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TO THE UNITED STATES TRADE REPRESENTATIVE

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

PETITIONERS:

INTERNATIONAL LABOR RIGHTS
EDUCATION AND RESEARCH FUND
(ILRERF)

JUNE 1, 1993

June 1, 1993

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

LABOR RIGHTS IN COLOMBIA

INTRODUCTION

This petition requests the GSP Subcommittee to re-examine the beneficiary status of Colombia, and if the allegations presented below are proved to be accurate, to suspend GSP privileges for Colombia until such time as that country enters into compliance with the worker rights provisions of the GSP law by taking steps to provide workers internationally-recognized workers rights.

The eligibility of Colombia for GSP privileges was last examined to the Petitioner's knowledge in 1990 on the basis of a petition submitted by Americas Watch and the United Mine Workers of America. That review resulted in a decision by the GSP Subcommittee to the effect that Colombia was "taking steps" to respect worker rights, largely on the basis of a revised labor code enacted in December, 1990. *short not IS, not reviewed* *bron*

X This petition is submitted because it is now apparent that there are serious inadequacies and omissions in the new labor code. These problems are compounded by new measures in the code that worsen the access of workers to the rights of free association and collective bargaining by allowing "short-term labor contracts." Furthermore, the health problems facing workers in the export flower industries have come to light as a clear indication of the deadly impact of the lack of respect for worker rights on the lives and well-being of workers. Finally, the Petitioners assert that, although the incidence of violence against labor union organizers may have lessened, the government has taken few steps to bring to justice those responsible for the murders of hundreds of trade unionists in the past - decade, contributing to a climate of terror which acts as a significant and serious impediment to the establishment of just and equitable labor relations. Although Petitioners recognize the seriousness of the civil violence that continues to wreak havoc upon Colombian society, it is incumbent on the Government to determine by the application of its prosecutorial powers that *FCA*
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such violence engaged in by drug cartels and guerrilla forces does not become the excuse for official violence or the condoning of non-official violence against the labor movement under cover of fighting the drug lords or armed opposition groups.

The International Labor Organization's Freedom of Association Committee is currently seized of 111 cases, in which complaints have been submitted to the Governments concerned for observations (as of March 4, 1993). Of these 111 cases throughout the entire world, seven are complaints against Colombia. They include:

- Cases No. 1434 and No. 1477, filed first in 1985 and augmented periodically, for the murders of several hundred trade unionists;
- Case No. 1522, filed in February, 1990 regarding the dismissal of trade unionists without cause;
- Case No. 1562, filed in November, 1990, protesting the declaring illegal of strikes, the arbitrary suspension of trade unions' legal personality, and the "disappearance" of a trade union leader.
- Case No. 1620, filed in January 1992, regarding the banning of a strike by hotel workers;
- Case No. 1625, filed in February 1992, protesting aspects of the revised labor code, particularly the "short-term labor contract system."
- Case No. 1631, filed in February 1992, regarding an overly broad restriction on strikes by workers in the bank sector.
- Case No. 1686, filed in the interim between November, 1992 and March, 1993, not yet made public by the Committee.

Clearly, the Colombian government's labor practices constitute a pattern of violations, or at the very least, serious allegations of violations based on this record, that warrants review by the GSP Committee.

I. Problems in the 1990 Labor Code Revision

The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) examined Colombia's 1990 labor law revision (Act No. 50 of 1990) in 1991. It noted a number of improvements, including: accelerated machinery for

the registrations of trade union organization; clarification of the legal personality of trade unions; clarification of the scope of workers and trade union officers protected by trade union immunity; declaration of the illegality of refusing to bargain with trade union organizations; the illegality of concluding collective agreements with non-unionized workers when the trade unions represent more than one-third of workers in an enterprise; allowance for official employees to establish a mixed trade union organizations representing both official employees and public servants.

However, the CEACR noted that ACT No. 50 had omitted a number of recommendations of long standing from the ILO on provisions of law that are incompatible with Convention 87, which Colombia has ratified. These include the following:

1. The requirement that 75 percent of members of workers' organizations are Colombian nationals (Section 384 of the Labor Code).
2. Interference in the internal administration of trade unions, through supervision of internal management and meetings of unions (Sec. 486 of the Labor Code), strict rules for trade union meetings (Decree No.1 2655 of 1954), and the presence of authorities at general assemblies convened to vote upon the calling of a strike (new section 444, last paragraph, of the Labor Code.)
3. The requirement that persons be Colombian nationals for election to trade union office (Sec. 384).
4. The requirement that the election of trade union officers be submitted for approval by the administrative authorities (Sec. 21 of Resolution No. 4 of 1952 and sections 10 to 13 of Decree No. 1469 of 1978).
5. The suspension for up to three years, with loss of trade union rights, of trade union officers who have been responsible for the dissolution of their unions (new section 380(3) of the Code.)
6. The requirement that persons belong to the trade or occupation in order to be considered eligible for election to trade union office (Sec. 388(1)(c) and 432(c) of the Labor Code.)
7. The prohibition on trade unions from taking part in political matters (section 379(a) of the Labor Code) or meetings on political matters.
8. The prohibition on federations and confederations from calling a strike (sec. 417(a) of the

Labor Code.)

9. Prohibition of strikes not only in the essential services in the strict sense of the term but also in a very wide range of public services which are not necessarily essential (sec. 430 and new sec. 450(1)(a) of the Labor Code.
 10. Prohibition of strikes when they are called for the purpose of requiring the public authorities to take action in relation to matters which fall within their exclusive reserve (new section 450(1)(g).
 11. The power of the Minister of Labor to refer to a vote by all the workers in an enterprise the question of whether or not they wish to submit persistent differences of view to arbitration once a strike has been called (new section 448(3).
 12. The power of the Minister of Labor to terminate a dispute lasting more than 60 days and the power of the President to terminate a strike which is affecting the interests of the national economy and to submit disputes to compulsory arbitration (new section 448(4).
 13. The prohibition of strikes, subject to administrative penalties and sentences of imprisonment, in cases where a state of emergency has been declared.
 14. The possibility of dismissing trade union officers who have intervened or participated in an illegal strike (sec. 450(2).
 15. The withdrawal or suspension by administrative authority of the legal personality of a trade union in the event of violations of the provisions respecting trade unions (sec. 380) or in the event of a strike that is declared illegal (new section 450(3)).¹
- (The full text of the CEACR Report is Appended at Appendix I.)

Because of the practical importance of the new Colombian labor code to trade unions and their ability to represent workers' interests, it is worth repeating in this petition the full comments (as recorded in the minutes of the 1991 ILO Conference) of the Workers' Representative when the CEACR Report was placed in discussion before the ILO Conference.:

¹According to the representation of the Colombian Government's representative to the 1991 ILO Conference, the withdrawal of a labor union's legal personality following a strike or unlawful work stoppage requires a decision by the labor courts, not just the administrative authorities.

A Workers' member of Colombia thanked the ILO and all those who had expressed their concern and distress at the terrible situation faced by workers in Colombia. Referring to the statement made by the Government representative, he maintained that there was improper interference by the State in every aspect of the functioning of trade unions and not only in the Confederation to which he belonged. A virtual war was being waged against the trade union movement in Colombia and this arose in connection with the most recent legislation mentioned by the Committee of Experts in its report. He stated that the trade union movement had, for a long time, been making requests and calling for democratic reform of the labor legislation, but had constantly met resistance from the Government and employers. With reference to the Government representative's statement that reforms were being carried out in collaboration with the workers and employers, he observed that although the workers had hoped for proper proposals, the Government had produced reactionary provisions that were now embodied in Act No. 50 of 1990. In his opinion, the Government was trying to convince world public opinion that the amendments favored workers whereas the legislation had really been brought into line with the requirements of the World Bank and International Monetary Fund. There had been some progress compared to 1989 and 1990 but he noted that Conventions Nos. 87 and 98 had been law in Colombia since 1976 and, despite all the legislation passed over the last fifteen years, they were still not properly applied. The Government representative had stated that strikes were not prohibited, but rather work stoppages. However, the four trade union confederations had organized a strike on 14 November 1990 aimed exclusively at defending workers' interests and this peaceful action had resulted in government measures including imprisonment for three years of those who called the strike, confiscation of trade union funds and the censorship of union radio and television. The military forces had been deployed as an intimidation measure and the Government had orchestrated a disinformation campaign alleging that the stoppage had been a failure. In concluding, he considered that the work of the Committee of Experts in this case had to be continued and suggested that a direct contacts mission be sent once again to the country with a view to establishing clearly how Act no. 50 of 1990 was going to be applied in practice.

Another Workers Representative commented on the impact of the new legislation on the right to strike. The new Act also introduced changes concerning strike formalities, he said, and pointed out that it was now very difficult for workers to vote in favor of a strike because the decision had to be taken at an enterprise-level meeting which could be attended by workers who were not members of the union.

Finally, it was noted by the Workers Representative that the new Labor Code reduces the minimum age for work in Colombia from 14 to 12 years of age.

In response to these and other comments at the Conference, it was determined by the

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Committee on Conventions and Recommendations as follows:

The Committee . . . took note of the request addressed to the ILO regarding the sending of a direct contacts mission and hoped that it would take place very shortly. The Committee noted with interest certain legislative improvements which had taken place in the application of Conventions Nos. 87 and 98 since last year. However, in view of the deep concern which it had expressed for a number of years in connection with the numerous and serious deficiencies that continued to exist in the law and in practice as regarded the application of the Conventions, the Committee expressed the firm hope that the Government would be in a position to communicate to the supervisory bodies of the ILO as rapidly as possible specific information on the measures taken or envisaged so as to bring the legislation and practice into full conformity with the requirements of these Conventions. In view of the seriousness of the trade union situation which was confirmed by the Committee on Freedom of Association when it examined pending cases, the Committee insisted that the Government indicate that real and substantial progress had been made in its next report.

Petitioners are unaware whether the ILO Direct Contacts Mission occurred as requested or the results of that mission, but would urge that the GSP Committee request from the ILO the relevant documents to indicate the disposition of this request, and to include its findings in the review of Colombia's GSP status.

II. The Impact of the "Short-Term Contract" System

The second major issue relating to the Labor Code No. 50, not addressed in the CEACR Report, is the approval in that code of "short-term contracts" which, in the experience of Colombian trade unionists, are being used to make it difficult if not impossible for trade unions to organize. One Colombian Workers' Representative at the ILO spoke of its impact:

Another Workers' member of Colombia, having listened to the Government representative's statement, informed the Committee that the situation of Colombian workers could not be worse. The new labor legislation not only breached the fundamental principles of the ILO, but was aimed at destroying the Colombian trade union movement. He based this remark on the following: rather than providing for the "elimination" of obstacles to the formation of unions, the Act allowed precarious employment contracts so that it was impossible for workers to join a union because of their temporary employment situation. Workers knew that if they joined a union, they ran the risk that their contracts would not be renewed. With this institutionalization of temporary employment (the law had previously prohibited contracts of less than one

year) it was impossible in practice for workers to belong to unions and to conclude collective agreements. (ILO Conference Report, 1991)

The Petitioner has been able to confirm from interviews with Colombian trade unionists in 1993 that the impact of the "short Term Contracts" allowance has been exactly as predicted above. Workers, for example, in the flower industry are hired on fixed contracts, with a three-, four- or six-month expiration date. The companies refuse to negotiate collective agreements. When the individual worker's contract expires, the company does not renew it; rather it allows the worker to continue to work on a day-to-day basis without a contract, so that in the event of any labor militancy or trade union activity, the worker can be fired at will. In fact, the worker who testified to these and other problems in a visit to the United States in March, 1993, Ms., Sibilina Torres, was fired from her job at a large flower producer, Floresa, immediately on returning to Colombia, along with fifteen others.

The workers have attempted for many years to organize a union, but have been virtually worn down by the resistance of the employers, their arbitrary actions against any women who join the union, and the overall climate against violence. According to Torres, only one trade union exists in the industry; it is a company-run union.

III. Health and Safety Violations

Protecting the rights of workers to organize becomes important in Colombia for another reason: to offer some semblance of attention to the health and safety problems facing workers in certain industries, completely outside the concern of the government or its politically potent allies among the industrialists concerned.

The flower industry, which currently exports in excess of \$225 million in flowers to the United States annually, is the setting for gross and criminal mismanagement of toxic chemicals in the workplace. Approximately 80 percent of the 140,000 workers are women with more than half under the age of 25. Each day, according to the testimony of the flower workers' union, deadly pesticides are sprayed in the greenhouses to kill insects, fungi, snails, weeds, etc. On many occasions women are forced to work in the greenhouses while these pesticides are being sprayed. The working conditions have caused workers to suffer skin diseases, headaches, nausea, and an abnormally high number of stillbirths and children born

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with severe birth defects. Workers who protest about the chemicals are given 10 minutes only to breathe outside air before returning to the poisoned atmosphere of the greenhouse.

According to workers in the industry, pesticides in use daily in the greenhouses are among those pesticides which are banned for use by Colombian law. Workers are given no training in their use, or protective equipment.

IV. Ongoing Violence Against Trade Unionists

The representations of violence against trade unions which have been made at the ILO are well-documented and too numerous to repeat here. (Cf. COFA Cases No. 1429, 1434, and 1477)

The killings continue. In March Oliverio Molina, vice president of SINTRAINAGRO, the banana plantation workers' union, was gunned down on his way home from a meeting with human rights monitors. Killings of workers and their families on the banana plantations occur every few days, according to trade union sources in Colombia. The unions accuse the government of direct complicity in these killings, which are often carried out ostensibly as part of drug raids or by drug warlords, or in connection with government efforts against "subversive forces."

In March, 1993, the ILO Committee on Freedom of Association renewed its serious concern for the lack of investigation or prosecution in all but a handful of cases of murder of trade unionists, and in particular called the government to provide information on the recent murder of the trade union leader, Emilio Rueda Ortiz and the death threats made against trade union leaders Elicer Castro Escobar and Luis Carrillo Jimenez.

It would appear that the situation in Colombia continues in 1993 as was described in the 1991 ILO Conference by a Worker Representative from the United Kingdom:

The Government would say, as it did last year, that this violence against trade unionists was the work of drug dealers and criminals. This was, to some extent, true. But considerable evidence existed showing that members of the security forces had acquiesced, and had even been directly involved in some of these criminal acts. The attitude of the Government towards trade unions, with its restriction of trade union rights and detention without trial for long periods, created an atmosphere in which criminals and drug dealers had to feel that they were almost acting as government agents. Trade unionists themselves, in trying to establish recognition of basic trade

Death
Family

Death
(2)
Threat
(2)

union rights, were being treated as criminals in Colombia. Unionists throughout the world tried desperately to promote their causes peacefully; if the Government of Colombia was to harness the peaceful cooperation of unions, instead of repressing them, it might have better success in dealing with the criminal elements which pervaded the whole of Colombian society. Trade unionists discovered that, although massive military forces were available to break up local strikes, the same forces were mysteriously absent when union headquarters were being attacked and unionists being killed. (ILO Conference Report, 1991)

V. Conclusion

The Petitioner believes that sufficient evidence on ongoing serious violations of workers rights exists to warrant a review of GSP eligibility by the U.S. Trade Representative. These violation include, but are not limited to, murder, disappearance, and other physical violence and the threat of physical violence against trade unionists; serious flaws in labor law which restrict the practical ability of workers to organize or bargain collectively. A lowering of the age of children allowed to work from 14 years to 12 years, and massive violations of the rights of workers to health in the workplace through unrestrained and unprotected use of dangerous chemicals in the flower industry, among other places.

We therefore petition the USTR to open a new review of Colombia's BDC status, and subsequently to conduct a through investigation. We look forward to providing further and more detailed evidence of the violations mentioned above to help the Committee in making its determination.

TITLE

*CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948
Colombia (ratification: 1976)*

Published: 1991

REF

DESCRIPTION:(CEACR Individual Observation)

CONVENTION:C87

COUNTRY:(Colombia)

PUBLISHED:1991

CLASSIFICATION:02_01

CLASSIFICATION:07_01

STATUS

STATUS:(Current)

TEXT

The Committee notes that it has not received the Government's report. However, it notes the long discussions which took place in the Conference Committee in June 1990, and Act No. 50, of 28 December 1990, amending the Substantive Labour Code.

I. The Committee notes with satisfaction that Act No. 50 has made a number of improvements to the previous provisions as regards freedom of association and collective bargaining, some of which had been the subject of comments by the Committee of Experts or the Committee on Freedom of Association:

- the machinery and formalities for the registration of trade union organisations have been accelerated (new sections 361 and following);
- it has been established that all trade union organisations, by the mere fact of their establishment and dating from their constituent assembly, enjoy legal personality (new section 364);
- the number of workers and trade union officers protected by trade union immunity (new section 406) and the scope of protection against interference with the right of association in trade unions (new section 354) has been approved;
- refusal to bargain with trade union organisations is illegal and punishable by fines (new section 354(c));
- it is forbidden to conclude collective agreements with non-unionised workers when the trade union or trade unions represent more than one-third of the workers in an enterprise (paragraph added to Chapter II, Title II, third part of the Code);
- official employees are permitted to establish mixed trade union organisations representing both official employees and public servants (new section 414, final paragraph).

II. Nevertheless, the Committee regrets that Act No. 50 has omitted to take into account certain comments that the Committee has been making for many years on the provisions of the legislation that are incompatible with the Convention. These comments concern the

following points:

1. The establishment of workers' organisations (Article 2 of the Convention)

- the requirement that 75 per cent of members are Colombian to establish a trade union (section 384 of the Labour Code), whereas it should be possible for workers to establish organisations of their own choosing without distinction on grounds such as nationality.

2. Interference in the internal administration of trade unions (Article 3 of the Convention)

(a) Financing, administration and meetings

- the supervision of the internal management and meetings of unions by public servants (section 486 of the Labour Code and section 1 of Decree No. 672 of 1956), strict rules for trade union meetings (Decree No. 2655 of 1954) and the presence of authorities at general assemblies convened to vote upon the calling of a strike (new section 444, last paragraph, of the Labour Code).

(b) Election and suspension of trade union officers

- the requirement that persons be Colombian for election to trade union office (section 384 of the Labour Code and section 18(a) of Resolution No. 4 of 1952);

- the election of trade union officers has to be submitted for approval by the administrative authorities (section 21 of Resolution No. 4 of 1952 and sections 10 to 13 of Decree No. 1469 of 1978);

- the suspension for up to three years, with loss of trade union rights, of trade union officers who have been responsible for the dissolution of their unions (new section 380(3) of the Code);

- the requirement that persons belong to the trade or occupation in order to be considered eligible for election to trade union office (sections 388(1)(c) and 432(2) of the Labour Code; section 18(c) of Resolution No. 4 of 1952, for first-level trade unions; and section 422(1)(c) of the Labour Code, for federations).

3. Right of trade unions to further and defend the interests of the workers (Article 3 of the Convention)

- the prohibition on trade unions from taking part in political matters (sections 12 and 50(a) of Resolution No. 4 of 1952; section 16 of Decree No. 2655 of 1954; and section 379(a) of the Labour Code);

- the prohibition on trade unions from holding meetings on political matters (section 12 of Resolution No. 4 of 1952);

- the prohibition on federations and confederations from calling a strike (section 417(a) of the Labour Code);

- prohibition of strikes not only in the essential services in the

strict sense of the term but also in a very wide range of public services which are not necessarily essential (section 430 and new section 450(1)(a) of the Labour Code and Decrees Nos. 414 and 437 of 1952; 1543 of 1955; 1593 of 1959; 1167 of 1963; 57 and 534 of 1967);

- the prohibition of strikes when they are called for the purpose of requiring the public authorities to take action in relation to matters which fall within their exclusive reserve (new section 450(1)(g));

- the power of the Minister of Labour to refer to a vote by all the workers in an enterprise the question of whether or not they wish to submit persistent differences of view to arbitration once a strike has been called (new section 448(3) of the Code);

- the power of the Minister to terminate a dispute lasting more than 60 days and the power of the President to terminate a strike which is affecting the interests of the national economy and to submit disputes to compulsory arbitration (new section 448(4) of the Labour Code, Decree No. 939 of 1966, as amended by Act No. 48 of 1968, and section 4 of Act No. 48 of 1968);

- the prohibition of strikes, subject to administrative penalties (the suspension of the legal personality of trade unions) and sentences of imprisonment, in cases where a state of emergency has been declared (examples of the application of this prohibition are Decree No. 2004 of 1977 and Decrees Nos. 2200 and 2201 of October 1988);

- the possibility of dismissing trade union officers who have intervened or participated in an illegal strike (section 450(2) of the Labour Code).

4. Suspension and dissolution by administrative authority (Article 4 of the Convention)

- the withdrawal or suspension by administrative authority of the legal personality of a trade union in the event of violation of the provisions respecting trade unions (section 380 of the Labour Code) or in the event of a strike that is declared illegal (new section 450(3) of the Labour Code).

The Committee had noted that a Bill was to be submitted in the near future to the Congress of the Republic to amend section 379 of the Labour Code, which prohibits trade unions from intervening in political matters. The Committee requests the Government to supply information on any development in the situation in this connection.

Despite the progress that has been noted in this observation, the Committee emphasises that there remain many provisions that are still not in accordance with the Convention and requests the Government to take the necessary measures as soon as possible to bring the law and practice into full conformity with the Convention. The Committee reminds the Government that the ILO is at its disposal to provide assistance in the revision of the legislation.

The Government is asked to supply full particulars to the Conference at its 78th Session and to report in detail for the period ending 30 June 1991.

CONFERENCE_SESSION:78
REPORT_DATE:30:06:1991

LEGISLATION

Act No. 50 of 28 December 1990
Substantive Labour Code
Labour Code, as amended
Decree No. 672 of 1956
Decree No. 2655 of 1954
Resolution No. 4 of 1952
Decree No. 1469 of 1978
Decree No. 414 of 1952
Decree No. 437 of 1952
Decree No. 1543 of 1955
Decree No. 1593 of 1959
Decree No. 1167 of 1963
Decree No. 57 of 1967
Decree No. 534 of 1967
Decree No. 939 of 1966
Act No. 48 of 1968
Decree No. 2004 of 1977
Decrees No. 2200 of Oktober 1988
Decree No. 2201 of Oktober 1988