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## The Robert E. Hudec Article on Global Trade

### Why European Union Trade Sanctions Do Not Work

Yaraslau Kryvoi\*

#### I. INTRODUCTION

In a world governed by the principles of state sovereignty and non-interference in internal affairs, few effective methods exist to make countries comply with their international obligations, including obligations to respect fundamental labor rights.<sup>1</sup> The framework for a Generalized System of Preferences (GSP) provides one of those few methods by linking trade and labor standards. GSPs were first implemented in the 1970s by the United States, the European Union and other countries in

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1. See generally Yaraslau Kryvoi, *Enforcing Labor Rights Against Multinational Corporate Groups in Europe*, 46 INDUS. REL. 366 (2007) (discussing limited effectiveness of corporate codes of conduct and litigating labor rights in domestic courts in civil and common-law jurisdictions).

an effort to stimulate exports from developing countries.<sup>2</sup> Under GSP, developing and transition countries receive additional trade preferences, but these preferences can be withdrawn in certain cases.<sup>3</sup> This includes for violations of core labor standards.<sup>4</sup>

In order to predict the effectiveness of linking trade and labor standards, it is crucial to understand the reasons why countries disrespect core labor standards. The three most important reasons are economics, politics, and lack of resources. The main economic reason is fear that compliance will raise the cost of labor and deter foreign investment. Political reasons come into play when governments violate core labor standards to achieve certain political purposes—for instance, by preventing workers from organizing into independent trade unions in order to block their participation in political activities. Finally, violations of core labor rights can occur in countries that do not have control over their territories and where the rule of law is nonexistent or very weak. The main contribution of this Article is that it suggests for the first time the importance of distinguishing between economic and political justifications for violating fundamental labor rights. This distinction has practical implications in deciding how to deal with countries that violate these and other human rights standards and in assessing the effects the sanctions will have.

Under the European Union's GSP, European Union member states reserve the right to withhold preferential trade treatment as a sanction for improper labor practices. The European Union's GSP has existed since the 1970s, but only twice has it been applied as a tool for linking trade to labor: against Myanmar in 1997 for the use of forced labor, and against Belarus in 2006 for violations of the freedom of association. Although linking trade and labor standards has recently become a hot topic,<sup>5</sup> little has been written on how the European Union implements its GSP. This Article attempts to fill this gap by analyzing the recent developments and the effectiveness of linking labor standards to trade under European

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2. See, e.g., Kevin Kolben, *Integrative Linkage: Combining Public and Private Regulatory Approaches in the Design of Trade and Labor Regimes*, 48 HARV. INT'L L.J. 203 (2007).

3. See, generally, Lance Compa & Jeffrey Vogt, *Labor Rights in the Generalized System of Preferences: A 20-Year Review*, 22 COMP. LAB. L. & POL'Y J. 199 (2001).

4. *Id.*

5. See *id.*

law.

Although scholars have argued that the European Union has not resorted to withdrawing countries from the GSP for political purposes,<sup>6</sup> my analysis of the cases of Belarus and Pakistan suggests otherwise. It shows that various factors such as the geographical location of the country in question, the level of economic development, the country's willingness to cooperate, and geopolitical considerations play more important roles than do formal requirements of the GSP regulations.

As far as the effectiveness of removal from the GSP regime is concerned, the mere threat of sanctions may be effective in regulating countries that disrespect core labor standards due to economic pressures. But sanctions are less effective when labor rights are disrespected due to political pressures. Therefore, this Article predicts that the situations in Myanmar and Belarus will not change as a result of sanctions, especially since both countries have important political and economic sponsors such as China and Russia. However, the implementation of sanctions as such shows that the European Union pays serious attention to violations of core labor standards, which may deter other countries from following labor policies that would result in sanctions.

The Article is organized as follows. Part II deals with the reasons why countries might not be willing to promote core labor standards. It pays special attention to economic and political justifications and highlights the practical significance of distinguishing between them. Part III discusses the revised procedure under the European law for withdrawing countries from preferential trade treatment for violations of core labor standards. Part IV presents three cases in which the procedure for withdrawal has been triggered or was close to being triggered. Part V provides an analysis of the effectiveness of sanctions and makes policy recommendations based on the case studies. Part VI concludes.

## II. ATTITUDES TOWARD CORE LABOR STANDARDS

### A. ARGUMENTS IN SUPPORT OF CORE LABOR STANDARDS

The International Labor Organization (ILO) Declaration on

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6. See, e.g., BOB HEPPLE, *LABOUR LAWS AND GLOBAL TRADE* 105 (2005).

Fundamental Principles and Rights at Work “[d]eclares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization arising from respect, to promote and to realize . . . the principles concerning the fundamental rights[.]”<sup>7</sup> These fundamental or “core” labor standards are:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labor;
- (c) the effective abolition of child labor; and
- (d) the elimination of discrimination in respect of employment and occupation.<sup>8</sup>

There are many reasons to support core labor standards. The economic reason suggests that the standards help prevent unfair competition, for instance by prohibiting forced labor or child labor. The goods produced under unfair conditions can be cheaper and more competitive than goods produced under “good” conditions.<sup>9</sup> Although critics of this argument suggest that richer countries with higher productivity easily outperform developing countries with unfair standards,<sup>10</sup> inferior labor standards can distort competition between countries with similar levels of economic development.

Another reason to promote core labor standards is to avoid a race to the bottom.<sup>11</sup> The Preamble to the Constitution of the ILO reflects the race-to-the-bottom concern by mentioning that the failure of any nation to adopt humane conditions of labor is an obstacle for other nations desiring to improve conditions in their own countries.<sup>12</sup> If countries compete by using low labor standards to attract foreign direct investment, the world could end up with no standards at all, and this would not be the most socially desirable result as argued below.

A legal argument in support of core labor standards is that these are fundamental rights guaranteed by important

7. See ILO Declaration on Fundamental Principles and Rights at Work, *infra* note 13, § 2.

8. *Id.*

9. ARVIND PANAGARIYA, LABOR STANDARDS AND TRADE SANCTIONS: RIGHT END WRONG MEANS 1 (2003), available at <http://129.3.20.41/eps/it/papers/0309/0309004.pdf>.

10. *Id.* at 9.

11. Sarah H. Cleveland, *Why International Labor Standards?*, in INTERNATIONAL LABOR STANDARDS: GLOBALIZATION, TRADE AND PUBLIC POLICY 129, 139–41 (Robert J. Flanagan & William B. Gould IV eds., 2003).

12. ILO CONST. pmbl.

international legal instruments.<sup>13</sup> The ILO considers core labor standards as “a tool used both to assist development and to measure progress toward development.”<sup>14</sup> In its recently published Core Labor Standards Handbook, the ILO mentions that respect for core labor standards has a number of positive governance effects; for example, it:

- (i) builds respect for the law;
- (ii) increases respect for human rights;
- (iii) promotes decent work;
- (iv) improves dialogue between social partners; and
- (v) improves prospects for exports as importing countries increasingly demand respect for ILS including CLS.<sup>15</sup>

Another ILO study concludes that “collective bargaining and tripartite dialogue are necessary elements creating an environment that encourages high productivity, attracts foreign direct investments and enables the society and the economy to adjust to external factors such as financial crisis and natural disasters.”<sup>16</sup>

Empirical research suggests that political and economic freedoms, which include freedom of association and other fundamental rights, are positively correlated with economic growth.<sup>17</sup> Other studies show “a mutually supportive relationship between successfully sustained trade reforms and improvements in association and bargaining rights.”<sup>18</sup> Kimberly Elliott and Richard Freeman show there is also consumer

13. For instance, freedom of association is guaranteed by numerous important international legal instruments. *See, e.g.*, Universal Declaration of Human Rights arts. 20, 23, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. DOC. A/810 (Dec. 12, 1948); International Covenant on Economic, Social and Cultural Rights art. 8, G.A. Res. 2200A (XXI), at 50, U.N. GAOR, 21st Sess., U.N. DOC. A/6316 (Dec. 16, 1966); International Covenant on Civil and Political Rights Art. 22, G.A. Res. 2200A (XXI) at 55, U.N. GAOR, 21st Sess., U.N. DOC. A/6316 (Dec. 16, 1966); ILO Declaration on Fundamental Principles and Rights at Work § 2 (June 1998), available at <http://www.ilo.org/declaration> (follow “Text of the Declaration”).

14. ILO, CORE LABOR STANDARDS HANDBOOK 11 (2006).

15. *Id.*

16. ILO, *Country Studies on the Social Impact of Globalization: Final Report*, ¶ 94, GB.276/WP/SDL/1, 276th Sess. (Nov. 1999).

17. *See* Surjit Bhalla, *Freedom and Economic Growth: A Virtuous Cycle?, in* DEMOCRACY’S VICTORY AND CRISIS: NOBEL SYMPOSIUM NO. 93, 195, 195 (Axel Hadenius ed., 1997) (“[A] one point increase in political freedom (on a seven point scale) leads to an increase in per-capita growth of approximately 1 percent.”).

18. ORG. FOR ECON. CO-OPERATION & DEV. (OECD), TRADE, EMPLOYMENT AND LABOUR STANDARDS: A STUDY OF CORE WORKERS’ RIGHTS AND INTERNATIONAL TRADE 112 (1996).

demand in society for decent labor standards.<sup>19</sup>

Despite these good reasons to implement core labor standards, some countries consciously and systematically violate those standards. The next section will consider the reasons that drive these violations.

## B. ECONOMIC REASONS FOR DISRESPECT

The main economic reasons for a country's reluctance to respect the core labor standards are fears that the standards may weaken exports,<sup>20</sup> raise the cost of labor and deter foreign investment,<sup>21</sup> and may halt entire industries by strikes or other forms of collective action.<sup>22</sup>

Governments may experience direct pressure from multinational enterprises aimed at blocking measures which would give workers more rights. Multinationals often lobby for lower labor standards because they fear that the introduction of more restrictive labor regulations would decrease profits or reduce control over their workforce.<sup>23</sup> Moreover, influential international organizations such as the World Bank recommend that governments adopt flexible and employer-friendly labor regulations to improve the business climate.<sup>24</sup>

Elliott and Freeman suggest distinguishing between the

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19. See KIMBERLY ANN ELLIOTT & RICHARD B. FREEMAN, INST. FOR INT'L ECON., CAN LABOR STANDARDS IMPROVE UNDER GLOBALIZATION? 28–45 (2003).

20. See TRADE, EMPLOYMENT AND LABOUR STANDARDS, *supra* note 18, at 85 (“Unions are simply prohibited in the export-processing zones of Bangladesh and Pakistan . . . while they are discouraged in Guatemala and Panama.”).

21. The government of Bangladesh opposed allowing unions into national export processing zones and argued that unions would deter investment and lower exports. See Kimberly Ann Elliott & Richard B. Freeman, *The Role Global Labor Standards Could Play in Addressing Basic Needs*, in GLOBAL INEQUALITIES AT WORK 299, 320 (Jody Heymann ed., 2003).

22. For instance, trade unions in France often halt railroads or airlines, causing serious economic damage to businesses and political troubles for the government. See generally STEVE JEFFERYS, LIBERTÉ, ÉGALITÉ, AND FRATERNITÉ AT WORK: CHANGING FRENCH EMPLOYMENT RELATIONS AND MANAGEMENT (2003).

23. For instance, multinationals in China vigorously opposed changes in labor legislation that would improve workers' rights. See GLOBAL LABOR STRATEGIES, UNDU INFLUENCE: CORPORATIONS GAIN GROUND IN BATTLE OVER CHINA'S NEW LABOR LAW—BUT HUMAN RIGHTS AND LABOR ADVOCATES ARE PUSHING BACK 1 (2007), available at <http://laborstrategies.blogs.com> (follow article title under “GLS Reports”).

24. See The World Bank Group, Doing Business Project, *Employing Workers*, Jan. 26, 2008, <http://www.doingbusiness.org/ExploreTopics/EmployingWorkers/> (ranking regions' and economies' employer-friendly indicators, which measure employment laws of various countries).

“core” labor standards promulgated by the ILO and “cash” standards.<sup>25</sup> The latter mandate specific outcomes and thereby directly increase labor costs, potentially affecting the level of economic development.<sup>26</sup> They suggest that poor countries, unlike rich countries, cannot afford higher cash standards such as minimum wages, workplace safety, or shorter working hours.<sup>27</sup> However, all core labor standards are also to some extent cash standards, because they require a certain level of additional enforcement and always involve additional costs that could affect economic performance. Both businesses and governments fear that strengthening workers’ rights will increase the cost of labor and will make businesses and national economies less competitive.

Although many governments are convinced that ignoring core labor standards would help their economies grow, in reality the connection is not so obvious. There is an ongoing debate between economists over whether non-market intervention, including support of freedom of association, can improve economic performance. The liberal argument is that intervention would create distortions in the market, which would otherwise function perfectly and produce optimal results.<sup>28</sup> According to Srinivasan, unions and collective bargaining will drive wages above “market” levels and reduce employment.<sup>29</sup> Van Beers suggests that strict labor standards are associated with reduced exports of goods produced with skilled labor.<sup>30</sup>

On the other hand, some economists argue that market failures such as imperfect information or asymmetry of bargaining power can be tackled by trade unions. Unions have collective voice effects, which can improve productivity and raise wages.<sup>31</sup> They can improve workers’ bargaining power, and help

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25. See CAN LABOR STANDARDS IMPROVE UNDER GLOBALIZATION?, *supra* note 19, at 13.

26. *Id.*

27. *Id.*

28. Will Martin & Keith E. Maskus, *Core Labor Standards and Competitiveness: Implications for Global Trade Policy*, 9 REV. INT’L ECON. 317, 317 (2001).

29. T.N. Srinivasan, *International Labor Standards Once Again!*, in INTERNATIONAL LABOR STANDARDS AND GLOBAL ECONOMIC INTEGRATION: PROCEEDINGS OF A SYMPOSIUM, (Gregory K. Schoepfle & Kenneth A. Swinnerton eds., U.S. Dep’t of Labor 1994).

30. Cees van Beers, *Labor Standards and Trade Flows of OECD Countries*, 21 WORLD ECON. 57, 58–73 (1998).

31. See generally Richard Freeman, *Labor Market Institutions and Policies:*



workers overcome lack of information about such issues as health hazards. Stiglitz argues that collective bargaining can enhance the overall efficiency of the economy by improving the system of distribution of wealth, which would not occur or would be too costly to implement through the tax system.<sup>32</sup> On the other hand, he also realizes that collective labor relations can "hold up" the rest of economy by making labor costs prohibitive in some industries.<sup>33</sup>

In 1996, the Organisation for Economic Co-operation and Development (OECD) conducted a study that found no evidence that countries with low core labor standards enjoy a better global export performance than countries with higher standards.<sup>34</sup> The study suggests that the economic effect of freedom of association and the right to collective bargaining can help upgrade the production process, while also raising workers' motivation and productivity.<sup>35</sup> Freedom of association and collective bargaining can produce positive effects such as "counteract[ing] the market power of employers, while also improving worker-management cooperation and information sharing."<sup>36</sup> However, the study warns that these rights can introduce a new distortion in the market if unionized workers succeed in raising their wages and working conditions above optimal market levels.<sup>37</sup>

The OECD study suggests that fears that improved compliance with core labor standards could jeopardize trade reforms are unfounded.<sup>38</sup> The study concludes "that the output effects of greater freedom-of-association and collective bargaining rights are likely to be negligible compared with other factors such as shifts in technology, raw-material prices and terms of trade."<sup>39</sup> However, comparisons of quantifiable economic indicators and freedom of association cannot yield perfect results. A more recent study examined the influence of the industrial relations system on direct foreign investment in

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*Help or Hindrance to Economic Development?*, in PROCEEDINGS OF THE WORLD BANK ANNUAL CONFERENCE ON DEVELOPMENT ECONOMICS 117 (World Bank 1992).

32. See generally Joseph Stiglitz, *Democratic Development as the Fruits of Labor*, 4 PERSP. ON WORK 31 (2000).

33. *Id.*

34. See TRADE, EMPLOYMENT AND LABOUR STANDARDS, *supra* note 18, at 12.

35. *Id.* at 11.

36. *Id.* at 82.

37. *Id.* at 12.

38. *Id.* at 112.

39. *Id.* at 12.

OECD countries and concluded that multinationals from developed nations prefer the countries “that provide management with a greater amount of leeway in allocating labor and reducing employee voice at work.”<sup>40</sup>

Although economic reasons are the most typical reasons for disrespecting labor standards, sometimes these reasons play a less important role than political reasons, as the next section will discuss.

### C. POLITICAL REASONS FOR DISRESPECT

Political reasons for violation of core labor standards come into play when countries try to achieve certain political goals. While freedom of association is the most obvious target of political repressions, governments might also restrict other fundamental rights for political purposes. For instance, they may use forced labor to build military infrastructure or discriminate against a particular group in society to reduce its political influence.

The principle of freedom of association is a peculiar fundamental principle and deserves special attention in the political context. It is the only positively formulated principle in the ILO list of negative core labor rights which includes elimination of forced labor, child labor, and discrimination in the workplace.<sup>41</sup> Freedom of association comes first in the ILO list, which emphasizes the importance of this principle. It is the only enabling principle by means of which workers can reach agreements with employers through collective bargaining. The realization of freedom of association requires not only non-interference of the state in trade union affairs, but also affirmative protection of organized workers from employers who might create obstacles for workers' organizations.

Another important aspect of freedom of association is that its realization depends on respect of other civil liberties. According to the ILO, freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention, and the right to a fair trial by an independent and impartial tribunal are among the liberties necessary for the

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40. Hwikwon Ham & Morris M. Kleiner, *Do Industrial Relations Institutions Influence Foreign Direct Investment? Evidence from OECD Nations*, 46 *INDUS. REL.* 305, 324 (2007).

41. See generally ILO Declaration on Fundamental Principles and Rights at Work, *supra* note 13.

realization of trade union rights.<sup>42</sup> It is hardly possible to imagine strong and independent trade unions in a non-democratic state, where basic human rights such as freedom of speech and freedom of assembly are not respected.

Freedom of association not only allows workers to organize and negotiate but also increases their power in relation to employers and to the state. Countries that lack labor law enforcement mechanisms, including the least developed countries, will certainly benefit from the increased power of workers when exercised responsibly. The workers are in a better position to understand what would help them to be more productive and how to achieve optimal arrangements with their employers. But authoritarian regimes might see the power of labor as a threat to their political hegemony.

Not surprisingly, denial of core labor standards such as freedom of association occurs much more often in non-democratic political systems than in democracies.<sup>43</sup> As Freeman points out, “[i]f the world consisted solely of democracies, the argument against global labor standards would carry substantially more weight.”<sup>44</sup> It is not surprising that almost all authoritarian regimes prevent freedom of association.<sup>45</sup> Using corporate law terminology, opposition to freedom of association can be described as the blocking minority argument.<sup>46</sup> The premise of this argument is that although the establishment of freedom of association will make the society better off, some groups will be worse off.<sup>47</sup> In this scenario, the minority will usually be represented by a ruling elite with concentrated political power it uses to suppress trade unions. The elite minority will use its power to “block” the majority’s freedom of association, despite the negative impact this has on society overall. Trade unions are seen by non-democratic political regimes as a danger to political stability and a source of

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42. ILO, Resolution Concerning Trade Union Rights and Their Relation to Civil Liberties, International Labour Conference, 54th Sess., Geneva, 1970.

43. See generally Julio Valenzuela, *Labor Movements and Political Systems, in THE FUTURE OF LABOR MOVEMENTS* (Marino Regini ed., 1992).

44. See Freeman, *supra* note 31, at 302.

45. See Press Release, Freedom House, Freedom in the World 2008: Global Freedom in Retreat (Jan. 16, 2008), <http://www.freedomhouse.org/template.cfm?page=70&release=612>.

46. TRADE, EMPLOYMENT AND LABOUR STANDARDS, *supra* note 18, at 35. For a list of rights afforded to minority shareholders that can be used to dominate the majority, see, generally, 12B Fletcher Cyclopedia of the Law of Private Corporations §5813 (rev. vol. 1987).

47. TRADE, EMPLOYMENT AND LABOUR STANDARDS, *supra* note 18, at 35.

potential popular revolt.

These fears of authoritarian governments are not completely unfounded. The Polish Solidarity trade unions greatly contributed to the collapse of the former Soviet Bloc.<sup>48</sup> In South Africa, unions played an important role in the struggle against apartheid.<sup>49</sup> More recently, unions in Zimbabwe have been targeted by President Robert Mugabe because they are seen as a part of the political opposition.<sup>50</sup> China is another country where the motivation for suppressing independent trade unions is political and where “official” trade unions still function as quasi-state entities.<sup>51</sup> Authoritarian governments may prefer to establish trade unions themselves and to control them in order to give the appearance of freedom of association without suffering the possible political repercussions of actually granting such freedom.

Strong authoritarian regimes resort to political repression to prevent potential revolt. On the other side of the spectrum are governments that do not have the capacity to enforce their laws. The next section discusses lack of resources as a reason for disrespecting core labor standards.

#### D. LACK OF RESOURCES AS A REASON FOR DISRESPECT

Violations of core labor rights may also occur in countries that do not have control over their territories and where the rule of law is nonexistent or very weak. The governments of these countries may agree with the core labor standards, but simply lack the financial resources or political capacity to enforce their law.<sup>52</sup> Countries like Somalia or Iraq today can hardly be blamed for labor rights violations, simply because their governments cannot effectively implement these policies in conditions of political turmoil or civil war.

It would make little sense to sanction countries under foreign occupation or at war for disrespecting core labor

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48. See Bartosz Kaliski, *Solidarity, 1980-1: The Second Vistula Miracle?* 134, in *REVOLUTION AND RESISTANCE IN EASTERN EUROPE: CHALLENGES TO COMMUNIST RULE* (Kevin McDermott & Matthew Stibbe eds., 2006).

49. Jeremy Seekings, *Trade Unions, Social Policy & Class Compromise in Post-Apartheid South Africa*, 31 *REV. AFR. POL. ECON.* 299, 299 (2004).

50. See *Zimbabwe: Brutal Trade Union Arrests*, 43 *AFR. RES. BULL.: POL., SOC. & CULTURAL SERIES* 16802 (2006).

51. See generally Feng Chen, *Between the State and Labour: The Conflict of Chinese Trade Unions' Double Identity in Market Reform*, 176 *CHINA Q.* 1006 (2003).

52. *TRADE, EMPLOYMENT AND LABOUR STANDARDS*, *supra* note 18, at 152.

standards, because these countries have little power to enforce their laws. Governments in these countries are more likely to spend their resources to stabilize their societies and strengthen their political power and to see labor standards as secondary and non-urgent. However, in some countries the real question is whether the issue is truly a lack of resources, or simply corruption or a choice to commit resources to other purposes such as the military or public health.

Law enforcement and informal economic relations remain important problems not only for poor economies but also for transitional and rich.<sup>53</sup> In some countries there is traditionally a gap between law on the books and law in practice. Even the best laws will be meaningless in the absence of actual implementation.<sup>54</sup> Another problem is the informal economy, where a large portion of workers work in the unregulated shadow sector.<sup>55</sup> The problem with the informal economy is that the level of organization is much lower, making it very difficult to monitor compliance with international labor standards.<sup>56</sup>

It is difficult to agree that "the lack of resources fails to explain violations of the core standards of freedom of association and forced labor."<sup>57</sup> Realization of freedom of association implies not only that governments should refrain from intervention in union affairs, but also an affirmative duty to protect unions *vis-à-vis* employers by creating appropriate and enforceable legal rules. It is quite possible to imagine situations when trade unions are repressed by employers rather than by the government and the latter is too weak to interfere to prevent the violations. By the same token, private parties may use forced labor despite governmental opposition. There is nothing in ILO conventions making forced labor a violation which could be carried out only by the state and not by private parties. Therefore, the ILO conventions allow sanctions against a government for failing to regulate private parties.

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53. See ILO, Decent Work and the Informal Economy, International Labour Conference, 90th Sess., Rep. VI, Geneva, 2002, available at <http://www2.ilo.org/dyn/dwresources/docs/375/F211229726/report6.pdf>.

54. See Yaraslau Kryvoi, *Discrimination and Security of Employment in a Post-Soviet Context*, 22 INT'L J. COMP. LAB. L. & INDUS. REL. 5, 7-8 (2006) (discussing "legal nihilism" in post-Soviet countries).

55. See generally FRIEDRICH SCHNEIDER, SIZE AND MEASUREMENT OF INFORMAL ECONOMY IN 110 COUNTRIES AROUND THE WORLD (2002), available at [http://rru.worldbank.org/Documents/PapersLinks/Informal\\_Economy.pdf](http://rru.worldbank.org/Documents/PapersLinks/Informal_Economy.pdf).

56. See Decent Work and the Informal Economy, *supra* note 53, at 71-74.

57. STEVE CHARNOVITZ, TRADE LAW AND GLOBAL GOVERNANCE 244 (2002).

## E. PRACTICAL MEANING OF VARIOUS REASONS FOR DISRESPECT

The main hypothesis from this review is that it should be easier to influence those countries that disrespect core labor standards on economic grounds than those that do it for political reasons. The governments motivated by economic considerations care more about money and the overall social impact of their policies. Cost-benefit analysis would suggest that as a result of trade sanctions, such governments would lose more money than they would win by attracting foreign investors with low labor standards. Hence, they would tend to comply with the international obligations under ILO conventions. However, if the benefits from violating core labor standards are greater than benefits of compliance, they might prefer not to comply.

If the government suppresses unions or violates other labor rights on political grounds, the cost of losing political control by allowing organized political dissent may be too great. This is especially true if the ruling elite could face criminal charges or other serious sanctions as a result of regime change. Therefore, if the motivation is not money but rather retention of political control, sanctions are likely to be ineffective unless they lead to dramatic changes in national economies, as occurred in South Africa.<sup>58</sup>

An important implication of differences between economic and political motivations to suppress trade union rights relates to a country's international reputation. A poor international reputation may lead to less foreign direct investment. Therefore democratic regimes are more sensitive to reputation costs and may prefer to comply with international standards. Non-democratic or dictatorial regimes care less about their reputation in the international arena because their reputation is already bad. The "mobilization of shame," as Sarah Cleveland put it, can play an effective role for regulating relatively democratic countries that do not follow international standards on economic grounds.<sup>59</sup>

For countries that do not respect core labor standards because of their lack of resources, applying sanctions will not make sense if the governments are incapable of enforcing their

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58. Such dramatic changes are difficult to anticipate when countries have supportive "bigger brothers." This phenomenon is evident with both Myanmar (supported by China), and Belarus (supported by Russia), as will be shown below.

59. Sarah H. Cleveland, *Norm Internalization and U.S. Economic Sanctions*, 26 YALE J. INT'L L. 1, 3 (2001).

laws. However, if the government is strong enough to enforce laws but knowingly allows violations of core labor standards claiming the absence of resources, political and economic sanctions might have a positive effect.

The next section of this Article deals with linking labor rights and trade sanctions by means of the Generalized System of Preferences established by the European Union, which will be followed by the application of the hypothesis outlined above.

### III. EUROPEAN UNION'S GSP AND LABOR STANDARDS

#### A. LINKING TRADE AND LABOR STANDARDS

There are various ways to promote labor standards, which include "soft" methods such as labeling initiatives, shareholder activism, public campaigns, and codes of conduct.<sup>60</sup> Soft methods are applied by consumer groups and corporations, rather than by governments, and they target consumers' and shareholders' sense of social responsibility for their purchasing decisions. But soft methods may be costly or difficult to initiate. In the absence of transparency and universal disclosure rules, the supply of information about working conditions is costly to obtain and often unavailable at the point of purchase. These initiatives can have quasi-legal effects on national legal systems, though one should not overestimate their impact. Enforcement of labor standards ultimately lies with national governments and courts that decide cases primarily on the basis of domestic law.<sup>61</sup>

Trade is often seen as an effective tool to foster economic development.<sup>62</sup> The benefits of international trade are obvious from an economic perspective—trade helps increase export earnings, increases diversification of national economies, and promotes foreign investment. Some scholars see trade as one way to foster the development and growth of transitional countries by providing special tariffs, which make goods from

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60. See generally Michael Trebilcock & Robert Howse, *Trade Policy & Labor Standards*, 14 MINN. J. GLOBAL TRADE 261 (2004) (discussing the importance of soft law mechanisms).

61. See Kryvoi, *supra* note 1, at 381 (discussing the limitations of international labor law and litigating international labor rights in national courts).

62. See generally L. Alan Winters, *International Trade and Poverty: Cause or Cure?*, 39 AUSTL. ECON. REV. 347 (2006).

economically weaker countries more competitive.<sup>63</sup> Others are not so optimistic about trade as an economic equalizer and argue that it increases inequality.<sup>64</sup>

Some methods to promote core labor standards can be very costly. For instance, the 1995 World Development Report, which addressed the issue of child labor, called for programs that increase income security, reduce costs of education, and improve the quality of schooling.<sup>65</sup> Panagariya refers to a study done by Consumer Utility and Trust Company, an NGO based in India, showing that it would cost anywhere between \$12 billion to \$18 billion per annum in India alone to send all existing child workers to school.<sup>66</sup> It is unlikely that developed countries would be willing or able to significantly contribute to this cost.

Unilateral sanctions such as withdrawing trade preferences because of labor rights violations can be considered a cheap way to promote compliance with international obligations in the sense that sanctions do not require direct financial spending.<sup>67</sup> Unlike multilateral sanctions, these sanctions can be implemented relatively quickly as there is no need to achieve international consensus.<sup>68</sup> There is usually an aspiration that other countries would join, and that the unilateral character of sanctions might change to multilateral.

Successful examples of the use of trade to enforce labor standards include the U.S.–Cambodia Bilateral Textile Trade Agreement.<sup>69</sup> The United States offered an increase in the textile quota by fourteen percent if working conditions in the Cambodia textile and apparel sector substantially complied with

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63. See generally Bernard Hoekman, Constantine Michalopoulos & L. Alan Winters, *Special and Differential Treatment of Developing Countries in the WTO: Moving Forward After Cancún*, 27 *WORLD ECON.* 481 (2004).

64. See generally Ajit Ghose, *Global Inequality and International Trade*, 28 *CAMBRIDGE J. ECON.* 229 (2004).

65. See *WORLD BANK, WORLD DEVELOPMENT REPORT: WORKERS IN AN INTEGRATED WORLD* 72–73 (1995).

66. See PANAGARIYA, *supra* note 9, at 6.

67. However, the international economic competitiveness of the country imposing sanctions can be hurt by reduction of trade with the target country.

68. The European Union, upon which this paper is primarily focused, is an exception here because many of its decisions should be agreed upon by consensus of various states.

69. Agreement Relating to Trade in Cotton, Wool, Man-made Fiber, Non-Cotton Vegetable Fiber and Silk Blend Textiles and Textile Products Between the Government of the United States of America and the Royal Government of Cambodia, U.S.–Cambodia, art. 10, Jan. 20, 1999.



local law and internationally recognized core standards.<sup>70</sup> The combined efforts of the United States and the ILO have led to substantial improvement of labor standards in Cambodia.<sup>71</sup>

One of the most promising avenues for addressing gross violations of labor standards is to link enforcement of these rights with trade preferences. The linkage between trade and labor is already more than half a century old.<sup>72</sup> Preferential treatment was initially considered as discrimination disallowed by the General Agreement on Tariffs and Trade (GATT). The Preamble of GATT mentions the elimination of discriminatory treatment in international commerce and Article XIII articulates the basic GATT principle that like goods should be treated alike without discrimination.<sup>73</sup>

In 1964, the first Secretary-General of United Nations Conference on Trade and Development (UNCTAD) proposed the idea of granting developing countries preferential tariff rates for industrialized markets.<sup>74</sup> The second UNCTAD conference formally adopted the "generalized system of preferences."<sup>75</sup> In 1971, GATT contracting parties allowed preference-giving countries to gain preferential tariff treatment under national GSP schemes.<sup>76</sup> Initially such preferential treatment was allowed for a ten-year period and in 1979 it was extended for an indefinite period.

According to Resolution 21(ii) adopted at the UNCTAD II Conference in New Delhi in 1968,

[T]he objectives of the generalized, non-reciprocal, non-discriminatory system of preferences in favor of the developing countries, including special measures in favor of the least advanced among the developing countries, should be:

- (a) to increase their export earnings;
- (b) to promote their industrialization; and

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70. See Kevin Kolben, *Trade, Monitoring, and the ILO: Working to Improve Conditions in Cambodia's Garment Factories*, 7 YALE HUM. RTS. & DEV. L.J. 79, 90 (2004).

71. See Kolben, *supra* note 2, at 255.

72. Steve Charnovitz, *The Influence of International Labor Standards on the World Trading Regime: A Historical Overview*, 126 INT'L LABOUR REV. 565, 565 (1987).

73. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

74. United Nations Conference on Trade and Development, *About GSP*, <http://www.unctad.org/Templates/Page.asp?intItemID=2309&lang=1> (last visited Feb. 3, 2008).

75. Resolution 21(ii) of the United Nations Conference on Trade and Development (1964).

76. *About GSP*, *supra* note 74.

(c) to accelerate their rates of economic growth.

As of 2008 there were thirteen national GSP schemes reported to the UNCTAD secretariat, but most of them do not link trade to labor rights.<sup>77</sup>

The first GSP scheme was implemented by the European Community in 1971 through regulations for industrialised products, textile products, agricultural products, and those covered by the European Coal and Steel Community Treaty.<sup>78</sup> The GSP is a twofold measure—on the one hand, it provides additional trade preferences to developing and transition countries, and on the other hand, the governments can withdraw these preferences in certain cases.

Not everybody supports linking GSP to labor rights. It is argued that such a link is “a controversial market-based approach that seeks to relocate globalized labour law into the field of international trade law.”<sup>79</sup> Indeed, the very goal of trade agreements is to liberalize trade; attaching labor strings to these agreements is not always consistent with free trade. In 2004, the WTO Appellate Body put into question the compatibility of linking human rights to trade preferences, declaring that any preferences granted must be based on objective and transparent criteria for the selection of the beneficiary countries, i.e. countries in similar conditions should be treated similarly for the purposes of GSP.<sup>80</sup> Although the decision did not deal specifically with labor arrangements, these special arrangement initiatives became a matter of some uncertainty under GATT.<sup>81</sup> If sanctions in the labor rights context are not applied equally to countries with similar labor rights compliance because of geopolitical or economic reasons, these sanctions can well be considered as “unjustified discrimination” within the meaning of the GATT.<sup>82</sup> Such

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77. *Id.*

78. EUROPEAN COMM'N, DIRECTORATE-GEN. FOR TRADE, THE EUROPEAN UNION'S GENERALISED SYSTEM OF PREFERENCES 3, available at [http://trade.ec.europa.eu/doclib/docs/2004/march/tradoc\\_116448.pdf](http://trade.ec.europa.eu/doclib/docs/2004/march/tradoc_116448.pdf) (last visited on Mar. 27, 2008).

79. See HEPPLER, *supra* note 6, at 89.

80. Appellate Body Report, European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries, ¶ 139, WT/DS246/AB/R (Apr. 7, 2004).

81. Anne Davies, *Should the European Union Have the Power to Set Minimum Standards for Collective Labour Rights in the Member States?*, in *LABOUR RIGHTS AS HUMAN RIGHTS* 177, 189 (Philip Alston ed., 2005).

82. Robert Howse, *The World Trade Organization and the Protection of Workers' Rights*, 3 J. SMALL & EMERGING BUS. L. 131, 145 (1999).

sanctions can potentially be challenged in the framework of the WTO dispute settlement mechanism.

The United States and the European Union are the only legal systems that have incorporated clauses dealing with social rights into their GSP and use withdrawal procedures against those who do not comply. A number of studies have already compared the European Union and the United States GSP regimes. The United States has resorted to withdrawal procedures on a number of occasions, and its application of GSP has been labeled as "aggressive unilateralism,"<sup>83</sup> criticized for being based on geopolitical and foreign policy concerns.<sup>84</sup> Compared to the United States GSP, the European Union's system directly refers to the eight core ILO conventions and therefore allegedly does not undermine the rule of international law.<sup>85</sup> The procedure in the European Union is considered more transparent,<sup>86</sup> and some authors claim that there is "no evidence of preferences being granted or denied by the European Union for protectionist or political purposes."<sup>87</sup> The European Union started resorting to unilateral measures to address violations of labor rights only recently, and the rest of this Part describes the nature and the mechanism of implementation of the European Union's GSP.

## B. THE GSP OF THE EUROPEAN UNION

The European Union plays an important role in international trade, and especially in trade with developing countries. The European Union absorbs twenty percent of developing country exports and forty percent of its imports originate in developing countries.<sup>88</sup> The European Union is also the world's largest importer of agricultural products from developing countries, absorbing more than the United States,

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83. See Compa & Vogt, *supra* note 3, at 235.

84. *Id.*

85. HEPPLÉ, *supra* note 6, at 105; George Tsogas, *Labour Standards in the Generalized Systems of Preferences of the European Union and the United States*, 6 EUR. J. INDUS. REL. 349, 363-65 (2000).

86. HEPPLÉ, *supra* note 6, at 105.

87. *Id.* The absence of political purposes will be put in question at the end of this Article.

88. Press Release, Eur. Comm'n, *Developing Countries: Commission Unveils System of Trade Preferences for Next Ten Years—Simple, Transparent, and Objective* (July 7, 2004), [http://ec.europa.eu/trade/issues/global/gsp/pr070704\\_en.htm](http://ec.europa.eu/trade/issues/global/gsp/pr070704_en.htm) (last visited Feb. 3, 2008).

Canada, and Japan combined.<sup>89</sup>

Increasing economic cooperation by means of liberalized trade was the main reason for integration in Europe, which led to significant economic growth.<sup>90</sup> There are two central elements of this integration: (1) the prohibition of customs duties and of quantities restrictions between Member States on the import and export of goods, and measures having equivalent effect; and (2) the establishment of a common customs tariff and a common commercial policy toward third-party countries.<sup>91</sup> This means that goods from third-party countries receive identical treatment in all Member States. Once the goods enter the European Union, they freely circulate among Member States without customs charges or other discriminatory treatment.

Accordingly, the European Community bodies, and not the Member States, develop and implement the GSP regime. Article 113, which is the core of European Common Commercial Policy, establishes that the common commercial policy should be based on uniform principles with regard to tariff rates, the conclusion of trade agreements, the achievement of uniformity in liberalization, in export policy, and in protective trade measures.<sup>92</sup> According to paragraph 3 of Article 113, the European Commission submits proposals to the European Union Council for implementing the common commercial policy, which acts by a qualified majority. One of the criticisms of the European Union's GSP system is that a small group of countries can block any action, because decisions are made by a qualified majority.<sup>93</sup>

Unlike the United States GSP, which provides only for sanctions, the European Union also provides another way to promote labor standards by giving additional trade preferences for "good" conduct. Although the effect of GSP arrangements is not always obvious,<sup>94</sup> they are generally considered beneficial for

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89. *Id.*

90. See generally Harald Badinger, *Growth Effects of Economic Integration: Evidence from the EU Member States*, 141 REV. WORLD ECON. 1610 (2005).

91. Consolidated Version of the Treaty Establishing the European Community art. 3, Dec. 24, 2002, 2002 O.J. (C325) 40.

92. *Id.* art. 113.

93. Tsogas *supra* note 85, at 365.

94. See Arvind Panagariya, *European Union Preferential Trade Arrangements and Developing Countries*, 25 WORLD ECON. 1415, 1425 (2002) (arguing that a definite positive impact of trade preferences on developing countries is difficult to detect, because the special schemes offered to other developed countries can be more beneficial, resulting in *de facto* discrimination of developing countries).

developing and transitional countries, because exports from these countries become more competitive.

The European Union Council Regulation for a ten-year period from 2006 to 2015 establishes the current regime of the GSP.<sup>95</sup> According to Article 1 of the Regulation, there are three types of arrangements for beneficiary countries.<sup>96</sup> First, under the default regime, all beneficiary countries enjoy the benefit of the general arrangement (about 170 countries in total). Second, there is a "special incentive arrangement" for sustainable development and good governance, which provides for additional benefits for countries implementing certain international standards in human and labor rights, environmental protection, combating illegal drug trafficking, and good governance.<sup>97</sup> The special incentive arrangement also provides for suspension of specific duties on certain products originating from the so-called "vulnerable countries."<sup>98</sup> In 2005, the European Commission adopted a list of fifteen countries that can benefit from such arrangements.<sup>99</sup> Finally, there is a special arrangement for the least-developed countries, also known as the "Everything but Arms" initiative, which provides for the most favorable treatment of all, with the aim of granting the least-developed countries "duty-free and quota-free" access to the European Union market.<sup>100</sup>

The European GSP regime also provides for a procedure of withdrawing preferential treatment from countries that seriously and systematically violate the principles of conventions listed in the annex to Council regulation

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95. Council Regulation 980/2005, Applying a Scheme of Generalised Tariff Preferences, *pmb.*, 2005 O.J. (L 169) 1 (EC) [hereinafter EU's GSP].

96. Prior to that there were six GSP schemes under European Union law: (a) the general scheme; (b) the special scheme for the protection of labour rights; (c) the special scheme for the protection of the environment; (d) the special scheme to combat drug production and trafficking; (e) the special scheme for the least developed countries; and (f) "Everything but Arms," for the world's 50 poorest countries. See Council Regulation 2501/2001, 2001 O.J. (L 346) 1 (EC).

97. See Commission Decision 2005/924, 2005 O.J. (L 337) 50 (EC) for the list of GSP+ beneficiary countries.

98. According to Article 9, Section 3 of the EU's GSP, a vulnerable country is one that is not classified by the World Bank as a high income country during three consecutive years and whose five largest sections of its GDP-covered imports to the Community represent more than 75% in the value of its total GSP-covered imports, which represent less than one percent in value of total GSP-covered import to the European Community. EU's GSP, *supra* note 95.

99. Commission Decision 2005/924, *supra* note 97.

100. See EU's GSP, *supra* note 95, § 3.

establishing the regime of trade preferences.<sup>101</sup> The list of conventions includes all eight ILO fundamental conventions.<sup>102</sup> The procedure for withdrawal consists of four stages: consultations between Member States and the Commission,<sup>103</sup> initiating and conducting an investigation,<sup>104</sup> monitoring the situation for six months,<sup>105</sup> and, finally, the Commission makes its decision on temporary withdrawal. This withdrawal permanently enters into force six months after it was begun, unless the reasons justifying the withdrawal no longer prevail.<sup>106</sup>

The next section of the Article deals with cases of Myanmar, Belarus, and Pakistan, when the European Union has triggered or has nearly triggered withdrawal of violators from the GSP.

#### IV. CASE STUDIES ON THE USE OF THE EUROPEAN UNION'S GSP

##### A. MYANMAR

Myanmar, also known as Burma, is a country of about fifty-five million people located in Southeast Asia. A military coup in 1962 was a starting point for gross human rights violations in Myanmar that continue today.<sup>107</sup> After tens of thousands of

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101. *See id.* art. 16.

102. Convention Concerning Forced or Compulsory Labour (No. 29) (1930), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>; Convention Concerning Freedom of Association and Protection of the Right to Organise (No. 87) (1948), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087>; Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No. 98) (1949), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098>; Convention Concerning Equal Remuneration of Men and Women Workers for Work of Equal Value (No. 100) (1951), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100>; Convention Concerning the Abolition of Forced Labour (No. 105) (1957), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105>; Convention Concerning Discrimination in Respect of Employment and Occupation (No. 111) (1958), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111>; Convention Concerning Minimum Age for Admission to Employment (No. 138) (1973), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>; Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182) (1999), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>. The websites for all eight conventions were last visited on Feb. 4, 2008.

103. *See* EU's GSP, *supra* note 95, art. 18.

104. *Id.* arts. 19–20.

105. *Id.* art. 20.

106. *Id.*

107. John Badgley, *Myanmar in 1993: A Watershed Year*, 34 ASIAN SURV. 153, 153 (1994).

Burmese rallied for democracy in 1988, the military junta formed the State Law and Order Restoration Council (SLORC) to strengthen its political power.<sup>108</sup> The human rights situation in Burma continued to deteriorate following the bloody end in September 1988 of Myanmar's pro-democracy demonstrations, when troops massacred at least 3,000 students and other largely unarmed civilians on the streets of the capital and other cities.<sup>109</sup> The SLORC generals consolidated their rule with forced labor, rape, torture, forced relocation, and intimidation.<sup>110</sup>

However, until the late 1990s, large areas of southern and eastern Myanmar remained relatively free of military rule due to the resistance of numerous indigenous ethnic groups such as the Mon, Karen, and Karenni.<sup>111</sup> But with a massive infusion of new capital, largely from selling natural-gas concessions offshore, the junta initiated an ethnic cleansing operation in an attempt to consolidate its rule in rural areas of Myanmar.<sup>112</sup> The junta extensively used violence against the indigenous people when it sought to raise foreign exchange by harvesting the world's last sizable stands of teak.<sup>113</sup>

Following these events, the European Union imposed an arms embargo and suspended defense cooperation with Myanmar in 1990.<sup>114</sup> The subsequently-introduced visa ban and asset freeze was directed against Myanmar senior military officers, members of government, and their families.<sup>115</sup> European Union registered companies were prohibited from making financing available to named state-owned enterprises.<sup>116</sup>

In 1995, the International Confederation of Free Trade Unions and the European Trade Union Confederation filed a joint complaint to the European Commission calling for

108. *Id.*

109. HUMAN RIGHTS WATCH, BURMA (MYANMAR), <http://www.hrw.org/reports/1989/WR89/Burma.htm> (last visited Feb. 4, 2008).

110. RAINFOREST RELIEF, TEAK IS TORTURE AND BURMA'S REIGN OF TERROR: MON, KAREN, AND KARENNI INDIGENOUS PEOPLES THREATENED IN BURMA (1997), <http://nativenet.uthscsa.edu/archive/nl/9703/0119.html> (last visited Feb. 4, 2008).

111. See generally Bruce Johansen, *Burma (Myanmar): Forced Labor in the World's Last Teak Forest*, in INDIGENOUS PEOPLES AND ENVIRONMENTAL ISSUES: AN ENCYCLOPEDIA, (2003), available at <http://www.ratical.org/ratville/IPEIE/Burma.pdf>.

112. *Id.*

113. See RAINFOREST RELIEF, *supra* note 105.

114. See EUR. COMM'N, THE EU'S RELATIONS WITH BURMA/MYANMAR, [http://ec.europa.eu/comm/external\\_relations/myanmar/intro/index.htm](http://ec.europa.eu/comm/external_relations/myanmar/intro/index.htm).

115. *Id.*

116. *Id.*

withdrawal of Myanmar from the European Union GSP because of its use of forced labor.<sup>117</sup> The submission to the European Commission quoted the ILO regarding the violations occurring in Myanmar:

[W]omen and children as well as men are randomly rounded up by local police or the military from such public places as train stations and movie theaters or from their homes or places of work; in many cases, village headmen are responsible for filling porter quotas or providing large sums of money to the military instead. [Porters] are not paid for their work and are allowed very little food, water or rest. In many case, porters are bound together in groups of 50–200 at night. They are denied medical care. Porters are subject to hostile fire as well as to abuse by the soldiers they serve. They are routinely beaten by the soldiers and many of the women are raped repeatedly. Unarmed themselves, they are placed at the head of the columns to detonate mines and booby traps as well as to spring ambushes. According to credible sources, many of these porters die as a result of mistreatment, lack of adequate food and water, and use as human mine sweepers[.]<sup>118</sup>

ILO Convention No. 29 concerning Forced or Compulsory Labor defines “forced or compulsory labour” as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.<sup>119</sup> Obviously, Myanmar breached its obligations under ILO Convention No. 29.

In January 1996, the European Commission launched an investigation of the alleged forced labor widely used by the military regime of Myanmar.<sup>120</sup> Myanmar authorities claimed that their practices fell under the exception provided by Article 2(b) of the ILO Convention Concerning Forced Labor,<sup>121</sup> which excludes from the notion of forced labor “any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country.”<sup>122</sup> Myanmar authorities did not

117. *Id.* at 1.

118. International Labour Organization, *Report of the Committee Set up to Consider the Representation Made by the International Confederation of Free Trade Unions Under Article 24 of the ILO Constitution Alleging Non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)*. Session 261, ILO Doc. GB.261/13/7/, § 12 (Nov. 1994).

119. TRADE, EMPLOYMENT AND LABOUR STANDARDS, *supra* note 18, at 152.

120. 1996 O.J. (C15) 3.

121. INT’L LABOUR ORG., CONVENTION CONCERNING FORCED OR COMPULSORY LABOUR (1930), available at <http://www.ilo.org/ilolex/english/convdisp1.htm> (follow “C29 Forced Labour Convention” link).

122. Report of the ILO Director-General to the Members of the Governing Body on Measures Taken by the Government of Myanmar Following the Recommendations of the Commission of Inquiry Established to Examine its



implement ILO recommendations and refused to allow the ILO fact-finding team into the country.<sup>123</sup>

In 1997, Myanmar became the first country from which the European Union withdrew trade preferences for the widespread use of forced labor.<sup>124</sup> The Resolution withdrawing the preferences specifically references the ILO in its preamble, noting that the ILO recognized Myanmar's practices as forced labor and has called for immediate repeal of the Myanmar laws in question in order to ensure compliance with the letter and the spirit of Convention No 29.<sup>125</sup> As of 2008, Myanmar still lacks trade preferences under the European Union GSP.

## B. BELARUS

Belarus is a former Soviet Union republic located in the north of Eastern Europe with a population of about ten million people. It shares common borders with three European Union countries.<sup>126</sup> Since 1996, the political situation in Belarus has been deteriorating under the rule of authoritarian President Alyaksandr Lukashenka. His administration restricted basic human rights such as freedom of speech and freedom of demonstrations, systematically rigged elections, and repressed political opposition.<sup>127</sup> The United Nations appointed a Special Rapporteur on the situation of human rights in Belarus.<sup>128</sup> The most serious allegation against the regime is the disappearance of three leading opposition leaders and a journalist in the 1990s.<sup>129</sup>

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Observance of the Forced Labour Convention, 1930 (No. 29), ¶ 24 (1999).

123. Council Regulation 552/97, Temporary Withdrawing Access to Generalized Tariff Preferences from the Union of Myanmar. Official Journal L 85, 27.3.1997, at 8–9.

124. *Id.*

125. The United States has also introduced sanctions against Burma, noting that the human and labor rights violations in Burma are of an egregious nature. The sanctions recognized crimes including not only forced labor, but also rape as a weapon of intimidation, forcible conscription of child soldiers, and ethnic cleansings against minorities within Burma. See *Burmese Freedom and Democracy Act*, H.R. 2330, 108th Cong. (2003).

126. These countries are Poland, Lithuania, and Latvia.

127. See HUMAN RIGHTS WATCH, *WORLD REPORT 2007* 360–64 (2007), available at <http://hrw.org/englishhwr2k7/docs/2007/01/11/belaru14847.htm>.

128. The mandate of the Special Rapporteur on the situation of human rights in Belarus was established by the United Nations Commission on Human Rights resolution 2004/14 and extended by resolution 2005/13.

129. Adrian Severin, Report of the Special Rapporteur on the Situation with Human Rights in Belarus, United Nations General Assembly, A/HRC/4/16, Jan. 15, 2007, at 7.

In view of these events, in 2006 the European Council decided to adopt restrictive measures against President Lukashenka, the Belarusian leadership and officials personally responsible for the violations of international electoral standards, as well as for the crackdown on civil society and democratic opposition. The European Union adopted a list that includes individuals subject to travel bans to the European Union.<sup>130</sup>

Another important concern of the European Union and broader international community was freedom of association in Belarus. European and international trade unions requested an investigation into the violation of freedom of association in Belarus.<sup>131</sup> The request in particular mentioned the following violations:

The authorities of Belarus have always opposed the existence of independent organisations representing workers' rights and interests. For many years, obstacles have been raised systematically to oppose legal registration of free trade unions, to limit trade union activities, and to repress trade union leaders and activists. . . . The government [of Belarus] and the other public authorities have organised what can only be called a systematic campaign against the main trade union organisation, the FTUB, culminating in July 2002 in the taking over of this organisation by one of the President's closest advisers.<sup>132</sup>

On December 23, 2003, the European Commission decided to initiate an investigation into alleged violations of trade union rights in Belarus.<sup>133</sup> According to the formal notice issued by the Commission, the main problem in Belarus was violations of freedom of association guaranteed by the ILO Conventions Nos. 87 and 98.<sup>134</sup> A number of international trade union organizations initiated a complaint with regard to unions' rights

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130. Press Release, Council of the Eur. Union, 2723rd Council Meeting, Luxembourg, Apr. 10–11 2006, at 2, *available at* [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/gena/89219.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/89219.pdf).

131. Letter from Guy Ryder, General Secretary, ICFTU, Emilio Gabaglio, General Secretary, ETUC, & Willy Thys, WCL to Pascal Lamy, European Trade Commissioner (Jan. 27, 2003), *available at* <http://www.icftu.org/displaydocument.asp?Index=991217051>.

132. *Id.*

133. Commission Decision 2004/23/EC, Providing for the Initiation of an Investigation Pursuant to Article 27(2) of Council Regulation (EC) No 2501/2001 with Respect to the Violation of Freedom of Association in Belarus, 2004 O.J. (L 5) 90.

134. Commission, Notice of Initiation of an Investigation of Violation of Freedom of Association in Belarus in View of Temporary Withdrawal of Benefits Under the Scheme of Generalised Tariff Preferences (GSP), 2004 O.J. (C 40) 4.

violations in Belarus.<sup>135</sup> The complaint mentioned the following violations of freedom of association: creating obstacles in registration of trade unions, interference in trade union affairs, and intimidation of trade union leaders, as well as delays of transfer of union duties, unlawful entry into union premises, and confiscation and destruction of union property and papers.

In 2004 both the ILO and the European Union sent commissions to Belarus to investigate the violation of trade union rights. The ILO Governing Body appointed a Commission of Inquiry in accordance with its Constitution to investigate trade union freedom in Belarus.<sup>136</sup> This is the strongest measure the ILO can take against a Member State, to which it resorts only in exceptionally grave cases. The Commission of Inquiry was finalized its work in a report of July 2004, which criticized the policies of the Belarusian authorities.<sup>137</sup>

According to the ILO Convention concerning Freedom of Association and Protection of the Right to Organize, workers and employers, without distinction, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.<sup>138</sup> Paragraph 2 of Article 3 of this Convention requires public authorities to refrain from any interference in trade union affairs which would restrict this right or impede the lawful exercise thereof. Belarusian authorities breached these principles by creating obstacles to

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135. Groups supplying the information were International Confederation of Free Trade Unions, European Trade Union Confederation, and World Confederation of Labor. *Id.* ¶ 1.

136. Int'l Labour Office, Officers of the Governing Body, *Report of the Officers of the Governing Body: Complaint Concerning the Non-observance by Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Made by Delegates to the 91st Session (2003) of the International Labour Conference Under Article 26 of the ILO Constitution*, para. 10, GB.288/8, 288th Session (Oct. 14, 2003).

137. Int'l Labour Office, *Trade Union Rights in Belarus: Report of the Commission of Inquiry Appointed Under Article 26 of the Constitution of the International Labour Organization to Examine the Observance by the Government of the Republic of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*, 163–75 (July 2004) [hereinafter *Trade Union Rights in Belarus*], available at <http://www.ilo.org/public/english/standards/relm/gb/docs/gb291/pdf/ci-belarus.pdf>.

138. ILO, *Convention Concerning Freedom of Association and Protection of the Right to Organize (No. 87) art. 2, Jul. 9, 1948*, 68 U.N.T.S. 17, available at <http://www.itcilo.it/actrav/actrav-english/telearn.global/ilo/law/con87.htm>.

registration of trade union organizations, interfering in union affairs, and discriminating against members of independent trade unions.<sup>139</sup>

Following the announcement of the start of the six-month period of monitoring and evaluation, the European Union Council adopted a resolution temporarily withdrawing Belarus from access to the generalized tariff preferences.<sup>140</sup> The resolution mentions the ILO Commission of Inquiry report of July 2004, which contained twelve recommendations of specific steps to improve the situation in Belarus.<sup>141</sup> It also notes the Committee on Freedom of Association (CFA) follow-up report in March 2006 “in which the CFA pointed to the actual worsening of the situation of trade unions’ rights in Belarus.”<sup>142</sup> The European Union resolution also mentioned the June 2006 report of the ILO Committee on the Application of Standards of the International Labour Conference, which “deplored the continued failure by the Belarusian Government to implement the recommendations and stressed the necessity of rapid actions so that real and tangible progress could be noted.”<sup>143</sup> As the situation with trade union rights in Belarus did not change, the resolution withdrawing the preferences entered into force in June 2007.<sup>144</sup>

The main reason why Belarusian authorities limit freedom of association is that they are trying to prevent potential revolt or “color” revolution.<sup>145</sup> The unions are not their only target: NGOs and political parties also have hard times in Belarus.<sup>146</sup> The memories of the Solidarity trade union movement in Poland, which greatly contributed to the collapse of the Communist Bloc, are too fresh to be ignored by the Belarusian

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139. For more about trade unions in Belarus, see Yaraslau Kryvoi, *The Relationship Between the State and Trade Unions on the Labour Market: The Belarusian Case*, 48 BULL. OF COMP. LABOUR REL. 175 (2003).

140. Council Regulation (EC) No. 1933/2006, Temporary Withdrawing Access to the Generalised Tariff Preferences from the Republic of Belarus, art. 1, 2006 O.J. (L 405) 35, 39.

141. *Trade Union Rights in Belarus*, *supra* note 137, at 175–78.

142. Council Regulation (EC) No. 1933/2006, *supra* note 140, § 8.

143. *Id.* § 9.

144. *Id.* § 12.

145. The Belarusian authorities strengthened their grip after the Orange Revolution in the neighboring Ukraine and the Revolution of Roses in Georgia. See generally Vitali Silitski, *Preempting Democracy: The Case of Belarus*, 16 J. OF DEMOCRACY 83 (Oct. 2005).

146. BUREAU OF DEMOCRACY, U.S. DEP’T OF STATE, BELARUS: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2007), available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100549.htm>.

authorities. This is the main reason why they do not comply with the requests of the International Labor Organization and the European Union to respect freedom of association.

### C. PAKISTAN

Pakistan is an Asian country with a population of nearly 170 million people and shares common borders with Iran, Afghanistan, India, and China. In 1999, General Pervez Musharraf seized power in Pakistan as a result of a military coup, declared himself president, and has remained in power since that time. Ongoing human rights violations in Pakistan include "arbitrary detention; lack of due process; the mistreatment, torture, and 'disappearance' of terrorism suspects and political opponents; harassment and intimidation of the media; and legal discrimination against and mistreatment of women and religious minorities."<sup>147</sup>

Labor rights violations are a part of a bigger picture of human rights violations in Pakistan, as a study of Human Rights Watch shows:

Millions of workers in Pakistan are held in contemporary forms of slavery. Throughout the country employers forcibly extract labor from adults and children, restrict their freedom of movement, and deny them the right to negotiate the terms of their employment. Employers coerce such workers into servitude through physical abuse, forced confinement, and debt-bondage. The state offers these workers no effective protection from this exploitation. Although slavery is unconstitutional in Pakistan and violates various national and international laws, state practices support its existence.<sup>148</sup>

Pakistan ratified the ILO Convention on the Worst Forms of Child Labor and undertook an obligation to implement urgent measures to prohibit and eliminate the worst forms of child labor, which include debt-bondage and serfdom.<sup>149</sup>

In 1995, a number of international and European trade unions<sup>150</sup> submitted a petition to the European Commission with

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147. HUMAN RIGHTS WATCH, *ESSENTIAL BACKGROUND: OVERVIEW OF HUMAN RIGHTS ISSUES IN PAKISTAN* (2007), <http://hrw.org/englishwr2k7/docs/2007/01/11/pakist14756.htm>.

148. HUMAN RIGHTS WATCH, *CONTEMPORARY FORMS OF SLAVERY IN PAKISTAN 1* (1995), available at <http://www.hrw.org/reports/pdfs/c/crd/pakistan957.pdf>.

149. ILO, *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (No. 182) arts. 1–3, available at <http://www.ilo.org/ilolex/english/convdisp1.htm> (follow "C 182" hyperlink).

150. The trade unions were the International Confederation of Free Trade Unions; the European Trade Union Congress; the International Textile, Garment

regard to forced labor in Pakistan. According to the submission:

An uncertain number of people, certainly at least several millions, are enslaved in different forms of forced or bonded labour in Pakistan. Millions are children. Typical working conditions involve incredibly long hours of work, seven days a week, 52 weeks a year; serious neglect of basic occupational health and safety standards; steadily accumulating debt; and a predominantly child work force in work places in many sectors including shoes, brick kilns, footballs and surgical instruments.<sup>151</sup>

The petition urged the European Commission to initiate an investigation in accordance with European Union Regulation on the GSP.<sup>152</sup> Although the situation in Pakistan has not improved, the European Commission neither initiated an investigation nor called for stronger measures. The government of Pakistan used various tactics to derail any investigation, but apparently the European Union member states were themselves not willing to launch an investigation.<sup>153</sup>

Quite on the contrary, in 2005 the European Union included Pakistan in the list of countries that benefit from special incentives for the protection of labor rights and environment and for combating drug production and trafficking.<sup>154</sup> The European Commission decided to actively support projects in Pakistan under the ILO's international program for the eradication of child labor and in collaboration with the ILO and UNICEF.<sup>155</sup> In 2002 the European Commission explained that the decision to grant the additional preferences to Pakistan was linked to wider political motives and, in particular, the "fight against terror," the change of Pakistan's position in relation to Taliban regime and its determination to return to democratic rule.<sup>156</sup> Most recently, the European Commission proposed to give Pakistan 200 million Euros in economic aid.<sup>157</sup>

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and Leather Workers Federation; and the European Trade Union Committee: Textiles, Clothing and Leather. INT'L CONFEDERATION OF FREE TRADE UNIONS, ENDING THE MENACE OF BONDED LABOR IN PAKISTAN: SUBMISSION UNDER THE GENERALIZED SYSTEM OF PREFERENCES OF THE EUROPEAN UNION (1998), <http://www.icftu.org/displaydocument.asp?Index=990916192&Language=EN>.

151. *Id.*

152. *Id.*

153. See Tsogas, *supra* note 85, at 122.

154. Council Regulation (EC) No 980/2005, *supra* note 95 ¶ 7.

155. See generally Barbara Brandtner & Allan Rosas, *Trade Preferences and Human Rights*, in *THE EU AND HUMAN RIGHTS* 699 (P. Alston ed., 1999).

156. European Commission, European Union Response to 11 September—Latest Update on European Commission Action, Briefing on 12 March, 2002.

157. Press Release, Eur. Comm'n, EU-Pakistan: Commission Proposes Increase in Assistance (Jan. 31, 2007), available at <http://europa.eu/rapid/pressReleases>

#### D. ANALYSIS OF CASES

The most obvious similarity between the situations in Myanmar, Belarus, and Pakistan is the existence of well-documented violations of the core labor standards. Forced labor in Myanmar, disrespect of freedom of association in Belarus, and bonded and child labor in Pakistan were the reasons why international trade union organizations initiated complaints against the governments of these countries.

Belarus and Myanmar have more similarities because both countries have engaged in aggressive suppression of a democratic movement, causing the deterioration of political freedoms. The labor rights violations in these countries are being committed by the governments *as part* of this broader suppression of democracy. By contrast, there has not been a sharp deterioration of political participation in Pakistan, and the labor rights violations are deeply entrenched problems committed by the private sector, not by the government as part of a campaign of political oppression.

Another important difference is that the magnitude of violations of core labor standards is very different in these three countries. In Pakistan, thousands of people were forced to work, beaten and tortured; millions of people suffered from "contemporary forms of slavery."<sup>158</sup> In Burma, thousands of people were tortured and forced to work on exhausting projects.<sup>159</sup> In Belarus, by contrast, the reported violations did not amount to torture, physical injuries, or systematic use of force against trade union leaders. The main problem in Belarus is that independent trade unions have hard times registering their organizations and their leaders are often squeezed out of jobs.<sup>160</sup>

The motivation for disrespect of labor standards in these three cases is different. The main reason for violations of core labor standards in Pakistan is economic in the sense that the government does not allocate resources necessary to deal with the wide-spread use of child labor and bonded labor. Belarus repressed independent trade unions on purely political grounds as a part of a campaign of oppressing democracy in the country. In the case of Myanmar we can see two main reasons for using

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Action.do?reference=IP/07/115&format=HTML&aged=0&language=EN&guiLanguage=en.

158. See HUMAN RIGHTS WATCH, *supra* note 147.

159. See *generally Report of the Committee Set up to Consider, supra* note 118.

160. See Letter from Guy Ryder, *supra* note 131.

forced labor. One reason is economic—the government wanted to build a pipeline cheaply by making people work at gunpoint. It is quite possible that the Burmese authorities could not raise enough money through taxes imposed on their impoverished population and therefore resorted to forced labor. Another reason is political—the military junta tried to consolidate its control over the territory of Myanmar including the areas traditionally controlled by indigenous people.

One possible explanation why Belarus was treated more strictly on the issue of freedom of association is that this country is much richer than Myanmar or Pakistan—GDP per capita in Belarus is five times higher than in Myanmar and more than two times higher than in Pakistan.<sup>161</sup> Therefore, Belarus is seen as a country that can afford freedom of association, which is to a certain extent a “cash” right. In further support of this point, other former Soviet Union republics such as Uzbekistan have virtually no independent trade unions<sup>162</sup> but still benefit from the European Union’s GSP arrangements. One possible explanation is that other former Soviet Union republics are very poor compared to Belarus<sup>163</sup> and therefore are not expected to have as high a level of labor standards.

Presumably, the European Union looks hard at the situation in Belarus because the country is located in the geographical center of Europe and its human and labor rights standards sharply contrast with the standards prevailing in the rest of Europe. This is possibly a reason why there are no sanctions against Uzbekistan or Turkmenistan, which might not look very striking in the context of their Central Asian neighbors. Despite the fact that independent trade unions are almost non-existent in these Asian countries,<sup>164</sup> the European Union has not withdrawn them from the GSP regime.

Another important factor is the expense to the European

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161. Myanmar’s 2007 gross domestic product, per capita, was \$239, Pakistan’s \$909; and Belarus’ GDP per capita is \$4,013. See International Monetary Fund, Data and Statistics: Report for Selected Countries and Subjects, <http://www.imf.org/external/pubs/ft/weo/2007/02/weodata/weoselgr.aspx> (select the country, then select the parameter, i.e., GDP per capita, then create report).

162. U.S. DEPT OF STATE, TURKMENISTAN COUNTRY REPORT ON HUMAN RIGHTS PRACTICES (2006), available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78845.htm>; U.S. DEPT OF STATE, UZBEKISTAN COUNTRY REPORT ON HUMAN RIGHTS PRACTICES (2006) [hereinafter UZBEKISTAN], available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78848.htm>.

163. Uzbekistan’s 2007 gross domestic product, per capita, was \$753 and Tajikistan’s \$522. Data and Statistics, *supra* note 161.

164. See UZBEKISTAN, *supra* note 162.



Union of introducing economic sanctions. The economic cost of applying sanctions to Pakistan, with a population of about 170 million people and significant foreign direct investment, is more significant than the expense of sanctioning Myanmar, with population of fifty million people and almost no foreign investment, or Belarus, with only ten million people.<sup>165</sup> It is hardly possible that the European Union would introduce sanctions against China, because that would be too costly from a purely economic point of view.

Western nations see Pakistan as an important ally in the war on terrorism following the September 11, 2001 attacks. This is an important reason why the United States and the European Union tend to turn a blind eye to human rights violations there.<sup>166</sup> Moreover, the willingness of Pakistan to engage in dialogue and to modify its legislation may have played a decisive role in the decision not to proceed with the complaint against Pakistan.<sup>167</sup> On the other hand, Belarus, with its anti-Western policies and hypocritical president,<sup>168</sup> and Myanmar, ruled by military junta backed by China, are not seen as allies by the European Union. This certainly had an important effect on excluding these countries from the GSP regime. However, it is not the first time in history that geopolitical considerations influence the GSP treatment.<sup>169</sup>

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165. Foreign direct investment was around 12.4 billion U.S. dollars in Pakistan, around 2.7 billion U.S. dollars in Belarus, and around 5 billion U.S. dollars in Myanmar. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, WORLD INVESTMENT REPORT, 2006, U.N. Doc. WIR/2006, available at [http://www.unctad.org/en/docs/wir2006\\_en.pdf](http://www.unctad.org/en/docs/wir2006_en.pdf).

166. In 1998 the United States imposed sanctions on Pakistan following Pakistan's tests of nuclear explosive devices, but completely lifted sanctions on September 22, 2001. See generally DIANNE E. RENNACK, CONGRESSIONAL RESEARCH SERVICE REPORT INDIA AND PAKISTAN: CURRENT U.S. ECONOMIC SANCTIONS (2001).

167. Andrew Clapham & Joanna Bourke Martingoni, *Are We There Yet? In Search of a Coherent European Union Strategy on Labour Rights and External Trade*, in SOCIAL ISSUES, GLOBALISATION AND INTERNATIONAL INSTITUTIONS: LABOUR RIGHTS AND THE EU, ILO, OECD AND WTO 279, 283 (Virginia A. Leary & Daniel Warner eds., 2006).

168. Vitali Silitski, *Contagion Deterred: Preemptive Authoritarianism in the Former Soviet Union (the Case of Belarus)*, Center on Democracy, Development and the Rule of Law Working Paper No. 66, June 2006, available at [http://iis-db.stanford.edu/pubs/21152/Silitski\\_No\\_66.pdf](http://iis-db.stanford.edu/pubs/21152/Silitski_No_66.pdf).

169. During the Cold War the United States supported trade unions in communist countries such as Solidarity in Poland, but undermined trade unions in countries with pro-American governments such as South Korea, Chile, El Salvador, Indonesia and others where U.S. multinationals had strong economic interests. See, e.g., WILLIAM TAUBMAN, GLOBALISM AND ITS CRITICS: THE AMERICAN FOREIGN POLICY DEBATE OF THE 1960S (1973).

Another important difference between the Pakistan case on the one hand and Belarus and Myanmar on the other hand is the degree of government involvement in labor rights violations. The Pakistan government can largely be blamed for passivity and non-intervention into labor rights violations, while the Belarus and Myanmar governments themselves committed violations. Sanctions are unlikely to be effective in pushing Pakistan to eradicate child labor in the private sector, because ingrained cultural traditions and lack of economic opportunities in rural areas play a more important role in this problem rather than the "bad will" of the government. Moreover, child labor can be lessened by a combination of foreign assistance, improved access to education, and encouragement of cooperation with international organizations.

As this analysis shows, although core labor standards are supposed to be universal, economic and political predispositions play a more important role than black-letter law in decisions on withdrawing GSP preferences. The GSP of the European Union as a matter of fact depends on a number of additional factors, such as the economic importance of a target country, geopolitical considerations, regional context, and the level of cooperation between the country and the sanctioner.

The next Part offers some general conclusions on the effectiveness of trade sanctions and the importance of distinguishing between economic and political justifications for disrespect of core labor standards and human rights.

## V. EFFECTIVENESS OF SANCTIONS

As a general rule, sanctions are deployed by countries in pursuit of policy goals related to warfare or national security and might be an effort to destabilize foreign governments.<sup>170</sup> Sanctions have also been used to protect human rights, to halt nuclear proliferation, to settle expropriation claims, and to combat international terrorism.<sup>171</sup>

Imposing sanctions for violations of labor rights is more difficult than for "regular" gross human rights violations such as torture or extrajudicial killings. Even the detailed obligations under ILO conventions allow for a great deal of flexibility in

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170. GARY CLYDE HUFBAUER, JEFFREY J. SCHOTT & KIMBERLY ANN ELLIOTT, *ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY* 5-6 (2d ed. 1990).

171. *Id.* at 7.

implementation and diversity among countries. The international standards recognize only the principles, which are always country-specific. That leaves room for purely political discretion of those who implement these principles and those who sanction their violation. For instance, evaluating freedom of association using a uniform standard is complicated, because it is difficult to design an absolute rather than a relative set of specific measurable standards.<sup>172</sup> The "ideal" standard has to be applied in a broader context taking into account the country's level of economic development, its political and economic importance, and its attitude towards the sanctioner.

As it has been shown, the European Union uses its GSP regime in a limited manner to sanction countries that violate the core labor standards. Exclusion of countries from the GSP for violations of labor standards can lead to economic losses and reputational damages for the sanctioned country. Sanctions can also send a strong signal that a country is potentially a bad investment destination.<sup>173</sup> No country likes bad international publicity. Even if a country has been traditionally considered a violator of human rights, it usually undertakes at least nominal steps to show willingness to cooperate and to show that the alleged wrongdoings are not a matter of substantive violations, but a result of different understanding of the standards or politically motivated paternalism of other countries.<sup>174</sup>

Empirical studies suggest that economic sanctions seem to be more effective when aimed against erstwhile friends and close trading partners.<sup>175</sup> This is not the case with Belarus and Myanmar, which are not allies of the West. Both Belarus and Myanmar have a powerful non-Western "big brother," who turns a blind eye to violations of labor rights and human rights violations in general and provides economic support. Russia traditionally backed the current political regime in Belarus.<sup>176</sup>

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172. NAT'L RESEARCH COUNCIL, MONITORING INTERNATIONAL LABOR STANDARDS: QUALITY OF INFORMATION 18 (Margaret Hilton ed., 2003).

173. See Compa & Vogt, *supra* note 3, at 204.

174. In response to the withdrawal of Belarus from the EU's GSP, President Lukashenka declared that the real reason for withdrawal of Belarus from the preferable treatment was that the European Union could not compete against Belarusian goods. Interfax, *Lukashenka: Evrosoyuz ne vyderzhal konkurentsii s Belarusyu na svoikh rynkakh* [*Lukashenka: European Union Could Not Sustain Competition with Belarus on its Internal Market*], Dec. 29, 2006, (Russian) <http://news.tut.by/79889.html>.

175. See HUFBAUER ET AL., *supra* note 170, at 104.

176. Russia supplied almost 60% of imports in 2005 and is by far the most important source of imports to Belarus. It provides the raw materials such as fuel,

China is the key trade, investment, and political partner of Myanmar.<sup>177</sup> In January 2007, China and Russia vetoed a U.N. Security Council resolution proposed by the United States that criticized Myanmar, although the resolution received support from a majority of members.<sup>178</sup>

The examples of Myanmar and Belarus show that powerful economic sponsors of undemocratic regimes can render any economic sanctions meaningless. This is in line with the existing empirical studies suggesting that in order to be effective, the aim of sanctions should be relatively modest; the target country should be much smaller than the country imposing sanctions, economically weak, and politically unstable.<sup>179</sup> None of that applies to Belarus or Myanmar, where political regimes seem to retain an iron grip on society. These countries are a subject of concern primarily because of their suppression of political freedom, which goes beyond the labor rights violations.

As the Myanmar and Belarus cases show, sanctions are easier to impose when the target is a pariah state with very few economic interests, such as direct investment of the sanctioners. Then it is possible to achieve two major goals relatively cheaply—to demonstrate commitment to international labor standards and to punish an unfriendly regime.<sup>180</sup> However, even in this case, sanctions might be enough to harm people in these countries, but not to fix the governmental policy.<sup>181</sup>

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metals, and chemicals required by Belarusian industry. See Economist Intelligence Unit, *Country Profile of Belarus* 30 (2007).

177. Economist Intelligence Unit, *Country Profile, Myanmar* 14 (2007).

178. *China and Russia Veto US/UK-backed Security Council Draft Resolution on Myanmar*, UN NEWS CENTRE, Jan. 12, 2007, <http://www.un.org/apps/news/story.asp?NewsID=21228&Cr=myanmar&Cr1#>.

179. See generally HUFBAUER ET AL., *supra* note 170 (studying 116 cases of economic sanctions and deriving general principles for successful imposition of sanctions).

180. However, sanctions are not necessarily cheap. For instance, the issue of effectiveness of sanctions has also been considered by the U.S. Congress, which mentioned that the use of sanctions has translated into billions of dollars in lost opportunities for U.S. exporters to the benefit of European, Japanese, and other foreign competitors, whose home governments have not bound them by similar sanctions. See U.S. House of Representatives, *Use and Effect of Unilateral Trade Sanctions*. Hearing before the Subcommittee on Trade of the Committee on Ways and Means, May 27, 1999. U.S. Government Printing Office, Wash., D.C., 2000, at 3.

181. Belarusian businessmen claim that the withdrawal of Belarus from the GSP will hurt small businesses in the first instance, and not the government. *Biznesmeny Vzyvaiut k ES [The Businessmen Appeal to the EU]*, BELORUSSKI PARTISAN, Apr. 19, 2007, (Russian) <http://www.belaruspartisan.org/bp-forfe/?page=100&news=12023>.

Sanctions also lessen the importance of multilateral cooperation with non-democratic regimes, which often is difficult to obtain. The target countries may become even more dependent on their "big brothers" which support their repression of democracy and human rights.<sup>182</sup> For instance, there is an ongoing debate in Europe over whether it is better to isolate the Belarusian regime or to propose cooperation by exposing officials of the country to better standards.<sup>183</sup> Another related problem is commitment—once launched, sanctions are very difficult to terminate, with domestic politics militating against an administration's attempt to "back down" or as a gesture of support of a repressive regime.<sup>184</sup>

One general concern is that withdrawing trade benefits from countries violating core labor standards on political grounds can hurt the people in the name of whose rights the sanctions are introduced. Policies to isolate countries in which human rights are violated and to exclude them "from the prosperity that accompanies open trade may well cause human rights to deteriorate."<sup>185</sup> It is therefore preferable to use more "smart sanctions," i.e., those targeting particular persons and companies, as opposed to blunt sanctions imposed on the whole country.<sup>186</sup>

Skeptics argue that trade sanctions may produce a perverse effect and trade liberalization is a better alternative policy to

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182. To illustrate, a few months after the United States introduced economic sanctions against Belarus for violations of human rights in 2007, Russia provided several billion dollars in loans to Belarus to eliminate the effect of these sanctions. See Elena Lashkina, Tsena Druzhyby. Viktor Zubkov Osudil SSHA za Ekonomicheskie Sanktsii Protiv Minska. (The Price of Friendship. Victor Zubkov condemned the United States Sanctions against Minsk.), Rossiiskaia Gazeta No. 4554, Dec. 27, 2007 (Russian).

183. See Interfax, *Ex-President Litvy prosit ne Izolirovat Belarus [Ex-President of Lithuania Calls Not to Isolate Belarus]*, Mar. 9, 2007, (Russian) <http://bdg.by/news/news.htm?101744,1>.

184. Donald L. Losman, *The Case Against Sanctions: Good Intentions Gone Bad; Punitive Trade Embargoes Are Appealing, but They Don't Achieve Our Goals*, WASH. POST, Oct. 6, 1996, at C3.

185. Alan O. Sykes, *International Trade and Human Rights: An Economic Perspective*, in 5 WORLD TRADE FORUM, INTERNATIONAL TRADE AND HUMAN RIGHTS: FOUNDATIONS AND CONCEPTUAL ISSUES 69, 77 (Frederick M. Abbott et al. eds., 2001).

186. For example, the European Union refuses to reduce prohibitively high visa fees for Belarusian citizens, which helps the policy of self-isolation from the West pursued by the Belarusian regime. See EU Business, *EU Commissioner says no plans to cut visa fees for Belarus*, Apr. 22, 2008, <http://www.eubusiness.com/news-eu/1208835122.63>

combat labor rights violations such as child labor.<sup>187</sup> However, trade sanctions may have other effects that go beyond the target country. For instance, they can contribute to the international definition, promulgation, recognition, and domestic internalization of human rights norms.<sup>188</sup> Sanctions can be an effective way to demonstrate commitment to a particular set of values, such as core labor standards or fundamental human rights. Imposition of sanctions may also deter other countries that would think twice before committing violations.

Unilateral sanctions—even when imposed by the largest economies in the world—face far more difficult challenges in an increasingly integrated international economy. Despite the sanctions introduced by the European Union, the situations with freedom of association in Belarus and forced labor in Myanmar have not improved. Although sanctions prove to have limited effectiveness against the target countries, they might help develop a system of protection based on international labor standards. The very efforts to keep labor standards in the international spotlight, blame the governments, and morally support the oppressed groups are important to prevent further deterioration of human rights in target countries.

## VI. CONCLUSION

Linking trade and labor standards is one of the few ways to apply “hard” law as opposed to political pressure to make countries comply with their international obligations to respect core labor standards. In using this linkage it is important to distinguish why the countries adopted the policies that violated core labor rights. If the motivation is economic, the mere threat of sanctions may be enough for the states to comply or at least to cooperate because of the states’ concerns about international reputation and economic damages that result from sanctions.

If the violations are motivated primarily by political considerations, it is very unlikely that the sanctions will be effective, unless they are introduced by a state that is a major trading partner of the violating country or a sponsor of the regime. Sanctions against politically motivated violators most probably will not change their practices, although the attention

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187. Sarbajit Chaudhuri, *Trade Sanctions and Child Labour: Quest for an Alternative Policy* 19 (June 2003) (unpublished paper available through Social Science Research Network), available at <http://ssrn.com/abstract=426821>.

188. See Cleveland, *supra* note 11, at 6.

of the international community can be helpful to prevent further deterioration and to support the oppressed groups. Sanctions can have other important effects, which go beyond their impact on a target country, as they deter other potential violators and demonstrate a commitment to the fundamental labor rights. This should be taken into account when decisions whether to impose sanctions are made.