

Generalized System of Preferences (GSP)
Subcommittee
of the
Trade Policy Staff Committee
1993 GSP Annual Review

Worker Rights Review Summary

Case: 010-CP-93

MALAWI

March 1994

GSP Information Center
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20506
(202) 395-6971

I. INTRODUCTION*

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, extended until December 1993, of worker rights laws and practices in Malawi. The purpose of the review was to determine whether Malawi 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The GSP program, originally enacted in 1974, provides duty-free entry to eligible products from beneficiary developing countries.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 several submissions from the petitioners and the Government of Malawi, the Department of State's Country Reports on Human Rights

* 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. This summary includes information received as of March 1993, and reports from the U.S. Embassy in Lilongwe, Malawi.

Practices, documents from the International Labor Organization (ILO), and reporting from the U.S. Embassy in Malawi.

II. PRINCIPAL ISSUES

The Subcommittee's review of Malawi concentrated on two principle areas: the right of association and the right to organize and bargain collectively.

Right of Association

The Subcommittee's review, initiated in June 1992, focused primarily on issues related to the right of association in Malawi. Four major issues were considered: (1) the independence of the Trade Union Congress of Malawi (TUCM) from the Government of Malawi; (2) the GOM's decision in 1992 to close the Southern Africa Trade Union Coordinating Council (SATUCC) headquarters in Malawi; (3) the harassment and persecution of labor leaders, in particular, the arrest and incarceration in 1992 of Chakufwa Chihana, secretary-general of the SATUCC; and, (4) the degree to which the right to strike is allowed.

With respect to the independence of the TUCM, the Subcommittee noted the statement in the 1992 State Department Human Rights Report on Malawi, that "Unions are required by law to affiliate with the Trade union Congress of Malawi (TUCM). The TUCM...is a private organization ostensibly independent of the Malawi Congress party, but in practice its activities are highly circumscribed by the government." While unions are still required to affiliate with the TUCM, which in itself is a violation of ILO norms, the Subcommittee does note positive developments that occurred in 1993 that signal a shift away from centralization of the trade union movement under the control of the "President for Life" and his ruling Malawi Congress party. The 1993 Human Rights Report, released in February 1994, does reflect this movement in its statement that "The TUCM...was until late 1993 highly restricted in its activities." The following developments were of particular interest to the Subcommittee:

- A national referendum in June 1993 resulted in movement towards a multi-party system. Malawi's first multi-party presidential and parliamentary elections have been scheduled for May 1994.
- Following the referendum, TUCM leaders formed a Caretaker Committee, to be responsible for overseeing the first free TUCM elections in fourteen years, to be held in late March or April 1994.

- The Ministry of Labor announced its support of a new labor policy that aims to decentralize dialogue, negotiations and collective bargaining and underscores the right of workers to organize freely into trade unions. Part of this policy was a commitment to review Malawi's Trade Union Act and other labor legislation.

Second, regarding the SATUCC, a regional labor organization whose Malawi office was closed by the Government of Malawi in April 1992 in connection with the arrest of Chakufwa Chihana, the Subcommittee was pleased to hear of the GOM's decision in September 1993 to authorize the reopening of the SATUCC office. The Subcommittee understands that the SATUCC office reopened in early 1994.

With respect to the treatment of labor leaders, the Subcommittee monitored with particular interest the case of Chakufwa Chihana. The Subcommittee noted that as Secretary General of the SATUCC, Chihana is legitimately considered a labor leader in Malawi, regardless of the nature of the charges brought against him or whatever political activities he might engage in. As such, the Subcommittee concluded that the nature of actions against Chihana were justifiably considered restrictions on the right of association, not least because of the impact they would have on others considering involvement in independent labor organizations in Malawi. The Subcommittee did view positively the fact that while convicted for sedition, Chihana's sentence was reduced upon appeal, and Chihana was released from prison in June 1993, prior to the national referendum. In addition, the Subcommittee noted, Chihana plans to run for President in the 1994 elections. The Subcommittee will continue to monitor the treatment of labor leaders in Malawi, particularly ones working for labor institutions independent of the government, such as Chihana.

Finally, the Subcommittee examined the right to strike. The Subcommittee noted that Malawi experienced an unprecedented degree of labor unrest since May 1992, when a spontaneous work stoppage in Blantyre resulted in at least 22 dead. In 1993, this trend was amplified, both in the public and private sectors, according to information provided by the Government of Malawi and reporting by the U.S. Embassy in Lilongwe. The Subcommittee did note that labor unrest in 1993 was generally nonviolent in nature, except for an incident in which a striker was fatally shot by a Malawian police officer at a sugar plantation. The Government of Malawi, in a November 1993 submission, stated that the Ministry of Labour subsequently advised the plantation management that since striking was a legal activity, "premature recourse to police intervention in future labor disputes should be avoided as a matter of good labor management." The Subcommittee noted that negotiations generally led to a successful resolution of disputes and often wage concessions. Of

particular interest was the development of a new pattern of negotiations that took place in 1993, according to the government of Malawi-- direct negotiations between workers' representatives and employers without the involvement of Ministry of Labor officials.

Right to Organize and Bargain Collectively

The Subcommittee took note of petitioners' allegations against Malawi in the area of the right to organize and bargain collectively. It began by recalling the statement from the 1992 HRR quoted by the petitioners: "Workers have the legal right to bargain collectively, but the law does little to restrict antiunion discrimination by employers." The lack of legal protection against antiunion discrimination was considered a serious hindrance to the right to organize and bargain collectively.

Yet, the Subcommittee did recall that the 1992 HRR also stated that, "when employers and employees cannot reach agreement on a labor issue, a labor officer from the Ministry of Labor meets with the two sides in an attempt to reach a consensus. This is usually successful." In addition, the Subcommittee took note of the section of the 1992 HRR which states that:

Management-labor councils (called "work committees"), which arose in direct response to the May disturbances, mediate labor issues in the workplace. Standing management-labor councils exist for large industries and businesses. The composition of the councils is generally half labor and half management, but there are no set procedures on how labor representatives are chosen or what relationship the committees have with existing unions. Grievances of all kinds (including wage issues) may be handled by these committees as long as they relate to work at that particular place of employment. When wage negotiations concern an entire industry nationwide, the Government involves itself in the discussions, and all parties work until a consensus is reached. However, the Government does not intervene overtly in the collective bargaining process.

The Subcommittee considered this information important in assessing the true extent to which a process approximating true collective bargaining (i.e., consistent with ILO norms) exists in Malawi. It viewed the creation of work committees as an effort to respond constructively to labor grievances. In addition, the Subcommittee noted the Government of Malawi's stated intention, in its Policy Statement on Trade Unions and Collective Bargaining, to promote the right to bargain collectively and a policy of non-discrimination against workers involved in trade

particular interest was the development of a new pattern of negotiations that took place in 1993, according to the government of Malawi-- direct negotiations between workers' representatives and employers without the involvement of Ministry of Labor officials.

Right to Organize and Bargain Collectively

The Subcommittee took note of petitioners' allegations against Malawi in the area of the right to organize and bargain collectively. It began by recalling the statement from the 1992 HRR quoted by the petitioners: "Workers have the legal right to bargain collectively, but the law does little to restrict antiunion discrimination by employers." The lack of legal protection against antiunion discrimination was considered a serious hindrance to the right to organize and bargain collectively.

Yet, the Subcommittee did recall that the 1992 HRR also stated that, "when employers and employees cannot reach agreement on a labor issue, a labor officer from the Ministry of Labor meets with the two sides in an attempt to reach a consensus. This is usually successful." In addition, the Subcommittee took note of the section of the 1992 HRR which states that:

Management-labor councils (called "work committees"), which arose in direct response to the May disturbances, mediate labor issues in the workplace. Standing management-labor councils exist for large industries and businesses. The composition of the councils is generally half labor and half management, but there are no set procedures on how labor representatives are chosen or what relationship the committees have with existing unions. Grievances of all kinds (including wage issues) may be handled by these committees as long as they relate to work at that particular place of employment. When wage negotiations concern an entire industry nationwide, the Government involves itself in the discussions, and all parties work until a consensus is reached. However, the Government does not intervene overtly in the collective bargaining process.

The Subcommittee considered this information important in assessing the true extent to which a process approximating true collective bargaining (i.e., consistent with ILO norms) exists in Malawi. It viewed the creation of work committees as an effort to respond constructively to labor grievances. In addition, the Subcommittee noted the Government of Malawi's stated intention, in its Policy Statement on Trade Unions and Collective Bargaining, to promote the right to bargain collectively and a policy of non-discrimination against workers involved in trade

union activities. The Subcommittee hopes that an administrative and legal framework will be developed to effect this statement of policy, most importantly through a review of Malawi's trade union legislation and the establishment of labor courts.

III. POSITIVE ACTIONS NOTED

The GSP Subcommittee noted the following positive actions, which have had a constructive effect on the country's worker rights situation:

- The June 1993 release of Chakufwa Chihana from prison.
- The creation of work committees to mediate labor management issues in key Malawian enterprises.
- The government of Malawi's approval of the reopening of SATUCC offices in Lilongwe.
- The government of Malawi's approval of a new labor policy that underscores the right of workers to organize freely into trade unions, aims to decentralize dialogue, negotiations and collective bargaining, and states the commitment of the government of Malawi to reviewing the Trade Union Act and other legislation.
- The formation by TUCM leaders of a Caretaker Committee, to be responsible for overseeing the first free TUCM elections in fourteen years, to be held in March or April 1994.

In addition, the Subcommittee viewed positively the public referendum held in June in Malawi and the plans for presidential and parliamentary elections in May 1994, on the grounds that movement to a multiparty system in Malawi could increase the independence of labor organizations from the government, and thus improve the right of association in the country.

IV. RECOMMENDATION

In light of the positive actions noted above, the Subcommittee recommended that Malawi be found to be in compliance with the worker rights provision of the GSP law and that the worker rights review of Malawi be favorably terminated. The Subcommittee did recommend, however, that a reversal of the positive trends noted above, including the failure to hold free and fair union elections on schedule, would be a basis for reopening the review.