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

1993 GSP Annual Review

Worker Rights Review Summary

Case: 004-CP-93

DOMINICAN REPUBLIC

July 1994

rev of 1993 case

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I. INTRODUCTION*

In response to a petition filed in June 1993 by the AFL-CIO, the interagency Subcommittee on the Generalized System of Preferences (GSP) conducted a review of worker rights laws and practices in the Dominican Republic. The purpose of the review was to determine whether the Dominican Republic 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The GSP program, originally enacted in 1974, provides duty-free entry to eligible products from beneficiary developing countries.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."

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 submissions from the petitioners and the Government of the Dominican Republic, the Department of State's Country Reports on

* 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.

Human Rights Practices for 1993 (HRR) and reporting from the U.S. Embassy in Santo Domingo.

II. PRINCIPAL ISSUES

The Subcommittee's review of the Dominican Republic focused on the right of association and the right to organize and bargain collectively, particularly in the export processing zones (EPZs). The Dominican Republic has some 26 established EPZs, according to the HRR, and some 150,000 employees, most of whom are women. While the Dominican Republic's new labor code, passed in May 1992 and implemented in November 1993, does provide extensive worker rights protections, the petitioners' allegations related primarily to the Government of the Dominican Republic's (GODR) failure to enforce the provisions of the code.

Right of Association

In the course of the review, initiated in October 1993, the Subcommittee considered to what extent Dominican workers, particularly in the EPZs, can freely join unions of their choosing without retribution, and whether existing unions were able to perform their usual functions. These issues related to the allegations in the petition that: 1) attempts to join or form unions by Dominican workers are met with firings and other retaliatory measures, and 2) such actions erode the ability of unions to perform their usual functions, and thus often result in their disbanding.

With respect to the right of association, the Subcommittee noted that the 1992 labor code and its implementing regulations did significantly strengthen rights in this area. The labor code established in detail the steps legally required to establish a labor union, federation or confederation and provided for automatic union recognition should the government not act on a specific application within a certain time period. According to the HRR, the GODR has in practice "readily facilitated recognition of labor unions" and organized labor represents between 10 and 15 percent of the Dominican labor force overall.

The Subcommittee noted that according to the HRR, although the GODR had recognized over 50 new unions in the EPZs since the new labor code went into effect in June 1992, fewer than five of these unions were still operating by the end of 1993. The Subcommittee noted that the disbanding of many unions in the EPZs appeared problematic, especially so far as they related to alleged employer anti-union behavior. The Subcommittee concluded that while the GODR provides the right to associate freely and has greatly simplified the union registration process, the general environment in the EPZs seems, in practice, to have

eroded the right of association. The allegations regarding employer behavior in the EPZs are examined in the next section, which addresses the right to organize and bargain collectively.

Right to Organize and Bargain Collectively

The Subcommittee took note of the petitioner's allegations in the area of the right to organize and bargain collectively, particularly in the EPZs. The right to organize and bargain collectively includes protection against acts of anti-union discrimination, such as dismissal or harassment, as well as representation in negotiating and settling disputes with employers. The Subcommittee considered: 1) the absence of functioning unions in the EPZs, and 2) the extent to which the GODR enforces the labor code by effectively sanctioning violators through the judicial process or other means.

The Subcommittee began by noting that according to the HRR, none of the existing unions in the EPZs has been able to "function freely in the workplace." The Subcommittee noted that while the right to bargain collectively is provided by law, and may legally take place once a union has gained the support of an absolute majority of workers, no union in the EPZs has succeeded in concluding a collective bargaining agreement with management. The Subcommittee found the lack of functioning unions in the EPZs, to the extent that it related to employer harassment and dismissals of union members and leaders, to be a problem of serious nature.

With respect to violators of the labor code, particularly firms engaging in anti-union discrimination, the Subcommittee first noted that under the 1992 labor code, workers cannot be dismissed because of their trade union membership or activities. In addition, specific numbers of union organizers are protected from dismissals by *fuero sindical*. The HRR reports, however, that despite these measures, "some EPZ companies have a history of discharging workers who attempt to organize unions." Case histories provided by the petitioners and the GODR further indicated to the Subcommittee that dismissals or harassment of union leaders and organizers has occurred with some frequency in the EPZs. In addition, the Subcommittee considered the petitioners' allegations regarding the failure of the Dominican judicial system to effectively punish labor code violators.

The Subcommittee did note positively, however, the recent actions taken by the GODR towards establishing an environment that enables unions to function more freely in the EPZs. To this end, the GODR has demonstrated its willingness to enforce Law 8-90, which allows the GODR to suspend export of production operations for firms in the zones violating labor or other laws. The Subcommittee noted that on April 26, the GODR suspended the

export license of an apparel firm that had a persistent record of illegal anti-union behavior, including firings and harassment of union organizers on the eve of elections that would set the stage for a collective bargaining process.

The GODR reported that the suspension, which was revoked 10 days later, did result in a marked improvement in the working environment for union leaders and respect for union members' rights to conduct normal union activities. Furthermore, the Subcommittee noted, the GODR has stated that if the firm in question refuses to negotiate with its union regarding collective bargaining once the union has demonstrated that it has the necessary majority, the Labor Ministry will request that the firm's export license be irrevocably cancelled. On the other hand, the Subcommittee did note that the workers who had been ready to hold a vote to show they had majority support contend that unfair labor practices by the firm have intimidated workers and eroded previously pledged support for the union. The Subcommittee believed overall that additional evidence of GODR enforcement of Law 8-90 would be a positive development.

The Subcommittee also noted that the National Council of Free Zones, which has the authority to suspend the export or operating licenses of firms who violate Dominican labor law, has agreed to invite labor representatives to attend Council meetings. This situation, which the GODR indicated may eventually result in full participant status for a labor representative, will enable workers to present complaints and recommend sanctions against firms that have repeatedly violated the labor code.

The Subcommittee also noted favorably the progress made by the Tripartite Oversight Commission, originally established in August 1993, in mediating disputes in the EPZs. In April 1994, an agreement was signed by representatives of five of the six major labor confederations, the GODR and the free trade zone association establishing rules governing the Tripartite Commission's mediation process for collective disputes. The Subcommittee noted that the sixth labor confederation, the National Confederation of Dominican Workers, later signed the agreement after finding that most cases that had been handled through the mediation process involved its own affiliates. The rules established by this agreement, according to the GODR, provide for mediation in the initial stages of collective disputes, so as to reach an early resolution and avoid worsening of the situation through unilateral actions. They do not, the Subcommittee noted, preclude the exercise by either party of the rights accorded by the Constitution or the labor code, such as referring the case to the judiciary or conducting a strike. According to information provided by the GODR and the U.S. Embassy in Santo Domingo, the Tripartite Commission has successfully facilitated the resolution of conflicts in several

cases in the EPZs since the agreement was signed. The Subcommittee will welcome additional evidence confirming that the Commission is functioning effectively.

As noted above, the GODR has demonstrated its willingness to enforce the provisions of Law 8-90. The Subcommittee noted, after examining information submitted by the GODR and the U.S. Embassy in Santo Domingo regarding labor cases currently pending in the Dominican court system, that while there had been an improvement in the processing of court cases, there was not yet a strong record of effective sanctioning of labor code violators through the judiciary system. The Subcommittee did note favorably, however, that a law had been recently promulgated by President Balaguer establishing a new labor court and two labor justices in San Pedro de Macoris. It was the view of the Subcommittee that these actions, combined with the operations of the Tripartite Committee, should improve the GODR's ability to enforce its labor laws in the zones.

III. POSITIVE ACTIONS NOTED

The GSP Subcommittee noted the following positive actions, which it believes will have a constructive effect on the Dominican Republic's worker rights situation:

- The GODR's indication of its willingness to enforce Law 8-90, which allows the GODR to suspend the export or production operations of firms in the zones who violate the country's labor laws.
- The decision to allow a labor representative to attend the National Council of Free Trade Zones' meetings as an observer, which may lead to eventual full participation.
- The conclusion of an agreement between the GODR, private sector and representatives of the six major labor confederations establishing: 1) rules governing a tripartite mediation process for collective disputes in the zones, and 2) an Educational Commission to enhance knowledge of the labor code and worker rights. The Tripartite Commission has successfully facilitated the resolution of conflicts in several cases in the EPZs since the agreement was signed.
- The recent promulgation of a law establishing a new labor court and two labor justices in a third Dominican city.

IV. RECOMMENDATION

The Subcommittee concluded that the positive actions noted above indicate that mechanisms have been put into place to provide for improved labor law enforcement in the export processing zones.

To more definitively determine if such mechanisms are being effectively implemented, the Subcommittee recommended that the worker rights review of the Dominican Republic be continued for an additional 90 days.

by July 1990

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