

AFL-CIO

SUPP 2002

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GSP 2002 AR

002-CP-02 Costa Rica

GSP 2002 ANNUAL REVIEW
COUNTRY PRACTICE CASES
CASE NO. 002-CP-02

Costa Rica

(This brief supplements Case No. 002-CP-01.)

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**SUPPLEMENT TO PETITION TO REMOVE COSTA RICA
FROM THE LIST OF BENEFICIARY DEVELOPING COUNTRIES
UNDER THE GENERAL SYSTEM OF PREFERENCES ("GSP")**

SUBMITTED BY:

**AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)**

DECEMBER 2, 2002

Information Required under 15 CFR part 2007.0(b)

The AFL-CIO is pleased to submit this supplement to its June 2001 petition on the worker rights situation in the country of Costa Rica. The sections of the law warranting review are 19 U.S.C. § 2462 (b)(2)(g) and 19 USC § 2462 (c)(7). The AFL-CIO petitions for the withdrawal of Costa Rica's status as a beneficiary developing country pursuant to 19 U.S.C. § 2462(d) on the grounds that the Government of Costa Rica (GOCR) has not been and is not taking steps to afford internationally-recognized worker rights as defined at 19 U.S.C. § 2467(4). The substantial new information presented below illustrates the GOCR's failure to take steps to afford its workers' their core worker rights and its ineligibility for GSP benefits. Costa Rica's ineligibility for GSP benefits also disqualifies the country from benefits under the Caribbean Basin Economic Recovery Act (CBI).

Background

In June 2001, the AFL-CIO petitioned for the withdrawal of Costa Rica from the list of beneficiary developing countries under the Generalized System of Preferences (GSP) and the Caribbean Basin Economic Recovery Act (CBI), based on the Costa Rican Government's failure to protect internationally recognized worker rights.¹ Substantial new evidence obtained since June 2001 strengthens the case for denying GSP and CBI benefits to Costa Rica.² This new evidence includes: the May 2001 decree on public sector collective bargaining;³ the recommendations of the ILO technical assistance mission that visited Costa Rica from September 3-7, 2001; the proposed legislative reforms presented by the Executive in May 2002; the report of the ILO Committee of Experts in June 2002;⁴ and additional cases raised by Costa Rican unions. This substantial new evidence is summarized in a document prepared by the Costa Rican unions.⁵

The Government of Costa Rica (GOCR) claims that it has taken a number of actions to improve respect for worker rights. First, the GOCR claims that it has made efforts to respond to the ILO technical assistance mission that visited Costa Rica from September 3-7, 2001. These actions allegedly include:

Submission of ILO Conventions 151 and 154 for ratification;

¹ 19 U.S.C. 2462(b)(2)(G); 19 U.S.C. 2702(b).

² Pursuant to 19 U.S.C. 2462 (d)(2) the President "shall...withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as a result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2) of this section." Similarly, pursuant to 19 U.S.C. 2702 (e)(1)(a), the President must withdraw Costa Rica's designation as a beneficiary country under the CBI.

³ Reglamento para la negociación de las convenciones colectivas en el sector público, Decreto No. 29576-MTSS, 31 May 2001.

⁴ ILO, *Informe sobre la misión de asistencia técnica realizada en Costa Rica del 3 a 7 de septiembre de 2001*.

⁵ Asociación Nacional de Empleados Públicos y Privados (ANEP), Confederación de Trabajadores Rerum Novarum (CTRN), Coordinadora de Sindicatos Bananeros (COSIBA), and Federación de Trabajadores de Limón (FETRAL), *Petición a la American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)*, 22 November 2002.

Introduction in the Legislative Assembly of a proposed amendment to Article 192 of the Constitution clarifying the right of collective bargaining in the public sector;

Presentation to the Legislative Assembly of a proposed amendment to include collective bargaining in the General Act on Public Administration;

Submission to the Legislative Assembly of a draft amendment to the Labor Code on freedom of association; and

Improvements in the administration of labor justice.

Second, the GOCR purports to have reactivated a process of social dialogue with trade unions and employers. As evidence of this reactivation, the Government cites:

Bipartite discussions between unions and employers belonging to the Costa Rican Union of Chambers and Associations of Private Enterprises (UCCAEP); and

Revival of the Higher Council for Labor; specifically creation of a Commission for Labor Reform to evaluate draft legislation, and a National Commission on Employment to define the framework of a national employment policy.

In addition, the GOCR notes the closing of the COBASUR case by the ILO.)

In fact, since June 2001 the Costa Rican government has continued to foster and promote actions that undermine freedom of association and collective bargaining. None of the serious deficiencies noted by the ILO and described in the AFL-CIO's 2001 petition have been remedied. The labor code explicitly permits direct dealing between employers and employees over terms and conditions of employment. It permits the formation of "Permanent Workers' Committees," effectively controlled by employers, that are authorized to present complaints or requests on behalf of the workforce. And the government continues to encourage the formation of *Solidarista* associations that, despite being explicitly prohibited from collective bargaining, have increasingly taken over functions that properly belong to unions.⁶ Collective bargaining in the public sector is still effectively prohibited for most categories of public employees. FOA

The GOCR's recent promises to reform its labor laws echo promises that were made – and broken – a decade ago. On October 22, 1992 and November 8, 1993 the Government and unions signed agreements providing for reform of labor laws to permit collective bargaining in the public sector. The GOCR did not honor these agreements, and unions continued to report violations of fundamental rights to the ILO and USTR. In 1998, there was another attempt at dialogue resulting in a tripartite agreement, under which the Government promised to enact a series of reforms governing freedom of association and collective bargaining.⁷ This commitment was reaffirmed in an agreement signed November 23, 1999 between the government and unions.⁸

⁶ See ILO Committee of Experts on Application of Conventions and Resolutions, *Individual Observation concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Costa Rica (ratification: 1960)*, 2002 (referencing communications from the trade unions SINDHAC and SICOTRA alleging the conclusion of illegal direct pacts in the passenger and cargo transport sector).

⁷ Consejo Superior de Trabajo, Comisión Ad Hoc de la Concertación. *Informe Concertado "Libertad Sindical,"* 5 October 1998.

⁸ Acta Acuerdo, 23 de noviembre de 1999, entre Jefes de Fracciones Legislativas Mayoritarias, Ministro de Trabajo y Seguridad Social y organizaciones sindicales, acuerdos 8, 10 y 11.

The Government has utterly failed to comply with these commitments or to address in any significant way the repeated criticisms of the ILO. Yet it now makes these same empty promises to USTR.⁹

Failure to Deliver on Promises of Workers' Rights Improvements

Submission of ILO Conventions 151 and 154 for Ratification

The Government claims that it has submitted ILO Conventions 151 and 154 to the legislature for ratification. What it does not say is that the promise to ratify these conventions was contained in its agreement with the unions of October 22, 1992. Despite the ILO Committee of Experts' expression of "the firm hope that it will be adopted in the very near future,"¹⁰ there is no greater likelihood of this law being enacted now than ten years ago. In fact, ratification appears less likely: the Technical Services Department of the Legislative Assembly has indicated that the current proposal for ratification of ILO Conventions 110, 151, and 154 cannot be voted on because they were submitted by a deputy and not by the Executive Branch, meaning that the ratification proposal must be re-initiated.¹¹

⁹ To the extent that the GOCR relies for any assertion that it is "taking steps" to afford internationally recognized worker rights on proposals submitted by the Executive Branch to the Legislature, but not yet made law, the TPSC must disregard the GOCR's arguments. In the first place, the plain language of 19 U.S.C. 2462 (b)(2)(G) states that a country is ineligible for trade benefits if "Such *country* has not taken or is not taking steps to afford internationally recognized worker rights . . ." (emphasis supplied). Had Congress considered the unrequited proposals of a single branch of government to meet the statutory standard, it could easily have said so, but it did not. Rather, Congress logically placed the burden of compliance on the entire government of a country seeking beneficiary status. Moreover, the TPSC's own precedents demonstrate that not just proposing but even enacting legal reforms does not preclude the acceptance of a GSP petition for review. For example, a 1992 petition on Guatemala was accepted even after the passage of labor law reforms GSP Subcommittee of the TPSC, 1992 GSP Annual Review, Worker Rights Review Summary, Case no. 005-CP-92, Guatemala, July 1993). In addition, where the TPSC has described a legislative proposal as "a big step forward," the proposal in question was drafted under the guidance of the ILO and was under "active consideration" in the Legislature (Case no. 005-CP-92). In this case the proposed legislation has not advanced in the legislative process for up to a decade, an unaccountable delay that the ILO has condemned (see nn. 11-16, *infra*). Finally, if it does decide to give weight to proposed legislation, the TPSC would be well advised to consider the pending proposals that would roll back protections for basic worker rights. One example is the GOCR's unilateral reform of freedom of association (see n.16, *infra*). Another is a bill "for the Strengthening of *Solidarismo*," introduced in the National Assembly on May 15, 2002, would strengthen the very *solidarista* associations whose existence has been condemned by the ILO as a fundamental violation of freedom of association. (Ley Para Fortalecer el Solidarismo, available at www.racsa.co.cr/asamblea/proyecto/dictamen/14712.doc).

¹⁰ ILO Committee of Experts on Application of Conventions and Resolutions, *Individual Observation concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Costa Rica (ratification: 1960)*.

¹¹ Dictamen ST 448.01, 3 July 2001.

Proposed Legislation on Collective Bargaining (amendment to Article 192 of the Constitution and amendment to include collective bargaining in the General Act on Public Administration)

The ILO Technical Assistance Mission emphasized “the confusion, uncertainty and even legal insecurity that exist with respect to the scope of collective bargaining rights in the public sector”¹² and the consequent need to:

“realize important progress respecting the right of collective bargaining for those employees in the public sector who are statutory employees who do not work in State administration (including those who work in state enterprises or decentralized public institutions, a right which appears to have been negated by the Constitutional Chamber of the Supreme Court of Justice through a retroactive decision that also appears to contravene existing collective agreements, numerous other collective bargaining instruments that apply to these categories of workers, and the constitutionality of the regulation on public sector collective bargaining of 31 May 2001 . . . The mission expresses its concern regarding the precarious situation of collective bargaining in the public sector”¹³

Yet the Executive’s reform proposals introduced in May 2002 have not advanced, and there is nothing to suggest that they will be treated differently than identical proposals that the Government agreed to ten years ago.

Draft Amendment to the Labor Code on Freedom of Association

The government also touts its proposed reforms on freedom of association. But in fact its draft amendment to the Labor Code unilaterally and significantly weakens the reform package that was agreed on by labor, business, and government but never enacted – because the government subsequently demanded major concessions on wage flexibility in exchange for its support.

The subject of freedom of association was discussed in the Higher Council of Labor, resulting in the “Consensus Report on Freedom of Association” of October 5, 1998 endorsed by the Government, employers, and trade unions.¹⁴ This agreement implied reforms in areas of freedom of association, public employment, and judicial procedures to sanction non-compliance and effectively protect union officers from dismissal. Of the various legal reform proposals mandated by the tripartite agreement, the Government submitted only one to the Legislative Assembly, concerning protection of union officers against dismissal and internal organization of

¹² ILO, *Informe sobre la misión de asistencia técnica realizada en Costa Rica del 3 a 7 de septiembre de 2001*, p. 15.

¹³ Id., p. 24. See also ILO Committee of Experts on Application of Conventions and Resolutions, *Individual Observation concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Costa Rica (ratification: 1960)*.

¹⁴ Consejo Superior de Trabajo, Comisión Ad Hoc de la Concertación. *Informe Concertado “Libertad Sindical,”* 5 October 1998.

unions.¹⁵ This bill was debated in the Committee on Social Affairs of the Legislative Assembly on February 9, 1999 and voted out with unanimous support on March 10, 1999, and has not moved since.

The GOCR attempts to create the impression that the proposal is advancing in the Legislative Assembly. In fact, the Government submitted an entirely different proposal linking freedom of association with labor market flexibilization¹⁶ as a substitute for the reforms agreed upon in a tripartite process. This law unilaterally modifies the proposal achieved by tripartite consensus.¹⁷ It incorporates proposals for a flexible work week, which are still under discussion in the Higher Council of Labor and on which there is no consensus among the parties, due to concerns about increased unemployment of women, negative effects on workers who are also studying to advance their careers, and heightened safety risks.

Alleged Improvements in the Administration of Labor Justice

The ILO Committee of Experts continues to note the “slowness of judicial procedures in the event of cases of anti-union persecution and of those applicable in cases of breaches of the labour legislation giving rise to the imposition of penalties which, according to the report of the mission, may last for one or two years, as well as, in contrast, the Government’s statement that the prior administrative procedure takes around the period of two months established by the Constitutional Chamber.”¹⁸

The government asserts that it has improved prosecution of anti-union acts. But the statistics it provides on employment cases lump freedom of association cases together with all sorts of individual employment cases, disguising the delays of up to nine years in adjudicating freedom of association claims.

As noted by the Committee of Experts, the duration of administrative procedures has been declining, probably as a result of the 2-month limit imposed by the Constitutional Chamber. Still, only 29.6% of investigations were completed on time in 1998 and 29.4% in 1999. Moreover, this time limit applies only to the investigation of a complaint. Once the investigation is completed it often takes another 3 to 4 years to obtain a decision.

For example, the Union of Workers of the National Association of Educators Credit Union (ANDE) notified the employer of its formation on May 10, 1996. On May 24 the union leaders were fired. The Labor Inspectorate confirmed the violation on August 8, 1996, but the Constitutional Chamber did not issue a decision until July 2, 1998. In the case of members of the

¹⁵ Expediente legislativo no. 13,475 (sobre procedimientos para proteger el fuero sindical y la autonomia sindical), available at www.racsa.co.cr/asamblea/proyecto/dictamen/13475.doc

¹⁶ Expediente legislativo no. 13,560 (reforma a los procedimientos para sancionar las infracciones a las leyes laborales).

¹⁷ For this reason, unfortunately, the observation of the ILO Committee of Experts in June 2002 that “This Bill is supported by the central trade union organizations” is no longer valid.

¹⁸ ILO Committee of Experts on Application of Conventions and Resolutions, *Individual Observation concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Costa Rica (ratification: 1960)*.

executive council of the Union of Workers of the Alajuela Maquila (SITRAMA) at Wrangler Costa Rica, fired one day after the union was organized, it took nine months for the inspection report to be presented to the court.¹⁹ The court has still not issued a decision after more than 3 ½ years. C1

A case reported since the filing of the AFL-CIO petition concerns the Empresa Auto Mercantil S.A. On September 14, 2001 the union presented a demand to the Labor Judge of the Second Judicial Circuit regarding labor conditions in the enterprise. The union nominated members to represent it before the court. Despite the Labor Code provision that no worker can be dismissed once a case is presented without prior approval from a court, the company immediately fired the three representatives. According to the Labor Code, once a collective conflict is presented to the Judge, a conciliation tribunal must be constituted within 12 hours including the judge and a representative of the employer and the union. This was never done. Nor has the union's petition to nullify the illegal dismissals been acted on. The Union has requested an embargo on the firm's property, but no judicial action has resulted despite the threat that the enterprise will be sold. C2

In addition to delay and inefficiency, the lack of effective remedies makes it impossible to obtain compliance with judicial orders. For example, the leaders of the workers' association at the Port of Limon were fired over six years ago. A court ordered reinstatement more than three years ago, but the employer has still not complied.

Another recent case concerns the Empresa Bananera Carrandi S.A. On September 2, 2002, the Union of Workers of Agricultural Plantations (SITRAP) notified the company that seven workers had joined the union. At 5 a.m. the next day, the administrator of the plantation called the workers to his office and interrogated them, promised to resolve their concerns, and told them he had forms for disaffiliating. The same day a *solidarista* promoter from the John XXIII School appeared, warning that the union collected 10% of salaries as dues and offering disaffiliation forms. The next day the union members held a meeting. The following day the administrator convened them and warned that no meetings were allowed on the plantation.²⁰ C3

On September 6 the administrator broke up a meeting between workers and a SITRAP official, and ordered the official off the plantation (contrary to law). When the SITRAP official attempted to leave, he found the gate locked and guarded by armed men, who interrogated him before allowing him to leave. On September 9 the union informed the company that another 6 workers had joined. The new members again asked the union representative to attend a meeting, and the representative informed the administrator's secretary. Again the administrator broke up the meeting and ordered the union representative to leave. The union is currently awaiting a report from the Labor Inspectorate, but expects that it will not receive a court decision for 3 to 4 years, during which time it has no remedy for the employer's unlawful behavior. C4

¹⁹ Ministerio de Trabajo y Seguridad Social, Dirección Nacional de Inspección, Resolución DNI-429-99, 23 April 1999.

²⁰ See ILO, *Informe sobre la misión de asistencia técnica realizada en Costa Rica del 3 a 7 de septiembre de 2001*, p. 18 (expressing concern over denial of union access to agricultural plantations).

Failure to Reactivate Social Dialogue

The government purports to have reactivated social dialogue. In fact, the new “Commission on Labor Reform” chaired by the Minister of Justice was constituted on September 5 but has never been convened despite union requests to do so, apparently because the government has not appointed a new Minister. The “National Commission on Employment” has never met. The labor-business dialogue involving unions and the Costa Rican Union of Chambers and Associations of Private Enterprises (UCCAEP) has some union participation, but focuses on employment policy, not worker rights.

Conclusion

Far from reviving social dialogue, the GOCR – as described above – has repeatedly flouted commitments made in tripartite consultations with unions and employers, and has broken its promises to the ILO and USTR of substantial reforms to improve workers’ rights. The systematic and serious violations of fundamental worker rights reported in the AFL-CIO’s June 2001 petition continue unabated, as demonstrated in the substantial new information presented in this supplement. If the GOCR has taken any steps since last June, they have been backward. Accordingly, Costa Rica’s GSP and CBI benefits must be withdrawn.

AFL-CIO

GSP 2002 MR
002-CP-02 Costa Rica

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To: <FR0052@USTR.GOV>

Subject: "2002 Annual GSP Review-Petition."

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