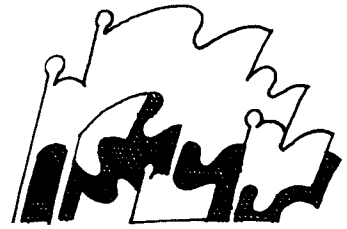


Foreign Labor Developments



Caribbean Basin Initiative: setting labor standards

STEVE CHARNOVITZ

On January 1, 1984, the Caribbean Basin Initiative went into effect, eliminating tariffs for most products exported by that region to the United States. This preferential access to American markets is expected to increase the flow of investment into Caribbean countries with high unemployment, and thus create additional jobs.

The Caribbean Basin Economic Recovery Act lists 27 countries¹ as potentially eligible for the trade benefits, but directs the President of the United States to undertake a rigorous process of designation. This process includes a review of 18 criteria for designation. The criteria are quite varied; they range from whether a country is Communist to whether commercial stations in that country pirate U.S. television broadcasts.

Although only 7 of the 18 criteria are mandatory, the Administration has persuaded each designated country—20 as of mid-1984—to meet all of the criteria.² At the end of the bilateral discussions, each country interested in being designated was asked to submit a letter to the United States explaining how each of the 18 criteria were met. These letters contain both declarations and commitments regarding present and future policies.³ In some cases, governments are required to take specific actions before the designation letters are accepted.

The labor criterion

One of the most controversial criteria is that regarding labor.⁴ This provision requires the President to consider the degree to which workers in the country are afforded “reasonable workplace conditions” and enjoy the “right to organize and bargain collectively.” In practice, this has meant that in countries with restrictive labor policies, the U.S. negotiating teams have encouraged the governments to agree to changes in their policies.

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The primary reason for the labor criterion is a concern that the labor laws and conditions in some countries would prevent the benefits of the Caribbean Basin Initiative from reaching the workers. By promoting free trade unions, the United States intended not only to contribute to democratic pluralism, but also to provide foreign workers the institutional base needed to earn their rightful share of the income generated by the Initiative. A second reason for the labor criterion is to safeguard American workers from unfair foreign competition. By using the statutory labor criterion, the United States would have leverage against a participating country that exported to the American market products made under “sweatshop style” working conditions.

Aside from the narrow provision in U.S. trade law that prohibits the importation of products made by convict or forced labor, the Caribbean Basin Initiative is the only U.S. law that makes foreign labor conditions a specific consideration in providing trade benefits to other countries.⁵ While international fair labor standards have been a longtime goal of organized labor in the United States, the Initiative is the first time this concept has been incorporated into U.S. tariff legislation.

Defining the standard

In implementing the labor criterion, the Administration faced 27 countries with a wide range of labor conditions—from very good to very poor. Realizing that it could not apply the same standards to countries with different cultures and legal systems, the United States adopted a two-step procedure. One, all countries are reviewed with respect to a few very basic labor standards. Two, countries with inadequate labor rights are asked to make some improvements. The approach the United States takes in each country, of course, also depends on the number of negotiation issues involving the other Caribbean Basin Initiative criteria.

The first area of concern is freedom of association, or the right to organize unions, form labor federations, and affiliate with international trade union organizations. In defining this standard, the United States relied heavily on the Freedom of Association Convention (Convention 87) of the International Labor Organization (ILO).

The second area of concern is workplace conditions. At a minimum, this means freedom from forced labor and child

labor abuses—a universal standard applicable to all countries. The United States also looks at laws on minimum wage and occupational health and safety, but each country's laws are judged on an individual basis. This approach was suggested by the legislative history, because the House had considered but failed to enact a bill to make U.S. occupational safety and health laws the standard for the labor criterion.

The third area of concern is government protection of unions from harassment and nonrecognition by employers. In each country, the United States looks for laws to promote collective bargaining, to protect union organizers from being fired, and to permit peaceful strikes. Where these laws do not exist, the countries are urged to consider reforms.

The fourth area of concern is the Export Processing Zones in many of the Caribbean Basin Initiative countries. Such zones, also called "free trade zones," are exempt from many of the commercial laws that apply in the rest of the country. Because these zones serve as platforms for export to the American market, the United States seeks assurances that the labor standards in these zones are not less than the standards in the rest of the country. This issue came up because, in the past, some of these zones had abusive labor conditions, compared with the rest of the country, that gave the zone's production an unfair competitive advantage in international markets. For example, in some of these zones, the governments prohibited trade unions.

Before the U.S. team visits a country, the U.S. Department of Labor consults closely with the AFL-CIO and the American Institute for Free Labor Development to obtain information and insight into the labor problems of that country. These consultations, together with embassy analyses and ILO reports, enable the U.S. team to focus on the most serious labor problems within the time constraints of short visits.

Major labor provisions

Several of the agreements call for significant improvements in labor conditions.

Although Haiti had a handful of weak trade unions, the Haitian government's history of repressing unions under former President Francois Duvalier had made it anathema in the international free trade union community. The Initiative program coincided with plans of the present Haitian government to improve its labor laws, and so the Haitian government agreed with the United States that a well-publicized labor law reform would give a boost to Haiti's labor unions and lead to needed assistance by the ILO.

Specifically, Haiti's designation letter includes the following:

- Several changes in labor code provisions which impeded the free operation of unions,
- an official announcement that the stringent registration provisions of the penal code did not apply to trade unions,

- a clarification of the government law prohibiting strikes and an agreement to ask the ILO for assistance in studying improvements in that law,
- a letter to all Haitian unions notifying them of their right to form federations and affiliate with international trade union organizations,
- a letter to international trade union organizations advising them that affiliation is allowed and welcoming them to visit Haiti,
- an agreement to use a weekly radio show to clarify the labor code to workers,
- a statement that workers who report minimum wage violations will be protected from punishment by employers,
- a statement that Haitian sugar workers going to the Dominican Republic are allowed to keep their travel documents and contracts,
- instructions to the Haitian Embassy in the Dominican Republic regarding improved inspections of sugar plantation conditions, and
- a request to the ILO to provide technical assistance with regard to the problems of the sugar workers.

In the Dominican Republic, the Administration sought commitments to improve the working conditions of the Haitian migrant sugar workers. In 1983, a special ILO Commission of Inquiry had found very poor working conditions including, in some cases, "forced labor." Specifically, the Dominican designation letter includes the following: (1) an agreement to allow workers to choose the plantation they work on, (2) an agreement that the national police will make sure that plantation security forces do not prevent workers from quitting their jobs and leaving the plantation, (3) a statement that further improvements in working conditions will be made in 1984, (4) a statement that sugar workers are given a break during the day and 1 day off per week in accordance with the contract, (5) a statement that workers do receive at least the minimum wage (\$3.50 per day), and (6) a commitment to provide government inspectors to oversee the weighing of cane. With regard to the export processing zone, the government stated that the right to form unions and bargain does apply there. The Dominican government also agreed to ask its Congress to speed up consideration of pending labor law reforms, which include protection of employees from dismissal because of union organizing activities.

In El Salvador, the Administration sought commitments regarding the past violent attacks on trade union leaders. The letter from El Salvador specifically states: (1) the government will take special measures to assure that its security forces provide more effective protection against illegal attacks or detention of trade unionists or employer organizations and (2) the government will take suitable measures to assure that the necessary organization exists within the security forces to investigate illegal acts of violence against labor leaders and seek evidence to present to a court of

justice. With regard to labor laws, El Salvador's letter includes: (3) a statement that workers can join free trade unions, that unions can form federations, and that federations can affiliate internationally, (4) an agreement that in the new Constitution, the right of farm workers to associate in labor unions will be established, (5) an agreement that the government will propose to the tripartite labor code commission sanctions adequate to act as a deterrent to employers who refuse to bargain or who intimidate trade unions, and (6) a statement that the labor code applies to the free trade zone and that union organizers would henceforth be permitted to enter the zone.

In Honduras, the United States sought to investigate allegations that some of the firms in the free zone prohibited unions. In the Honduran letter, the government stated that the labor code applies in the free zone and that the government would investigate charges that workers in one company were obliged to sign an agreement not to establish a trade union. The government also pledged to send additional inspectors to the zone to assure that workers know their rights and protections under the labor code.

In Guatemala, the United States sought the government's legal recognition of the new Guatemalan labor confederation, the Confederation of Labor Unity. The Guatemalan letter stated that the Confederation has been recognized and that unions have a right to form federations and affiliate with international organizations.

The designation letters of the other 15 countries also discuss labor rights and conditions, but the United States did not press for significant reforms in these countries (for example, Barbados) because their labor conditions already met the Administration's standard.

Future of labor standards in trade

In summary, the designation process of the Caribbean Basin Initiative provides an important boost to organized labor in several countries where there were serious labor problems. In the months ahead, the U.S. Government will work closely with American and international unions to

monitor these designation letters to assure that the Caribbean Basin governments adhere to them. Such monitoring is particularly important because many of the statements on labor involved prospective changes.

During the next few years, many parties will be analyzing the impact of the labor criterion under the Caribbean Basin Initiative. This analysis will involve a weighing of the benefits and costs of promoting labor rights in these countries. Both economic and political factors will need to be considered. If the labor criterion is judged to be successful, the next step would be to consider extending it to other countries receiving trade preferences from the United States.⁶ □

—FOOTNOTES—

¹The following countries or territories are eligible for designation under the Caribbean Basin Economic Recovery Act (P.L. 98-67):

Anguilla	Grenada	Saint Vincent and the Grenadines
Antigua and Barbuda	Guatemala	Suriname
Bahamas, The	Guyana	Trinidad and Tobago
Barbados	Haiti	Cayman Islands
Belize	Honduras	Montserrat
Costa Rica	Jamaica	Netherlands Antilles
Dominica	Nicaragua	Saint Christopher-Nevis
Dominican Republic	Panama	Turks and Caicos Islands
El Salvador	Saint Lucia	Virgin Islands, British

²Seven of the countries have not asked to be designated. They are Anguilla, Guyana, Nicaragua, Suriname, the Cayman Islands, the Turks and Caicos Islands, and the Bahamas.

³Eleven of the country designation letters have been published in *Communication From the President of the United States* (U.S. House of Representatives, Committee on Ways and Means, House Document 98-151, Jan. 23, 1984). All of the letters are on file at the Committee.

⁴There are two types of criteria—mandatory and discretionary. For the mandatory criteria, the President cannot designate a country unless it meets these criteria. For the discretionary criteria, the President is directed to take these criteria into account in making designation decisions. The labor criterion is discretionary.

⁵This provision is in the Tariff Act of 1930, Section 307. The prohibition exempts goods, wares, articles, and merchandise not produced domestically in sufficient quantities to meet the "consumptive demands" of the United States.

⁶On Oct. 30, 1984, the President signed the Trade and Tariff Act of 1984 which, in renewing the Generalized System of Preferences, includes a new designation criterion relating to "internationally recognized worker rights."