

9/2005

KN

REV ~~Ø~~ (NAFTA)

OUT ~~Ø~~

**PETITION TO REVIEW HONDURAS'S COUNTRY ELIGIBILITY UNDER THE
GENERALIZED SYSTEM OF PREFERENCES (GSP) FOR VIOLATION OF
INTERNATIONALLY RECOGNIZED WORKERS' RIGHTS**

To:

**Chairman, GSP Subcommittee
Office of the United States Trade Representative
1724 F Street, NW, Room F-220
Washington, DC 20508**

Submitted by:

**International Labor Rights Fund ←
733 15th Street, NW, Suite 920
Washington, DC 20005
Phone: (202) 347-4100
Fax: (202) 347-4885**

**Asociación Servicios de Promoción Laboral ←
Apartado Postal: 583 Guadalupe
San José, Costa Rica
Tel: (506) 285 13 44
Fax: (506) 285 2196**

Date: December 13, 2004

for 2005

I. General Information about Petitioners

The International Labor Rights Fund (ILRF) is an independent non-profit organization headquartered in Washington, DC. ILRF was created in 1986 to promote and defend labor rights worldwide. ILRF achieves this goal through research, publication, public education and outreach, training and advocacy programs in partnership with civil society organizations in developing countries, engagement with international organizations, and legal advocacy. Since the addition of the labor rights clause in the Generalized System of Preferences (GSP), ILRF has filed numerous petitions with the US Trade Representative seeking suspension of trade preferences to countries that failed to comply with internationally recognized worker rights. These prior GSP petitions include: Bangladesh, Cambodia, Columbia, El Salvador, Guatemala, Honduras, Indonesia, Malaysia, Mexico, Peru, Pakistan, Panama, Sri Lanka and Thailand. Each report included an in-depth review of the country's labor rights practices, drawing on a thorough review of the literature (including governmental and NGO reports and academic publications), in-country research and numerous interviews with representatives of labor, civil society and government.

ILRF has also promoted the enforcement of other US laws and programs with labor rights clauses. For example, the Overseas Private Investment Corporation (OPIC) is prohibited from supporting any project that contributes to a violation of internationally recognized workers rights in the host country, as defined by the Trade Act of 1984. In 2000, OPIC began to process an application for financing an political risk insurance to support the construction of a methanol plant by AMPCO in Equatorial Guinea. However, ~~OPIC was concerned that although the laws of Equatorial Guinea recognized the~~ fundamental worker rights, the laws were not always enforced. Indeed, OPIC specifically noted ongoing country practices that limited the exercise of the right to freely associate. In order to perform its due diligence review vis a vis labor rights, OPIC contracted with ILRF to perform a thorough assessment of worker rights in Equatorial Guinea.

The Asociacion Servicios de Promocion Laboral (ASEPROLA) is an independent non-profit non-governmental organization founded in 1985. ASEPROLA is based in San Jose, Costa Rica. Its mission is to provide technical support to the formal sector salaried workers in Central America to better defend, promote and fully exercise their social and labor rights. ASEPROLA has been a major force in the formation of national labor organizations and the consolidation of regional labor organizations in the Central America. In the agricultural sector, for example, ASEPROLA provides research, training, and legal advice to its partners, including for example, Coordinadora Centroamericana de Trabajadores (COCENTRA), Coordinadora Latinoamericana de Sindicatos Bananeros (COLSIBA) and Coordinadora de Sindicatos Bananeros de Honduras (COSIBAH). ASEPROLA has a broad and experienced working relationship with other labor oriented Central American non-governmental agencies (NGOs) and civil society organizations in Panama, El Salvador, Guatemala and Honduras.

As described below, the petitioners believe that Honduras has systematically failed to comply with internationally recognized workers' rights, as required by 19 U.S.C. § 2462, § 502(b)(2)(G). Therefore, we request that Honduras's eligibility under the Generalized System of Preferences be placed under review, as a means to bring Honduras into compliance with these rights.

ILRF previously submitted a petition requesting a review of Honduras's labor rights practices to the Office of the US Trade Representative in 1991.

1991 = ILRF

II. Supporting Information on Violations of Internationally Recognized Workers Rights

In Honduras, anti-union dismissals are frequent when workers attempt to organize. Moreover, child labor is a problem in rural areas, the informal sector, and some export agriculture. A recent ILO report found that 490,000 Honduran children were working in 2002. Another study estimated that 97,000 children between the ages of 10 and 14 had left school to work. Child labor in its worst forms also exist; children are exposed to dangerous conditions on lobster boats, where they dive illegally with little safety protection, and on melon farms, where they are exposed to toxic pesticides.

CHILD

In response to clear evidence of its failure to meet the GSP worker rights criteria, the Government of Honduras agreed in 1995 to sign a Memorandum of Understanding with the Office of the US Trade Representative (USTR), as a means of demonstrating its commitment going forward to better implement internationally recognized worker rights. Unfortunately, in recent years, the Honduran Government has failed to make significant progress toward the terms of the MOU, and moreover, the USTR has neglected to undertake the dialogue necessary to ensure future progress under this agreement. The MOU has clearly been an insufficient instrument to ensure better protection for worker rights in Honduras.

We recognize that the MOU proved useful in bringing about some immediate changes in the few years following its signature. However, we note with concern that at least since 2000, there have been no additional steps taken to ensure full implementation of the terms of the MOU. For example, the MOU commits the Honduran government to improve the training of labor inspectors, and to increase the frequency of inspections. Local trade union leaders have found that neither of these terms has yet been adequately met. The MOU also commits the Government of Honduras to combat corruption among labor inspectors. On this point, the ILO has noted on several occasions that the Honduran Government has not yet provided adequate legal provisions that would provide redress against corrupt inspectors, or otherwise prohibit legally corrupt or partial behavior by inspectors.¹

We note also that Honduran laws are not yet in full compliance with ILO standards, particularly with respect to freedom of association. The law requires a

FOA

¹ See CEACR: Individual Observations Concerning Convention No. 81, Honduras 2002.

Trade Unions

minimum of 30 workers to form a trade union, and prohibits the existence of more than one union in a single workplace. It bans the calling of strikes by union federations or confederations. Moreover the law provides insufficient penalties for acts of anti-union discrimination.² The fine in such cases is approximately US\$12, an amount grossly insufficient to deter employers from engaging in such acts.³

In comments submitted to the Office of the US Trade Representative in December 2002 related to a public request for comments on the Central America Free Trade Agreement (CAFTA), ILRF noted its particular concerns for the Honduran government's failure to effectively enforce its protections for union rights. ILRF cited in those comments the well-known cases of union discrimination in the maquila sector, the cases of Yoo Yang and Kimi factories. ILRF notes here that the problems cited in our December 2002 comments have not yet been addressed, and workers in the maquila sector continue to face widespread obstacles to the formation of trade unions.

Our December 2002 comments encouraged the Office of the US Trade Representative to revisit the terms of the MOU and to also raise these obligations with Honduras during the CAFTA negotiations. It is apparent that not only has USTR failed to encourage the Honduran government to follow through on its commitments to the MOU, but through the CAFTA negotiations, has tacitly discouraged the Honduran government from implementing those commitments and created perverse incentives for labor law reform. Currently, the Honduran Ministry of Labor, working with employers' groups, is promoting a project to modify the labor law with reforms that would generalize fixed-term contracts. It would also make the payment for severance payable only on an annual basis so that it would not be possible to create special funds with these monies. A policy of freezing salaries continues, and Honduran employers are increasingly delaying negotiations with workers.

(A)

CAFTA
Comments

² See CEACR: Individual Observations Concerning Convention No. 87, Honduras 2002; ICFTU 2002 Annual Survey of Violations of Trade Union Rights: Honduras.

³ See CEACR: Individual Observations Concerning Convention No. 98, Honduras 2002.