

BEFORE the UNITED STATES
TRADE REPRESENTATIVE

(letter)

POST-HEARING BRIEF in SUPPORT of

WORKER RIGHTS PETITIONS

regarding

GUATEMALA'S

ELIGIBILITY FOR GSP TRADE BENEFITS

CASE NUMBER 005-CP-02

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SUBMITTED BY:

U.S./LABOR EDUCATION in the AMERICAS PROJECT

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“benchmark” requirements for the extension of GSP benefits nearly a decade ago. Virtually no progress has been made on this issue, however. A lengthy list of cases illustrating impunity over the ten years could be compiled from previous petitions, including key “benchmark” cases like Empresa Exacta.

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The one small breakthrough was the Guatemalan government prosecution, trial and conviction of some of the armed thugs who attacked the SITRABI banana union in 1999. This breakthrough was achieved only with intense pressure provided by the GSP worker rights review process. Even so, at the time these thugs were convicted (March 2001), US/LEAP noted that the outcome resulted in virtually no jail time for the perpetrators while five members of SITRABI's Executive Committee were forced to flee into exile. The conduct of the Guatemalan government at the trial did not meet the “effective prosecution” standard set by USTR in 2000. Consistent failure to cross-examine witnesses and the failure to present new evidence to support its request for increased charges revealed a government that was unwilling or unable to seek genuine justice in this high-profile test case. There was wide-spread acknowledgment as to the short-comings of the trial and a promise that a new trial would be sought. For those who have monitored the worker rights situation in Guatemala over the past decade, it is not surprising that a new trial was never sought once USTR ended its review. More recently:

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No progress has been made in bringing to justice the persons responsible for six recent assassinations of trade unionists: Robinson Manolo Morales Canales, Hugo Rolando Duarte and Jose Alfredo Chacon Ramirez in January 1999; Angel Pineda in March 1999; Baldomero de Jesus Ramirez in June 1999; Oswaldo Monzon Lima in June 2000, and Baudillo Arnado Cermeño Ramirez in December 2001.

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No progress has been made in prosecuting the persons responsible for the July 18, 2001 assaults on the Choi Shin and Cimatextiles workers.

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significantly to a situation in which the unions themselves have been unable to generate support from the workforce and establish themselves as an independent force.

B. LABOR LAW REFORM

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As a recent ILO report has found, Guatemalan labor law falls short of international standards in a number of areas despite several labor law reform initiatives over the past decade. Indeed, the reforms enacted in 2001 contained provisions that posed new obstacles to the exercise of core labor rights. Specifically, the requirement that those seeking to form industrial unions organize more than 50% of the workers in an industry makes the organizing of such unions virtually impossible.

2001 Labor Code
are reversals

While the 2001 reforms allow agricultural workers the right to strike during the harvest, there is no evidence that workers in the countryside (where impunity is most pronounced) have been able to exercise this right in any meaningful way. Indeed, this provision is undermined by the President's broad discretion to ban strikes in "essential economic activities."

The labor law reform package currently being considered in Guatemala contains provisions which could undermine workers' ability to organize unions by making replacement of permanent workers with temporary workers an attractive alternative for employers. The proposed reform of Article (7) would give workers who retire voluntarily the right to claim a severance benefit (currently, only workers who are fired are entitled to severance). While this is an improvement for workers in general, as it is currently written, unless it is combined with a mechanism to discourage temporary contract labor, it could result in a rapidly shrinking base of permanent employees among whom unions could organize.

The reform package also seeks to change Article (8), stating that temporary contract workers will not be entitled to severance. The Guatemalan labor movement accepts this proposal, but reiterates its position that temporary employment contracts should not be permitted for work

- o Many banana workers on these plantations make less than minimum wage.

- o Injured and sick workers are sometimes denied permission to seek medical aid through the Guatemalan Social Security Institute (IGSS); those who insist are sometimes fired.

- o Fired workers are often paid less than full severance.

- o In one banana-producing zone, field workers are not permitted to leave the area when aerial spraying against Black Sigatoka (a fungus that affects bananas) is underway, and are exposed directly to the spray; in another zone, they are pulled from the area when spraying is underway, but must return the following day, when the banana plants are still wet with the sprayed chemical. The workers believe that such exposure has made them ill, but do not know who to complain to, and are fearful of being fired if they do.

- o In a banana-producing zone in San Marcos Department, many workers are not registered with IGSS (Social Security) and do not receive vacation pay.

- o All interviewees said they had never seen labor inspectors visiting their workplaces.

- o When asked, "Have you ever thought of organizing a union?," all interviewees stated that they would never dare do so, because they were sure they would be fired and blacklisted (prevented from ever finding work again in a banana plantation in that area).

- o When asked, "To whom can you complain about employer abuses?," "No one" was the most common answer, though one interviewee answered, "Only to God."