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BEFORE THE UNITED STATES TRADE REPRESENTATIVE

PETITION TO REMOVE **COSTA RICA**  
FROM THE LIST OF BENEFICIARY DEVELOPING COUNTRIES  
UNDER THE GENERAL SYSTEM OF PREFERENCES ("GSP")  
AND FROM THE LIST OF BENEFICIARY COUNTRIES UNDER THE  
CARIBBEAN BASIN ECONOMIC RECOVERY ACT ("CBI")

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

**JUNE 2001**

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(note) gsp authorization expired: no action/no renewal

**Petition to Remove Costa Rica From the List of Beneficiary Developing Countries  
Under the Generalized System of Preferences ("GSP")  
and from the List of Beneficiary Countries  
Under the Caribbean Basin Economic Recovery Act ("CBI")**

The AFL-CIO hereby petitions, under the Trade and Tariff Act of 1984, 19 U.S.C. 2461 *et seq.*, for the removal of Costa Rica from the list of beneficiary developing countries under the Generalized System of Preferences (hereinafter "GSP"). The AFL-CIO further requests, pursuant to Section 212 of the Caribbean Basin Economic Recovery Act (hereinafter "CBI"), that CBI benefits be denied to Costa Rica. Both petitions are based on the Costa Rican Government's failure to protect internationally recognized worker rights.

As shown below, the actions of the Costa Rican government in regard to workers in the country are inconsistent with status as a beneficiary country under either the GSP or the CBI. Such facts dictate that Costa Rica must be denied benefits under the GSP and CBI.<sup>1</sup>

Recent developments and actions by the Government of Costa Rica demonstrate that Costa Rica no longer qualifies as a beneficiary under either the GSP or the CBI. Pursuant to 19 U.S.C. 2462 (d)(2) the President "shall...withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as a result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2) of this section." The facts recited in this petition demonstrate that Costa Rica no longer qualifies as a beneficiary developing country under the GSP. Accordingly, the President must revoke its status. Similarly, pursuant to 19 U.S.C. 2702 (e)(1)(a), the President must withdraw Costa Rica's designation as a beneficiary country under the CBI.

**BACKGROUND**

Costa Rica is a generally stable Central American country with a market economy based primarily on tourism, agriculture and electronics exports. Official unemployment currently stands at 5.2%. However, poverty continues to increase, with the official figure now 21.1%. The United Nations has expressed concern that vulnerability or risk of poverty may be rising as employment opportunities in less stable jobs with fewer benefits and limited income increase, in contrast to the more stable and secure forms of formal and public employment.<sup>2</sup> According to the U.S. Embassy in San Jose, "the apparent contradiction between falling unemployment and rising poverty is believed to be the result of rising employment in the free trade zones and low employment growth and weak agricultural prices in the rest of the economy."<sup>3</sup>

Less than 15 percent of the labor force is unionized, and almost all of the unions are in the public sector, where collective bargaining is prohibited. A particularly high number of complaints of violations of the freedom of association have been filed against Costa Rica with the International Labor Organization (ILO) throughout the 1990s. The Government of Costa Rica has consistently ignored the recommendations of the ILO to improve the labor rights conditions. In

Too

FUA  
CHILLABA  
MINSTAD  
NUM CASES = 13  
HFS

1999, for the second time this decade, the ILO offered to provide either Technical Assistance or a Direct Contact Mission. The Government rejected both proposals.<sup>4</sup>

FOIA  
C/WILD

Labor strife is particularly prevalent on the banana plantations, a sector currently facing fierce international competition. Government acceptance of *solidarista* organizations has been cited as a violation of the freedom of association by the ILO. The public sector also experiences problems related to overly restrictive labor laws combined with the country's move toward privatization. As noted by the U.S. State Department, child labor—including the worst forms of child labor—also persists.<sup>5</sup>

Miguel Angel Rodríguez Echeverría, of the Social Christian Unity Party, was elected President in February of 1998. At that time, he requested that the ILO grant him time to make progress on the labor situation and demonstrate his commitment to worker rights. However, although President Rodríguez has now been in office for over three years, the deficiencies in labor law and practice to which the ILO has repeatedly drawn attention persist, with no prospect of Government action to resolve them.

**THE BENEFICIARY STATUS OF COSTA RICA UNDER THE GSP AND CBI MUST BE WITHDRAWN, BECAUSE THE COSTA RICAN GOVERNMENT IS NOT TAKING STEPS TO AFFORD INTERNATIONALLY RECOGNIZED WORKER RIGHTS TO WORKERS IN THE COUNTRY, AS REQUIRED UNDER BOTH ACTS.**

Both the CBI and the GSP require a country to afford internationally recognized worker rights to workers in the country in order to be eligible for benefits. Where a country is initially designated as a beneficiary country, a change of circumstances in the country—or a demonstration that the country is not taking steps to afford internationally recognized worker rights—requires that the beneficiary status be removed.<sup>6</sup>

***The Costa Rican Government Fails to Afford its Workers the Right of Association.***

FOIA

As noted in the U.S. State Department Report, although the law specifies the right of workers to join unions, barriers exist in practice. Almost all unionized workers are in the public sector; very few workers in the private sector belong to unions. One of the main impediments to freedom of association in Costa Rica is the government's tolerance of employer-promoted solidarity associations. In 1991, the ILO ruled that these solidarity associations were interfering in trade union activities and violating the freedom of association in Costa Rica. In 1993, Costa Rica responded by enacting new legislation (Law 7360) that restricts the associations' activities and prohibits the associations from signing collective bargaining agreements. In 1998, a tripartite agreement included a commitment by the Government to enact a series of legal reforms to guarantee freedom of association and collective bargaining.<sup>7</sup> This commitment was reaffirmed in an agreement signed 23 November 1999 between the government and unions.<sup>8</sup> Despite these undertakings, proposed labor legislation that would protect freedom of association has not been approved.<sup>9</sup> In addition, a series of executive and judicial decisions have further restricted the already narrow scope of collective bargaining rights in the public sector, and the laws that protect freedom of association have not been effectively enforced.<sup>10</sup>

Under Costa Rican law, union leaders are protected against retaliatory dismissal on account of their union activities by a special immunity, known as *fuero sindical*.<sup>11</sup> There are serious problems with this immunity. First, the protection applies only to a small number of union leaders and for a limited period of time (the specifics are spelled out in Article 367 of the Labor Code). These restrictions have been criticized by the ILO.<sup>12</sup> Second, the courts have systematically refused to recognize a Constitutional cause of action for dismissal of union leaders, relegating these cases to the labor courts (where, despite a legal requirement that cases be adjudicated within 2 months, the average time to resolve a case is three years).<sup>13</sup> Third, in the case of *fuero sindical*, unlike all other Constitutionally-established immunities, the employer is not required to establish just cause prior to effecting the dismissal. Finally, for union leaders in the private sector, there is no legal mechanism to reinstate union leaders even if their dismissal is found to be unjust.<sup>14</sup> In 1998, the Government submitted draft legislation, negotiated through a tripartite process, that would have addressed many of these problems, but this legislation has never been approved.<sup>15</sup>

The lack of effective remedies for anti-union retaliation helps to create a climate of impunity where employers feel free to dismiss union organizers and leaders and to replace them with company-controlled unions or direct dealing with employees, with little fear of legal consequences. This impunity is most pronounced in the private sector, where mass dismissals of union members are common. For example, at Agropecuaria Matina, S.A., which is owned by the Costa Rican Ambassador to the United Kingdom, a number of workers were dismissed in February 2001 and then rehired under worse conditions.

As a result of this impunity, union representation has been almost eliminated in the private sector in Costa Rica. The most recent data indicate that while 11.99% of all workers are unionized, only 5.24% of private sector workers (59,432 workers) are represented by unions. However, if members of unions of small agricultural producers, where no labor-management relation exists, are excluded, the actual number of private sector union members is only 25,999, representing only 2.29% of private sector workers. In contrast, 53.04% of public sector workers have union representation (98,697 workers).<sup>16</sup>

The ICFTU has expressed specific concerns about conditions in Costa Rica's nine Export Processing Zones, where large numbers of workers have been dismissed on account of union involvement. Most of these cases are decided in favor of the employer, and in the few cases where workers have prevailed, the decisions were subsequently overturned.<sup>17</sup>

Costa Rican law (Article 60(2) of the Constitution and Section 345(e) of the Labor Code) prohibits workers who are not Costa Rican nationals from holding trade union office, effectively excluding more than 300,000 immigrant workers from participation in union leadership. Despite repeated ILO criticisms of this provision, draft legislation to repeal these provisions has lain dormant in the Parliament for more than five years.<sup>18</sup>

In addition, agricultural workers in small enterprises (those which permanently employ no more than five workers) are excluded from union representation under section 14 (c) of the Labor Code. This provision was held unconstitutional in 1952, but the constitutional change has never been reflected in the Labor Code.<sup>19</sup>

1 total case

*The Costa Rican Government Fails to Afford its Workers the Right to Organize and Bargain Collectively.*

**The Government Denies the Right to Organize and Bargain Collectively in the Private Sector**

In addition to the restrictions on union organizing and representation in the private sector discussed above, the Government has fostered and promoted specific mechanisms to undermine collective bargaining.

The labor code explicitly permits direct dealing between employers and employees over terms and conditions of employment.<sup>20</sup> It also permits the formation of "Permanent Workers' Committees" of up to three members in each workplace, which are authorized to present complaints or requests on behalf of the workforce. Whereas unions are subject to a number of onerous and illegal requirements, e.g the requirement that all members of their governing councils be Costa Rican citizens, no such requirements apply to the Permanent Workers' Committees. In practice, these committees are effectively controlled by employers.

The Government also continues to encourage the formation of *Solidarista* associations, under the 1984 *Ley de Asociaciones Solidaristas*<sup>21</sup> which, despite being explicitly prohibited from collective bargaining (under Law 7360) have increasingly taken over functions that properly belong to unions. As a result, between 1994 and 1999, 479 direct arrangements (*arreglos directos*) between employers and workers were registered in the private sector and only 31 collective bargaining agreements (*convenciones*). Of these 31, only 13 remain in force today; all of these are enterprise-level contracts.<sup>22</sup>

This direct inverse relationship between collective bargaining agreements since the passage of the 1984 law and direct arrangements is clear in the agricultural sector, as shown in the following table.<sup>23</sup>

Period	<i>Convenciones</i> in agriculture	<i>Arreglos directos</i> in agriculture
1967-1971	8	1
1972-1976	72	6
1977-1981	104	16
1982-1986	39	104
1987-1991	15	259
1992-1996	7	289
Totals	245	675

The banana plantations of Costa Rica are known as the birthplace of the *solidarismo* movement. Companies promote the solidarity associations as a means of undermining and displacing the unions. Employer efforts to lower working standards and violate workers' rights have increased in recent years as a result of great international commercial pressure.<sup>24</sup> Competition among the

banana exporting companies for access to the European market has stimulated regional overproduction, provoking a "race to the bottom" that threatens decent wages and working conditions in the historically unionized Central American and Colombian banana plantations.<sup>25</sup>

#### The Case of SITRASUR

*Case* A current example involves the banana company COBASUR.<sup>26</sup> In 1998, COBASUR denied recognition of the Union of Workers of the South (SITRASUR), refused to deduct union dues for union members, fired the union's general secretary, and established a solidarity association with which it initiated negotiations. The labor inspector confirmed the allegations and lodged a complaint against COBASUR in the labor courts of Costa Rica on November 20, 1998. Later, the General Secretary, Adrian Herrera Arias, received death threats, and an attack on his vehicle. On April 13, 1999, as the legal process dragged on without result, Mr. Herrera Arias was brutally beaten and threatened with death.

On April 27, 1999, the ICFTU filed a complaint against Costa Rica with the ILO. The ILO's report deeply regretted the company's anti-union discrimination and interference and requested the Government to keep it informed of the legal process. The Committee also requested that the Government take measures to ensure that COBASUR properly deduct the dues of SITRASUR affiliates as provided by law. Yet, more than two years after the Costa Rican court case was initiated, no decision had been issued and no steps have been taken to afford the workers' relief.

*Violence &  
Threat  
(2 instances)*

#### The Government Denies the Right to Organize and Bargain Collectively in the Public Sector

The Government severely restricts collective bargaining in the public sector in a number of ways. First, the great majority of public employees are prohibited from negotiating collective bargaining agreements (*convenciones colectivas*). Most public employees are forced to use the Regulation on Collective Bargaining for Public Servants, which fails to meet minimum ILO requirements for public sector bargaining; even the minimal requirements of this Regulation are routinely violated by the Government. Likewise, in those few workplaces where *convenciones colectivas* are legal, the Government has refused to negotiate under these agreements. In addition, in workplaces where previously existing *convenciones colectivas* have been held to be valid, the Government has eliminated the collective bargaining language from these agreements. Finally, the right to bargain over wages is denied to practically all public employees. Despite many promises to do so, the Government has not enacted legislation to address these defects. The ILO has repeatedly criticized Costa Rica's failure to make progress on this legislation.<sup>1</sup>

The Government has consistently interpreted the 1979 General Law on Public Administration to prohibit the negotiation of collective bargaining agreements for public employees with the general exception of local governments and universities<sup>27</sup>, and collective bargaining agreements existing prior to 26 April 1979.<sup>28</sup> Specifically, the ruling has been interpreted to hold that only employees of entities whose activities are governed by common law may negotiate collective

<sup>1</sup> ICFTU Report at 6. The ILO Committee of Experts will again take up the matter of Costa Rica's non-compliance with Convention 98 in 2001.

*1 total case*

bargaining agreements. Examples of workers who do not have the right to bargain include cooks in school cafeterias, garbage collectors, highway maintenance workers, and musicians in the National Symphony Orchestra.

Attempts to resolve public sector labor disputes through the arbitration procedures established in Article 526 of the Labor Code were also held unconstitutional in 1992.<sup>29</sup> In the bipartite agreement signed by the Government and trade unions on 22 October 1992, the Government promised that it would regulate collective bargaining, dispute resolution, and strikes in the public sector by means of a Public Employment Law. As a provisional measure, the Government promulgated the Regulation on Collective Bargaining for Public Servants.<sup>30</sup> But the promised Public Employment Law has never been enacted, and the gravely deficient provisional regulation remains in place.

The Regulation on its face violates the right of collective bargaining. Specifically, the ILO has found that the Regulation's requirement that all collective agreements be reviewed by a commission of state officials, with the authority to reject the negotiated agreement, is "contrary to the principles of collective negotiation."<sup>31</sup> Moreover, the Regulation sweepingly excludes any negotiation of salaries or any issue with potential impact on the national budget. A proposed new regulation, presented by the Government in May 2001, fails to remedy these deficiencies.<sup>32</sup>

More cases (5)

Yet the Government has failed to give effect to even this flawed provisional regulation, refusing to approve agreements negotiated under the Regulation (for example, agreements between the National Registry and SITRARENA, between the Institute for Agrarian Development (IDA) and UNEIDA, and between the National System of Radio and Television (SINART) and ANEP). In other cases, Government agencies have simply refused to bargain over negotiating proposals made under the regulation (for example, the Colegio Universitario de Puntarenas and the Instituto Costarricense de Deporte.)

With a few narrow exceptions, bargaining over wages has been relegated to the "Negotiating Commission on Public Sector Salaries" made up of Government and trade union representatives. However, the Government has failed to implement agreements that have been reached in this Commission. For example, in 1995 the Government signed an agreement authorizing a wage increase of 4,000 colones, to be followed by a second increase amounting to an 11.49% increase. When the unions challenged the Government's failure to implement the second increase, the Supreme Court held that an agreement reached in the Negotiating Commission on Public Sector Salaries is binding only when the Government issues a decree implementing the agreement.<sup>33</sup> The Government's subsequent practice has shown that it will give no independent effect to agreements negotiated in the Commission.

2 more

Even in the few public entities where collective bargaining is still permitted, such as the National Insurance Institute and the Postal Service, the Government has refused to negotiate over proposals presented by the unions. And in public entities where collective bargaining agreements existed prior to 1979, the courts have proceeded to declare collective bargaining clauses unconstitutional on a case-by-case basis. Examples include the case of RECOPE<sup>34</sup> and the Banco Popular y de Desarrollo Comunal.

2 more cases

[9 total instances cases]

#### The Case of SITRARENA<sup>35</sup>

In 1995, after negotiations and a series of strikes, an "agreement" was signed between the Trade Union of Workers and Retired Workers of the National Registry and Related Persons (SITRARENA) and the administration of the National Registry, which is a part of the Ministry of Justice. This agreement was the only one that has been achieved under the provisional regulation that permits a weak form of collective bargaining in the public sector.

The agreement reached between SITRARENA and the National Registry was submitted to the Ministry of Labor in August of 1995. However, the Ministry of Labor never convened the required commission of state officials, and the agreement languished. On July 24, 1998, the Legal Affairs Board of the Ministry of Labor opined that the agreement should be considered approved, given that the two month time limit for a decision had expired almost three years earlier. However, on September 1, 1998, the Constitutional Court denied the union's application for a court order to enforce the agreement, holding that the proper procedures had not been followed and the union's rights had not been infringed by the non-application of the agreement. In 1999, the Ministry of Justice issued circulars declaring the National Registry's agreement with the union to be technically flawed and impossible to apply. To date, the original agreement has not been implemented.

The Rerum Novarum Confederation of Workers (CTRN) and SITRARENA filed a complaint before the ILO in May 1999. The Committee on Freedom of Association found in 2000 that the regulation is contrary to the principles of collective bargaining under Convention No. 98.

Noting that in its response the Government had stressed that a new bill on public employment which would improve the opportunities for bargaining in the public sector is pending in the Legislative Assembly, the ILO Committee urged the Government to adopt the new law as soon as possible. The Committee also offered technical assistance in drafting the legislation to be in conformance with ILO Conventions.

The Government of Costa Rica declined the offered technical assistance. The Government has also failed to enact the new legislation, despite its communication to the ILO and despite the ILO's conclusion that the current regulations violate the internationally recognized right to collective bargaining.

#### The Case of SEBANA<sup>36</sup>

(1) The Union of Employees of the National Bank of Costa Rica (SEBANA) is also facing barriers to collective bargaining. Prior to the 1992 legislation, SEBANA had already achieved an agreement with the National Bank of Costa Rica. However, SEBANA and the Bank were unable to agree on proposed reforms to the agreement. The particular area of dispute concerns retirement packages to employees with more than 25 years of continuous service.

1 total  
08/20



The dispute was presented to the magistrates of the Court of Cassation, which is part of the Supreme Court of Justice and handles cases of labor law. On August 11, 1999, the Court ruled that it had profound doubts about the legality of reforming existing collective agreements in the public sector and therefore the Court would consult with the Constitutional Court regarding the constitutionality of such reforms given that the Constitution does not recognize this type of collective agreement.

The case is currently pending in the Constitutional Court. This case represents a huge threat to trade unions and the rule of law in Costa Rica. Costa Rica has not only enacted legislation that severely impedes the right to form any new agreements; now the right of even existing agreements to continue to be legally recognized is threatened.

### The Government is Using Privatization to Undermine Public Employees' Right to Organize and Bargain Collectively

Although the Government of Costa Rica has committed itself to privatizing public services, it has met strong opposition from trade unions and civil society. In a country like Costa Rica where the grand majority of unions are found in the shrinking public sector, privatization represents a particular threat to trade unions and workers. Workers are particularly alarmed due to the Government's antipathy toward trade unions and the failure to include unions in the process of privatization.

*Aduna*

In March 20, 2000, the Legislative Assembly adopted a bill to privatize the public services in the electricity and telecommunications sectors. Opposition was fierce and led to large demonstrations. The Government reacted by deploying riot police, who were accused of using excessive force (firearms, batons and tear gas) and arbitrary arrests.

### The Case of FERTICA<sup>37</sup>

X In 1995, the national fertilizer company, FERTICA, was privatized. Shortly thereafter, the company fired 20 workers in violation of the collective bargaining agreement that had existed with the Association of Fertilizer Workers (ATFe) since 1970. The union complained that the dismissals were in violation of the agreement, and the company quickly fired them also. In September of 1999, the company simply fired all 265 employees and rehired them on contracts whose conditions were substantially inferior to the collective agreement. In place of ATFe, the company established the Solidarity Association of FERTICA.

ATFe attempted to use administrative measures, legal actions and a petition to the ILO. First, ATFe approached the Ministry of Labor. However, the Ministry stalled for so long after the inspection that it decided the time for action had expired. ATFe then approached the Constitutional Court, which denied its petitions. The Court delayed even longer than the Ministry of Labor, delivering its final decision in 1999. ATFE also presented legal petitions before the Labor Court and initiated a process that took more than four years without result.

In 1996, ATFe filed a complaint before the ILO. The Committee on Freedom of Association deplored the unfair labor practices and the dilatoriness of the Government in addressing these practices. The Committee requested that the Government take measures to mediate the dispute

*1 total case*

between the parties, while respecting the right to bargain collectively and to reinstate the dismissed workers. The Committee requested that the workers dismissed for their trade union affiliation be reinstated and that the collective agreement be implemented.

The Government failed to implement its recommendations. None of the executive board of ATFe or the 265 members was reinstated, the collective bargaining agreement was not implemented. Furthermore, the company engaged in more anti-union practices that were verified by the Labor Inspector but were not addressed or resolved by the Government. These included blocking ATFe's attempts to communicate with its members, refusing to recognize the ATFe board, establishing a parallel board, refusing to turn over to the union dues that the company had deducted from union members; and refusing to participate in collective bargaining. As a result, ATFe filed another complaint with the ILO in 1998. In response to that complaint, the Committee on Freedom of Association:

- a) urged the Government to take new measures to implement without delay its recommendations made regarding the earlier case: to ensure that the dismissed employees are reinstated and that the collective bargaining agreement is implemented.
- b) expressed concern regarding the Government's slowness, noting that the long delay amounts to a denial of justice.
- c) deplored that FERTICA had again engaged in anti-union practices and urged the Government to take measures to ensure that FERTICA recognize ATFe, turn over the withheld dues; and refrain from interference with the union that amounts to grave violations of the principle of freedom of association;
- d) requested that the Government ensure that FERTICA honors the collective agreement.
- e) requested that the Government take measures to conduct detailed investigations into all the allegations against FERTICA and ensure that the judicial orders against dismissals be respected.

As a result of this action the union's legal case for recovery of dues retained by the employer was reinstated; however the court order requiring that the dues be turned over to the union has still not been enforced. An attempt by the company union to legally dissolve ATFe was also rejected by the courts. However the principal case of illegal dismissals, some of which occurred more than five years ago, has still not been resolved.

#### **The Government Denies the Right to Strike**

The right to strike, a necessary corollary to effective collective bargaining, is effectively non-existent in Costa Rica. The law sets out detailed and burdensome requirements for demonstrating the legality of a strike, including the presentation by the union of a list of striking workers to demonstrate 60% participation, as well as the exhaustion of administrative requirements that have taken on average three years to complete. As a result, in the fifty years during which the Labor Code has been in effect, only two strikes have been held legal. Draft labor reform legislation proposed by the government does not remove this requirement, which has been criticized by the ILO.<sup>38</sup> A constitutional challenge to the Labor Code provisions governing the declaration of a legal strike, brought in July 1999, has been pending before the Constitutional Court which has not yet decided if it will even consider the case.

Strikes remain effectively prohibited in the public sector, in agriculture, and in transportation, despite a 1998 ruling by the Supreme Court which declared illegal sections 376(a) and (b) of the Labor Code, which respectively prohibited strikes by public officials and agricultural workers.<sup>39</sup> The Constitutional Chamber, reviewing this decision, held in March 2000 that a judge must first determine that "services necessary to the well-being of the public" will not be jeopardized before a public sector strike can proceed. However, neither the courts nor the legislature have adopted criteria to define these services, leaving strike procedures effectively paralyzed for lack of legal guidance.<sup>40</sup> In addition, sections 375 and 376(c) of the Labor Code still prohibit the exercise of the right to strike in the rail, maritime, and air transport sectors. The ILO has expressed strong hope that in the very near future the Government will take measures to recognize workers' right to strike in these sectors.<sup>41</sup>

Child

#### *The Costa Rican Government Fails to Prevent Child Labor*

The Costa Rican Constitution and Labor Code establish a minimum working age of 15 years and provides special protections for children between the ages of 15 and 18 years. Nevertheless, a 1999 study by the Ministry of Labor reported that up to nine percent of children between 5 and 14 years of age are working in either the formal or informal workforce<sup>42</sup>, while an IPEC survey indicated that 56,261 children under 14 are employed, excluding those working in the informal economy.<sup>43</sup> The US State Department report that "child labor remains an integral part of the informal economy, particularly in small-scale agriculture and family-run microenterprises selling various items, which employ a significant proportion of the labor force."<sup>44</sup> "An estimated 70,000 girls and young women, many of whom are Nicaraguan immigrants and some 40% of whom started work before age 14, work as domestic servants."<sup>45</sup>

Child prostitution in Costa Rica, much of it linked to sex tourism, has attracted increasing attention.<sup>46</sup> There are an estimated 3000 child prostitutes in San Jose.<sup>47</sup> Child advocacy groups have criticized the government for failing to provide the National Institute for Children (PANI) with sufficient resources and for inadequate enforcement of laws against child prostitution and sex tourism.<sup>48</sup>

MW standards = wages

#### *The Costa Rican Government Fails to Afford its Workers Acceptable Conditions of Work.*

The Ministry of Labor effectively enforces the legally mandated minimum wages in the San Jose area, but does so less effectively in rural areas. Especially at the lower end of the wage scale the minimum wage is insufficient to provide a worker and family a decent standard of living.

H+S

A 1967 law on health and safety in the workplace requires industrial, agricultural, and commercial firms with 10 or more workers to establish a joint management-labor committee on workplace conditions and allows the Government to inspect workplaces and to fine employers for violations. The State Department reports that most firms subject to the law establish such committees but either do not use the committees or neglect to turn them into effective instruments for improving workplace conditions. While workers have the right to leave work if conditions become dangerous, those who do so may find their jobs in jeopardy unless they file written complaints with the Labor Ministry. Due partly to budgetary constraints, the Ministry has not fielded enough labor inspectors to ensure consistent maintenance of minimum conditions of

safety and sanitation, especially outside San Jose.<sup>49</sup> There are continuing allegations of aerial spraying of pesticides on Costa Rican banana plantations.<sup>50</sup>

## CONCLUSION

The evidence presented above clearly demonstrates that the Government of Costa Rica has for many years systematically and intentionally refused to take any steps to afford internationally recognized worker rights, specifically the freedom of association and the right to organize and bargain collectively, to Costa Rican workers. This refusal has persisted despite numerous and repeated entreaties from the International Labor Organization and the international trade union movement. In addition, the evidence shows that Costa Rica has not complied with its obligation to eliminate the worst forms of child labor, specifically the use, procuring, or offering of a child for prostitution. Therefore, this petition should be granted and Costa Rica should be removed from the list of beneficiary countries under both the Generalized System of Preferences and the Caribbean Basin Economic Recovery Act.

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<sup>1</sup> 19 U.S.C. 2462(b)(2)(G) states that:

*The President shall not designate any country a beneficiary developing country under this subchapter if any of the following applies:...(G) Such country has not taken or is not taking step to afford internationally recognized worker rights to workers in the country (including any designated zone in that country); (H) Such country has not implemented its commitments to eliminate the worst forms of child labor.'* (Emphasis supplied).

Similarly, pursuant to 19 U.S.C. 2702(b):

*the President shall not designate any country a beneficiary country under this chapter - (7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 2467(4) of this title) to workers in the country (including any designated zone in that country).* (Emphasis supplied).

<sup>2</sup> Social Watch Report, 2001. <http://www.socwatch.org.uy/>

<sup>3</sup> U.S. Embassy, Political and Economic Section, Macro-Economic Report, 1<sup>st</sup> Quarter 2001.

<sup>4</sup> After Costa Rican unions made public their intention to pursue a GSP petition earlier this year, the Government accepted an ILO technical assistance mission.

<sup>5</sup> U.S. Department of State, Country Report on Human Rights Practices, 2000.

<sup>6</sup> According to 19 U.S.C. 2467, the term "internationally recognized worker rights" includes:

- (A) the right of association;
- (B) the right to organize and bargain collectively;
- (C) a prohibition on the use of any form of forced or

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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 2000 amendments to the statute added to this list the worst forms of child labor, which are defined as:

`(A) all forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

`(B) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes;

`(C) the use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and

`(D) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.

<sup>7</sup> Consejo Superior de Trabajo, Comisión Ad Hoc de la Concertación. *Informe Concertado "Libertad Sindical,"* 5 October 1998.

<sup>8</sup> Acta Acuerdo, 23 de noviembre de 1999, entre Jefes de Fracciones Legislativas Mayoritarias, Ministro de Trabajo y Seguridad Social y organizaciones sindicales, acuerdos 8, 10 y 11.

<sup>9</sup> Expediente legislativo no. 13,475 (procedures for protecting immunity of trade union leaders (*fuero sindical*) and trade union autonomy; expediente legislativo no. 13,560 (reforms of procedures for punishing infractions of labor laws).

<sup>10</sup> The Costa Rican unions have set out benchmarks for immediate reforms to bring Costa Rica into compliance with ILO norms in a letter to the Labor Minister dated 24 May 2001.

<sup>11</sup> Corte Suprema de Justicia, Sala Constitucional, Resolución 5000-93, 8 Octubre 1993; Voto 3421-94, 8 July 1994.

<sup>12</sup> ILO, *Comentarios del Departamento de Normas Internacionales del Trabajo de la OIT sobre las disposiciones del proyecto relativas a la libertad sindical*, 22 December 1998.

<sup>13</sup> See Corte Suprema de Justicia, Sala Constitucional, Voto 0161-96, 10 Enero 1996; Voto 2574-96, 31 Mayo 1996; Cases of UNEIDA and INCOFER.

<sup>14</sup> For example, union representatives dismissed by the SARET Group, whose reinstatement was ordered by the Second Labor Court of Alajuela in January 1997 but who have been unable to compel the employer to reinstate them. ILO Report 300, Case 1780, para. 143.

<sup>15</sup> See International Confederation of Free Trade Unions, *Internationally-Recognised Core Labour Standards in Costa Rica: Report for the WTO General Council Review of the Trade Policy of Costa Rica*, May 2001 [hereinafter ICFTU Report], at 4.

<sup>16</sup> Data from Department of Social Organizations, Ministry of Labor and Social Security, August 2000.

<sup>17</sup> ICFTU Report at 5.

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- <sup>18</sup> ICFTU Report at 3; International Labor Organization, Committee of Experts on the Application of Conventions and Recommendations [hereinafter ILO CEACR], Individual Observation concerning Convention No. 87, 2001.
- <sup>19</sup> ILO CEACR, Individual Observation concerning Convention No. 87, 2001.
- <sup>20</sup> Labor Code, Article 504.
- <sup>21</sup> Law No. 6970, 7 November 1984.
- <sup>22</sup> Data from Departamento de Relaciones de Trabajo, Ministerio de Trabajo y Seguridad Social.
- <sup>23</sup> Mario Alberto Blanco Vado, Informe Sobre la Situacion de la Libertad Sindical en Costa Rica, November 1997.
- <sup>24</sup> See generally ILO Committee on Freedom of Association, Case No. 1984, concernign numerous worker rights violations on Costa Rican banana plantations, which is discussed in Reports Nos. 316 (1999), 320 (2000), and 324 (2001).
- <sup>25</sup> ICFTU Report at 4.
- <sup>26</sup> Information in this section from ILO Committee on Freedom of Association, Report No. 320, Case No. 2024 (2000).
- <sup>27</sup> Procuradoria General de la Republica, Dictamen No. C-007-80, 18 January 1980.
- <sup>28</sup> A large number of universities and municipalities are prohibited from negotiating over wages under this ruling. Examples include the Universidad Nacional, the Universidad de Costa Rica, and the municipalities of Cartago, Escazu, La Cruz, and Santa Cruz.
- <sup>29</sup> Corte Suprema de Justicia, Sala Constitucional, Voto No. 1696-92.
- <sup>30</sup> Consejo de Gobierno, Directriz No. 162, acuerdo unico, articulo tercero de la sesion ordinaria No. 125, 6 October 1992.
- <sup>31</sup> ILO Committee on Freedom of Association, Report No. 320, Case No. 2030, para. 596 (2000)
- <sup>32</sup> Decreto Ejecutivo sobre el reglamento para la Negociacion de Convenciones Colectivas en el Sector Publico, May 2001; Letter from Costa Rican unions to Minister of Labor, 24 May 2001.
- <sup>33</sup> Corte Suprema de Justicia, Sala Segunda, Sentencia No. 1999-00339, 29 October 1999. This decision was reaffirmed by a decision of the Constitutional Chamber this year (Sentencia No. 2001-1822)
- <sup>34</sup> Corte Suprema de Justicia, Sala Constitucional, Voto No. 2000-7730.
- <sup>35</sup> Information in this section from ILO Committee on Freedom of Association, Report No. 320, Case No. 2030 (2000); see also Ronald Moya Chacon, "Eliminan privilegios en Recope," *La Nacion*, 12 January 2001.
- <sup>36</sup> Information in this section from the Rerum Novarum Confederation of Workers.
- <sup>37</sup> Information in this section from ILO Committee on Freedom of Association, Report No. 311, Case No. 1966 (1998).
- <sup>38</sup> ILO CEACR, Individual Observation concerning Convention No. 87, 2001.
- <sup>39</sup> *Id.*
- <sup>40</sup> ICFTU Report at 6.
- <sup>41</sup> ILO CEACR, Individual Observation concerning Convention No. 87, 2001.
- <sup>42</sup> U.S. State Department Report.
- <sup>43</sup> ICFTU Report at 9.
- <sup>44</sup> U.S. State Department Report.
- <sup>45</sup> ICFTU Report at 9.
- <sup>46</sup> "Deaths force Costa Rica to fight child-sex trade," Miami Herald, 14 May 2001.

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<sup>47</sup> ICFTU Report at 9.

<sup>48</sup> U.S. State Department Report.

<sup>49</sup> *Id.*

<sup>50</sup> *See, e.g.*, Cameron McWhirter and Mike Gallagher, "Workers sprayed in the fields," *Cincinnati Enquirer*, 3 May 1998.