

GSP Subcommittee Rationale for Non-Acceptance

) WMS

of Worker Rights Petition on

Thailand

Prepared by the U.S. Department of State

for Public Release

August 22, 1988

The GSP Subcommittee of the Trade Policy Staff Committee, on July 6, 1988, conducted the first level of interagency consideration of the petition filed by the AFL-CIO regarding internationally recognized worker rights in Thailand. 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 Subcommittee recalled that Thailand was the subject of a previous request for a review of internationally recognized worker rights. The previous request was made on June 1, 1987, and, in that instance, the request was also filed by the AFL-CIO. The June 1, 1987 request was accepted for review and, on April 1, 1988, the President declared that Thailand had been found to be taking steps to provide internationally recognized worker rights.

The Subcommittee established this year that the AFL-CIO failed to satisfy the five information requirements for a request for a review laid out in Part 2007.0(b). Specifically, the Subcommittee established that the request failed to satisfy the requirement for the provision of substantial new information in the case of a petition on a subject that has been received pursuant to a previous request.

- o Part 2007.0(b)(5) - "...If the subject matter of the request has been reviewed pursuant to a previous request, the request must include substantial new information warranting further consideration of the issue."

The Subcommittee compared the petition submitted on June 1, 1988 with the petition submitted on June 1, 1987. A side-by-side examination of the petitions follows. The 1988 petition is examined first with the charges presented in the language used in the petition. The 1987 petition follows, again, with the language used in the petition. The Subcommittee noted the similarity, and often exact repetition, of language in both petitions. New information was acknowledged in the review, and is preceded by three asterisks. The Subcommittee found that the new information was not new in substance, but additional confirmation of an already examined allegation.

AFL-CIO Thailand Petitions

1988 Petition Private Sector

"Workers...seeking to organize face considerable obstacles...expose themselves to sharp retaliation...seldom turn to government for protection...no system of checks and balances...concept...fair play is non-existent."

"The ability...to fire...casts a pall...legal recourse against...reprisals...is largely ineffective...is easily circumvented...pay small sums of severance pay...."

*** cites two incidents as examples - intervention in a strike at Sirikao Knitting Co. mid-1987 and the murder of the Vice President of the Leather Tanning Workers Union in 1987 (no more specific date).

"...officials must maintain status as full-time workers...able to reach informal arrangements...requirement can be resurrected...."

*** cites two examples - a 1985 railway case and a February 1988 case involving the Plastic Textile Workers Union.

"...undermines union organizing...in turn...affects the growth of local unions and of regional and national...intrusion in union affairs...."

"Persons...have right to establish...union...must be...same employer...same description of work...separate unions...for each enterprise...union prevented from representing the workers at more than one workplace...."

1987 Petition

1. Freedom of Association/Right to Organize

"Although the right to form unions is guaranteed...it is subject to severe restrictions...."

b. "Workers...face harassment and even discharge...they have no effective legal recourse against such reprisals...."

c. "...officials must be workers in the plants...and remain in that capacity full time...requirement, although ignored in some instances, is a severe hindrance to the growth...both at the local and national level...."

d. "as few as 10 workers can constitute...a union...even in the same workplace...makes it easy...to create company unions...promotes multiple unionism and enables...play one...against another...."

1988 Petition
Public Sector

"Civil Servants (including...teachers)...are denied right to organize...exempts public servants at all levels...."

1987 Petition

1. Freedom of Association/Right to Organize

a. "Civil servants and local government employees...are denied the right by law."

1988 Petition
Right to Organize and Bargain Collectively

"as a direct result of weakened organizations, most bargaining on wages has a very minimal goal -- to win wage increase pegged to the legal minimum wage...***...in 1987...labor members...Minimum Wage Committee reduced...many...fail to pay even the minimum wage...." *** cites undated survey on wages.

"stifling structural inhibition...is...requirement that...agreements cover only one enterprise...separate contracts...government's failure...to advance...is indicative of a...policy...designed to keep unions divided...."

"...bargaining...hampered by the far-reaching anti-strike provisions...ban on strikes...employees of state-owned enterprises...essential civil servants...should not be applied to...state-owned enterprises...."

*** "When...cannot be settled...compulsory arbitration...weighted in favor of public authority...."

"...wide discretionary authority to declare almost any strike illegal...'may affect the economy of the country or cause hardship to the public or endanger the security of the country or be against the public order'...." *** cites two 1987 instances - Sirikao Knitting Co. and another non-specified.

"...growing practice...individual work contracts...no recourse to alter their status...willingly."

1987 Petition

2. Right to Bargain Collectively

"The restrictions on union organization have their impact on the exercise of the right to bargain. Consequently, most bargaining on wages has a very minimal goal--to win wage increases pegged to the legal minimum wages."

1. Freedom of Association/Right to Organize

d. "as few as 10 workers can constitute...a union...even in the same workplace...makes it easy...to create company unions...promotes multiple unionism and enables...play one...against another...."

2. Right to Bargain Collectively

"...right to strike, permitted in the private sector under legally established procedures (but not for civil servants or in state-owned enterprises), is a feeble weapon...government...may...and at its own discretion, order an end to any strike that 'may affect the economy of the country or cause hardship to the public or endanger the security of the country or be against the public order'...is not frequently used...."

"growing practice to force...individual work contracts...."

1988 Petition

Child Labor

"...laws remain inadequate...no child, under twelve years old may be employed, but many are. Those aged twelve to fifteen are legally permitted to work in stores, perform 'light work', and work in other situations at the discretion of the Labor Department. Yet according to one estimate, which is thought to be low by some demographic experts, at least 100,000 children ages twelve to fifteen work in hazardous factory jobs in the Bangkok area alone. Some of these situations involve

manufacture of fireworks. Other children do repetitive manual labor in hundreds of factories in the textile, garment, plastic, leather, toy and candy industries. Most come from rural areas, 'leased' by their parents for two or three years in return for payments, frequently ranging from \$100 to \$250, paid to the parents in cash at the outset. Small irregular allowances may be paid directly to the child, but generally no such obligation or regulation of payments is involved in this modern system of indentured servitude...commonly prohibited from leaving the work site at any time, and sometimes they are forbidden to see their parents...."*** cites Baulee in support.

"...unwilling to enforce...employers who violate...face no penalties...Children as the plaintiffs must prosecute...under criminal statutes, a much more difficult procedure. With penalty fines very low, violators can...pay...and continue practice...."*** talks to dissolution of Parliament.

1987 Petition

3. Forced or Compulsory Labor

"The practice of child labor warrants consideration both as forced labor and as willful refusal to implement child labor standards."

4. Child Labor

"Legal prohibitions are scant...flagrantly ignored...near slave status...."

a. "No child under 12 years old may be employed, but they often are, especially in the informal sector."

b. "Children aged 12 to 15 are legally permitted to work in stores, in other 'light work'..., and elsewhere at the discretion of the Labor Department. According to one estimate (considered low by some demographic experts), 100,000 children from ages 12 through 15 work in factory occupations in the Bangkok area alone, some in hazardous jobs such as the manufacture of firecrackers."

c. "...children...do repetitive manual labor in hundreds of factories in the textile, garment, plastic, leather, toy and candy industries...Most come from rural areas, 'leased' by their parents for two or three years in return for 3,000 to 6,000 Baht (\$118 to \$236) in payments to the parents. No payment...to the children except small irregular allowances...commonly prohibited from leaving the work site at any time, and sometimes they are forbidden even to see their parents...."

"Employers who violate...face no penalties...but must be prosecuted under criminal law, a more difficult procedure...fines so low...pay and continue exploiting...."

While the Subcommittee holds that the review of the 1987 petition effectively closed with the proclamation of a Presidential finding on April, the addendum titled "Information Concerning the Report of the United States Trade Representative's Office on Thailand's Labor Policies" was examined to determine if it contained substantial new information. This examination was undertaken with the understanding that the information contained therein was to be examined in light of the following language found in a similar section of the AFL-CIO petition filed on Indonesia:

"It would seem that there is a fundamental misconception as to what should be considered significant when it comes to 'taking steps.'

The Subcommittee held that this language indicates that this section does indeed revisit the April 1, 1988 finding that steps were being taken. As such the information contained need not be found pertinent to the June 1, 1988 request for a review.

This section opens with the following language, "The investigation conducted by the Office of the USTR produced no conclusive evidence that the Government of Thailand is any more prepared to address the problems of worker rights this year than it was before the AFL-CIO filed its complaint in 1987." The AFL-CIO than poses responses to portions of the USTR justification for the Presidential determination that Thailand was taking steps to provide internationally recognized worker rights.

The AFL-CIO responses were statements of AFL-CIO positions and not presentations of new information:

"Expressions of the Thai Government's good intentions do not constitute evidence that improvements are actually underway;"

"Because no government has unlimited funds for enforcement of standards, regarding labor rights or anything else, this is non-responsive;"

"The AFL-CIO is not persuaded that the elevation of the Department of Labor to ministry status constitutes an alteration in the status of worker rights;"

"We do not feel that a tripartite body reviewing the matter will seriously alter the practice;"

"The AFL-CIO do not believe that a program of public awareness is sufficient to address the problem of child labor...;" and

"The USTR response did not include the most up-to-date information that was available at the time of its writing."

As noted above, the Subcommittee found these responses to be arguments and not the provision of new information. The Subcommittee further registered its concerns regarding the last AFL-CIO response. The information that followed the statement cited above was a misrepresentation of information contained in a classified U.S. Department of State cable. How the information came to be in a public document is a matter of concern to the Subcommittee.

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

His Excellency Subin Pinkhayan
Minister of Commerce
c/o Embassy of Thailand
2300 Kalorama Road, N.W.
Washington, D.C. 20008

Dear Minister Subin:

As you know, my office is charged with responsibility for administering our law dealing with the Generalized System of Preferences (GSP). This year, like last year, we have received a petition from a leading U.S. labor federation alleging that Thailand does not meet the eligibility standards required of the GSP program due to its failure to take "steps to afford internationally recognized worker rights". The U.S. Government has decided not to accept the petition concerning Thailand for review this year.

In making this decision, the petition was examined keeping fully in mind the intent of the U.S. Congress, the relevant provisions in U.S. law, and the regulations governing the GSP program. The Administration's decision not to accept the petition was based on a determination that given the comprehensive review of the worker rights situation in Thailand just completed, the petition did not provide substantial new information concerning practices related to worker rights as the regulations require.

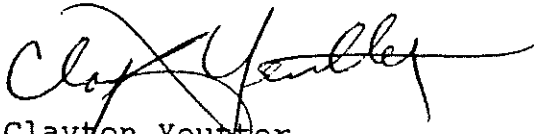
The comprehensive review completed last April resulted in a Presidential determination that Thailand was "taking steps" to provide internationally recognized worker rights. At the same time, however, the Thai Government was made aware of U.S. concerns in several areas, many of which have been the subject of reviews and complaints in the International Labor Organization and the International Congress of Free Trade Unions.

Given the continuing concerns in the United States, it is imperative that you continue your efforts to improve the worker rights situation in Thailand and that you address legitimate concerns that are raised in this area.

His Excellency Subin Pinkhayan
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We will observe with much interest your efforts over the coming months. We wish you every success in advancing this important cause.

Sincerely,



Clayton Yeutter

cc: Ambassador Daniel O'Donohue, Bangkok
Ambassador Vitthya Vejjajiva, Washington