

APPENDIX B

Reporting on Worker Rights

U.S. law requires annual reporting to Congress on the status of internationally recognized worker rights in countries that are eligible to receive benefits under the Generalized System of Preferences (GSP). The law defines internationally recognized worker rights to include: “(A) the right of association; (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form of forced or compulsory labor; (D) a minimum age for the employment of children, and a prohibition on worst forms of child labor; and (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.” 19 U.S.C. § 2464, 2467. In addition to these rights, several U.S. free trade agreements have also included the “elimination of discrimination in respect of employment or occupation” in their definition of internationally recognized worker rights.

The International Labor Organization (ILO), in its *1998 Declaration on Fundamental Principles and Rights at Work*, sets forth these principles and rights at work as follows: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation.

Worker rights are discussed in each country report under the section heading “Worker Rights” in five subsections: freedom of association and the right to collective bargaining; prohibition of forced or compulsory labor; prohibition of worst forms of child labor and minimum age for employment; prohibition of discrimination with respect to employment and occupation; and acceptable conditions of work. Enforcement of the law is key to effective implementation.

The discussion of worker rights considers not only laws, statutes, and regulations but also their practical application. The discussion is informed by internationally recognized labor rights and standards, including the Conventions and Recommendations of the ILO, and antitrafficking provisions in the UN Organized Crime Convention Protocol to Prevent, Suppress, and Punish Trafficking in Persons. Some specific guidelines derived from these are discussed below.

Freedom of Association and the Right to Collective Bargaining:

“Freedom of association” includes the right of workers and employers to establish and join organizations of their own choosing without previous authorization; to draw up their own constitutions and rules, to elect their representatives, and to formulate their programs; to join in confederations and affiliate with international organizations; and to be protected against dissolution or suspension by administrative authority.

“The right to organize and bargain collectively” includes the right of workers to be represented in negotiating terms and conditions of employment and the prevention and settlement of disputes with employers, the right to protection against interference by the government or employers, and the right to protection against acts of antiunion discrimination. Governments should promote mechanisms for voluntary negotiations between employers and workers and their organizations. Coverage of the right to organize and bargain collectively includes a review of the extent to which collective bargaining takes place and the extent to which workers, both in law and practice, are protected against antiunion discrimination.

The section of each report on freedom of association also covers the right to strike. While it is generally accepted for strikes to be restricted in the public sector and in essential services, the interruption of which would endanger the life, personal safety, or health of a significant portion of the population, these restrictions need to be offset by adequate safeguards for the interests of the workers concerned (for example, mechanisms for mediation and arbitration, due process, and the right to judicial review of legal actions). Reporting on restrictions on the ability of workers to strike generally includes information on any procedures that may exist for safeguarding workers’ interests.

Forced Labor:

“Forced or compulsory labor” is defined as work or service exacted under the menace of penalty and for which a person has not volunteered. This definition does not include “work or service” where obligations to work or serve are imposed in order to receive education or training. “Menace of penalty” includes loss of rights or privileges as well as penal sanctions. The ILO exempts compulsory military service, normal civic obligations, emergencies, and minor communal services from its definition of forced labor. The ILO has also exempted certain forms of prison labor, but only to the extent that such labor is exacted as a consequence of a conviction in a court of law and carried out under the supervision and control of a public authority, and provided that the prisoner is not hired out to or placed at the disposal of private entities. The ILO further notes that constitutional provisions concerning the obligation of citizens to work do not

violate this right so long as they do not take the form of legal obligations enforced by sanctions and are consistent with the principle of “freely chosen employment.”

U.S. law defines forced labor as knowingly providing or obtaining the labor or services of a person by force or threats of force, serious harm or threats of serious harm to that person or another person, abuse or threatened abuse of law or legal process, or any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint. The UN Trafficking Protocol also addresses forced labor, by requiring state parties to criminalize the recruitment, transport, transfer, receipt, or harboring of a person for the purpose of forced labor or services extracted through coercive or fraudulent means.

Child Labor:

“A minimum age for employment” is related to the effective abolition of child labor because it requires a minimum age for employment that is consistent with the fullest physical and mental development of young people. The “prohibition on the worst forms of child labor” looks to ILO Convention 182, which defines anyone under the age of 18 as a child, and specifies certain types of employment as “the worst forms of child labor.” These worst forms of labor include slavery, debt bondage, forced labor, forced recruitment into armed conflict, child prostitution and pornography, involvement in illicit activity such as drug production or trafficking, and work that, “by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

Discrimination with Respect to Employment and Occupation:

“Discrimination with respect to employment and occupation” may be direct or indirect. Direct discrimination exists when laws, rules, or practices explicitly cite a particular ground (such as sex, race, religion, political opinion, national or social origin, etc.) to deny equal opportunities for employment or vocational training, as well as any other ground for distinction determined to impair equal opportunity. The ILO has noted that indirect discrimination occurs where rules or practices appear on the surface to be neutral but in practice lead to unwarranted exclusions. For example, requiring applicants to be a certain height could disproportionately exclude women and members of some ethnic groups. Unless the specified height is necessary to perform the particular job, this could illustrate indirect discrimination.

U.S. law prohibits discrimination in respect to employment on the basis of race, color, religion, sex, national origin, disability, genetic information, or age. Many

states and municipalities also have enacted protections against discrimination and harassment based on sexual orientation, status as a parent, marital status, and political affiliation.

Acceptable Conditions of Work:

“Acceptable conditions of work” refers to the establishment and maintenance of appropriate mechanisms, adapted to national conditions, that provide for minimum working standards, namely: wages that provide a decent living for workers and their families; working hours that do not exceed 48 hours per week, with a full 24-hour day of rest; a specified number of annual paid leave days; and minimum conditions for the protection of the safety and health of workers. National laws should specify whether workers in the informal sector are covered, and whether or not any other group of workers or sectors of the economy are excluded.