

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

Worker Rights Review Summary

Case: 007-CP-93

GUATEMALA

July 1994 ~~fr 1993 - 1992~~ pehky
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labor reform and labor enforcement gains at 1992

I. INTRODUCTION

In responses to petitions filed in June 1992 by the AFL-CIO and the International Labor Rights Education and Research Fund (ILREREF), the interagency Subcommittee on the Generalized System of Preferences (GSP) initiated a review of worker rights and practices in Guatemala. Among the more serious charges were violence and harassment against union and cooperative members, need for reforms to the labor laws, cumbersome union recognition requirements and the lack of enforcement of existing labor laws, particularly those protecting workers exercising their rights.

In light of substantial improvements in Guatemala's labor legislation, the worker rights review was extended in June 1993 for a six-month period to allow the Government of Guatemala (GOG) time to effect changes through enforcement of the laws. In December 1993, the worker rights review was extended for an additional six months in order to enable the GOG to further demonstrate concrete progress in labor law enforcement.

The GSP program, originally enacted in 1974, provides duty-free entry to eligible products from beneficiary developing countries.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 the 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 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.

Worker Rights summaries are made public to highlight the principal issues considered by the GSP Subcommittee during the 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.

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 a number of groups including the petitioners, the Guatemalan Government, the Department of State's Country Reports on Human Rights Practices, and reports from the U.S. Embassy in Guatemala.

II. PRINCIPLE ISSUES

In the course of the second year of the review, the GSP Subcommittee focused primarily on Guatemalan labor practice, particularly the issue of labor law enforcement. Specifically, ~~the Subcommittee reviewed allegations concerning:~~ 1) the freedom of association, including violence against labor leaders, the right to strike, and union recognition; 2) the right to organize and bargain collectively, particularly issues of anti-union discrimination; and 3) the enforcement of minimum wages and a minimum age for employment of children.

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Freedom Of Association

A. Labor Code Reform

The Subcommittee noted again that labor code amendments, which addressed issues related to both freedom of association and the right to organize and bargain collectively, were enacted and came into force in December 1992. The final law, which is the first major revision of the labor code in 45 years, contains 32 articles. Key provisions include the following:

- o Workers cannot be dismissed for participating in the formation of a trade union;
- o The process of obtaining union recognition is simplified in several ways. Of particular importance is that the Minister of Labor now has the authority (the former exclusive domain of the President) to sign all papers granting legal recognition to unions.
- o The fines which labor courts may impose for violations of the labor code are increased substantially. The maximum fine was raised from 1000 to 5000 quetzals.
- o The judicial process in the labor courts is speeded up, for example by establishing clear time frames and eliminating

the common employer practice of failing to appear at hearings.

- c. The labor courts have a strengthened ability to act against employers who fire workers without just cause after negotiations have begun.

B. Reforms to Union Recognition

As noted in the above section, articles in the new labor code directly affect union formation. These articles specifically identify information needed to support union recognition, simplify the process for a union to obtain legal status by allowing the Ministry of Labor, rather than the President, to grant legal status to a union and shortening the time frame for processing petitions from sixty to twenty days. Also important is specific wording which indicates that those responsible for delaying petitions for union recognition may be fired.

In November 1993, the Guatemalan Labor Ministry further revised the internal regulations regarding the approval of new trade unions, further reducing the number of steps necessary to grant approval. In practice, the Subcommittee found, the GOG has made real progress toward reducing the backlog of requests for union recognition and meeting the new administrative timetable. The Subcommittee viewed favorably the recognition of 63 new unions since President Ramiro De Leon Carpio took office in June 1993, bringing the total number of registered unions in Guatemala up to 993, according to information provided by the GOG. Several previously controversial applications were approved, according to the HRR, including the union representing Coca-Cola workers in Puerto Barrios, the union representing workers at the Bank of the Army, and several unions at maquila plants. The Subcommittee did note, however, that delays in union recognition do still seem occur and that some backlog does still appear to exist. It will thus continue to monitor the extent to which the GOG complies with the statutory timetable.

summary
points

C. Strikes

An issue that was unresolved at the conclusion of the 1992 annual GSP review was a February 19, 1993 decree to implement a prohibition on strikes and work stoppages by employees in the public sector. The decree, the Subcommittee noted, appeared to affect a broader number of public workers than ILO practice defines as essential services. The Subcommittee noted favorably that the decree was withdrawn, following protests by public sector employees and the Minister of Labor. Furthermore, the Subcommittee noted that a large public sector strike was held in Guatemala City during the spring of 1994 without GOG interference.

summary
strikes held

D. Violence against Labor Leaders

The Subcommittee noted that while the government of President de Leon Carpio, a former human rights ombudsman, has expressed its commitment to the protection of human rights, incidents of violence against labor leaders have continued since his election in June 1993. Such acts, the Subcommittee noted, result in a climate in which the exercise of freedom of association and other worker rights is made more difficult. The Subcommittee noted with regret reports of continuing acts of violence and threats of violence against trade unionists in 1994. The Subcommittee added that it hopes that the GOG will take swift action to resolve these issues, thus demonstrating its intolerance of acts of violence and preventing their recurrence.

Freedom to Organize and Bargain Collectively

In the area of freedom to organize and bargain collectively, the Subcommittee continued to consider the problem of antiunion discrimination. The Subcommittee noted that while under the 1992 amendments to the Guatemalan labor code workers cannot be fired for participating in or organizing union activities, the HRR reported that "the scarcity of labor inspectors, the lack of adequate training and resources and structural weaknesses in the labor court system resulted in only minimum enforcement of the labor code." The Subcommittee therefore particularly considered to what extent the GOG has taken actions to improve enforcement mechanisms in the past year. Such mechanisms include the effectiveness of labor inspection capabilities, resolution of cases in the labor courts and the appropriate sanctioning of labor code violators.

The Subcommittee viewed as positive the GOG's hiring of 39 new labor inspectors, who have received extensive training. According to data provided by the GOG, the Ministry of Labor has stepped up "ex-officio" (i.e., routine) inspections and citing of labor code violations since the expansion of its inspection corps. During the first four months of 1994, as compared to the same period in 1993, there has been over a 100 percent increase in "ex-officio" visits, which have resulted in 111 lawsuits in the labor courts, compared to only 38 during the same period of 1993. Furthermore, the Subcommittee noted, new regional inspection bureaus were created in December 1993 in four Guatemalan departments to facilitate inspection capabilities outside of Guatemala City, and additional resources, such as twelve new vehicles, have gone towards improving labor inspection capabilities.

Regarding resolution of cases in the labor courts, the Subcommittee also noted favorably that in addition to four

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increased
inspections

existing labor courts, two additional labor courts were established in Guatemala City, one in June 1993 and the other in 1994, and are currently in operation. The sixth labor court, according to the GOG, will deal uniquely with collective conflicts and punitive proceedings. The Subcommittee noted with concern the large backlog of cases that have been filed but not resolved by the labor courts, a situation it believes can work to make employers less likely to comply with the labor code provisions, thus eroding the legal rights provided to workers through the labor code and constitution.

Enforcement of Minimum Wages and Minimum Age for Employment

Two concerns noted in the July 1993 Worker Rights Summary on Guatemala were the enforcement of the minimum wage as well as the employment of minors. The HRR indicated that in both of these areas, problems in enforcement continue despite statutory standards. According to the HRR, "widespread, credible reports indicated the minimum wage is commonly, if illegally, not paid to significant numbers of rural and urban workers." In the area of the employment of minors, the HRR reported that although the minimum age of employment is 14, "children below this age are regularly employed in the formal and informal sectors of the economy." The Subcommittee noted that improved labor inspection capabilities and sanctioning of violators could be expected to result in advances in these areas as well. The Subcommittee also noted favorably the creation by the GOG of a "Commission for the Under-age Worker," which will be responsible for overseeing the enforcement of labor regulations regarding the employment of children.

III. POSITIVE ACTIONS NOTED

The Subcommittee viewed positively the following actions:

- The hiring and extensive training of 39 new labor inspectors by the Ministry of Labor and the establishment of four new regional inspection offices;
- The increase in the filing of punitive proceedings with the labor courts by the labor inspection corps;
- The recognition of 63 new unions under the new, more transparent recognition process established by the Ministry of Labor;
- The establishment of two new labor courts;
- The creation of a "Commission for the Under-age Worker" to oversee the enforcement of regulations regarding the employment of children; and

- Other initiatives by the Ministry of Labor in the area of education and dissemination of information regarding worker rights, such as the creation of a special unit for working women and the translation of the Guatemalan labor code and constitution into four indigenous areas in order to reach workers in rural areas.

IV. RECOMMENDATION

As noted above, the Subcommittee views positively the progress made by the Government of Guatemala in the past year to expand its labor law enforcement mechanisms. In order to make a more definitive finding on the effectiveness of these mechanisms, however, the Subcommittee recommended that the review be extended for an additional 90 days to provide the GOG some additional time to show that improved enforcement is occurring in practice.

In particular, the Subcommittee will especially monitor developments addressing: compliance with the new procedures for union recognition and the elimination of the backlog of applications for registration; continued progress in the area of labor inspection and filing of punitive proceedings; the effective sanctioning of labor code violators through the judiciary or other means; the resolution of cases involving violence against trade unionists; improved enforcement of regulations regarding the minimum wage and employment of children; and other evidence of actions taken to enforce the new labor code.

