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BEFORE the UNITED STATES
TRADE REPRESENTATIVE

POST-HEARING BRIEF in SUPPORT of
WORKER RIGHTS PETITIONS

regarding

GUATEMALA'S

ELIGIBILITY FOR GSP TRADE BENEFITS

CASE NUMBER 005-CP-02

SUBMITTED BY:

U.S./LABOR EDUCATION in the AMERICAS PROJECT

October 31, 2003

Accepted(?)

renew ended 2004

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under review

The U.S./Labor Education in the Americas Project is an independent non-profit organization that supports the basic rights of workers in Latin America. Founded as the U.S./Guatemala Labor Education Project, the organization has been extensively engaged in supporting worker rights in Guatemala and was a GSP worker rights petitioner during most of the 1990s, having co-filed the 1992 petition that was accepted for a review that was extended for five years. The organization subsequently provided regular submissions to USTR and appeared at inter-agency subcommittee hearings, including those held in March 2001 that focused on the issue of impunity and violence against trade unions as exemplified in the attacks on banana worker union leaders and the inadequate justice meted out by the Guatemalan legal system. As our organizational focus has broadened to include other countries in Central America, Mexico, Ecuador and Colombia, our participation in the GSP worker rights process with respect to Guatemala has been reduced but we continue to maintain an office in Guatemala and remain sufficiently versed regarding the worker rights situation in Guatemala to strongly support the decision by USTR to put Guatemala under review. We now wish to endorse the call for a suspension of Guatemala's GSP benefits due to a lack of progress in respecting worker rights.

We believe that for the past decade Guatemala has consistently failed to meet the standard under the GSP program law requiring steps forward in respecting worker rights. There has been a lack of progress in areas identified consistently by petitioners and USTR alike as fundamental areas in which progress on worker rights should and can be measured. We believe that the evidence provided by the current petitions of the AFL-CIO and the International Labor Rights Fund, which build on petitions filed over the years by others including US/LEAP, clearly demonstrates that Guatemala does not meet the eligibility criteria for the GSP program.

A. IMPUNITY

Impunity was one of the most important structural issues identified when USTR imposed

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“benchmark” requirements for the extension of GSP benefits nearly a decade ago. Virtually no progress has been made on this issue, however. A lengthy list of cases illustrating impunity over the ten years could be compiled from previous petitions, including key “benchmark” cases like Empresa Exacta.

The one small breakthrough was the Guatemalan government prosecution, trial and conviction of some of the armed thugs who attacked the SITRABI banana union in 1999. This breakthrough was achieved only with intense pressure provided by the GSP worker rights review process. Even so, at the time these thugs were convicted (March 2001), US/LEAP noted that the outcome resulted in virtually no jail time for the perpetrators while five members of SITRABI’s Executive Committee were forced to flee into exile. The conduct of the Guatemalan government at the trial did not meet the “effective prosecution” standard set by USTR in 2000. Consistent failure to cross-examine witnesses and the failure to present new evidence to support its request for increased charges revealed a government that was unwilling or unable to seek genuine justice in this high-profile test case. There was wide-spread acknowledgment as to the short-comings of the trial and a promise that a new trial would be sought. For those who have monitored the worker rights situation in Guatemala over the past decade, it is not surprising that a new trial was never sought once USTR ended its review. More recently:

- o No progress has been made in bringing to justice the persons responsible for six recent assassinations of trade unionists: Robinson Manolo Morales Canales, Hugo Rolando Duarte and Jose Alfredo Chacon Ramirez in January 1999; Angel Pineda in March 1999; Baldomero de Jesus Ramirez in June 1999; Oswaldo Monzon Lima in June 2000, and Baudillo Amado Cermeño Ramirez in December 2001.
- o No progress has been made in prosecuting the persons responsible for the July 18, 2001 assaults on the Choi Shin and Cimatextiles workers.

In its review of this case in March 2003, the ILO Committee on Freedom of Association lamented the fact that the GOG "has confined itself to state that legal proceedings have been filed concerning certain acts of violence and lists the series of legal proceedings, and has not communicated specific enough observations on all allegations." The Committee went on to urge the GOG to "insure that the investigation covers all the allegations made in this case, with a view to clarifying the facts, determining responsibility and punishing those responsible."

This has not happened. Officials of the Public Ministry, in a meeting in late June, assured leaders of the SITRACIMA and SITRACHOI maquila workers unions, as well as General Secretary of the International Textile, Garment, and Leather Workers' Federation, Neil Kearney, that they would reopen the criminal investigation of the anti-union violence in July 2001 against these unions. However, in August the same union leaders reported that instead of reopening the investigation, a Public Ministry official, Nancy Paiz, had urged them to drop the criminal case.

One is left with the impression that the Public Ministry's offer was made under the same pressure that caused the Ministry of Economy, with support from the Ministry of Labor, to announce that it was going to suspend the export licenses of the Choi Shin and Cimatextiles garments plants, and that once the collective-bargaining agreement was signed between management and the two unions in July, the Public Ministry no longer felt obligated to pursue the criminal case.

While US/LEAP appreciates that the pressure brought to bear on the Guatemalan government by the CAFTA negotiations has led to the signing of the only collective-bargaining agreements in Guatemala's maquiladora sector, we concur with the view that this was accomplished under extraordinary circumstances which are unlikely to be duplicated in the future and therefore do not represent a systemic advance in respecting worker rights. Moreover, the Guatemalan government's refusal to prosecute those responsible for the anti-union violence against two such high-profile unions reinforces once again the message that violence against workers who are organizing still carries no real penalty in Guatemala—and has contributed

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significantly to a situation in which the unions themselves have been unable to generate support from the workforce and establish themselves as an independent force.

B. LABOR LAW REFORM

As a recent ILO report has found, Guatemalan labor law falls short of international standards in a number of areas despite several labor law reform initiatives over the past decade. Indeed, the reforms enacted in 2001 contained provisions that posed new obstacles to the exercise of core labor rights. Specifically, the requirement that those seeking to form industrial unions organize more than 50% of the workers in an industry makes the organizing of such unions virtually impossible.

While the 2001 reforms allow agricultural workers the right to strike during the harvest, there is no evidence that workers in the countryside (where impunity is most pronounced) have been able to exercise this right in any meaningful way. Indeed, this provision is undermined by the President's broad discretion to ban strikes in "essential economic activities."

The labor law reform package currently being considered in Guatemala contains provisions which could undermine workers' ability to organize unions by making replacement of permanent workers with temporary workers an attractive alternative for employers. The proposed reform of Article (7) would give workers who retire voluntarily the right to claim a severance benefit (currently, only workers who are fired are entitled to severance). While this is an improvement for workers in general, as it is currently written, unless it is combined with a mechanism to discourage temporary contract labor, it could result in a rapidly shrinking base of permanent employees among whom unions could organize.

The reform package also seeks to change Article (8), stating that temporary contract workers will not be entitled to severance. The Guatemalan labor movement accepts this proposal, but reiterates its position that temporary employment contracts should not be permitted for work

normally done by permanent employees. We believe that the alternative proposals put forth by the Guatemalan labor movement are needed to prevent the Guatemalan government's proposed reforms from being used by employers as another instrument to make it more difficult for Guatemalan workers to exercise their right to organize unions.

Another proposed reform deals with reinstatement of workers who have been fired without justification. Currently, the law only gives most workers the right to collect severance benefits and back wages. The proposed reform would grant all workers the right to demand reinstatement after being fired without justification and would require employers to pay legal costs in such cases but would no longer require payment of back wages. The Guatemalan labor movement proposes that employers also be required to pay back wages.

C. LABOR LAW ENFORCEMENT:

As the U.S. Department of State's *2002 Country Reports on Human Rights Practices* notes, in Guatemala, "retaliation, including firing, intimidation, and sometimes violence, by employers and others against workers who try to exercise internationally recognized labor rights is common and usually goes unsanctioned." The United Nations Mission in Guatemala (MINUGUA), in its Report on the Administration of Labor Justice, concludes that "there exists serious legal inconveniences and practices that make it impossible to achieve effective labor norms such as prompt and thorough treatment by the justice system."

This is especially true in rural areas, where labor inspectors rarely venture and where isolation makes it easier to intimidate workers who would organize unions. US/LEAP recently undertook a series of interviews of banana workers in the rural departments of Retalhuleu and San Marcos. All are employed on banana plantations which produce for one of the three U.S.-based transnational banana companies (Dole, Chiquita and Del Monte). The interviewees reported the following:

- o Many banana workers on these plantations make less than minimum wage.

- o Injured and sick workers are sometimes denied permission to seek medical aid through the Guatemalan Social Security Institute (IGSS); those who insist are sometimes fired.

- o Fired workers are often paid less than full severance.

- o In one banana-producing zone, field workers are not permitted to leave the area when aerial spraying against Black Sigatoka (a fungus that affects bananas) is underway, and are exposed directly to the spray; in another zone, they are pulled from the area when spraying is underway, but must return the following day, when the banana plants are still wet with the sprayed chemical. The workers believe that such exposure has made them ill, but do not know who to complain to, and are fearful of being fired if they do.

- o In a banana-producing zone in San Marcos Department, many workers are not registered with IGSS (Social Security) and do not receive vacation pay.

- o All interviewees said they had never seen labor inspectors visiting their workplaces.

- o When asked, "Have you ever thought of organizing a union?," all interviewees stated that they would never dare do so, because they were sure they would be fired and blacklisted (prevented from ever finding work again in a banana plantation in that area).

- o When asked, "To whom can you complain about employer abuses?," "No one" was the most common answer, though one interviewee answered, "Only to God."

It should be noted that a significant expansion of banana production is underway in these provinces on the Pacific Coast while at the same time unionized plantations are being shut down on the Atlantic Coast.

During its testimony, the GOG attributed its inability to enforce labor law to a weak legal system, implying that it affects all parties equally. This defense at this time is particularly repulsive. The legal system is not feeble when it comes to prosecuting workers and union leaders. A leading Guatemalan trade union leader has been languishing in jail since the summer due to what are widely understood to be trumped up charges while criminal cases have proceeded against the country's largest private sector union, SITRABI. Meanwhile, cases have not even been filed against those who violently attack or murder workers.

In Conclusion

Since the first Guatemala GSP worker rights petition was accepted for review in 1992, there have been sporadic bursts of attention to worker rights by the Guatemalan government and employers (e.g. shortly before the 1992 hearings, the first maquiladora union in six years gained legal recognition; the 2001 trial of the SITRABI thugs took place just before the 2001 hearings). But gradually the leverage of the GSP process has weakened as the Guatemalan government, and employers, have become convinced that USTR will never actually suspend any benefits. Endless reviews with stern admonishments are more useful than not, but they lose their effectiveness over time. It is past time for USTR to move to the next stage and suspend at least some of Guatemala's benefits until it achieves the benchmarks that have been put forth by the petitioners.