"ANNEX A"

BEFORE THE UNITED STATES TRADE REPRESENTATIVE

2004 Dec 13
AR Resubmitted by WOLA/USLEAP for 2005

PETITION TO REMOVE GUATEMALA FROM THE LIST OF BENEFICIARY DEVELOPING COUNTRIES UNDER THE GENERALIZED SYSTEM OF PREFERENCES ("GSP") AND FROM THE LIST OF BENEFICIARY COUNTRIES UNDER THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT ("CBI")

SUBMITTED BY:
THE WASHINGTON OFFICE ON LATIN AMERICA (WOLA) &
U.S.\LABOR EDUCATION IN THE AMERICAS PROJECT (US\LEAP)
DECEMBER 13, 2004

1. Introduction

On September 3, 2003, the USTR once again accepted for review GSP petitions filed by the AFL-CIO and the International Labor Rights Fund (ILRF) with regard to labor rights violations in Guatemala. The petitions cited the judicial impunity with regard to the murders of and death threats toward Guatemalan trade unionists, the systemic failure of the government to adequately enforce the existing labor laws, and the inadequate remedies available to workers unlawfully dismissed. The petitions also emphasized the need for further reforms to the Labor Code in order to bring it into compliance with international standards.

A public hearing was held at the USTR on October 7, 2003. Then Guatemalan Ambassador, Antonio Arenales Forno, noted that Guatemala had amended the Labor Code in 2001 and that new amendments were then before the Guatemalan congress. The Ambassador further assured the panel assembled at the hearing that Guatemala was taking all measures within its reach to address the situations set forth in the petitions. However, congress did not pass the cited amendments and the government appears to be making few if any efforts to do so now. Under the Berger administration, which had promised to take labor issues seriously, violations of labor rights continued and went unpunished. In spite of this, the USTR lifted its review of Guatemala on July 6, 2004.

Petitioners once again seek review of Guatemala's GSP beneficiary status, perhaps for the last time. This does not reflect optimism that Guatemala will have taken the steps necessary to stave off review of its labor practices but a recognition that GSP review will cease to exist upon the ratification of CAFTA. Petitioners urge USTR to take a hard look at Guatemala and consider whether a country that has for decades allowed the rights of its workers to be violated, or violated those rights itself, should remain a beneficiary of preferential trade treatment. For all of the reasons set forth in this document, it is clear that Guatemala should not.

2. Guatemala's Labor Law Does Not Meet International Standards

As firmly established by the International Labor Organization, Guatemalan labor law simply fails to meet international labor standards. These shortcomings have been elaborated numerous times by the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), by local and international trade unions, and by GSP petitioners. Although Guatemala did approve labor reforms in April 2001 (Decree 18-2001), these reforms did not take into account many of the ILO's observations. Moreover, key aspects of those reforms were recently challenged by well-known, anti-union lawyers and deemed unconstitutional by the Constitutional Court of Guatemala in August 2004. Further, the much-needed additional reforms to the Labor Code, promised by the Berger Administration, have not yet been enacted.

A. The Guatemalan Labor Code Does Not Meet International Labor Standards.

The Labor Code continues to create legal obstacles to the full enjoyment of the right to free association, to organize and to bargain collectively. Listed below are some of the ways in which the code falls short of international standards.

1. Public sector workers face serious obstacles to the enjoyment of their labor rights. Although the law recognizes the right of public sector workers to strike, this right may only be exercised if it does not affect the provision of essential public services. The same law also sets forth an expansive definition of essential public services, including education, postal services, transportation and the fuel generation and distribution. According to the ILO, essential public services ought to be considered only those services whose interruption could endanger the life, security, personal health or conditions of existence for a population.

   Public sector unions must also submit to compulsory arbitration without the possibility of resorting to a strike even in those public services that are not essential in the strict sense of the term. Such unions are also prohibited from undertaking sympathy strikes.

2. The right to strike is also limited in the private sector, as Article 241 of the Labor Code requires 50% +1 of those working in the enterprise (excluding management) to call a strike. The ILO Committee of Experts recently stated that, "[t]he Committee recalls that in its previous comments it pointed out that only the votes cast should be counted in calculating the majority and that the quorum should be set at a reasonable level."[3]

3. The Labor Code establishes a highly burdensome requirement for the formation of industrial unions. As such, Guatemalan law establishes a *de facto* ban on industrial unions, which vastly undercuts the ability of unions to raise standards within an industry, such as the apparel sector, allowing employers to easily close their operations and move production to an unorganized factory.

4. Guatemalan law requires that trade union leaders be of Guatemalan origin and that they be actually employed in the enterprise or the occupation. See Articles 220 and 223. The ILO has also criticized these provisions, noting that "[t]he Committee points out that it is for trade union statutes and not the legislation to lay down the eligibility criteria for trade union office…The Committee therefore requests the Government to inform it of any measures taken to amend the legislation and the Constitution so as to ensure that workers are able to determine in full freedom the conditions

[3] CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organize, Guatemala (2004)

for the election of their officers and hence appoint representatives of their own choosing."[4]

5. Although the Labor Code was improved by affording 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." However, even this right is difficult to exercise given the structure of the industry. Many farm workers are temporary or are employed by contractors who divide their workforce into small enterprises that employ a number of workers short of the minimum required to form a union. Thus, the only was to organize, and to strike is through the formation of an industrial level union, which, as explained above, is nearly impossible to accomplish.

B. Important Reforms Have Been Nullified by the Constitutional Court

In response to the numerous GSP petitions criticizing the insignificant size of fines assessed for labor violations and the failure of the courts to enforce those fines in the majority of cases, the government of Guatemala passed a much-touted reform that gave the General Inspector of Labor the power to assess administrative fines, set up a new fine structure, and established mechanisms to foster the direct execution of those fines. In its 2004 rebuttal to USTR, Guatemala stated: "[a] significant advance to enforce labor rights was the creation of a new system to levy fines which strengths (sic) the inspection of the compliance with the labor standards."[5]

However, the Constitutional Court ruled on August 3, 2004, that key articles of Decree 18-2001 are unconstitutional. Specifically, the ruling overturns the power of the General Inspector of Labor to impose administrative fines against labor-rights violators. Moreover, according to Guatemalan labor lawyers, this creates a current legal vacuum on the issue of fines. Since legal reforms nullify pre-existing statutes, there is no automatic return to the status quo. Until the Labor Code is reformed, no one can impose fines on labor-rights violators, including the labor courts. As yet, there is no draft proposal before congress to restore to the labor courts the power to levy economic sanctions for Labor Code violations.

C. Promised Reforms Have Not Materialized

In response to criticisms raised in the 2002 and 2003 GSP petitions, the government of Guatemala submitted a lengthy document to the USTR outlining an ambitious Labor Code reform. Among other things, the reform would address outstanding issues related

---

[4] *Id.*

[5] Government of the Republic of Guatemala, Guatemala GSP Country Practices Review (Guatemala Feb 2004)

to:

- Child Labor: Currently, Article 32 provides children younger than 14 years of age can work if they have authorization from the labor inspectorate. The reform would establish a minimum age of employment at 14 with no exceptions. Article 150, as reformed, would also bar hazardous work and worst forms of child labor.

- Sexual Harassment. The reform will amend Article 62 and 64 to define and prohibit sexual harassment. No such prohibition currently exists.

- Domestic Labor: Currently, under Article 164, domestic workers are not subject to the same laws regulating days of work and maximum hours. The reform provides that domestic workers would have the same labor rights as other workers.

- Reinstatement: As reformed, the law would provide that a wrongly terminated worker would have the right to opt for reinstatement or compensation (currently limited to compensation),

The USTR's decision to lift GSP review in 2004 was based in part on the government's promise to enact these much-needed reforms. Unfortunately, despite repeated promises to do so, the labor-code reform package has yet to be enacted and instead languishes before the Tripartite Commission. If the government does not spend the necessary political capital to pass this legislation, or does not receive a very clear signal from the USTR, it remains doubtful that such reforms will be seen in the near future

3. Despite Promises to USTR, the Government of Guatemala Has Not Increased the Labor Ministry Budget.

Historically, the Ministry of Labor has been under-funded to such an extent that it was unable to sufficiently carry out its mission – to investigate labor violations and to enforce its labor code. Additionally, the Ministry rarely spent more than 75% of the funds allocated to it, a clear demonstration of the secondary role that labor issues occupy in political process in Guatemala. The chart below shows the amount of funds approved, the amount actually allocated and the sums yielded back over the last 6 years

Budget of the Ministry of Labor **1998 – 2004** (in millions of Quetzals)

Year	Approved (A)	In use at the end of the year (B)	Yielded (C)	% c/a	% c/b
1998	36.0	28.0	18.1	50.4	64.8
1999	42.2	39.8	33.8	80.2	84.9
2000	45.5	42.2	34.4	75.6	81.6
2001	61.3	57.2	46.1	75.2	80.5
2002	66.2	51.0	46.2	69.8	90.5
2003	58.3	58.4	23.2	39.7	39.7
2004	Held at 2003				

Data from the Ministry of Finance, Compiled by Jose Pedro Mata, Colectivo de Organizaciones Sociales

In the context of CAFTA negotiations, the government of Guatemala promised dramatic increases (50%) in funding for the Ministry of Labor. The proposed budget for the Ministry of Labor in 2004 was in fact over Q125 million. However, the proposal was never approved and the funding was maintained at the paltry 2003 levels. As the budget for 2005 reflects, the Ministry of Labor will receive even less funding than it has received for the last four years (amounting to 0.15% of the national budget). Of that, nearly a quarter of the budget is allocated for recreation and vacation centers, the second largest dedicated line item just behind oversight and application of labor standards.

2005 Budget

Total (in Quetzals)	**48,885,387**
Union, Labor and Salary Issues	2,332,783
Oversight and Application of Labor Standards	14,454,080
Attention to Worker's Social Previsión	1,049,610
Regional Coordination of the Ministry of Labor	4,184,860
Maintenance and Administration of Recreational and Vacation Centers	11,498,954
Human Resource Development and Promotion of Employment	3,190,214
Other Activities	12,174,886

Given that GSP review was lifted and a trade agreement with the United States was negotiated, the government of Guatemala likely perceives little pressure to live up to the promises made in the context of prior GSP review.

4. Trade Unionists Continue to be the Target of Violence

Violence against trade unionists and impunity for those who commit the violence continues to be a problem in Guatemala. According to a 2002 MINUGUA report, entitled *Libertad Sindical en Guatemala* (Freedom of Association in Guatemala), the UN mission made the following observation:

> One of the most troubling issues is the assassination and disappearance of leaders or workers for their union activity. The ILO has noted the existence of a climate of impunity as is reflected in the assassination, disappearance or threats against unionists, which constitutes a serious obstacle to the exercise of trade union rights and that such acts demand strong measures on the part of the authorities, such as the undertaking of independent judicial investigations. The ILO has observed that the government has not commenced prosecutions or done what they are capable of doing to find those responsible.

Libertad Sindical en Guatemala. at p. 284.

Moreover, the Committee of Experts of the International Labor Organization recently reiterated this point, stating that:

> The Committee notes with concern that in their comments on the application of the Convention, the trade union organizations refer to serious acts of violence against trade unionists. Furthermore, various cases before the Committee on Freedom of Association (Cases Nos. 1970 and 2179), as well as comments by the ICFTU and the UGT, confirm that there are many murders, acts of violence, death threats and intimidation against trade unionists.... The Committee stresses the gravity of the situation and points out that trade union rights can be exercised only in a climate that is free of violence and pressure. The Committee expresses the firm hope that the Government will take prompt action to ensure that basic human rights and fundamental freedoms, which are essential to the exercise of trade union rights, are effectively observed.[6]

The brutal legacy of violence against trade unionists continues to this day. On November 29, 2004, Julio Rolando Raquec, Secretary General of the Guatemalan Transportation Union and Federation of Independent Workers and director of the General Central of Guatemalan Workers (CCTG) was assassinated. Since July 2004, Mr. Raquec filed complaints with local law enforcement officials concerning two threats that he had received. However, the police failed to respond to these complaints, ultimately resulting in his murder. Although one cannot rule out common crime or gang violence, given the history of violence against trade unionists in Guatemala, there is a strong possibility of a link between his murder and his union activity.

Also, Imelda Lopez de Sandoval, Executive Secretary of the CGTG, Secretary General of the Sindicato de Trabajadores de Aeronautica Civil, STAC (Union of Civil Aviation Workers), and Executive Secretary of the Federacion Nacional de Servidores Publicos, FENASEP (National Federation of Public Service Workers) has been the subject of threats and attempts on her life. According to the CGTG, the last attempt on her life

---

[6] CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organize, Guatemala (2004).

occurred on December 1, 2004, when someone loosened the bolts on her vehicle causing the wheel to fall off as she was driving. Fortunately, the vehicle was not moving quickly and was brought under control. Although she did not sustain any physical injuries, the attempt caused her mental duress. This incident marked the second time that the bolts on her wheels were loosened; the sabotage was detected the previous time before it was too late. She has also received numerous obscene and threatening phone calls at work.

Even in the recent, high profile case of Nobland (set forth below), the Guatemalan government continues to exhibit a complete disinterest in investigating the formal complaints filed by union workers regarding death threats, violence, and physical intimidation.

5. Recent Cases Demonstrate the Failure of Guatemala to Enforce its Laws

Guatemala's recent labor reforms were supposed to significantly improve respect for worker rights. The new Article 209 was designed to protect workers in the process of forming a union. It states that workers who have informed the Labor Ministry of their intention to unionize are protected from being fired. It also stated that any worker who violates Article 77 (which outlines justifications for firing workers) cannot be fired without a court's authorization. The new Article 380 extends protection to all workers at a work site where a judge has declared a "collective conflict." Both Article 209 and Article 380 have stipulations for the immediate reinstatement of workers fired without authorization. Despite these reforms, workers are routinely fired and their employers rarely face any consequences.

Guatemala's failure to enforce its Labor Code is confirmed by the U.S. State Department in its 2004 human rights report. In relevant part, the report states:

> The law prohibits retribution for forming unions and for participating in trade union activities; in particular, the Labor Code prohibits employers from firing workers for union organizing and protects them from being fired for 60 days following notification to the Labor Ministry that a union is being formed.... However, enforcement of these provisions was weak. Many employers routinely sought to circumvent Labor Code provisions to resist unionization. An ineffective legal system and inadequate penalties for violations hindered enforcement of the right to form unions and participate in trade union activities in the past and perpetuated the violence that workers faced if they attempted to exercise their rights.

Moreover, the much-touted power of the Ministry to sanction violators, before being struck down as unconstitutional, was largely ineffective. Again, according to the State Department,

> The Ministry of Labor may levy substantial fines for violations of labor rights. During the year, the Ministry imposed a total of 4,009 fines, amounting to $1.6 million (12.3 million quetzals); however, the number of

fines actually paid was 535, amounting to $194 thousand (1.5 million quetzals). Individual fines were generally low because companies may challenge Ministry fines above $641 (4,968 quetzals) in the labor courts. The labor inspection system remains inadequate and corrupt, despite continuing efforts at improvement. Low pay, the lack of a strong ethic of public service, and ineffective management prevented the Ministry from providing effective service.

The following cases, which represent only a handful of the total violations of labor rights in Guatemala, amply demonstrate the government's inability to enforce its Labor Code. USTR should also refer to previous GSP petitions, setting forth several cases that have yet to be fully resolved. Petitioners also expect to receive additional, relevant cases and hope to submit those to the USTR on a continuing basis so as to fully inform USTR's decision on this matter.

1. Secretaría de Bienestar Social de la Presidencia de la República, SBSPR (Presidential Secretariat for Social Welfare)

In June 2004, workers at the Secretaria de Bienestar Social, an agency that is run by an appointee of President Berger, decided to form a labor union. On June 14, twenty-three workers notified the Labor Ministry of the formation of their union. The workers did not, however, seek an injunction from a labor court because, under Article 209 of the amended Labor Code, they would have sufficient protection from retaliation by simply notifying the Labor Ministry of their nascent union and requesting its protection. The Labor Ministry's Labor Inspector General, Celeste Ayala, in fact notified the parties of the union's protection from dismissal on June 17, 2004 (in effect for the following 60 days), citing Articles 209 and 223 of the Labor Code, as well as Articles 21 and 23 of the Regulations of the Labor Inspector General's office.[7]

On June 18, the SBSPR fired 3 three workers who had signed up with the union; SBSPR Administrator María Midence claimed "reorganization" as the reason. On June 21, the workers requested a labor inspection and the Inspector General sent an inspector over in the morning. After the investigation, the inspector advised the parties that the workers could not be legally fired, though the inspector later confided to some of the workers that he was under tremendous pressure from above not to push the case. That afternoon, SBSPR fired the rest of the workers who had signed the notification.

On July 9, the union's representative, Reynaldo González, met with an assistant to Nicole Otallah, Human Rights Attaché at the US Embassy. The Embassy said that it would communicate its concerns to the government of Guatemala. Three days later, on July 12, Mr. González attended a meeting convened by the Labor Ministry, where the Labor

[7] Literally, the notice read: "The Labor Inspector General's Office acknowledges receipt of notification of the union in formation of the workers of the SBSPR... Said workers enjoy the right to job stability (inmovilidad) as of that date.". As explained by Reynaldo González, of FESEBS (Federación Sindical de Empleados Bancarios y de Servicios/Union Federation of Bank and Service Employees), to which the SBSPR union is affiliated, the notice applied to all of the SBSPR's approximately 875 workers.

Minister and Anamaría Orozco Olivet, Sub Secretary of SBSPR, were also present. Mrs. Orozco acknowledged that mistakes might have been committed but insisted that some of the workers deserved to be fired because they were "lazy." She agreed to review the cases and to meet the week of July 19.

The time limit to file a case in the labor courts (for the three workers fired on June 18) would expire on July 18, the day before the proposed meeting. Rather than let the deadline pass, the union filed a suit against SBSPR for illegal dismissal. As a result, the incipient negotiations broke down. In the meantime, two of the fired workers were rehired, but as new employees, in an attempt by the employer to break the union's unity.

2. Horticultura de Salamá.

Horticultura de Salamá, S.A. is a hybrid seed research, development, and marketing company located in the department of Baja Verapaz. Seminis Vegetable Seeds, Inc, based in the U.S., owns the company.[8] Approximately 120 workers are employed at Horticultura de Salamá, most of whom (around 70%) are women. In June 1997, 106 of the 120 workers decided to form a union and notified the Labor Ministry that July. The Labor Ministry determined that all of the members of the union-in-formation enjoyed protection from firing as of that moment (July 30, 1997).[9] Nevertheless, on August 28, 1997 the employer prevented 52 of the organization's members from entering the worksite, including six pregnant women.

The union filed suit for reinstatement in the Labor Court of Cobán, Alta Verapaz, which ordered the members' immediate reinstatement and payment of back wages on October 28, 1997. The judge further requested that the Justice of the Peace in Salamá, Baja Verapaz, enforce the reinstatement order. The Justice of the Peace thereafter accompanied the fired workers to the entrance of the worksite on November 17, 1997 to make sure that they were reinstated as ordered. However, Joel Calderón, the General Manager at Horticultura de Salamá, refused to allow them to enter and stated that he had filed an appeal and thus would not reinstate anyone. The Labor Court judge in Cobán, Alta Verapaz later ruled in favor of the employer's appeal, but the union appealed to the Appeals Court, whose First Tribunal (Primera Sala) found in the union's favor and dismissed the employer's appeal.

In the years since, the employer has filed an endless series of appeals, all of which it has lost. The case has moved around from court to court, judges have been recused, and delays have been added to delays. The case is still in the labor courts and the judicial system appears to be incapable of enforcing its own orders to reinstate the fired workers.

---

[8] The business address is: 2700 Camino del Sol, Oxnard, California, 93030-7967, USA

[9] The union's statutes were later published in the official government newspaper on Sept. 19, 1997, making its registration official.

3. Embotelladora Mariposa, S.A. (EMSA)

PepsiCo's Guatemalan bottler, Embotelladora Mariposa, S.A. (EMSA), rather than enter contract negotiations with its union, SITRAEMSA, when the previous contract expired at the end of 2000, initiated a campaign of bribes and intimidation to induce members to leave SITRAEMSA. Additionally, union officers were reassigned to new work places to isolate them from the rest of the employees. When the union's rank and file continued to demand contract negotiations rather than concede, the company fired 99 workers (66 of whom were members of the union) on October 5, 2002.

EMSA reportedly paid off some key union leaders and signed a new contract without consulting its rank-and-file. Subsequently, PepsiCo has distributed copies of an April 24, 2003 letter, signed by the union's general secretary, which states that there are no longer problems at the Mariposa bottling plant in Guatemala City. However, the federation representing food and beverage workers, FESTRAS, to which SITRAEMSA is affiliated, has publicly disowned the union's general secretary and executive committee and is continuing to advocate for reinstatement of the illegally fired workers.

Some of the workers eventually accepted severance payments from the company in exchange for dropping their demand for reinstatement. However, a core group of 30 workers has resisted, setting up a tent in Guatemala City's Central Park in February 2003 (which was recently taken down for the holidays). Two different courts have ordered the company to reinstate the 30 workers, but the company is using every means to block or delay enforcement of the court judgment. In several meetings held in government offices, the company has offered some additional severance money, but only on the condition that the workers drop their demand for reinstatement to which they are entitled by law. Company lawyers are appealing the two court orders for reinstatement to the Supreme Court, winning a temporary stay and thereby hoping by delay to starve out the remaining workers.

On April 15, 2004, the workers met with President Berger, whose chief spokesperson, Rosa María de Frade, previously worked as a human resources consultant for EMSA to demand that he enforce their trade union rights by implementing the court judgments ordering their reinstatement. President Berger, however, exhorted them to accept the company's severance offer, and suggested that he could help them obtain visas to the United States if they agreed to do so. He also complained that their presence in the Central Park and their international campaign was damaging Guatemala's image.

4. Las Delicias

The conflict at Las Delicias rubber plantation in Retahluelu has dragged on for over ten years. In 1994, 96 workers were fired illegally after filing an injunction against the plantation management for violations of workers rights. Plantation management claimed that the dismissals were part of reorganization and not retaliatory. A local labor court agreed with plantation management and upheld the dismissals. However, three years later

a court backed the workers complaint, ruling that the dismissals were illegal and that the workers were entitled to protection under the original injunction.

Over the past five years, the case of the workers of Las Delicias has been appealed and re-appealed in the Guatemalan court system. On four occasions the decision to recognize the initial injunction and reinstate the fired workers has been upheld, twice by the Supreme Court and twice by the constitutional court. However, in response to each of these findings, the plantation management has initiated another round of appeals with lower, local courts. These appeals have effectively stalled any resolution of the case. That these appeals have even been recognized and granted by the local courts, against the reasoning and legal authority of higher courts, raises serious questions about the transparency and possible trafficking of influences.

In December of 2002, the Guatemalan Supreme Court, in a finding completely contradictory to its history of rulings in this case, ruled that the 36 workers were not legally authorized to dispute or defend the original injunction. Not only did this ruling reverse the precedent set by the Supreme Court and Constitution, but it condones and rewards the painstaking and lengthy legal stalling tactics that the plantation has practiced for ten years. The workers and their attorney have filed an appeal of the Supreme Court decision with the Constitutional Court.

The plantation is currently under the management of Agroindustriales Huleras, whose legal representative is Ricardo Ortiz Flores. His son, Ricardo Jose Ortiz Altenbach, functions as the plant manager. The Ortiz family has routinely denied the fired workers access to the plantation. This is a significant measure considering that the workers' community is on property directly bordering the plantation. Before the conflict, workers relied on the plantation grounds to gather firewood and gain access to local rivers. Mr. Ortiz Altenbach has now installed armed security guards who have regularly intimidated and threatened workers and their families. Also the workers report that Mr. Ortiz Flores has circulated a blacklist to nearby plantations that has prevented nearly all of the workers involved in the conflict from finding gainful employment.

Agroindustriales was created in 1997 to take control of what was previously called Plantation de Hule Good Year. The change is largely cosmetic. Workers report that the plantation continues to deliver its product to Ginsa Tire Good Year processing plant in Guatemala City. Legally, Agroindustriales continues to work under the 50-year contract conceded to Goodyear in 1956. Workers are particularly frustrated with Goodyear's response to the labor conflict. They don't consider any significant divestment has taken place. They note that Good Year representatives still visit the plantation regularly. They have repeatedly asked Mr. Ortiz Flores to establish a meeting with the Goodyear representatives, but since 1997 no meeting has materialized.

In addition, the workers report that Good Year remains the legal owner of three communal areas in the workers residential community. Mr. Ortiz Flores, however, claims to be the owner of the plots. Mr. Ortiz refuses to turn over the title deeds to the land. The

workers have repeatedly asked for Good Year's intervention to clarify the ownership of the property in question, but there has been no response form the company.

6. Violations of Worker Rights in Guatemala's Maquiladoras

Sun Jai

On March 5, 2003, the Sun Jai textile factory in Villa Nueva ordered all its employees to punch out early and remove themselves from company property. The factory management claimed that an area teachers' strike would create serious traffic problems, and workers should leave before the end of their shifts. When workers returned to work the next day, March 6, they found that the factory had closed its doors and sold off all but the oldest machinery. The closure of Sun Jai was unannounced and illegal. The company and its representatives owe 400 workers a two-week paycheck. As well, the workers are entitled to a severance pay and accumulated vacation hours. The workers of Sun Jai have few recourses. Initially, a group of workers approached the Public Ministry in an attempt to file criminal charges against the factory and its representatives. However, the workers were told that factory closings were not a criminal offense, and were redirected to the Labor Ministry where they filed a complaint with labor inspectors.

The complaint names the company of Sun Jai and its legal representative, a Korean citizen, as the responsible parties. However, the company no longer exists (it was dissolved when the factory closed) and the Korean citizen has returned to Korea. As a result, there is no one available to answer to the charges. Currently, the complaint is before a labor court judge. Twenty-five of the 400 workers have attached their names to a suit that seeks an embargo of Sun Jai property. But because the entity no longer exists, the gesture is essentially a symbolic one. The majority of former employees have returned to work in other textile factories.

Modas Paraiso

The Modas Paraiso garment factory in Villa Nueva closed on August 6, 2003. The closure came after a protracted campaign of forced resignations and worker intimidation. The company claimed that it no longer had contracts with major manufacturers. However, as recently as January 2003 the factory employed approximately 700 workers and filled substantial orders for Target brand clothing. Furthermore, Modas Parasio has been one of the more stable factories in the Guatemalan garment industry with more than ten years of production, first in Lago Amatilan and afterwards in Villa Nueva. Despite its longstanding economic stability, the factory began forcing out its workers in the spring of 2003. By June, the workforce was reduced to 200 employees on only two operating lines. The factory obligated workers to accept very small retirement payments in order to avoid firing them. Under Guatemalan law, fired workers are entitled to a severance payment that is calculated by, among other factors, length of service to the company. Hence, Modas Paraiso would save itself a large amount money if workers accepted the retirement plan and gave up their right to severance pay, which in some cases, after ten years of work, would reach as much as $1,500.

In the months leading up to the August closing, workers reported serious violations of their rights, including physical abuse, failure to pay social security accounts, and verbal intimidation. Workers who refused to accept the retirement package were told they would receive nothing when the factory inevitably closed. Eventually, all but one of the workers agreed to the retirement plan. The lone holdout, Natividad Lopez, filed a complaint with Labor Ministry claiming severance pay for her ten years of service. When the Labor Inspectors investigated the case, they determined that Modas Paraiso no longer existed, but its legal representatives had reconstituted the company as Modas Lee and had opened a new factory in Villa Nueva. The new factory offered jobs to 35 former employees of Modas Paraiso. However, it does not respect seniority or tenure with the previous factory; workers report that everyone started working at the minimum wage.

NB

The Sindicato de Trabajadores de NB, SITRANB (Union of NB Workers), was formed in October 2003 and immediately affiliated with the food and beverage federation, FESTRAS. On October 12, the union's ad-hoc committee filed for the right to negotiate a collective bargaining agreement and for an injunction to prevent its members from being fired. On October 16, the Third Labor Court agreed to consider the union's demand for negotiations, and proceeded to place the company under an injunction, which prohibits the company from firing any worker without obtaining prior consent from a Guatemalan labor court. The union was granted official recognition by the Labor Ministry on October 30, and its Executive Committee was officially registered on December 12. SITRANB's original bargaining demands included job stability, a permanent mechanism to negotiate production goals, a raise in salaries, and minimal medical benefits.

From the beginning, management resisted the union and fired four workers the same day that the court granted the injunction. After interventions by the Labor Ministry, the company reinstated the fired workers on October 29. The company then organized a pro-management group, headed by nine supervisors, which asked another labor judge to add their names to the ad-hoc committee's original petition. After the judge agreed, the pro-management group asked him to lift the injunction, opening the possibility of a mass-dismissal of union supporters. The union appealed and the injunction was quickly reinstated. On December 5, 2003, the Labor Ministry's inspector found that the company had engaged in unfair labor practices, including reprisals against union members, in violation of the injunction.

Mr. Keith Kim, who initially denied reports of anti-union activity by his management, agreed to hire former-MINUGUA official Ricardo Changala to conduct an independent review in January 2004. His report confirmed that management was engaging in unfair labor practices. In response, the company announced on Feb. 19, 2004, that it would begin negotiating a collective-bargaining agreement with the union. Contract negotiations began but a brief honeymoon ended in late March as the company resumed anti-union activities and contract negotiations halted. FESTRAS sent a letter to Mr. Kim on April 6 urging a return to good faith negotiations but the letter was never answered.

Over the course of the next several months, management engaged in anti-union behavior, including repeated threats to close the factory, blaming the union for lost business, sending workers to mandatory anti-union meetings, and trying to pit the workers against the union. In April, union members reported that Mr. Kim took them to lunch and urged them to cease communications with international supporters and end their affiliation to FESTRAS, implying that the future of the factory was at stake.

In June, international pressure mounted on the company to resume negotiations. The company attributed the absence of negotiations to changes in local management and the failure of labor inspectors to show up for meetings. Even after agreeing to resume negotiations, the company refused to negotiate until early July, after a three-month hiatus. In the meantime, a climate of physical intimidation had developed.

In late May, a member of SITRANB's Consultative Committee began to receive visits from Rodrigo Orantes, a former NB supervisor who claimed that he had been asked by President Berger to intervene in the NB case. He offered her and two members of the unions Executive Committee, Carolina Sic and Rosa López, money and land in exchange for their resignation from the company, and made a thinly veiled threat of physical violence should they not heed his advice. The union filed a complaint with the Public Prosecutor's office and both the government and the company denied any association with Mr. Orantes.

Shortly thereafter, Carolina Sic began organizing a pro-management group of workers to fight the union. On June 19, Ms. Sic convened an unauthorized "assembly" at the factory during work hours, with permission from personnel manager Alfonso Cutzal, who allowed her to speak to the workers for an hour. She announced at the "assembly" that she was expelling Vidalia García, SITRANB's general secretary, from the executive committee. The Labor Ministry did not approve the expulsion and stated that the "assembly" was illegal.

On June 21, when Vidalia Garcia, SITRANB general secretary was meeting with Yong Ha Kim and Alfonso Cutzal in Kim's office, Ms. Sic attacked García, slapping her face. Kim and Cutzal did nothing to stop Sic's attack, nor did they punish her for it at the time. After the union filed a complaint with the Labor Ministry, the company finally agreed to a light penalty by suspending Ms. Sic for two days.

On July 13, the labor court delivered notice of NB's intent to dismiss 26 workers, 25 of whom were union members. Two weeks later, on July 26, Marconi Chojolán Morales, another supporter of Carolina Sic, attacked union member Noemi Melchor when she entered the factory gates after returning from their lunch break, again in the presence of Yong Ha Kim and Alfonso Cutzal, who did not intervene. Union members were so concerned for their safety that they sought and began to receive accompaniment from Peace Brigades International in late July.

US/LEAP wrote Mr. Keith Kim on July 27, protesting the company's initiative to fire a large group of union workers, and the failure of the company to adequately discipline

workers who attacked union workers, thereby sending a message to all workers that the company tolerated such behavior. Management reacted by having Alfonso Cutzal read only part of US/LEAP's letter – the warning about having to contact the brands if the anti-union campaign continued – over the loudspeaker to all the workers, in an attempt to turn them against the union.

Meanwhile, Ms. Sic's group continued its campaign of intimidation of union workers, showing up at union assembly meetings, taking photographs of union members, and urging union members to resign from the union. Ms. Sic also began trying to take over the union, demanding that it hold an assembly at which her supporters would be elected to supplant the union leadership now that union has been greatly weakened by the yearlong campaign against it.

On September 28, Susana Morales, who had previously cooperated with Carolina Sic's anti-union group, resigned from the company under duress after she began receiving threats from Ms. Sic, who was angry that Morales had ceased to cooperate with her. Morales subsequently confided to the union and FESTRAS, detailing management's sponsorship of Carolina Sic's group and its anti-union activities. She filed a formal complaint with the Ministry of Labor, met with the U.S. Embassy, and taped her description of meetings and collusion between management and Ms. Sic's group to orchestrate a campaign of intimation against the union. She has continued to receive threats, including anonymous phone threats to her home, and was recently fired from a new job at another factory, which she attributes to having been blacklisted by NB management.

On November 3, the union moved to take management to court as a result of its refusal to negotiate in good faith the remaining articles of the collective-bargaining agreement, all of them having to do with pay and other forms of remuneration.

7. Child Labor Law Continues to Be Unenforced in Guatemala

Several reports document the incidence of child labor in Guatemala. One report, a 2003 study by the ILO's International Program for the Eradication of Child Labor (IPEC) and INE/ MECOVI, entitled, *Understanding Child Labor In Guatemala,* found that of the over 500,000 economically active children between the ages of 7 and 14, children 63% of child laborers work in the agricultural sector (of those, 76% worked as unpaid assistants to the family), 16% in small commerce, 11% in factories, 6% as domestic servants and 3% in construction. The actual workweek for such children, 47 hours, is longer than what is legally permitted for adults in the public or private sector. Child labor assumes many forms in Guatemala, from domestic service, manufacture of fireworks, heavy work in quarries, fieldwork in agriculture and garbage collection.

Domestic Work: Children employed as domestic servants work between 13 and 16 hours a day, 6 days a week. Many of these children are threatened, beaten and sexually abused, in addition to the fact that they are not paid their benefits nor are permitted vacations or sick days. ENCOVI has determined that there are 17,350 children between 7

and 14 who are child domestic laborers; the Human Rights Office of the Archbishop puts the number at 92,800.

Pyrotechnics: The manufacture of fireworks is one of the most dangerous jobs due to the highly explosive powder and the toxicity of the chemicals to which workers are exposed. The ILO estimates that more than 3,000 children make fireworks in their homes. There are no safety measures observed or protective equipment for these workers, leading to respiratory ailments and irritation of the eyes. On occasion, power will explode, causing sever burns or, in some cases, death.

Garbage Collection: It is common to find children in the trash heaps that surround urban areas searching for objects that can be reused or recycled. Children undertake this work beginning around the age of 9, but some have started at an earlier age. The average child in this sector spends 7.4 hours in the collection of garbage, working usually 5 days a week. According to a 2000 ILO study, children are exposed to several hazards, resulting in wounds and other lesions, eye irritation from exposure to gases, and headaches from prolonged exposure to the sun.

As noted above, the Ministry of Labor has proposed reforms to the Labor Code to tackle these problems as a legal issue. The proposal would set the legal minimum age at 14, prohibit child labor and its worst forms; assign joint responsibility to those obligated to prevent it (family, employers, etc), and provide for fines and indemnification in the case of a violation. The proposal has yet to be enacted.

8. Conclusion

For the reasons stated above, Guatemala should be removed from the list of beneficiary developing countries under GSP and CBTPA until it can demonstrate that the following conditions have been met:

1. Guatemala reinstates immediately the authority to sanction employers to the body constitutionally permitted to exercise such authority, and/or to amend the constitution to allow the Labor Ministry to assess fines.

2. Guatemala enacts labor law reforms to address each of the legislative shortfalls noted in this petition.

3. Guatemala makes significant progress in the resolution of the specific cases cited in the petition and those to follow.

4. Guatemala makes significant progress in strengthening of labor law enforcement to permit effective exercise of freedom of association and collective bargaining

5. Guatemala adopts effective measures to eradicate child labor.

Petition submitted by:

Jeff Vogt, Esq.
Senior Associate for Rights and Development
Washington Office on Latin America
1360 Connecticut Avenue, NW, Suite 200
Washington, D.C. 20009
(202) 797-2171
jvogt@wola.org

Stephen Coats
Executive Director
U.S./Labor Education in the Americas Project
P.O. Box 268290
Chicago, IL 60626
Tel: 773-262-6502
usglep@igc.org