Generalized System of Preferences (GSP) Subcommittee
of the
Trade Policy Staff Committee

1991 GSP Annual Review

Worker Rights Review Summary

Cases: 003, 004, 008-CP-91
Guatemala

not coded

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The GSP Subcommittee of the Trade Policy Staff Committee conducted the first level of interagency consideration of three petitions challenging the continuing preference-eligibility of Guatemala under the U.S. Generalized System of Preferences. The challenge was based on allegations brought forward by the petitioners regarding Guatemala's failure to satisfy the GSP's mandatory eligibility criterion in section 502(b)(7) of the Trade Act of 1974, as amended,

> "... the President shall not designate any country a beneficiary developing country under this section--if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country."

For the purpose of examining the petitions, the term "internationally recognized worker rights" was defined as detailed in section 502(a)(4) of the Trade Act of 1974, as amended.

The petitions in question were filed by the AFL-CIO, the New York Labor Committee in Support of Democracy and Human Rights in El Salvador (referred to below as the NYLC), and a group of organizations including the International Labor Rights Education and Research Fund (ILRERF), the U.S./Guatemala Labor Education Project, the United Electrical, Radio & Machine Workers of America, the Amalgamated Clothing and Textile Workers Union, the United Food and Commercial Workers International Union, and the International Union of Food and Allied Workers' Associations, North America (referred to below as ILRERF et al).

The examination was conducted under the terms of Part 2007 of the Regulations of the United States' Trade Representative Pertaining to the Eligibility of Articles and Countries for the Generalized System of Preferences Program (GSP [15 CFR Part 2007]).

At the onset of its examination of the petitions, the Subcommittee recalled that Guatemala had been the subject of five previous requests for reviews of internationally recognized worker rights. The first request, made by the AFL-CIO, was made as part of the Congressionally-mandated General Review of the GSP program in 1985-1986. This request was accepted for review and, on January 2, 1987, the President determined that Guatemala had been found to be taking steps to provide internationally recognized worker rights.

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In the wake of the President's 1987 determination, requests for further review were filed in the 1987, 1988, 1989, and 1990 Annual Reviews of the GSP. In each of these instances, the Subcommittee determined that the petitions failed to satisfy

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the information requirements for a request laid out in Part 2007.2(a)(2). Specifically, the Subcommittee found in each case that the petitions either 1) provided insufficient information relevant to the statutory provisions of the Trade Act of 1974, as amended, 2) failed to clearly demonstrate that the information provided fell within the criteria of those same statutory provisions, or 3) failed to present substantial new information warranting further consideration of the issue:

> Part 2007.2(a)(2) "If a request submitted pursuant to Part 2007.0(b) does not conform to the requirements set forth above, or if the request does not provide sufficient information relevant to subsections 502(b) or 502(c)[19 U.S.C. 2642(b) and (c)] to warrant review, or if it is clear from available information that the request does not fall within the criteria of subsections 502(b) or 502(c), the request shall not be accepted for review."
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> Part 2007.0(b)(5) "If the subject matter of the request has been reviewed pursuant to a previous request, the request must include substantial new information warranting further consideration of the issue."

The Subcommittee, in the case of the requests made in June 1991 by the AFL-CIO, the NYLC, and ILRERF et al, established that the petitions again failed to satisfy the information requirements for a request laid out in Parts 2007.2(a)(2) and 2007.0(b)(5). Specifically, the Subcommittee found that 1) the petitions failed to provide substantial new information, and 2) that the information which was provided was either not sufficient to warrant another review or it was not clear that the information provided fell within the statutory provisions. Therefore, the Subcommittee recommended that the petitions be rejected for review.

A more detailed account of the Subcommittee's deliberations follows.

As it began its examination of the three petitions submitted against Guatemala in the 1991 Annual Review, the Subcommittee observed that the petitions contained four broad categories of allegations.

As in previous years, the first type of information consists of a number of allegations of harassment or violence against trade unionists in which no plausible link was made between the incidents and the victims' trade union activities or between the incidents and the statutory provisions of the 1974 Trade Act, as amended. In all of these incidents, the Subcommittee observed, it had either been unable to verify the allegation or received information from the U.S. Embassy in Guatemala City casting material doubt on the relevance of the incidents to the specific

worker rights outlined in the Trade Act. In this context, the Subcommittee noted that at least one incident of this type, the alleged "kidnapping, torture, and murder of...Lilian Elizabeth Juarez Escobar by a Guatemalan death squad," was later withdrawn by the petitioner on the grounds that it was "unrelated to labor activity."

Specific alleged incidents of worker rights violations which fell into this category of information include those relating to Otto Ivan Rodriguez, Olga Violeta Florez, Maria del Carmen Anavizca, Victor Humberto Gonzalez Gamarra, Sebastian Velasquez Mejia, Oscar Humberto Portillo, Petronilo Hernandez Valio, the Trade Union of Guatemalan Workers (UNSITRAGUA), the National Federation of Government Workers (FENASTEG), the El Pilar Sugar Mill, Jose Leon Segura and other STINDE workers, the Sagastume brothers, and DIGESA in San Marcos. A large number of these alleged incidents, the Subcommittee observed, had been put forward in previous petitions and/or discussed in various editions of the Country Report on Human Rights Practices.

While it viewed all such allegations of violence against trade unionists with great seriousness, the Subcommittee recalled its longstanding determination that these types of alleged incidents cannot form the sole basis for an informationally sufficient petition challenging a country's eligibility under section 502(b)(7) of the Trade Act of 1974, as amended. This determination is based on the methodological difficulties of evaluating these incidents as relevant to the worker rights requirements of the law and the pervasive procedural difficulties in verifying such allegations. In this regard, the Subcommittee viewed the following passage from a report of the U.S. Embassy in Guatemala City (the Embassy) as illustrating the inherent difficulty in extrapolating allegations of broader classes of worker rights violations from allegations of harassment or violence against individuals:

> "Violence is common in Guatemala. Many people of all occupations have been victims of violence. [It is an error to assume]...that whenever a union member is killed, he was killed because of being a union member. This is simply incorrect. We see no systematic pattern of violence directed against unions by security forces."

The salient issue, the Subcommittee noted, was not whether violence remains a sad and pervasive fact of Guatemalan life, but rather whether such violence was systematically targeted against workers and their organizations. After careful consideration, the Subcommittee believed the latter point could not be substantiated by the information presented in the petitions. This sentiment, the Subcommittee noted, was echoed by the Country Report on Human Rights Practices for 1990:

"Reliable evidence indicates that security forces and civil patrols committed, with almost total impunity, a majority of the major human rights abuses. These included extrajudicial killings, torture, and disappearances of, among others, human rights activists, unionists, indigenous people, and street children. Whether supported by fact or merely spurious information, the motive behind many of the abuses appears to be the belief that the victims were somehow supportive of or sympathetic to the guerrillas."

The second broad category of information presented in the petitions consists of allegations of government complicity in firings or other acts of retaliation against workers or unions engaged in legitimate union activities, as well as alleged government attempts to interfere in workers' organizations. These firings and acts of retaliation are held to constitute a systematic pattern of denial of the right to organize and bargain collectively. Regarding this second category of information, the Subcommittee noted that a substantial number of the allegations presented had been raised in previous petitions against Guatemala and dealt with by the Subcommittee in great detail. Other allegations in this category were materially flawed by their one-sided representation of the facts. In this regard, the Subcommittee noted that most of the alleged acts of retaliation occurred either during strikes, union organizing campaigns, or negotiations over collective bargaining agreements. Each of these processes involves both unions and management, and conflicting versions of the same events offered by the two sides often cast material doubt on whether the allegations presented a pattern of worker rights violations.

In addition to these two procedural objections--the fact that many allegations had been previously raised, and one-sided presentations of facts--the Subcommittee observed that the allegations which fell into this second category of information faced a more fundamental weakness. That weakness is the inherent result of concentrating on the labor-management relations in a number of individual private firms rather than on the efforts of the Government of Guatemala to afford its workers internationally recognized worker rights. In a free enterprise economic system where the government does not control the business decisions of private firms the Subcommittee believed it unreasonable to expect all firings and retaliations to cease. What is reasonable, and of primary importance, is that the government make a concerted, good-faith, and reasonably effective effort to enforce applicable Guatemalan laws in cases of firings and anti-union retaliation. After careful examination, the Subcommittee determined that the allegations presented in this second category of information failed to demonstrate that the Government of Guatemala had failed to make such an effort, and thus were neither sufficient to warrant review nor substantial and new.

Specific alleged incidents of worker rights violations which fell into this category of information include those relating to the Banco del Ejercito, Banco del Agro, Banco del Occidente, Banco Metropolitano, Dong San, the municipal employees in Escuintla, workers at the University of San Carlos, Auxilio Posthumo del Magisterio, and CIDASA.

The third broad category of information presented consists of a number of allegations of worker rights violations resulting from weaknesses in the content, administration, and enforcement of Guatemalan laws, including labor laws. Although the Subcommittee noted that it had examined previously each of these allegations in nearly identical form, it nonetheless reexamined each because of its longstanding belief that questions of labor law and administration are particularly relevant to a discussion of the protection of worker rights. If verified, the Subcommittee believed that allegations of this nature inherently fell within the definition of information acceptable under Part 2007.2(a)(2) of the GSP regulations. In addition, because of the importance it has long attached to questions of labor law, when considering whether the petitions filed in the 1991 GSP Annual Review presented "substantial new information" as required by Part 2007.0(b)(5), the Subcommittee further believed it appropriate to take a relatively more flexible view. Even with a more flexible view, however, the Subcommittee determined that none of the allegations contained in this category of information could be held to present "substantial new information," and as such were not sufficient to warrant further review. The specific allegations falling into this category of information are detailed below.

"provisions of the [Guatemalan] Labor Code violate international standards on the right of association" as well as the right to organize and bargain collectively (ILRERF et al)

This allegation, the Subcommittee noted, was supported by a list of articles of the Guatemalan labor code which allegedly violate international worker rights standards, as well as two broad assertions regarding deficiencies of the labor code with respect to the right to organize and bargain collectively. In addition, the ILRERF et al petition alleges that efforts by the Serrano government to pass a step-by-step labor code reform "fail to address continuing violations of basic rights of association, organizing and bargaining," and as such should not be considered by the Subcommittee.

Regarding these allegations, the Subcommittee noted that a virtually identical list of labor code articles was included in pages 13-16 of the petition filed by ILRERF et al in the 1990 GSP

Annual Review. The two broad allegations concerning the deficiencies of the labor code with respect to the right to organize and bargain collectively (that the labor code lacks both a reinstatement remedy for workers discharged for union organizing or union activity and a provision requiring employers to bargain in good faith with a duly constituted union) were similarly presented on page 15 of the same petition. the Subcommittee recalled that it had commented on nearly identical allegations in the worker rights summary released in 1990, after its decision to recommend the rejection of that year's petitions. In addition, the Subcommittee took note of the following language from a report of the U.S. Embassy which directly addresses the two broad allegations concerning the deficiencies of the labor code with respect to the right to organize and bargain collectively:

> "While true that explicit provisions of the [Labor] Code providing for reinstatement were removed in 1954, other articles have the same effect in practice. Article 62 of the Labor Code prohibits employers from "forcing or trying to force employees, by whatever means, to withdraw from unions or other legal groups to which they belong or wish to join." Article 379 says that after a union or group of employees notifies the Court that they have grounds to declare a strike, "none of the parties may take reprisals against the other nor prevent the exercise of their rights. Any party which violates this provision . . . must immediately remedy the damage he has caused." This provision has been used to reinstate workers. Article 380 says that in a conflict, the Court must approve "the termination of any labor contracts."
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> "The Labor Code...provides that a union or an ad hoc group of employees can present a grievance to the employer or the Court. If 25 percent of the work force supports the petition, a Labor Court assures that the parties are bargaining or it convokes a "conciliation tribunal" to recommend a solution to the grievance. The latter is one step for authorizing a legal strike. This in theory is more effective than ordering bargaining in good faith because employers may have to allow the Court to determine the settlement."

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As it considered these allegations, as well as the allegation that efforts by the Serrano government to pass a step-by-step labor code reform "fail to address continuing violations of basic rights of association, organizing and bargaining," the Subcommittee observed that the salient issue was not whether or not the Guatemalan Labor Code, in itself, provided an adequate level of worker rights protections. On this point, the Subcommittee believed that ample evidence from ILO documents, Embassy reports, various Country Reports on Human Rights Practices, and GSP worker rights petitions existed which

demonstrated that a number of the provisions of the Guatemalan Labor Code were not in compliance with international standards. While an issue of great concern, the Subcommittee believed that because of the inherent political and social difficulties in enacting an entirely new labor code, the more important issues for the protection of worker rights in Guatemala were the actions of the Government to enforce the present labor code as well as continuing actions to reform the labor code.

In this context the Subcommittee considered the allegation presented in the ILRERF et al petition that meaningful labor code reform had ceased in Guatemala and that the step-by-step labor code reforms presently under consideration "fail to address continuing violations of basic rights of association, organizing and bargaining." Because of the unsatisfactory nature of the present labor code, the Subcommittee believed that, if verified, an allegation that meaningful attempts to reform the Labor Code had ceased would qualify as "substantial new information" in the context of the GSP regulations.

As it examined the allegation and available information regarding labor code reform in Guatemala, however, the Subcommittee observed that it could not be said that serious, continuing efforts to reform the Guatemalan labor code were not underway. Although it acknowledged that the comprehensive, ILO-assisted labor code reform cited in its 1990 worker rights summary of Guatemala was no longer active, the Subcommittee observed that an important and meaningful labor code reform bill was in fact working its way through the Guatemalan Congress. This bill, introduced to the Congress by Juan Francisco Alfaro, a member of Congress from the National Centrist Union (UCN) and the President of CUSG, one of the largest Guatemalan trade union confederations, offers amendments to 44 articles of the Guatemalan Labor Code. Besides seeking to streamline the process of union registration and accreditation, the bill would also strengthen the penalties for unjust dismissals and other labor code violations, raising the fine from 100 to 500 quetzales for violations of any part of the labor code. This latter provision the Subcommittee weighed particularly heavily in light of the repeated allegations in previous GSP worker rights petitions of inadequate penalties for labor code violations.

While examining this draft labor code reform legislation, the Subcommittee was aware that the extent to which draft legislation could be viewed as a positive trend in the protection of worker rights was affected by the likelihood of the legislation being enacted into law. This likelihood of enactment, in turn, is strongly dependent on the degree of commitment to the legislation demonstrated by the current government. In this context, for a number of reasons the Subcommittee believed that the Labor Code reform bill had a particularly good chance of being passed. In the first place, the Subcommittee observed that the bill is based

on consensus reached in Social Pact discussions between the Government, private sector groups, and trade unions. Secondly, the Subcommittee noted that the bill enjoyed relatively broad support from members of UCN, which holds 40 out of 118 seats in the Congress, and President Serrano and his party, the Solidarity Action Movement (MAS), which holds 18 seats. And finally, the Subcommittee noted that the bill had already shown progress through the Guatemalan legislative system by being reported out of the Congressional Labor Committee with a favorable recommendation and passing its first of three readings on July 10.

"Denial or delay of union legal recognition" (AFL-CIO) (ILRERF et al)

This allegation, the Subcommittee noted, contains two distinct aspects. Regarding the first, that the complexity of the trade union registration process itself constitutes a worker rights violation, the Subcommittee noted that it had considered this issue as presented on page 14 of the Lawyers Group petition last year, and responded in its public worker rights summary. The salient issue, the Subcommittee recalled, was that despite the recognized shortcomings of the union registration process, the Government of Guatemala continued to recognize a substantial number of new trade unions, thereby adequately protecting the right to organize and bargain collectively. The second aspect of the allegation, that during the first half of 1991 the new Government had ceased to recognize new trade unions, was by nature new, and the Subcommittee considered it at length. Discussion of this issue is presented in a later section below.

The Government tolerates the use of Solidarismo by Guatemalan employers, which is designed solely to attack and destroy the right to organize and bargain collectively.

As it considered this allegation, the Subcommittee noted that allegations of worker rights violations stemming from "solidarismo" have been presented in a number of petitions submitted in previous GSP Annual Reviews, most recently in the petition filed by the Lawyers Group in 1990. Despite the fact that no credible new information, substantial or otherwise, was presented in the 1991 petitions, the Subcommittee again examined the question because of the evident seriousness with which petitioners have viewed the issue.

Regarding the solidarismo movement and its relationship to internationally recognized worker rights, the Subcommittee observed again that the central issue was not whether Guatemalan private sector employers favored solidarsimo and viewed it as a preferred alternative to trade unionism. In the view of the Subcommittee, ample evidence indicates that Guatemalan employers

do promote solidarismo. This evidence has been consistently verified by the U.S. Embassy in Guatemala City, most notably in the report cited in the 1990 worker rights summary. Because of the impossibility of controlling the business decisions of private firms in a free enterprise economy, the Subcommittee did not view the existence of soldarismo in itself or employers' promotion of solidarismo as prima facie proof of a worker rights violation. More critical to a discussion of worker rights, the Subcommittee determined, was the Government's attitude toward solidarismo, including the legal framework established for solidarismo and the manner in which the Government managed the relationship between legitimate workers' organizations and solidarismo associations.

In this context, the Subcommittee observed that record of the Government of Guatemala toward solidarismo was clear. The Government has consistently refused to register solidarismo associations as trade unions, and has thus denied the associations the right to perform functions which Guatemalan law reserves for trade unions, such as negotiating and signing collective contracts. As the following passage from a report from the U.S. Embassy makes clear, Guatemalan courts have ruled that solidarismo associations may not function as trade unions and may only exist as civic organizations:

> "A union-inspired appeal to the Constitutional Court challenged the Government's decision last September to grant a juridical personality to the solidarista umbrella organization as a civic (not worker) organization, the first Government attempt at legal recognition of solidarism. The Constitutional Court recently ruled that under Article 34 of the Constitution, the Government has no right to limit the freedom of association of solidarista members."

In the Subcommittee's view, a legal framework which reserves for legitimate trade unions the functions protected under the Labor Code, yet permits solidarismo associations to exist as civic organizations, is acceptable from a worker rights standpoint provided that the Government does not permit solidarismo associations to function in a way which serves to materially limit the exercise of the right of association by impairing the ability of unions to operate. Despite the allegations of petitioners to the contrary, the Subcommittee observed that the record was clear that unions continued to operate in the face of management attempts to organize solidarismo associations, thus demonstrating that the legal framework for solidarismo adequately protected the right of legitimate worker organizations to organize and bargain collectively. In this respect, the Subcommittee noted the following language from a report of the U.S. Embassy:

"In the real world, the five percent of pay a worker is required to contribute to the solidarista organization is more than union dues. Solidarismo is relatively expensive for both workers and employers. Unions which protect their members interests have little trouble competing with solidarismo....Although solidarismo is critical of unions, an individual worker is not forced to choose between the two, he can belong to both."

Inadequate enforcement of the minimum wage, child labor laws, and health and safety regulations (NYLC, AFL-CIO)

"the Ministry of Labor's failure to apply the [Labor] Code and the Labor Court's maladministration of labor justice resulted in further violations of worker rights." (ILRERF et al)

Turning to the above allegations concerning the enforcement, administration, and adjudication of Guatemalan labor laws, the Subcommittee noted that with minor exceptions, it had dealt with virtually identical allegations in previous GSP worker rights petitions, most recently in pages 17-18 of the 1990 Lawyers group petition. According to both that petition and the 1991 petition filed by ILRERF et al, Guatemalan employers routinely bar entry to labor inspectors and refuse to turn over books and records. According to the ILRERF et al petition, the labor inspectors themselves are too few in number and are grossly underpaid and susceptible to bribes. The Labor Courts, in the view of the ILRERF et al group, rarely issue compliance orders, and those orders that are issued are not enforced. Furthermore, despite Labor Code provisions allowing first-level proceedings in the Labor Courts to be entirely oral, the ILRERF et al petition alleges that Labor Court judges demand written materials, a practice which allegedly denies labor justice to many workers incapable of conducting a written argument and unable to afford an attorney. In addition to these previously presented allegations, the NYLC and AFL-CIO petitions contained a number of allegations of a failure of the Government of Guatemala to adequately enforce its labor laws in the maquila sector.

As it considered these allegations, the Subcommittee noted that a number of sources have consistently noted the inadequacies in the enforcement and administration of labor law in Guatemala, including Embassy reporting and various Country Reports on Human Rights Practices. In this respect, the Subcommittee observed that inadequate legal and administrative enforcement is a problem which extends beyond labor issues in Guatemala, and is to a large extent the result of Guatemala's relatively low level of socioeconomic development and ongoing insurgency. Such root causes of administrative and legal inefficiencies, the Subcommittee recognized, would only gradually be resolved, and as

a result the Subcommittee believed it unreasonable to expect such problems to be solved overnight. The more salient issue, the Subcommittee determined, was whether the Government was making progress to ameliorate the recognized inadequate enforcement and adjudication of the Guatemalan labor laws.

In this context, the Subcommittee determined that the case had not been persuasively made that the Government was not continuing to make progress to overcome the inadequate enforcement and adjudication of the Guatemalan labor laws. Consequently, the Subcommittee believed that the information presented under these allegations was not sufficient to warrant review in the sense of Part 2007.2(a)(2) In reaching this determination, the Subcommittee placed great weight on the important and highly-publicized campaign to increase Labor Code enforcement in the maquila industry (discussed in a later section below), as well as on the following sections from reports of the U.S. Embassy in Guatemala City:

> "The Ministry of Labor has recognized it will not obtain a massive infusion of additional resources and is reorganizing its existing staff. The changes should help to improve the work of the labor inspectors. The inspectors do have compulsive authority under Guatemalan law. If they are refused entry to a plant and give management a prudent period to respond, they can ask the police to escort them into the plant. This authority is seldom used since it obviously makes their work more difficult. Inspectors, however, do go to court to ask for punishment of managers."

> "After six months, under a new Labor Minister, some changes [in government efforts to improve administration of labor laws regarding conditions of work] have been dramatic, e.g., such as the blunt report on maquila problems... Without doubt the Labor Minister is hampered in his ability to be even more effective in the fight to uphold decent working conditions by the severe economic difficulties being suffered by the GOG [Government of Guatemala], including a huge deficit. The Government hopes to have a fiscal reform package in operation soon which will provide enhanced revenues to all ministries, including Labor....[T]he labor minister is genuinely committed to working on the issues..."

> "[It is incorrect to state that]...the Labor Code does not compel attendance at judicial hearings. Article 382 compels attendance. It is true, however, that the employer representative on the conciliation tribunal, a supposedly neutral third party, often fails to appear which obstructs the formation of the tribunal."

Regarding the CIDASA trade union dispute: "Despite political pressure from Mayora Dawe, the new Minister of Labor has

continued to insist that the company rehire the union leaders. The case is now before the courts. This is one of the cases which will test the Serrano Government's ability to use Labor Courts effectively."

Forced, physical labor is a recurring and regular part of mandatory service in Civil Defense Committees, thus violating the prohibition on forced or compulsory labor.

This allegation, the Subcommittee noted, has been presented in a nearly identical form in a number of petitions dating back to 1988. In response, the Subcommittee has commented repeatedly on the relevance of the issue to the worker rights outlined in the 1974 Trade Act, as amended, most recently in a lengthy discussion of the issue in its 1990 worker rights summary of Guatemala. On each occasion, the Subcommittee has noted that the U.N Convention on Forced Labor allows conscription into military service and that no convincing information exists which demonstrates a systematic pattern of forced labor among Civil Patrols. Regarding this year's ILRERF petition, despite the undocumented claim that unremunerated labor is a regular part of Civil Patrol activity, the Subcommittee again concluded that the information presented did not address a valid worker rights issues as required by Part 2007.2(a)(2). This conclusion, the Subcommittee noted, was supported by both reports from the U.S. Embassy and the 1991 Country Report of Human Rights Report for Guatemala:

"The ILO Convention on Forced Labor allows military conscription and honors civic obligations. Civil Defense patrols, while theoretically voluntary in nature, are commonly seen as a civic obligation in conflictive areas. Abolishing the patrols is one of the issues being debated in the negotiations for a peace settlement. While there are many human rights problems with the patrols, there is no systematic pattern of forced labor involved in membership in the civil patrols." (Embassy Report)

"There are allegations that civil defense patrols have violated the prohibition against forced labor. There were credible isolated instances of unpaid patrolmen being used for road work, building barracks, or cutting firewood. No systematic pattern of such abuse has been established." (Human Rights Report)

The fourth and final category of information considered by the Subcommittee consisted of two broad allegations of worker rights violations which had not been submitted previously in their present forms, and thus could be held to be "new." After

careful analysis of each petition, the Subcommittee determined that these two allegations, which dealt with the issues of labor code enforcement in the Guatemalan maquila sector and union registrations, were the only significant new issues raised in the 1991 petitions. As such, the Subcommittee believed that if either of the two allegations could be substantially corroborated, sufficient grounds would be established to warrant further review. After an in-depth examination of these issues, however, the Subcommittee determined that neither broad allegation could be said to be valid as presented, and that consequently the information presented by the allegations was not admissible under Part 2007.2(a)(2). A more detailed treatment of the two issues follows.

"Labor rights violations are constant in Guatemala's burgeoning maquila factories"

Although the Subcommittee noted that it had considered allegations of worker rights violations in Guatemalan textile and maquila plants in previous years, as it examined the 1991 petitions it was clear that the quantity and scope of allegations presented had materially increased. Rather than focusing solely on isolated labor-management conflicts in individual firms, as in previous years, the 1991 petitions present a number of allegations of systemic worker rights violations regarding the right to organize and bargain collectively and acceptable conditions of work, the most central of which are presented below. Regarding the right to organize and bargain collectively, the ILRERF et al petition alleges that the "major reason for the dearth in union membership in the maquila is the inability and unwillingness of government agencies to protect workers' rights....hundreds of maquila workers are dismissed each year for suspected union activity." In the same vein, the NYLC petition quotes an unnamed CGTG official who states that "eight attempts to enter the textile maquilas to organize--every effort has failed."

The Subcommittee noted that allegations regarding substandard working conditions, including inadequate minimum wages, were presented in all three petitions. The ILRERF et al petition alleges that "workers in the maquila export processing zone factories report widespread failure to pay the minimum wage." The NYLC petition, alleging "slave-like working conditions" in the maquila sector, charges that typical work conditions in the maquilas include being locked in the factory 12 hours a day, six days a week...management gives the workers stimulants so that they can work through the night without a break." In addition, the NYLC petition charges that "forced overtime is not compensated with the legally mandated overtime wage differential," and that "[f]actories in Guatemala rarely face government inspection, and if they do, regulations are never enforced." Drawing from a report published by the Guatemalan

government, the AFL-CIO petition notes a "lack of respect for the duly established hours in the workday", along with a number of other alleged violations.

As it considered these allegations, the Subcommittee noted that a surprising amount of information was available concerning conditions in the Guatemalan maquila sector, much of it provided by the Government of Guatemala itself. The most authoritative source on the maquila sector, the Subcommittee observed, was a report issued by the Guatemalan Ministry of Social Welfare on April 5, 1991. This report, a translated version of which is included in the AFL-CIO petition, documents in a open and forthright manner the worker rights problems in the maquila sector. In addition to documenting problems in the sector, however, the report also lists a series of "concrete proposals to protect workers in this industry" as well as an accounting of measures already adopted. As it reviewed this report, the Subcommittee found that although the report did tend to validate the form of some of the above allegations, the report itself should also be seen as a critical first step in coming to grips with the worker rights problems of the maquila sector. The Subcommittee found this point to be critical: The fact that the Government had researched and published a report critical of the maquila industry and outlined a program of action for improving conditions directly contradicted the central allegation that the government is unwilling and unable to enforce labor laws in the maquila sector.

This characterization of the Government as unwilling and unable to enforce labor laws in the maquila sector was similarly contradicted by other publicly available information and Embassy reports. This information tended to show both that the Government was making a good-faith effort to enforce Guatemalan labor laws in the sector, and that the enforcement actions had lead to an improvement in the observance of worker rights. According to a Bureau of National Affairs report from May 1991, Labor Minister Solorzano announced "a crackdown on foreign-owned maquiladoras that...are mistreating their workers with unfair wages, long hours, and unsafe working conditions." The report continued to note that as part of the crackdown, Solorzano conducted widespread inspections of approximately 300 maquila operations in Guatemala, of which 90 are Korean or North American-owned. This action resulted in 59 citations issued for labor law violations in less that three months, more than the 43 citations issued for all of 1990. In addition, the report noted that Solorzano formed a special commission of labor leaders, government officials, and export industry representatives to propose "tough reforms to the country's 1989 maquila law."

The Subcommittee observed that embassy reports also tended to show that although union organizers have had difficulties organizing factories in Guatemala's relatively new maquila

sector, it cannot be said that the Government is unwilling to extend worker rights protections to the sector. In this respect, regarding the NYLC allegation that all efforts to organize the maquilas have failed, the Subcommittee noted the following passage from a report from the U.S. Embassy:

> "Petitioners claim all attempts to organize have failed. this is not correct. Juan Francisco Alfaro has organized unions in Arrow and TEXMOSA textile factories which produce for the local market. As the petition shows, UNSITRAGUA has a union in CIDASA, a local textile factory, and in INEXPORT, a textile maquila. CGTG organized a union in PINDU, S.A. The latter two were "failures" because the union was not able to reach agreements with management to improve working conditions as unions did in Arrow and TEXMOSA."
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> "Alfaro is personally advising a union in formation at CAMOSA, the Van Heusen factories. Despite management's initial reluctance to allow a union in the international company, a Conciliation Tribunal was formed in mid-June and negotiations are underway using the court as mediator/ arbitrator. Management claims it wants to provide the best benefits in the industry; if so, CAMOSA could have the first successful union in maquila. This is an important test case."

In the context of a discussion of substandard working conditions in maquilas, including unacceptably low minimum wages, the Subcommittee also took note of the fact that in the context of the Social Pact discussions the Government recently reached an agreement with unions and employers groups to raise the minimum wage for both agricultural and non-agricultural workers. Besides meeting a key demand of labor in the Social Pact discussions, the Subcommittee noted that the raising of the minimum wage also directly addresses the allegation that the Guatemalan minimum wage is unacceptably low, and provides further evidence that the Government is making a good-faith effort to improve conditions in the maquila and non-maquila sectors.

> "Since the Serrano government took office, none of the previously existing CUSG union applications have been processed, and none of the 14 new applications for union recognition submitted since January 1991 have been acted upon." (AFL-CIO)

As it considered this allegation, the Subcommittee noted that in response to similar allegations in prior petitions, it had examined previously the provisions of the Guatemalan Labor Code which serve to hinder the ability of unions to quickly obtain legal recognition. These provisions, the Subcommittee recognized, are not in conformity with relevant ILO Conventions, and, if implemented vigorously, would unduly restrict the ability

of Guatemalan unions to exercise their right to organize and bargain collectively. In its previous considerations of the issue, the Subcommittee recalled that it had found that in spite of the complex procedures for obtaining legal recognition, the Government of Guatemala continued to grant legal recognition to a substantial number of trade unions. Although no substitute for a thorough reform of the provisions, in its previous considerations of the issue the Subcommittee determined that the evident good faith on the part of the Government of Guatemala ensured that the fundamental right to organize trade unions in Guatemala was respected.

In this context, the Subcommittee viewed particularly seriously the allegation that the present government had retreated from the practice of the previous government of granting legal recognition to trade unions as expeditiously as possible under present regulations. Despite the relative newness of the Serrano government, the Subcommittee believed that precisely because of the unsatisfactory nature of the regulations governing the legal recognition of trade unions, it was incumbent on the Government to continue at all times to make a good-faith effort to recognize trade unions as expeditiously as possible. The Subcommittee believed that because of the seriousness of the issue, verifiable information that the government had retreated from prior practices would in itself be sufficient to warrant further review.

In this respect, the Subcommittee noted that contrary to the claims of the petitioners, substantial evidence exists to indicate that the Serrano government continues to make a good-faith effort to recognize trade unions. According to a report from the U.S. Embassy, the Subcommittee noted, the Serrano government has used its administrative authority to simplify the regulations for the recognition of unions. President Serrano has delegated the responsibility for signing the juridical personalities to Labor Minister Solorzano, eliminating review in the President's office. Although this administrative action has undergone a court challenge, the Subcommittee viewed it as indicative of the Government's attitude and a positive development.

As it further examined the issue, the Subcommittee observed that available information also indicated that the Government was in fact continuing to register trade unions. In a letter to Bill Doherty, President of the American Institute for Free Labor Development, and later verified by the U.S. Embassy, President Serrano noted that "all of the union applications that were awaiting approval after having fulfilled the legal requirements were signed last week. The rest of the applications are being processed according to legal norms. In any case we have changed regulations to make the procedures for approval of a union less of a nuisance and speed them up."