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

1992 GSP Annual Review

Worker Rights Review Summary

Case: 003-CP-92

EL SALVADOR

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## I. INTRODUCTION<sup>1</sup>

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In 1990, a petition was filed against El Salvador's worker rights practices 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, needed major reforms to the existing labor code, lack of union recognition and lack of protection for workers exercising their rights (particularly in the export processing zone), including the right to strike.

★ The state of labor relations in El Salvador has been in large part attributable to the overall lack of human rights due to the eleven year civil war in that country. On December 31, 1991, the Government and the opposing Farabundo Marti Front for National Liberation (FMLN) signed an agreement bringing the civil war to an end and agreeing to a series of reforms that would assure basic human and legal rights. Because these Peace Accords were expected to bring a change in all areas, and explicitly included the area of labor sector reforms, the GSP review was continued in June, 1992 for another year.

The GSP program, originally enacted in 1974, provides duty-free entry to eligible products from beneficiary developing countries.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

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<sup>1</sup>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.



In the course of its review, the Subcommittee examined submissions from a number of groups including the AFL-CIO, the Salvadoran Government, and the Department of State's Country Reports on Human Rights Practices.

## II. PRINCIPLE ISSUES

The GSP Subcommittee has focussed on both labor law and practice in El Salvador. With respect to labor law, the key issue has been the reform of El Salvador's labor code, which in several key respects is not even consistent with the Salvadoran constitution, which grants workers broad rights. Second, the Subcommittee was interested in the enforcement of existing labor rights in El Salvador, which includes the issue of violence against workers seeking to exercise those rights.

### **Reform of the Labor Code**

The Subcommittee considered the comprehensive reform of El Salvador's labor code as the single most significant action in the post-civil war era that could be taken to improve the rights of workers in El Salvador. A revised labor code has the potential to improve the status of worker rights in a variety of key areas, such as the right of association, and the enforcement of rights. Accordingly, the Subcommittee focused closely on the status of labor code reform.

The Subcommittee determined that while the Government of El Salvador has not yet enacted a labor code, a good faith effort is underway to address the problem. The tripartite (government, labor, management) Socio-Economic Forum concluded on February 17 a "Social Pact," which is an agreement by all parties to their respective rights and responsibilities in the area of labor relations. While the pact is not intended to, and cannot, substitute for a new labor code, the Subcommittee viewed the substance of the Pact as representing a credible step toward the eventual completion of a "consensus" code, and the tangible improvement of worker rights in El Salvador. The Subcommittee also noted that the Pact was considered necessary by some members of the labor sector before a serious effort could be made to draft a new labor code. The Socio-Economic Forum has now established two committees one of which is conducting the discussions on the draft labor code. According to the terms of the Social Pact, the three sides have agreed to recommend consensual changes to the code by September 30, 1993. Accordingly, the Government of El Salvador has indicated that the draft code is expected to be ready for submission to the legislature this year.

### **Other Key Issues**

#### Freedom of Association: Reduction of Violence

As part of the peace process, the FMLN has disarmed and the government military forces were significantly reduced. As part of this reformation of military forces, the police force was separated from the jurisdiction of the Department of Defense and a national civilian police force was established and deployed in February 1993.



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death (2) (?)

The level of overall violence in El Salvador, has been significantly reduced and previous cases of violence are being investigated. Among reported acts of violence in 1992 were murders of two members of the FENASTRAS Labor Federation. The cases were investigated and the deaths were discovered to be the result of personal disputes. The Subcommittee viewed this positively, and will continue to monitor the situation to determine if the trend toward reduced violence and the investigation of violent incidents continues.

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ILO Contact Group. The ILO has on several occasions offered to send an ILO Direct Contacts Mission to cooperate with El Salvador on remedying violations of freedom of association predominantly with respect to acts of violence, arrests and disappearances of trade union leaders. During the GSP Subcommittee hearings in 1992, the Salvadoran Ambassador indicated his government was not opposed to such a mission and suggested that such a mission could occur in early 1993, allowing the Socio-Economic Forum time to plan and prepare for the contacts mission.

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• Freedom to Organize and Bargain Collectively

Under existing laws both private sector unions and public sector associations make use of the collective bargaining mechanism. The Constitution protects union officials during their election, term in office and one year following from suspension, firing removal or demotion except for legal cause. While this is generally observed in practice, there has been concern that some individuals attempting to form unions have been fired before they have their credentials. In resolving this review, the Subcommittee will look for concrete signs that this issue be effectively addressed.

Also of concern were statements that union formation is essentially blocked in the two export zones. The GOES has noted the public export zone is located near its most important Air Force base and access by non-employees or others involved in actual export zone is partially a security concern. It has also been noted that access is controlled to prevent black-marketeering of duty-free goods. In 1992, although no unions had been established in the two export zones, the government had established Ministry of Labor offices in each zone. The Subcommittee is hopeful that the existence of Ministry offices will facilitate ability of EPZ employees to exercise their freedom of association rights should they continue to feel they are inhibited from forming and joining worker organizations by companies within the EPZs.

Enforcement Issues

In general, as the GOES works to improve its social system, the Subcommittee expects to see consideration of expansion of its inspection and law enforcement system as a means to improve all areas of its labor rights regime (including child labor and working conditions) and hopes that it will make use of analyses and recommendations made by the ILO in consideration of improvements to its labor regime.





### III. POSITIVE ACTIONS NOTED

As noted above, some of the key actions taken in El Salvador in the past year include:

- o The conclusion of the tripartite Social Pact in February, and the resultant commitments to conclude agreement on a consensus labor code later in the year;
- o The continuation of the trend of reduced violence toward labor leaders, and efforts to investigate such violence.
- o Efforts by the GOES to establish Labor Ministry offices near the EPZs.

### IV. RECOMMENDATION

Worker rights issues in El Salvador have been under GSP review since 1990. The Government of El Salvador can be commended for the degree of initial progress made in the past year to address its both its overall and worker rights problems. While still concerned about the level of enforcement of protection afforded workers the Subcommittee is encouraged that the government has made a good faith effort to improve the level of enforcement to protect its workers rights.

The Subcommittee considers these efforts important, but stresses the need for concrete follow-up and the continued trend toward progress in all areas, for a satisfactory resolution of this review. Given the government's specific commitments with respect to establishing a labor code, the GSP Subcommittee has recommended that a further half-year extension is warranted in order to allow time for the draft labor code to be reviewed and completed by the GOES proposed deadline date of September 30, 1993. In addition, this will allow time for a further demonstration of good faith labor law enforcement efforts by the GOES.

