



International Labor Rights Forum

2001 S Street NW, Suite 420, Washington, DC 20009

**Testimony of BRIAN CAMPBELL, Director of Policy and Legal Programs,
on behalf of the INTERNATIONAL LABOR RIGHTS FORUM,
to the Committee on Ways and Means, Sub-Committee on Trade.**

December 1, 2009

The International Labor Rights Forum (ILRF) is a non-profit 501(c)(3) organization headquartered in Washington, DC. Founded in 1986, ILRF serves a unique role among human rights organizations as an advocate for and ally with the working poor around the world. ILRF believes that all workers have the right to a safe working environment where they are treated with dignity and respect, and where they can organize freely to defend and promote their rights and interests. The core of the ILRF's mission is to promote labor rights by using the labor rights clauses in existing US trade legislation, like the Generalized System of Preferences (GSP). Working with allies and partners around the world since 1986, the ILRF has been responsible for dozens of labor rights country practice petitions under the GSP.

ILRF currently has three labor rights petitions pending before the Office of the US Trade Representative (USTR). In June 2006, on behalf of an anonymous partner in Niger, ILRF filed a petition requesting review of the Government of Niger for its continued tolerance of slavery. After consulting with the ILRF, the USTR agreed to leave the review of Niger open in 2007 until more progress is made toward adoption of the new draft laws and until public findings by the new National Commission against Forced Labor and Discrimination were complete.

In May 2007, ILRF filed a petition against the Republic of the Philippines for permitting and tacitly condoning the escalating violence against trade unions in that country. The petition alleges that the Government of the Republic of the Philippines has encouraged and is accused of being engaged in the extra-judicial killings and abductions of union leaders, members, organizers, and supporters through elements of the Armed Forces of the Philippines (AFP), the Philippine National Police (PNP), local police forces, and private security forces. The case was accepted in September 2007 and remains under review.

Also in May 2007, ILRF filed a petition with the Office of the US Trade Representative requesting the suspension of Uzbekistan from the Generalized System of Preferences (GSP) program. The petition was based on growing concerns regarding the country's deteriorating human rights record within cotton production and export. State-orchestrated forced labor, including forced child labor, is a common practice during the cotton harvesting and weeding seasons. The petition was accepted for review in September 2007 and remains under review.

Strong labor standards are cornerstone elements of broad-based, sustainable development policy, particularly in export sectors.

Current US Government development-related policy is aimed at encouraging economic development by 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

To achieve these goals, the US employs several different development related programs, including the GSP program. The purpose is to promote US policy goals related to development through targeted trade benefits. 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 deciding, the USTR is instructed to examine “the effect [expanding GSP benefits] will have on furthering the economic development of developing countries through the expansion of their exports.”³

In implementing these objectives, US Government policy recognizes the important role that core labor standards play toward achieving these goals. Labor rights protections are fundamental components to long-term, equitable development. Strong, democratic labor organizations are vital for promoting democratic change; improving labor laws, relations, policies and practices; expanding the social dialogue to encourage basic protections from the government; and promoting sustainable development.⁴ From an economic perspective, there is a strong correlation between the protection of core labor standards, including the right to freedom of association, and strong economic growth.⁵ Strong labor organizations play a key role in ensuring that the gains from global trade are shared across a broad spectrum of society, which promotes expansion of domestic markets and sustained economic development. Also, strong labor organizations play a key role in increasing domestic savings and investment, lessening the reliance on outside capital, and keeping capital gains within a country.

The economic development needs for workers are often in conflict with the investment and production goals of corporate management, investors and national governments. For this reason, workers have guaranteed rights, as agreed upon by all ILO member states in the Declaration on Fundamental Principles and Rights at Work. These rights are both a

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

² Id. at Sec. 102.

³ See 19 USC §2461(1). See also General Systems of Preferences Renewal Act of 1984, P.L. 98-573, 98 Stat. 3019

⁴ See House Report No. 98-1090, 1984 U.S.S.C.A.N. at 5111.

⁵ See Organisation for Economic Co-operation and Development. (1996) *Trade, Employment and Labour Standards: A Study of Core Workers Rights and International Trade*. Paris: OECD. See also, Kucera, David. (2001) *The Effects of Core Workers Rights on Labour Costs and Foreign Direct Investment: Evaluating the "Conventional Wisdom"*. Geneva: International Institute for Labour Studies.; Dølvik, Jon Erik and Liv Tørres. (2002) *Globalisation, Work, and Labour Standards*. Oslo: Fafo Institute for Applied Social Science.

shield and a sword for workers to be able to capture a fair share of the value of economic development promoted by trade preference programs. It also helps workers to defend themselves from the combined political and economic power of the state and corporations who often seek to violate workers fundamental rights in an effort to lower costs and improve competitiveness. Internationally agreed upon core 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 deciding any country or product is 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)

However, since the GSP was amended to include labor standards, 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 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 based on 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.

To remedy these problems, we believe that the labor criteria for all trade preference programs should be updated. 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. Most importantly, as described above, the USTR must also have a clear understanding, achievable only through direct Congressional mandates, that respect for core labor rights at both the country and industry level. It is a fundamental precondition to achieve the program's goal of broad-based sustainable development and that of any trade benefits. We believe that the reforms outlined below, if fully implemented and adhered to, will provide the USTR with the renewed mandate and the tools needed to advocate for improved working conditions in industries that receive preferential trade access to the US market.

Recommendations to Improve GSP Labor Rights Criteria and Review Process

- (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.***

The GSP statute was amended in 1984 to create, as a mandatory eligibility criterion, the requirement that beneficiaries be “taking steps to afford” internationally recognized workers’ rights. Since that time, though, international labor standards have matured and

consensus regarding the core labor standards has been formed in the ILO Declaration on Fundamental Principles and Rights at Work. We believe, therefore, that the GSP statute must be updated from referring to “internationally recognized worker rights” to an explicit mention and recognition of the ILO Declaration on Fundamental Principles and Rights at Work. Those rights include the right to freedom of association and collective bargaining, a prohibition on child labor, an end to the practice of forced labor, and the right to be free from discrimination.

Recognizing that the core labor standards are not enough to promote to development goals of the GSP, as these are basic floor protections for workers, the GSP standards must also retain its current focus on promoting “acceptable conditions of work”, a catch-all that includes workplace health and safety, working hours, wages, and other prevailing industry practices. While stand alone “acceptable conditions at work” labor petitions are rarely filed if ever, violations of core labor standards are often combined with other labor violations in the workplace that undercut the ability of workers to fully enjoy the fruits of their labor.

The absolute ‘floor’ standards for any country that wishes to participate in US trade preference programs must include the following:

- 1) The government must demonstrate continual progress towards adopting laws consistent with the core labor rights listed in the ILO Declaration and as defined by the relevant ILO conventions, and toward achieving acceptable conditions of work in all industries. At the conclusion of an initial transition period, which shall be longer in the case of Least Developed Countries, each government must have adopted strong labor laws;
- 2) The government and industries must not have in place any laws that prohibit, *de facto* or *de jure*, the exercise of a core labor right or fail to have laws that govern acceptable conditions of work;
- 3) The government must be making continual progress during the initial transition period toward effective enforcement of laws related to core labor rights and acceptable conditions of work, assisted by appropriate USG capacity building funds, and effectively enforce such laws by the period’s conclusion;
- 4) At a minimum, each government must ensure the existence of fair, equitable, and transparent tribunals for the enforcement of labor rights and acceptable conditions of work, with the possibility of remedies such as fines, penalties, or temporary work closures. In addition, the venues for the appeal or review, as appropriate, of decisions be decided by impartial and independent tribunals.
- 5) Each government must meet the State Department established criteria for combating trafficking of persons and not be on the Tier 3 Watch List of State Dept. Trafficking in Persons Report.

While the above criteria represent the absolute floor that any government must meet, the trade preference program must have built in incentives to encourage governments and industries to take additional meaningful steps to ensure that the benefits from trade are

shared broadly. If a “GSP plus”- type program is implemented, developing countries should be required to meet enhanced eligibility criteria on labor rights in order to qualify for these enhanced benefits. The exact nature of these enhanced benefits may vary depending on the local situation. For example, a government could enact laws establishing acceptable conditions of work or providing a living wage. Special enhanced labor specific development programs, such as Better Factories Cambodia, could be implemented. Industries and their unions could enter into specific, enforceable framework agreements in particular problematic sectors or, a requirement could be included that NO worker be excluded, *de facto or de jure*, from, and that all workers are covered equally by, the protection of national labor laws could be required.⁶

(2) *Labor rights review processes must be more flexible and transparent with binding timelines for action by the US Government.*

The rigid schedule by which the USTR reviews country practice petitions is a significant constraint on the effective use of GSP to promote strong labor standards. The regulations promulgated by the government in 1985, and still in place, called for an annual review cycle for both country practice and product eligibility hearings.(15 CFR §2007.3) Petitions filed by June 1 are subject to an initial screening for a July 15 announcement of acceptance or rejection. Hearings in the fall on petitions that have been accepted are followed by negotiations with the BDC to secure recommended improvements in time for a decision to be announced April 1. In practice, however, it has not worked out that way. The only deadline adhered to is that of the petitioners' for submission of the initial petition. Particularly in recent years, as a by-product of more serious examination of petitions, reviews have stretched out two, three, sometimes four years without a decision. While this is intended to allow more substantive reviews, in the absence of regulations or certain schedules, it has instead tended to communicate indecisiveness.

While the deadlines have been violated regularly by the government, their existence has made it impossible for new petitions to be filed when changes occur in a country. So, the one-sided flexibility has worked negatively both for countries under review and in preventing the initiation of reviews in response to developments.

The petition process should be more accessible, more transparent, more clearly structured, and executive discretion should be subject to some limitations. It should also allow for the consideration of both country- and sector-based petitions. Any non-frivolous petition should be accepted for review. If a petition is rejected the USG should provide in writing a statement of explanation for the decision.

The practice of a limited petition filing window should be eliminated and petitions should be accepted throughout the year. Finally, clear timelines should be established:

- to accept or reject a petition, with short extensions granted only in cases of insufficient information;

⁶ Workers that must be covered include subcontracted, temporary, migrant, seasonal, part-term, project-based, informal sector, and other workers in similarly precarious employment situations.

- to invite additional information through an FR notice process regarding a petition accepted for review;
- to hold a public hearing, if possible in the beneficiary country at issue;
- to evaluate the petition, issue findings on the merits of its claims, and make recommendations to the President regarding the petition.

Countries found in violation of the workers' rights criteria should have the opportunity to implement a remediation plan, developed in cooperation with the USG and civil society, not to exceed one year in duration and accompanied by appropriate labor-related technical assistance and capacity building. If the plan is not fully implemented within its timeframe, the TPSC should recommend benefit termination, in whole or in part, unless the beneficiary made a good-faith effort to implement the plan, in which case an extension not to exceed one year may be granted.

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 workers' rights petition should be accepted; and whether, following an investigation, those claims have been substantiated by the evidence.

(3) *“New information” requirement for country practice petitions must be removed from the regulations.*

Another major fault in the GSP program has been the rigid requirement that new petitions regarding countries that have been rejected for review could not be taken up without providing "substantial new information." (15 CFR §2007.0 (b)). This requirement was badly abused in the early years of the program to reject petitions that documented ongoing violence against workers and unions, simply because the violence was similar to that which they had reviewed or refused to review in earlier years. Further, the "new information" requirement was utilized to reject petitions that alleged that promised improvements in response to earlier petitions had not been carried out, or that other measures taken subsequent to a GSP decision that a country was "taking steps" or making "continual progress" had canceled out the gains on which the earlier decision had been based.

These last two points of ambiguity, "new information" and "taking steps"/ "continual progress", were intended to prevent frivolous or repetitive petitions and to allow flexibility in administering the program. These goals are laudable and necessary. However, without more concise definitions of what constitutes new information, particularly as it relates to a failure of a country to make progress, the requirement is -- as has been demonstrated in practice -- an invitation for administrative abuse. Likewise, "taking steps"/"continual progress" is a reasonable requirement. But without further definition, this phrase can be -- and has been -- used to justify changes that in the aggregate set back the rights of workers rather than advance them. There is a clear need for more precise language.

(4) *Product eligibility must be subject to the same mandatory labor criteria.*

When the GSP program was amended in 1984 to include protections for internationally recognized workers' rights, Congress specifically intended these standards would apply with respect to consideration of product petitions. The statute's drafters recognized that in some instances country and business development policies may undermine the long-term development goals for local communities. Yet, the statute establishes a bifurcated eligibility determination. While countries are subject to mandatory labor rights eligibility criteria, labor rights standards are discretionary when applied to specific products.

In particular, the GSP statute grants the USTR the discretion to "limit the application of the duty-free treatment" accorded to a product under 19 U.S.C. §2463, which governs the petition process utilized by governments and industries to have their products added to the GSP. When doing so, the USTR is instructed to "consider the factors set forth in §2461 and §2462(c)," including "whether or not such country has taken or is taking steps to afford workers in that country (including in any designated zone in that country) internationally recognized workers' rights."

As we have seen in our twenty-five years of using the GSP process, the "mandatory" labor rights eligibility criteria for governments has essentially become discretionary, subject to the prevailing politics of the day. When applied to product eligibility determinations, the discretionary labor rights eligibility standards have become non-existent. Trade preference reform must make clear that product eligibility must be conditioned on implementation of labor eligibility criteria, just as in the case of country eligibility.

(5) *The GSP must provide the right to file product-eligibility petitions for widespread labor violations in economic sectors encompassing many countries.*

While the current GSP review process emphasizes bilateral relations between the US and a trading partner, systematic labor violations in one country can be driven by the political economy of neighboring countries or competitors. In some cases, widespread and common labor abuses are concentrated in particular industries that cross international borders creating a situation where bilateral efforts to address systematic labor abuses will not be enough. The USTR must be empowered to address the multi-national labor violations in a multi-lateral process through the GSP program.

For example, for years, the cocoa industry has been criticized for its use of child, trafficked and forced labor. The "List of Goods Produced by Child Labor or Forced Labor" released recently by the US Department of Labor notes that child or forced labor has been reported in cocoa production in Cameroon, Cote d'Ivoire, Ghana, Guinea and Nigeria.⁷ Additionally, another major problems identified in the West African cocoa industry is the use of children who have been trafficked from neighboring countries like Mali, Benin, Togo and Burkina Faso into Cote d'Ivoire and other countries in order to

⁷ United States Department of Labor. "List of Goods Produced by Child Labor or Forced Labor." USDOL, September 2009. Available online: <http://www.dol.gov/ilab/programs/ocft/PDF/2009TVPRA.pdf>

work in cocoa production. Due to the clear transnational labor issues in the West African cocoa industry, a simultaneous regional approach is required to eliminate labor rights abuses. While these problems have been detected in many countries producing cocoa, the supply chain is dominated by a small number of global trading companies – primarily Cargill, Archer Daniels Midland and Barry Callebaut. Even on the consumer end of the supply chain, the chocolate industry is largely run by a handful of companies who are becoming increasingly concentrated. Due to the clear trend of labor rights issues across many of the top cocoa producing countries and the small number of companies involved in the global cocoa trade, it is necessary for companies involved in the cocoa trade to take an industry-wide and regional view of the problems.

Cocoa is not the only product where rampant violations of core labor rights and acceptable conditions of work are common across countries. According to the US Department of Labor, forced labor and child labor are commonly used in the production of goods for export to the United States, including bananas from four countries, sugar from 15 different countries, gold from 17 different countries, and tobacco from 13 different countries to name a few.

Despite the widespread violations of core labor standards and acceptable conditions at work in a growing number of export sectors, filing a petition against one of the countries could lead to a shift in production to another eligible country. Without the firm right, grounded in statutory language, to file petitions to address common labor problems that occur across international borders in particular industries, advocates are faced with exacerbating labor problems in a country not currently under review by driving business its way while at the same time impacting the comparative advantage the country under review receives through the preference program. For example, gold sourced from the Democratic Republic of the Congo (DRC) is often exported, illegally in many instances, from neighboring Rwanda. As a result, any GSP action towards the DRC would not address Rwandan trade in those same products under review in the DRC. If the GSP action against DRC involved suspending trade benefits, Rwanda will stand to gain from the murky, non-transparent supply chains and may see an increase in exports of minerals originally from the DRC. Because some current proposals for GSP reform include providing 100% duty free/quota free access for products from LDCs, Rwanda may stand to benefit from continued labor abuses in the DRC.

To resolve this dilemma, the GSP petition process should be amended to provide more flexibility to address multi-lateral labor problems in product specific petitions. Providing the USTR with the tools to address multi-lateral labor problems in the GSP program would not be overly burdensome or unmanageable. Currently, when a company or government requests expanded product eligibility for their products, often the request will seek the inclusion of a single product from multiple countries, so it is common practice for the USTR to consider the economic impact of product eligibility across different countries. For example, in 2008, Dole Packaged Foods, which is one of the world's largest suppliers of fresh and packaged fruit, requested that certain HTS lines of pineapple juice be given GSP eligibility. In its §2463 petition for product eligibility and for a CNL waiver, Dole sought the inclusion of product lines from Indonesia, Thailand

and the Philippines. Because of significant concerns over labor conditions in Dole's global supply chain, the ILRF intervened in the petition, requesting the USTR to open an examination of labor standards in pineapple production in the Philippines specifically, but also in the other countries that may benefit from expanded GSP access to the US market. As a result, Dole withdrew its request after facing significant pressure from the US Department of Labor and the USTR to account for its labor practices when producing those specific HTS lines.

(6) *The GSP must also provide the right to file product-eligibility petitions for widespread labor violations in economic sectors within a single country.*

Under the current GSP statute, "any person" can file a petition calling into question the labor policies of a particular country. However, only "interested parties" are eligible to file petitions seeking to expand or limit the number of products eligible under the GSP program. "Interested parties" are defined as "a party who has a significant economic interest in the subject matter or any other party representing a significant economic interest that would be materially affected." Only after a product eligibility review has been opened, usually at the request of governments or businesses, do labor and human rights advocates have the ability to engage in the review process.

Advocates seeking to question compliance of particular industries with the GSP eligibility criteria, including labor rights, are required to bring a petition against the practices of each of the foreign governments independently. As a result, benefits from every industry in that country, including those arguably in compliance with labor standards, are placed at risk. Companies are left in an uncertain position regarding eligibility for their products. For example, in recent efforts to defend itself from potentially millions in liability for its role in polluting the Ecuadorian rainforest and seriously damaging the health of the local inhabitants, Chevron has brought a complaint against the Government of Ecuador for being in violation of preference program eligibility criteria. While the dispute focuses on the Ecuadorian government's compliance with the eligibility criteria in terms of the oil export sector, all benefits from Ecuador have been placed at risk. Of course, while the USTR currently has the discretion to limit any possible suspension of Ecuador's benefits to the oil sector, as Chevron has requested, Ecuadorian companies in other sectors who enjoy trade preference benefits still find themselves in a position where they could lose their benefits as a result of actions in unrelated sectors.

This is not to say necessarily that the current competitiveness assessment for product eligibility by the USTR under §2463 should be open to any person other than an "interested party." Rather, the GSP country practice review provided under §2461 should be amended to allow "any person" to file a sector specific petition rather than just a country specific petition for review.⁸

⁸ We do not believe, though, petitions by the USTR solely be focused only on the industries where significant problems occur. The USTR must be able to retain flexibility to address egregious labor problems in trading partners even if the labor problems are in sectors that do not receive GSP benefits. For example, we currently have a pending petition to revoke GSP benefits for Uzbekistan for engaging in the

(7) *Sector-based labor initiatives linked to trade incentives has had a positive impact on broad-based development.*

Overall, sector-based trade incentives conditioned on implementing a sector-wide labor program have proven successful in raising the labor standards in beneficiary countries. 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. By addressing development from a sectoral rather than country approach, the Cambodian textile industry was able to focus on implementing reforms, had clear incentives to improve labor standards, and has been able to hold itself out as an industry leader.

Unfortunately, with the end of the Multi-Fiber Agreement, and thus the loss of significant trade incentives for the government and industry to continue reforms, much of the progress over the last 10 years is at risk. Current efforts to reform the GSP must, at a minimum, examine reforms to the program that will enable a sector-based approach to improving labor standards.

Respectfully submitted on December 1, 2009.

/s/

Brian Campbell
Director of Policy and Legal Programs
International Labor Rights Forum
2001 S Street NW, Suite 420
Washington, D.C. 20009
ph – 202-701-3021
e-mail: brian.campbell@ilrf.org

widespread use of forced and child labor in the harvesting of cotton for large state run companies. Currently, Uzbekistan only receives GSP benefits for one product, uranium.