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

1990 GSP Annual Reviews

Worker Rights Review Summary

Case: 18-CP-90

Review of
(1989 submission)

The Dominican Republic

April, 1991

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THE DOMINICAN REPUBLIC

The Subcommittee on the Generalized System of Preferences (GSP) of the Trade Policy Staff Committee, continued an interagency review of the petition filed by Americas Watch challenging the continuing preference-eligibility of the Dominican Republic. The challenge was based on allegations brought forward by the petitioner regarding the Dominican Republic's failure to satisfy the GSP's mandatory eligibility criterion 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 purposes of the review the term internationally recognized worker rights was defined as detailed in section 502(a)(4) of the Trade Act of 1974, as amended.

The review 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 (15 CFR Part 2007).

As it continued and broadened its review, the Subcommittee took note of the fact the petition filed in May 1989 by Americas Watch focused solely upon allegations of a denial of worker rights among Haitian cane cutters in the Dominican Republic. While judging these allegations to be serious enough to warrant an examination, the Subcommittee was, nonetheless, guided by the language of the Conference Report of October 5, 1984 on the Trade and Tariff Act of 1984, which states:

"It is the intention of the Conferees that each element of the definition (of internationally recognized worker rights) be reviewed with respect to the determination required...."

In this context, the Subcommittee began the second year of its review of the Dominican Republic by recalling its interim determinations of April 1990:

"...as the provision of internationally recognized worker rights to the Haitian cane cutters employed in the Dominican Republic was the objective of its examination, and that the elements of such an effort are extremely complicated, time was required to bring such protections into being. Such protections...could be effected either through a government-to-government agreement between the Governments of Haiti and the Dominican Republic or through legislation in the Dominican Republic."

"...as the focus of its examination in this review cycle was focused solely on the issue of the cane cutters, the Subcommittee had not been able to satisfactorily complete its examination of all five of the worker rights criteria detailed in the statute as those criteria are applied throughout the Dominican Republic. In this regard, the Subcommittee noted the following language in the Country Reports on Human Rights Practices for 1989:

But not all 5 are required for action
ex: child labor? Forced labor? Rare

"...unions operate under the handicap of a dated labor code (1951) that gives unions few rights vis-a-vis management and gives no effective protection for organizers or union officials. The labor code specifies in detail the steps required to constitute a legal union, federation, and confederation, and labor objects that the Government can use the failure to comply with every minute detail to withhold official recognition...."

"[International Labor Organization (ILO)] criticism is often directed at Article 69 of the code which essentially permits an employer to dismiss a worker without cause. The ILO's Committee of Experts (COE) noted in 1989 that the Government still needed to strengthen measures protecting workers against antiunion discrimination."

"Although the labor code applies to free trade zones, in both 1988 and 1989 there were allegations that workers identified in applications for union recognition were dismissed from free trade zone companies shortly after the presentation of documents to the Secretariat of Labor. Labor union officials also charged that the Secretariat of Labor failed to act on formal applications for recognition of unions in the free trade zones within the required 30-day period."

As it reviewed these interim determinations, the Subcommittee noted that allegations had been raised and information presented concerning worker rights problems in a number of sectors of the Dominican economy. Given the considerable number of allegations, the Subcommittee decided to examine information obtained during the 1990 Annual Review in terms of the following groups of allegations:

1. Allegations of worker rights violations of Haitian sugar cane cutters (principally forced labor, child labor, and infringements on the right to organize);
2. Allegations of worker rights violations principally resulting from weaknesses of the Dominican labor code (including Article 69), and;
3. Allegations of violations of the right of association and the right to organize and bargain collectively of workers employed in Dominican Export Processing Zones (EPZs).

Although the Subcommittee recognizes the substantial overlap between groups of allegations, its findings regarding each group of allegations are detailed below.

ALLEGATIONS OF WORKER RIGHTS VIOLATIONS OF HAITIAN SUGAR CANE CUTTERS.

As the Subcommittee reviewed in detail the various allegations concerning worker rights violations of Haitian cane cutters, it recalled that in its May and October 1989 submissions to the Subcommittee, Americas Watch posed five general categories of worker rights allegedly denied Haitian cane cutters in the Dominican Republic. Those categories are: 1) "forced recruitment;" 2) "forced labor;" 3) "child labor;" 4) "substandard living and working conditions;" and 5) "infringement of the right to organize."

Because of its special relevance to the issue of Haitian cane cutters in the Dominican Republic, the Subcommittee recalled portions of the text of the 1989 ILO Conference "special paragraph" on the Dominican Republic:

...In this regard the Committee considered that special efforts were called for so that the ILO could as from the next harvest verify the situation and ascertain on the spot that improvements which had been promised but were still awaited had in fact been made."

"...The Committee [of Experts] stressed that there had been no progress either in terms of legislation or in practice on essential points raised over a number of years by the Commission of Inquiry, the Committee of Experts, and the Conference Committee.

As it further considered the allegations concerning forced recruitment and labor, child labor, and infringements on the right to organize of Haitian cane cutters, the Subcommittee was pleased to note several positive developments during the 1990 review cycle, including the visit of an ILO team to the Dominican Republic in January 1991, the promulgation of a Presidential Decree on Haitian cane cutters in October 1990, the Secretariat of Labor's October 1990 resolution banning recruitment of seasonal laborers by intermediaries (buscones), and the inclusion of new language guaranteeing the rights of foreign laborers in the draft labor code submitted to and supported by President Balaguer. The Subcommittee was further pleased to note that both the ILO visit and the Presidential Decree directly addressed concerns from the ILO special paragraph cited above.

Concerning the January 3-22, 1991 visit of the ILO team, the Subcommittee received reports that the team observed the beginning of the sugar harvest, considered progress on revamping the Dominican Labor Code, and consulted with the Government of the Dominican Republic on various worker rights issues. Although the Subcommittee regretted that the ILO team's report had not been available for its consideration, it believed nonetheless that the visit itself should be viewed as a positive indication of the Government of the Dominican Republic's intentions to improve its worker rights practices.

Regarding Presidential Decree 417-90 on Haitian cane cutters, the Subcommittee noted with satisfaction that the decree not only directly addressed concerns raised in the ILO special paragraph cited above, but also appeared to address the subcommittee's primary interim determination of April 1990:

"...Such protections [for Haitian cane cutters]...could be effected either through a government-to-government agreement between the Governments of Haiti and the Dominican Republic or through legislation in the Dominican Republic. (emphasis added)."

The Subcommittee determined that the Presidential Decree could provide such legislative protection based on a report from the U.S. Embassy in Santo Domingo that the Dominican Constitution "grants the President the power to issue decrees in the pursuance of his responsibilities to 'govern the nation.'...[D]ecrees have the full force of law and may define new policy."

As it reviewed the Decree and its implementation, the Subcommittee observed that it mandates three separate actions, each of which, when fully implemented, would go a considerable way toward favorably resolving a number of the petitioners allegations concerning worker rights abuses of Haitian cane cutters. Specifically, the Decree 1) legalizes the immigration status of Haitian workers; 2) requires companies to register alien workers, and; 3) requires companies to provide individual contracts to workers in their native language. By legalizing the immigration status of Haitian workers, the

Subcommittee noted that the Decree would remove the barriers which have stopped illegal immigrants from seeking legal protection of their worker rights as provided for in the Dominican labor code. Further, the Subcommittee noted that the act of registering Haitian workers and providing them written work contracts, when fully implemented, would remove a large measure of the social and legal uncertainty which can make them vulnerable to forced recruitment and labor.

Given the complex nature and long history of the Haitian cane cutters problem, the Subcommittee weighed especially carefully available information concerning the implementation of the Decree. In this regard, the Subcommittee noted the following comments by the U.S. Embassy in Santo Domingo:

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"Sources throughout the country have confirmed that there is a serious effort to register and grant status to illegal Haitian workers in agriculture."

"Several thousand illegal Haitians have begun their paperwork to become legalized."

"...[T]he Secretariat of Labor had set up several offices in the area [one large sugar refining complex or "ingenio"] to assist in the legalization of Haitians under the October Presidential Decree....Local labor leaders reported that the work was progressing well and that more than half of the estimated 4,000 illegal Haitian residents had begun their paperwork with many more applying for legal status each day. They stated that the other major impact of the new Decree would be the change from a collective agreement for sugar workers to individual (but collectively bargained) contracts. Union leaders opined this would benefit workers."

"The United Union of the Central Romana Corp. (which owns the country's largest private sugar producer) reports that sugar harvesters of the la Romana area are under individual contracts. Most of these workers were previously covered under a collective contract."

"Another CEA ingenio told [the Labor Reporting Officer] that four of the Secretary of Labor special representatives were working in the ingenio, travelling from batey to batey to make sure all workers were under contract."

The Subcommittee also considered information submitted in a March, 1991 report prepared by Americas Watch, the National Coalition for Haitian Refugees, and Caribbean Watch. According to this report:

"...[I]mplementation of the measures outlined in the Presidential Decree was uneven. The harvest was only about one month old in most of the country and just beginning at some sugar mills, and this may account for some of the unevenness. We saw no signs that the Secretary of Labor's resolution [banning recruitment by intermediaries] was being followed."

"Some progress had been made. Work contracts had been distributed at the border to many first-time Haitian cane cutters; an immigration office had been established in several of the sugar mills we visited and the names of Haitian cane cutters were registered in the bateys, with the promise that they would later be given identification cards...."

"...we also found significant problems with the implementation of the measures announced in the Presidential Decree and that the most serious abuses that pervaded the Dominican sugar industry persisted....A number of Haitian first-time cane cutters with whom we spoke at random did not have work contracts. Some had never received one and others had it taken away by a CEA administrator upon arriving at the plantation. Most of those who had contracts, did not know what the papers were or what they entitled them to. One basic problem with the work contract is that the Creole version of the contract was produced by the Dominican Secretariat of Labor and is very poor quality...."

Concerning the above shortcomings reported by America's Watch et al, the Subcommittee determined that while serious and deserving of continued attention, in themselves they did not demonstrate that the Dominican government was not making a credible attempt to enforce the Decree. Given the complex nature and long history of the Haitian cane cutters problem, the Subcommittee believed it understandable that the Dominican government was experiencing some procedural difficulties in implementation of the Decree in its first year, such as problems with Creole translations and a lack of uniformity in distributing work contracts.

Regarding the Secretariat of Labor Resolution 23/90 banning recruitment of seasonal workers by intermediaries, the Subcommittee noted that it had received contradictory information concerning the Resolution's implementation. According to the report filed by America's Watch et al, the resolution has had little effect:

"Forced labor is still practiced in the Dominican Republic. The CEA and its recruiters together with Dominican border guards continued (sic) to use deception and force to recruit, transport and confine Haitian cane cutters to state-run plantations during the current harvest."

The Subcommittee additionally noted the March 1991 Lawyers Committee for Human Rights' claim that "Haitian children continue to be lured to the CEA plantations by recruiters who are paid by the CEA and are forced to cut cane."

On the other hand, the Subcommittee noted the following statement from a report from the U.S. Embassy in Santo Domingo:

"There has been a marked reduction in the number and level of both private and public complaints of abuse in this area for the last two seasons....[I]ndividual complaints about small numbers of people forcibly recruited or deceived by private agents [continue to be reported], but in general...the problem [appears] significantly smaller."

Concerning this apparently contradictory information, the Subcommittee believed it likely that both the U.S. Embassy statement and the Americas Watch report were describing different aspects of the same situation: The Embassy view of a general improvement was based on its long-term, country-wide point of view, while the America's Watch opinion of continued violations was based on the interview of a small number (approximately three dozen) of Haitian cane cutters over a short period of time (January 28-February 6, 1991). Given the seriousness of the issue of forced recruitment and labor, however, the Subcommittee believed that the situation should continued to be monitored closely in the future.

spatic evidence but overall perspective

In the context of the legal protections afforded by Presidential Decree 117/90 and Secretariat of Labor Resolution 23/90, the Subcommittee was also pleased to note the inclusion of language guaranteeing the rights of foreign laborers in the labor code reforms recently submitted by a Presidential blue-ribbon commission to President Balaguer. The draft labor reforms contain the following language, which the Subcommittee viewed as further evidence of the government of the Dominican Republic's commitment to furthering the worker rights of Haitian cane cutters:

"The use of intermediaries or the involvement of the military in the contracting, transportation or recruitment of foreign labor to work in the sugar industry is prohibited."

To be hired, a foreign worker must be given, conforming to existing law, a temporary residence permit. The contract of this worker must contain, in addition to the requirements of Article 23 of this code (note: which outlines the basic requirement of any work contract), the following:

- a) the right of the worker to unilaterally rescind the contract;
- b) the details of wages, paid in cash and personally to the worker, which in all cases cannot be less than the established minimum wage;
- c) the payment of all bonuses, incentive payments, Christmas extra wage or all other economic rights or benefits granted by law;
- d) guarantees in the weighing of the cane, which must be done in the presence of the worker or his representative;
- e) the recognition of the freedom to organize;
- f) the obligation of the worker to submit to a medical examination and his right to be covered by social security and labor laws;
- g) the conditions of lodging, food, sanitation and adequate treatment for the worker and his family; and
- h) the provision of the contract in Spanish and in the native language of the worker.

ALLEGATIONS OF WORKER RIGHTS VIOLATIONS PRINCIPALLY RESULTING FROM WEAKNESSES OF THE DOMINICAN LABOR CODE

As it considered allegations of worker rights violations principally resulting from weaknesses of the Dominican Labor Code, the Subcommittee again recalled the following language from the Country Reports on Human Rights Practices for 1989:

"...unions operate under the handicap of a dated labor code (1951) that gives unions few rights vis-a-vis management and gives no effective protection for organizers or union officials..."

Given the key role played by the labor code in providing worker rights to workers in the Dominican Republic, the Subcommittee viewed particularly seriously charges of a dated and unfair labor code. In this context, however, the Subcommittee was pleased to note a number of positive developments during the 1990 review cycle, including the formation of a blue-ribbon commission to reform the present labor code, the submission of draft labor reforms to President Balaguer, the passage through the Congressional Chamber of Deputies of a labor protection law modifying Article 69 of the labor code, and a Presidential announcement supporting worker rights and labor code reform. Taken together, the Subcommittee viewed these developments as important demonstrations of the government of the Dominican Republic's commitment to modernize the Dominican labor code and better afford worker rights to Dominican workers.

Concerning the blue-ribbon commission to reform the labor code, the Subcommittee observed that the commission finished its draft of labor code reforms on time in mid-January and presented it to President Balaguer on February 6. President Balaguer, in turn, presented the draft reforms to the Secretary of Labor, the business sector, labor, and the Pontifical Mother and Teacher Catholic University (PUCMM). Following the presentation of the revision project to the public, the business and labor sectors began on March 18 a series of meetings to work out consensus support of a major portion of the proposed revised code prior to its being presented to the Congress (possibly sometime in April). Both sectors have publicly recognized the need to revise the old code. On March 23, President Balaguer reiterated his support for the new Code and applauded the business and labor sectors' efforts to work out differences and support the revision. Although it may face political opposition and is not yet law, the Subcommittee nonetheless judged the draft labor code to be a singularly important development affecting worker rights.

In addition, the Subcommittee noted with satisfaction that the draft labor code reforms appear to be comprehensive in nature, touching on each of the five worker rights specified in the 1974 Trade Act, as amended. As it reviewed the draft labor code, the Subcommittee observed that, among others, it proposes the following significant revisions to the current Dominican labor code:

Principle II (new) "all persons are free to pursue whatever profession or office, industry or commerce permitted by law. No one may impede the work of anyone or oblige them to work against their will."

Principle VIII (new): "in the case of conflict among laws or conventions, the worker's side prevails. If there is doubt in the interpretation or scope of the law, it will be decided in favor of the worker."

Principle XI (VII in current code) language changed: "minors cannot be employed in services that are not appropriate for their age, state or condition or that impede them receiving obligatory schooling."

Principle XII (new): "it is recognized that workers have, among others, the basic rights of freedom to organize, to enjoy a just wage, to have professional training and to enjoy the respect of their physical integrity, privacy and personal dignity."

Article 60: Requires the Secretariat of Labor to review work contracts which have been suspended and issue a decision within 15 days as to whether the cause for suspension was legal. Previously, no specific time period was required.

A new Article 79 which would replace current Article 68:

"Layoff ("desahucio") is an act where one of the parties (of a work contract), by giving advance notice to the other and without alleging cause, exercises the right to terminate an open contract.

A layoff does not take effect and the open contract continues if the employer uses this right:

1st - during the time in which he had promised to use the worker's service, according to Article 25. (Note: Article 25 allows an employer to guarantee a certain period of work in an open contract.)

2nd - while a work contract is under suspension.

3rd - during a worker's vacation.

4th - during the year following a woman worker having filed charges of sexual harassment against the employer or his representative before the Department of Labor or jurisdictional authorities.

5th - after the worker having completed 10 years of uninterrupted service with the company.

6th - in those cases covered by article 236 and 396. (Note: Article 236 prohibits a layoff of a woman six weeks prior to and following birth. Article 396 grants protection to certain union members)."

Article 84: Doubles to quadruples the required severance pay (based on time with the company). For example, a worker with 4 years employment would get 60 days wages in severance pay under the current code, 120 days wages under the revised code; a worker with 11 years would get 165 days wages now, 660 under the revised code.

A new Article 91 contains a revised version of Article 78 of the current code which lists causes for justified dismissal (under which an employer is not liable for termination pay or to give advance notice). The revised language limits the use of this article to the initial three-month trial period of a new worker. The proposed new language also drops the 19th section of the current Article 78, which acts as a catchall section allowing the employer to fire a worker for not performing to the expectations of the company.

A new Article 112 reduces the requirement for a union to become a collective bargaining agent from support of over 60 percent of all employees (current code) to over 50 percent.

Article 213 (new): Disallows employers to withhold payment of wages for debts owed the company.

Article 214 (new): Defines as criminal fraud failure to pay all wages on payday or at the end of the work contract.

Articles 259 - 261 effectively eliminate the apprentice system found under the current code. (Note: Organized labor has often charged that many companies, especially in the EPZs, have abused this part of the code in order to pay less [apprentices only have to be paid 1/2 the minimum wage] and not be required to pay benefits [if an apprentice is let go within 6 months]).

Article 326 (new): For the first time, the formation of unions by sector rather than by company would be explicitly permitted.

Article 380: A new paragraph is added which allows workers to demand a decision from the Secretariat of Labor 60 days after a petition for union recognition is formally presented. If such a demand is not answered after 3 days, the union is automatically recognized.

Article 407: Allows public employee conflicts the option of Secretariat of Labor mediation and arbitration. The current code only has the option of labor courts for these disputes.

Article 408: Narrows the definition of essential public services which are forbidden to strike by eliminating from the current code prohibitions against strikes by workers in transportation, food services, and fuel services. It maintains strike prohibitions for workers in communication, utilities (water, gas, electricity), and the medical sector.

Article 410: Allows strikes for issues affecting the "collective interest." The current code only permits strikes for economic conflict settlements. This article also drops prohibitions against political and sympathy strikes, both illegal under the current law. It maintains the ban on strikes that affect national security, public order, etc.

Article 411 reduces the vote needed to have a strike from 61 percent of the union (under the current law) to 51 percent.

Articles 725 - 726: Define the violations that are subject to being penalized and set forth maximum and minimum penalties. The current code has penalties from rd\$5 to \$1000 (US \$0.40 To \$79.00) And prison terms from 6 days to 6 months. The revised code increases these to 2 to 30 times the monthly minimum wage (rd\$2,000 to \$60,000 or US \$158 to \$4,735) and the same prison terms. The current code has five levels of violations, two of which carry potential prison terms. The revised code calls for six levels of violations, five of which carry potential prison terms.

As it continued its examination of the role of Dominican labor law in providing worker rights to Dominican workers, the Subcommittee next turned its attention to the passage through the Chamber of Deputies of a labor protection bill modifying Article 69 of the Labor Code. The Subcommittee viewed the introduction and partial passage of such legislation as particularly important because of the frequent allegations of misuse of Article 69 by Dominican employers against workers attempting to organize unions. Although also not fully acted into law, the Subcommittee noted with satisfaction that similar language protecting union officials against dismissal had been included in the draft labor code reforms discussed above. The language in the draft labor code reforms is adapted from the bill passed through the Chamber of Deputies, and, among others, contains the following provisions:

Article 393: "The stability granted by this section is given to guarantee the defense of the collective interest and autonomy in the exercise of union functions."

Article 394: "Those covered by union right protection:

- a) worker/members of a union in formation, up to 20 people;
- b) worker/members of an executive board of a union, up to 5 people;
- c) representatives of workers in the negotiation of a collective contract, up to 3 people; and
- d) substitutes for those named in this title."

Article 395: "The firing of all workers covered by union rights protection must be done before the Labor Court, after which, in a period not longer than 5 days, it will determine if the alleged cause results from the worker's labor conduct, function or activity. When the employer does not observe this procedure, the firing is null and does not terminate the work contract."

Article 396: "Layoffs ("desahucios") have no legal standing for those workers covered under union rights protection."

Article 397: "The duration of union rights protection is subject to the following rules:

- 1) for members of a union in formation, up to 3 months following its registration;
- 2) for members of a union executive board and for representatives of workers in negotiation of a collective contract, up to 6 months following the termination of their duties;
- 3) when the worker in one of these positions is replaced by another in the actual execution of the union function, he loses the union rights protection; and
- 4) the union or its supporters must communicate in writing to the employer, the Department of Labor or the local jurisdictional authority the intention of constituting a new union as well as the designation or election that takes place. The coverage of union rights protection begins with this notification."

As it concluded its considerations of the role of Dominican labor law in providing worker rights, the Subcommittee finally drew its attention to a public statement by President Balaguer as reported in the newspaper Listin Diario on February 15, 1991. According to a translation provided by the government of the Dominican Republic and confirmed by the U.S. Embassy in Santo Domingo, President Balaguer made the following remarks (emphasis added):

"...Here in the Dominican Republic not only is freedom to unionize considered sacred, but also many other guarantees that benefit labor. The reform has not been submitted immediately to Congress, first, because the Congress is currently discussing several other issues of extreme importance to the nation; and second, because it is desirable to first consult with domestic unions and other knowledgeable individuals so

that they can express their opinion and indicate errors in the draft code that have to be corrected or other things that need to be added. The Government is willing to make every effort necessary to submit the draft code to Congress soon, and to see that the Code meets all the requirements, and that it fulfills the desires of all the labor organizations in the country."

Given that the proposed labor code reforms are still in a preliminary stage, the Subcommittee welcomed the personal commitment of President Balaguer to the labor code reform effort and was confident his support would greatly contribute to a speedy enactment of the reforms.

ALLEGATIONS OF VIOLATIONS OF THE RIGHT OF ASSOCIATION
AND THE RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY
OF WORKERS EMPLOYED IN EXPORT PROCESSING ZONES

FOIA

As it examined the final group of allegations concerning worker rights problems in Dominican export processing zones (EPZs), the Subcommittee was troubled by the large number of allegations made during the 1990 Annual Review cycle. The Subcommittee viewed such allegations as particularly serious given the large number and economic importance of EPZs in the Dominican Republic and the requirement of the 1974 Trade Act that worker rights be afforded in "any designated zone" in GSP beneficiary developing countries.

As it reviewed available information concerning the allegations, the Subcommittee observed that during the review cycle allegations had become less general and more specific in their focus on the behavior of a small number of firms located in Dominican EPZs. For instance, in a post hearing brief dated October 16, the AFL-CIO made a number of general allegations concerning the denial of the right of association to workers employed in Dominican EPZs, including the following:

"There are 19 free zone parks in the country, but there is not one functioning union." Case 1

"It is widely feared that open signups and submission of members names to obtain legal recognition for workers in a plant would result in the immediate dismissal of the workers involved. Such fears are not exaggerated, as evidenced by the attached letter....This type of blacklisting is a clear violation of workers right of association." Case 2

"Workers in San Pedro de Macoris attempted to organize a union, United Workers Unions, affiliated with the confederation of Independent Workers (CTI) and applied for legal recognition. The Secretary General, Mayran Jimenez, was fired from 4 different factories and arrested 3 times." Case 3

While not disputing the veracity of the AFL-CIO's initial allegations, the Subcommittee was obliged nonetheless to note that 1) with the exception of the allegation concerning a lack of unions in Dominican EPZs, the Subcommittee was not in a position to confirm the AFL-CIO's charges, and; 2) none of the AFL-CIO's charges allege any wrongdoing or complicity in worker rights violation on the part of the Dominican Government. The Subcommittee believed the latter point especially important given that the object of its inquiry was not on the actions of individual firms, per se, but on the broader role of the Dominican Government in affording worker rights to individuals

employed in Dominican EPZs. In this context, the Subcommittee noted the AFL-CIO's statement in its October 16 submission concerning the Dominican Government's reaction to the continuing problems of workers attempting to organize unions in Dominican EPZs:

"On October 11, the Minister of Labor, Washington De Pena, announced to the press that both Haitian braceros and free zone workers would be allowed full freedom to organize unions. In making the announcement, De Pena admitted that 'it is true that the number of trade unions in the free zones is very reduced owing to the type of union repression that exists in some industrial parks.' The AFL-CIO welcomes the government's willingness to recognize new unions in the zones."

In its December 11 letter to the Subcommittee, however, the AFL-CIO narrowed its focus to the behavior of a small number of firms operating in EPZs and the Government of the Dominican Republic's response to the firing of union organizers in those firms:

"Despite government assurances that workers in the free trade zones would have the right to organize and bargain collectively, workers in those zones who recently attempted to organize unions were summarily fired. Workers were fired from Westinghouse, Sylvania, Hanes and several other local companies after they began to organize unions. In Westinghouse, the union was able to gain legal recognition; however, three weeks later all nine of the union leaders were fired. With a weak labor code and judicial system, there is little expectation that any of those workers dismissed for union activities will be reinstated."

In its January 18, 1991 letter the AFL-CIO continued in a similar vein, arguing that the "...Dominican Government must be held responsible for the clear violations of workers rights in the free trade zones even if the violations are perpetrated by foreign companies."

Regarding these allegations, the Subcommittee was able to develop the following information:

On October 15, the Minister of Labor announced that petitions for recognition of unions in free trade zones would be processed.

As of March 27, the Dominican government has officially recognized unions at four plants in EPZs: Westinghouse, Undergarment Fashions, Colombia Cadena and Sylvania.

Concerning the Westinghouse union:

According to the U.S. Embassy in Santo Domingo, after the Westinghouse union was recognized, a total of ten union members were fired including eight from the union's board of directors.

On December 21, 1990, the Westinghouse union filed a complaint with the Secretariat of Labor charging that Westinghouse's firings were in violation of the labor code.

On January 11, the Westinghouse workers union presented a second formal action before the Secretariat of Labor seeking rd\$10 million (US \$896,000) in damages from Westinghouse for the allegedly illegal firing of several union members.

On January 10-15, the Westinghouse union presented criminal charges of violation of the labor code against Westinghouse in a Dominican labor court. The labor court action is a parallel legal process to the regulatory/civil actions the union has filed with the Secretariat of Labor.

- Concerning the allegations in regard to the formation of a union at the Sylvania plant: case 6

According to sources cited by the U.S. Embassy in Santo Domingo, on November 11, 1990 the Sylvania workers union constituted itself. On November 13, it presented full documentation for union recognition to the Secretariat of Labor.

On November 19, according to sources cited by the U.S. Embassy in Santo Domingo, Sylvania fired 10 members of the union, 6 of whom were on the Central Executive Committee.

On March 15, the Sylvania Union was recognized by the Secretariat of Labor, some four months after its initial petition.

Concerning allegations in regard to the formation of a union at the Undergarment Fashions plant, the Undergarment Fashions Union was recognized on January 29. The union charged that the company fired 42 union members including the entire board on February 19 and a second union board on March 9. case 7

As it reviewed the information it had developed concerning the EPZ union issue, the Subcommittee determined that, while serious and deserving of continued monitoring, in themselves the allegations did not demonstrate that the Dominican government was not taking actions to enforce its laws guaranteeing the right of organization in EPZs. In this regard, the Subcommittee noted that the Westinghouse union had opted to pursue remedies in three independent legal or regulatory proceedings. Although no decision had yet been rendered, the Subcommittee believed that the fact that the union had resorted to legal and regulatory proceedings demonstrated that those processes offered hope of appropriate remedy.

As it further considered the EPZ issue, the Subcommittee observed that the primary legal difficulty facing prospective union organizers in EPZs was not one of inadequate government enforcement of existing labor law, but rather of the inadequate nature of the law itself. In this context, the Subcommittee was pleased to recall the inclusion of specific language affecting the right of organization in EPZs in the draft labor code reforms recently submitted to President Balaguer. In addition, the Subcommittee noted the constructive approach of the government of the Dominican Republic to the EPZ union issue. This constructive approach was evident in the original Ministry of Labor announcement reiterating the right of unions to be formed in EPZs, and is most recently displayed in public statements by President Balaguer on February 15 supporting the right to organize in EPZs. According to a translation provided by the government of the Dominican Republic and confirmed by the U.S. Embassy in Santo Domingo, President Balaguer made the following remarks concerning the EPZ union issue (emphasis added):

"In terms of the free zones, the Government sympathizes with the claims that have been made in the United States and elsewhere in the sense that freedom of unionization must be respected. I believe that the freedom to unionize must be respected, not only in the Dominican firms, but also by foreign businesses established

in the country...There are some [firms] that have been reluctant to allow unions, but they have been convinced of the necessity of complying with Dominican laws and they are already making efforts to comply with our laws. I believe that an agreement will be reached on this, and that even in those firms that appear to be reluctant, the law will be enforced and the corresponding unions will be established."

CONCLUSION

After full and deliberate review of the foregoing, the Subcommittee recommended that the Dominican Republic be found to be taking steps to afford internationally recognized worker rights. The most important factors leading to the Subcommittee's recommendation were a number of reports from the U.S. Embassy in Santo Domingo that abuses of Haitian cane cutters appear to be much less widespread in this harvest season, as well as the following actions taken by the government of the Dominican Republic since October 1990 to address major worker rights problems:

- The formation of a blue-ribbon commission to reform the labor code.
- The issuance of a Presidential Decree regularizing the status of Haitians and establishing government oversight of their working conditions.
- The passage through the Congressional Chamber of Deputies of a labor protection law modifying Article 69 of the labor code.
- The invitation of an ILO team to visit the DR.
- The public announcement by the Minister of Labor that petitions for recognition of unions in free trade zones would be processed.
- President Balaguer's public announcement supporting worker rights and labor code reform.

Given that several of the above actions are prospective in nature, however, the Subcommittee determined that it has a number of remaining concerns regarding worker rights practices in the Dominican Republic. These concerns center around the prospects for a successful conclusion to the labor code reform effort. They also include several more specific issues:

- The degree to which the labor code reform will resolve any ambiguities concerning the rights of workers to associate and organize throughout the Dominican economy, including in firms located in the Free Trade Zones.
- The degree to which the final labor code clears up the issue of just cause dismissal and its effects on union organization (Article 69 of the Dominican Labor Code).
- The degree to which the Dominican government continues to enforce its resolution against recruitment of cane cutters through intermediaries, and the extent to which the Dominican government fulfills its commitment to regularize the status of Haitian nationals and provide written contracts to those engaged in harvesting sugar cane.

Despite these concerns, the Subcommittee was confident that the government of the Dominican Republic will continue moving forward on labor code reform and other worker rights issues.