

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

1992 GSP Annual Review

Worker Rights Review Summary

Case: 004-CP-92

FIJI

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## I. INTRODUCTION\*

### WORKER RIGHTS SUMMARY: FIJI

In response to a petition filed in June 1992 by the AFL-CIO, the interagency Subcommittee on the Generalized System of Preferences (GSP) conducted a review of worker right laws and practices in Fiji. The purpose of the review was to determine whether Fiji 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The GSP program, originally enacted in 1974, provides duty-free entry to eligible products from beneficiary developing countries.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 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.

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 worker rights cited above, irrespective of social systems or states of economic development.

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

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\* Worker Rights Summaries are made public to highlight the principal issues considered by the GSP Subcommittee during worker rights reviews. More complete discussions of countries' worker rights laws and practices can be found in the Department of State's Country Reports on Human Rights Practices, as well as in various documents issued by the International Labor Organization (ILO). This summary includes information received by the Subcommittee as of April, 1993, documents from the International Labor Organization (ILO), and a number of reports from the U.S. Embassy in Suva, Fiji.

## II. PRINCIPAL ISSUES

The Subcommittee identified problems falling principally in the area of freedom of association. Specifically, the Subcommittee was concerned that three decrees enacted in 1991, along with additional regulations promulgated by the government of Fiji, reduced the ability of workers to exercise their rights in this area. Prior to 1991, workers in Fiji were more clearly able to effectuate in accordance with international norms the rights of freedom of association and to bargain collectively. Allegations were also made in the petition about poor conditions of work.

### A. Freedom of Association

Freedom of Association includes the right of workers to join and form organizations of their own choosing (including trade unions) without prior government approval. International norms specify that trade unions and other organizations should be able to operate without internal interference from the government; *i.e.*, they should be able to draw up their own constitutions and rules, and to elect their representatives in full freedom. \* Freedom of association also includes the right to strike.

The petition filed by the AFL-CIO contends that through three decrees (Decrees 42, 43, and 44 of October, 1991) and two legal notices (notices 58 and 59), the Fiji Government unilaterally restricted freedom of association, including the right to strike. In brief, these decrees established stricter definitions of preconditions for a strike, more complex machinery for settlement of labor disputes, and other guidelines to control the internal affairs of labor unions. While most workers in Fiji retain the freedom to join unions of their own choice, the Subcommittee concluded that certain aspects of these measures reduce the autonomy of trade unions to operate independently and to establish their own rules and procedures.

The Subcommittee notes that the ILO Reports of the Committee on Freedom of Association for November 1992 stated that some portions of these decrees and related measures were inconsistent with ILO standards, and requested the Government of Fiji to make the necessary changes to make their labor regime more consistent with international norms.

Specific problems include the following:

- o Provisions which restrict the ability of a trade union to choose its own officers, free from government interference, *e.g.*
  - o prohibitions on certain officers of an industrial association from holding office in another such association or trade union (Decree 42) and;
  - o requirements that trade union leaders shall at the time of their election have been engaged for more than a year in the occupation or trade in which the organization functions (Decree 42).

- o Legislation (the Trade Unions Act) which deprives workers with multiple employers of the right to join a trade union or to be a party to a labor dispute.
- o Provisions which may interfere with the union recognition process. Under Decree 43, recognition orders can be blocked by the simple existence of a rival claim for union recognition, and the Permanent Secretary (a government official) rather than a judiciary authority has jurisdiction to settle recognition disputes. This latter provision could be particularly troublesome in cases of recognition disputes in the civil service, since a government official might have a particular bias.
- o Provisions which appear to interfere in internal union matters, e.g.
  - o new requirements (in Regulations 10a and 10b) which prescribe the intervention of certain administrative officials in union ballots; and
  - o requirements for a secret ballot when a union requests support from outside of Fiji (Decree 44).
- o Provisions which impede the right to strike, e.g.
  - o Legal notice 58 outlines an elaborate process for conducting a strike vote, thus interfering in internal union affairs. Any strike vote has a mandate of only six weeks, and strike action may only be taken with regard to the specific grievance cited in the strike vote.
  - o Decree 44, which was reconfirmed in a May 1992 decree, broadens the definition of strike, so that workers could be considered "on strike" for a variety of reasons, including reducing their productivity or refusal to work in dangerous conditions. Workers who conduct unofficial strike actions could face stiff fines or imprisonment.
  - o Provisions allowing the Government to ban strikes related to union recognition disputes (Decree 43).
- o Elimination of the automatic check-off of union dues, and the imposition of "undertakings" on civil servants in return for allowing automatic deduction of union dues.

The Subcommittee does not have concrete evidence about the effect of these decrees in practice on either the actual conduct of labor relations or the extent to which these decrees have been invoked by the Government.

The Subcommittee notes that the Government of Fiji takes the position that the reform of labor legislation is part of a wide-ranging economic reform designed to promote economic growth, and that workers retain their right to join a union of their choice and to bargain collectively.

The Subcommittee understands that the Prime Minister of Fiji was elected after promising to work for repeal of the 1991 Decrees. In September, 1992 the Minister for Labor and Industrial Relations made a public pledge to review the 1991 labor decrees, and further committed to eliminate those aspects of the measures considered undesirable by labor. The government declared on June 2 that it was "satisfied" with the 1991 labor "reforms", but then announced on July 19 that, in response to complaints by the ILO, decisions had been made to rescind or change four provisions:

- o lifting the ban on multiple office holding by labor officials;
- o repeal of the limited six week validity ban for union strike ballots;
- o repeal of a government requirement for secret ballots if a trade union seeks international support and;
- o repeal of "check off" agreements for public sector unions.

The Subcommittee notes that these measures, if fully implemented, would appear to address some of the concerns raised by the ILO.

#### B. Conditions of Work

The AFL-CIO made several allegations about conditions of work in Fiji, specifically: (1) Fiji has no national minimum wage; (2) Fiji has no regulation specifying hours of work for adult males; and (3) the government does not have enough personnel to adequately enforce health and safety standards. The garment industry is cited as an example of an industry where working conditions are particularly poor.

These allegations are corroborated in part by the 1992 Human Rights Report (HRR). The HRR states that Fiji has no national minimum wage, but that certain sectors have minimum wages set by the Ministry of Labor and Industrial Relations. According to the HRR these minima are effectively enforced and will generally support a barely adequate standard of living.

The HRR also confirms that Fiji has no standard workweek for adult males and that employees in certain industries, notably transportation and shipping, have problems with excessive hours of work. The HRR also states that government enforcement of health and safety standards suffers from a lack of trained personnel, but that the unions do a reasonable job of monitoring health and safety conditions. As a result of a 1989 investigation, the Government ordered many firms in the garment industry to improve working conditions.

### III. Positive Actions Noted

- o The Government of Fiji took some positive actions while the review was in process, including restoring the automatic unions dues check-off system and formally recognizing the Fiji Trade Union Congress (FTUC).
- o In his June 2 public address, the Prime Minister promised to reestablish a tripartite labor, employer and government committee to discuss the formulation of economic policy.
- o On July 19, the Government of Fiji announced that the Cabinet had decided to rescind or change four provisions of the 1991 labor "reforms" in response to complaints raised by the ILO.

### IV. Recommendation

The Subcommittee recognizes that Fiji has an independent and active labor movement. According to the 1992 Human Rights Report, "workers' rights to form and join unions, elect their own representatives and determine their own policies are respected in law and practice." However, the Subcommittee is concerned that the three labor decrees (numbers 42, 43, and 44) of 1991 and related regulations are steps backwards in that they unilaterally deprive workers of some rights which previously existed. The Government of Fiji has in the past stated that these measures are justified and do not need to be changed, but, as noted above, a more recent announcement indicates that some of the restrictions may be liberalized.

Accordingly, the Subcommittee recommended that the worker rights review of Fiji be continued for one full year in order to monitor ongoing labor developments, notably the extent to which the Government of Fiji repeals or modifies the measures discussed above to make them consistent with international norms. The Subcommittee will also monitor efforts by the Government of Fiji to improve and enforce laws related to conditions of work.