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**Comparative Case Analysis of the Impacts of Trade-Related Labor Provisions on Select US  
Trade Preference Recipient Countries**  
**Bama Athreya**  
**International Labor Rights Forum**  
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**Introduction**

Labor rights advocates in the United States have been relatively successful in legally-mandating the link between labor rights and trade on a unilateral basis in U.S. law.<sup>1</sup> A series of laws have been passed that explicitly condition certain trade benefits on compliance with labor rights. This paper examines the use of this linkage in a particular program, the Generalized System of Preferences (GSP), by civil society advocates in select cases in the early years of the country review program (1987 – 1993). The goal of the project is to examine past efforts by civil society actors to protect labor rights via trade linkage within GSP, and to analyze the relative effectiveness of various strategies connected to select cases. The paper seeks to examine civil society's views of the utility of the petition process in promoting broader protections to labor rights. It describes strategic and tactical decisions by civil society actors involved in each specific case. The study does not intend to examine the sufficiency of the legislative language or implementing procedures within GSP. The central question for the study is what lessons civil society has learned about effective uses and limitations of this particular mechanism.

**Brief Description of GSP**

Since 1976, the U.S. GSP has provided preferential duty-free entry for more than 4,650 products from 131 designated beneficiary countries and territories. The U.S. along with many other advanced industrialized countries adopted preferential access programs in the 1970s with the stated goal of promoting economic growth in the developing world. Other one-way U.S.

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<sup>1</sup> Collingsworth, *American Labor Policy in the International Economy: Clarifying Policies and Interests*, 31 **Boston College Law Review** 31-100 (1989).

preferential agreements include the Caribbean Basin Economic Recovery Act (CBERA),<sup>2</sup> which is similar to the GSP program but focuses on the Caribbean basin; the Andean Trade Promotion Act (ATPA), in which the nations of Colombia, Ecuador, Bolivia and Peru receive additional trade preferences, and the African Growth and Opportunity Act (AGOA) covering many sub-Saharan African nations.

In 1984, the GSP legislation was amended to include labor rights conditionality.<sup>3</sup> To remain eligible for duty-free access to the U.S. market, recipient countries were required by this amendment to show they are “taking steps” to extend a five factor definition of “internationally recognized worker rights”:

(A) the right of association; (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form of forced or compulsory labor; (D) a minimum age for the employment of children; and (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.<sup>4</sup>

A complaint mechanism allows any group or individual to file petitions with the U.S. Trade Representative (USTR) to initiate a review into the labor practices of any states that may not be meeting the labor rights conditions. Past petitions have generally addressed which of the five fundamental rights are being violated and how government actions did or did not uphold labor rights commitments. Once a petition is filed, it is vetted by the GSP Subcommittee to determine if it should be reviewed by the USTR, with final determinations on labor rights enforcement and GSP benefits made by the President.

The GSP Subcommittee, chaired by a representative of USTR, is composed also of representatives from different branches of the federal government, including the Departments of State, Labor, Treasury, Agriculture and Commerce, and the Council of Economic Advisors. The GSP Subcommittee’s duties include reviewing the labor rights (“country practice”) petitions,

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<sup>2</sup> 19 U.S.C. §§ 2701-06 (1986).

<sup>3</sup> The final section of this paper will describe the human rights movement’s role in promoting labor conditionality within GSP in the 1980s. An examination of legislative or administrative intent at the time of the inclusion of this provision is beyond the scope of this study.

<sup>4</sup> 19 U.S.C. § 2462 (a)(4).

requests for product inclusions, eligibility extensions to new countries, violations of a separate intellectual property rights clause, and other GSP issues. In labor rights cases, the Subcommittee counsels the USTR on whether a full in-country review of labor rights should be taken. The in-country review involves but is not limited to fact finding by State Department personnel and labor reporting officers stationed in the relevant US embassies or consulates. The outcome of this review in turn determines Subcommittee recommendations to USTR as to whether the USTR recommends to the President that GSP benefits should be continued or suspended for specific countries. In brief, the conclusion of the review process is the decision by USTR to continue or suspend GSP benefits for the target country.

Initial worries that, by linking trade with labor conditionality, the GSP would be open to protectionist misuse have not been borne out by experience. There have been few instances of industries that are facing competitive challenges looking for removal of benefits for imports from GSP beneficiaries.<sup>5</sup> However, in the history of GSP review process, country reviews have been subject to delays, for administrative and political reasons, impeding the ability to respond to developments – positive or negative – within the country. This will be described further in the case review below.

### **Rationale for Case Selection**

The main body of this paper examines, through review of empirical data, in particular primary source documents and interviews with key informants in select cases, civil society engagement with labor rights review processes under US trade preferences programs through four select cases where the petition practice was actively utilized.<sup>6</sup> The cases were selected to represent distinct petitions and outcomes under the GSP country practice review process. The question examined in all cases is what civil society actors gained in terms of actual changes to labor rights practice, or development of new strategies and tactics to promote labor rights,

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<sup>5</sup> See e.g. Compa, Lance and Jeffrey S. Vogt, “Labor Rights in the Generalized System of Preferences: A 20-year Review” in *Comparative Labor Law and Policy Journal* Vol. 22: 199 – 237; also Harvey, Pharis J., “U.S. GSP Conditionality: ‘Aggressive Unilateralism’ or a Forerunner to a Multilateral Social Clause?” ILRF Working Paper, Washington, DC 1995. Franz Christian Ebert and Anne Posthuma in ILO Discussion Paper 205, “Labour Provisions in Trade Arrangements: Current Trends and Perspectives” note also that European Union and other non-U.S. GSP schemes have never led to punitive sanctions.

<sup>6</sup> A fifth case, Pakistan (1993) is included as an appendix to the paper.

through engagement with the petition process. Corollary questions include whether civil society actors understood the process and shaped goals and objectives that were appropriate to the specific labor rights conditions and parameters of the US government review procedures.

The first case to be examined is Malaysia (1990). Malaysia was the subject of two separate GSP petitions in 1988 (filed by the AFL-CIO/ Asian American Free Labor Institute) and 1990 (filed by the International Labor Rights Forum), both on the basis of violations of freedom of association. Both cases relied on a single petitioner working in close coordination with the Malaysian Trades Union Congress and in-country sectoral unions. As an early case under this mechanism, the Malaysia review provides insight into the evolution of the civil society actors' understanding of the petition process and its potential strategic uses. As shall be described, the case galvanized a civil society push for reform to the GSP review process, even in the first decade of its existence.

The second case, Indonesia, was the subject of GSP petitions in 1987, 1988, 1989, 1990 (all filed by the AFL-CIO/ Asian American Free Labor Institute) and 1991 (International Labor Rights Forum/ Asia Watch). The USTR review was ultimately suspended in 1995. The case shows the evolution of particular strategies by different civil society actors, both within Indonesia and in the United States. The early cases filed by AFL-CIO did not rely on domestic civil society partners, but the later petitions by ILRF and Asia Watch demonstrate the development of a communications strategy, and a more nuanced understanding of the possible changes in law and practice that could be sought through the petition process. A growing NGO movement within Indonesia also used the case as part of its evolving set of tactics to pressure the Indonesian government. The contrast between the earlier AFL case and the later case, which was broadly supported by local civil society actors within Indonesia with important tactical effects that could not be reflected within the formal review process, will be discussed.

El Salvador was the subject of petitions by several organizations beginning in 1987 and continuing through the early 1990s, with the first case that was formally accepted for review by USTR submitted in 1990. The level of attention by multiple civil society actors, and the extent of correspondence and coordination between several labor and human rights organizations both

in the US and in El Salvador throughout this case, was unusual and provides a good opportunity to assess and comment on civil society strategies employed through the GSP petition process. The 1990 petition is unique in its use as a tool to generate broader engagement between indigenous trade unions and labor rights organizations in El Salvador, and a social justice movement in the United States. It also represented an impressive coordination of US and Salvadoran civil society actors, and was one of the very few petitions submitted directly by a domestic labor organization from the target country (FENASTRAS). The case provides not only important fodder for discussion of the tensions and challenges of cooperation between indigenous and US solidarity organizations, but also an important window into a prominent debate regarding the extent to which labor rights reviews can be separated from a broader review of human rights and political freedoms in a target country.

Honduras was the subject of an initial petition by the National Labor Committee in 1991, which, while it was formally rejected by the GSP subcommittee, became the basis for a unique bilateral negotiation of a Memorandum of Understanding (MOU) on labor compliance. The AFL-CIO, while initially resistant to the use of the GSP mechanism, became engaged via the efforts of both US and Honduran organizations and developed an interesting strategy to use the potential for a GSP filing to push the negotiation of the MOU, while it withheld the actual filing of a new case until 1995. The unique strategy of engaging USTR and promoting a *de facto* review process even in the absence of an active case, and the question of why Honduras represented an unusual opportunity to pursue this strategy, will be discussed.

In all cases, it was necessary to rely extensively on documentation on file at the International Labor Rights Forum (ILRF)<sup>7</sup> and to a lesser extent among other civil society organizations such as the AFL-CIO and US Labor Education in the Americas Project (USLEAP). While until recently it was possible to review correspondence related to such cases at USTR's reading room, the reading room itself was recently closed and USTR staff were no longer able to provide any documents except for the original petitions themselves in response to outside

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<sup>7</sup> The acronym ILRF will be used throughout the paper but the organization's name has been changed over the years; at the time of the submission of the relevant petitions the organization was the International Labor Rights Education and Research Fund (ILRERF) and has also been known as the International Labor Rights Fund, referred to in some file documents as the Fund.

inquiries. Other relevant agencies (US Department of Labor and US Department of State) indicated that they were unable to provide any correspondence without a Freedom of Information Act request, which was not possible without dedicated resources to support the costs of such filings, and a longer time period required to obtain the documents.<sup>8</sup> Other petitioners such as the AFL-CIO no longer keep all of their old files on these cases on hand. ILRF remained the sole repository of many of the documents related to these cases, unless such documents still exist in the files of one of the federal agencies.<sup>9</sup>

This is important to note for two reasons. First, if indeed ILRF is the sole public repository of many of these documents it may be desirable to request that ILRF formally archive the materials elsewhere, to make them more accessible to future researchers.<sup>10</sup> Second, it should be noted that civil society advocates or any other interested parties in the developing countries themselves, who may seek to review and learn from these cases, would be for all practical purposes entirely unable to obtain the relevant documentation. This may have real political consequences for the process in future.

### **Academic Literature on the Application of Labor Conditionality within GSP**

There is a wide body of literature on the topic of labor standards in trade agreements generally. The debate over labor standards in trade agreements divides broadly into two camps: those who argue that labor linkage in trade preferences is a protectionist mechanism, invoked by unions in developed nations for protectionist reasons, and those that suggest labor linkage may be an effective policy tool for human rights protections in the developing world.<sup>11</sup> Proponents of

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<sup>8</sup> ILRF did not anticipate the need to FOIA the relevant documents for this paper, as in the past primary source documents had been publicly accessible via USTR's reading room, and therefore did not include FOIA costs in the initial contract for this study..

<sup>9</sup> ILRF provides access to its case files to researchers upon request; however, as files are in paper form only this requires researchers to be able to visit ILRF's office. Researchers must schedule such visits during limited periods when ILRF staff may be able to dedicate time to facilitating file access.

<sup>10</sup> Cornell University's Industrial and Labor Relations School has kindly offered to provide a home for the archived materials.

<sup>11</sup> e.g. Bhagwati, Jagdish, *In Defense of Globalization*, New York: Oxford University Press USA, 2004; Gresser, Edward, "Labor and Environment in Trade Since NAFTA: Activists Have Achieved Less, and more, Than They Realize," *Wake Forest Law Review* Vol. 45 No. 2, pp. 491 – 525, Summer 2010; Elliott, Kimberly Ann and Richard B. Freeman, *Can Labor Standards Improve Under Globalization?* Washington, DC: Peterson Institute, 2003; also "Should Labor Standards Have a Role in Trade Agreements?" Online Council on Foreign Relations debate between

the latter view most often focus on U.S. policy responses for evidentiary basis of this position.<sup>12</sup> Few sources have treated these mechanisms as a tactical tool invoked by civil society actors in developing countries themselves, or assessed its effectiveness in light of their immediate objectives.

There are fewer academic sources specifically focusing on labor conditionality within GSP, Nolan Garcia provides a helpful breakdown of all cases filed from 1987 through 2005 under the U.S. GSP country practice petition process on labor rights grounds, including identification of petitioners and conclusions in each case. Of the 64 petitions filed from 1987 through 2000, 32 were accepted for review.<sup>13</sup> Using the same data set, Kimberly Elliott explicitly treats the question of whether labor conditions within GSP serve to protect U.S. workers or developing country workers' interests.<sup>14</sup> Her assessment of all cases taken up by USTR through 2006 shows that in no cases were benefits suspended for protectionist purposes; in slightly less than half the cases (15 of a total 32 cases assessed) there were 'discernable changes,' which Elliott defines as "first, determining whether there had been any change in the target country, and second, trying to attribute that change to various political influences, including U.S. pressure."<sup>15</sup>

Peter Dorman authored a study titled "An Evaluation of Worker Rights Conditionality Under the Generalized System of Preferences," on contract to the U.S. Department of Labor's Bureau of International Labor Affairs, in 1989.<sup>16</sup> Dorman's paper is complementary to the current study in its goals and objectives. The stated goal of the paper is to enhance the consistency of decision-making and the precision of policy instruments intended to promote

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Charles Kernaghan and Claude Barfield, June 15, 2007 available at <http://www.cfr.org/trade/should-labor-standards-have-role-us-trade-agreements/p13576>.

<sup>12</sup> Compa, Lance and Jeffrey S. Vogt, "Labor Rights in the Generalized System of Preferences: A 20-year Review" in *Comparative Labor Law and Policy Journal* Vol. 22: 199 – 237; also Harvey, Pharis J., "U.S. GSP Conditionality: 'Aggressive Unilateralism' or a Forerunner to a Multilateral Social Clause?" ILRF Working Paper, Washington, DC 1995.

<sup>13</sup> Nolan Garcia, Kimberly A., "Linking Trade and Labor Standards: Labor Rights Provisions in the Generalized System of Preferences," conference paper for Latin American Studies Association meetings in Montreal, Canada, September 4 – 9, 2007.

<sup>14</sup> Elliott, Kimberly Ann, "Preferences for Workers? Workers' Rights and the Generalized System of Preferences," conference paper, Faculty Spring Conference, Calvin College, Grand Rapids, MI, May 28-30, 1998, available online from the Peterson Institute for International Economics, <http://www.piie.com/publications/papers/paper.cfm?ResearchID=313>

<sup>15</sup> Elliott, "Preferences for Workers? Workers' Rights and the Generalized System of Preferences."

<sup>16</sup> Dorman, Peter, "An Evaluation of Worker Rights Conditionality under the Generalized System of Preferences," prepared for the U.S. Department of Labor, Bureau of International Labor Affairs, February 23, 1989.



worker rights. To this end, the paper analyzes administrative responses to select GSP cases, focusing on examination of procedural issues through assessment of US government actions and responses to the cases. The cases examined are El Salvador (the 1987 and 1988 Americas Watch petitions), in which review was denied; Malaysia (AFL-CIO 1989), which had just been accepted for review at the time of the study, and Chile (AFL-CIO 1986). In all cases, the author limits examination to U.S. government considerations and responses, and does not discuss the objectives or tactics of civil society actors associated with the petitions. The study concludes with a number of specific recommendations to the U.S. government for procedural reforms to the review process.

A review of the program by Lance Compa and Jeffrey Vogt is perhaps the best available comprehensive piece to evaluate the “success” of GSP petitions through a case study approach. The stated goal of the article is “to convey the complexity (of the GSP labor review mechanism) with a few key examples. The cases of Chile, Guatemala, Indonesia, Malaysia, Pakistan, and Belarus reflect strengths and weaknesses in the unilateral regime of labor rights trade linkage under U.S. law.”<sup>17</sup>

Compa and Vogt use as their means test for what constitutes a ‘successful’ case the broad measure of whether the case affected U.S. bilateral policy toward the target country (except in the discussion of Belarus). Where the GSP review becomes integral to U.S. policy toward the country, the case is seen as successful. By this measure, the authors conclude that the case filed on Chile in 1986, which alleged severe repression of trade unions in the wake of a *coup d’etat*, was effective, as it altered U.S. policy toward Chile on broader democratization issues beyond labor. The authors begin discussion of the Chile case by noting the explicit link between overall political repression and labor rights: “The smashing of Chile's democracy by the armed forces in 1973 carried with it--not as a byproduct, but as a strategic objective--the destruction of the organized labor movement and the imprisonment, torture, exile, and murder of thousands of union activists,” they state.<sup>18</sup>

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<sup>17</sup> Compa and Vogt, p. 209

<sup>18</sup> Compa and Vogt, p. 209

The authors consider the Chile case, concluded in 1988 with USTR's decision to suspend GSP benefits to the country, as a success. Their means test of effective change to U.S. bilateral policy sets a high bar for the remainder of the case studies. The authors explain,

It would be overstating the case to say that the GSP decision was the decisive element in Chile's return to civilian government. Chile's turn toward democracy was a complex process. Trade unionists and other democratic activists played a key part rallying a majority of their compatriots, through a political dynamic unique to Chile, to reject the dictatorship. But the U.S. GSP action should not be discounted either. Chile's economic elites could live with a government that was an international pariah politically, as long as its free-market, export-oriented policies stayed intact and their profits kept rolling in. But when exports to the United States became threatened by General Pinochet's labor policies, business interests began softening their support for the dictatorship. In 1991, with a new democratically elected government in place, the most abusive features of the labor code removed, and an end to physical violence against trade union activists, Chile's GSP benefits were restored.<sup>19</sup>

While USTR's full reasoning behind the decision to suspend Chile is not provided in the article,<sup>20</sup> the conclusion implies that the U.S. government supported the position and analysis of the civil society groups behind the petition, explicitly linking political democracy to respect for labor rights. This measure of 'success' is relevant to the authors' treatment of the other cases (except Pakistan), where petitioners also alleged a strong connection between autocratic governments and labor rights repression. How GSP petitioners' strategy and tactics were affected by their desire to promote broader rule of law and governance reforms will be discussed in the case studies covered by this article, in particular in the El Salvador case, where analysis similar to the Chile petitioners' view was embedded in the case and affected tactical decisions by petitioners.

Guatemala also, despite early refusal of the petition by USTR, is described as a successful force for influencing U.S. bilateral policy during Guatemala's political and constitutional crisis of 1993. In this case, as with Chile, the authors state that "a CIA-sponsored military takeover" of Guatemala's democratic government in 1954 heralded the end of an era of

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<sup>19</sup> Compa and Vogt, p. 211 -212.

<sup>20</sup> Dorman's more focused examination of U.S. government response to the Chile case concludes that in fact, the decision to suspend Chile's benefits represents a broader decision to pressure the Chilean government for democratic reform

reasonably strong labor protections, as “After the turn to military rule, suppression of organized labor became a consistent feature of Guatemalan life.”<sup>21</sup> The authors view Guatemala as a mixed case and not an unqualified success, as USTR did not, at any point, suspend benefits to Guatemala. However, the petition did succeed, as petitioners had intended, in making democratic governance and human rights issues central to US trade policy. The authors conclude,

The impending decision on Guatemala’s GSP status proved to be a critically important policy tool for the United States in pressing for the restoration of constitutional governance. At news of the *autogolpe* (self-coup), the U.S. labor rights coalition met with USTR and State Department officials demanding an immediate cutoff of Guatemala's GSP benefits unless constitutional rule was restored. The State Department issued a statement that “unless democracy is restored in Guatemala, GSP benefits are likely to be withdrawn.”<sup>22</sup>

The Belarus case is also one in which an ‘auto-coup’ by the country’s President, Alexander Lukashenko, was explicitly linked by petitioner AFL-CIO to repression of trade unions. Although USTR did withdraw benefits in the Belarus case, which should have rendered it a success on the scale of effective use of U.S. policy, it is instead viewed by the authors as a failure, in part because the case held no tactical significance that led to improvement of worker rights in that country. Little further analysis is offered on the USTR decision and the extent to which the U.S. government sought to use it, as they had in the Guatemala case, to comment on the need for democratic governance or rule of law.

Pharis Harvey (1995) reiterates this view of what constitutes a ‘successful’ outcome, citing briefly not only the Chile case but also the suspension of benefits for Paraguay and the Central African Republic. “In each of these cases, the GSP program was used successfully, not so much to get improvements in labor rights in a narrow sense, but to secure a change of regime that improved the potential protection of all human rights,” he concludes.<sup>23</sup> Harvey’s view of the strategic reasons for using the mechanism in these cases is particularly significant to the analysis of all the case studies in this paper, and its conclusions, as Harvey and his organization, the

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<sup>21</sup> Compa and Vogt, p. 213

<sup>22</sup> Compa and Vogt, p. 219

<sup>23</sup> Harvey 1995, p. 6

ILRF, were among the principal users of the mechanism over two decades, and thus had a strong role in shaping strategy and tactics for many allied civil society organizations.

The Malaysia and Indonesia cases are described by Compa and Vogt as failures because in each case there was a weak US government response to the petitions, with USTR discretion weighing in favor of other bilateral interests, and particularly commercial interests in each country. The authors state,

A positive balance can be discerned in efforts by the U.S. government to apply the GSP labor rights clause in Chile or Guatemala. The cases of Malaysia and Indonesia are less encouraging. They reflect a more cynical use of the labor rights clause, allowing economic interests to prevail against human rights considerations.<sup>24</sup>

Official US responses to both the Malaysia and Indonesia cases will be described in the sections below on these two cases. It should be noted that Compa and Vogt do not assess the extent to which civil society groups on the ground in both countries used the review as a tool to press for reforms internally.

Few other sources cover the cases described in this paper. Teri Caraway, in an overall review of the effectiveness of various ‘solidarity’ instruments to promote labor rights in Indonesia, describes the tactical uses of the 1992 Indonesia GSP case by civil society actors both within Indonesia and internationally.<sup>25</sup> Marlies Glasius, in a longer monograph on Indonesia, also discusses the effects of the GSP case. Benjamin Davis provides a thorough analysis of the effects of GSP conditionality on El Salvador, reviewing uses of the petition process beginning with Americas Watch 1987, 1988, 1989 petitions. Richard Rothstein provides a brief tactical analysis of the Malaysia 1988 petition and particularly its use by the Harris electronic sector unions in Malaysia.<sup>26</sup> Pharis Harvey analyzes briefly a few cases where petitions helpfully led to negotiated improvements, and notes tactical significance for domestic actors of 1992 Indonesia

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<sup>24</sup> Compa and Vogt, p. 222.

<sup>25</sup> Caraway, Teri L. “Political Openness and Transnational Activism: Comparative Insights from Labor Activism,” in *POLITICS & SOCIETY*, Vol. 34 No. 2, June 2006, pp. 277-304

<sup>26</sup> Rothstein, Richard, “Setting the Standard: International Labor Rights and U.S. Trade Policy,” Washington, DC: Briefing Paper, Economic Policy Institute, 1993 (available at [http://www.epi.org/page/-/old/briefingpapers/1993\\_bp\\_setting.pdf](http://www.epi.org/page/-/old/briefingpapers/1993_bp_setting.pdf))

petition.<sup>27</sup> Finally, Henry Frundt provides a thorough assessment of both the El Salvador and Honduras cases (as well as all cases pertaining to Central America and the Dominican Republic during the early 1990s) in his book Trade Conditions and Labor Rights: US Initiatives, Dominican and Central American Responses.<sup>28</sup> A brief description of the coverage provided by each of these sources relevant to the cases in this paper follows.

Rothstein, in a policy brief principally focused on arguments supporting the need to incorporate labor standards into trade agreements, in particular the North American Free Trade Agreement (NAFTA), briefly discusses the Malaysia case. The case study is intended to support Rothstein's argument that the labor mechanism in the GSP is insufficient, and thus stronger mechanisms are needed within free trade agreements. Rothstein concludes the following on the Malaysia case:

The (U.S.) government's position has been that official violence to repress trade unionists' efforts to organize is beyond the scope of worker rights investigation, since official violence involves a violation of "human rights" and not "worker rights": and "human rights" are not covered by the international labor rights standard.<sup>29</sup>

Glasius (1999) provides a detailed description of the GSP petitions on Indonesia in the early 1990s in her longer monograph on Indonesia's foreign policy and human rights.<sup>30</sup> Her analysis focuses on the extent to which actual changes in Indonesian law and policy could be linked to the GSP review process. Glasius concludes that Indonesia did undertake policy reforms during the period of active review that might be seen as improving respect for freedom of association, in particular, restructuring of the single trade union federation and certain legal reforms. She also credits U.S. government engagement with the invitation to the ILO to send a direct contacts mission to Jakarta in November, 1993.<sup>31</sup> She notes, however, that at the same

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<sup>27</sup> Davis, Benjamin N. "The Effects of Worker Rights Protections in United States Trade Laws: A Case Study of El Salvador," *The American University Journal of International Law & Policy*, Spring, 1995, 10 Am. U.J. Int'l L. & Pol'y 1167

<sup>28</sup> Frundt's analysis highlights the Dominican Republic case as one of the few cases successfully concluded, with the petitioner (AFL-CIO) and USTR negotiating a withdrawal of the case on the basis of substantial labor reforms by the Dominican government. Frundt, pp. 226-227

<sup>29</sup> Rothstein, p. 24.

<sup>30</sup> Glasius, Marlies. Foreign Policy on Human Rights: Its Influence on Indonesia under Soeharto. Antwerp: School of Human Rights Research Series, Vol. 4., 1999.

<sup>31</sup> Glasius, p. 205.

time, intimidation, arrests and disappearance of trade unionists continued, and may even have increased.

Caraway (2006) points out that in countries where there is a relatively open political process, domestic actors have less reason to turn to transnational forms of activism such as the use of trade-related instruments.<sup>32</sup> She suggests there is thus a certain inevitability that where transnational forms of activism emerge, there will be a critique, implicit or explicit, of the country's overall political environment for civil society and labor movements. Caraway concludes that with regime change in Indonesia in 1998, greater openness for civil society and labor movements domestically diminished the utility of the GSP mechanism, which had been an important instrument for domestic activists earlier in the decade. After 1998, however, "the government's recognition of freedom of association and the successful registration of many trade unions diminished the utility of GSP petitions for addressing labor rights abuses in Indonesia, as the state's involvement in these violations had declined," she states.<sup>33</sup>

Also, as noted above, Pharis Harvey (1995) discusses the Indonesia case briefly in his overall assessment of the effectiveness of the GSP instrument to promote labor rights. Harvey notes that in this case, during the period of active review (1992-1994) some minor effect in providing greater space for Indonesian labor activists to function could be observed. However, when the case was terminated in 1995, he notes that government repression against independent trade unionists actually intensified. "It would be important to analyze the cause-effect relationship of these events," he concludes.<sup>34</sup>

Benjamin Davis (1995) evaluates the El Salvador (1990) GSP case as a limited success. He notes that the threat of removal of GSP benefits created a limited political opening for Salvadoran unions. He also notes that as a result of the review, El Salvador for the first time recognized to some degree the jurisdiction of the International Labour Organization (ILO).<sup>35</sup> He also notes, however, that the broader bilateral interests and the use of GSP by USTR "to serve

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<sup>32</sup> Caraway 2006, p. 279

<sup>33</sup> Caraway 2006, p. 294

<sup>34</sup> Harvey 1995, p. 8

<sup>35</sup> Davis 1995 p. 1213

foreign policies unrelated to worker rights” pose an ongoing challenge to activists’ use of the GSP review instrument. “Were it not for El Salvador’s hyperdependency on the United States, the limited economic threat posed by the GSP worker rights review might have had no political consequences at all,” he concludes.

Finally, Frundt provides a thorough analysis of cases related to all of the Central American countries. Frundt’s comprehensive review of each case examines not only the subject of civil society tactics related to the petitions, but also US policy responses and overall effectiveness of each petition in promoting improvements in labor rights. Frundt’s discussion of the El Salvador and Honduras cases is cited later in the sections of this paper related to those cases. Frundt uses the case studies to assess the merits of the advocacy approach that initially led to labor rights linkage in GSP. He cites the position put forth by John Cavanagh<sup>36</sup> and others who advocated for trade-labor linkage in GSP. In the work’s introduction, Frundt explains that the cases are intended to elucidate the debate over whether the initial premises behind the policy, that trade linkage would facilitate improvements in labor rights, can be empirically supported.<sup>37</sup>

In addition to the case studies, Frundt includes a chapter interviewing civil society actors, specifically labor unions, to obtain their evaluation of the utility of the mechanism. Frundt summarizes these interviews as follows: “Union leadership appraisals of the impact of GSP petitions range from positive to mixed. They reach a general consensus that while petitions have changed private-sector attitudes very little, if at all, they afforded greater space for union action.”<sup>38</sup> Frundt’s specific case analysis concludes that Dominican Republic case was one of the few cases successfully concluded, with the petitioner (AFL-CIO) and USTR negotiating a withdrawal of the case on the basis of substantial labor reforms by the Dominican government.<sup>39</sup> Overall, Frundt concludes that trade-based labor standards do not reinforce protectionism and may have played a modest role in enhancing respect for labor rights in the region.<sup>40</sup>

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<sup>36</sup> Cavanagh, John, et. al. *Trade’s Hidden Costs; Worker Rights in a Changing World Economy*. Washington, DC: International Labor Rights Education and Research Fund, 1988.

<sup>37</sup> Frundt, Henry J. *Trade Conditions and Labor Rights: U.S., Dominican and Central America Responses*. Gainesville, FL: University Press of Florida, 1998, pp. 9 - 10

<sup>38</sup> Frundt, p. 264.

<sup>39</sup> Frundt, p. 226 – 227; this finding is discussed further in the conclusion to this paper.

<sup>40</sup> Frundt, p. 286.

## Malaysia

The main focus of this section is a petition filed in 1990 by the ILRF<sup>41</sup>. The petition focused on Malaysia's alleged failure to protect freedom of association in the country's electronics sector, and specifically described actions by the Malaysian American Electronics Industry Association (MAEI). The key allegations in the petition revolve around "a firm policy by the MAEI which is enforced vis-à-vis the Malaysian government through direct threats to disinvest if the electronics industry is unionized."<sup>42</sup>

The petition documents the various attempts of electronics sector workers to organize over the period of the previous several years, and cites statements by Malaysian government that it would not allow unions in the export processing zones. The ILRF petition followed an earlier, 1988 petition by the AFL-CIO which focused specifically on the harassment of a union leader, V. David. The Malaysian government's response to the AFL-CIO petition had been to create changes in law to allow in-house unions to form in the electronics and otherwise previously restricted sectors within EPZs.<sup>43</sup> As Rothstein (1993) describes,

When the Administration accepted the (AFL-CIO) petition for review, Malaysia announced it would henceforth permit unions in electronics – but only "in-house" (single company) unions, not industry-wide unions. Company unions are usually too weak to negotiate higher wages since their officers, all company employees, can be pressured into tempering their militancy. Nonetheless, the Bush administration dismissed the AFL-CIO petition, ruling that Malaysia was now "taking steps" to comply with U.S. trade law.<sup>44</sup>

Following the change in policy, however, workers at the Harris electronics plant did organize a plant level union. The union was subjected to various obstacles to its registration. As Rothstein documents, at this time employees of another firm also attempted to organize an 'electronics workers' union. "The Malaysian authorities ruled that this attempt was also

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<sup>41</sup> At the time of filing the organization was named the International Labor Rights Education and Research Fund (ILRERF); it was renamed ILRF in 1998.

<sup>42</sup> "Petition Submitted to the U.S. Trade Representative Regarding Malaysia's Violations of the Worker Rights Provisions of the Generalized System of Preferences," International Labor Rights Education and Research Fund, May 31, 1990 p. 8.

<sup>43</sup> Interview with Terry Collingsworth, June 24, 2011.

<sup>44</sup> Rothstein, p. 23



unlawful because the firm employed *electrical* workers who could not legally be represented by an *electronics* union.”<sup>45</sup>

The 1990 ILRF petition sets forth several detailed arguments about the continued legal and *de facto* restrictions on freedom of association. It also details ILRF’s strategy regarding use of the petition process itself:

(The MAEI) can either comply with the GSP law or continue their illegal pact without the benefit of GSP status. The workers will clearly lose if the latter option is chosen, but the growing sentiment among knowledgeable workers and union leaders is that they would prefer the short term hardship of the loss of GSP benefits to the lifetime loss of worker rights and dignity. The reality is, however, that if there is a serious possibility of the removal of GSP benefits, and the American government intercedes to control the illegal practices of its nationals, Malaysia and the MAEI would comply. The loss of GSP benefits is worth much more to the companies than the slight increase in wages they would pay if their industry was unionized.<sup>46</sup>

In targeting the industry association, the petitioners sought to influence US corporate investors’ views in this matter by arguing that the competitive advantage provided by preferential treatment would offset the perceived competitive advantage of a union-free investment climate. Terry Collingsworth, the lead drafter of the case for ILRF, described the development of this strategy in 1989, when he traveled to Malaysia and met directly with workers attempting to unionize at the Harris Electronics plant.<sup>47</sup> During this visit, a spontaneous strike broke out at the Harris semiconductor factory, and Collingsworth compiled interview data on the spot with workers engaged in this strike. Workers interviewed stated that the Malaysian government had agreed to exempt electronics plants from labor laws for a certain period of years. Collingsworth suggested that since US companies were receiving benefits and explicit exemption from freedom of association, that local activists might consider use of the GSP review mechanism.

According to Collingsworth, the local union and ILRF both requested that Collingsworth conduct further research on the legal and *de facto* restrictions on freedom of association in

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<sup>45</sup> Rothstein, p. 24

<sup>46</sup> ILRF 1990 Malaysia petition, p. 12

<sup>47</sup> Interview with Terry Collingsworth, June 24, 2011.

Malaysia, and prepare a petition. Collingsworth detailed the careful process of consultation with local union activists, who were, at first, skeptical of the process. In particular, Malaysian unionists were concerned that US labor activists were merely interested in using the tool as a protectionist mechanism. This fear may have been well-founded, as a US union did send USTR a letter stating its concerns with the loss of US jobs in this sector at the time of the ILRF submission.

However, Collingsworth was able to document and provide the Malaysian trade unions with information showing that the semiconductor chip industry had already left the United States, and that nearly all factories producing high tech sealed sterile expensive semiconductor chips were in Asia and likely to remain there.<sup>48</sup> The goal of the ILRF petition would be to promote specific changes in law to allow union organizing in the export processing zones, and thus directly support union organizing efforts in this industry and in particular at the Harris electronics factory.

Malaysian union leaders, including General Secretary G. Rajasekharan of the Malaysian Trades Union Congress (MTUC), accepted the strategy. However, they identified the probability that there would be retaliation against union leaders associated with the petition itself, and suggested that while MTUC could not formally endorse GSP petition for reasons of possible political retaliation, it would give its ‘blessing’ and directly assist ILRF with ongoing research on the central subject matter.<sup>49</sup> The views of the affected Malaysian workers are documented directly in the petition. “Many workers interviewed . . . wanted the right to have an independent union and felt that an in-house or company union would not be adequate because a small union limited to the employees of a single company would be no match for the combined strength of the large multinationals in the MAEI.”<sup>50</sup>

The 1990 ILRF petition details harassment and intimidation faced by organizers for the RCA Workers Union (RCAWU) at the Harris electronics plant.<sup>51</sup> Details include the firing of

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<sup>48</sup> Interview with Terry Collingsworth, June 24, 2011.

<sup>49</sup> Interview with Terry Collingsworth, June 24, 2011.

<sup>50</sup> ILRF 1990 Malaysia petition, p. 17

<sup>51</sup> The original parent company, RCA, changed its ownership and name to Harris in 1988.

union leaders, reassigning of union officers, subjecting workers to anti-union propaganda, and detailed instances of harassment and threats to fire workers who joined the union. The petition notes that the harassment reached such a level that the union had been able to get an injunction order from Malaysian High Court restraining Harris from certain activities.<sup>52</sup>

Although the 1990 petition focuses very heavily on the Harris company, it also presents information to support the allegation of a pattern of anti-union discrimination throughout the electronics sector. Other cases are cited briefly include instances of anti-union activity in factories producing for Intel, National Semiconductor, and Hitachi. The petition alleges that the Harris example typifies an overall pattern in the industry:

The worst violations of worker rights occur in the electronics sector dominated by American multinationals, many of which are major defense contractors for the U.S. government. These companies have formed a cartel, the Malaysian-American Electronics Industry (“MAEI”) and use their considerable power to keep unions out of their industry.<sup>53</sup>

The petition is also noteworthy for raising the possibility of suspending benefits on a sectoral basis. The petition states: “The GSP statute specifically allows for separate consideration of a ‘products petition’ and the Fund expressly requests the removal of GSP eligibility for any products classified as electronics by the Malaysian government.”<sup>54</sup>

Collingsworth and former ILRF Executive Director Pharis Harvey both noted that this was one of the very first cases filed by ILRF using this process, and therefore ILRF had no past experience from which to anticipate USTR reactions to the case itself, or to the particular strategy.<sup>55</sup> ILRF also had no predetermined process for continuing to gather data to support the case, nor for consultation with domestic partners as the case proceeded. Per prior agreement, however, the MTUC stepped in to serve as a liaison between the Harris workers and other electronics sector workers and ILRF, and continued to communicate and keep all parties advised

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<sup>52</sup> ILRF 1990 Malaysia petition, p. 22

<sup>53</sup> ILRF 1990 Malaysia petition, p. 2.

<sup>54</sup> ILRF 1990 Malaysia petition p. 2.

<sup>55</sup> Interview with Pharis Harvey, June 23, 2011.

about the case. MTUC General Secretary G. Rajasekharan stated that they had high hopes that case would ultimately help them.<sup>56</sup>

For its part, ILRF also recognized the need for continued, detailed fact-finding to support the case. Collingsworth returned to Malaysia in 1990 to gather new evidence to submit a supplemental ILRF filing in 1991. The continued communication and relationship between the organizations was particularly important in light of US union response to the petition. Immediately following the ILRF filing, and consistent with MTUC's fears, the International Brotherhood of Electrical Workers (IBEW) submitted a letter to USTR requesting that certain articles from Malaysia be removed from duty-free treatment under the GSP.<sup>57</sup> IBEW alleges as its standing for what is, in essence, a product petition by stating that it "represents thousands of workers employed in industries that are being harmed by articles being imported under the GSP program." The letter states that the union has suffered the loss of "about 30,000 jobs" in the consumer electronic industry, the semiconductor industry, and other electrical/ electronics industry products.

Documentation and interviews related to the 1990 Malaysia petition provide an unusually good window into the strategic and tactical decisions of local trade union advocates regarding this process. Collingsworth notes that Malaysian unions shared a general suspicion of the AFL-CIO and US unions. Moreover, the Malaysian government was promoting high tech industrial development as a national strategy for growth. Union leaders were careful to manage nationalist and anti-American sentiment as they cooperated with ILRF in the petition process. Within Malaysian unions there were also tensions to navigate, as some categories of workers were able to join unions, and some were not able to do so due to legal restrictions. MTUC took a position that it supported the rights of all workers to organize, and that it supported the petition as a means to address and remove legal obstacles to organizing in any sectors where it was prohibited.

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<sup>56</sup> Interview with G. Rajasekharan, Kuala Lumpur, Malaysia, November 1998.

<sup>57</sup> Letter from IBEW to Chairman, GSP Subcommittee dated June 1, 1990 on file at ILRF.

The case was, according both to Collingsworth and to leaders of the Harris electronics union, intended to be a campaign document to provide direct support to their organizing effort.<sup>58</sup> The strategy included a public shaming element, as the petition cited, in journalistic exposé fashion, correspondence of electronics company officials explicitly stating they were seeking to invest in a union-free environment.<sup>59</sup> Harris workers believed the case would provide some protection to them by raising public awareness of the anti-union behavior. They believed the public documentation provided by the petition would make it harder for Harris management to take actions against them or fire them while the case was under review. According to Collingsworth, there was no explicit public media or consumer-facing campaign strategy against Harris at the time because the company was a defense contractor. Thus, its major customer was the US government itself. “We had little hope that Defense Dept would be responsive to concerns,” said Collingsworth.<sup>60</sup>

The campaign strategy was effective in some ways, according to civil society actors involved with the case. Interviews in Malaysia with Harris electronics workers in 1999 found that workers involved with the case had strong, clear and very positive memories of ILRF and of the process. “We would never have achieved even plant level organizing without this pressure,” recalled Bruno Pereira, a key informant in the 1990 case.<sup>61</sup> Pharis Harvey recalls, “It was quite clear that the petitions were useful to the trade union movement in general in putting pressure on the electronics industry. Did they succeed in getting the electronics industry to recognize freedom of association? No, but they did succeed in putting some strong pressure on the industry to do things that could be seen as a substitute for freedom of association- such as setting up company unions. The petitions generated sufficient pressure to convince employers to consider the need to demonstrate some respect for freedom of association.”<sup>62</sup>

ILRF Board members also developed tactics to call attention to the petition after it was filed. ILRF Board member Donald Pease, a Member of Congress, called the USTR to request

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<sup>58</sup> Interviews with Bruno Pereira, Harris electronics company, and K. Somasundram, Chairman, Union of Pos Malaysia Uniformed Staff, Kuala Lumpur, Malaysia, November 1998.

<sup>59</sup> ILRF 1990 Malaysia petition, pp. 9 – 10.

<sup>60</sup> Interview with Terry Collingsworth, June 24, 2011.

<sup>61</sup> Interview with Bruno Pereira, November 1998.

<sup>62</sup> Interview with Pharis Harvey, June 23, 2011.

their attention to the petition. Nevertheless, the petition was not accepted for review.<sup>63</sup> In its written response to the 1990 filing, USTR stated that “the Subcommittee determined that the petitions failed to satisfy the information requirements for a request laid out in Section 2007.2 (a)(2).”<sup>64</sup> ILRF did conduct additional research and submit a new petition in June, 1991, stating within the petition that new evidence was being presented in response to USTR’s earlier rejection, and taking exception to USTR’s finding that the ILRF 1990 petition substantially repeated issues raised by the AFL-CIO 1988 case, which had been terminated by USTR. “The most significant ‘new information’ regarding the continued repression of worker rights in Malaysia is that the 23 officers and activists of the Harris Corp. Solid State Workers Union (hereinafter “Harris Union”) were terminated almost immediately following the GSP Subcommittee’s rejection of the Fund’s 1990 petition,” states the document.<sup>65</sup>

The 1991 petition also critiques the US Embassy in Kuala Lumpur, and indeed the GSP Subcommittee itself. This reflects an apparent strategic decision by ILRF to take on a critique of the review process, in addition to making the case for continued review of the violations in Malaysia. The document states,

The GSP process envisions that the GSP Subcommittee will act as an objective fact finder. That process is severely tainted when the GSP Subcommittee’s primary source of information, the U.S. Embassy, has lost its objectivity and places the reliability of the Embassy’s representations in doubt. . . . the conduct of [an official] in the U.S. Embassy in Kuala Lumpur, unequivocally shows that for unexplained reasons he had a personal interest in seeing that Malaysia’s GSP benefits were not threatened. In June 1990, a few weeks after the 1990 petition was filed, [the official] invited Mr. Bruno Periera, the President of the Harris Union, and several of the other officers of the Union, to the Peninsula Hotel in Kuala Lumpur for dinner. During the course of the dinner meeting, [the official] urged Mr. Periera “to drop the whole thing and forget the idea of forming a union at Harris.” This was well after the Union had been formed and Harris had implemented its plan to destroy the union by changing the company’s name, transferring all of the employees but the Union activists to the new entity, and leaving the Union activists isolated in an abandoned warehouse and denying them any access to the other workers.<sup>66</sup>

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<sup>63</sup> Compa and Vogt (2005); Rothstein (1993)

<sup>64</sup> Generalized System of Preferences Subcommittee of the Trade Policy Staff Committee, 1990 GSP Annual Review, Case: 006-CP-91 Malaysia, p. 1

<sup>65</sup> Petition Before the U.S. Trade Representative for Malaysia’s Violations of the Worker Rights Provision of the Generalized System of Preferences, International Labor Rights Education and Research Fund, June 1, 1991.

<sup>66</sup> ILRF 1991 Malaysia petition, pp. 10 - 11

The petition also attaches several unclassified State Department cables related to the case in its effort to present the case that US Embassy Kuala Lumpur interfered in the GSP Subcommittee review process.

Once again the Subcommittee denied review of the petition, stating in its written response that ILRF had failed to satisfy the information requirements for a new petition, a response that will be examined further in the following section on the Indonesia case. The Subcommittee statement does not take up the question of whether US Embassy Kuala Lumpur reporting on the case was biased, or biased the decision of the Subcommittee, although the statement indirectly addresses this challenge in a paragraph that provides a narrow interpretation of its legislative mandate, as follows:

As it considered these arguments, the Subcommittee deemed it important to reiterate its role in the administration of the GSP worker rights standard. At the initial petition evaluation stage of GSP Annual Reviews, the Subcommittee noted that its principal role is to provide expert and objective analysis of the informational sufficiency of the petitions and to make a recommendation whether petitions should be accepted for review.<sup>67</sup>

ILRF did not consider a new filing after the second petition was rejected; however, continued correspondence on the issues shows that ILRF did continue to raise the issues with USTR in 1992 and 1993, when a new Administration and new US Trade Representative, Mickey Kantor, were in place. It appears the continued attention to these matters, even in the absence of a GSP review, continued to generate responses by both the Malaysian government and the US business community; a letter on file to USTR Kantor from Senator Charles Robb, dated September 1993, refers directly to both the AFL-CIO and ILRF petitions, notes the Senator's concern that US business interests are being jeopardized, and states "repeated consideration of the GSP question frays an already difficult political relationship and negatively impacts U.S. foreign investment prospects." ILRF does not appear to have pursued the case further after

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<sup>67</sup> 1990 GSP Annual Review: Worker Rights Case Summary, Case: 006-CP-91 Malaysia, January 1992, GSP Subcommittee of the Trade Policy Staff Committee, p. 5.

1993; however, ILRF used the petition and its rejection as the basis for an Administrative Action suit against the US government, noted later in this study.

Pharis Harvey in a 1995 retrospective on the case identified economic relations as the primary reason why the petition was denied. “It is not inconsequential that the major beneficiaries of GSP exports from Malaysia are U.S. multinational electronics firms such as Motorola and Harris, which have put immense pressure on the Malaysian government not to change its labor code to meet the criticism in the earlier GSP petitions,”<sup>68</sup> states Harvey.

The 1990 Malaysia petition demonstrates evidence of the implementation of early ‘lessons learned’ by ILRF. ILRF sought to establish firm and ongoing relations with an indigenous civil society partner, MTUC, as an important part of its strategy related to this case. The case also serves as an early example of a targeted and sharply delineated strategy, focusing on a single sector, a single issue, and a clear possible remedy to the alleged violation (in this case, recognition of the Harris union). Nevertheless, the petition was not accepted for review by USTR. Notwithstanding the apparent failure of the strategy, Malaysian trade unionists interviewed a decade after the filing believe the mechanism served a useful, if limited, purpose in raising attention and response to the alleged violations.

## **Indonesia**

Indonesia was the subject of early petitions by the AFL-CIO (1987 – 1990) and Asia Watch (1987). These early petitions were very broad in their treatment of the labor rights issues. In the petitions, the authors note that they were unable to obtain direct access to the country for information-gathering because of severe restrictions on such independent investigations.<sup>69</sup> The 1987 AFL-CIO petition is a broadside critique of “Pancasila” industrial relations, a system of managed industrial relations established by the Suharto government. This system established and maintained a single, government-dominated union federation, the Federasi Serikat Pekerja

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<sup>68</sup> Harvey 1995, p. 3.

<sup>69</sup> Asia Watch, Testimony by the Asia Watch Committee Before the U.S. Trade Representative Concerning Labor Rights in Indonesia, October 1987 (on file at ILRF).



Seluruh Indonesia (FSPSI). The petition notes that this system is fundamentally in conflict with the principle of freedom of association, as noted by the ILO.

While the analysis of Indonesia's industrial relations system presented in the petitions is thorough, no specific recommendations for change are offered. The petitioners' comments suggest that only a complete legal overhaul will address the problem. The 1988 filing states:

It would seem that there is a fundamental misconception as to what should be considered significant when it comes to "taking steps." In circumstances where labor relations are entirely controlled by the government, administrative actions which give the appearance of greater freedom are easy to announce—and just as easy to reverse. None of the examples of "change" cited in the USTR analysis—all of which constitute this type of cosmetic reform where government control remains pervasive—offer any serious basis for expecting improved worker rights in Indonesia in the near future.<sup>70</sup>

Jeff Ballinger, who represented the Asian American Free Labor Institute (AAFLI)<sup>71</sup> of the AFL-CIO in Indonesia from 1987 - 1991 noted that this early petition did not rely on consultation with domestic labor advocates. The original 1987 AFL-CIO petition was, rather, part of a general roundup of petition-filing to utilize the relatively new process. Ballinger states, "We had a toolkit and it was really the only thing there that we could tell to local NGOs to let them know we had something real and concrete we could do to help them."<sup>72</sup>

The second AFL-CIO filing in 1988 is highly similar to the 1987 filing, with a description of 'Pancasila' industrial relations and an implication that a fundamental restructuring of the country's industrial relations system is the only outcome that could address the complaint. No domestic organizations are cited in the petition. The petition for several pages rebuts actions cited by USTR, in response to the earlier case, as constituting "taking steps" under the statute. These included structural reorganization of FSPSI and public statements by the Government of

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<sup>70</sup> AFL-CIO Petition to the U.S. Trade Representative: Indonesia, 1988 p. 39

<sup>71</sup> Like the regional Human Rights Watch institutes (Asia Watch, Americas Watch, etc.), until 1998 the AFL-CIO institutes were maintained as separate regionally focused organizations, including the two referenced in this paper, AAFLI and AIFLD. The institutes merged in 1999 to form the American Center for International Labor Solidarity (Solidarity Center).

<sup>72</sup> Interview with Jeff Ballinger, June 28, 2011

Indonesia on the right to strike. However, apart from this rebuttal of USTR's case, no new information is provided.

USTR denied acceptance of the AFL-CIO 1988 case on the basis that the petitioner had failed to provide any new information. In doing so, USTR revealed a new hurdle to the use of the process in its written statement of August 22, 1988:

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.<sup>73</sup>

This exchange established boundaries that affected later use of the petition process. First, through the 1987 petition process, the petitioners and their allies learned that USTR would consider minor changes in law and indications of government support for further change as meeting the legislative criteria for 'taking steps.' This interpretation affected civil society actors' strategy on later petitions, not only on Indonesia but also on other countries, as petitioners learned to be more detailed in their prescriptions for what should be considered adequate measures of progress on the labor issues identified. The 1988 exchange also deterred petitioners from simply refile existing information, and compelled civil society advocates seeking to use the process to develop the capacity to continually update their data on the specific issues. Although a 1989 submission by the AFL-CIO was deemed sufficiently different from the 1988 submission to warrant a new review, again the USTR found that Indonesia to be 'taking steps' and terminated the review in 1990.

The AFL-CIO submitted a new petition in 1991, and this petition represents a breakthrough in strategic and tactical use of the petition process. This time, the AFL-CIO worked directly with local civil society advocates, and developed a detailed case, and set of recommended steps, that encompassed immediate goals of the civil society partners. The breakthrough would not have been possible without a significant change in the landscape of the

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<sup>73</sup> GSP Subcommittee Rationale for Non-Acceptance of Worker Rights Petition on Indonesia, Prepared by the U.S. Department of State for Public Release, August 22, 1988 p. 1.

movement within Indonesia in 1990: the formation of a new, independent trade union, SetiaKawan (Solidarity) in September, 1990.

SetiaKawan, also known as Serikat Buruh Merdeka (SBM) was founded by two Indonesian human rights activists, Saut Arintonang and H.J.C. Princen, and intentionally modeled on Solidarnosc in Poland.<sup>74</sup> Arguably, the attention of the AFL-CIO and Asia Watch to the overall repression of trade unions in its earlier petitions had some influence on these activists, who were directly in contact with Ballinger and AAFLI. The petition states:

Since SBM's founding, the Indonesian government has systematically sought to destroy the group. Government officials have told workers not to join the group, they have physically intimidated its leaders, and they have employed a web of legal entanglements to strangle the organization.<sup>75</sup>

Detailed examples of such intimidation are provided throughout the document, but the petition falls short of making a specific request for what would constitute acceptable steps to ensure no further harassment or intimidation of the union, although this goal is clear. USTR's response is equally interesting: in its written response to the AFL-CIO, USTR notes it did consider the evidence of repression of SetiaKawan as potentially relevant new information, and considered the detailed instances of harassment closely. However, USTR concluded:

As it evaluated these five incidents, and the systematic campaign against SBM that they purportedly represent, the Subcommittee noted that it had received reports from the U.S. Embassy in Jakarta (the Embassy) which cast doubt on the validity of each and their relevancy to Indonesian worker rights practices.<sup>76</sup>

Activists involved with the Indonesia case took from this response, as they would in the El Salvador case, that US government analysis embedded the specific violations reported in the petition in a broader pattern of military repression of civil society actors. In brief, the labor activism was seen as part of a broader political struggle for change. Thus, as activists believed to

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<sup>74</sup> [http://en.wikipedia.org/wiki/Solidarity\\_%28Polish\\_trade\\_union%29](http://en.wikipedia.org/wiki/Solidarity_%28Polish_trade_union%29)

<sup>75</sup> Worker Rights and the Generalized System of Preferences: The AFL-CIO Petition to the Office of the U.S. Trade Representative, June 1991 p. 59

<sup>76</sup> Generalized System of Preferences(GSP) Subcommittee of the Trade Policy Staff Committee, 1991 GSP Annual Review, Worker Rights Review Summary, Case 008-CP-91: Indonesia, January 1992.

be true in many of the Central America cases, they understood the US government would not interpret evidence of political repression as constituting specific violations of “internationally recognized worker rights.” Activists would challenge this broad line of analysis in several other cases.

Tactically, Ballinger acknowledged the failures of the earlier AFL petitions and noted the ILRF 1990 Malaysia petition as a much stronger example of use of the petition process. Ballinger noted that in the Malaysia petition, “we had direct evidence about both government and industry positions AND we had a direct and practical target to support collective bargaining.”<sup>77</sup> He described conversations with the activists who established SetiaKawan and strategic discussions regarding use of the petition process. “Saut and Princen set up the union, they were very tentative but they seemed determined to do this. They wanted to sound out the AFL to see if they would be protected if they did something,” he described. Ballinger states that he was careful not to make any specific commitment to particular tactics of support, but instead urged them to build their own popular base of support and continue to discuss possible tactics and instruments to support these efforts.

As noted earlier, the 1991 petition filed in support of the SetiaKawan efforts was not accepted for review by USTR. However, Ballinger believes the failed 1991 petition was nonetheless effective at raising awareness within the US government of the close connections between worker rights repression and overall political repression.<sup>78</sup> Ballinger notes that the Indonesian military was, at the time, very frequently used to break up strikes and protests. There was no bright line between suppression of worker organizing, and overall suppression of any mass mobilization. “What USTR and the Embassy did was tell Suharto’s people that the military intervention looked terrible and they were intimidating workers that made stuff for US market,” said Ballinger. He noted that the public visibility, and in particular, media visibility on the topic provided useful tools for Indonesian NGOs to push for reforms. Indonesian labor activists, including those active within SetiaKawan at the time, strongly agreed that the media coverage of the petition had provided the union with both visibility and negotiating space that they may not

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<sup>77</sup> Interview with Jeff Ballinger, June 28, 2011

<sup>78</sup> Interview with Jeff Ballinger, June 28, 2011

otherwise have had.<sup>79</sup> The GSP petition thus became an avenue for labor and human rights advocates to challenge the US government's support for a government that was committing broader human rights violations- a connection that also arose in the Central America cases.

The 1992 case co-filed by ILRF and Asia Watch, accepted for review by USTR, marked a watershed in US foreign policy to Indonesia, as it placed the need to protect human rights in the context of the US bilateral trade relationship with Indonesia. Although the petition was technically unsuccessful,<sup>80</sup> together with a growing international concern over Indonesia's treatment of East Timor it succeeded in dramatically raising awareness of US support for an authoritarian government with a poor human rights record. This negative spotlight on US policy at a time when the indigenous Indonesian NGO movement was beginning to gather steam may have influenced the Indonesian government in ways that ultimately did enable labor and other social organizations to mobilize grassroots and pressure the Indonesian government for political change.

The ILRF/Asia Watch petition documented obstacles in Indonesian labor law to freedom of association. It noted that the only legally existing trade union federation was dominated and funded by the ruling party, Golkar, that those attempting to form independent trade unions had met with harassment, arrest and 'disappearance,' and that the military was called to intervene in labor disputes, adding to an atmosphere of intimidation of workers. The petition also documented instances of forced labor and child labor, and noted the Indonesian government's own findings that its minimum wage was inadequate to cover the basic needs of a single person. In particular the petition noted the attempts of another new, independent trade union, Serikat Buruh Sejahtera Indonesia (SBSI), to legally register in early 1992, and the government response and crackdown on the union.<sup>81</sup>

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<sup>79</sup> Group interview with SetiaKawan activists (unnamed), SetiaKawan office, November 1993.

<sup>80</sup> The case was left pending until 1994, at which time the review ceased without a clear decision having been made. Indonesia continued to receive full privileges under the program.

<sup>81</sup> Petition Requesting the Review of the Beneficiary Status of Indonesia 1992. International Labor Rights Education and Research Fund, Asia Watch

Editorials in the print news media, cautiously testing the boundaries in the early 1990s prior to a media crackdown of 1994, offered guarded support for the case.<sup>82</sup> More significantly, ordinary factory workers were encouraged by the possibility of US government pressure on the Indonesians.<sup>83</sup> Indonesian NGOs and new networks of workers affiliated with SBSI and other trade unions and advocacy groups were largely in favor of an outcome that would remove trade privileges from the Indonesian government until such time as independent unions were recognized; SBSI openly called upon the US government to revoke the trade privilege.

Ballinger noted that despite the lack of progress on freedom of association, the petition had corollary benefits. The Indonesian government felt pressured to provide small improvements in other worker rights areas, such as minimum wage, as a response to the US government's continued demarches on the topic. "We had very few weapons at that point so it was really the only thing we could use- it wasn't the most important thing, but very close. The minimum wage agitation was probably more beneficial to workers at the time (than promoting the right to associate). But we may not even have gotten the support or the media coverage for the wage project without the threat of the GSP petition."<sup>84</sup>

Local NGO activists began to apply more effort during the early 1990s to documenting extremely low wages in light manufacturing sectors in Indonesia, in particular in export sectors, whether or not the particular sectors were covered by trade preferences. Local activists also began making the connections, with Ballinger's assistance, to US companies sourcing products from Indonesian factories in violation of the minimum wage. Indonesian news sources regularly published stories based on these reports, despite existing restrictions on media freedoms. The US trade case created a news angle that provided sufficient excuse to local journalists to continue to report on labor rights violations at a time when news publications and individual journalists were subject to censorship.

Beginning in 1990, as a result of the combined pressure, the Indonesian government began to announce hikes to the minimum wage each year. Employers routinely refused to pay

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<sup>82</sup> "Of Soldiers and Spies," *Jakarta Post*, September 27, 1993.

<sup>83</sup> Field interviews with Indonesian factory workers, Tangerang and Jakarta, 1993 and 1994.

<sup>84</sup> Interview with Jeff Ballinger, June 28, 2011

the mandated minimum wage.<sup>85</sup> Workers, made aware of increases in minimum wage via media reporting, began to strike to demand payment of the new minimum wage in enterprises where employers were not implementing the wage hike.

With the acceptance of the ILRF/ Asia Watch case in 1992, local NGOs that were beginning to develop a stronger capacity to report on labor rights violations were given new reasons to focus on such reporting. The decision by USTR to review the case forced a written response from the Indonesian government which ultimately ran into the thousands of pages; this was far more than local NGOs and activists had any hope of eliciting otherwise, and provided them with the same sort of ammunition that Western human rights groups had been using to great effect with the US and other governments. The Indonesian government provided the grist for sustained advocacy on labor issues by failing to take any systemic actions to respond to the petition's charges. Instead, the government enacted a handful of cosmetic legal changes, including a change permitting the establishment of independent trade unions at the factory level, provided that such unions affiliate with the government-sponsored union federation, renamed the Serikat Pekerja Seluruh Indonesia (SPSI), within two years' time.

One of the cosmetic changes offered by the Indonesian government was an ordinance prohibiting military intervention in labor disputes; local human rights groups, as well as the AFL-CIO and Asia Watch, helpfully continued to document cases of military intervention in strikes after the enactment of this ordinance.<sup>86</sup> Despite the legal changes, military actions continued to provide evidence for the petitioners. In particular, in 1993, the rape and murder of Marsinah, a labor organizer in Surabaya, was linked to the military and provided stark evidence in support of the claims of the petitioners.<sup>87</sup> Glasius notes that despite the scrutiny provided by the GSP review process, nine executives of the factory where Marsinah had worked were abducted and tortured in October 1993, in what human rights organizations described as an

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<sup>85</sup> Wallace, Charles. "New Shots Fired in Indonesia Wage War." *Los Angeles Times*. 22 September 1992; also Holman, Richard. *Wall Street Journal*. 14 February 1994

<sup>86</sup> Asia Watch, "Indonesia: Charges and Rebuttals over Labor Rights Practices," January 1993.

<sup>87</sup> For a full account, see the Indonesian Legal Aid Foundation report, Laporan Pendahuluan Kasus Pembunuhan Marsinah (Jakarta: Indonesian Legal Aid Foundation, March 1994).

operation to frame these executives as the murderers and divert attention from possible military involvement in the murder.<sup>88</sup>

On the US side, watchdog groups like ILRF and Asia Watch continued to issue lengthy reports on the worker rights situation in Indonesia, and popular pressure among US activists for a reversal of Indonesia policy grew. On the Indonesian side, grassroots actors in the NGO and nascent trade union movement were encouraged by the fact that for the first time their issues were introduced into the bilateral diplomatic discourse, giving the issues a prominence and legitimacy heretofore unseen, and helping them to publicize abuses within Indonesia. For example, without the pressure of the GSP case, it is possible that the Indonesian Legal Aid Foundation's lengthy investigation of the Marsinah killing would have been quickly suppressed. The spread of information internationally, however, made it more difficult and problematic to suppress information domestically, and also provided disincentives for retaliation against the investigators. Asia Watch assisted the Indonesia Legal Aid Foundation and other local Indonesian NGOs to document the cases well, gave them a reason to do so, and presented a strong case to the US government. Therefore, even though the GSP case was not accepted for review, activists both within Indonesia and without were emboldened by these cases to continue to document and publicize worker rights and other human rights abuses.

Ballinger notes that the 1992 ILRF/ Asia Watch petition was strategically and tactically useful, but only because of the tacit acknowledgement by representatives of the US government that "they were on the spot to figure out how to get Suharto government to do something."<sup>89</sup> Harvey comments, "ILRF could not tell if it had any significant impact on the ground, but the response of the Ambassador and the Indonesian government conveyed that they were sensitive on this topic. Did the petition have any role at all in establishing a climate in which independent unions like SBSI can flourish? We can't say but we believe it had a role in sensitizing Indonesian government to international views on this topic."<sup>90</sup>

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<sup>88</sup> Glasius, pp. 171-172.

<sup>89</sup> Interview with Jeff Ballinger, June 28, 2011

<sup>90</sup> Interview with Pharis Harvey, June 24, 2011



USTR suspended the review in 1995. According to Ballinger, the suspension reflected a broader change in views by the Clinton Administration regarding the promotion of worker rights.<sup>91</sup> Moreover, in the absence of any move to revoke GSP benefits, Ballinger and others expressed the view that “USTR had gotten as much as they were going to get from the Suharto regime and were not willing to go the extra mile to get anything more from Indonesian government. Whether the ‘nuclear bomb’ option should enter into the equation or not, they were not willing to take it- there were too many powerful interests, and the Indonesians may have put some chips on the table, too, to get the case withdrawn.”<sup>92</sup>.

Ballinger took up the case on another front, launching an international campaign to expose the fact that contractors for the world’s most profitable sport shoe company, Nike, were refusing to pay workers minimum wage. While with domestic NGO assistance the workers fought a legal battle with factory management, Ballinger and his allies fought a public relations war with the company in the international media. Consumers in the US and Europe began to respond by participating in demonstrations outside of the company headquarters, its shareholder meetings, and Nike retail outlets.

The Nike case effectively borrowed the techniques successfully employed to highlight labor rights violations by governments, and deployed those techniques against US-based corporations; as advocacy directed at the US government had done, the Nike campaign drew its effectiveness from the fact it was able to engage Nike corporation in a debate over “the facts.” From the point of view of Indonesian civil society advocates, it was an important continuation to the earlier work launched via the GSP petition process. While the GSP case had already brought the issues of concern to them into the public discourse, the Nike campaign helped these groups to develop new and important linkages with NGOs and trade unions worldwide, many of whom were working on issues of labor exploitation in other developing countries. For many of these non-Indonesian activists, the Nike campaign provided a first point of entry into an understanding of Indonesia. Thus the campaign became a means for activists within Indonesia to educate

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<sup>91</sup> This view will be treated further in the description of the Honduras case and in particular the Clinton Administration response to ‘sweatshop’ exposes in numerous countries and the creation of the Apparel Industry Partnership

<sup>92</sup> Interview with Jeff Ballinger, June 28, 2011

grassroots activists in other countries about the range of problems faced by Indonesian workers. The campaign also helped to legitimize and strengthen labor advocacy within the Indonesian NGO community, principally by drawing several NGOs active in this field together to form the Indonesian Sport Shoe Monitoring Network (ISMN), a loose structure which, although it sponsored very little activity as a network, helped to strengthen the visibility and work of its individual members.<sup>93</sup> The high level of international attention to the case, received within Indonesia principally via news reports, also strengthened the advocacy of individual NGOs with shoe factory workers at a grassroots level; the demonstrations of international interest further strengthened the perceived legitimacy of the causes being discussed by workers and NGOs. As shall be discussed later in this paper, the shifts in strategy and tactics for Indonesian activists, as these activists realized limitations of the GSP process, were repeated elsewhere, as well.

## **El Salvador**

The first labor rights petition filed against El Salvador under GSP was submitted by Americas Watch in 1987. At that time, El Salvador was in the midst of a civil conflict between the Christian Democratic Party-led government, led by Napoleon Duarte in alliance with the right-wing ARENA party, and the leftist forces of the Frente Faribundo Marti Para Liberacion Nacional (FMLN). Throughout the earlier decade, according to human rights groups, right wing death squads in El Salvador had killed more than 10,000 people, including many trade union leaders.<sup>94</sup> In response, as Henry Frundt notes, progressive trade union and social justice activists in the United States formed the National Labor Committee in Support of Democracy and Human Rights in El Salvador (NLC)<sup>95</sup> in 1981.<sup>96</sup> In the years that followed, the NLC and allied social justice organizations sent a number of delegations to El Salvador, an ongoing exchange which became relevant to the GSP case.

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<sup>93</sup> Interviews with members of the ISMN, July 1995 and September 1999. Members of the ISMN were: Yakoma, LBH Jakarta (Legal Aid of Jakarta), LBH Bandung (Legal Aid of Bandung), LBH APIK (Asosiasi Perempuan Indonesia Untuk Keadilan, or Indonesian Women for Justice), INFID (International NGO Forum on Indonesian Development), YLKI (Yayasan Lembaga Konsumen Indonesia, or Indonesian Consumers' Association), ELSAM and Akatiga.

<sup>94</sup> Frundt, p. 104 cites to Armstrong et al 1987 for this figure.

<sup>95</sup> Later renamed the National Labor Committee, and now known as the Institute for Global Labor and Human Rights, but referred to throughout this study as National Labor Committee (NLC).

<sup>96</sup> Frundt, p. 104

The Americas Watch GSP case against El Salvador “presented forty-three instances of labor rights abuses, including unjust arrests and torture.”<sup>97</sup> USTR declined to review the case, and Americas Watch resubmitted the petition in 1988. Tom Kahn of the AFL-CIO’s Latin American Institute, American Institute for Free Labor Development (AIFLD) filed a lengthy rebuttal on June 10, defending the El Salvadoran government and attacking Americas Watch.<sup>98</sup> USTR rejected the Americas Watch 1988 petition.

Holly Burkhalter served as advocacy director at Americas Watch throughout this period and was extensively involved in the submissions. “It was Armageddon down there for left-of-center labor unionists. They were being destroyed. We had seen execution after execution after execution, and we were seeing one of the most dramatic annihilations of a movement that I have ever seen in my life,” reports Burkhalter.<sup>99</sup> While the merits of the petition were clear, she believed, the US government did not take up the case because it was heavily supporting the Duarte government and Salvadorean military throughout the late 1980s. In his analysis of the Salvadorean case, Frundt notes that with the election of Duarte in 1984, US foreign assistance to El Salvador increased dramatically.<sup>100</sup> USTR took the position that the instances of violence documented in the Americas Watch 1987 petition were the result of political opposition to the El Salvadorean government, not labor activity *per se*. USTR stated that the abuses documented did not constitute worker rights violations per the statutory requirement, as the victims were members of unions “known by the U.S. Government to be front organizations of the insurgent FMLN.”<sup>101</sup> In its response to the subsequent 1988 petition USTR also noted that the “arrest, killing, or other abuse does not violate worker rights unless it is intended specifically to keep workers from exercising their right to associate, organize, and bargain collectively.”<sup>102</sup>

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<sup>97</sup> Frundt, p. 105.

<sup>98</sup> Memo to the files from Bill Goold, ILRF, August 17, 1992. From the end of World War II until the 1980s, US labor policy was shaped by close consultation with the AFL-CIO, and, as historian Nelson Lichtenstein recently put it, “the AFL-CIO often subsidized the most conservative, regime-dependent leaders of the working class in those countries where U.S. funding enabled it to function.” Lichtenstein notes the well-documented relationship between, and shared ideological goals of, the CIA and the AFL-CIO from the end of World War II until the late 1990s, and the mistrust of both for trade unions that conceived of trade unionism “as a social movement of the broad left.”

<sup>99</sup> Interview with Holly Burkhalter, July 1, 2011.

<sup>100</sup> Frundt, p 105

<sup>101</sup> USTR letter to Americas Watch, on file at ILRF .

<sup>102</sup> USTR letter to Americas Watch, on file at ILRF

However, following USTR's refusal, a hundred members of the U.S. Congress asked for an official probe into the nation's labor rights abuses.<sup>103</sup>

While the geopolitics of the region are agreed by those involved to be the principal reason USTR refused to consider the El Salvador cases in the late 1980s, the tensions between the American Institute for Free Labor Development (AIFLD), representing the views of the AFL-CIO, and the human rights movement were a factor in the US government's rejection of the cases. According to Burkhalter,

The AFL said that they were not unionists, and some said that executions are not a labor rights violation. These were said to be 'political' killings, but Americas Watch dealt with that in our submissions. But the more strenuous claims were that the victims were not legitimate unionists, they were 'Communists.' The legitimate movement were the guys that AIFLD was standing up and not the folks being killed. That was not true- they were the real unionists out there pushing the hardest for protection of the workers and decent working conditions, and that is why they were targeted. The army was absolutely acting at the behest of landed interests. We knew of cases where landed interests would just call in the army to kill people who were causing trouble, and they did.<sup>104</sup>

In 1989 Americas Watch filed again, joined by the Massachusetts Labor Committee and several other US social justice organizations. Americas Watch in its 1989 filing documented an additional 28 incidents of violence and intimidation against unionists in El Salvador. Although USTR once again rejected the petition, Congressional pressure had translated to active pressure in-country by US Embassy and USAID personnel for changes by the ARENA party, which had come to power in 1989.<sup>105</sup> Both Davis and Frundt note that even the AIFLD had a change of heart by this time and considered taking a position in support of the GSP case.<sup>106</sup>

Burkhalter believes the earlier petitions had their use, despite the rejections by USTR. She describes the tactical use of the petitions as a campaign tool to raise awareness of the violence.

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<sup>103</sup> Frundt, p. 106

<sup>104</sup> Interview with Holly Burkhalter, July 1, 2011

<sup>105</sup> Interviews with Holly Burkhalter and Benjamin Davis, July 2011.

<sup>106</sup> Frundt, p. 107, Davis 1995, p. 8.

More than anything else we hoped that if the petitions were accepted, we'd get some attention to these killings and that would put a stop to them . . . Americas Watch would have wanted to see the privileges revoked, and wanted to punish the employers by denying them trade benefits in US markets. We didn't think that USTR would actually suspend the benefits, but we really did think USTR would take up the case and look closely at it.<sup>107</sup>

Burkhalter believes, however, that denial of the petitions may have exacerbated the problems faced by union leaders. "By rejecting the petition and characterizing these guys as Communists, they actually put them at higher risk."<sup>108</sup>

Although Americas Watch ceased to lead the petition process for El Salvador after 1989, a new submission to USTR in 1990 came directly from the Salvadorean union federation, FENASTRAS (National Federation of Salvadoran Workers) and the Labor Coalition on Central America, represented by two US lawyers, Phillip R. Kete and Todd Howland, both of whom had close ties to the Salvadorean community in the United States. The FENASTRAS/Labor Coalition petition was the first petition on El Salvador formally accepted for review by USTR. A parallel submission by the United Food and Commercial Workers (UFCW) and International Union of Electronic, Electric, Salaried, Machine and Furniture Workers (IUE) was submitted in June 1990.

Stan Gacek, who represented the United Food and Commercial Workers, notes that by 1990, as a result of over a decade of civil war, there were a number of Salvadoreans, many of them refugees, living in the United States. The Salvadorean diaspora community was able to form close ties through churches, unions, and other civil society organizations and was also able to maintain regular communication and ties with activists within El Salvador. The FENASTRAS/ Labor Coalition petition represented this unusually close relationship between indigenous and US activists, and indeed, the FENASTRAS petition is one of the very few instances in which an indigenous organization filed such a case directly with USTR.

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<sup>107</sup> Interview with Holly Burkhalter, July 1, 2011.

<sup>108</sup> Interview with Holly Burkhalter, July 1, 2011.

The FENASTRAS petition states its goal as follows: “The direct benefit FENASTRAS expects is a cessation of the abductions, arbitrary arrests, tortures, office bombings, and murders which it and other union organizations have been suffering, as well as the creation of effective mechanisms to enforce collective bargaining rights.”<sup>109</sup>

The petition presents a careful rebuttal to the USTR case that extrajudicial killing and other violence are unrelated to the right to associate, citing from US labor history and jurisprudence and from ILO jurisprudence. As noted, the groundwork for USTR to accept this case had already been laid by congressional, media and other attention to the earlier Americas Watch cases. The killing of six Jesuit priests in El Salvador in late 1989, and the very high level of US media and public attention to this case, also served to galvanize a more proactive response by the US government in the 1990 case.

Importantly, the parallel submission by two major US unions provided additional weight to the FENASTRAS submission. The IUE and the UFCW, working closely with Kete and Howland, prepared a supplementary filing reiterating many of the points of the FENASTRAS petition, and noting also the change in position by the AFL-CIO. Both petitions also noted that the change in government within El Salvador in 1989 represented “substantial new information” in the country context, and the numerous instances of violence since the change in government should be regarded as providing the new information USTR had stated it required to reexamine a case under the statute.<sup>110</sup>

Stan Gacek, UFCW’s International Affairs director at the time, notes the importance of the political moment for changing views within the US union movement. Gacek had traveled to El Salvador in 1985, accompanying General Secretary of the Inter-American region for the

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<sup>109</sup> Petition to Remove El Salvador from the list of Beneficiary Developing Countries Under the Generalized System of Preferences, petition submitted by FENASTRAS (National Coalition of Salvadorean Workers) and the Labor Coalition on Central America, June 1, 1990. p 6

<sup>110</sup> Petition to Remove El Salvador from the List of Beneficiary Developing Countries Under the General (sic) System of Preferences, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (AFL-CIO) and United Food and Commercial Workers (AFL-CIO), June 1, 1990, pp 35 – 37.

global communications' workers federation FIET (now UNI)<sup>111</sup> Al Corry. At that time Gacek met with FENASTRAS representatives. About the decision to use the petition process, he says,

We knew how difficult the process was, and that it would be an executive decision as to whether the benefits would be suspended or not but we saw that tactic would be effective if benefits were suspended by leading to greater worldwide recognition of the importance of taking these rights seriously.<sup>112</sup>

Benefits were not suspended, nor were there clear indications of progress on the ground as a result of the GSP case. Anecdotally, however, some trade unionists in El Salvador felt more protected because of the visibility raised by the case. In addition, Gacek notes that the case played a significant role in strengthening alliances and overall solidarity work between unionists in El Salvador and the United States. "I had support within UFCW to do whatever we could for authentic unionism and full respect for labor rights, understanding that in El Salvador, there were legitimate trade unionists who were being typecast because of affiliation with the FMLN but they were legitimate and were being targeted for trade union activity."<sup>113</sup> Gacek notes that US union politics of the Cold War era were also changing. Whereas during the 1980s, many in the US union movement had suspicions of union movements in other countries as promoting a pro-Soviet agenda, Gacek notes the fall of the Berlin Wall in 1989 as a turning point. "The symbolic end of the Cold War did have an effect on our relationships in Latin America and gave us a certain space to promote new relationships." Gacek and other US unionists took advantage of the new space by highlighting intimidation and harassment of leftist trade unionists.

Other US advocates involved in the case also note that the case enabled the US union movement to build bridges with human rights and faith groups inside the United States in new ways.<sup>114</sup> The 1991 El Salvador post-hearing brief joins forces between the prior petitioners, and is jointly submitted by IUE, UFCW, FENASTRAS, the Labor Coalition on Central America, the Massachusetts Labor Committee, the AFL-CIO, and others (ILRF and Americas Watch formally joined the petitioners' list at this time). The post-hearing brief reveals that the US government's position on the linkage between overall human rights conditions and labor rights had

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<sup>111</sup> See [www.uniglobalunion.org](http://www.uniglobalunion.org)

<sup>112</sup> Interview with Stan Gacek, July 1, 2011.

<sup>113</sup> Interview with Stan Gacek, July 1, 2011.

<sup>114</sup> Davis, Coats, Gacek interviews

substantially changed. In its formal written response to the case issued in April 1991, USTR states that the GSP subcommittee will monitor the progress “of a number of initiatives which could positively affect worker rights in El Salvador, including the ongoing peace negotiations between the Government and the FMLN, the labor code reform effort, and the implementation of the July 1990 human rights agreement signed between the Government and the FMLN.”<sup>115</sup> In their post-hearing brief, the petitioners cannot resist commenting on this conclusion:

On the surface, it is not clear why it would do this. The GSP subcommittee of the Trade Policy Staff Committee has no jurisdiction over war and peace, over negotiations between a government and a guerilla group. It has no jurisdiction over human rights violations as such. Whether the government continues to murder priests or stops murdering priests, whether it continues to torture farmers or stops torturing farmers, is outside the mandate of this committee. As the subcommittee explained, however, it intends to monitor the peace negotiations and the implementation of the human rights agreement as it believes they “could positively affect worker rights in El Salvador.”<sup>116</sup>

The petitioners suggest that the shift in USTR’s position supports the petitioners’ broader case of that the violence and intimidation of trade unionists was a matter of political will at a high level, and therefore required the US government to push for a decision at the highest level of El Salvador’s government for intimidation to cease. The petitioners’ post-hearing brief also notes that the immediate revocation of benefits would be essential to galvanizing such a change in political will.<sup>117</sup>

Benjamin Davis represented ILRF and worked closely with FENASTRAS as the petition moved into a less explicitly political and more formalized review process. Davis agrees with Gacek that this particular case remained an important one for the purpose of building a broader set of social movement connections. Davis notes, in particular, the pressure faced by Salvadorean unionists working with US civil society on the case, and the pressure and threats that they knew would result from the case. He speculates that the late 1989 bombing of the FENASTRAS office, which killed several activists, may have been in direct retaliation for their

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<sup>115</sup>Generalized System of Preferences (GSP) Subcommittee of the Trade Policy Committee Staff Worker Rights Review Summary Case: 001-CP-90, 002-CP-90, 003-CP-90, 004-CP-90, 008-CP-90, 011-CP-90, El Salvador, April 1991.

<sup>116</sup> GSP El Salvador 1990 Petition by IUE and UFCW pp 26 - 27

<sup>117</sup> GSP El Salvador 1990 Petition by IUE and UFCW pp 28-29



involvement in prior GSP petitions. “But they thought they were so exposed already, there was nothing much left to lose.”<sup>118</sup>

Davis notes a variety of sister union programs, delegations, and broader sister communities programs between US and Salvadorean groups during this period. The delegations served to build a personal level of support between progressives and trade union leaders in the US and activists in El Salvador. A number of local US union leaders developed ongoing relationships, which, Davis commented, may have affected the political alignment around US policy toward El Salvador by demonstrating the existence of a constituency in support of changed policy.<sup>119</sup>

Davis, Burkhalter and Gacek all comment that by the late 1980s, the Salvadorean diaspora community had succeeded in developing a civil society network with a political voice in the United States, advocating on a range of issues including development assistance, refugee policy, and human rights. All these movements not only put pressure on the US government, but also on the AFL-CIO. By highlighting the actual abuses suffered by Salvadorean activists, US social justice activists were able to educate US unionists in ways that compelled the umbrella federation to look beyond simple right-left political alignments. “There was significant cognitive dissonance in this process,” notes Davis. “These unionists were not puppets of the Castro regime- they were real unionists.”<sup>120</sup>

Davis believes the petition itself ultimately resulted in some positive changes in the country:

The petition did have an impact on labor law reform. The petition played an important role in getting labor law reform enacted, which was the good news; the bad news was, as enacted, it still had a number of weak spots that have not yet been remedied. The nature of the petition sort of ‘officialized’ the information reported by human rights groups on labor rights violations. Also, it certainly got press attention in country when the petition

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<sup>118</sup> Interview with Benjamin Davis, July 5, 2011.

<sup>119</sup> Interview with Benjamin Davis, July 5, 2011

<sup>120</sup> Interview with Benjamin Davis, July 5, 2011

was filed – you would get much more press attention locally around cutting off trade benefits than you would around the killing of union leaders.<sup>121</sup>

US civil society activists agree the El Salvador and other Central America petitions (Honduras 1991, Guatemala 1991) were a useful tool toward building an internationalist vanguard within US labor movement, and one that was directly allied with and in contact with the Central American labor organizations themselves. By itself, the process of developing the contacts and relationships to gather the information was useful. The petitions also gave some structure to the movement-building by compelling US petitioners to do more than simply gather information, as they consulted to develop shared strategies and desired outcomes.

Salvadorean activists also recall the process as having a strategic merit to movement-building, as well as concrete reforms in law. Amanda Villatoro<sup>122</sup> was one of the principal representatives of FENASTRAS during this period, and testified before the GSP Subcommittee on behalf of the union in 1990. She believes that the concrete possibility of sanctions on the Salvadoran government for violations of freedom of association, and subsequent actions initiated by the complaint, managed to motivate labor code reform in El Salvador by 1994. She also notes that the petition instigated a process of review, and ultimately ratification, of two ILO conventions (although two important conventions noted in the petition, ILO Conventions No. 87 and 98, were not ratified until very recently).<sup>123</sup>

Sarahí Molina and Juan José Huezo<sup>124</sup> also represented FENASTRAS at the time of the filing, and Huezo also testified before the GSP subcommittee at its 1991 hearing. Both stated that the petition was effective in its time, as it created a “crisis” in El Salvador, and just as it contributed to change, it also contributed to dialogue for peace. Independent of whether the complaint ‘worked’ or not as a demand against labor conditions, they consider it as having served to prompt discussion in the Salvadorian government so that peace negotiations could be conducted. They believe the strategy allowed Salvadorean civil society to engage a formal

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<sup>121</sup> Interview with Benjamin Davis, July 5, 2011

<sup>122</sup> Interview with Villatoro by Omar Salazar, ASEPROLA cited in “SPG Entrevistas y Analisis,” document prepared for ILRF in April 2001, on file at ILRF.

<sup>123</sup> El Salvador ratified Conventions No. 87 and No. 98 in 2006, according to the ILO’s website (see <http://www.ilo.org/global/standards/lang--en/index.htm>).

<sup>124</sup> Executives of the FENASTRAS, an organization that prepared and filed the 1990 Salvadorean GSP petition.

process of negotiation with the government. From the point of view of the indigenous social movement, they stated, a change in the state would later bring positive changes in labor laws.

Villatoro noted that use of the GSP tool managed to shift business interests to allow for reforms that economic elites might not have accepted otherwise. However, she noted the following limitations to the tactical push for specific legal reforms. First, although reforms were instituted, there was not a clear process or timeline for their implementation, which resulted in delays. The lengthy timeline for review and lack of clear deadlines also allowed the government and businesses to raise anew questions regarding the legitimacy of claims within the petition. Villatoro also noted that whether or not benefits were suspended, the employers themselves were not held accountable to implement any changes in practice. Following the peace talks of the early 1990s, the focus on violence against unionists diminished so that once peace was restored, employers, including those producing for multinational corporations, did not feel any pressure to continue the process of labor reform.

Huerzo and Molina are more willing to acknowledge that the dissipation of the process may also have been affected by the Salvadorean movement's actions. They suggest that the trade union movement during those years put more emphasis on the reconstruction of state institutions and especially on the peace process, and therefore the movement was not able to establish a monitoring and follow-up strategy, despite their understanding that this would be the most effective strategy. The trade unions set aside labor issues, and let the strategy be directed by the FMLN. The FMLN put aside the topics raised in the petition, and also other demands raised before the ILO. As time passed, the state and business sector developed and consolidated strategies to slow the promised legislative and judicial reforms. Despite this, they note that the petition had some positive outcomes, including the fact that systematic killing of trade unionists slowly declined.

Villatoro and other domestic advocates believe that the complaint mechanism is significantly compromised by its relationship to US political considerations associated with the

region and the country at hand.<sup>125</sup> Governments, stated Villatoro, are well aware of this and will also use other factors in the bilateral and multilateral relationship to play against the review of trade benefits. Finally, FENASTRAS representatives and other civil society actors interviewed<sup>126</sup> agree that the entire process, while it did strengthen relationships with US unions, did not sufficiently strengthen the capacity or role of Salvadorean unions to undertake their own representation in this forum. Salvadorean unions lacked, and lack still, the necessary resources and training to file or track complaints. Hueza notes that in the process of the drafting and presentation of the 1990 petition, he and other representatives were invited to political events in North America as witnesses to comment on cases and not as political participants and members of the drafting process. Thus, they did not gain any knowledge of the procedures. Sergio Chavez, who has represented the National Labor Committee in El Salvador, noted that to some extent the failure to coordinate close discussions with Salvadorean partners on strategy reflects the fact that North American groups may also have no clear strategy on how to follow-up and monitor the petition.<sup>127</sup>

In brief, the Salvador petitions cumulatively were important in promoting two broad goals. First, the petitions served to draw attention to the interplay between overall political conditions and specific labor rights violations, and engaged USTR in a discussion of the relationships between labor standards and broader democracy and rule of law issues. Second, the petitions were effectively utilized by civil society both in the US and in El Salvador as part of a broader movement-building effort.

As in Indonesia during the same period, in the mid-1990s labor solidarity in Central America took a new form: consumer-facing campaigns to mobilize public pressure in the US in support of worker struggles. Most notably, NLC and its allies launched a campaign against clothing brand Gap Inc. in 1995 to highlight labor rights concerns connected with one of Gap's supplier factories, Mandarin. The Mandarin campaign built upon relationships that had been

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<sup>125</sup> Interviews with Huerzo and Molina by Omar Salazar, ASEPROLA, cited in "SPG Entrevistas y Analisis," document prepared for ILRF in April 2011, on file at ILRF.

<sup>126</sup> Interview with Sergio Chavez by Omar Salazar, ASEPROLA, cited in "SPG Entrevistas y Analisis."

<sup>127</sup> Representative of the Central National Labor Committee (CNL)

critical to the GSP case, and used tactics acquired in the course of information-gathering for the GSP case to apply to consumer-facing campaign work.

## **Honduras**

US advocates who had been deeply involved with the El Salvador case of 1990 / 1991 concur that next door Honduras, while also troubled by a climate of impunity for violence against unionists, was simply not as dramatic a case.<sup>128</sup> The country was not in the midst of civil conflict, and although unionists were harassed and targeted, the country nevertheless had a much higher union density than its neighbors, including a registered collective bargaining agreement in the maquila sector.<sup>129</sup>

However, the elimination of a major teacher's union in the 1980s signaled a pattern of growing repression.<sup>130</sup> The New York Labor Committee in Support of Democracy and Human Rights in El Salvador (NLC)<sup>131</sup> turned its sights to Honduras in 1990, and decided to file a GSP case with USTR in May 1991.

The NLC petition is structured as a human rights report, documenting specific instances of union harassment. It begins with a direct reference to assassination of trade union leaders Francisco Javier Bonilla on May 31, 1990 and Ramon Briceno on June 1, 1990. The petition alleged that the Honduran government had failed to investigate the murders or hold the perpetrators accountable, and used this to describe a broader failure to end impunity for extrajudicial killings:

The government of President Rafael Callejas has been in office for a little over one year. In 1990, according to the Committee for the Defense of Human Rights (CODEH), the state or agents of the state were responsible for 77 extrajudicial killings, five assassinations of union and peasant leaders and 357 illegal detentions, which frequently

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<sup>128</sup> Interviews with Steve Coats, Ben Davis, Stan Gacek, Lance Compa; a Guatemala case filed in 1991 also garnered much more widespread attention from US civil society groups than did the Honduras case, for similar reasons as El Salvador.

<sup>129</sup> "Labor Law in Honduras: Legal, Political and Practical Obstacles to its Enforcement." Background paper on file at ILRF, p. 2.

<sup>130</sup> Frundt, p. 195

<sup>131</sup> A branch of the National Labor Committee

include torture during interrogation. In mid-1990 the International Commission of Jurists concluded that “the Honduran government and the judicial authorities have not followed up any of the recent violations. They have not carried out one single investigation to find or punish the guilty.”<sup>132</sup>

In its tone and focus, the petition is similar to those filed in 1990 on El Salvador, which met resistance from the USTR on broader political grounds, as noted earlier. However, US interests in Honduras were differently aligned than in the other cases, in part due to the fact there was no active conflict, nor a leftist guerilla movement in Honduras at the time. Indeed the Honduran government was a stable regional partner to the US government

The petition also points to concerns related to government interference with independent unions. “Honduras may be unique in the blatancy of the government’s attempts to control union organizations by forcibly installing parallel unions headed by government supporters.”<sup>133</sup> The petition documents government and military interference in COLPROSUMAH<sup>134</sup>, the teachers’ union, in the 1980s as well as harassment of the independent public health workers’ union, SITRAMEDHYS.<sup>135</sup> This harassment included the assassination of a local leader, Braulio Canales Lopez, in August 1990.

It is not clear from the petition itself that any specific remedies were sought; it appears that the petitioners sought to raise awareness of the violence and to push for overall government action to hold perpetrators accountable. It must be noted that the petition on file at USTR appears to be incomplete<sup>136</sup>, therefore there may have been specific requests associated with the case that are no longer documented. Sources agree that USTR denied review of the petition, although no written statement from USTR is on file at any of the relevant organizations. However, in response to a letter from Pharis Harvey of ILRF requesting details on the reason for the rejection, USTR responded in 1992 by providing an unclassified cable from US Embassy Tegucigalpa. The cover letter from USTR GSP Director Joseph Damond states, “On the basis of

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<sup>132</sup> Petition Before the U.S. Trade Representative on Labor Rights in Honduras, New York Labor Committee in Support of Democracy and Human Rights in El Salvador, May 1991 p. 3

<sup>133</sup> NLC 1991 GSP Petition on Honduras case p 4

<sup>134</sup> Colegio Profesional de Superacion Magisterial Hondureno

<sup>135</sup> Sindicato de Trabajadores de Medicina, Hygenica y Similares

<sup>136</sup> The version of the 1991 Honduras petition provided by USTR ends on p 12 and appears to lack a concluding section.

this analysis, as well as input from the U.S. Department of Labor, it was determined that allegations contained in the 1991 petition were insufficiently substantiated, or only a partial accounting of the facts.”<sup>137</sup> The attached cable, however, provides a point-by-point analysis of each of the crimes documented, and each instance of interference with unions described in the NLC petition. In each case, the Embassy analysis supports the underlying facts of the petition but disagrees only on the extent to which they can be shown to demonstrate intention on the part of the Honduran government. This may be seen as an acknowledgement by post, if not USTR, that if the government were demonstrated to support a pattern of violations (as alleged also in the Malaysia case) then regardless of political context, the case would merit review. The cable concludes,

In Embassy’s view, the charges alleged by the N.Y. Labor Committee do not constitute sufficient cause to consider cutting off Honduras from GSP and CBI benefits. Most of the allegations are against individual employers or arise from shortcomings of the inadequate judicial system. There is no evidence of systematic or institutional infringement of workers’ rights by the government.<sup>138</sup>

At the time of the submission, Alan Howard of the International Ladies’ Garment Workers Union (ILGWU) was the Director of the Board of the New York Labor Committee. Howard confirmed that El Salvador solidarity work was NLC’s main priority and reflected the strong US civil society activism in support of El Salvador throughout the 1980s. Honduras had never garnered the same level of attention or support from US social justice activists, and was “an afterthought.”<sup>139</sup>

El Salvador and Guatemala were much more attractive to politically-aware groups. That just meant there was going to be a lot more attention there than in Honduras. Also there was a coup in Guatemala, and the petition had real high-stakes political ramifications. Honduras was a staging ground for training of contras, but the country itself was stable. Therefore, I could see we could be able to do something different strategically than with the other petitions.<sup>140</sup>

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<sup>137</sup> Damond letter to Pharis Harvey, September 4, 1992 on file at ILRF

<sup>138</sup> State Department unclassified cable TEGUCI 09322 July 1991, para 36 (on file at ILRF)

<sup>139</sup> Interview with Alan Howard, July 7, 2011

<sup>140</sup> Interview with Alan Howard, July 7, 2011.

Howard states that although he was not involved with the initial drafting of the 1991 Honduras petition, he became involved soon afterward in helping NLC directors Charlie Kernaghan and Barbara Briggs develop a focused strategy that would set the Honduras case apart from the other Central America cases, and possibly help Howard, as an internationalist within the US union movement, move his union leadership toward a new post-Cold War orientation in their overall international work. Howard described how he was able to use the case, even though it was dismissed by USTR, to help shape understanding within the US movement of the economic hardships faced by workers in Honduras, in particular those producing goods for the country's light manufacturing export (*maquila*) sector. With Kernaghan and Briggs, he presented information related to the country's extremely low wages, second only to Haiti as the lowest in the region. Howard began working directly with labor activists in Honduras documenting conditions faced by young women workers in the *maquila* sector.

Howard realized that activists might be able to pursue the Honduras case in support of different objectives than the other Central America cases. "Our motives were purely economic, not political like in Guatemala and El Salvador. That was true also within the US government and in social movements within Honduras. There wasn't any controversy – there wasn't the same leftist polarization within union movement in Honduras."<sup>141</sup> NLC and Honduran allies continued to gather information and documentation of working conditions in Honduras throughout 1992 and 1993. In that time period, Howard made the case internally that the ILGWU needed a fresh perspective on international organizing in the apparel sector. ILRF and other allies within the US union movement, including UFCW and those involved with the Guatemala and El Salvador cases, were also supporting the argument that a protectionist approach was inferior to an approach, via the GSP cases and related strategies, that sought to "bring up the bottom by organizing workers in other countries so they could also produce stuff under decent conditions."<sup>142</sup>

Howard explains that it was uniquely possible to make this particular case vis a vis Honduras because the case was free from the complicated movement dynamics that emerged

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<sup>141</sup> Interview with Alan Howard, July 7, 2011; see also Cavanagh et. al., Trade's Hidden Costs.

<sup>142</sup> Interview with Alan Howard, July 7, 2011



around other Central America cases. No broader political process was necessary to implement changes to basic labor rights, unlike El Salvador. Tactically, it therefore became possible for US unions to view GSP petitions as a tool that might support and reinforce existing efforts of unions in Honduras, including in the *maquila* sector, to organize.

Although the formal case files closed after the USTR 1991 response, Howard and the ILGWU kept the issues alive within an ongoing informal dialogue with the USTR. Howard notes that in 1992, after President Bill Clinton took office, ILGWU leadership perceived they might be able to engage on a friendly basis with the incoming USTR, Mickey Kantor. Union leadership were willing to adopt a non-protectionist stance, and Kantor seemed “very receptive” to the case for labor conditionality.<sup>143</sup> Both sides perceived Honduras to be a good case for the Administration to take up. By 1993, civil strife in neighboring countries had diminished. The US-Honduras relationship was stable and cordial. Also, by 1993, NLC had begun a series of high profile exposes on child labor and other rights violations in the country’s *maquila* sector, exposing abuses by factories producing for well-known US brands and retailers.<sup>144</sup> According to Howard, multinationals facing embarrassment from these exposés were willing to support USTR approaches that might serve to reduce their risk from public and media campaigns. USTR was therefore well-positioned to engage the Honduran government toward specific measures to improve labor rights.

It bears noting that even in the absence of a pending case, USTR worked with stakeholders throughout 1993 and 1994 to develop its engagement with the Honduran government. The AFL-CIO indicated it was preparing documentation and was prepared to submit a petition, but withheld from filing while the USTR dialogue was ongoing. Also the cases on next-door countries El Salvador and Guatemala, which continued through those years, may have provided some additional pressure on USTR to demonstrate that it was capable of producing outcomes via the GSP review mechanism in a Central American country. Howard notes that USTR’s Deputy GSP Director, Jon Rosenbaum, agreed to join a delegation to

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<sup>143</sup> Interview with Alan Howard, July 7, 2011

<sup>144</sup> the most prominent of these investigations revealed that clothing labeled with the name of television personality Kathie Lee Gifford was made with child labor in Honduran factories. See Duke, Lynne, “The Man Who Made Kathie Lee Cry,” *Washington Post*, Sunday, July 31, 2005.

Honduras during that period, consisting also of Howard, David Jessup of AIFLD, and Michael Gale representing US apparel interests. The delegation presented findings to the Honduran government and expressed a shared view that specific steps needed to be taken to forestall the possibility of a new petition and GSP review.

“The Honduran government knew they were being pressured and were happy to sign anything that was put on their desk because they figured that would take the pressure off,” says Howard.<sup>145</sup> The delegation succeeded in motivating the Honduran government to negotiate and sign a Memorandum of Understanding on labor issues. The MOU contained four sections, each outlining very broad points: the first on labor inspection, the second on freedom of association, the third on ‘egregious violations’ (sanctions for exporters) and the fourth a catch-all category stating that both parties would seek budgetary resources to improve the country’s labor capacity. The document was signed in November, 1995.<sup>146</sup>

Honduran allies were consulted prior to the delegation meeting with the Honduran government, although Howard expresses concern that not enough was done to provide Honduran unions with the opportunity to comment on the strategy and work with US allies toward an integrated approach to labor rights concerns. Honduran representatives who were active during that period are less critical of the US labor movement’s approach. Maritza Paredes, a key ally to Howard and to NLC at the time, recalls that the GSP instrument enabled various violations of human and labor rights to be presented together in a way that succeeded in pressuring the government.<sup>147</sup> In specific circumstances, she noted, it is an instrument that is capable of promoting targeted objectives, perhaps to a greater extent than the instruments available under the ILO or other multilateral human rights bodies. She also recalled the positive effect the case had had in fostering relationships and collaboration between Honduran and US civil society groups, a connection that had been lacking previously.

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<sup>145</sup> Interview with Alan Howard, July 7, 2011

<sup>146</sup> Memorandum of Understanding, USTR and Honduran Ministry of Labor, November 1995 on file at ILRF.

<sup>147</sup> Executive Director of the Independent Monitoring Team of Honduras (EMIH). At the time of the complaint, worked on the collection of documentation and testimony that led to it, by the Human Rights Commission of Honduras (CODEH).

Paredes' main critique of the process was that while significant effort went into preparing a complaint, and into the development of the Memorandum of Understanding, there was no forethought to follow up and monitoring of the instrument, and "no sustainability in the process and in general - there is no type of strategic planning to uphold these agreements."<sup>148</sup> She notes that the role of Honduran civil society groups would be critical to such follow up and monitoring, and expectations between US and Honduran groups were never sufficiently clarified.

Howard concurs, and notes that the US activists may have been naïve in believing that the Memorandum of Understanding itself, along with the threat of a future GSP case, was sufficient to drive progress. He recognizes that there was no implementing direction for the MOU, and no timetable. "Without the implementation piece we had nothing to push. I believe it was an advance in the process and procedures we had at the time, and we could have made it work if we kept the pressure on, but we didn't have enough to use to keep the pressure on."<sup>149</sup>

US union leadership's attention was also diverted by developments within the US. The ILGWU underwent a merger with the Amalgamated Textile and Clothing Union (ACTU), and the merged union, UNITE, was invited to join the Clinton Administration's newly-convened Apparel Industry Partnership (AIP) in 1996. The context for engagement on labor rights issues in Central America had shifted from the trade-related mechanism to the role of US brands and retailers in implementing change on a voluntary basis, within their own supply chains in Central America and elsewhere.

The Clinton Administration during this period was experimenting with new ways to address labor rights concerns in developing countries. In addition to the Nike Indonesia expose by Ballinger and NLC campaigns on the Mandarin in El Salvador and maquila factories Honduras, the early 1990s saw a number of other high-profile media and human rights exposes of labor abuses in supply chains of U.S.-based companies. In 1991 jeans maker Levi-Strauss was revealed to be using a contractor in the Northern Marianas, where young women from Asia

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<sup>148</sup> Interview with Maritza Paredes by Omar Salazar, ASEPROLA, cited in "SPG Entrevistas y Analysis," document prepared for ILRF in April 2011, on file at ILRF.

<sup>149</sup> Interview with Alan Howard, July 7, 2011

were being shipped in to work in factories under near-bonded conditions<sup>150</sup> Shoemakers Nike International and Reebok International were the subjects of a series of reports starting in the early 1990s about labor rights abuses in shoe production facilities in China and Southeast Asia.<sup>151</sup> Walmart was the subject of an NBC Dateline television expose in 1992 that revealed that garments it retailed carrying a “Made in USA” label were actually produced with child labor in Bangladesh.<sup>152</sup>

Consequently, U.S. Labor Secretary Robert Reich reached out to the apparel industry, to trade unions and to non-governmental organizations to conceptualize answers to the dilemma of labor compliance in an era of production shifts to developing countries. The outcome of the “No Sweat” Campaign initiated by Reich was the creation of the Apparel Industry Partnership, announced by the Clinton White House in August, 1996. Initially composed of 10 major apparel and footwear companies, two unions and four civic groups (human rights, labor rights, religious and consumer organizations), the AIP presented its proposed code of workplace practices to President Clinton in April, 1997.

Howard, who was involved in Apparel Industry Partnership discussions, describes the effects of this intense period of activity on the Honduras case.

The creation of the Apparel Industry Partnership served to deflect pressure on apparel companies that were the subject of campaigns, and deflected also the US government’s political attention from implementing one agreement for one country in favor of what was perceived to be a global initiative. UNITE’s attention was also deflected, and the union ran into internal problems and challenges to its internationalist position, and the result was that it was no longer going to play that kind of strategic role. It would no longer be pushing for the utilization of mechanisms for the purpose of strengthening unions in these countries. The FLA discussions blew up in 1999 and internal pressures in union worked more and more against UNITE’s ability to do what it had started out to do, and without civil society pressure on USTR, and USTR pressure on Honduras, there was simply no progress likely.<sup>153</sup>

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<sup>150</sup>See Forcese, Craig, Commerce with Conscience? Human Rights and Corporate Codes of Conduct, Quebec: International Centre for Human Rights and Democratic Development, 1997.

<sup>151</sup>See The Sweatshop Quandary, Washington: Investor Responsibility Research Center, 1998.

<sup>152</sup>“Walmart Disputes Report on Labor,” New York Times Service, *New York Times*, December 24, 1992.

<sup>153</sup> Interview with Alan Howard, July 7, 2011

Honduran union leaders also recall the dissipation of bilateral attention after the MOU was signed in 1995. Union leader Germain Zepeda<sup>154</sup> notes that the instrument did succeed, at first, on putting pressure on both the Honduran government and on the private sector. The process, and resulting MOU, did provide some advances on labor issues, and the MOU itself, although minimal, was a formal commitment to further progress.

Zepeda believes the failure to achieve more progress rests within the Honduran labor movement:

Problems lie in the trade union movement's ability to follow-up and monitor the changes, as these are medium and long term. This is something very exhausting for a trade union that is constantly attacked for its attempts to stop labor violations. The circumstances that the unions find themselves in do not allow for the possibility of establishing medium and long term plans.<sup>155</sup>

Howard concludes that it would have been better for Honduran unions if a greater range of US organizations had been involved with the case, and if the case had not been solely dependent on attention from a single US constituent, UNITE. With hindsight he states it would also have been optimal for groups to have developed a longer-term strategy to ensure implementation of the MOU.

This view notwithstanding, it appears that US labor did in fact continue to consider its role in generating the basis for continued tactical actions to implement the MOU. The AFL-CIO prepared and eventually did submit a 1995 GSP petition against Honduras, even as the MOU was being negotiated. The petition carefully builds its analysis on the campaign work initiated by NLC and its allies in 1994, including the media exposure of underage workers in Honduran factories, and uses the public campaign to build a case for targeted actions via the GSP process. To this end, the petition focuses very specifically on the single sector of interest to the consumer-facing campaign: apparel. The petition, in its introduction, notes that Honduras, in contrast with

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<sup>154</sup> Interview with German Zepeda, President of the Coordination of Banana Unions and Agroindustrialists of Honduras, an affiliate of the Latin American Coordination of Banana Unions COLSIBA; also Iris Munguia of Program for Women and Gloria Garcia of SITRATERCO, conducted by Omar Salazar, ASEPROLA and cited in "SPG Entrevistas y Analisis," document prepared for ILRF in April, 2011 on file at ILRF.

<sup>155</sup> Salazar interview with Zepeda

its neighbors, had in recent decades provided relatively strong protections for workers' rights to associate and bargain collectively. It notes particularly that in the maquila sector,

workers were somewhat more successful than others in the region in organizing and bargaining. In the government-owned Puerto Cortes free zone, workers successfully negotiated contracts in the early 1980s with seven multinational clothing companies. These companies have been among the most successful and productive in the field, and have benefitted from stable labor-management relations.<sup>156</sup>

The petition then documents the erosion of bargaining rights in the maquila sector since the 1980s, noting that not a single new collective bargaining agreement had been signed in the 1990s.

The petition cites at length from media coverage and other public testimony in the US related to the NLC campaign, including a lengthy and verbatim transcript of the testimony of 15 year old apparel worker Lesley Rodriguez before a Senate subcommittee in 1994.<sup>157</sup> Rodriguez worked in a factory producing apparel for the clothing brand Liz Claiborne. The petition notes the effectiveness of the campaigners in garnering the attention of Honduran authorities and positions their arguments to bolster the need for bilateral engagement via the GSP process, providing an interesting if somewhat oblique critique of the GSP review process itself. The petition cites Honduran Labor Minister Cecilio Zavara as follows:

Zavala stated that “It would be better to present this type of complaint to the authorities in the country so that the legal remedies may be applied, and avoid this type of thing where an international complaint may damage not just the government, but the country.” He stated that the case involving workers was an isolated case, not an indication of massive violations. He warned that if Honduras is named as a rights violator, it would affect trade, “which the country needs so much in order to export its products, especially to the North American market.” (El Tiempo, 11/25/94)<sup>158</sup>

The petition seems to suggest that the media and public campaign tactic led the Honduran labor ministry to evoke the possibility of trade sanctions in a statement to Honduran media, even in the wake of a successful bilateral negotiation regarding the actual GSP case itself. To be sure, the

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<sup>156</sup> AFL-CIO Petition to the U.S. Trade Representative: Honduras, 1995, p 1

<sup>157</sup> AFL-CIO 1995 Honduras petition, pp. 4 – 5.

<sup>158</sup> AFL-CIO 1995 Honduras petition, p. 6.

AFL-CIO had left open the threat of a new case in the absence of effective implementation of the MOU but at the time of the cited statement, had not yet submitted such a case. The Honduran government in a sense opened the topic of whether indeed such a case was needed to stimulate response and action. The case was filed in 1995 and the case itself, interestingly, does not reference the MOU being negotiated at that time nor suggest specific remedies that might be attached to the MOU or its implementation.

Despite the petition's failure to establish a clear link between its allegations of rights violations in the maquila sector and the terms of the MOU, behind the scenes it appears that US unions did continue to use the attention to the petition to promote implementation of the MOU. Memoranda in the ILRF files indicate that UNITE requested the USTR send a delegation to Honduras in 1998.<sup>159</sup> Subsequent correspondence between UNITE and USTR that year indicates that UNITE was challenging Honduras' failure to implement the MOU as well as specifically requesting action with regard to a factory in the maquila sector that had been the subject of campaign actions in the United States.<sup>160</sup> These memos suggest UNITE was attempting to converge its work on consumer-facing campaigns with its GSP-related strategy.

In brief, the Honduras case is a direct example of the implementation of 'lessons learned' about the limitations of the petition process in other Central American cases by US civil society actors. Petitioners intentionally sought to engage USTR on issues that were described as strictly 'economic,' avoiding the complex debates over impunity and judicial reform that were inherent in other petitions. Petitioners also drew upon the evolving consumer-facing campaigns to motivate business interests to support clear actions in Honduras. Civil society actors interviewed in both the US and Honduras believed, with hindsight, that even more could have been gained through better long-term planning and continued coordination.

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<sup>159</sup> Memorandum from Jay Mazur, President, UNITE to Israel Salinas, Secretary General, CUTH and Claudio Villafranca, Secretary General, CTH, September 16, 1998 (on file at ILRF).

<sup>160</sup> Memorandum from Alan Howard, UNITE to Jay Mazur, UNITE re: Honduras, August 13, 1998 (on file at ILRF).

## **Adjusting Course: Lessons Learned by Civil Society**

As noted in the earlier section reviewing the literature, human rights advocates who were early users of the GSP petition process had ambitious expectations for its use. The mechanism was promoted legislatively at a time when human rights groups' criticisms of US foreign policy and its support for repressive regimes were gaining steam. David Rieff, among others, has summarized the broad strategy of the major human rights organizations during this period, with its focus on investigation-based activism.<sup>161</sup> Human Rights Watch and other groups took up the challenge presented by a foreign policy rhetoric which stressed the virtues of "democracy" by providing extensive documentation of the gap between rhetoric and reality, and seeking to force US officials to respond.

This new strategy of documentation combined with advocacy for policy change was used in the area of labor rights. In the early 1980s a group of progressive activists, including some in the US trade union movement who were disenchanted with the AFL-CIO's policies, called for workers' rights conditionality in trade agreements. Representative Don Pease introduced the "five-fold" definition of workers' rights within the GSP in 1984, and the legislation generated the petition process for the removal of trade benefits from violating countries.

Although the initial push for conditionality came from the human rights movement, Frundt notes that human rights organizations were only partially successful in utilizing the instrument they had promoted. "Between 1986 and 1993, the AFL-CIO filed twenty-one petitions, while ILRF and human rights groups filed nineteen petitions requesting review of Latin American nations. USTR rejected only 29 percent of the federation's petitions but quashed 79 percent of those from rights groups,"<sup>162</sup> he notes. Frundt also describes the complications for USTR, and more broadly, for the Reagan and Bush Administrations in separating labor issues from broader human rights abuses. One of his informants, a retired State Department official

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<sup>161</sup> Rieff, David, "Human Rights and Wrongs," *New York Times Magazine*, August 8 1999. The 50 year anniversary of the Universal Declaration for Human Rights has prompted some reflection on the human rights 'regime,' and another recent think piece on the same subject is Michael Ignatieff's "Human Rights: The Midlife Crisis," *New York Review of Books*, May 20, 1999.

<sup>162</sup> Frundt, p. 68



believed that USTR would explicitly look for any loophole to deny petitions, including linkage between broader human rights abuses and labor rights abuses, invoking wherever possible the excuse of ‘insufficient information relevant to the statutory provision.’<sup>163</sup> Frundt notes also that Elliott Abrams, as the State Department’s Undersecretary for the Latin America region, was well-known to be an opponent of the view that labor rights issues were linked to human rights.<sup>164</sup>

Human rights advocates utilizing the process experienced an erosion of confidence that USTR would make good faith efforts to enforce its legislative mandate regarding worker rights. Holly Burkhalter of Americas Watch comments that by 1989, the human rights movement recognized the challenges. Both the US government and the Salvadorean government, she believed, had an interest in covering up their complicity in human rights violations. Collingsworth recalled that during one USTR hearing, the State Department representative to the GSP subcommittee had explicitly stated there was no way a strategic partner to the US would be punished under this law.<sup>165</sup> Collingsworth adds, “We were all somewhat naïve in thinking the law would be respected rather than corrupted and coopted. We were all shocked at how ‘taking steps’ language was expanded to such a point as to make it meaningless.”

To some extent, this disappointment in the process reflects civil society actors’ views on what constituted ‘success’ in a GSP case. The negative views of most actors interviewed for this study may be explained in part by examining their views of what constitutes ‘success’ in the petition process. As noted in the section reviewing the literature, many actors linked successful resolution of a case to systemic political change. In other cases, actors believed that even where initial use of the petition had opened the possibility of gains, the process had not generated sufficient follow-through by governments to ensure gains were sustained. Harvey (1995) states:

As long as countries perceive the possibility of sanctions, however remote or minor the economic impact might be, they tend to react in positive ways to a review. Repeatedly we have been told by trade unionists in countries under review that the government had responded to the criticism in the GSP petition more seriously than they had ever reacted to a negative judgment by the ILO’s Committee on Freedom of Association or Committee of Experts. In Peru, for example, the filing of a petition in 1992 led the government of

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<sup>163</sup> Frundt, p. 68

<sup>164</sup> Frundt, p 69.

<sup>165</sup> Interview with Terry Collingsworth, June 24, 2011.

President Fujimori to open a dialogue with trade unions for the first time in his administration's history. Unfortunately, before promised legal reforms in Peru could be sealed by law, the review ended on the basis of a "commitment" to reform. Then, the review out of the way, labor rights violations increased and the reforms were put on hold. Now the situation in Peru has deteriorated sufficiently that the ILO has singled it out for special attention. The possible leverage of the GSP program, however, has been squandered.

Stephen Coats echoes the sentiments of other activists regarding the promise of the instrument:

We wonder what would have happened if USTR had actually, in any single case, actually enforced the law- offered a shot across the bow- we don't know what we might have achieved. Unfortunately we have learned this through too many pieces of our work. Enforcement was the biggest problem we had.<sup>166</sup>

Gacek says that despite growing cynicism over the process, some US advocates felt a moral obligation to file the El Salvador case. This was combined, he explains, with a recognition that there was little likelihood that benefits would be suspended. "But we were seeing a great resistance by the US government to even accepting petitions," he notes, and states that beyond the case itself, UFCW and other groups had agreed by that time to join the ILRF administrative case against the Bush Administration for failure to enforce the worker rights conditionality within GSP.<sup>167</sup>

As noted earlier, by 1991, US civil society activists were sufficiently disillusioned with the petition process to file a legal case against the Bush Administration for its failure to enforce the law. ILRF was joined in this action by numerous groups that had attempted to use the petition process throughout the late 1980s, including the AFL-CIO, IUE, AFSCME, Steelworkers, Longshoreman, ILGWU, ACTU, Communications Workers of America, United Electrical Workers, Human Rights Watch, Lawyers' Committee for Human Rights, Council on Hemispheric Affairs, Institute for Policy Studies, Asia Resource Center, Washington Office on Haiti, Massachusetts Labor Committee, Columban Fathers and Bread for the World. The case provides a window into how these groups perceived the instrument prior to 1992. The

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<sup>166</sup> Interview with Stephen Coats, July 6, 2011.

<sup>167</sup> Interview with Stan Gacek, July 1, 2011.

petitioners allege that USTR's enforcement was inconsistent with the legislative mandate, as they interpret it. They object in particular to the discretion USTR is able to exercise in determining whether petitioners have standing and what constitutes substantial "new information" as they require. Finally they object to excessive discretion in the interpretation of what constitutes "taking steps" as required by the statute.<sup>168</sup> Pharis Harvey summarizes the overall views of this group in his 1995 review of the GSP and labor rights:

As an active participant in about 25 of the 80 cases, the International Labor Rights Fund has watched the process unfold for the past 10 years. The early years were marked by official hostility, arbitrary decisions unrelated to the level of labor rights abuses, and frequent manipulation of the labor rights issue to gain leverage on some trade matter of greater importance to the administration. In fact, the administration of the program was so arbitrary and capricious that in 1989, all 23 organizations that had filed labor rights petitions joined in a lawsuit charging the government under the Administrative Procedures Act with failure to administer the program in terms of the law and Congressional intent. This suit was ultimately unsuccessful due to a District Court ruling that the president had absolute discretion to administer GSP as a foreign policy initiative, and a divided appellate court that voted against by two to one on technical grounds that failed to address the substance of the complaint.<sup>169</sup>

Lance Compa, one of the principal authors of the Guatemala petitions filed from 1988 onwards, recalls, "We decided to file the case because of the lack of concrete results from USTR and the way they slipped, and evaded, and concocted bogus rationales for not taking action, such as arguing the assassinations of union leaders are not labor violations - it was frustration with those kinds of things that led us to seek recourse in the courts." He notes that the remedy desired by the petitioners was an order from the court to USTR to eliminate much of USTR's discretion in dealing with the cases. However, he feels even in the absence of the desired reforms to the process, it continued to play its role within a broader set of strategies to promote human rights:

However remote the possibility, the fact that it was a possibility created some pressure on governments to do something. I thought, and still think, the GSP mechanism is a viable one. It is not a magic bullet, but if you use it in creative ways you can push to resolve problems. The Guatemala coup d'etat was in large part reversed because of pressure

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<sup>168</sup> Brief for Appellants, International Labor Rights Education and Research Fund et.al. v George Bush, President of the United States, et. al. Case No. 90-5390 United States Court of Appeals for the District of Columbia Circuit October 3, 1991.

<sup>169</sup> Harvey 1995, p. 2

from the GSP mechanism. Also strikes got resolved, we shed a spotlight on people who were receiving death threats and that gave them some protection, and we did get direct results in Chile, which I thought was a very positive example, but even in Malaysia and Indonesia a dynamic was created that held open some possibilities for advances if mechanisms were carefully applied.<sup>170</sup>

Activists agree there was a dropoff in use of the process after 1995. This was, in part, due to the fact that the GSP program itself became subject to short-term renewals, instead of the 10-year extensions it had enjoyed in 1974 and 1984, and therefore USTR's timeline for accepting and reviewing complaints became less regular and more difficult to predict. USTR also ceased the practice of providing written responses to cases. On the activist side, there may also have been some 'complaint fatigue' post-1995, as activists turned to new, consumer-facing campaign strategies to highlight abuses.<sup>171</sup>

On a more limited basis than previously, however, some parties continued to find the process of use. A 1991 petition by Americas Watch on the Dominican Republic<sup>172</sup> offered some positive outcomes to counter the cynicism generated by the El Salvador case, and Honduras also was viewed as a mixed success.

### **What did activists learn?**

The case reviews suggest that civil society activists may have gained more than they realized through their engagement with the GSP mechanism. Although many activists were frustrated by the limitations of the process, over the course of the years covered by the case studies they developed an increased sophistication on the potential tactical uses of the petitions. Insights common to these cases are as follows:

- Development of sophisticated communications and consultation strategies between groups in the United States and in target countries, leading to stronger overall relationships

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<sup>170</sup> Interview with Lance Compa, July 14, 2011.

<sup>171</sup> Cite Nolan Garcia stats on dropoff in cases post 1995

<sup>172</sup> Letter from Human Rights Watch to Carla Hills, U.S. Trade Representative, May 29, 1991 (on file at ILRF)

- Strengthened tactical use of petitions as a means to drive media coverage and general public awareness of issues, and an increased understanding of the importance of public opinion as an additional leverage point for change
- Notable substantive gains in establishing a desired acknowledgement of the links between overall human rights issues and labor rights
- Refined understanding of the limitations of US government engagement, leading to more pragmatic and specific ‘asks’ within petitions

As discussed in the case analysis, these learnings were translated into more effective strategies used in other non-trade related cases and campaigns throughout the 1990s.<sup>173</sup>

Stephen Coats of the US Labor Education in the Americas Project (USLEAP)<sup>174</sup> explains that activists in the US learned that it was not a good idea to file independently simply based on reporting of abuses. It was important to spend time explaining the process itself to unionists and civil society allies in the target country, and to ensure the process had support of the indigenous labor movement. Coats says groups in Central America also learned the value of using the process to raise awareness of specific cases.<sup>175</sup> “It wasn’t separate from the *maquila* campaigns, we were doing those campaigns at the same time and those cases also were used for GSP petition.”<sup>176</sup> Unfortunately, says Coats, a result of the strategy was that governments would

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<sup>173</sup> While beyond the scope of this paper, documents reviewed for the four case studies suggest that USTR was also evolving its approach to cases throughout this period, and may, by 1994, have reached a point where more effective engagement with civil society via this process may have been possible. Unfortunately, as noted in the study, for various reasons civil society groups lessened their use of the mechanism at this time.

<sup>174</sup> Formerly the US Guatemala Labor Education Project, one of the principal petitioners in the Guatemala cases of the late 1980s and early 1990s.

<sup>175</sup> USLEAP worked extensively during this period on a case of trade union rights in a factory in Guatemala owned and operated by US clothing company Philipps Van Heusen. A description of this case and lessons learned is contained in (cite to Coats paper)

<sup>176</sup> Interview with Stephen Coats, July 6, 2011.

sometimes use actions by private employers that were the result of consumer campaigns as evidence of progress, despite the lack of any systemic action by the government itself.

Compa and Vogt attempt also to deal with the interplay between civil society use of GSP and of consumer-facing campaign strategies their review:

In many developing countries, trade unions and NGOs shared years of experience investigating workers' rights violations and filing petitions under the GSP labor rights clause. As a result, a cross-border network of trade union and human rights activists was already in place to take advantage of new opportunities presented by corporate codes. For example, a new group arose out of the GSP network in Guatemala, the Commission for the Verification of Codes of Conduct or Coverco. It quickly became known as the most reliable respected labor rights monitoring group in Central America, commissioned by companies like Liz Claiborne and stakeholder groups like the Fair Labor Association and the Workers Rights Consortium to conduct investigations under their codes. In sum, a modest amendment in a little-known U.S. trade program promoted by a small group of idealistic reformers helped build a broad movement for workers' rights in the global trading system.<sup>177</sup>

Viewed with a wider lens, it may be argued that civil society actors did obtain important gains because of their engagement with the petition process. As described in the earlier section on Indonesia, the 1992 case co-filed by ILRF and Asia Watch marked a watershed in US foreign policy to Indonesia as it placed the need to protect human rights in the context of the US bilateral trade relationship with Indonesia. Stronger alliances between international human rights actors and grassroots organizations in Indonesia, and in particular those generated through corporate campaigns, led to new and more effective critiques of foreign policy in all its guises-- including trade policy, development policy, the effects of foreign direct investment and the presence of multinational corporations, and the effects of IMF and World Bank policies. These critiques linked to a broader critique of global capitalism, connected with anti-sweatshop campaigns in Central America and elsewhere, and had their part in giving rise to a broader movement that critiqued neoliberal trade and development policies and culminated in protests around the World Trade Organization meetings in Seattle in 1999.

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<sup>177</sup> Compa and Vogt, p. 208.

In sum, while actors learned to have measured expectations of the potential outcomes of GSP submissions, useful tactics were developed through the cases. The tactics included establishing regular channels of communication and reporting between civil society actors in the target country and in the United States; using indigenous media coverage of the case to highlight violations and push for reforms; using the bilateral dialogue generated by reviews (as in the Honduras case) to push for specific new instruments to protect labor rights; using attention to the case as a platform to develop broader civil society connections between groups in the target country and groups in the US; and using petitions as a means to highlight broader human rights and rule of law concerns.

The greatest disincentive to continued use of the process appears to be a lack of confidence on the part of civil society actors that the US government would ever, in any cases, impose sanctions on a targeted country. In petitioners' view, the lack of a credible threat of sanctions has disabled many of the potential tactical uses of the process to push for labor rights reforms. Petitioners' increasing use of alternative strategies in recent years, in particular the use of consumer-facing campaigns and private voluntary initiatives, may in part reflect the erosion of confidence in the legal mechanisms available to protect labor rights in global trade.

## **Appendix: Pakistan**

This appendix provides a brief overview of a 1993 GSP petition on Pakistan. The case is included as it may represent an important turning point in USTR's engagement with civil society on two counts: first, USTR initiated a review of Pakistan immediately upon receipt of the case, without the usual window of review described in the four cases covered by the study. Second, the outcome of the case was a targeted removal of benefits from select industries – an outcome not seen in any other case. The case merits elaboration in a future version of this study or a separate research project.

In 1993 a GSP petition regarding Pakistan was submitted to USTR by ILRF and the International Human Rights Law clinic at Washington College of Law, American University. The 1993 Pakistan case detailed two categories of allegations. The first related to violations of freedom of association. The second described extensive forced labor, including forced child labor.

The freedom of association complaints were based on the restrictive export processing zone (EPZ) laws enacted by the Government of Pakistan in 1980. This law granted the government the right to exempt employers in EPZs from all provisions of the Pakistani labor code, including protections for trade union rights. The 1993 case noted that the State Department's annual human rights report of 1992 had confirmed the conclusion that freedom to associate was significantly 'constrained' in law and in practice.

The allegations on bonded labor cite dramatic statistics on the widespread nature of the problem. The petition states that approximately 20 million people, of a total population of 195 million, were estimated to be in debt bondage. A separate statistic on child labor (as defined by ILO Convention No. 138) noted that, according to the Human Rights Commission of Pakistan, children under 14 years of age made up fully 46 percent of the country's total labor force. The



petitioners argue that these statistics reveal a systemic and intentional pattern, and are not merely an outgrowth of the failure to enforce domestic legislation. The petition states,

Although Pakistan's government recently passed legislation abolishing forced labor, the practice is still widespread and often the only employment opportunity for Pakistan's laborers, many of whom have mortgaged their labor for generations. The issue of forced labor remains indivisible from child labor, which has also recently been abolished by law. Children are also employed in many industries that fall within the category of bonded labor.<sup>178</sup>

The AFL-CIO filed supplementary comments in 1993 in support of the ILRF petition.

The case was accepted for review by USTR, which issued a report in July 1994. The report noted several positive steps taken by the Government of Pakistan that could be construed as 'taking steps' to enforce internationally recognized worker rights, as called for by the GSP statute. These included the establishment of a Task Force on Labor, engaged in reviewing Pakistan's labor statutes with the goal of bringing them into greater compliance with international standards; and the conclusion of a Memorandum of Understanding between the Government of Pakistan and the International Labor Organization on the elimination of child labor.<sup>179</sup>

Notwithstanding these steps, the GSP Subcommittee decided to hold the review of Pakistan open "for an additional year."<sup>180</sup> In contrast to other cases reviewed in this study, the initial report issued by USTR is not a report on whether or not the Subcommittee found sufficient basis to accept the case. Instead, this first response from USTR to the 1993 filing reads as an update on an already-ongoing full fledged review of Pakistan's practices. Indeed the report states, "In response to petitions filed in June 1993 by the ILRERF . . . (et al) the Subcommittee

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<sup>178</sup> Petition to Review the GSP Status of Pakistan Under GSP Worker Rights Provisions, submitted by the International Human Rights Law Clinic, Washington College of Law, American University and the International Labor Rights Education and Research Fund, June 1, 1993 p. 3

<sup>179</sup> Generalized System of Preferences (GSP) Subcommittee of the Trade Policy Staff Committee Case 16-CP-93: Pakistan, p. 7

<sup>180</sup> GSP Subcommittee report on case 16-CP-93: Pakistan p 8

on the Generalized System of Preferences (GSP) *conducted a review of worker rights laws and practices in Pakistan.*<sup>181</sup> (italics added for emphasis).

Compa and Vogt, among others, have commented on the unique outcome of the Pakistan GSP review. By 1995, consumer-facing campaigns and media exposes had spotlighted the extensive problem of bonded child labor in various industries in Pakistan. Whether or not as an outcome of this public attention, the US government's bilateral efforts apparently targeted the bonded child labor issue.<sup>182</sup> The Administration chose to suspend benefits to Pakistan on targeted industries where bonded child labor was found to be particularly endemic. These industries were some sporting goods, surgical instruments, and hand woven rugs.

ILRF's files contain substantial correspondence with trade unions regarding the freedom of association allegations in the petition, which elucidate civil society actors' goals on this topic. However the files reveal far less correspondence related to civil society groups' proposed strategy on bonded child labor. Nevertheless, ILRF remained in contact with local NGOs in Pakistan on the child labor issue for several years after the termination of the GSP review, and engaged in a consumer-facing campaign in partnership with these groups on the issue of bonded child labor in soccer ball production in 1996. Civil society views on the effects of USTR's decision to suspend GSP benefits for target sectors, and how this attention may have affected later tactics, is a subject recommended for further study.

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<sup>181</sup> GSP Subcommittee report on case 16-CP-93: Paksistan p 1

<sup>182</sup> ILRF files contain detailed correspondence between ILRF and global trade union federations and the ITUC on the freedom of association issues in Pakistan. It is possible that separate strategies on freedom of association also had some effect during this time frame.

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