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**Generalized System of Preferences (GSP)  
Subcommittee  
of the  
Trade Policy Staff Committee  
1993 GSP Annual Review**

**Worker Rights Review Summary**

**Case: 003-CP-93**

**COSTA RICA**

**December 1993**

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## I. INTRODUCTION

In response to a petition filed in June 1993 by the <sup>7 SP/SD</sup> AFL-CIO, the interagency Subcommittee on the Generalized System of Preferences (GSP) conducted a review of worker rights laws and practices in Costa Rica. The purpose of the review was to determine whether Costa Rica is complying with the worker rights provision of Section 502 (b) of the U.S. GSP law, which requires beneficiary countries to have taken or be taking steps to afford its workers internationally recognized worker rights. *RW*

On October 5, 1993, United States Trade Representative Mickey Kantor initiated the GSP worker rights review of Costa Rica, noting that actions towards improving worker rights were already in progress. For this reason, he announced, the worker rights review of Costa Rica could be terminated at any time during the review period. Because substantial positive actions have been taken by the Government of Costa Rica to resolve the allegations and shortcomings listed in the petition, and noting that the AFL-CIO informed the Subcommittee on November 16, 1993 of its decision to withdraw the petition, the Subcommittee recommends that Costa Rica be found to be taking steps to afford internationally recognized worker rights. As a result, the GSP review of Costa Rica has been terminated. *TS*

The GSP program, originally enacted in 1974, provides duty-free entry to eligible products from beneficiary developing countries. The GSP legislation (Title V of the 1974 Trade Act, as amended) defines internationally recognized worker rights as follows:

- a) the right of association;
- b) the right to organize and bargain collectively;
- c) a prohibition against any form of forced or compulsory labor;
- d) a minimum age for the employment of children;
- e) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health.

The Subcommittee noted that it is established U.S. policy that basic human rights are universal and that all governments are required to respect basic human rights, which include the first three cited worker rights, irrespective of social systems or stage of economic development.

The legislative history of the Generalized System of Preferences Renewal Act of 1984 indicates that Congress intended the level of development to be taken into account in assessing the worker rights situations in GSP beneficiary countries. The 1984 Committee on Ways and Means' report on the Renewal Act states that:

It is not the expectation of the Committee that developing countries come up to the prevailing labor standards of the

U.S. and other highly-industrialized countries. It is recognized that acceptable minimum standards may vary from country to country.

In the course of its review, the Subcommittee examined several submissions from the Government of Costa Rica (GOCR), the AFL-CIO, the International Labor Organization and the U.S. Embassy in Costa Rica.

II. Principal Issues

The AFL-CIO petition alleged violations of three of the five internationally recognized worker rights: 1) the right of association; 2) the right to organize and bargain collectively; and 3) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health, particularly with respect to conditions in the Free Trade Zones. Because the right of association and the right to organize and bargain collectively are closely connected in this case, the two issues will be dealt with simultaneously.

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The Right of Association and the Right to Organize and Bargain Collectively

One of the principal allegations made in the petition was that Costa Rica's Labor Code does not provide legal protection from reprisal for individuals engaged in trade union activities, organizers or leaders of a union being organized, or officers of an established union. In addition, the petition alleged that certain articles of the Labor Code restrict the right to strike, especially in the public sector, and that public sector workers are excluded from collective bargaining. The petition also charged that "solidarista" associations (joint worker-management organizations) are dominated by employers and are used to replace trade unions and to "negotiate" collective bargaining agreements. In addition, the petition alleged that the administrative requirements for forming solidarista associations are less stringent than those for union formation.

Anti-union discrimination

The petition cited specific provisions of the Costa Rican Labor Code that gave Costa Rican employers power to dismiss workers immediately and without notification for any reason, including involvement in trade union activities. The subcommittee confirmed that these provisions allowed employers to fire workers without cause or notice if financial compensation was made, and to dismiss workers immediately and without notification for any of twelve specified "valid" reasons.

The Subcommittee noted significant progress in Costa Rica in strengthening protections from employer reprisal for workers

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exercising their right to form unions and engage in trade union activities:

- The Constitutional Branch of the Costa Rican Supreme Court issued a major decision on October 8, 1993 enforcing all workers' constitutionally protected rights to associate, to form labor unions and workers' committees, and to be free from employer reprisals and dismissals based on union or organizing activities. This decision held that an employer had unlawfully fired three employees because of their participation in organized activity, and ordered the employer to reinstate the employees and pay back wages as damages.

- On October 27, 1993, the Legislative Assembly approved Reform Legislation consistent with the ILO Committee on Freedom of Association's 1991 recommendations regarding adequate protection against anti-union discrimination. The legislation was then enacted on November 12, 1993. Significant provisions of the reform legislation include the following:

*new labor Code Cascht W/LO*

- Article 364 of the Labor Code, as amended by the reform legislation, prohibits all actions by an employer that tend to "eliminate, avoid, limit or impede the free exercise of workers' collective rights, union rights, and the rights of workers' coalitions." The Subcommittee noted that this article also provides that any act derived from a violation of these rights is "absolutely null and void" and is punishable as mandated by the Labor Code.

- Furthermore, Article 610 of the Labor Code, as amended, mandates that in cases where a fine is imposed for a violation of worker rights as enumerated in Article 364, there must also be restitution of the violated right and compensation for damages. The GOCR informed the Subcommittee that restitution would include the restoration of employment.

- Article 368 provides enhanced job security to certain union members and union organizers, leaders, officers and candidates for office by prohibiting employers from firing such individuals for a specified period of time after the registration of a union.

- Article 369 of the Labor Code, as amended, clarifies an existing provision allowing employers to terminate at any time an employee who is working without a contract as long as adequate notice is given. Article 369 states that such a dismissal is null and void if it took place because of an employee's attempt to exercise

his rights under the Labor Code. In addition, this article requires the Labor Courts to order the reinstatement of the employee with back pay and to impose sanctions against the employer.

\* Newly-enacted Article 612 of the Labor Code provides that forty percent of fines collected by the Labor Courts will be earmarked for strengthening the mechanisms of labor protection.

*Truly to inspect*

**Solidarista associations**

The petition alleged that Costa Rica's Labor Law allows employers to establish "solidarista" associations that can "negotiate" collective bargaining agreements with management, thereby preempting the role of unions. The Subcommittee notes that the ILO Committee on Freedom of Association, upon conclusion of a two-year investigation in Costa Rica, did rule that the involvement of solidarista associations in trade union activities such as collective bargaining were violations of freedom of association.

The Reform Legislation amends the Law of Solidarity Associations to prohibit such associations from carrying out any type of activity which opposes or impedes "the organization or the operation of labor and cooperative unions." In addition, the Subcommittee notes, the new legislation expressly prohibits solidarista associations from participating in collective bargaining or entering into collective bargaining agreements. The reform legislation also changes the administrative requirements for union formation, allowing unions to have the same number of members (twelve) as are required to form a solidarista association.

*not resubmit to change:  
1) that solidarista  
can negotiate  
2) direct agreement*

**Rights of public sector workers to bargain collectively and to strike**

Reporting from the U.S. Embassy in San Jose and the State Department's Country Reports on Human Rights Practices for 1992 both confirm the petition's allegation that public sector workers cannot legally engage in collective bargaining, pursuant to the 1978 Public Administration Act. But the Subcommittee notes that the GOCR has taken steps to afford public sector workers the right to bargain collectively and to strike.

The Subcommittee takes particular note of the Legislative Assembly's June 15, 1993 passage of a bill repealing Articles 333 and 334 of the Penal Code that provided for criminal penalties for workers who organize public sector strikes.

In addition, the GOCR has submitted to the Legislative Assembly for ratification ILO Conventions No. 151 and 154 governing public

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sector workers' right to organize and bargain collectively. Under Costa Rican law, ratified ILO Conventions are equivalent in status to treaties and as such become domestic law. The GOCR has also submitted twelve other ILO conventions for ratification this year.

The Subcommittee views positively the development of a new law, being drafted by the GOCR in consultation with the Costa Rican trade union movement, which when enacted will guarantee the right to organize and bargain collectively to public sector workers and will afford the right to strike to public workers who are not in "essential services" as defined by ILO Convention No. 151. The Subcommittee will continue to monitor developments in Costa Rica related to the ratification of ILO Conventions, including Nos. 151 and 154, and the enactment of the new law for public sector workers.

Acceptable Conditions of Work with Respect to Minimum Wages, Hours of Work and Occupational Safety and Health

The petition alleged that widespread violations of worker rights standards, including safety and health standards, excessive working hours, noncompliance with minimum wage standards and poor working conditions, occur in the Free Trade Zones (FTZ's). The petition further charged that Labor Ministry investigations in the FTZ's had been discontinued due to a lack of resources.

While no significant evidence was provided by the petitioner to support these allegations with respect to working conditions in the FTZ's, the Subcommittee noted that the GOCR is actively engaged in efforts to improve enforcement of Costa Rican labor laws. Article 612 of the Reform Legislation earmarks forty percent of funds collected as fines by the Labor Courts to strengthen labor protection mechanisms and enforcement. In addition, the Subcommittee noted that the GOCR has obtained a funding commitment from the Inter-American Development Bank to enable the Labor Ministry to increase its number of labor inspectors and to provide regional inspection capabilities outside of the San Jose region.

III. Subcommittee Recommendation

In light of the significant positive actions noted above, the Subcommittee recommends that the review of Costa Rica's worker rights practices be terminated and the GOCR be found to be taking steps to afford internationally recognized worker rights to its workers. The Subcommittee will continue to monitor progress in areas where reform is yet to be completed, particularly with respect to legislation granting the right to bargain collectively and to strike to public sector employees and the ratification of ILO Conventions in this area.