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BACKGROUND

The AFL-CIO has decided not to present an exhaustive compilation of specific cases of violations this year, despite the fact that such violations continue unabated in Guatemala. Instead, the AFL-CIO will limit its 1992 petition to several points on which the Subcommittee stated in October 1991 that new information would constitute grounds for GSP review, even though we believe that other types of violations are more urgent and flagrant, especially the continuing practice of management retaliation against workers who try to form unions.

+ X In so doing, the AFL-CIO wishes to make clear for the record that it does not accept the Subcommittee's categorization of our 1991 cases, nor its criteria for evaluating eligibility under the GSP law. The AFL-CIO continues to believe that the ongoing, overt violations of worker rights are rampant in Guatemala, resulting in widespread fear among workers and the lowest rate of unionization in Central America. Even under the Subcommittee's narrower criteria, however, the AFL-CIO believes that GSP benefits for Guatemala should be terminated.

REFORMING THE LABOR CODE

In its 1991 Worker Rights Review Summary, the Subcommittee agreed with our view that Guatemala's labor code does not meet international worker rights standards (pp. 7-8). According to the Subcommittee, however, the salient issue was whether the government was making "meaningful attempts" to reform the labor code. If such attempts were to cease, the Subcommittee stated, this fact "would qualify as 'substantial new information' in the context of GSP regulations."

The Subcommittee concluded last year that "meaningful attempts" to change the labor code were indeed under way, on the grounds that Guatemalan Confederation of Trade Union Unity (CUSG) General Secretary Juan Alfaro, who is also a Congressman, had introduced new labor legislation in the National Assembly, and that the government and the Union of the National Center (UCN) party were supporting the reform bill.

Deal Code (Congressman Alfaro now reports that although his bill (No. 786) passed the first reading, the legislation is dead. Both the government and the UCN have abandoned it. Furthermore, based on his experience in the Assembly, Brother Alfaro believes that the

government is apathetic toward any labor code reform, and will not take serious and effective steps until the problem is perceived in more urgent terms.

As a result, Guatemalan workers are left to function under a law that clearly fails to protect workers against widespread violations of worker rights, with no meaningful prospect for change in sight. Without changes to the labor code, especially increasing the penalties for violations, Guatemalan managers, both private and public, will continue to violate worker rights with impunity. As stated by the U.S. State Department in its 1992 Human Rights Report, "labor courts, responsible for enforcing laws prohibiting such [anti-union] discrimination, are ineffective."

BURDENSOME REQUIREMENTS FOR LEGAL RECOGNITION

The Subcommittee recognized (pp. 15-16) that the provisions for legally recognizing unions in Guatemala are not in conformity with international standards. The Subcommittee argued, however, that the government had 1) "used its administrative authority to simplify regulations," including delegating the "responsibility for signing the juridical personalities to Labor Minister Solorzano, eliminating review in the President's office," and 2) made a "good-faith effort to recognize unions as expeditiously as possible" and "continued to grant legal recognition to a substantial number of trade unions."

Administrative Regulations

Regarding the first point, the promised administrative changes to simplify the legal registration process have not been implemented. Presidential review and signature of applications for union recognition is still required. Although the Labor Minister requested that this step be eliminated, legal advisors to the President reportedly declined to accept the Labor Minister's request. As a result, the application for legal recognition for the CAMOSA workers' union languished in the President's office for two months (in addition to the seven months that it took to reach that stage). This long delay was a primary factor in the dissolution of the union's provisional executive committee, forcing workers to begin the organizing process anew (Attachment III).

Furthermore, the Labor Ministry still requires verification of employment status of a union's provisional executive committee members by means of a time-consuming visit to the business by a labor inspector. The Ministry also continues to require verification that union leaders have no prior criminal record by means of a visit by a labor inspector to the presiding local judge. These and other burdensome requirements are imposed not only when a trade union is first formed, but every two years when a new executive committee is elected. Such procedures are not spelled out in the labor code

itself. These are *administrative* regulations which could be simplified without a change in the labor code.

Failure to do so should be viewed in light of other administrative changes made by the Guatemalan government. According to the *International Business Chronicle*, Guatemala has taken significant steps to liberalize administrative procedures for business investment:

In the past, processing the paperwork for an investor took six months and trips to numerous government agencies. Now, within 20 days, after one visit to one window, the investor will have received all the necessary permits and documents. (Jane Wagner, "Guatemala: A Leader Again," *International Business Chronicle*, April 27 - May 10, 1992, p. 6.)

According to the CUSG, not a single one of its applications for recognition or certification was processed within the 60 day limit set forth in article 217 of the labor code. Many union applications, according to the CUSG staff person assigned to help shepherd them through the maze, are still rejected for reasons such as name misspellings or missing address lines.

For example, the application for certification of the new CUSG Executive Committee was submitted to the Director General of Labor on February 25. CUSG had held its convention and elected a new Executive Committee on February 2, 1992. The Directorate had to verify the place of work of each person (14 in total) on the Executive Committee to ensure that the individuals are indeed employed in the firms listed on their application. As of May 5, more than the 60-day legal limit, the CUSG had not received its new credentials. When questioned about the delay, a Labor Ministry official claimed that the CUSG application failed to include a copy of the personal ID card of one Executive Committee member certifying that he can read and write. The member in question, Luis Pacheco, is a well-educated lawyer. According to CUSG staff, the ID copy was not really missing. The employee was just careless. Case 2

Instead of simplifying administrative procedures, as the Guatemalan government told both the Subcommittee and the AFL-CIO it would do, the Labor Ministry continues to impose unreasonable requirements on workers seeking to form trade unions.

Recognition of Unions

Regarding the latter point, namely, that despite unreasonable delays, the Guatemalan government continues to recognize unions, the salient issue is not simply the number of unions recognized, but the *unfair and unequal burden imposed on workers* to

achieve these results. The CUSG, for example, eventually succeeded in obtaining recognition for a substantial number of unions this past year. But these results were obtained not because of government administrative improvements, but because CUSG decided to spend the money to assign a staff person to work nearly full time to visit the Labor Ministry to shepherd applications through the recognition process. The results, in other words, cannot be put forward as evidence that the government is "taking steps" under the terms of GSP conditions. In fact, they are evidence of a violation of worker rights, because in order to achieve legal recognition, unions are unfairly required to spend staff time and resources to achieve what the Subcommittee itself concedes is unduly burdensome. Whatever numerical figures on union recognition the government puts forward as evidence it is "taking steps" should therefore be evaluated in these terms.

CONCLUSION

The AFL-CIO believes that the Guatemalan government has not fulfilled the promises it made to reform the labor and streamline bureaucratic procedures for union recognition. The GSP benefits the Guatemalan government currently enjoys should be terminated.