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Generalized System of Preferences (GSP)
Subcommittee
of the
Trade Policy Staff Committee

1993 GSP Annual Review

Worker Rights Summary

Case: 002-CP-93

COLOMBIA

November 1993

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I. Introduction

In response to a petition filed June 1, 1993 by the International Labor Rights Education and Research Fund (ILRERF), the inter-agency Subcommittee on the generalized system of preferences (GSP) conducted a preliminary review of worker rights laws and practices in Colombia. The purpose of the evaluation was to determine if the petition warranted a full review. Per?

In October 1993, the GSP Subcommittee recommended that the petition be rejected on the grounds that the right to form unions and to bargain collectively is generally protected in Colombia, measures are being taken to address possible violations noted by the ILO, and other allegations are not adequately documented.

The GSP program, originally enacted in 1974, provides duty-free entry to eligible products from beneficiary developing countries. Section 502(b)(7) of the GSP law (Title V of the Trade Act of 1974, as amended) states that eligibility for GSP benefits depends, among other things, on whether a country "has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally-recognized worker rights." The GSP legislation defines internationally-recognized worker rights as follows:

- a) the right of association;
- b) the right to organize and bargain collectively;
- c) a prohibition against any form of forced or compulsory labor;
- d) a minimum age for the employment of children; and
- e) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health.

The Subcommittee noted that it is established U.S. policy that basic human rights are universal and that all governments are required to respect basic human rights, which include the first three cited worker rights, irrespective of social systems or stage of economic development.

In its review, the Subcommittee examined statements submitted by the government of Colombia and by the ILRERF, the State Department's Country Reports on Human Rights Practices for 1992, and reporting from the U.S. embassy in Colombia.

Petition History

In 1990, the GSP Subcommittee recommended the ~~rejection for~~ review of a petition filed by Americas Watch and the United Mine Workers requesting a review of worker rights practices in 1990

Colombia.¹

II. Principal Issues

The current petition recapitulates previous charges of violence against trade union members and contains new allegations on several issues, including ILO findings of labor code deficiencies regarding freedom of association and the right to organize; the use of short-term contracts to preclude union organizing; and unsafe working conditions, notably in the flower industry. A detailed summary of the Subcommittee's findings is presented below.

Freedom of Association

1. Labor Code Reform

The petition alleges that the Colombian labor code, as amended by Act No. 50 of December 28, 1990, contains "serious inadequacies and omissions." This allegation is based on a 1991 report on Colombia by the ILO Committee of Experts (COE) on the Application of Conventions and Recommendations. As the petition itself notes, the COE report makes both positive and negative comments about the Colombian labor code. In the report, the COE notes "with satisfaction" that Act No. 50 "has made a number of improvements to the previous provisions as regards freedom of association and collective bargaining".

The COE cites six examples of improvements, including easier ~~trade union registration procedures~~ and increased protection against antiunion discrimination for trade union leaders. The Subcommittee also notes that the new Labor Code expressly grants the right to form unions without prior authorization. Specifically, the Code provides for automatic recognition of unions which have obtained 25 signatures from a workplace. The Country Reports on Human Rights Practices (HRR) for 1992 states that "Colombian workers are organized into 2,265 trade unions, 101 federations, and 3 confederations, and are free to establish international affiliations without government interference."

On the other hand, the COE also states that Act No. 50 fails to take into account certain comments that it has made several times before regarding provisions of the legislation that are incompatible with ILO Convention 87 on the Freedom of Association.

¹ 1990 GSP Annual Review, "Worker Rights Review Summary," Colombia, August 1990.

The petition provides a list of fifteen labor code deficiencies cited by the ILO. The Subcommittee noted that discussions are continuing within the ILO framework and with labor groups in Colombia, however, and the Government of Colombia has begun to address a number of these issues. For example, technical assistance has been requested from the ILO for the purpose of changing a provision requiring that candidates for trade union office belong to the trade or occupation he/she is to represent. Legislation is being drafted to deal with several others, including a prohibition on the calling of strikes by labor federations and confederations. In addition, a provision relating to government supervision of union's internal management has been repealed.

The Subcommittee concluded, therefore, that Colombia has taken a number of positive steps towards improving its labor code and is beginning to address several remaining deficiencies cited by the ILO. The Subcommittee remains concerned about several issues, however; in particular, a series of regulations that may inhibit the right to strike. FOA

2. Violence Against Trade Union Members Violence

The petition alleges that, as documented in ILO reports, violence against trade unionists is rampant. It asserts that "killings of workers and their families on banana plantations occur every few days" and notes union charges of government complicity in these killings. In its 1993 report, the ILO Committee of Experts restated its concern about the serious violence which presents the full exercise of trade union activities.

According the HRR for 1992, "Organized labor suffers from a disproportionately high rate of violence from a variety of sources, including guerrillas, illegal paramilitary groups, and common criminals, and also as a result of internal union struggles." The Report did not, however, make any allegations regarding government complicity in connection with violence against trade union members. The Subcommittee noted that the Government of Colombia has taken steps to stem the violence against trade union members, as well as all groups who have been victimized. For example, reporting from the American Embassy in Bogota indicated that a major aid project to the violence-ridden banana growing region has been launched, combined with an increased military presence. [not govt]

Right to Organize and Bargain Collectively FOA

Short-term Contracts

The petition alleges that short-term contracts are used to impede union organizing attempts and cites, as an example, the use of fixed (three, four or six-month) contracts in the flower

industry. The petitioner states that, according to interviews with Colombian trade unionists, workers in this industry are hired on a day-to-day basis after their fixed-term contract expires, and thus can be fired at will if any attempts are made to form a union.

A submission of the Government of Colombia to the GSP Subcommittee states that "...there is no provision in Colombian law which prohibits workers under short-term contracts from joining a union," and adds that all workers, whether or not under short-term contract, are eligible to receive the full protection of Colombian labor law. The submission also states that since Law 50 of December 1990 went into effect through April 27, 1993, 339 new unions were registered.

Short-term contracts do not necessarily constitute a violation of workers rights; the critical question is whether the system is used as a basis for nullifying union organization attempts. On this point, the petition contained little evidence and failed to demonstrate a pattern of such behavior.

Acceptable Conditions of Work

The petition alleges that flagrant violations of worker health and safety occur regularly in Colombia's flower industry. According to the petition, women, who make up approximately 80 percent of the workers, are often forced to work in greenhouses where deadly pesticides banned by Colombian law are sprayed.

The submission by the Government of Colombia stated that a 1983 law (resolution 0204) contains provisions for control of sanitary health in the flower industry. The submission states that the regulations of resolution 0204 require that employers provide their workers with all necessary protection. The submission also documented a number of specific regulations relating to occupational safety and health, including laws which regulate the importation of pesticides. A separate submission described the establishment of a National Commission on Insecticides whose objectives include preventing harm to the health of the community.

The Subcommittee concluded that Colombia has extensive laws and regulations which regulate occupational safety and health overall as well as in the flower industry. The issue is the extent to which these laws and regulations are implemented. The evidence provided by the petitioner on this point consists of the following statement: "According to workers in the industry, pesticides in use daily in the greenhouses are among those pesticides which are banned for use by Colombian law."

The Country Reports on Human Rights Practices for 1992 states that "Workers' occupational safety and health is extensively

regulated but many such regulations are difficult to enforce for workers in the informal sector...Employees have the right to ask for Ministry of Labor inspections in cases of suspected occupational hazards."

The Subcommittee concluded that, while some abuses may occur regarding exposure to toxic chemicals, the government has a series of stringent laws and is taking some measures to improve enforcement, e.g., the establishment of a Commission on Insecticides.

III. Positive Actions Noted

1. The Government of Colombia has undertaken labor law reform (Act 50 of 1990) which makes a number of improvements in workers' freedom of association.
2. Progress is being made towards addressing some remaining labor code deficiencies, and discussions are continuing in the ILO on these issues.
3. The government is also seeking to reduce exposure to toxic chemicals in the flower industry, e.g., by setting up a commission on pesticides.

IV. Recommendation

In light of the positive steps noted above and the lack of documentation of certain allegations, the Subcommittee recommended that the petition not be accepted for a formal review.

V. Remaining Concerns

The Subcommittee's recommendation was based on the expectation that:

1. Colombia will continue to address remaining deficiencies in labor law which the ILO has cited.
2. Enforcement of laws regarding exposure to toxic chemicals and pesticides, particularly in the flower industry, will be strengthened as necessary.
3. Colombia will continue efforts aimed at reducing the overall climate of violence in the country.