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**BEFORE THE UNITED STATES
TRADE REPRESENTATIVE**

**PETITION TO REMOVE EL SALVADOR
FROM THE LIST OF BENEFICIARY DEVELOPING COUNTRIES
UNDER THE GENERALIZED SYSTEM OF PREFERENCES ("GSP")**

**SUBMITTED BY:
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS (AFL-CIO)**

September 2, 2003

Information Required Under 15 CFR part 2007

1. Petitioner: AFL-CIO
2. Country: El Salvador
3. Section of Law Warranting Review: 19 U.S.C. §2462(b)(2)(g) and 19 U.S.C. §2462 (c)(7)
4. Reason for Filing: The Government of El Salvador has not been and is not taking steps to afford internationally-recognized worker rights.

Introduction

In December, 2002 the AFL-CIO petitioned for the withdrawal of El Salvador's status as a beneficiary developing country pursuant to 19 U.S.C. § 2462(d) on the grounds that the Government of El Salvador (GOES) has not been and is not taking steps to afford internationally-recognized worker rights as defined at 19 U.S.C. § 2467(4). The actions of the GOES described therein demonstrated that El Salvador is not eligible to receive GSP benefits.

The Government of El Salvador continues to systematically violate workers' rights to freedom of association and collective bargaining. No significant progress has been made to address the systemic impunity of employers or the GOES itself, described in detail in the AFL-CIO's petition of 2000, 2002 and the CAFTA Comments presented in June, 2003.

Cases

STIT and Tainan S.A. de C.V.

STIT and Tainan Enterprises represents another serious case of worker rights violations in the maquilas. While there has been some advancement toward a negotiated solution in this case, the original violations which caused the conflict in the first place have not been remediated by the GOES. In 2000, workers began organizing a section of the Union of Workers of the Textile Industry (STIT). The organizing effort faced a series of reprisals, including the firing of two union leaders on February 26 and continued efforts by management to force workers to join a company-sponsored union. The union asked the Labor Ministry for legal recognition on May 23 and finally received it on July 9. Union supporters continued to receive threats of dismissal and physical attacks.

On October 17, 2001, 109 workers from the unionized TS2 plant in Tainan were illegally suspended. A protest organized by the union caused Tainan to reinstate the suspended workers on November 4. STIT continued to organize and on April 18, 2002 presented evidence of majority support required to negotiate a collective bargaining agreement (the first case of collective bargaining in the Salvadoran maquilas). That same week, Tainan announced that it was shutting down its plants because its clients allegedly no longer wished to work with unionized workers. On April 26, 2002, Tainan began breaking down its machinery in the San Bartolo factory.

On September 13, 2002, a judge of the Fourth Labor Court declared Tainan's suspension of its employees' work contracts illegal. The workers, however, have not gained restitution through actions of the Salvadoran Government but rather through an international campaign which brought Tainan Enterprises to a negotiated settlement. The settlement does not correct the violation of freedom of association and collective bargaining that took place at the time of the closing of the factories, nor does it entirely re-employ the more than 1000 workers who lost their jobs through that closing. The agreement is that Tainan Enterprises will provide capital to invest in another enterprise which will employ 150 ex-union members from the Tainan plant. This arrangement was not facilitated nor ever clearly supported by the GOES. In fact, the new plant is still not operating as of August, 2003 in part because of serious delays on the part of the GOES in authorizing the operation of the enterprise and in releasing the sewing machines to the company to begin production.

STIT and PRIMO, S.A. de C.V.: case ①

Primo S.A. de C.V. is an apparel producer (U.S. investment) located in the San Bartolo Free Trade Zone in Ilopango, outside of San Salvador. It is located in the same free trade zone where the Tainan Enterprises plants operated until they were closed in April, 2002. In November, 2002 the Centro for Estudios y Apoyo Laboral filed a complaint with the Workers Rights Consortium (WRC) asserting that ex-Tainan workers who had also been union members had been discriminated against in hiring processes due to their previous union membership to STIT while working at the Tainan Enterprises TS2 plant in San Bartolo. The WRC report stated that ex-Tainan workers/ STIT members had effectively been denied employment based on a "blacklist" which circulated in the San Bartolo Free Trade Zone after the closing of Tainan Enterprises. The report also made recommendations to the university apparel brands contracting at Primo S.A. de C.V. that they ensure remediation of the violation by offering new opportunities to apply to and be hired by the company. As of this time, no workers have been offered such an opportunity. While there are no pending legal actions before the Labor Ministry or labor courts regarding blacklisting in the free trade zones, it is known as common practice in El Salvador. While it is difficult to prove, the WRC investigation was able to identify through interviews and factory inspections sufficient evidence of discrimination in hiring based on previous union participation. Discussions of the topic with Labor Ministry officials have been circumspect, in that they suggest that blacklisting, while wrong, is hard to prove. They also suggest that workers are remiss in not presenting the cases to be handled by the labor authorities. However, workers allege that the labor ministry authorities can and will do little to investigate blacklisting and to research and interview sufficiently to build the evidence needed to confront it and curb it in the FTZs.

STIT and INSINCA, S.A. case ①

On July 31, 2002, the administration of the INSINCA maquila suspended the contracts of 640 employees, all members of the Union of Workers of the Textile Industry (STIT) and proceeded to distribute severance pay, stating that the firm was undergoing a process of reorganization. The administration promised all workers that they would be

re-contracted once operations began again but that they would be working under new labor conditions, which included the loss of annual bonuses and 25 days of vacation leave per year. The legal department of INSINCA instructed workers that in order to receive severance payments, they would have to sign a letter relieving the company of all responsibility. Many of the suspended workers were not re-contracted; those who were have lost the benefits they previously enjoyed.

INSINCA used the mass firing to undermine the union. In addition to the dismissal of hundreds of union members, 12 leaders of the STIT union were also denied access to the factory. INSINCA has refused to re-hire the union leaders.

Under Articles 36 and 37 of the Labor Code, reorganization of production to reduce costs does not constitute legal cause for suspending employees' individual labor contracts. Moreover, Article 47 of the Constitution and Article 248 of the Labor Code prohibit the firing or suspension of union organizers and leaders during their tenure and for one year thereafter. INSINCA's firing of union leaders directly violated these provisions.

STIT first appealed to the Labor Ministry, which produced no results; the Ministry's refusal to order an inspection is being appealed to the courts. A request to the Fourth Labor Court to declare INSINCA's action a lockout was also rejected.¹ As of August, 2003 no progress has been made against this case and the union is effectively crippled to represent the workers at the worksite.

ANTHONY FASHIONS case ①

Anthony Fashion, a subsidiary of the New-Jersey based Metrix Computer Cutting, Inc., opened in 1998 in the San Bartolo free trade zone. On December 20, 2002, the company announced that it was suspending production due to a lack of orders for US retailers Liz Claiborne and Leslie Fay. The company failed to pay salaries and end-of-year bonuses to its 700 workers. The back wages (but not the bonuses) were paid on December 30, and on January 6 the company announced that it was closing permanently. At the same time, the company was reorganized under a new name. Anthony Fashion also failed to pay legally required bonuses and pension and social security contributions for the 13 months prior to its shutdown. The workers have filed some 350 complaints in the labor courts for the unpaid contributions. The Labor Ministry provided the workers with documentation of the unpaid social security contributions (\$260,000) and pension contributions (\$120,000), but refused to provide them with documentation of unpaid bonuses, without which the workers are unable to pursue their legal claims against the company. Labor inspectors showed workers a copy of a letter from a representative of the factory owner to the Labor Minister requesting that neither the workers nor their union be given the documentation that they requested to pursue their legal cases. The letter reads, in part:

¹ Id.

It is important to tell you that unscrupulous people are using the media to generate negative propaganda against by representative [Anthony Fashion]; said people are supposed trade unionists who have nothing to do with the company that I represent, as they do not even work there; it is for that reason that I ask you to order your assistants to use appropriate discretion with respect to information that this company gives to this Ministry, because said information falling into evil hands would cause the situation of the company to become even more complicated and arrive at a point where the business was unable to pay for itself.

 The refusal to provide information to workers about their unpaid bonuses was reiterated on January 17 2003 by the Vice-Minister, who threatened sanctions against labor inspectors who had given information orally.

On March 19, the Procurator-General of the Republic informed the union that 298 individual cases were in danger of being dropped because the owner of the company was outside the country and could not be served. The union explained that it had not been able to take legal action to place an embargo on the company's property because of the Labor Ministry's refusal to turn over information to the Attorney General. Despite a promise by the General Labor Inspector to provide the information, the union soon learned that the plant's equipment was being sold to other free zone companies. The union has appealed to the National Assembly for assistance in compelling the Salvadoran Ambassador to the US to track down the owner of Metrix Computer Cutting.²

The Anthony Fashions company, throughout the history of its operations in the San Bartolo Free Trade Zone, was known as one of the most severe violators of labor standards and basic working conditions. While the company deducted Social Security payments from the workers salaries, they had not paid them over to the Social Security Administration since July, 2001. Prior to the closing in December, 2002, in the Public Prosecutor's Office, more than 50 cases had been filed by pregnant workers from Anthony Fashions who had not been able to obtain health care services through the Social Security Health Care System because their employer had failed to pay in the worker and employer contributions. In the Labor Ministry there were numerous individual cases brought against the company by workers for such concerns as failure to pay wages,  failure to provide health certificates to attend medical appointments, etc. Despite the hundreds of complaints filed against Anthony Fashions, there were no measures taken against the company while it was open leaving even less recourse for workers once it was closed. This case elaborates on the failure of the labor authorities to focus in on egregious violators and to seek corrective measures prior to the incidence of more severe violations or complete loss of the employment source, as was the case with Anthony Fashions.

² CEAL, *Actualización de estado de casos de violaciones a los derechos laborales en El Salvador*, May 2003

SETNESSA and Nestle - case ①

In 1995, Nestle El Salvador S.A. purchased Productos de Café, S.A., whose 288 workers were represented by the Association of Workers of Coffee Products, S.A. (ASTPROCOSA), subsequently reorganized as the Union of Workers of Nestle, S.A. (SETNESSA). Despite assurances from the new owners that employment would not be reduced, the company began a series of dismissals – 26 in 1995 (25 union members), 15 in 1996 (13 union members), and 19 in 1997 (18 members). Currently the workforce has been reduced to 74 non-administrative employees, of whom 65 are union members.

On March 5, 2003, the company demanded that the union vacate its office by March 14. On April 18, the company summoned the union leaders to a meeting to announce the closing of the factory plant on April 30. Despite the existence of a collective bargaining agreement, a letter from the company dated May 5 offering severance pay stipulates that “these conditions are not subject to any type of negotiation.” The union filed a complaint with the Fourth Labor Judge on May 30. The Labor Ministry has taken no action to mediate the conflict.³ While the union was able to negotiate a slightly better settlement than that which was offered, this took place outside of the labor authorities and through international pressure brought on by the IUF and other international organizations. The company is now completely closed and this pillar union of the Food and Beverage Workers Federation has been eliminated.

SELSA and Lido, S.A. case ①

The Union of Empresa Lido, S.A. (SELSA) was founded on November 22, 1959 and won legal recognition on February 12, 1961. Clause 43 of the collective bargaining agreement between Lido and SELSA establishes that salaries will be reviewed during the first fifteen days of January each year. In 2002, Lido failed to do so and SELSA began direct negotiations with Lido. SELSA brought up several different proposals for increasing worker salaries; Lido did not raise salaries. During the subsequent conciliation period that followed the negotiations, Lido brought forth its own suggestions, including a 5% reduction in worker salaries, in clear violation of Article 30 of the Labor Code that prohibits the reduction of salaries without legal cause.

In order to pressure the company, SELSA organized a one-day work stoppage on May 6, 2002, in which 320 of the 350 workers in the factory participated. The following day, Lido locked out the 11 members of the union executive along with 25 SELSA-affiliated workers, and on May 9, five more affiliated workers were denied entry. In total, 43 union members have been locked out, clearly in retaliation for union activities.

Lido brought an action against the workers for illegal work stoppage, but the Second Labor Court ruled that a lockout had occurred. However, the union’s request to the Third Labor Court to declare a lockout was rejected. The union also asked the Labor Ministry to extend the conciliation period and to investigate the company’s denial of entry to the union members. SELSA relied on Article 47 of the Constitution, Article 248

³ *Id.*

of the Labor Code, and the collective contract with Lido, all of which state that union members cannot be fired, dismissed, or suspended except for legal cause previously established by a competent authority. Nevertheless, Lido continues to deny workplace access to the 11 union leaders and the 30 SELSA-affiliated workers.⁴

After more than a year, the 11 SELSA union leaders continue to be locked out from the workplace. While the company has recognized that the leaders can not be dismissed as has paid the salaries of the union leaders, they have refused to allow the workers to enter their work site or to represent the members in any way. The 11 union leaders have been unable to conduct grievance resolution, meet with workers or management, or attend to workplace based concerns since May, 2002. They have attempted to maintain a dialogue with their employer, though as of this date there has been no progress in gaining re-entry to the workplace. The union leaders state that with no effective union leadership and representation inside the work site the company has committed other types of abuses such as to allegedly coerce members to resign from the union or to violate the clauses of the collective bargaining agreement. While the Labor Ministry has stated that they are taking a special interest in the case, as of August 2003, they had been unable to obtain a solution to the case. The only discussions of re-entry to the workplace were suggestions that the leaders return in two or more groups over a period of some months. Even this “flexible” application of the obligation not to dismiss union leaders as stipulated in Article 47 of the Constitution of El Salvador has not been implemented at this time.

In its examination of this case, the ILO Committee on Freedom of Association reached the following conclusions. First, it determined that the Labor Ministry had no authority to declare the May 7 work stoppage illegal. Second, in view of the ruling of the Second Labor Court that no strike had occurred on May 7, the Committee found it plausible that the company had retaliated against the locked-out workers for anti-union motives, and asked the government to obtain a prompt judicial resolution of this question. With respect to the government position that strikes are prohibited during the term of a collective bargaining agreement, the Committee stated that such a prohibition must be compensated by the availability of rapid and effective mechanisms to resolve disputes that arise over the application of the conflict. The Committee also asked the government to promptly investigate the union’s claims that its members had been pressured to drop their legal claims. Finally, the Committee requested that the government allow the union leaders access to the workplace.⁵

SIES and Del Sur - case (D)

The Union of the Electrical Industry of El Salvador (SIES), representing employees of recently-privatized electricity distribution firms, has denounced systematic violations of its collective bargaining agreement with the “Del Sur” electric company, a subsidiary of the Pennsylvania-based PPL Global. A particular concern has been inadequate safety and health procedures used by subcontractors, resulting in three deaths and several

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⁴ Id.

⁵ ILO, Committee on Freedom of Association, Report No. 330, Case No. 2208, paras. 599-605.

injuries. In April 2003, a delegation from SIES traveled to the U.S. to present the union's concerns to PPL officials. However, when the members of the delegation returned they were publicly accused by the company of having jeopardized the workers' jobs for personal gain. The Labor Ministry has taken no action to resolve these problems despite numerous requests from SIES.⁶

Worker Rights in the Health Care Sector ?

The government of El Salvador's continued assault on trade union freedoms in the health sector has sparked significant social protest. On November 9, as many as 300,000 people marched in San Salvador to support health care unions that are striking to protest the privatization of public hospitals. Shortly thereafter, the National Assembly rejected the President's arguments and approved a decree halting the privatization of public health services.⁷

The Salvadoran government's efforts to privatize the public hospital system, violating the rights of health care workers and their unions, have provoked continuing conflict. In July 1999, workers affiliated with the Sindicato de Trabajadores del Instituto Salvadoreño del Seguro Social (STISSS) were fired in violation of their collective agreement. STISSS began a work stoppage, which continued after more workers were fired in November. Doctors organized in the Sindicato de Médicos del Instituto Salvadoreño del Seguro Social (SIMETRISS) joined the stoppage and eventually more than 10,000 doctors, nurses, and workers honored the strike. President Flores militarized work sites and fired 221 more workers. On March 10, 2000, government representatives and union leaders established a "Reform Council of the Health Sector" to elaborate reform based on principles of equity. The Council presented a series of proposals to President Flores in December, which were ignored.

In February 2001, a labor court ruled that the firing of the 221 workers in 1999 was illegal and ordered the government to re-hire them. On July 5, 2001, the Supreme Court upheld the ruling of the lower court and ordered the government to re-hire the workers with six months' back wages. To this day, the Government of El Salvador has not complied with that order. (ILO, Committee on Freedom of Association, Report No. 324, Case No. 2077.)

In January 2002, riot police evicted STISSS members from their offices in violation of the union's collective agreement. At the same time, SIMETRISS denounced the illegal firing of 10 union doctors. In September, STISSS called a one-day strike against the privatization and illegal firings; in response, 30 STISSS members were fired. The union declared an indefinite strike and riot police forcibly and violently evicted STISSS members and leaders from several hospitals.

Violence
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⁶ CEAL, *Actualización de estado de casos de violaciones*

⁷ "Ratifican decreto de salud," *Diario de Hoy*, 15 November 2002, www.elsalvador.com/noticias/2002/11/15/nacional/nacio28.html

On October 8, a labor court declared the ISSS strike illegal based on a strict interpretation of the Constitution. The Supreme Court refused to hear an appeal. On October 15, President Flores unveiled his ISSS privatization plan and 50,000 doctors, nurses, and healthcare workers took to the streets in the first "White March" against the plan. On October 17, the Salvadoran Legislative Assembly passed the "State Guarantee of Health and Social Security" outlawing the privatization of healthcare and the electricity generation sector and on October 23, 200,000 workers participated in a second "White March." STSEL union activists from the electricity generation sector joined the strike, demanding that neither healthcare nor electricity generation be privatized and adding to a hunger strike that began on October 23. On November 9, hundreds of thousands joined in a third "White March" while police arrested several union leaders.

More than 30 leaders of the strike received anonymous death threat calls from a caller who identifies himself as part of the "Comando de Exterminio" or Extermination Commando. Death threats such as these are an echo from the violent past in El Salvador.⁸

Throughout the first half of 2003 the SIMETRISS doctors remained on strike in protest of the proposed privatization processes for the health care services. The "State Guarantee of Health and Social Security" decree was repealed shortly after it was approved and the doctors continued to strike throughout the first six months of 2003. In June, an agreement was reached after numerous failed attempts at mediation and the doctors returned to work. The agreement included back pay for striking doctors, a halt to privatization processes, and continued dialogue on health care reform through the National Commission on Health Sector Reform. As of August, 2003 a number of residents and other ex-strikers had not been paid their salaries and had not been formally re-contracted under an agreement calling for "recovery of services", the National Commission of Health Sector Reform had not advanced in the dialogue and the gradual process of privatization continued in a "piece-by-piece" model of privatization (one hospital at a time) rather than the full-scale model which was the object of protest in the first place. In any case, the issues which brought on the strike in the first place have not been adequately dealt with through grievance resolution mechanisms and collective bargaining and the impact on the union has been debilitating.

SITCOM

On April 2, 2003, communications workers petitioned the Ministry of Labor to register the Industry Union of Communications Workers (SITCOM). The union was reportedly formed by thirty-five workers from the Telecommunications Company of El Salvador, S.A. de C.V. (CTE); one from the radio station, *Radio Clave*; one from Telecommunications and Electric Services (SETELCOM); and one from Electrification and Communications, S.A, on March 23, 2003.⁹

⁸ CEAL, *Recopilación de las principales violaciones*

⁹ Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

Afterwards, the ministry notified the four employers and sought to confirm “the [union] founders’ status as employees and . . . the principal activity of [each] company,” as required by law.¹⁰ On May 22, 2003, based largely on the companies’ responses, the Ministry of Labor rejected SITCOM’s petition. The ministry cited three key reasons for its rejection: SITCOM failed to fulfill the requirement that an industry-wide union include workers from at least two companies engaged in the same activity;¹¹ the union’s provisional president was not employed by CTE at the time of union formation; and four members were “employees of confidence” and, therefore, ineligible to unionize alongside other workers.¹² Based on these factors, the ministry found that the workers failed to form an industry-wide organization and fell short of the mandatory minimum number of workers required to unionize.¹³

On May 30, 2003, SITCOM petitioned the Ministry of Labor to reverse its decision. The petition asserted that all four companies for which SITCOM workers are employed were, and still are, engaged in the same primary activity of communications. It also criticized the ministry because it did not give the union an opportunity to counter the companies’ official responses to their registration request.¹⁴ At this writing, the Ministry of Labor has yet to respond to SITCOM’s petition.

The Ministry of Labor, in this case, denied union registration based on the employers’ versions of events and did not investigate the matter or seek workers’ views. Furthermore, the ministry relied on outdated international guidelines when it concluded that SITCOM failed to fulfill the criteria to qualify as an industry-wide union.

Criteria for an “Industry-Wide Union”

The Ministry of Labor determined that CTE was a member of the communications industry, but that the other three companies employing SITCOM members were engaged in “activities different from ‘communications.’”¹⁵ In reaching its conclusion, the ministry relied on a 1989 definition of “communication” set forth in the United Nations’ “International Standard Industrial Classification of All Economic Activities” (ISIC):

Communication services rendered to the public whether by post, wire or radio and whether intended to be received audibly or visually. Services for the exchange or

¹⁰ Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

¹¹ Labor Code, article 209.

¹² Labor Code article 206 prohibits “mixed unions, that is, those comprised of employers and workers.” In refusing to count four alleged “employees of confidence” as SITCOM affiliates, the Ministry of Labor liberally interpreted this prohibition to bar mixed unions of “employees of confidence” and workers.

¹³ Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

¹⁴ Petition for reconsideration from Angel Edgardo Moreno Guardado, provisional president, SITCOM, to Jorge Isidoro Nieto Menéndez, Minister of Labor, May 30, 2003.

¹⁵ Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

recording or messages are also included. Radio and television broadcasting studies and stations are classified in [another] group.¹⁶

However, this definition has been revised twice since 1989. In the latest revision, from 2002, the categories of “telecommunication services,” “pay telephone services,” “radio beacon and radar station operation,” “other telecommunication,” and “radio and television programme transmission,” that were separate and distinct categories in 1989, have been combined into one class under the heading “telecommunications.”¹⁷ According to the 2002 criteria:

This class [“telecommunications”] includes: transmission of sound, images, data or other information via cables, broadcasting, relay or satellite; telephone, telegraph and telex communication; transmission (transport) of radio and television programmes; maintenance network; internet access provision; public pay-telephone services. This class excludes . . . production of radio and television programmes, whether or not combined with broadcasting.¹⁸

Thus, the ministry based its rejection of SITCOM’s status as an industry-wide union on an obsolete, narrow definition of the communications sector. Had the ministry applied the 2002 standard, it may have led to union registration. For example, whereas the ministry asserted that “*Radio Clave[’s]*, . . . principle activity is broadcasting, an activity classified under the group . . . ‘Radio and Television Transmissions,’ rather than “communications,” under the 2002 guidelines, “Radio and Television Transmissions” is explicitly cited as a “telecommunications” activity.¹⁹

In addition, the former general secretary of the El Salvadoran Association of Telecommunications Workers (ASTTEL), who assisted in the SITCOM organizing drive, asserts that both SETELCOM and Electrification and Communications, S.A, are companies formed by former CTE workers and are regularly contracted by CTE to perform projects and services. He argues that these smaller companies, which “perform the same work as CTE” are, like their “mother corporation,” also part of the

¹⁶ Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003; United Nations Department of Economic and Social Affairs, *International Standard Industrial Classification of All Economic Activities* (1989), ST/ESA/STAT/Ser. M/4/Rev. 2, E.68.XVII.8, group 7200.

¹⁷ United Nations Department of Economic and Social Affairs, *International Standard Industrial Classification of All Economic Activities* (2002), ST/ESA/STAT/Ser. M/4/Rev. 3.1, E.03.XVII.4; United Nations Department of Economic and Social Affairs. *Correspondences for ISIC Rev. 3.1 code 6420*. (No date). Available: <http://unstats.un.org/unsd/cr/registry/regso2.asp?Cl=17&Co=6420&Lg=1> [July 16, 2003].

¹⁸ United Nations Department of Economic and Social Affairs, *International Standard Industrial Classification of All Economic Activities* (2002), ST/ESA/STAT/Ser. M/4/Rev. 3.1, E.03.XVII.4, class 6420.

¹⁹ United Nations Department of Economic and Social Affairs, *International Standard Industrial Classification of All Economic Activities* (2002), ST/ESA/STAT/Ser. M/4/Rev. 3.1, E.03.XVII.4; United Nations Department of Economic and Social Affairs. *Correspondences for ISIC Rev. 3.1 code 6420*. (No date). Available: <http://unstats.un.org/unsd/cr/registry/regso2.asp?Cl=17&Co=6420&Lg=1> [July 16, 2003].

communications industry.²⁰ The ministry failed to identify the main activities of these two companies in its rejection of SITCOM's registration petition.

Minimum Number of Workers to Form a Union

The labor ministry also found that SITCOM failed to meet the mandatory minimum of thirty-five workers to form a company union at CTE. The ministry noted that CTE had submitted a document "proving the termination of the individual labor contract" of the provisional president of SITCOM on February 1, 2003—roughly seven weeks prior to the union's founding assembly. CTE also asserted that the union included two "group leaders," one "supervisor," and an "assistant"—four "employees of confidence," who were barred from unionizing with CTE workers.²¹ Another three workers were disqualified because they did not work for CTE and, therefore, according to the ministry, were not communications workers. By excluding these eight workers from the initial thirty-eight founding members of SITCOM, the ministry concluded that SITCOM only had thirty founding members—five workers short of the mandatory minimum required for union registration.²²

The workers strongly disagree with the ministry's conclusions. According to the former general secretary of ASTTEL, the "employees of confidence" actually perform the same jobs as the other workers, have similar work contracts, are not managers and, therefore, should not have been qualified as "employees of confidence."²³ In the case of the provisional president's labor contract termination, CTE allegedly withheld the worker's salary until he agreed to tender a "voluntary" resignation. The former ASTTEL general secretary explained, "The provisional president was pressured because of his salary. He gave in and signed a 'voluntary' resignation, [back]dated . . . so it did not fall after the union's formation." Afterwards, he received his back pay and severance. Since that time the other two provisional leaders of the SITCOM union have also been dismissed by the company. While the Labor Ministry officials have stated in meetings with the union officers that they enjoyed the protection from dismissal under Article 47 of the Constitution, they have not been reinstated nor has the GOES been effective in obtaining their reinstatement.

While the Labor Ministry has held a number of meetings with the union officers and their advisors they have still not made a final resolution on the petition to revoke the rejection of legal recognition. Labor Ministry officials including the Labor Minister himself have made numerous suggestions to the union officers that they form another union, conduct another General Assembly and try again to obtain a new legal status.

²⁰ Telephone interview with Luis Wilfredo Barríos, ex-general secretary, El Salvadoran Association of Telecommunications Workers, July 16, 2003.

²¹ El Salvadoran labor law, however, does not define "employees of confidence." See Report from Orlando Zelada, supervisor, Department of Industry and Business Inspection, to the head of the Department of Industry and Business Inspection, September 7, 2001.

²² Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

²³ Telephone interview with Luis Wilfredo Barríos, ex-general secretary, El Salvadoran Association of Telecommunications Workers, July 16, 2003.

However, should the workers decide to hold another General Assembly the founders of SITCOM would not be able to participate as founders of a new union, since there is a legal prohibition for 6 months after an attempt to form a union is made, for the same workers to attempt to form another union. As a result the workers would be forced to seek out new founding members, elect leadership different from the leaders they chose in the SITCOM attempt and present all of the paperwork again to the Labor Ministry in order to possibly gain a new recognition. Many of these telecommunications workers came from the workplace based union SUTTEL and remember the 1999-2001 struggle to obtain recognition of their union in which they were forced to conduct three General Assemblies, had to conduct a lawsuit against the Labor Ministry for failure to recognize the union and had to obtain a Supreme Court order to be recognized before they could begin union representation in the CTE-Telecom, after the 1998 privatization process. At that time the SUTTEL case was subject of GSP petitions as well as an ILO complaint. The ILO advised the GOES at that time that the imposition of excessive procedural requirements on unions seeking legal recognition violates workers' right to freedom of association. Even still, the same types of delays and excessive requirements appear to have taken place again in the case of SITCOM.

