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**VIA FILING AT REGULATIONS.GOV**

Mr. William D. Jackson  
Deputy Assistant U.S. Trade Representative  
for the Generalized System of Preferences,  
Chairman, GSP Subcommittee of the Trade Policy Staff Committee  
Office of the U.S. Trade Representative  
United States Trade Representative  
600 17th Street, N.W.  
Washington, DC 20508

**Re: Agency: Office of United States Trade Representative (USTR)**  
**Parent Agency: Executive Office of the President (EOP)**  
**Docket ID: United StatesTR-2013-0020**  
**Republic of Union of Myanmar Response to Post-Hearing Questions**

Dear Mr. Jackson and the GSP Subcommittee:

In connection with the above-referenced matter, and on behalf of the Republic of the Union of Myanmar (Myanmar or the MM Government), we thank you for the opportunity to provide this post-hearing response and supplement to support the designation of Myanmar as a beneficiary developing country (BDC) under the United States GSP program (the GSP Program), and further designate Myanmar as a least-developed beneficiary developing country (LDBDC) under GSP Program. We respectfully believe that Myanmar meets the criteria for both designations as a BDC and LDBDC under the GSP Program.<sup>1</sup>

Set forth below are our written responses and supplement to questions posed by the GSP subcommittee to the MM Government delegation. We have also included necessary and appropriate information to further explain the issues raised by the GSP subcommittee. It is the

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<sup>1</sup> We hereby submit our responses and supplement to support the determination that Myanmar meets the eligibility criteria set forth under the Trade Act of 1974, as amended (19 U.S.C. 2462(c)) (the Trade Act).

MM Government's goal to ensure internationally recognized worker rights, intellectual property rights and all relevant rights and laws within all areas of Myanmar in connection with the GSP Program.

## I. INTRODUCTION

The government of Myanmar has made great strides in recent years to address political, social and workers' rights and to transform its economy through trade and investment, repeatedly demonstrating its sincere commitment to become a responsible stakeholder in the global trading system.

On June 18, 2013 during the 102nd session of the General Conference in Geneva, Switzerland, the International Labor Organization (ILO) adopted a resolution to lift all remaining sanctions on Myanmar.<sup>2</sup> This reasoned resolution by the ILO will assist Myanmar's effort to create jobs, attract international trade and foreign investment, and create opportunities for all stakeholders concerning Myanmar. The ILO's affirmative decision recognizes Myanmar's progress and proactive actions for ending forced labor, provides recognition of rights, and advancement of all applicable rights and laws in connection with the GSP Program. As earliest as 2012, the ILO definitively concluded that significant progress has been achieved in Myanmar, which resulted in the recent resolution.

The GSP Program and the positive commerce it will ensure can continue to build on that progress. We believe all U.S. and Myanmar businesses and stakeholders will benefit from the GSP Program. Providing Myanmar with LDBDC and BDC designations will result in commerce that both countries will derive great benefits from.

In May of 2013, the European Parliament also recognized Myanmar's progress by voting to restore Myanmar's preferential access to the EU markets.<sup>3</sup> This decision by the European Parliament is in direct response to the MM Government's positive transition towards democratic reform that has taken place in the country following recent improvements in labor standards in the country.

We submit this letter in support of reinstating Myanmar in the GSP Program with the LDBDC and BDC designations and respectfully urge this Sub-Committee to expeditiously act on this matter.

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<sup>2</sup> Please see [http://www.ilo.org/ilc/ILCSessions/102/media-centre/news/WCMS\\_216355/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/102/media-centre/news/WCMS_216355/lang--en/index.htm) for more information.

<sup>3</sup> <http://ec.europa.eu/trade/policy/countries-and-regions/countries/myanmar/>

## II. SUMMARY OF PRE-HEARING MEMO AND LEGAL SCHEME IN RESPECT OF GSP PROGRAM

In the light of the changes and progress being made in Myanmar and in bilateral relations between the two countries, Myanmar deems that it is timely for both countries to again have closer trade investment opportunities and ties. Myanmar has made great strides with its reform process. Politically, economically and socially, the country is in a systematic and peaceful transition to democracy.

The people in Myanmar - including all levels of the Government, all divisions of political parties and the general public - are very much aware and understand that it will take time, political will, leadership and relentless efforts by all to reach the desired goals. However, in the mean time, it is also vital for a country to strive for economic development and to catch up with the rest of the region. Poverty which is the root cause of many political, social and economic conflicts can only be eradicated with balance economic growth. Trade and investment are engines that will drive that growth.

Myanmar has been trading with neighboring countries, regional countries and other Asia Pacific countries. Now, it will certainly be extended to Europe as EU lifted all sanctions on Myanmar (except weapon on 22 April 2013) and many other countries have actively engaging with Myanmar to promote commerce in all fields of business and industries.

### Myanmar Reform Process

Myanmar formerly became a GSP country in 1976. The program was suspended in 1989 due to the 1988 political crisis. Myanmar is now undertaking many political, economic and social reforms to overcome the crisis and build a democratic nation.

A National reconciliation process in the country is gaining pace with the new Government that took office in 2011. Amnesty was granted seven times to over 29,668 prisoners including political prisoners. Election laws are amended to enable wider participations. The April 2012 by-election saw NLD leader Daw Aung San Suu Kyi and many NLD representatives joined the Parliament.

Furthermore, the President and Daw Aung San Suu Kyi establish good working relationship and share the same goals for moving the country forward. The new media laws, the people's right to assemble law were also enacted. Olive branches were extended. Peace agreements were reached with 10 out of 11 remnant armed groups. This is a feat for a multi-ethnic society with over 100 diverse ethnic groups with long protracted history of multi-colored armed insurgencies. Formerly there were over 18 major armed groups and 22 small armed groups in the country. After much peace effort, it came down to 11 groups. Now, only KIA remains and the Government is engaged in a cease-fire agreement with them. Peace process is

still ongoing and we are confident that comprehensive peace with all armed groups will be achieved in the near future.

On economic reforms, the Foreign Direct Investment Law (FDI) has been enacted in 12 Nov 2012. It is specifically designed to attract and provide an enabling environment for -foreign investors. A notable point that meets the GSP criteria is the provision that states no investment will be expropriated (art. 28).

Myanmar was formerly designated as a GSP country in 1976 because she was deemed to have met the criteria including criteria on non-nationalization, non-expropriation of United States citizens' own property or corporation without proper compensation or due arbitration. This remains true, from 1976 onward, there is no such case of expropriation or nationalization in Myanmar. The new Foreign Direct Investment Law will again ensure that there will not be one. There are also other economic reform process such as the finance and taxation reforms, monetary sector reforms, relaxation of regulations on trade and investments, and promotion of private sector development. Myanmar is in process of signing the New York Convention (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958).

Myanmar is also in consultation and drafting the Patent Law, Industrial Design Law, Trade Mark Law and Copyright Law. Moreover, Labour Organization Law (2011), Settlement of Labour Dispute Law (2012), Social Security Law (2012) and Minimum Wages Law (2013) have been enacted.

Myanmar is in the process of signing the Extractive Industries Transparency Initiative (EITI). Myanmar is working with the Open Government Partnership (OGP) to become a member in 2016. The OGP is a multilateral program for building of a more transparent, accountable and efficient government by promoting public participation in political process, ensuring anti-corruption, and improving technology sector. This is one of the aims to create clean government and good governance. This is also to create an enabling environment to promote trade.

### **Promotion of Human Rights**

In the areas of promotion and protection of human rights, the Government is working together with the International Committee of the Red Cross (ICRC) and several International Non-Government Organizations (INGOs). The ICRC and the INGOs are assisting and assuring the MM Government's efforts and mission to promote and protect human rights.

The Myanmar National Human Rights Commission (MNHRC) was established in September 2011 and is now actively taking part in national human rights protection and promotion tasks (by among other many actions, accepting complaints and reports of human rights violations, conducting its own investigation of those violations and providing its findings and recommendations).

The Myanmar Government is proactively, closely and responsibly working with the MNHRC Commission to promote and protect the human rights of its citizens. To further its works, two human rights dialogues were held in Myanmar - one with the United States in October 2012 and another one with Japan in February 2013.

Our Government is also working closely with the UN to open the OHCHR (Office of the High Commissioner for Human Rights) in Myanmar. Myanmar is also a state party to many UN human rights conventions. These dramatic developments in the country have not been in the past decades till now as the country open up to the international community.

### **Myanmar and Counter Terrorism**

As stated in our Pre-Hearing memo, Myanmar condemns terrorism in all forms of manifestation. It is against our policy to provide assistance, either active, or passive, to entities or persons involved in terrorist acts. Myanmar has bitter experience with acts of terrorism in the past and will take all actions necessary and appropriate to deter terrorism. Myanmar stands together with other nations in fighting terrorism and as part of the nine United Nations Conventions and two Protocols on Terrorism; Myanmar will continue her commitment to deter terrorism. Pursuant to the U.N. Security Council Resolution 1373, Myanmar submits yearly report to the UN Counter Terrorism-Committee.

### **Elimination of Forced Labor and Labor Rights**

Forced labor is cited as one of the reasons for suspension of the GSP Program in 1989. Let me point out that many developments have taken place on the issue of forced labor in Myanmar since 1989. Myanmar is closely cooperating with the International Labor Organization (ILO) for elimination of forced labor in the country. In 2002, an agreement was reached and signed between Myanmar and the ILO under Convention 29 (Forced Labor) to be appointed an ILO Liaison Officer in Myanmar to help eliminate force labor. This was later extended with a yearly Supplementary Understanding (SU). Under the SU, a complaint mechanism was established for lodging complaints of forced labor. The complaints were investigated by a committee headed by Ministry of Labor. Its members are the ILO Liaison and all the relevant Ministries. The Supplementary Understanding is still very active and is extended to 2014. On March 16, 2012, Myanmar and the ILO signed a Memorandum of Understanding on Joint Strategy for elimination of forced labor in Myanmar by 2015. Therefore, a joint plan of action is being implemented to meet the targeted goals by 2015 or earlier. As a result, the ILO High Level Mission headed by Chairman of the ILO Governing Body paid a visit to Myanmar (May 2012) and later at the 101st session of International Labor Conference in 2012 most of the sanctions imposed by ILO between 1999 and 2000 were lifted or suspended. The recent outcome at the 102<sup>nd</sup> session of International Labor Conference in 2013 showed Myanmar's genuine spirit to eliminate forced labor and approved by lifting all the rest sanctions.

Internally, Ministry of Labor undertook reviews of domestic labor laws during which (17) labor laws were amended and new laws were also enacted in line with international standards and practices.

While the Labor Organization Law, the Settlement of Labor Dispute Law, the Social Security Law, Occupational Safety and Health Law and Alien Workers Law, the Minimum Wage Law were enacted, the Employment and Skills Development Law is in the process of submission to the Parliament. The Myanmar Parliament (Pyidaungsu' Hluttaw) exercising the power vested by section 24 of the Constitution enacts labor laws to protect the right of the workers, to establish a good employer-employee relationship, and to promote the right to form independent labor organizations with good disciplines. To these ends, the Labor Organization Law (11 Oct. 2011) protects the rights to form labor unions and organizations.

Since its enactment, (523) certificates were issued to (492) labor organizations, (1) labor federation, (18) organizations of employers, (11) township labor organizations and (1) employer federation. In this connection, Myanmar has no case of child labor. In a Myanmar society children are protected by families, extended families and a community at large. Culturally, children are cherished and being taught the values of religions, family and disciplines in order to be a good citizens in society. Myanmar is also a state party to the Convention on the Right of the Child (CRC) since 1991. Myanmar works closely with UNICEF in promoting child rights. She has not only served several terms in the UNICEF Executive Board but also set a special Plan of Action to eliminate alleged child soldier issue in the country.

### **Bilateral Relations with the U.S.**

So many changes have taken place in the country within so short a time. The Government of Myanmar is moving forward with all round reform process with the aim to promote a better life for all its citizens. We cite a few examples of progresses being made in the country in its endeavor to put in place democratic structure and foundations.

The next important development worth mentioning is the progress of bilateral relation between the United States and Myanmar. Today Myanmar has diplomatic relations with 109 countries in the world. And Myanmar relation with the United States has a special place in Myanmar history. The United States was one of the three countries that Myanmar established diplomatic relations in 1947, the year before Myanmar officially became an independent nation. However, actual bilateral relation goes way back much earlier to 1857 when the Representative of President James Buchanan was given an unconditional access to Myanmar King Mindon and his royal court.

Starting from 2009, both the United States and Myanmar have reached out to re-engage and to normalize the diplomatic ties. Both side put in efforts to find mutual ground to move forward. We began with many positive and groundbreaking steps. The Myanmar Government is undertaking all encompassing reforms process. The United States Government demonstrates its

support by the Secretary of State visiting Myanmar (in December 2011). It was the first ever visit by the United States Secretary of State to Myanmar in 55 years. This was followed by appointment of Ambassadors to each other capitals and easing of some part of the sanctions. The normalization of relation reaches its height when President Obama visited Myanmar in November 2012. It was also an historical visit by the U.S. President to Myanmar. We would also attribute the success of the Myanmar reform process to the international community, particularly to the United States and ASEAN. Myanmar appreciates their support, encouragement and cooperation. In the early stages of the reform process there were some skeptics and cautious optimism, but now we can confidently say that Myanmar is now gaining the trust and understanding from the international community. For a country that has lagged behind for many years, more is needed to be done to catch up. Myanmar hopes to receive the continue support of the international community especially the vital support of the United States.

Our Myanmar President has recently made a historical working visit to the United States (in May 2013). The White House announced that the visit underscores President Obama's firm commitment to support and assist governments that embrace reforms. It also highlights the United States' dedication to help the transitional country to face many remaining challenges including bringing economic opportunity to the people. Indeed, trade facilitation between the two countries is timely and should be one of most important steps towards the right direction. Bilateral Trade According to the United States Department of Commerce's reports, U.S exports to Myanmar for the first three months of 2013 amounted to \$88.7 million, making Myanmar United States' 7th largest export market in ASEAN and 10th largest export market worldwide. This was said to be ahead of Cambodia, Brunei and Laos. The U.S. import to Myanmar in the same 3 months amounted to \$1.4 million.

These numbers have potential to grow especially with the signing of the recent Trade and Investment Framework Agreement (TIFA) between the United States and Myanmar.<sup>4</sup> As a member of the Myanmar delegation and a signatory to the TIFA, Deputy Commerce Minister Dr. Pwint San testified before the GSP Subcommittee leading the effort to engage in ongoing dialogue and cooperation on trade and investment issues between our two governments. As part of this dialogue, the two sides will work together to identify initiatives that support the ongoing reform program and promote inclusive development that benefits the people of Myanmar, including the poorest segments of its population. The GSP would be the next logical step to follow.

### **Economic Opportunities in Myanmar and the Benefits of the GSP Program**

Myanmar lies strategically located between two populated nations - China and India. Myanmar is also a land-bridge between Southeast Asia and South Asia and China. Myanmar has a population of over 60 million populations and together with Southeast Asia and her neighbors

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<sup>4</sup> Please see <http://www.ustr.gov/about-us/press-office/press-releases/2013/may/u.s.-burma-sign-tifa> for more information on the

represents a vast consumer market and potential labor force. Myanmar is also resource rich country. Her resources are not yet fully realized or utilized. Currently, Myanmar's major export products are agricultural products, marine products, forest products, natural gas and garments while import products include consumer goods, capital goods and industrial raw materials.

To further promote trade, Ministry of Commerce has drafted soon to be enacted Consumer Protection Law and Competition Law in line with the international trading practices. Since the enactment of new Foreign Direct Investment Law the foreign investment has increased fivefold reaching over United States\$1.4 trillion in foreign investment in 94 industries, and over Kyats 1.1 trillion domestic investments in 65 industries and created jobs opportunities for 82,792 between 2011 and 2012. Again, these numbers have potential to grow if Myanmar and the U.S. open up trade opportunities with the GSP. The GSP results in more export promotion, more market access, opportunity for industrial development, job creations and income generation, competitiveness in global market, improve the capacities of SMEs to name a few. The GSP schemes are aimed to increase foreign export earning, to develop industries and to bring economic development. The economic development would be conducive for the eradication of poverty and bring better social standard and life for the people of Myanmar.

### III. **RESPONSES OF MYANMAR GOVERNMENT TO POST-HEARING QUESTIONS**

*(Note: The Post-hearing questions are hereinafter set forth below in bold/italics for ease of reference. As applicable, all our responses below supplement our responses provided at the hearing. Where appropriate, our responses below also address the questions found in the hearing transcript.)*

#### **Worker Rights/Forced Labor/Child Labor**

##### **Question 1**

*We understand that your government currently employees 60 labor inspectors; is that correct? Do the inspectors have specialties, such as health and safety inspectors or wage and pension experts? Are all inspectors qualified to inspect all types of establishments? Can you describe their geographical deployment? Please provide a translated copy of the checklist that the inspectors use.*

##### **Response to Question 1**

There are 69 labour Inspectors under the Current Departmental structure. As the Labour Inspection Service is growing in Myanmar, the Government allowed extending its structure (manpower) up to (326) and the recruitment and selection process will be carried out by the Union Civil Service Selection Board in October, 2013.

All the Factory Inspectors and some of the General Labour Laws Inspectors have been trained by different international organizations such as JISHA, KOSHA, NIOSH, OSHC (Philippines) so on. The training courses deliver lectures for Safety and Health Officers, Industrial Hygiene and Construction Safety. Moreover, ILO has started providing Labour Inspection trainings to FGLLID Inspectors based upon the needs of the country. In light of this, all the inspectors are well qualified to handle all aspects of Myanmar's Labour inspection requirements. The geographical deployment of the FGLLID Inspectors and the translated copies of the checklists both types of Inspectors appear in **Exhibit A** attached hereto and labeled as Annex (A), (B) and (C), respectively.

According to Myanmar's Labour Organization Law, oversight of labor is divided geographically and jurisdictionally, starting at the basic level, township level, and then regional/state level. Above all these levels are the Myanmar Labour Confederation and Labour Federation. Parties interested in organizing at any of those levels—whether it be at the basic, township, regional or state level—must apply to the township registrar using the recognized forms.

Those seeking to organize with the Myanmar Labour Confederation and Labour Confederation must apply with the Chief Registrar. The Chief Registrar is the head of Myanmar's labor regulatory scheme according to the Labour Organization Law and this position oversees the registrars from the Department of Labour in 77 townships and districts are appointed and assigned duties by Chief Registrar.

In Myanmar, 19 ILO conventions have already been ratified. To protect the rights of workers, Myanmar has been reviewing and amending existing labour laws in accord with International standards. Moreover, Myanmar enacted the Labour Organization Law, the Settlement of Labour Dispute Law, Social Security Law and the Minimum Wages Law with the advices of ILO Experts. Myanmar is drafting the Employment and skill Development law and it will be enacted soon.

#### Organization of Labor Organizations:

Labour Organizations (Trade Unions) are allowed to form independently in line with the Labour Organization Law. Presently 565 basic labour organizations, 15 township labour organizations, 2 labour organizations, 2 labour federations, 18 basic employer organizations, 1 township employer organization and 1 basic employer federation have formed.

When applications to organize as a Labour Organization are received, the applications are processed and investigated to ensure compliance with the Labour Organization Law. Recognition at the Township level requires approval at lower levels to ensure compliance with pertinent regulations. Organizations then must submit their applications to the Chief Registrar within 30 days. Once compliance is proved, the Chief Registrar issues a recognition certificate within 30 days.

Organization at the Myanmar Labour Confederation and Labour Federation level requires an application to the Chief Registrar. The Chief Registrar then will issue a recognition certificate within 60 days to those organizations based on the information provided on the application.

#### The Duties and Responsibilities of the Labour Exchange Office:

There are 5 Departments under the Ministry of Labour, Employment and Social Security. 91 Labour Exchange Offices are under the supervision of the Department of Labour, which is charged with ensuring peaceful industrial relations, managing employment issues (local and overseas), enhancing the skills development of workers in the workplace, enforcing workers' rights in accord with labour laws, and cooperating in International and Regional labour affairs.

There are 80 social security offices, including 77 at the Township level and 3 Divisional offices. There are 93 Social Security Clinics and 3 Social Security Hospitals. These offices are charged with the task of registering insured workers, collecting social security contributions, issuing social security benefits, and providing and upgrading health care services.

All together 54 Region/State and Township level Offices are open under the Factories and General Labour Laws Inspection Department, and act as an enforcement body in accord with the existing labour laws and occupational safety and health regulations. 14 State/Regional level Offices are open under the Labour Relations Department, and are tasked with settling labour disputes quickly and fairly. 67 State, Region and Township level Offices exist under the Central Inland Freight Handling Committee. These offices provide systematic and effective freight and cargo handling services for smooth and steady flow of commodities throughout the country.

#### Question 2

*In light of the many legislative changes that have occurred, what types of training have these labor inspectors receives, or will they receive, to ensure that they understand the relevant legal changes? Are there any plans to increase the number of labor inspectors?*

#### Response to Question 2

The government of Myanmar understands the critical role of labor inspectors. As such, the Government has developed an approach to improving our enforcement mechanisms. In the part of implementing high level training procedures, appropriate training in the specific tasks they perform, with an emphasis on the nascent developments in the particular areas of law that they are tasked with enforcing. This training ranges from providing compliance seminars and staff training exercises, to a concerted initiative on the part of the government to raise the overall quality of newly hired staff. The goal is to change the mindset of government staff away from the old ways, with a new focus on fairness to the labor applicants.

Because our implementation efforts are expanding quickly, we are committed to expanding our staff proportionately to the increased demand. We are currently in the process of

gauging the response to our present efforts, and measuring the growth of these very new programs, and will respond with our resources accordingly.

The reform process of Myanmar has accompanied many legislative changes and in connection with this, the Factories General Labour Laws Inspection Department (FGLLID) Inspectors usually receive relevant laws awareness through attending the Laws Awareness Workshops and trainings held by different Ministries as well as international organizations.

As the Labour Inspection Service is becoming a growing importance in Myanmar, the Government allowed to extend its structure (manpower) up to (326) inspectors and the recruitment and selection process has been carried out by the Union Civil Service Selection Board. Thus, the first selection and recruitment process will be started in October, 2013. In this sense, in the near future, it is expected to appoint more than hundred inspectors all over the country.

### **Question 3**

*Regarding labor inspectors for the Special Economic Zones (SEZs):*

*a. If the current government labor inspectors do cover the SEZs: What are the procedures for entering a zone?*

*or*

*b. If the current government labor inspectors do not cover the SEZs: Do the SEZs employ their own inspection teams or labor experts? To what authority will the SEZs inspectors ultimately report? Are there any additional or different legal measures that cover industrial relations and workplace safety and health in the SEZs?*

### **Response to Question 3**

Currently the government of Myanmar intends to maintain the status quo with respect to its management of its Special Economic Zones, in accordance with the Myanmar Special Economic Zone Law. As such, the procedures for entering a zone will remain the same, with no planned changes to the procedures for labor inspectors already in place.<sup>5</sup> The Government continues to monitor and assess the situation, and will make appropriate changes as they become necessary, and in accordance with GSP and international guidelines.

Regarding the Special Economic Zones, the existing 1951 Factories Act allows the Inspectors to freely enter and inspect any industrial establishments around Myanmar regardless of its special economic purposes. Moreover, in Myanmar Special Economic Zone Law, chapter IX deals with labour affairs and it is clearly stated in section 48 (b) of it that all labour services for special economic zones must comply with the existing Labour Laws, rules and regulations.

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<sup>5</sup> For a full explanation of Myanmar's procedures with respect to entry into Special Economic Zones in accordance with the Myanmar Special Economic Zone Law, please see <http://www.dica.gov.mm/includes/MSEZ.pdf>

#### **Question 4**

*We understand that the Social Welfare Law does not cover the agriculture sector. If this is correct, has any action been taken or are there plans to take action to extend the Social Welfare Law to the agriculture sector? Do any other laws address the rights of workers in the agricultural sector?*

#### **Response to Question 4**

The Ministry of Agriculture and Irrigation is tasked with the objective of fulfilling the needs of local consumption, creating agricultural export surpluses, and assisting with rural development through agricultural development. (See **Exhibit B**.) Relevant here are the Ministry's major tasks for agricultural development. These tasks are hybridization, mechanization, irrigation, training and education, and privatization. Myanmar is committed to improving and modernizing its standards of employee protections, and raising its legal framework to the present international standard, especially with respect to agricultural workers. Myanmar is rich in natural resources, and our agricultural industry is one of our most important. This area of the law is evolving rapidly, and Myanmar is committed to enduring labor reform.

Although Myanmar's Social Security Law does not directly apply to the agriculture sector, Myanmar has numerous laws and enforcement agencies already in place to ensure the protection of Myanmar's agricultural workers' interests. These laws directly address the needs of Myanmar's large agricultural labor force, and include the 2011 Labor Organization Law. This modern, comprehensive reform is supplemented by other laws, including Myanmar's Minimum Wage Law and Social Security Law. Together these measures ensure a high standard of living and other essential protections for Myanmar's many agricultural workers.

These new laws supplement a number of measures in place to protect workers, including the Leave and Holiday Act, Employment and Training Act, and Workman's Compensation Act. Members of Myanmar's Parliament are presently in the early stages of introducing new legislation to continue to expand the scope of Myanmar's labor law.

Pursuant to the regulations under the new Social Security Law (2012), farm workers can achieve concerned benefits at their option by contributing social security insurance even though they do not have any rights to enjoy benefits from the current insurance system under the Social Security Act of 1954.

#### **Question 5**

*We have seen reports of a number of under-age recruits being discharged by the military. What steps is the government, including the military, taking to ensure that all under-age soldiers are discharged and that no additional children are recruited into the military?*

#### **Response to Question 5**

The Myanmar government and the Country Task Force on Monitoring and Reporting Mechanism (CTFMR) signed an action plan on the prevention of underage recruitment on June 27, 2012. Following the signing of this action plan, 16 meetings took place in the Ministry of Defence and Nay Pyi Taw to decide upon the implementation of the Action Plan.

According to the agreed upon procedures, training on the prevention of underage recruitment was carried out at military focal points at different levels of the government's regional command. This training was attended by 14 General Service Officers from the different regional commands, 4 commanders from recruitment units, and commanders from the Military Transit Center.

Following this training, multiplier training for lower officers from the inferior officers battalions and regiments' for those officers was conducted. All pertinent information surrounding the prevention of underage recruitment was disseminated to the battalions in September 2012.

Recruitment was carried out systematically in accordance with the Defence Council Directives, Disciplinary Act directives, and directives from General Officer Long. 42 underage recruits were discharged. The military command has been carrying out the identification of suspected minors. These efforts have lead to the discharge of an additional 24 underage recruits.

Regarding the provisions for independent monitoring as part of the action plan, monitoring visits were conducted by the CTFMR, accompanying senior liaison officers to recruitment units and basic military training schools. These visits are conducted independently in accordance with the CTFMR monitoring criteria. These visits have identified a total of 63 additional suspected minors.

The government of Myanmar takes underage recruitment very seriously, and will continue with its successful efforts to identify and discharge any suspected minors from the military. Please refer to the attached **Exhibit C** for a detailed prevented measures and activities implemented by Myanmar in connection with the foregoing.

In addition, under the Supplementary Understanding between the Government of the Union of Myanmar and the International Labour Office (2007) to advance the objectives of the elimination of the use of forced labour, complaints related to the under-age recruitment are received by Ministry of Labour, Employment and Social Security (MoLES) through the ILO liaison officer in Yangon. After the initial assessment, the complaints are forwarded to the Ministry of Defence and when the responses investigated are received, MoLES replies to the ILO liaison officer.<sup>6</sup>

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<sup>6</sup> please see <http://www.ilo.org/yangon/country/lang--en/index.htm> for more information.

## **Question 6**

*At the hearing, government officials stated that military orders had been issued that the use of forced labor will not be tolerated by the military. However, we heard from other witnesses that in remote areas the military is still using forced labor. What steps is the government, including the military, taking to ensure that even in remote areas no one is being forced or volunteered to work for the military against their will, including in non-military capacity?*

## **Response to Question 6**

We respectfully refer to the specific response to Question 5 above and generally to all the responses set forth herein and the hearing testimony by our delegation in response to this question.

Further, there are extensive awareness-raising activities throughout the entire country of Myanmar through workshops, seminars and joint presentations with the ILO. Copies of advocacy brochures in seven ethnic languages were and are being distributed. **(Exhibit-H)** The contents of the brochures have also been broadcasting nationwide, publishing in national newspapers and announcing to public.

## **Question 7**

*At the hearing, government officials stated that voluntary labor was no longer being used for projects such as road construction and that people who work on such projects will be paid. How is work for such projects now recruited? If a citizen is asked to work on a project but refuses, is that citizen subject to retribution?*

## **Response to Question 7**

Job recruitment on government works projects is conducted in accordance with all applicable international and Myanmar government labor standards. That is, the government of Myanmar takes job applications from contractors and individuals with the requisite skills to perform jobs on a purely voluntary basis. Additionally the government of Myanmar and the various government localities maintain a full-time staff of construction and maintenance workers, who are paid in accordance with Myanmar's numerous labor laws. The precise procedures vary from job to job, and locality to locality, but broad measures are already in place to prevent forced labor. The government of Myanmar recognizes and wholeheartedly supports freedom of contract, and does not punish individuals for their choices not to work, the nature of the present government employment process prevents the possibility for retribution, as jobs are simply posted and then filled.

In addition, according to the elimination of forced labour action plan on 2015 by Myanmar, Ministry of Construction, Ministry of Labour, Employment and Social Security and ILO are cooperating to ensure proper labour practices for projects such as in road construction.

Private Agencies can recruit workers independently based on the wages agreed mutually by both parties for the particular projects. A Myanmar citizen has the right to refuse to contribute his or her labour without worrying to be taken action according to the Ward/Village Tract Administration Law.

### **Question 8**

*How many collective bargaining agreements have been negotiated in your country in the past two years? Does a process exist to document and track collective bargaining agreements at the enterprise or sectorial level? If not, are there plans to establish one?*

### **Response to Question 8**

We respectfully refer to the specific response to Question 1 above and generally to all the responses set forth herein and the hearing testimony by our delegation in response to this question.

Further, the workers in Myanmar have the rights to bargain freely in compliance with the existing law, rules and regulations. There have been 166 bargaining agreements starting from April 2012 to May 2013 after the enacting of the settlement of labour disputes law and can be settled according to the applicable laws.

The Labour Organization Law, rules and regulations are already enacted. Therefore, the employers and workers can organize the organizations independently and systematically according to the law. If the dispute arises between the employer and worker, these organizations shall conciliate and settle the dispute to reach the mutual agreement. If the employer or worker fails to comply with the Employment Contract and dispute related to other labour affairs, the Workplace Coordinating Committee shall settle the dispute at the workplace under the Settlement of Labour Disputes Law. If any of the disputes could not be settled, it shall be settled by the Conciliation Body which comprises of the representatives of workers, employers, Government and two distinguished persons, trusted and accepted by both employer and worker, and the State/Region Dispute Settlement Arbitration Body. If the dispute cannot be settled even in this stage, the Arbitration Council shall settle to work out.

### **Question 9**

*We understand that forced labor is most prevalent in areas of ongoing or recent conflict in Myanmar. Please provide any specific information or numbers on instances of forced labor in the Kachin and Rakhine states and detail any additional measures the government has undertaken to end the practice of forced labor in areas of ongoing or recent conflict.*

## **Response to Question 9**

Myanmar has reviewed its policies and standards concerning forced labor with members of the military at all levels, especially those who are currently deployed in areas of ongoing and recent conflict. As discussed above, the Myanmar government is committed to following the rules and procedures in accordance with its own standards and the standards of the international community.

In 2002 Myanmar appointed an ILO liaison Officer to assist the Myanmar Government regarding the elimination of forced labour under Convention 29. Subsequently a Supplementary Understanding was signed for a one year trial period in 2007. A complaint mechanism for the elimination of forced labour has been established under the Supplementary Understanding, with the aim of resolving forced labour complaints. This Supplementary Understanding has been renewed yearly from 2007 until the present. It will remain in effect until February 2014.

Moreover, the Memorandum of Understanding for the Joint Strategy for the Elimination of Forced labour in Myanmar by 2015 was signed between the ILO and the Myanmar Government on March 16, 2012. The joint plan of action for the elimination of forced labour is being implemented to reach the targeted goal by 2015 or earlier. Article 27A of the Amendment to the Ward Tract Administration Law, Pyidaungsu Hluttaw Law No. 7, (enacted in March 28, 2012) includes provisions for penalties for use of forced labor by imprisonment or fine.

As set forth above, on June 18, 2013 the ILC announced that it has lifted all ILO restrictions on Myanmar, due to Myanmar's significant reform efforts to combat forced labor. Myanmar is in the process of ratifying the ILO Convention 182—the Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labour. The government of Myanmar pledges to continue its effort to combat forced labor in all forms, and act in accord with all GSP procedures and requirements with respect to forced labor.

In addition, the Government of the Republic of the Union of Myanmar has been actively implementing measures such as political reforms including peace making process in order to solve the conflicts throughout the country for the purpose of ending forced labour practices.

## **Question 10**

*According to some NGOs, farmers and farm workers were driven from their place of work through land confiscation. Please describe how Myanmar's new land laws impact smallholder farmers and what steps are being taken to address the problem of displacement. What has the government done to provide compensation or alternate land for smallholder farmers who are displaced? What is the government doing to develop fair and equitable land tenure policies?*

## **Response to Question 10**

Myanmar has begun a systematic process of reforming and modernizing its land use and ownership laws. On March 30, 2012, the Farmland Bill was signed into law by the President of the Union of Myanmar, repealing the Land Nationalization Act. The Farmland Bill permits any person with land use rights to transfer, exchange, mortgage, or lease their land freely. There are 9 steps in implementing processes of issuing the Land Use Right. (See **Exhibit D** for a detailed procedure concerning this process and details of the Farmland Law.)

First a farmer must get an application from the ward or village tract Administrative office. Next, the Administrative Body of the Farmland of that tract or ward submits the farmer's completed application to the Township Settlement and Land Records Department. The Department makes its recommendation within 30 days. Any objections must be raised within 15 days. During this 15 day period, the Township Officer is tasked with investigating and carrying out a survey of the land. After the expiration of 30 days, the Township officer submits its findings to the District Administrative Body of the Farmland. Next, the Township Settlement and Land Records Department register the registration form to the Township Administrative Body of the Farmland. Finally, the Township Administrative Body of the Farmland issues a Land Use Right Certificate.

At each step, any dispute for land use rights may be appealed to the appropriate administrative body. That is, a dispute with the Ward or Village Tract Administrative body may be appealed to the Township Administrative Body, and any dispute with the Township Administrative Body may be appealed to the District Administrative Body, et cetera.

In addition to this Act, the President of Myanmar simultaneously signed into law the Vacant, Fallow, and Virgin Lands Management Law as an amendment to the Farmland Bill. This legislation permits any individual to make use of unused land. The purpose of these bills is to allow the free alienation of land, and encourage economically productive uses of land.

The impact of these laws is extremely positive for smallholder farmer, who are now free to sell and transfer their land for value, and legally capture the economic upside to their investments and improvements to these productive lands. During this period of extreme economic growth in Myanmar, such a policy stimulates economic activity and growth, to the benefit of smallholder farmers. Meanwhile displaced famers may take advantage of the Vacant, Fallow, and Virgin lands Management Law, which provides them a place to farm and live, provided that they comply with the terms of the law.

Additionally, the Law Revoking the Land Confiscation Act has already been approved in the Myanmar National Assembly. Members of Parliament intend to continue to introduce legislation designed to address, reform, and modernize Myanmar's land tenure policies.

Please refer to **Exhibit D** for a more detailed discussion of the new Farmland Law drawn and enacted for the interests of the Myanmar public.

### **Question 11**

*Is the government aware of any cases of intimidation or bribery of arbitration or conciliation body members? What procedures are in place to ensure the independence, qualifications, and professionalism of these bodies, and adherence to their decisions?*

### **Response to Question 11**

The Government has not been made aware of any situations involving bribery of arbitration or conciliation body members. The Government of Myanmar understands that encouraging the rule of law in Myanmar is critical to Myanmar's development as a nation, governmentally, economically, politically, and internationally. Presently the Union Attorney General's Office is reviewing over 400 separate pieces of legislation. Much of this review effort is precisely concerned with ensuring independence, professionalism, and legitimacy in governmental decisions and dispute resolution. The Union Attorney General's Office itself will need to increase its capacity in the future, both in size and expertise on international legal matters.

The Ministry of National Planning and Economic Development is currently developing initiatives to advance laws with respect to government contracting, procurement, and land tenure. Meanwhile the Judiciary is seeking to reform its training procedures to match the demands of the high volume of new laws in Myanmar. In general, the Myanmar government anticipates that the role of the legal system as means of dispute resolution will increase substantially, as the burgeoning economy necessitates the expansion of precisely the kind of professionalism and qualifications needed to handle the needs of Myanmar's people. This is rooted in educational reform and development, a top priority for Myanmar's government.

As discussed above, there is no case informed to the MM Government referring to intimidation or bribery of arbitration or conciliation body members. The Arbitration Council and the Arbitration Body were established by the persons selected from the nomination lists submitted by the employer's and the worker's organizations and the Ministry of Labour, Employment and Social Security according to the approval of the Union Government and its bodies comprises with the labour affairs experts and legal experts who have employment professionalism or relevant qualification.

Tribunals are empowered to decide in accordance with the Settlement of Labour Dispute Law Section 21(a) standing and carrying out as the organization which is independent and impartial based on social justice, decent works and principles of equity in making decisions.

## **Question 12**

*Please describe any prosecutions under the Towns and Village Tracts Administration acts, or other civil or criminal penalties, imposed for identified cases of forced labor*

### **Response to Question 12**

Myanmar has been an ILO member since May 18, 1948, and ratified the Forced Labour Convention 29 on March 4, 1955. In February 27, 2007, as part of its broad reform efforts in the country, the Myanmar government signed a Supplementary Understanding, beginning a broad commitment to the total eradication of Forced Labour. After signing the Supplementary understanding, a total of 593 complaints of forced labor were brought to the government's liaison office. 227 of these complaints have been resolved, and 336 are still ongoing. A new initiative, the Memorandum of Understanding of Implementing Joint Strategy for the Elimination of Forced Labour in Myanmar by 2015, was signed between the government of Myanmar and the ILO on March 16, 2012. Further the government of Myanmar has hosted and conducted forced labor awareness workshops in numerous regions in state-owned training centers. Further the government has undertaken an initiative to distribute educational brochures regarding the elimination of forced labor. To date, these brochures have been distributed in eight ethnic languages.

In a joint initiative aimed at combating human forced labor, the United States and Myanmar passed the 2012 Wards and Village Tracts Administration Act. This act explicitly criminalizes all forms of forced labor. Here, the Government of Myanmar has worked with the U.S. Government to Implement the ILO Action Plan on Forced Labor and other provisions of the new Wards and Village Tracts Administration Act by registering cases of forced labor, through the ILO complaint mechanism and the United States enforcement authorities. The Government of Myanmar has expended significant resources in investigating, prosecuting, and convicting perpetrators of internal trafficking, in accord with the Wards and Village Tracts Administration Act.

In 2011 there were 136 known cases of forced labor, down from 234 in 2010. In September 2011, the Myanmar government inaugurated a national trafficking hotline that has succeeded in rescuing over 60 victims of forced labor. In February 2012, the Government launched a website for reporting instances of forced labor, which has been similarly successful.

In addition, the General Administration Department under the Ministry of Home Affairs has proclaimed the instructions to the administrators of regions and states to follow Ward/ Village Tract Administration Law and to implement awareness raising workshops for public service personnel in all villages. According to Section 27A in Ward/ Village Tract Administration Law, any person who forces someone for personal service in work or service without his/ her own voluntarily volition by threatening be affected his/ her interest or be

punished, will be sentenced to no more than one year imprisonment or will be fined no more than 100,000 Ks or both punishments will be served.

### **Question 13**

*We understand that the government has undertaken extensive labor law reform over the past two years. Please provide any official English translations of labor related legislation, including the Labor Organizations Law, the Settlement of Labor Disputes Law, the Minimum Wage Law, the Social Security Law, and the Occupational Safety and Health Law, the Alien Workers Law, and the draft Employment and Skills Development Law.*

### **Response to Question 13**

Please see attached **Exhibit E** summary in the Myanmar language. Official copies of the documents requested are in the Myanmar native language and unofficial translations will be provided upon further request.

### **Question 14**

*Please describe the steps in the process of updating your county's IPR laws. How long does the government expect this process to take?*

### **Response to Question 14**

Myanmar became a founder country of the World Trade Organization on January 1, 1995. Myanmar joined ASEAN on July 23, 1997. Myanmar also became the 176<sup>th</sup> member country of the World Intellectual Property Organization (WIPO) on May 15, 2001.

Among the existing relevant Intellectual Property laws in Myanmar are as follows: The Myanmar Copyright Act, the Myanmar Merchandise Marks Act, the Registration Act, Myanmar Penal Code, The Sea Customs Act, The Land Customs Act, The Motion Picture Law, The Television and Video Law, The Science and Technology Development Law, and The Specific Relief Act. (See **Exhibit F**.)

As a focal ministry for the World Intellectual Property Organization, MOST takes responsibility for implementing Intellectual Property matters. MOST coordinates with the Ministry of Commerce, Ministry of Information, and the Union Attorney General's Office. MOST has met with WIPO experts to amend its draft Myanmar IP laws. These meetings have been ongoing since May 2013.

In addition to the draft Myanmar Intellectual Property Laws, which have been drawn in line with TRIPS agreement by the Ministry of Science and Technology (MOST), there are provisions relating to traditional Myanmar customs in the Myanmar draft Copyright Law. At present, members of Myanmar's Parliament are holding discussion meetings about this law,

taking comments and suggestions from relevant ministries, NGOs such as the UMFCCI, and law firms.

After promulgating the Copyright law, the copyrights of foreign countries will be protected with respect to creative endeavors, such as film, music, publishing, and software. The government of Myanmar is committed to protecting the Intellectual Property rights of all foreign and domestic persons.

Presently copyright infringements are protected by existing laws, but the government of Myanmar understands that a thorough and comprehensive reform and modernization process must take place to satisfy the legitimate concerns of interested parties in the international community. After promulgating the Myanmar Intellectual Property laws, the Government will diligently enforce all relevant international Conventions and Treaties regarding intellectual property according to the requirements of our country.

The last draft of the International Property Rights (IPR) laws and regulations are being finalized with the legislative advice contributed by WIPO. Once such laws are finalized, the necessary internal process will proceed to adopt these IPR laws.

### **Question 15**

*We have heard that there is more than one proposed copyright law. Is that correct? If so, what are the major differences between them and which version have parties like the IIPA provided comments on? What is the process for incorporating outside comments in proposed laws?*

### **Response to Question 15**

We respectfully refer to the specific response to Question 14 above and generally to all the responses set forth herein and the hearing testimony by our delegation in response to this question.

In addition, Ministry of Science and Technology is the focal ministry for IP matters and cooperating with relevant ministries, for example, Ministry of Information for copyright law and international organizations. During the time of drafting those laws, the concerned ministries and other related associations including NGOs and INGO like IIPA have contributed their comments and suggestions. There is only one proposed copyright law version agreed by consensus to be in line with the TRIP is being discussed. We also refer to the WIPO resources in respect of Myanmar.<sup>7</sup>

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<sup>7</sup> Please see the WIPO website for additional information concerning Myanmar and the relevant resources at: <http://www.wipo.int/wipolex/en/profile.jsp?code=MM>

## **Hearing Questions (HQ)**

### **Worker Rights/Forced Labor/Child Labor**

*HQ 1. \* We understand that approximately 540 labor unions have been allowed to register since the Labor Organization Law went into effect in March 2012. Can you describe the process of union registration? Is registration of a qualifying union automatic, or does the registering official have discretion? Are the regional registration offices described in the Labor Organizations Law in place and operational?*

*Follow-up: Despite reported progress in union registration, the AFL-CIO reports that many employers do not recognize these unions for purposes of collective bargaining. How many collective bargaining agreements have been signed to date?*

### **Response to HQ 1**

We respectfully refer to the specific response to Question 1 above and generally to all the responses set forth herein and the hearing testimony by our delegation in response to this question.

When applications to organize Labour Organization are received, such applications are allowed after being scrutinized whether in line with the Labour Organization Law or not. For those who wish to apply to organize basic, township, regional and state level labour organization have to apply to the township registrar using the regarded forms.

Township registrar has to issue form 6 to those organizations applied in comply with the rules/with complete facts and figures and after that has to submit the form to the Chief Registrar within 30 days. The Chief Registrar has to issue recognition certificate not exceeding 30 days.

For the permission to organize Myanmar Labour Confederation, and Labour Federation have to apply to the Chief Registrar. The Chief Registrar has to issue recognition certificate within 60 days to those organizations submitted complete facts and figures.

Labour Organizations (Trade Union) are allowed to form independently in line with the Labour Organization Law. Up to now, 565 basic labour organizations, 15 township labour organizations, 2 labour organizations, 2 labour federations, 18 basic employer organizations, 1 township employer organization and 1 basic employer federation have been allowed to form.

To meet the democratization, the prevalence of Laws and Orders is a major one and if the employers and workers have knowledge on the existing laws, the disputes can be settled in plant peacefully in accord with the laws.

The workers can bargain their rights freely in accord with the existing law, rules and regulations. There are 166 bargains from April 2012 to May 2013 after enacting the law and can settle according to the law.

77 offices of township registrars to cover throughout the country are in place and operational.

If labour organizations are established under the labour organization laws, employers shall recognize as legal and accept the right of collective bargaining.

During the period from April 2012 to May 2013, there are 166 collective bargaining agreements that have been signed.

***HQ 2. \* There have been reports of discriminatory action taken against workers as a result of forming or joining a union. What is your government doing to help combat discriminatory action taken against union members and to facilitate collective bargaining?***

### **Response to HQ 2**

We respectfully refer to the specific response to Question 1 above and generally to all the responses set forth herein and the hearing testimony by our delegation in response to this question.

In addition, there is no report received related to the discriminatory action taken against workers directly as a result of forming or joining a union. If there are claims, ministry of labour, employment and social security will take action in accordance with the existing labour organization laws.

***HQ 3. \* The Settlement of Labor Disputes Law went into effect in March 2012 to create a dispute resolution system through the creation of local and national tripartite arbitration bodies. However, the AFL-CIO reported that some employers have been unwilling to submit to arbitration and that there are concerns that penalties against those who violate worker rights are not sufficiently deterrent. What is the government doing to ensure that employers submit to arbitration and that those who violate worker rights are subject to deterrent penalties?***

### **Response to HQ 3**

We respectfully refer to the specific response to Question 1 above and generally to all the responses set forth herein and the hearing testimony by our delegation in response to this question.

In addition, under the Settlement of Labor Disputes Law, the employee side also has the right to submit to the arbitration for the violation of worker rights and the existing penalties are to be reviewed.

***HQ 4. \* You have stated that your government's goal is to eliminate forced labor in your country by 2015. Please describe in more detail what the government is doing to achieve this goal. Is there a strategy paper or other information that you can share?***

#### **Response to HQ 4**

We respectfully refer to the specific response to Questions 1 and 12 above and generally to all the responses set forth herein and the hearing testimony by our delegation in response to this question.

Further, Myanmar has become member of ILO since 18th May 1948 and ratified Forced Labour Convention 29 on 4th March 1955. The Supplementary Understanding (SU), as referred to above, was signed on 26th February 2007 to implement the eradication of Forced Labour. After signing the SU, totally (593) complaints were received through the Liaison Officer, (227) were solved out and (336) cases are under the ongoing process. The MoU of Implementing Joint Strategy for the Elimination of Forced Labour in Myanmar by 2015 was signed between the Government of Myanmar and the ILO on 16th March 2012. Under this joint strategy, an action plan has been implemented by the working group comprises of concerned ministries. The chairman is minister of MoLES and the deputy minister of defence, the deputy minister of MoLES and the ILO liaison officer act as joint secretaries and as the operational focal points of this new body.

***HQ 5. \* We have seen reports that the military contributed to forced labor through its self-reliance policy. What steps have been taken to address the concerns raised about this policy? Please describe any military orders issued against the use of forced labor; and any prosecutions of military officials who have been involved in the conscription of forced labor, as well associated penalties.***

#### **Response to HQ 5**

We respectfully refer to the specific response to Questions 5 and 9 above and generally to all the responses set forth herein and the hearing testimony by our delegation in response to this question.

Further, apart from the SU 2007, the MOU of Joint Strategy to eliminate forced labour in Myanmar by 2015 was signed between Myanmar and ILO on 16th March, 2012. In the MOU under the paragraph of jointly agreed and prioritized, time-bound action plan designed to stop forced labour practices nationwide and to, where appropriate, identify alternative operational solutions to each indentified element of forced labour including the Forced labour associated with the Ministry of Defence self-sufficiency policy.

***HQ 6. \* We understand the new Foreign Investment Law, which is not yet in force, prohibits 100 percent foreign ownership in certain sectors including business that affects the traditional culture and customs of the national races of your country. Please explain how this law will affect the abilities of creative industries such as film, music, publishing, and software, to do business in your country.***

## **Response to HQ 6**

New Foreign Investment Law was enacted on 2nd November, 2012. Rules and Notifications of Foreign Investment Law were enacted on 31st January, 2013. The Foreign Investment Law which has been in force on 31<sup>st</sup> January 2013 indeed prohibits complete foreign ownership in sectors relating to business that affects the traditional culture and customs of the national race. The intent of this language is to protect Myanmar's national identity, as well as businesses which rely heavily the national identity of Myanmar. The purpose of this restriction is to ensure that at least some input by the Myanmar people in the way in which Myanmar is portrayed to the people of Myanmar by foreign entities. This, however, should not significantly constrict any entities involved in creative industries, such as film, music, publishing and software. Foreign entities in the creative industries that wish to do business in Myanmar must simply seek approval by the Myanmar Investment Commission, as outlined in the Foreign Investment Law and Notification No. 1/2013 of Myanmar Investment Commission.

Under the Article IV of the new Foreign Investment Law, the foreign investments which can affect the traditional culture and customs of the national races within the Union shall be restricted or prohibited.

As long as it does not spoil the traditional culture and customs of the national races, the ability of creative industries can be encouraged in Myanmar with the permission of relevant ministries.

Ministry of Science and Technology (MOST) is drafting Myanmar IP Laws to be in line with TRIPS agreement. There are some provisions related to the Myanmar traditional culture and customs in draft Copyright Law. At present, the consultation meetings are being organized to receive suggestions and comments from the concerned ministries, NGOs, UMFCCI and law firms.

***HQ 7. Does the government have a plan of action to fight the establishment of optical disc production plants intending to produce pirated materials?***

## **Response to HQ 7**

We respectfully refer to the specific response to Questions 14 above and generally to all the responses set forth herein and the hearing testimony by our delegation in response to this question.

Moreover, at present, the copyright infringements are protected by existing laws and such laws can be effectively protected after promulgating the new Copyright Law.

Expropriation of foreign property in Myanmar is governed by the Customs Department of the Ministry of Finance and Revenue. (See **Exhibit G.**) Article 18 of the Sea Customs Act states as follows:

## Article 18 Prohibitions and Restrictions of Importation and Exportations

18(D) goods having applied thereto a counterfeit trademark within the meaning of the Penal Code or a false trade-description within the meaning of the Merchandise Marks Act:

If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under the above act 18(D), be imported onto or exported from Myanmar, shall be liable to penalty according to the Sea Customs Act, Section 167(8), as follows:

Such goods shall be liable to confiscation; any person concerned in any such offence shall be liable to a penalty...

***HQ 8. Does your government have plans to ratify the Berne Convention or the World Intellectual Property Organization (WIPO) Internet Treaties?***

### **Response to HQ 8**

The Government of Myanmar is committed to Intellectual Property law, and as such we are committed to ratifying the Berne Convention and WIPO Internet Treaty. The Government of Myanmar is continuing to monitor and assess the present status of international law concerning Intellectual Property, and will make appropriate changes as they become necessary, and in accordance with GSP and international guidelines.

After promulgating the Myanmar IP laws which are drawing in line with TRIPS Agreement, Myanmar is considering for accession to international Conventions and Treaties according to the requirements of country's situations.

### **Expropriation**

***HQ 8. As you may know, one of the GSP eligibility criteria involves nationalization of expropriation of property owned by U.S. citizens or corporations. Is the government aware of any cases or complaints in your country involving the expropriation of property owned by U.S. citizens or corporations?***

### **Response to HQ 8**

The government of Myanmar is not aware of any instances of expropriating the property owned by U.S. Citizens or corporations.

The Union Government ensures that a business formed under the permit shall not be nationalized within the term of the contract or the extended term if such term is extended. The

Union Government also ensures not to suspend any investment business carried out under the permit of the Commission before the expiry of the permitted term without any sufficient cause. On the expiry of the term of the contract, the Union Government permits the investor invested in foreign capital to disburse his rights in the category of foreign currency in which such investment was made.

#### IV. **CONCLUSION**

We respectfully thank the U.S. Trade Representative, Mr. Jackson and all members of the GSP Subcommittee for the consideration to reinstate Myanmar to the GSP Program. The Myanmar Government and its officials look forward to the great potential of the GSP Program for both the United States and Myanmar.

In sum, as the AFL-CIO concluded in its written submission this Sub-Committee<sup>8</sup>, and as a result of the ILO recent decision eliminate lift all remaining restrictions on Myanmar<sup>9</sup>, we urge this Sub-Committee to expeditiously reinstate Myanmar to the GSP Program.

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<sup>8</sup> Please see Page 3 of AFL-CIO submission at <http://www.regulations.gov/#!documentDetail;D=USTR-2013-0020-0010>

<sup>9</sup> Please see [http://www.ilo.org/ilc/ILCSessions/102/media-centre/news/WCMS\\_216355/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/102/media-centre/news/WCMS_216355/lang--en/index.htm)

If you require additional information or have any questions regarding any of the foregoing matters and responses, please contact the undersigned directly or our legal counsel Law Offices of Vincent S. Wong at (212) 888.0884 or vswwlaw@gmail.com.

Respectfully submitted,

**MINISTRY OF COMMERCE,  
THE REPUBLIC OF UNION OF MYANMAR**

By: \_\_\_\_\_

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Dated: June 25, 2013  
Nay Pyi Taw, Myanmar