

TESTIMONY OF
JEFFREY S. VOGT,
GLOBAL ECONOMIC POLICY SPECIALIST,
AMERICAN FEDERATION OF LABOR &
CONGRESS OF INDUSTRIAL ORGANIZATIONS

BEFORE THE SENATE FINANCE COMMITTEE

HEARING ON U.S. PREFERENCE PROGRAMS:
OPTIONS FOR REFORM

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Chairman Baucus, Ranking Member Grassley and members of this committee, on behalf of the over 11 million members of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), I thank you for the opportunity to address options for the future of U.S. preference programs. While the AFL-CIO is interested in the reform of multiple aspects of the preference program system, I will focus today on the labor eligibility criteria.

Introduction

In 1984, labor advocates succeeded in passing legislation conditioning a country's eligibility under the Generalized System of Preferences (GSP) on "taking steps to afford internationally recognized worker rights."¹ These rights include: the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.² The rationale for linking trade and labor rights was two-fold: i) workers who are able to exercise these fundamental rights will be able to bargain collectively for better wages and working conditions, ensuring that the benefits of trade accrue not only to capital but also to labor; and ii) while developing countries should be able to attract investment based on a comparative wage advantage, it should not benefit from wages that are artificially low due to labor repression.

Economic research has also demonstrated that the adoption and enforcement of these core labor rights is essential to broad-based economic development. As the Organization for Economic Cooperation and Development (OECD) pointed out in a 2000 report, International Trade and Core Labor Standards, "countries which strengthen their core labor standards can increase efficiency by raising skill levels in the workforce and by

¹ 19 USC 2462(b)(2)(G)

² In 2000, countries were further required to implement their commitments "to eliminate the worst forms of child labor" to remain eligible. See 19 USC 2462(b)(2)(H).

creating an environment which encourages innovation and higher productivity.”³ The OECD also found in a 1996 report, entitled Trade, Employment and Labor Standards, that “any fear on the part of developing countries that better core standards would negatively affect either their economic performance or their competitive position in world markets has no economic rationale.”⁴

Today, U.S. general or regional trade preference programs all contain either the GSP labor clause or a minor variation thereof.⁵ However, there are significant substantive and procedural problems with the current labor provisions.

A. SUMMARY OF PROBLEMS WITH CURRENT GSP LABOR STANDARD AND PROCEDURES

1. Outdated Standard

In 1998, the member states of the International Labor Organization (ILO) agreed on a set of universal, core labor rights applicable to all members regardless of level of development. These core labor rights were enshrined in the ILO Declaration on Fundamental Principles and Rights at Work, which commits all members to respect, promote and realize four categories of labor rights: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labor, the abolition of child labor and the elimination of discrimination in respect of employment and occupation. Importantly, all members are obliged to respect, promote and realize these principles and rights regardless as to whether they have ratified the relevant, underlying conventions. This touchstone has now been incorporated into all bilateral free trade agreements pending as of May 10, 2007.

Despite the adoption of these principles and rights over ten years ago, trade preference programs still refer to “internationally recognized worker rights” (IRWR). There are important differences between IRWR and the core labor rights. For example, IRWR do not include the prohibition on discrimination in respect of employment and occupation contained to the ILO Declaration. In addition, the preference programs currently refer to “a minimum age for the employment of children,” which is weaker than the ILO formulation, “the effective abolition of child labor.” It has also been argued that the rights collectively defined as IRWR do not refer to any external source of law and thus

³ OECD, International Trade and Core Labour Standards (Oct. 2000), available online at <http://www.oecd.org/dataoecd/2/36/1917944.pdf>

⁴ See also, Aidt, Toke & Zafiris Tzannatos, UNIONS AND COLLECTIVE BARGAINING, ECONOMIC EFFECTS IN A GLOBAL ENVIRONMENT, World Bank (2002), available online at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2002/09/13/000094946_02083104140023/Rendered/PDF/multi0page.pdf

⁵ See, e.g. African Growth and Opportunities Act (AGOA), substituting “making continual progress toward establishing” in place of the “taking steps to afford” approach in GSP. The Haitian Hemispheric Opportunity through Partnership Encouragement Act (HHOPE) also contains a substantial labor monitoring program based on the ILO Cambodia labor monitoring project.

may be invested with any meaning given to them by the USTR, rather than the meaning conferred upon those rights by the international community through the ILO.⁶

2. No Minimum Level of Compliance

The current preference programs simply require a country to improve labor standards over time, but do not require a country to have achieved any basic level of compliance to be eligible. A country may therefore have horrendous labor laws and practices (2 on a scale of 10), so long as it temporarily and marginally improves them after a petition is filed (3 of 10).

3. Limited Petition Filing Window

Preference programs, with the exception of the CBI and AGOA, allow for third parties to submit petitions alleging the violation of any eligibility criteria. The regulations implementing each program limit petitions to only once a year, though the statute imposes no such limitation. If a major labor rights violation occurs a month after the petition window closes, a potential petitioner will have to wait nearly an entire year to raise the matter through a petition process. Further, the petition windows for the various programs are not coordinated, nor are they fixed (in practice), meaning that the petition window can (and does) change from year to year.⁷ In 2003, the petition window was never opened. The U.S. government has also failed to regularly review the compliance of beneficiary countries and self-initiate appropriate action.

4. No New Information Rule

A determination that a country does not merit review should not bar subsequent petitions on the same or similar issues, as it has in the past. The so-called “no new information” rule, 15 CFR 2007.0(b)(5) and 2007.1(a)(4), has no statutory foundation and should be abolished.⁸ In general, the rule prohibits the filing of a petition on any matter that has been raised in a previous petition against the same country. Thus, a country could take minimal steps towards compliance just to avoid review and then backslide into

⁶ An infamous example of this is the so-called “Clatanoff Rule,” articulated by former Assistant USTR for Labor, William “Bud” Clatanoff. At a 2003 conference at the National Academy of Sciences regarding the monitoring of international labor standards, he stated with regard to freedom of association: “If someone tries to form a union, they can’t get shot, fired or jailed. I’m sorry. I know there are thousands of pages of ILO jurisprudence I am not going to read, but that’s my criteria – shot, fired or jailed, you’re not given freedom of association.”

⁷ 15 CFR 2007.3 does provide that petition shall be conducted at least once a year according to the schedule set forth in therein. The deadline for petitions established in the regulations is June 1, unless otherwise specified by notice in the Federal Register. The petitions are rarely, if ever, due on that date. In 2009, petitions were actually due on June 24th. In 2004, petitions were due on December 14th.

⁸ 15 CFR 2007.0(b) During the annual reviews and general reviews conducted pursuant to the schedule set out in §2007.3 any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in section 502(b) or 502(c) (19 U.S.C. 2642 (b) and (c)). Such requests must: (5) supply any other relevant information as requested by the GSP Subcommittee. *If the subject matter of the request has been reviewed pursuant to a previous request, the request must include substantial new information warranting further consideration of the issue.*

noncompliance once suspension of benefits is no longer threatened. If a petitioner were to file a complaint on the same subject matter, the petition could be rejected if the new information were not deemed sufficiently substantial.

5. Exercise of Excessive Executive Discretion

a. Meritorious Petition Not Accepted for Review and No Reason Given

The only reason to reject a country practice petition for review that finds any support in the statute or regulations is that the petition fails to set forth facts that, if substantiated, would demonstrate that the beneficiary country in question has not taken steps to afford workers internationally recognized worker rights.⁹ However, numerous well-supported petitions detailing widespread and/or serious violations of worker rights have been rejected in the past without any official explanation. The government should accept for review a petition if the statements contained therein, if substantiated, would constitute a failure of the beneficiary country to comply with its obligations or commitments under the labor clause. If a petition is rejected, the government should provide in writing the reasons for that decision. If a defect in the submission could be remedied, the government should instruct the petitioner what is needed to make the petition acceptable for review. Further, the criteria that the GSP subcommittee of the Trade Policy Staff Committee (TPSC) employs to determine whether to accept or reject a GSP petition for review should be public.

b. Abuse of Continuing Review

USTR has often put countries under a “continuing review,” a probationary period during which the government waits to see whether a country is making sufficient progress necessary to retain its eligibility. Using a “continuing review” as a means to provoke the improvements necessary to avoid suspension is legitimate. However, some reviews have continued for several years while workers’ rights continued unabated. Thailand, for example, was under review for nine consecutive years while it maintained GSP eligibility. Reviews should rarely, if ever, last for more than two petition cycles without a final determination of eligibility. No country will undertake needed reforms if it believes that there is no real chance that market access could be limited, suspended or withdrawn.

c. Executive Branch Fails to Limit, Suspend or Withdraw Preferences, even in Clear Cases.

⁹ See, 15 CFR 2007.0(b) During the annual reviews and general reviews conducted pursuant to the schedule set out in Sec. 2007.3 any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in section 502(b) or 502(c) (19 U.S.C. 2642 (b) and (c)). Such requests must (1) specify the name of the person or the group requesting the review; (2) identify the beneficiary country that would be subject to the review; (3) indicate the specific section 502(b) or 502(c) criteria which the requestor believes warrants review; (4) provide a statement of reasons why the beneficiary country's status should be reviewed along with all available supporting information; (5) supply any other relevant information as requested by the GSP Subcommittee.

GSP does provide the President some discretion to continue to extend preferences even if the country fails to meet the worker rights eligibility criteria. Section 2462(b)(2)(G) of the GSP provides that “The President shall not designate any country a beneficiary developing country under this subchapter if any of the following applies: such country has not taken steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country.” Section 2462(b)(2) does provide, however, that subparagraphs (G) and (H)(to the extent that the work “by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children”) “shall not prevent the designation of any country as a beneficiary country under this subchapter if the president determines that such designation will be in the national economic interest of the United States and reports such determination to the congress with the reasons therefore.” (emphasis added).

Despite this limited grant of discretion, several country practice reviews over the last 25 years have been closed with no action taken (limitation, suspension or withdrawal) and with no apparent steps taken by the foreign government to afford IRWR. Given the complete lack of transparency, it is impossible to ascertain the basis for inaction and determine whether it is rooted in the clear statutory language outlining the scope of presidential discretion or whether other extra-statutory factors are considered by subordinate committees such as the TPSC when making a recommendation to the President.¹⁰ The discretion exercised by the TPSC in practice and afforded the President under the statute is so broad that it could form the basis for inaction on almost every petition.

6. Country v. Industry-Level Enforcement

Nothing currently prevents USTR from suspending trade preferences with regard to a specific industry or industries where rampant violations occur (rather than suspending or

¹⁰ 15 CFR 2007.2(g) and (h) regulate the process by which recommendations are made to the President. Nowhere do the regulations provide the TPSC (and superior committees) discretion to weigh considerations unrelated to the program’s eligibility criteria.

(g) The TPSC shall review the work of the GSP Subcommittee and shall conduct, as necessary, further reviews of requests submitted and accepted under this part. Unless subject to additional review, the TPSC shall prepare recommendations for the President on any modifications to the GSP under this part. The Chairman of the TPSC shall report the results of the TPSC's review to the U.S. Trade Representative who may convene the Trade Policy Review Group (TPRG) or the Trade Policy Committee (TPC) for further review of recommendations and other decisions as necessary. The U.S. Trade Representative, after receiving the advice of the TPSC, TPRG or TPC, shall make recommendations to the President on any modifications to the GSP under this part, including recommendations that no modifications be made.

(h) In considering whether to recommend: (1) That additional articles be designated as eligible for the GSP; (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; (3) that product coverage be otherwise modified; or (4) that changes be made with respect to the GSP status of eligible beneficiary countries, the GSP Subcommittee on behalf of the TPSC, TPRG, or TPC shall review the relevant information submitted in connection with or concerning a request under this part together with any other information which may be available relevant to the statutory prerequisites for Presidential action contained in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461-2465).

withdrawing preferences at the country level). With very rare exceptions, such as Pakistan, where USTR suspended preferences in the 1990s for carpets, surgical instruments and soccer balls, USTR has not exercised this flexibility and has instead limited itself to a determination as to whether to suspend or withdraw trade preferences for an entire country. The targeted limitation of preferences should be used more frequently.

B. A BETTER WAY

Below is a comprehensive set of proposals to reform both the labor eligibility criteria as well as the process for reviewing complaints, remediating violations and making determinations as to whether to suspend preferences in whole or in part.¹¹ These recommendations could be applied to reform of any or all of the extant preference programs, or lay the foundation for a new, unified preference program.

1. Eligibility Standard(s)

Establishing new eligibility criteria for a broadly revamped preferences scheme requires several related choices. For example, tiers of development and levels of market access could be uniform or layered. For purposes of this testimony, we assume three baskets of trade preferences based on a combination of level of development and market access. However, should the program evolve and take another shape, these suggestions would need to be adapted.

Also, note that only labor eligibility criteria are discussed here. One would expect that other criteria would be required, including those related to good governance, human rights, the environment and others.

a. Basic Preference for Developing Countries

Assuming levels of market access similar to the current GSP program for developing countries, the following criteria should be met to be or remain eligible.

Standard

- The country must make continual progress towards adopting laws consistent with core labor rights and must have adopted laws consistent with the ILO core labor rights within 3-5 years of the program entering into force to remain eligible.
- Though the obligation is to make progress during the transition period, the country cannot have laws that prohibit (de jure or de facto) the exercise of a core labor right (eg., bar on the formation of unions or a minimum requirement of 100 members to form a union) or fail to have laws governing acceptable conditions of work with respect to minimum wage, hours, and health and safety.

¹¹ Note: We believe that beneficiary countries must also meet eligibility criteria with regard to human rights, rule of law and good governance and the environment. Those criteria are not spelled out here.

Level of Enforcement

- During the transition period, the country must make continual progress towards effectively enforcing its laws related to the core labor rights and acceptable conditions of work; once the transition period ends, the country must effectively enforce those laws.
- Though the obligation is to make continual progress during the transition period towards effective enforcement, the country, at a minimum, must have tribunals for the enforcement of such labor rights and acceptable conditions of work, which shall be fair, equitable, and transparent; provide for the possibility of remedies such as fines, penalties, or temporary work closures; and allow for the appeal or review, as appropriate, of decisions to impartial and independent tribunals.
- Though a country retains the right to the reasonable exercise of discretion and to *bona fide* decisions with regard to the allocation of its resources, the country must, at a minimum, not reduce the percentage of its annual budget for labor enforcement and should increase the budget for labor enforcement proportionately as the economy expands.
- The country cannot be on Tier 3 of US State Dept Trafficking Report (those countries whose governments do not fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards and are not making significant efforts to do so).¹²

b. GSP-Plus

Currently, the U.S. has no incentive based program that ties greater levels of market access to certain vulnerable developing countries to compliance with a higher set of eligibility criteria. The European Union currently has such a program – GSP Plus. If the U.S. were to incorporate such an approach, a developing country could be eligible to export more goods at a preferential tariff rate than possible under the basic GSP. If correctly designed and implemented, a incentive based program that rewarded better labor practices could result in better labor laws and practices. If such a program were to be established, the following eligibility criteria would be appropriate. Such countries should also be subject to more rigorous oversight on compliance with the eligibility criteria.

To be eligible, the country must:

- have adopted laws and regulations consistent with the core labor rights
- must effectively enforce those laws and all other national laws governing worker rights and social protection

¹² In 2009, this list included: Burma, Iran, North Korea, Syria, Chad, Kuwait, Papua New Guinea, Zimbabwe, Cuba, Malaysia, Saudi Arabia, Eritrea, Mauritania, Sudan, Fiji, Niger and Swaziland.

- maintain a functioning tripartite body that meets regularly to discuss labor laws, labor relations and social and economic policy generally, if such a structure exists, or otherwise ensure regular and meaningful social dialogue on these issues.
- ensure that no workers are excluded *de facto* or *de jure* from, and that all workers are protected equally by, national labor laws, regulations, and policies, including subcontracted workers, temporary workers, migrant workers, seasonal workers, part-time workers, project-based workers, informal sector workers, etc. Nothing in this criterion shall be construed as prohibiting positive affirmative measure to protect the rights of more vulnerable workers.

c. Duty-Free / Quota Free for Least Developed Countries

It has been proposed that Least Developed Countries (LDCs) should now receive duty free/quota free preferential tariff treatment. LDCs should also be required to meet the basic GSP criteria described herein; however, they should be given a somewhat longer transition period and more resources from a variety of sources should be marshaled to help LDCs meet these and other eligibility criteria. This arrangement would strike a balance between the lower level of development on one hand and the substantially greater market access afforded on the other.

2. A New Process

a. Institutions

Currently, worker rights country practice petitions are filed with the USTR and reviewed initially by the GSP Subcommittee of the TPSC, an inter-agency committee that includes USTR, Treasury, Agriculture, State, USAID, Commerce and Labor. The full TPSC includes, in addition, the Council of Economic Advisors, Council on Environmental Quality, Department of Defense, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Interior, Department of Justice, Department of Transportation, Environmental Protection Agency, National Economic Council, National Security Council, Office of Management and Budget and the U.S. International Trade Commission (non-voting member).

It is understandable that a wide range of agencies may have an interest in a decision regarding country eligibility to receive trade preferences. However, as to whether the petition 1) on its face alleges a violation of the worker rights criteria and should therefore be accepted and 2) whether, following an investigation, those claims have been substantiated by the evidence, it appears that those decisions are wholly within the competence of DOL, and specifically ILAB. Thus, as to the first two aforementioned questions, ILAB's findings and conclusions should be given substantial deference, if not be determinative. The ultimate issue, whether a country's benefits should therefore be suspended because of those violations, or what the scope of the suspension should be, could be a determination that requires input from a broader inter-agency committee – though the scope of their review should be circumscribed.

b. Procedures

1. Public Petitions

The USG should provide for the receipt of public petitions from any person at any time on labor rights matters under a new trade preference scheme. This could be accomplished either by establishing an open petition process or by maintaining a fixed annual review process, at which time petitions would be encouraged, but with the possibility of filing a petition out-of-cycle. Elements of a basic petition should include: name and contact information of petitioner (which should remain confidential if requested), a summary of the relevant facts, if possible the specific domestic laws or international labor rights alleged to have been violated and the relief sought. No additional information should be required at the initial stage.

The petition shall be accepted for review if the statements contained in the petition, if substantiated, would constitute a failure of the country to comply with the obligations or commitments under the preference program. ILAB should announce its determination within 30 days of the receipt of the petition. If the information provided is insufficient to make an initial determination, ILAB should notify the petitioner within 30 days of the receipt of the petition and request any information needed to make a determination. The petitioner should have 60 days from receipt of the notification to supply the requested additional information. ILAB shall have 30 days from the date the petitioner resubmits the petition in order to make its determination. If the petitioner does not supply the requested additional information within 60 days, or if the information is still insufficient, then the petition may be rejected.

If accepted, a notice should be published in the Federal Register within 5 days that a petition to review the eligibility of a beneficiary country has been accepted for review. Specific notice should be given to the foreign government and petitioner(s). The FR notice will start a process not to exceed 120 days. ILAB shall invite the public to submit supplemental written testimony in support of or in opposition to the petition within 30 days. Thereafter, ILAB and any other relevant agencies should conduct an investigation, including interviews with petitioners, government officials, employers or employer associations specifically named or in an industry identified in the complaint, as well as NGOs and other relevant stakeholders. As part of its investigatory process, a public hearing should also be held. The investigatory phase should close within 120 days from the filing of the petition.

Within 60 days from the close of the investigation, a written determination as to whether a violation or violations of the labor clause occurred, and the facts and evidence supporting that determination.¹³

¹³ The USG should develop a methodology setting forth clear and consistent procedures for the conduct of investigations, the criteria used to determine whether a violation of the labor clause has occurred, how such factors are weighed, and how a final determination is made. The methodology should also set forth procedures for drafting and implementing a remedial work plan, if applicable, and oversight of the implementation of such a plan. This proposed methodology should be published in the federal register for public comment.

2. Levels of Review

Unlike the existing petition process (in practice), petitioners should be able to request action taken at the country and/or industry level. Indeed, almost all past petitions have raised concerns at both levels, but the only remedy available in practice has been a complete suspension of preferences to an entire country. The availability of targeted remedies may provide the USG the flexibility to address the most critical problems directly.

For example, a situation could arise in which a petitioner alleges: 1) that the government has failed to enact laws consistent with the country's preference program obligations, has failed to maintain those laws, and/or in a systematic way has failed to enforce them; 2) alleges rampant violations in a specific industry, with illustrative cases with regard to specific firms that represent the worst actors within that industry. A petitioner should be able to request (and the U.S. government provide) action be taken at one or both levels. In cases where laws and regulations fall short of core labor standards, where there is a widespread failure in the administration of labor justice (ministry, inspectorate, courts), and/or where the government as employer is violating worker rights, the U.S. government should consider application of country-level remedies. Where worker rights violations are especially concentrated in a particular industry, the U.S. government should consider remedies that target the products of that industry.¹⁴

3. Remediation & Suspension

a. country level

The primary purpose of enforceable labor rights criteria is to improve working conditions, not to suspend tariff preferences for the sake of it. Thus, the approach taken to labor violations should be cooperative, at least initially. If ILAB were to determine based upon a petition or a biennial review (see below) that the beneficiary country is not in compliance with the labor eligibility criteria, then it should enter into consultations with the beneficiary country (with the participation of worker and employer representatives) to develop a work plan with clear benchmarks that, if met, would bring the country into compliance with the eligibility criteria. Such a work plan should usually be no longer than one year in duration, with a mid-point review.

If, after such consultations, a work plan cannot be developed, eligibility should be terminated. If such a plan is not fully implemented after the year, ILAB shall consider what progress has been made toward fulfilling the work plan. If the country has demonstrated sufficient political will and has taken substantial steps towards implementing that plan, the USG should extend the period for an additional period not to

¹⁴ If the industry does not benefit from preferences, violations would have to be viewed in the context of a broader, country practice petition. However, this does not preclude the USG from developing a remediation plan that addresses concerns in that industry. The limitation would be in that benefits would have to be withdrawn for the entire country, rather than the specific industry.

exceed one year. If, however, the country has not demonstrated the requisite will or has made insufficient progress, the preferences shall be limited, suspended or withdrawn.

As noted above, the TPSC is responsible for making a recommendation to the President to limit, suspend or withdraw preferences. Although the statute gives the President the discretion to factor in other considerations, i.e. the national economic interest, it is clear that members of the TPSC are factoring in additional non-labor considerations at the time the recommendation is being formulated. Further, the TPSC does not now appear to be constrained by any timelines whatsoever in making their decision.

The TPSC should be constrained to make its recommendation to the President within 60 days from ILAB's recommendation. Further, TPSC may reject ILAB's determination and recommend no action be taken only on the basis of an affirmative, consensus opinion based on evidence that suspending the preferences would either cause serious harm to the U.S. economy or jeopardizes the national security of the United States. If the TPSC recommends limitation, suspension or withdrawal of preferences, the President should notify Congress of his (or her) intent to limit or suspend the country's eligibility for preferential trade treatment within 30 days (unless the president independently determines that suspending preferences would cause serious harm to the economy or jeopardizes the national security of the United States. The final decision, either in the affirmative or negative, must be in writing with a full explanation for the reasons supporting that decision.

b. industry-level

If a petition targets a particular industry or industries, or ILAB otherwise determines that violations described in a country practice petition are concentrated in a specific industry or in industries, it should develop a special work plan (or sub plan) with specific recommendations to address violations in the identified industry or industries. Of course, persistent worker rights violations in any industry are the responsibility of both the employers (who violate the law) and the government (which fails to enforce the law), so a sectoral approach will necessarily have to set forth specific benchmarks in a work plan that are directed to both the government and to the employers. As with the country-level work plan, government, employers and workers should all be engaged in developing that plan.

If the country and employers have demonstrated the will and have taken substantial steps towards implementing that plan, the president should extend the review period for an additional period not to exceed one year. If, however, the country has not demonstrated the requisite will or has made insufficient progress, and the violations are especially concentrated in an industry or industries, the president shall notify congress of intent to terminate the preferential treatment for the products in the identified industries.¹⁵

¹⁵ In many cases, a firm or group of firms may be responsible for giving the entire sector a bad reputation. If an entire sector were under review, it would be advantageous for the better actors to put pressure on the bad actors to avoid having the relevant product losing preferential treatment. However, if a firm within an

4. Reinstatement of Eligibility

The President may reinstate the eligibility for preferential treatment of a country (or sector) whose eligibility has been terminated if it is determined that the qualified beneficiary country has fully implemented the work plan.

Countries seeking reinstatement should file a written request with USTR. Notice of the request shall be published in the Federal Register. Any interested party shall have 60 days to provide information in response to the notice as to whether the country has implemented its work plan and/or any new additional information post-suspension with regard to the country's compliance with the labor clause generally. A public hearing should be held within 30 days after comments are due. ILAB shall review the evidence and conduct such investigations as necessary and make a determination within 90 days whether the beneficiary country has complied with the work plan. The preferences shall remain limited or suspended unless ILAB makes a finding that the beneficiary has fully complied with the work plan (and has not engaged in subsequent violations that justify the continuation of the suspension). If so, it would make a recommendation of reinstatement to the TPSC. If not, preferences shall remain suspended until such time that the beneficiary country can demonstrate full compliance through the process described above.

There may be some cases where a country seeks reinstatement of eligibility after several years out of the program, at which point the work plan would not longer be relevant. In such cases, a new assessment would need to be undertaken to ascertain whether the country meets the relevant eligibility criteria.

5. Regular Biennial Monitoring

In conjunction with civil society partners with demonstrated expertise in labor rights matters and together with other relevant international organizations, USTR, DOL and State shall work together to assess compliance by beneficiary countries with core labor rights and acceptable conditions of work, in law and practice. Such assessments shall be based on information available from the annual IRWR reports required under 19 USC § 2464,¹⁶ the International Labor Organization, other interested parties, country and worksite visits that include confidential worker and worker representative interviews, meetings with management, visits to workplaces, collection and review of relevant documents. The U.S. government would not be required to develop yet another report but rather to survey information already in hand or readily available, and any additional information provided by civil society organizations and collected in the course of ongoing information gathering from the labor attachés and labor reporting officers.

industry continues to commit serious violations of worker rights, the USG should seek ways, where possible, to deny benefits to that firm or firms.

¹⁶ This section would of course need to be amended to refer to the core labor rights assuming our recommendations herein are adopted.

In recognition of the limited resources, the U.S. government should be allowed to exercise discretion and self-initiate reviews of those countries that present the worst cases of non-compliance.

C. Capacity Building

Substantial funding will be required to make this program reach its desired goal. We will need to be creative in pursuing a consistent stream of funding. It is important, too, that we undertake a serious assessment of the efficacy of past labor capacity building programs. While some were well tailored to address properly diagnosed problems, others were not designed to address the most critical problems. Coordination among the several agencies at times seemed poor, with multiple projects receiving funds to do largely the same work. In other cases, organizations that received funding to carry out labor capacity building programs have had little expertise in labor relations and/or are unfamiliar with the region. In some cases the local partners designated by US-based organizations are unknown to or do not have the complete trust of labor organizations. Finally, there appears to be little accountability, particularly with regard to government institutions, that continue to receive funds for workshops, training and equipment year after year despite showing little will to actually improve the quality of their work.