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TRADE AGREEMENTS AND LABOR STANDARDS

A Briefing on the New Report from the
National Academy of Sciences

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THIS IS AN UNCORRECTED TRANSCRIPT.

P R O C E E D I N G S

MS. BRAINARD: [In progress] --Trade and Labor Standards. The issue that we're going to talk about today couldn't be more central, really, to determining the course of future global trade agreements and how they're perceived in terms of legitimacy here and abroad.

The National Academy of Sciences is releasing a report that addresses the critical issue of the place of labor standards internationally, not from, as is too often the case, from the kind of point of view of polemics, but from the hard, practical realities of what would be required to actually operationalize enforcement of the core labor standards in trade agreements. The report takes very seriously the charge of issuing practical recommendations on actually doing it, which I think is very commendable, but it's also quite sobering in that the existing multilateral framework on these issues, the ILO, has a lot of internal ambiguity and sometimes contradictions on these issues.

It's a great pleasure for me personally to welcome today's three panelists. I've worked with all of them extensively over the years. All three of our panelists today bring to this issue not only great intellectual backgrounds, but also a wisdom and a thoughtfulness that comes of dealing with these issues in the messy realm of policy challenges.

Ted Moran will be the first speaker to talk about the National Academy of Sciences report. He chaired the Committee on Monitoring International Labor Standards for the NAS. He's the founding director of the Landegger Program in International Business Diplomacy and the Marcus Wallenberg Chair at the School of Foreign Service.

He has authored and co-authored a large number of books--I couldn't count them-- focusing in particular on the issue of multinationals' foreign direct investment, most recently entitled "Beyond Sweatshops." He's also served on the policy planning staff of the State Department.

Thea Lee was a member of the same committee that produced the report. She is assistant director for international economics at the AFL-CIO, where she's co-authored A Field Guide to the Global Economy. And she is a frequent participant both on the Hill and in public debates on this issue of what's the place for labor standards in trade.

Finally, Robert Litan is vice president for research and policy at the Kauffman Foundation, but he is best known in these corridors as, I think, an almost three-decades-long active member of Brookings and a very close colleague of mine. He's also served as associate director of the Office of Management and Budget and deputy assistant attorney general at Justice. And he is also co-author and author of, really, uncountable articles and books, including a recent policy brief on off-shoring, which is available outside. And for this particular debate, perhaps his best known tome is called "Globaphobia," one of Brookings's few true bestsellers.

So with that, let me turn it over to Ted Moran. I think he's going to do a PowerPoint.

MR. MORAN: Thank you very much, Lael. When Bob Litan invited me here, he said could you introduce the report of the National Academy and discuss the implications for inserting labor standards in trade agreements. And, as I told him and I want to tell you, those are really two distinct assignments, because in the report we were

instructed to stay away from the debate about trade and labor standards. So when I get to that point, these will be my own reflections. I'll try to make them come together as a whole, but I still wanted to point that out.

When you get a chance to get a copy of the report, you will see that we tried to provide a framework within which to improve the assessment of compliance in a thorough and consistent way, dealing with all the drawbacks of various information sources and providing transparency so that you all can clearly identify where different people come to differences of interpretation.

I don't have to spend time telling this audience what the core labor standards are. We also looked at acceptable conditions of work, which is part of U.S. trade legislation and indeed is even more complicated than what I'm going to describe in my presentation.

The first thing we noted, which will not be a surprise to any of you, is that there are enormous challenges in trying to monitor compliance. First of all, there are challenges associated with exactly what the core labor standard is and what the obligations of individual countries are. I'm going to give some illustrations of that. Second of all, there's the question of how do you operationalize compliance, how do you find indicators that you can look at and examine and come to a conclusion whether or not a country is in compliance or out of compliance? Then there are sources of information, questions about both quantitative and qualitative sources of information and there are problems with drawing inferences. I'm going to just touch on each of these quite quickly.

Problems of definition and specifying obligations. You will note that I'm going to draw a handful of examples from where there are difficulties with ILO traditions and interpretations. This is not to dump on the pioneering work and the achievements of the ILO, but it's to illustrate a point that I'm going to come to, that there are very many problematic areas within the umbrella of the ILO.

What about retaliation against striking workers? I choose this because this is particularly vexing in the United States. The ILO repeatedly identifies us, the United States, as being one of the biggest violators because our laws allow hiring of permanent replacement workers, along with a handful of other countries I wouldn't even want to be named in any other list with. But the ILO does not come to the conclusion that we are in noncompliance. It basically equivocates on this and says it's a question of how much this practice takes place.

What about--here's another problem--how should you evaluate freedom of association and collective bargaining if many of the unions appear to be protection rackets? Right now there's a big debate about Bangladesh and the fact that freedom of association and organization of unions is not permitted in export processing zones. Part of that debate, however, is that the assertion--I hear; I'm not making it--that many of the unions in Bangladesh are either run by political parties or run by Mafia groups. So the ideal would be to allow freedom of association but to avoid this kind of corruption. The problem is that the ILO does not have a governance standard, so that the ILO really does not deal with this issue of corruption or protection rackets.

Does respect for nondiscrimination require provision of subsidized legal services for grievance actions? If you pick up a legal text, the answer is yes. I mean, if

you want to have an effective nondiscrimination system, you have to have an effective grievance procedure, and for poor people--often poor women, but poor people in general--that requires subsidized legal services. ILO doesn't touch on this. This is a resource issue that we're going to come back to in a moment.

Just two more before I move on.

Does respect for nondiscrimination prevent use of explicit quotas? Anathema in the United States and in many other countries, the ILO says, on the contrary, yes, the use of explicit numerical quotas is fine.

Finally, is compliance with the forced or compulsory labor standard incompatible with private work programs in prisons, with participation in work programs as a condition of parole? Here, the ILO is clear. This is forbidden. Fourteen U.S. states require participation in work programs and many more parole systems say that this is part of the rehabilitation process. New Zealand, the U.K. do the same thing. So there's just a mishmash between management of penal systems and where the ILO comes out on this. I'm not taking a view, I'm only pointing out some of the difficulties.

Well, that's--and you have 181 pages of other examples and complexities.

Looking at information sources, both quantitative and qualitative information sources, is it representative? If we're going to pass judgment on Bangladesh or on El Salvador, do we have information that covers the economy as a whole, or does it just come from large firms, maybe even large foreign owned firms in the export sector?

Well, you have big problems of how representative is the information. Is the information comparable across time and across countries? If we're going to compare

Honduras and El Salvador, do we get comparable information? Let me answer that. No. I mean, very seldom can--those of you who know this field very well know the tremendous difficulties of comparability in information.

Is the information mostly complaint-driven and therefore subject to selection bias? Well, many, especially of the qualitative sources are complaint-driven, so you have to deal with that. I'm, again, not dumping on that. That can be very valuable information, but you have to recognize the difficulties.

And is it--if I redid this, I wouldn't say "biased," I would say "slanted." Does the information in some way represent the interests of the business groups, the union groups, the human rights groups, the government groups, whoever is representing it? And much of it, of course, the answer is yes.

So difficulties with information sources.

How do you make inferences? It's after lunch. If this were a graduate seminar, I could put you to sleep in 13 seconds talking about the problems of making inferences. So I will try and go very rapidly. But what do you do with a growing number of strikes? Is the appropriate inference that, gee, the society is becoming more repressive, or just the opposite? You see a growing number of strikes, maybe that means things are opening up. So you can't just take number of strikes; you have to look at the context.

Relative wage levels. Do lower wage rates for women mean they are less productive, they have unequal opportunities for advancement, they have less access to vocational or other training, or they have inadequate protection against retaliation?

Well, again, you can take one set of statistics and you have to make a lot of contextual analysis of what that means.

This is my last problem area, discounting. How much should government performance, what it puts into enforcement, the outcomes that it gets from enforcement, be discounted as a function of having a huge, overwhelming AIDS program, or a recent civil war, or just very high poverty levels? Well, this is entirely subjective. Should there be no discounting or should there be some discounting? How much should a country be forgiven for poverty levels or conflict or other uses of its resources if it doesn't put that much into the labor inspectorate or into other kinds of labor issues?

This is the point that many people, including me, thought, well, maybe we should just write 181 pages of the caveats, the difficulties, turn it over to the Department of Labor, who commissioned this study, and say best of luck, sincerely yours, the Committee, good-bye.

We didn't do that. We wanted to basically try and figure out a way to improve the monitoring process. We thought to do this we would have to operationalize compliance on three levels. First of all, a set of indicators focusing on the legal and regulatory framework. We call these A indicators. A second set of indicators addressing government performance, both what it tries to do and how well it does it. So you have two dimensions to that second set of indicators. And the third set of indicators involves overall outcomes in the economy.

And being social scientists, we had to have a matrix. Actually, that isn't true. I mean, we debated whether or not to have a matrix, and we decided what we would do was to make it as simple as possible and to invite everybody who reads the

report to improve on this and to make it more complex or to organize it in a different way. But somehow to have countries with some problems in a particular core labor standard--child labor, nondiscrimination--more extensive problems; and severe problems. As I say, maybe you'd want five categories.

And then we wanted that dynamic element. Are things staying the same, are they improving, are they worsening? And what we would invite assessors--government officials, World Bank officials, church groups, socially responsible groups, the president and the student body of Georgetown trying to figure out where to do their logos--to try and look at all the indicators and then place them within this kind of a simple matrix. That was our idea.

Now, and here I quote from our report. We did not attempt to delineate the thresholds along either axis that would place a country above or below it. So if you go back, the difference between more extensive problems and really severe problems is yours to make. Again, you got lots of advice on how to do it, but we didn't think we could come up with a system that would enable that to be done for all countries across time in what you could call an objective way.

So given these uncertainties and the subjective and contingent nature of the judgments, what's the value of our framework? The value of our framework is to promote what we call due diligence. That's to say if you look at all of our indicators--and you may improve on this, too. You may decide there are too many, you may decide, well, there are not enough. I mean, we expect this to be a very interactive kind of framework. If you look at all those, you will have done due diligence looking at El Salvador, Honduras, Bangladesh with regard to a particular labor standard. And then

you can compare clearly where you and your counterpart, somebody else, differ on how to make these difficult and problematic judgments.

Now, I have some examples of that, but I think that will have to wait for the question-and-answer period, or I'll just take up too much time.

So we tried to provide a roadmap and a useful structure within which different assessors could compare their assessments and see clearly where they differed in these many problematic areas.

Now, in capital letters, the report avoids going into what the implication of this might be for trade and labor standards. I think--I'm saying "I" clearly, not for ego reasons, but so you know that this is my own impression--I think it has three important implications for the trade and labor standards-to-be.

The first, I think, comes right out of everything that we've said. It reveals how far the world is from agreement on how to determine compliance or noncompliance so as to instruct trade dispute panels and appellate bodies. Focus on the last: so that you can have consistent outcomes with dispute panels looking at Madagascar and El Salvador and Bangladesh on one of these and coming to consistent and appealable kinds of decisions. We're very far from having a multilateral jurisprudence in how to do that, is my first conclusion.

The second conclusion--and again, I shaped the debate this way--is it shows that the proposal "let the ILO determine innocence or guilt" could not possibly work except for simple cases in small, passive states. I have to tell you, I am a fan of the U.S.-Cambodian agreement, and I think that the ILO can go in, monitor certain kinds of problems--it has a tripartite structure there--and come to decisions, and we, the United

States, then may agree or not agree and extend greater benefits on the basis of that. The ILO clearly can help El Salvador and Honduras improve both their legislation.

When I ran this presentation by the ILO, I have to tell you I was afraid maybe they were going to think I was being too critical. I had a claim, A) they don't want to be stuck in these--at least, the audience that I spoke to didn't want to be stuck in this, and B) they said yes, very problematic; and we can be helpful, and certainly we can be helpful in a positive--that's to say an incentive-based--way, but determining guilt or innocence on the basis of our past jurisprudence is simply not realistic.

My third and final implication is it demonstrates that any effort to formulate a multilateral jurisprudence for use in trade and labor cases would surely require fundamental substantive changes in labor law in developed as well as developing countries, not least the United States.

Now, there are some of you who may applaud that, who say Aha, then let's start the negotiations to figure out how we're going to do this and maybe we can get rid of some of the obnoxious features of U.S. labor law like hiring permanent replacement workers or right-to-work states--if you don't happen to like right-to-work laws. Whatever your particular agenda is. But the idea that this is something that we can enunciate worldwide in a GSP format--you know, we'll decide and if we like it, then we'll let you trade with us--is very far from the idea of having a multilateral jurisprudence.

Now, just to illustrate this--and these are my last two slides--the House Ways and Means Committee sent a letter to USTR talking about CAFTA--we could take other examples, but I'm just doing this because this is a recent event--saying look, in

many of these Central American states the laws do not limit voting on a strike to union workers, they don't give fast enough judicial review for workers who are dismissed for union activities, and it doesn't award them any meaningful awards. Also, in many of these countries there's no federal legislation allowing agricultural workers in general, or migrant agricultural workers in particular, to unionize and to elect foreign nationals as their leaders.

This, incidentally, means--because we had hearings in Costa Rica--Costa Rica would let Nicaraguan workers come in, as they do, and then be led by what they referred to ex-Sandinista leaders. I mean, so very controversial. They don't do that, was the complaint.

And the laws do not prevent an employer from threatening to close or move a plant when faced with an organizing campaign. These are deficiencies in the CAFTA framework, according to this letter.

Working with one of my fellow committee members, Ed Potter, who is a specialist on U.S. labor law, if you look at the United States, nonunion workers have a right to vote about going out on a strike; that is, in right-to-work states. There's no expedited handling of anti-union dismissal cases. The National Labor Relations Board normally orders no more than reinstatement of the employee with back pay and, incidentally, takes a god-awful long time to do it, so I am told. Firms are allowed to hire permanent replacements for striking workers--we've already been over this point. And additional point--and to allow those replacements to vote in an election decertifying the original union. That's an extra kicker in some states. I didn't say Texas. Agricultural workers are exempted from the NLRA statute.

Now, state legislation, like California or Florida, allows unionization, but we don't have a national coverage for agricultural workers. And as a standard operating procedure, employers threaten to move or close their plants when faced with union organizing campaigns in more than 60 percent of the cases.

Now, what I draw from this is, if we did want to move in a multilateral direction--not the Big United States v. Five CAFTA Countries, but actually a multilateral direction with the World Trade Organization--first of all, we're very far from having the jurisprudence and the agreement to do it. Some of you--this half of the audience might think it's a good idea; that half of the audience might think it's a bad idea. But it would be a big task. And it might be a race to the top--we would pull U.S. and other OECD standards upward; or it might be a race to the bottom, I mean, it might be everybody would kind of come to a lowest common denominator. I don't know what the dynamics of that would be, but it would-- And we're not yet ready to say, hey, we've got the ILO, very experienced in some of these things, let's just get the WTO and the ILO together and move ahead.

So, as I say, you can make up your own minds about what you see the future agenda. My point is that we're not there yet, and the feasibility of doing it has formidable challenges.

I'm done.

I have really good examples, so if you want to talk about it [off microphone, inaudible.]

MS. LEE: Good afternoon, everybody, and thanks to Lael for the introduction and for all of you for coming out this afternoon.

I think I'll give you a little bit of a flavor of some of the debates that we had within the context of our committee on monitoring international labor standards at the National Academy of Sciences. I guess I wanted to start on a more positive note, since Ted, even though he looks like a kind of friendly, positive guy, was relentlessly negative in his presentation about all the problems and all the difficulties and all the inconsistencies and so on.

I want to start with the rationale, why it is we're even talking about including labor standards in trade agreements, why the labor movement thinks this is so important--and not just the American labor movement, but the international labor movement. Many of the trade unions that we work with around the world, including developing country trade unions, really want to see the debate on protecting workers' rights in the global economy through the context of trade rules be able to move forward so we can have a more intelligent discussion.

The whole point of a global economy and rules in the global economy is to delineate acceptable versus unacceptable forms of competition. There is an international consensus in the world on the core labor standards that Ted talked about, through the ILO Declaration on Fundamental Principles and Rights at Work--the freedom of association, the right to organize and bargain collectively, and prohibitions on forced labor, child labor, and discrimination in employment. There's no debate anymore since 1998 and even since 1996 with the WTO, the core labor standards, or 1995 at the U.N. Social Summit, that the world communities said over and over again these are fundamental human rights. Every worker in the world deserves to be able to

exercise these rights. Every government in the world has a responsibility to ensure that their citizens can exercise these rights.

And yet we also know that there are huge pressures in a dynamic global economy to compete, for countries to compete with each other, particularly developing countries but also industrialized countries, by sweating labor, by violating workers' rights. And I think China is the most glaring example right now. I'll come back to China in a little bit. But I think when you see a country the size of China with the kind of economic growth and industrialization that we see in China, and yet the level of repression, lack of democracy, then it becomes a concern not just for American workers but for workers in every country in the world. How are going to compete in the global economy with China? How are we going to compete for a share of the U.S. market if we have a democracy, we have free unions, we have decent wages and working conditions? Our government is actually enforcing our labor laws. How do we get our costs as low as those in China?

And I think this is really the inescapable question, that democracy in every country, workers' rights in every country are threatened by a global system that says this is none of our business. There's really nothing we can do about it. Workers are just going to get treated badly and that's just the way it goes. And this is just a cost of doing business. This is a part of free trade. It's great. Everybody knows free trade is great. A global economy is a great thing, and workers just happen to be the losers in this case because we just can't--it's too hard to figure out how to do this.

But just as domestic markets only function with parameters, a global economy needs rules. And just as trade laws discipline certain government actions like

subsidizing exports or underpricing exports, dumping and so on, it seems to us not unreasonable to say that the global economy needs rules on minimum standards of treatment for workers, that these basic human rights should be respected, and we should use the trading system to ensure that there are economic consequences for those countries that try to compete in the global economy by violating workers' human rights.

And we don't all agree with each other on the precise level of national protections, like what the minimum wage should be. If I took a poll, you know, some of you would think the minimum wage in this country is too high, some too low; the environmental protections too stringent, not stringent enough; union protections and so on. We don't have to agree with each other. And at the national level, the difference between the global economy and the national level, we have a government at the national level that can make those tough decisions. It's a kind of imperfect representative democracy, but that's what we have. We have a system for hashing out what we believe.

We don't have any kind of representative democracy at the international level. And so we need to be able to have a conversation at the multilateral trading system--at the WTO, at the IMF, at the World Bank--about how we're going to deal with these competing systems with different levels of protection, and how we're going to ensure that workers' human rights are not sacrificed on the altar of free trade.

Let me just say four reasons why labor standards are important in the global economy. The first is just a morality question, that these are basic human rights and people deserve them. If workers want to form a union independent of their government or their employer, they should be able to do so. And again, on child labor

and forced labor and discrimination, I think it's obvious. I think people just have a general sense that that's true.

The second is a question of distribution of income, fair distribution of income, that you have a basic asymmetry of power at any workplace, and certainly in the global economy, when you have multinational corporations and workers sometimes with very little education, very few options available to them, that they're trying to compete and trying to protect their own safety sometimes and certainly bargain for decent wages. In order for workers to have even a fighting chance to bargain for their fair share of the wealth that they create in the global economy, they need to be able to form a union. That's kind of a minimum thing. It's not a maximum thing at all.

The third thing is democracy, that free trade unions are the foundation of strong democracy. And I think you actually can't have a thriving strong democracy without unions, without independent unions. And one of the questions that comes up sometimes with respect to China is people saying, well, you know, the Chinese government obviously isn't going to allow independent trade unions because that would threaten their existence. And I happen to agree with that. I think that free trade unions do threaten dictatorships, just like in South Africa, the apartheid governance was threatened by free trade unions, by independent trade unions, and they resisted them for that reason. It's not a reason necessarily for other countries in the rest of the world to say, oh, well, there's nothing we can do about it. This would threaten the existence of the dictatorship in China, therefore we have to agree that it's not going to happen.

And finally, the last thing is fair terms of competition, which is where I started, that in terms of creating a balanced and a fair global economy that's fair for

American workers as well as for workers in other parts of the world, it doesn't seem unreasonable to say that workers' basic human rights should be respected. It's not to say that we're going to take American labor laws or American minimum wages or American health and safety standards and impose them on any other country. Frankly, they're not that good. But it is to say that, as a starting point, workers ought to be able to at least form a union if they want to and have those protections under the core labor standards.

And I think another point on that has to do with the markets, growing markets, that if the United States is going to have a reciprocal trading relationship with developing countries, we want to see middle classes grow, we want to see workers come out of poverty. And our view is that that's only going to happen if workers can fight for decent wages and see their wages rise as productivity grows in their country, and not just see themselves be used as sort of disposable pawns in a system that doesn't value it.

Let me briefly just review that, you know, we talk about the trade-linked labor standards. We have a lot of labor standards written into U.S. trade law already. And I guess I would disagree with Ted that this is a fundamentally unworkable system. We have, as he mentioned, the GSP, which I think is the most often used--the Generalized System of Preferences, the unilateral trade preference program that the United States gives to developing countries. We have pretty clear workers' right linkage, that countries have to be at least taking steps to afford internationally recognized workers' rights. It's kind of close to but not identical to the ILO list, because it came about in 1984. It's been in place about 20 years now.

And it's been used, I would say, not perfectly. It's a system that's always evolving and could certainly be stronger, could be better. But it's something that has

really given us some leverage and some teeth to raise some of the most egregious workers' rights violations with countries with whom we trade, countries that want to continue getting beneficial access to the United States market. And I would submit that that's been an extremely important part of that relationship.

A lot of the other regional unilateral grants with the Caribbean Basin, the Andean countries, the African countries also include workers' rights protections. OPIC, the Overseas Private Investment Corporation, Cambodia, as Ted mentioned, and the Jordan Free Trade Agreement, which is a bilateral agreement negotiated at the end of the Clinton administration that has very strong, and we would say really good, a good foundation for workers' rights, where the ILO core labor standards are written into the agreement, commitment to enforce domestic labor laws, commitment not to weaken labor laws in order to increase trade, and the whole thing rolled into a dispute settlement provision that covers both commercial and labor and environment provisions. And even at the IMF and the World Bank we have some labor standards written into the way the United States engages with these organizations.

Section 301 of U.S. trade law, which is the part of the U.S. trade law that is used to challenge unfair trade practices by other countries, also has workers' rights written into it. Until recently it had never been invoked, but in 1988, Congress amended Section 301 to say that a persistent pattern of violation of workers' rights constituted an unfair or unreasonable trade practices to the extent that it burdened or restricted U.S. commerce, and could be challenged under Section 301. As some of you know, I think most of you maybe know, that the AFL-CIO brought a Section 301 case against China in

March, which was recently rejected by the administration, which declined even to investigate the charges that we had raised.

But those are the places where we already have labor standards written into trade agreements. Let me get to the report, the National Academy of Sciences report, and my reading of that report.

Of course, there are tough issues in terms of measuring compliance with any core labor standard. I don't disagree with that, and I don't disagree with the examples that Ted put up there. But I think every trade issue has similarly difficult issues. Determining dumping, subsidies, safeguard provisions, IPR protections, national security are all controversial, and two countries probably disagree on most of those.

But I submit that in practice the trade-linked core labor standards are not so unclear. And I say that as a practitioner, not an academic, so I come to this issue maybe with lower standards than the academics come to it. I've made my peace with the idea that we're going to be making decisions based on the best available evidence and not on perfect evidence.

And I think in the labor standards area what the report that we put together for the National Academy of Sciences shows is that you can put together an intelligent and coherent list of factors, basically the questions you would want to know the answer to for every core labor standard. If you wanted to know about freedom of association, right to bargain, child labor, forced labor, and discrimination, there's a set of questions, a set of factors you'd want to know. Now, sometimes there's no answer to the question. And in many cases, what the committee did was to lay out areas where we

need better data or we need more research on things. But I think what we've done is create a fairly clear roadmap for how to address that.

I see I'm running out of time. I wanted to tell my sort of, my sweet stories about ways in which trade-linked labor standards have been used, where just in the last six months or so I've had contact with some trade unionists in developing countries, in Swaziland, in Central America, and in Bangladesh, who have said to me that the GSP cases, most of them brought by the AFL-CIO, have been very important in their lives in terms of either changing the labor laws on the ground in their countries, or convincing their government that it's important to move forward on something, that the governments are afraid of losing GSP benefits. And in order to do that, they have actually taken steps that they were quite reluctant to do otherwise.

And I think that's an important piece. And it's something that--you know, I guess in this context, in the GSP context, the workers' rights linkage really is about empowering workers in other countries and less about protecting American jobs. I wish it were better at protecting American jobs, but I consider that sort of the long-term, big-picture kind of global economy I want to live in is an economy where workers' rights are protected and we use every means available, whether it's the unilateral, the bilateral, the regional, or the multilateral trade negotiations that we have, to ensure that workers' rights are respected.

And so I guess that's just where I would differ from Ted in the sort of, I guess what I would call a defeatist position, that what we need is our own government to take a clear stance that these are important issues, that this is a priority in our economic dialogue with any country in the world, whether it's China or Guatemala or Bangladesh,

to say that in order to be a trading partner of the United States, in order to get a free trade agreement with the United States, in order to continue to receive benefits, countries need to respect their international obligations. And that's not asking so much.

Thank you very much.

[Applause.]

MR. LITAN: Lael, can I just go ahead and sit down? It's after lunch, and I'm tired. You are, too. I'll try to be relatively quick so that we can get to Q&A.

To start off, my basic reaction to the NAS study which Ted has presented is that it's not an academic exercise. It's actually quite practical. In my other life, I've been a lawyer, so I appreciate the lawyerly tone of the document, or at least as presented. Because it's one thing to agree to the words in the ILO core standards. And I fully agree with Thea--I'm not going to agree with the objectives. In a way, it's like putting words in the Constitution or in the Declaration of Independence--life, liberty, and the pursuit of happiness.

The problem, as we all learn in law school, is actually applying these words in the real world. And what this NAS report does, in my view, it's a very real-world report and it says, look, when you get down to the brass tacks, there's all kinds of disagreement over what these theoretically neutral principles actually mean. And if you can't get agreement at the ILO or the WTO, then how can you expect to have a consistent set of jurisprudence to use?

Now, this is not an academic or theoretic concern because it becomes very, very practical when you tie compliance with core labor standards to trade agreements. And that's really, in my view, what we're talking about: Do you want to

use trade sanctions to punish countries that don't adhere to these standards, or do you want to condition future trade agreements to adherence to these standards? That is the issue.

Now, the debate is between virtually all economists that I know of, on the one hand, including me, who say that, look, we agree with the long-run objectives of the labor movement and everybody else that we sign on to ILO, that we should get to these standards, but the best way to do it is through economic growth, trade facilitates growth, and we'll get there. And some countries are richer and some countries are poorer, and the poorer countries will gradually get to the richer countries' standards over time. It may not make organized labor and other people happy that this takes a long time, but that's the real world. So say the economists.

Now, the response to that from organized labor and NGOs and so forth is we don't want to wait. We want to get adherence to these standards--putting aside the issue of what they actually mean for a minute--we want to get adherence right now. And the way to get it right now is to use the only lever we know that will actually work short of military action--and we've all learned how problematic military action is these days--the only other lever around is trade agreements. So let's tie the compliance with the labor standards to the trade agreements.

So I think the useful contribution of the NAS report, even though they did not address specifically a linkage, the useful implication of this report is that it is damn difficult, it's going to be damn difficult to actually do what I think organized labor wants to have done, which is to tie adherence to these standards to future trade agreements.

Now, here's an irony. About five years ago we had all these anti-globalization protesters outside in Seattle, and they were ranting and raving about the WTO. And here in Washington we had them back, I think, in 2000, 2001, and so forth. And I think it's well known that certain parts of organized labor facilitated these protests against the WTO. And the irony we have today is that I think-Thea would probably agree--that the ILO is probably the wrong place to put all this. Maybe for the reasons that Ted pointed out, the ILO doesn't want it. So the only other place that you're actually going to be able to litigate these standards is guess where? The WTO.

So the irony that I find is that the organized labor movement, which was so much against, quote, the WTO, the anti-globalization movement facilitating that, now I think wants to embrace the WTO and use it to elevate core labor standards. I find it highly ironic this is an outcome.

But I don't think it's a good idea. Not a good idea, one reason because of what I call the glass house problem. People in glass houses shouldn't throw stones. And Ted basically said we live in a glass house, the United States. We arguably do not fulfill the right to organize, for the reasons he talked about. We have right-to-work laws, we also allow replacement labor, and ILO has said that's no good. So we in the United States are violators, is step one. Number two, as he said, 14 states, we use forced labor in the United States. So we live in the glass house. It's hard for us to go out and complain against other countries.

Now, maybe there's a hidden objective here, and that is maybe labor feels that by embodying all these standards in the WTO, we can force U.S. labor law to change. If that's true, I'd say good luck. All right? Right now the WTO is not the most

popular body in the U.S. Congress--by the way, in part because, I think, of agitation fomented by organized labor. WTO is not that welcome in U.S. Congress. I see now way to have U.S. Congress say we're going to change U.S. labor laws in order to comply with some international body, WTO. It's not going to happen.

Now, the useful contribution, though, of organized labor putting this issue on the debate, I think, is it chastens economists in one respect. About four or five years ago, when I was writing "Globaphobia," maybe six years ago, I think there was much more enthusiasm than turns out to be warranted for so-called deep integration. Shallow integration is let's just get rid of trade barriers. And by the way, that would include not only tariffs, but unlawful subsidies and dumping and so forth--by the way, which are different issues in character than deep integration issues like labor standards or environmental rules and so forth which affect the internal workings of a country. And four or five years ago, I think there was a lot more enthusiasm for harmonizing this deep integration because it would facilitate one, you know, sort of one sort of superstructure, fair global trading field, and so forth.

This debate, I think, illustrates perfectly why deep integration is probably not a realistic objective. I think that we'd probably do ourselves a service if we limit our negotiations, I think, in the future to negotiating true at-the-border restrictions, and shy away from these deep integration issues.

Now, a final couple of points. And that is it's not only the United States that lives in a glass house. Thea brought up the example of China. What about Saudi Arabia? What about some other countries that probably wouldn't meet her test for complying with the four core labor standards. Are we going to put trade sanctions on

these countries when we have a lot of other business to do? We have a policy of constructive engagement with China. That's one foreign policy objective.

With Saudi Arabia, they're one of our putative allies. Now, I know there's a lot of criticism in the wake of the Iraq war, but the fact is we put trade sanctions on Saudi Arabia for not living up to these standards, and what if Saudi Arabia then turns around and agitates in OPEC and we have sharply higher oil prices? The reality is, in the real world we're not going to punish big countries or countries with whom we have a geopolitical relationship.

The only countries that we're going to punish, it seems to me, in a world of labor standards being tied to trade, are the little countries. All right? Because they don't have the geopolitical strength to argue against us. And if the whole regime comes down to punishing little countries, we have--at least I have--two major objections to that. Number one, incredibly hypocritical for us to go around picking on them because they lack the power. And number two, for the economic reason that if we really want them to grow, one of the best ways for them to grow is through international trade linkage. So don't halt trade with them. If anything, we ought to be encouraging more trade between them and us. And if we really believe we want labor standards to improve, we ought to be doing things to make them richer.

Let me conclude on one final point, and that is, well, is there anything else we can do other than rely on the standard economist's prescription of economic growth? Yes. And it's something that labor has great experience in. And that's, in a world of the Internet, mount, organize boycotts. If consumers or workers want to organize in individual countries and say don't buy from X or don't buy from Y because

they have junky labor standards, I think the Internet has proven that world publicity can be a very powerful force in changing behavior. It changed Nike's behavior; it can change other companies' behavior.

So I say in this world let's not worry about changing government policy, which is fraught with all the complications that we've talked about in the NAS, and organized labor is free to do whatever it can to work with other organizations to try to induce specific companies to change their policies.

Thank you.

[Applause.]

MS. BRAINARD: All right, thank you very much to all three of our panelists, who are individually extremely persuasive and, collectively, completely inconsistent with each other. So now let's go to questions. I'm going to take the prerogative of the chair and ask a few questions for myself, and then I'm going to turn it over to the audience and ask you to identify yourself and your affiliation.

First of all, I just wanted to ask a little bit about, you know, just how hard this is and contrast how hard this is with, for instance, where we were on intellectual property going into the Uruguay Round. I mean, we talk about international inconsistencies in treatment of regulatory issue. Well, certainly, I think there was a lot of variation going into the Uruguay Round and, remarkably, we came out of it with absolutely uniform standards across countries.

The second thing that's striking in that regard is that we actually have internationally agreed core labor standards, which we don't have, for instance, on

competition policy, which we didn't have on intellectual property. So can you do a little bit of a compare-and-contrast there?

And I think first to Ted, and maybe also to Bob.

MR. MORAN: I'll tell you, I'm not as big a fan of intellectual property protection as I think we were coming out of the Uruguay Round. So I'm not sure that that's the model that I would immediately choose. My impression is, however, despite variations in patent protection and copyrights and other things, this is vastly more complicated. But I say that without being a technical expert in intellectual property rights, so actually, if either of you have a different view, I'd like to hear it.

Lael, part of what my argument was, well, we have four core labor standards, but what they mean and how to recognize them when you see it and how to say who's guilty is a huge problem. I've talked--I see Dave Richardson in the back, he's also said, well, you've got differences with regard to competition policy. Maybe this will be the same. Maybe we can figure out ways to deal with abuse of prominent position in the marketplace. I happen to think myself that's easier than trying to figure out what to do about child labor and whether or not you discount a country's behavior when they don't have effective access to elementary education as an alternative. I mean, just to pick one example, that strikes me as a much broader problem than figuring out whether or not you penalize India through trade--now that after 25 years India is just starting to open up--because it has such huge child labor problems. That strikes me as vastly counterproductive.

You would be surprised to hear Thea and I are good friends and worked very compatibly on this thing, even though she called me an academic defeatist. And

maybe I'm emphasizing the problems here too much, but I think we really difficult practical problems.

MS. LEE: Can I jump in on this issue? I think the IPR question is very interesting because we also use it as a parallel for labor standards, that if it's possible to incorporate IPR, to go to a country and tell it to change its copyright length, its patent length, to put in place an enforcement mechanism that they don't have there--which is what we did with Singapore and we negotiated an FTA--why isn't it possible also to say you need to treat your workers like human beings, you need to respect their rights?

And I guess, you know, a lot of the arguments that we hear--I sit at a lot of meetings, advisory committee meetings with the business lobbyists--some of my friends in the room, maybe--and I always think to myself, I always try to put myself in their shoes. If the USTR said to them, well, listen, what we're going to do, I know intellectual property rights is crucially important to your company, it's a life-or-death question, and here's what we're going to do. We're going to have free trade. And we know that free trade is going to make these countries richer. And we know that richer countries tend to protect their copyrights better than poorer countries, so you ought to be okay. And I think most of these lobbyists would be afraid to go back and tell their boss this is what we came up with--they're giving us free trade and they're telling us to wait until free trade makes the country rich and then the rich country just chooses to voluntarily abide by better IPR.

If it's important to the business community, they want it written into the trade agreement. They want it explicitly in there with economic consequences for noncompliance. And I don't blame them.

And that's how I feel about labor rights, that it's not something I'm willing to wait for 50 years. And I think that it's a perfectly legitimate thing, when two countries have an economic relationship, to say, hey, this is a priority for us, it's something 93 percent of the American public says is important, should be in trade agreements. It's something that the U.S. Congress has pretty much said ought to be included in trade agreements, how it's done. But, you know, and so you could tell business to go do an organized boycott on IPR protection, you know, countries that aren't doing a good job or companies that aren't doing a good job on IPR protection, you could boycott them. But it's not a very direct way, and I don't think it's really acceptable in the context of how we do trade.

And just in terms of the level of uncertainty or how difficult it is to discern, I think on something like dumping or illegal subsidies it's clear we don't have consensus at the WTO on what is an illegal subsidy. Right? In terms of cotton, you know, we have a dispute right now, and we have a dispute settlement mechanism. We have a way of deciding these cases. And many of us will disagree with how it goes. It doesn't mean that we refrain from making those decisions, putting those commitments if they're important to us, if they're a priority.

And I guess my point is we use trade sanctions in this country all the time, to protect IPR, against subsidies, against dumping and so on. And it's not the same as saying you want a country to be poor, you don't want them ever to grow. We use it because this is about creating a set of rules for the global economy that's rational, that creates the right incentives, that rewards countries that do well, that respect the rights of workers.

You know, I just have to go to the glass-house question, because both Ted and Bob raised it. It's very much our position that we negotiate trade agreements either in bilateral agreements or multilaterally, but they should apply to the United States. Other countries should be able to use them to be able to challenge our labor laws when they fall short of ILO. To the extent that we fall short of ILO standards, I think it's absolutely right that we should be challenged in international bodies and that--see where it goes. But we should be living up to our ILO obligations. We shouldn't be hiding behind them.

MR. LITAN: Actually, Thea's done one thing over the last five years. She's persuaded me on the IPR issue. But not in the way that she would expect, in the sense that I've now come around to where John [inaudible] is. As an academic matter, I think it was a mistake to put IPR in the Uruguay Round. All right? Now, as a practical political matter, the Uruguay Round probably would have never gotten through to Congress if it hadn't had the IPR stuff in there, for the reasons that Thea talked about. But frankly, I don't think they should be in there. And furthermore, it's pretty clear in practice that we don't really do very much about it.

I remember, for example, in the Clinton administration, I think it was Charlene went over to China, right, and complained like crazy about their piracy and so forth. And then there were pictures on TV and they were taking these steamrollers over, you know, and smashing all these CDs and other things that had been pirated.

The fact of the matter, though, is that we have not really taken aggressive action against China. Nor are we going to. We want a constructive relationship with China and hope that they do better. And that is exactly my point, that what we end up

doing with these kinds of--whether it's IPR or if we ever do it with labor standards, we're only going to go after the little countries. All right? That is just a realpolitik. And if other countries start retaliating against the United States--let's say we put labor standards in there--I think we're headed down to where we were in the 1930s.

MS. LEE: We'd like to go after China on workers' rights. That's not a little country, is it?

MR. LITAN: I know that, but the fact of the matter is we really never did that much on China on IPR. And if we go after China on workers' rights, I'm telling you it's going to reverse a whole consistent policy of several administrations, which is to have a constructive trading relationship with them.

MS. LEE: It is constructive. It is very constructive to go after them on workers' rights, say we want to trade with you, we want to continue to have an important trade relationship, but you've got to treat your workers like human beings.

MR. LITAN: All right, and then they're going to come back and they're going to say to us you've got a glass house. All right?

MS. LEE: Fine.

MR. LITAN: We'll do that--all right, and you know what that means? No trade. All right?

MS. LEE: It doesn't mean no trade.

MR. LITAN: Oh, yes, it does.

MS. LEE: Nonsense.

MR. LITAN: Because you end up having sanctions against the third-largest trading country in the world. This is not going to happen. We're going to end up

in a situation, a downward spiral like we had in the 1930s. It looks innocent the way it starts, but once you start rolling the ball down the edge, it's going to end up just like Smoot-Hawley, except in a different name.

MS. LEE: It doesn't happen that way. We use trade sanctions very surgically. And most of the time, you threaten a trade sanction, you never actually have to bring it in some of these cases because it simply becomes a tool. It's a part of the economic dialogue between countries, that you have a way of raising these questions.

MS. BRAINARD: Let me ask you on the glass-house question, suppose we did go into a free trade agreement with Central America, where we actually referenced the core labor standards instead of referencing enforce your own, which is the standard in many of the other free trade agreements that we have. And the Central Americans or others do bring a case. I think Central America may not be the best example, because we don't actually have that much at stake there in terms of our exports.

But let's take a much larger country and let's talk about sanctions that hurt our manufacturing workers in particular countries. Especially the EU is very, very clever about using whatever trade agreements there are and imposing sanctions that hit very hard on our workers. What's the position of the AFL at that juncture? I mean, where do you end up where we've got a WTO case where you've got \$4 billion of sanctions, you've got tariffs against U.S. goods that are targeted at manufacturing workers. Are we still in a better position than we are in today having those kinds of standards in the agreements?

MS. LEE: Absolutely. I mean, it's a way of using sort of a temporary threat of something that you hope you'll never have to enforce in order to get some

change. And if that's what it would take to force the United States to come into compliance with its ILO obligations, I think that's totally--

I mean, if you look back at the South Africa situation under apartheid, and you had the same kinds of arguments--well, if you don't trade with South Africa, then you're going to be hurting the very people you're trying to help, and so on. In the end, it turned out that you needed to have a lot of external economic pressure and in fact it had a huge impact on the apartheid government. They felt they really couldn't go forward and be isolated from the global economy and that it wasn't worth it. And there was change that came about.

And so I think in other cases it's something which tends to be used. I mean, the rules are written in a way that--it's not that easy to use them. And I think a lot of it is atmospherics. You've got almost like arms talks, that it's a way of saying, yes, we recognize that this is important between our two countries, we recognize the legitimate economic issue that one country can raise with respect to another. But the reality is that it only ends up being invoked in extremely egregious cases.

MS. BRAINARD: Ted, do you want to comment on that?

MR. MORAN: I would like to make a short comment, but Lael, I can see people wanting to--

MR. LITAN: Yeah, I think they want to jump in.

MS. BRAINARD: I'll get there. I'll get there.

MR. MORAN: Let me take on Thea with regard to the GSP mentality. My fear, I have been talking about the feasibility of doing this. And I have pointed out the difficulties. Now we're moving into where [flip tape] --the desirability of this.

Now, I don't see any difference between me and Thea. I mean, I think China is atrocious. I think there are things in Bangladesh that are atrocious. I think we have Mexican representatives here. We heard testimony about things in Mexico that are atrocious. What I'm asking is, can there be a common jurisprudence that deals with China, Bangladesh, Mexico, and the United States? And the feasibility of doing that is very difficult.

Now, the desirability question. What I call the GSP mentality is access to our market is a blessing that we bestow upon you. Now, in Cambodia's case, that's the case, I mean for them to get preference to that. Extending that to the WTO system and saying, okay, everybody has the right to suspend their obligations, this entire structure of liberalization built up over the past 40 years, if they can bring a case and they can win a case under these, what I say, difficult and murky circumstances, that strikes me as very frightening.

I mean, whether or not it leads to Smoot-Hawley or, you know, how fast it happens, I don't know. But I think that that is a threat that all of us who are worried about development have to think about.

For those of you--and I see friends and people that I know in the corporate social responsibility community--think about how retaliation would work in that system. Suppose you find subcontractors in textile and apparel who have egregious violations and then any nation that brings that case can suspend access to that sector. Well, we deal with the Gaps and the Nikes and the Levi-Strausses who try very hard to tell their suppliers if you meet our standards, we'll give you assured contracts, and if you don't, we'll cut you off. Well, if you can go to the Philippines or you can go to Mexico

or you can go to Bangladesh and cut off the whole sector, then that whole system of monitoring and of trying to get people to act responsibly is completely undermined.

So I wasn't going to get into desirability, but I think this is a highly dangerous evolution if we were to head in the direction that Thea wants us to.

MR. LITAN: Fifty seconds on South Africa, and then we can go to the audience.

South Africa is the rare case where you had basically almost all the world that mattered, in trading with South Africa, agree that what they were doing was reprehensible; they impose multilateral sanctions and they work. And the whole sanctions literature basically says that when sanctions are multilateral, they're much more likely to work than when they are unilateral.

We have the opposite case with labor standards. While we have agreement on the buzz words in the ILO Convention, what the NAS report basically says is we don't have agreement on the practicality of the definitions. It's a completely different situation than South Africa, because there is no consensus. That's what that report documents. There is no consensus on how to apply this, whereas in the case of South Africa, total consensus that what they were doing was wrong.

MS. LEE: South Africa sanctions started as unilateral.

MR. LITAN: And they became--and by the way, if they had been unilateral and only unilateral, I'll bet you they wouldn't have worked, because then Europe would have sold to South Africa and they would have said the hell with us.

MS. BRAINARD: Okay, let me turn to questions from the audience.

QUESTION: My name is Madisa von Beulo [ph]. I'm a Ph.D. candidate at Johns Hopkins and a professor at the University of Brasilia, Brazil.

I have two quick questions. One is about the NAFTA labor side agreement. Have you, in thinking about labor and trade, have you taken a look at the NALC [ph] experience? Because I think that there the problem has been not so much the definition of labor standards or how to measure it. The problems of enforcement have been political will. So that would be my first question, have you taken a look at it.

And the second question is for Thea Lee. Some organizations in the U.S. and outside of the U.S., civil society organizations that have been critical of free trade agreements, have also been critical of the AFL position. They have said that there is this sort of mantra in the U.S. trade debate that it's all about labor and environmental clauses, that's the main problem of free trade agreements. And these organizations say that this kind of approach ignores a whole lot of other issues that are important problems in free trade agreements. How would you respond to that kind of criticism?

Thank you.

MS. BRAINARD: I think, Ted, the first one sounded like it was for you.

MR. MORAN: Actually, for those of you who know the experience within NAFTA and the NALC experience, this reinforces my skepticism--not defeatism--my skepticism. That is to say, if you look, for example, at freedom of association and collective bargaining, that was explicitly excluded from any dispute settlement. I mean, you can do consultations on it, but you can't take it to any outside panel. Because just three countries, not 141, but three countries thought that their systems were difficult enough.

Going just one extension, if you look at the Canada-Chile free trade agreement--Canada, Chile; today's Chile, today's Canada--I mean, I would think, gee, this would be easy--both of them said the same thing. Labor legislation having to do with freedom of association is so idiosyncratic and defined differently that that can't go to dispute settlement either. I mean, so that leads me in my pessimistic or cautious direction.

MS. LEE: The fact that stronger labor standards weren't included in the NAFTA is, I guess, a political decision that was made partly on the part of the U.S. But, you know, our view about NAFTA is that the provisions aren't strong enough and they only really were about enforcing domestic labor laws, too. That was really the commitment made under the NALC. There was no attempt to do an upward harmonization. But our view is that the cases that have been brought show that you need stronger enforcement mechanisms, you need some of the upward harmonization, and that that's one of the frustrating things about it.

In terms of the emphasis on labor and environment, these are issues that we have put a lot of attention and a lot of energy into, but they're by no means the only issues we raise around trade agreements. And I think if you read any of the materials the AFL-CIO has up on our Web site--our executive council resolutions on the FTAA, for example; a lot of the other issues about, for example, investment rules that in our view give too much power to corporations to sue governments and possibly to overturn legitimate domestic public health and environmental regulations; the services provisions that in our view might limit the ability of governments to provide public services; the government procurement provisions, which we think have too narrow a restriction on

how governments can use their tax dollars, whether it's for social objectives like human rights and worker rights, or whether to create jobs at home.

And on IPR, we've really worked very closely with unions in other countries on that issue, which I think is one where there's a lot of concern that the U.S. agenda on IPR is really preventing a lot of developing countries from being able to provide accessible medicine for life-saving problems like HIV/AIDS. And on that, we've been very supportive of our developing-country brothers and sisters.

So I think we have a much broader range. And today's topic was on labor standards, trade and labor, but it's by no means the only critique we have of the trading rules.

And just going back to Bob's point, I think, Bob, you misunderstood the engagement of the AFL-CIO in the critique of the WTO. We were very much an active player in organizing the WTO demonstrations, but we--if you've read any of the materials we put out at the time, the point wasn't to abolish the WTO. We are actually believers in multilateral rules. We simply want our own government to have a different set of priorities as it goes to the multilateral negotiations, and we also want the WTO to be, as an organization, more transparent and open and not so dominated by the corporate interests. But we've never said we should get rid of the WTO. We've said it needs to be reformed and fixed to take up different issues.

QUESTION: Dave Richardson, Institute for International Economics.

I'd like to ask Bob Litan a playful question, then a more serious one and a very brief one also, and then one to Thea.

The playful question is, Bob, among the economists who unanimously say let it happen, do you know any labor economists?

The more serious one is, is the NAS report more constructively like the beginning of a notification process to a WTO agreement that would include some core labor rights? Notification is a well established procedure.

To Thea, would you comment on Bob's surmise that the ILO has no place, or at least no particular new place, in core labor standards? And would you comment on the idea that Kim Elliott and Richard Freeman have broached of a WTO agreement on trade-related core labor standards only? Trade-related implies an injury test, trade-related implies a very restricted inclusion in the WTO aimed at eliminating distortions.

MS. LEE: Okay, Dave, on the playful question, labor economists I know--maybe I just don't know enough of them--agree with what I said. Maybe I don't know enough of them.

On the notification, I think your implication is that in effect the NAS reports are the beginnings of a dialogue on how to interpret all this stuff that may eventually someday come to fruition. And you can look at it that way. I think we're a long way from getting from where we are now to where we need to be.

And in that sense, I just want to make one sharp distinction between subsidies, dumping, and labor standards, or [inaudible] policy, whatever. In the case of subsidies and dumping--and people here know that I'm no fan of dumping laws--but at a minimum, when you're administering a subsidy and the dumping laws, there are well

articulated procedures of measuring things. I may not like the way they do it or whatever, but you can quantify things, you can measure them, and so forth.

When it comes to--whether it's IPR or labor standards or competition or any of these other things, they're 0-1 variables. You either do it or you don't. There's no halfway house. And we don't have consensus on whether it's a 0 or a 1. I mean, in effect, that's the way I read the NAS report. And so these are very different things that the measurement issues that confront us in subsidies and dumping.

MS. LEE: Dave, to your question about the ILO, I don't agree that the ILO has no place. The ILO is a crucial and credible organization that will always have the expertise and maybe the legitimacy to make crucial decisions about, you know, whether countries are or are not in compliance, how to improve their labor laws to come into compliance with ILO core labor standards.

One of the things I was little bit puzzled about Ted's dismissal of the ILO as being unable to find guilt or innocence, I guess--you know, the ILO does all the time. They have their Committee on Freedom of Association, the Committee on Experts on the Application of Conventions and Recommendations. But, you know, they're constantly judging countries and finding whether countries are, you know, taking steps or they're working towards or very concerned or a little bit concerned and so on. And maybe it's all sort of cloaked in ILO language, but I think it's been a really important process that the ILO does, that happens.

And with the NAS Committee I went to the June meeting one year and sat through some of the committee discussions, and I found it very, very interesting.

And it's a tripartite organization, so you have employers, workers, and governments from 170-some-odd countries. It's really a remarkable and extraordinary place.

And so I would always hope that the ILO would be playing that role of lending its expertise and credibility and objectiveness to some of these decisions about whether or not countries are coming into compliance, or how to bring them into compliance.

And I think, in the case of Burma, the ILO played a very important role. The ILO invoked Article 33 of its constitution for the first time with respect to the very serious charges of slave labor in Burma. And the U.S. Congress actually acted on the ILO's--the ILO instructed its members to go out and to examine their bilateral relationship with Burma to make sure that they weren't actually supporting slave labor and forced labor through their actions. And the U.S. Congress at some point last summer banned imports from Burma. And that was, in some ways, in response to the ILO taking that action.

So I don't agree that the ILO has no role.

And the last thing about Kim and Richard Freeman's proposal on trade-related core labor standards, I think that's a reasonable way. Most of the bilateral trade agreements that we have do have a trade-related mechanism. So you're not trying to solve all the problems of the world or fix any kind of labor rights violation; what you are doing is saying this impacts the trade relationship with us, it impacts the price of trading goods, the pattern of investment, and therefore it's very much our business just in the way that an illegal subsidy is.

I think it's very similar, that if a government deliberately keeps labor cheap by jailing or murdering or torturing trade unionists--and there are many governments, I'm afraid to say, in the world who do that--then they are in a sense subsidizing the employers who come there and hire that cheap labor. So, you know, government action which is deliberately cheapening labor and artificially cheapening labor--and, I would say, illegally cheapening labor--and it is part of a function international trade system to be able to address those kinds of actions.

QUESTION: I'm Mike Castellano [ph] with the Ways and Means Democrats.

One comment. Mr. Moran, I just want to point out--I mean, I think you make some good points in this policy brief, but on page 7 you list--I count eight sort of alleged objections that the House Democrats had to Central American law. Five of them aren't right. So I'm not sure what document you were relying upon. I think I know the document, and having helped author it, I mean, I know that five of those aren't in that document. Three of them are, and you make some good points with respect to those three. But, I mean, I would hope that you might issue a correction. It's tough to--we get a lot of straw-man arguments against our position; it's tough to respond to a straw-man argument.

MR. MORAN: E-mail me that, and of course I'll do it. I had the letters in front of me, or at least what was published in Inside U.S. Trade. So, I mean, that was an attempt to just--I think there was one thing about closing plants that wasn't in your letter.

But in any case, by all means, e-mail me and I'll get that right.

QUESTION: Okay, thank you.

And a comment also about sort of the uniqueness of the labor standards issue. I think that there's a very good point to be made about--there is a--it would be difficult for a panel to come up and say, all right, this is exactly what the right to associate means and that you're not effectively enforcing that. But, I mean, I think equally, you know, there's plenty of other standards that are already in trade agreements. In investment agreements we have a "fair and equitable" treatment standard. That's a wide-open standard. In IP, there's fair use. There's public noncommercial use, which has never been defined. And if you ask someone in India what that means, they have a different answer than somebody in pharma. There's also the idea of legitimate interests of intellectual property rights holders.

So there's a whole bunch of very ill-defined standards out there that eventually we probably will come up with definitions for. Or alternatively, the more likely scenario is we may never know. But in the meantime, the U.S. will have used the fact that those standards are in agreements as ways to jawbone countries to improve their standards in ways that we think is appropriate, and other countries as well.

So that gets me to sort of my question, which is isn't this debate way ahead of where we need to be right now on this issue? Because, I mean, we're talking about economic sanctions, okay? We're so far away from applying economic sanctions for a violation of the core labor standards in a trade agreement. We don't even have them in a trade agreement right now. Even the provisions that we do have, they've never been used for the enforce your own law.

And so shouldn't the focus be the question: Number one, is it desirable to use U.S. economic leverage to raise labor standards throughout the world? And number two, is including these types of provisions in trade agreements a good way of using U.S. leverage to help raise those labor standards? And from my perspective, the answer to both those questions is yes. And the rest of this is so far beyond where we actually are in terms of our negotiations that it's sort of doing a disservice to the fact that the answer to those two questions is yes.

MS. BRAINARD: Comments on that?

MR. MORAN: Yeah. Mike, you pointed out use U.S. leverage. I know you came in a little bit late. I made a distinction between either bilateral free trade arrangements or GSP or regional free trade arrangements in which really what you're doing is putting the United States in the position of using its leverage to try and change the legislation or the behavior. There are pluses to that, there are minuses to that.

What I was addressing was a genuine multilateral forum, which, again, only the U.S. is talking--almost only the U.S. is talking about very seriously and is way down the road. So this is going to get into your this-is-far-off-into-the-future. And that where, as I said a minute ago, any country could suspend its obligations when it brings a case and if it won a case, I see as much different. This isn't just the United States, you know, looking at Central America or looking at Cambodia and saying, okay, if we really find that you're killing the labor leaders we're going to cut off your quota. I mean, that's bilateral pressure and you can make a justification for that. But the idea of having a multilateral system, I think, is much more dangerous, for the reasons that I laid out just a minute ago.

MR. LITAN: Can I just add--look, your point about all these vague words in all these other agreements, that's true. There are vague words and there are more vague words in ILO and so forth. And I think the point of the NAS document is that until you get rid of some of the vagueness, it's counterproductive to put these vague words in these agreements. Because in practice, what it's going to mean is it will punish the Burmas, will punish small country X, Y, and Z, but we're not going to end up doing anything against the big countries for geopolitical reasons. And I think there's a huge hypocrisy in that.

And then when we get to the issue of U.S. leverage, this to me is highly ironic, that--and I'm a Democrat, by the way, proud of it. But you know, it's highly ironic that Democrats, who have been so critical of the Bush administration for attempting to ram America's values down everybody's throats in following a unilateralist foreign policy, would then come to the trade debate and say, well, we're going to throw our weight around and we're going to shove this down other people's throats, and if they don't buy it, we're not going to have further trade liberalization with them.

So this is a very real-world--this is not a theoretical problem. This is, going forward, are we going to have new trade deals that are conditioned on this kind of thing. And if we're saying the only way we're going to have a deal is if you buy our view of the world--and by the way, ignore our hypocrisy, ignore our labor laws, ignore the fact that we have prison labor and so forth--if we're going to go ahead and do this, then we're acting just as unilateralist as the Bush administration--which I oppose also.

MS. LEE: We're not talking about ramming America's values down anybody's throats. We're talking about countries living up to the ILO obligations they've already made and enforcing their own labor laws.

MR. LITAN: But we don't.

MS. LEE: Well, then, they can use it when we put it into the bilateral agreements.

MR. LITAN: They won't.

MS. LEE: They might.

MR. LITAN: Oh, come on. No small country's going to--

MS. LEE: There have been cases under NAFTA against the United States, and they've been very interesting cases. The Washington apples, the [inaudible], the Sprint one. There have been very interesting cases where the U.S. has been called unto account for how we treat immigrant workers, for freedom of association questions, and it's been very useful and very constructive.

And in terms of--

MR. LITAN: And how many cases of sanctions of small countries against the United States?

MS. LEE: Well, NAFTA, there's no sanctions under NAFTA for anybody.

MR. LITAN: Well, that's my point, though.

MS. LEE: There haven't been any sanctions against Mexico, either, because we haven't gotten to that stage because the whole agreement was so badly negotiated.

I think you should just stop saying the small-country/large-country thing, because we're talking about addressing this with respect to China. And I think a Kerry administration might very well bring a Section 301 case against China. There is not that issue that we simply cannot challenge. In fact, China's size makes it more imperative that we address the workers' rights violations there, not less imperative.

MS. BRAINARD: Let me just say that I'm afraid we have to wrap up, so any additional questions you have, please bring to the panelists directly.

What's clear is that although there may be international consensus on this issue, we have cleverly picked our panel so there is absolutely no consensus or even agreement on this panel.

[Laughter.]

MS. BRAINARD: Thank you very much for coming, and thanks to our panelists.

[END OF TAPED RECORDING.]