a lot of
8 technical assistance has been provided.

9 Department was equipped with body
10 cameras, tablets, computers, work uniforms,
11 special boots, helmets, and et cetera. With the
12 support of German International Development
13 Program the mobile application Construction
14 Safety was developed as well. The application
15 includes regulatory documents, hazardous
16 situations, safety measures and technical
17 instructions with illustrations. Work on labor
18 inspection management system, which is supported
19 by the International Labour Organization, is in
20 process.

21 In order to facilitate the inspection
22 process, Labour Inspectorate is working on

1 development of internal procedural mechanisms.

2 Due to the highest risks and number of
3 accidents in construction sector the government
4 of Georgia made a decision to strengthen control
5 and set up integrated monitoring groups. The
6 groups consist of labor inspectors of Ministry of
7 IDPs, Labour, Health and Social Affairs and
8 monitors from Technical and Construction
9 Supervision Agency of the Ministry of Economy and
10 Sustainable Development and Municipal Department
11 for Supervision of the Tbilisi City Hall. Around
12 300 joint inspections were conducted in this
13 regard.

14 The Minister of Internally Displaced
15 Persons from the Occupied Territories, Labour,
16 Health and Social Affairs of Georgia approved an
17 accredited program for an occupational safety
18 specialist that aims to train OSH specialists and
19 determine the curricula of the program, rules and
20 conditions of its implementation. Twelve
21 organizations were registered and 4,914 OSH
22 managers were certified by the end of 2019.

1 Since 1st of January, 2019, pursuant
2 to the requirements of the law on occupational
3 safety, employers are obliged to provide
4 occupational accident insurance from the work
5 accidents at own expense during the employment
6 period.

7 Forced labor including child labor is
8 being monitored by the Labor Conditions
9 Inspecting Department since 2016. Labor
10 officials are authorized to inspect labor
11 conditions unannounced with the aim to identify
12 and respond to the violation/possible cases of
13 forced labor exploitations.

14 Since adoption of law on occupational
15 safety in 2018 significant improvement in labor
16 condition is noted in the hard, harmful and
17 hazardous sectors. Compared to 2018 the number
18 of inspections conducted was increased in 2019.
19 Labor inspectors inspected 558 objects and
20 suspended working process in 92 companies due to
21 critical non-compliance. The number of fatal
22 accidents compared to 2018 was decreased by 35

1 percent and the number of non-fatal accidents by
2 16 percent.

3 The most recent amendments introduced
4 to the labor legislation on February 19, 2019
5 establish principles that serve to eliminate and
6 prohibit discrimination in labor and pre-
7 contractual relations, introducing definitions of
8 sexual harassment at workplace as the form of
9 discrimination. The amendments were made to
10 organic law in Georgia, Georgian Labor Code, law
11 of Georgia on elimination of all forms of
12 discrimination, law of Georgia on public service,
13 and law of Georgia on gender equality.

14 Having said that, we realize that
15 there are remaining legislative and policy gaps
16 related to protection of Georgian workers, hence
17 the government of Georgia continue to harmonize
18 its legal framework with international standards,
19 working on expansion of labor legislation by
20 introducing international labor standards into
21 Georgian labor market, as per Georgia's
22 Association Agreement with EU, Annex 30.

1 Currently work is underway on legislative package
2 which includes Georgian Labour Code and law on
3 labor inspection.

4 Also the Labor Inspectorate body will
5 be established according to the Georgian
6 governmental decree in person to the draft law on
7 labor inspection. The labor inspection service
8 in Georgia will be an independent legal entity of
9 public law under the Ministry of Internally
10 Displaced Persons from the Occupied Territories,
11 Labor, Health and Social Affairs of Georgia. The
12 ultimate goal of establishment of the Labor
13 Inspectorate is to ensure effective
14 implementation of labor legislation, in
15 particular protection, enforcement and
16 improvement of labor rights.

17 So the law on labor inspection is
18 elaborated already I think to establish an
19 independent enforcement body and defines basic
20 principles, authority and power of inspection,
21 its rights and obligations and ensures effective
22 implementation of labor norms.

1 The mandate of the Labour Inspectorate
2 applies to and will be ensuring oversight of all
3 labor rights determined by the Labour Code, Law
4 on Public Service, including forced labor and
5 labor exploitation, execution of the agreements
6 reached through labor mediation, and of course
7 OSH norms as determined by the organic law of
8 Georgia on occupational safety.

9 In addition to the oversight the
10 Labour Inspectorate will consult employers and
11 employees on issues related to labor legislation,
12 analyze revealed violations, and
13 elaborate/develop proposals on improvement and
14 perfection of the labor legislation. Conduct
15 awareness raising activities as well.

16 Social partners have always been
17 engaged in the working process, having
18 opportunities to express their concerns and thus
19 influence the process with their suggestions and
20 initiatives.

21 Let me inform you that as we speak
22 government of Georgia has approved draft law on

1 Labour Inspectorate which will be submitted to
2 the parliament in due time. So the governmental
3 decree has been approved yesterday and will be
4 submitted to the parliament very soon. The draft
5 of amendments in Labour Code will be submitted to
6 the parliament during spring session.

7 Moreover, it is important to highlight
8 that as a member of ILO Georgia undertook a
9 commitment in promoting social dialogue in
10 country. To this end, as you are aware, a
11 Tripartite Social Partnership Commission was
12 established in 2013. The commission serves as a
13 forum for information exchange, consultations and
14 negotiations. Social pacts, tripartite
15 agreements and declarations, validation of
16 political documents and policy instruments
17 represent the outcomes of the Commission.

18 Since the establishment of the TSPC
19 there have been six meetings at national level.
20 Meetings resulted in important decisions such as
21 approval of roster of mediators, ratification of
22 ILO Conventions, and others.

1 So in order to -- for the social
2 partners to discuss labor-related issues laid
3 down in the strategic action plans a working
4 group under TSPC is operational since 2016 and
5 holds a number of meetings annually. For
6 example, such kind of meetings took place in 2019
7 as well, and the number of meetings was six in
8 total in 2019.

9 Regional social dialogue is also a
10 priority for the government and to this end
11 Tripartite Social Partnership Commission of
12 autonomous republic of Adjara was established.
13 The commission held three meetings in 2019,
14 adopted an action plan for 2019-20 and
15 established a working group.

16 Apart from that, mediation system is
17 in place and operational since 2013 and employers
18 and employees are given a mechanism to solve the
19 disputes free of charge, in short period of time
20 and without involvement of the court. The
21 mechanism is building trust between the parties
22 and prevents them from necessity of strikes. To

1 this date there have been 52 disputes and
2 majority of them were fully resolved. The
3 government is continuously working on improvement
4 of the existing mechanism.

5 Now to conclude, on behalf of the
6 government of Georgia let me once again express
7 our readiness and willingness to direct all our
8 efforts to building an efficient system in
9 compliance with international labor standards and
10 to ensure that decent working conditions are
11 available and accessible for Georgian workers.
12 The road ahead is quite long and challenging, but
13 we intend to keep balance so that all the
14 interests of all the parties are taken into
15 consideration and protected.

16 I would like to thank you for your
17 kind attention and ready to answer to your
18 questions. I thank you.

19 CHAIR BUFFO: Thank you very much, Mr.
20 Genadi, for your testimony. And, yes, we will
21 have a few questions. We'll turn to my
22 colleagues to begin the questions. Thank you

1 very much.

2 MS. PIOTROWSKI: Thank you for that.

3 So given broad new enforcement authorities for
4 inspectors under the law on occupational safety
5 and health and Georgia's history battling a
6 perception of corruption amongst inspectors, what
7 steps is the government taking to build the
8 confidence of employers that labor inspectors
9 will not abuse their authority? What protections
10 exist for employers against corruption and the
11 exercise of undue discretion on the part of
12 inspectors?

13 MR. ARVELADZE: We have here also the
14 Deputy Minister of IDP, Social Affairs and Health
15 who is with me, and she's also responsible in
16 covering labor issues under this ministry and
17 also responsible to oversee the responsibilities
18 of the Labour Inspectorate Department today. So
19 I will ask her to give floor and to answer.

20 MS. BARKALAIYA: Yes, if I may. Thank
21 you very much for the opportunity.

22 We realize that there is a very high

1 risk of corruption when it comes to the oversight
2 in general and especially oversight of
3 businesses, and that's why when we started
4 implementation of the occupational safety and
5 health law we have adopted internal policy.

6 We've purchased the body cameras. So
7 all labor inspection process, the entire process
8 is recorded by the body camera and is placed on
9 the server. And the process is transparent, so
10 if there are any questions from the side of
11 employer, we can always refer to the recordings.

12 Also there is an Anti-Corruption
13 Committee which consists of social partners as
14 well as our internal -- myself, deputy minister,
15 but also Labor Inspection Department, which
16 reviews the process on regular basis. Normally
17 it's -- the meetings are annual -- quarterly, but
18 if there is any specific information received by
19 any of the party, then the Corruption -- the
20 Anti-Corruption Committee is the one reviewing
21 the cases.

22 MS. LAURY: Thank you very much for

1 your testimony.

2 In your testimony today you've
3 described the new draft law on inspections that
4 would expand the authority of the Labour
5 Inspectorate body. Can you confirm that the
6 draft law provides the Labour Inspectorate the
7 authority to conduct unannounced inspections in
8 all sectors of the economy and monitor for
9 compliance with all internationally-recognized
10 worker rights?

11 And also you mentioned that you expect
12 this draft to be submitted to parliament very
13 soon and I wondered if you had any prediction or
14 expectation for when the bill would become law.

15 MR. ARVELADZE: Thank you for the
16 questions. With regard to the amendments that
17 will come from the parliament initiative; and
18 this will be submitted to the parliament for its
19 discussion, this will happen in the spring
20 session, parliamentary session of 2020. So in
21 coming months, two to three months, we'll have
22 already discussions launched on the expansion of

1 the amendments in the Labour Code.

2 With regard to the mandate that will
3 give the power to the Labour Inspectorates, as
4 you know, the current law, OSH law already allows
5 to start to implement the unannounced inspections
6 in all sectors, but in terms of the labor rights,
7 which we are now -- we have introduced in the
8 government, then has approved yesterday, which
9 will be submitted into the parliament for its
10 consideration, this already considers that
11 implementation body for the existing Labour Code
12 which consists -- which covers the labor rights.
13 Existing legislation also will be covered by the
14 Labour Inspectorate.

15 So we are -- this will be part of also
16 the labor inspection, but let me note here that
17 this will have a one-year transitional period
18 also, so the mandatory unannounced inspections
19 will be launched in 2021.

20 MS. LAURY: For labor rights?

21 MR. ARVELADZE: For labor rights, yes.

22 Because we -- I have mentioned that for OSH and

1 safety we already have these unannounced
2 inspections.

3 So for labor rights, as I said, it
4 will be -- unannounced mandatory inspections will
5 be launched 1st of January, 2021 because we need
6 some preparatory works to be done and this
7 preparatory works will be training/retraining the
8 existing labor inspectors as well as also
9 recruiting the new ones and also the new LLP.
10 This independent body also will need some time
11 before it is established also to be fully
12 operational.

13 So because of this, taking all this
14 into consideration, we need some transitional
15 period and then it will become fully operational
16 since 1st of January, 2021.

17 MS. MITCH: Thank you very much. The
18 AFL-CIO petition alleges significant instances of
19 employer interference in independent labor unions
20 including in state-owned enterprises. What steps
21 is the government taking to ensure that workers
22 can exercise their rights and that collective

1 disputes are effectively addressed including in
2 these state-owned enterprises?

3 MS. BARKALAI: Yes, that's a very
4 good question. Well, as the employer
5 interference into the professional unions in the
6 AFL case was actually submitted 10 years ago.
7 Since then, as we said, since 2013 in fact there
8 were numerous legislative changes done to the
9 Labour Code to improve the rights including the
10 collective redundancy cases in the Labour Code.
11 And the Labour Code is in fact protected -- or
12 the rights stated under the Labour Code are
13 protected by the court system at the moment.
14 That's why we are currently implementing the
15 changes into the Labour Code to establish a
16 proactive monitoring and oversight system of
17 Labour Code in form of labor inspection which
18 will be effective in 2021.

19 However, given the high priority of
20 those two cases we have conducted, the labor
21 inspection has conducted visits on occupational
22 safety and health in one of these facilities and

1 businesses in 2019, and the second one is planned
2 for 2020. And while doing inspection on
3 occupational safety and health we are also on
4 recommendation basis reviewing. And based on the
5 interest from the current owners of -- or the
6 employers of the company we have also -- we are
7 also reviewing the labor rights component based
8 on organic law Labour Codes.

9 So we will see what the results for
10 that will be and we will be developing
11 recommendations for -- after the inspection
12 period, which is planned for Quarter 1 of 2020.

13 CHAIR BUFFO: Thank you very much.
14 And I will ask what I think might be our final
15 question, unless there are any follow-up
16 questions.

17 So public comments submitted by Human
18 Rights Watch describes particularly dangerous
19 working conditions in the mining sector. What
20 kind of inspections or other actions has the
21 government taken in this sector? Thank you.

22 MS. BARKALAI: We don't have

1 statistics with us, and we can get back to you
2 with statistics, however, there have been very
3 intensive -- there has been intensive monitoring
4 of mining sector in general because it's
5 considered to be -- mining and construction are
6 the highest priority for labor inspection. So
7 all our efforts within first year of
8 establishment of labor inspection as an OSH
9 oversight body was focused on mining and
10 construction sector.

11 We have -- as you know, one of the
12 mining sites have been -- has been closed down
13 for approximately a year, a little bit under a
14 year to ensure safety and security of the workers
15 while the salaries of the employees have been
16 fully paid by the employer. Meanwhile, we've
17 been working with our international partners,
18 international experts from Germany, to do the
19 full-scale assessments of the occupational risks
20 in those particular mines where the highest risks
21 were identified by labor inspection. And
22 currently the same mining -- or the same

1 consultancy firm is recruited by the new owner of
2 the mines who is supporting the employers in
3 establishing occupational safety and health
4 systems and to equip occupational safety and
5 health systems in mines.

6 It continues to be a challenge, but
7 the challenge that we are addressing -- and we
8 are addressing together with employer in this
9 case and with their involvement.

10 MR. ARVELADZE: Just briefly to add on
11 it, we have the joint inspections. We have also
12 the joint decree by two ministers; this is the
13 Ministry of Economy and also Ministry of IDPs and
14 Social and Health, to have a monitoring system.
15 Jointly they enter to those mining companies,
16 enterprises and they monitor and inspect
17 together. This is one technical and supervision
18 -- technical and construction supervision agency
19 who technically checks the safety and also the
20 labor issues which is checked by the Labour
21 Inspectorate Department by now.

22 MS. BARKALAIYA: And there were cases

1 where we've suspended work of certain --

2 MR. ARVELADZE: Yes.

3 MS. BARKALAIYA: --certain mines when
4 the high risk was identified. And for several of
5 them they still have time to repair, to do the
6 repairs before the re-monitoring is done.

7 CHAIR BUFFO: Thank you very much for
8 the -- for both of your participation, both
9 deputy ministers, in this panel. We would like
10 to again thank you for traveling from very far
11 away to be here with us today.

12 And we'd now like to invite the next
13 panelist, Ms. Cassandra Waters from the AFL-CIO,
14 to please step forward.

15 Thank you again.

16 MS. WATERS: Hello. Good afternoon
17 again.

18 Chairwoman Buffo and members of the
19 Subcommittee, thank you again for the opportunity
20 to testify today.

21 The AFL-CIO first filed a petition in
22 this case in 2010 after the government of Georgia

1 embarked on a sweeping de-regulatory agenda that
2 abolished the Labour Inspectorate and weakened
3 many critical worker protections.

4 Although the current government
5 inherited rather than caused many of the problems
6 in Georgia's labor relations system, the
7 government has not yet established laws and
8 practices that afford internationally-recognized
9 worker rights. There is still no Labour
10 Inspectorate with a broad mandate to investigate
11 worker rights violations.

12 Workers face dangerous conditions on
13 the job and cannot effectively organize to demand
14 fair treatment. Independent unions have been
15 under attack for a decade. Employers, both
16 public and private, fire, harass, intimidate
17 union members with impunity, refuse to bargain in
18 good faith, disregard existing collective
19 bargaining agreements, and establish parallel
20 yellow unions to undermine independent worker
21 organizing.

22 In our last submission we identified

1 nine cases where independent unions have ceased
2 to exist or have been rendered effectively
3 defunct due to sustained anti-union tactics. In
4 three cases rights violations are ongoing and
5 require urgent intervention. Employers, many
6 state-controlled, act with impunity against
7 organizing and this must be resolved before this
8 case is closed.

9 Georgia's current legal framework does
10 not afford internationally-recognized worker
11 rights. As result of U.S. pressure and
12 international pressure the Labour Code was
13 amended in 2013, however, key concerns remain
14 unaddressed, most critically the lack of a
15 government agency with a mandate to enforce all
16 labor laws.

17 The ILO has also drawn attention to
18 restrictions on the right to strike, a lack of
19 clear protections against anti-union
20 discrimination and the creation of employer-
21 dominated unions and regulations giving the
22 government the ability to halt collective

1 bargaining.

2 The new Occupational Safety and Health
3 Inspectorate established in September 2019 is a
4 positive development. In particular, we welcome
5 the fact that the inspectorate is an independent
6 entity with the authority to conduct unannounced
7 site visits, issue fines and suspend activity.
8 However, without the ability to address labor
9 rights in a comprehensive manner directly we fear
10 this will not be sufficient to address the root
11 causes of some of the serious health and safety
12 issues.

13 A recent report by Human Rights Watch
14 shows how workplace fatalities increased after
15 the government adopted its de-regulatory agenda
16 in 2006, and the work fatality rate in Georgia
17 remains above the pre-2006 average.

18 The report highlights the role
19 employer policies play in undermining health and
20 safety on the job, policies like imposing quotas
21 and penalizing workers who don't meet them and
22 adopting schedules where employees pull 12-hour

1 shifts for 15 days straight. The predictable
2 result is exhausted workers who cut corners. And
3 the report contains harrowing accounts of miners
4 who admit they don't follow procedures to avoid
5 losing desperately needed income and have
6 sustained preventable injuries.

7 Georgian workers need a Labour
8 Inspectorate that can meaningfully tackle these
9 root causes of deadly incidents. Without a broad
10 mandate over all labor rights including working
11 hours, it is hard to directly address business
12 practices that create unsafe conditions.

13 Further, Georgia's lack of a system
14 for enforcing labor law also leave aggrieved
15 workers with only one recourse, bringing
16 individual cases to court. This is not an
17 effective or efficient way to ensure justice.
18 Judicial proceedings are lengthy and expensive.
19 The vast majority of workers do not have the
20 resources to bring cases forward at all, let
21 alone effectively.

22 Unionized workers are more likely to

1 pursue legal redress, but unions don't have
2 sufficient legal staff to meet work demand
3 currently and ongoing union busting continues to
4 shrink these resources. Even when workers obtain
5 a judgment in their favor, it is difficult
6 getting fines or restitution paid. The current
7 regulatory regime does not ensure accountability
8 or allow workers to exercise internationally-
9 recognized worker rights.

10 Further, union leaders and activists
11 across industries have been targeted with
12 sustained campaigns of repression including
13 retaliatory dismissals, intimidation and
14 harassment. Employers openly collude with yellow
15 unions and pressure workers to join these
16 ineffective bodies that do not meaningfully
17 advocate for their interests.

18 Over the last decade the AFL-CIO
19 tracked nine cases where independent unions have
20 been busted and are now either fully or
21 functionally non-existent.

22 The railway workers union is still

1 under attack by management at the government-
2 owned Georgia state railway. In 2014 the union
3 had 6,200 members. It now has 300. The
4 sustained attacks have successfully blunted
5 demands for better working conditions and left
6 railway workers without the protections of a
7 collective bargaining agreement for four years.
8 Workers report management continue to fire union
9 members and leaders, explicitly forbids new
10 workers from joining the union, openly encourages
11 membership in an employer-dominated union, and
12 interrogates workers who interact with the union
13 on social media. The company has repeatedly
14 refused to negotiate a new collective agreement
15 after the old one expired in 2016.

16 Under the new occupational safety and
17 health law employees have the right to elect
18 health and safety representatives at their
19 workplace, however, railway management organized
20 the election in which only candidates for the
21 employer-dominated union were allowed to run.

22 The GTUC-affiliated independent union

1 at the state-owned Georgia post remains in crisis
2 with its few remaining members afraid to publicly
3 engage with the union. The union still has not
4 office and the union's leader is not allowed in
5 the main office building. The union has several
6 open lawsuits trying to vindicate the rights of
7 its members and leadership, but none have been
8 resolved as of now.

9 Private employers appear to be
10 emboldened by this climate of impunity.
11 Unfortunately, we fear that as government
12 enterprises openly retaliate against workers who
13 form or join independent unions and refuse to
14 bargain in good faith private actors feel free to
15 adopt the same practices. The government has not
16 yet addressed ongoing violations of labor law,
17 particularly systematic anti-union
18 discrimination.

19 Georgia must take concrete and
20 continuous steps to bring law and practice in
21 line with internationally-recognized worker
22 rights. This must include the establishment of

1 Labour Inspectorate with a full mandate to
2 investigate all worker rights violations and
3 effective efforts to ensure accountability for
4 employers that retaliate against independent
5 unions and activists.

6 Thank you for your time and I will be
7 happy to take any questions.

8 MR. O'DONOVAN: Ms. Waters, thank you
9 very much for your testimony and for being here
10 today. I'd like to focus my question a little
11 bit on the issue of the Labour Inspectorate.

12 You state in your testimony that there
13 is an inability to approach inspections in a
14 comprehensive manner given the very, very limited
15 authority of the inspectorate that exists today.
16 However, the government here today has described
17 draft legislation that would dramatically expand
18 the authorities of the inspectorate by providing
19 for unannounced inspections and sanctions across
20 all the internationally-recognized worker rights
21 in all sectors of the economy.

22 Does that address your concerns or do

1 you feel that there is more that needs to be
2 done?

3 MS. WATERS: So, and I'll have to
4 expand on this in a prehearing brief. My
5 understanding is that there is some discussion of
6 opening the mandate for -- my understanding is
7 that the health and safety inspector already has
8 the ability to do things like conduct unannounced
9 site visits and issue sanctions, which is good.
10 And the real issue right now is about the breadth
11 of the actual issues that they're allowed to
12 tackle.

13 My understanding is that there is
14 upcoming legislation that covers some additional
15 issues, but not all of them. And I think one of
16 the critical ones that I -- from my understanding
17 is still missing; and I will have to correct this
18 because I don't -- I will have to go and look for
19 the record. My understanding from what our
20 partners have said is that anti-union
21 discrimination, for example, is not part of the
22 new reform package. I will have to go back and

1 check to make sure though because I want to make
2 sure I have the right information. So I can
3 follow up in a post-hearing brief.

4 But generally speaking I think our
5 issue is mainly with the breadth of what they can
6 cover, because you need to look at labor rights
7 comprehensively and right now as -- I think a
8 great example with health and safety is the fact
9 that you can't directly go out -- there's no
10 direct regulation over working hours, which is
11 driving a lot of the abuses in the sector.

12 MR. O'DONOVAN: Thank you very much
13 for that, and your additional thoughts in a post-
14 hearing brief would be very welcome. As I
15 understand your concern though it addresses
16 whether and how the government could inspect --
17 could enforce freedom of association laws, is
18 that correct?

19 MS. WATERS: Exactly. The mandate
20 over what the scope of violations that they're
21 allowed to directly -- to issue fines and
22 investigate.

1 MR. O'DONOVAN: Thank you.

2 MS. LAURY: Thank you, Ms. Waters. in
3 your testimony you also highlighted a number of
4 instances of employer interference in union
5 activity including alleged anti-union dismissals
6 and lack of meaningful bargaining at the Georgia
7 state railway.

8 Do you have any recommendations for
9 what the Georgian government can do to address
10 these type of issues?

11 MS. WATERS: Yes. Well, first of all,
12 amend the law so that there is an actual ability
13 to go in and address these holistically. I think
14 as a manager -- it is a state-owned company, so I
15 think that there could be efforts to train
16 management in proper labor relations, looking at
17 sort of management of management. Forgive me.
18 I'm not articulating this particularly well, but
19 looking at how they incentivize managers, how
20 they're trained on labor relations, what sort of
21 considerations go into decisions around
22 promotions, looking at how you can incentivize

1 productive industrial relations to be something
2 that is actively accounted for in like their own
3 internal human resources management.

4 MR. PAJUSI: Ms. Waters, the
5 government of Georgia says that the meetings and
6 activities of the Tripartite Social Partnership
7 Commission serve as a forum to promote compliance
8 with international labor standards in Georgia.

9 What is your view of the TSPC and its
10 effectiveness?

11 MS. WATERS: So my understanding from
12 my -- our partners on the ground is that it meets
13 very infrequently, and I will have to again
14 follow up in a post-hearing brief. My
15 understanding is that in the last six or seven
16 years that it has met a total of six times. I
17 know that it's supposed to -- I think it's
18 supposed to meet three times a year.

19 I mean I think that there needs to be
20 probably a more holistic approach to revising how
21 tripartite consultations are managed, and
22 generally speaking I don't think this has been a

1 particularly -- viewed as a particularly
2 effective avenue, but I can consult with our
3 partners and let you know further.

4 MR. PAJUSI: Thank you.

5 CHAIR BUFFO: So thank you very much,
6 Ms. Waters, for your testimony.

7 And with that, we will conclude
8 today's panel, and today's hearing actually. The
9 hearing is not over. We have an entire full day
10 tomorrow, but I'd still like to do this.

11 (Bangs gavel.)

12 CHAIR BUFFO: Today is closed. Thank
13 you very much for everyone's participation.

14 (Whereupon, the above-entitled matter
15 went off the record at 4:39 p.m.)

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In the matter of: US Generalized System Preference

Before: US Trade Representative

Date: 01-30-20

Place: Washington, DC

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