

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

1989 GSP Annual Review
Worker Rights Review Summary

Case: 004-CP-89
Thailand

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The Subcommittee on the Generalized System of Preferences (GSP) of the Trade Policy Staff Committee, conducted an interagency review of the petition filed by the AFL-CIO challenging the continuing preference-eligibility of Thailand. The challenge was based on allegations brought forward by the petitioner regarding Thailand's failure to satisfy the GSP's mandatory eligibility criterion section 502(b)(7) of the Trade Act of 1974, as amended,

"...the President shall not designate any country a beneficiary developing country under this section--if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country...."

For the purposes of the review the term internationally recognized worker rights was defined as detailed in section 502(a)(4) of the Trade Act of 1974, as amended.

The review was conducted under the terms of Part 2007 of the Regulations of the United States' Trade Representative Pertaining to the Eligibility of Articles and Countries for the Generalized System of Preferences Program (GSP[15 CFR Part 2007]).

The AFL-CIO petition contained numerous allegations. The Subcommittee examined each in turn.

The AFL-CIO petition begins by noting four allegations contained in its 1987 petition against Thailand noting that "none of the above listed charges has ever been addressed in USTR explanations regarding the U.S. Government's decisions. There has been no change since 1987 with respect to any of these conditions."

The first "charge" is that "Thai employees can easily be fired for engaging in union activity and have little protective recourse."

The Subcommittee noted that the Government of Thailand in its October 18, 1989 submission in opposition to the AFL-CIO petition stated

"Dismissal of workers who participate in union activities is not any easy option available to employers. Part 4 of the Thai Industrial Relations Act established the Labor Relations Committee, a tripartite body with the authority

to arbitrate labor disputes. Workers with grievances, including those who believe they were fired for their union activities, may take their case to the Committee, which has the authority to order employees to reemploy workers, to make severance payments, or to cease improper actions."

"Workers can take their cases further to the Labour Court, which also has the power to order to employees to take actions outlined above."

In its November 13, 1989 statement to the Subcommittee the Government of Thailand expanded upon the above

"The Labour Relations Committee may hear cases involving alleged violations of sections 121, 122 and 123 of the Labour Relations Act of 1975. Section 121 prohibits employers from: dismissing union members for staging or planning protests; dismissing workers for participating in unions; interfering with workers' enrollment in unions; and interfering with union activities. Section 122 prohibits employers and employees from: coercing or threatening (directly or indirectly) workers to join or resign from unions, or taking any action that may cause an employer to contravene section 121. Section 123 provides that, during the effective period of the Labour Relations Committee decisions, an employer may not dismiss any employees who are involved in the case unless the employee carries out malpractice against the company, violates the company's regulations, intentionally injures the company or the employer, or fails to report to work on more than three consecutive days without a justifiable excuse."

According to the same statement of the Government of Thailand,

"The Labour Court has broader jurisdiction than the Labour Relations Committee. The Court may hear cases involving:

disputes over employment conditions;

disputes over employee rights and employer obligations under the Labour Protections Law and the Labour Relations Act;

cases which require judicial process under the Labour Protections Law or the Labour Relations Act;

cases appealing judgments by the Labour Relations Committee, by authorized officials in accordance with the Labour Protections Law, or by the Minister of the Interior in accordance with the Labour Relations Act; and

labor-related disputes which the Minister of the Interior submits, in accordance with the Labour Relations Act, to the Labour Court for resolution."

The Subcommittee noted that the Government of Thailand presented, in its November 13, 1989 statement, detailed information regarding the number of cases referred to both bodies in 1987 and 1988 as well as information on the nature of the cases involved. In 1987, 6,293 cases were submitted to the Labour Court and 134 to the Labour Relations Committee. In 1988, 6,771 cases were submitted to the Court and 120 to the Committee.

According to the data contained in the Government of Thailand's statement, of the cases brought before the Labour Relations Committee in 1987, 8 (involving 20 workers) involved the reinstatement of dismissed workers. In 1988, 14 cases (involving 34 workers) were brought.

Examination of the data provided by the Government of Thailand revealed that approximately one-third of the Labour Court cases in both 1987 and 1988 involved either reinstatement or severance payment issues - (1987) 120 reinstatement, 2,797 severance payment and (1988) 57 reinstatement, 2,843 severance payment. Another third involved overtime pay - (1987) 2228 and (1988) 2692. Worker dismissal cases totalled 113 in 1987 and 92 in 1988.

The Subcommittee further noted that the Government of Thailand stated that "both employers and employees may appeal decisions by the Labour Relations Committee to the Labour Court."

In this regard, the Subcommittee noted that the Country

Reports on Human Rights Practices for 1989 states

"The Labor Relations Act of 1975 affirmed the rights of employees...to be protected against discrimination, dissolution, suspension, or termination by any outside authority because of union activities...A system of labor courts implemented in 1980 exercises judicial review over most aspects of labor law...The law does not fully protect unionists against antiunion discrimination and retribution...The Thai Court Law of 1980 prohibits 'unfair dismissal,' but Thai courts have not been uniform in their interpretation of this law...Employees who were determined to have been dismissed 'unfairly' by the labor court were seldom reinstated. Instead there was a widespread reliance on severance pay as compensation to resolve labor disputes."

In this regard, the Subcommittee also noted that U.S. Embassy Bangkok reported that "settlements (in the Thai Labour Court and the Labour Relations Committee)...weigh heavily in favor of severance pay over reinstatement."

The Subcommittee noted that in a February 8 submission to the Subcommittee the AFL-CIO states that "legal recourse available to workers as outlined...does not guarantee action by an employer to provide compensation to dismissed workers." The Subcommittee noted that no legal system "guarantees" a desired outcome.

In the same February submission the AFL-CIO states that an "employer can rid himself of an entire union executive committee without fear of significant penalty or mass reinstatement" and that "the Thai government does not deny that this is a regularly used option (dismissal followed by compensation) by employers." The Subcommittee noted that the specific allegation had not been made in the June 1, 1989 petition, so no opportunity for denial had been afforded the Government of Thailand.

The second "charge" that the AFL-CIO notes as not having been addressed in the USTR explanation of April 1988 was "the fact that Thai union officials must remain as full time employees in the plants where they work restricts choice of leadership, inhibits union servicing functions, and effectively prevents organizing." The petitioner goes on to note that the

leaders of national unions must therefore maintain full-time jobs as a condition of national union leadership. The AFL-CIO argues that this denies these leaders the time required to function as national trade union leaders. The petitioner concludes by alleging "this government intrusion into union affairs persists as part of a wider pattern of unwarranted government controls."

The Subcommittee noted that the Government of Thailand in its October 18, 1989 statement held that

"...while there is no provision in Thai law explicitly stating that members of a union must be employees at the locations they represent, the Thai Labour Relations Act of 1975 does state that members of a union must be employees of either the same employer or must be engaged in the same line of work. Therefore, union employees are effectively full-time employees."

The statement went on to note that "the law also provides the right for a union to consult with an employer regarding permission for union officials to perform union activities during their regular working hours." The statement went on to opine that "many union officials have enjoyed the advantages of this provision."

In addition, the statement noted

"Furthermore, section 102 of the Thai Labour relations Act provides that members of a union's committee are entitled to take leave from their regular duties to function as workers' representatives in negotiations, reconciliation, arbitration or other meetings organized by the government. There are numerous workers functioning in such capacities and all of them are allowed to do so by their employers without any difficulties."

The Government of Thailand also reported that union officials may request, through the Labour Ministry, time off from work to attend labor seminars or participate in study tours. The government of Thailand indicated that no request had ever been denied.

The Government of Thailand concluded its discussion of this "charge" by noting that there are no restrictions on the employment of advisers and experts by Thai unions. The Government of Thailand stated that "many Thai unions employ outside experts" and these experts work full-time for the unions and "can bargain on their behalf."

The Subcommittee noted that the Country Reports on Human Rights Practices for 1989 states

"The law requiring union leaders also to work full time in the plants or industries which they represent tends to make them vulnerable to employer action in cases of conflict, especially as they have no explicit protection against dismissal for union activities for union activities prior to registration of their union."

The Subcommittee also took note of a U.S. Embassy Bangkok report "that state enterprise unionists appear to have little problem with this provision; but private sector unionists undoubtedly are constrained by it." The Subcommittee considered this in light of the following statements in the Country Reports on Human Rights Practices for 1989

"The state enterprise sector is the backbone of the labor movement in terms of the number of union members and the relative strength of its unions."

"Union membership and power is heavily concentrated in the state enterprise sector."

The Subcommittee noted that in a February submission to the Subcommittee the AFL-CIO expands its original allegation from union officials being required to be full-time employees to a charge that "workers attendance at union education programs is not assured." The AFL-CIO then notes that this should be taken as "one indication that union leaders face difficult obstacles when they seek to conduct the affairs of their organizations."

The third "charge" that the AFL-CIO notes was not addressed in the April 1988 USTR explanation was that "unions are effectively limited to representation that is work place or

individual enterprise-based."

The Subcommittee noted that the Government of Thailand was silent in regard to this "charge" in any of its statements in response to the AFL-CIO petition. The Subcommittee also noted, however, that the AFL-CIO in an appendix to its September 28, 1989, public hearing statement before the GSP Subcommittee notes

"The legal basis for forming federations in Thailand is not at issue. We do not dispute the existence of federations or the right of unions to form them. The difficulty lies in the restrictions that prevent federations from representing members effectively."

The petitioner then goes on to cite two examples of such "restrictions": 1) a union's elected officers must be full-time workers and 2) each work place must be covered by a separate collective bargaining agreement. As regards the latter, the AFL-CIO notes that this means it is "not possible for a federation to participate in all the negotiations and there is no provision in the law for coordinated bargaining."

Given the AFL-CIO's expansion upon its original petition "charge," the Subcommittee applied the Government of Thailand's response to the second "charge" regarding the requirement that union officials maintain full-time employment in the work place.

The Subcommittee noted that the Country Reports on Human Rights Practices for 1989 states that

"The Labor Relations Act of 1975 affirmed the rights of employees...(to) confederate with other unions," and

"leaders of the main labor federations recognized that fractionalization weakened their impact and continued to coordinate on such national issues as minimum wage, privatization, social security, 'temporary' work contracts, and health and safety issues."

U.S. Embassy Bangkok reported in this regard that "the Thai Labor Relations Act also allows for unionization on an industry or workplace basis. While we know of no industry-wide unions and no industry-wide collective bargaining agreements, there

are more than a dozen industry-wide federations...The four national centers also serve to enhance labor's collective bargaining power on issues of broader national importance, such as minimum wage, privatization of state enterprises, abuse of temporary workers, etc."

The fourth "charge" under "Freedom of Association" (sic) that the AFL-CIO notes was not addressed in the USTR April 1988 explanation on Thailand was that "civil service workers are denied the right to organize" and "as for the union rights of civil servants, there has been no talk of change." The Subcommittee noted that in an appendix to its September 29, 1989 public hearing statement before the GSP Subcommittee the petitioner states

"Although the Thai Civil Servants Association is quite strong as an interest group representing the bureaucracy, it is not a union and does not function as a union, as the US Embassy in Thailand admits. All civil servants can join the association...It is closer to the truth to say that the Thai Civil Servants association represents the interests of Thailand's traditionally powerful bureaucratic elite, not those of the average government worker."

In a February submission to the Subcommittee the petitioner charges that there is "no mechanism now available to the rank and file workers which allows them to influence the wage-setting process."

The Government Of Thailand in its October 18, 1989 statement in opposition to the AFL-CIO petition stated

"The Thai Labor Relations Act of 1975, which entitles workers to strike, does not apply to civil servants...."

"However, Thai civil servants have the right to organize associations, which may negotiate for improvements in workers' salaries and benefits. Currently, 36,000 Thai civil servants are members of the Government Employee Association and 30,000 civil servants are members of the Civil Servant Association."

"The bargaining power of Thai civil servant associations is

no different from that of any Thai union."

"Effective January 1, 1989, it (the Thai Government) implemented a nationwide pay increase for all civil servants and also adjusted upward the pension rate upward."

The Subcommittee noted that in its November 13 statement to the Subcommittee the Government of Thailand stated that the pay increase referenced in the last point was of 13 percent.

The Subcommittee also noted that U.S. Embassy Bangkok reported in this regard that "there is no movement here, on their part (the civil servants) or on the part of any other Thai interest group, to amend the Act to permit the unionization of civil servants. Civil servants are, literally, 'servants of His Majesty,' who themselves would see their unionization as an act of disloyalty to the Crown...This is not to say however, that they (the associations) do not ably represent their interests vis-a-vis, the RTG (the Royal Thai Government). The Thai Civil Servants' Association...is a potent political force here."

The Subcommittee further noted that the Country Reports on Human Rights Practices for 1989 states that the rights of the Labor Relations Act of 1975 are withheld from government workers. The Country Report chapter on Thailand goes on to note that "Civil servants, therefore, may not unionize, though they may and do form 'employee associations,' which are influential in determining salary scales, benefits, and conditions of employment." Finally, the Country Report states that "increases in the minimum wage and salary levels for civil servants and state enterprise went into effect in early 1989 after extensive union lobbying late in 1988."

The AFL-CIO petition then moves on to the "Right to Organize and Bargain Collectively." The petitioner states that "a number of charges the AFL-CIO made in its first petition were overlooked." The first "charge" was that "the Thai Government has broad discretionary power to declare almost any strike illegal."

The Subcommittee noted that the Government of Thailand in its October 18 statement in opposition to the AFL-CIO petition stated

"As is the case in many countries, the Thai government may declare illegal strikes that threaten the nation's security or may cause hardship to the public. However, in practice, the Thai government has gone to great lengths to avoid invoking its authority in this regard."

"Almost without exception, past strikes in these types of enterprises have been solved by the government through consultation and compromise."

"In one recent instance has the government declared a strike illegal. This occurred in February 1989 in the case of a strike by employees of the Bank of Malaysia."

In an expansion upon this last point, the Subcommittee noted that the Government of Thailand in its November 13 statement to the Subcommittee provided data to indicate that between 1983-1988 there 64 strikes in Thailand, but only two, including the Bank of Malaysia case noted above, were declared illegal.

In this regard U.S. Embassy Bangkok reported that Thai officials "consistently point out that the RTG has used this provision of law with great infrequency" and "there is no example during the last decade of the RTG declaring illegal any private sector strike, though the RTG has intervened on behalf of workers to declare private sector lock-outs illegal." The Embassy further noted that "to the Embassy's knowledge, the RTG has not used this provision of law to coerce strikers or potential strikers from striking."

The Subcommittee also noted the following from the Country Reports on Human Rights Practices for 1989

"In addition to a prohibition on strikes in 'essential services' (defined to include ports, education, transportation, fuel and energy, telecommunications, hospitals, and waterworks), the right to strike is denied all state enterprise workers. Nevertheless, strikes do occur in the public sector and are usually tolerated by the Government."

"In most of the private sector, 24-hour notice to

management is the only legally mandated prerequisite to a strike. However, the Government has the authority to 'restrict the right to strike whenever a strike would affect national security or cause severe negative repercussions for the population at large,' though this provision of law was not used in 1989 to end any strikes. It was used to end lockouts in two large manufacturing enterprises...."

In this regard the Subcommittee took particular note of a report from U.S. Embassy Bangkok regarding work "actions" taken by certain port workers in 1989. The Embassy reported that in August members of six unions at Thailand's principal port at Khlong Toei "laid down their tools to attend an 'extraordinary' union meeting. As the result of the meeting (equivalent to a strike, which would have been illegal in a state enterprise under Thai law) most operations" were interrupted.

The Subcommittee further noted that U.S. Embassy Bangkok reported that on January 30, 1990 Bangkok port workers again called an "extraordinary meeting" which halted all freight shipments in the Khlong Toei port. The Embassy, in this instance, reported that such an "extraordinary meeting" is permitted under Thai labor law, and that 2,000 of the port's 5,000 workers convened outside the port entrance for a rally, halting all freight movements in the port. Present at the "meeting" were representatives of Thailand's two leading labor federations, the TTUC (Thai Trade Union Congress) and the LCT, as well as a representative of the State Enterprise Group.

The Country Reports on Human Rights Practices for 1989 states that state enterprise sector in Thailand was quiet in 1989 "with the notable exception of the ports." The County Report chapter on Thailand notes that "work stoppages" took place in August and September and that "although such strikes are prohibited, no action was taken against the port unions."

The second "charge" in this section of the AFL-CIO's petition focuses on the practice of forcing employees to sign individual work contracts. The petitioner notes, however, that in this instance, the "charge" was (emphasis added) addressed in the USTR April 1988 explanation on Thailand.

The AFL-CIO states that

"...no actions have been taken to eliminate the growing practice of forcing workers to sign individual work contracts..." and

"The latest word is that the problem will be considered only within the context of comprehensive labor reform. This will require...Parliamentary scrutiny...a process that could take years...."

In an appendix to its September 28 public hearing statement to the GSP Subcommittee the AFL-CIO expands upon this point

"MOI (Ministry of Interior) rejected the DOL (Department of Labor) draft a couple of months ago saying it was too pro-worker."

"...there is little evidence that change is around the corner."

The Subcommittee noted that U.S. Embassy Bangkok reported on October 11, 1989 that Interior Minister Praman Adireksan signed a Ministerial Notification to curb the abuse of temporary work contracts. The Embassy reported that the action "represents a significant step toward enhancing the worker rights situation" in Thailand.

The Notification has three principal clauses: 1) the elimination of the distinction between "temporary" and "permanent" employee under Thai labor law; 2) restricting labor contracts to employment which is truly seasonal or temporary; and 3) a reduction in the maximum probation period for new employees from 180 to 120 days. With regard to clause (2), an employer will have the right to extend a temporary contract only one time, for a period equal to the first contract. Embassy Bangkok reported that the Notification affects "over one million Thai workers, who will become eligible for labor protection benefits such as sick leave, disability, and severance pay."

The Subcommittee noted that the Government of Thailand in its November 13 statement notes that Ministerial Notifications have been "upheld by the Thai Supreme Court to be the equivalent of law." The Government of Thailand further noted

that only four Notifications have been rescinded since 1984, and that in each instance, the Notification was replaced with a more expansive Notification.

The Subcommittee noted that the AFL-CIO in a February submission to the Subcommittee alleged that "there is almost universal agreement" among Thai unions that the Ministerial Notification does "not represent progress." The Subcommittee noted, however, that the only support provided by the petitioner for this statement was

- a) an AFL-CIO opinion that "the notification appears to be merely a recommended code of conduct."
- b) the opinion of a Thai labor attorney "that the government will probably turn a blind eye to companies that force workers to repeat probationary periods."
- c) an AFL-CIO opinion that as the Notification provides that workers can be hired on a "project-by-project" description, "textiles and garments will probably be considered project work."

In addition, the Subcommittee noted that U.S. Embassy Bangkok reported that

"After the issuance of the Notification...Thai organized labor, which had participated in the drafting, gradually came to the public view that too many loopholes were left open...."

The AFL-CIO petition then goes on to address "Safety and Health." As with the issue of temporary work contracts discussed above, the petitioner notes that the issue was addressed in the April 1988 explanation provided by USTR on Thailand. The petitioner alleges that while a national occupational safety and health center was established in 1983 "there is no evidence it has had any effect on conditions which affect the health and safety of workers." In an appendix to its September 28 public hearing statement to the GSP Subcommittee the AFL-CIO states that "the bottom line on safety and health in Thailand is that conditions of work have not changed for the better nor has the spiraling increase of

accidents and injuries been halted."

The AFL-CIO specifically alleges that "over two-thirds of all industrial workers are employed in small-scale industries, which fall outside the scope of government occupational safety and health inspectors." The petitioner then cites Thai Department of Labour statistics that show 43,644 injuries in 1987, quotes the Director General of the Department of Labor as stating there were 55,000 injuries in 1988, and notes the fatality rate per 10,000 workers has been rising.

In a February submission to the Subcommittee, the AFL-CIO quotes the labor advisor to the Prime Minister of Thailand as stating that "factory conditions, which are below occupational health and safety conditions, particularly exposure to dangerous chemical substances on the job, and work-related accidents have been on the rise."

The Subcommittee noted that in its October 18 statement in opposition to the petition the Government of Thailand responded by stating that "the AFL-CIO's claim is based on an incomplete presentation of Department of Labour statistics. The AFL-CIO only cites the Department's data through 1987, rather than through 1988." The Government of Thailand then presented data that showed 38,756 injuries in 1988. The Government statement went on to note that their decline between 1987 and 1988 is "even more impressive given the inherent bias in the Department's statistics" as the number of Thai provinces covered in each reporting year had grown, from 56 provinces in 1985 to 73 provinces in 1988. (In 1987, 70 provinces comprised the reporting base.)

The Subcommittee noted that the Government of Thailand was silent on the other statistics cited, but also noted that the AFL-CIO provided no information to support its allegation regarding the industrial fatality rate.

The Government of Thailand, in its October 18 statement, affirmed that the Thai government "has always given serious attention to the question of environmental conditions in the workplace." The statement noted

"...since 1985, Thailand has required that all enterprises

with more than 100 employees station at least one safety officer per 100 employees at the work site. Safety officers continuously monitor safety conditions at the plant, supervise the use of equipment, promote safety modifications and report on all accidents and the general safety environment at the site."

"The number of safety inspectors was increased from 37 in the last fiscal year to 99 beginning October 1, 1989."

In its October 18 Post-hearing Brief, the AFL-CIO quotes a Bangkok Post article to the effect that the Thai Department of Labor statistics on industrial injuries (see above) are "gross underestimates." The Department of Labor's statistics are alleged to be "incomplete since its statistics are collected from about 126,00 registered factories and do not take into account workers of at least 30,000-40,000 unregistered (emphasis in original) factories in small plants in Thailand." The brief goes on to allege that in the same article that the head of the Department of Labor, Siri Kewarinsrit, acknowledges the underreporting. Siri Kewarinsrit is also quoted as noting that his inspection force is understaffed. The brief concludes with a citation from an article in The Nation, noting increased industrial injuries.

The Government of Thailand in its November 13 statement responded to the above noting

"...Labour Department data cover all profit-making enterprises in Thailand. Only purely agricultural activities are excluded from Thai safety and health regulations and from Department of Labour statistics."

"The actual remarks made by the head of the Department of Labour attributed any underreporting of industrial accidents to the failure of certain employees and employers to inform the Labour Department about their claim settlements."

The Government of Thailand went on to report that the Thai budget for safety and health enforcement activities "almost doubled over the last five years, rising from 7.1 million baht in 1985 to 13.3 million baht in 1989." The Government of

Thailand concluded with a response to the allegation contained in the petition that "there is no evidence" that the National Center for Occupational Safety and Health "has had any effect on conditions." (see above) The Government of Thailand noted

"Since 1984, the Center has conducted:
137 training sessions for 7,122 workers,
96 training sessions for 4,787 safety inspectors;
569 lectures for 23,548 employers and employees;
282 exhibits; and
32,146 physicals.

In addition, the Center has published 56 guides on safety and health issues that have been distributed to over 663,500 workers."

The Subcommittee also noted that U.S. Embassy Bangkok reported that "enforcement of these regulations (occupational health and safety) is expected to improve as a result of the doubling of the DOL inspectors." In addition, the Embassy reported "an additional effort, which ILO officials have described as 'a model for ASEAN,' is the DOL's National Institute for the Improvement of the Working Environment (NICE). Improvement in industrial health and safety is NICE's key objective...In addition to its Bangkok center, NICE opened a new regional office in Chonburi province this year...."

The Subcommittee noted the following in the Country Reports on Human Rights Practices for 1989

"Working conditions vary widely in Thailand. Medium and large factories...generally work 8-hour shifts under conditions which meet international standards. Health and safety standards are maintained voluntarily, minimum wages usually are exceeded, children are not employed, and employees enjoy various additional benefits. However, in Thailand's large informal sector, which is susceptible to minimal inspection, enforcement, and educational efforts by the Government, internationally recognized health and safety standards are generally little understood or upheld."

"Government programs for industrial safety have relied

primarily on informational campaigns and voluntary compliance. While the programs themselves have been praised as among the best in the region, more resources are required to meet health and safety challenges posed by rapid industrialization. The national task force of labor inspectors, even after the increase approved in 1989 is fully implemented, will remain inadequate to the task...especially in the absence of complaints."

The AFL-CIO petition, after a general presentation on the issue of "safety and health," cites three examples: a Japanese survey of small-scale textile mills, a press report on the construction industry, and a Canadian television film on asbestos exposure.

The Subcommittee noted that the Government of Thailand responded solely to the final example. In its November 13 statement the Government of Thailand stated

"The Labour Department regularly monitors all asbestos factories to determine whether employees are being exposed to dangerous levels of asbestos. If dangerous exposure is identified, Department of Labour personnel recommend to the employers and employees ways to improve the safety of their operations."

The Subcommittee noted that the AFL-CIO did not provide a copy of the Japanese survey, nor provide evidence, other than one anecdotal press story to support its allegation that "safety and health standards in the construction industry are grossly deficient."

The final problem area identified by the AFL-CIO in its petition was "Child labor." The petitioner notes that "the Government of Thailand admits there is a problem, but its recognition has not resulted in a crackdown on offenders." As was the case in the areas of temporary work contracts and safety and health standards discussed above, the petitioner states that the allegation was addressed in the April 1988 USTR decision on Thailand.

The AFL-CIO continues noting that public awareness has not been translated into action. A 1988 report is cited that notes

"a half million children are employed" and the Vice Minister of Interior is quoted as "conceding" inspection has failed to "effectively contain child labor abuses." The petitioner goes on to state that the Thai Government "has taken no concrete steps to address the issue."

The petition closes by noting that child employment jumped 34% between 1983-1987, while exports in the same period rose 84%, and by noting that the influx of children into the job market "affects the employment opportunities and wages of their parents." The final citation is from a Business Week article regarding a Hong Kong toymaker's threat to the PRC to move to Thailand if PRC regulation of labor abuses were tightened.

The Government of Thailand in its October 18 statement in opposition to the AFL-CIO petition stated

"A labor survey by their National Statistical Office indicates that approximately 90 percent of the 1.1 million children aged 12-15 that are employed in Thailand are working in the agricultural sector."

"The Cabinet has already approved the extension of compulsory education from grade 6 to grade 9...It should be noted however, that due to budgetary constraints, enforcement of this regulation must be phased in gradually...."

In its November 18 statement the Government of Thailand expanded upon its earlier submission by stating

"...the Thai budget for enforcement of child labor laws has increased almost 30 percent since 1985, raising from 786,688 baht that year to 1,012,050 baht in 1989. Furthermore, the number of child labor inspectors has increased from 8 in 1985 to 10 in 1989. The Thai government has already budgeted for an increase to 24 child labor inspectors by 1991."

The Subcommittee noted that U.S. Embassy Bangkok reported as follows on this matter

"The RTG...clearly takes the child labor abuse problem

seriously...The Thai Cabinet decided...to raise the level of compulsory education from six to nine grades...This is a significant step which implies an annual increase in the Education Ministry's budget of 200-300 million dollars annually...the Thai Cabinet...approved increasing by 261 the number of DOL labor inspectors. This increase includes a trebling this year of the staffing of the DOL's Division of Women and Child Labor from 12 to 36 persons with specific inspection and enforcement responsibilities for child labor...."

The Subcommittee also noted the following from the Country Reports on Human Rights Practices for 1989

"There was no substantial new evidence of the employment of children under the age of 12 in 1989."

"...there continued to be strong anecdotal indications that children over the age of 12 were employed in dangerous, unhealthful, or otherwise harmful circumstances."

"Thai efforts to correct these problems again were hampered in 1989 by inadequate budget resources for inspection and enforcement, and low penalties and fines which did not deter potential violators."

In this regard, the Subcommittee took particular note of the Ministerial Notification signed on January 18 by Interior Minister Baharn Silpa-Archa that raised the minimum working age from 12 to 13.

The Ministerial Notification was published in the Royal Gazette on March 6, 1990 and will become effective thirty days after publication. The text of the notification reads, in part,

"Clause 2: Provision in Clause 20, 21 and 22 of Notification of the Ministry of Interior on the subject of labor protection of 16 March, 1972 shall be repealed and replaced by the following:"

"Clause 20 - An employer is prohibited from hiring a child worker below age 13. This provision is not applicable to any child worker who has attained age 12 prior to entry into force of this notification."

"Provision 21 - An employer is prohibited from hiring as child worker aged 13 through 15 for work for work which the Interior Ministry has deemed hazardous to health and physical growth; or for work which has not been approved by the labor inspector, who must certify that such work would not be hazardous to health, sanitation, growth, or mental or moral welfare of the child."

"Clause 4: Clauses 23, 24 and 25 of the Notification of Ministry of Labor Protection of April 16, 1972 shall be repealed and replaced by the following:"

"Clause 23: An employer may not impose normal working time of more than eight hours per day for employees aged 13 through 18. An employer is prohibited from hiring a child worker aged 13 through 15 to work during holidays, overtime, or between 10 PM to 6 AM except in entertainment, and then only if a reasonable rest period is provided."

"Clause 24: An employer is prohibited from hiring a child worker aged 13 through 18 to perform work as proscribed by the Ministry of Interior."

The Subcommittee also noted that a second Ministerial Notification was signed on January 18, 1990. It reads, in part, as follows:

"Clause 2: The specific provision of the Notification of the Interior Ministry dated April 16, 1972 permitting the employment of children aged 12 through 15 shall be repealed."

"Clause 3: Employers may be permitted to hire child workers aged 13 through 15 under clause 21(1) of the Notification of the Ministry of Interior on Labor Protection (No. 12) (see above) as follows: service in commercial work except where liquor is sold or consumed; newspaper delivery; service in sports; picking, selling or delivering flowers, fruits, groceries, without non-alcohol drinks; and lifting, carrying materials weighing less than 10 kgs."

"Clause 4: Employers are prohibited from hiring child

workers aged 13 years through 18 to work in the following types of works under clause 24 of the Notification of the Ministry of Interior on Labor Protection (No. 12) (see above): smelting, blowing, foundry, rolling metal or other materials; pumping metal or other materials; works associated with heat, cold, unusual vibrations, noise, or light which may be hazardous to health; hazardous chemicals under the Notification of the Ministry of Interior regarding working safety and environment (chemicals); jobs with exposure to virus, bacteria, and other disease, poisons, explosive and inflammable material except at gas stations; driving or controlling cranes or similar machinery; works related to electrical energy or machinery; works underground, under water, in caves, tunnels or mines; or exposure to radiation."

"Clause 5: Employers are prohibited from hiring child workers aged 13 years through 18 to work in the following types of works under clause 24 of the Notification of the Ministry of Interior on Labor Protection: slaughterhouses; casinos; dance halls, ramwong, or rong ngeng places regardless of the presence of bar girls; shops that serve food, liquors, tea or other drinks for sale and which provide mistresses or sleeping places or massage service for customers; places for baths, massage or relaxation which provide service girls for customers."

The Subcommittee noted that U.S. Embassy Bangkok reported that "while the absence of severe penalties may limit the effectiveness of these provisions, the RTG will have authority to remove working children from undesirable circumstances described in the Notification."

Finally, the Subcommittee noted four additional points raised by the AFL-CIO outside the framework of its petition.

In the appendix to its September 28 public hearing statement the AFL-CIO raised the issues of upgrading the Thai Department of Labor to Ministerial level and labor law reform. The Subcommittee noted that in the first instance the AFL-CIO reported the withdrawal of a bill by the Thai Government from legislative consideration, and in the later case, opined that it "finds it doubtful that comprehensive labor law reform is

around the corner." The Subcommittee noted the AFL-CIO's views but determined them not to be appropriate subjects for examination as instances to alleged worker rights violations.

The final point raised by the AFL-CIO in its September 28 appendix is under the title of "minimum wage." The AFL-CIO alleges that "pervasive violations of the country's minimum wage law by employers have increased. The petitioner cites a Bangkok Post story that allegedly reports on a Department of Labor survey that revealed "47% of businesses surveyed violated minimum wage restrictions, up seven percent from 1988."

The Government of Thailand in its October 18 statement in response to the AFL-CIO petition, while not directly in response to the allegation noted

"...earlier this year the Government twice increased the minimum wage. On January 1, it was raised from 73 baht per day to 76 baht per day. On April 1 it was raised again to 78 baht per day."

U.S. Embassy Bangkok, reporting on the minimum wage issue, stated that on January 19, 1990 "the RTG's Tripartite National wage Committee agreed...to an increase in the minimum wage for Bangkok and five adjoining provinces from the current 78 baht to 90 baht per day."

The Subcommittee noted that the Country Reports on Human Rights Practices for 1989 reported that outside the Thai formal sector "standards can deteriorate significantly." The Country Report chapter on Thailand reports that unskilled labor, pouring into Bangkok from the countryside, often willingly accepts work at wage rates below the minimum standard, and that rural workers willingly work for less than the minimum wage. The Country Chapter on Thailand concludes its discussion on this subject by noting

"Government officials continued to report large groups of laborers--estimated at about one-third of the total--received less than the legal minimum wage, and to exhort labor inspectors to enforce prescribed rates more effectively."

The AFL-CIO's fourth point was raised in a February 8 submission to the Subcommittee. In the submission, the petitioner noted that social security legislation remains stalled in the Thai parliament. The petitioner characterized the "Thai government's failure to move in this area as clear evidence that it does not intend to seriously pursue labor right reform." The Subcommittee determined that it would be inappropriate to attempt to characterize parliamentary/legislative operations in Thailand as worker rights violations.

The Subcommittee, in a similar vein, noted that in the same February submission the AFL-CIO noted that "the legislation to upgrade the Department of Labor to a Ministry must pass through the full legislative process where there are many obstacles." The Subcommittee again determined that it would be inappropriate to attempt to characterize parliamentary/legislative operations in Thailand as worker rights violations.

The Subcommittee also noted that during the examination of the AFL-CIO petition U.S. Embassy Bangkok reported that on January 11, 1990 "arrest warrants" had been issued for five State Enterprise unionists for alleged involvement in mid-December 1989 protests by rubber growers and plantation workers in Nakhon Si Thammarat province. The Embassy further reported that the Thai Trade Union Congress (TTUC) publicly called for the RTG to withdraw the warrants for two of the five who are TTUC members.

State Enterprise Group leader Ekkachi Ekhankamon argued, the Embassy reported, that the incident "was over and done with" as two of the five appeared at a press conference Ekkachi called (no effort was made to arrest the two by Thai police) to state that all 200,000 of his group's members would turn themselves in if any of the five were arrested.

The Embassy also reported that according to Thai press reports Interior Minister Bahan has ordered a review of the matter.

The Subcommittee determined, in light of the above reported developments, that the Government of Thailand could be found to

be taking steps to provide internationally recognized worker rights. The two increases in the minimum wage, the increased number of labor inspections, and the three mentioned Ministerial Notifications figured most significantly in this determination. The Subcommittee also noted, however, that it remained concerned about the absence of new or higher penalties for violations of the new Ministerial Notifications. The Subcommittee, while prepared to recognize that Thai law does not permit changes or additions of penalties in Ministerial Notifications, determined that its concerns in this regard needed to be established.

