



Pre-Hearing Brief

Re: Docket No. USTR–2013–0020 - Initiation of a Review of the Union of Burma for Possible Designation as a Beneficiary Developing Country

May 17, 2013

ATTN:

Mr. William Jackson, Deputy U.S. Trade Representative
Chairman, GSP Subcommittee of the Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th St., NW
Washington, DC 20508

Pursuant to the notice published at 78 Fed. Reg. 22,593 (April 16, 2013), EarthRights International (ERI) hereby submits this brief to present its views on the proposal to grant beneficiary developing country status to the Union of Burma under the Generalized System of Preferences (GSP), Docket No. USTR–2013–0020.¹ ERI takes no position on whether such status should be granted to Burma but seeks to explain and mitigate concerns related to human rights and the national emergency with respect to Burma.

Notice of Intent to Testify: Jonathan Kaufman, Legal Advocacy Coordinator, EarthRights International, hereby provides notice to the Committee of his intent to testify at the hearing on June 4, 2013.

Overview

This brief presents ERI's concerns about the potential negative impacts on human rights – including workers' rights and land rights – that could be linked to the designation of Burma as a beneficiary developing country (BDC) under the GSP. The brief focuses on the extractive industries and plantation agriculture, where human rights concerns are particularly acute and therefore warrant special measures. ERI believes that the Trade

¹ EarthRights International (ERI) is a non-governmental organization with offices in Thailand, Peru, and the United States. ERI uses a wide range of tactics, including litigation, public advocacy, fact-finding, and training of community leaders to the defense of communities worldwide that face human and environmental rights abuses as a result of the activities of multinational corporations. ERI has focused on human rights and environmental destruction in Burma/Myanmar since its founding in 1995.

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Act of 1974 requires the President to take into account the economic impacts of these abuses and also gives the President the authority to take such to mitigate such impacts.

Moreover, the President has declared a national emergency with respect to Burma, partially as a result of the ongoing human rights problems there. The administration has taken carefully calibrated steps using the powers granted to the President under the International Emergency Economic Powers Act to manage economic reengagement so as not to exacerbate human rights concerns. Any move to grant trade preferences should not be allowed to undermine this overall approach. Burma's BDC designation should be managed coherently with the overall strategy on the human rights situation in Burma, which is an extraordinary threat to U.S. national security and foreign policy.

Despite some progress under the current regime, widespread labor rights and other human rights violations persist in Burma's export-oriented sectors, in particular those that involve the large-scale acquisition of land, such as plantation agriculture and the extractive industries. These sectors are also associated with rampant land-grabbing, which negatively affects the lives and livelihoods of Burma's poorest and most vulnerable people. Therefore, ERI proposes that, if the President does grant BDC status to Burma, he should also take the following measures:

- Exclude problem sectors – in particular, plantation agriculture and extractive products – until the Department of Labor, the U.S. Department of Agriculture, and the State Department certify that those sectors are free of systematic labor rights and other human rights violations;
- Require all importers of GSP-eligible products to certify to the U.S. Government that they have conducted human rights due diligence in accordance with international standards;
- Establish a transparent annual review mechanism with participation from Burmese labor and civil society groups;
- Provide for an expedited, accessible grievance mechanism to resolve complaints alleging that human rights abuses occurred in association with the production of goods imported into the United States under the GSP.

I. Policy and Legal Framework

The President's duty and authority to consider human rights impacts – including labor and land rights – in granting BDC status to Burma arise from the Trade Act of 1974, 19 U.S.C. § 2461 *et seq.*, and the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1701 *et seq.* Together, these statutes – in addition to the regulations and Presidential declarations promulgated thereto – dictate that the President should take steps to limit and condition such a designation to mitigate negative impacts that could exacerbate the human rights situation in Burma.



A. Trade Act of 1974

The President’s authority to grant BDC status to a country comes from the Trade Act, which expressly conditions beneficiary status on, *inter alia*, a determination that the country is taking steps to respect internationally recognized workers’ rights and is implementing commitments to eliminate the worst forms of child labor.² The President is also directed to take into account “the level of economic development of such country, including its per capita gross national product, *the living standards of its inhabitants, and any other economic factors which the President deems appropriate*[.]”³ Thus while BDC status cannot be granted to a country that does not respect labor rights, the President may also deny such status based on other economic factors. The economic consequences of export promotion on Burma’s most vulnerable people as a result of land grabs and other human rights violations is surely an economic factor that the President should deem appropriate to take into account. Such concerns could be sufficient to deny BDC status to Burma; this brief, however, focuses on the President’s power to “limit the application of duty-free treatment”⁴ in order to mitigate these consequences.⁵

B. International Emergency Economic Powers Act

IEEPA also provides sufficient basis for the U.S. Government to ensure that granting BDC status to Burma does not exacerbate the human rights situation there. The Burma context is unique in that Burma is subject to a Presidential declaration of national emergency due to the persistence of political prisoners, conflict, human rights abuses, and Burma’s military relationship with North Korea.⁶ Based on the national emergency declaration, IEEPA grants the President authority to regulate transfers of credit or payment, transactions in foreign exchange, and transactions in property belonging to foreign nationals or U.S. persons that are subject to the jurisdiction of the United States,

² 19 U.S.C. § 2462(b)(2)(G) & (H).

³ *Id.* § 2462(c)(2) (emphasis added).

⁴ *Id.* § 2462(d)(1).

⁵ Independent authority to consider land grabs from Burma’s citizens may also exist in a Trade Act provision that conditions BDC status on a finding that the country does not indirectly expropriate or nationalize property. Although the U.S. Trade Representative’s public materials suggest that the expropriations clauses apply only to the property of U.S. citizens and companies, only the first two clauses prohibiting BDC status for countries that expropriate property expressly limit their application to the property of U.S. citizens and companies. 19 U.S.C. §§ 2462(b)(2)(D)(i)(I) & (II). The indirect expropriation clause, on the other hand, may apply more broadly to all persons’ property. *Id.* § 2462(b)(2)(D)(i)(III) (referring to “property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property[.]”)

⁶ President Barack Obama, Letter -- Continuation of the National Emergency with Respect to Burma (May 2, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/05/02/letter-continuation-national-emergency-respect-burma>. See also Exec. Order 13,619 pmb., 77 Fed. Reg. 41,243 (July 11, 2012) (finding that “human rights abuses in Burma, particularly in ethnic areas, effectuated by persons within or outside the Government of Burma,” *inter alia*, constitute an “extraordinary threat to the national security and foreign policy of the United States.”)



in order to manage an extraordinary threat to U.S. foreign policy.⁷ This authority is the basis for much of the sanctions regime that the U.S. still maintains with respect to Burma.

Since Burma began its political reform, the President has used his IEEPA powers to fine-tune U.S. policy, with the aim of liberalizing economic engagement and promoting development and political reform while managing potential human rights impacts. Under authority delegated by the President,⁸ the Treasury has largely lifted a ban on investments and financial services but maintained sanctions on particular persons, as well as on armed groups in Burma (including the military) and companies owned by such groups.⁹

The Treasury has also delegated to the State Department the authority to enact Reporting Requirements on Responsible Investment in Burma, which – when finalized – will apply to all U.S. persons investing more than \$500,000 in aggregate in Burma.¹⁰ These persons will be required to report on their human rights, labor rights, and environmental policies and procedures, provide information about their payments to the Burmese government, and explain the steps they have taken to assess land tenure issues and settle disputes.¹¹ In its public justification for the Reporting Requirements, the State Department cited to a wide variety of human rights concerns, including forced labor, land grabbing, torture, summary executions, and sexual violence.¹² Similarly, the Treasury proceeded cautiously when it waived the longstanding U.S. ban on Burmese imports, excluding blocked individuals and also declining to waive the ban on Burmese jadeite and rubies, which are of special concern due to labor conditions in the mines.¹³

Given the nuanced approach that the U.S. Government has taken on economic restrictions with regard to Burma, it would be anomalous if the President and his delegates were to grant BDC status without taking into account the same considerations. Even if the Trade Act did not contain sufficient authority – which it does – nothing prevents the Secretary of Treasury from delegating to the Committee the authority to include such considerations. The Committee can and should therefore take steps consistent with IEEPA to ensure that trade preferences under the GSP are not in conflict with the

⁷ 50 U.S.C. § 1701(A)(i), (A)(ii), (B).

⁸ Exec. Order 13,619 § 10.

⁹ See U.S. Dept. of the Treasury, Office of Foreign Assets Control, *Release of Executive Order Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma; Burma Designations; Release of Burma General Licenses*, at <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120711.aspx>.

¹⁰ U.S. Dept. of the Treasury, Office of Foreign Assets Control, Gen. License No. 17 ¶(e) (July 11, 2102), at <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/burmag17.pdf>.

¹¹ See U.S. State Dept., Reporting Requirements on Responsible Investment in Burma, at <http://www.humanrights.gov/wp-content/uploads/2013/04/Burma-Reporting-Requirements.pdf> (updated April 2013).

¹² U.S. State Dept., *30-Day Notice of Proposed Information Collection: Reporting Requirements on Responsible Investment in Burma*, 78 Fed. Reg. 12,133 (Feb. 21, 2013).

¹³ U.S. Dept. of the Treasury, Office of Foreign Assets Control, Gen. License No. 18 (Nov. 26, 2012), at <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/burmag18.pdf>.



President's strategy to manage the extraordinary threat that the ongoing human rights situation in Burma poses to U.S. foreign policy.

II. Ongoing Labor Rights Abuses in Burma

Although Burma has taken important steps toward recognition of international workers' rights under the new civilian regime, significant gaps remain in labor protection.

A. Trafficking in Persons

Despite having graduated from Tier 3 to Tier 2 on the State Department's Trafficking in Persons Report last year, Burma's 2012 Country Narrative reveals significant problems, including gaps in the government's commitment to fighting trafficking and forced labor. The Narrative explains that Burma is both a source country and a transit country for international trafficking. It also details the many scenarios in which men, women, and children are coerced into providing forced labor, particularly by the military and most often in zones of active ethnic conflict, such as Chin State and Kachin-dominated areas.¹⁴ The Narrative cites a number of important steps that the Burmese government has undertaken, including the repeal of antiquarian laws sanctioning some forms of forced labor, the enactment of new laws, increased prosecution efforts, and the creation of a national hotline. It concludes, however:

Previous government human rights abuses and economic mismanagement, coupled with the Burma military's continued widespread use of forced and child labor as well as recruitment of child soldiers, underpinned Burma's significant trafficking problem, both within the country and abroad. The climate of impunity and repression and the government's lack of accountability in forced labor and the recruitment of child soldiers represent the top casual factors for Burma's significant trafficking problem.¹⁵

B. Forced Labor

As the State Department's trafficking report notes, forced labor – usually enforced by the military – remains common in Burma, despite progress on enacting new laws and ratifying the core ILO Conventions. This is especially true in areas surrounding major extractive projects, and in conflict zones in ethnic minority areas. For example, forced labor has been widely reported at all stages of the Shwe Oil and Gas Project, which includes offshore facilities, a port, and two parallel pipelines that run the length of Burma, from the Bay of Bengal to the Chinese border. Forced labor along the pipeline

¹⁴ U.S. STATE DEPT., 2012 TRAFFICKING IN PERSONS REPORT: COUNTRY NARRATIVES 102, at <http://www.state.gov/documents/organization/192594.pdf>.

¹⁵ *Id.* at 103.



has taken numerous forms, including forcing villagers to join militias and other military support units; to guide them through dangerous areas subject to civil war and attack; and to build pipeline facilities and associated infrastructure. In 2011, ERI reported incidents of forced labor at the construction site on Maday Island, where villagers were required to join a fire brigade; in the central Dry Zone, where community members were forced to build a health clinic that was part of project partner Daewoo International's corporate social responsibility commitment; and in Shan State, where villagers were forced to join a militia.¹⁶ In 2012, the Ta'ang Students and Youth Organization (TSYO) reported incidents of forced guiding and portering for military patrols in Shan State,¹⁷ as well as ongoing conscription of villagers to carry pipeline equipment and dig drains, enforced by Namtu Township Police and Infantry Battallion 324.¹⁸

Similar allegations of forced labor exist in other areas of the extractives sector. In particular, it has been reported that jade and rubies are mined under slave-like conditions in northern Burma, and there are allegations that men and children have been rounded up from villages and forced to work in remote mines with no contact to the outside world.¹⁹

C. Other Violations of Internationally Recognized Workers' Rights

The full range of workers' rights lie outside ERI's general area of expertise – which focuses on the connection between human rights, land rights, and the environment – and a full treatment of these rights is beyond the ambit of this brief. Moreover, ERI understands that other groups that are in a stronger position to report on this aspect of the human rights situation in Burma are submitting testimony to the Committee. However, our field staff and partners in Burma have heard stories of serious labor violations, particularly in connection with agricultural plantations and extractive operations.

The Revenue Watch Institute recently reported that Burma ranks at the very bottom on its global rating scale for transparency and accountability in natural resource governance, with an abysmal score of 4 out of 100.²⁰ This lack of transparency in the extractives sector makes it difficult to report on working conditions and the exercise of free association in mines and at oil facilities. However, some cases are publicly reported; for

¹⁶ EARTHRIGHTS INTERNATIONAL, THE BURMA-CHINA PIPELINES: HUMAN RIGHTS VIOLATIONS, APPLICABLE LAW, AND REVENUE SECRECY 11-12 (Mar. 2011).

¹⁷ TA'ANG STUDENTS AND YOUTH ORGANIZATION, PIPELINE NIGHTMARE: SHWE GAS FUELS CIVIL WAR AND HUMAN RIGHTS ABUSES IN TA'ANG COMMUNITY IN NORTHERN BURMA 25 (Nov. 2012).

¹⁸ *Id.* at 38-39.

¹⁹ See Dan McDougall, *The curse of the blood rubies: Inside Burma's brutal gem trade*, DAILY MAIL (UK), Sept. 18, 2010, at <http://www.dailymail.co.uk/home/moslive/article-1312382/The-curse-blood-rubies-Inside-Burmas-brutal-gem-trade.html>.

²⁰ REVENUE WATCH INSTITUTE, THE 2013 RESOURCE GOVERNANCE INDEX: A MEASURE OF TRANSPARENCY AND ACCOUNTABILITY IN THE OIL, GAS AND MINING SECTOR 9 (2013), available at http://www.revenuewatch.org/sites/default/files/rgi_2013_Eng.pdf.



example, just this month, flooding at a gold mine in Shan State killed at least nine miners,²¹ an accident that could have prevented.

On plantations, it is reported that working conditions are abusive, pay is paltry, and workers are denied the freedom to associate and form trade unions. Despite the widespread use of toxic chemicals, there is little to no training in health and safety precautions, and protective gear is not provided. The Burmese Government has recently drafted a Social Welfare Law that provides for social security and disability coverage. This law reportedly applies only to industrial sectors and not to farm work, thereby leaving agricultural workers without social benefits. As a consequence, labor standards are left up to individual employers, rather than being mandated as a matter of law.

III. The Epidemic of Land Confiscation in Burma²²

The past decade in Burma has seen large-scale confiscation of land from small farmers in Burma for export-oriented agricultural and natural resource extraction projects. Unfortunately, the pace of confiscation appears to be continuing unabated under the current government, and may accelerate due to a new legal framework that offers fewer protections than before, as well as increasing foreign investment.

A. Recent trends in land confiscation

Burma remains a mostly rural country, in which the majority of the population relies on small farms for their livelihoods. Unfortunately, landlessness has been on the rise for years, and the pace of land confiscation may be increasing.

The importance of small farmers²³ in Burma is difficult to overstate. According to the Land Research Action Network:

[N]early three-fourths of the population or about 40 million people – live in rural areas and rely on farmland and forests for their daily needs and livelihoods.

²¹ See Khin Myo Thwe, *Floods, mine collapse cause deaths in Shan State*, MIZZIMA, May 6, 2013, at <http://www.mizzima.com/news/inside-burma/9345-floods-mine-collapse-cause-deaths-in-shan-state.html>.

²² This section is drawn primarily from testimony delivered by Marco Simons, ERI's Legal Director in front of the Tom Lantos Human Rights Commission during a hearing on human rights in Burma on February 28, 2013, which can be found in full at [http://tlhrc.house.gov/docs/transcripts/2013_02_28_Burma/FINAL%20Testimony%20of%20Marco%20Simons%20-%20Lantos%20Commission%20-%20Business%20and%20Human%20Rights%20in%20Myanmar%20-%202013%20\(3\).pdf](http://tlhrc.house.gov/docs/transcripts/2013_02_28_Burma/FINAL%20Testimony%20of%20Marco%20Simons%20-%20Lantos%20Commission%20-%20Business%20and%20Human%20Rights%20in%20Myanmar%20-%202013%20(3).pdf).

²³ In Burma, small farms are considered to be those that do not exceed 10 acres; this definition is complicated, however, by the situation of farmers who practice shifting cultivation, who may range over larger areas of land, as well as widespread use of common resource land. See Land Core Group of the Food Security Working Group, *The Role of Land Tenure Security for Smallholder Farmers in National Development* 1 (2012).



Agriculture (including livestock and fisheries) contributes about one-third of the country's gross domestic product (GDP) and 15 percent of total export earnings, and employs over 60 percent of the nation's labour force (2008-09 government data).²⁴

For example, in six villages that will be relocated to make way for the Dawei Special Economic Zone, about 6,000 out of 10,000 villagers are farmers. Most of the remainder work on local plantations. Locals have traditionally been able to provide for most of their food, water, and housing needs from the land and rivers; as one villager put it, "There is no other place like our village... I am very concerned that we cannot access such a place elsewhere."²⁵

Support for small farmers can promote equitable social development, help to resolve conflict, protect food security, improve gender equality, and encourage sustainable agricultural practices.²⁶ Research by the Food and Agriculture Organization (FAO) has found, for example, that small farmers invest more in their land when they have secure land rights, and that small farmers in general produce more food than mono-crop plantations.²⁷ Moreover, land disputes are often traceable to insecure tenure, and have the potential to derail progress towards a lasting peace in the ethnic minority states of Burma.²⁸ Rampant land confiscation and landlessness, by contrast, have been associated with malnutrition and food insecurity.²⁹

Rural landlessness has been on the increase in Burma for a variety of reasons, including civil war, indebtedness, and outright land grabbing. As of 2012, nearly one quarter of Burma's farmers were estimated to be landless – a fraction that reached more than half in some areas.³⁰ Moreover, in many areas the average plot size has shrunk to under 5 acres, which is below subsistence level.³¹

²⁴ Land Research Action Network, *Land Not For Sale in Myanmar* (Oct. 12, 2012), at <http://www.landaction.org/spip.php?article666>.

²⁵ Thukha Thakin, *Dawei Development Project is Creating the Negative Impacts of Land Confiscation, Changing Lifestyles, and Lack of Livelihoods for Local People East and West of Dawei* 144-45, in EARTHRIGHTS INTERNATIONAL, *WHERE THE CHANGE HAS YET TO REACH: EXPOSING ONGOING EARTH RIGHTS ABUSES IN BURMA (MYANMAR)* (2012).

²⁶ Land Core Group 2012, *supra* note 23, at 2.

²⁷ FAO, *Land Tenure and Rural Development*, 3 FAO LAND TENURE SERIES ¶ 2.1 (2002); Land Core Group 2012, *supra* note 23, at 2.

²⁸ Land Core Group 2012, *supra* note 23, at 4-5.

²⁹ See, e.g., TRANSNATIONAL INSTITUTE, *FINANCING DISPOSSESSION: CHINA'S OPIUM SUBSTITUTION PROGRAMME IN NORTHERN BURMA* 35 (Feb. 2012)

³⁰ Land Research Action Network 2012, *supra* note 24.

³¹ *Id.*



A key driver of land loss has been the reallocation of farmers' land for economic development projects. Reports of land grabbing fill the newspapers in Burma, and the total amount of farmed land turned over to private entrepreneurs in recent years has reached between 1.5 and 2 million acres.³² While land confiscation is common in a number of sectors, at least one important factor has been the Ministry of Agriculture and Irrigation's 30-year Master Plan for the Agriculture Sector (2000-01 to 2030-31), which aims to convert 10 million acres of "wasteland" for private industrial agricultural production.³³ Overall, it is estimated that 28 million acres of "arable land" could eventually be turned over to investors.³⁴ Moreover, the anticipation of high prices has already led to cases in which wealthy business interests have bought up large tracts of land in hopes of getting compensation from the government when that land is confiscated, thereby distorting prices and making land unaffordable for locals.³⁵

The areas that have been hardest hit by large-scale land confiscations have been ethnic minority states such as Kachin State and Shan State, as well as Tenasserim Region, which is populated mainly by ethnic Karen, Tavoyan, and Mon peoples. Over a million acres of land in Tenasserim have been transferred to developers, while the largest increases in recent years have been in Kachin State and northern Shan State, both conflict zones where China has financed private enterprise schemes to replace opium cultivation.³⁶

A recent report by the Karen Human Rights Group provides extensive documentation on a wide range of economic development projects – notably, extractive, infrastructure, and plantation agriculture projects – in eastern Burma. The report concludes that such projects are frequently carried out unilaterally, without consultation or information disclosure; are often associated with militarization at project sites; have limited benefits for local communities; and cause widespread displacement. Local communities commonly suffer serious additional human rights impacts, including forced labor, environmental degradation, physical threats and arbitrary detention, and destruction of livelihoods. And their ability to deter these impacts is compromised by the paucity of

³² See DISPLACEMENT SOLUTIONS, MYANMAR AT THE HLP CROSSROADS: PROPOSALS FOR BUILDING AN IMPROVED HOUSING, LAND AND PROPERTY RIGHTS FRAMEWORK THAT PROTECTS THE PEOPLE AND SUPPORTS SUSTAINABLE ECONOMIC DEVELOPMENT 5-6 (Oct. 2012); Land Research Action Network 2012, *supra* note 24. The majority of this land has not been developed for the purposes for which it was originally granted, and in some cases farmers have been allowed to remain on the land as before. However, the promised flood of investment is now leading some entrepreneurs to reassert their ownership rights and expel their tenants in preparation for expansion. See, e.g., *Burmese land ownership a work in progress*, MIZZIMA NEWS (Aug. 23, 2012), at <http://www.mizzima.com/news/inside-burma/7829-burmese-land-ownership-a-work-in-progress.html>.

³³ Land Research Action Network 2012, *supra* note 24.

³⁴ DISPLACEMENT SOLUTIONS 2012, *supra* note 32, at 7.

³⁵ *Id.* at 9.

³⁶ Land Research Action Network 2012, *supra* note 24.



information on projects, legal barriers to redress, threats of violence, and the lingering effects of past trauma.³⁷

B. Causes of land confiscation

Displacement of small farmers has occurred primarily for the following types of export-oriented economic activity: commercial agriculture, oil and gas, and Special Economic Zones (SEZs).

Commercial agriculture

In recent years, more land has been taken from communities for large-scale agricultural plantations than for any other commercial activity. As a result, land in some areas has become a speculative commodity, and powerful politicians, landowners, and entrepreneurs bribe land registry officials or use powerful connections to register occupied land or obtain concessions in their name in hopes of being bought out by the government, or receiving investment to develop the land.³⁸

Few farmers in Burma have formal title to their land, and all land in the country has long been owned by the state. In order to allow large-scale agricultural development, the government simply allocates land to companies. Under the laws governing these concessions, the land is supposed to be cultivated within a few years, but in many cases it is simply taken; one group has estimated that only 20-30% of these concessions are actually under cultivation.³⁹

In Tenasserim Region, the Burmese Government has promoted palm oil production, leading to the transfer of over 1 million acres of farmland to private investors – most notably the Yuzana Company, owned by Htay Myint, who is subject to U.S. sanctions.⁴⁰ The large-scale conversion of land to palm oil plantations has led to the widespread clearing of forests on which communities rely; in many cases, the land has not even been used for plantations but rather has been clearcut for timber sales.⁴¹ PTT, the Thai energy

³⁷ KAREN HUMAN RIGHTS GROUP, *DISENFRANCHISING DEVELOPMENT: LAND CONFLICTS AND COLLECTIVE ACTION IN EASTERN MYANMAR* (Mar. 2013).

³⁸ *See, e.g.*, TNI 2012, *supra* note 29, at 61 (describing loss of community forest to well connected private investor who was able to receive land concession despite informal demarcation of traditional territory).

³⁹ Land Research Action Network 2012, *supra* note 24.

⁴⁰ Land Research Action Network 2012, *supra* note 24; *Tracking the Tycoons*, THE IRRAWADDY (Sept. 2008), at http://www2.irrawaddy.org/article.php?art_id=14151&page=5;

⁴¹ Land Research Action Network 2012, *supra* note 24; TNI 2012, *supra* note 29, at 35.



company, has recently announced plans to develop a 100,000 hectare plantation in Tenasserim.⁴²

Kachin and Northern Shan State have seen the highest growth rate of land grabbing in recent years.⁴³ This trend is fueled largely by China's opium substitution program, in which the Chinese government provides various forms of financial and administrative benefits to Chinese businesses that establish monocrop plantations in border areas that have traditionally been key locations for poppy cultivation.⁴⁴

These developments have turned the uplands of Kachin and Northern Shan States into a "rubber belt," with over 100,000 acres planned in 2010-11 – nearly all financed by the Chinese opium substitution program.⁴⁵ Much of this acreage constitutes confiscated land that previously was used by villagers; as described in greater detail below, the legal architecture of land tenure makes *taungya* (shifting cultivation) land that is an important part of uplands agriculture in these areas particularly vulnerable.

In addition to rubber, two Burmese companies with rumored Chinese financial backing – Yuzana and Jadeland – received concessions of approximately 200,000 hectares total to grow cassava and other crops in Hugawng Valley Tiger Reserve, leading to environmental damage, conflicts with local villagers and the confiscation of 1,450 hectares of village land by mid-2010.⁴⁶ The transfer of so much land to Chinese-backed business interests – both in government-controlled and ceasefire areas – has caused widespread loss of farmland, decreased the available amount of land for traditional swidden agriculture, reduced average farm plot sizes, and decreased food security in the affected provinces, where rates of landlessness now reach 50 percent and more in many townships.⁴⁷

To date, most agricultural concessions have been granted to Burmese companies. As described below, however, the new foreign investment laws allow greater participation of foreign companies in large-scale commercial agriculture, and will likely increase the pace of land confiscations.

⁴² *PTT buying up palm oil farms*, DAWEI PROJECT, June 1, 2012, at <http://daweiproject.blogspot.com/2012/06/ptt-buying-up-palm-oil-farms.html>.

⁴³ *Id.*

⁴⁴ See TNI 2012, *supra* note 29, at 22-23. While China ostensibly provides this support in order to fight the drug trade, it reaps the benefits of increased imports of Chinese-grown rubber, an important strategic commodity. *Id.* at 28.

⁴⁵ *Id.* at 40-42. As Myanmar official statistics are notoriously inaccurate, it is difficult to ascertain whether these goals are being met.

⁴⁶ *Id.* at 63.

⁴⁷ *Id.* at 35, 44, 74



Oil and gas projects

Pipeline construction in Burma has historically been associated with serious human rights abuses – including forced displacement – and the pattern continues along the route of the Shwe pipelines, which are currently under construction.⁴⁸ The Shwe Oil and Gas Project is a major energy development linking the Shwe natural gas fields in the Bay of Bengal off southwestern Burma with Yunnan Province in China. Comprising two parallel pipelines – one to carry natural gas and the other to carry crude oil from a new port facility on Maday Island – the project crosses the entirety of Burma, including environmentally sensitive areas and conflict zones in Northern Shan State.⁴⁹

Displacement along the Shwe pipelines began in 2010 at the latest. Villagers on Maday and Ramree Islands and other areas of Kyauk Phyu Township in Rakhine State reported that their land, including subsistence farming plots, had been confiscated by Daewoo International and China National Petroleum Corporation (the principle foreign investors in the pipelines), and by Asia World Company Ltd. (a Burmese contractor and construction company that is closely linked to the former military regime) to build onshore facilities for the Shwe Gas Project.⁵⁰ Many people have no warning that the government is planning to take their land, or only hear about it second-hand, until the order arrives for them to clear out. Villagers elsewhere in Arakan State have word that they too will be displaced; compensation has been inconsistent at best and non-existent at worst.⁵¹

This pattern has been replicated along the entire pipeline route. At the other end of the pipeline corridor, in the ethnic Ta'ang area of Namkham Township in Northern Shan State, surveyors have repeatedly entered farmers' land, erected barriers, and summarily informed villagers that their land is being appropriated. Farms have been destroyed, and villagers have been forced to stop growing crops on large portions of their land.⁵² Information on the project is often unavailable, and neither the Burmese Government nor

⁴⁸ Physical displacement and land confiscation are not the only forms of displacement that communities have suffered as a result of the Shwe project. Fishermen in Kyauk Phyu Township have reported that waters that previously were their traditional fishing grounds have been closed to them, leaving them unable to sustain their customary livelihoods. See EARTHRIGHTS INTERNATIONAL, *BROKEN ETHICS: THE NORWEGIAN GOVERNMENT'S INVESTMENTS IN OIL AND GAS COMPANIES OPERATING IN BURMA* (MYANMAR) 28 (Dec. 2010).

⁴⁹ EARTHRIGHTS INTERNATIONAL, *THE BURMA-CHINA PIPELINES: HUMAN RIGHTS VIOLATIONS, APPLICABLE LAW, AND REVENUE SECRECY* 2-3 (Mar. 2011); see also TSYO 2012, *supra* note 17, at 15.

⁵⁰ ERI, *THE BURMA-CHINA PIPELINES*, *supra* note 49, at 2-3; ERI, *BROKEN ETHICS*, *supra* note 48, at 25-26.

⁵¹ ERI, *THE BURMA-CHINA PIPELINES*, *supra* note 49, at 8-9.

⁵² Mai Mao Dang, *The Negative Impacts of Burma-China Natural Gas and Oil Pipelines on Local Villagers through Land Confiscation in Western Namkham Township, Ta'ang Area, Northern Shan State*, in ERI, *WHERE THE CHANGE HAS YET TO REACH*, *supra* note 25, at 228-29, 231-32, 234



the pipeline companies have conducted consultations with villagers.⁵³ Altogether, approximately 2,000 Ta'ang households in Northern Shan State have been forcibly relocated and lost land because of the pipeline project.⁵⁴ Compensation is expected to be inadequate and inconsistent with international standards, which require resettlement and assistance in adjusting livelihoods strategies.⁵⁵ Moreover, government officials have informed villagers that only those with official land titles will receive compensation, a particularly severe problem in a region where only one-sixth of small farmers actually possess legal land documents and shifting *taungya* cultivation is the norm.⁵⁶

Land confiscation along the Shwe pipeline has created tremendous opportunities for corruption, further imperiling the farmers who are displaced. ERI field interviews have revealed that MOGE, Burma's notoriously corrupt state-owned petroleum company, has in some cases retained up to 50% of land compensation payments made by construction companies that destroy farmers' land. ERI has also discovered that Infantry Battalion (IB) 34 in Kyauk Phyu and the naval squadron based at Dyanawaddy, both on Ramree Island, Rakhine State, have confiscated local farmers' untitled land and sold it to Myanmar Golden Crown (Burma) and Punj Llord (India), two construction companies that are building the onshore gas terminal for the Shwe project.⁵⁷

Special Economic Zones

Land grabbing has become a particular concern in communities surrounding the planned Dawei Special Economic Zone (SEZ) in Tenasserim Region. Since 2008, the Thai company Italian-Thai Development Corp. has been developing Dawei pursuant to a Memorandum of Understanding with the Burmese Government. Plans for the SEZ include heavy industries, a petrochemicals complex, major road and rail links, and a deep seaport that could provide Thailand with a direct transport link to India and the Middle

⁵³ *Id.* at 232, 236.

⁵⁴ *Id.* at 233.

⁵⁵ *Id.* at 232; see also TSYO 2012, *supra* note 17, at 30; compare Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, *Basic Principles and Guidelines on Development-Based Evictions and Displacement* ¶ 61, U.N. Doc. A/HRC/4/18 Annex 1; International Finance Corporation, *Performance Standard 5* ¶¶ 15-16, 19.

⁵⁶ Mai Mao Dang 2012, *supra* note 52, at 229.

⁵⁷ For information on findings of military land confiscations associated with the Shwe project, see *Investigation body discloses military's land confiscations in western Myanmar*, MYANMAR NEWS LINKING SITE, Dec. 15, 2012, at <http://www.news.myanmaronlinecentre.com/2012/12/15/investigation-body-discloses-militarys-land-confiscations-in-western-myanmar/>.



East.⁵⁸ Thailand has been criticized for using the Dawei SEZ project to export some of its most polluting industries to neighboring Burma.⁵⁹

Official figures suggest that 32,274 individuals will be displaced from 52,361 acres of land in order to make way for the SEZ, and that hundreds more will be displaced for a dam that will provide power to the development. According to research by Paung Ku, a local Burmese civil society network, however, the official numbers fail to recognize the full number of people subject to “direct” land grabs, and the total displaced population is likely to be up to 50,000.⁶⁰ The displaced are slated to be resettled on smaller plots of land than they originally farmed, isolated from their former communities and with no plan for restoring their livelihoods.⁶¹

Paung Ku also notes that the number of direct land grabs does not take into account “indirect” land grabbing, by which well-connected speculators invest in Dawei real estate, driving up prices astronomically and effectively pricing locals out of the land market. These entrepreneurs then sell land rights to Italian-Thai and other development companies, often without the knowledge of the traditional occupiers of the land, who are deprived of their access to the land without compensation.⁶²

Moreover, the farmers subject to land confiscation also suffer at the hands of corrupt officials. For example, the Dawei Development Association (DDA) has informed ERI that U Tin Maung Swe, the former Chairman of the government-sponsored Supporting Committee for the Dawei SEZ, was removed from his post in late 2012. According to DDA’s interviews with local community members, he had been helping himself to 10% of the compensation paid to farmers displaced by the development in return for expediting payments. And ERI field interviews reveal that wealthy business people have registered land farmed by small farmers in their own name, thereby successfully claiming the compensation paid by Italian-Thai – which should be due to the farmers – by virtue of their fraudulently held titles.

⁵⁸ See Dawei Development Company Limited, *Project Overview*, at <http://www.daweidevelopment.com/index.php/en/dawei-project/project-overview->.

⁵⁹ See, e.g., Stuart Deed, *How will the Dawei project benefit Myanmar?*, MYANMAR TIMES, Nov. 5, 2012, at <http://www.mmtimes.com/index.php/opinion/2883-how-will-the-dawei-project-benefit-myanmar.html> (quoting Thai Prime Minister Abhisit Vejjajiva as saying, “Some industries are not suitable to be located in Thailand. This is why they decided to set up there,” referring to Dawei).

⁶⁰ PAUNG KU & TRANSNATIONAL INSTITUTE, *LAND GRABBING IN DAWEI (MYANMAR/BURMA): A (INTER)NATIONAL HUMAN RIGHTS CONCERN 7* (Sept. 2012). Ironically, the increased number includes farmers who will be resettled from the relocation sites.

⁶¹ *Id.* at 12.

⁶² *Id.* at 10-11.



In addition to Dawei, another major SEZ project is underway in Kyauk Phyu, the site of the Shwe oil and gas terminal. This project, which will be centered on a major oil transshipment port and possibly petrochemical plants, threatens to present similar problems as have already been witnessed in connection with the Dawei SEZ.⁶³

C. Legal framework contributing to land confiscation

For decades, all land in Burma has been formally owned by the state; that continues under the 2008 Constitution, which provides in Article 37(a) that the state “is the ultimate owner of all lands and all natural resources above and below the ground.” Virtually no small farmers have title, even where they have been farming the same land for generations. The legal protections for these small farmers have been eroding; unfortunately, laws passed by the Burmese Parliament, or Hluttaw, following the transition from absolute military rule have contributed to this insecurity.

The legal architecture for land ownership and transfer in Burma has historically facilitated the accumulation of land by wealthy private businessmen, and recent changes will make it even easier for farmers to lose their land without recourse. This weakness in the land laws is already disproportionately affecting *taungya*, or shifting cultivation, land, which means that its effects are felt most acutely in upland conflict areas like Kachin and Shan States.

For decades, the government has used the 1991 Prescribing Duties and Rights of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land Law (“Wastelands Law”) to allocate 30-year leases on large tracts of untitled land to investors for industrial crop production. The recipients have mostly been domestic businessmen, but the list recently includes foreign companies, mostly from China.⁶⁴ However, restrictions on private land transfers, in particular, remained in place, at least in theory.⁶⁵ Then, in March 2012, as part of a slate of new legislation meant to promote foreign investment and liberalize the economy, the Hluttaw passed several important land laws that are expected to further destabilize land tenure for poor farmers.

Farmland Law

First, the Farmland Law, Pyidaungsu Hluttaw Law No. 11 of 2012, legalized for the first time the private purchase and sale of official farming use rights.⁶⁶ In the current

⁶³ William Boot, *Thailand Losing out to China in Battle of the Burma Ports*, THE IRRAWADDY, Feb. 21, 2013, at <http://www.irrawaddy.org/archives/27320>.

⁶⁴ TNI 2012, *supra* note 29, at 31; *see also* DISPLACEMENT SOLUTIONS 2012, *supra* note 32, at 35-36.

⁶⁵ *Id.*

⁶⁶ *See* DISPLACEMENT SOLUTIONS 2012, *supra* note 32, at 11 (analyzing Farmland Law Ch. III cl. 9).



atmosphere of intense speculation and intimidation of farmers, especially in high-priority areas like Dawei, this provision could allow for large-scale alienation of land from titled small farmers.

Conversely, the Farmland Law discriminates against the vast majority of small farmers who have no official title, and who therefore have no share in the rights conferred by the Law.⁶⁷ Although the law sets up a system for conversion of customary land interests to formal land title, this system is inadequate and subject to corruption. Local administrative bodies known as Farmland Management Committees are tasked with scrutinizing and granting applications for land title certificates; these committees are appointed by the central government, with no provision for independent decision making and no guidance as to the criteria for membership on these committees.⁶⁸ And the Farmland Law removes jurisdiction for almost all land rights disputes from the courts and instead vests it in the very same politically appointed bodies that make the decisions in the first place: the Farmland Management Committees.⁶⁹ Farmers who are denied land title or whose land is taken from them before they have a chance to apply for title have no legal recourse to the courts, but instead must seek remedies from local officials who are likely to have participated in the land confiscation.

Vacant, Fallow, and Virgin Land Management Law

The second recent law – the Vacant, Fallow, and Virgin Land Law, Pyidaungsu Hluttaw Law No.10 of 2012 (“VFV Land Law”) – completes the evisceration of protections for small farmers by providing a legal framework for the reallocation of untitled land. Under the VFV Land Law, a Central Committee for the Management of Vacant, Fallow and Virgin Lands, composed of high government officials and appointees, has sole discretion to grant concessions to companies for agriculture, animal husbandry, mining, aquaculture, and other uses, on land judged to be either abandoned or uncultivated.⁷⁰

The import of this law is enormous. The determination of whether land is abandoned or uncultivated – vacant, fallow, or virgin – as well as the decision of how to allocate it – to Burmese companies or foreign investors – is made by the Central Committee itself, and is not subject to review by any court or administrative body.⁷¹ It is generally expected that farmers without official title will be subject to arbitrary expropriation through this mechanism. Moreover, the definition of “vacant” or “fallow” land is startlingly broad, extending to land that was “worked by the tenant previously, and then abandoned by the

⁶⁷ Land Research Action Network 2012, *supra* note 24.

⁶⁸ DISPLACEMENT SOLUTIONS 2012, *supra* note 32, at 12-13 (analyzing Farmland Law Ch. IV & V).

⁶⁹ *Id.* at 13 (analyzing Farmland Law Ch. VIII).

⁷⁰ Vacant, Fallow, and Virgin Land Law Ch. III, Pyidaungsu Hluttaw Law No.10 of 2012 (Myan.).

⁷¹ *Id.* Ch. III cl. 5(d) & (e); *see also* DISPLACEMENT SOLUTIONS 2012, *supra* note 32, at 13.



tenant for *any reason*. . . [.]”⁷² This definition could make it impossible for those who practice shifting *taungya* cultivation – primarily upland farmers in Kachin and Shan State – to show that land they have left fallow on a rotational basis is, in fact, still cultivated land. Shifting cultivation works only if large areas are left fallow on a regular basis, a practice that could lead directly to the loss of the land under the VFV Land Law.

Rules enacted in January 2013 to operationalize the VFV Land Law provide no additional comfort on this point. They simply note that if it is reported “with sound evidence” that allocated land “had long been the cultivated lands of the local peasants currently doing agricultural work,” the Central Committee is expected to negotiate with them and “ensure they are not unfairly or unjustly dealt with.”⁷³ This vague mandate provides little basis for small farmers to expect that their land rights will be respected.

Foreign Investment Law and foreign land ownership under the new land laws

Overall, the new legal architecture for land administration is expected to increase the reallocation of land farmed by small farmers to both foreign and domestic investors, without adequate protection or provisions for resettlement and compensation. As noted above, the Burmese government has allowed transfer of land rights to foreign investors in recent years, and the Farmland Law explicitly contemplates this. In November 2012, the Hluttaw approved a Foreign Investment Law, continuing the previous law’s provision for 100% foreign-owned investments in Burma and providing for new 50-year leases on land.⁷⁴ Thus foreign investors could obtain the right to use land cultivated by small farmers who do not have land title under the VFV Land Law, and then apply for a Land Use Certificate under the Farmland Law, thereby abrogating the rights of any previous users of the land without any compensation or other livelihoods assistance.

IV. Other Incidents of Violence and Human Rights Abuse

In addition to labor and land abuses, companies producing GSP-eligible goods for export continue to be associated with violent human rights abuses, particularly in the extractives sector. While such incidents may be more rarely reported now than during the military regime, the examples of the Shwe Project and the Letpadaung Copper Mine demonstrate that violent human rights abuses persist – predominately in zones of ethnic conflict, but also in other parts of Burma where community opposition runs up against powerful economic interests.

⁷² *Id.* Ch. I cl. 2(e) (definition of “Vacant land and fallow land”) (emphasis added).

⁷³ Republic of the Union of Myanmar, Ministry of Agriculture and Irrigation, Notification No. 1/2012, Vacant, Fallow and Virgin Land Management Rules, Ch. VI cl. 52(b) (2012).

⁷⁴ See Aung Hla Tun, *Myanmar state media details new foreign investment law*, REUTERS, Nov. 3, 2012, at <http://www.reuters.com/article/2012/11/03/us-myanmar-investment-idUSBRE8A204F20121103>.



The Shwe Oil and Gas Project has caused increasing militarization as it moves into conflict-affected areas of Shan State. Government forces are moving to secure the pipeline corridor, creating a flood of internally displaced persons without adequate access to food, water, and shelter.⁷⁵ TSYO notes that fighting is focused on the pipeline construction area, where armed forces provide security for Chinese construction workers.⁷⁶ TSYO also reports numerous cases of rape and sexual harassment.⁷⁷ And villagers on Maday Island in Arakan State who protested the project's impacts were recently arrested after being told that the island was under a "state of emergency."⁷⁸

At the Chinese-run Letpadaung Copper Mine in Monywa, which is in a majority-Burman area, a community protest against the environmental impacts of mine expansion was suppressed violently last year. Burmese security forces attacked the protesters' camps while most of them were sleeping, severely injuring nearly fifty people, including Buddhist monks.⁷⁹ The wounded suffered horrific burns, apparently because the security forces used white phosphorus,⁸⁰ which may be considered a chemical weapon that is prohibited under international law when used against human targets.⁸¹

V. Conclusions and Recommendations

Incidents of human rights abuse – including labor and land rights violations – remain rife in Burma's export-oriented sectors, especially extractive industries and plantation agriculture. These abuses deeply affect the physical and economic well-being of the poorest and most vulnerable Burmese citizens, contribute to conflict and corruption, and undermine the rule of law. They are therefore relevant to the President's considerations under 19 U.S.C. § 2462(c)(2). Moreover, the effects are particularly severe in ethnic minority areas, which are often active conflict zones. Any U.S. initiative promoting imports that are connected to human rights abuses or civil conflict must be reviewed for consistency with the President's national emergency declaration with respect to Burma. Designation of Burma as a BDC would be one such policy, as the duty-free promotion of exports may intensify the negative impacts these industries already cause.

⁷⁵ TSYO 2012, *supra* note 17, at 19-20.

⁷⁶ *Id.* at 20; *see also* ERI, THE BURMA-CHINA PIPELINES, *supra* note 49, at 6 (noting arrangement between CNPC and Burmese Government providing that the government will guarantee the safety of the pipeline).

⁷⁷ TSYO 2012, *supra* note 17, at 35.

⁷⁸ Human Rights Watch, Press Release, *Burma: China-Led Oil, Gas Projects Spark Arrests* (May 11, 2013), at <http://www.hrw.org/node/115469>.

⁷⁹ *Id.* *See also* Gwen Robinson, *Violence casts shadow over Myanmar reform*, FINANCIAL TIMES, Dec. 1, 2012, at <http://www.ft.com/intl/cms/s/0/152b40b8-3acb-11e2-b3f0-00144feabdc0.html#axzz2LeOjhWnR>; Ingjin Naing & Khet Mar, *Dozen Mine Protesters Arrested*, RADIO FREE ASIA, Sept. 10, 2012, at <http://www.rfa.org/english/news/burma/arrested-09102012185605.html>.

⁸⁰ Jonah Fisher, *Burma police 'used white phosphorous' on mine protesters*, BBC, Feb. 14, 2013, at <http://www.bbc.co.uk/news/world-asia-21455087>.

⁸¹ *See, e.g.*, Paul Reynolds, *White phosphorus: a weapon on the edge*, BBC, Nov. 16, 2005, at <http://news.bbc.co.uk/2/hi/americas/4442988.stm>.



ERI takes no position on whether the U.S. Government should grant BDC status to Burma. However, given these concerns, if BDC status is granted, the U.S. Government should take the following steps to mitigate potential human rights impacts:

1. Sectors where abuses of land, labor, and other human rights are common and contribute to conflict should be excluded from the BDC designation. At a minimum, this encompasses extractive industries and plantation agriculture. The U.S. Government has previously exercised this option in Pakistan, where concerns about child labor led to the suspension of GSP eligibility for sporting goods, surgical instruments, and hand-knotted rugs in 1996.⁸² This suspension could be subject to revocation upon certification by the State Department, the Department of Labor, and the U.S. Department of Agriculture that these sectors are no longer characterized by widespread human rights violations, including worker exploitation and land confiscation, and are not contributing to conflict.
2. All persons who import Burmese goods under the GSP into the United States should be required to certify that they have conducted adequate human rights due diligence according to international standards, and that to the best of their knowledge, human rights – including internationally recognized workers’ rights and land rights – have not been violated in connection with the production of the goods they are importing. At a minimum, this due diligence should be consistent with the UN Guiding Principles on Business and Human Rights, which the U.S. has endorsed. This requirement should not be particularly onerous because U.S. investors will already be encouraged to undertake due diligence under the Reporting Requirements on Responsible Investment in Burma, and because supply chains in Burma’s export sector, which is dominated by raw materials.

More specific due diligence standards may be appropriate in particular fields or sectors. Best practice in land tenure is represented by the Voluntary Guidelines on the Responsible Governance of Land Tenure,⁸³ which were approved by the Committee on World Food Security, of which the U.S. is a member.⁸⁴ Importers could certify that goods were produced on or from land that has benefitted from the protections described in the Voluntary Guidelines. Further guidance may be found in the U.S. Department of Agriculture’s Guidelines for Eliminating Child

⁸² See Office of the United States Trade Representative, *Generalized System of Preferences; Pakistan; Internationally Recognized Worker Rights*, 60 Fed. Reg. 56,088-89 (Nov. 6, 1995).

⁸³ See Food and Agriculture Organization (FAO), *Voluntary Guidelines on the Responsible Governance of Land Tenure* (2012), at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

⁸⁴ See FAO, *Countries adopt global guidelines on tenure of land, forests, fisheries*, May 11, 2012, at <http://www.fao.org/news/story/en/item/142587/icode/>; Committee on World Food Security, *The CFS Bureau and Advisory Group*, at <http://www.fao.org/cfs/cfs-home/cfs-about/cfs-members/en/>.



and Forced Labor in Agricultural Supply Chains,⁸⁵ the Implementation Guidance Tools for the Voluntary Principles on Security and Human Rights⁸⁶ and the Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.⁸⁷

3. The details of Burma's BDC status should be revisited annually and reviewed by a multipartite commission consisting at least of representatives from U.S. government agencies, Burmese labor and civil society organizations, and importers. To date, review of GSP designations has been on an ad hoc basis, and usually at the behest of U.S.-based labor organizations. However, given the national emergency with respect to Burma, the effects of BDC status should be reviewed by an inclusive body with more regularity. This commission could issue recommendations on fine-tuning aspects of the regime in order to ensure consistency with the President's strategy to mitigate human rights impacts.
4. The Committee should establish an accessible mechanism to handle grievances alleging that human rights abuses occurred in association with the production of goods imported into the United States under the GSP. One enforcement model is the APEC Privacy Framework and Cross-Border Privacy Rules (CBPR). Under the CBPR, participants agree to abide by a code of conduct developed by a multistakeholder group. An external "Accountability Agent" is engaged to do spot-checks and ensure compliance. If a participant consistently fails to comply, its home government may pursue misrepresentation claims against it.⁸⁸

Respectfully submitted,

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⁸⁵ See U.S. Dept. of Agriculture, Consultative Group To Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products, *Request for Comment on Guidelines for Eliminating Child and Forced Labor in Agricultural Supply Chains*, 76 Fed. Reg. 20,305-09 (Apr. 12, 2011).

⁸⁶ International Council on Mining and Metals, *Voluntary Principles on Security and Human Rights: Implementation Guidance Tools* (2011), at <http://www.icmm.com/library/voluntary-principles-on-security-and-human-rights>.

⁸⁷ Organization for Economic Cooperation and Development, *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones* (2006), at <http://www.oecd.org/daf/inv/corporateresponsibility/36885821.pdf>.

⁸⁸ See Asia-Pacific Economic Cooperation, *APEC Cross-Border Privacy Rules System*, at http://www.apec.org/Groups/Committee-on-Trade-and-Investment/~/_media/Files/Groups/ECSG/CBPR/CBPR-PoliciesRulesGuidelines.ashx.