Washington takes a new look at import policy

THE HUMAN RIGHTS OF FOREIGN LABOR

by Steven Charnovitz

Little noticed by the press, United States trade policy is undergoing significant changes aimed at promoting the rights of workers in foreign countries—changes achieved through the use of both a carrot and a stick. The carrot, now being offered to the less-developed world, is duty-free access to the U.S. market for qualifying products exported by countries that meet certain new criteria on labor. The stick is a ban on imports made by forced labor—something the Reagan administration is under increasing pressure to invoke against the Soviet Union. While it is too early to gauge the success of such attempts at exercising economic leverage, they may yet become a milestone in the march of human rights.

There are three reasons for the current attention to labor rights. First, a growing understanding of the centrality of work in our lives has given the labor issue a high moral and religious significance. It was no less an authority than Pope John Paul II who, in his 1981 encyclical *Laborem Exercens*, declared that "the human rights that flow from work are part of the broader context of those fundamental rights of the person." Those in the developing world lucky enough to have work usually toil under oppressive conditions. This is as much the case under Communist regimes, which govern in the name of the worker and systematically extinguish worker liberties, as it is under authoritarian regimes that sacrifice liberty for growth and outlaw free labor institutions.

A second motivation for promoting worker rights is recognition of the connection between worker participation and democratic pluralism. As George Meany once explained: "History has clearly demonstrated that there cannot be genuine freedom in any country unless, in that country, labor is free." Meany's thesis, of course, has prescriptive as well as descriptive value: If one desires to assist foreign governments in transforming themselves into democracies, fostering unions is a good place to start. The current administration has recognized this, and the president, in his 1982 speech to the British Parliament, specifically included unions as part of the "infrastructure of democracy."

Finally, interest in worker rights has been kindled by the issue of "fair" versus "unfair" trade. Increasing penetration of the American market by foreign imports has engendered a congressional counterattack on certain "unfair" trade practices by foreign governments. Just as an export subsidy makes a country's exports more competitive than would ordinarily be the case, so too do restrictions on unions lower the cost of production. Viewed in this way, the application of labor standards to imports is not an act of protectionism but, rather, an extension of the well-established principle that fair trade means adherence to internationally recognized rules.

Given the checkered history of economic sanctions, one might question why the U.S. has now loaded labor rights onto the vehicle of trade policy; certainly many past attempts at linking human rights and trade (e.g., Jackson-Vanik) have not been successful. But there are three reasons why the U.S. should be in a better bargaining position when it comes to worker rights. First, U.S. efforts would not depend on multilateral cooperation for their success. Second, the domestic costs to the U.S. of invoking trade sanctions would not be great. Third, most countries can meet labor standards without making fundamental policy changes.

And trade policy is not the only vehicle being used to promote labor rights. The U.S. Agency for International Development will spend about $20 million this fiscal year to support the work of the AFL-CIO's international labor institutes. In addition, the new National Endowment for Democracy is undertaking several projects to strengthen free trade unions.

THE ILO CONNECTION

The Generalized System of Preferences (GSP) is a program carried out by many industrialized countries to provide duty-free treatment to qualifying imports from less-developed countries (LDCs). At present, the American GSP is extended to 140 LDCs. Before a country may be designated for GSP benefits, the president must apply eight mandatory criteria and "take into account" seven discretionary ones. Five of the mandatory criteria, including the new one on labor, can be waived by the president if he determines that a GSP designation for a particular country is in the "national economic interest" of the United States.

The mandatory criteria are quite varied. For instance,

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they exclude countries that are Communist, are members of OPEC, or have expropriated property from a U.S. national without compensation. The mandatory criterion on labor, added by the Congress in October, 1984, excludes any country that "has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country)." A "designated zone" refers to the free zones that have been set up in many LDCs to process their exports and which are commonly exempt from many of the commercial and labor laws that apply elsewhere in the country.

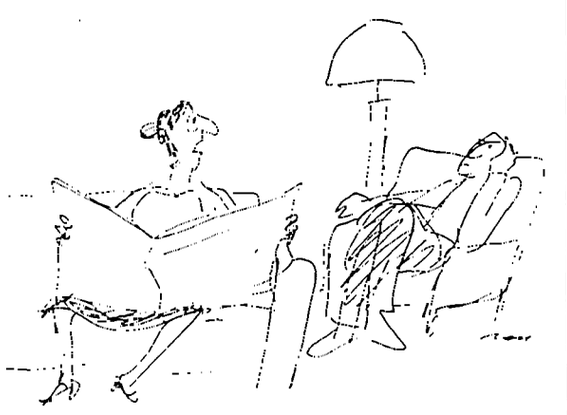
The new labor addition to the GSP criteria calls for "internationally recognized worker rights," including the right of association, the right to organize and bargain collectively, a prohibition on forced labor, a minimum working age, and working conditions that meet acceptable standards regarding minimum wage, hours of work, and health and safety. Exactly what the Congress meant by "internationally recognized rights" is not clear, but it would seem reasonable for the U.S. program to rely heavily on the international labor standards promulgated by the U.N.'s specialized agency on labor, the International Labor Organization (ILO).

The ILO is a unique institution. It originated in the Treaty of Versailles as part of the League of Nations and has endured, relatively intact, since 1919. The ILO is the only U.N. organization that is tripartite, in the sense that it is composed of government, worker, and employer delegates. The United States withdrew from the ILO in 1977, complaining of its selective citation of human rights violators, but rejoined in 1980 after desirable changes had been made.

To date the ILO has approved 159 Conventions dealing with labor, many of them quite detailed. Among these is a "Freedom of Association" Convention, which states that workers have the right to establish organizations of their own choosing without obtaining previous authorization from their government and that these organizations may establish federations and affiliate themselves with international organizations. The same Convention also enjoins public authorities from interfering with the right of worker organizations to formulate their programs. A "Right to Organize and Bargain Collectively" Convention affirms that workers are to enjoy protection against acts that discriminate against unions in places of employment. A "Minimum Age for Children in Industrial Employment" Convention disapproves the hiring of children under the age of fifteen. An "Hours of Work in Industrial Undertakings" Convention sets working hours at no more than eight per day and forty-eight per week. The fact that a government has signalled its acceptance of an ILO Convention by ratifying it, however, is not necessarily an indication of whether it will abide by the Convention. Some countries ratify Conventions yet ignore them; others fail to ratify the Conventions but follow them nevertheless.

When it comes to LDCs, unfortunately, there is often a vast gulf between ILO standards and national practice. Using the State Department's annual human rights report as a source of information on foreign labor practices, one readily identifies current GSP beneficiaries, including the most prominent ones, whose labor practices may not come up to the new labor criterion. In Taiwan, for example, walkouts and strikes are prohibited under martial law, and there is really no such thing as collective bargaining. In South Korea unions are restricted to individual enterprises, there are tight limits on relations with international labor organizations, and strikes are effectively forbidden. In Brazil the government can take over labor negotiations, stop strikes, replace union officials, and require unions to obtain prior approval of international affiliations. The State Department human rights report does not address working conditions per se, but such issues as child labor, a weekly day of rest, and antiunion discrimination in the free zones are certain to arise when the new criterion is applied to several of the countries that currently enjoy GSP status.

According to the language of the new labor criterion, however, GSP designation is permitted if a country is "taking steps" to afford its workers such rights. Whether the U.S. will have the leverage to convince GSP countries to take such steps in return for designation is not yet clear. Still, one way of gauging the potential effectiveness of the new labor provisions is to examine the impact of the much weaker labor criterion used for the Caribbean Basin Initiative (CBI).



"According to a recent survey, the best things in life are now one thousand dollars and up!"

THE LETTER AND THE LAW

In August, 1983, the Congress enacted the CBI to provide duty-free access to U.S. markets for qualifying products exported by the twenty-seven Basin countries. As with the GSP, it is the president's duty to determine eligibility on the basis of mandatory and discretionary criteria. There is no mandatory labor criterion for the CBI, but there is a discretionary one. That criterion, proposed by the Reagan administration, directs the president to take into account "the degree to which workers in such country are afforded reasonable workplace conditions and enjoy the right to organize and bargain collectively. It arose from a concern that the labor laws and conditions in some of the countries might prevent the benefits of the CBI from reaching down to the workers. The inclusion of a labor criterion enabled U.S. negotiators to put on the table the sensitive issue of foreign labor practices.

To assist the president in making his designation decisions, U.S. Government teams visited all the Caribbean countries interested in learning about the program. The

visits allowed the U.S. to explain the eighteen criteria in detail and to raise specific questions regarding those that might not be met. Countries desiring designation were asked to send a letter to the U.S. that demonstrated compliance with each of the criteria. The letters from Haiti, the Dominican Republic, and El Salvador, among others, contained significant declarations and commitments regarding labor.

Before CBI, Haiti had only a handful of weak trade unions and no labor federation at all. Moreover, the government's brutal repression of unions under François "Papa Doc" Duvalier had made Haiti a pariah in the international labor community. It thus came as a surprise to many observers when Haiti's letter requesting CBI designation listed several important labor reforms. These included several changes in a labor code that had formerly impeded the free operation of unions; a letter to the unions notifying them of their right to form federations and affiliate with international trade union organizations; and a letter to the ILO, the AFL-CIO, and the International Confederation of Free Trade Unions welcoming visits to Haiti for meetings with trade unionists. Today Haiti has a functioning labor federation, the first recognized by the government in over twenty-five years.

In the Dominican Republic, the U.S. raised the matter of a recent report by an ILO Commission of Inquiry that had found extremely poor working conditions for migrant Haitian sugar cane cutters on Dominican plantations. The Dominicans' CBI letter announced several significant improvements in the treatment of these workers, among them the pledge that in future harvests every Haitian would be allowed to select the plantation he worked on. The letter also stated that the National Police would make sure that workers wishing to quit their jobs could do so without interference from private security forces.

In El Salvador, the U.S. brought up the issues of physical attacks on labor leaders, recognition of unions, and worker rights in the free zone. All three of these issues were directly addressed in El Salvador's CBI letter. The government agreed to provide more effective protection against physical attacks and to gather evidence about such acts for presentation to a court of justice; to clarify the rights of *campesino* unions and propose adequate sanctions against employers who refuse to bargain with unions; and to establish a procedure for permitting union organizers, for the first time, to enter the free zone.

Although the United States was able to elicit important changes in labor policy from several Caribbean Basin governments, this success might not be replicated by the GSP. In theory, of course, the U.S. ought to be able to accomplish more under GSP, since its labor criterion is mandatory rather than discretionary and more specific than the CBI's. But in practice, labor progress under GSP may be more difficult: Far more is at stake financially than under CBI, and one may expect the largest GSP beneficiaries to make full use of their effective lobbying resources. Yet, if implementation of the new labor criterion *does* yield beneficial results, the U.S. will probably not stand alone for long. Among Western industrialized countries there are ten other GSP-type programs, and it seems likely that the Nordic countries, and possibly the European Community, would consider adding a labor provision to their own programs.

FORCED LABOR

The first ban on imported goods made by forced labor was contained in the McKinley Tariff of 1890. The current ban, instituted under the Hawley-Smoot Tariff Act of 1930, prohibits the importing of goods made by convict or forced labor in foreign countries. (Forced labor is defined as work exacted from a person who would suffer a penalty for its nonperformance and for which the worker does not offer himself voluntarily.)

The forced labor ban has been invoked in only a few instances: against Algerian iron ore in 1935, Soviet crabmeat in 1950, Austrian toy tanks in 1963, and Mexican furniture in 1971. At present it is being enforced against a few minor articles made in Mexican prisons.

The current controversy regarding Soviet exports began in 1982, when several organizations denounced the use of forced labor on the Soviet gas pipeline. In September, 1984, a group made up of thirty-three congressmen, two senators, and five organizations brought suit against the United States, asking the court to direct the Customs Service to ban the entry of some thirty-six Soviet products allegedly made by prison or forced labor.

While there is little doubt that the Soviet Union operates the largest forced labor system in the world (1,100 camps, 4 million laborers), there are two legal roadblocks to invoking the tariff provisions against some Soviet imports: first is the problem of obtaining sufficient evidence regarding whether specific products are made by forced labor; second is the stated exception to the forced labor ban in the case of a product that is not produced domestically in sufficient quantity to meet the "consumptive demands" of the U.S. For example, one of the Soviet imports at issue is gold, about which it may be argued that U.S. production is insufficient to meet our domestic demand. In addition to these legal problems, there would also be serious political problems in singling out the Soviet Union for such treatment when other countries are also suspected of utilizing forced or prison labor.

Whatever the outcome of the lawsuit, the forced labor provision is bound to get greater attention over the next few years. The U.S. International Trade Commission is preparing a survey of forced labor practices around the world, and this report, due soon, will likely add more fuel to the fire. Because the GATT rules for international trade make specific allowance for a ban on prison-made goods, here, as in the case of the new labor criterion, American action could serve as a model for other nations.

The concept of international fair labor standards goes back over a hundred years. Although the ILO has never had an enforcement mechanism for its Conventions, the increasing importance of world trade could provide the opening needed to secure adherence to just such minimum international standards. There are those who continue to view the issue of working conditions overseas solely in the context of their implication for U.S. industrial competitiveness, but the stakes in the labor issue are far broader than that. As Representative Donald Pease of Ohio explained during a recent address to the House: "The denial of labor rights to Third World countries tends to perpetuate poverty, to limit the benefits of economic development and growth to narrow privileged elites, and to sow the seeds of social instability and political rebellion." WV