

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

Worker Rights Review Summary

Case: 005-CP-93

EL SALVADOR

July 1994

GSP Information Center
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20506
(202) 395-6971

I. INTRODUCTION*

In response to petitions filed in June 1990 by the AFL-CIO, the National Federation of Salvadoran Workers, the Labor Coalition on Central America, the Massachusetts Labor Committee and the New York Labor Committee, the interagency Subcommittee on the Generalized System of Preferences (GSP) conducted a review of worker rights laws and practices in El Salvador. The purpose of the review was to determine if El Salvador was 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 internationally recognized worker rights.

The worker rights review of El Salvador was extended in 1991, 1992 and 1993 to monitor progress in promoting worker rights (see Worker Rights Summary of El Salvador, June 1991, June 1992 and June 1993). In December 1993, the Administration announced that the review would be continued again with the expectation that labor code reform legislation consistent with ILO norms would be enacted. The announcement stated that "once such legislation is enacted, the Administration would be in a position to consider successfully terminating the worker rights review." Subsequently, El Salvador's National Assembly enacted comprehensive labor code reform legislation on April 21, 1994.

The GSP program, originally enacted in 1974, provides duty-free entry to eligible products from beneficiary developing countries.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 legislative history of the Generalized System of Preferences Renewal Act of 1984 indicates that Congress intended for level of development to be taken into account in assessing the worker rights situations in GSP beneficiary countries. The 1984 report of the Committee on Ways and Means on the renewal act states that:

"It is not the expectation of the Committee that developing

* Worker Rights Summaries are made public to highlight the principal issues considered by the GSP Subcommittee during worker rights reviews. More complete discussions of countries' worker rights laws and practices can be found in the Department of State's Country Reports on Human Rights Practices, as well as in various documents issued by the International Labor Organization.

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."

The Subcommittee noted that it is established United States 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.

In the course of its review, the Subcommittee examined submissions from the AFL-CIO, the Government of El Salvador (GOES) and other interested parties as well as the Department of State's Country Reports on Human Rights Practices for 1993 (HRR), reporting from the U.S. Embassy in San Salvador, and information from the International Labor Organization (ILO).

II. PRINCIPAL ISSUES

Principal issues identified by the Subcommittee fell into two principal categories as they relate to both law and practice: (1) restrictions on the right of association and (2) restrictions on the right to organize. A key problem was El Salvador's need to reform its labor code to protect these two basic rights. The Subcommittee also reviewed enforcement of existing rights in El Salvador, including allegations by petitioners of antiunion discrimination and of violence against trade union members.

Reform of the Labor Code

While El Salvador's 1983 Constitution provides extensive rights to workers, these rights were not ever fully institutionalized through secondary labor law. Until the April 1994 enactment of labor code reform, a confusing and sometimes conflicting set of labor laws remained in place. For example, only private sector non-agrarian workers had the right to form unions and to strike. For those workers who had the legal right to strike and chose to exercise this right, however, cumbersome legal procedures-- including provisions requiring disputes to go through a complex process of direct bargaining, conciliation, and mediation-- had the effect of making most strikes technically illegal. (See previous worker rights summaries for a more thorough discussion of these issues.)

The Subcommittee recalled that as reported in the HRR, the GOES committed itself, in the 1992 peace accords, to seeking consensus on revised labor legislation through a Tripartite Socio-Economic Forum with equal representation from labor, the government, and the private sector. The Subcommittee noted that the GOES also sought advice from the ILO on Labor Code reform, and an ILO

expert made proposals for forty-nine changes in the Code, which were discussed within the Socio-Economic Forum. Differing viewpoints, however, prevented a full tripartite consensus on certain issues.

Following the impasse in the Socio-economic forum, the GOES submitted to the National Assembly a compromise labor reform bill containing 41 of the 49 provisions recommended by the ILO expert. The HRR states that after reviewing the GOES' proposal, ILO experts reported that there were "no significant changes from the original (ILO) recommendations."

The new labor code was enacted on April 21 by the National Assembly and became effective on May 20. Key provisions include streamlining the process to form and register unions, providing the right to form unions to agricultural workers, eliminating provisions allowing the executive branch to dissolve unions, and the presumption of the legality of strikes unless declared otherwise by the judiciary.

Freedom of Association: Reduction of Violence

The Subcommittee noted that the trend of reduced violence against trade union members, recorded in the July 1993 Worker Rights Review Summary of El Salvador, appears to be continuing, although individual incidents of violence do still occur. In 1993, the HRR states, the International Conference of Free Trade Unions (ICFTU) cited reports from its Salvadoran affiliate FENASTRAS of the killing of 20 trade unionists in 1992, other instances of death threats against trade union leaders and instances of abductions.

The Report of the November 1993 ILO Direct Contacts Mission to El Salvador noted that violation of trade union rights over the past 12 years has been a constant feature of the general climate of violence in the country. The Report went on to state, however, that "no persons are being detained for trade union activities and there have been no further searches of trade union premises; violence against trade unionists has declined substantially--in the past 12 months there have been no acts of violence against trade unionists except in a few isolated instances."

Freedom to Organize and Bargain Collectively

The Subcommittee notes that while the right to bargain collectively was granted under the pre-reform Labor Code (and the Constitution), public sector employees were not covered in either. The pre-reform Labor Code granted this right only to employees in the private sector and in autonomous agencies of the government. However, according to the HRR, both private sector unions (by law) and public sector unions (in practice) use the

right of collective bargaining extensively. Labor code protection for agricultural workers was significantly expanded in the April labor code reform legislation, but the legal restrictions on the right to bargain collectively for public sector workers remains.

The Constitution prohibits discrimination against union members and protects union officials from dismissal (except for legal cause) at the time of their election, during their term, or one year following their term. The HRR concludes that "this provision is generally observed in practice, but in some cases those attempting to form unions have been fired before receiving their credentials." The ICFTU cited allegations of antiunion discrimination and the firing of workers for trade union activity. The ICFTU also contends that all attempts to form unions in export processing zones have led to the dismissal of the workers involved. While concluding that ICFTU charges are "too broad," the HRR states that unionization efforts in EPZs have encountered strong resistance.

III. POSITIVE ACTIONS NOTED

The GSP Subcommittee noted the following positive actions taken by the government of El Salvador over the past year:

- Establishment of a Tripartite Socio-Economic Forum to discuss social and economic issues, including labor code reform;
- Enactment of major labor code reform, with assistance from the ILO;
- Continued efforts to reduce the general level of violence, including violence against trade union members.

IV. SUBCOMMITTEE RECOMMENDATIONS

In light of the above actions, particularly the passage of labor code reform based on ILO recommendations, the Subcommittee determined that El Salvador could be considered to be "taking steps to afford internationally recognized worker rights" as required by the GSP law. Accordingly, the Subcommittee recommended that the worker rights review of El Salvador be concluded favorably at this time.

The Subcommittee encourages the Government of El Salvador to ensure that provisions of the new labor code are effectively and systematically enforced, particularly in the area of antiunion discrimination. While the Subcommittee is encouraged by the trend of decreasing acts of violence against trade unionists, it stresses the need for the Government of El Salvador to ensure

that perpetrators of such actions are appropriately sanctioned. In addition, the Subcommittee also hopes that tripartite consensus will be reached on the remaining ILO recommendations so that further improvements to the labor code can be implemented.