

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

To:

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

Submitted by:

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

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

9020053  
KV  
KW  
RW

(2)

Date: [ December 13, 2004 ] 2005 AR

## **I. General Information about Petitioners**

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

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

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

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

ILRF previously submitted a petition requesting that Guatemala's country eligibility under the GSP program be reviewed in December 2002.

## II. Supporting Information on Violations of Internationally Recognized Workers Rights

In September 2003, USTR accepted for review GSP petitions filed by ILRF and by the AFL-CIO to review Guatemala's country eligibility based on its failure to uphold internationally recognized worker rights. These petitions cited the judicial impunity with regard to threats and violence against trade unionists in Guatemala, the systematic failure of the government to enforce existing labor laws, and the need for further reforms to the country's labor laws in order to bring it into full compliance with international standards. The review has failed to bring about meaningful progress in these three areas.

TH = y  
V = y

As detailed in ILRF's 2002 submission to USTR, the labor code reforms passed in 2001 did not bring Guatemala's labor practices up to acceptable standards. While the reforms did commit the country to making some important improvements, not all have been carried out. For example, the May 2001 reforms gave the Ministry of Labor a new power to levy fines for labor rights violations (Article 16, Decree 18-2001). However, this power was rescinded by a ruling by the Constitutional Court on August 3, 2004 which declared the articles that provided this authority unconstitutional. The most dangerous aspect of this ruling is that there is now no mechanism to sanction violations, either in the Ministry or in the courts.

Moreover, the 2001 reforms still do not meet ILO standards in several key areas. These areas were detailed in ILRF's petition of December 2002, and include failure to ease restrictions on public sector employees' right to strike and unrealistic minimum requirements for membership for union formation. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has also expressed their concern and asked for the clarification of provisions that give the President unilateral discretion to end strikes, *see* Article 13, Decree 18-2001, and that require trade union officers to be Guatemalan citizens.<sup>1</sup>

The state of the Guatemalan labor courts is particularly troubling. The labor courts are weak, proceed slowly, and fail to enforce their rulings and thus do not effectively protect the rights of workers or remedy the worker who has been treated unjustly. Perpetrators of violence against trade unionists also continue to enjoy impunity, as documented in a February 2002 report published by MINUGUA that meticulously

V = y

<sup>1</sup> ICFTU Report for the WTO General Council Review of Trade Policies of Guatemala (Jan. 2002), p. 2.

3 cases  
described the Guatemalan government's failure to address key portions of the Peace Accords. Indeed, the UN noted that Guatemala had failed to protect human rights or undertake judicial reform and further observed that impunity is an "entrenched phenomenon" and "the main obstacle to the effective enjoyment of human rights" in Guatemala.<sup>2</sup> In our 2002 petition we noted in particular cases of violence and intimidation against the Sindicato de Trabajadores Bananeros de Izb'al (SITRABI), the electricity workers' union Luz y Fuerza (SLF), and the textile sector unions Sitrachoi and Sitracima.

TOA  
Low levels of unionization, along with management's aversion to sharing power with workers, limit the practice of collective bargaining. Most workers, even those organized in trade unions, do not have collective contracts documenting their wages and working conditions, nor do they have individual contracts as required by law. A November 2000 study by the Association for Research and Social Studies found that only 10 percent of workers have a contract registered with the Labor Ministry as required by law. Even where workers have a binding collective bargaining agreement, the management sometimes chooses to ignore selected provisions.

contract = MNSTD ??

---

<sup>2</sup> MINUGUA, *supra* n. 2.