Why European Union Trade Sanctions Do Not Work

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Abstract

This Article analyzes the role of legal, political and economic factors in determining the effectiveness of trade sanctions imposed in response to violation of labor standards. It begins by addressing the theoretical aspects of the linkage between trade and labor and then turns to the practical aspects by examining the application of the recently revised European Union’s Generalized System of Preferences (GSP). The Article suggests that the reasons why countries fail to respect core labor standards are of critical importance in determining the potential effectiveness of sanctions. If the reason is principally economic the mere threat of sanctions may be enough to motivate a country to modify its policies to prevent economic damages resulting from sanctions. Sanctions are less effective in changing the conduct of countries which violate core labor standards primarily due to political reasons. The European Union’s decisions to terminate trade preferences for labor rights violations for Myanmar in 1997 and Belarus in 2006 did not have any significant impact on these countries and are unlikely to achieve their desired objectives in the future for two main reasons. First, the main motivation for these countries’ violations is political and the cost of the undemocratic regimes’ compliance with international obligations is greater than the cost of non-compliance. Second, both countries have powerful “sponsors”, which undermine the economic impact of the European Union’s sanctions. Despite the limited effectiveness against the target countries, the withdrawal of trade preferences may have other important effects, such as deterring other potential violators, demonstrating the European Union’s commitment to promote core labor standards and strengthening the link between trade and fair labor practices.
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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. Linking trade and labor standards in the framework of the Generalized System of Preferences (GSP) is one of those few methods. The GSP is a twofold measure – on the one hand, it gives additional trade preferences to developing countries and countries in transition, and on the other hand, the preferences can be withdrawn in certain cases, including for violations of core labor standards.

In order to predict the effectiveness of the linkage between trade and labor standards it is crucial to understand the reasons why countries disrespect core labor standards. There are three most important reasons: economic, political and lack of resources. The main economic reason is fear that compliance will raise the cost of labor and deter foreign investments. 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 standards and in assessing the effects the sanctions will have.

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 the violations of the freedom of association. Although linking trade and labor standards has recently become a hot topic, 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 Law.

Although scholars have argued that the European Union has not resorted to withdrawing countries from the GSP for political purposes, my analysis of the cases of Belarus and Pakistan suggest 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 role than law on the books. As far as effectiveness of withdrawal from the GSP regime is concerned the mere threat of sanctions may be effective in targeting countries that disrespect core labor standards on economic grounds. But sanctions are less effective when labor rights are disrespected on political grounds. Therefore, 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

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4 See, e.g., BOB HEPPLE, LABOUR LAWS AND GLOBAL TRADE 105 (2005).
II. ATTITUDES TO CORE LABOR STANDARDS

A. Arguments in Support of Core Labor Standards

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.\(^5\) Although critics of this argument suggest, that richer countries with higher productivity easily outperform developing countries with unfair standards,\(^6\) inferior labor standards can distort competition as between countries with a similar level of economic development.

Other reasons to promote core labor standards include the avoidance of a race to the bottom\(^7\). The Preamble to the Constitution of the International Labor Organization (ILO) adopted in 1944 reflects the race to the bottom concern by mentioning that the failure of any

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\(^6\) Id. at 9.

nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries.\footnote{Constitution of the International Labour Organization (Declaration of Philadelphia) (1944).} If countries compete by using low labor standards to attract foreign direct investments, the world could end up with no standards at all, and this would not be the most socially desirable result.

A legal argument in support of core labor standards is that these are fundamental rights guaranteed by the most important international legal instruments.\footnote{For instance, freedom of association is guaranteed by the following instruments: Article 20 and 23 of the Universal Declaration of Human Rights; Article 8 of International Covenant on Economic, Social and Cultural Rights, Article 22 of International Covenant on Civil and Political Rights; \$ 2 of ILO Declaration on Fundamental Principles and Rights at Work.} The ILO Declaration on Fundamental Principles and Rights at Work declares that 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 to respect, to promote and to realize the principles concerning the fundamental rights.\footnote{See Declaration on Fundamental Rights at Work, supra note 38, para. 2.} The 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 labour;
(c) the effective abolition of child labour; and
(d) the elimination of discrimination in respect of employment and occupation.\footnote{Id.}

The ILO considers core labor standards as a tool used both to assist development and to measure progress toward development.\footnote{INTERNATIONAL LABOUR ORGANIZATION, CORE LABOR STANDARDS HANDBOOK 11 (2006).} In its recently published Core Labor Standards Handbook the ILO mentions that respect of 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.  

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”. 

Empirical studies suggest that political and economic freedoms, which include freedom of
association and other fundamental rights, are positively correlated with economic growth. Other
studies show a mutually supportive relationship between successfully sustained trade reforms and
improvements in association and bargaining rights. A study by Kimberly Elliott and Richard
Freeman shows, there is a consumer demand in society for decent labor standards. 

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.

13 Id.
14 INTERNATIONAL LABOUR ORGANIZATION, COUNTRY STUDIES ON THE SOCIAL IMPACT OF
15 According to an empirical study of Bhalla one point increase in political freedom (on a seven
point scale) leads to an increase in per-capita growth of approximately 1 percent. See Surjit
Bhalla, Freedom and Economic Growth: a Virtuous Cycle? in DEMOCRACY’S VICTORY AND CRISIS:
16 ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT [OECD], TRADE,
EMPLOYMENT AND LABOUR STANDARDS. A STUDY OF CORE WORKERS' RIGHTS AND
INTERNATIONAL TRADE 86, 112 (1996).
17 See KIMBERLY ELLIOTT & RICHARD FREEMAN, CAN LABOR STANDARDS IMPROVE UNDER
B. Economic Reasons for Disrespect

The main economic reason for a country’s reluctance to respect the core labor standards is fear that they may weaken exports, raise the cost of labor and deter foreign investments; organized labor might also halt entire industries by strikes or other forms of collective action.

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

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18 Unions are simply prohibited in the export-processing zones of Bangladesh and Pakistan, while they are generally discouraged in Guatemala and Panama. See OECD, supra note 16, at 85.


20 For instance, trade unions in France often halt railroads or airlines and that often causes serious economic damage to businesses and political troubles to the government. See STEVE JEFFERY, LIBERTÉ, ÉGALITÉ, AND FRATERNITÉ AT WORK: CHANGING FRENCH EMPLOYMENT RELATIONS AND MANAGEMENT, 2003.

21 For instance, multinationals in China vigorously opposed changes in labor legislation improving workers’ rights. See GLOBAL LABOR STRATEGIES, UNDUE INFLUENCE: CORPORATIONS GAIN GROUND IN BATTLE OVER CHINA’S NEW LABOR LAW (2007).

Elliott and Freeman suggest distinguishing between the “core” labor standards promulgated by the ILO and “cash” standards. The latter directly increase labor costs and therefore might potentially affect the level of economic development. They suggest that poor countries, unlike rich countries, cannot afford higher cash standards such as minimum wages, workplace safety or shorter working hours. 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 own costs which 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 restricting 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. According to Srinivasan, unions and collective bargaining will drive wages above “market” levels and reduce employment. Van Beers suggests that strict labor standards are associated with reduced exports of goods produced with skilled labor.

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23 See Elliott & Freeman, supra note 17, at 13.
24 Id.
On the other side, the economists argue that market failures such as imperfect information or asymmetry of bargaining power can be tackled by trade unions. Unions have, as Freeman puts it, “collective voice” effects, which can improve productivity and raise wages.28 They can improve workers’ bargaining power that helps 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 be too costly to implement through the tax system.29 On the other hand, he also realizes that collective labor relations can “hold up” the rest of economy.30

In 1996 the 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.31 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.32 Freedom of association and collective bargaining can produce positive effects such as counteracting the market power of employers, while also improving worker-management cooperation and information sharing.33 However, the study warns that these rights can introduce a

29 See Joseph Stiglitz, Democratic Development as the Fruits of Labor, 4 PERSPECTIVES ON WORK 31 (2000).
30 Id.
31 See OECD, supra note 16, at 10.
32 Id., at 11.
33 Id., at 82
new distortion in the market if unionized workers succeed in raising their wages and working conditions above market levels.\textsuperscript{34}

The OECD suggests that fears that improved compliance with core labor standards could jeopardize trade reforms are unfounded.\textsuperscript{35} 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.\textsuperscript{36} However, comparisons of quantifiable economic indicators and qualitative variables of economic freedoms in general and freedom of association, in particular, cannot yield perfect results. A more recent study examined the influence of the industrial relations system on direct foreign investment in 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.\textsuperscript{37}

Although economic reasons are the most typical reasons for disrespect, sometimes they play less important role than political reasons do, as the next section will discuss.

\textit{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

\textsuperscript{34} Id., at 12.

\textsuperscript{35} Id., at 112.

\textsuperscript{36} Id., at 12.

repressions, the governments might also restrict other fundamental rights for political purposes. For
instance, they may use forced labor to build military infrastructure, suppress a rebel population 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 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.\textsuperscript{38} Freedom of association comes first in the ILO list, which emphasizes the
importance of this principle. Freedom of association is the only enabling principle by means of
which workers can reach agreements with employers in the process of collective bargaining, which
would implement their other rights. 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, which might create obstacles for workers’ organizations.

Another particularity 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 realization of trade union rights.\textsuperscript{39} It
is hardly possible to imagine strong and independent trade unions in a non-democratic state, where
basic human rights such as access to information and freedom of assembly are not respected.

Freedom of association not only allows workers to organize and to negotiate their workplace
problems but also increases their power \textit{vis-à-vis} employers and in relation to the state. Countries
which lack labor law enforcement mechanisms including the least developed countries will certainly

\textsuperscript{38} See ILO Declaration on Fundamental Principles and Rights at Work, \textit{supra} note 10.

\textsuperscript{39} ILO, Resolution concerning Trade Union Rights and Their Relation to Civil Liberties,
benefit from the increased power of workers when exercised responsibly. 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 rather than in democracies. As Freeman points out, “if the world consisted solely of democracies, the argument against global labor standards would carry substantially more weight”. It is not surprising that almost all authoritarian regimes prevent freedom of association. Using corporate law terminology opposition to freedom of association can be described as the blocking minority argument. Although the establishment of freedom of association will make the society better off, some groups will be worse off. Usually the ruling elite is a minority, that has concentrated political power and the authoritarian elite uses its ability to suppress trade unions. Trade unions are seen by non-democratic political regimes as a danger to political stability and a source of 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 Block. In South Africa unions were also the leading force in the struggle against apartheid. More recently, unions in Zimbabwe have been the target of Robert Mugabe because they are seen as the main opposition

41 See Freeman, supra note 28, at 302.
force.\textsuperscript{44} 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.\textsuperscript{45}

Strong authoritarian regimes resort to political repressions to prevent potential revolt against their rule. On the other side of spectrum are governments which do not have capacity to enforce their laws in their territories. The next section discusses lack of resources as a reason for disrespect of core labor standards.

\textit{D. Lack of Resources as a Reason for Disrespect}

Violations of core labor rights may also occur in countries which 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.\textsuperscript{46} Countries like Somalia or Iraq today can hardly be blamed for labor rights violations, simply because their governments cannot effectively implement their policies in conditions of political turmoil or civil war.

Countries under foreign occupation or at war as they indeed cannot enforce their laws and therefore are not likely to be subject to any kind of sanctions for disrespect of core labor standards. Governments in these countries are more likely to spend their resources to stabilize their societies and strengthen their political power and will see labor standards as secondary and non-urgent.


\textsuperscript{46} OECD, supra note 16, at 152.
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 (military, public health etc.).

Law enforcement and informal economy remains an important problem in many countries – not only poor but also rich and transitional.\textsuperscript{47} 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.\textsuperscript{48} Another problem is the informal economy where a large portion of workers work in the unregulated shadow sector.\textsuperscript{49} The problem with the informal economy is that the level of organization is much lower there and it is very difficult to monitor compliance with international labor standards than in more transparent systems.\textsuperscript{50}

The literature suggests that the lack of resources fails to explain violations of core standards of freedom of association and forced labor.\textsuperscript{51} However, realization of freedom of association and implies not only to refrain from intervention in union affairs, but also an affirmative duty to protect unions \textit{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 the government’s opposition to it. There is nothing in ILO conventions

\textsuperscript{47} See: International Labour Conference, 90th Session, Report VI, Decent Work and the Informal Economy, Sixth item on the agenda, International Labour Office, Geneva


\textsuperscript{50} See ILO, supra note 47, at 71-74 (2002).

\textsuperscript{51} Steve Charnovitz, \textit{Trade Law and Global Governance} 244 (2002).
which makes forced labor a violation which could be carried out only by the state and not by private parties.

E. Practical Meaning of Various Reasons for Disrespect

The main hypothesis from this review is that it should be easier to influence those countries which disrespect core labor standards on economic grounds than those which 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 other labor rights on political grounds, the cost of loosing 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 to retain political control, it is hardly possible that sanctions would be effective, unless they lead to a dramatic change in the economic situation in the country as in South Africa.\textsuperscript{52}

An important implication of differences between economic and political motivations to suppress trade union rights relates to country’s international reputation. A poor international

\textsuperscript{52} Such dramatic changes are difficult to anticipate when countries have supportive “bigger brothers” such as China in case with Myanmar and Russia in case with Belarus as will be shown below.
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 relatively democratic countries that do not follow international standards on economic grounds.

Sanctioning countries which do not respect core labor standards because of the lack of resources will not make sense, if the governments are incapable to enforce their laws. However, if the government is strong enough and 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 the 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, shareholders activism, public campaigns and codes of conduct. These methods


target consumers’ and shareholders’ sense of social responsibility for their purchasing decisions. But
in the absence of transparency and universal disclosure rules, the supply of information about
working conditions is costly to obtain and unavailable at the point of purchase of the goods in
question. 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.55

Trade is often seen as an effective tool to foster economic development.56 The benefits of
international trade are obvious from an economic perspective – it helps gain export earnings,
increases diversification of national economies and promotes foreign investments. Others see trade
as one of the ways to foster development and growth of transitional countries by providing special
tariffs, which does not make goods from economically weaker countries more competitive.57 At the
same time, some economists are not so optimistic about trade and argue that it increases inequality.58

Some methods to promote core labor standards can be very costly. For instance, World
Development Report 1995 addressing the issue of child labor called for programs that increase
income security, reduce costs of education, and improve the quality schooling.59 Panagariya refers

55 See Kryvoi, supra note 2, at 381 (discussing the limitations of international labor law and
litigating labor rights in national courts).
56 See L. Alan Winters, International Trade and Poverty: Cause or Cure?, 39 THE AUSTRALIAN
57 Bernard Hoekman, Constantine Michalopoulos & L. Alan Winter, Special and Differential
Treatment of Developing Countries in the WTO: Moving Forward After Cancún, 27 THE WORLD
ECONOMY 481 (2004).
58 See Ajit Ghose, Global Inequality and International Trade, 28 CAMBRIDGE JOURNAL OF
59 See WORLD BANK, WORKERS IS AN INTEGRATED WORLD, WORLD DEVELOPMENT REPORT
to a study done by Consumer Utility and Trust Company, a NGO based in India, it will cost anywhere between $12 billion to $18 billion per annum in India alone to send all existing child workers to schools.\(^6\) It is unlikely that developed countries would be willing 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 it does not require direct financial spending.\(^6\) Unlike multilateral sanctions, these sanctions can be implemented relatively quickly as there is no need to achieve international consensus.\(^6\) There is usually an aspiration that other countries would join, and that the unilateral character of sanctions might change to multilateral.

There have been successful examples of the use of trade to enforce labor standards. US-Cambodia bilateral Trade Agreement is a good example. The United States offered an increase in the textile quota by 14 percent if working conditions in the Cambodia textile and apparel sector substantially complied with local law and internationally recognized core standards.\(^6\) The combined efforts of the United States and the ILO have lead to substantial improvement of labor standards in Cambodia.\(^6\)

\(^{60}\) See Panagariya, supra note 5 at 6.

\(^{61}\) However, the international economic competitiveness of the country imposing sanctions can be hurt by reduction of trade with the target country.

\(^{62}\) The European Union on which this paper is primarily focused is an exception here, because many of its decisions should be agreed by consensus of various states.


\(^{64}\) See Kolben, *supra* note 3, at 255.
One of the most promising avenues for addressing gross violations of labor standards to link these rights with trade preferences. The idea of granting developing countries preferential tariff rates for industrialized markets was proposed by the first Secretary-General of United Nations Conference on Trade and Development (UNCTAD) at its first conference in 1964. At the second UNCTAD conference the “generalized system of preferences” was formally adopted. In 1971 the General Agreement on Tariffs and Trade (GATT) contracting parties allowed preference-giving countries to gain preferential tariff treatment under national GSP schemes. Initially such preferential treatment was allowed for ten years period and in 1979 was extended for an indefinite period.

As stated in Resolution 21 (ii) taken at the UNCTAD II Conference in New Delhi in 1968, “... the 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
(c) to accelerate their rates of economic growth.”

According to UNCTAD, as of 2007 there were thirteen national GSP schemes notified to UNCTAD secretariat, but most of them do not link trade to labor rights.

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65 The Preamble of the GATT mentions the elimination of discriminatory treatment in international commerce and Article XIII articulates the basic the GATT principle that like good should be treated alike without discrimination. Therefore initially preferential treatment was regarded as discrimination not allowed by GATT.


68 Id.
Bob Hepple considers linking GSP to labor rights is “a controversial market-based approach that seeks to relocate globalized labor law into the field of international trade law”.\(^{69}\) Indeed, the very goal of trade agreements is to liberalize trade and attaching labor strings to them is not always consistent with free trade. In 2004 the WTO Appellate body put into question compatibility of linking human rights to trade preferences, declaring that any preferences granted must be based on objective and transparent criteria for the election of the beneficiary countries.\(^{70}\) Although the decision did not deal specifically with labor arrangements, the special arrangement initiatives became a matter of some uncertainty under GATT.\(^{71}\) 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\(^{72}\) and can potentially be challenged in the framework of the WTO dispute settlement mechanism.

The first GSP scheme was implemented by the European Community in 1971 through different regulations for industrialised products, textile products, agricultural products and those covered by the European Coal and Steel Community Treaty.\(^{73}\) The GSP is a twofold measure – on

\(^{69}\) See Hepple, *supra* note 4, at 89.


the one hand, it provides additional trade preferences to developing and transition countries, and on the other hand, the governments can withdraw these preferences can in certain cases.

The United States and the European Union are the only legal systems, which have incorporated social clauses into their GSP and use withdrawal procedures for those who do not comply. The linkage between trade and labor is already more than half a century old. A number of studies have already dealt with comparing of 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” criticized for being based on geopolitical and foreign policy concerns. Compared to the United States GSP, the European Union’s system allegedly does not undermine the rule of international law by directly referring to the ILO eight core conventions. The procedure in the European Union is considered more transparent and some authors claim that there is “no evidence of preferences being granted or denied by the European Union for protectionist or political purposes”. The European Union started to resort to unilateral measures to address violations of labor rights only recently, and the GSP rules are reviewed every ten years. The rest of this Part deals with the practice of application of GSP provisions by the European Union.

76 Id.
77 George Tsogas, Labour Standards in the Generalized Systems of Preferences of the European Union and the United States, 6 EUROPEAN JOURNAL OF INDUSTRIAL RELATIONS 349, 125 (2000); Hepple, supra note 4, at 105.
78 Id. at 124.
79 Id, at 105. The absence of political purposes will be put in question at the end of this paper.
B. 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 one fifth of developing country exports and 40 percent of European Union imports originate in developing countries.\(^8^0\) The European Union is also the world’s largest importer of agricultural products from developing countries, absorbing more than the United States, Canada and Japan taken together.\(^8^1\)

Increasing economic cooperation by means of liberalized trade was the main reason for integration in Europe, which led to significant economic growth.\(^8^2\) There are two central elements of this integration – 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 the establishment of a common customs tariff and a common commercial policy towards third countries.\(^8^3\) This means that goods from the third countries receive identical treatment in all Member States. Once the goods enter the European Union, they freely circulate among Member States along without being subjected to any customs charges and other discriminatory treatment.

Article 133, 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

\(^8^0\) European Commission, *Developing Countries: Commission Unveils System of Trade Preferences for Next Ten Years – Simple, Transparent and Objective*, 7 July 2004 IP/04/860.

\(^8^1\) Id.


rates, the conclusion of trade agreements, the achievement of uniformity in liberalization, in export policy and in protective trade measures. According to paragraph 3 of Article 133, the European Commission submits proposals to the European Union Council for implementing the common commercial policy, which acts by a qualified majority. Therefore these are the European Community bodies, and not the Member States which develop and implement the GSP regime. 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 taken by a qualified majority”.84

Regulation of collective labor rights may seem problematic from the point of European Union Law. Article 137(5) of the Treaty establishing the European Community provides that it may not legislate on freedom of association and the right to strike within the Community.85 From the first sight, influencing the way collective labor rights are realized in non-member States does not fit very well in the competence of the European Community. However, the Charter of Fundamental Rights of European Union clearly retains collective labor rights.86 In addition, all EU States, as Members of the ILO, are bound by the ILO Constitution87 which contains freedom of association as well as by the Declaration on Fundamental Rights and Principles at Work which spells out the four core labor standards.88

As already mentioned, the European Union initially adopted its GSP in 1971. Unlike the United States GSP which provides only for sanctions, the European Union provides an additional

84 Tsogas supra note 77, at 125.
85 EC Treaty, supra note 83.
88 See Declaration on Fundamental Rights and Principles at Work, supra note 10.
way to promote labor standards by giving additional trade preferences for “good” conduct. Although the effect of GSP arrangements is not always obvious\(^8^9\), they are generally considered to be beneficial for developing and transitional countries, because they make goods from these countries more competitive.

The European Union Council Regulation for a ten-year period from 2006 to 2015 establishes the current regime of the GSP.\(^9^0\) According to Article 1 of the Regulation, there are three types of arrangements for beneficiary countries.\(^9^1\) 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 (the "GSP+"), which provides for additional benefits for countries implementing certain international standards in human and labor rights, environmental protection, combating illegal drugs’ trafficking, and good governance.\(^9^2\) The special incentive arrangement also provides for suspension of specific duties on certain products originating from the so-called vulnerable countries.\(^9^3\) In 2005 the European

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\(^8^9\) See Arvind Panagariya, *EU Preferential Trade Arrangements and Developing Countries*, 25 *The World Economy* 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 which results in *de-facto* discrimination of developing countries).


\(^9^1\) Prior to that there were five 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 LDC’s; (f) “Everything but Arms”, for the world 50 poorest countries. See Council Regulation (EC) No. 2501/2001.

\(^9^2\) See Commission Decision 2005/924/EC for the list of GSP+ beneficiary countries.

\(^9^3\) According to § 3 of Article 9 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
Commission adopted the list of fifteen countries which can benefit from such arrangements. 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, in the aim of granting the least-developed countries "duty-free and quota-free" access to the EU market.

The European GSP regime provides for a procedure of withdrawing from preferential treatment countries which seriously and systematically violate the principles of conventions listed in the annex to Council regulation establishing the regime of trade preferences. The list of conventions includes all eight ILO fundamental conventions. The procedure for withdrawal consists of four stages: consultations between Member States and the Commission, initiating and

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95 See EU’s GSP, supra note 90, Section 3.
96 See EU’s GSP, supra note 90, Article 16.
97 Convention concerning Minimum Age for Admission to Employment (No 138); Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No 182); Convention concerning the Abolition of Forced Labour (No 105); Convention concerning Forced or Compulsory Labour (No 29); Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value (No 100); Convention concerning Discrimination in Respect of Employment and Occupation (No 111); Convention concerning Freedom of Association and Protection of the Right to Organise (No 87); Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No 98).
98 See EU’s GSP, supra note 90, Article 18.
conducting an investigation\textsuperscript{99}, monitoring and evaluating the situation for a period of six months\textsuperscript{100}. Finally, the Commission makes its decision on temporary withdrawal, which enters into force six months after it was taken, unless the reasons justifying the withdrawal no longer prevail.\textsuperscript{101}

The next section of the Article deals with the cases when withdrawal of violators of fundamental labor standards under the EU’s GSP was triggered or was about to be triggered.

**IV. CASE STUDIES ON THE USE THE EUROPEAN UNION’S GSP**

**A. Myanmar**

A military coup in Myanmar (Burma) in 1962 was a starting point for gross human rights violations which continue until today. After tens of thousands of Burmese rallied for democracy in 1988, the military junta formed the SLORC (State Law and Order Restoration Council) to strengthen its political power. The human rights situation in Burma continued to deteriorate sharply throughout 1989, following the bloody end in September 1988 of Myanmar’s pro-democracy demonstrations, when at least 3000 students and other largely unarmed civilians on the streets of the capital and other cities were massacred.\textsuperscript{102} The SLORC generals consolidated their rule with forced labor, rape, torture, forced relocation, and intimidation.

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

\textsuperscript{99} *Id.* Articles 19 & 20.  
\textsuperscript{100} *Id.* Article 20.  
\textsuperscript{101} *Id.* Article 20.  
and Karenni.\textsuperscript{103} However, with a massive infusion of new capital, largely from selling natural-gas concessions offshore, an ethnic cleansing operation was initiated by the junta in an attempt to consolidate its rule in rural areas of Myanmar.\textsuperscript{104} Violence was extensively used against the Karen indigenous people when the junta sought to raise foreign exchange by harvesting world's last sizable stands of teak.\textsuperscript{105}

Following these events, the European Union imposed arms embargo in 1990 and suspended defense cooperation with Myanmar.\textsuperscript{106} The introduced visa ban and asset freeze was directed against the Myanmar senior military officers, members of government, and their families.\textsuperscript{107} European Union registered companies were prohibited from making financing available to named state-owned enterprises.\textsuperscript{108}

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 withdrawal of Myanmar from the EU’s GSP because of its use of forced labor.\textsuperscript{109} The submission to the European Commission quoted the ILO regarding the violations occurring in Myanmar:

\begin{quote}
\textsuperscript{104} \textit{Id.}
\textsuperscript{106} \textit{See:} The EU’s relations with Burma / Myanmar. Available at: http://ec.europa.eu/comm/external_relations/myanmar/intro/index.htm.
\textsuperscript{107} \textit{Id.}
\textsuperscript{108} \textit{Id.}
\textsuperscript{109} \textit{Id. at 1.}
\end{quote}
...women 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...110

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.111 Obviously, Myanmar breached its obligations under The 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.112 Myanmar authorities claimed that their practices fell under the exception provided by Article 2 (b) of the ILO Convention Concerning Forced Labor113, 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”. Myanmar

111 International Labour Organization, Convention No. 29 concerning Forced or Compulsory Labor (1930), Article 2.
authorities did not implement ILO recommendations and refused to allow the ILO fact-finding team into the country.¹¹⁴

Myanmar was the first country from which the European Union in 1997 withdrew trade preferences for the widespread use of forced labor.¹¹⁵ The Resolution withdrawing the preferences specifically references the ILO in preamble, noting that the ILO recognized Myanmar’s practices as forced labor and has called for immediate repeal of the laws in question in order to ensure compliance with the letter and the spirit of Convention No 29.¹¹⁶ As of 2007 Myanmar is still deprived of trade preferences under the 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.¹¹⁷ Since 1996 the political situation in Belarus has been deteriorating under the rule of authoritarian President Alexander Lukashenka. The authorities restricted basic human rights such as freedom of speech, freedom of demonstrations, systematically rigged elections and oppressed political opposition. The United Nations appointed a Special Rapporteur on the situation of human

¹¹⁵ Id.
¹¹⁶ The United States have also introduced sanctions against Burma noting that the human and labor rights violations in Burma are of indeed of egregious nature and included not only forced labor but also rape as weapon of intimidation, forcible conscription of child soldiers and ethnic cleansings against minorities within Burma. See Burmese Freedom and Democracy Act. June 17 2003.
¹¹⁷ These countries are Poland, Lithuania and Latvia.
rights in Belarus. The most serious allegation against the regime is the disappearance of three leading opposition leaders and a journalist in the 1990s.

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 EU adopted a list that includes individuals subject to travel bans to the European Union.

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

The authorities of Belarus have always opposed the existence of independent organizations 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 organized what can only be called a systematic campaign against the main trade union organization, the FTUB, culminating in

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118 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.
July 2002 in the taking over of this organization by one of the President’s closest advisers.

According to the ILO Convention concerning Freedom of Association and Protection of the Right to Organize adopted workers and employers, without distinction whatsoever, 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.\(^\text{123}\) 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 were in breach of these principles by creating obstacles to registration of trade union organizations, interfering in their affairs and discriminating against members of independent trade unions\(^\text{124}\).

On 23 December 2003 the European Commission decided to initiate an investigation of the alleged violations of trade union rights.\(^\text{125}\) 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.\(^\text{126}\) The proceedings were initiated at a complaint of a number of

\(^{122}\) *Id.*

\(^{123}\) International Labour Organization, Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize (1948), Article 2.


international trade union organizations. 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, which is the strongest measure the ILO can take against a Member State, and is only taken in exceptionally grave cases. The work of the Commission of Inquiry was finalized in a report of July 2004, which criticized the policies of the Belarusian authorities.

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. The resolution makes several references to the ILO

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127 International Confederation of Free Trade Unions, the European Trade Union Confederation and the World Confederation of Labor.


examination of the situation in Belarus. It mentions the ILO Commission of Inquiry report of July 2004, which contained twelve recommendations of specific steps to improve the situation in Belarus\textsuperscript{131}, and 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\textsuperscript{132}. The European Union Resolution also mentioned the June 2006 report of the ILO Committee on the Application of Standards of the International Labor 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”\textsuperscript{133}. As the situation with trade union rights in Belarus does not change, the resolution withdrawing the preferences entered into force in June 2007\textsuperscript{134}.

The main reason why Belarusian authorities limit freedom of association is that they are trying to prevent any potential revolt or “color” revolution.\textsuperscript{135} The unions are not their only target: NGOs and political parties also have hard times in Belarus.\textsuperscript{136} The memories of the Solidarity trade unions movement in Poland, which greatly contributed to the collapse of the Socialist Block, are too fresh to be ignored by the Belarusian authorities. This is the main reason why they do not comply


\textsuperscript{132} Id. § 8.

\textsuperscript{133} International Labour Office, Report of the ILO Committee on the Application of Standards of the International Labor Conference (June, 2006).

\textsuperscript{134} Id. § 12.

\textsuperscript{135} The Belarusian authorities strengthened their grip after the Orange Revolution in the neighboring Ukraine and the Revolution of Roses in Georgia.

with the requests of the International Labor Organization and the European Union to comply with
the obligation to respect freedom of association.

C. Pakistan

Pakistan is an Asian country with population of nearly 170 million people which 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, and 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.137

Labor rights violations are a part of a bigger picture of human rights violations in Pakistan, as
a study of Human Rights Watch provides 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 coerc e
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.138

Pakistan ratified the ILO Convention on the Worst Forms of Child Labor and undertook
an obligation to take urgent measures to prohibit and eliminate the worst forms of child labor,

which include debt bondage and selfdom. Clearly, the government of Pakistan was in breach of its obligation.

In 1995 a number of international and European trade unions submitted a petition to the European Commission with 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.

The submission urged the European Commission to initiate an investigation in accordance with European Union Regulation on the GSP. 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.

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139 International Labour Organization, Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), Articles 1-3.
140 The International Confederation of Free Trade Unions, the European Trade Union Congress, the International Textile, Garment and Leather Workers; Federation and the European Trade Union Committee: Textiles, Clothing and Leather.
142 Id.
143 See Tsogas, supra note 77, at 122.
Quite on the contrary, in 2005 the European Union included Pakistan in the list of countries which benefit from special incentives for the protection of labor rights and environment and for combating drug production and trafficking. 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. 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. In 2007 the European Commission proposed to give Pakistan 200 Euro million in economic aid.

D. Analysis of Cases

Imposing sanctions for violations of labor rights is more difficult than for “regular” gross human rights violations such as torture or extrajudicial killings. The main reason is that even the detailed obligations under ILO conventions allow for a great deal of flexibility in 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 implements

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these principles and sanctions for their violation. For instance, evaluating freedom of association using a uniform standard is very difficult, because it is hardly possible to design an absolute rather than a relative set of specific measurable standards. 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.

The most obvious similarity between these the situations in Myanmar, Belarus and Pakistan is the existence of well-documented violations of the core labor standards. Forced labor in the case of Myanmar, disrespect of freedom of association in case of Belarus, and bonded and child labor in the case of 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 which has caused the deterioration of political freedoms; and 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 sharp deterioration of political participation in Pakistan, and the labor rights violations are deeply entrenched problems being committed by the private sector, not by the government as part of a campaign of political oppression. However, the magnitude of violations of core labor standards is very different. In Pakistan thousands of people were forced to work, beaten and tortured; millions of people were suffered from “contemporary forms of slavery”. In Burma thousands of people were tortured and forced to work on exhausting projects. Belarus does not look very impressive in this context, because the reported violations did not amount to torture, physical injuries or systematic use of force.

148 MARGARET HILTON, MONITORING INTERNATIONAL LABOR STANDARDS. QUALITY OF INFORMATION 18 (2003).
149 See supra note 137.
150 See supra note 110.
against trade union leaders. The main problem in Belarus is that independent trade unions have hard
times registering their organizations, their leaders are often squeezed out of jobs.\footnote{See supra note 122.}

The motivation for violating labor standards in these three cases is different. The main
reason for violating core labor standards in Pakistan is economic in sense that the government does
not allocate resources necessary to deal with the wide-spread use of child labor and bonded labor.
The very fact that the government has failed to eradicate the behavior is likely to be seen as a lesser
failure than if the government were itself the entity actively using bonded labor and child labor.
Belarus repressed independent trade unions on purely political grounds as a part of campaign of
oppressing democracy in the country. In the case of Myanmar we can see two main reasons for
using forced labor. One reason is economic – the government wanted to build a pipeline cheaply by
making people work at a gunpoint. It is quite possible that the Burmese authorities could not raise
enough money through taxes imposed on impoverished population and therefore resorted to forced
labor. Another reason is political – the military junta was trying 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.\footnote{Myanmar GGP per capita is $1,693, Pakistan’s GDP per capita is $2,653 and Belarus’ GDP
per capita is $7,711 (IMF, 2005).} Therefore, Belarus is seen as a country which can afford freedom of association, which is to a certain extent a “cash” right. To support this point - other former Soviet Union republics like Uzbekistan have virtually no independent trade unions whatsoever\footnote{U.S. Department of State, Uzbekistan Country Report on Human Rights Practices - 2006.
Available at http://www.state.gov/g/drl/rls/hrrpt/2006/78848.htm; U.S. Department of State,
Union’s GSP arrangements. The possible explanation is that other Soviet Union Republics countries are very poor compared to Belarus and therefore are not expected to have as high a level of labor standards.

Presumably, the European Union takes a hard look into 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 countries the European Union has not withdrawn them from the GSP regime.

Another important factor is how expensive for the European Union to introduce economic sanctions. The economic importance of Pakistan with a population of about 170 million people and significant foreign direct investments is more significant that that of Myanmar’s population of 50 million people and almost no foreign investments or Belarus with its 10 million population. It is hardly possible that the European Union would introduce sanctions against China, because that would be too costly even from purely economic point.

Western nations see Pakistan as an important ally in the war on terrorism following the 9/11 attacks. This is why the United States and the European Union tend to turn a blind eye on human


154 Uzbekistan GDP per capita is $1,920 and Tajikistan’s is $1,388 (IMF, 2005).
155 See Uzbekistan, supra note 153.
156 Foreign direct investments were around 12,400 million U.S. dollars in Pakistan, around 2,700 million U.S. dollars in Belarus and around 5,000 million U.S. dollars in Myanmar (World Investment Report, 2006).
rights violations there.\textsuperscript{157} Moreover, the willingness of Pakistan to engage in dialogue and to modify its legislation may have played a decisive role not to proceed with the complaint.\textsuperscript{158} On the other hand, Belarus with its pro-Russian policies and hypocritical president\textsuperscript{159} and Myanmar ruled by military junta backed by China are not seen by the European Union as allies. 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.\textsuperscript{160}

An importance difference between Pakistani case on the one hand and Belarus and Myanmar on the other hand, is the degree of government involvement in labor rights violations. Pakistani government can largely be blamed for passivity and non-intervention into labor rights violations while Belarusian and Myanmar government themselves committed violations. Sanctions are unlikely to be effective in pushing Pakistan to eradicate child labor in private sector, because ingrained cultural traditions and lack of economic opportunities in rural areas play a more important role in this


\textsuperscript{160} 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 other were economic interests of the US multinationals were strong. \textit{See}, e.g.,: TAUBMAN, WILLIAM, \textit{Globalism and Its Critics; The American Foreign Policy Debate of the 1960s} (1973).
problem rather than the “bad will” of the government. 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 more important role than black letter law when decisions on withdrawing GSP preferences are taken. 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 effectiveness of GSP sanctions and the importance of distinguishing between economic and political justifications for disrespect of core labor standards.

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.\textsuperscript{161} Sanctions have also been used to protect human rights, to halt nuclear proliferation, to settle expropriation claims, and to combat international terrorism.\textsuperscript{162}

As it has been shown, the European Union uses its GSP regime in a limited manner to sanction countries, which violate the core labor standards. Exclusion of countries from the GSP


\textsuperscript{162} Id.
for violations of labor standards can lead to economic losses and reputational damages. Sanctions can send a strong signal that a country is potentially a bad investment destination.\textsuperscript{163} No country likes bad international publicity. Even if a country has been traditionally considered as a violator of human rights it usually undertake at least nominal steps to show their willingness to cooperate and that the alleged wrongdoings are not a matter of substantive violations\textsuperscript{164}, but a result of different understanding of the standards or politically motivated paternalism of other countries.\textsuperscript{165}

Empirical studies suggest that economic sanctions seem more effective when aimed against erstwhile friends and close trading partners.\textsuperscript{166} This is not the case with Belarus and Myanmar, which are not former allies of the West. Both Belarus and Myanmar have a powerful non-Western “older brother”, who turns a blind eye to violations of labor rights and human rights violations in general and provide economic support. Belarus has traditionally been backed by Russia, which supported President Lukashenka’s \textit{coup d’état} in 1996.\textsuperscript{167} China is the key trade, investment and political partner of Myanmar.\textsuperscript{168} In January 2007 China and Russia vetoed a UN Security Council resolution

\begin{footnotesize}
\begin{enumerate}
\item See Compa \& Vogt, \textit{supra} note 75, at 204.
\item For instance, Myanmar authorities claimed that “community work” is an integral part of Myanmar culture.
\item In response to 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. \textit{See} Interfax, Lukashenka: Evrosoyuz ne vyderzhal konkurentsii s Belarusyu na svoikh rynkah (Lukashenka: European Union Could Not Sustain Competition with Belarus on its Internal Market) 29 December 2006, available at http://news.tut.by/79889.html.
\item See Hufbauer et al., \textit{supra} note 161, at 104.
\item Russia supplied almost 60 percent of imports in 2005 and is by far the most important source of imports. It provides the raw materials such as fuel, metals and chemicals required by Belarusian industry. \textit{See} Economist Intelligence Unit, \textit{Country Profile of Belarus} 30 (2006).
\end{enumerate}
\end{footnotesize}

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.\footnote{See generally GARY HUFBAUER, JEFFREY SCHOTT, & KIMBERLY ELLIOTT, ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY (1990).} 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.\footnote{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...} However, even in this case, they might be enough to harm people in these countries, but not to fix the governmental policy.\footnote{172}
Sanctions also lessen the importance of multilateral cooperation with non-democratic regimes, which often is difficult to obtain. For instance, there is an ongoing debate in Europe on whether it is better to isolate the Belarusian regime with its violations or to propose cooperation by exposing officials of the country to better standards. 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.

The general concern that withdrawing trade benefits from countries violating core labor standards on political grounds can hurt the people in the name of whom rights the sanctions are introduced. Policies to isolate countries in which human rights are violated and to exclude them from prosperity that accompanies open trade may well cause human rights to deteriorate. It is therefore preferable to use more “smart sanctions” targeting particular persons and companies as opposed to blunt sanctions imposed on the whole country.


 Belorusski Partisan, Biznesmeny Vzyvaiut k ES (The Businessmen Appeal to the EU), 19 April 2007, available at http://www.belaruspartisan.org/bp-forte/?page=100&news=12023 (Belarusian businessmen claim that the withdrawal of Belarus from the GSP will hurt small businesses in the first instance, and not the government).

 Interfax, Ex-President Litvy prosit ne Izolirovat Belarus (Ex-President of Lithuania Calls Not to Isolate Belarus), available at http://bdg.by/news/news.htm?101744,1.

 Donald L. Losman, Good Intentions Gone Bad, Washington Post, October 6, 1996.

Skeptics argue that the trade sanctions may produce a perverse effect and trade liberalization is a better alternative policy to combat labor rights violations such as child labor.\textsuperscript{176} However, trade sanctions may have other effects which go beyond the target country. For instance, they can contribute to the international definition, promulgation, recognition, and domestic internalization of human rights norms.\textsuperscript{177} Sanctions can be an effective way to demonstrate commitment to a particular set of values, such as core labor standards. Imposition of sanctions may also deter other countries which 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. The situation with freedom of association in Belarus and with forced labor in Myanmar has not improved, despite the sanctions introduced by the EU. Although there is little evidence that the EU sanctions have improved situation in Myanmar or Belarus, sanctions may have important effects for the development of the system of protection of international labor standards. The very fact of keeping labor standards in international spotlight, blaming the governments, and morally supporting the oppressed groups are important to prevent further deterioration of human rights in target countries.

\section*{VI. CONCLUSION}

Linking trade and labor standards is one of few ways to apply “hard” law as opposed to political pressure to make countries comply with their international obligations to respect core labor


\textsuperscript{177} See Cleveland, \textit{supra} note 7, at 6.
standards. In using this linkage it is important to distinguish why the countries adopted the policies which 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 which 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 are unlikely to change their practices, although the attention of 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 demonstration of commitment to the fundamental labor rights. This should be taken into account when decisions whether to impose sanctions are made.