

**Generalized System of Preferences (GSP) Subcommittee
of the
Trade Policy Staff Committee**

1991 GSP Annual Review

Worker Rights Review Summary

Case: 008-CP-91

THAILAND

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I. INTRODUCTION

In response to a petition filed in June 1991 by the AFL-CIO, the interagency Subcommittee on the Generalized System of Preferences (GSP) conducted a review of worker rights laws and practices in Thailand. The purpose of the review was to determine whether Thailand is complying with the worker rights provision of Section 502 (b) of the U.S. GSP law, which requires beneficiary countries to have taken or be taking steps to afford internationally recognized worker rights.

The GSP program, originally enacted in 1974, provides duty-free entry to eligible products from beneficiary developing countries. The GSP legislation (Title V of the 1974 Trade Act, as amended) defines internationally recognized worker rights as follows:

- a) the right of association;
- b) the right to organize and bargain collectively;
- c) a prohibition against any form of forced or compulsory labor;
- d) a minimum age for the employment of children;
- e) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health.

The legislative history of the Generalized System of Preferences Renewal Act of 1984 indicates that Congress intended for level of development to be taken into account in assessing the worker rights situations in GSP beneficiary countries. The 1984 report of the Committee on Ways and Means on the renewal act states that:

"It is not the expectation of the Committee that developing countries come up to the prevailing labor standards of the U.S. and other highly-industrialized countries. It is recognized that acceptable minimum standards may vary from country to country."

In the course of its review, the Subcommittee examined several submissions from the AFL-CIO and the [Royal] Thai Government, the Department of State's Country Reports on Human Rights Practices,

* Worker Rights Summaries are made public to highlight the principal issues considered by the GSP Subcommittee during worker rights reviews. More complete discussions of countries' worker rights laws and practices can be found in the Department of State's Country Reports on Human Rights Practices, as well as in various documents issued by the International Labor Organization (ILO). This summary includes information received as of April 15, 1992. documents from the International Labor Organization (ILO), and a number of reports from the U.S. Embassy in Bangkok, Thailand.

II. PRINCIPAL ISSUES

The Subcommittee identified significant worker rights problems falling under three of the five categories of internationally recognized worker rights: the right of association, the right to organize and bargain collectively, and a minimum age for the employment of children.

The Right of Association: Principal problems identified were 1) the placing of a number of significant restrictions on the free association rights of state enterprise employees by the State Enterprise Labor Relation Act (SELRA); 2) new limitations on who may act as union advisors as a result of Announcement 54 of the National Peacekeeping Council (NPC), and; 3) the continuation, and tightening, of a ban on strikes for all state enterprise workers.

The April 1991 enactment of the SELRA by the military-appointed National Legislative Assembly was the central issue in the Subcommittee's review. The Subcommittee viewed the SELRA as particularly important because it represented a clear change in the legal structure for trade union rights in Thailand, and because of the SELRA's general effect on the organization and the viability of the Thai trade union movement. A number of sources, including submissions by the petitioner, the 1991 Country Reports, and a November 1991 ILO report from the Committee on Freedom of Association (CFA), detailed the restrictions placed by the SELRA on the free association rights of state enterprise workers, including:

- The abolition by legislative fiat of the former state enterprise unions, with no possibility of any appeal or redress by unionists.
- Limitations on the number of workers' associations which may be formed in each state enterprise.
- Membership and registration requirements for state enterprise workers' associations are considerably higher than for private sector labor unions.
- A prohibition on the forming of state enterprise associations by non-Thai citizens.
- Limitations on the right of state enterprise workers' associations to affiliate, especially with private sector unions and international labor organizations.
- The restricting of general meetings of state enterprise workers' associations to official or traditional holidays only.

- Unlike Section 102 of the 1975 Labor Relations Act (the principal labor legislation governing private sector workers), the SELRA makes no provision for state enterprise workers to take time off for union work.
- Overly broad authority on the part of the Registrar of unions to oversee the internal affairs of state enterprise workers' associations.
- Strikes are completely forbidden, even in state enterprises not likely to meet the ILO's test of an essential industry, and the penalties for striking are particularly severe.
- The possibility of the de facto confiscation of the assets of dissolved trade unions through a provision mandating that they be transferred to the Thai Red Cross society in cases where no succeeding workers' association exists or where the union's rules fail to prescribe a juridical person to which the assets should be transferred.

While each of the above provisions appear to contravene ILO right of association guidelines, the Subcommittee noted that several of the provisions had proven in practice not to have a significant negative impact on the right of association. In particular, the Subcommittee observed that high membership and registration requirements had not precluded the formation of a large number (37 as of April 1992) of state enterprise worker associations, and that the provisions giving the Registrar broad authority to oversee the internal affairs of state enterprise workers' associations had in general not been utilized. According to a submission from the Thai Government, the Registrar has never used the provision to refuse, dissolve or remove an association or association member. In addition, the Subcommittee noted information from the Government that as of February 21, 1992 there had been "no transfer of assets of former state enterprise unions to the Red Cross or any juridical persons."

With respect to the SELRA's overall effect on the legal regime for the protection of worker rights, the Subcommittee found that the legal restrictions listed above limit freedom of association rights for an important part of the Thai workforce. The Subcommittee, however, viewed positively the former Government's stated willingness to amend the SELRA. According to the Government's October 23 submission, "if it becomes clear that modifying the law's provisions -- particularly with respect to registration requirements -- would benefit workers, the Thai Government will consider amending the law."

A second important right of association issue examined by the Subcommittee was Announcement 54, issued by the National Peacekeeping Council in February 1991, which amends the 1975 Labor Relations Act to place new restrictions on who may act as union advisors. The Announcement requires all union advisors to be certified by the Government, and establishes a list of criteria which applicants must meet in order to be certified: Among others, applicants must be of Thai nationality, be drug-free, must exhibit good conduct, must support democracy and the King's role as head of state, and must agree to work within the parameters of Thai law. In addition, applicants must meet stringent conditions with respect to their previous labor relations experience.

A central question in assessing the concrete impact of the registration requirements on right of association principles, the Subcommittee observed, was the implementation of the Announcement by the Department of Labor. In this respect, the Subcommittee noted that the record appeared to be mixed. On the one hand, the Subcommittee viewed positively information from the Government that there are "567 registered advisors as of February 7, 1992" and that "[n]o one has been refused registration or penalized." On the other hand, the Subcommittee was unable to identify any officials of the former state enterprise unions, among Thailand's most experienced trade unionists, who had been successfully registered as private sector union advisors.

Despite questions concerning the implementation of Announcement 54's provisions on the registration of union advisors, the Subcommittee viewed the registration requirements themselves as clearly in conflict with right of association principles. In this context, the Subcommittee took note of the following language from the November 1991 ILO CFA report: "[T]hese requirements clearly go beyond what could be considered reasonable in the context of [collective bargaining] negotiations in state enterprises and infringe the principles of freedom of association."

With respect to the issue of an outright ban on strikes for all state enterprise workers, the Subcommittee noted that the SELRA, like the 1975 Labor Relations Act, forbids state enterprise workers from striking. While not a new provision, the Subcommittee recalled that prior to the enactment of the SELRA, unions were able to conduct work stoppages by calling "extraordinary meetings" during working hours which had the same effect as a strike. This de facto ability of the former state enterprise unions to exercise the right to strike was an important factor in the Subcommittee's previous worker rights reviews of Thailand. Under the SELRA, however, the Subcommittee noted that workers may not engage in any activities "having the same effect as a strike," including slowdowns, and all general meetings of worker associations must be held on weekends or

official holidays.

The Subcommittee viewed these new provisions as a further diminution of the right to strike for state enterprise workers. While noting that ILO standards permit a prohibition on strikes in essential services under certain conditions, the Subcommittee noted that a number of state enterprises covered by the no-strike provisions could not plausibly be termed "essential."

During the review, the Subcommittee viewed with concern the June 1991 disappearance of Thanong Podhiarn, a prominent Thai union leader and outspoken critic of the military government. The Subcommittee received no concrete information from the Thai Government concerning Thanong's disappearance.

Right to Organize and Bargain Collectively: Principal problems identified were 1) the placing of additional restrictions on the collective bargaining rights of state enterprise employees by the State Enterprise Labor Relation Act (SELRA), and; 2) inadequate protection under the SELRA against dismissal or discrimination for legitimate union activities.

In addition to its implications for free association rights, the Subcommittee noted that several provisions of the SELRA appeared to establish further de jure limitations on the collective bargaining rights of state enterprise employees. Two aspects of the labor relations system established by the SELRA appeared to have the greatest potential impact on collective bargaining: The limited role of the Labor Relations Committees (LRCs) established in each state enterprise, and the composition of the overall State Enterprise Labor Relations Committee (SERC).

According to the Government's October 23 submission, the LRCs are to be composed of three to seven representatives from labor (selected by the worker associations) and an equal number from management, with a neutral chairperson drawn from the board of the state enterprise. The LRCs are to meet "at least monthly" to "develop rules and regulations regarding working conditions", to consider workers' complaints, and to consider suggestions from workers' associations "to improve workers' rights and benefits." The Subcommittee noted that it is unclear whether in any real sense the LRCs can serve as a forum in which worker associations can bargain for wages. With respect to this issue, the Subcommittee took note of the following language from the November 1991 ILO CFA report:

"In particular, ...if these...proposals have financial implications, the labor relations committee must submit the results of its deliberations to the national level State Enterprise Labor Relations Committee for prior approval.

In addition, ...proposals reached by labor relations

committees must also be submitted to the decision-maker in the enterprise and to the relevant Ministry "to take final actions". This clear lack of autonomous decision-making power is contrary to the promotion of voluntary negotiation of workers' terms and conditions of employment as envisaged in the ILO principles of free collective bargaining"

Despite the apparent functional limitations of the LRCs under the SELRA, the Subcommittee observed that some form of discussions regarding collective bargaining for wages appeared still to be taking place. The Subcommittee took note of information from the Government that "currently lying before the SERC for its consideration are the resolutions of the LRCs in eight state enterprises concerning the new pay scale for employees." The Subcommittee also noted that, according to a report from the U.S. Embassy in Bangkok, in February 1992 the SERC "agreed that state enterprise employees should get raises of from 20 to 23 percent in line with the 23 percent approved for civil servants. The state enterprise associations had submitted proposals asking for a raise of 16 percent."

The composition of the SERC, which has overall responsibility for all financial issues affecting the state enterprises, including the approval of wage agreements, was also raised as an impediment to fair collective bargaining. According to a submission from the Government, the 21 members of the SERC are as follows:

- Five government officials (Minister of Interior (chair), the Permanent Secretaries from the Ministries of Finance and Interior, the Comptroller-General and the Director-General of the Department of Labor);
- Five "experts" appointed by the Government;
- Five representatives of state enterprise managements;
- Five workers' representatives;
- The Chief of the Office serving the Committee (acts as Secretary)

Several sources observed that the large number of government and management representatives on the SERC made it an unsuitable forum for genuine collective bargaining. The petition, for example, charged that the SERC will be a "rubber stamp for government and employer wishes." The November 1991 ILO CFA report noted that "such a pro-employer weighting cannot ensure balanced debate of issues affecting the workers' interests," and that the SERC "does not provide a balanced forum where genuine collective bargaining could take place."

While viewing seriously the imbalance in the SERC's membership, and the attendant possibility of collusion between government and management representatives to the detriment of the state enterprise worker associations, the Subcommittee observed that the above statements had been made before the SERC began to function fully. In the principal decision made since the SERC began full operations, the February 1992 ruling on the wage increase package for state enterprise employees, the Subcommittee noted that the wage increase granted exceeded the request of the state enterprise associations.

The Subcommittee also viewed seriously apparent inadequacies in the SELRA with respect to the protection of state enterprise association members against dismissal or discrimination for legitimate union activities. It noted language from the November ILO CFA report criticizing the limited scope of protections granted to state enterprise association members:

"The text of the SELRA provides "protection only against dismissal or transfer on grounds of certain types of union activity. This appears...to be inadequate since no protection against anti-union bias at the time of hiring is included, and since it does not match the substantial protection set out for private sector workers under the Labor Relations Act. There is also no penalty for breach of this section in the Penalties Chapter of the Act."

However, the Subcommittee received no information indicating that discrimination against state enterprise association members had in fact increased under the SELRA.

A Minimum Age for the Employment of Children: Although it took note of several government actions intended to reduce child labor, the Subcommittee found that the exploitation of working children continues to remain a severe problem in Thailand. The Subcommittee took note of several sources describing the extent of the child labor problem, including the June 1991 ILO Standards Committee "special paragraph" on Thailand and the 1991 Country Reports. The special paragraph, considered the ILO's most severe form of rebuke, criticizes the Thai Government for its lack of effective implementation of laws prohibiting child labor. According to the Country Reports:

"Complaints against Thailand allege that Thai [child labor] standards continue to be low, that enforcement is inadequate despite recent increases in the number of labor inspectors, and that penalties for violations of the law are not severe enough.... There are continued reports of children over age 13 illegally employed in dangerous, unhealthful, or otherwise harmful circumstances.... Thai efforts to remedy these problems are hampered mostly by inadequate resources devoted to inspection and enforcement, and fines which do

not sufficiently deter potential violators."

While noting that the Government has not established a timetable for raising the minimum age for employment from 13 to the ILO standard of 15, the Country Reports and reports from the U.S. Embassy in Bangkok list several examples of recent Government initiatives aimed at reducing child labor. These initiatives include a provision in the current five-year plan raising the compulsory period for schooling from six to nine years, the doubling of the corps of inspectors charged with enforcing child labor laws over the past two years, and proposals by the cabinet to amend the penal code and the Job Placement and Job Seekers Act to deal with violators of child labor law.

III POSITIVE ACTIONS NOTED

During the review, the Subcommittee noted a number of positive actions on the part of the Government with respect to worker rights problems in Thailand. These positive actions, while not addressing the core issue of the new restrictions placed on the right of association of state enterprise employees by the SELRA, were viewed positively by the Subcommittee. They include:

- Several increases in the minimum wage for private sector workers since the last worker rights review of Thailand, including a 15 percent increase on April 1, 1992.
- An increase in the number of nationwide labor inspectors from 37 in 1989 to 79 today, with six more inspector positions authorized.
- The doubling over the past two years of the corps of inspectors (from 10 in 1989 to 21 today) charged with enforcing child labor laws, with another 20 inspector positions authorized.
- The inclusion in the seventh five-year plan of a provision for raising the compulsory period for schooling from six to nine years. According to the Government, the educational expansion will cover an additional thousand schools each year, so that by the end of the plan an additional 6,500 schools will be covered.
- Proposals by the cabinet to toughen the penal code to deal with violators of child labor law, according to which employers hiring underage workers would be subject to imprisonment of up to six years. Those forcibly detaining children workers could face up to ten years in jail. If the employer physically abuses the child the

penalty increases to 20 years or death if the child dies as a result. The Cabinet also proposed amending the Job Placement and Job Seekers Act to impose a jail term of one to six years on agents illegally placing children or placing women or children in sweatshops.

IV. RECOMMENDATION

While noting the above positive actions, the Subcommittee determined that because of the significant new restrictions placed on the free association rights of state enterprise workers by the SELRA, it was unable to make an overall recommendation that Thailand was taking steps at this time. The Subcommittee believed it important to underline the central importance of the right of association, a basic human right and core right of workers.

The Subcommittee was, however, aware that the SELRA and Announcement 54 were enacted by a non-democratic, military regime whose tenure was ended by the March 22 democratic elections. At the conclusion of the Subcommittee's review, a new Government had not yet had sufficient time to fully organize itself or present its labor policies to the Parliament. The Subcommittee recalled, however, several statements by the previous Government expressing a willingness to consider amending the SELRA.

With the previous Government on the record as willing to consider amending the SELRA, and evidence of some progress on child labor and workplace standards issues, the Subcommittee recommended that the review of Thai worker rights laws and practices be extended until December 15 in order to monitor child labor developments and to provide the new Government with an opportunity to repeal or amend the SELRA to bring it into compliance with international right of association standards.