

NATIONAL ADVISORY COMMITTEE  
FOR LABOR PROVISIONS OF FREE TRADE AGREEMENTS (NAC)

U.S. Department of Labor  
200 Constitution Ave. N.W.  
Washington D.C.

Thursday September 27, 2012  
MINUTES OF MEETING

**Committee Members Present:**

Public Representatives

Kimberly Ann Elliott, Center for Global Development  
Kevin Kolben, Rutgers University, Business School  
Raymond Robertson, Macalester College, Department of Economics

Labor Representatives

Cathy Feingold, American Federation of Labor & Congress of International Organizations (AFL-CIO)

Business Representatives

Adam B. Greene, United States Council for International Business (USCIB)  
Darryl Knudsen, Gap Inc.  
Ed Potter, Coca-Cola

Present Via Teleconference

Lance Compa, Cornell University, School of Industrial and Labor Relations  
Benjamin N. Davis, United Steel Workers (USW)  
Cindy Estrada, United Auto Workers (UAW)  
Ramon Ramirez, Pineros y Campesinos Unidos del Noroeste (PCUN)  
Anna Walker, Levi Strauss & Co

**Welcome and Introductions**

Acting Associate Deputy Undersecretary (AADUS) Eric Biel called the meeting to order at 10:04 am.

Mr. Biel commented that every committee member was participating, either in person or on the phone. He noted that Acting Deputy Undersecretary (ADUS) Carol Pier would join the committee for the afternoon session, which would focus on Free Trade Agreement submissions and implementation. Mr. Biel thanked Ms. Elliott for her work as chair. Mr. Biel also thanked the Office of Trade and Labor Affairs (OTLA) team who worked on putting the NAC together.

Mr. Biel then noted that, during the last NAC meeting, Former DUS Sandra Polaski was saying her farewells. She has settled into her new position at the International Labor Organization (ILO), and she sends her regards. ILAB has been working closely with her and the ILO on a number of issues. Acting DUS Pier has stepped seamlessly into her role, and Mr. Biel now has the title of Acting Associate DUS.

Mr. Biel highlighted some work ILAB has been doing that would not be formally addressed in the meeting. The Office of Child Labor, Forced Labor, and Human Trafficking (OCFT) and Secretary Solis announced the release of three major annual reports/lists. The report on Worst Forms of Child Labor for the first time includes country assessments and categorizations. The Trafficking Victims Protection Reauthorization Act (TVPRA) report also was released, and some contract-based reports will be coming out about specific sectors. The Office of International Relations is very busy with multilateral issues as well.

Mr. Biel offered to invite Marcia Eugenio, Director of OCFT, to speak at the committee meeting if any member was interested. Mr. Potter expressed interest, so the OTLA team began making arrangements.

Mr. Potter noted that President Obama gave a speech about human trafficking at the Clinton Global Initiative (CGI) and unveiled a new executive order regarding human trafficking. Mr. Potter said that, from a company perspective, he would like to know sooner where reports identify trafficking or forced labor. Mr. Biel stated that, while the Department of Labor was involved, the lead on the initiatives announced at CGI was Department of State. The initiatives deal with trafficking in the context of federal contracting. The impetus was in part the 150<sup>th</sup> anniversary of the Emancipation Proclamation.

Ms. Elliott thanked the committee and especially Paula Albertson (OTLA) and her team for making her job easy. Ms. Elliott invited all of the visitors in the room to introduce themselves. The visitors were: Mary Berger with Washington Trade Daily, Dan Arp (ILAB), Tim Wedding (USTR), Eva Sidleman (law student at UDC), Sandi Soderstrom (ILAB), Ryan Carrington (ILAB), Crispin Rigby (ILAB), Brenna Dougan (ILAB), Gloria Della, Kathy Schalch (ILAB), Halima Woodhead (ILAB), Joshua Kagan (ILAB), Everett Murtagh (ILAB).

Ms. Elliott noted that the next order of business was to vote on whether to approve the minutes. Mr. Greene moved for a vote, the motion was seconded by Mr. Robertson and Mr. Potter. The vote was unanimous to approve the minutes from last session.

Ms. Elliott turned over the symbolic gavel to Mr. Robertson.

Mr. Robertson thanked Ms. Elliott for her service and Ms. Albertson for her work on the NAC. Mr. Robertson emphasized that he wants everyone to have the opportunity to be heard and encouraged the committee members on the phone to speak up. Ms. Albertson

invited the members on the phone to introduce themselves. Mr. Ramirez, Ms. Estrada, and Mr. Compa introduced themselves.

Mr. Robertson opened up the discussion of North American Agreement on Labor Cooperation (NAALC) issues. He explained that there was a NAC Subcommittee that met and put together recommendations and that also had a separate background paper.

Mr. Compa explained that the basic working document is the called the Subcommittee's "one-pager," a discussion draft that sets out the general framework for approaching the issue of the NAALC. In addition to the Subcommittee one-pager, Mr. Compa did a background paper, and he emphasized that the background paper was just his, but that it had generated good discussion in the Subcommittee. He underscored that there are disagreements on some points, so it is not offered as a consensus or something the Subcommittee has approved.

Mr. Compa explained that the Subcommittee one-pager discussion draft lays out some ideas for some degree of revitalization of the NAALC. Mr. Compa stated that the revitalization should be done in concert with North American partners in the NAALC. Mr. Compa stated that, although the question of TPP looms over all of this, it shouldn't deter the committee from addressing the question of the NAALC. Mr. Compa noted that the recommendations are at the bottom, and explained that, if we couldn't go back to a full blown Secretariat, there are ways to use information technology to create a virtual Secretariat that can provide research and analysis on important topics to aid understanding of labor law and labor markets in North America. Mr. Compa stressed the importance that the NAALC is not limited to just traded sectors and that he thinks that should be preserved. Mr. Compa also discussed strengthening the submissions process by strengthening cooperative activities and creating action plans to deal with problems that arise.

Mr. Compa then summarized the background paper. He stated that the thesis was that the NAALC is still valuable and even if all of the institutional accompaniments cannot be preserved, the agreement itself should be preserved. He noted the special relationship between North American countries: Canada and Mexico share borders with the US and are by far the biggest trading partners with whom the United States has a Free Trade Agreement (China is a separate question). Mr. Compa highlighted the utility of approaching North American trade in a singular way and giving it priority. He would like the NAALC to be integrated into the overall responsibilities of the OTLA office, which should staff who are NAALC specialists with facility in Spanish (and French would be an extra step) so that they could hit the ground running when it comes to NAALC issues.

Mr. Compa stressed the unique features of the NAALC: the protection of migrant rights (one of the 11 labor principles that go far beyond ILO core standards); the welcoming submissions process (not required that government initiate the process, public hearings on submissions); the Evaluation Committee of Experts (never used); and the Secretariat (professional) staff to serve the Commission, helpful research outcomes on labor markets

and labor law). Mr. Compa said that although the NAALC and Secretariat stagnated to some extent, it is still a viable forum to raise labor issues and submissions are still coming in. Thus, there is a case for reviving.

Mr. Compa discussed the cooperative activities under the NAALC. He stated that in the early years there was too much government involvement and not enough civil society, but he noted that that was probably the fault of civil society because of the original attitudes against NAFTA and the NAALC. He thinks that if a new program started that sought to bring in civil society, they would now be responsive.

Mr. Compa then discussed the Secretariat. He stated that there is a case to be made for a well-functioning Secretariat. It still would require an executive director and a small staff, but they wouldn't necessarily have to be in the same place. There is still rent being paid on the empty office, and if there is an efficient way to put people in that office, that could be beneficial. He noted that he was in Dallas where the Secretariat was before, and he noticed that personal relationships yielded valuable work product, more so than if everything was done online. Mr. Compa explained that we must be more careful in selecting staff, especially the executive director. He set out some possible prerequisites in his background paper. Mr. Compa discussed the idea of giving the Secretariat some degree of independence for initiating research projects. He cautioned that we don't want a rogue Secretariat, so this would require careful consideration and would need to have coordination with governments. Mr. Compa reiterated again the critical importance of the migrant workers issue in the NAALC process.

Mr. Robertson then turned the discussion over to the Trans Pacific Partnership (TPP) update, noting that the NAALC discussion would be informed by the update.

Mr. Biel stated that Ms. Eugenio would join the meeting at 3:30 pm. Mr. Biel also mentioned that because at least a few members wanted to hear about ongoing developments of Mexican labor law reform, Mr. Biel, Ms. Pier, and Greg Schoepfle (OTLA Director) were prepared to do that.

Mr. Schoepfle gave an update about TPP negotiations: the 14<sup>th</sup> round of negotiations in Leesburg, VA was completed a few weeks ago. Mr. Schoepfle explained that progress has continued to be made on the labor chapter, but there is still much more work to be done. The next round of negotiations, which will include Mexico and Canada, will be in December in Auckland, New Zealand, and between now and then, the text will be shared with Mexico and Canada. Mr. Schoepfle said that the week before, the US held hearings in an interagency process to get input from stakeholders about Mexico and Canada joining. The DOL internal process is to follow the same process that we followed for the Trade Promotion Authority. USTR is mimicking this process. Mr. Schoepfle stated that Meaningful Labor Rights Reports will be done to review each party's labor laws and enforcement, which may yield opportunities for the committee members to offer their input. Mr. Schoepfle stated that, often in negotiations, the US will work with countries to bring them onboard in a manner where they will be able to accept obligations. While the labor obligations have not been finalized yet, they will likely be "Peru plus"; they will be

obligations to have your laws meet international standards and to enforce those laws. It will be more than the NAALC (just enforce laws). Mr. Schoepfle stated that, if the committee has ideas of how to work with Mexico, Canada, and other partners to help them meet obligations in a timely fashion, he would like to hear their ideas. Mr. Schoepfle also raised a question to consider: does the NAALC have a role to play in the context of a larger agreement? Mr. Schoepfle explained that in the TPP, many members are part of ASEAN or other groups, and that because Mr. Compa talked about the important relationship between North American countries, would it make sense to have a North American regional group within the TPP? If so, Mr. Schoepfle followed up, how would we incorporate that in a way that will work?

Mr. Kolben asked what the meaning of “plus” in “Peru plus” meant. Mr. Schoepfle responded that at this point, the final text is not set, but that by Peru plus, he meant that the labor obligations will not be less than the Peru standard (meeting international standards and enforcing laws). Mr. Schoepfle stressed that the scope of what laws and principles will be covered is still open, but it will include the fundamental ones.

Ms. Feingold noted that she had not heard “Peru plus”. She stated that she had not seen much difference in negotiations, despite the fact that TPP was supposed to encompass improved standards. She offered to send out AFL position statements concerning Mexico and Canada. She also noted that the AFL is concerned about the Mexican labor law reform that was occurring the day of the NAC meeting. She noted that AFL had begun discussions with the Organization for Economic Co-operation and Development (OECD) president, who supported reform even though he promised he wouldn’t support flexibilization. Ms. Feingold also asked for more information on the labor rights review reports, including timeline and what countries will be covered. She noted a lot of confusion among members about what TPP means for North American Free Trade Agreement (NAFTA). She also expressed her opinion that the submission process should be part of this conversation.

Mr. Ramirez requested that Ms. Feingold send the materials she referenced to the committee members.

Mr. Schoepfle noted that there are three types of reports: ones that assess impact on US employment, the meaningful labor rights reports that analyze labor laws and enforcement, and the listing of laws in partner countries to eliminate the worst forms of child labor. The report Mr. Schoepfle was referring to would review labor law and practice, and in the case of Mexico, clearly labor law reforms would influence what OTLA says in the report. Ms. Feingold asked about the timeline of the reports. Mr. Schoepfle responded that there is no formal process in place, but practically these reports have been included in the implementation package that is sent to the Hill. Mr. Schoepfle said that the earlier OTLA finishes the reports, the more useful it would be. Mr. Schoepfle did not yet know if the initial reports will be publicly available, but he stated that OTLA welcomes the input of the committee members and that OTLA is in the process of analyzing the eight other parties and trying to identify areas of concern.

Ms. Feingold sought to clarify that originally the notion of TPP was that countries could not opt out of obligations. She stated that she assumed OTLA would want to look at labor issues for countries like Vietnam. She offered to send information about Vietnamese law, and she encouraged OTLA to do the reports sooner rather than later.

Ms. Albertson highlighted that OTLA is conducting ongoing monitoring in all Free Trade Agreement (FTA) countries and all TPP countries. She emphasized that OTLA appreciates any information the committee members may have and that if the members send information to her, she can pass it on to the right people.

Mr. Robertson asked if other Subcommittee members had anything to add about NAALC, TPP, or Mexico's labor law reform.

Mr. Ramirez asked what was stalling the appointment of the Secretariat. He stated that there are some serious issues for which the Secretariat could be useful, especially migrant rights. Mr. Schoepfle responded that the Secretariat was suspended/temporarily closed in 2010, and following that, there was an announcement from the Council of Ministers and a direction to the NAO offices to analyze how to address improving the function of the NAALC.

Mr. Schoepfle noted that the Secretariat had dwindled and there were leadership problems, and that at that point, the staff other than two or three people had already moved on. Mr. Schoepfle stated that the NAOs had met sporadically over the period to discuss what to do but had not come up with a final solution yet. He stated that the NAOs were currently exploring whether there are options to sublease the office space and recover some of the rent. Mr. Schoepfle highlighted the financial problems with the long term leases, high cancellation penalties, and a former executive director's waiver of right to immunity at signing. Mr. Schoepfle concluded that the first priority is to reduce some of the financial burden of paying rent, and then to engage in some cooperative activities through a virtual framework between NAOs.

Mr. Davis (via phone from Mexico) commented on the Mexican labor law reform. He stated that it was voted out of committee the day before and he finds it very disturbing, especially in the TPP context. He stated that this is a derogation in capital letters. He noted that the issues of wrongful dismissals, subcontracting outsourcing, pay by the hour, temporary contracts and transparency have been concerns to the US and Canada. He commented that there was originally some positive language but that has been taken out. Mr. Davis concluded by saying that there is very little improvement in critical areas and significant movement backwards in individual employment protections. Mr. Davis also commented that this is clear evidence that the way Mexico is preparing itself for entry into TPP is to reduce wages and standards to be competitive with lowest wage countries like Vietnam.

Mr. Biel asked Mr. Davis to clarify the process for the Mexican labor law reform. He asked whether the PRI amendments to the PAN proposals had been accepted and the status of action by lower house this week and senate under fast-track procedures. Mr.

Biel also noted that ILAB had received concerns from the AFL-CIO and other organizations as well as a letter from 10-12 House members to Secretary Clinton. Mr. Biel stated that ILAB is prepared to reach out to counterparts in the Government of Mexico regarding TPP, but it is not likely that there will be an intervention on behalf of the US Government as a whole.

Mr. Greene asked if the assessment by OECD can be shared. Ms. Feingold said she would send a letter with all the Mexico information.

Mr. Davis stated that Gerrilla of OECD has been publicly attacking the Mexican teacher's union and it is not the first time he has done this.

Ms. Albertson asked Mr. Davis to clarify whether the transparency clauses had been taken out of the proposed law's text. Mr. Davis responded that they had been and that the legislators insisted on taking out all proposals related to internal conduct of unions. He stated that the bill is essentially a labor market flexibilization package that's weakening individual protections.

Mr. Robertson invited other comments from the Subcommittee. Mr. Greene emphasized the problem with discussing solutions for the NAALC is that the TPP too broadly affects the NAALC to discuss NAALC like it is a distinct process.

Ms. Elliott stated that the idea of the "one pager" was to identify things that could be done inexpensively in this period of uncertainty. Ms. Elliott requested a vote of agreement on the "one pager" so that the committee could forward it on to ILAB as recommendations. Ms. Elliott proposed to add a parenthetical that the ideas in Mr. Compa's background paper are ideas not necessarily endorsed by the committee, along the lines of "Mr. Compa's paper has details of how improvements could be made in the selection process".

Ms. Feingold stated that the NAALC is a very important space to keep open and strengthen. She stated that without this space, it is difficult to create discussion on Mexico about anything other than security concerns. She also noted that the security funding coming out of the Department of State has not been helpful and that the more the US funds security forces, the more they're being used to suppress labor rights.

Mr. Davis emphasized the need for assistance in the labor field and rule of law issues in Mexico, but he does not think that that is happening and the situation is growing worse.

Mr. Knudsen asked to hear from OTLA about the pros and cons to the approaches outlined in the one-pager. Mr. Schoepfle responded that he feels comfortable with them, as they are basically continuing the efforts that OTLA has been engaged in. Mr. Schoepfle noted that he was not sure how the changing administration in Mexico will affect the people that participate in the NAO. He welcomed specific suggestions from the committee, as the entry into TPP is a concrete opportunity to engage with Mexico on common issues of interest, such as through cooperative programs.

Mr. Schoepfle stated that the virtual Secretariat is de facto happening and that the NAOs have good communication with each other. Mr. Schoepfle said that in terms of the submission process, OTLA has had a renewed flow of submissions under FTAs. He stated that he thinks the process is working and that whether they decide to hold a public hearing depends on the specific submission and whether it would be useful. Mr. Schoepfle stated that OTLA has been increasing staff to accommodate the increased workload and to handle submissions in a timely manner.

Ms. Albertson noted that if OTLA has tripartite stakeholders on record, OTLA can demonstrate to Mexico and Canada that they have asked for input and received it, which would show that OTLA is making progress. Mr. Schoepfle said that part of the agreed plan of the NAOs was to reach out to stakeholders, so having the committee on record would enable OTLA to show that it has engaged.

Mr. Greene noted that another factor that may come up regarding TPP is US – Central America – Dominican Republic Free Trade Agreement (CAFTA-DR) technical cooperation. He mused that technical cooperation with Mexico may be more relevant with CAFTA-DR than with other TPP countries. Ms. Albertson noted that technical cooperation in Mexico has been mostly smaller exchanges and not large projects like in CAFTA-DR countries. Ms. Albertson stated that she thought Mexico would prefer to be somewhat distinguished in that way.

Mr. Robertson observed that the conversation seemed to be gravitating toward a vote as to whether the committee should endorse the recommendations of the NAALC Subcommittee. Mr. Greene noted that the recommendations are all caveated by the TPP, but he thought a vote would be appropriate. Ms. Elliott clarified that they would take out the “discussion draft” language and add “report of committee” if approved.

Mr. Robertson asked for a motion. Mr. Kolben motioned. Mr. Greene seconded. The vote to endorse the recommendations was unanimous.

The committee agreed to move to the next agenda item and not have a break. Mr. Robertson turned the discussion over to the web consultant presentation. Mr. Robertson noted that there was a document sent out to members that was a discussion guide.

Mr. Arp introduced himself as the ILAB website staff person, and he introduced Katya Albanese and Rebecca Skipper from Concepts, the company helping with the website redesign. Mr. Arp noted that the Committee’s feedback was instrumental. Ms. Albertson noted that ILAB’s hiring of staff to address the website shows that the committee members were heard and that ILAB is working to address their comments. Mr. Robertson said thank you.

Mr. Arp stated that they have conducted focus groups with staff to discover what message they want to get out through the website. Mr. Arp asked the committee to discuss what they expected from the website.



Ms. Skipper introduced herself and started the discussion questions by asking how the committee members would describe what ILAB does to an acquaintance not in the labor field. Mr. Greene said he would say that it is DOL's international division. Ms. Skipper asked what his response would be if the acquaintance asked why DOL had an international division. Mr. Greene said he would say that it is to assist other countries with their labor laws. However, Mr. Greene said it is unlikely that someone not in the labor field would want to know about ILAB. Mr. Greene said that the information that would be useful to companies would be what is going on in each country, which sectors have engagement, whether there is capacity building at the factory level or supply chain mechanisms, and which programs the US Government is backing in each country.

Mr. Knudsen would say that DOL has an international division because the global economy is interconnected, people care about labor conditions, and trade agreements have labor provisions. He would say that ILAB is the agency responsible to make sure those expectations are followed and that it also works with countries to help everyone improve in the practice of how labor laws are respected.

Ms. Feingold stated that the labor community does not use the website very much because there isn't enough updated information. She stressed that the labor field is very fast moving. Consequently, she continued, ILAB must decide if it has the staff and capacity to keep the website up to speed so that it's useful for stakeholders and if it does not, it should just stick to basic information that is crisp and easily accessible. She noted that the US Government position documents and submissions are not easy to find.

Ms. Albertson noted that the website does get updated the day that OTLA makes a decision regarding a submission and that the website has submission summaries, decisions to accept, and public reports. Ms. Feingold stated that she gets asked a lot for archived submissions, especially Mexican submissions. Mr. Robertson also stressed that archiving is very important. Mr. Greene stated that it would be helpful to have links to international law. Ms. Albertson said that they were in the process of trying to find the countries' official websites to link to laws.

Mr. Knudsen asked what type of audience the ILAB website is trying to cater to. He noted that it is hard to speak in one voice and have appropriate content for all audiences.

Ms. Skipper asked who ILAB's main stakeholders are. Mr. Kolben stated that, from a university standpoint, graduate students are looking for complex real information and data while undergraduates are looking for more accessible information. Mr. Greene stated that the main stakeholders are labor, private sector, and researchers and noted that the structure of the NAC is a good framework. Mr. Robertson underscored Mr. Kolben's point about data.

Mr. Robertson asked if there are public data sets generated from studies being done, such as about the cocoa sector. He also noted that a purpose of the ILAB website should be to increase the prominence of ILAB's activities and to prominently display the

accomplishments because ILAB is underappreciated. Ms. Skipper agreed and stated that she has been hearing about the need to put a human face on ILAB's activities. Ms. Feingold stated that other governments are also interested in the information on ILAB's website, especially governments that have pending submissions.

Ms. Feingold suggested that "Justice for All" (an AFL-CIO publication) is a good place to link to for students. She also noted that LRO's (Labor Rights Organizations) often have to submit to human rights reports and that many tourists traveling to a country would be interested in the labor situation in that country. She noted that that would be resource-intensive. Ms. Elliott suggested linking to State Department Human Rights Reports, which would be less resource intensive. Ms. Elliott stated that the resources available on the ILAB site should tie in to ILAB's mission: to support US international engagement on labor issues, technical assistance, enforcement through submission process, and research analysis. Ms. Feingold stated that former DUS Polaski was pushing ILAB into economic policy, and ILAB participates in G20, labor ministerials, OECD, and IAMCL, and the website should reflect that and show ILAB's voice. Mr. Robertson noted that the web pages related to the NAC were very good.

Ms. Feingold noted that she gets the DOL newsletter but it rarely includes much about ILAB. She asked if ILAB could send out its own updates. Mr. Greene agreed that that would be good. Ms. Albertson said that now that Mr. Arp is part of the staff, his focus is not just on the website but also on ideas such as the newsletter. Mr. Greene noted that setting up the newsletter would give a good idea of who ILAB's stakeholders are based on who signs up. Mr. Robertson said that it would also be helpful for ILAB to include other international labor related news, not just ILAB's own activities. Mr. Potter stated that the newsletter does not have to be extensive; he gets a weekly email from Center for Business and Human Rights that gives 1-sentence descriptions and links, organized by region and subject. Ms. Albertson asked if the committee members would be willing to test the newsletter before it was available to the public. Mr. Robertson agreed.

Ms. Skipper asked what sites the members use for up-to-date information. Mr. Robertson noted that he is very specialized, but that he uses the Bureau of Labor Statistics website for the data sets and background. He noted that there is a real shortage of international employment data. Mr. Potter mentioned the Business Human Rights Resource Center. Mr. Kolben mentioned the Wall Street Journal. Mr. Knudsen said he uses standing alerts from Google on human rights and labor rights. Ms. Feingold noted that Solidarity Center does daily compilations of all labor rights stories in the press. Mr. Robertson stated that World Bank and Interamerican Development Bank have good research. Mr. Potter noted that OECD, ILO and World Bank have information. Ms. Elliott said that the ILO is very important but it's not a very good website, so don't use it as a model; Mr. Potter agreed. Ms. Feingold suggested to ask the division heads what they think is important, because she stated that, for example, Mr. Shepard of OIR probably does important things that she doesn't know about. Mr. Knudsen suggested that there be two tracks of level of information: the track where you don't need to be an expert to understand and the track where experts would understand the data sets and information. He suggested there be two homepages to filter the users to the appropriate data. Mr. Robertson thanked Ms.

Albertson and Mr. Arp for their hard work and for listening to the committee. Ms. Albertson reiterated that if the committee members have ideas in the future to please send them.

At 11:55 the committee broke for lunch.

After the break, the committee began to hear about FTA administration.

Ms. Soderstrom (OTLA) introduced herself and summarized ILAB involvement in Peru. She explained that, from September 9-19, she and Mr. Everett Murtagh (OTLA) traveled to Peru for a technical exchange related to labor inspections under the Peru Trade Promotion Agreement. Ms. Soderstrom explained Mr. Murtagh's experience as a labor inspector and described the exchange: Mr. Murtagh shared the US labor inspection experience and lessons learned, and the delegation learned more about the reality of the Peruvian labor inspection system by visiting three regions, attending inspections, and meeting with labor inspectors and government officials, both in the national ministry and in the regions. Ms. Soderstrom signaled OTLA's commitment to continued engagement with the Government of Peru and, pending funds, additional technical exchanges focused on labor inspection capacity building.

Ms. Soderstrom then explained OCFT's project in Peru, called Proyecto Semilla, which is a \$13 million, four-year project in the Andean regions of Peru. The project is designed to combat child labor by infusing new technologies that replace child labor on family farms and by providing direct educational support to children. Mr. Potter asked for an example of a new technology, and Mr. Murtagh cited the example of a mini thresher that does the job of multiple children.

Mr. Kagan (OTLA) introduced himself and discussed the public report on the Peru SUNAT-SINAUT submission, which OTLA published on August 30, 2012. Mr. Kagan explained that the submission was filed by a union of tax and customs workers who alleged that their employer SUNAT was not fulfilling its obligations under the Peru Trade Promotion Agreement as they relate to collective bargaining. OTLA accepted the submission, conducted review, and found that SUNAT appeared not to have complied with the collective bargaining law in Peru. However, Mr. Kagan said, OTLA found certain ambiguities in the law that prevented a finding that the Government of Peru failed in its commitments under the Trade Promotion Agreement. He explained that, as the law stood, it was unclear whether arbitration was voluntary or compulsory and whether a public sector union could in good faith collectively bargain on economic issues. Mr. Kagan noted that the Government of Peru enacted laws to clarify the issue and has been putting them in place and training arbitrators so that the right of arbitration is actionable for workers. Mr. Kagan stated that, given these positive outcomes, OTLA did not request consultations. Ms. Albertson noted that the clarifying decrees came out the day before an OTLA delegation flew down to Peru for a fact-finding trip, and that trainings were put into place quickly thereafter.

Mr. Greene noted that the discussions under the submission seemed to have been fruitful but asked how the issues in the submission were linked to trade. Ms. Pier responded that the procedural guidelines OTLA must follow for acceptance of a submission do not require showing a link to trade. Ms. Pier cited the key portions of the guidelines, which require that the allegations, if substantiated, would constitute a violation of an obligation. Ms. Pier stated that those guidelines mandated acceptance of the submission, and then the analysis process began. Ms. Pier noted that OTLA did not reach the question of “manner affecting trade” because it determined that there was no violation of an obligation based on the factual review of the allegations. Mr. Greene clarified his understanding that if the preliminary inquiry is whether the allegations are subject to the PTPA, there should have been an investigation of the link to trade. Ms. Pier stated that the issue is not so clear cut, as a WTO case, *Bananas III*, gives a very broad interpretation of what can constitute “affecting trade.” Ms. Pier stressed that there was an allegation that the violations occurred in a manner affecting trade. When Mr. Greene asked about supporting evidence for that allegation, Ms. Pier explained that there is no robustness requirement for submissions and it is the job of OTLA to conduct factual research.

Ms. Albertson noted the difficulty with factually investigating the “manner affecting trade” issue before formally accepting the submission, because the investigation would de facto start the submission review before acceptance. Ms. Elliott noted that a potential concern is that the Peru submission may have signaled a broad view of what might be trade-related and that it could be considered to open the floodgates. Ms. Pier agreed that it was something worth considering. She noted that it was a decision not to use the Peru submission as a case of first impression to determine the parameters of the “manner affecting trade” issue. Mr. Potter asked about the *Bananas III* WTO decision. Mr. Kagan explained that *Bananas III* was a decision of the Appellate Body in 1997. The Appellate Body said the standard was “measures affecting trade” and that “affecting” should have a broad scope of application. Mr. Kagan explained that the decision stated that no measure should be excluded a priori as not affecting trade, and that each case must be looked at individually. Ms. Pier noted that the decision also stated that there should not be a quantitative or trade volume test to determine whether a measure affects trade.

Mr. Compa stated his understanding that the test for a submission was just “matters related to this Chapter”, not to trade. Mr. Compa cited article 17.5.5(c). Mr. Compa stated that if you insist on matters related to trade, then submissions could not cover child labor on bricks, because those bricks are not exported. Mr. Greene restated his concern that the trade requirement was explicitly in the negotiations and that it was there for a reason. He stated that if a good is not traded, the FTA process cannot reach it. Ms. Pier countered that “manner affecting trade” may have more interpretations than just whether a good is traded; for example, collecting customs is very arguably related to trade, because without trade, there would be no customs collection. Ms. Pier also noted that the goal of the submissions process is to move the ball forward on workers’ rights, and if OTLA had declined the submission, the progress in Peru would not have happened. Ms. Pier also stressed that OTLA had not set aside the trade requirement; it was just further along in the process than the submission reached.

Mr. Biel gave a summary of the Mexico submission. He explained that on November 14, 2011 OTLA received a submission from a Mexican electrical workers union and many other organizations, including the AFL-CIO. The submission argues that the Government of Mexico failed under articles 2 through 6 of the NAALC, beginning when an executive decree issued on October 10, 2009 closed a parastatal electrical company. OTLA accepted the submission for review on January 13, 2012 and published the decision to accept through a Federal Register Notice. An OTLA team began an intensive review process, which included a fact-finding trip to Mexico City. The case is extremely complicated, with a myriad of claims and documents involved. On June 25, 2012, OTLA published an extension of review time in the Federal Register. Mr. Biel summarized the allegations in five categories: 1) the legality of the executive decree; 2) improper application of substitute employer law criteria; 3) unlawful interference with union autonomy; 4) inadequate occupational safety and health inspections; and 5) due process violations at administrative and judicial levels. The submitters also filed a supplemental submission that provided details of the liquidation of the electrical company and the dismissal of pregnant workers, as well as reiterating allegations of a Government of Mexico media campaign to discredit workers that resulted in blacklisting. Mr. Biel stated that a key part of OTLA's analysis is whether the decree was improperly characterized as "force majeure," which would enable the Government of Mexico to subvert labor laws.

Mr. Biel noted that a parallel submission was filed under the NAALC with Canada and that the OTLA consulted with Canada in terms of how they would proceed. However, Mr. Biel explained that the two review processes are separate, and OTLA is proceeding under its own timeline and not comparing notes with regard to substantive conclusions. Mr. Biel stated that the team has largely completed its review and is moving to the drafting phase. Mr. Potter noted that this submission is one of the more complicated cases to come along. Mr. Biel agreed, noting the sweeping allegations of the scope of the executive and judicial branches. Ms. Pier stated that, in terms of legal analysis, the Mexico and Bahrain submissions are two of the most challenging submissions that OTLA has analyzed.

Ms. Feingold asked if OTLA had any sense of the Canadian timeline and whether OTLA was trying to coordinate. Mr. Biel stated that OTLA is not trying to coordinate, and while OTLA has a sense that they will be done before Canada, that is only based on infrequent discussions. Mr. Biel said that the coordination was primarily at the beginning of the review process and was especially for ease of interaction with the Government of Mexico.

Ms. Feingold mentioned the CDM case against the US Government in Mexico and reiterated the NAALC's focus on migrant labor. She also noted that the Service Employees International Union (SEIU) Alabama case was just accepted by Mexico. Mr. Potter stated his idea that there is a factually valid argument that migrant labor is encompassed by forced labor, because a very narrow slice of migrant labor is actually voluntary. Mr. Compa made the observation that he thinks the picture is more mixed and that there would have to be a border-by-border analysis, as he thinks much migrant labor

is voluntary. Mr. Potter noted that if there is a recruiting fee, that is bonded labor, and if workers have to give up their passports, that is trafficked labor. Mr. Kolben gave the example of a country that applies different laws to migrant workers than to domestic workers.

Ms. Pier stated that she thinks that labor provisions of the trade agreements apply to all workers in the country and that, if there is a law that is discriminatory or violates migrant workers' right to freedom of association, there is a violation of the freedom of association right guaranteed by the FTA. Whatever rights due citizens under the free trade agreement are due migrant workers. Mr. Kolben asked if wage differentials would be covered. Ms. Pier responded that the question presented would be acceptable conditions of work. Ms. Pier also added that another question would be whether the discrimination is based on migrant status or on a protected category such as race or ethnicity. Ms. Albertson pointed out that the current discussion illustrates how interesting the work is that OTLA is doing because so many of these issues still need to be clearly defined and many issues are fact specific.

Mr. Kolben noted that, in some contexts such as Jordan, it would be interesting to have an economic analysis to see what kinds of industries were created by the FTA and the impact those industries have. Ms. Pier stated that the United States does an economic impact analysis that is prospective, but it is all from the US perspective. She agreed that it would be interesting to do such an analysis from the Jordanian perspective.

Mr. Biel noted that OCFT has a report of the indicators of forced labor that was published. Ms. Feingold noted that many working groups are trying to move on forced labor. Ms. Feingold also stated that many of the NAC members are not receiving OCFT notices, invitations, and information and that they would like to receive them. Mr. Potter was getting them. Ms. Pier said she would pass along the information.

Mr. Robertson thanked OTLA for the update on Mexico and invited Mr. Murtagh to begin speaking about CAFTA-DR.

Mr. Murtagh introduced himself and then gave background information about CAFTA-DR. Mr. Murtagh explained that, surrounding the negotiations of CAFTA-DR, the US Government agreed to provide \$20 million in the first year and \$40 million in following years to build capacity for enforcement in the first year, split between labor and environmental enforcement. Mr. Murtagh reported that in the first year, \$19 million went to labor enforcement and \$1 million went to environmental enforcement. The following year, the funds were split more evenly. Mr. Murtagh stated that between 2005 and 2010, there were 22 technical assistance projects. An interagency group got together periodically to discuss divisions, and as a result, DOL handled issues relating to the Ministries of Labor, USAID covered labor justice, Department of State covered culture of compliance issues.

Mr. Murtagh explained that the White Paper Verification Project was mandated by Congress. He noted that the White Paper, written just before the vote on CAFTA-DR,

was divided into five different areas, including child labor. Mr. Murtagh stated that the analysis in the White Paper Verification Project showed quantitative progress, such as increases in budgets, inspectors, and inspections, but that gauging qualitative progress is more difficult. He noted that the Verification Project reaped a lot of information, but there is criticism that it is not specific enough in some areas.

Mr. Murtagh discussed the Cumple y Gana project, which created the Leylaboral electronic system that contains all labor laws in Central America and an inspection case tracking system. He noted that the project with workers' rights centers is scheduled to end in March 2013 but that there is a sustainability plan in place. Funding for the project was supposed to run out in 2010, but in 2011, it received some additional funding. Mr. Murtagh stated that they are now trying to bridge the project to Pathways to Prosperity funding. Mr. Murtagh stated that \$86 million for 5 years in multiple countries is not enough funding and that he thinks there should be a concerted effort to push for more funding.

Ms. Albertson added that DOL's CAFTA-DR report was sent to Congress and contains a detailed analysis of inspection systems. Mr. Ramirez requested a link to the report. He also asked whether DOL participated in any on the ground inspections. Mr. Murtagh responded that DOL used the information from its counterparts in the ILO, who were doing the Verification Reports.

Mr. Potter asked what the qualitative shortfalls are. Ms. Elliott sought to phrase Mr. Potter's question in terms of outcomes. Ms. Feingold noted that, from her perspective, a good example of the qualitative data is whether the response to a call for inspection from a worker is the same as the response when the employer requests the inspection. She also noted that, in countries like the DR, there are economic challenges, so inspectors will have workers pay for gas to accomplish the inspection. Ms. Feingold noted that Leylaboral was very concrete and useful. She said that she has qualitative concerns, and, for example, she would guess that what is happening in Honduras has qualitative shortcomings.

Ms. Pier agreed, stating that the gap between qualitative and quantitative is framing our approach to technical assistance. Ms. Pier explained that the reason ILAB is so actively engaged is that we want to be able to figure out where the capacity shortcomings are, not just the resource shortcomings. She noted that this is similar to ILAB's approach to assistance in Peru. Ms. Pier stated that, going forward, ILAB is having more intensive engagements with countries for technical cooperation because, when you really know the country and build relationships, that is when you get qualitative and quantitative increases.

Mr. Davis noted that, whenever one is doing an evaluation, it is important to go back and benchmark not just from the beginning of the grant or FTA, but from the history we have going back to the 1980s. For example, in Central America, USAID had a \$7 or \$8 million project with the goal of strengthening the Ministry. Mr. Davis is skeptical that enough progress has been made on this goal.

Ms. Elliott noted that at the Center for Global Development, they look for results-based aid. She stated that there are various ways to pay for outcomes, but you have to be careful not to create perverse incentives. Mr. Robertson stated that he thought DOL is shifting to results-based funding to the States, so results-based funding to countries would be consistent with broader domestic policy also.

Ms. Feingold noted that she was very familiar with the workers' rights centers and has heard of the success. She stated that sustainability is a big concern and requested more information about the Pathways program funding. Mr. Murtagh responded that much of the funding that is coming from CAFTA-DR morphed into Pathways funding. The four pillars can have labor funding and the CAFTA-DR funding will fit in. Ms. Pier added that although the labor aspect of Pathways has not been used much to date, ILAB will ensure that the labor aspect is stronger. Mr. Carrington (OTLA), the project manager of the workers' rights center, explained that the project has engaged respected leaders in the community as labor promoters that were trained to intake workers and address the many issues that do not require lawyers, which increases sustainability. Mr. Carrington noted that he would appreciate hearing any ideas the Committee had about sustainability, as the project still has six months left.

Mr. Kagan summarized the Dominican Republic submission. Mr. Kagan explained that the DR submission, which was filed by a priest on behalf of workers in the DR sugar sector, was received on December 22, 2011. The DR sugar sector has a largely Haitian undocumented migrant worker population. The submission contains allegations that fall under every prong of the CAFTA-DR labor chapter, including freedom of association, child labor, degrading living conditions, payment irregularities, and OSH violations. Mr. Kagan stated that OTLA accepted the submission for review on February 22, 2012. During the review, OTLA took two review trips, one in late April and one in late July. During those trips, the OTLA delegation met with representatives from the national and regional governments, major sugar companies, civil society members, and 70 individual workers. Mr. Kagan stated that OTLA received so many comments that it wanted to formalize the process, so they issued a Federal Register Notice soliciting public comments and reviewed the comments that were received. On August 20, 2012, OTLA issued an FRN to extend the review period, given the amount of information. OTLA is currently in the review and drafting process, but there is not a concrete timeline for publication at this point. Ms. Feingold asked why there was not a timeline. Mr. Biel noted that ILAB heard back from the government and the submitter and neither was upset about the extension. Mr. Biel also noted that the DR submission was sparsely detailed, unlike Mexico, but OTLA is finally at the point where there is not new information coming in, so the drafting process can make more progress.

Ms. Pier explained that ILAB wants to get reports published as soon as possible and that ILAB is not making political calculations. The delays are due to the complicated nature of the submissions they have received. OTLA must make sure that the reports include all relevant developments and sound legal analysis. In addition, many cases are cases of first impression.



Ms. Albertson summarized the progress on the Honduras submission. Ms. Albertson explained that in March, ILAB received a submission from AFL-CIO and others about 17 different cases in Honduras. The submission was over 60 pages with well-written fact patterns. It was the most extensive submission ILAB has received. ILAB accepted the submission for review before the timeline expired. A review team, which included an attorney from DOL's Office of the Solicitor, traveled to Honduras in July. During the trip, the team met with high level Ministry officials in the capitol, three regional government offices, inspectors, and over 90 workers. The submission focuses on the agriculture sector in the south, as well as seven apparel companies and port conditions of work. Ms. Albertson noted that ILAB has had an ongoing dialogue with the Government of Honduras and the tone of the review trip was different than typical submission review trips. Ms. Albertson stated that civil society has organized. ILAB has minutes from two meetings, and they are supposed to be meeting regularly. The Government of Honduras will develop a work plan to respond to allegations and will be working with civil society to do this. The Government of Honduras has also conducted inspections in all of the mentioned companies except one that refused entry and is consequently being sanctioned. Ms. Albertson said she is cautiously optimistic.

Ms. Elliott asked whether the minutes of the meetings were meetings with civil society and government together, and Ms. Albertson confirmed that they were. Ms. Albertson also noted that the submission contained allegations of violence against union leaders.

Ms. Feingold noted that Honduras is a good case to show context. She explained that two human rights lawyers were just killed, and that is an example of why AFL-CIO wants the reports sooner. She stated that for some groups, the submission process is the last resort to try to shed light on a terrible issue. Ms. Albertson reiterated that ILAB uses the FTA standards to evaluate the submissions. Mr. Potter noted that from a multinational company perspective, it is important to understand the care ILAB takes in reviewing these cases. Mr. Potter explained that companies are accountable for their supply chains and that ILAB is helping them understand their supply chains. He appreciates that ILAB understands the nuances of the case.

Ms. Dougan introduced herself and summarized the status of the Guatemala submission. Ms. Dougan noted that the last update the Committee had received was in March. The US Government requested an arbitration panel. The new administration came into office in January 2012. USG has continued discussions and are continuing to work together. Ms. Dougan was pleased to report that they made progress with a number of issues and will continue to find common ground. Ms. Pier added that arbitration panelists have been identified. The USG is trying to develop a settlement enforcement plan, but there was nothing public that could be said about that because it is government-to-government discussions. She stated that, from the US perspective, it is better to get agreement on a plan that can be implemented rather than going to arbitration because there is no way to predict what the panel will determine. Ms. Feingold asked about transparency and whether the plan will become public. Ms. Pier stated that USG would not do an eleventh

hour rollout of the plan. Mr. Potter noted that in his experience with Guatemala, it takes a long time to accomplish things in the labor space especially.

Ms. Pier gave an update on Colombia. She stated that she and Ms. Dougan, along with two representatives from USTR, were traveling to Colombia the following Monday as part of the follow-up under the action plan that was negotiated between the two governments leading up to the FTA ratification process. She explained that they have been traveling every 3 or 4 months as part of the follow-up process. She noted that the strategy taken for these trips has worked very well. ILAB identifies one or two critical issues that are narrowly focused and then has a day of intensive meetings to raise their concerns and questions on those issues. Ms. Pier said that part of the reason ILAB is able to identify those issues is because an ILAB staff member, Valkyrie Hanson, is on the ground and has a good, in-depth understanding of the obstacles being faced and critical issues that must be addressed. Ms. Pier stated that the upcoming trip focused on two sectors, ports and palm, and that they have asked questions as pointed as how the Government of Colombia will be adopting methodology to enforce a very specific article of a law. She stated that Decree 2025 is the key regulation implementing a piece of legislation out of the action plan that focuses on abusive contracting. Violations can carry a million dollar fine, which is unprecedented. This raises enormous responsibilities and questions, such as how to collect a million dollar fine, what happens to the entity fined, what happens to the workers. Ms. Pier noted her excitement at the level of knowledge and engagement ILAB has had with Colombia. She stated that they have seen progress, not as quickly as they hoped, but it is a large task to completely turn around a labor inspectorate and a system not used to applying these kinds of fines and laws. She noted that ILAB has great partners on the ground in Colombia and is in regular contact with the Ministry of Labor. Ms. Pier also stated that ILAB has announced the intention to have a workers' rights center project in Colombia modeled after the CAFTA workers' rights center project. Additionally, she said, ILAB is funding an ILO presence on the ground that is very close to being launched.

Mr. Robertson asked for questions from the Committee, but none were raised. Ms. Albertson asked everyone in attendance to ensure that they had signed the sign-in sheet.

Mr. Greene then asked if ILAB gets the sense that Colombia is happy with ILAB's engagement. Ms. Pier stated that she does and that Colombia wants to do this.

Ms. Pier summarized the progress on the Bahrain submission. She stated that ILAB received a submission shortly after the events of the Arab Spring in Bahrain (February and March of 2011). It contained allegations of violations of the labor chapter, and an OTLA team has conducted two fact-finding trips, during which they met with many workers, employers, and government officials. Ms. Pier noted that there have been many developments, including changes to labor laws, a pending case in front of the ILO Committee on Freedom of Association, a report by the Committee on Freedom of Association, an Article 26 claim brought, and a report released by an independent Bahraini commission studying the events of the Arab Spring. Ms. Pier noted the difficulty of analysis and stated that ILAB is in the final stages. ILAB has a draft and is in interagency discussions. It is an iterative process, and ILAB is in the third or fourth

rewrite. Ms. Pier stated that ILAB understands the urgency of the situation on the ground, and doing the most rigorous analysis possible will make the report a useful tool.

Ms. Feingold stated that the AFL-CIO has been unhappy at how long the process has taken. She noted that many people from the US have been denied entry to Bahrain despite help from the US embassy and that even the ILO cannot enter. She wondered how useful the report would be because of the delay. Ms. Feingold reiterated that there should be a balance between what is happening politically and the review process. Ms. Pier noted that different FTAs establish different standards. The Bahrain FTA is under the 2002 Trade Promotion Authority and the only justifiable standard is to enforce the country's own laws. ILAB shares the concerns Ms. Feingold articulated, but they must have robust analysis without overstepping the FTA.

Mr. Pandya noted that the thrust of the original submission was dismissals and problems with reinstatement. ILAB could have released something on that early and it may or may not have been useful. He noted that the problem was with the draconian changes made with respect to unions and government sponsored confederations. He explained that part of the difficulty is to ensure that ILAB grapples with the prime current issue, so the thrust of the original submission needed to be replaced.

Mr. Pandya discussed ILAB engagement with Oman. Mr. Pandya stated that Oman has replaced Bahrain as the country in best standing with the US in the GCC. He noted that, while Oman is not where Bahrain was before recent events, Oman is a society where there is commitment on the part of tripartite partners. The first labor Subcommittee was held in April, during which USG and the Government of Oman had a cordial exchange about technical cooperation. Oman's interest seems to be principally in improving their capacity to collect and analyze labor market research and statistics as well as in training their labor inspectors. Mr. Pandya noted that they heard from employers and workers that there is a need to equalize the pension regime between the public and private sectors. The Government of Oman is less enthusiastic about that. Mr. Pandya noted that the government-sponsored union confederation appears not to like the idea. There was an agreement to send an FMCS delegation to give trainings, but it was canceled at the eleventh hour because the official confederation was not in line. Mr. Pandya stated that there does seem to be development of pluralism: 165 unions are registered, but there appears to be a fair amount of independence and mutual agreement between confederations and regional unions to develop regional federation structures.

Mr. Pandya gave an update on ILAB engagement with Jordan. Mr. Pandya stated that USTR was the lead, and USTR is now planning a joint committee meeting in mid-October. There is a pending MOU between the Ministry and DOL providing for technical cooperation in various areas. There is also an implementation plan largely negotiated by USTR that addressed issues of concern in the apparel sector. Mr. Pandya said that there might be a labor Subcommittee meeting in tandem with the joint committee meeting, but he thinks that is unlikely. He said it is likely that the MOU and implementation plan will be announced and that the joint committee will ask the labor Subcommittee to meet and do implementation. Mr. Pandya also noted continuing issues

in Jordan. He explained that, following the Arab Spring, an independent but unofficial trade union organization developed consisting of phosphate workers, electrical workers, and public sector day workers. It is being tolerated, but it is not official. Mr. Pandya also noted the unequal treatment of Jordanian and non-Jordanian workers. The Jordanian workforce is largely foreign workers, but an increase in minimum wage did not apply to foreign workers. Additionally, there are concerns that foreign workers do not have the right to join or form unions.

Mr. Pandya discussed ILAB engagement with Morocco. Mr. Pandya said that there was some talk of a labor Subcommittee meeting later this year. Since the last Subcommittee meeting a few years ago, ILAB has had limited technical cooperation with the Government of Morocco, including an FMCS training. There are plans to have another one. There are current issues outside the ambit of FMCS. The AFL-CIO brought in Moroccan unionists to ILAB, and both federations in Morocco have concerns about freedom of association. Although the law provides for the unlimited and unrestrained right to form trade unions, there is a real concern about practical constraints to unionization, including intimidation and firing of workers.

Mr. Pandya noted that Israel, although it does not have a labor chapter, had an MOU from 1986-1996 on labor. Mr. Pandya stated that there was a request in 2007 from Israel to begin talks about renewing the MOU. The draft text is being reviewed by the Knesset, and it provides for a very wide scope of technical cooperation.

Ms. Feingold asked about gender discrimination and noted that in Jordan, there are real issues of sexual harassment and violence in the apparel sector. Mr. Davis asked what the date was for the joint committee meeting and asked if the documents were still confidential. Mr. Pandya replied that the joint committee is scheduled to meet October 17 and that the documents are still confidential because they are the subject of government negotiations.

Ms. Pier responded to Ms. Feingold, stating that gender issues are a real frustration because the only justiciable provision that can go to dispute settlement is the requirement of enforcing the country's own labor laws, but this does not cover discrimination because they use the GSP, which doesn't include discrimination.

Ms. Feingold asked about ways ILAB can be creative with respect to addressing gender discrimination. She asked if gender discrimination would be included in the Meaningful Labor Rights Reports. Ms. Pier responded that the reports do analyze gender discrimination because they deal with a different framework. Mr. Pandya stated that, although ILAB has constrained resources, Ms. Pier is committed to thinking strategically about issues in the Middle East. ILAB wants gender to be a distinct issue. Mr. Robertson noted that Secretary Clinton has been highlighting gender as an issue and that he thinks it is important for ILAB to do the same. Mr. Kolben noted that in Jordan, participation of women in the workforce is very low. Ms. Feingold stated that there is an Arab women's group that is trying to get a movement of women into the labor force. The global labor movement will be meeting in Jordan to shed a light on the Middle East.

The Committee took a break.

Ms. Eugenio (OCFT) summarized OCFT's three legislatively-mandated annual reports. The first is the Findings on the Worst Forms of Child Labor, which is mandated by the Trade Development Act of 2000. The mandate is to produce an annual report that focuses on combating the worst forms of child labor. The report covers the extent and nature of child labor, laws and regulations, coordination and enforcement, policies, and social programs in 144 countries. Additionally, Ms. Eugenio noted that the most recent report included, for the first time, assessments of each country's efforts to advance the elimination of the worst forms of child labor with the following possible ratings: significant, moderate, minimal, or no advancement. The report is online, as is a map that shows the assessments for each country. Ms. Eugenio brought a map and also a USB that contains all three reports and information about technical assistance programs.

Ms. Eugenio described the List of Goods Made with Child Labor and Forced Labor in violation of international standards. This report is mandated by the TVPRA of 2005. Ms. Eugenio stated that, this year, OCFT added four new goods and three new countries to the list. The current list has 134 goods from 74 countries. Ms. Eugenio described a Federal Register Notice that was also issued with proposed additions to the EO 13136 List - goods produced with forced or indentured child labor. There are four new goods being proposed for addition and three new countries. The list currently has 31 products from 23 countries. Ms. Eugenio distributed a brief outline of the three reports.

Brandie Sasser (OCFT) explained the evaluation activities that OCFT conducts. Ms. Sasser stated that OCFT has a long history of doing rigorous and intensive oversight of their assistance programs which include monitoring, evaluations and audits. OCFT has every grant go through a programmatic and financial audit based on risk assessment. Ms. Sasser explained that there are several different types of evaluations. Implementation evaluations are at the midpoint and endpoint of all projects. They evaluate whether the project is advancing toward reaching its targets and, especially at the midpoint, what corrective action or redesign could correct any challenges. Ms. Sasser noted that OCFT tries to maintain as much independence as possible in the evaluation process, so they contract out audits and evaluation work. A portion of OCFT grant money is earmarked for the ILO, so with the ILO the process is a little different but still independent. Ms. Sasser stated that, in fiscal year 2012, OCFT did 20 implementation evaluations. They are publicly available to anyone, many available on the web, and if any Committee member was interested in one not yet published on the website, Ms. Sasser would get it to the requesting member.

Ms. Sasser explained that, in fiscal year 2010, OCFT began a process of doing impact evaluations. These are very time consuming and resource intensive, and the intent is not for every project to have an impact evaluation. OCFT's preferred method is a randomized control trial, if possible. In FY 2010, OCFT did five of them, which was perhaps too many, and in FY 2011, OCFT did two, so there are now seven impact evaluations in various stages. Ms. Sasser stated that baseline data and reports would be

available on the website for 2010 projects the day after the Committee meeting. She explained that the impact evaluations select one intervention within the project, a decision that is made jointly between OCFT, the grantee, and the evaluator. Ms. Sasser noted that there are not many randomized control trials looking specifically at child labor, but there are some about education. OCFT began researching in 2002 and funded a series of grants workshops to find some methodology that would be usable. Currently, OCFT is reviewing the evaluations in 2010 and 2011 to learn what would make them run more smoothly. Ms. Sasser stated that the end goal is to get concrete evidence to show what is most effective to combat child labor.

Ms. Sasser explained that OCFT conducts one or two thematic evaluations each year. Thematic evaluations on vocational training and alternative income generation strategies are finished and published on the website. These evaluations look at all projects and try to comb out systematic analyses. They have been coding data, and the trafficking evaluation is 95% done.

Ms. Sasser explained there is an ongoing synthesis study that looks at all projects from 2010 to 2012. It is in the process of coding reports and looking more broadly and what is working well in projects and what is not. Ms. Sasser noted that this type of study is particularly useful for refining future programming. Grantees also have said it is helpful for them.

Mr. Greene asked if OCFT gets a range of outcomes or if it is project specific. Ms. Sasser replied that it is very project specific and even country specific. She explained that, for example, Jordan projects are struggling because the whole context of the country has changed. But, Ms. Sasser noted that they have come a long way to strengthening the labor side of the projects, not just the education aspects of the projects.

Ms. Feingold asked if the \$40 million given to IPEC gets evaluated. Ms. Sasser replied that it is evaluated by EIA (within IPEC), but they are independent and fall under the ILO evaluation unit. Ms. Feingold asked if OCFT is able to view across the board whether child labor is linked to freedom of association, for example. Ms. Sasser replied that the impact evaluations are narrowly focused. Ms. Feingold noted that, from a trade union perspective, they have a different idea on eliminating child labor. State DRL has a big grant of freedom of association in Egypt. Ms. Sasser stated that all grantees are required to work with others in the country. So OCFT looks at how they are engaging with governments and stakeholders. But, she noted, the purpose of the evaluations is mostly to see if the project is doing what it is supposed to be doing based on the project documents.

Mr. Robertson asked if the coded data sets include outcomes, such as number of kids removed from child labor. Ms. Sasser responded that it does not and that OCFT has that data separately from performance data reporting. Mr. Robertson asked if it was possible to merge that data in with program characteristics. Ms. Sasser was unsure but noted that the numbers are at a general level, so it might be difficult to tie them to specific themes or outcomes. Mr. Robertson asked what the analysis was that was done for the synthesis

report. Ms. Sasser responded that it was looking at what the project was meant to do, what it is doing well, what types of interventions were used. Ms. Sasser noted that it is very context specific, but that OCFT plans to separately analyze all the data that is outcome level data. Mr. Robertson suggested that OCFT do a meta analysis for the 10 years of data they have. Ms. Sasser was unsure whether that was possible, and Kenneth Swinnerton (OTLA) stated that he understood Mr. Robertson's point. Ms. Sasser noted that OCFT is always looking for new methods of evaluation. Mr. Knudsen asked if most programs with IPEC are government-to-government. Ms. Sasser replied that OCFT funds cannot go directly to governments and must go to international organizations. She also noted that the funds cannot be for inherently governmental activities.

Mr. Swinnerton explained the work of the Economic and Labor Research Division of OTLA. Mr. Swinnerton explained that the purpose of the division is to inform policy making and program designs based on research, shape agendas for future research and honing the questions that academic papers are asking to more clearly support ILAB's research needs. Mr. Swinnerton stated that the division conducts and sponsors research on the effects of international economic initiatives and developments as well as peer reviews research conducted by USG, international organizations, and academics. Mr. Swinnerton noted that some of the recent topics the division has been engaged in are monitoring methodologies, the effects of trade programs on labor rights, the employment impact on US workers, including the impact of services trade on employment. Mr. Swinnerton stated that ELR uses its peer review power to shape broader research agendas as well as to redirect the way the current paper being reviewed is going. ELR also collaborates with colleagues in policy and program shops to bring an analytical perspective to what work is going on throughout ILAB. Mr. Swinnerton noted that ELR is a part of OTLA but is a resource to all of ILAB. ELR has a staff of 5 people and around \$300,000 to sponsor contract research.

Mr. Swinnerton asked the Committee members what they think are the interesting research questions. Ms. Albertson noted that part of the reason why she put Mr. Swinnerton on the NAC agenda was because several members had mentioned wanting to research certain issues more deeply. Mr. Kolben asked if ELR's staff were all economists. Mr. Swinnerton replied that four of the five are. Ms. Feingold stated that this merits more time on the agenda in future NAC meetings and is very helpful and important. Ms. Feingold asked for clarification as to how ILAB determined to fund Malawi. Ms. Feingold also asked about the wider question of how academic research supports labor movement like microloans to enable consumption in India. Mr. Swinnerton responded that the sustainable livelihoods theme was something that came with former DUS Polaski when she was DUS. Ms. Polaski's view was that you need to have the rights in place but that you also must provide people with the economic reality to exercise those rights. ELR is trying to figure out reliable sustainable livelihood strategies. This was a new field and ELR is in the learning stages and are very interested in research papers about methodologies and methodological pitfalls. ELR is happy to have papers related to free trade partners but did not set that as a requirement.

Ms. Albertson suggested that perhaps a smaller group of the NAC would want to follow up with Mr. Swinnerton. Mr. Robertson agreed and volunteered to be a member of that Subcommittee. Ms. Feingold and Mr. Greene volunteered for the Subcommittee on research.

Mr. Swinnerton explained that they are at a crossroads at the issue of labor rights indicators. It started with the National Academy of Sciences giving ILAB a large report about the matrix of how to assess labor rights. ELR took the methodology and had it evaluated. They were told that it's nearly impossible to get people to agree on indicators because everyone interprets them differently. Mr. Barenburg broke them down into 800 pages of yes/no questions. Mr. Swinnerton asked the Committee whether they thought it was possible to systemize monitoring assessment.

Mr. Davis mentioned that the predictions of the impact of Mexican labor law reform vary greatly, and it would be useful to have a range of calculations to work with. Mr. Davis was not aware of any research to assess the impact, but he knew some groups say the reform will have a large impact and some say the market is in reality very flexible so it won't actually have an impact. Mr. Davis also noted that there are papers written by policy experts saying that Mexico is a middle class country, but Mr. Davis says that there's no actual definition of middle class. Mr. Davis said it would be helpful to have quantitative and qualitative indicators of middle class.

Mr. Kolben asked if there was a grant to follow up regarding the Barenburg indicators. Mr. Swinnerton stated that they had not awarded a grant. Ms. Albertson noted that, although it's not academic, the OTLA team systematically monitors countries. A law student used Barenburg to monitor a country. The problem is that the data is not really out there and the indicators are very hard to dig through.

Mr. Swinnerton asked the Committee members what they thought were the most relevant indicators. Mr. Compa stated that he does not think it is possible to construct reliable quantitative sets of indicators on freedom of association. He suggested that the best within those limitations is what David Kucera and Karen Curtis did at the ILO. Mr. Swinnerton asked if those indicators were a triage tool to suggest where to look more deeply. Mr. Compa was not sure and said that it had an ILO bias because it was taken from findings of the ILO COE and CFA.

Mr. Swinnerton said that an advantage to a set of reliable indicators would be that it could be easily reproducible. If it's case-by-case, it's not as reliable. Ms. Albertson noted that the Committee had suggested that the Secretariat should do research and suggested that they ask Mr. Swinnerton and ELR about research.

Mr. Robertson asked if Mr. Compa wanted to join the research Subcommittee and Mr. Compa agreed to join.



Ms. Feingold noted that Bangladesh is a good example of the challenges with using indicators to try to evaluate labor conditions in a factory. Mr. Robertson asked for more questions, and, finding none, remanded the rest of the discussion to the Subcommittee.

Mr. Robertson solicited public comments.

Mr. Wedding from USTR noted that it was helpful to hear from the Committee. Mr. Wedding made the point that USTR is informing DOL during the processes and that Federal Register Notices for the negotiations are very helpful.

Ms. Morgan from the Department of State reiterated what Mr. Wedding said and noted that DOS is not waiting for FTA negotiations to engage with other governments.

Mr. Robertson noted action items:

- Forming the research Subcommittee.
- Agreeing to be guinea pigs for the notification system that may come from ILAB
- Ms. Feingold would send the information on Mexico

Mr. Schoepfle thanked the committee for spending the day at DOL and for their advice and input. He noted that he was glad to see that the NAC has been revitalized. He stated that the meeting covered a wide range of issues and that it was a learning experience for ILAB and probably for the Committee members as well. He noted that this is a two way exchange and the Committee members' efforts to attend were appreciated and very important. He stated that many issues discussed in the meeting about FTA enforcement are new areas. There are written agreements and procedures but they have not really been tested, so ILAB is going into new areas. He noted that Guatemala has moved the furthest.

Mr. Schoepfle explained that ILAB is testing new mechanisms, learning and seeing how best to improve. ILAB's goal is not to penalize and not solve the problem. In many cases, there are work plans that try to constructively engage with countries. Mr. Schoepfle noted that labor issues are not like normal trade disputes. They do not involve just fines; there are people affected by these issues. It's a matter of correcting systemic problems and changing attitudes and behaviors. Mr. Schoepfle reiterated that ILAB values the Committee's suggestions on ways to have constructive engagement and make a difference. He stated that ILAB hopes to continue this dialogue and that ILAB welcomes any review or concerns the members may have about potential TPP parties in terms of their labor law and practice. Mr. Schoepfle said that they will be trying to engage to make sure they are able to improve our labor chapters as they progress in terms of future FTAs. Mr. Schoepfle thanked the Committee members for coming.

Ms. Albertson noted that the one action item that was forgotten was to set the next meeting. She asked if six months worked. The members agreed, and Ms. Albertson said she would circulate a Doodle.

Ms. Feingold motioned to adjourn and Mr. Kolben seconded.