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## **Standing Committee on International Trade**

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**EVIDENCE**

**Thursday, March 29, 2012**

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**Chair**

**The Honourable Rob Merrifield**



## Standing Committee on International Trade

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• (1105)

[English]

**The Chair (Hon. Rob Merrifield (Yellowhead, CPC)):** I'd like to call the meeting to order.

We have with us today, in our further study of Bill C-23, the Canada-Jordan free trade agreement, two witnesses in the first hour, and I'd like to introduce them.

From the International Trade Union Confederation, actually from Brussels, Belgium, we have Mr. Jeff Vogt. He is a legal advisor from the Department of Human and Trade Union Rights. Thank you for being with us.

Are we coming through okay?

**Mr. Jeff Vogt (Legal Advisor, Department of Human and Trade Union Rights, International Trade Union Confederation (ITUC)):** Yes, fine. Thank you.

**The Chair:** Very good.

We also have, from Toronto, from the Canadian Environmental Law Association, Theresa McClenaghan, executive director and counsel.

Theresa, are we coming through all right for you?

**Ms. Theresa McClenaghan (Executive Director and Counsel, Canadian Environmental Law Association):** Yes, just fine. Thank you.

**The Chair:** Very good. You're coming through on this end as if you were sitting in the room, so thank you for taking part in this.

We'll give you each opening comments, and then we'll move to questions and answers.

Jeff, the floor is yours.

**Mr. Jeff Vogt:** Thank you very much.

Good morning. My name is Jeff Vogt. I'm the legal advisor to the Department of Human and Trade Union Rights at the ITUC. The ITUC is a global confederation of 176 million workers worldwide, including workers in Canada.

Again, thank you for this invitation to testify before the Standing Committee on International Trade on the subject of the proposed Canada-Jordan free trade agreement.

While there are many aspects of this trade agreement that deserve careful consideration, as they impact workers both in Canada and in Jordan, I'll focus my remarks today on whether the Kingdom of

Jordan currently complies with the commitments it must undertake under the bilateral agreement on labour cooperation. From our view, the simple answer is no.

Article 1 of the agreement on labour cooperation provides that each party "shall ensure that its labour law and practices embody and provide protection" for eight categories of principles and rights, the first four being the ILO core labour rights as set forth in the ILO declaration on fundamental principles and rights of work, as well as four additional categories, including: acceptable minimum employment standards; compensation, such as minimum wages and overtime pay; the prevention of occupational illnesses and injuries; and non-discrimination in respect of working conditions for migrant workers.

While the Kingdom of Jordan has instituted some reforms in recent years, their labour code still falls short of the requirements of article 1. For example, article 98 of the labour code requires a minimum of 50 workers to form a union. According to the ILO treaty on freedom of association, the establishment of a trade union may be considerably hindered or even rendered impossible when the minimum number of members of a trade union is fixed at obviously too high a figure, as in this case, where the legislation requires that a union must have at least 50 founding members.

Second, article 98 of the code also authorizes a tripartite committee to define those industries in which workers may form trade unions and prevents workers from forming more than one union in each of them. Again, the treaty on freedom of association states that establishing a limited number of occupations with a view to recognizing the right to associate violates the principle that workers of any occupation whatsoever should have the right to establish organizations of their own choosing.

Section 10 of the code requires that the treaty set up the general confederation of trade unions. However, the question on whether we need to form a federation or confederation as needed is to be determined solely by workers and organizations. Moreover, a monopoly situation imposed by laws is at variance with the principles of freedom of association.

Although a 2010 amendment eliminated language that specifically forbids migrant workers from joining trade unions, the law includes language that forbids migrant workers from forming unions of their own choice. The law maintains the requirement that founding members be Jordanian nationals. Thus, the right to organize foreign workers is not fully guaranteed; they are not authorized to participate in the establishment of a trade union or participate as leaders.

Further, the ILO recently noted this year that while the labour code forbids accident interference, fines for violations of this provision remain between 50 and 100 Jordanian dinar, which is between \$70 and \$140 U.S., and which the ILO considers to be far too small to have any decisive impact.

Those are just some of the highlights of the ways in which the current legal framework does not comport with the first article of the agreement on labour cooperation.

Moreover, under article 3 of the agreement on labour cooperation, the Kingdom of Jordan has an obligation to effectively enforce its laws. In the garment sector, conditions have improved somewhat since 2006, when there was an exposé by the national labour committee—and I think the head of that organization will be testifying later today—as well as trade complaints filed by the AFL-CIO over the U.S.-Jordan bilateral trade agreement, which brought attention to horrendous working conditions in the qualifying industrial zones.

Since 2008, the ILO has established the Better Work program, which covers a number of factories in the QIZs with Jordan. However, their third synthesis report, which was issued just a couple of weeks ago, revealed several serious problems in the QIZs.

With regard to forced labour, the ILO noted in a report just a couple of weeks ago:

The issue of recruitment fees to a third party remains a serious concern. Migrant workers often are required to pay substantial fees to recruitment agents and sub-agents in their home countries. Workers in over 40% of factories indicated that this debt adversely affects their freedom to leave their jobs. There are no provisions in Jordanian law to ensure that workers have not been recruited under such circumstances.

...

Better Work Jordan has [also] observed a practice in some factories under which workers who terminate their contracts are required to stay on the job until a replacement is found, sometimes for a period of several months.

With regard to work hours, Jordanian law does not impose a general limit on total overtime or maximum number of total hours per week and thereby tolerates excessively long work days and work weeks, with excessive work hours and compulsory overtime remaining a major concern of Better Work Jordan.

[Another] area of concern is disciplining workers using physical punishment or humiliating treatment. In six factories...

—which was 25% of those reviewed in the report—

...it was found that workers were either subjected to verbal or physical abuse, or were threatened if they did not complete their production targets.

With regard to dormitory conditions, there are no minimal standards in Jordanian labour law, and inspectors do not regularly inspect dormitories.

The report found that there were serious issues with regard to ventilation, bathing facilities, sewage, protection against heat or cold, insects, and fire. These issues persisted in nearly half the factories assessed.

The report also noted that “in one factory, thirty-two workers were denied allowances and bonuses for having participated in a strike”.

“In recent months, Better Work Jordan has refined its assessment of freedom of association especially [with regard to] interference and

discrimination”, and it noted in its report that it anticipates that in the future there will be many more findings of non-compliance as a result.

The problems are, of course, not limited to the garment export sector. We find violations of the labour code throughout the Jordanian economy, but I think as an initial assessment of the situation, I'll leave it there.

I'm happy to take any questions you have with regard to Jordanian labour law practice.

Thanks.

• (1110)

**The Chair:** Thank you very much for that.

Now we'll move on to Theresa McClenaghan. The floor is yours.

**Ms. Theresa McClenaghan:** Thank you very much.

Thank you for this opportunity to attend and make a presentation to the committee today.

The Canadian Environmental Law Association is an environmental law legal clinic, one of the specialty clinics in the Ontario legal aid system. We're 41 years old, and we're a federally incorporated ENGO. In addition to representation of eligible groups, families, and individuals, we also have a mandate to pursue environmental law reform and public legal education.

We've had an opportunity to review the Canada-Jordan bilateral free trade agreement and the agreement on the environment between those parties, the subject of your committee's study today.

Some of my comments today will echo comments I have made before this standing committee in earlier parliaments in reviewing other free trade agreements—for example, the Canada-Peru agreement and the potential Canada-European Union comprehensive economic and trade agreement.

Our analysis is generally premised on advocating that each level of government in Canada can and must act to protect the environment in diverse ways. We've argued this before the courts, and the courts, including the Supreme Court of Canada, have agreed that we have a strong system in Canada of action on environmental matters by municipal, provincial, and federal governments, and of course first nations, in addition to strong action at the international level.

So when we, as CELA, look at the proposed trade agreements and make recommendations, we're primarily concerned with ensuring that those diverse levels of jurisdiction and ability to act in the aim of strong environmental protection is flexible, well-recognized, and protected.

I'll turn now to specific topics under the Canada-Jordan free trade agreement.

The first one is the national treatment provision. In the proposed Canada-Jordan free trade agreement, there is, as is usual, a proposed national treatment provision. It imports the provisions of the GATT providing for an exception for that national treatment provision relating to environmental measures necessary for the “protection of human, animal or plant life or health”.

We have a recommendation that in this agreement it should be broadened beyond the GATT so that it's not limited just to measures that are necessary; it should include measures "intended" or "relating" to environmental and health objectives.

The second point is that of course there's the agreement on the environment, which is in front of you, as a side agreement. Again, this is not unusual, as I've noticed with various bilateral agreement regimes that I've looked at.

We've reviewed that chapter as well. The definition of "environmental laws" in the environment agreement explicitly excludes public and worker health and public safety. We submit that the environment side agreement should not be limited only to those laws whose primary purpose is environmental protection, but should include other laws that also relate in part to environmental protection. We also think the exclusion of laws relating to public health and worker health and safety, from that side agreement, is not reasonable.

For example, as many of you may know, one of Canada's major environmental protection statutes, the Canadian Environmental Protection Act, equally protects human health as well as non-human health in environmental matters. Another example is the recently enacted Canadian Consumer Product Safety Act, which has important elements of public health and safety as well as implications for environmental safety in indoor environment contexts.

Other improvements to the environment agreement would include requiring the parties to take account of scientific and technical information and of the precautionary principle, which CELA strongly endorses. The precautionary principle, along with scientific and technical information, is also an important element in occupational health and safety, and should be included in the side agreement—as well as, I might suggest, although I haven't studied it, the labour cooperation agreement; I did notice that there was no language like that there.

This type of language was recently proposed by the EU in the current CETA negotiations, for example, and we commended it to your predecessor committee in our prior appearance.

CELA also would prefer more explicit language obliging the parties to implement in their domestic laws and practices the requirements of multilateral environmental agreements, as listed here—the Stockholm, Basel, and Rotterdam conventions, the Montreal protocol, and the endangered species trade convention—rather than, as it does, merely providing that the multilateral environmental agreements would prevail in case of an operational inconsistency. We'd like the agreement to go further and oblige implementation of those commitments between the parties.

•(1115)

We also have a point on procurement, which is that we advocate the inclusion of provisions allowing for green procurement, for example, to allow for market transformation and in aid of more sustainable practices, products, and services, as well as green jobs in the domestic economies of the parties.

I have a point as well on expropriation. Your study apparently doesn't include the Canada-Jordan investment agreement, but in

terms of environmental impact, we don't think we can testify at the committee without mentioning what we think that would do. We would suggest that at the first opportunity the provisions of that agreement that allow for claims of indirect expropriation in any case involving environmental regulation be disallowed, both procedurally and substantively.

The agreement limits such claims—in the terms it provides—in extremely rare circumstances. But this committee, and some of you, may have heard me say before that we think the better approach is that contained in the U.S.-Australia bilateral free trade agreement, which doesn't contain any such provision over and above the regular domestic laws of each party.

More to the point, Australia released a trade policy statement in April 2011—so quite recently, in the scheme of things—stating that it would not negotiate treaty provisions "that would confer greater legal rights on foreign businesses than those available to domestic businesses" or that "...constrain the ability of Australian governments to make laws on social, environmental and economic matters in circumstances where those laws do not discriminate...."

We think that's an extremely sound policy for Canada's context. So we would strongly encourage the adoption of that type of policy for this agreement and all other bilateral trade negotiations. We think that eliminating investor-state provisions beyond the remedies under Canada's domestic law would be a significant improvement here.

We don't argue against appropriate provisions for direct expropriation in domestic and international law. The common law and often statutory law provides strong protection. On the other hand, we've long disputed that public interest regulation amounts to expropriation or that any compensation is due when activities are curtailed because of public interest regulation. We would suggest that if expropriation is provided, it be limited to direct expropriation.

Before I finish that point, the fact that the claims may be brought, even if we don't think they will succeed on the language of the agreement, is, in itself, a problem. It raises the potential for regulatory chill on the domestic, national, and subnational governments; that is, they have to pause and think about whether the regulation they're planning to take could be the subject of such a challenge.

The last point I want to make before concluding and opening it up for your questions and discussion is that as more and more of the agreements are entered into on a bilateral basis, we're starting to see a real patchwork of rules pertaining to the protection, or sometimes the lack of protection, of the sovereign rights of Canada and the provinces and other nations that we're entering into agreements with to establish environmental, health, safety, and labour rights as each of those governments sees fit. Each of these agreements constrains in some way the ability of those governments to act in these areas, even while providing language that purports to protect it.

The fact that those claims can be brought at all we see as highly problematic. We also find very problematic the fact that these claims would be evaluated on a case-by-case basis and that the reasonableness of the government action to protect the environment or its legitimacy or its good faith, for example, might be in play.

● (1120)

To conclude, we strongly encourage that there be improvements in the language—as we've said with respect to other agreements that we've looked at—of the entire agreement and the side agreement to ensure the most beneficial provisions and strong environmental protection and regulation by the parties, and the most sustainable approaches.

We recommend that the committee advise the government that it should return the agreement to negotiation to take into account the above recommendations, including the more preferred expressions of the ability to provide for environmental regulation domestically without hindrance. We think it should extend to strong, precautionary, and protective language in the side agreement and the main agreement, as well as the similar provisions that I noted are contained in the investment agreement.

We also, as I said, recommend that the government adopt a trade policy statement similar to that of Australia's, whereby it would not accord to non-domestic investors any greater rights than domestic investors have.

Thank you once again for the opportunity to present our views.

**The Chair:** Thank you very much for that.

We'll move right to questions and answers.

Mr. Masse, the floor is yours for seven minutes.

**Mr. Brian Masse (Windsor West, NDP):** Thank you, Mr. Chair.

Thank you to the witnesses for being here today.

One of the things we sought to do when we started this was to examine the Jordan deal to see whether or not there had been significant improvements to the labour and environmental laws since the last time this came through Parliament. We heard testimony from the Jordanian ambassador the other day that suggested that there had been some significant labour improvements.

Mr. Vogt, I'll start with you with regard to clarification on some issues. There seems to be some discrepancy between our research and that of another presentation that was made. I want to get some clarification here.

Do all Jordanian workers have the right to form a union? If not, which groups do not? As well, can they form independent unions, too, or working associations?

**Mr. Jeff Vogt:** There's a number of issues there. One, I think there the law requires a monopoly union confederation, the GFJTU, the General Federation of Jordanian Trade Unions, which on its face is a violation of the principles of freedom of association.

There's also legislation stating that there can only be trade unions in certain designated industries, and in those industries you have one federation.

With regard to the kinds of workers who can join unions, I think there was an important change. It used to be the case that migrant workers were excluded from the coverage of the labour code. Now they can join a union, but it is clear from...[*Technical difficulty—Editor*]...that the founders be...[*Technical difficulty—Editor*]....

It also appears that there are limitations on the leadership of the unions—

● (1125)

**The Chair:** Just one second: can you repeat part of that?

We're losing the feed there, and you're breaking up a little bit. Can you repeat that last sentence just slowly? Let's see if it comes through that way.

**Mr. Jeff Vogt:** Sure.

I'm saying that the legislation was changed. There used to be an exclusion of migrant workers from trade unions, and that has been changed. Migrant workers can now belong to a trade union. However, they cannot be founders of trade unions. So they can't actually create a union; they must join a union.

It also appears that there may be some limitations on their ability to be an officer or a leader of a trade union.

**Mr. Brian Masse:** So you have to join one of the designated existing unions.

Maybe you can clarify this point as well. Those unions, if I'm correct, have to get permission for the right to strike or to engage the government when work practices are problematic.

Then I want to move on quickly to another question, to something that I thought was very disturbing in your testimony. I'll mention it right now, and you can follow up. I just wanted to highlight a little bit more of this.

You talked about the agents and sub-agents, and that literally people could not leave their jobs for several months. I mean, this is indentured servitude, and I'd like you to expand upon that issue. If workers literally cannot leave their place of work, that's nothing more than slave labour, at the end of the day.

**Mr. Jeff Vogt:** On your first question about strikes, there is a lengthy notice requirement to undertake a strike, and it's longer if it's in a public service. In practice, essentially permission is required to undertake a strike. The law also allows the government to intervene and undertake mediation and conciliation, at which point a trade union cannot undertake a strike.

So there are clearly limitations on the right to strike, which contravene principles of freedom of association and collective bargaining.

With regard to the issue of forced labour, again this is drawn from an ILO report written two weeks ago. It is not a problem that's unique to Jordan. We see it throughout the Gulf, but there are a couple of issues there. One is that in order to be able to get to Jordan in the first place, some have to take out quite sizeable loans at very high rates of interest, and then they are basically stuck in situations they may not want to be in because they have to continue to work to pay off an unsustainable debt in order to freely leave.

The other issue the ILO flagged was that even after a contract of employment is over, some workers have to wait until a replacement is found in order to be able to leave their employment. That, again, is offered very clearly in the Better Work Jordan report from March of this year.

**The Chair:** You have one minute.

**Mr. Brian Masse:** Very quickly, for the Canadian Environmental Law Association, I'm really curious. Can you highlight a little bit the green procurement clause you're advocating for?

Thank you.

**Ms. Theresa McClenaghan:** First of all, under NAFTA, the subnational governments are not bound by the restrictions on procurement. Second, their government procurement is protected. So we have an ongoing concern as subnational governments start to be bound by these agreements, and there is provision here that that could happen if provinces agree down the road; Canada could indicate that to Jordan.

As well, globally we have a lot of competition for green jobs and a green economy. Domestically we want to see that strengthened as well, and it takes time to build up that capacity. So during that time and going forward, we want to make sure that the agreements don't constrain that kind of ability of governments to set requirements for green procurement, especially for their own government procurement.

• (1130)

**The Chair:** Thank you very much.

Mr. Keddy.

**Mr. Gerald Keddy (South Shore—St. Margaret's, CPC):** Thank you, Mr. Chairman.

Welcome to our witnesses here today.

Ms. McClenaghan, you had a fair amount to say in a short period of time, and I had a little bit of difficulty following it all. In your comments you went into environmental measures and how we should have subnational treatment and a strong system of

environmental protection. I think all of us at the table here agree with that.

Then you went on to some discussion about the precautionary principle. What I understand you're advocating for is to have some environmental policies actually apply to labour regulations and investment regulations, and to always have that environmental principle. You're against investor-state provisions, but you're asking for essentially the same thing that investor-state provisions have. So you're looking at individual requirements under the law and saying there should always be a protection there for the environment. What the investor-state provisions provide for, quite frankly, is protection for the investor and for that state; they don't preclude the other country from contesting that and going to court. If they are in disagreement, they're not forced to apply those laws, but they are forced to provide compensation.

Can you explain a little bit more the difference between these two issues?

**Ms. Theresa McClenaghan:** Yes, I will. The written notes that the committee will get from me this afternoon are lengthier on this very point.

Our contention is not so much on the two states taking issue with each other if they think they've breached the agreement, and then taking that forward for resolution. Our contention on that point is the fact that an investor, a corporation or a person, a legal person, can itself bring a claim against the state for something it did by way of regulating environment, health, or labour. That is the problem.

We don't have that provision here domestically for our own companies. If the Province of Ontario or the Government of Canada passes an environmental regulation, our domestic companies could make submissions and say it's not a good idea; it's going to impact them and there might be unintended consequences. That's all fair enough. At the end of the day, the government weighs everything and says, "We think this measure is very necessary for environmental protection and we've weighed everything." A Canadian company doesn't get to go to court and say, "My company has now been damaged by that environmental regulation, so you have to pay me money."

But these trade agreements are putting in that right for the foreign investors to do that. That's starting to create what I call a regulatory chill problem, whereby governments have to think twice, not only in balancing all the interests, but if allegations are made that there are going to be these kinds of claims, do those claims have merit? Might they win? Will the government have to pay compensation?

Even though, as I say, I think the language goes some distance about that, they nevertheless still allow the claims to be brought. We saw that with Dow bringing a claim against Quebec's pesticide code, which was just resolved in recent months, and that was done explicitly because Ontario was thinking about doing a pesticide ban on cosmetic pesticides at the time.

I think it's a very real problem. As for addressing it, Australia and the United States don't have this provision between them. I don't think it's necessary. I think that allowing this kind of provision is going way beyond what's necessary in terms of looking at all of the other interests the government is trying to balance.

•(1135)

**Mr. Gerald Keddy:** I appreciate that. This is just a statement and not a question, but certainly on the pesticide ban in Quebec, it didn't prevent Quebec from bringing in a cosmetic pesticide ban. So the municipalities still have the right to the enforcement of environmental regulations.

I want to move on to Mr. Vogt.

Mr. Vogt, I want to drill down a little further into what Mr. Masse was talking about in regard to the labour unions. I hear what you're saying, but when you appeared before us the last time, you stated that in 2008 Jordan updated its labour law. I believe foreigners are now allowed to join unions; however, they do not have voting rights and they therefore may not vote in favour of a strike.

Our understanding of the changes that have been brought in—and a bit of clarity needs to be brought to this, I believe—is that under the new laws that have been brought in, they are allowed, since I believe 2010, to join unions. They have to join a union that already exists in Jordan, and my understanding is that they may not be able to hold office, but they certainly have voting rights. Can you clarify that?

**Mr. Jeff Vogt:** Yes. I have the 2010 amendments here. They clearly state that a Jordanian national must be the founder of a trade union. Foreign workers cannot create their own unions. That is a violation of freedom of association. It also does not appear that they can be in the leadership of a trade union, which is also an issue. What is different between now and then is that then foreign migrant workers were excluded from being in trade unions, period. Now that has changed.

**Mr. Gerald Keddy:** And to be clear, they have voting rights.

**Mr. Jeff Vogt:** I would assume so if they can be members of a trade union. Yes.

**Mr. Gerald Keddy:** Okay.

One of the other points you brought up in your last testimony was about the garment workers. In particular, in the garment industry, especially with the American agreement, our understanding is that conditions have improved.

**Mr. Jeff Vogt:** Yes. I think they have improved over where they were in 2006. Again, I was one of the drafters of the complaints that the AFL-CIO filed against Jordan then. The other witness, who will be on later, was also involved in exposing those violations in the garment industry at the time.

Is it better? I would say yes. But is Jordan effectively enforcing its laws as is required under article 3 of the agreement? I'd say no, in a number of areas. Again, the ILO, just a couple of weeks ago—

**The Chair:** Could we have a very quick answer? Time is up.

**Mr. Jeff Vogt:** Again, the ILO found just a couple of weeks ago that in a number of important areas there are still the issues around forced labour, forced overtime, violations of freedom of association, horrendous dormitory—

**The Chair:** That's fine. Thank you very much for that answer.

We'll move now to Mr. Easter.

**Hon. Wayne Easter (Malpeque, Lib.):** Chair, you will find it difficult to interrupt with new technology. It's the difference between having a witness here and on screen.

**The Chair:** I find it difficult to interrupt testimony when they're here too. Go ahead.

**Hon. Wayne Easter:** Thank you to both witnesses.

Mr. Vogt, we haven't had the opportunity to be on the ground in Jordan to see what working conditions are like there, so we've been going to a certain extent on what has been said. You said something along the lines that there are horrendous working conditions in, I think you called them, qualified work zones.

Can you just describe those horrendous working conditions? I think it would give us a better picture, so to speak, of what we're really dealing with. I hope as a committee we can travel and see what conditions are like, but in the event we can't, can you paint us a picture?

•(1140)

**Mr. Jeff Vogt:** Certainly. Again, I think the third witness, who is coming up after the two of us, has visited these zones before and will present to you a lot of eyewitness testimony of his own.

I think a very authoritative source—and a very recent source—would be the most recent report of the ILO Better Work Jordan. I drew these examples from this report. There are workers working extremely long hours, who are not necessarily compensated for those hours of work, who live in dormitory conditions that are primitive at best, who are physically or verbally threatened by employers. You have a number—40%, according to the ILO—of people who are in such debt that they cannot freely leave employment, and there was the case of people being subject to retaliation for undertaking concerted trade union activity. The ILO notes, I think, that with its revised methodology on freedom of association, it expects to find more violations in the future, not fewer.

I think these are all very clear inconsistencies with what Canada is requiring Jordan to undertake under the labour cooperation agreement. So I would strongly encourage you to take a look at the Better Work—

**Hon. Wayne Easter:** I'd suggest, Mr. Chair, that we get a copy of the ILO Better Work Jordan report, if the researchers can get it. I think that would be helpful to us.

Thank you for that. I may come back to you if I have time, but I do want to turn to Ms. McClenaghan.

First, how would you rate the side agreement with Jordan on the environment at the moment? Second, you talked about some model environmental side agreements. You mentioned the CETA one and you also mentioned the United States-Australia agreement. What is, in your determination, the best model to give the best environmental protection for Canada, and for that matter for Jordan too?

**Ms. Theresa McClenaghan:** If we use NAFTA as the benchmark, we do see some improvement in language in some of the bilateral agreements negotiated since. That was, of course, some time ago. As I say, we'll see how far those go in terms of improving the conditions.



What I like about the U.S.-Australia agreement is the fact that it doesn't allow those claims by foreign investors against Australia at all. It's up to the U.S. and Australia to negotiate between themselves if they think they have any disputes, but neither country's investors can directly make a claim under the agreement for compensation for some regulation having been passed. That's what I like about that one. So as long as the rest of the agreements don't do something like that, I think they still have a very fundamental failing by continuing to allow these kinds of claims.

The Canada-Europe agreement, the CETA, which is progressing—we've seen various rounds of language—is going to depend on where the parties land, in the end, on those environmental provisions that they have been negotiating. When I attended before the committee some months ago, we pointed to some places where we preferred the European Union language and some other places where we preferred the Canadian language.

If the best environmental language out of that agreement is chosen, and if they do away with the investor-state provisions, I think we have a really strong agreement. There are some very promising suggestions between the parties in that agreement.

So it's a very iterative thing where we're seeing language start to improve, and then of course we'll see how that plays out on the ground.

**Hon. Wayne Easter:** Do you—

• (1145)

**Ms. Theresa McClenaghan:** But the Jordan agreement, I should say, just to answer your question, is more similar to the older agreements, and the language is still pretty boilerplate to those older agreements.

**The Chair:** I'll allow for just one very quick question and one quick answer.

**Hon. Wayne Easter:** You're saying it's necessary to do away with the investor-state protection. Why?

**Ms. Theresa McClenaghan:** Well, not for direct expropriation, but to argue that environmental regulation is indirect expropriation is where the problem lies.

**Hon. Wayne Easter:** So—

**Ms. Theresa McClenaghan:** Just because a government passes an environmental protection measure doesn't mean that somebody should be able to make a claim.

**The Chair:** Thank you very much.

Mr. Hiebert.

**Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC):** Thank you.

To Ms. McClenaghan, you spent a fair amount of your time in your opening statement talking about direct and indirect expropriation. I'm just wondering if you could elaborate again on what the side agreement on the environment actually states about that. Or is it the absence of comment on that issue that concerns you most?

**Ms. Theresa McClenaghan:** No, it has a provision, and as I say, it is better than the NAFTA provision. The language is in itself, on that point, not too bad. It says:

Except in rare circumstances, such as when a measure or series of measures are so severe in the light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriation.

That's not bad, on its face. It sounds pretty good. My concern is that the companies can still bring that claim—and we've seen that they do—and say, for example, well, it wasn't reasonable, it wasn't good faith; it wasn't really directed at health or safety or the environment. So it still leaves the door open for these kinds of attempts to derail the regulatory agenda, even before it happens, by saying, well, we'll bring this kind of claim. That's my concern.

I really don't like to see the Canadian government and its subnational governments have their regulatory-making powers in the area of the environment constrained by this.

**Mr. Russ Hiebert:** I have some—

**Ms. Theresa McClenaghan:** So it's better than the NAFTA, but it's... We shouldn't even have the claims be possible.

**Mr. Russ Hiebert:** Do you have examples of other similar language being used for that purpose, as you've described it, or is this more what you “expect” might happen?

**Ms. Theresa McClenaghan:** In terms of what we expect might happen, we've had many claims brought against Canada, for example, under NAFTA. The Dow is the most recent. It ended up being resolved.

On the other hand, we have a good precedent in a case called Methanex, where the arbitral panel ruled against the applicant and said that this kind of regulation is not expropriation. The problem is that it's not binding on any of the subsequent arbitral panels. It says, right in this agreement, that it's case by case. The issues about reasonability, legitimacy, good faith, etc., would be up for argument every time.

**Mr. Russ Hiebert:** I ask that question because I also know that in the side agreement on the environment, both parties—Canada and Jordan—commit themselves not only to complying with their domestic environmental legislation as it currently stands, but also to not weakening but in fact strengthening their environmental laws, providing proceedings for a remedy, increasing public awareness, and ensuring that there are environmental impact assessments. It sounds as though by engaging with Jordan we're actually strengthening their environmental provisions and empowering them to raise their standards. Wouldn't that be an expectation of this agreement? If that were the case, then giving companies an opportunity to come along and challenge those increased standards would be inconsistent with the agreement.

**Ms. Theresa McClenaghan:** Yes, challenging the increased or more protective standards would be inconsistent. Those kinds of provisions, I think, are good. Even in the NAFTA we had the commission for environmental cooperation, which does some very good things. For example, it compares the national emissions by the biggest polluters across the three countries. Those kinds of extra provisions are helpful.

I will be quite interested, as more and more of these agreements are negotiated, to see how much the parties—the states—actually give them living force, in terms of paying attention to how much they are improving and increasing the protective level of their environmental protection. Language is useful. It's somewhat vague, but it's useful, especially if the parties actually pursue that line of inquiry to say, "Well, what have you done lately to increase your environmental protection? Can you demonstrate that?"

• (1150)

**Mr. Russ Hiebert:** I haven't heard you say it, but it almost sounds as though you are suspicious that Jordan or any country that would be party to an agreement with this language might try to use environmental standards as a non-tariff barrier. That's what the companies that would be impacted would be fighting against. Is that kind of an indirect way of saying what you are concerned about?

**Ms. Theresa McClenaghan:** It's not my concern that environmental regulation amounts to non-tariff barriers, but that is a claim that is often made by industry. A lot of the language in the free trade agreements is trying to both address the avoidance of non-tariff barriers and still allow for environmental regulation. I believe that's where it comes from in the first place, from the drafters.

**Mr. Russ Hiebert:** I also have read that the side agreement on the environment does not include any financial penalties to be applied when a party is deemed to be not in compliance with a panel report. Did that strike you as interesting, or is that standard?

**Ms. Theresa McClenaghan:** It didn't strike me as interesting or as standard either. I was more concerned about whether that would extend into the investment agreement, and it doesn't. In the investment agreement, the investors still have the right to bring claims for expropriation or indirect expropriation.

The fact that the parties wouldn't seek financial claims for regulating or not regulating in the interests of the environment doesn't really surprise me. If they thought, for instance, that the other wasn't complying with the provisions to pursue high levels of regulation, I assume they would pursue other remedies in this agreement, such as talking to each other or setting up a committee, etc.

**The Chair:** Thank you very much.

Mr. Ravnat.

[*Translation*]

**Mr. Mathieu Ravnat (Pontiac, NDP):** Thank you, Mr. Chair.

Thank you to the witnesses for being here.

My question is for Mr. Vogt. When workers' rights have not been established, it is usually women and children who must work in the toughest conditions. I am wondering if you could describe the situation for female and child workers in the Hashemite Kingdom of Jordan.

[*English*]

**Mr. Jeff Vogt:** In the garment industry, as is typical in many places, the workforce is typically female. I am not by any means an expert on the question of child labour within Jordan. I can certainly research that and provide information to you on that question. I'm

afraid that's probably the extent of what I can provide to you now. I'll be happy to prepare something in writing on that question.

[*Translation*]

**Mr. Mathieu Ravnat:** That would be very helpful.

Often, the unions that are active in the region have a better idea of workers' conditions and the advantages of a possible agreement or the disadvantages of a possible free-trade agreement.

Do you know what concerns unions in the Hashemite Kingdom of Jordan have when it comes to trade liberalization? Do they support this measure, yes or no?

[*English*]

**Mr. Jeff Vogt:** I do not know what the position of the federation is on that issue. I know, though, that since Jordan entered into an FTA with the United States, the QIZs have shrunk substantially in size. So I think there was an indication that this would be a lifeline to the garment industry in Jordan, but that turned out not to be the case. I can't speak on behalf of the Jordanians on this legislation.

• (1155)

[*Translation*]

**Mr. Mathieu Ravnat:** Very well.

Speaking of the U.S., I have a question for you. It has to do with the very principle of side agreements on labour. The free-trade agreement with the U.S. does not include a side agreement on labour, but the main trade agreement contains some labour clauses.

In light of the U.S.'s experience, do you think that the part on labour in the Canada-Jordan agreement should be included in the main document? Would that help things? Can side agreements really be implemented?

[*English*]

**Mr. Jeff Vogt:** I think the real question is, what are both the standards and the dispute mechanisms that are available in such circumstances? I think the reason why there was such an outcry on the labour provisions of the NAFTA was that you had a very obviously substandard set of dispute resolution processes under the side agreements, whereas I think if you move the text within the agreement but still have a tie to a different or lesser set of dispute settlement mechanisms, you're not really accomplishing much.

For example, in the case of CAFTA, in the United States, you had the labour provisions moving from the outside to the inside, but it also had a kind of second-tier dispute settlement mechanism. You actually weren't gaining much by the fact that it was in the agreement because you had a lesser dispute settlement mechanism.

I think what is important is that you have high standards, that those standards are fully enforceable, and that sanctions are available in a case where one of the parties is not living up to its commitment under the agreement.

I think the U.S.-Jordan free trade agreement is an example. Both parties entered into that agreement. At the time, it had probably the strongest labour provisions available, yet the labour laws were not compliant from day one. Still, many years later, there remain issues, fewer than before but there are issues, and we still have many problems with implementation—

**The Chair:** Thank you very much.

We'll have to move on to the next questioner now.

**Mr. Mathieu Ravignat:** Mr. Chair, I just want to make sure that the information with regard to the condition of women and child workers will be forwarded to this committee.

**The Chair:** We actually should ask the next questioner that question. I think you would probably get more direct and firsthand information.

Mr. Shory.

**Mr. Devinder Shory (Calgary Northeast, CPC):** Thank you, Mr. Chair.

Thank you witnesses as well.

Mr. Chair, everyone knows that this government has an ambitious trade agenda, because we strongly believe that trade creates jobs and also provides opportunities for businesses, specifically for SMEs. That in turn creates jobs here in Canada. I believe this is a win-win situation. This free trade agreement will benefit both Canada and Jordan by opening markets for Canadian and Jordanian exporters, by providing unprecedented access to our respective markets, and by eliminating tariffs on a number of key products.

Mr. Chair, I don't understand the NDP's position that by opening new markets we will lose the jobs here in Canada. It's quite funny that during the leadership convention last week they hired a Spanish company over a Canadian company. Perhaps they need to "walk the talk".

My question is for Mr. Vogt. Just as in the case of the Canada-Colombia Free Trade Agreement, we believe that engagement with Jordan through free trade will help raise the standard of living and improve Jordan's labour and environmental standards. However, the NDP believe "the only way we will get countries like Colombia to elevate their standards of labour and human rights is by not allowing them to play in that sandbox of globalized capital trade".

We have seen improvements in Colombia since we signed the free trade agreement with Colombia. My question is—

• (1200)

**The Chair:** Get very quickly to your question.

**Mr. Devinder Shory:** —do you believe, as in the case of Colombia, that labour and environmental standards will be improved with the signing of the Canada-Jordan free trade agreement?

**The Chair:** We have time for a very quick answer.

**Mr. Jeff Vogt:** I think at this moment—and this could be said about the U.S.-Colombia free trade agreement—you have substantial leverage prior to entering into an agreement to try to encourage the other country to live up to its legal obligations under the FTA. Once the FTA is ratified, there's usually a reluctance on the part of the governments to vigorously enforce labour clauses once the agreement is in force. I think withholding, in the U.S. context, the FTA with Colombia created substantial leverage, which over time led to the ability to negotiate a pretty extensive—not perfect, but extensive—labour action plan that the Colombian government is moving to implement, again not fully, and certainly with issues.

But in the case of U.S.-Jordan, just signing the agreement did not lead to worker rights being respected. It was only after a major exposé in *The New York Times* and a trade complaint against Jordan that we began to see some progress being made.

**The Chair:** Thank you very much, Mr. Vogt and Ms. McClenaghan, for your testimony and for your answers to the questions.

That brings us to the end of this segment of our committee. We will set up now for the next presenter.

I appreciate your time with us. Have a good day.

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\_\_\_\_\_ (Pause) \_\_\_\_\_

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• (1205)

**The Chair:** I call the meeting back to order.

We had a little technical hiccup in our video conferencing from Pittsburgh, Pennsylvania. Mr. Charles Kernaghan, you are with us from the Institute of Global Labour and Human Rights. Are we coming through all right?

**Mr. Charles Kernaghan (Director, Institute for Global Labour and Human Rights):** Very good. Fine.

**The Chair:** There seems to be a bit of a delay, but let's try it and see how you make out.

We want to thank you for coming to the committee and testifying with regard to Bill C-23, the Jordan-Canada free trade agreement.

The floor is yours, sir.

**Mr. Charles Kernaghan:** Thank you very much for the opportunity to testify about labour rights in Jordan.

When the institute began its work in Jordan, we discovered that over the course of the five years from 2001 until 2006, the United States-Jordan free trade agreement had descended into human trafficking of guest workers, who were stripped of their passports, held under conditions of indentured servitude, and forced to work gruelling hours while being cheated of their wages.

After our report was released, there were some minor improvements. For one thing, many of the guest workers received their passports back again.

Other than that, violations continue. I would like to bring you up to date on one of those violations, which is going on right now, today.

We just released this report yesterday. It is on a factory called Rich Pine, in the Cyber City Industrial Park. It makes clothing for Liz Claiborne and J.C. Penney and Macy's and Kohl's. Its Chinese and Bangladeshi guest workers are working 14 hours a day, seven days a week. They are at the factory 96 hours a week. That's just the norm. They have had only one day off in the last 120 days, in the last four months. The workers are being paid about 70¢ an hour, which appears to be.... It is below the minimum wage in Jordan, which is 74.5¢.

The workers have no rights whatsoever. It's a real sweatshop. Workers are housed in primitive dormitories. The Chinese workers and Bangladeshi workers have no voice. In the dormitories during wintertime, there is not sufficient heat or hot water. Their bathing facilities are a bucket of water; they use a cup and splash water on themselves. The workers are treated with no rights whatsoever.

I would say in that Rich Pine factory, every single labour right under Jordanian law and under the U.S. free trade agreement is being blatantly violated in broad daylight.

I want to make just two other comments.

We know that the U.S.-Jordan free trade agreement was the best free trade agreement ever negotiated by the United States, because it had the core labour rights at the centre of the free trade agreement: the freedom of association, the right to organize and to bargain collectively. What turns out is that the Jordanian government amended the free trade zone.

Do you know what the Jordanian government did? They said that guest workers would have to be employed in the private sector for five years before they could organize a union; the only problem is that guest workers get three-year contracts.

Then, to make it worse, the Jordanian government said that if the guest workers want to organize, they will have to go to their home countries and they'll have to pass legislation, in a country like China, giving the Chinese workers in Jordan the right to have a union.

In other words, the right to organize and to bargain collectively is being blocked by the Jordanian government. We have the documents to prove this, the cables that we received, so I'm very skeptical about the Government of Jordan living up to its rights under Jordanian law and also under the U.S. free trade agreement.

We know right now, 10 years into the free trade agreement, that guest workers do not have the right to organize a union and they do not have the right to collective bargaining under these roadblocks the government has thrown up. Again, this has come out in U.S. government documents.

I want to talk finally and briefly about the Classic factory in Jordan. It's the largest factory in Jordan. There are 5,000 workers from Egypt, Bangladesh, Sri Lanka, and China.

• (1210)

They have \$125 million of exports to the U.S., most of it Walmart and Hanes. The workers are working 14, 15 hours a day. Maybe they get two Fridays off a month. The workers are slapped, screamed at. When shipments have to go out, they'll work 18-and-a-half-hour shifts.

But that's the least of it. What we have discovered is that at the Classic factory, Jordan's largest factory, there are scores and scores of young women guest workers who have been raped at the Classic factory.

I'll tell you how we found out about this. We were in Jordan in December of 2010. Young women came to us and gave us disks. They gave us tapes that they had made themselves with their cellphones testifying about the rapes, pleading that we help them, pleading that we stop the rapes.

A young woman, Kamala, told us about the men—it was Anil Santha in this case, but there was also Priyantha and these other people—that:

I was molested in every way.... That man tortured me. He took a lot of sexual advantages from me...I had to fulfill everything he desired because I was placed in an extremely vulnerable situation and intimidated... My whole body is in pain.... I cannot face my mother and father. I am destroyed. I cannot even change clothes before my mother because Priyantha has destroyed me. I have teeth marks all over my body.

She goes on to say that she was so horrified and humiliated, she would have committed suicide:

I cannot take my own life because I am extremely poor. I am the only one to take care of my parents. This is why I came here [to Jordan].

This young woman from Sri Lanka came to this Classic factory and was raped repeatedly.

It goes on and on. It's in our report. It's in our updates.

We rescued a young Bangladeshi girl, Nazma, in June of 2011. They took her out of the factory and told her she was going to another factory. She was frightened, as she'd just gotten there. She was working at one of the Classic factories; there are five different Classic factories.

When a supervisor came over and told her she had to go to another factory, she went outside and got in the car with the general manager of the factory, Anil Santha, and they drove. They parked in front of a house. She was confused. It wasn't a factory. She was getting scared. They opened the door, they walked in, and she thought maybe there was a factory through the next door. Of course there wasn't. He threw her on a bed and he raped her. He tore her dress and bit her shoulder. He did this in March of 2011. In May of 2011, he raped her twice again, biting her shoulder and leaving a big black and blue mark.

We're right now involved in additional rape victims' testimonies. We will not let this case go away.

In 2010 the workers went on strike: 2,500 Sri Lankan and Indian workers went on strike. They were tear-gassed and beaten by the police. The demand was to get rid of the general manager, Anil Santha, who was raping the women.

Everybody knows about this. The one reason they can get away with it is that Muslim women cannot talk about being raped without having their husband leave them, their children taken away, or their being ostracized.

I see very big problems in Jordan and the lack of respect of human and women's rights.

• (1215)

**The Chair:** Thank you very much. Thank you for that testimony.

We'll now move on to the question and answer portion of our meeting.

Mr. Côté, the floor is yours for seven minutes.

[*Translation*]

**Mr. Raymond Côté (Beauport—Limoilou, NDP):** Thank you very much, Mr. Chair.

I want to begin by thanking Mr. Kernaghan for his remarks. Would you be able to provide the committee with the proof you showed us?

[English]

**Mr. Charles Kernaghan:** Yes, of course. There are also articles from the *Wall Street Journal*, the *Huffington Post*, and Associated Press.

[Translation]

**Mr. Raymond Côté:** Thank you.

Mr. Clerk, would it be possible to obtain those for the committee members?

I want to compare your comments with those made by Mr. Vogt, from the International Trade Union Confederation. You told us that there were some improvements concerning human rights and labour rights in Jordan.

Mr. Vogt, however, told us earlier that even the International Labour Organization was reviewing its standards, which could result in the ILO identifying more problems in Jordan.

Overall, do you think there has really been a tangible improvement in the working conditions of immigrant workers in the Hashemite Kingdom of Jordan? And if so, in what form and according to which criteria?

• (1220)

[English]

**Mr. Charles Kernaghan:** I think the problem in Jordan is that there's very little actual research on worker conditions and factory conditions. It sounds maybe too bad to say it, but Jordan is a very corrupt country. You can buy anybody off very easily.

For example, with the Rich Pine Factory I just spoke about, they're on the "Golden List" of the Ministry of Labour as being among the best factories in Jordan. Yet the people are working 14 hours a day, seven days a week.

In other words, something's broken here. Yes, workers did receive their passports back, and yes, workers aren't being brutally beaten or killed. But when you still have instances of rape of young women, and you still have these gruelling hours, and the workers have no rights...

The Jordanian government will not allow these workers to organize. Even the media in Jordan; 94% of journalists in Jordan say they self-censor themselves because they could be hit with a \$28,000 fine for offending the government.

In other words, this is a very tough case. If you go forward, it would be so important to level a real demand that the workers have the right to organize and to bargain collectively. Right now they have no power whatsoever.

[Translation]

**Mr. Raymond Côté:** That is a significant revelation. In fact, one of the arguments I often make in this committee is that it may be well and good to have certain rules and rights in place, but without the will or ability to enforce them, they are basically meaningless.

Ultimately, they aren't worth anymore than the paper they are written on.

I want to come back to the improvements that were reported. They seem quite piecemeal and very long in coming. That is what you said about the U.S.-Jordan agreement, which started out as a very good agreement but was unfortunately amended by the Hashemite Kingdom of Jordan.

Given the weak structures in place and the weak will shown by the government, do you think that improvements we should expect to see will still take too long to materialize and will not really address the issue of repeated violations of workers' rights within a reasonable timeframe?

[English]

**Mr. Charles Kernaghan:** We could hope so, but there would have to be a whole new Ministry of Labour. There would have to be real pressure from the U.S. government.

Speaking in terms of the U.S.-Jordan free trade agreement, our government knows exactly what's going on, because inside that cable they say that we have to put more pressure on the Government of Jordan; we have to let Jordan know that we give them more than \$600 million a year and so on.

So everybody's aware of the problems, but they're not being corrected. The guest workers are really suffering.

As a matter of fact, do you know what the Jordanian government did? When we put out our report in 2006 that first exposed the trafficking of workers and the bidding on workers, they banned Bangladeshis from working in Jordan. Their response was to put a ban in 2006 that no Bangladeshis could come into Jordan. That lasted three and a half years, until 2010, when they needed more Bangladeshi workers. They lifted the ban and they allowed Bangladesh women to enter Jordan, but not men. So this thing is a manipulation from beginning to end.

It could be further improved, but you would have to sit with the government at a high level, and it would have to be serious. They would have to be held to some accountability.

You might be able to do that. You might make a breakthrough.

[Translation]

**Mr. Raymond Côté:** I hope so.

One last very brief question, Mr. Chair.

As an ally and a friend to the U.S., we would be glad to help with the issue of accountability.

I want to pick up on the issue of freedom of association. If I understood you correctly, we can conclude that the very inadequate rights granted by the Jordanian government to unions seem to represent another barrier to better working conditions. Is that correct?

•(1225)

[English]

**Mr. Charles Kernaghan:** Well, yes, under the U.S.-Jordan free trade agreement the rights are quite specific. They're the ILO, International Labour Organization, rights for collective bargaining and organizing. Jordanian law is completely different.

Recently, when we were in Jordan we saw the president of the garment workers' union from Jordan meeting with the owner of the Classic factory at the very time we were raising these allegations about the rape of these young women. I think much more pressure has to be applied.

**The Chair:** Thank you very much.

We'll now move on to Mr. Adler for seven minutes.

**Mr. Mark Adler (York Centre, CPC):** Thank you, Chair.

I want to thank you, Mr. Kernaghan, for those very candid remarks.

I'm just curious. Is that degenerate still working at the Classic factory? Are you aware?

**Mr. Charles Kernaghan:** Yes, Anil Santha has a long history of raping women. He did it in Dubai, and he did it in Kuwait, I think. People know him quite well.

**Mr. Mark Adler:** Is he still employed there?

**Mr. Charles Kernaghan:** He has now been suspended, but we don't really know what the status is. He's not entering the factory every day, but he is still in Jordan.

**Mr. Mark Adler:** Mr. Kernaghan, how long have you been heading up the National Labor Committee?

**Mr. Charles Kernaghan:** It's been over 25 years.

**Mr. Mark Adler:** In that time period, have you seen a free trade agreement that you have really liked, something that's a model of a bilateral agreement that you think should be held up as the model for all free trade agreements, and if so, which one is that?

**Mr. Charles Kernaghan:** Well, actually, the U.S.-Jordan free trade agreement was the model, and it was endorsed by the AFL-CIO. It was endorsed by the labour movement in the United States. It was endorsed by very progressive unions like the Steelworkers. In other words, this was really the first breakthrough. The agreement was written under President Clinton back in 2000. It was implemented in 2001, but this really was the standard-bearer, and everybody got behind it.

**Mr. Mark Adler:** But in your opinion, in your 20-some years, throughout the course of those two decades, what agreement did you personally really like?

**Mr. Charles Kernaghan:** Well, it would have been the Jordan one, but in fact we travelled to Mexico. There were many problems under NAFTA. We went to Central America. We worked there for years. There were lots of problems under the U.S.-Central America free trade agreement. We were hoping that the Jordan model would actually work, actually function.

**Mr. Mark Adler:** In terms of improvements on the ground, you're saying that the text of the U.S.-Jordan free trade agreement was a great model. You're also saying that it received bilateral support in

the U.S. Congress. It received the support of President Clinton. It received the support of business, and it received the support of organized labour. However, you're also saying that on the ground in Jordan, the text—not even the spirit—of the free trade agreement is not being upheld.

Is that correct?

**Mr. Charles Kernaghan:** Yes, it's not being upheld.

**Mr. Mark Adler:** Pre-free trade agreement, what were the conditions like, compared to post-free trade? Has there been any kind of improvement whatsoever from pre- to post-free trade?

**Mr. Charles Kernaghan:** In the case of Jordan in particular, this is a very strange free trade agreement, because you have guest workers coming from China, Bangladesh, India, Sri Lanka, and Myanmar; the Jordanians wouldn't work in the factories. Only now are Jordanians working in the factory, and usually they make up a very small percentage of the workers—10% to 15%. So this is really driven by guest workers. The free trade agreement is also odd in that they exported \$125 million of goods to the U.S. from this Classic factory. It all comes in duty free. So we gave the Classic factory a \$20 million tariff rate, and then on top of that, all of the textiles are from China. So two-thirds of the value of the free trade agreement is really benefiting China.

•(1230)

**Mr. Mark Adler:** Right.

What percentage of imports from Jordan are coming to the United States from factories that employ guest workers in Jordan?

**Mr. Charles Kernaghan:** It's 100%. In other words, there are no garment factories without guest workers; the Jordanians won't work in the factories there.

I understand that there's one Jordanian factory now getting off the ground that is fully Jordanian workers. I have to apologize, as I don't know enough about that, but in terms of exports, all of that is coming out of factories that are operated by guest workers.

**Mr. Mark Adler:** Would you agree that engagement would be the best possible solution? Politically, the U.S. and Jordan are engaged. Commercially, a free trade agreement can only enhance engagement. Does that not lead to a better outcome? Isn't it better that we have a free trade agreement in order to be able to work towards those workers having more dignity and being able to work under better working conditions than they are currently, rather than just abandoning them?

**Mr. Charles Kernaghan:** Yes. The problem is that the free trade agreement has been up and running for more than 10 years and has failed the workers. The will is just not there. If it had been implemented correctly, this would indeed have been a new model. This would be something that the United States, Jordan, and Canada could be quite satisfied with and encouraged by. But right now what we're seeing in cables that we have from the State Department is that Jordan is not playing ball—even with the U.S. government.

**Mr. Mark Adler:** Have the labour unions, organized labour in the United States, been vocal on this at all?

**Mr. Charles Kernaghan:** Yes.

**Mr. Mark Adler:** They have?

**Mr. Charles Kernaghan:** Yes, they've turned against it.

Again, many of the unions, but particularly the Steelworkers, have been very vocal with the State Department, and very decent, but they're asking real hard questions.

**Mr. Mark Adler:** Mr. Kernaghan, I have just one quick question: is there a free trade agreement on the face of this earth that you have supported?

**Mr. Charles Kernaghan:** The Jordan agreement, but no others, and that ended up being a failure.

**Mr. Mark Adler:** So you supported the U.S.-Jordan free trade agreement, but you've never supported any other free trade agreement, including the Canada-United States Free Trade Agreement or the NAFTA?

**Mr. Charles Kernaghan:** NAFTA? No.

No, we've been to Mexico quite a bit. It's not in good condition.

**Mr. Mark Adler:** Have you been to Canada at all?

**The Chair:** Your time is gone—

**Mr. Mark Adler:** Have you been to Canada?

**The Chair:** No, you're done.

**Mr. Charles Kernaghan:** Frankly, I spend my—

**The Chair:** Mr. Easter, the floor is yours.

**Hon. Wayne Easter:** Thank you, Mr. Chair.

Thank you, Mr. Kernaghan. Your testimony is pretty damning and worrying, I would certainly say, especially given the fact that the U.S.-Jordan trade agreement is in place, which I think you felt was a good one.

I guess there's a key question for us. As you know, the reason we're holding these hearings is to determine whether we support the government's initiative of going ahead with a Canada-Jordan trade agreement. I want to come to that at the end, but I have just a couple of questions on the ownership of Rich Pine factory and Classic factory, as I think you said. What is the ownership of those companies? Do you know?

**Mr. Charles Kernaghan:** The Rich Pine factory is Taiwanese-owned, with Chinese workers, mostly. They don't come from Taiwan. They come from the mainland. The Classic factory is owned by a manager in India, who got most of his money in Dubai.

**Hon. Wayne Easter:** So what's really happening in Jordan is that factories are being located in Jordan in free trade zones with ownership from outside Jordan, and to a great extent—90%—with a workforce from outside Jordan.

• (1235)

**Mr. Charles Kernaghan:** Yes.

**Hon. Wayne Easter:** According to your evidence, it's almost absolute human exploitation.

**Mr. Charles Kernaghan:** I would say 100% yes.

**Hon. Wayne Easter:** I personally believe that if there are these kinds of work conditions in areas, and you as a country—Canada—set up a trade agreement under certain rules and conditions, you actually have a greater ability to apply pressure on that country and those companies that work within that country to improve labour and working conditions.

That hasn't happened, certainly, with the U.S.-Jordan trade agreement. How do you see getting around that? On the one hand, I certainly have been supportive to date of going ahead with the Canada-Jordan trade agreement, because I think you make progress on both sides and you do improve conditions. But given the experience of the U.S.-Jordan trade agreement, I'm beginning to wonder.

How do you see getting around that problem? Does it mean there has to be pressure from governments internationally in Jordan?

On Tuesday we had the Jordanian ambassador here. I'll just read you what he told us and then ask for your comments.

On the issue of the application of Jordanian law with respect to migrant and permanent residents, the Jordanian ambassador said this:

With our new laws, any labour in Jordan, be it foreign labour or domestic labour, is now covered within the Jordanian law. There is no exclusion and no different treatment.

He went on to say:

It has nothing to do with the origin of the worker; it has to do with the sector that they are working in. If you have a sector that has more than two or three workers, then everyone is covered.

How do you respond to that statement? What the ambassador told us is clearly at odds with what your evidence shows.

**Mr. Charles Kernaghan:** Yes.

This is from a U.S. cable from a high-level State Department official:

Only when the king and government believe that the U.S. Congress and U.S. administration are serious about certain reforms will they take notice and attempt some level of reform. Continued engagement by senior U.S. officials, such as... will keep the pressure on the Jordanians and indicate to them that their reform efforts are being monitored by those who also follow the considerable foreign assistance levels allocated to Jordan.

In other words, I would say that the United States government has a pretty good grip on what's going on, but they're not moving.

So I would have to beg to differ with the ambassador. This is from a high-level State Department cable. As I said, I think the State Department knows what's going on, but for whatever reason they're not breaking through.

**Hon. Wayne Easter:** Then how do you see breaking through? I mean, we think we may be doing the right thing by moving ahead on a trade agreement. If you don't move ahead on the trade agreement, then you're just saying, well, the practices will continue with other countries. We have no way to apply pressure to try to change things. From your perspective, what's the best way to proceed?

I mean, it just shocks me; if this were oil instead of human workers, by God the U.S. government would be doing something. But here we are, a very rich western world, and in order to buy cheap clothes we're allowing the exploitation of human labour. It just makes absolutely no sense at all.

How do you see proceeding to protect these people's human rights?

● (1240)

**Mr. Charles Kernaghan:** I would very much be in favour of there being a conference, together with the United States and Canada, to have labour involvement from Canada and the United States, to have involvement from our embassies. I think if Canada, before moving ahead on the free trade agreement....

If there were some way to gather together with the Canadian Parliament and U.S. officials, along with labour input from Canada and the United States, I think we could make a very powerful statement to Jordan that things will have to change if a free trade agreement really does go forward.

Unfortunately, much of what goes on in Jordan is just politics. Jordan is getting rewarded for doing certain things and the workers are getting the shaft.

**The Chair:** Thank you very much.

Mr. Keddy.

**Mr. Gerald Keddy:** Thank you very much to our witness.

Mr. Kernaghan, your testimony was very forthright and, without question, disturbing. I guess the question I have.... I agree with the comments by Mr. Easter that we move countries forward by engagement, not by isolation. Isolation is really only used when it's the last resource you have left, the last card you have left to play.

There's a question I'm struggling with. I'm having some difficulty with this, because you said the U.S.-Jordan agreement was a good agreement. I know that it certainly has increased trade between the U.S. and Jordan. It looked as if, from the labour point of view, it was going to bring some modernization and probably equality to labour standards in Jordan.

So if—and it's not a question of “if”, and I'm not questioning your testimony—labour rules are being broken, and in extreme circumstances in some cases, that's a question of a legal issue that should have been taken care of by the Jordanian government. This individual who is the alleged rapist should have been dealt with by law.

However, you still have an agreement between the United States and Jordan that has clauses in it that can affect trade between the United States and Jordan. What is the reticence on behalf of the American government to engage that process? I'm failing to understand why they wouldn't engage that process.

**Mr. Charles Kernaghan:** If I'm understanding you correctly, I think this is just above my level. I mean, I do believe that the United States government has a very close relationship to the Government of Jordan and the free trade agreement was really meant to bring Jordan into an alliance with other nearby countries, such as Israel and all. So there are a lot of things going on.

Unfortunately, I think it was this attempt that launched the free trade agreement, because it's an odd thing to have a free trade agreement where people won't work in the factories and you have to bring in guest workers.

Of course, that opens people to abuse: they don't know the language, they're young women, and they pay a lot of money to get these contracts to come to Jordan. In the Classic factory, the young girls are only allowed out of the factory for six hours a week, on a Friday, and when they come back to the factory, they're interrogated.

So something's gone wrong. Again, maybe it can be fixed, but it's going to have to be fixed with some very hard questioning of the Jordanian government.

**Mr. Gerald Keddy:** I appreciate what you're saying, that it may be more complicated than simply an abuse on the ground, whether that's blatant in all aspects of the economy or just in this portion of it.

We're just going to say that there's a failure on behalf of the U.S. to enforce the rules. However, that certainly doesn't lead me to believe that there would be a failure on Canada's behalf to enforce the rules. We've signed a trade agreement here with Jordan. We signed it in good faith. We expect to see improvements in labour, in the environment, and in respect for human rights. The Jordanians have told us those things will happen.

With other free trade agreements we've signed with other countries around the world.... I happen to be a supporter of free trade. I appreciate your candour and honesty in saying that you have not supported free trade agreements in the past. However, moving forward, we signed a free trade agreement with Colombia, and I want to use this as an example.

Colombia has had major struggles in the past, and it still has some challenges ahead of it, without question. Yet in every single category, life has improved for Colombians. I'm not saying it's perfect, by any stretch of the imagination, but life has improved for Colombians. Freedom of association, ability to travel, personal safety, respect for the environment, ability to find a job—in every single category things have improved for the average Colombian. Again, it's not perfect.

We would expect that this agreement should—and I'm going to use the word “should”—be able to bring some of that to Jordan. I think the whole issue of whether Jordanians themselves work in the factory is a whole other cultural issue, which we're not going to settle here today.

We still buy their products. In the past, when we've seen blatant labour abuses around the world, citizens in the United States, Canada, and the European Union have boycotted those countries. I'm a little bit shocked that, if it's as bad as you say it is, we're not seeing some of that kickback, if you will, from consumers.

● (1245)

**Mr. Charles Kernaghan:** We're not experts on the case of Colombia, but I do believe they still have, by far, the highest death rate of trade union people in any country in the world, so problems do remain.



I can tell you, if any of you wanted to go with us to Jordan, I could give you my word that we could hold a meeting with 1,000 or 2,000 workers at the Classic factory, and those guest workers would speak the truth to you if they were guaranteed that there wouldn't be reprisals against them.

We did it already. We went to the Classic factory. I think we did this in 2008. We held a meeting with maybe 2,000 or 3,000 workers in a giant auditorium, and we had the Ministry of Labour there. The workers told the truth about how they were touched and groped, and about how they were beaten, and about how they had to work. In other words, it's relatively easy to find out what's happening, right from the workers' mouths and from their own documentation, and to go to see the dormitories and see how many hours they work.

I think maybe I'm a little out of place here. We are actually researchers, and we are workers' rights advocates, like human rights workers. We don't work at the highest levels of the U.S. government or other governments. Basically, our job is to investigate and to try to improve conditions and help the workers.

I'm leaving tomorrow for Bangladesh. This is what we do. We go on the ground and we do these investigations. We put pressure on the major labels to improve conditions.

We're not very much into theory.

**The Chair:** Thank you very much.

Mr. Masse, I believe you're splitting your time with Ève.

**Mr. Brian Masse:** Yes, I am. Thank you, Mr. Chair.

Thank you for being with us today.

With regard to the Canada-Colombia deal, that agreement has only been in effect for six months, so I'd like to see the evidence of the improvements. The time certainly doesn't add up, in my opinion, in terms of a full evaluation of the effects of the trade agreement with regard to human rights.

At any rate, I thank you for your comments. The ambassador actually did agree, and invited us, and said we could go to Jordan.

Would you be willing to share with us your Congressional and Senate representatives who have worked on this file, elected persons, and would you be willing to work with us to create a Canada-U.S.-Jordan working group to bring to fruition the ideals of the U.S. FTA before we ratify the Canada-Jordan deal?

Would you be willing to bridge that? You're saying that it should be the ideal, and it isn't working as the ideal; we know that. How do we get there? That's the key.

I'm a big fan of the carrot and the stick: you have the incentive, but you make sure you have the stick to make sure you get to the final destination before you give away everything you've got.

• (1250)

**Mr. Charles Kernaghan:** I would think it would be a great idea. I know there are very decent and high-level people in the State Department who are very involved in this at the U.S. Trade Representative's office. They have never put a block on us or stopped this dialogue. The U.S. Trade Representative's office has

been fantastic. The office on human trafficking has been fantastic. The State Department has been fantastic.

Maybe you're on to something. As a way to bring all of you together and to make that final push against Jordan, you may have found an answer.

**Mr. Brian Masse:** Could you send us that information? We want to make things work, but there has to be accountability, at the end of the day. If you could send that information, please, I would appreciate it. The clerk will distribute it to the rest of the committee.

I think we may have something here.

**The Chair:** Thank you very much.

Ève.

**Ms. Ève Pécelet (La Pointe-de-l'Île, NDP):** Thank you very much.

You have been on the ground. You have been to Jordan. You probably know that during the Arab Spring there was a lot of opposition from the population to the government in place right now and to the regime, which is a monarchy right now and has most of the power in its hands.

[*Translation*]

How do you think this situation prevents the government—which uses military force, for instance, to keep people from demonstrating in the streets—from inspecting these types of factories?

How does this opposition impact the likelihood of the government enforcing human rights?

[*English*]

**Mr. Charles Kernaghan:** You're absolutely correct about the lack of democracy in Jordan, the lack of freedom of the press, the lack of the right to organize. The workers themselves, the guest workers—we're talking from their perspective—come to places like Jordan because they're incredibly poor. They want to give their families a little better life, so they're willing to travel all the way from Bangladesh or Sri Lanka and come to a factory like Classic.

All they want is their minimum rights. They're not asking for \$10 an hour. They're not asking for two days off a week. They're not asking for an eight-hour day. In other words, it should actually be relatively easy to bring these factories into compliance with international labour rights standards. But at this particular point, from what I can see, there is no good faith on the part of the Jordanian Ministry of Labour or other elements.

Again, I mentioned about the media; an independent media is critical. We find out, though, that the media in Jordan is terrified. They self-censor themselves because of fines and threats of four years' imprisonment.

In fact, one gentleman, the AP head in Jordan, wrote a very truthful piece—I'll send you the article—about the rape of the young girls at the Classic factory. Well, what happened was that the U.S. companies picked up the telephone and called AP in New York City, their headquarters, to try to get this guy fired.

So there's a lot of stuff going on. This is what the labels are doing. It's a very tough situation. Any time you have guest workers from thousands of miles away, isolated from their home countries, with no rights, it's a very difficult circumstance.

• (1255)

**The Chair:** Your time is up. Thank you very much.

Mr. Holder.

**Mr. Ed Holder (London West, CPC):** Thank you to our guests for attending.

Mr. Kernaghan, who specifically did you bring up your concerns with in the U.S. government with respect to violations relating to the U.S.-Jordan free trade agreement?

**Mr. Charles Kernaghan:** I have testified a number of times before Congress and in the Senate. Basically, we send our material immediately to the Office of the U.S. Trade Representative as well as to the State Department and to the labour department. I know that the president of the United Steelworkers of the United States and Canada, Leo Gerard, was in very high-level adjudications with the State Department.

He is really on the side of these workers. Pretty much, I think, we've spoken to a lot of members of the House and a lot of members of the Senate as well.

**Mr. Ed Holder:** Mr. Kernaghan, I guess I'm thinking about the Institute for Global Labour and Human Rights. I'm trying to get a sense of how you measure your effectiveness in relation to your dealings with the United States regarding this free trade agreement.

I'm not here to challenge your testimony. We all just want to get to what is correct. You said that if workers could have the right to speak freely, they would speak freely as long as there were no reprisals. You then indicated that thousands attended a rally or some form of meeting to express their concerns, and I think the fact that they could do that is terrific.

I want to come back. How does your organization measure its effectiveness? You obviously want to be effective. In your dealings with the United States, the most powerful economic country in the world, which can't put that kind of pressure on Jordan.... How do you measure what you do with them?

**Mr. Charles Kernaghan:** For example, when we issued our report in 2006, the government literally went into a state of shock. The head of the Office of the U.S. Trade Representative asked us how we did this.

In other words, in the first five years of the free trade agreement, the U.S. government didn't have a clue as to what was going on. The head of the U.S. Trade Representative—

**Mr. Ed Holder:** Sorry—can I stop you?

At that point in 2008 when you did that and you brought it to them and they were shocked, how did they respond? Has there been a noticeable, significant difference through the dealings of the most powerful country, the United States, with Jordan to improve the rights of workers, be they migrant or otherwise?

**Mr. Charles Kernaghan:** There have been minor improvements, but by and large inside factories there remain sweatshop conditions and illegal conditions.

**Mr. Ed Holder:** Thank you for that.

With respect to the media, you mentioned that media are afraid to make reports because of the reprisals associated with fines and jail terms.

Can you tell us the names of media members that have been fined the \$28,000? I think it would be very useful for us to get their accounts of what happened. I think it would help this committee. You don't have to do that right this second, but do you have their names?

**Mr. Charles Kernaghan:** The U.S. cables don't really give their names, but it says here that this official highlighted specific restrictions with the Justice Minister Odeh, including the threat of high fines up to U.S. \$20,000—later on, they say it's \$28,000—under the press and publication law and the threat of imprisonment under the prison code.

It is a fact that over 90% of journalists say they practise self-censorship.

I don't think that it's—

**Mr. Ed Holder:** How about the other 10%? Has anybody been fined?

**Mr. Charles Kernaghan:** Oh, yes.

**Mr. Ed Holder:** Can you undertake to give us those names? I say that because I think we would want to have that as testimony. I think that would support what we're trying to do.

There has to be a monster conspiracy somewhere here that I'm just not clear on. You indicated that your government knows what is going on and that the State Department knows what is going on. You know, you have a President of the United States in Mr. Obama who is a great professor of rights worldwide. I can't imagine that the most powerful country in the world would let this go untreated, undone. I'm shocked about that.

My time is running out. Please do those undertakings, if you would, that I asked for. I would appreciate that very much.

Thanks.

• (1300)

**The Chair:** Thank you very much, Mr. Kernaghan. Thank you for your testimony. It was very compelling and informative for the committee as we continue our deliberations on this piece of legislation.

This is just a reminder to the committee. If there are any witnesses you'd like to bring before the committee, speak now or forever hold your peace. If you don't have any, we'll be going to clause-by-clause by Tuesday. I give that over to the committee. I don't have any room to delay, but we can talk to you about it.

**Mr. Brian Masse:** Mr. Chair, that's fine, but we can't go to clause-by-clause. We need to get that information that needs to come in and be translated before.... We've had great testimony.

**The Chair:** Fair enough.

Thank you very much.

The meeting is adjourned.

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