

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

1992 GSP Annual Review

Worker Rights Review Summary

Case: 005-CP-92

GUATEMALA

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I. INTRODUCTION¹

In 1992, a petition was filed against Guatemala's worker rights practices by the AFL-CIO and International Labor Rights Education and Research Fund (ILRERF) on grounds of violations of rights of freedom of association and freedom to organize and bargain collectively. 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, lack of enforcement of existing labor laws particularly those protecting workers exercising their rights.

While steps are yet in progress, in light of substantial improvements in legislation, the GSP Subcommittee has recommended extending the review for six-months to allow the Government of Guatemala time to effect changes through enforcement of the laws.

The GSP program, originally enacted in 1974, provides duty-free entry to eligible products from beneficiary developing countries.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

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.

¹Worker 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.

II. PRINCIPLE ISSUES

The GSP Subcommittee focussed on both issues of Guatemalan labor law, and practice (particularly the issue of enforcement of labor laws) in conducting its review. Specifically, the Subcommittee focused on allegations concerning: the freedom of association, including violence against labor leaders, the right to strike, and union recognition; issues concerning the right to organize and bargain collectively, particularly issues of anti-union discrimination; and, an examination of other allegations.

Freedom Of Association

A. **Labor Code Reform**

Long awaited labor code amendments were enacted and came into force in December 1992. (Note: labor code reform addressed issues in both the areas the "freedom of association" and "right to organize and bargain collectively.") 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.
- o 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, articles in the new labor code directly affect union formation. These specifically identify information needed to support union recognition and simplify the process for a union to obtain legal status. Two important items were to allow the Ministry of Labor, rather than the President to grant legal status to a union and to shorten the time frame from sixty to twenty days to accept petitions for legal recognition. Also important is specific wording which indicates that those responsible for delaying petitions for union status may be fired.

In practice, the GOG does not still fully comply with the time frames set for legal recognition, but it has improved greatly. The Phillips-Van Huesen CAMOSA union, which had been the subject of great criticism was finally recognized by President Serrano prior to the amendment of the labor code. While other labor unions are completing petitions for legal recognition, it will take time to determine whether real changes to reduce requirements and time for legal status have been effective. The Subcommittee intends to monitor progress in this area closely.

C. Strikes

One important unresolved issue is a February 19, 1993 decree to implement a prohibition on strikes and work stoppages by employees in the public sector. The decree appears to affect a broader number of public workers than ILO practice defines as essential services (which limits essential services to workers whose jobs affect the public health and safety). The matter is currently being appealed by public sector employees on constitutional grounds and a request has reportedly been made for the ILO to investigate the allegations of public sector freedom of association rights violations.

D. Violence against Labor Leaders

While there were no reports of murders of union leaders in 1992, there were numerous union complaints to the Human Rights Ombudsman concerning violence and threats of violence. The ILO Committee on Freedom of Association expressed its regret in November 1992 that the GOG had still not responded to allegations regarding 1991 acts or threats of violence against trade unionists. These included 15 murders, attacks, abductions, death threats and 58 arrests of trade unionists. The GSP Subcommittee believes it vital for the Government of Guatemala to take action to resolve these outstanding issues, in order to demonstrate its intolerance of such acts and thus prevent such actions from recurring.

Freedom to Organize and Bargain Collectively

The Subcommittee's review concluded that antiunion discrimination remains a problem. However, as described above, several provisions of the amended labor code are designed to improve the situation, if enforcement of laws is made more effective. The Subcommittee viewed as positive reports that new labor inspectors are being trained and put into the field, and actions by the Government of Guatemala to open new labor courts and select judges through a competitive system.

The Subcommittee is of the opinion that enforcement of labor laws will be of particular importance in addressing anti-unionism in the export processing zones, preventing retaliation against those who wish to form or join unions (particularly with respect to threats of violence already discussed) and in assuring collective bargaining agreements and laws regulating minimum wage and decent working conditions are respected. With respect to the latter the Subcommittee particularly takes note of farm workers ("campesinos") in February protesting the denial to them of the minimum wage and other benefits to which they are legally entitled.

In general, the Subcommittee will monitor closely the degree to which alleged violations of the labor code are adjudicated, and violators brought to justice.

Other Worker Rights Issues

The GSP Subcommittee determined as part of its review that there is no systematic pattern of forced labor, though some allegations of abuse do exist. Additionally, the GOG has reported many thousands of minors work without the legal permission of the Labor Ministry, both in the formal and informal sectors. The Subcommittee notes that these minors are therefore open to exploitation. Enforcement of the minimum wage and decent working conditions are also a major concern.

III. POSITIVE ACTIONS NOTED

The Subcommittee viewed positively the following actions of the past year:

- o The amendment of the Guatemalan labor code in November 1992, which strengthened the legal protections afforded Guatemalan workers.
- o Actions to recognize unions, such as the CAMOSA union at the Van Heusen factory.
- o GOG actions to hire more labor inspectors and create more labor courts.

IV. RECOMMENDATION

With the enactment of the new labor reforms, the Government of Guatemala has overcome one major obstacle to overall labor reform, though additional reforms appear necessary in the area of union recognition and court reform. Moreover, effective enforcement of the law, which was a second key issue, can only be determined over time.

As noted, the Subcommittee views positively the fact that the Government of Guatemala has promised to expand its enforcement mechanism and has stated its commitment to see that the new laws are effectively enforced. While it will take considerable time to fully address labor sector problems, the Subcommittee believes that extending the review for six months will provide the GOG an opportunity to make concrete progress in affording worker rights.

In particular, the Subcommittee will review developments addressing: outstanding reports of violence against workers and union leaders noted by the ILO and the Ombudsman; the recognition of unions with pending applications; enforcement of organizational and collective bargaining rights of unions (particularly in the export processing zones); the disposition of the appeal on prohibition on public sector employees ability to strikes; improvements in compliance with laws protecting child labor and enforcing minimal standards of wages and working conditions; progress made in hiring new labor inspectors and in establishing new labor courts, and other evidence of actions taken to enforce the new labor code.

