

# Labor's Anti-Trade Drive Claims a Victim, Guatemala

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GUATEMALA CITY – On March 26, in order to be in compliance with International Labor Organization guidelines, the Guatemalan Congress passed a set of eight labor reforms. Unsatisfied with the extent of the legislation, U.S. Ambassador Prudence Bushnell paid an uninvited visit on May 3. She threatened that if it failed to pass 28 additional regulations proposed by the Ministry of Labor, the U.S. would kick Guatemala out of the Caribbean Basin Initiative (CBI) and the General System of Preferences (GSP), two preferential-trade programs on which many farmers, laborers and businesses in Guatemala rely. Ms. Bushnell's threat, which she claims is backed by the U.S. State Department, achieved its desired results. On Monday, Congress passed all but three of the remaining laws that she demanded.

Exclusion from CBI and GSP would harm many Guatemalans, but so will compliance with Ms. Bushnell's demands, which place extraordinary power in the hands of a few, weaken the rights of workers, and discourage investment. In a country where concentrated power has produced so much corruption, inequality before the law, and capital flight, this arm-twisting by the U.S. will have very damaging consequences. A U.S. Trade Representative official told a representative of U.S. business interests here, «We needed to throw a bone to labor.» Apparently the future of Guatemala was the easiest «bone» to throw.

One example of the foolhardy nature of these regulations is found in the minimum-wage provision: Minimum-wage rates are to be fixed unilaterally by the minister of labor, instead of by a tripartite commission as recommended by the ILO. This will concentrate extraordinary discretionary power in the hands of a single individual. Also, fines for non-compliance with labor laws are to be decided by Ministry of Labor inspectors – appointed by the minister – rather than adjudicated by the courts, as called for by the Guatemalan constitution. Moreover, the proposed fines are confiscatory in nature. For every week of non-compliance an employer must pay each worker 10 to 50 times the monthly minimum wage. With fines levied exclusively by the Ministry of Labor, this becomes an easy mechanism with which to arbitrarily punish or confer privilege.

Another of the new laws exempts union leaders from criminal responsibility for any damages resulting from a strike called with the approval of the union's general assembly or executive committee, which is tantamount to giving them the right to incite to criminal actions with impunity.

Three of the proposals in the original package of reforms endorsed by Ms. Bushnell have yet to be addressed by Congress. These would subject non-union workers to the tyranny of unions and the minister of labor. The decision to call a strike or to negotiate under collective bargaining would lie

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exclusively with unionized workers, who would need only a simple majority vote. Under this scenario, even if unionized workers constitute a tiny minority of total employees and the majority of employees oppose a strike or "collectively bargained" agreement, the vote of non-unionized workers will not count. Under another proposed reform, a worker could not be fired for one year from the date of joining a union, which would give him a privileged and powerful position compared to non-union workers. Ms. Bushnell also fought for a law that would have exempted union leaders from having to account to their members on how they spend union dues. The voluntary labor association Solidarity has three times as many members as do unions, but the changes advocated by Ms. Bushnell would silence the voices of these workers, which would only be regained if they join a union.

The Bushnell-backed laws also propose to make a union decision in one company extensive to all «related» companies. Again, discretionary power will lie exclusively with the minister of labor, who will decide which enterprises are "related." Through the decision of this one individual, a strike in one company (or a "collective bargaining" agreement with that company's union) would apply to other companies. Such a policy has the potential to grant a minority of employees in a single company the right to decide to strike or negotiate on behalf of potentially hundreds, or thousands, of workers who not only have no say in the issue, but who also may disagree.

The new rules pushed by the ambassador are designed to invest the minister of labor with dictatorial powers. Not surprisingly, Guatemala's minister of labor is working closely with Ambassador Bushnell in this project. Such regulations are tai-lor-made to expand corruption, as well as open new opportunities for political and personal vendettas through fiscal terrorism. Interestingly,

Guatemala is the only country operating under CBI or GSP being pressured to adopt such draco-nian laws, although the labor laws of most member countries are similar to the ones Guatemala is being forced to abandon.

In Guatemala, 20 employees or more can freely form a union. The level of freedom of speech and association enjoyed today in Guatemala makes the country entirely different from 16 years ago, when the current constitution was enacted. Guatemala's union movement remains weak because of the perception by workers that unions imply more costs than benefits, as well as the strong support among workers for the Solidarity labor association, with its open entry and exit.

If signed by President Alfonso Portillo, the Bushnell-backed laws will further undermine Guatemala's fragile economy, delivering a death-blow to already meager investment, both local and foreign. Emigration will provide a safety valve – especially emigration to the U.S., where laws such as those proposed by Ms. Bushnell would find no support. This is because they not only strangle labor mobility and, thus, economic growth, but they also violate basic principles of fair play and democracy.

Alternative reforms have been proposed in Guatemala that would actually enhance the position of all laborers by encouraging labor mobility and freedom of association. One is a recommendation to allow laborers to seek the best negotiating arrangements or instruments to improve working conditions, rather than giving monopoly bargaining and strike rights to unions.

Under the Guatemalan constitution, the consequences of deferring to Ms. Bushnell's threat will be forever. The constitution stipulates that once entitlement is conferred on labor, Congress can never subsequently overturn it, no matter how damaging the result.