

~~Costa Rica~~ update 2003 CR AFL-CIO

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BEFORE THE UNITED STATES
TRADE REPRESENTATIVE

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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)
SEPTEMBER 2, 2003

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 presented in December 2002 strengthened the case for denying GSP and CBI benefits to Costa Rica.² This new evidence included: 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 Since December 2002, the AFL-CIO has had the opportunity to submit additional information through the June 2003 request for comments on labor rights in the context of the Central America Free Trade Agreement negotiations. On that occasion, the AFL-CIO reported no progress on the issues discussed in the June 2001 petition and contributed additional information on new cases. At this time the AFL-CIO reiterates its concerns and updates the information, recognizing that this updated information only demonstrates continued lack of progress on the part of the GOCR.

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.

Denial of the Right to Organize and Bargain Collectively in the Private Sector

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In addition to the restrictions on union organizing and representation in the private sector discussed above, the government has fostered and promoted specific mechanisms to undermine collective bargaining.

The labor code explicitly permits direct dealing between employers and employees over terms and conditions of employment.⁶ It also permits the formation of “Permanent Workers’ Committees” of up to three members in each workplace, which are authorized to present complaints or requests on behalf of the workforce. Whereas unions are subject to a number of onerous and illegal requirements, e.g. the requirement that all members of their governing councils be Costa Rican citizens, no such requirements apply to the Permanent Workers’ Committees. In practice, these committees are effectively controlled by employers.

The government also continues to encourage the formation of *Solidarista* associations, under the 1984 *Ley de Asociaciones Solidaristas*.⁷ Despite being explicitly prohibited from collective bargaining (under Law 7360), these associations have increasingly taken over functions that properly belong to unions. As a result, between 1994 and 1999, 479 direct arrangements (*arreglos directos*) between employers and workers were registered in the private sector and only 31 collective bargaining agreements (*convenciones*). Of these 31, only 13 remain in force today; all of these are enterprise-level contracts.⁸

The banana plantations of Costa Rica are known as the birthplace of the *solidarismo* movement. Companies promote the solidarity associations as a means of undermining and displacing the unions. Employer efforts to lower working standards and violate workers’ rights have increased in recent years as a result of great international commercial pressure.⁹ Competition among the banana exporting companies for access to the European market has stimulated regional overproduction, provoking a “race to the bottom” that threatens decent wages and working conditions in the historically unionized Central American and Colombian banana plantations.¹⁰

⁶ Labor Code, Article 504.

⁷ Law No. 6970, 7 November 1984.

⁸ Data from Departamento de Relaciones de Trabajo, Ministerio de Trabajo y Seguridad Social.

⁹ See generally ILO Committee on Freedom of Association, Case No. 1984, concerning numerous worker rights violations on Costa Rican banana plantations, which is discussed in Reports Nos. 316 (1999), 320 (2000), and 324 (2001).

¹⁰ ICFTU Report at 4.

CASE 1

1. COBASUR

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In 1998, the banana company COBASUR denied recognition of the Union of Workers of the South (SITRASUR), refused to deduct union dues for union members, fired the union's general secretary, and established a solidarity association with which it initiated negotiations.¹¹ The labor inspector confirmed the allegations and lodged a complaint against COBASUR in the labor courts of Costa Rica on November 20, 1998. Later, the General Secretary, Adrian Herrera Arias, received death threats, and an attack on his vehicle. On April 13, 1999, as the legal process dragged on without result, Mr. Herrera Arias was brutally beaten and threatened with death. (2, 2)

On April 27, 1999, the ICFTU filed a complaint against Costa Rica with the ILO. The ILO's report deeply regretted the company's anti-union discrimination and interference and requested the government to keep it informed of the legal process. The Committee also requested that the government take measures to ensure that COBASUR properly deduct the dues of SITRASUR affiliates as provided by law. After three years, the case was settled as a result of the ILO complaint.

C2

2. Empresa Mercantil

A case reported since the filing of the previous AFL-CIO GSP 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.

C3

3. Carrandi

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

¹¹ Information in this section from ILO Committee on Freedom of Association, Report No. 320, Case No. 2024 (2000).

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.¹²

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.

4. Caribana

Banana workers in Caribana, Lomas de Sarapiquí, attempted to organize in the SITAGAH union beginning in August, 2002 to protest non-payment of wages and lack of safety and health protections.. Management has interfered directly in the process of naming union representatives, threatening retaliation against any workers who attempt to complain. The John XXIII School has assisted management in these actions; the Labor Ministry has not intervened to protect workers' rights to choose their representatives. In addition, the employer has retaliated against pro-union employees by reducing their wages by as much as 50 per cent. In practice, the union is not allowed to carry out its representative functions.¹³

5. Sixaola

Another banana producer, Sixaola S.A. (a subsidiary of CORBANA) has committed numerous labor rights violations. Sixaola has refused to negotiate with the Union of Agricultural Workers of Limon (UTRAL), preferring to deal directly with the Permanent Workers' Committee. In addition, the employer undermines the union by hiring temporary employees. As a result, the working day has been extended while wage increases decreed over the past three years have not been paid to the workers.¹⁴

¹² 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).

¹³ Coordinadora de Sindicatos Bananeros de Costa Rica (COSIBA), *Trabajadores sindicalizados en Caribana, Lomas de sarapiquí reclaman respeto a sus derechos* (May 2003)

¹⁴ COSIBA Report (May 2003).

