



International Labor Rights Forum

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on behalf of the INTERNATIONAL LABOR RIGHTS FORUM,
House Committee on Foreign Affairs, Subcommittee on Terrorism,
Nonproliferation, and Trade**

March 10, 2010

Thank you for the opportunity to present our testimony on ways in which US trade and development policy can be enhanced to strengthen respect for worker rights around the world. This hearing is extremely timely. Over the past thirty years, US trade and development policies have promoted export led development throughout the developing world. However, the workers in these industries in countries such as Bangladesh, China, Cambodia and indeed throughout the developing world have faced extreme violations of their fundamental rights, as this testimony will describe. In Bangladesh, two weeks ago, twenty-one garment workers lost their lives in a terrible factory fire. The exits were locked, trapping the workers inside, despite the fact that this was the *second* fire in the factory in just six months. Bangladesh received \$74 million in US direct foreign assistance last year and nearly \$937 million since 2001. Bangladesh has been the subject of a trade petition, filed by the AFL-CIO, for its endemic failure to protect worker rights.

This case, and others we will describe, raise fundamental questions as to whether US trade and development policies, as currently implemented, really serve the development goals for which they were designed?

In principle, US development policy is aimed at promoting “conditions enabling developing countries to achieve self-sustaining economic growth with equitable distribution of the benefits.”¹ To promote these objectives, Congress emphasized that “sustaining growth *with equity*” requires that a “majority of people in developing countries . . . participate in a process of equitable growth” by being able to “influence decisions that shape their lives.”²

This guidance from US Congress is again consistent with the longstanding stated objectives of trade liberalization. The preamble to the original General Agreement on Trade and Tariffs (GATT), signed in 1947, stated: "Relations among countries in the field of trade and economic endeavor should be conducted with a view to raising standards of

¹ See Foreign Assistance Act of 1961, PL 87-195 at Sec. 101(a)(2).

² Id. at Sec. 102.

living and ensuring full employment.”³ This long dormant idea should be the central tenant of international development and trade policy for worker rights. To achieve its stated objectives, the US employs several different development related programs, including the unilateral trade preference program, the Generalized System of Preferences (GSP). As envisioned by Congress, the purpose of the GSP program is to “promote the notion that trade . . . is a more effective . . . way of promoting broad-based sustained economic development.” When awarding preferences, the US Trade Representative (USTR) is instructed to examine “the effect [expanding GSP benefits] will have on furthering the *economic development* (emphasis ours) of developing countries through the expansion of their exports.”⁴

As our testimony will show, however, in practice over the past quarter century, this fundamental objective of raising living standards by promoting sustainable and decent work has been tangential, and not central, to our trade preferences and our development assistance.

This should not be the case. The case for promoting labor rights as a fundamental component to long-term, equitable development is crystal clear. Broad-based economic development is a win-win proposition for workers. Workers in all countries suffer if trade and development policies foster competition between nations for low wage jobs, while corporations reap the benefits of a global surplus of cheap labor. Workers in the US will benefit if rising wages in the developing world fuel consumer demand and a growing part of this is consumption of goods and services from the US.

Growth in the global economy must now be fueled by rising incomes of the enormous number of workers in China, India, Mexico, Brazil and sub-Saharan Africa. If these workers can obtain a livable wage and have some disposable income, this will increase global demand and create jobs for workers everywhere. US policies must support the immediate prospect for creating new growth through rising wages for the poorest workers, and prohibiting exploitive labor practices.

When the economic development needs for workers and the local community come in conflict with the investment and production goals of corporate management, investors and national governments, workers will need a basic set of tools to fairly bargain for the economic well-being of their families and communities. As a result, before designating any country or product eligible for GSP benefits, the USTR is directed to consider the impact extending benefits will have on broad-based economic development in the particular sector and countries in which the potential GSP eligible product is produced. (19 U.S.C. §§2461, 2463)

³ See, e.g., Collingsworth, Goold and Harvey, *Time for a Global New Deal*, **FOREIGN AFFAIRS**, 12 (Jan. -Feb. 1994).

⁴ See 19 USC §2461(1). See also General Systems of Preferences Renewal Act of 1984, P.L. 98-573, 98 Stat. 3019

However, since the GSP was amended to include labor standards in 1984, application of the labor provisions have been poor and wrought with political considerations. Despite the statutory right to bring labor complaints, these complaints often go ignored or drag on for years without any meaningful resolution. While the GSP labor petitions have led to some successful interventions in the past, our general experience with GSP labor petitions has been mixed. While some cases were addressed in a serious manner, others were not. The petition process has lacked of transparency and finality, and other political considerations often trump labor concerns. In many cases, such as the current case pending against Uzbekistan, foreign governments under review have simply ignored the USTR without any negative repercussions knowing that adverse rulings because of labor standards are rare. In other cases, the USTR has refused to even accept labor petitions without providing any reasoning or has allowed proceedings to drag on for so many years that the review essentially becomes meaningless.

Arguing that Congress had granted the President total discretion on whether and how to enforce the new labor conditions, successive Presidential Administrations have refused to conduct meaningful investigations or to fully enforce the labor rights under the GSP program. As early as 1990, over twenty human rights organizations and labor unions had submitted labor rights petitions to the USTR arguing that several countries had failed to comply with the worker rights standard. When the government failed to act on the petitions, all of the groups sued the government for the "systematic failure to enforce the mandatory language of the worker rights provision consistent with the intent of Congress." The organizations immediately sought a preliminary injunction requiring the GSP Committee to conduct an immediate review of Malaysia's compliance with the worker rights standard alleging that Carla Hills, the Trade Representative, had extended Malaysia's GSP benefits even after finding that Malaysia was violating worker rights. The GSP Committee rejected the petitions on the basis that they did not contain any "new information", a technicality created by the USTR as an obstacle to labor rights enforcement under the GSP.⁵

A similar case, and one I had occasion to witness first hand, was that filed by Human Rights Watch and ILRF against Indonesia in the early 1990s. At that time, I was serving with the US Department of State as a foreign service officer, assigned to the economic reporting section of US Embassy Jakarta. I worked closely with the economic counselor and also with the US labor attaché to report on US interests in this case, and supported the visit of a delegation led by USTR, but including officials from the State and Labor departments, to assess the merits of this case in 1993. The insiders' view of this case was revealing. US business interests in Indonesia, in particular in the oil, gas, and mining sectors, were predominant in shaping US policy. The State Department position on this labor rights case, significantly influenced by the US Ambassador to Indonesia, was that a negative determination in the case might adversely impact these business interests. So deeply held was this concern that the labor attaché's reporting on continued and very serious labor rights violations in country was suppressed, and on at least one occasion he was compelled to resort to the rarely used "dissent channel" to ensure his reporting on labor violations reached Washington. The case was suspended by USTR in 1994 on the

⁵ 15 C.F.R. § 2007.1(a)(4)

eve of a visit by President Clinton to Indonesia, and despite the jailing that year of a prominent human rights figure and labor leader, Muchtar Pakpahan. In brief, like the Malaysia case, actual findings on labor rights violations were completely irrelevant to the US Administration's decision on this worker rights complaint.

Unfortunately, efforts to ensure that the President is enforcing the labor rights preconditions have been rejected by the courts. Finding that eligibility criteria for GSP are discretionary and not mandatory, the District Court for the District of Columbia ruled in 1992:

Not only is there only a vague requirement of review from time to time but also GSP contains no specification as to how the President shall make his determination. There is no definition of what constitutes "has not taken . . . steps" or "is not taking steps" to afford internationally recognized rights. Indeed, there is no requirement that the President make findings of fact or any indication that Congress directed or instructed the President as to how he should implement his general withdrawal or suspension authority.

Given this apparent total lack of standards, coupled with the discretion preserved by the terms of the GSP statute itself and implicit in the President's special and separate authority in the areas of foreign policy there is obviously no statutory direction which provides any basis for the Court to act. The Court cannot interfere with the President's discretionary judgment because there is no law to apply."⁶

We have not seen any significant change in the extent to which worker rights criteria are upheld in such cases. Most recently, ILRF has filed a GSP complaint against the country of Uzbekistan for the very serious and endemic problem of forced child labor in its cotton sector. As documented in the ILRF petition filed in 2007, state-orchestrated forced labor, including forced child labor, is a common practice during the cotton harvesting and weeding seasons. Every year, the government of Uzbekistan mobilizes hundreds of thousands of children, as well as teachers and public servants, for the manual harvesting of cotton.⁷ Children perform arduous work in harsh conditions and are threatened with expulsion from schools if they fail to fulfill Soviet-style production quotas.⁸ Children are also exposed to hazardous work, experiencing inadequate shelter, limited access to clean drinking water, and exposure to toxic pesticides.⁹ Virtually all of this cotton is exported to world markets, and much is processed into textiles that enter the US market.

Despite the remarkable fact that Uzbekistan does not meet the other preconditions for GSP, lacking democratic governance or a market economy, the country has continued to enjoy trade preferences. These preferences do not serve to generate any noticeable

⁶ *International Labor Rights Education and Research Fund v. Bush*, 752 F. Supp. 495, 497 (D. DC 1990).

⁷ Kandiyoti, Deniz et. al. "Invisible to the World? The Dynamics of Forced Child Labor in the Cotton Sector in Uzbekistan." London: School of Oriental and African Studies, University of London, 2008.

⁸ *White Gold: The True Cost of Cotton. Uzbekistan, Cotton and the Crushing of a Nation.* Environmental Justice Foundation, 2005. London, UK

⁹ "The Deadly Chemicals in Cotton." Environmental Justice Foundation in collaboration with Pesticide Action Network-UK, London, UK, 2007.

benefits for Uzbekistan's working people. As noted in a recent letter by Congressman Lloyd Doggett and several of his colleagues on the House Ways and Means Committee, "Despite the fact that the Government of Uzbekistan has never responded to the allegations in the ILRF petition, and that information indicating the persistence of labor exploitation was filed in 2008 and 2009, the USTR has yet to issue a decision on this petition. The merits of the petition are clear, well-documented, and have never been challenged by the Government of Uzbekistan or any other respondent. The failure of the USTR to act on the merits of the petition by revoking Uzbekistan's trade privileges raises troubling questions about the integrity and effectiveness of the review process."

Troubling indeed, as in this case ILRF has been in close contact not only with officials from USTR, but from the US Department of State, including the US Ambassador to Uzbekistan. It is evident from these conversations that once again the position of US agencies, including the State Department, is being determined by factors other than the actual merits of the petition. In the case of Uzbekistan, an important logistical supply route to Afghanistan, the other interests at play are clear. We cannot help but comment, however, that in such a case the GSP does contain a national security waiver that may be invoked by the President if needed. The process is failing. Uzbekistan should clearly be declared to be in violation of the worker rights provisions in this and in the earlier cases mentioned. If security interests, or indeed national economic interests, are so important in such cases that they must trump the human rights and development goals of these programs, then this should be clearly stated, and waivers should be invoked. In such cases, no one should be fooled that the programs are being applied to facilitate broad based and equitable development.

Spotty as the history of GSP has been, at least it has had more to offer than our development aid policies, which have no criteria at all to allow the US government- or US taxpayers- to measure whether aid dollars are actually supporting equitable development and labor rights. We will focus much of our remaining testimony on a program that has become a 'fair haired child' of US foreign assistance in recent years, the Millenium Challenge Account.

When Congress created the Millenium Challenge Corporation (MCC) in 2004, it required that any country wishing to negotiate with the MCC for grants must demonstrate a commitment to 12 core criteria listed in Section 607 of the MCC statute that are necessary preconditions to ensure that MCC aid will promote sustainable and equitable economic development. One of the 12 criteria Congress mandated is whether a country is promoting "economic freedom, including a demonstrated commitment to economic policies that respect worker rights, including the right to form labor unions."

The intricate system of evaluation that the MCC subsequently designed, where the Board examines 17 numerical indicators designed by outside organizations such as Freedom House, the Heritage Foundation, and the World Bank Group, does not effectively evaluate whether potential MCC partners respect workers' rights. Only one of the 17 indicators used by the MCC includes an evaluation of a country's respect for workers' core labor rights, the Civil Liberties indicator. Within the Civil Liberties indicator itself,

though, workers' rights is only one of 15 different criteria used to examine civil liberties protections, and its limited focus is restricted only to the right to freedom of association in a cursory way. Thus, despite Congress' express intent to see labor rights protections examined as one of the 12 core criteria, the actual MCC indicator treats workers' rights as a footnote, just one of myriad civil liberties concerns. It does not view workers' rights as a core aspect of economic freedom or the economy for that matter, since it is seen as a political right only, not an economic right.

Second, though Congress clearly envisioned respect for workers' rights as a fundamental economic freedom, the only indicator within the MCC's "Encouraging Economic Freedom Category" that even addresses issues related to workers' rights is the Regulatory Quality Indicator. The RQI, though, is not intended to promote respect for workers' rights. Rather, it encourages countries to promote policies that expand "flexible labor markets", which is often used as a euphemism for a move toward labor contracting and additional restrictions on the ability of workers to form unions and exercise their rights at work. In particular, when assessing labor laws, the RQI examines whether a country's labor laws are seen as too restrictive by businesses, not whether they adequately protect workers rights. To illustrate, the RQI draws data on transition economies in Eastern Europe and the former Soviet Union from the World Bank and European Bank for Reconstruction and Development's *Business Environment and Enterprise Performance Survey* ("BPS"). Relevant data from the BPS used to influence a country's RQI score includes firms' assessments regarding "[h]ow problematic ... labor regulations [are] for the growth of [their] business[es]." ¹⁰ Similarly, the RQI uses the responses to another survey covering a global sampling of countries, the *World Competitiveness Yearbook*, which asks its private sector respondents *how countries' "[l]abor relations hinder business activities."* ¹¹ Due to the sources and nature of information it relies upon, the RQI thus not only fails to further, but actually counters Congress' specification that MCA-eligible countries should have in place economic policies reflecting a demonstrated commitment to respecting workers' rights.

Recognizing that the development community, and in particular the World Bank, has utterly failed to establish an analytical framework or indicator to protect and enhance workers' rights, and facing growing pressure from the global labor unions concerned that World Bank policies were encouraging flexible labor schemes and the dismantling of labor protections as a policy measure to attract private sector investment, the WB eliminated its Employing Workers Indicator last year and convened a Consultative Group in October of last year to rewrite the indicator. While this is a promising first step, the MCC continues to rely on other WB indicators, like RQI, which reward a country for cutting back on workers' rights to job security.

Because the MCC had not implemented its statutory obligation to promote labor rights-friendly development initiatives, countries who have demonstrated little commitment to ensuring workers' rights are being chosen as MCC partner countries. For example, in March 2008 more than one year after the US Trade Representative opened an official review of the Philippines' GSP eligibility for gross violations of labor rights, the MCC

¹⁰ *Governance Matters*, at 43 (emphasis added).

¹¹ *Governance Matters*, at 70 (emphasis added); see also, *id.* at 75.

designated the Philippines eligible to negotiate for hundreds of millions in aid despite its dismal track record in respecting the right of workers. The International Labor Organization (ILO), which is the UN body tasked with monitoring labor standards has consistently and resoundingly criticized the Philippine government for its failure to protect workers' rights. In response to complaints brought by Philippine trade unions to the ILO's Committee on Freedom of Association, the ILO has also undertaken a formal review of the Philippine government's policies that seriously violate Filipino workers' rights to freedom of association, including murder of trade union leaders, military harassments by government forces of the workers' democratically elected trade union representatives, government regulations which prevent workers from striking, and government policies that prevent workers from organizing. As a part of that review, the ILO sent an investigative team to the Philippines this year, which the Philippine government allowed only after facing the loss of its GSP benefits for refusing to cooperate with the ILO review. To date, the government has still not fully implemented the resulting recommendations by the ILO to bring its laws and policies in line with international standards.

In another egregious example, less than six months after the USTR GSP subcommittee accepted a case ILRF filed against the Republic of Niger for condoning and even supporting a caste-based slavery system, the MCC designated Niger to be eligible for its threshold program. The heart of the GSP case revolved around the Nigerien government's failure to take serious measures to eradicate slavery within its own borders and its choice to continue supporting the system by cracking down on anti-slavery activists and lawyers to appease the politically powerful slave owners. Recently, in December 2009 the MCC suspended its assistance to Niger because of the political upheaval caused by President Mamadou Tandja's decision to dissolve the National Assembly and Constitutional Court and to crackdown on opposition groups in an effort to maintain power. While hindsight is 20/20, the MCC knew in advance about the Government's proclivity for violent and repressive measures to keep critics silent. All they had to do was ask the 43,000 slaves currently toiling as slaves or the USTR who had placed Niger under review for workers' rights violations.

Finally, in a tremendous snub to workers' rights, the Millennium Challenge Corporation (MCC) selected Colombia to be compact eligible in December 2008. The Board made this decision despite unassailable evidence of widespread workers' rights violations in Colombia, which is the most dangerous country in the world for trade unionists. According to the International Trade Union Confederation, 39 trade unionists were killed in 2007, the year just prior to the MCC board's decision. In 2008, at the time the Board declared Colombia MCC-eligible, 41 trade unionists had already been killed that year. Trade unionists in Colombia face abductions, arrests, death threats, and other harassments. Colombian trade unions have lodged no less than six complaints before the ILO Committee on Freedom of Association seeking aid from the international community to help protect their members' rights.

The designation of the Colombia, Niger and the Philippines should raise red flags, and Congress should take a hard look at how the MCC has been implementing its statutory

responsibility to ensure that the MCC only chooses countries that are committed to respecting workers' rights. Even though the Philippines and Niger were under review for serious violations of workers' rights, the USTR did not raise these issues to the MCC. While it may seem odd that the left hand doesn't know what the right hand is doing at the USTR, perhaps the simplest explanation is that the USTR Trade Policy Sub-Committee (TPSC) includes representatives from the Department of Labor, which is the US government agency responsible for working closely with the ILO as well as monitoring respect for labor rights by our trading partners as required by our free trade agreements and trade preference programs. Yet, despite the MCC's core responsibility to evaluate workers' rights protections, the DOL was excluded from the MCC Board when it was founded in 2004. This decision apparently stemmed from the Bush Administration's contempt for international labor standards as evidenced by its yearly efforts to cut the DOL's International Labor Affairs Bureau budget. Without any labor expertise represented on the MCC Board, it is unlikely labor rights will ever be evaluated as one of the 12 core eligibility criteria as Congress envisioned.

To ensure that labor rights are adequately taken into account, the MCC's indicator-based selection process must be reformed to allow for a close evaluation of labor conditions in potential partner countries. While recent efforts by the World Bank to reform its own indicators to be more labor friendly are laudable, the MCC should not wait until the World Bank finishes its work. Rather, the DOL should develop a labor specific indicator for use by the MCC. Furthermore, the MCC along with the DOL should review each of its current indicators to determine whether they promote or endanger the MCC's obligation to ensure that internationally recognized workers' rights are respected in each partner country. In the meantime, in all future reviews, the MCC Board should closely evaluate the assessment of the ILO Committees on Freedom of Association (CFA) and on the Application of Standards (CAS) and the GSP Committee of the United States Trade Representative and publicly report its findings before rewarding governments with generous assistance packages.

To summarize and conclude, internationally recognized labor rights provide workers with the basic set of tools that they need to be able to fairly bargain for the economic well-being of their families and communities. As a result, before designating any country or product eligible for trade benefits, or for development assistance, all US government agencies should assess and provide clear evaluation of the impact extending benefits will have on broad-based economic development.

In GSP, application of labor provisions has been poor and wrought with political considerations. Complaints often go ignored or drag on for years without any meaningful resolution. The petition process has lacked transparency and finality, and other political considerations often trump labor concerns. In many cases, such as the current case pending against Uzbekistan, foreign governments under review have simply ignored the USTR without any negative repercussions knowing that adverse rulings because of labor standards are rare. In other cases, the USTR has refused to even accept labor petitions without providing any reasoning or has allowed proceedings to drag on for so many years that the review essentially becomes meaningless.

In the case of MCC, workers' rights have played little to no role in determining the allocation of MCC funding around the world despite Congressional intent to that protection of workers rights is a vital precondition for funding. Serious rights abusers are rewarded with compact eligibility without any due regard for the rights of workers in those countries. Evidence of serious violations goes unheeded even when those countries are under review by both the USTR and the ILO.

To remedy these problems, we believe that the labor criteria for all trade preference programs and all development assistance should be updated and that reforms must be undertaken to ensure a fair and manageable petition review process that includes reviews for both country compliance and industry compliance with the labor eligibility criteria. We offer the following three recommendations regarding trade preference reviews, and four recommendations proposing reforms of the MCC:

On GSP:

- (1) GSP eligibility criteria must be updated to meet current international law norms and every country must at least meet a basic minimum labor standard.
- (2) Labor rights review process must more transparent with binding timelines for action by the US Government and a requirement for written, published decisions. The role of USDOL's International Labor Affairs Bureau (ILAB) in the review process should be clarified and strengthened. ILAB should have the lead authority to determine whether, on its face, a worker rights petition should be accepted; and whether, following an investigation, those claims have been substantiated by the evidence.
- (3) Product eligibility must be subject to the same mandatory labor criteria and GSP must provide the right to file product-eligibility petitions for widespread labor violations in specific sectors, within a country or across countries.

On MCC:

- (1) The MCC board should be expanded to include a representative from the US Department of Labor as well as a representative from the labor community to ensure that foreign assistance decisions adequately assess prevailing labor conditions and rights enforcement in beneficiary countries.
- (2) The Department of Labor should develop an indicator specifically addressing labor rights as an economic freedom for the MCC.¹²

¹² See Lance Compa, *Assessing Assessments: A Survey of Efforts to Measure Conformance with Freedom of Association Standards*, 24 COMP. LAB. L. & POL'Y J. 283 (2003) (discussing various international efforts to document and assess labor conditions).

- (3) Labor rights criteria should be mandatory. If a country fails labor rights review, it must be denied eligibility for MCA funds.
- (4) The MCC must also formalize procedures for considering supplemental issues relating to labor rights conditions in candidate countries.

Finally, we ask this Committee to consider carefully the initiatives that can be supported more broadly through our foreign direct assistance, as it considers a substantial revision of the Foreign Assistance Act. We call the Committee's attention to the fact that **sector-based labor initiatives**, and in particular those that are explicitly linked to trade incentives, have had a positive impact on broad-based development. For example, under the 1999 US-Cambodia Bilateral Textile Agreement, sector incentives were effective in improving labor conditions. Under the agreement Cambodian textile producers were offered an increased export quota on condition that the sector demonstrated a commitment to worker rights under the ILO-led "Better Factories Cambodia" initiative. In order to attain the increased access to the US market, the Cambodian textile industry worked with the Cambodian government and the ILO to implement a far ranging labor program that led to significant improvements in labor standards in the industry, a stronger labor and civil society development, and an arbitration mechanism to resolve labor disputes in the industry. As a result the sector gained quota increases—by 18% in 2004 for example—and also gained foreign investment and 250,000 new jobs by its reputation for strong labor standards.

Addressing development from a sectoral rather than country approach led to some real gains for Cambodia's textile workers, and as a corollary, for their families and communities. Unfortunately, with the end of the agreement and thus the loss of incentives for the government and industry to continue reforms, much of the progress over the last 10 years is at risk and we have been very troubled by recent efforts to weaken legal protections for Cambodia's workers, stimulated by the troubling 'race to the bottom' pressures we noted in the early part of this testimony. We continue to pour significant US foreign direct assistance into Cambodia. Will this assistance continue to foster upward mobility for Cambodia's workers? Or, as in Bangladesh, will it support export industries that perpetuate exploitative sweatshop conditions? US assistance can, and should, foster real and sustainable gains for workers everywhere. Creating stable and decent jobs creates stability as well as prosperity in the developing world. It supports democratic governance. And it will enhance consumer markets for US goods and services. The changes in policy we have proposed are the outcome of over a quarter century of close observation of what works, and what does not work in US trade and development policy. The benefits not only to the countries in which we invest, but to ourselves, are clear and the time is ripe to enact these policies.

Thank you very much for the opportunity to present our testimony on policies to improve international worker rights.