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January 9, 2012

The Honorable Ron Kirk
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

RE: **Comments in Response to Notice on AFL-CIO GSP/Worker Rights Petition**
Regarding the Republic of Georgia (Case Number 001-CP-10)

Dear Mr. Ambassador:

This letter presents the comments of The Heritage Foundation ("Foundation") in response to the Office of the United States Trade Representative notice that the Generalized System of Preferences (GSP) Subcommittee of the Trade Policy Staff Committee has accepted for review a country practices petition submitted by The American Federation of Labor & Congress of Industrial Organizations (AFL-CIO) regarding the Republic of Georgia (Case No. 001-CP-10), 76 *Fed. Reg.* 67530 (November 1, 2011). The AFL-CIO petitioned to remove the Republic of Georgia from the list of eligible beneficiary developing countries pursuant to the GSP (19 U.S.C. 2462(d)).

The Foundation is a District of Columbia nonprofit corporation that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, with the mission "to formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense." The Foundation submits these comments as permitted by law (5 U.S.C. 553(c), 2 U.S.C. 1602(8)(B)(x), 26 U.S.C. 4911(d)(2)(E) and 15 CFR 2007.0(c)("other person")).

The Foundation recommends that the President or his authorized delegate deny the AFL-CIO petition.

I. Applicable Law Specifies Factors to Be Considered

Section 2462(d) of title 19 provides that the "President may withdraw, suspend, or limit the application of the duty-free treatment accorded . . . with respect to any country" and that, in taking such action "the President shall consider the factors set forth in section 2461 of this title and subsection (c) of this section." Section 2461 provides that:

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this subchapter. In taking any such action, the President shall have due regard for--

- (1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;
- (2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;
- (3) the anticipated impact of such action on United States producers of like or directly competitive products; and
- (4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

Section 2462(c) provides:

(c) In determining whether to designate any country as a beneficiary developing country under this subchapter, the President shall take into account--

- (1) an expression by such country of its desire to be so designated;
- (2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;
- (3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;
- (4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that

it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective protection of intellectual property rights;

(6) the extent to which such country has taken action to--

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

No single factor in the statutory lists predominates over the others in making decisions whether to withdraw duty-free treatment. The President must give due regard to all four factors identified in section 2461 and must take into account all seven factors identified in section 2462(c). Finally, section 2462(d) makes withdrawal discretionary and not mandatory, as it says the President "may" withdraw duty-free treatment after considering the statutory factors.

The AFL-CIO petitions (page 1) argues that the Georgia Labor Code "falls far short of internationally recognized worker rights." Federal law (19 U.S.C. 2467) states that 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 compulsory labor;

(D) a minimum age for the employment of children, and a prohibition on the worst forms of child labor, as defined in paragraph (6); and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The referenced term "worst forms of child labor" refers to:

(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.

The work referred to in subparagraph (D) shall be determined by the laws, regulations, or competent authority of the beneficiary developing country involved."

Applying these standards set forth in the law, the President should deny the AFL-CIO petition.

II. The Republic of Georgia Has Taken or Is Taking Steps to Afford to Workers in Georgia Internationally Recognized Worker Rights

Of the eleven statutory factors the President must consider in deciding whether to withdraw duty-free treatment, the AFL-CIO alleges that the Republic of Georgia falls short with respect to only a single factor -- internationally recognized worker rights. It should be noted that the statutory factor does not establish "perfection" as the standard with respect to internationally recognized worker rights (a standard that no country would meet). Instead, the statutory factor sets a standard of "progress" -- the statutory factor (19 U.S.C. 2462(7)) is that "the country has taken or is taking steps to afford to workers in that country . . . internationally recognized worker rights." Georgia meets the standard set by the statutory factor, as Georgia has, in fact, taken and is taking steps to afford to workers in Georgia internationally recognized worker rights.

Although Georgia was an independent nation for three years in the 20th century (1918-1921), the Union of Soviet Socialist Republics (USSR) forcibly incorporated Georgia into its Union thereafter and Georgia suffered under Soviet domination until the USSR collapsed in 1991. Suddenly achieving independence again, Georgia worked to build a country that could survive and serve its people.

According to the U.S. Central Intelligence Agency, Georgia's main economic activities include agriculture, mining, and a small industrial sector. The country is highly dependent on imports, and especially for fuel. CIA estimates the Georgia Gross Domestic Product (purchasing power parity) in 2010 was \$22.44 billion. The country exports scrap metal, wine, mineral water, ores, vehicles, fruits and nuts. CIA estimates that the Georgia's exports amounted to \$2.46 billion in 2010. The small country, about the size of South Carolina with a population of 4.5 million, borders on a hostile Russia, which invaded Georgia in August 2008.¹ Georgia faces a challenge of defending itself against a hostile neighbor, maintaining democracy, and building a sound economy.

Georgia has taken and is taking steps to afford to workers in Georgia internationally recognized worker rights. Articles 24, 25, and 26 of The Constitution of Georgia (1996) guarantees Georgians the freedoms of speech, the press, assembly, and association, explicitly including the right to associate in trade unions. Article 30 provides for protection by law of labor rights, fair remuneration of labor, safe, healthy working conditions, and the working conditions of minors and women.

Georgia has become a state-party to all eight of the International Labor Organization (ILO) fundamental conventions²:

Right to Organise and Collective Bargaining Convention, 1949 (joined 1993);

Equal Remuneration Convention, 1951 (joined 1993);

Discrimination (Employment and Occupation) Convention, 1958 (joined 1993).

Abolition of Forced Labor Convention, 1957 (joined 1996);

Minimum Age Convention, 1973 (joined 1996);

Forced Labour Convention, 1930 (joined 1997);

Freedom of Association and Protection of the Right to Organize Convention, 1948 (joined 1999); and

Worst Forms of Child Labour Convention, 1999 (joined 2002).

Georgia reported to the World Trade Organization in 2009 that its Labour Code enacted in 2006 complies with the ILO core standards such as:

¹ CIA World Factbook (2011), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/gg.html>.

² ILO Table of Ratifications of Fundamental Conventions (as of January 5, 2012), available at <http://www.ilo.org/ilolex/english/docs/declworld.htm>.

- freedom of association and the right to collective bargaining;
- the elimination of all forms of forced or compulsory labor;
- the abolition of the most hazardous forms of child labour; and
- the elimination of discrimination in respect of employment and occupation.

Georgia noted that "[t]he Labour Code of 2006 replaced the Soviet style labour legislation adopted in the seventies."³

The European Union inquired about Georgian cooperation with the ILO in the written questions-and-answers following the WTO review:

1. Could Georgia provide an update on the implementation of this Joint Statement, including on preparations of possible changes to its labour legislation in line with the ILO's recommendations?

Response

In December, 2008 a memorandum was signed between the Ministry of Labour, Health and Social Affairs (MoHLSA), the Georgian Trade Union Confederation (GTUC) and the Georgian Employers Association (GEA) that established provisions to start a social dialogue process in Georgia. This process was facilitated by the ILO expert consultant who participated in most of the meetings held by the parties and streamlined the process in general.

Social partners have been holding sessions regularly since December 2008, at least once a month (in some cases several times a month) to discuss issues concerning the labor legislation and other issues of labor relations.

An ILO social dialogue roundtable was held in Tbilisi end October 2009. The two day roundtable was chaired by the ILO Executive Director, Mr. Kari Tapiola. Participants included high level representatives of the Georgian Government, Trade Unions and Employers' Association.

Based on the conclusions of the roundtable, the Prime Minister of Georgia issued a decree that formalized and institutionalized a National Social Dialogue Commission.

The United States also asked a follow-up question and received the following answer from Georgia:

³ World Trade Organization, "Trade Policy Review Report by Georgia," WT/TPR/G/224 (3 November 2009), available at http://www.wto.org/english/tratop_e/tp_r_e/g224_e.doc.

Section 2.5, "Labor Market Reform," of the government's report asserts that Georgia's 2006 labor code is in compliance with the International Labor Organization's core labor standards. However, the ILO has observed as recently as 2008 that Georgia's labor code does not adequately provide for freedom of association, including by requiring 100 members to form a trade union. What steps is the government taking to address ILO concerns?

Response

Existing legislation (e.g. Constitution, Labour Code, Civil Code, Law on Trade Unions) provides for freedom of establishment of association and membership to any association, including trade unions.

The right of establishment of trade unions and the right of membership to trade union is ensured by the Constitution of Georgia. Article 26 of the Constitution stipulates that "Everyone shall have the right to form and join civil associations, including trade unions." According to the Article 2, Paragraph 3 of Law on Trade Unions, trade union can be established in any enterprise, establishment, organization and other employment facility.

Everyone in Georgia has the right to set up associations (including trade unions), because law provides for it (unless the objective of their establishment is against constitutional order and sovereignty). Establishment of associations means not only formation of the trade unions, but also establishment of any kind or form of association, organization, federation, including labour related bodies.

Establishment of civil association means any type of association including trade unions. Accordingly, legal definition of civil associations includes trade unions and all the rights of civil association are fully applicable to the trade unions as well without any reservation.

Current Georgian legislation stipulates the issues related to the freedom of association and membership to the trade union in much more free manner as compared to the previous Soviet Labour Code abolished in 2006. Existing legislation permits the establishment of any kind of association or membership to any association, including trade unions. As under the Soviet Labor Code, then existing trade union had a monopolistic position, workers had no other alternative than to become a member of this particular Trade Union (Article 2, paragraph 3.d).

Under the Georgian legislation, procedures of establishment of an association are simple. Establishment of an association needs at least 2 members and only registration fee of 26 EUR equivalent is to be paid.

Georgia is characterized with one of the highest association density in the region. At the same time Georgian legislation does not limit activities of associations unless it violates basic rights and freedoms of others and/or public order.

The civil association means any type of association including trade union and all the rights of civil association are applicable to the trade unions to full extent.

The discrimination based on membership to any association is a subject of a criminal liability. According to section 142 of the Criminal Code, violations of the equality based on membership of any civil association is punishable by imprisonment for a period of up to two years.

A number of Laws provide for freedom of associations, e.g.:

- Constitution of Georgia
- Labour Code
- Law on Trade Unions
- Law on Public Service
- Civil Code

According to the above-mentioned, Georgian legislation stipulates issues related to the freedom of association fully.

Regarding the concern that the limitation related to the number of members to form a trade union, it should be mentioned that according to the labour legislation, requirement of 100 persons to form a trade union is related to the confederation of trade unions and not to the primary trade unions. This argument is supported not only by legislation itself, but more importantly by practice. There are numerous of primary trade unions in Georgia with membership lower than 100, e.g.:

- Ministry of Culture, Monument Protection and Sport - 80 primary trade union members
- Ministry of Justice - 40 primary trade union members
- Ministry of Economic Development - 80 primary trade union members
- JSC Bank of Georgia - 80 primary trade union members.

An ILO Tripartite Roundtable was held in Tbilisi, Georgia on October 21-22. An ILO high level delegation, representatives of the Government of Georgia (GoG), the Georgian Trade Unions Confederation (GTUC) and the Georgian Employers Association (GEA) attended the Roundtable. Each party to the Roundtable was represented by 6 persons.

First, in signing the United States-Georgia Charter on Strategic Partnership on January 9, 2009, the United States and Georgia affirmed the "importance of our relationship as friends and strategic partners" and their intention "to pursue an Enhanced Bilateral Investment Treaty, to expand Georgian access to the General[ized] System of Preferences, and to explore the possibility of a Free-Trade Agreement." The United States needs to be good for its word with Georgia.

Second, with the encouragement of the United States, Georgia has sent armed forces to participate in the North Atlantic Treaty Organization's (NATO) International Security Force in Afghanistan (ISAF). Georgian troops have a significant role in Regional Command-South, under the operational control of a U.S. commander.⁵

Third, Georgia's remaining under GSP serves longstanding U.S. trade and foreign policy goals. The United States support the expansion of free enterprise across the globe. The 2012 Index of Economic Freedom published jointly by The Heritage Foundation and the Wall Street Journal shows that Georgia ranked as the 34th most free economy in the world. Reforms instituted by the Georgian Government in 2004 after the "Rose Revolution" of 2003, have resulted in GDP per capita tripled; bank deposits up eight fold, salaries four times larger; and private sector employment up by 50%. Notable reforms in business freedom, trade freedom, fiscal freedom, and labor freedom have spurred economic development in recent years. Despite a sharp economic contraction in 2008, the Georgian economy has averaged 4.8 percent annual growth over the last five years. According to the U.S. Department of State and the U.S. Agency for International Development (USAID), "Georgia is a key U.S. ally in the war on terrorism and a gateway for energy resources from the region to Europe and beyond. Since the 2003 Rose Revolution, the Government of Georgia (GOG) has carried out numerous democratic and economic reforms, raising the living standards of its citizens."⁶ Continued freedom to trade on beneficial terms with the United States, and robust free trade with other countries, will continue to be important to the economic health of this country friendly to the United States.

Fourth, the United States also needs to avoid taking actions that would undercut Georgia's economic health or political stability as it faces its relatively hostile neighbor Russia. Only three short years ago, the Russian Republic invaded Georgia. Approximately 20% of Georgian territory is not under the control of the Georgian government, with Russian forces in the regions of South Ossetia and Abkhazia and a European Union Monitoring Mission patrolling the administrative lines between the rest

⁵ NATO, ISAF, "Troop Numbers and Contributions" available at <http://www.isaf.nato.int/troop-numbers-and-contributions/index.php> (visited January 6, 2012).

⁶ U.S. Agency for International Development, "Georgia: Overview," available at http://www.usaid.gov/locations/europe_eurasia/countries/ge/index.html (visited January 6, 2012). See U.S. Department of State, "Background Note: Georgia" (visited January 6, 2012) available at <http://www.state.gov/r/pa/ei/bgn/5253.htm>.

of Georgia and those two regions under a 2008 ceasefire agreement between Georgia and Russia. Russia continues to impose economic sanctions on Georgia. The United States is committed to the political sovereignty and territorial integrity of Georgia; any appearance of a weakening in that commitment, such as through a downgrading of Georgia's trade status with the United States, would embolden those hostile to Georgia.⁷

If the U.S. were to grant the AFL-CIO petition and withdraw Georgia from the GSP, the United States would act inconsistently with its commitment in the Charter on Strategic Partnership "to expand Georgian access to the General[ized] System of Preferences," fail to show the respect due wartime coalition partners, harm U.S. trade and economic policy, and embolden those hostile to the country of Georgia.

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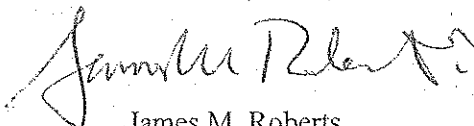
For the foregoing reasons, The Heritage Foundation recommends that the President or his authorized delegate deny the AFL-CIO Petition of September 10, 2010 to remove Georgia from the list of eligible beneficiary developing countries pursuant to 19 U.S.C. 2462(d) of the Generalized System of Preferences.

Sincerely,



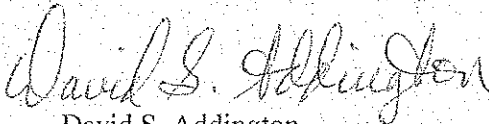
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David S. Addington

Vice President for Domestic and Economic Policy

⁷ U.S. Department of State, "Background Note: Georgia" (visited January 6, 2012) available at <http://www.state.gov/r/pa/ei/bgn/5253.htm>. Georgian trade with the United States accounted for \$353.9 million in 2010, according to the National Statistics Office of Georgia.

