

June 2, 1992

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TO THE UNITED STATES TRADE REPRESENTATIVE:

PETITION/REQUEST FOR REVIEW  
OF THE GSP STATUS OF **GUATEMALA**  
UNDER GSP WORKER RIGHTS PROVISIONS

PETITIONERS:

- ✓ INTERNATIONAL LABOR RIGHTS EDUCATION AND RESEARCH FUND (ILRERF)
- ✓ U.S./GUATEMALA LABOR EDUCATION PROJECT (U.S./GLEP)
- WASHINGTON OFFICE ON LATIN AMERICA (WOLA)
- NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.,  
HUMAN RIGHTS OFFICE (10)
- UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
- INTERNATIONAL LADIES GARMENT WORKERS UNION (ILGWU)
- UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW)
- AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION (ACTWU)
- INTERNATIONAL UNION OF FOOD AND ALLIED WORKERS' ASSOCIATIONS (IUF),  
NORTH AMERICA
- INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE  
AND FURNITURE WORKERS (IUE)

JUNE 2, 1992

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Petition and Request for Review to the U.S. Trade Representative

LABOR RIGHTS IN GUATEMALA

INTRODUCTION

This petition is based on information contained in the U.S. State Department's Human Rights Report for 1991 on Guatemala, on reports by the government of Guatemala, by trade union groups, human rights organizations, independent research institutes and other specialized bodies, and by information acquired in an on-site investigation of labor rights and labor conditions by a delegation of petitioner representatives that visited Guatemala in May, 1992. This delegation met with trade union members and leaders at the local, regional and national levels, with employer representatives, government officials and representatives of non-governmental human rights and economic research organizations, and with the Ambassador and staff of the United States Embassy in Guatemala. Supporting information has also been amassed before, during and since the delegation's visit by human rights and labor rights investigators engaged by petitioners to monitor labor rights and labor conditions in Guatemala.

This is the seventh annual petition seeking review of the GSP status of Guatemala under the worker rights provisions of the Generalized System of Preferences. Review was granted only in the first General Review of the GSP Program in 1985-86, and resulted in

a finding that Guatemala was taking steps to afford internationally recognized worker rights. Since then, each petition has been rejected notwithstanding evidence, often confirmed in the State Department's Human Rights Report, that labor rights violations occur systematically in Guatemala.

The several petitions by a petitioner community now numbering more than a dozen organizations over seven years, and responses to them by the GSP Subcommittee, constitute a substantial, continuing dialogue on the degree of labor rights violations in Guatemala. It may be helpful, in this Introduction, to delineate critical differences in analytical methods that have emerged in this seven-year exchange and suggest ways of overcoming them in this petition stage of the GSP process, so that the Subcommittee may move the petition forward to make recommendations to the President based on a full review of the facts.

What are we doing  
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1) The "incidents" problem:

All petitions have cited incidents of violence against trade union leaders and members, and each succeeding petition added new incidents since the prior petition, as will this one. Such incidents include assassinations, disappearances, kidnappings, assaults, and threats. The GSP Subcommittee has consistently rejected these allegations as a basis for proceeding to review on the grounds that such violence is common in Guatemala and that petitioners have failed to show a direct link between the incident and the victim's trade union activity, and/or any link between the government and such incidents.

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Petitioners believe that in most of the cases a prima facie case for such links was made, and indeed will seek to establish them in incidents submitted in this petition. The link between the government and the violence is confirmed by the State Department's 1991 report that "the number of politically motivated killings . . . was very high . . . Most of these killings are credibly believed to have been committed by the armed forces and persons associated with or protected by the army . . . The security forces are virtually never held accountable for human rights violations."

The labor link has been confirmed in interviews with the staff of the Human Rights Ombudsman's office, which concluded that trade unionists are a specific target of violence because of their trade union activity. The continuing pattern of violence against unionists, often accompanied by specific reference to their union status or activities, is further evidence of the link.

The Human Rights Ombudsman's conclusion, and the references to union activity in threats or violence since the last petition, is new information which countervails the grounds offered by the Subcommittee in its 1991 response, citing the State Department's 1990 Human Rights Report, that "the motive behind many of the abuses seems to be the belief that the victims were somehow supportive of or sympathetic to the guerrillas." Of course, the perpetrators of violence allege guerrilla ties as the basis of their attacks. But this self-serving allegation should not be relied on by the Subcommittee to avoid taking up the issue of labor rights violations. The pattern of violence against all sectors of

society that call for democracy, land reform, labor rights and other social justice objectives supports the conclusion that the perpetrators are really opposed to precisely those demands, or any reforms that might further them. Thus, trade unionists are targeted because they favor labor rights; campesino organizers are targeted because they favor land reform, and so on -- not because they have ties to the guerrillas.

Petitioners urge the Subcommittee to see through the "guerrilla" defense at least for the purpose of reaching the Review stage of the process. Petitioners also request the Subcommittee to consider the cumulative effect of violence against trade unionists, and the fact that many of the earlier incidents remain unresolved. While outright killings of unionists have declined, the climate of terror is unabated. The earlier killings have had their effect of interfering with the right of association. Death threats have risen, often with specific reference to union activity and the prior assassinations of union activists. Petitioners respectfully suggest that these matters go forward to a full-scale review this year.

2) "One-sided presentations of facts":

In connection with various petitioner allegations about firings and other forms of discrimination against workers for trade union activity, the GSP subcommittee has argued that "allegations in this

category were materially flawed by their one-sided representation of the facts." We ask the Subcommittee to keep in mind that petitioners are initiating the process with an effort to make a prima facie case for review. Between an account of events offered by trade unionists and human rights activists who are the victims of abuse, and a version offered by the perpetrators or beneficiaries of the abuse, petitioners offer a defense of the victims of labor rights violations, not a defense of the violators.

*what review does: dispute full story*  
Those who would dispute the facts offered in the petition have the opportunity to refute them in the Review process, which is precisely why the Subcommittee should move the petition forward to the Review stage. That is where the Government of Guatemala and Guatemalan employer organizations can seek to refute petitioners' allegations. To refuse to accept a petition for review alleging labor rights violations, on the grounds that the petitioners have only made a case for the victims and not made the case for the alleged violators, runs counter to a fair administrative review process.

3) The effect of legislative reform proposals:

Petitions in 1990 and 1991 offered detailed analyses of the Guatemalan Labor Code and provisions that on their face, or in their enforcement or non-enforcement, violate internationally

recognized worker rights. In 1990 the Subcommittee cited the U.S. Embassy report stating that "we agree with the petitioners that the Guatemalan Labor Code is inadequate in implementing the principle contained in the 1985 Guatemalan Constitution and ILO conventions." However, the Subcommittee rejected the petition in this respect because "the Government of Guatemala introduced legislation, drafted under the guidance of the ILO, which addresses these discrepancies in the law . . . The new code . . . is under active consideration right now by the Labor Committee of Congress. This is a big step forward." The Subcommittee chastised petitioners for not providing "information about recently-introduced labor code legislation or about the ILO role in the drafting stage."

Responding to a renewed critique of the Code in the 1991 petition, the Subcommittee again noted that "a number of the provisions of the Guatemalan Labor Code were not in compliance with international standards." The Subcommittee acknowledged that "the comprehensive ILO-assisted labor code reform cited in its 1990 worker rights summary of Guatemala was no longer active." Surprisingly, however, the Subcommittee then went on to repeat its expectation of labor law reform, insisting that "an important and meaningful labor code reform bill was in fact working its way through the Guatemalan Congress . . . the Subcommittee believed that the Labor Code reform bill had a particularly good chance of being passed."

Events since then have borne out the contention of the 1991 petitioners that prospects for labor law reform were nil.

Petitioners urge the Subcommittee to adopt an approach that the mere fact of reform bills being introduced in the legislature or promoted by the executive, or assurances as to the likelihood of the legislation being enacted into law, should never be sufficient grounds for rejecting a petition for review at the initial screening stage. The only test should be actual enactment and implementation. Otherwise, a government could always get "off the hook" by claiming that reform measures are under active consideration. *Labor Code passed 11/17/1992 (after review) undertaken*

4) Labor Code enforcement

Another area where, in petitioners' view, the Subcommittee has relied too much on assurances of progress rather than specific performance, is that of Labor Code enforcement. Petitioners are cognizant of the lack of personnel and resources related to Guatemala's relatively low level of socioeconomic development. Petitioners agree with the Subcommittee, as stated in the 1991 Response, that it is unreasonable to expect such problems to be solved overnight, and that "making progress to ameliorate the recognized inadequate enforcement and adjudication of the Guatemalan labor laws" is the salient issue.

*opinion* The centerpiece of the Subcommittee's defense of Guatemala's worker rights practices in the enforcement area is the "blunt report on maquila problems." A hard-hitting report exposing labor law violations is always desirable, but it is no substitute for actual enforcement. Enforcement is reflected not in reports, and not only in inspections, but in fines that have real bite (not the



minimal fines employers treat as a normal cost of doing business), in punishing employer representatives who obstruct the formulation of a conciliation tribunal (a problem noted by the Subcommittee), in reinstatement of workers, in satisfying court judgements against employers and other marks of labor law enforcement. These are the "markers" of an effective labor law enforcement effort, and they are lacking in Guatemala.

With the foregoing methodological discussion setting the framework for the petition, we now proceed to discuss the events of the past year, or information and analysis that has appeared in the past year, supporting the Request for Review.

#### A. THE RIGHT OF ASSOCIATION

##### 1) Threats and Violence against Trade Unionists:

The State Department's 1991 Human Rights Report notes in its Worker Rights section that "There have been threats and violence against unionists by members of the security forces." Where labor violence involved "thugs" used by employers, the Report notes, "perpetrators of these criminal acts are seldom prosecuted."

In its section on Respect for the Integrity of the Person, including Freedom from Political and other Extrajudicial Killing, the Report states that "In June, armed men killed Oscar Oswaldo Luna, a member of the San Carlos University (USAC) maintenance workers' union who had taken part in a bitter strike in which USAC officials were held hostage. Although President Serrano ordered that the killing be thoroughly investigated, there were no results

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2 by year's end." The State Department Report also notes that "In June, Yolanda Figueroa, a leader in the Custom Workers' union, was the intended victim of a kidnapping."

The Report further cites a case noted by petitioners in 1991: "In April, police in Chiquimula arrested the former secretary general of the electric workers' union, Otto Ivan Rodriguez, claiming that he belonged to a car theft ring. They beat him, nearly blinding him in one eye. The abuse ended when a judge had Rodriguez taken from the local jail to one in Guatemala City where he received medical treatment. He was freed April 25 and left the country."

The Report also cites findings of the ILO on abuses against trade unionists and the failure of the government to investigate them, and a promise by the National Ombudsman for Human Rights to establish a special office, headed by a union leader, to handle complaints related to trade union activities. This special office has not been established, and labor abuses continue to go uninvestigated and unpunished.

In a November, 1991 report in cases nos. 1512 and 1539, the ILO addresses complaints filed by the ICFTU in connection with assassinations, kidnappings, assaults and death threats in the cases of Jose Orlando Pantaleon, Carlos Humberto Rivera, Estanislao Garcia y Garcia, Jose Leon Segura de la Cruz, Werner Miranda Calderon, and several teachers and students supportive of a 1989 teachers union strike. +10

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The ILO noted that "the successive government of a same State cannot, for the mere reason that a change has occurred, escape the responsibility which could flow from events that occurred under a former government. In any event, the new government is responsible for any continuing consequences which these events may have." The ILO noted that proceedings had been initiated in the Pantaleon, Segura de la Cruz and Rivera cases, but that no action was being taken in the other cases. At the filing of this petition six months after the ILO report, there still has been no resolution of any of the cases in which proceedings had been initiated. Although most of these cases were cited in earlier GSP worker rights petitions, these developments constitute new information in this petition, as does the fact that the Human Rights Ombudsman has not followed through on the promise cited in the Human Rights Report to establish a special office on trade union activities.

A special human rights report by an independent expert named by the United Nations, Sr. Christian Tomuschat, also reviews the cases brought to the ILO. The Tomuschat report further points to

-- threats against union members by the mayor of San Pedro Carcha;

-- threats against Hector Oswaldo Hernandez Lopez, general secretary of the union of the firm Inmobiliaria Los Estanques;

-- reports received from the CGTG union federation of the August, 1991 attempted kidnapping and assault against Customs Employees union leader Yolanda Figueroa, and threats against colleague Jose Pinzon and other union officials, and June, 1991

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assaults and death threats against national typographical union leader Rosendo de Leon and FENASTEG official Mauricio Roxcajo.

The Roxcajo case is also significant for the fact that his attackers asked him the whereabouts of other union officials, confirming that he was targeted for his union role. Altogether, says the Tomuschat report, 20 union leaders fled into exile during 1991 because of death threats against themselves and their families.

All of these reports, and the failure to establish the special office in the Ombudsman's organization, constitute new information and new evidence that should be considered in a full-fledged Review sought by this petition.

In addition to the cases cited in the Human Rights Report and the Tomuschat report, petitioners bring to the attention of the Subcommittee the following incidents of violence and threats against trade unionists:

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321 -- In July, 1991 armed men in civilian clothing assaulted Tomas Lares Lopez, General Secretary of the Union of Farm Workers of the La Torre plantation, the site of a labor dispute earlier in 1991.

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3 -- In December, 1991, armed men in civilian clothing in a military issue vehicle assaulted union officials (Byron Morales) of the UNSITRAGUA federation, and (Armando Sanchez) of the FENASTEG. Soon after, in January, 1992, death threats were widely circulated naming (Morales) and (Sanchez) along with several <sup>t/O</sup> other leaders of the UASP coalition. The threat calls them "the last communist leaders who will die massacred. Because we won't be happy until they die.

Anticommunist unity." (C10)

-- In December, 1991, an employee of the Food Workers (IUF) TH  
affiliate, Jose Mercedes Sotz, received a death threat from the 54  
Secret Anticommunist Army citing his union work and ordering him to  
leave the country. The text of the threat is significant: "We are  
aware of the denunciations you made abroad against the Government  
and that you are back in Guatemala working in the trade union  
movement. For this reason we give you a limited time to leave the  
country, otherwise you will be eliminated. You must follow this  
instruction. E.S.A." Sotz left the country. C11

-- Marco Vinicio Hernandez Fabian, General Secretary of the TH  
Union of Workers of the Auxilio Posthumo and coordinator of the  
Education Commission of Unsitragua, has received numerous death  
threats by telephone at his workplace. SYR10  
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-- Aura Marina (Rodriguez), a member of the union organizing (C12)  
committee at the Camisas Modernas (CAMOSA) facility, was shot on  
September 6, 1991. There is no evidence that the shooting was a  
common crime, as there was no attempt at robbery or rape. On the  
contrary, there is circumstantial evidence that the shooting was a  
reprisal for her union activity; unknown men posing as union  
supporters came to her home looking for her two days after the  
shooting. Ms. Rodriguez fled into hiding, and later abandoned the  
union effort. ASS 2'

-- Officials of the STINDE union report that on March 29, 1992,  
the Secretary of the local union in San Luis Buena Vista.  
Escuintla, was kidnapped by heavily armed men, beaten, and left

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tied at the side of the road after they threatened him with death if he continued his union activities. The assault took place in the course of a labor dispute between the union and management over the company's privatization plan and job losses.

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-- During the same labor dispute, groups of armed men in military-type vehicles drove past demonstrating workers shooting into the air and announcing death threats with amplified sound systems if the workers persisted in their opposition to privatization.

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-- STINDE leaders have consistently received telephoned death threats throughout their dispute with management.

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Workers in the Maquila sector reported to the petitioners' delegation that employers repeatedly and forcefully tell employees about threats, deaths and other cases of violence against trade unionists, suggesting that attempts to organize will bring violence down on workers who lead or join such an effort. This tactic was perhaps most notorious in same CAMOSA context discussed above in the shooting case of Aura Marina Rodriguez. The shooting followed repeated death threats by a personnel supervisor against workers attempting to form the union.

The continuing occurrence of violence against trade union leaders and members over a period of several years confirms a systematic pattern of abuse in violation of the right of association. The intractability of this problem and the continuing failure of the Government of Guatemala to prevent such abuses or to investigate, prosecute and punish their perpetrators are cause for

the Subcommittee to at last move this petition to the Review stage for a comprehensive look at the problem.

FOA

2) The Labor Code:

Earlier petitions summarized articles in the Labor Code that interfered with the right of association as well as the right to organize and bargain collectively. Petitioners will not repeat the details here, since the Labor Code remains unchanged. The 1991 Human Rights Report states that "Due to their complexity, provisions of the Labor Code serve to hinder both the ability to organize unions and to obtain the necessary legal recognition," and that "Workers have the right to strike, but procedures involved made legal strikes cumbersome; most occur without permission. In practice, the government made no effort to determine their legality."

In its response to the 1991 petition the GSP Subcommittee acknowledged "ample evidence from ILO documents, Embassy reports, various Country Reports on Human Rights Practices, and GSP worker rights petitions existed which demonstrated that a number of the provisions of the Guatemalan Labor Code were not in compliance with international standards." The Subcommittee took the position, however, that "the salient issue was not whether or not the Guatemalan Labor Code, in itself, provided an adequate level of worker rights protections . . . the more important issues . . . were the actions of the Government to enforce the present labor code as well as continuing actions to reform the labor code."

It is petitioners' position that the content of the Labor Code is a salient issue, and that the finding of the Subcommittee that a number of its provisions are not in compliance with international standards speaks is grounds for review, where the question of "actions to enforce" can be fully examined in an open forum. With respect to "continuing actions to reform the labor code," petitioners urge the Subcommittee to cease speculating as to the prospects for labor code reform, and confront the reality that despite repeated promises and attempts at Code reform over several years, no such changes have been implemented , nor appear to be imminent.

This leaves us, finally, with the actions of the government to enforce the present Labor Code. An ongoing failure in this area, cited in all prior petitions, is the difficulty unions have in obtaining recognition, or juridical personality, as it is called. The 1991 Human Rights Report says that "During 1991, the Government used administrative powers to simplify rules for union recognition." The government states in a May, 1992 message from the Minister of Labor that it has approved 167 union authorizations since taking office.

FOIA

Petitioners have obtained new information indicating that the Ministry's claim of 167 union authorizations is not correct. There are two forms of "recognition" at issue here: Personalidad Juridica, which is the legal recognition of an organization by the State, and Personeria Juridica, which involves the legal recognition by the state of an individual in his or her capacity



within the organization. The former is the relevant recognition for a union to exist.

The total of 167 recognitions claimed by the Ministry apparently combines the two forms. The Ministry's Carta Laboral of January, 1992 indicates that there were 23 union recognitions in 1991, and 148 individual recognitions. Pressed by petitioners for details, however, the Ministry of Labor provided information as of May 19, 1992, indicating that in calendar 1991 6 "independent" organizations (which are not unions that negotiate on behalf of employees, but associations or cooperatives of small businesses), 4 public sector unions and 2 private sector unions secured Personalidad Juridica -- a total of 6 unions. From January 1 through May 19, 1992, 11 "independent" associations, 11 public sector unions and 2 private sector unions obtained recognition. This makes for a total, since January, 1991, of 15 public sector unions and 4 private sector unions.

According to trade union representatives interviewed by petitioners, however, many new rules on recognition are being applied on a highly politicized basis. A number of the newly-recognized groups have been in-house public employee unions set up by the government to pre-empt independent union organization. Private sector unions and independent public sector or peasant unions still face bureaucratic obstacles and delays in obtaining juridical personality.

The union federation CUSG reports that it has 60 pending applications for Personalidad Juridica, ranging from three months

to several years. UNSITRAGUA reports 5 applications pending for more than six months. The fact that in nearly a year and a half only four private sector unions obtained recognition is evidence of the continuing failure of the Government to afford the right of association.

Perhaps the best-known of the Personalidad Juridica controversies is that of the Camisas Modernas (CAMOSA) operations in Guatemala, already <sup>not recanted</sup> discussed above in connection with violence against unionists. Workers at CAMOSA first sought union recognition on March 21, 1991. The Labor Ministry took until November to forward the application to the President. He failed to act.

The employer took the opportunity of the delay to intimidate, on one hand, or pay workers on the other hand, depending on each individual's vulnerability, to abandon the union effort. The shooting of Aura Marina Rodriguez occurred during this period of pendency of the application. The application was voided in February, 1992.

A new group of union organizers filed another application in April, 1992 which has still not been acted on by the Government. Just as before, (intimidation) harassment and payoffs are being used to attempt to break the organizing effort. Petitioners recall the passage of a report from the U.S. Embassy, relied on by the Subcommittee in rejecting the 1991 petition, that "CAMOSA could have the first successful union in maquila. This is an important test case." Petitioners respectfully submit that the test has been failed. There is still no successful union in the maquila sector

with a functioning leadership, a collective bargaining agreement and normal labor-management relations.

Finally with respect to the right of association (except that the right of association is implicated in the treatment of the right to organize and bargain collectively, below), petitioners urge the Subcommittee to reconsider its continuing refusal to recognize the use of solidarismo as a violation of the right of association. Employers continue to use solidarista associations to displace, neutralize or prevent the formation of genuine trade unions.

In addition to cases cited in earlier petitions, this phenomenon has manifested itself recently in the Tejidos Sportex factory in Quetzaltenango where workers sought to organize a union; in the CIDASA facility where in July, 1991 management installed a solidarista association to interfere with the union, and at Inexport and its related shell subsidiaries, which have been a continuing focus of attention from petitioners and remains still the starkest example of the failure of labor law enforcement in Guatemala.

Until now, the Subcommittee has cited the government's policy of declining to register solidarista associations as trade unions as sufficient grounds for rejecting this aspect of the petition. ~~Petitioners urge the Subcommittee to change its approach to this question.~~ Solidarismo promoters boast of reaching 100,000 worker members, far in excess of the number of genuine trade union members, and openly predict that they will effectively displace

trade unions in Guatemala. A government policy of "benign neglect" toward the purposeful use of solidarismo to destroy trade unionism should not be permitted to justify rejection of the petition again.

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B. THE RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY

This section of the petition holds fast to the issue engaged above as to the actions of the Government of Guatemala in enforcing labor laws. The starting point of this analysis is again the determination in the 1991 Human Rights Report that "Workers have the legal right to organize and bargain collectively but often face discriminatory antiunion actions by employers. Labor courts, responsible for enforcing laws prohibiting such discrimination, are ineffective." Similarly, the Subcommittee in its response to the 1991 petition noted that "a number of sources have consistently noted the inadequacies in the enforcement and administration of labor law in Guatemala, including Embassy reporting and various Country Reports on Human Rights Practices."

The more salient issue, said the Subcommittee last year, was "whether the Government was making progress to ameliorate the recognized inadequate enforcement and adjudication of the Guatemalan labor laws." Petitioners submit that, aside from issuing declarations of good intention, the Government has not made such progress.

1) Perhaps the most telling case in this regard is the ongoing drama of Internacional de Exportaciones, S.A., or Inexport, and the successive shell corporations created by its owner inside the same factory to evade legal responsibility for its lawbreaking (Negocias

Agrícolas, Exportadora de Ropa, Almacenes Sin Limites (ALSA) and Confecciones de Centroamerica (CONFECASA)). Final determinations of labor law violations involving massive firings of union adherents, and orders to give back pay to discriminated-against workers, have been flouted by the company's owner since 1989.

The failure of labor law enforcement is evident in the following cases as well:

-- At the DARAM, S.A. and RCA, S.A. maquila plants, cited by the Human Rights Ombudsman in April, 1992 for a series of labor rights violations (including child labor, excessive hours, safety and health violations and abusive treatment) in a report that admonished the Labor Ministry for failing to protect labor rights in the maquila. (C18)

-- In the above-mentioned Sportex facility where, in addition to the solidarismo ploy, 25 workers were fired for union activity in October-November, 1991, with no remedial action taken by the Labor Inspectorate or by the courts. ✓

-- In the Confecciones Unidas enterprise, where 74 workers were fired for union activity in November, 1991, with no remedial action by the Government. (C19)

-- in the Incatecu factory, where management tendered severance pay to the unionized workforce of 200 employees upon a declaration of plant closing in December, 1991, only to re-open shortly thereafter with a new, non-union staff. (C20)

-- In the Compania Comercial Agronomo Pecuaria, where 306 workers were dismissed in February, 1992 just two days after making (C21)

bargaining demands on the employer.

(22) -- In the Army Bank, where the "ineffectiveness" of the labor courts, already acknowledged by the Subcommittee, has for years prevented the recognition of a union chosen by employees to represent them.

(23) -- In the Corporacion Financiera Nacional (CORFINA), where approximately 80 workers, including key union leaders, were fired while the company was under an emplazamiento prohibiting such discriminatory action.

(24) -- In the national Tobacco company, where the long-established STIC union has been undermined by the employer's dismissal of union workers and hiring of temporary and part-time workers to avoid union bargaining.

(25) -- In plantations where workers are represented by the CUSG-affiliated Banano de Izabal union, including the El Paraiso, El Real, Bobos and Mopa plantations or related facilities. In late 1991 and early 1992, forces of the army and police intimidated workers seeking to organize and bargain collectively with plantation owners, and employers fired many workers for their union activities.

(26) -- In the La Torre plantation, which has been under a valid emplazamiento since 1987. The employer has repeatedly fired union supporters in violation of the law, with no effective sanctions by the government or the courts. In the latest round, more than 100 workers were fired in February, 1992 and remain dismissed.

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-- In the San Gregorio plantation, where over 300 workers were fired in February, 1992 for trying to form a union.

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-- In the municipalities of San Pedro Carcha, San Andres Xecul and Mazatenango, union supporters have been threatened, harassed and fired for union activity in late 1991 and early 1992.

In all of these cases the government and the courts have failed to enforce laws that are supposed to protect workers against such abuses. Petitioners recognize that, in the words of the Response to the 1991 Petition, "In a free enterprise economic system where the government does not control the business decisions of private firms, the Subcommittee believed it is unreasonable to expect all firings and retaliations to cease." But the available evidence indicates that the Government of Guatemala is failing to "make a concerted, good-faith, and reasonably effective effort to enforce applicable Guatemalan laws in cases of firings and anti-union retaliation," the Subcommittee's formulation of the test under the GSP Worker Rights provisions.

The Subcommittee quoted a U.S. Embassy report purporting to counter the points developed in the 1991 petition on the lack of a reinstatement remedy and the lack of compulsion to bargain in good faith with a union formed by employees. The Embassy report cited Articles 62, 379 and 380 of the Labor Code, and recourse to a "conciliation tribunal," as evidence that reinstatement and an order to bargain (or even more effective "in theory", a mandated contract), are available remedies for Guatemalan workers.

Guatemalan unionists interviewed by petitioners on these points report that these provisions are totally ineffective in preventing firings or retaliation, in securing reinstatement of fired workers, or compelling employers to bargain. Their view is supported by the cases cited this year and in all prior years.

With respect to the courts, the seven major national union federations submitted to the Supreme Court a bill of particulars, dated March 16, 1992, of the problems they commonly confront in the labor courts. The 17-point memorandum cites the fact that only four first-line labor courts serve the entire capital city, the same as forty years ago despite a massive population increase; case files being lost or misplaced, missed deadlines, irregular hours, lack of office supplies, failure to notify parties of hearings or other procedures, solicitous behavior toward employer representatives but high-handed treatment of union and worker advocates, unprepared and ill-informed judges, inconsistent reasoning by judges, and lack of enforcement in the rare cases where workers prevail.

C. PROHIBITION OF FORCED OR COMPULSORY LABOR

Over the years petitioners and the Subcommittee have had a dispute about whether forcing peasant into the Civilian Self-Defense Patrols (PAC's), where they perform unpaid labor, constitutes a violation of this right. The Human Right Report again acknowledges "credible reports of isolated instances of unpaid PAC members being used to provide free manual labor" but concludes, as does the Subcommittee, that "no systematic pattern of such abuse was established." Petitioners again this year, as in all previous



investigations, received reports that such tasks as clearing roads, cutting and hauling firewood, building barracks and lookout towers and other forms of unremunerated labor are commonly performed by peasants forced to participate in the PAC's. Clearly petitioners and the Subcommittee have a fundamentally different interpretation as to what constitutes "isolated instances" versus a systematic pattern.

In a statement published in Siglo XXI on February 15, 1992, the Minister of Defense, General Jose Garcia Samayoa, stated that the PAC's "act and function . . . for defense and to carry out works of infrastructure in favor of their communities." This statement can fairly be construed as an admission that the unpaid labor of PAC members is a systematic feature of the PAC system. This new information should provide a basis for moving forward to the review stage on this point for a thorough examination of whether forced or compulsory labor is taking place.

In addition to the PAC issue, petitioners also received numerous accounts of forced overtime to meet production quotas. This is not a matter of scheduled overtime or reasonably expected overtime in the normal production mode, but overtime forced by locked doors and physical intimidation, especially in the maquila zone factories (see below). Petitioners believe that this rises to the level of violations of the prohibition on forced or compulsory labor, and is thus worthy of a full review by the Subcommittee in the next stage of the GSP review process following acceptance of this petition for review.

CHILD

D. MINIMUM AGE FOR THE EMPLOYMENT OF CHILDREN

The Subcommittee did not respond to the section of the 1991 petition alleging widespread use of child labor. The Human Rights Report notes that child labor is common in the informal and agricultural sectors, and cites the finding of Casa Alianza that "over 5,000 children live in the capital city's streets; they are often involved in prostitution and other crimes."

Petitioners recognize that Guatemala's crushing poverty underlies the use of child labor and that the Government cannot fairly be expected to eradicate it. However, the Government could take stronger measures to limit it, especially in the industrial sector, and to ensure that children are not super-exploited. The publication Siglo XXI of January 20, 1992 tells of children named Edgar Diaz and Juan Piosh Ruiz who sustained serious injuries while performing agricultural labor, injuries that required medical care at government clinics and hospitals. Nonetheless, no apparent effort has been made to send inspectors to the plantations where these injuries occurred to insist that employers stop utilizing child labor in their fields. Similarly, Siglo XXI featured an interview with child workers in its February 23, 1992 issue describing the heavy labor they perform in the fields.

Case 29 The Tomuschat human right report cites the use of child labor in 30 the maquila factories of Confecciones Oceano, Prendas Estrella and Modas del Este. According to a report by the National Institute of Statistics of Guatemala, some 50,000 children below the minimum age for labor work regularly in the formal sector, but only 5,000 of

them have the permission from the Ministry of Labor for an exception to the child labor law.

SODIFAG research conducted in January, 1992 surveyed 4,000 child workers from 5-15 years old in 80 municipalities. Their work includes shining shoes, selling food, clothes, newspapers and lottery tickets; making adobe and charcoal, cutting firewood, washing cars, washing clothes, assisting tradesmen, agricultural work and domestic labor. Since most of these children work in violation of the law, they have no social benefits, no social insurance, earn no pension or vacation, are not eligible for severance pay, and otherwise are victims of a form of super-exploitation since they have no social safety net to guard them.

A 1990 SODIFAG survey of children workers in Mixco, Amatitlan, Escuintla, Mazatenango, Antigua and Chimaltenango found more than 300 children between 6 and 15 years old (half of them 10-12) working in a variety of occupations. Nearly two-thirds received no salary at all, but work with their parents; others were paid less than the minimum wage.

A 1989 SODIFAG study of 71 children working in the informal sector found them watching parked cars, selling, shining shoes, arranging flowers, washing cars, plastic-coating documents and watching children. Most worked 5-12 hours a day for less than the minimum wage.

Joaquin Lorenzo Bamaca, chairman of the Protection of Minors Commission of Congress, states in the special feature on child labor in Siglo XXI of February 23:

"There is no legislation that drastically punishes those who take advantage of child workers. Minors work out of need and landowners prefer them because they pay them half of what they pay adults, although sometimes their production is the same. In addition, since they are outside the law, they have no obligation to assume responsibility in case of an accident . . . This problem is not only present on the plantations and agroindustries, but also in the industrial sector. The current legislation has lost its function. Labor inspectors look the other way and no one says anything. Something must be done, because we cannot allow things to go on as they are."

The same sentiments were expressed by Marylis Barrientos de Estrada, Director of the Family and Minors Area of the Human Rights Ombudsman Office:

"The problem of the child who works in the agricultural sector has two facets: he or she is not subject to social security; the legislation stipulates a workshift but it turns out that they work like any other man and are not paid the minimum wage. Since he or she does not know the law, they accept and endure everything . . . Human rights violations do not only refer to disappearances and deaths. Also to the conditions in which individuals work, especially children. And we should be concerned about this."

Surely these facts and assertions by knowledgeable Guatemalans should be sufficient for the Subcommittee to act on the petition by moving it forward to the Review stage, where a complete examination of the child labor question can be carried out.

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E. ACCEPTABLE CONDITIONS OF WORK

1) Minimum Wage

Responding to petitioners' assertions of widespread minimum wage violations in the 1991 petition, the Subcommittee pointed to the Social Pact discussions among the Government, unions and employers and a resulting agreement to raise the minimum wage. However, the State Department's Human Rights Report for 1991 pointed out that, after the announced increase:

"The Minister of Labor in late November publicly denounced that many rural and urban workers are not receiving the minimum wage established for their sector. While some skilled workers earned wages higher than the minimum, most are paid below the legal minimum. Labor Ministry inspectors have been unable to enforce the minimum wage law. These wages do not provide a decent standard of living; over 75 per cent of the population lives below the Guatemalan poverty line."

This conclusion of the State Department as to the impact and enforcement of the new minimum wage standards is clearly new information warranting full Review by the Subcommittee to determine whether it overrides the Subcommittee's own conclusion last year that "the raising of the minimum wage also directly addresses the allegation that the Guatemalan minimum wage is unacceptably low, and provides further evidence that the Government is making a good-faith effort to improve conditions in the maquila and non-maquila sectors." An on-the-record Review is called for in this circumstance to determine which of these conflicting statements by an agency of the United States Government is correct.

Petitioners interviewed union officials and workers who confirmed that the Social Pact is virtually a dead letter and evasion of the minimum wage law is widespread. A survey by the Farmworker Unity Committee in late 1991 about wages, hours and conditions on plantations throughout the country found that half are not paying the minimum wage, and that women workers are paid 30-50% less than men. These findings were confirmed by leaders of the CGTG federation and other union officials who met with petitioners.

They were also confirmed by the Vice Minister of Labor in a November 26, 1991 denunciation of widespread failure to comply with the minimum wage law (in which he also stated, "we cannot adopt postures like policemen with a stick to force their compliance." This acknowledgement of non-enforcement carries over to a widely-announced plan to inspect commercial establishments for minimum wage and other labor code violations. Inspections uncover almost total non-compliance with the law, but no "stick" is brought to bear to compel even minimal compliance.

The level of the minimum wage is also at issue here. Inflation of nearly 100% since the announced increase in the minimum wage has made it already little relevant to the daily needs of Guatemalan workers. The monthly minimum of Q420, even with both parents working full time, does not meet the estimated amount of more than Q1000 per month to meet basic necessities of life.

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2) Hours of Work

The Subcommittee did not directly address the section of the 1991 Petition regarding Hours of Work, though it did indicate that a Labor Ministry report of April 5, 1991 "did tend to validate" allegations about abuses in this area. As noted earlier, the Subcommittee apparently has treated the issuance of a critical report as evidence of "a good faith effort to enforce Guatemalan labor laws." Petitioners believe that this is inadequate. It is particularly telling that the State Department's 1991 Human Rights Report, in analyzing this subject, did not mention the April 5 report. The State Department concluded as follows:

"The workday is legally 8 hours and the workweek 44 hours, but a tradition of much longer hours remains. As noted in the April report on the export processing zone industry, most owners of textile plants paid minimum wages for a 12 hour day, violating both the Constitution and the Labor Code. Several complaints of beatings and firings of textile workers accused of failing to meet work requirements were made to the Labor Ministry. Labor inspectors, who report to the Labor Courts, were accused of a lack of diligence in enforcing the eight hour day, in part because the highly mobile third country textile plants move when they find conditions more attractive elsewhere."

Interviews with workers and union officials confirm that these findings of the State Department are still valid. On its face, the State Department's analysis is new information suggesting that the Government is not, as the Subcommittee stated its own criterion, "making progress to ameliorate the recognized inadequate enforcement and adjudication of the Guatemalan labor laws." This is further ground for proceeding to the Review stage of the GSP petitioning process.

Anticipating that the widely publicized February, 1992 prosecution of two managers of the Korean-owned Prendas Estrella, S.A. maquila plant charged with unlawful detention of their employees might be raised as evidence of enforcement, petitioners point out that their sentences of 30 days in jail were commuted to \$1.00 per day for 30 days, plus \$15.00 in civil fines, or a total of \$45.00. Maquila workers told petitioners that maquila factory employers and managers openly scoff at these results, and boast that the law has no effect in changing conditions.

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### 3) Occupational Health and Safety

The Subcommittee did not directly address the occupational health and safety portion of the 1991 Petition, though by

implication the same argument regarding hours of work was also applied to the health and safety question. Again, however, the findings of the State Department reflected in the 1991 Human Rights Report support going forward to Review. In contrast to its 1990 Report, which was silent on the health and safety issue, the State Department found for 1991 that:

"Little was done to educate workers and employers about the potential harmful effects of certain chemicals and procedures. Even simple precautions, such as helmets and hearing devices on construction sites, were rarely taken. In November the Government issued a decree requiring all employers to provide medical facilities on work sites, a decree to which employers have objected . . . Insufficient time has passed to measure if these decrees will be enforced."

The State Department's findings, and its analysis of the November decree, constitute new information that should be reviewed by the Subcommittee. In particular, the question of enforcement of the November decree is now ripe for examination at the Review stage of the GSP process. Upon review, the Subcommittee can determine whether "actions of the Government to enforce" the decree are underway -- the Subcommittee's test for compliance -- or whether this is another case of government initiatives that are introduced but not implemented.

Petitioners interviewed Dr. Obdulio Cordon Paredes, Head of the Non-Transferable Diseases Department of the Ministry of Public Health. He asserted that there is no institutional relationship among the Ministry of Public Health, IGSS, the University of San Carlos and the Ministry of Labor on occupational health and safety issues. To overcome this lack of coordination, Doctor Cordon authored a national plan for occupational health and safety



(PLANSAT) in early 1991 for implementation in 1992, designated "The Year of Workers' Health" by the Pan American Health Organization. No action has been taken by the Government on Dr. Cordon's 1992 PLANSAT.

According to the Appendix on Worker Rights Standards in the U.S. Department of Labor's May, 1991 publication "Worker Rights in U.S. Policy", several of the "warning signs" of non-compliance in the health and safety field are present in Guatemala:

-- "Too few labor inspectors vis-a-vis the total number of enterprises": According to IGSS data, there are fifteen inspectors for 14,000 enterprises covering 300,000 workers in Guatemala City, or approximately one labor inspector per 1,000 enterprises (or per 20,000 workers).

-- "Untrained inspectors": According to Dr. Cordon Paredes, labor inspectors are self-trained. There is no advanced degree program in occupational health and safety in Guatemala. Scholarships to study abroad are no longer granted.

-- "No available data on injury and illness": The only relevant statistical report is the "Boletin Epidemiologico de Accidentes Guatemala/91." While this is an up-to-date and professionally produced bulletin for what it contains, it lacks necessary details such as numbers and rates of injuries, illnesses and fatalities by industry or sector. According to a USAC medical school official, students conduct case studies of health and safety conditions in some workplaces, but the government makes no effort to synthesize the findings. A doctor who has studied pesticide poisonings of

farmworkers pointed out that official statistics on such poisonings are unreliable because only a relative handful of victims have access to the national health clinics. Dr Cordon Paredes stated that the entire budget for his department, aside from salaries, is \$500.00 -- not even enough for sufficient office supplies.

-- "A low number of penalties levied may be indicative of ineffective enforcement": Government, trade union and private sector officials concurred that current Labor Code penalties fail to deter violations. Employers treat minimal fines simply as a cost of doing business for the few times they are imposed. The Prendas Estrella case discussed above indicates the disdain with which employers view penalties for labor law violations. In addition, there was a consensus that bribery of labor inspectors is a common practice also reflective of ineffective enforcement.

Petitioners reviewed data gathered under an IGSS-approved random survey of 333 agricultural workers exposed to pesticides on 22 plantations in Escuintla. The project was carried out by a physician from the USAC medical school. He identified the following unsafe work conditions and practices:

--using hands to mix pesticides with water, and tasting the mixture to test concentration;

-- using human beings as guideposts for aerial spraying, with no protective equipment;

-- ordering workers into fields shortly after spraying, instead of waiting the required twenty-four hours;

-- using leaky sprayers, and using mouth suction to unclog sprayers.

These abuses were confirmed by workers from the San Gregorio plantation who met with petitioners' delegation after they had been fired for trying to form a union. Among their demands were protective equipment and training for handling pesticides. Their case has not advanced because the owner has failed to appear at hearings, with no effort by the Ministry to advance their case.

Petitioners also reviewed a study of 100 children who work at night in Guatemala City. The study was conducted in September and October, 1991. Half the children were 14 or younger, and only one-fourth completed as much as second grade. They confronted a variety of health and safety problems including traffic accidents, dust, chemicals, animal bites, and noise hazards. More than half had skin disorders, one-fifth had respiratory ailments, one-tenth suffered gastro-intestinal illnesses, and another tenth had suffered work-related accidents. Nearly three-fourths used alcohol and tobacco, or sniffed glue and solvents. It is evident that the Government of Guatemala has not made progress setting and implementing policies to abate health and safety hazards among child laborers.

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CONCLUSION

In adopting the labor rights amendment to the GSP statute in 1984, the House Ways and Means Committee declared that

"Promoting respect for the internationally recognized rights of workers is an important means of ensuring that the broadest sectors of the population benefit from the GSP program . . . The denial of internationally recognized worker rights in developing countries tends to perpetuate poverty, to limit the benefits of economic development and growth, to narrow privileged elites, and to sow the seeds of social instability and political rebellion."

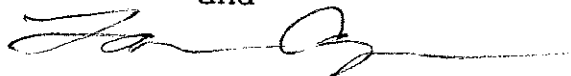
Petitioners believe that the people of Guatemala are not benefitting from the GSP program when worker rights are being violated to the extent found by petitioners in the formulation of this request for review. The proper setting to decide whether petitioners' assessment is correct is in the full review stage of the procedure for determining country eligibility. Petitioners request acceptance of the petition for review.

Respectfully submitted.



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