

Rev OUTSTANDING

~~9/17/2002~~
MT ② 9220021

~~note: AD possible 2003~~

~~"LRF 2002"~~

LRF 2002 update: assured for inside Footnote

**PETITION TO SUSPEND EL SALVADOR'S TRADE PREFERENCES 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, N.W., Room F-220
Washington, D.C. 20508

Submitted by:

International Labor Rights Fund
733 15th Street, N.W., Suite 920
Washington, D.C. 20005
Phone: (202) 347-4100
Fax: (202) 347-4885

FOIA

child

I. Introduction

As set forth below, the government of El Salvador continues to violate or fail to prevent violations of all of the internationally recognized workers rights. Indeed, the frequent violations of the right to association, the right to bargain collectively, and the right to strike are among the most egregious examples of labor rights abuses in El Salvador today. In addition, child labor and trafficking are not being addressed seriously and effectively. Therefore, the U.S. Trade Representative should accept review of this petition and remove El Salvador from the list of beneficiary countries under the Generalized System of Preferences.

II. Violations of Internationally Recognized Workers Rights

A. Freedom of Association

Although El Salvador has not ratified ILO Convention 87, it is bound as a member of the ILO to uphold worker's freedom of association under the Article 2 of the ILO's 1998 Declaration of the Principles and Rights at Work. As the U.S. State Department has notes, both the Constitution of El Salvador and the Labor Code permit workers and employers to form unions or associations. Moreover, the law prohibits anti-union activity before a union is registered legally and prohibits the dismissal of workers whose names appear on a union application. However, the ILO has routinely found that the labor code impermissibly restricts workers' freedom of association.¹ For example, only private sector workers and some employees of autonomous public agencies have the right to form unions.² Public sector workers are prohibited from forming unions, although they are allowed to form professional and employee organizations. The government has justified this exclusion on the basis that civil servants provide essential services. However, among those workers who may form unions, the Code erects procedural obstacles that make registration and recognition of the union difficult.

The law also erects significant barriers to the right to strike, including a requirement that 51% of workers in an enterprise, whether or not they are union members, support the strike.³ A strike can only be called if it concerns a change or

¹ U.S. Dept. of State, Country Reports on Human Rights Practices – 2001: El Salvador, March 4, 2002.

² Article 204 of the Labor Code states, "Tienen el derecho de asociarse para defender sus intereses economicos y sociales comunes, formando asociaciones profesionales o sindicatos, sin distincion de nacionalidad, sexo, raza, credo o ideas politicas, las siguientes personas: a) los patronos y trabajadores privados; b) los trabajadores de las instituciones oficiales autonomas.

³ Article 529 of the Labor Code provides in part "Si la huelga fuese decidida pro la mayoria de los trabajadores de la empresa o establecimiento que estuviese afectado por el conflicto, tal decision obligara a todo el personal."

renewal of a collective agreement or maintaining the workers' professional interests.⁴ Additionally, unions may only strike after the expiration of a collective bargaining agreement and must first seek to resolve any differences through negotiation, mediation, and arbitration before initiating a strike.⁵ Once a union decides to strike, however, the union must first name a strike committee to serve as a negotiator and send the list of participants to the Ministry of Labor, who then notifies the employer. The union must then wait four more days from the time the Ministry notifies the employer before beginning the strike.⁶ It is therefore not surprising that there have been no significant strikes recently.

In recent years, the ILO's Committee on Freedom of Association has supported complaints filed by Salvadoran unions alleging violations of freedom of association. In 2000, the ILO determined that El Salvador had violated the rights of several unions to freely associate either by means of excessive formalisms or exclusions for public sector workers.⁷ For example, the ILO criticized the government's decision to deny the application of five food industry unions to form a federation, the Trade Union Federation of Food Sector and Allied Workers (FESTSA). The ILO found that "although the founders of a trade union should comply with the formalities prescribed by legislation, those formalities should not be of such a nature as to impair the free establishment of organizations."⁸ The ILO held that the government should have asked the federation to submit the missing information rather than to deny recognition.

In the same opinion, the ILO also castigated El Salvador for its refusal to grant legal personality to the Ministry of Education Workers' Union (ATRAMEC) in May 2000. The government had refused to recognize the union on the basis that its members were employed in the public sector. The Committee rejected that view, holding that "the

⁴ Article 528 of the Labor Code provides "Las huelgas que reconoce est Codigo, para efectos laborales, unicamente seran aquellas que tengan cualquiera de las siguientes finalidades: 1) la celebracion o revision del contrato colectivo de trabajo; 2) la celebracion o revision de la convencion colectiva de trabajo; y 3) la defensa de los intereses profesionales comunes de los trabajadores."

⁵ See Articles 480 et seq. of the Labor Code.

⁶ Article 530 of the Labor Code provides, in part "La huelga no podra estallar antes de haber transcurrido cuatro dias contados a partir de la fecha de la notificacion a que se refiere el articulo anterior ..."

⁷ See Complaint against the Government of El Salvador presented by the Trade Union Federation of Food Sector and Allied Workers (FESTSA), the Company Union of Workers of Doall Enterprises S.A. (SETDESA) and the Ministry of Education Workers' Union (ATRAMEC) Report No. 323, Case(s) No(s). 2085.

⁸ *Id.* at ¶ 172.

denial of the right of association of public service employees to establish unions is an extremely serious violation of the most elementary principles of freedom of association.”⁹ Consequently, the Committee urged the Government “as a matter of urgency to ensure that the national legislation of El Salvador is amended in such a way that it recognizes the right of association of public service employees.”¹⁰

The ILO also supported a complaint by the Company Union of Workers of Doall Enterprises S.A. (SETDESA), who was denied recognition as a union by the government. In its defense, the government claimed that it would not recognize the union because, one hour before the foundation of the union, the founders had resigned, the workers who had attempted to establish the union were subsequently reinstated, and other workers established a different union which was granted recognition. Upon reviewing the facts, the Committee rejected the government’s excuses and “express[ed] its profound regret at the anti-union acts of discrimination and interference on the part of the company.”¹¹

Case 10
The freedom to associate and form a union continues to remain elusive to many workers in El Salvador. For example, on June 9, 2001, workers at AMITEX S.A. established the Amitex workers’ union, SITIASA. Three days later, the union submitted documents for its legal registration. However, the company responded by firing 87 union workers. Once the Labor Ministry intervened, it merely converted the dismissals to suspensions.¹²

A.1 The Maquila Sector

In 2000, the Ministry of Labor of El Salvador issued a report assessing the level of labor rights compliance in the maquila sector.¹³ The authors of that report found the rate of unionization in the maquila sector was, and continues to be, very low and that in the majority of companies, union organization does not exist.¹⁴ The reasons cited for the low level of unionization was the existence of an anti-union policy, by which any attempt

⁹ *Id.* at ¶ 173.

¹⁰ *Id.*

¹¹ *Id.* at ¶ 174

¹² See ICFTU 2002 Annual Survey of Violations of Trade Union Rights: El Salvador; U.S. Dept. of State, Country Reports on Human Rights Practices – 2001: El Salvador, March 4, 2002.

¹³ See Informe del Monitoreo de las Maquilas y Recintos Fiscales: Unidad de Monitoreo y Analisis de las Relaciones Laboral, Julio 2000, available at <http://www.nlcnet.org/elsalvador/0401/arlcover.htm>.

¹⁴ *Id.* at 17.

at organization was repressed.¹⁵ According to union leaders interviewed, it was very common for supervisors and other management representatives to threaten workers with firing if they belonged to a union or attempted to form one. The workers stated that one of the principal anti-union policies consist in the maintenance of "blacklists" of the names of workers who at some time belonged to a union. The workers affirm that people who appear on these blacklists are not hired in the maquila sector, which constitutes a flagrant violation of their freedom of association.¹⁶

threaten
w/ firing

B. The Right to Organize and Bargain Collectively

As the U.S. State Department noted in the 2002 country practices report, the Constitution and the Labor Code provide for collective bargaining rights for employees in the private sector and for certain categories of workers in autonomous government agencies. Additionally, the Constitution prohibits discrimination against unions and also provides that union officials at the time of their election, throughout their term, and for one year following their term may not be fired, suspended, removed, or demoted except for legal cause. However, the Labor Code does not require the employers to reinstate them, but rather requires the employers to provide a severance payment. In practice, employers dismiss workers who seek to form unions; the Government typically does not prevent their dismissal or require their reinstatement but may ensure that the severance is paid. Moreover, the ILO has reported instances of employers using illegal pressure to discourage organizing, including the dismissal of labor activists and the maintenance of lists of workers who would not be hired because they had belonged to unions.

B1. Structural Impediments to the Enforcement of the Right to Organize and Bargain Collectively

The Ministry of Labor monitors the implementation of collective bargaining agreements and mediates in labor disputes where bargaining is permitted. However, the Ministry often seeks to conciliate labor disputes through informal channels rather than attempt to enforce regulations strictly, often to the detriment of labor. Moreover, the U.S. State Department noted that corruption among labor inspectors and in the labor courts is a problem. In fact, the Labor Ministry removed from their positions five inspectors who had been accepting bribes from companies in June of 2001.

B2. Violations of the Right to Organize and Bargain Collectively (Non – Maquila)

¹⁵ *Id.*

¹⁶ We also wish to note that the government has refused to recognize the legal status of Grupo de Monitoreo Independiente de El Salvador (GMIES), an NGO which monitors the conditions of work in factories in El Salvador producing goods for such U.S. brands as The Gap and Liz Claiborne. We ask that this matter be addressed directly with the Ministry of Labor and other relevant agencies within the government.

Of the numerous violations of the right to organize and bargain collectively in the past year, the militarization of the national airport represents perhaps the most egregious case outside of the maquila sector.¹⁷ On September 23, 2001, the armed forces of El Salvador, in conjunction with riot police from the National Civil Police, burst into the El Salvador International Airport and ordered the workers, many of whom were represented by the union, to leave the terminal on the explanation that they had been dismissed. The following day, the same forces prevented workers of the cargo and maintenance departments, all of whom were members of the El Salvador International Airport Workers' Union (SITEAIES), affiliated to FESTRASPE, from entering the airport. Subsequently, the military personnel in charge informed the workers that only those from the maintenance department could enter the premises, and that the other 159 members of the cargo and security departments had been dismissed. According to FESTRASPE, all of the workers affected were members of SITEAIES.

The airport administration attempted to force workers to withdraw from the union, and informed all of those who had been suspended that they had now been dismissed. They also tried to eject four union leaders, who enjoyed trade union immunity under the labor code. At the request of the union, the Ministry of Labor carried out an inspection and found a series of labor rights violations, including anti-union discrimination through the restriction of access to union premises and threats to trade union leaders. At the same time, the union lodged a complaint with the judicial authorities, with the hope of achieving a ruling that the lockout was illegal. However, the judge ruled that no lockout had occurred, and the Court of Appeal rejected the subsequent appeal. A complaint was also filed with the ILO's Committee on Freedom of Association, who asked the government to investigate and reinstate all workers fired for union activities. Early this year, over 60 of the baggage handlers returned to work as independent contractors to the airport. The conditions of employment, including the rate of pay, is, however, less than the previously received.

Threat
①

Additionally, the Workers' Union of the National Institute for Public Employees' Pensions (SITINPEP) alleged that on 21 December 2001, a total of 92 workers, 56 of whom were members of the union, were dismissed from the National Institute for Public Employees' Pensions (INPEP). Of the 56 members of the union, three were federal leaders enjoying trade union immunity. When presented with these facts, the ILO's CFA determined that the Government should have consulted tried to reach an agreement with the trade union organizations regarding staff reductions. The Committee also noted that over half of the workers dismissed were members of the union, and that 24 of them were workers' representatives in various commissions and committees. The Committee "requested that the Government take the necessary measures urgently to ensure that an investigation is carried out to determine the reasons why such a high proportion of unionists were dismissed and, if it transpires that any of these dismissals were due to the

¹⁷ Information regarding the mass dismissal of union members at the national airport was drawn from numerous sources, including the ILO CFA Report No. 328, Case No. 2165, ICFTU, Global Report 2002 and U.S. State Department Country Report 2002 – El Salvador.

worker's trade union membership or legitimate union activities, that it takes the necessary measures urgently to ensure the reinstatement of those workers in their jobs without loss of pay.”

B.3. Violation of the Right to Organize and Bargain Collectively (Maquila Sector)

There are approximately 220 maquila factories, the majority of which are located in the country's 11 EPZ's. Although the Labor Code applies in the EPZ's, enforcement of those laws is infrequent at best. Indeed, Labor Ministry, in a 2000 report described what it called the systematic violation of workers' efforts to form unions as well as safety problems and mandatory overtime policies. The report, undertaken in El Salvador's four largest export processing zones, San Marcos, San Bartolo, American Park and El Pedregal, found that there was a clear anti-union policy in the maquilas, whereby any attempt at organizing was repressed. Union leaders interviewed said it was very common for supervisors to threaten workers with dismissal if they joined or attempted to form a union. The report further noted that none of the 229 maquilas had a union contract. Many of the workers interviewed told Labor Ministry officials that the union supporters were blacklisted to ensure they did not get jobs.

Perhaps the most significant violation of the right to organize and bargain collectively in 2001-2002 occurred at the TS2 factory, owned by the Taiwan based multinational, Tainan Enterprises. In 2000, workers began to organize a unit of STIT, the textile workers union of El Salvador. The workers suffered a number of anti-union measures at this time, including the suspension of two union leaders on February 26, 2001, when they denounced the company's decision to force the workers to continue working through the earthquakes of early 2001. Despite the anti-union reprisals, a unit of STIT was organized at Tainan during the visit of Tainan President Chen Shui-Bian on May 23, 2001; the union received legal status as a union from the Labor Ministry that July.

On August 26, 2001, STIT attempted to organize its first strike, based on Tainan's threat to suspend several of the workers, the majority of whom were union members. Tainan followed through with its threat on October 17, 2001, when it suspended 109 workers, most of whom were union members. However, as a result of the threat of a major campaign against GAP by U.S. based labor organizations and NGO's, Tainan signed an accord with STIT in November 2001 to return the suspended workers.

In March 2002, STIT launched an effort to sign up workers in order to reach the numbers needed to demand collective bargaining agreements. However, the plant manager threatened more suspensions, arguing that labels such as the Gap were not placing orders due to the labor unrest. Upon reaching the legal minimum to bargain collectively, the union filed a request with the Labor Minister to negotiate a collective bargaining agreement on April 18. On the following day, however, delegates attending a meeting with representatives of Tainan Enterprises in Taiwan were informed that the factory would be closed, albeit temporarily. However, management began to dismantle

the machinery in the factory the following week. To date, Tainan has refused to accept the union's demand to reopen the factory despite a recent ruling by a labor court in El Salvador finding that the company's suspension of the workers' contracts was illegal.

Forced C. **Forced or Compulsory Labor**

Traffic of children is prohibited under ILO Convention 182, Article 3 ¶ (a) & (b), which prohibit "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children" and "the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances." Although El Salvador ratified Convention 182 on October 12, 2000, it is alone among its neighbors in Central America in that it has no penal legislation specifically prohibiting the trafficking of women or children for sexual exploitation.¹⁸ Some traffickers have been prosecuted in the rare case, however, under anti-smuggling legislation. Trafficking of women and children continues to be a problem, despite its commitments to the ILO to the contrary.

Kid According to the State Department's 2002 Country Report on Human Rights Practices and the recent International Human Rights Law Institute report, women and children are trafficked into El Salvador from Nicaragua and Honduras and are trafficked from El Salvador to Guatemala and Mexico. The most common methods used to approach victims of sex trafficking are kidnapping, promises of lucrative job offers, and inducement into prostitution by friends. In some instances, Salvadoran women and children are lured to Mexico by procurers and are thereafter sold into bonded labor to owners of establishments who force the trafficked persons to work off their debt as prostitutes. Street children from El Salvador are also lured into border areas with Guatemala where they are then forced into prostitution by organized crime rings. Moreover, females between the ages 14 to 19 are trafficked within El Salvador for the purpose of sexual exploitation.

D. Child Labor

child ILO Convention 138, Article 4, ¶ 3 mandates a minimum age of 15. However, under Article 4, ¶ 4, a country "whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years." Therefore, if El Salvador has acted in accordance with ¶ 4, the law of El Salvador, as described below, complies with the convention's minimum standards.

Article 38 of the Constitution specifically provides that no child fourteen years of age or younger is permitted to work unless necessary to provide for the basic needs of the family. Even in such cases, a child's work cannot impede the completion of his or her obligatory education. Moreover, children of 15 or 16 years of age can work no more than

¹⁸ International Human Rights Law Institute, DePaul University College of Law, *In Modern Bondage: Sex Trafficking in the Americas*, October 2002.

six hours a day or more than 34 hours in a week.¹⁹ Additionally, children younger than 18 years of age may not engage in dangerous work or during the night, with few exceptions.²⁰

Despite the legal prohibition on child labor, however, the ILO documented widespread child labor in various sectors of the Salvadoran economy, and in some cases in its worst forms. The ILO estimates that there are 447,782 minors (7% of the total population) engaged in some form of child labor.²¹ Such labor includes domestic work, sugar cane cutting and harvesting, fishing, sorting garbage or various forms of street work. In most cases, the health, welfare and education of the children engaged in such work are severely compromised. A review of the conditions of work in domestic labor and cane cutting, for example, provide a rather stunning illustration of the effects of child labor on the children of El Salvador.

D.1. Domestic Employment²²

According to the ILO, 19% of the 21,508 children performing domestic service in El Salvador are between 10 and 14 years of age, with the remaining 81% between the ages of 14 and 19. However, children often enter the world of domestic work between 9 and 12 years of age. As such, these children are responsible for washing clothes, ironing, housecleaning, cooking and serving food, watching children, attending to the aged or incapacitated or other similarly arduous tasks. It is not surprising, therefore, that the children engaged in this work quickly suffer physically, psychologically and socially.

As part of the investigation, the ILO researchers interviewed 110 children to obtain data on quality of life issues, including level of education, health and conditions of work. The ILO found that only 34 of the 110 children interviewed attended school and, of these, only 25 attended with regularity. The principle reason for non-attendance was that the work hours are typically the same time as school hours. Additionally, in some cases, children were unable to pay for their school uniforms, transportation and other required costs or fees.

¹⁹ Article 116 of the Labor Code states, in part “La jornada de los menores de dieciseis años, no podra ser mayor de seis horas diarias y de treinta y cuatro emenales, en cualquier clase de trabajo. “

²⁰ Article 105 of the Labor Code states, in part “Se prohíbe el trabajo de los menores de dieciocho años en labores peligrosas o insalubres.”

²¹ See ILO-IPEC, El Savlavdor: Trabajo Infantil en Los Trabajos Domesticos, Feb. 2002, p. 19.

²² Id. at pp. 19 -36.

Children also reported chronic fatigue and pain in their limbs, shoulders and head. Moreover, many children contracted viral infections and bacteria from contact with laundry and cleaning detergents, disinfectants and other solutions. Still others developed allergic reactions on their skin, eyes or respiratory systems. Over half of the children surveyed also showed signs of moderate malnutrition, which leads to greater incidence of disease and fatigue. In addition to these workplace health and safety concerns, many children were also physically and mentally abused. Many reported frequent beatings by their employer, by hand, with shoes or kitchen implements. Similarly, the children receive frequent insults and threats. Many young girls are also the victims of sexually abuse by their male employers.

beat
threat
~~to~~

Gen

D.2. Sugar Cane Harvesting²³

Of all the forms of child labor in El Salvador investigated by the ILO, sugar cane harvesting exemplifies child labor in its worst forms. As set forth in ILO Convention 182, Articles 2 and 3, no person under the age of 18 may perform work “which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

Using 1999 data, the ILO reported that 47.1% of the 233,700 boys and 185,000 engaged in some form of labor worked in the agricultural sector. Indeed, of the producers consulted for the report, 27 to 30 of each 100 workers in the fields are children, figures that include children who accompany their parents to assist them with various aspects of production. Of the children interviewed, 68.5% were between the ages of 7 and 14, the majority entering such work between the ages of 7 and 10. The average day for these children begins at 6 am and ends between 12 and 4 p.m., with a daily salary of about \$3.20 per day.

Boys are primarily responsible for cutting or burning cane, which involves the use of dangerous instruments such as curved knives, machetes, hoes, shovels, hooks and fumigation equipment. The hands and arms of the majority of boys are covered with cuts and bruises. Others have suffered more serious injuries, usually with machetes, requiring several days to recuperate from the cuts. Additional hazards include prolonged exposure to the sun and the inhalation of ash from the burning cane. Both of these hazards increase the risk of deadly cancer, the former causing various degrees of skin cancer and the later lung cancer.

E. Acceptable Conditions of Work

E.1. Minimum Wages

According to the State Department’s 2002 report for El Salvador, the minimum wage is set by executive decree based on recommendations from a tripartite committee. The minimum daily wage is \$4.80 for commercial, industrial, construction, and service

²³ See ILO-IPEC, El Salvador: Trabajo Infantil en la Cana de Azucar, Feb. 2002, pp. 19 - 40.

employees, \$2.47 for agricultural workers and \$3.57 for seasonal agriculture industry workers. This wage, with benefits, does not provide a decent standard of living for a worker and family.

E.2. Hours of Work

The law sets a maximum normal workweek of 44 hours.²⁴ It limits the workweek to no more than 6 days for all workers and requires 100% bonus pay for all overtime.²⁵ Additionally, a full-time employee is paid for an 8-hour day of rest in addition to the normal workweek.²⁶ However, many workers worked hours beyond the legal maximum and were not paid the required overtime, particularly in the maquila sector.

The Ministry of Labor reported that overtime is worked in the majority of maquila companies in order to complete production goals established by the company.²⁷ In some cases, overtime was not paid or workers did not receive the 25 percent legal premium for night hours. The Ministry further found that in the majority of companies, personnel are required to work overtime under the threat of firing or some other reprisal.²⁸ In addition to threatening the health of the workers, this exacerbates family problems. Additionally, the majority of workers stated that even when they received remuneration for overtime, the wage was insufficient to satisfy their family needs with dignity.

E.3. Occupational Safety and Health

The Constitution and the Labor Code require employers, including the Government, to take steps to ensure the safety of their employees while at work. However, due to its limited mandate and resources, the Ministry of Labor has not been able to adequately enforce the applicable workplace regulations. Indeed, as set forth in the Labor Ministry report, the conditions in the maquilas fall below minimum safety and health standards. For example, workers reported that they did not receive safety equipment appropriate for their work, such as masks, gloves, respirators and other

²⁴ Article 161 of the Labor Code provides “La semana laboral diurna no excedera de cuarenta y cuatro horas ni la nocturna de treinta y nueve.”

²⁵ Article 169 of the Labor Code provides “Todo trabajo verificado en exceso de la jornada ordinaria, sera remunerado con un recargo consistente en el ciento por ciento del salario basico por hora, hasta la limite legal.

²⁶ Article 171 of the Labor Code provides “Todo trabajador tiene derecho a un dia descanso remunerado por cada semana laboral.”

²⁷ Ministry of Labor, *supra* n. 13, at 12.

²⁸ *Id.* at 13.

necessary equipment.²⁹ Additionally, the physical working environment is usually characterized by excessive heat and poor ventilation, producing stress, fatigue and illness that may become chronic.³⁰ Other hazards include the poorly maintained machines that workers frequently attempt to repair in order to prevent work stoppage. Often times, these workers are injured in the process.³¹ Unhealthy drinking water and cafeteria conditions have lead to some illness requiring visits to health clinics.³²

Conclusion

The evidence presented herein clearly demonstrates that El Salvador continues to systematically deny workers their fundamental rights. Therefore, the U.S. Trade Representative should accept review of this petition and remove El Salvador from the list of beneficiary countries under the Generalized System of Preferences.

²⁹ *Id.* at 10.

³⁰ *Id.* at 10-11.

³¹ *Id.* at 9.

³² *Id.* at 7 – 8.