

CR 2004

New ^{Case} Petition 2004 AR Case # 001-CP-04
by ILRF & ASEPROL
WR Costa Rica

2004

From: Bama Athreya [bama.athreya@ilrf.org]
Sent: Monday, December 13, 2004 3:56 PM
To: FN-USTR-FR0441
Subject: 2004 Annual GSP Review- Petition

Attached please find a cover letter and GSP petitions on El Salvador, Panama, Honduras, Costa Rica and Guatemala.

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December 13, 2004

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

Dear Chairman,

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Pursuant to Vol. 69, No. 219, Fed. Reg. 65674 (Nov. 15, 2004), the International Labor Rights Fund (ILRF), in cooperation with the Asociacion Servicios de Promoción Laboral (ASEPROLA) hereby submits the attached five petitions to be considered under the 2004 Annual Product and Country Eligibility Practices Review. In so doing, we join the petitions submitted by the AFL-CIO and the Washington Office on Latin America/US Labor Education in the Americas Project regarding the failure of El Salvador and Guatemala to comply with internationally recognized workers rights. As set forth more fully in the attached petitions, Honduras, Costa Rica, Panama, El Salvador and Guatemala have 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 each of these countries' eligibility under the Generalized System of Preferences be placed under review, as a means to bring these Central American countries into compliance with these rights.

We would also like, with this letter, to raise concerns regarding the proposed Central America Free Trade Agreement (CAFTA). We are extremely concerned that the labor chapter in this agreement will in fact lead to a weakening of labor laws and legal implementation in each of the Central American countries that are party to this agreement. The CAFTA labor chapter will supersede more credible and transparent labor review processes, such as that available under the GSP program, creating a perverse incentive for Central American governments to weaken their existing labor laws, and eliminating the existing process by which concerned civil society actors, including trade unions, can petition the US government to hear these concerns.

In written testimony on CAFTA submitted to the Office of the US Trade Representative in December 2002, ILRF requested that access to the labor rights enforcement process be made available to all interested parties, not just the government signatories to the trade agreement. The key constituency, workers themselves, must have direct access to an

enforcement process, at least through the trade unions and other civil society organizations such as human rights groups or church groups that are most closely promoting their interests. As currently written, the CAFTA labor chapter does not address this concern.

We also requested that the enforcement process make a distinction between violations that are attributable to private actors, including multinationals, and therefore require remedies more in the line of penalties, and those that are attributable to governments, and might be better addressed by trade sanctions. Penalties directed at companies, with the cooperation of the host government, will resolve most problems. This also leaves problem solving within the firm control of the individual governments and allows them to act to prevent any protectionist use of the enforcement process. Again, the current CAFTA labor chapter completely fails to address this concern.

We strongly believe that as currently written, the CAFTA labor chapter will not promote better compliance with international labor standards in the Central American countries. As currently written, the chapter is weak, diffuse, complicated, and aimed to sanction commercial actions and not to protect labor. As detailed in the attached petitions, some Central American countries have already sought to weaken their existing labor laws in order to compete within the framework of the free trade agreement. In other countries, governments are seeking to introduce parallel mechanisms that will impede workers' use of labor laws, either by weakening existing labor movements or by creating new barriers to bringing forward cases under existing laws. Moreover there is no means to sanction employers who consciously abandon more stringent labor enforcement environments for weaker regimes, promoting a "race to the bottom." In Honduras, Costa Rica, and El Salvador, for example, the maquilas are slowly leaving for countries such as Nicaragua, Haiti, and China, and workers in the former countries live in fear that if the conditions 'don't improve' the maquilas will leave for good. In Guatemala, the banana companies initiated an exodus from the Caribbean to the Pacific (where there have historically been few or no unions) in order to eliminate union. In Honduras, the Tela company, owned by Chiquita, has been delaying the collective bargaining with the union SITRATERCO for more than a year. Trade unions and other civil society organizations throughout the Central American region have been protesting the passage of CAFTA by their national governments, clearly signaling that they do not believe the agreement will further workers' interests.

With this letter we would also like to present briefly a comment on Nicaragua, which is not a GSP beneficiary country and therefore not subject to review at this time. A legal project to promote alternative dispute resolution has been undertaken in Nicaragua, with support from the Ministry of Labor and Nicaraguan companies in the export sector. The initiative is being presented to the Nicaraguan parliament. We are concerned that any changes to Nicaraguan law to facilitate alternative dispute resolution not in any way undermine collective bargaining and the mechanisms to negotiate and resolve disputes already present in collective bargaining agreements. We understand that as proposed, the current legal initiative may undermine existing laws related to the formation of unions, and may eliminate existing Ministry of Labor obligations for verification of good faith bargaining. We would very much appreciate the attention of the Office of the US Trade Representative to the proposed initiative, to ensure that it in no way undermines existing Nicaraguan laws related to the formation of unions or collective bargaining agreements.

If you have any questions regarding this submission, please contact Bama Athreya at the International Labor Rights Fund at (202) 347-4100 x 106.

Sincerely,

**Bama Athreya
Deputy Director**

**PETITION TO REVIEW COSTA RICA'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
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Submitted by:

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Date: December 13, 2004

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 Costa Rica 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 Costa Rica's eligibility under the Generalized System of Preferences be placed under review, as a means to bring Costa Rica into compliance with these rights.

II. Supporting Information on Violations of Internationally Recognized Workers Rights

Costa Rica is one of the most anti-union countries in the Americas and routinely violates the right of workers to freely associate. Only 15% of the Costa Rican work force belongs to a union, and, of that number, 80% are in the public sector. Currently, the greatest impediment to free association in Costa Rica is the use of "solidarity associations," which are favored by the employers. Such associations are incapable of exerting a threat to the employer because they do not enjoy the right to strike. Indeed, employers use these organizations as cover to avoid obligations to bargaining collectively with unions. FUA

Among those who do have the right to strike, they are excessively restricted by an absence of legal guidance and a hostile judicial system. For example, while strikes are allowed in the public sector so long as a judge determines that a strike would not effect essential services, no criteria exist to determine which sectors belong to this category. In the past 50 years, only two strikes have been declared legal. Indeed, after a visit to Costa Rica in September 2001, the ILO confirmed that it is almost impossible to carry out legal strikes. FUA

Within the Costa Rican system, judicial processes that should protect the rights of union workers are slow and ineffective. In effect, different sectors accuse the judicial branch of preventing workers from reclaiming their labor rights, because of the long delays in the courts. Individual workers' complaints take an average of 18 months to be resolved. RA

In 2002, the GSP Subcommittee rejected for review the petition submitted by the AFL-CIO to suspend trade preferences for Costa Rica. Given the abundant evidence that Costa Rica does not respect internationally recognized worker rights, as set forth in that petition, we urge the USTR to reconsider its decision and to conduct a full investigation into the failure of Costa Rica to meet all of the conditions necessary for participation in the GSP program.

We are particularly concerned that during the negotiations of the Central American Free Trade Agreement (CAFTA), the Costa Rican government has actually taken steps to weaken existing national labor protections. In early 2004 the government introduced a project to reform the country's labor code. In particular, proposed legislation would modify working hours through a year-long calendar of work shifts and the weekly accumulation of working hours, eliminating the standard eight-hour workday.

The proposed legislation would also eliminate the rights to mixed and absolute overtime hours, as it would allow employers to increase work hours at times of high demand, and lessen work hours in times of low demand. We are particularly concerned that when introducing this legislation to the Costa Rican parliament, the government argued that *such flexibilization of working hours and overtime rules was necessary in order to allow Costa Rica to remain competitive with the other Central American countries once the CAFTA was ratified*. Public pressure on the Costa Rican government resulted in some modifications to the proposed legislation, which has not yet been introduced to the legislature.