

Establishing Human Rights Safeguards in the GSP Program for Myanmar

Chairman Jackson, members of the Subcommittee, thank you very much for the opportunity to address you today on the subject of reinstating Beneficiary Developing Country status for Myanmar.

Ms. Quigley has spoken about the ongoing human rights abuses— including labor rights and land rights violations – in the export-oriented sectors in Myanmar, and I have provided further information on these issues in my pre-hearing brief. There is a legitimate concern that promoting exports through the GSP program will exacerbate these problems, particularly in the oil, gas, mining, and plantation agriculture sectors. I would like to focus on the authority and options this Committee has at its disposal to manage these concerns, pursuant to the Trade Act and consistent with the foreign policy this administration has pursued under the International Emergency Economic Powers Act, or IEEPA.

In particular, I'd like to draw the Committee's attention to the recently finalized Responsible Investment Reporting Requirements. According to the State Department, the Reporting Requirements are intended both to ensure that U.S. investors do not contribute to human rights abuses and conflict in Myanmar, and to support Myanmar's reform efforts, including by promoting inclusive economic development. As I argued in my pre-hearing brief, the Committee has the authority to take similar steps to manage the human rights impacts of promoting Myanmar exports through the GSP program, by virtue of the Trade Act's labor rights provisions and the President's responsibility to take into account other economic factors. The Administration could also delegate authority to the Committee under IEEPA to carry out these measures, but that is unnecessary. Rather, the steps the Administration has already taken under IEEPA should guide the Committee in order to ensure a coherent policy toward economic reengagement with Myanmar.

There's also a strong argument that conditioning GSP eligibility on some form of human rights assurance is important for U.S. economic interests. Under the Reporting Requirements, all U.S. persons *investing* in Myanmar are required to report on their human rights performance, flag contracts with the Myanmar state-owned oil company, and publish their payments to the Myanmar government. It makes little sense to create an uneven playing field for U.S. investors by exempting importers from mechanisms to assure responsible conduct. This would suit neither our economic interest in promoting foreign investment nor our foreign policy imperative to manage the human rights and conflict situations in Myanmar.

Fortunately, the Committee has two points of entry through which it can act to manage the impacts of the GSP program on human rights, including labor rights. If Myanmar's GSP status is reinstated, the Committee can first use its powers to limit the designation of Myanmar as a Beneficiary Developing Country in order to require reporting and certification requirements for all importers and trigger periodic reviews. And second, the Committee can use its power to limit and withdraw the designation of particular articles,

to exclude certain high-risk articles and establish a procedure for vetting progress on human rights concerns.

Importers should be required to certify that they have conducted human rights due diligence, consistent with U.S.-endorsed best practice – such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, and that to the best of their knowledge there have been no violations of internationally recognized human rights in connection with the articles they import. An alternative – or additional – mechanism to ensure responsible conduct would be to require persons who import goods from Myanmar into the United States to report on their human rights policies and procedures – including labor, environmental, and land rights – and to provide all other information to make such reports consistent with the Responsible Investment Reporting Requirements.

In addition, as many of my colleagues have noted, the fluid situation in Myanmar makes it incumbent that the Committee conduct a yearly review to ensure that the nation is making progress toward meeting its commitments on labor rights and other human rights issues. Benchmarks for progress could include ratification and implementation of core ILO Conventions and the core UN human rights conventions; the absence of credible allegations of human rights abuses with relation to the Myanmar military; especially in minority ethnic areas; a halt to the persistent practice of arresting and otherwise harrasing lawyers and activists who are advocating for communities that resist land-grabbing and destructive economic development; and the enactment of a land rights regime that provides access to an effective remedy and protects traditional usage rights.

The President should also use his powers under the Trade Act to withhold eligibility for oil, gas, mining, and plantation agriculture products from Myanmar due to the unusually high incidence of human rights abuses in those sectors -- including well documented incidents of forced labor along all sections of the Shwe Pipeline and extrajudicial killings near the section of the Pipeline that runs through Shan State. Of course, GSP benefits are not meant to be used as a weapon, but rather as an incentive and a tool to improve compliance with international standards. Therefore, the Committee, with the assistance of the International Trade Commission, should hold periodic public hearings to review these sectors in an effort to provide a roadmap for the reinstatement of GSP eligibility for Myanmar oil, gas, mining, and plantation products.

To conclude, EarthRights International takes no position on whether the suspension of Beneficiary Developing Country status for Myanmar should be ended. However, we are very concerned that without proper safeguards and limitations, reinstatement of GSP benefits could exacerbate the already existing connection between foreign investment and human rights abuses, including labor rights and land rights violations. The U.S. is already taking cautious steps to manage the role its investors play in that dynamic, and it should coordinate its trade policy to do the same lest it undermine its own foreign policy on economic reengagement with Myanmar.