

Generalized System of Preferences (GSP)
Subcommittee
of the
Trade Policy Staff Committee
1992 GSP Annual Review

Worker Rights Review Summary

Case: 013-CP-92

THAILAND

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1. INTRODUCTION¹

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 right 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.

In June 1992, the GSP Subcommittee recommended extending the review of Thailand until December 15, 1992 in order to monitor developments with regard to (1) child labor and (2) government efforts to reform the State Enterprise Labor Relations Act (SELRA), which restricts freedom of association and the right to organize for employees of state enterprises. The Review was extended again in December 1992, in order to give the newly-installed civilian elected government more time to address concerns about worker rights. In June 1993, it was announced that the review had been extended for an additional six month period, to December 15, 1993. This report summarizes the Subcommittee's rationale in making this recommendation.

The GSP program, originally enacted in 1974, provides duty-free entry to eligible products from beneficiary developing countries.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 the 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.

¹Worker rights summaries are made public to highlight the principal issues considered by the GSP Subcommittee during the worker rights reviews. More complete discussion on 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.

The Subcommittee noted that it is established United States policy that basic human rights are universal and that all governments are required to respect basic human rights, which include the first three cited worker rights, irrespective of social systems or stage of economic development.

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

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. In addition, new issues of the lack of enforcement of industrial safety standards were raised by the May 10 doll factory fire near Bangkok.

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 (NPKC), and; 3) the continuation, and tightening, of a ban on strikes for all state enterprise workers.

1. State Enterprise Labor Relations Act

Thailand's basic labor law is the Labor Relations Act of 1975, which now extends to the private sector only the right to form unions or employee associations of their own choosing without prior authorization.

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 1992 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.
- The obligation to establish only one employee organization per enterprise

- Membership and registration requirements for state enterprise workers' associations are considerably higher than for private sector labor unions.
- Overly broad authority on the part of the Registrar of unions to oversee to internal affairs of state enterprise workers' association.
- 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.

In its review, the subcommittee determined that the SELRA places restrictions on freedom of association and the right to organize and bargain collectively for a significant part of the Thai workforce. However, the Subcommittee notes that the Government of Thailand has committed itself to reforming (but not abolishing) the SELRA to bring it closer into conformity with international norms. A December 14, 1992 statement by Deputy Prime Minister Supachai Panitchpakdi began with the words that: "The government is determined to improve workers' rights taking into account Thailand's economic, social and development needs and international norms. The government will further review the State Enterprise Labor Relations Act of 1991."

Subsequently, on March 17 1993, Interior Minister Chawalit issued a public statement which indicates that amendments to the SELRA under consideration would restore several internationally-recognized rights, including freedom of association, the right to collective bargaining, and protection from unfair labor practices. The statement issued by the Interior Minister, in regard to the SELRA, read as follows:

The Minister of Interior is considering amendments to the State Enterprise Labor Relations Act of 1991, the most important of which concern: giving freedom of association to form unions and employee federations; having the right of collective bargaining; having the right to engage in activities with private sector labor federations, including international activities. This will give more rights and freedoms than provided under the State Enterprise Labor Relations Act of 1991, in keeping with the Labor Protection Act of 1975.

The Subcommittee viewed this statement positively, and notes that the government has since formally proposed specific amendments to the SELRA. The Subcommittee will closely monitor the development of relevant legislation to determine whether the rights lost as a result of the SELRA are restored by the Chuan Administration.

2. Announcement 54--Limitations on Who May Act as Union Advisors

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 other things, applicants must be of Thai nationality, be drug-free, exhibit good conduct, support democracy and the King's role as head of state, and agree to work within the parameters of Thai law.

The Subcommittee viewed the registration requirements 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.

The Subcommittee noted that the public statement on the SELRA by the Interior Minister does not specifically address Announcement 54, and continues to be concerned that the effect of the decree (or any succeeding legislation) could be to significantly restrict the right of association.

3. Ban on Strike Activity

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. 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 works. 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 then strike provisions could not plausibly be termed "essential" under ILO guidelines, and thus represent a limitation on the legitimate right to strike.

The Subcommittee noted that the announcement on the SELRA by the Interior Minister does not directly address the right to strike. However, allowing the right to strike would be consistent with the pledge to bring the SELRA into closer conformity with international norms regarding freedom of association.

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.

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 dominance by the government of the membership of the overall State Enterprise Labor Relations Committee (SERC).

According to information supplied by the government, 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 powers appears 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 functional limitation of the LRCs under SELRA, the Subcommittee observed that some form of discussions regarding collective bargaining for wages appear to have taken place, and that discussions within the LRC's have in the past led to improvements in wages and benefits for state enterprise workers. The Subcommittee will continue to closely monitor the operation of the LRCs, to determine if they are a de facto forum for the bargaining of wages.

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; 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). Thus, the composition of the SERC is heavily weighted towards government membership, which could limit the ability of the minority labor representatives to bargain collectively on behalf of their membership.

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 again noted language from the November 1991 ILO CFA report criticizing the limited scope of protection 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

The exploitation of child labor is a serious problem in Thailand as evidenced by the ILO "special paragraph" (the most severe rebuke possible under ILO procedures) in 1991 which criticized the government for its lack of effective enforcement of laws prohibiting child labor.

The Subcommittee notes that the Government of Thailand has taken a number of measures to reduce the incidence of child labor and that it publicly committed to taking additional steps. Among these are actions noted in the March 17 announcement by the Minister of the Interior which states:

- (1) The government is seriously conducting child labor inspections. From November 1992 to February 1993 6,678 establishments were inspected. 44 employers were prosecuted for violating child labor laws, fines...were issued and two employers sent to prison.
- (2) The government is determined to extend compulsory education from 6 to 9 years.
- (3) The government will revise the Labor Protection Act to decrease the legal work day for children [aged 13 to 15] from 8 to 6 hours.
- (4) Maximum penalties for violating the Labor Protection Act will be increased.

The Subcommittee will continue to monitor the child labor situation in Thailand closely, in particular to determine the extent to which enforcement of child labor violations are prosecuted, and penalties imposed where appropriate.

Enforcement of Health and Safety Standards

The Subcommittee noted with concern the lack of enforcement of industrial safety standards as exemplified in the doll factory fire of May 10, 1993 in which over 200 employees perished and 500 were injured. The Subcommittee looks for a thorough investigation of this matter, as well as evidence that more effective enforcement of occupational health and safety standards results from the tragedy.

III. Positive Actions Noted

(1) the Subcommittee noted the public commitment of the Government of Thailand to amend the SELRA to provide freedom of association and the right to organize and bargain collectively to state enterprise employees.

(2) The Subcommittee recognized the Government of Thailand has increased its level of enforcement of laws prohibiting child labor, and that it is publicly committed to taking more measures in the future to reduce the exploitation of children in the workplace.

IV. Subcommittee Recommendation

While noting the above positive actions, the Subcommittee determined that restrictions on freedom of association and the right to organize and bargain collectively by state enterprise workers remain in place, it was unable to make a finding at this time that Thailand is taking steps to promote internationally-recognized worker rights. The Subcommittee continues to consider the loss of worker rights due to the SELRA of 1991 and NPKC Announcement 54 as the primary basis for this review, and looks for the restoration of these rights.

The Subcommittee noted that the Government of Thailand appears to be taking some measures aimed at addressing the issues raised in the AFL-CIO petition and has made a public commitments to remove restrictions on worker rights of state enterprise workers and to reduce the incidence of child labor. Therefore, it recommends that the review of Thailand be extended for six months in order to monitor developments in these two areas, particularly whether legislation is enacted that brings treatment of state enterprise workers into accordance with international norms.