

GSP 2000 Country Practice
Review

9220001

001-CP-2000

MT
②

REV OUTSHEA
Q

**BEFORE THE
UNITED STATES TRADE REPRESENTATIVE**

**PETITION TO REMOVE EL SALVADOR
FROM THE LIST OF BENEFICIARY DEVELOPING COUNTRIES
UNDER THE GENERALIZED SYSTEM OF PREFERENCES ("GSP")
AND FROM THE LIST OF BENEFICIARY COUNTRIES UNDER THE
CARIBBEAN BASIN ECONOMIC RECOVERY ACT ("CBI")**

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

**DATE:
AUGUST 2000**

Introduction

The AFL-CIO hereby petitions, under the Trade and Tariff Act of 1984, 19 U.S.C. 2461 et. seq., for the removal of El Salvador from the list of beneficiary developing countries under the Generalized System of Preferences (hereinafter "GSP"). The AFL-CIO further requests, pursuant to Section 212 of the Caribbean Basin Economic Recovery Act (hereinafter "CBI"), that CBI benefits be denied to El Salvador. Both petitions are based on the Salvadoran Government's failure to protect internationally recognized worker rights.

The United States State Department's Country Reports on Human Rights Practices for 1999 makes several findings which, standing alone, should lead to Trade Representative review of El Salvador's status as a beneficiary country under the GSP and the CBI. Furthermore, the International Labor Organization has found specific instances of violations of internationally protected labor rights by the Government of El Salvador (GOES), including violations of such core labor rights as the freedom of association and the right to organize.

Unfortunately, recent actions by the Government of El Salvador indicate that it is taking an increasingly hard line with unions. The ILO has charged that the government has violated the freedom of association and the right to organize. These violations often occur in the context of the GOES's economic reform programs, financed by the international financial institutions.

In addition to the evidence included in the State Department report and the ILO Freedom of Association Committee's charges, this petition discusses numerous other instances of the Salvadoran Government's direct violation of the internationally recognized rights of its own workers, which are inconsistent with status as a beneficiary country under either the GSP or the CBI.

★ Freedom of Association

The Salvadoran Government consistently fails to afford its workers the fundamental right of association.

The Case of ANTEL

-case (1)

In March 1999, the Freedom of Association Committee of the International Labor Organization concluded that the Government of El Salvador had been applying various sections of the Labor Code to effectively preclude the formation of a trade union in the recently privatized telecommunications industry. During the privatization process in 1997-99, which was financed by a loan from the Inter-American Development Bank, the GOES denied four separate applications for union recognition based on legal technicalities or formalities. The Committee concluded that the sections of the Labor Code on which the GOES based these denials violate the

freedom of association.¹

Sections of the Labor Code cited by the Committee included those that placed "excessive formalities" on the procedure for establishing a trade union organization. These included, *inter alia*, section 211 regarding the requisite legal quorum; section 602 incorporating various aspects of the Notary Act pursuant to the Code of civil Procedure into the Labor Code; and section 248 stipulating that subsequent applications to establish a trade union may only be made six months after a previous one. The Committee also cited Clause 20, section 209, which restricts workers of independent public institutions to forming only "works unions" as opposed to trade unions, as a violation of the freedom of association.

The GOES has also ignored -- for more than one year -- the recommendation of the Committee on Freedom of Association to amend "the legislation so that the current excessive formalities that apply to the establishment of trade union organizations are removed and so that workers do not have to constitute enterprise-based works unions if they do not consider this to be appropriate."²

In relation to the same complaint, the Committee on Freedom of Association also addressed the failure of the GOES to protect union representatives. Pursuant to the Privatization Act of the National Telecommunications Administration, the National Telecommunications Administration (ANTEL) was dissolved and the workers dismissed on December 29, 1997. The workers were then rehired by the newly formed private entity, Telecommunications Company of El Salvador (CTE S.A. de C.V.).

However, on January 2, 1998, 72 workers were dismissed, all of whom were current or former trade union leaders.³ [Such firings are prohibited by Salvadoran law which protects union representatives from dismissal without just cause. The firings also violated a December 27, 1997 agreement with the unions that the company would respect the collective bargaining agreement for an eighteen-month period.] Seventy of the fired employees accepted monetary compensation but two resisted the dismissal. An additional 61 workers, including 14 who had attempted to form a new union, were dismissed on October 31, 1998.

The Committee on Freedom of Association requested that the Government ensure the reinstatement of the two trade union leaders who had refused monetary compensation. The Committee also cautioned the Government of El Salvador to guarantee that future privatization

¹ Complaint Against the Government of El Salvador, presented by Communications International ("CI"), Report No. 313, Case No. 1987 at ¶ 113.

² *Id.* at ¶ 113.

³ *Id.* at ¶ 89.

measures not directly or indirectly threaten unionized workers and their organizations.⁴ However, the two trade union leaders have not been reinstated; the Government continues to claim that the firings were legal under the Privatization Act. As to the broad recommendation, the Government's treatment of workers in sectors undergoing privatization has grown dangerously more repressive, as demonstrated below.

★ The Case of ANDA case (4)

The water sector is also undergoing a privatization process, financed by an Inter-American Development Bank loan, that has been used as an excuse to violate worker rights in contradiction to basic international standards as well as Salvadoran law. On July 5, 1999, an agreement was signed between ANDA (the public water authority) and Tetralogia (a mixed capital project formed to participate in the decentralization process), in which Tetralogia was to take over distribution of potable water in the province of Usulután. The workers of ANDA were members of SETA (Union of the Company of Workers of ANDA) and were covered by a collective bargaining agreement. SETA had attempted to negotiate an equitable transfer for its workers in Usulután, who would begin working in the privatized company. According to the July 5, 1999 agreement, ANDA would maintain responsibility for the workers for the first 18 months of the agreement.

In direct violation of the agreement, the 36 ANDA employees in Usulután were dismissed on March 30, 2000, directly before the April 2000 initiation of the private enterprise. Thirty-four of the dismissed employees were then hired by the private company under temporary three-month contracts, which effectively prohibits them from forming a new workplace union within Tetralogia. The rehired employees lost all of their rights and benefits under the collective bargaining agreement.

★ The Case of ISSS⁵. case (3)

The Salvadoran Social Security Institute (ISSS) administers the health services for the employed and their families. The ISSS' plan for privatization, financed by the Inter-American Development Bank, has been met with distrust from the public, which is concerned about the quality of health care services. The union of doctors (SIMETRISSS) has lead the campaign against the privatization, in particular the privatization of two hospitals in the nation's capital, the Roma and Amatepec hospitals.

In 1998, the Salvadoran Social Security Institute (ISSS) refused a salary increase requested by the Union of Workers of the Salvadoran Social Security Institute (STISSS), a union

⁴ Id at ¶ 116.

⁵ Except where otherwise noted, this information is taken from a report from the STISSS Executive Board, "Outline of the Labor Conflict of the Salvadoran Social Security Institute, 1999-2000."

which includes non-medical workers from the administrative and paramedical areas. After long negotiation, on December 8, 1998, the ISSS agreed to the salary increase. However, the increase was never implemented. President Flores's administration refused to honor the pay raises, and he issued a presidential decree freezing public sector wages.⁶

Receiving no relief from the government authorities, the STISSS union addressed its complaint to the Legislative Assembly regarding the government's noncompliance with the ISSS agreement. Legislation was passed to implement the salary increase, but it was vetoed by President Flores who claimed a shortage of funds. Faced with this roadblock, the union turned to direct action.

In May of 1999, the STISSS had begun negotiations with the ISSS regarding the renewal of its collective bargaining agreement. The ISSS administration pushed for the elimination of previous benefits in violation of Article 52 of the Constitution. Unable to reach agreement, the negotiations were forced into arbitration, where a tripartite commission can create binding agreements. In the tripartite arbitration, the government and business representatives created an agreement that eliminated certain economic benefits.

In November 1999, the negotiations between the STISSS and the ISSS broke down. At the same time, the doctors of SIMETRISSE were increasing their campaign against the planned privatization of the health sector. On November 15, 1999, the unions initiated a nationwide strike with work stoppages and slow downs. On November 29, 221 workers were fired for their participation, including workers who are protected by law from such dismissals (e.g., pregnant women, workers absent due to illness or disability, and union representatives). Although the doctors continued to provide essential services, the ISSS withheld their November and December wages and their end-of-year bonuses.⁷

The courts did not protect the workers' rights. They enforced only certain elements of the Labor Code (for example those sections that violate internationally recognized labor standards by prohibiting strikes by public sector employees), while failing to resolve such issues as the firing of more than 200 employees and the nonpayment of wages.

Following the firings, massive demonstrations and marches began to take place, which included large numbers of the general public, who were demonstrating support for the unions and opposition to the privatization of the health care services. On March 6, 2000, a large demonstration was held in San Salvador outside the Roma Hospital. Riot police attempted to disperse the crowd through such excessively violent methods as high pressure water hoses, tear

violence

⁶ U.S. State Department, Bureau of Democracy, Human Rights, and Labor, 1999 Country Reports on Human Rights Practices, released February 25, 2000 (hereinafter "1999 U.S. State Department Report") at Section 6(a).

⁷ Jean-Pierre Daubois, "El Salvador: After the Civil War, an Economic War on Workers," Labor Notes, July 2000.

gas and rubber bullets. Family members of patients waiting to enter the hospital as well as patients were injured in the incident.

On March 8, 2000, another demonstration was staged to protest the excessive violence of the police. The doctors threatened to resign en masse. On March 10, the unions and the ISSS reached a tentative agreement containing the following points:

1. End the strike;
2. Renew negotiations with the following stipulations:
 - a) implement the agreements of the tripartite commission signed on May 21, 1998;
 - b) respect the eventual decision of the Supreme Court regarding the firings of the workers;
 - c) respect the eventual decision of the Court of Accounts regarding the retained salaries and bonuses of the workers;
3. Resolve the various issues through the creation of the following discussion tables:
 - a) to address the issues between the doctors' union and the Ministry of Health;
 - b) to address the problem between the SIMETRISSS and ISSS;
 - c) to address the problem between the STISSS and ISSS;
 - d) a special table to address the process of reform of the health sector.
4. Open the Roma and Amatepec hospitals in the minimum amount of time and in accordance with the standards for decentralization and modernization ;
5. No privatization will take place, as stipulated in the Constitution;
6. No reprisals against STISSS and SIMETRISSS members;
7. The workers and ISSS will respect the agreements of the arbitration which are presently in effect.

This agreement has not been honored by the GOES. The unions have terminated the strike and returned to their worksites. The Supreme Court has not yet resolved the issue of the fired workers: 70% of them have been reinstated, but 30% have not. Nor has the Court of Accounts issued an opinion with respect to the retained salaries and bonuses of the workers. Neither the Roma nor the Amatepec hospitals has been opened. The Government continues to research ways to privatize the health sector but steadfastly refuses to allow the doctors and/or non-medical personnel or civil society to participate in the planning process.

Right to Organize and Bargain Collectively.

The GOES continues to tolerate employers' dismissal of labor activists to discourage union organizing.⁸ These firings violate not only the internationally recognized right to organize, but also the Salvadoran Constitution, which prohibits the dismissal of labor representatives from the time of their election through one year following the completion of their term in office,

⁸ 1999 U.S. State Department Report at Section 6(b) as well as numerous reports from Salvadoran trade unions, as demonstrated in the sample cases listed below.

except for just cause. Both the Ministry of Labor and the courts have been reluctant to enforce this section of the Constitution and other laws that protect workers, as acknowledged in the 1999 U.S. State Department Report. The Ministry prefers instead to conciliate labor disputes through informal channels, which has led to distrust of the Ministry.⁹ The Report also notes that corruption remains a problem within the Ministry.

The Salvadoran Government is also failing to protect the collective bargaining rights of workers on projects funded by the World Bank. Instead of being used to develop a productive workforce and raise the standard of living, these large investments are being applied to projects that summarily violate the workers' rights to organize and bargain collectively.

The Matter of Ganadera Cooperative of Sonsonate¹⁰

In January 2000, a dairy plant in Sonsonate, owned by the Ganadera Cooperative, opened large new facilities funded through a four million dollar investment, financed by a World Bank loan. President Flores presided over the inauguration of the new facilities, which will produce more and improved dairy products with an eye toward future commercial openings, principally through a trade agreement with Mexico.

The Ministry of Labor presided over collective bargaining negotiations between the company and the Union of Workers of the Dairy Plant, La Salud (STELS). The negotiations reached an impasse when the company refused to offer more than a \$6.80 per month raise. [Company salaries ranged between \$287 and \$390 per month.] The union refused this meager raise as insufficient, especially considering the massive influx of capital and the expanded plant that was going to considerably increase production.

The period of negotiations was scheduled to end on February 17, after which by law the negotiations could either continue, pass into arbitration or result in a legal strike. One day before this deadline, on February 16, the company fired 44 people -- all labor activists. The written reason for the firings was "the intransigence of the union leadership" regarding the pay increase. The following day, the company attended the last negotiating session and ~~in the presence of a representative of the Ministry of Labor--~~ pressured the union leaders to "voluntarily" resign in exchange for full severance pay. During the preceding three days, the workers had been systematically pressured inside the plant. The message from the supervisors and owners was that the workers should learn from what had happened and that all those who refused to withdraw from the union or who associated with the union leaders remaining in the plant would be fired.

Under this pressure, on February 25 the 43 union members who remained inside the

⁹ 1999 U.S. State Department Report at Section 6(b).

¹⁰ This information is taken from a report by Gilberto Garcia of the Center for Labor Studies (CENTRA), "Review of the Most Recent and Relevant Violations of Labor Rights in El Salvador, C.A.," May 2000.

plant, including the leaders, accepted their severance checks and left the plant. The company succeeded in breaking years of union tradition and collective bargaining in the plant. While the company had received huge loans permitting the installation of new and improved machinery that would augment productivity and generate larger profits, the workers lost their collective contract, their benefits and their ability to negotiate their working conditions -- all under the watch of the Ministry of Labor.

The Matter of the Industrial Cement Company, CESA *Case 4?*

In 1999, CESA employed more than 500 workers, 278 of whom were members of the Union of the Cement Industry of El Salvador (SICES), a union with 48 years of existence and 43 years of collective bargaining at CESA. The plant had four cement ovens in production.

In October 1998, the World Bank injected millions of dollars into the plant and the company began construction of a new oven to replace three of the older ovens. During the construction of the modern oven, the company informed the union that layoffs were imminent, and began a process of replacing the permanent employees with contract employees. The company refused to negotiate with the union over the impact of the new technology. Instead, in March of 1999, it laid off some 100 workers and replaced them with contract employees.

On September 28, 1999, 12 days before the expiration of the collective bargaining agreement, the union, as required under Salvadoran labor law, presented its proposal for revision to the agreement. In response, the company began a new substitution of workers with contract employees in violation of the existing agreement. The union filed a complaint in the labor court in Santa Ana in November 1999.

In a manner reminiscent of the "excessive formalities" used by the Ministry of Labor to deny legal personality to the unions and criticized by the ILO in the case of ANTEL above, the court of Santa Ana relied on peculiar, alleged discrepancies in the complaint to refuse review. First, the complaint was rejected for referring to the judicial authority as "His Honor" although the judge was female. The complaint was rejected a second time for referring to the court as the First Labor Court of Santa Ana when it is the "only" court in Santa Ana. Having corrected this matter, the complaint was rejected a third time. This time the court insisted that the union must attach the original register in which the union constitution was published -- 48 years ago. The court rejected a certified photocopy and refused to proceed with the case.

On January 20, 2000, the new cement oven was inaugurated with much fanfare. Government functionaries, top Salvadoran business leaders, World Bank representatives, the diplomatic corps and President Flores all participated. The community neighboring the plant created a mural depicting the contamination from the dust of the plant. In the dust that covers the windows of the houses in the vicinity was written "CESA: 50 years of contamination."

In February of this year, 200 more personnel were dismissed. Only the union leaders remained. At the beginning of March 2000, the company gave the workers an ultimatum: they would be paid 150% severance if they would resign. Further, the company threatened that if they

did not accept at that precise moment, they would receive nothing and would be fired in any case. As they presented the checks, the company made another demand -- the directors must sign an agreement dissolving the collective bargaining agreement.

In the end, CESA retained only 84 employees, who were selected without reference to the collective bargaining agreement. Despite the efforts of the union, the company unilaterally determined who would benefit from and who would be harmed by the effects of this technological progress.

The Matter of DOALL Enterprises in the EPZ

Case 4

Illegal methods to prevent unionizing persist in the export processing zones ("EPZs") as well. There are six EPZs in El Salvador and several maquila plants operating outside the zones.¹¹ There are 225 maquila assembly factories, employing an estimated 68,000 to 90,000 employees.¹² Eighty percent of the workers are young women, the majority 17 - 25 years of age.¹³ While there have been some improvements in general conditions in the maquilas, these have come about as a result of increased international pressure, not as a result of the Government enforcing the labor laws.

As noted in the 1999 U.S. State Department Report, employers continue to dismiss union organizers in order to prevent unionization. As a result, only one EPZ company has been unionized.¹⁴ None have achieved a collective bargaining agreement.¹⁵ Nevertheless, as also noted by the U.S. State Department Report, the Ministry of Economy has never even threatened to utilize its authority to revoke free zone privileges from companies that violate labor regulations.¹⁶ This authority was granted to the Ministry of the Economy under legislation enacted in 1996 as a response to the public outcry in the U.S., which had led to several retailers imposing voluntary codes of conduct on their suppliers or canceling contracts.¹⁷

Recent events in the DOALL maquila, described in the U.S. State Department Report,

¹¹ 1999 U.S. State Department Report, Section 6(b).

¹² National Labor Campaign, "Fired for Crying to the Gringos," July 1999 at page 2, and International Confederation of Free Trade Unions, "Report on El Salvador from the Annual Survey of Violations of Trade Union Rights (1999)" at page 1.

¹³ Id at page 12.

¹⁴ 1999 U.S. State Department Report, Section 6(b).

¹⁵ National Labor Campaign, *supra* at page 3.

¹⁶ 1999 U.S. State Department Report, Section 6(b).

¹⁷ ICFTU, *supra* at page 1.

provide an example of how the Salvadoran Government has relinquished its role as the arbiter of labor rights to the international community. DOALL has two plants in the San Marcos EPZ and one in the El Progreso EPZ, which together employ roughly 3,200 workers.¹⁸

On November 20, 1999, the Union of Workers of DOALL Enterprises (SETDESA) was founded by 38 workers.¹⁹ This was at least the fifth attempt to form a union at DOALL; the others had been crushed through illegal firings.²⁰ Within days 10 of the 11 union executive members and at least 17 other workers were fired by the DOALL management; a week later the number had risen to 35.²¹ On November 22, 1999, the union president, Rosa Delia Dominguez, and the Secretary of Organization were offered large monetary payments to sign resignation statements; they refused.²² SETDESA and the Salvadoran Workers Central (CTS), an umbrella labor organization, filed a complaint with the Ministry of Labor, which initiated an investigation on November 24, 1999. The Ministry drew no conclusions and took no action.²³

However, the international response was swift and strong. Several nongovernmental organizations had been monitoring the activities of the DOALL garment factories for years, because of their continued violations of labor rights. In 1996, the Canadian Broadcasting Corporation had aired a Fifth Estate program exposing sweatshop abuses at the DOALL factory. The National Labor Committee has written a report, "Fired for Crying to the Gringos", that outlines the series of abuses predating the November 1999 firings.

On December 11, 1999, a representative of Liz Claiborne, Inc. headed a delegation to the DOALL factories. The delegation met with the Independent Monitoring Group of El Salvador (GMIES) as well as the company and authorized the initiation of an investigation by GMIES.²⁴ On January 10, 2000, the GMIES issued its report in which it clearly established the anti-union activities of DOALL. GMIES recommended the reinstatement of the fired workers, the payment of back wages, and other actions to reduce the anti-union atmosphere.

¹⁸ Centra Report at page 14.

¹⁹ *Id.* at 14; U.S. State Department Report at Section 6(b).

²⁰ National Labor Campaign at pages 2 and 3. The entire report concerns illegal firings of union organizers predating the matters discussed in this petition.

²¹ Maquila Solidarity Network, "DOALL Workers Win Reinstatement: Continuing Support Needed," February 28, 2000 at page 3, and U.S. State Department Report at Section 6(b).

²² *Id.* at page 3; Centra Report at page 14.

²³ U.S. State Department Report at Section 6(b); Maquila Solidarity Network at page 4;

²⁴ Centra Report at page 14.

Meanwhile, the Government of El Salvador was taking no steps to afford the workers their right to organize. On January 26, 2000, the Ministry of Labor denied legal personality to the SETDESA. As a basis for this rejection, the Minister annexed the forced resignation letters. According to the law, no new application to establish union can be filed for a period of six months.²⁵

On February 9, 2000, despite the Government's rejection of the union, under pressure from Liz Claiborne, Inc., a meeting was held between representatives of the DOALL, the SETDESA union, the CTS, and the Ministry of Labor with the GMIES monitoring the session. After six hours of tense negotiations, an agreement was reached:

1. The fired workers would be reinstated as of March 11, 2000
2. the workers would return to their former positions;
3. 100% back pay;
4. Guarantees of no future reprisals; and
5. the GMIES would be permitted to monitor the conditions in the DOALL factory.²⁶

As a result of extensive international pressure from human right groups, unions, consumers, and retailers, the workers were reinstated to their former positions. These private, informal mechanisms are no substitute for official government enforcement of its workers fundamental right to organize and bargain collectively. The GOES abdicated its responsibility and has allowed the rights of its workers to be violated with impunity. However, the administration of DOALL has reneged on its promise to allow the GMIES to monitor conditions.

Prohibition on the Use of any Form of Forced or Compulsory Labor

child
As acknowledged in the U.S. State Department Report, there are credible complaints of forced overtime in the maquila sector and of forced prostitution by children. The State Department cites a report from the Human Rights Ombudsman's Office on the maquila sector, which "indicated that 7.8 percent of the workers in its survey sample were not paid legally required extra pay for working beyond the normal 44 hour work week, a strong indication of forced overtime."²⁷

One of the main reasons cited by the workers at the DOALL factory for attempting to form a union was to improve conditions at the plant -- primarily the forced overtime. The workers have reported having to work at least 12 hour per day, five days per week and nine more

²⁵ *Id.* at page 14.

²⁶ *Id.* at page 14 and National Labor Campaign, "Grassroots International Pressure Leads to Watershed Human Rights Victory in El Salvador," February 11, 2000 at page 1.

²⁷ 1999 U.S. State Department Report at Section 6(c).

hours on Saturdays.²⁸ The agreement with DOALL administration to allow the GMIES to monitor the conditions at the factory was intended to prohibit precisely this type of violation. Unfortunately, the DOALL administration has reneged on the agreement and will not allow the GMIES to monitor its practices. Given the Government's failure to intervene on their behalf, the workers are left without protection against such abuses.

Conclusion

For the reasons set out, this petition should be granted and El Salvador should be removed from the list of beneficiary countries under both the Generalized System of Preferences and the Caribbean Basin Initiative.

²⁸ Maquila Solidarity Network, *supra* at pages 1 and 4; ICFTU at page 1; National Labor Campaign, "Watershed" at page 3.