

## LABOR RIGHTS IN THE GENERALIZED SYSTEM OF PREFERENCES: A 20-YEAR REVIEW

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### I. INTRODUCTION

In the fall of 1982, a small group of labor, religious, and human rights activists began charting a new course for human rights and workers' rights in American trade policy. The principles of these labor rights advocates were straightforward:

1. No country should attract investment or gain an edge in international trade by violating workers' rights;
2. No company operating in global trade should gain a competitive edge by violating workers' rights; and,
3. Workers have a right to demand protection for labor rights in the international trade system, and to have laws to accomplish it.<sup>1</sup>

The coalition that took shape 20 years ago made a labor rights amendment to the Generalized System of Preferences (GSP), the chief policy vehicle in U.S. law to promote these principles. This article reviews 20 years' experience with the GSP labor rights clause. Following this introduction, Part II recounts the legislative process

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1. The labor rights planning meetings were hosted by Pharis Harvey, a Methodist missionary recently returned from years of work with grass roots social service groups in Asia, and by Bill Goold, then legislative assistant to Ohio congressman Don Pease. They were joined by trade unionists, including Lee Price (United Auto Workers), Barbara Shailor (International Association of Machinists), Stan Gacek (United Food and Commercial Workers), Ben Davis (American Federation of Government Employees), Jack Sheehan (United Steel Workers), and Steve Beckman (AFL-CIO's Industrial Union Department); human rights activists like Holly Burkhalter of Americas Watch and John Cavanagh of the Institute for Policy Studies; academics like Terry Collingsworth of Loyola University Law School; and, retired Labor Department officials like David Williams and Jack Buchanek, whose labor rights interests went back to the 1950s. They later produced a book containing detailed arguments for their position. *See CAVANAGH ET AL., TRADE'S HIDDEN COSTS: WORKER RIGHTS IN A CHANGING WORLD ECONOMY* (1988). Williams and Buchanek are now deceased; Sheehan is retired. The rest are involved in new levels of responsibility and leadership in international labor rights advocacy.

that resulted in passage of the GSP labor rights amendment. Part III examines briefly other labor rights clauses in U.S. trade laws inspired by the GSP clause, as well as workers' rights dimensions in bilateral, regional, and multilateral trade arrangements, and in corporate codes of conduct.

Part IV is the heart of the article. After presenting summary information about GSP labor cases since the passage of the workers' rights clause, Part IV focuses on detailed case studies of 6 countries: Chile, Guatemala, Malaysia, Indonesia, Pakistan, and Belarus. These cases demonstrate the cross-cutting human rights, diplomatic, and economic policy complexities in applying the GSP labor rights clause.

To conclude, Part V acknowledges salient criticisms of the GSP labor rights regime and agrees that the law and its application have been flawed. But the willingness of the United States to act unilaterally, most pointedly in the GSP context, has driven a process of bilateral, regional, and multilateral action to promote workers' rights in trade that goes far beyond the GSP program. We conclude that, on balance, the GSP workers' rights clause has been an important instrument in international labor affairs that has yielded concrete positive results for workers in many instances. Flaws in the law and its application should inspire further efforts to improve it, not to abandon it.

The labor rights advocacy coalition that began meeting in the early 1980s was inspired by economic and political developments of the time. Multinational corporations were shutting down workplaces throughout the United States and transferring jobs to overseas facilities where workers' rights were brutally suppressed by authoritarian governments.<sup>2</sup> Then-President Ronald Reagan's administration selectively favored independent unions in communist countries like Solidarity in Poland, but undermined independent unions that challenged employers and governments in right-wing military-dominated countries like Korea, South Africa, Indonesia, Malaysia, Chile, El Salvador, Guatemala, and other countries that were centers of U.S. investment, joint ventures, and subcontractor suppliers to U.S. firms.<sup>3</sup>

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2. See, e.g., RICHARD J. BARNET & RONALD E. MUELLER, *GLOBAL REACH: THE POWER OF THE MULTINATIONAL CORPORATIONS* (1974); CHARLES LEVINSON, *INTERNATIONAL TRADE UNIONISM* (1972); FOR A NEW LABOUR INTERNATIONALISM (Peter Waterman ed., 1984).

3. See, e.g., Simon Rodberg, *The CIO without the CIA*, *THE AMERICAN PROSPECT*, Vol. 12, No. 12, July 2, 2001, supp., *Globalism and its Critics*, at 27; HOBART A. SPALDING, *ORGANIZED LABOR IN LATIN AMERICA* (1977); WILLIAM M. LEOGRANDE, *OUR OWN BACK YARD: THE UNITED STATES IN CENTRAL AMERICA, 1977-1992* (2000).

The advocates' group was also concerned by the narrow trade policy position of many unions. "Stop Imports" and "Buy American" were the most prominent trade calls from the labor movement. Union members' political energies went into various protectionist bills that had little chance of passage by Congress.<sup>4</sup> Rather than advocating human rights and labor rights, Labor Day celebrations in the 70s and 80s sometimes featured the communal smashing of foreign-made products—an entire Japanese car, in some cases.<sup>5</sup> To address these problems, advocates proposed an amendment to the Generalized System of Preferences (GSP) that would make benefits under the GSP program conditioned on respect for workers' rights.

The GSP is a centerpiece of U.S. trade policy, providing preferential duty-free entry for more than 4,650 products from approximately 140 designated beneficiary countries and territories.<sup>6</sup> The purpose of the tariff preference is to give developing countries greater access to U.S. markets, aiding the economic development of those poorer countries.<sup>7</sup> Advocates argued that a labor rights clause in the GSP would ensure minimum fair labor standards for workers as a condition of preferential access.

Advocates acknowledged that a natural comparative advantage in lower labor costs due to a country's level of development is acceptable in global trade. Such advantage is not acceptable, however, if obtained by jailing or murdering workers who try to organize unions, denying workers political rights, using the work of young children, discriminating against women and ethnic minorities, or ignoring life-threatening health and safety hazards in the workplace. Further, lower labor costs should not result from the deliberate suppression of wages and working conditions below levels that workers' productivity should yield to them, while small economic and political elite reaps the benefits of their labor. Workers in developing countries should share the gains from enhanced access to the U.S. consumer market. Moreover, they must have a voice in

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4. See I.M. DESTLER, *AMERICAN TRADE POLITICS* 175-76 (3d ed. 1995).

5. Alan Goldstein, *Japan: Digging In*, ST. PETERSBURG TIMES, Dec. 22, 1991, at Bus. 11. Unions, however, were not alone. Members of Congress deeply offended Japan by publicly smashing Toshiba radios with sledgehammers. *Id.*

6. UNITED STATES TRADE REPRESENTATIVE, U.S. GENERALIZED SYSTEM OF PREFERENCES GUIDEBOOK iii (1999), available at <http://www.ustr.gov/pdf/gspintro.pdf>.

7. GSP Renewal Act of 1984, H.R. Rep. No. 1090, 98th Cong., 2d Sess., at 11 (1984) (explaining that the GSP was designed to provide temporary, unilateral grants of preferences by developed countries to developing countries; to extend benefits to sectors of developing countries that were not competitive internationally; and, to include safeguard mechanisms to protect domestic industries sensitive to import competition from articles receiving preferential tariff treatment).

shaping economic development policies and social protection through trade unions and political participation.

A labor rights clause in the GSP was adopted by Congress and signed by President Ronald Reagan on October 30, 1984, taking effect in the GSP Renewal Act of 1984.<sup>8</sup> From then on, a country's beneficial status under the GSP was linked to whether it was "taking steps to afford internationally recognized worker rights."<sup>9</sup> The bill set forth the following 5-part definition of such rights, which has been repeated many times in other U.S. trade laws:

1. the right of association;
2. the right to organize and bargain collectively;
3. a prohibition on the use of any form of forced or compulsory labor;
4. a minimum age for the employment of children; and,
5. acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.<sup>10</sup>

Just as important as the labor rights provision in the law was the adoption by the USTR of regulations and procedural guidelines for filing petitions to challenge a country's GSP status due to labor rights violations.<sup>11</sup> The regulations first established a threshold to determine whether to accept or reject a petition for review.<sup>12</sup> If accepted, the USTR would proceed to an investigation. This mechanism made it possible for workers, trade unions, and religious and human rights allies in the United States to collaborate with their foreign counterparts to investigate working conditions and to file complaints. Procedures included public hearings and other forums to present evidence and argue for the removal or suspension of trade benefits because of abuses against workers.<sup>13</sup>

## II. LEGISLATIVE LESSONS

Passage of the 1984 GSP labor rights amendment carried important lessons about the legislative process.<sup>14</sup> First, it required a

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8. GSP Renewal Act of 1984, Pub. L. No. 98-573, 98 Stat. 3019 (1984).

9. 19 U.S.C.A. § 2462(b)(2)(G) (West 1999).

10. *Id.* § 2467(4)(A-E).

11. Regulations of the U.S. Trade Representative Pertaining to Eligibility of Articles and Countries for the Generalized System of Preference Program, 15 C.F.R. § 2007 et seq. (2002).

12. 15 C.F.R. § 2007.2(a)-(b).

13. *Id.* § 2007.2(d).

14. This account of the lobbying and legislative process is based on author Compa's participation in the labor-religious-NGO coalition pursuing passage of the GSP labor rights clause.

legislative champion. Congressman Don Pease was a high-ranking member of the Trade Subcommittee of the House Ways and Means Committee, often described as the most powerful committee in Congress. He made international labor rights a personal cause and gave his staff a mandate to develop a GSP workers' rights provision.

Democrats controlled the House of Representatives in the 1980's, permitting pro-labor initiatives to get off the ground. Rep. Pease also had friendly relations with influential committee Republicans. He was perfectly positioned to push labor rights legislation through the committee system to the floor of Congress. Moreover, he was able to convince the Republicans that supporting a labor rights clause in the GSP gave them a chance to cast a pro-labor vote and to tell their constituents that they were doing something on trade for workers.

The GSP labor rights provision that ultimately emerged, however, reflected negotiation and compromise. Congressional Democrats could have passed any version of a labor rights amendment over Republican opposition. However, the Republican administration could veto it. A painful compromise took shape in negotiations with Reagan administration officials. The administration wanted to cut from the original draft a clause prohibiting discrimination on the basis of race, sex, religion, or national origin. It also sought to change the mandatory sanctions clause in the draft bill, which would require the immediate suspension of GSP benefits for a country found to be systematically violating workers' rights. Instead, the administration wanted flexibility in deciding whether to apply suspension of benefits, depending on larger geopolitical and foreign policy considerations.

The administration's demands had their basis in domestic and international politics. Some officials in the administration feared souring relations with allied oil-producing states where discrimination against women and non-Muslims is prevalent. Others did not want to subject Israel to criticism over the treatment of Palestinian workers. Still others had vague unfounded concerns that non-discrimination provisions in U.S. trade laws might revive the recently defeated Equal Rights Amendment to the U.S. Constitution.<sup>15</sup>

Administration officials also insisted on language to soften the mandatory suspension of rights violators. Instead of requiring full compliance or an immediate cutoff of benefits, their proposal would require countries to be "taking steps" to afford workers' rights,

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15. For a discussion on some of these points, see Karen Travis, *Women in Global Production and Worker Rights Provisions in U.S. Trade Laws*, 17 YALE J. INT'L L. 173 (1992).

without defining how many steps, whether steps had to be taken in any or all of the 5-part definition of such rights, or how far the steps had to go to meet requirements of the law. The administration wanted maximum discretion in applying the law to serve geopolitical and foreign policy interests.

The labor rights coalition and the sponsors of the GSP workers' rights amendment faced a difficult decision. Should they reject administration demands and press for a strong undiluted bill that would likely face a veto by the President? With new elections set for November 1984, perhaps a Democratic victory in the race for the White House would see their original draft become law under a new President. Or should they compromise, accepting a version without the non-discrimination and immediate compliance provisions—the proverbial half a loaf?

After passionate debate inside their coalition, the labor rights advocates chose the compromise. In view of the 1984 Reagan electoral landslide that followed, their half-a-loaf strategy was correct. Congress dropped the non-discrimination clause from the definition of internationally recognized workers' rights and inserted the “taking steps” language into the amendment, giving the administration wide latitude for applying economic sanctions against workers' rights violators. However, advocates gained a new forum for filing complaints, presenting evidence, and getting decisions for workers victimized by labor rights violations.

### III. RIPPLE EFFECTS

The GSP is a limited program affecting a small portion of total U.S. trade. As GATT negotiations in the “Tokyo Round” and the “Uruguay Round” gradually cut tariff levels generally, the economic benefit to developing countries of the GSP's lower tariffs was reduced. But the impact of the GSP labor rights clause reaches far beyond immediate economic effects. A country's eligibility for GSP is an important marker for U.S. trade negotiators, trade policy makers, and multinational executives and investors. Loss of GSP beneficiary status sends them a strong signal that a country is potentially bad business. Developing countries that desire unfettered access to the U.S. market do not want to end up on a U.S. list of labor rights violators. Besides losing GSP benefits, they would face sanctions under other trade programs with labor rights amendments.

The labor rights amendment in the GSP fixed into U.S. law and policy both the principle of a labor rights-trade linkage and the

practice of applying it. Passage of the GSP labor rights amendment in 1984 was followed by over a half-dozen other amendments where the United States injected labor rights conditionality into trade relationships with other countries.

- In 1985, Congress added a labor rights provision to legislation governing the Overseas Private Investment Corporation (OPIC), which provides political risk insurance for U.S. companies investing overseas.<sup>16</sup> Under the new labor rights clause, such insurance can only be provided in countries “taking steps to adopt and implement laws that extend” internationally recognized workers’ rights, using the 5-part definition from the GSP law. Determinations made in the GSP petition and review process are also applied to OPIC beneficiaries.<sup>17</sup>
- In 1988, Congress made the labor rights trade linkage a principal U.S. negotiating objective in “fast track” legislation, authorizing the President to undertake multilateral trade negotiations. The Republican Congress deleted the labor rights clause from “fast track” legislation in 1997, leading to the historic first time defeat of a fast track trade bill.<sup>18</sup>
- In the same Omnibus Trade Act of 1988, a labor rights amendment to Section 301 used the 5-part GSP definition to make systematic workers’ rights violations by any trading partner an unfair trade practice against which the United States could retaliate with economic sanctions.<sup>19</sup>
- In 1990, a Caribbean Basin Initiative renewal bill adopted the GSP labor rights formulation.<sup>20</sup> The same clause was applied to the Andean Trade Preference Act of 1991.<sup>21</sup>
- In 1992, Congress swiftly enacted a bill barring the Agency for International Development (AID) from expending funds to help developing countries lure U.S. businesses to countries where workers’ right are violated.<sup>22</sup> Passage of the AID labor rights bill followed hard-hitting exposés on TV newsmagazines shortly before the 1992 elections, in which producers posing as businessmen recorded U.S. AID officials touting anti-union blacklists and anti-labor repression as attractive features of the Central American *maquila* zones.<sup>23</sup>

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16. 22 U.S.C.A. § 2191a(a)(1) (West 1990).

17. *Id.* § 2191a(a)(2).

18. *See, e.g.*, Steve Charnovitz, *Causes and Consequences of Fast-Track Defeat*, J. OF COM., Nov. 14, 1997, at 7A.

19. 19 U.S.C.A. § 2411(d)(3)(B)(iii)(I-V) (West 1999).

20. *Id.* § 2702(b)(7).

21. *Id.* § 3202(c)(7).

22. 22 U.S.C.A. § 2151 (West Supp. 2002).

23. *60 Minutes: Hiring Rosa Martinez* (CBS television broadcast, Sept. 27, 1992); *Nightline: Paying to Lose Our Jobs* (ABC television broadcast, Sept. 29-30, 1992).

- In 1994, Congress turned labor rights attention to the World Bank, the International Monetary Fund (IMF), and other international financial institutions. Congressmen Bernard Sanders of Vermont and Barney Frank of Massachusetts secured an amendment to the law governing U.S. participation in those bodies that requires American directors to use their “voice and vote” to screen loan proposals for their effects on workers’ rights.<sup>24</sup>
- In 1997, Congress amended the Tariff Act of 1930, which already prohibited imports produced by prison labor by adding a child labor provision.<sup>25</sup> The new law declared that the same ban applies to products made by forced or indentured child labor.
- In 2000, Congress passed the African Growth and Opportunity Act, which authorized the President to designate a sub-Saharan African country as eligible for trade preferences if he determines that the country has established or is making continual progress toward the protection of internationally recognized worker rights using the GSP’s 5-part definition.<sup>26</sup>

Besides setting the precedent for labor rights clauses in unilaterally applied U.S. trade statutes and related programs, the GSP law promoted broader approaches to labor rights in trade agreements. U.S. willingness to act alone has driven a process of expanded bilateral, regional, and multilateral treatment of workers’ rights in trade and investment regimes. It also prompted the emergence of new corporate codes of conduct on workers’ rights and created an infrastructure of workers’ rights advocates in developing countries who could monitor such codes.

The supplemental labor agreement in the North American Free Trade Agreement (NAFTA) was one such outcome.<sup>27</sup> The opening of talks on a hemispheric trade pact, the Free Trade Agreement of the Americas (FTAA), also generated new advocacy for workers’ rights.<sup>28</sup> To avoid unilateral GSP scrutiny, Jordan and Cambodia negotiated bilateral workers’ rights clauses with the United States promising fair treatment of workers as part of an agreement granting them greater access to U.S. markets.<sup>29</sup>

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24. 22 U.S.C.A. §§ 262p-4p (West Supp. 2002).

25. 19 U.S.C.A. § 1307 (West Supp. 2002).

26. 19 U.S.C. § 3703(a)(1)(F) (West Supp. 2002).

27. Detailed information on the North American Agreement on Labor Cooperation (NAALC), including the full text, can be obtained from the North American Commission for Labor Cooperation, at <http://www.naalc.org>.

28. See, e.g., Alliance for Responsible Trade, located online, at <http://www.art-us.org>.

29. Gary Yerkey, *Senate Approves Free Trade Pact with Jordan, Clearing Way for Approval*, DAILY LAB. REP. (BNA), Sept. 25, 2001, at A-8; Chris Rugaber, *U.S.-Cambodia*



Labor rights have penetrated the governance of international financial institutions like the World Bank and the IMF.<sup>30</sup> The United States and other countries have pushed for labor rights on the agenda of the World Trade Organization.<sup>31</sup> The WTO has so far resisted this move, but WTO opposition propelled a new declaration on “core labor standards” by the ILO.<sup>32</sup> In a more defensive mode, labor rights advocates were part of an international coalition that halted approval of the Multilateral Agreement on Investment by the Organization for Economic Cooperation and Development (OECD), in part for its failure to sufficiently protect workers’ rights.<sup>33</sup>

The late 1990s saw a dramatic growth of corporate codes of conduct on protection for workers’ rights.<sup>34</sup> Both individual companies and “stakeholder” groups that include companies, trade unions, human rights groups, consumer organizations, and other NGOs have developed codes of conduct for subsidiaries and subcontractors in developing countries. They also set up monitoring systems to ensure that codes are respected.<sup>35</sup>

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*Textile Pact Extended, Despite Criticisms of Labor Provisions*, DAILY LAB. REP. (BNA), Jan. 8, 2002, at A-4 (criticisms were leveled by textile companies objecting to workers’ rights provisions in the accord).

30. WORLD BANK, CORE LABOR STANDARDS AND THE WORLD BANK (July 2000), available at <http://www.worldbank.org>; IMF, DEBT RELIEF, GLOBALIZATION AND IMF REFORM: SOME QUESTIONS AND ANSWERS (April 12, 2000), available at <http://www.imf.org>.

31. The trade labor linkage was pushed aggressively by the Clinton Administration in Seattle, generating much debate. See, e.g., Steven Greenhouse & Joseph Kahn, *Talks and Turmoil: Workers’ Rights; U.S. Effort to Add Labor Standards to Agenda Fails*, N.Y. TIMES, Dec. 3, 1999, at A1; John Burgess & Rene Sanchez, *Clinton’s Remarks on Sanctions Open Rift; Work Rules at Issue; Seattle Remains Tense*, WASH. POST, Dec. 3, 1999, at A30.

32. On June 18, 1998, the International Labor Organization adopted the ILO Declaration on Fundamental Principles and Rights at Work, which declared that all members have an obligation arising from the fact of membership in the Organization to respect, and to promote the fundamental rights, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) the effective abolition of child labor; and, (d) the elimination of discrimination in respect of employment and occupation. The text of the declaration is available at <http://www.ilo.org/public/english/standards/decl/declaration/text/index.htm>.

33. E.g., Stephan J. Kobrin, *The MAI and the Clash of Globalizations*, FOREIGN POL’Y, Fall 1998, at 97-109; Lance Compa, *The Multilateral Agreement on Investment and International Labor Rights: A Failed Connection*, 31 CORNELL INT’L L.J. 683 (1998).

34. E.g., Jorge F. Perez-Lopez, *Promoting International Respect for Workers Rights Through Business Codes of Conduct*, 17 FORDHAM INT’L L.J. 1 (1993); Lance Compa & Tashia Hinchliffe-Darricarrere, *Enforcing International Labor Rights Through Corporate Codes of Conduct*, 33 COLUM. J. TRANSNAT’L L. 663 (1995). Several corporations have also published their codes of conduct online. See, e.g., <http://www.codagroup.net/rhr/standards.html> (Reebok); <http://www.nikebiz.com/labor/code.shtml> (Nike); <http://www.levistrauss.com/responsibility/conduct> (Levi’s); [http://www.gapinc.com/social\\_resp/sourcing/vendorcode.htm](http://www.gapinc.com/social_resp/sourcing/vendorcode.htm) (The Gap).

35. Further information on these organizations is available at their respective web-sites. E.g., Fair Labor Association, at <http://www.fairlabor.org>; Worker Rights Consortium, at <http://www.workersrights.org>; Ethical Trade Initiative, at <http://www.ethicaltrade.org>; SA8000, at <http://www.cepaa.org>; and, the Maquila Solidarity Network, at <http://www.maquilasolidarity.org>.

In many developing countries, trade unions and NGOs shared years of experience investigating workers' rights violations and filing petitions under the GSP labor rights clause. As a result, a cross-border network of trade union and human rights activists was already in place to take advantage of new opportunities presented by corporate codes. For example, a new group arose out of the GSP network in Guatemala, the Commission for the Verification of Codes of Conduct or *Coverco*.<sup>36</sup> It quickly became known as the most reliable respected labor rights monitoring group in Central America, commissioned by companies like Liz Claiborne and stakeholder groups like the Fair Labor Association and the Workers Rights Consortium to conduct investigations under their codes. In sum, a modest amendment in a little-known U.S. trade program promoted by a small group of idealistic reformers helped build a broad movement for workers' rights in the global trading system.

Highlighting the GSP labor rights clause is not meant to ignore or underplay the importance of decades, even centuries, of efforts to link workers' rights and international trade. Robert Owen, Charles Fourier, and other social reformers took up the issue in the early 19th century. Later in the 19th century, Karl Marx and Friedrich Engels made it the centerpiece of the first International Workingmen's Association. Throughout the 20th century, the ILO, the League of Nations, the UN, the International Trade Organization (a forerunner to the WTO that was never convened), and various international commissions have pointed to the unfairness of trade advantage based on workers' rights violations. However, no institution ever backed up the labor rights principle with concrete action to punish a labor rights violator until Congress passed the U.S. GSP law.

#### IV. THE GSP LABOR RIGHTS EXPERIENCE

Despite the availability and importance of labor rights amendments in other U.S. trade laws modeled on the GSP provision, the original GSP formulation and petitioning process have had the greatest impact on workers' rights and trade policy. Since adoption of the GSP labor rights amendment in 1984, the United States has conducted approximately 100 reviews on whether countries were taking steps to afford workers' rights to workers in those countries.

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36. Further information about *Coverco*, as well as its most recent report, is available at <http://www.laborrights.org/projects/coverco/coverco2.htm>.

Allowing for repeated reviews of the same country, 42 different countries have come under labor rights scrutiny in the GSP process.

The first 15 reviews were part of a “general review” process mandated by the 1984 law.<sup>37</sup> Petitions filed by labor and human rights groups have prompted most of the subsequent country reviews. The most active petitioners have been the AFL-CIO, individual unions such as the United Electrical, Radio, and Machine Workers of America (UE), International Union of Electrical Workers (IUE), the United Food and Commercial Workers (UFCW), and several NGO’s, such as the International Labor Rights Fund (ILRF), the U.S. Labor Education in the Americas Project (U.S. LEAP), and various divisions of Human Rights Watch—Asia Watch, Africa Watch, and Americas Watch.

Because of labor rights violations, 13 countries have been suspended from GSP beneficiary status.<sup>38</sup> Additionally, 17 have been placed on a temporary extension with continuing review.<sup>39</sup> Several of the suspended countries undertook labor reform measures to meet GSP requirements and thus regained GSP benefits. The continuing review process persuaded others to make improvements too.

#### A. Case Studies

A complicated story could be told about every GSP petition and conditions in the country that prompted it. This article seeks to convey the complexity with a few key examples. The cases of Chile, Guatemala, Indonesia, Malaysia, Pakistan, and Belarus reflect strengths and weaknesses in the unilateral regime of labor rights trade linkage under U.S. law.

##### 1. Chile

The smashing of Chile’s democracy by the armed forces in 1973 carried with it—not as a byproduct, but as a strategic objective—the destruction of the organized labor movement and the imprisonment,

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37. Initiation of General Review Under the U.S. Generalized System of Preferences (GSP), 50 FED. REG. 6,294 (1985).

38. In order, they are: Romania (1987), Nicaragua (1987), Paraguay (1987), Chile (1987), Burma (1989), Central African Republic (1989), Liberia (1990), Sudan (1991), Syria (1992), Mauritania (1993), Maldives (1995), Pakistan (1996), and Belarus (2000).

39. Continuing review was applied to Benin (1990), the Dominican Republic (1990), Haiti (1990), Nepal (1990), Syria (1990), Bangladesh (1991), El Salvador (1992), Mauritania (1992), Panama (1992), Thailand (1992), Bahrain (1993), Fiji (1993), Guatemala (1993), Indonesia (1993), Malawi (1993), Oman (1993), Pakistan (1994), and Swaziland (1997).

torture, exile, and murder of thousands of union activists.<sup>40</sup> General Augusto Pinochet dissolved the United Workers' Central (CUT) and seized its assets on the grounds that it was a subversive political body, not a labor organization.<sup>41</sup> After the coup, the new military regime banned collective bargaining and abolished the right to strike.<sup>42</sup> Additionally, the right to freely associate was profoundly curtailed.<sup>43</sup> For example, if workers wanted to hold a meeting to discuss workplace issues, the date and time, place, and agenda had to be delivered in writing to the local police 2 days in advance. Military governors could remove union officials deemed "unsuitable."<sup>44</sup>

More than a decade later, abuses against Chilean workers and trade unionists were still rampant. Outspoken union leaders suffered internal banishment to remote areas of the country. In 1982, Tucapel Jimenez, a leading public employee union leader, was abducted by a military death squad, shot twice in the head, had his throat slit open, and his body thrown at the side of the road. In 1985, 3 teachers' union leaders suffered a similar fate.<sup>45</sup> Throughout the mid-1980s, human rights monitors reported hundreds of cases of abduction, torture, beatings, and threats against trade union activists. Moreover, under the 1979 Labor plan and, subsequently, the 1987 Labor Code, union leaders were banned from membership or activity in any political party.<sup>46</sup> The Code denied workers in "seasonal" industries like agriculture, construction, and many natural resources sectors the right to organize by requiring that workers be employed for at least 6 months.<sup>47</sup> Obliging union dues payments was prohibited and dues could no longer be automatically deducted from a member's paycheck.<sup>48</sup> If a union did exist, collective bargaining was limited to the single workplace and to a single issue—wages.<sup>49</sup> Employers, on the other hand, were free to lock out employees, hire strike breakers, and negotiate directly with individual employees.<sup>50</sup>

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40. PAUL W. DRAKE, LABOR MOVEMENTS AND DICTATORSHIPS: THE SOUTHERN CONE IN COMPARATIVE PERSPECTIVE 124 (1996).

41. *Id.* at 129.

42. *Id.* at 131. See also Joseph Collins & John Lear, *Working in Chile's Free Market*, LATIN AM. PERSPS., Winter 1995, at 10, 13.

43. *Id.*

44. Military Government Decree No. 198, Dec. 10, 1973 (on file with author).

45. *Report on the Situation of Human Rights in Chile*, Inter-Am. C.H.R., OEA/ser.L/V/II.66, doc. 17 (1985).

46. Collins & Lear, *supra* note 42, at 17-18.

47. *Id.*

48. *Id.*

49. *Id.* at 18-19.

50. *Id.* at 19.

a. *The GSP Petition*

In 1986, the AFL-CIO and the independent United Electrical, Radio, and Machine Workers of America (UE), filed petitions under the GSP labor rights clause challenging Chile's beneficiary status because of the military government's abuses against workers.<sup>51</sup> The U.S. unions worked closely with Chilean unionists and human rights monitors to amass the information supporting the charges of systematic labor right violations. Independent unions in Chile approved of the move. Responding to the petition, the Chilean government claimed to undertake "positive steps" to improve workers' rights, including government assurances that killing, jailing, and harassment of union leaders would be halted. The USTR continued the GSP labor review for 1 year.<sup>52</sup>

The labor groups cited continuing outrages against workers and trade unionists in 1987 petitions. Military terror squads, known as the "armed men in civilian clothing," kidnapped, beat, and threatened several individual union leaders. Also, as previously mentioned, the supposed labor code reforms only tightened the government's grip on union activity and tilted bargaining power more toward employers. Based on the continuing violations cited in the workers' rights petitions, the United States suspended Chile from GSP beneficiary status in February 1988.<sup>53</sup>

The GSP cutoff jolted Chilean economic and political elites. Business interests formerly comfortable with military rule and suppressed labor movements now faced economic sanctions just when they hoped to expand their exports to the United States. Some joined calls by labor, human rights, and other democratic forces for an end to the dictatorship and a return to more democratic rule.<sup>54</sup> In a plebiscite in October 1988, the Chilean people voted to do just that, supporting a "No" vote when asked if they wanted General Pinochet to continue as the head of government.<sup>55</sup>

It would be overstating the case to say that the GSP decision was the decisive element in Chile's return to civilian government. Chile's

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51. See Petition to the United States Trade Representative, Labor Rights in Chile (1986); Petition to the United States Trade Representative, Labor Rights in Chile (1987) (filed by the UE and the AFL-CIO) (on file with USTR).

52. Actions Concerning the Generalized System of Preferences, 52 FED. REG. 389 (Jan. 6, 1987).

53. Amending the Generalized System of Preferences, 52 FED. REG. 49,129 (Dec. 30, 1987).

54. Paul Adams, *Suspension of Generalized System of Preferences from Chile—The Proper Use of a Trade Provision*, 23 GEO. WASH. J. INT'L. L. & ECON. 501-530 (Winter 1990).

55. Eugene Robinson, *Chile's Pinochet Beaten In Plebiscite on Rule; Voters Reject Bid for 8 More Years in Power*, WASH. POST, Oct. 6, 1988, at A1.

turn toward democracy was a complex process. Trade unionists and other democratic activists played a key part rallying a majority of their compatriots, through a political dynamic unique to Chile, to reject the dictatorship. But the U.S. GSP action should not be discounted either. Chile's economic elites could live with a government that was an international pariah politically, as long as its free-market, export-oriented policies stayed intact and their profits kept rolling in. But when exports to the United States became threatened by General Pinochet's labor policies, business interests began softening their support for the dictatorship. In 1991, with a new democratically elected government in place, the most abusive features of the labor code removed, and an end to physical violence against trade union activists, Chile's GSP benefits were restored.<sup>56</sup>

## 2. Guatemala

The GSP labor rights experience with Guatemala was longer and more circuitous than Chile's story of dictatorship and suspension of GSP benefits followed by democracy and renewal of GSP benefits. The Guatemala case reflects more fully how GSP's labor rights amendment is viewed by successive administrations as a trade and foreign policy tool to this day. The United States never cut off GSP benefits for Guatemala, despite compelling evidence of workers' rights violations, perhaps even worse than those in Chile. At the same time, however, labor rights advocates found ways to maneuver within the confines of many years' "continuing review" of Guatemala's GSP status.

After World War II, Guatemalan workers and trade union organizations enjoyed several years of advances in labor rights and labor conditions, alongside a reforming democratic government. An estimated one-fourth of the Guatemalan work force, and perhaps a majority of workers in regular full-time employment settings, were union represented. Minimum wage, health coverage and other, and social insurance legislation protected employees.

Those developments ended in 1954 with a CIA-sponsored military takeover that eliminated Guatemala's democratically elected

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56. This does not mean there are not still severe problems with Chilean labor law and practice. U.S. and Chilean unionists combined to oppose Chile's accession to the North American Free Trade Agreement based on continued restrictions on organizing, bargaining, the right to strike, and other labor norms. For a thorough analysis, see Carol Pier, *Labor Rights in Chile and NAFTA Labor Standards: Questions of Compatibility on the Eve of Free Trade*, 19 COMP. LAB. L. & POL'Y J. 185 (1998).

government.<sup>57</sup> After the turn to military rule, suppression of organized labor became a consistent feature of Guatemalan life.<sup>58</sup> It attracted less attention from the media and from the human rights community than the military's campaign to wipe out indigenous peoples and communities in the countryside, but the labor repression had equally profound effects on Guatemalan society. The social welfare net was shredded and trade unions were suppressed as wealthy land and business owners and their military allies tightened their grip on the country, its resources, and its workers.<sup>59</sup>

Throughout the 1970s and into the mid-1980s, a harsh military campaign against a small guerilla movement provoked human rights violations on a massive scale. The main victims were the indigenous peoples of the Guatemalan highlands.<sup>60</sup> More than 100,000 people were killed or "disappeared" by the Army during this period.<sup>61</sup> Highland peasants were not the only victims however. In 1980, 27 leaders of the national trade union federation, the CNT, were kidnapped and disappeared.<sup>62</sup> Two months later, the national police hauled away 17 other leaders from a meeting in Esquintla. Their bodies were never recovered.<sup>63</sup> At the regional and local levels, dozens of individual union leaders were assassinated. Many more went into exile under death threats.<sup>64</sup>

By the mid-1980s, international revulsion began to isolate Guatemala diplomatically. The military agreed to step aside, at least nominally, in 1986. Under the terms of a new constitution, a civilian government led by Christian Democrat Vinicio Cerezo declared guarantees of rights of organization and bargaining for workers.<sup>65</sup> Guatemalan labor activists responded with increased activity, forming new unions and seeking to bargain with employers.<sup>66</sup> They were often frustrated, though, by continued killings, assaults and threats, lax enforcement of labor law, a hostile judiciary, and continued employer

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57. STEPHEN SCHLESINGER & STEPHEN KINZER, BITTER FRUIT: THE UNTOLD STORY OF THE AMERICAN COUP IN GUATEMALA 28 (1982); JIM HANDY, GIFT OF THE DEVIL: HISTORY OF GUATEMALA (1984).

58. See JAMES GOLDSTON, SHATTERED HOPE: GUATEMALAN WORKERS AND THE PROMISE OF DEMOCRACY 5-9 (1989).

59. *Id.*

60. AMERICAS WATCH, GUATEMALA: A NATION OF PRISONERS 104 (1984).

61. *Id.* at 16 (1984); AMNESTY INTERNATIONAL, GUATEMALA: A HUMAN RIGHTS RECORD (1987).

62. GOLDSTON, *supra* note 58, at 8.

63. *Id.*

64. *Id.* at 7-9; Anna Eisner, *Guatemala Unions: Testing the Waters*, NACLA REPORT ON THE AMERICAS, July/August 1986, at 24.

65. GOLDSTON, *supra* note 58, at 11.

66. *Id.*

resistance to unions.<sup>67</sup> It was commonplace for trade union activists to be accused of links to the guerilla movement as a method of frightening them and their co-workers into abandoning union organizing.<sup>68</sup>

The Christian Democratic administration was replaced in 1990 elections that brought conservative businessman Jorge Serrano to the presidency in January 1991.<sup>69</sup> Serrano campaigned on promises of economic development, especially in the *maquila* sector of factories exporting apparel and electronics goods, mostly to the United States.<sup>70</sup> A program that began in the mid-1980's, with just 6 factories employing fewer than 2,000 workers, quickly grew to more than 275 factories and 50,000 employees by 1992.<sup>71</sup> Fierce employer opposition to union organizing, massive minimum wage and hour violations, hazardous working conditions, and widespread use of child labor marked industrial relations in this sector.<sup>72</sup> The decades-old Labor Code contained a series of procedural hurdles that obstructed new union organizing and made most strike activity illegal. Minimum wage and child labor laws were badly enforced.<sup>73</sup>

Violence against trade union activists persisted, with documented cases of assassinations, disappearances, kidnappings, assaults, and threats.<sup>74</sup> In the highlands, "Civilian Self-Defense Patrols," created by the military ostensibly to confront guerilla forays, instead became instruments of rule by intimidation. Peasants were pressed into service with the Patrols and subjected to forced labor building roads, barracks, and in some cases, vacation homes for military officers.<sup>75</sup> On sugar, coffee, and banana plantations—that still dominated the

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67. *Id.* at 11-13 (noting that unionists continued to be persecuted); LAWYERS COMMITTEE FOR HUMAN RIGHTS, ABANDONING THE VICTIMS: THE UN ADVISORY SERVICES PROGRAM IN GUATEMALA 48 (1990).

68. GOLDSTON, *supra* note 58, at 12; *see also*, Petition to the United States Trade Representative: Labor Rights in Guatemala (1988); Petition to the United States Trade Representative: Labor Rights in Guatemala (1989); Petition and Request for Review of the GSP Status of Guatemala (1990); Petition and Request for Review of the GSP Status of Guatemala (1991) (on file with USTR).

69. KURT PETERSEN, THE MAQUILADORA REVOLUTION IN GUATEMALA 3 (1992).

70. *Id.*

71. *Id.* at 32-33.

72. *Id.* at 3-4.

73. *Id.*

74. *See* AMNESTY INTERNATIONAL, GUATEMALA: TRADE UNIONISTS AND POLITICAL ACTIVISTS TARGETED UNDER THE NEW GOVERNMENT (1991); Petitions, *supra* note 68.

75. *See* AMERICAS WATCH, CLOSING THE SPACE: HUMAN RIGHTS IN GUATEMALA, May 1987-Oct. 1988, 75-81 (1988); AMERICAS WATCH, MESSENGERS OF DEATH: HUMAN RIGHTS IN GUATEMALA, Nov. 1988-Mar. 1990, 95-101 (1990); LAWYERS COMMITTEE FOR HUMAN RIGHTS, CRITIQUE: REVIEW OF THE DEPARTMENT OF STATE'S COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1989 80 (1990); AMNESTY INTERNATIONAL, GUATEMALA: IMPUNITY—A QUESTION OF POLITICAL WILL 9-13 (1993); Petitions, *supra* note 68.



Guatemalan economy and made up the bulk of the country's exports to the United States—union organizing was suppressed, child labor was rampant, minimum wage laws were ignored, and toxic chemicals were used abundantly by farm workers with no warning of their effects and no protective clothing or devices made available.<sup>76</sup>

*a. The GSP Petition*

Beginning in 1988, the ILRF, along with a new NGO called the Guatemala Labor Education Project (GLEP),<sup>77</sup> and allied U.S. union, church, and human rights groups filed petitions each year to the USTR calling for an end to GSP benefits for Guatemala unless the government halted labor rights violations. Separately, in its annual comprehensive filing covering many countries, the AFL-CIO also petitioned for Guatemala's GSP cutoff.

Before each petition was filed, the ILRF-GLEP coalition sent a delegation to Guatemala to meet with workers, union leaders, church activists, U.S. embassy staff, and Guatemalan government officials. The delegations also met each year with agricultural and *maquila* enterprise owners, and with officials of the Guatemalan counterpart to the U.S. Chamber of Commerce. In a parallel fashion, Guatemalan unionists sent delegations to the United States to tour the country meeting with labor, church, human rights, and community organizations, and in Washington with U.S. government officials to discuss labor rights and labor conditions in Guatemala.<sup>78</sup>

Petitioners detailed assassinations, arrests, and torture of trade union activists, repressive provisions of the Guatemalan Labor Code, and non-enforcement of worker protection laws in the first four GSP petitions filed by U.S. labor rights advocates from 1988 to 1991. However, during this initial period, the USTR denied review of every one.<sup>79</sup>

USTR made 2 main arguments in refusing to accept for review the 1988-1991 petitions. First, evidence of trade unionists victimized by threats, beatings, and assassinations made a possible case for human rights violations, but not for labor rights violations because it

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76. Petitions, *supra* note 68.

77. Later, GLEP expanded its work to include other countries and became the U.S. Labor Education in the Americas project (U.S. LEAP).

78. Author Compa participated in these delegations and wrote the GSP petitions that followed. This account is based on his participation in Guatemala GSP work.

79. See USTR, GSP Subcommittee of the Trade Policy Staff Committee, *Workers Rights Review Summary: Petitions Not Accepted For Review* (Guatemala 1988, 1989, 1990 and 1991) (on file with USTR, US/GLEP and ILRF).

was not clear that they suffered such reprisals because of their trade union work.<sup>80</sup> Second, the mere introduction of labor reform legislation, before any parliamentary approval of such reforms, indicated that the government was "taking steps" to afford worker rights.<sup>81</sup> A more specious line of reasoning is hard to imagine.

*b. Dynamic for Change*

Despite the initial failure to achieve acceptance for review, the filing of petitions and their possible acceptance created a dynamic that modestly changed labor conditions in Guatemala. Behind the official rejection of the petitions, U.S. officials pressed the government of Guatemala for movement on labor rights to justify their rejection.

The annual cycle of delegations and petitions put increasing pressure on Guatemalan government and employer interests to avoid scrutiny under the GSP labor rights clause and risk losing beneficiary status. Each year, one or more collective bargaining disputes or failures to grant legal status to a newly organized union, cited by petitioners as evidence of worker rights violations in Guatemala, were resolved in workers' favor just as consideration of the labor rights petition was getting underway. Although viewed by labor rights petitioners as evasive action that failed to address the overall pattern of worker rights violations, such moves allowed the government of Guatemala to claim it was "taking steps" to afford labor rights.<sup>82</sup>

The exchange of petitions and rejections in 1988-1991 also put pressure on the U.S. government. The TPSC found itself having to devise increasingly contorted arguments to justify a refusal to accept Guatemala GSP petitions for review. However, a breakthrough came in 1992. After a new labor rights petition was submitted in June 1992, the ILRF, GLEP, and allied union, church, and human rights groups organized letter-writing campaigns from their grass roots members to members of Congress and to the USTR urging acceptance of the Guatemala petition and calling for public hearings. More than 100 members of Congress wrote to the USTR demanding for acceptance and review.<sup>83</sup>

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80. *Id.*

81. *Id.*

82. The source for this is author Compa's interviews with officials from the USTR in Washington and with U.S. embassy staff in Guatemala, who said that they were pressuring the government of Guatemala for change. These statements were made in off-the-record meetings with petitioners protesting the failure to accept petitions for review. The fact that some disputes got settled for no other apparent reason bore out their argument.

83. Letters to members of Congress to Carla Hill (on file with USTR).

In August 1992, the U.S. Trade Policy Staff Committee (TPSC) finally accepted a Guatemala labor rights petition for review.<sup>84</sup> In October, the TPSC held a public hearing on conditions for workers and unions in Guatemala. If the TPSC found Guatemala in violation of the labor rights' conditionality clause in GSP, a decision to apply sanctions could be announced in April 1993, to take effect in July 1993. As it turned out, these dates were critical in subsequent events.

Like earlier petitions, the 1992 Guatemala complaint pointed to repeated attacks and threats against trade unionists, labor code provisions that violated ILO Conventions, illegal crushing of efforts by workers to form unions, failure to enforce minimum wage and hour laws, extensive child labor, and abusive health and safety hazards.<sup>85</sup> A focus of the petition was conditions in the rapidly growing *maquila* sector, especially in the large number of garment assembly plants owned by Korean investors.<sup>86</sup>

The U.S. government's acceptance of the 1992 petition caused consternation in Guatemala. Government, business, and the media joined ranks to denounce U.S. interference in the sovereign affairs of Guatemala.<sup>87</sup> More ominously, new death threats were made against Guatemalan union leaders who hosted U.S. labor rights delegations and who came to Washington to testify at the GSP hearing.<sup>88</sup> Still, Guatemala was anxious to avoid sanctions. The government and employers moved quickly to settle a number of long-standing labor disputes and to amend the Labor Code with provisions long sought by

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84. Review of Product and Country Practice Petitions, 57 FED. REG. 38,088 (Aug. 21, 1992).

85. The 1992 GSP *Labor Rights in Guatemala* petition was filed by the International Labor Rights Education and Research Fund (ILRERF, now ILRF), US/GLEP, the United Electrical, Radio and Machine Workers of America (UE), the Amalgamated Clothing and Textile Workers Union (ACTWU), the International Ladies Garment Workers Union (ILGWU), the United Food and Commercial Workers (UFCW), the International Union of Food and Allied Workers' Associations (IUF), the International Union of Electronics Workers (IUE), the Washington Office on Latin America (WOLA), and the National Council of the Churches of Christ in the U.S.A., Human Rights Office. Another GSP labor rights petition on Guatemala was filed separately by the AFL-CIO (both on file with USTR).

86. Fifty of the largest factories in the *maquila* sector are owned by Korean investors. Promoters of export-led development in Guatemala saw the Korean "economic miracle" of the 1960s and 70s as a model for Guatemala. PETERSEN, *supra* note 69, at 137.

87. ILRF and US/LEAP have extensive news clips on file. Typical is the following from an editorial in EL GRAFICO, June 16, 1992 (on file with author): "*Eso es lo absurdo de los norteamericanos cuando meten sus narices en los asuntos internos de otros pueblos . . . Si hay un pueblo que ha sido a lo largo de su historia violador de los derechos humanos, ha sido los Estados Unidos*" (This is the absurdity of the Americans when they stick their nose into the internal affairs of other peoples . . . If there is one people that has been throughout its history a violator of human rights, it has been the United States").

88. Interview with Rodolfo Robles, IUF Regional Secretary, Guatemala City (Nov. 1992).

trade unions. Union organizing was simplified under the reforms and enforcement measures were strengthened.<sup>89</sup>

After acceptance for review and the public hearings that followed, there were 3 possible outcomes to the administrative process under the GSP labor rights clause. Guatemala could be found to be “taking steps” to afford internationally recognized worker rights and thus remain eligible for GSP benefits. It could be found not to be taking steps and suffer the sanction of removal from GSP beneficiary status. Or Guatemala could be placed on what USTR calls “continuing review” status, where it would remain in the GSP program with careful monitoring of steps to improve labor rights and working conditions. Without such improvements, sanctions might swiftly be applied.<sup>90</sup>

Initially, petitioners objected to the “continuing review” option, arguing it was not contemplated or permitted under the statute. But practical considerations breached this principled position. For one thing, there was progress in several prominent labor disputes. Unions whose applications for “legal personality” (a status needed to buy property, employ staff, and make contracts) had been delayed for months, suddenly found themselves certified and able to function. Some stubborn collective bargaining conflicts were settled with gains for workers.

Just as important, death threats against Guatemalan union activists had to be taken seriously. Demanding immediate imposition of a cutoff of GSP benefits against Guatemala might endanger the lives of trade unionists who worked closely with U.S. petitioners. With these realities in mind, the petitioners and the Guatemalan unionists in March 1993, agreed to drop demands for sanctions and instead called for a “continuing review.”

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89. *E.g.*, U.S. State Department Cable, U.S. Embassy Guatemala, Labor Code Amendments: A Review and Analysis (Dec. 22, 1992) (on file with US/GLEP and ILRF); Bulletin, Department of International Affairs, AFL-CIO, Guatemala: Labor Code Meets First Test (Feb. 1993) (on file with author).

90. In another context, the ILRF objected to the “continuing review” option, arguing it was not contemplated or permitted under the statute. In fact, the ILRF and every other labor and human rights organization that had ever filed a GSP petition sued the Bush administration for failure to apply the labor rights amendment as intended by Congress. Plaintiffs in *International Labor Rights Ed. & Research Fund v. Bush*, 954 F.2d 745 (D.C. Cir. 1992) argued that the statute only allowed a finding of compliance, in which case beneficiary status is maintained, or violation, in which case the violator is removed from the program. A divided 3-judge appeals panel upheld a motion to dismiss, but on conflicting grounds.

c. *Constitutional Crisis*

A dramatic turn of events in Guatemala soon afterwards made the GSP labor rights petition a pivotal issue for the future of constitutional order in Guatemala. On May 25, 1993, President Jorge Serrano dissolved the Guatemalan parliament and Supreme Court, and suspended constitutional rights.<sup>91</sup> He warned against “destabilizing” protest activity by trade unionists and grassroots organizations.

Union leaders and other activists in farm worker and community organizations went underground, fearing a revival of mass arrests, killings, and disappearances. As one analyst put it: “Union leaders are cautious. They want to gauge how much international sympathy (and thus some measure of protection) there is for direct action against Serrano. ‘We’re not all meeting together, and we’re staying in different locations,’ says Dino Arana of the Union of Guatemalan Workers.”<sup>92</sup>

The impending decision on Guatemala’s GSP status proved to be a critically important policy tool for the United States in pressing for the restoration of constitutional governance. At news of the *autogolpe* (self-coup), the U.S. labor rights coalition met with USTR and State Department officials demanding an immediate cutoff of Guatemala’s GSP benefits unless constitutional rule was restored. The State Department issued a statement that “unless democracy is restored in Guatemala, GSP benefits are likely to be withdrawn.”<sup>93</sup>

U.S. press analysis pointed out the leverage in the GSP decision: “But perhaps more damaging to the local economy and Mr. Serrano’s cause could be the call by U.S. labor rights groups to revoke Guatemalan industry’s tariff-free access to the U.S. market for certain products . . . . Guatemala’s labor practices are already under review by the U.S. Trade Representative’s office . . . . Given Serrano’s suspension of the right of public protest and strikes, analysts expect U.S. Trade Representative Mickey Kantor to consider terminating Guatemala’s trade benefits.”<sup>94</sup> The *New York Times* also cited the impending labor rights decision as critical to Serrano’s fate. It

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91. Tod Robberson, *Guatemalan President Seizes Decree Power, Dissolves Congress; Moves Follow Talk of Restive Military*, WASH. POST, May 26, 1993, at A21.

92. David Clark Scott, *Guatemalans and U.S. Put Pressure on President to Restore Democracy: Labor, Political and Religious Groups Mount Protests as U.S. Places Aid and Trade Benefits Under Review*, CHRISTIAN SCI. MONITOR, May 28, 1993, at 7.

93. Jared Kotler, *Keep the Economic Heat on Guatemala’s Leaders*, MIAMI HERALD, June 7, 1993, at 11A.

94. *Id.*

reported on the day before his abdication that "businessmen have panicked at a threat by the United States to withdraw Guatemala's trade benefits under the Generalized System of Preferences."<sup>95</sup>

Serrano's *autogolpe* collapsed. On June 5, the reconvened Guatemalan Congress elected Ramiro Deleon Carpio, who had been the independent human rights special counsel and a leading human rights advocate in Guatemala, as the new president of the country.<sup>96</sup> The following day, after Serrano's flight into exile, a *New York Times* analysis concluded:

Why Mr. Serrano launched his palace coup in the first place . . . was never entirely clear. But the reasons for his downfall were clearer. Most important, it seems, was the concern of business leaders that Guatemala's rising exports to the United States and Europe could be devastated if threatened sanctions were imposed. Within hours of an American threat to cut Guatemala's trade benefits, business leaders who in the past had supported authoritarian rule began pressing government and military officials to reverse Mr. Serrano's action.<sup>97</sup>

On June 25, U.S. Trade Representative Mickey Kantor announced that Guatemala would remain a GSP beneficiary country for an extended "continuing review" period. "If countries fail to make substantial concrete progress in addressing worker rights concerns during this time," he warned, "their GSP benefits will be in serious jeopardy."<sup>98</sup>

Even more than in Chile, the GSP labor rights petition was a powerful policy instrument available at just the right time to affect on the course of events in Guatemala and get it back on track toward constitutional government. The results demonstrate the potency of international labor rights advocacy where national and regional economies are increasingly interconnected.

#### d. *Continuing Review*

For several years after the 1993 constitutional crisis, Guatemala remained on "continuing review" status for GSP eligibility. The GSP labor rights case was not as prominent as United Nations-sponsored

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95. Tim Golden, *Guatemalan Leader Is Pressed to Yield Power*, N.Y. TIMES, June 1, 1993, at A7.

96. Tod Robberson, *Guatemala Swears in New President, Rights Leader Faces Political Challenges*, WASH. POST, June 7, 1993, at A13.

97. Tim Golden, *Guatemala's Counter-Coup: A Military About-Face*, N.Y. TIMES, June 3, 1993, at A3.

98. Press Release, U.S. Trade Representative Kantor Announces Results of 1992 GSP Reviews (June 25, 1993).

negotiations for a political settlement to end the civil war, but it still got results in specific cases as labor rights advocates prodded for change. With these gains in place and with progress in implementing the United Nations-brokered peace accord, U.S. labor rights advocates in 1997 quietly approved the U.S. government's decision to halt the continuing review of Guatemala's GSP status and to maintain its full normal GSP benefits.<sup>99</sup>

Lobbying by the AFL-CIO and by US/LEAP, and other labor rights advocates, persuaded the Clinton administration's USTR to reopen a GSP labor rights review of Guatemala's beneficiary status in 2000. Fragile labor courts and enforcement institutions had failed to anchor reforms and employers who still saw trade unions as subversive bodies launched new attacks on workers. Armed bands assaulted leaders of a banana plantation workers' union at a DelMonte company subsidiary in late 1999, and many union members were fired. Evidence continued to pour out of *maquila* factories of harsh conditions, sexual harassment, short pay, excessive hours, child labor, and other labor rights abuses.

In May 2001, the Bush administration closed the review and kept Guatemala in the GSP program.<sup>100</sup> The decision was a disappointment for Guatemalan unionists and their supporters in the United States because the pressure of the GSP process seemed to be an important means of achieving results for workers. Bush's USTR pointed to the reinstatement of banana plantation workers and the first of its kind prosecution and conviction of the assailants who had beaten their union leaders.<sup>101</sup> The USTR also cited a labor reform bill approved by the Guatemala Congress in 2001 that granted new rights to farm workers and stronger penalties against violators.<sup>102</sup> All this, said the USTR, was evidence that Guatemala was "taking steps" in compliance with GSP labor requirements.

The USTR's "taking steps" maneuvering with Guatemala under the GSP labor rights clause is a telling example of both potential and limits for advancing workers' rights through trade-linked measures. Disappointments are many and Guatemala workers still face enormous obstacles. But the dynamic of recourse to the GSP mechanism and its "stick" of threatened sanctions, and "carrot" of

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99. *USTR Begins Worker Rights Review For Belarus, Swaziland; Ends Guatemala*, DAILY LAB. REP. (BNA), May 6, 1997, at D-18.

100. Press Release, U.S. Trade Representative, USTR Concludes Review of Guatemala's Labor Practices and Trade Preferences Under U.S. Law (May 31, 2001).

101. *Id.*

102. *Id.*

continued beneficiary status, combined with deep sustained cross-border coordination and solidarity among trade unions and human rights organizations in Guatemala and the United States have dramatically altered the nature and course of workers' struggles.

### 3. Malaysia and Indonesia

A positive balance can be discerned in efforts by the U.S. government to apply the GSP labor rights clause in Chile or Guatemala. The cases of Malaysia and Indonesia are less encouraging. They reflect a more cynical use of the labor rights clause, allowing economic interests to prevail against human rights considerations.

Independent trade unions played important roles in Malaysian and Indonesian independence movements against British and Dutch colonialists after the Second World War. They were also important actors in the early years of independence. As military-dominated ruling groups consolidated power in the 1960s, however, independent labor unions were crushed and official government-sponsored unions took their place. Labor repression was especially fierce in Indonesia. Thousands of union leaders and members were among the half-million murdered victims of the new regime of General Suharto.<sup>103</sup>

Both countries became exemplars of the Asian economic model, suppressing democratic freedoms and labor rights to foster an investment and export climate favorable to multinational corporations from the United States, Japan, and other developed countries. Malaysia became a center for electronics manufacturing, with tens of thousands of workers laboring in special export processing zones for United States firms like Motorola, General Instrument, and Harris Electronics.<sup>104</sup> Indonesia's vast natural resources like oil, gas, tin, bauxite, nickel, gold, and timber also attracted billions of dollars in Western investment. More recently, Indonesia has become a main subcontracting source for the international running shoe industry with hundreds of thousands of workers turning out goods for Nike, Reebok, Adidas, and other United States and European companies.<sup>105</sup>

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103. For a thorough discussion of the Suharto coup and the subsequent state-sponsored massacres of communists and other dissidents, see GEOFF SIMONS, *INDONESIA, THE LONG OPPRESSION* Ch. 5 (2000).

104. MARVIN LEVINE, *WORKER RIGHTS AND LABOR STANDARDS IN ASIA'S FOUR NEW TIGERS* 333 (1997).

105. E.g., Robert Collier, *U.S. Firms Reducing Sweatshop Abuses; But Wages Still at Poverty Level*, *SAN FRANCISCO CHRON.*, Apr. 17, 1999, at A1.



Malaysian and Indonesian leaders became leading proponents of what they claimed to be “Asian values,” like labor discipline, social conformity, and deference to authority, counterposed to Western-inspired concepts like individual rights, free speech, and independent union formation.<sup>106</sup> Throughout the 1980s and 90s, Malaysian Prime Minister Mahathir Mohamed regularly denounced labor rights advocacy as part of a Western plot to retard economic development.<sup>107</sup> In Indonesia, an elaborate corporatist ideology called *Pancasila* purported to harmonize society under state guidance.<sup>108</sup>

Behind the rhetoric of non-confrontation and harmony lay state-led violence and repression against workers in Malaysia and Indonesia. In Malaysia, only government-sponsored unions were permitted to exist in the electronics sector and bargaining was limited to the enterprise rather than the industry.<sup>109</sup> This effectively nullified any potential bargaining power for workers. Additionally, U.S.-based electronics companies insisted that the government ban independent freely chosen unions and sector-wide collective bargaining in the growing electronics industry. Indeed, the companies openly threatened to leave Malaysia if the ban on genuine unions and industry-wide bargaining was lifted.<sup>110</sup>

In Indonesia, *Pancasila* was really a labor control mechanism.<sup>111</sup> Companies in Indonesia maintained high numbers of security guards roaming workplace floors for strict surveillance and suppression of any workers’ movement to challenge management’s unilateral power.<sup>112</sup> Behind them, the military stepped in to forcibly break strikes or any protest movement to demand higher wages and better

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106. See Mark Magnier, *ASEAN Nations Lash Out at West For Tying Human Rights to Trade*, J. OF COM., July 23, 1991, at 1; William Branigin, *Asians Question America’s Moral Authority to Lecture on Rights*, WASH. POST, Apr. 22, 1994, at A33. For more on Mahathir Mohamed’s “Look East” policy, see JOMO KWAME SUNDARAM & PATRICIA TODD, *TRADE UNIONS AND THE STATE IN PENINSULAR MALAYSIA* 150-151 (1994); ANTHONY WOODIWISS, *GLOBALIZATION, HUMAN RIGHTS AND LABOR LAW IN PACIFIC ASIA* 212-213 (1998).

107. LEVINE, *supra* note 104, at 331.

108. VEDI HADIZ, *WORKERS AND THE STATE IN NEW ORDER INDONESIA* 84-110 (1997).

109. SUNDARAM & TODD, *supra* note 106, at 153-156.

110. See A. Wangel, *The ILO and Protection of Trade Union Rights: The Electronics Industry in Malaysia*, in *TRADE UNIONS AND THE NEW INDUSTRIALIZATION OF THE THIRD WORLD* (R. Southall ed., 1988); J. Kankiah, *National Union’s Out, Electronics Workers Can Only Form In-House Unions*, KUALA LUMPUR STAR, Oct. 20, 1988 (on file with author); Memorandum of General Instruments Corp., Nov. 4, 1986, “If there is a union of any kind . . . it may mean closing down the plant in Malaysia,” cited in ILRF’s 1990 petition to the USTR.

111. HADIZ, *supra*, note 108, at 84-110.

112. *Id.* at 104-109.

working conditions.<sup>113</sup> Workers had to obtain police approval for any meeting of more than 5 persons away from the workplace.

In some cases, torture and murder were employed as instruments of labor discipline. For example, in May 1993, a 24-year-old woman worker named Marsinah was tortured and murdered after leading a strike action at a watch factory in East Java.<sup>114</sup> A 22-year-old worker named Rusli was beaten and left to drown in a river in March 1994, during a strike in Medan.<sup>115</sup> The following month, the body of a 23-year-old woman worker, Titi Sugiarti, was found floating in a waste pond with evidence of beating and torture near the shoe factory where she worked, after leading protest demonstrations for better maternity benefits.<sup>116</sup> In April 1995, the ILO accused the Indonesian regime of murder and the abuse of trade unionist, and demanded that the government find and punish those involved.<sup>117</sup>

*a. GSP Petitions*

In 1987 and 1988, the AFL-CIO, the ILRF, Asia Watch, and other advocacy groups began filing GSP labor rights petitions on Malaysia and Indonesia. The petitions detailed many abuses like those just mentioned. However, successive Reagan, Bush, and Clinton administrations failed to act upon the evidence of systematic labor rights violations in those countries. In a decision announced in 1989, the USTR brazenly found Malaysia to be "taking steps" in line with the law at the same time that Trade Representative Carla Hills wrote to the Malaysian Minister of Trade and Finance that "your government does not allow full freedom for workers to associate and form the labor organizations of their own choosing in certain export industries such as the electronics industry . . . [Y]our government's

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113. *Id.*; Margot Cohen, *Indonesians Push for Labor Rights*, CHRISTIAN SCI. MONITOR, Sept. 1, 1992, at 5 (The director general of Industrial Relations and Labor Standards at Indonesia's Ministry of Manpower acknowledged that the military is often used to break up strikes at the request of factory owners, stating "It is the duty of the military to come down right away if there is an invitation.").

114. Marsilah's torture included mutilation to make it appear a crime of rape. Later, company supervisors and local security officials were arrested and convicted of the crime. However, many analysts believe these arrests and trial were part of a large cover-up of involvement by higher-level security forces. See Asia Watch Newsletter, *Indonesia: New Developments on Labor Rights*, Vol. 6, No. 1, Jan. 24, 1994. See also, *Who Killed Marsinah?*, ASIaweek, Mar. 23, 1994, at 28-31; Goenawan Mohamad, *In Rural Java, Death Comes to a Fighter and a Dreamer*, INT'L HERALD TRIB., Jan. 13, 1994, at 7.

115. See, e.g., SIMONS, *supra* note 103, at 32-3.

116. Sugiarti's death was acknowledged by U.S. Ambassador Robert S. Gelbard at the Indonesian Women Workers Conference, Jakarta, Oct. 20, 2000. The full text of his speech is available at <http://www.nikeworkers.org>.

117. LEVINE, *supra* note 104, at 210.

Pioneer Industries Program restricts some collective bargaining . . . at firms with foreign investment.”<sup>118</sup>

The AFL-CIO and the Labor Rights Fund filed new petitions in 1990, citing the continued ban on independent unions and collective bargaining in the electronics export processing zones (EPZs), pointing to Hills’ letter as evidence. The USTR refused to accept the petition on the grounds that it contained “no new information,” distinguishing it from the earlier one.<sup>119</sup>

The United States never began a labor rights review in Malaysia. In Indonesia, though, the USTR started a review in the face of mounting evidence of severe labor rights violations cited by the U.S. State Department’s annual Human Rights Report, as well as by GSP petitioners in 1992.<sup>120</sup> The announcement of an Indonesia labor rights review created a furor in that country and in U.S. investment circles. This was not Guatemala, with a population of 6 million people and a meager economy sending coffee, sugar, and 99-cent underpants to the U.S. market. It was a country of 120 million people with oil, gold, and \$125.00 Nike sneakers to export. Additionally, almost 15% of its exports to the United States entered duty free in 1992 under the GSP program.<sup>121</sup>

The Indonesian government recognized the importance of polishing its tarnished reputation and introduced several limited measures to give an appearance of “taking steps.”<sup>122</sup> It changed the labor code to give a narrow opening for non-governmental unions to operate.<sup>123</sup> It reduced the national army’s role in labor surveillance (while keeping regional and local security forces). It introduced a higher minimum wage.<sup>124</sup> And most often cited in the continuing GSP review, it invited an ILO team to discuss labor conditions and advise the government on further moves.<sup>125</sup>

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118. Letter from Carla Hills (on file with ILRF and USTR).

119. Decision of Office of U.S. Trade Representative, Case No. 005-CP-90 (on file with ILRF and USTR).

120. Review of Product and Country Practice Petitions, 57 FED. REG. 38,088 (Aug. 21, 1992); *see also*, Cohen, *supra* note 113.

121. HADIZ, *supra* note 108, at 161.

122. Indeed, Minister of Manpower, Cosmas Batubara, remarked in 1992, that “If Indonesia wants to take part in globalisation we have to respect international labor standards, such as the right to organize, the right to bargain. If we do not follow international labor standards, our commodities will be blocked.” *Id.*

123. *Id.* at 159-60, 163-4.

124. *Id.*

125. *Id.* at 167.

The heaviest weight against USTR's labor rights review of Indonesia came not from Indonesia, but from U.S. business.<sup>126</sup> The U.S.-ASEAN Council for Business and Technology, amalgams of the largest U.S. multinational corporations with interests in Indonesia, swung into action. Mobil, Texaco, Chevron, American Express, General Electric, General Motors, Nynex, Caterpillar, and other big investors demanded an end to the GSP labor rights review because, according to the U.S.-ASEAN Council, "a removal of GSP . . . will undermine U.S. business and U.S. government interests and credibility." Characterizing the miniscule Indonesian moves as "unprecedented for their breadth and scope," the council praised the dictator Suharto as a "reasoned voice" in Asian affairs and called the country "one of the East Asian Miracles." Then it got to the point. Indonesia has "plentiful energy resources, significant mineral deposits, large timber potential, and a well-developed system of agricultural commodity production and exports." In the next decade, the U.S. companies argued, exports to Indonesia would boom in aerospace, electric power, telecommunications, transportation, and construction and mining equipment.<sup>127</sup>

One company in particular was especially concerned over labor rights. Freeport McMoran, a Louisiana-based mining firm, had called on the Indonesian military to break strikes or labor protests in its operations there. Its executives joined James Riady of the Lippo group, an Indonesian conglomerate that funneled huge sums in illegal campaign contributions to the Democratic National Committee in 1994, on the board of directors of the Indonesia Society.<sup>128</sup> The Society was formed to press for an end to the GSP labor rights review.<sup>129</sup>

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126. The Indonesian government also recognized that it needed to develop strong relations with U.S. corporations to defeat GSP review. The Indonesian Directorate of International Trade stated in 1993:

The Indonesian attitude toward the lifting of the GSP cannot be the same as our attitude toward Dutch aid, because the U.S. has more leverage, for example . . . in the form of OPIC insurance for its investment . . . We don't have the means to retaliate. We must therefore continue to take advantage of the dialogue with the U.S. although the diplomatic scope has its limits. Thus we must continue to explain to the U.S. team the steps we are taking toward meeting ILO standards while considering Indonesia's condition. In addition, we should also continue to improve our lobby in the U.S. by making use of Indonesia's friends, including large U.S. corporations that have mutually advantageous relations with Indonesia.

*Id.* at 166.

127. See U.S.-ASEAN Council for Business and Technology, Inc., Position Paper on GSP Benefits for Indonesia (1994) (on file with ILRF and USTR).

128. See Tim Shorrock, *U.S. Firms Influence Policy on Indonesia; Foreign Contributors Called Secondary Players*, THE J. OF COM., Nov. 26, 1996, at 1A.

129. *Id.* No hard evidence has surfaced to confirm that the Lippo Group's illegal campaign contributions bought an end to the GSP labor rights review. Pressure from big U.S.

Indonesia was targeted by the Clinton administration not for labor rights reform, but as a “big emerging market” selected for big-ticket trade and investment projects. Commerce Secretary Ron Brown and other administration officials pushed for new U.S. deals in Indonesia throughout 1993. In February 1994, U.S. Trade Representative Mickey Kantor announced an end to the labor rights review shortly before President Clinton paid a state visit to Indonesia for a meeting of the Asia-Pacific Economic Cooperation group (APEC) in November.<sup>130</sup> The decision came one week after the arrest of 19 Indonesian trade union leaders for publicly criticizing the weakness of labor reforms responding to the GSP review. The leader of the country’s main independent labor federation, Muchtar Pakpahan was arrested and tried for treason.<sup>131</sup> He faced the death penalty before an international outcry led to his being sentenced to 7 years in prison instead. Muchtar was later released from prison after General Suharto yielded power in the turmoil of the 1998 financial crisis.<sup>132</sup>

Labor unrest in Indonesia increased in 1994, due in part to the termination of GSP review. The decision by the United States was widely perceived by the government as a capitulation. Thereafter, the Indonesian government became confident that GSP review would never materialize and consequently became more aggressive in confronting international criticism of its labor rights record.<sup>133</sup> Some officials rejected outright the linkage between GSP’s trade preferences and labor rights protection.<sup>134</sup> Indeed, it was not long before the government retreated from its limited reforms and returned to the use of state repression and fear as a means of labor discipline. The violent state reaction to the Medan protests of April 1994 was seen as a turning point in government policy.<sup>135</sup>

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multinational corporations with billions of dollars at stake in Indonesia was probably more influential in an administration where Ron Brown’s deal-making trumped Robert Reich’s concern for workers’ rights. For a candid description of the relative weight of commercial versus labor interests in the Clinton administration, see ROBERT REICH, *LOCKED IN THE CABINET* (1997).

130. See also Charles Wallace, *Indonesian Labor Leader Gets 3-Year Prison Term; Asia: Official Allegedly Incited Worker Violence; Clinton To Discuss Human Rights On Upcoming Visit*, L.A. TIMES, Nov. 8, 1994, at A4.

131. See, e.g., DAN LA BOTZ, *MADE IN INDONESIA, INDONESIAN WORKERS SINCE SUHARTO 199-203* (2001); Manuel Saragosa, *Indonesia Spurns U.S Pressure Over Workers Rights*, FIN. TIMES (LONDON), Aug. 15, 1994, at 4.

132. LA BOTZ, *id.* at 202-3; Press Release, International Labor Organization, *Indonesia Releases Detained Trade Unionists*, available at <http://www.ilo.org>.

133. HADIZ, *supra* note 108, at 170.

134. *Id.*

135. *Id.*

In Chile and Guatemala, workers' rights advocates could point to positive results by creatively using the "taking steps" formulation and the "continuing review" process in applying the GSP labor rights clause. Malaysia and Indonesia, however, exposed the downside of the law's flexibility. U.S. administrations under both Republican and Democratic presidents gave priority to corporate economic interests in the face of overwhelming evidence of workers' rights violations.

*b. Recent Developments*

Labor and human rights groups have continued to file petitions to review labor practices under the GSP. Many recent petitions have been targeted at perennial problem countries, while others have been filed against certain of the Newly Independent States, including Ukraine and Belarus, and African nations such as Swaziland. The Belarus petition, filed by the AFL-CIO in 1997, even produced results; the USTR suspended benefits to Belarus in 2000, for its failure to uphold the right of workers to form independent unions and to strike.<sup>136</sup>

Perhaps the most remarkable development is the impending (as this is written) reinstatement of GSP benefits to Pakistan, a decision strongly questioned by the AFL-CIO.<sup>137</sup> While the reasons for the planned reinstatement are not yet publicly known, it is the opinion of many that reinstatement would not be forthcoming at this moment were it not for Pakistan's role in providing support to the United States' military campaign in Afghanistan.<sup>138</sup> The cases of Pakistan and Belarus provide further evidence that the suspension of trade preferences for failure to observe internationally recognized workers' rights is influenced more by political and economic factors than genuine concern for labor rights.

#### 4. Pakistan

The issue of child labor moved to the forefront in the 90's as human rights groups took note of a 12-year-old former bonded laborer from Pakistan named Iqbal Masih. As a child, Iqbal spent his days chained to a loom, where he worked 14-hour days, 6 days a week. However, by the time he reached his twelfth birthday, he had become

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136. Press Release, U.S. Trade Representative, USTR Recommends GSP Suspension of Belarus (July 3, 2000).

137. Interview with Ann Knipper, International Affairs Dept., AFL-CIO (Jan. 2002).

138. *Id.*; Interview with Terry Collingsworth, Executive Director, ILRF (Jan. 2002).

an internationally recognized advocate for children's rights and had campaigned to free over 3,000 children from bonded labor. His murder on April 16, 1995, shocked and outraged the international community. Shortly after his funeral, several thousand protesters, many of them children, marched through the streets of Lahore demanding an end to child labor. Western consumers reacted and the sale of imported carpets fell steeply. Collectively, importers in the United States and Europe canceled carpet orders valued at \$10 million following his death.<sup>139</sup>

By October 1993, the Clinton administration had initiated a review of labor rights practices in Pakistan.<sup>140</sup> In particular, the USTR cited concerns about the exemption of the Karachi Export Processing Zone from the labor law, the application of the Essential Services Act, which curtailed the right of state employees to strike or to quit, and the well-known and pervasive problem of child and bonded labor.<sup>141</sup> The administration's review continued through 1994 and 1995, while the United States and Pakistan engaged in a dialogue over these concerns. However, because the dialogue failed to bring about sufficient changes, particularly with regard to the use of child labor, President Clinton suspended GSP benefits on selected goods, including sporting goods, surgical instruments, and hand woven rugs in October 1996.<sup>142</sup>

Despite the suspension of GSP benefits, child labor persisted in Pakistan. The issue of child labor in the textile and soccer ball industry became the focus of several campaigns by labor, consumer, and human rights organizations in the late 1990s. Indeed, the plight of Pakistani children motivated several children around the world to take up their cause, including Canadian Craig Kielberger, the then 13-year old founder of Free the Children.<sup>143</sup> The sporting goods industry followed the lead in 1997, pledging not to sell soccer balls made by child labor.<sup>144</sup> Administered by ILO's International Program on the Elimination of Child Labor (IPEC), the child labor monitoring program had the ambitious, yet unsuccessful aim of eliminating child

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139. Jonathan Silver, *Child Labor in Pakistan*, ATLANTIC MONTHLY, Feb. 1996, at 79.

140. Notice of Review of Product and Country Practice Petitions, 58 FED. REG. 53,959 (Oct. 19, 1993).

141. Notice of Suspension of Certain Pakistan GSP Benefits, 60 FED. REG. 56,088 (Nov. 6, 1995).

142. *Id.*; Amendment to the Generalized System of Preferences, 61 FED. REG. 54,719 (Oct. 21, 1996).

143. Steven Greenhouse, *Child Labor Issue Ignites a Multifaceted Youthful Crusade*, N.Y. TIMES, Dec. 25, 1996, at B1.

144. Steven Greenhouse, *Sporting Good Concerns Agree to Combat Sale of Soccer Balls Made by Children*, N.Y. TIMES, Feb. 14, 1997, at A12.

labor from the soccer ball industry in Pakistan within 18 months.<sup>145</sup> Also that year, Congress enacted its first ban on the import of goods produced by forced or indentured child labor, inserted into the Treasury-Postal Appropriations Bill. The bill's sponsors, including Rep. Bernard Sanders, hoped that the bill would affect the importation of rugs and carpets produced in Pakistan. "Consumers in the United States of America shouldn't be purchasing goods made by children who are indentured servants and virtual slaves. We should not do business this way, and we should not be perpetuating this system."<sup>146</sup>

Today, the observation of labor rights in Pakistan continues to fall short of international labor standards. According to the 2001 report by the U.S. Department of State's Bureau of Democracy, Human Rights and Labor, "child labor is common and results from a combination of severe poverty, employer greed, and inadequate enforcement of laws intended to control it. . . . The Government (of Pakistan) acknowledges that child labor is a problem."<sup>147</sup> While there have been several advances in the fight against child labor in Pakistan, due to international pressure, the report notes the continued use of child labor in several industries, including agriculture, domestic work, surgical instrument manufacture, brick-making, carpet-making, and sporting goods manufacturing.

Child labor is not the only labor rights issue of concern in Pakistan. Country reviews issued by the State Department, the ILO, and the International Confederation of Free Trade Unions (ICFTU) have identified continuing violations of the freedom of association, the right to organize and bargain collectively, and of forced and bonded labor, both *de jure* and *de facto*.<sup>148</sup> The labor code prohibits several categories of workers from joining a union, including teachers,

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145. For a critique of the monitoring program, see INTERNATIONAL LABOR RIGHTS FUND, CHILD LABOR IN THE SOCCER BALL INDUSTRY, A REPORT ON CONTINUED USE OF CHILD LABOR IN THE SOCCER BALL INDUSTRY IN PAKISTAN (1999), available at <http://www.laborrights.org>. The report highlighted the continued use of child labor in the soccer ball industry and the failure to provide children with educational opportunities.

146. Steven Greenhouse, *Measure to Ban Import Items Made by Children in Bondage*, N.Y. TIMES, Oct. 1, 1997, at A1.

147. U.S. DEPARTMENT OF STATE, COUNTRY REPORT ON HUMAN RIGHTS PRACTICES 2321 (2001). The U.S. State Department repeated this observation in its most recent report on Pakistan. U.S. DEPARTMENT OF STATE, COUNTRY REPORT ON HUMAN RIGHTS PRACTICES 2001 (2002), at <http://www.state.gov>.

148. See INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS, ANNUAL SURVEY OF VIOLATIONS OF TRADE UNION RIGHTS—PAKISTAN (2001); INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS, REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF TRADE—PAKISTAN (2001); INTERNATIONAL LABOR ORGANIZATION, INDIVIDUAL OBSERVATIONS OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS—PAKISTAN (2001); STATE DEPARTMENT, *id.*



radio, television, railway, forestry, hospital, banking, and other Government employees. Attempts to form independent unions are also often suppressed. Both the ILO and ICFTU have also expressed concern about the practice of artificial promotions into management that denies workers the right to join a union.

Restrictions on strikes are severe and workers can be jailed for violations. Bricks and hand-woven wool carpets continue to be produced with forced or indentured child labor. Illegal bonded labor is pervasive in the brick, glass, fishing, and export carpet industry.

Despite persistent labor rights violations in Pakistan, the USTR has signaled its intention to lift the suspension of GSP benefits to Pakistan.<sup>149</sup> Indeed, legislation has already been introduced to reduce trade barriers and extend certain trade benefits to Pakistan in return for its continued support for the U.S. war in Afghanistan.<sup>150</sup> The USTR has to date denied any connection between the war and the decision to extend benefits to Pakistan.<sup>151</sup> Many observers believe, however, that the decision to reinstate GSP benefits would not have occurred without Pakistan's strong support for the American military campaign.<sup>152</sup> While it is acknowledged that Pakistan has made gains in labor rights enforcement, some, such as the AFL-CIO, do not believe that such gains yet warrant reinstatement of GSP benefits.<sup>153</sup> It appears that geopolitical concerns may once again influence GSP policy rather than the state of labor rights compliance.

## 5. Belarus

The United States extended GSP benefits to the central and eastern European states in the early 1990's, after these countries began the difficult transition from state to market capitalism.<sup>154</sup> The extension of trade preferences to Belarus did not, however, result in the democracy, pluralism, and market economy that the USTR was

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149. Interview with John Rosenbaum, Assistant U.S. Trade Representative for Trade and Development (Jan. 2002).

150. The Pakistan Emergency Economic Development and Trade Support Act, S. 1675, 107th Cong. (2001). The bill would authorize the President to reduce or suspend duties on textiles and textile products made in Pakistan until December 31, 2004. Specifically, the bill provides, "The President may proclaim such reduction or suspension of any existing duty on imports of textiles and textile products that are produced or manufactured in Pakistan as he determines to be appropriate in response to the threat to national security posed by international terrorism." *Id.* § 2(a).

151. Interview, *supra* note 149.

152. Interviews, *supra* notes 137, 138.

153. Interview, *supra* note 137.

154. Press Release, U.S. Trade Representative, USTR Recommends GSP Suspension of Belarus and Announces Termination of Workers Rights Review of Thailand (July 3, 2000).

hoping for.<sup>155</sup> Since 1994, President Alexander Lukashenko, labeled an authoritarian dictator by the State Department, has governed Belarus.<sup>156</sup> Indeed, Lukashenko staged a self-coup and consolidated his power by abolishing the courts and the parliament in the fall of 1996.<sup>157</sup> Since then, he constructed a brutal police state in which many of his political opponents have been imprisoned or vanished.<sup>158</sup>

Under his leadership, Belarus' centralized economy became increasingly unstable, deterring foreign investment or trade of any substance.<sup>159</sup> In 1996, the economic relationship between the United States and Belarus took a turn for the worse. The United States first suspended economic aid to the government in 1996, following the wave of arrests after the coup.<sup>160</sup> In 1997, the U.S. government announced that it would not encourage new investment in Belarus and then considered whether to actively discourage investments, following a threatened crackdown on private enterprise later that year.<sup>161</sup> The political relationship between the United States and Belarus fared no better; the United States was forced to recall its ambassador when Belarus shut off the water and telephones to the ambassador's residence and welded the gates shut.<sup>162</sup> By 1998, the currency collapsed, inflation soared to an annual rate of 130%, and average monthly wages plummeted to \$50.<sup>163</sup>

Lukashenko's brutal suppression of trade unionists prompted the AFL-CIO to file a petition to remove Belarus from the list of eligible beneficiaries under the GSP in February 1997.<sup>164</sup> Citing the U.S. Department of State's Belarus Country Report on Human Rights Practices for 1996, the AFL-CIO reported that although "[t]he Constitution upholds the right of workers... to form and join

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155. *Id.*

156. Lukashenko has often expressed his admiration for Joseph Stalin and Adolph Hitler. *E.g.*, Richard Paddock, *Ironfisted Belarus Boss Walls Out West*, L.A. TIMES, July 21, 1998, at A1.

157. *Id.*

158. Peter Baker, *President Claims Victory in Belarus; Protestors Say Election was Rigged*, WASH. POST, Sept. 10, 2001, at A13.

159. Ariel Cohen, *The Moscow-Minsk Mismatch*, J. OF COM., Apr. 21, 1997, at A10 (foreign investment in Belarus amounted to \$4 million in 1996).

160. Michael Lelyveld, *U.S. Considers Putting a Lid on Investment in Belarus*, J. OF COM., Oct. 10, 1997, at 3A. However, several corporations, including Ford Motor Company, Coca-Cola, and McDonald's have continued to invest in Belarus despite the hostile investment climate. *Id.* See also Steven Erlanger, *A Country Burgers Can't Save*, N.Y. TIMES, Dec. 15, 1996, Sec. 4, at 6.

161. *Id.*

162. See Paddock, *supra* note 156.

163. *Id.* See also Michael Wines, *"Bunny" Breeds Rapidly, Sinking Belarus Economy*, N.Y. TIMES, Aug. 12, 1998, at A3.

164. Petition to United States Trade Representative, Labor Rights in Belarus (Feb. 28, 1997) (on file with USTR).

independent unions on a voluntary basis and to carry out actions in defense of workers rights, including the right to strike . . . these rights are generally not recognized in practice.” The AFL-CIO also cited examples of state repression of legitimate union activity, including the suspension of the Free Trade Union of Belarus (SPB), following a 1995 strike by the Minsk Metro Workers Union. Members of the Independent Trade Union of Belarus (BNP) had also been repeatedly detained during marches in protest of the government’s policies in 1996. In its June 16, 1998 supplement, the AFL-CIO further noted the introduction of several repressive executive decrees, including one entitled “Gatherings, Meetings, Demonstrations and Picketing,” which prohibited nearly all forms of assembly and free expression.<sup>165</sup> These decrees later became law due to Lukashenko’s absolute control over the parliament.

On July 3, 2000, the United States announced the suspension of Belarus’ beneficiary status.<sup>166</sup> What is remarkable about the decision to suspend trade preferences to this former Soviet republic is that the process from the initial petition to suspension took only 3 years. This was quite rapid compared to the protracted reviews of several other countries, some of which never resulted in suspension. It appears that the negligible volume of trade between the United States and Belarus best explains the swiftness of the review process. The value of imports from Belarus entering the United States duty free under the GSP program amounted to a mere \$26.7 million in 1999.<sup>167</sup> Compare this result to the government’s refusal to suspend trade benefits to Thailand, despite considerable evidence of labor rights violations, after an 8 year review.

Thailand has long been criticized by labor and human rights organizations for its repression of labor rights.<sup>168</sup> Among the many criticisms raised against the Thai government was its passage of the State Enterprise Labor Relations Act of 1991, which banned unions in state enterprises. Additionally, private sector workers were subject to harassment and union leaders were often terminated in anticipation of official registration, at which time the union would be recognized under law.<sup>169</sup> Despite the merits of the annual petitions to suspend

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165. Petition to United States Trade Representative, Labor Rights in Belarus (June 16, 1998) (on file with USTR).

166. Press Release, *supra* note 154; *Clinton Suspends Benefits*, FIN. TIMES (LONDON), July 4, 2000, at 7.

167. Press Release, *id.*

168. See Petition to United States Trade Representative, Labor Rights in Thailand (1991-1999) (by the AFL-CIO and the ILRF) (on file with USTR).

169. *Id.*

Thailand's beneficiary eligibility under GSP, successive administrations failed to do so. This is explained, in part, by the importance of the trade relationship between the United States and Thailand. According to a report issued by The Trade Partnership, Thailand has consistently been among the top users of the GSP program.<sup>170</sup> Indeed, the United States imported over \$2.2 billion of eligible goods from Thailand duty-free in 2000.<sup>171</sup> While the decision to suspend Belarus was certainly justified, the motivation to do so appears driven primarily by the lack of an impact of any significance to the U.S. economy. Indeed, this conclusion nearly is inescapable in light of the near consistent failure of the United States to suspend preferences to countries that conduct substantial trade with the United States, regardless of their observance of international workers' rights.

## V. CONCLUSION

In August 2002, Congress approved and President Bush signed into law a comprehensive trade bill reauthorizing the GSP program and its labor rights clause for 5 years. Thus, workers' rights petitions under the GSP will continue to be an important instrument for international labor rights advocacy, as well as a continuing source of controversy.<sup>172</sup>

Applications of the GSP workers' rights provision have given rise to cutting critiques of U.S. trade policy and of unilateralism in labor rights policymaking generally. Some international law specialists question the invocation of "internationally recognized worker rights" in U.S. trade statutes without reference to ILO Conventions, human rights charters, or any other sources of international recognition. Congress created its own idiosyncratic definition of such rights, which excluded non-discrimination—a well-settled internationally recognized worker right—and included "cost items" like minimum wage, hours of work, and safety and health, which are outside most "core labor rights" definitions. As a result, critics argue, the United States is frustrating efforts to create consistent international norms.<sup>173</sup>

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170. See THE TRADE PARTNERSHIP, THE U.S. GENERALIZED SYSTEM OF PREFERENCES: AN UPDATE 4 (2001), available at <http://www.ustr.gov>.

171. *Id.* at 3.

172. See Elisabeth Bumiller, *Bush Signs Trade Bill, Restoring Broad Presidential Authority*, N.Y. TIMES, Aug. 7, 2002, at A5; Trade Act of 2002, PUB. L. NO. 107-210 (Aug. 6, 2002).

173. For a comprehensive statement of this and following critiques, see Philip Alston, *Labor Rights Provisions in U.S. Trade Law: "Aggressive Unilateralism?"*, in HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE (Lance A. Compa & Stephen F. Diamond eds., 1996).

Another criticism is that Congress has set rules for other countries that those countries did not have an opportunity to consider, comment on, or ratify. The critique assumes greater weight where an economically advanced country, such as the United States, sets the norms for economically struggling nations, threatening to deprive them of a small but important advantage in trade access to the U.S. market. The GSP labor rights law is therefore often characterized as yet another example of “aggressive unilateralism” or, more bluntly, global bullying by the United States.

A third criticism faults the U.S. statutory scheme for lack of due process. Under GSP, the USTR decides whether to accept the case (a prosecutor’s role), to hear the case (a judge’s role), to weigh the “taking steps” evidence (a jury’s role), and to apply the sanction (an executioner’s role).

Finally, critics cite the hypocrisy of the United States enforcing international workers rights standards when it has yet to ratify clear and internationally agreed workers’ rights in instruments such as United Nation covenants and ILO conventions, which have been ratified by many other countries. Indeed, the United States has failed to ratify the United Nation’s most extensive statement of labor rights, found in the International Covenant on Economic, Social and Cultural Rights. Additionally, of the ILO’s “core” labor rights conventions, the United States has ratified only one forced labor convention, No. 105, and one on the “worst forms” of child labor, No. 182. It has not ratified those covering freedom of association and protection of the right to organize, the right to organize and bargain collectively, child labor generally, and non-discrimination in the workplace.

Beyond these flaws in the content of the legislation and the procedures for applying it is a more substantive concern, namely that the merits of a petition have little bearing on the outcome of a case. Geopolitics and foreign policy are the chief considerations in applying the GSP labor rights clause, not the merits of a country’s compliance or non-compliance with the law.

These are powerful arguments. But they are arguments for improving the GSP labor rights system, not for renouncing it.<sup>174</sup> The lack of a non-discrimination clause in the statute’s definition of internationally recognized workers’ rights is indeed a gaping hole in

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174. For a comprehensive proposal for improving the GSP labor rights system, see Terry Collingsworth, *International Worker Rights Enforcement: Proposals Following a Test Case*, in HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE (Lance Compa & Stephen F. Diamond eds., 1996).

the law, but it results from political compromise inherent in the legislative process. The challenge for advocates now is to build support for adding non-discrimination to the statute. Indeed, as this article was prepared, an amendment adding non-discrimination to the GSP labor rights definition was adopted by the Senate and was considered by a House-Senate conference shaping GSP renewal in "fast track" legislation (now renamed "Trade Promotion Authority" (TPA)). However, Senate conferees dropped the non-discrimination clause from the bill at the last minute, leaving this goal still to be reached by labor rights advocates in years to come.<sup>175</sup>

On the positive side, the GSP labor rights clause's inclusion of wages, hours, and workplace health and safety is an important declaration that working conditions must be part of the social dimension in the global trading system. Economic and social rights are integral to the United Nations human rights agenda.<sup>176</sup> The United States' GSP definition comports with this approach more than the "core labor standards" approach of the ILO's 1998 Declaration, which fails to recognize economic and social rights.

The GSP labor rights clause is indeed an instrument used unilaterally by the United States. But it must be remembered that GSP is a preferential program created solely by U.S. law. International trade rules allow such preferential programs, which would otherwise violate most-favored-nation requirements. However, they do not mandate such programs. Industrialized countries are free to establish them with whatever norms and procedures they choose. Benefits are conceded unilaterally, and conditions are set unilaterally. In this context, American workers have a right to demand from their government labor rights conditions for preferential trade programs, just as businesses obtained a provision denying GSP benefits to countries that expropriate U.S. investments, or that fail to accept an international business arbitration award in favor of a U.S. company, or that fail to protect U.S. companies' intellectual property rights.<sup>177</sup>

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175. See Edward Alden, *U.S. May Press Countries Over Labour Rights*, FIN. TIMES (LONDON), May 17, 2002, at 10; David Firestone, *Senate Grants Bush Authority On Trade Deals*, N.Y. TIMES, Aug. 2, 2002, at A1; Nick Penniman, *Follow the Bouncing Congress; It's Corporate Reform Thursday, Corporate Cave-in Friday*, AM. PROSPECT, Aug. 26, 2002, at 10 (characterizing negotiations between the chief Senate and chief House negotiator as "a meeting between the village idiot and the evil genius" and noting that the former "had been steamrolled" by the latter). For the bill's final version, see Trade Act of 2002, PUB. L. NO. 107-210 (Aug. 6, 2002).

176. See Universal Declaration of Human Rights, Dec. 10, 1948, U.N. G.A. Res. 217 (III 1948), International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

177. See 19 U.S.C.A. § 2462(c)(5) (West 1999).

Japan, Australia, and the European Union act in the same fashion. The EU, too, has established workers' rights requirements for benefits under its GSP program. The EU covers rights of association, organizing and bargaining, child labor, and forced labor in its GSP labor rights clause. Discrimination is absent, as it is in the U.S. system. But so are minimum wages, hours of work, and occupational health and safety.<sup>178</sup>

A U.S. law comporting fully with international norms ratified and applied by the United States is a preferable approach for unilateral action under the GSP labor rights clause and labor provisions in other U.S. trade laws. The fact that the United States often withholds approval of international instruments creates a challenge for workers' rights advocates to build a social and political movement to win ratification of ILO conventions and UN human rights covenants. But this is not a reason to say that the United States cannot act under its trade laws to promote workers' rights.

Procedural flaws are problematic, but not fatal for the GSP labor rights regime. USTR's rules for petitioning, public hearing, and adjudication reflect standard administrative procedure common to many statutory schemes. Judicial review is available in case of alleged abuse. Labor rights advocates learned this all too well when their lawsuit alleging that the USTR failed to properly enforce the GSP workers' rights provision was rejected by a federal court of appeals.<sup>179</sup>

The most troubling aspect of the GSP labor rights system has been the inconsistent application of the law based on geopolitical and foreign policy concerns of successive administrations, all sensitive to the economic interests of U.S. multinational corporations. The cases examined here—Chile's suspension and reinstatement, Guatemala's continuing review, the failure to review Malaysia, the abandoned review of Indonesia, the pending reinstatement of Pakistan, and the painless suspension of Belarus—reflect the importance of such considerations over and above concern for workers' rights.

Much of this is an unavoidable reality of global politics and economics. Any government, especially the United States in its assumed role as a leader, reserves maximum discretion in international affairs.<sup>180</sup> But the labor rights advocacy community must

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178. See Neil Buckley, *EU to Offer Tariff Carrot to Poor States*, FIN. TIMES (LONDON), Oct. 30, 1997, at 5. For text of the clause, see Council Regulation 11541-98 of May 25, 1998, 1998 O.J. (L 160) 3-7.

179. See *ILRERF et al. v. Bush*, *supra* note 90.

180. This experience was replicated in 1998 with passage of the "religious freedom" bill, where the Clinton administration demanded and got ample discretion to decide when or how to

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not be content to live with imperfection. They must hold every administration's feet to the fire and demand justice for workers in the international trade and investment system. This requires political mobilization and it also requires patience and perspective. Just as it is in a national setting, fighting for workers' rights in the global economy is not a "finalistic" undertaking that ends in clear victory or defeat. It is a struggle that never ends, and advocates take victories—and they hope defeats—in small measures.