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BEFORE THE
UNITED STATES TRADE REPRESENTATIVE

PETITION TO REMOVE UKRAINE FROM THE LIST OF BENEFICIARY DEVELOPING COUNTRIES UNDER THE GENERALIZED SYSTEM OF PREFERENCES

SUBMITTED BY:
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)

DATE:
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Introduction

On September 22, 1999, Ukraine's President Kuchma signed into law a resolution on "Trade Unions, Their Rights, and Guarantees of their Activities." This law clearly violates the freedom of association by imposing significant restrictions on the ability of trade unions to acquire legal and territorial status in Ukraine. The seriousness of this violation is reflected in the conclusions and recommendations of the ILO on this matter. It is on this basis that the AFL-CIO calls for the revocation of GSP benefits for Ukraine.

Freedom of Association

The law on "Trade Unions, Their Rights, and Guarantees of their Activities" sets onerous requirements for unions in order to be eligible for local, district, regional, republican, and All-Ukrainian status, as well as to be recognized as legal entities. For each type of status, unions must satisfy specific levels of union membership and territorial competence (for details, see Attachment A, pp. 4-5). As such, this law represents a grave encroachment on Ukrainian workers' right to independent representation, as defined by the ILO's Convention #87 on the freedom of association.

The ILO's conclusions and recommendations with respect to this law are stated in its Case No. 2038, "Complaint against the Government of Ukraine presented by the Free Trade Union's Federation of Ukraine Report No. 318" (see Attachment B). This case was brought before the ILO in July 1999, when the law was still under consideration by the Verkhovna Rada (Parliament) of Ukraine. At that time, the ILO concluded that the law was not compatible with Convention #87, since issues such as territorial competence and the number of union members per district should be defined by trade unions themselves, not by the state. It recommended that the Government of Ukraine take "all necessary measures" to bring the law into compliance with Convention #87. In fact, Government of Ukraine has taken no such steps, and instead it ratified and signed the law into effect in September 1999.

The Law and Its Implications

The pertinent components of the law are Articles 11 and 16. Article 11 specifies the requirements for each type of status. Article 16 states that trade unions can be considered legal entities only if they have met the requirements of Article 11. In addition, the law obligates currently existing trade unions to register under the new provisions within six months of the enactment of the law.

The law deals a fatal blow to Ukraine's nascent independent trade unions: if it is fully implemented, virtually all independent trade unions in Ukraine will lose their legal status. Without this status, the independent unions will be powerless to represent their members, since, as the U.S. State Department's 1999 Country Report on Human Rights Practices for Ukraine indicates, status and registration "confer the right to acquire space, property, to maintain bank accounts, and to enter legally binding agreements." In addition, because of the stipulations of Article 16, any trade union that does not meet the necessary requirements can be dissolved.

In fact, trade union activities have already been affected by this law: At least one trade union has had its registration revoked and its bank account suspended in conjunction with the law. In the coal industry, some companies have terminated their relationships with particular trade unions on the grounds that these unions have not been registered in compliance with the law. In addition, the Ukrainian Parliament's Human Rights Ombudsman has filed a case with the Constitutional Court of Ukraine against the unconstitutionality of the law, and 188 members of Parliament have signed a petition and submitted their own case to the Constitutional Court against the law.

At the time of this writing, only the federation of state-supported trade unions (the successor to the Soviet trade union system, now known by its Ukrainian acronym - FPU) and one independent trade union have successfully registered. This experience exemplifies the claims of independent trade unions that the law is targeted to eliminate them in favor of the state-supported federation. As noted in the U.S. State Department's 1999 Country Report, this law also continues a more general trend of the Ukrainian Government to discourage certain categories of workers from forming unions. The State Department document reports that, "Under the new trade union law, an independent union also can be removed easily from the collective bargaining process at the enterprise level. Under the old law, if several unions at an enterprise failed to agree on joint representation, the bigger union (i.e., the FPU) represented labor in the bargaining process. The new law failed to repair this grievance."

Conclusion

Far from taking positive actions or steps toward the improvement of worker rights and labor standards in Ukraine, the Ukrainian Government has moved decisively in the opposite direction. By signing into law "Trade Unions, Their Rights, and Guarantees of their Activities," President Kuchma has created legal means for the denial of freedom of association to Ukrainian workers. If fully implemented, this law will eliminate most independent trade unions in Ukraine. The Government of Ukraine should adopt rapid and concrete measures to reverse this development and bring its legislation into accordance with ILO Convention #87. If not, GSP eligibility for Ukraine should be revoked.

Attachments:

A: "The Law of Ukraine on Trade Unions, Their Rights, and Guarantees of Their Activities" (English translation by the ILO)

B: "Complaint Against the Government of Ukraine Presented by the Free Trade Union's Federation of Ukraine Report No. 318" (ILO Case No. 2038, 1999)