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**PETITION TO SUSPEND GUATEMALA'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

Submitted by: International Labor Rights Fund
December 2002

The U.S. Trade Representative ended the last worker rights review on Guatemala in May 2001, concluding that the labor code reforms passed by the Guatemalan government in April and May represented a significant effort to strengthen protections for worker rights. The USTR also cited the reinstatement of illegally dismissed banana workers as justification for ending the GSP review, although the reinstatement of the workers was the result of a negotiated settlement between workers and management, not governmental intervention.¹

A year and a half after the completion of the last USTR review, the 2001 labor code reforms have yet to be fully enacted and serious violations of worker rights continue. Indeed, the UN Verification Mission in Guatemala (MINUGUA) stated in February that "there is a glaring disproportion between the magnitude and complexity of the country's labor problems and the human and material resources allocated by the State to overcoming them and the low priority assigned to labor issues in political decision-making."²

Based on the absence of progress in protecting worker rights since the last USTR review, we request that the U.S. Trade Representative begin a new worker rights review on Guatemala.

A. 2001 Labor Code Reforms Are Insufficient and Underutilized

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). At the time, this appeared to be a positive step toward improving labor law enforcement and encouraging compliance. However, this new power has yet to be used.

¹ Human Rights Watch, World Report 2002 – Guatemala, p.5.

² MINUGUA, *Report for the Consultative Group meeting for Guatemala*, Jan. 18, 2002, p. 12.

Moreover, the 2001 reforms still do not meet ILO standards in several key areas. For example, the reforms failed to ease unacceptable restrictions on public sector employees' right to strike. Also, they require that 50% plus one of the workforce in an entire industry sign up in order to form a new union, a minimum that makes union formation in the industrial sector virtually impossible. See Article 7, Decree 13-2001. 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.³

B. Labor Courts Fail to Protect the Rights of Workers

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 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.⁴

B.1. SITRABI

The experience of the Sindicato de Trabajadores Bananeros de Izabal (SITRABI), a union representing banana workers at Fresh Del Monte, illustrates the continuing problem of impunity in Guatemala. In 1999, Del Monte's subsidiary fired 918 banana workers in violation of a collective bargaining agreement. In October of that same year, over 200 armed men attacked SITRABI in their union hall.⁵ Five SITRABI leaders were held at gunpoint, instructed to quit the union and their jobs, and ordered to call off a planned work stoppage over the local radio, which had been organized to protest of the firings. The police did not investigate, even though the union offices are less than 300 meters from the central police station at Morales, numerous vehicles were at the site and armed men were patrolling the vicinity.⁶ Indeed, MINUGUA called the SITRABI case

³ ICFTU Report for the WTO General Council Review of Trade Policies of Guatemala (Jan. 2002), p. 2.

⁴ MINUGUA, *supra* n. 2.

⁵ NISGUA (<http://www.nisgua.org/articles/sitrabi%20trial.htm>)

⁶ Jacky Delorme, *Anti-union bananas*, ICFTU Online, 10/29/99 (<http://www.hartford-hwp.com/archives/47/112.html>)

the second worst violation of human rights since the beginning of the Guatemalan peace process.

On June 6, 2000, a court judge in Puerto Barrios refused to charge the perpetrators with kidnapping and dropped all charges against five of the thirty defendants, leaving only 25 of the 44 people accused by SITRABI faced with criminal charges.⁷ In March 2002, 24 men were finally brought to trial but were tried for the lesser charges of coercion and ~~illegal detention~~. During the proceedings, armed men waited outside the courthouse while people left the court, intimidating witnesses and workers.⁸ In the end, 22 defendants received 3.5-year prison sentences that were commuted upon payment of fines. The perpetrators, therefore, spent no time in jail. The union leaders and their families remain in forced exile and unable to return home. Presently, several former union members are subsistence farming and continue to be terrorized and even murdered by the same thugs that attacked the union offices in 1999. Eyewitness testimony links Obdulio Mendoza Matta, one of the leaders of the attack on the union and a known narco-trafficker, to the murder of at least one of the union members. On November 1, 2002, two more were murdered, this time by an armed man who shot into the workers' camp from his motorcycle.⁹ These events clearly demonstrate the failure of the authorities to take strong action against anti-union violence.

C. Freedom of Association

Guatemala has a particularly low rate of unionization. In fact, less than 3% of the Guatemalan labor force is unionized, and most members are in the private sector. However, employers in the public sector were among the worst violators of the right of association, as reported by MINUGUA in September 2001. In the worst cases, workers who decide to join unions cannot even be assured that they will be free to live. In December 2001, for example, Baudillo Armado Cermeño, the organizing secretary of the Luz y Fuerza (SLF) electricity workers' union, was assassinated. Several months earlier, armed men raided the SLF offices; neither incident was investigated by the police or human rights authorities.¹⁰

Employers have also begun to set up "solidarity associations" as a more compliant alternative to unions. As solidarity associations do not have the right to strike or to bargain collectively, they do not meet the requirements of "free association" as defined by the ILO. Although unions and solidarity associations supposedly coexist in the same company or factory, in practice many employers encourage membership in

⁷ http://www.rtfcam.org/report/volume_20/No_4/article_13.htm

⁸ ICFTU Report for the WTO, *supra* n. 3, p. 3.

⁹ Information gathered by Jeff Vogt, Assistant General Counsel, International Labor Rights Fund, through the course of interviews with former Del Monte workers during a visit in October 2002, and subsequent correspondence.

¹⁰ Human Rights Watch World Report 2002: Guatemala.

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solidarity associations as an alternative to the unions and foster a competitive relationship between them.

Strikes are still prohibited in the health, transport and energy sectors, on the basis that such services are “essential;” however, these jobs are not within the ILO’s accepted definition of essential services, where it may be justifiable to restrict the right to strike. Rather, the ILO defines essential services to be those “the interruption of which may endanger the life, personal safety or health of the whole or part of the population.” See General Survey, ¶159. Moreover, the President of Guatemala has the power to intervene and declare strikes in the banana, coffee or sugar industries to be illegal because they could injure fundamental economic activities. This too is incompatible with ILO jurisprudence regarding workers’ right to strike.

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C.1. The Choi Shin/CIMA Case

Events in Choi Shin and CIMA Textiles, related Korean companies that share production facilities in Villa Nueva, provide a clear example of the use of solidarity associations and intimidation to restrict the right to association. In July 2001, the two unions representing the workers at these factories registered themselves with the Guatemalan government and asked the 5th Labor Court to declare “employment immobility,” meaning that the court would have to approve all future firings and resignations. On the same day, lawyers representing VESTEX, the textile and apparel producers association, visited all of the workers and offered them an alternative membership in a management-supported solidarity association.¹¹ Managers further tried to discourage union participation by threatening to close the factories and encouraging union opponents to identify union workers and demand their resignation.

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When violent conflicts erupted in the factory, management claimed that they could not control the actions of the anti-union group and thus allowed them to continue the persecution of the union supporters. COVERCO, an independent monitoring group, noted that “senior and middle management... were slow to contact local police and chose not to hire additional uniformed security agents to stabilize the situation in the factories.”¹² Seven union members were forced to resign from work, in direct violation of the “employment immobility” order. Other unionists did not even enter the factory because they legitimately feared for their safety. Again, COVERCO observed “that anti-union workers and some members of management subjected those who had publicly identified themselves as union members to physical and verbal abuse, as well as psychological harassment.” During the days of most intense conflict, both the unions and managers asked the Ministry of Labor to visit the factories, which it did not do. When a labor inspector did come days later to meet with the factory managers, union representatives were not invited to attend.

¹¹ COVERCO Special Report, *Liz Claiborne International’s Standards of Engagement and the Unionization of Two Supplier Factories in Guatemala*, Aug. 2001.

¹² *Id.*

The Ministry of Labor finally recognized the union later that July and arranged a meeting between the unions and the management to resolve the conflict. This only happened after the AFL-CIO requested a review of Guatemala's trade preferences, indicating the important role that USTR reviews can play in promoting labor rights. The fired workers were reinstated, but they were not immediately returned to their original posts, as required by Article 20 of the Labor Code. The ICFTU has also noted that "trade union members in these factories still face discrimination, and there is still not a collective agreement".¹³ While the 2001 worker rights review encouraged recognition of these unions, it did not lead to permanent changes in terms of respect for worker rights.

D. Right to Organize and Bargaining Collectively

Under Guatemalan law, one-fourth of the workers in a factory or business must be union members for collective bargaining to take place. Low levels of unionization, along with management's aversion to sharing power with workers, therefore 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.

Furthermore, labor law enforcement is very weak in the export processing zones. Indeed, only one union is currently organizing in the maquilas, and none of the maquilas have collective bargaining agreements. Employers in the maquila sector frequently use intimidation, mass dismissals, and plant closings to discourage unionization.¹⁴

D.1. The PANAMCO Case

In February 2001, workers belonging to the STECSA union began negotiating a new contract with their employer, PANAMCO, a Coca-Cola bottler. During the negotiations, PANAMCO attempted to introduce proposals that would reduce rights and benefits, reduce job stability and hinder the processes established to solve problems in the workplace. Each of these proposals violate Section 106 of the Guatemalan Constitution and Section 12 of the Labor Code.¹⁵ Management has also been intimidating workers through illegal salary reductions and wage suspensions, and by neglecting machinery maintenance. The workers still do not have a new contract and

¹³ ICFTU Report for the WTO, *supra* n. 3, p. 4.

¹⁴ Human Rights Watch, *From the Household to the Factory: Sex Discrimination in the Guatemalan Labor Force*, Jan. 2002.

¹⁵ US/LEAP Report, Sept. 2002 (<http://www.usleap.org/STECSSAA1ert9-3-02.html>)

PANAMCO has since filed a suit in court to attempt to deny the union's legal right to strike in order give the company even more leverage.

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E. Conditions of Work

E.1. Sex Discrimination in the Export Processing Zones

Discrimination on the basis of sex is also a serious problem in the maquila sector. The International Confederation of Free Trade Unions (ICFTU) notes that "discrimination in employment...is especially clear concerning the women workers who constitute the majority of the workforce in the maquiladoras. Sexual harassment and physical abuse are common, women workers are almost exclusively not unionized [due to] intimidation and threats of reprisal from employers, and working conditions are generally bad."¹⁶

Article 151 of the Labor Code prohibits employers from specifying sex, race, ethnicity, or civil status in job announcements and from differentiating between single and married women and/or women with family responsibilities. The Labor Ministry has interpreted Article 151 to also prohibit pregnancy questioning or testing as a condition for employment, stating "Given that rights and obligations inherent to the working woman derive from pregnancy and maternity, which the State protects and whose strict enforcement [the state] ensures in a special manner, every act or document through which an applicant for a job is required whether she is pregnant [sic] or that intends to give her an exam related to that status, are *nulos ipso jure* and do not obligate those applicants [to comply]".¹⁷ However, women who apply for jobs in the maquila sector are routinely questioned about their pregnancy status, and are often required to have pregnancy exams. Indeed, COVERCO has cited cases where women were required to sign a pledge on their job application to stop having children.¹⁸

A 2002 Human Rights Watch study of the maquila sector also found widespread sex discrimination, pregnancy testing, illegal dismissals of pregnant workers, and failure to enforce maternity protections.¹⁹ The experience of Lourdes López, one of the women interviewed for the study, was typical. Ms. López had applied three times to work at Internacional de Alimentos Procesados S.A., a food processing and freezing plant, and once at Dong Bang Fashions S.A., a textile maquila, between 1989 and 1998. In all four interviews she was asked whether or not she was pregnant, and once she was required to give a urine sample for a pregnancy test.

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¹⁶ ICFTU Report for the WTO, *supra* n. 3, p. 4.

¹⁷ Human Rights Watch, *supra* n.14.

¹⁸ *Id.*

¹⁹ *Id.*

The Human Rights Watch study also found that many maquila workers are not registered for health care even though the maquila management is deducting the Guatemalan Institute for Social Security (IGSS) contribution from their paychecks. In addition, none of the maquilas investigated by Human Rights Watch had the daycare facilities that are legally required for employers with more than 30 female workers.

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E.2. Failure to Apply Maximum Hours of Work Laws to Domestic Workers

The 2002 Human Rights Watch study also revealed that “in Guatemala, domestic workers are excluded from core, nationally-recognized labor rights.” The Labor Code does not give domestic workers the right to an 8-hour workday, minimum wage, or a written employment contract. Domestic workers are supposed to receive a card that lists their first day of work and salary, but this often does not happen. The Ministry of Labor therefore does not even have a record of how many domestic workers there are in Guatemala or what their average wages and hours are. The domestic workers interviewed by Human Rights Watch averaged 90 hours of work per week and earned a monthly salary of approximately 96 dollars.

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F. Forced Labor

Guatemalan law allows sentences of forced prison labor for individuals who participate in illegal strikes, other labor violations, or communist agitation, or for public servants that fail to complete their duties. The International Labor Organization has criticized this legislation and recommended that it be amended.²⁰

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G. Child Labor

The Guatemalan government has failed to sufficiently address the endemic problem of child labor. Guatemala has the second-highest rate of child exploitation in Latin America, after Ecuador.²¹ Indeed, Carmen Moreno, the regional coordinator of the ILO’s International Program on the Elimination of Child Labor, explained in May 2002 that, with respect to child labor, “the Central American country that causes greatest concern is Guatemala.” In 2000, MINUGUA found that 34% of children between the ages of 7 and 14 were working. Moreover, the U.S. Department of State reported in 2002 that Guatemalan child workers generally do not receive social benefits, insurance, vacations, severance pay, or minimum-wage salaries.²² Additionally, while the law says

²⁰ ICFTU Report for the WTO, *supra* n. 3, p. 5.

²¹ Global March Against Child Labor, *2002 Report on the Worst Forms of Child Labor*, p. 94.

²² U.S. Department of State, *2001 Country Report on Economic Policy and Trade Practices*, Feb. 2002, p. 8.

that children may not work more than 7 hours daily, this does not apply to those who are domestic workers.²³

The government also fails to protect these children from the hazards of particular industries. Many child laborers work in particularly dangerous jobs, and health and safety standards are non-existent. Between 3,000 and 5,000 children work in the illegal fireworks industry, which directly exposes them to highly toxic, flammable and explosive materials.²⁴ Involvement in the fireworks industry “is responsible for numerous deaths and serious injuries of working children each year,” according to the ICFTU.²⁵ Also, approximately 20% of prostitutes are under age 15, and 60% are between ages 16 and 18.²⁶ The U.S. Department of State Country Report on Human Rights Practices estimated that 80% of work accidents involve 15 to 18 year old workers who lack proper safety training.²⁷

CONCLUSION

The evidence presented above clearly demonstrates that the Guatemalan government continues to systematically deny workers their fundamental rights. 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 Guatemala today. In addition, child labor and child prostitution are not being addressed seriously and effectively. The last USTR worker rights review was ended on the assumption that 2001 Labor Code reforms would solve these problems and satisfy ILO standards, but this has proven to be untrue. Therefore, Guatemala should be reviewed again by the U.S. Trade Representative and removed from the list of beneficiary countries under the Generalized System of Preferences.

²³ Human Rights Watch, *supra* n.14.

²⁴ AFL-CIO Petition to the USTR, August 2000.

²⁵ ICFTU Report for the WTO, *supra* n. 3, p. 5.

²⁶ Global March Against Child Labor, *supra*, n. 21 at 94.

²⁷ *id*