H.R. 1356, THE FREEDOM FROM SEXUAL TRAFFICKING ACT OF 1999

MARKUP

BEFORE THE

SUBCOMMITTEE ON
INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

OF THE

COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

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MARKUP OF H.R. 1356, THE FREEDOM FROM SEXUAL TRAFFICKING ACT OF 1999

Wednesday, August 4, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL
OPERATIONS AND HUMAN RIGHTS,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, D.C.

The Subcommittee met, pursuant to call, at 2:06 p.m., in room 2200, Rayburn House Office Building, Hon. Christopher H. Smith (Chairman of the Subcommittee) presiding.

Mr. SMITH. The Subcommittee will come to order. Good afternoon. We meet to consider H.R. 1356, the Freedom from Sexual Trafficking Act of 1999, pursuant to call, and the Ranking Member, Ms. McKinney from Georgia, will join us momentarily. But I will give a few opening remarks and then we will proceed with the markup after Mr. Goodling and Ms. McKinney have made their opening remarks.

Each year up to a million innocent victims, of whom the overwhelming majority are women and children, are brought by force and or fraud into the international commercial sex industry. Efforts by the U.S. Government, international organizations, and others to stop this brutal practice have thus far proved unsuccessful. Indeed, all the evidence suggests that instances of forcible and or fraudulent sexual trafficking are far more numerous than just a few years ago.

Only yesterday, the front page of the Wall Street Journal told the story of thousands of women who have been abducted in Vietnam and sold in China.

The problem is not abstract; it shatters the lives of real women and children. In Russia, for example, traffickers prey on orphanages. In a typical scenario a trafficker will pay an orphanage director approximately $12,000 to take a group of children on a ''field trip'' to the local McDonald's. The group of children will then leave the orphanage with the trafficker and never be seen or heard from again.

Part of the problem is that current laws and law enforcement strategies in the United States and in other nations often punish the victims more severely than they punish the perpetrators. When a sex-for-hire establishment is raided, the women—and sometimes children—in the brothel are typically deported if they are noncitizens of the country in which the establishment is located, without reference to whether their participation was voluntary or involuntary, and without reference to whether they will face retribution or

other serious harm upon return. This not only inflicts further cruelty on the victims; it leaves nobody to testify against the real criminals, and frightens other victims from coming forward.

H.R. 1356, the Freedom from Sexual Trafficking Act, would reverse this cruel and ineffective approach. It is designed to protect and assist the victims of sexual trafficking while inflicting severe and certain punishment on perpetrators. The central principle behind this legislation is that a person who knowingly operates an enterprise that profits from sex acts involving persons who have been brought across international boundaries for such purposes by force or fraud should receive punishment commensurate with that given to those who commit forcible rape. This would not only be a just punishment but also a powerful deterrent.

H.R. 1356 would implement this principle across the board. First, it would modify U.S. Criminal law to provide severe punishment up to and including life imprisonment for persons convicted of operating such enterprises wholly or partly within the United States, and of course that includes transporting and other aspects of bringing the women across the Federal lines.

It would also establish an office for the protection of victims of trafficking within the State Department, which would report annually on foreign countries that fail to criminalize and appropriately punish international sexual trafficking involving the use of force and/or fraud and to make other serious and sustained efforts to prevent it from operating within and across their borders. It would then prohibit nonhumanitarian U.S. assistance to such foreign countries unless this prohibition is waived by the President.

The bill also provides victim assistance and protection. This includes grants to shelters and rehabilitation programs for victims of forcible and/or fraudulent sexual trafficking. It also includes a relief from deportation for victims who would face retribution or other hardship if removed from the United States. It makes clear that the trafficking victims are eligible for the Federal witness protection plan and provides them with a private right of action against those who have profited by the harm that was done to them.

Finally, the bill authorizes grants for training for law enforcement agencies in foreign countries in the investigation and prosecution of international sexual trafficking, as well as for assistance in drafting and implementation of antitrafficking legislation.

I am aware that this bill has some critics. For example, the Administration objects to the establishment of a new office within the State Department. But the Department already contains numerous offices devoted to a myriad of other concerns such as the Office of Multimedia Publishing Services, the Office of Small and Disadvantaged Business Utilization, the Office of Marine Conservation, and the Office of Press Relations. The millions of women and children victimized by worldwide sexual trafficking deserve no less attention than protocol and plankton.

I stand ready, however, to work with the Administration toward a mutually agreeable solution so long as the Administration is committed to genuine negotiation and compromise.

Let me just make a couple of points and then I will yield to any of my colleagues if they have any comments that they would like to make.

I recently led a delegation to the OSCE assembly in St. Petersburg and during the course of that deliberation we were able to get passed a very strong, strongly worded resolution calling on all of the members of the OSCE to take effective action in their own country and to work in a collaborative way with other Nations to mitigate in the short term and completely end this heinous practice. I was amazed, in some of the conversations that I had in bilaterals and individually, including with the Speaker of the Duma, there was a sense of disbelief and "not here," "it doesn't happen here," or "that is just prostitutes, what are we worried about them for?" I think that shows a gross insensitivity to this exploitation of women and I do believe that we can and must lead by example. This legislation attempts to do that.

We did pass, like I said, that resolution. It passed unanimously. It was a very spirited debate. One amendment was offered by the Russians that actually strengthened it in the end. But there has to be a prioritization given to this and there must be tools available in order to make prosecutions effective and so that we put these individuals behind bars, hopefully for the rest of their lives, when they commit these terrible crimes.

I would like to yield to any of my colleagues if they have any opening comments. We are awaiting Ms. McKinney, who will be here shortly. Mr. Goodling? Mr. Ballenger?

Mr. GOODLING. I might offer an amendment dealing with punishment for the men involved. I think the amendment would be germane; it might not be humane. So I will not offer it.

Mr. SMITH. I take your drift. I do think that would be proportionate. I think the gentleman makes an excellent point, even with the use of humor. We really are all about a very serious undertaking here but the sad part is the traffickers—the people who coerce and defraud and force these women into these despicable situations—very often go scot free. We are now lacking I believe not only the right kind of law that makes prosecutions more likely, but also a prosecution strategy on the part of our U.S. Attorneys and others to go after these individuals who are exploiting these women.

Yes, there is some work being done. All of it is positive. But there must be much, much more. One of the ironies of the fall of the Soviet Union and the breakup of the Soviet Union has been that the explosion of poverty that has occurred has resulted in a very fertile ground for organized crime—the syndicates, the Russian Mafia, the Ukrainian Mafia—to prey upon these women.

I recently received a cable from some folks in Russia talking about what happened when some of our consular people met with other consular people in St. Petersburg in follow-up to some of the conversations we had there, and the responses from some of the other nation's representatives ranged from "they need to get more information," to "they have heard rumors of this," to one who said they raised it with the Russian police who said "there is none of that going on here, our women are just more beautiful," and just

laughed. That kind of dismissal of this issue is absolutely unacceptable and we need to lead, like I said, by example.

Mr. BALLENGER. I would just, you know, I have seen one story on TV that kind of covered this a little bit. But I was reading the story about your, I guess, Jersey City Police director. This Zalisko, he knows where the women are and doing all of this. There is no law being broken anywhere?

Mr. SMITH. There are laws, but there is a problem of too few resources being focused on it and the laws are relatively weak. We have done some study on the maximum penalties that can be meted out, and they are up to 10-years. But they are very seldom given to those who commit these kinds of crimes. To a large extent there is a problem with law enforcement not taking this as seriously as it should. That goes for this side of the Atlantic and especially for the other side of the Atlantic.

Mr. BALLENGER. He mentioned 3- to 5,000 women just in that area of New Jersey. Kind of blows your mind. Like I said, what little bit I knew I saw on TV and that is it. But I commend you for being involved. Somebody has got to care.

Mr. SMITH. I appreciate that, Mr. Ballenger. As we know with U.S. Attorneys, when they decide what they are going to prosecute, they certainly have prosecutorial discretion. If the penalty is too low, they are more likely to skip going after a certain kind of crime and will focus instead on something where there is a higher penalty if conviction is realized. That is the problem we face with our current law. It is infirm.

I have looked at some of the comments from those who are not necessarily enamored of what we are trying to do here. They make that point that part of the legislation says that we are to track what is going on in other countries, and the President has a national interest waiver so he doesn't have to impose sanctions, but nonhumanitarian sanctions can be imposed if certain criteria are not met and they are minimal criteria.

It was suggested that somehow the U.S. would not live up to those criteria if they were applied to us. If that be the case, shame on us our law is not sufficiently strong, and has not prioritized this issue. Maybe it is because this has been thrust upon us so quickly. It is almost like when crack finally hit the streets. I remember in the city of Trenton police officers telling me that overnight this changed the whole crime scene, and yet we didn't respond to it in a substantive way for a couple of years. Slow learning curve. Hopefully, that will not be the case here.

We do have a quorum. I think we can proceed. We have sufficient numbers to begin, unless there is objection. Out of respect for Ms. McKinney, and she does want to be here, we will delay a little bit longer. The Committee will stand in recess just for a couple of minutes.

[Recess.]

Mr. SMITH. The Chair will lay the bill before the Committee.

The Clerk will report the title of the bill.

[The bill H.R. 1356 appears in the appendix.]

The CLERK. H.R. 1356 to end international sexual trafficking, and for other purposes.

Mr. SMITH. Without objection, the first reading of the bill will be dispensed with. The Clerk will read the bill for amendment.

The CLERK. A bill to end international sexual trafficking, and for other purposes. Be it enacted by the Senate and the House of Representatives of the United States of America and Congress assembled, section 1—.

Mr. SMITH. Without objection, the bill is considered as having been read and is open for amendment at any point.

This bill was introduced, as I pointed out, on March 25th, it was referred on May 4th to the Subcommittee on International Operations and Human Rights, and since I have already made my opening comments, I yield to my good friend Ms. McKinney from Georgia.

Ms. MCKINNEY. Thank you, Mr. Chairman. I wish to express my deep appreciation to you for your personal efforts on the issue of sexual trafficking, including your recent visit to Russia to look into the issue of trafficking there, a practice that involves tens of thousands of Russian women. I join you in believing that this is a grave abuse that has not received enough attention and I wish to work with you in changing that situation.

It is also obvious that many elements in this bill, from the strengthened criminal penalties for sexual trafficking to the substantial authorization for domestic victim programs will improve our work on this serious issue.

Both our Chairman and his staff deserve credit for this outcome. I thus intend to support this bill, although I do have some reservations about the approach being used. One of these concerns relates to the scope of the bill. As important as sexual trafficking is, it is only one reason why people sell other people. People are also sold into bonded sweatshop labor and into domestic servitude and this is not just a labor issue. These are all slavery-like conditions often involving sexual exploitation by the employer as well. We ought to look for a way to deal with all of these conditions at once.

This is the approach taken in H.R. 1238, the International Trafficking and Women and Children Victim Protection Act, introduced by Congresswoman Louise Slaughter, of which I am a cosponsor. I do not want to ignore the victims of sexual trafficking, which is one reason I will support Mr. Smith's bill. But I am sure he does not want to ignore these other victims of trafficking, which is why I hope we can find a way to bring them in as well.

H.R. 1356 also repeats the procedure from our earlier legislation on religious persecution of creating a separate office on an important but selected human rights issue. About 10-years from now when we are in the process of creating the 15th separate human rights office and the 15th separate report, I suspect even those who got us started in this process with the best of intentions are going to have second thoughts. That the office of trafficking wouldn't be located in the Department's human rights bureau but isolated by itself could make it even less effective. We ought to look for more creative ways to increase our emphasis on issues without increasing bureaucracy.

The issue of sanctions also needs more thought. It may be that trying to work cooperatively with other countries rather than beating them about the head and shoulders is the best way to make

progress now on this issue, and the withdrawal of assistance is not a minor matter. Whatever we say sends a signal of general dissociation from the government of the country involved, which may do more harm than good. And again a future world of many human rights offices, each armed with a sanctions club, and with the President doing a hundred waivers a year to keep ordinary diplomacy moving, is something we want to avoid. If that is the direction we are going, I think we need to rethink our course.

There are other concerns we should also consider. The authorizations in the bill are not necessarily all in the right amount or going to the right places and we need to think more about whether a burdensome report separate from the human rights report is really necessary.

As we work further on this bill, I hope we will be able to hear from all of those with an interest in the matter. I regret we didn't have the opportunity to do a hearing in Subcommittee before our markup, and I particularly hope that senior officials from the Administration who are also committed to improving human rights observance will be given a chance to share their views with us in the near future.

I do believe that the approaches by Louise Slaughter and our chairman in these separate bills are not necessarily at war. I expect that we will all work together with each other and with the Administration, with interested organizations to produce a final bill that will be better than anything we could do separately, and I intend to be strongly involved in that effort.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you very much, Ms. McKinney. Does any other Member have any opening comments? Mr. Salmon?

Mr. SALMON. Thank you, Mr. Chairman. I know that this has been something that you have been working on for a long time and I really commend you and appreciate all of your hard work.

When we were over in Russia just recently, we met with several NGO groups and nonprofit organizations that have been working on this issue, and it is a travesty. I mean it is a multibillion dollar industry here in this world. It amazes me the stories that we heard about buses pulling up to orphanages and loading on children and then go going and selling them for $24,000 apiece. And it just disgusts me that in our world today that these kinds of things could go on.

There were allegations as well that in the government over there, they just kind of let it go on with a wink and a nod. That is wrong. And here we put out millions and millions of dollars in aid to Russia. I think it is time we put some stipulations on some of the money that we are sending over there. When their government turns a deaf ear to this kind of human suffering and misery, I think we have a responsibility to be a little bit more scrutinizing in how we dole out the money.

But I commend you for putting together this resolution. I think it goes a long way, but I think the work will not be over here. We have a lot of work to do to try to end this travesty. And I commend the gentlewoman as well for her leadership on this issue. But it looks like we are the only ones that are in the world that are going to—at least as far as governments are concerned that are going to

make an issue of this and if we don't do it, it is not going to get done.

So I think that Congress has a big responsibility not only to be vocal about this but to lead the charge and there is so much at stake. So I commend the gentleman and the gentlewoman and I pledge my support to fighting the battle side by side.

Thank you.

Mr. SMITH. I thank my good friend Mr. Salmon for his kind comments and especially for his work on this. And as we sat together, along with Mr. Tancredo, in St. Petersburg and met with the NGO's, the frontline people, some of the victims who are day to day trying to battle the syndicate, I was struck by the fact that not only are they trying to save women at risk—and it is mostly women who are exploited, although there are some young boys—they themselves are at risk. This is a lucrative, multimillion dollar, if not billion dollar, racket, and the NGO personnel are put at risk of possible death.

Mr. SALMON. If the gentleman would yield, and they are getting virtually no protection from the Russian Government. None. They have brought this issue to the attention of lawmakers in the Duma and they have brought it to the Speaker's attention and they are getting no protection. They are in a very dangerous situation and I think we have a responsibility. As we all know when we make it very public, I think that our fight here can shed some light. Sunlight is the best disinfectant, and by our actions maybe we can provide a little bit of protection for them because they are not getting it from the Russian Government.

Mr. SMITH. Mr. Tancredo.

Mr. TANCREDO. Thank you, Mr. Chairman. Just recalling our experience in Russia, and specifically in St. Petersburg, and I certainly agree with all of the comments that have been made and the incredible impact it had on all of us meeting with the NGO's and even that bilateral meeting we had with the Russians where we brought this up, of course, and they tried to indicate that it really was not as severe a problem as we know it to be, it is this severe. It is second only to drug smuggling, second only to narcotics in terms of the amount of money that organized crime is able to extort from the general public or to get from the public for this purpose. It is their second biggest product, which was incredible to me. I was astounded by that.

We had not heard much about this in the past so the fact that it could rise to that level was quite extraordinary. And the other thing that deserves just a comment perhaps, Mr. Chairman, was the incredible fortitude of some of the people who are involved with this at the NGO's. There was this lady whose name escapes me, the doctor who gave up her practice, went and visited the old Soviet Union, became acquainted with this problem and ended up coming back here. She was a doctor here in the United States, came back here, sold her practice, gave up everything and has gone back, now is living in St. Petersburg and is the head of the most effective NGO dealing with this particular issue and she is a true inspiration to us all. And it was a very extraordinary experience.

Mr. SMITH. I thank the gentleman. And MiraMed is doing an extraordinary job and they too are at great risk.

Any further comments? I do have one amendment. And I would like to offer it and the chief of staff will report the amendment.

[The amendment appears in the appendix.]

The CLERK. Amendment to H.R. 1356 offered by Mr. Smith of New Jersey. Page 11, line 18, strike Office of the—

Mr. SMITH. I ask unanimous consent to dispense with the reading of the amendment, and just very briefly—it will take 30-seconds to explain it.

We have already had a suggestion from the Administration and from my good friend Ms. McKinney that they would prefer that the office be housed in the Bureau of Democracy Human Rights and Labor. I don't think it weakens what we are trying to do. Perhaps it will strengthen it.

So I would offer this in the spirit of compromise and I hope that the membership will accept it.

Would anyone like to be heard?

Ms. MCKINNEY. I would just like to thank the Chairman for offering this amendment as a demonstration—as a down payment on a continuation of our cooperative spirit with respect to this legislation and I look forward to us continuing to work together to perfect it as it moves through the process.

Mr. SMITH. I thank you. And I say to my friend, one point that you made about if the President had to issue 100 waivers. I would submit that that would be an incredibly sad commentary on the state of the world with regard to women being exploited by traffickers, if the evidence was so overwhelming and a national interest waiver, which is probably one of the weakest imaginable, had to be invoked. But that would almost make our case.

We have to wage war on the traffickers, not manage the issue, but wage war against this exploitation, or it will only get worse.

All those in favor of the amendment say aye.

Opposed say no.

The ayes have it, and the amendment is agreed to.

Any further comments before we go to passage? I would like to recognize my good friend, the gentleman from Pennsylvania, for a motion.

Mr. GOODLING. Mr. Chairman, I move the Subcommittee report the bill, as amended, favorably to the Full Committee.

Mr. SMITH. Without objection, the motion is agreed to. The question is on the motion of the gentleman from Pennsylvania.

All those in favor, signify by saying aye.

Opposed, no.

The ayes have it and the motion is agreed to.

I want to thank the Members of the Subcommittee for coming out and look forward to working with you at the next stage.

[Whereupon, at 2:32 p.m., the Subcommittee was adjourned.]

A P P E N D I X

AUGUST 4, 1999

I

106TH CONGRESS
1ST SESSION

H. R. 1356

To end international sexual trafficking, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1999

Mr. SMITH of New Jersey (for himself and Ms. KAPTUR) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committee on the Judiciary, and Banking and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To end international sexual trafficking, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Freedom From Sexual Trafficking Act of 1999".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Purposes and findings.
Sec. 3. Definitions.
Sec. 4. Minimum standards for the elimination of sexual trafficking.

Sec. 5. Office for the Protection of Victims of Trafficking.
Sec. 6. Assistance for victim protection.
Sec. 7. Protection from removal for certain victims of sexual trafficking.
Sec. 8. Actions against governments failing to meet minimum standards.
Sec. 9. Trafficking of persons for commercial sexual purposes.

SEC. 2. PURPOSES AND FINDINGS.

(a) PURPOSES.—The purposes of this Act are to end international sexual trafficking, in which women and children are brought across international boundaries by means of force or fraud for purposes of forced prostitution, sexual slavery, and similar practices; to provide just punishment for the perpetrators of such practices; and to protect their victims.

(b) FINDINGS.—The Congress makes the following findings:

(1) Millions of persons every year, of whom the overwhelming majority are women or children, are trafficked into the international sex trade by means of fraud, force, or coercion.

(2) International trafficking in persons is not limited to sexual trafficking. It may also involve forced labor and other violations of internationally recognized human rights. Trafficking of persons in all its forms is an evil that calls for concerted and vigorous action by countries of origin, receiving countries, and international organizations.

(3) Sexual trafficking is a particularly brutal form of the international traffic in persons. Because

it causes the involuntary participation of another person in sex acts by means of fraud, force, or coercion, sexual trafficking includes all the elements of the crime of rape, which is defined by all legal systems as among the most serious of all crimes.

(4) International sexual trafficking also involves frequent and serious violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion.

(5) Existing legislation and law enforcement in the United States and in other nations around the world have proved inadequate to deter trafficking and to bring traffickers to justice, principally because such legislation and enforcement do not reflect the gravity of the offenses involved. Instead, even the most brutal instances of sexual trafficking are often punished under laws that also apply to far less serious offenses such as consensual sexual activity and illegal immigration, so that traffickers typically escape severe punishment.

(6) In some countries, enforcement against international sexual traffickers is also hindered by official indifference, by corruption, and sometimes even by active official participation in trafficking.

(7) Because existing laws and law enforcement procedures often fail to make clear distinctions between victims of sexual trafficking and persons who have wilfully violated laws such as those against prostitution, and because victims often do not have legal immigration status in the countries into which they are trafficked, the victims are often punished more harshly than the traffickers themselves.

(8) Because victims of international sexual trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, and because they are subjected to coercion and intimidation including physical detention, debt bondage, fear of retribution, and fear of forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.

(9) The Universal Declaration of Human Rights recognizes the right to be free from slavery and involuntary servitude, arbitrary detention, degrading or inhuman treatment, and arbitrary interference with privacy or the family, as well as the right to protection by law against these abuses.

(10) The United Nations General Assembly has passed three resolutions during the last three years (50/167, 51/66, and 52/98) recognizing that the international traffic in women and girls, particularly for purposes of forced prostitution, is a matter of pressing international concern involving numerous violations of fundamental human rights. The resolutions call upon governments of receiving countries as well as countries of origin to strengthen their laws against such practices, to intensify their efforts to enforce such laws, and to ensure the full protection, treatment, and rehabilitation of women and children who are victims of trafficking.

(11) The Final Report of the World Congress against Sexual Exploitation of Children, held in Stockholm, Sweden in August 1996, recognized that international sexual trafficking is a principal cause of increased exploitation and degradation of children.

(12) In the 1991 Moscow Document of the Organization for Security and Co-operation in Europe, participating states including the United States agreed to "seek to eliminate all forms of violence against women, and all forms of traffic in women and exploitation of prostitution of women including

by ensuring adequate legal prohibitions against such acts and other appropriate measures".

(13) In order to deter international sexual trafficking and to bring its perpetrators to justice, nations including the United States must recognize that sexual trafficking is a grave offense, equivalent for all moral and practical purposes to the crime of rape, and must act on this recognition by prescribing appropriate punishment for sexual trafficking, by giving the highest priority to its investigation and prosecution, and by protecting rather than punishing its victims.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) SEXUAL TRAFFICKING.—The term "sexual trafficking" means the taking of a person across an international border for the purpose of a commercial sexual act, if either such taking or such sexual act is effected by fraud, force, or coercion, or if the person has not attained the age of 18 years.

(2) VICTIM OF SEXUAL TRAFFICKING.—The term "victim of sexual trafficking" means any person who is taken across an international border for the purpose of a commercial sexual act, if the participation of such person in such taking or such act

is induced by fraud, force, or coercion, or if the person has not attained the age of 18 years.

(3) ACT OF SEXUAL TRAFFICKING.—The term "act of sexual trafficking" means any act at any point in the process of sexual trafficking, including any act of recruitment, harboring, transport, purchase, or sale of a victim of sexual trafficking, or any act of operation, management, or ownership of an enterprise in which a victim of sexual trafficking engages in a commercial sexual act or is induced or expected to engage in such act, or sharing in the profits of the process of sexual trafficking or any part thereof.

(4) COMMERCIAL SEXUAL ACT.—The term "commercial sexual act" means a sexual act on account of which anything of value is given to or received by any person.

(5) MINIMUM STANDARDS FOR THE ELIMINATION OF SEXUAL TRAFFICKING.—The term "minimum standards for the elimination of sexual trafficking" means the standards set forth in section 4.

(6) NONHUMANITARIAN FOREIGN ASSISTANCE.—The term "nonhumanitarian foreign assistance" means—

(A) any assistance under the Foreign Assistance Act of 1961 (including programs under title IV of chapter 2 of part I of that Act, relating to the Overseas Private Investment Corporation), other than—

(i) assistance under chapter 8 of part I of that Act;

(ii) any other narcotics-related assistance under part I of that Act or under chapter 4 or 5 of part II of that Act, but any such assistance provided under this clause shall be subject to the prior notification procedures applicable to reprogrammings pursuant to section 634A of that Act;

(iii) disaster relief assistance, including any assistance under chapter 9 of part I of that Act;

(iv) antiterrorism assistance under chapter 8 of part II of that Act;

(v) assistance which involves the provision of food (including monetization of food) or medicine;

(vi) assistance for refugees; and

(vii) humanitarian and other development assistance in support of programs of nongovernmental organizations under chapters 1 and 10 of that Act;

(B) sales, or financing on any terms, under the Arms Export Control Act, other than sales or financing provided for narcotics-related purposes following notification in accordance with the prior notification procedures applicable to reprogrammings pursuant to section 634A of the Foreign Assistance Act of 1961; and

(C) financing under the Export-Import Bank Act of 1945.

SEC. 4. MINIMUM STANDARDS FOR THE ELIMINATION OF SEXUAL TRAFFICKING.

(a) MINIMUM STANDARDS.—Minimum standards for the elimination of sexual trafficking are as follows:

(1) The country should prohibit and punish sexual trafficking.

(2) The country should prescribe punishment commensurate with that for the most serious crimes, such as forcible sexual assault, for a person who knowingly commits an act of sexual trafficking involving fraud, force, or coercion, or in which the vic-

tim of sexual trafficking has not attained the age of 14 years.

(3) The country should prescribe punishment commensurate with that prescribed for other serious crimes for a person who knowingly commits an act of sexual trafficking in which there is no proof of fraud, force, or coercion, and in which the victim of sexual trafficking has attained the age of 14 years but has not attained the age of 18 years.

(4) The country should make serious and sustained efforts to eliminate sexual trafficking.

(b) CRITERIA.—In determinations under subsection (a)(3) the following factors should be considered:

(1) Whether the country vigorously investigates and prosecutes acts of trafficking that take place wholly or partly within the territory of the country.

(2) Whether the country cooperates with other countries in the investigation and prosecution of sexual trafficking.

(3) Whether the country extradites persons charged with acts of sexual trafficking on the same terms and to the same extent as persons charged with other serious crimes.

(4) Whether the country monitors immigration and emigration patterns for evidence of sexual traf-

ficking and whether law enforcement agencies of the country respond to any such evidence in a manner which is consistent with the vigorous investigation and prosecution of acts of sexual trafficking, as well as with the protection of victims and the internationally recognized human right to travel.

(5) Whether the country protects victims and encourages their assistance in the investigation and prosecution of sexual trafficking, including provision for legal alternatives to their removal to countries in which they would face retribution or other hardship.

(6) Whether the country vigorously investigates and prosecutes public officials who participate in, facilitate, or condone sexual trafficking.

SEC. 5. OFFICE FOR THE PROTECTION OF VICTIMS OF TRAFFICKING.

(a) ESTABLISHMENT.—There is established in the Office of the Secretary of State an Office for the Protection of Victims of Trafficking. The office shall be administered by a director. The director shall be appointed by the President with the advice and consent of the Senate. The director shall have primary responsibility for assisting the Secretary of State in carrying out the purposes of this Act and may have additional responsibilities as determined by the Secretary.

(b) REPORTS TO CONGRESS.—

(1) ANNUAL REPORT.—Not later than April 30 of each year, the Secretary of State, with the assistance of the director, shall submit to the Congress a report with respect to the status of international sexual trafficking, including a list of those countries, if any, that do not meet the minimum standards for the elimination of sexual trafficking under section 4.

(2) COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.—Section 116(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n) is amended—

(A) at the end of paragraph (6) by striking "and";

(B) at the end of paragraph (7) by striking the period and inserting "; and"; and

(C) by adding after paragraph (7) the following new paragraph:

"(8) information on sexual trafficking and of efforts being taken by the country to prevent such trafficking.".

(3) INTERIM REPORTS.—The Secretary of State, with the assistance of the director, may submit to the Congress in addition to the annual report under subsection (b) one or more interim reports with respect to the status of international sexual

trafficking, including information about countries whose governments have come into or out of compliance with the minimum standards for the elimination of sexual trafficking since the transmission of the last annual report.

(c) DUTIES AND AUTHORITIES OF THE DIRECTOR.—Pursuant to the responsibilities set forth in subsections (a) and (b), the director shall assist the Secretary in the establishment and operation of facilities to receive and disseminate information about international sexual trafficking, including a site on the Internet. The director shall have authority to consult with experts on international sexual trafficking and with victims and other affected persons and to take evidence in public hearings or by other means.

(d) AUTHORIZATION.—There is authorized to be appropriated to the Secretary of State $2,000,000 for fiscal year 2000 and $2,000,000 for fiscal year 2001 for the Office for the Protection of Victims of Trafficking.

(e) NOMINATION OF DIRECTOR.—The President shall transmit to the Senate the nomination of the director not later than 120 days after the effective date of this Act.

SEC. 6. ASSISTANCE FOR VICTIM PROTECTION.

(a) INTERNATIONAL VICTIM PROGRAMS.—There is authorized to be appropriated to the Secretary of State

$10,000,000 for fiscal year 2000 and $10,000,000 for fiscal year 2001, for assistance to foreign countries in programs and activities designed to meet the minimum international standards for the elimination of sexual trafficking, including drafting of legislation to prohibit and punish acts of sexual trafficking, investigation and prosecution of sexual trafficking, and facilities, programs, and activities for the protection of victims.

(b) DOMESTIC VICTIM PROGRAMS.—There is appropriated to the Secretary of Health and Human Services, $10,000,000 for fiscal year 2000 and $10,000,000 for fiscal year 2001, for programs and activities to assist victims of sexual trafficking in the United States.

(c) ASSISTANCE THROUGH NGOS.—In carrying out this section, assistance should be administered through nongovernmental organizations (NGOs) whenever possible.

(d) ASSET FORFEITURE FUNDS.—Funds from asset forfeiture under section 2241A of title 18, United States Code, are authorized to be available in equal amounts for the purposes of subsections (a) and (b) and shall remain available for obligation until expended.

SEC. 7. PROTECTION FROM REMOVAL FOR CERTAIN VICTIMS OF SEXUAL TRAFFICKING.

(a) NONIMMIGRANT CLASSIFICATION FOR CERTAIN VICTIMS OF SEXUAL TRAFFICKING.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(1) by striking "or" at the end of subparagraph (R);

(2) by striking the period at the end of subparagraph (S) and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(T) an alien who the Attorney General determines—

"(i) is physically present in the United States;

"(ii) is or has been a victim of sexual trafficking as defined in section 3 of the Freedom From Sexual Trafficking Act of 1999;

"(iii)(I) has not unreasonably refused to assist in the investigation or prosecution of acts of sexual trafficking; or

"(II) has not attained the age of 14 years; and

"(iv) would face a significant possibility of retribution or other hardship if removed from the United States,

and, if the Attorney General considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in this subparagraph if accompanying, or following to join, the alien, except that no person shall be eligible for admission to the United States under this subparagraph if there is substantial reason to believe that the person has committed an act of sexual trafficking as defined in section 3 of the Freedom From Sexual Trafficking Act of 1999.".

(b) WAIVER OF GROUNDS FOR INELIGIBILITY FOR ADMISSION.—Section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) is amended by adding at the end the following new paragraph:

"(13) The Attorney General shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(T). The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section

101(a)(15)(T), if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration and Naturalization Service from instituting removal proceedings against an alien admitted as a nonimmigrant under section 101(a)(15)(T) for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under section 101(a)(15)(T).".

(c) ADJUSTMENT TO PERMANENT RESIDENT STATUS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following new subsection:

"(l)(1) If, in the opinion of the Attorney General, a nonimmigrant admitted into the United States under section 101(a)(15)(T)—

"(A) has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under section 101(a)(15)(T);

"(B) has, throughout such period, been a person of good moral character;

"(C) has not, during such period, unreasonably refused to provide assistance in the investigation or prosecution of acts of sexual trafficking; and

"(D) would face a significant possibility of retribution or other hardship if removed from the United States,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under that section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E)

"(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.".

SEC. 8. ACTIONS AGAINST GOVERNMENTS FAILING TO MEET MINIMUM STANDARDS.

(a) STATEMENT OF POLICY.—It is the policy of the United States not to provide nonhumanitarian foreign assistance to countries which do not meet minimum standards for the elimination of sexual trafficking.

(b) NOTIFICATION.—For each fiscal year, for each foreign country which does not meet minimum standards

for the elimination of sexual trafficking, as described in an annual report with respect to the status of international sexual trafficking under section 5(b)(1) or an interim report under section 5(b)(3), not less than 45 days and not more than 90 days after the submission of such a report, the President shall submit a notification to the Congress of one of the determinations described in subsection (c).

(c) DETERMINATIONS.—The determinations referred to in subsection (b) are as follows:

(1) WITHHOLDING OF NONHUMANITARIAN ASSISTANCE.—The President has determined that—

(A)(i) the United States will not provide nonhumanitarian foreign assistance to the government of the country for the subsequent fiscal year until such government complies with the minimum standards; or

(ii) in the case of a country whose government received no nonhumanitarian foreign assistance from the United States during the previous fiscal year, the United States will not provide funding for participation by officials or employees of such governments in educational and cultural exchange programs for the subsequent

fiscal year until such government complies with the minimum standards; and

(B) the President will instruct the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and to use his or her best efforts to deny, any loan or other utilization of the funds of his or her institution to that country (other than for humanitarian assistance, or for development assistance which directly addresses basic human needs, is not administered by the government of the sanctioned country, and confers no benefit to that country) for the subsequent fiscal year until such government complies with the minimum standards.

(2) SUBSEQUENT COMPLIANCE.—The Secretary of State, with the assistance of the director, has determined that the country has come into compliance with the minimum standards.

(3) CONTINUATION OF ASSISTANCE IN THE NATIONAL INTEREST.—Notwithstanding the failure of the country to comply with minimum standards for the elimination of sexual trafficking, the President has determined that the provision of nonhumani-

tarian foreign assistance to the country is in the national interest of the United States.

(d) CERTIFICATION.—Together with any notification under subsection (b)(1)(i), the President shall provide a certification by the Secretary of State that with respect to assistance described in clause (i), (ii), or (iv) of section 3(6)(A) or in section 3(6)(B), no assistance is intended to be received or used by any agency or official who has participated in, facilitated, or condoned sexual trafficking.

SEC. 9. TRAFFICKING OF PERSONS FOR COMMERCIAL SEXUAL PURPOSES.

(a) IN GENERAL.—Chapter 109A of title 18, United States Code, is amended by inserting after section 2241 the following:

"§ 2241A. Trafficking of persons for commercial sexual purposes

"(a) IN GENERAL.—Whoever, whether inside or outside the United States, knowingly does or attempts or conspires to—

"(1) transport a person across an international border;

"(2) recruit, entice, harbor, or engage in the purchase or sale of a person when the person will be or has been transported across an international border; or

"(3) own, manage, operate, or share in the proceeds of an enterprise in which a person has been transported across an international border,

for the purpose of causing a person who has not attained the age of 18 years to engage in a commercial sexual act or for the purpose of causing a person to engage in a commercial sexual act by fraud, force, or coercion, shall be punished as provided in subsection (b).

"(b) PUNISHMENT.—The punishment for an offense under subsection (a) is—

"(1) if the offense was effected by fraud, force, or coercion, or if the person transported had not attained the age of 14 years at the time of such offense, by a fine under this title or imprisonment for any term of years or for life, or both; or

"(2) if the offense was not effected by fraud, force, or coercion, and the person transported had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title or imprisonment for not more than 15 years, or both.

"(c) DEFINITION OF COMMERCIAL SEXUAL ACT.—In this section, the term 'commercial sexual act' means any sexual act, on account of which anything of value is given to or received by any person, and—

"(1) which takes place in the United States;

"(2) which affects United States foreign commerce; or

"(3) in which either the person transported or the person committing the violation is a United States citizen or an alien admitted for permanent residence in the United States.

"(d) FORFEITURE.—

"(1) IN GENERAL.—Upon conviction for a violation of this section, the convicted person shall forfeit to the United States such person's interest in any property, real or personal—

"(A) constituting or traceable to gross profits or other proceeds obtained from such offense; or

"(B) used or intended to be used to commit or to promote the commission of such offense.

"(2) PROCEDURE.—The procedures in section 1963 relating to forfeiture shall apply to forfeiture of property under this section in the same manner as those procedures apply with respect to property forfeited under that section.

"(e) WITNESS PROTECTION.—Any violation of this section shall be considered an organized criminal activity

or other serious offense for the purposes of application of chapter 224 (relating to witness protection).".

(b) RACKETEERING.—Section 1961(1) of title 18, United States Code, is amended by inserting "section 2241A (relating to trafficking of persons for commercial sexual purposes)," after "murder-for-hire),".

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 109A of title 18, United States Code, is amended by inserting after the item relating to section 2241 the following new item:

"2241A. Trafficking of persons for commercial sexual purposes.".

○

Amendment to H.R. 1356
Offered by Mr. Smith of New Jersey

Page 11, line 18, strike "Office of the Secretary of State" and insert "Bureau of Democracy, Human Rights, and Labor in the Department of State".

Statement of Representative Chris Smith
Chairman, Subcommittee on International
Operations and Human Rights
August 3, 1999

Markup of H.R. 1356, the Freedom from Sexual Trafficking Act of 1999

Each year up to a million innocent victims -- of whom the overwhelming majority are women and children -- are brought by force and/or fraud into the international commercial sex industry. Efforts by the United States government, international organizations, and others to stop this brutal practice have thus far proved unsuccessful. Indeed, all the evidence suggests that instances of forcible and/or fraudulent sexual trafficking are far more numerous than just a few years ago. Only yesterday, the front page the Wall Street Journal told the story of thousands of women who have been abducted in Vietnam and sold in China.

The problem is not abstract; it shatters the lives of real women and children. In Russia, for example, traffickers prey on orphanages. In a typical scenario, a trafficker will pay an orphanage director approximately $12,000 to take a group of children on a "field trip" to the local McDonalds, for example. Groups of children will then leave the orphanage with the trafficker and never be seen or heard from again.

The problem is not just overseas. Last week, my staff spoke to Walter Zalisko, the First Assistant to the Jersey City Police Director and an expert on Russian organized crime and sex trafficking. Based on numerous undercover investigations he has participated in, Mr. Zalisko reports that currently there are three to five thousand Slavic women working in go-go bars in the tri-state area, including my home state of New Jersey. Of that number, 80% are working in those establishments involuntarily. These are women who came to the United States in response to advertisements for reputable jobs as waitresses, housekeepers, nannies, and the like. They were provided passports and visas and transported to the United States. When they arrived in the U.S., they were told the jobs had already been filled but that they were still indebted for the cost of the trip -- anywhere from $15,000 to $40,000. Many of these helpless women have been forced to work as prostitutes until they pay off their debts.

Part of the problem is that current laws and law enforcement strategies -- in the United States as in other nations -- often punish the victims more severely than they punish the perpetrators. When a sex-for-hire establishment is raided, the women (and sometimes children) in the brothel are typically deported if they are not citizens of the country in which the establishment is located -- without reference to whether their participation was voluntary or involuntary, and without reference to whether they will face retribution or other serious harm upon return. This not only inflicts further cruelty on the victims, it also leaves nobody to testify against the real criminals, and frightens other victims from coming forward.

H.R. 1356, the Freedom from Sexual Trafficking Act, would reverse this cruel and ineffective approach. It is designed to protect and assist the victims of sexual trafficking while inflicting severe and certain punishment on the perpetrators.

The central principle behind this legislation is that a person who knowingly operates an enterprise that profits from sex acts involving persons who have been brought across international boundaries for such purposes by force or fraud should receive punishment commensurate with that given to one who commits forcible rape. This would be not only a just punishment, but also a powerful deterrent.

H.R. 1356 would implement this principle across the board:

- First, it would modify U.S. criminal law to provide severe punishment, up to and including life imprisonment, for persons convicted of operating such enterprises wholly or partly within the United States;

- It would also establish an Office for the Protection of Victims of Trafficking within the State Department, which would report annually on foreign countries that fail to criminalize and appropriately punish international sexual trafficking involving the use of force and/or fraud and to make other serious and sustained efforts to prevent it from operating within and across their borders;

- It would then prohibit non-humanitarian U.S. assistance to such foreign countries, unless this prohibition is waived by the President;

- The bill also provides victim assistance and protection. This includes grants to shelters and rehabilitation programs for victims of forcible and/or fraudulent sexual trafficking. It also includes a relief from deportation for victims who would face retribution or other hardship if removed from the United States. It makes clear that trafficking victims are eligible for the federal Witness Protection Plan, and provides them with a private right of action against those who have profited by the harm that was done to them.

- Finally, the bill authorizes grants for training for law enforcement agencies in foreign countries in the investigation and prosecution of international sexual trafficking, as well as for assistance in drafting and implementation of anti-trafficking legislation.

I am aware that the bill has its critics. For example, the Administration objects to the establishment of a new Office within the State Department. But the Department already contains numerous Offices devoted to a myriad of other concerns, such as the Office of Multimedia Publishing Services, the Office of Small and Disadvantaged Business Utilization, the Office of Marine Conservation, and the Office of Press Relations. The millions of women and children victimized worldwide by sexual trafficking deserve no less attention than protocol and plankton.

I stand ready to work with the Administration toward a mutually agreeable solution so long as the Administration is committed to genuine negotiation and compromise. Perhaps we can resolve the "new Office" issue if the State Department will reexamine its reflexive opposition to the use of sanctions to effect humanitarian goals. To take one example: Members of the Russian Duma have shown no willingness to focus on the trafficking issue, which plagues their country. A U.S. Consular Officer in St. Petersburg told me that when she approaches Russian authorities about trafficking, her concerns are routinely dismissed. During my travels in Russia, anti-trafficking NGOs repeatedly told me that this intransigence will change only if pressure is brought to bear on the Russian Government by other governments.

Finally, even critics must admit that the bill grants extremely broad waiver authority to the Administration. The President may waive the sanctions whenever

he deems it to be "in the national interest of the United States." It is alarmist to pretend that this bill ties the hands of the President in any meaningful way.

I sincerely hope that my Subcommittee colleagues will work with me in good faith to iron out these problems in the coming days, rather than voting to gut the bill at this preliminary stage.

I recognize that H.R. 1356 is not the only possible approach to the problem, but I believe it is the best approach. Our bill explicitly recognizes that international sexual trafficking is not the only form of traffic in persons. Innocent people are lured, pressured, and lied to every day all over the world in all kinds of situations. I take second place to no one in my commitment to ending all labor practices that are coercive, deceptive, or otherwise improper, even when they involve labor that is not itself inherently degrading. The problem with addressing all these evils in one bill is that they involve a wide range of different situations which may call for an equally broad range of solutions. So we decided to start by attacking the most brutal form of trafficking -- the use of force and deception in the systematic degradation of millions of women and children -- and to single it out for swift and certain punishment. I will also continue to support legislation designed to end sweatshops, bonded labor, and other unfair labor practices around the world. I believe, however, that the evil we address in the Freedom from Sexual Trafficking Act is uniquely vile, uniquely brutal, and cries out for its own comprehensive solution.

Last month, at the annual meeting of the Parliamentary Assembly of the Organization for Security and Cooperation in Europe, I introduced a resolution condemning the trafficking of women and children and calling on participating States to adopt the legislation and enforcement mechanisms needed to punish traffickers. Two hundred and seventy-five legislators from 52 countries in Europe and North America attended this meeting. Not a single one disputed the gravity of the trafficking problem or the need to take concerted action to fight the traffickers and protect the victims. The resolution was unanimously adopted. It is now time to put actions to our words, and work to end this horrible exploitation.