

BEFORE THE UNITED STATES TRADE REPRESENTATIVE

POST HEARING BRIEF

FOR THE JANUARY 2012 HEARING ON THE PETITION TO REMOVE

GEORGIA

**FROM THE LIST OF ELIGIBLE BENEFICIARY DEVELOPING COUNTRIES
PURSUANT TO SECTION 19 USC § 2462(d) OF THE GENERALIZED SYSTEM OF
PREFERENCES (GSP)**

filed by

**THE AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL
ORGANIZATIONS (AFL-CIO)**

FEBRUARY 2012

Preliminary Information

A. Party Submitting Petition:

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B. Country Subject to Review:

Georgia

C. Section of Law Warranting Review

19 U.S.C. § 2462(c)(7)

D. Basis for Petition:

The Government of Georgia is not taking steps to afford internationally recognized worker rights, including the right of freedom of association and the right to organize and bargain collectively. On the contrary, the Government of Georgia's actions affirmatively suppress unions and deny worker rights.

This post-hearing brief contains the AFL-CIO's responses to the questions raised during the hearing, as well as the additional questions submitted thereafter. We have also supplied additional information that we believe is relevant to determining whether Georgia should remain a designated beneficiary developing country under the Generalized System of Preferences (GSP). This information supplements the information set forth in the 1) initial petition and 2) written and oral testimony.

I. INTRODUCTION

The Government of Georgia (GOG) is failing to take steps to afford internationally recognized worker rights. As the AFL-CIO argued in its petition and oral and written testimony, the GOG's failures are not a simple matter of legal shortcomings or isolated failures to enforce. Rather, the GOG's actions imply apparently deliberate efforts to deny workers the right to freely associate, organize, and collectively bargain in both the private and public sectors.

With regard to Georgian labor law, as the International Labor Organization (ILO) has recognized, the shortcomings are many.¹ For example, the legal regime fails to provide sufficient protection against anti-union discrimination at the time of recruitment or at the time of termination.

Although the Government of Georgia argued in its brief that it believes its law is sufficient to protect workers, it also declared that it is ready to initiate amendments to the labor laws in order to ensure a clear and better articulated prohibition on discrimination based on trade union membership. The AFL-CIO welcomes this and other promised changes to Georgian labor law. However, we note that experience has shown that promises of change from a government are not enough to change the lived experience of workers. We understand that the Government of Georgia can successfully advance the promised amendments through its parliament at any time, and encourage the USG to urge the GOG to do so with haste.

Beyond the shortcomings in Georgian labor law are the failures of the Government to afford internationally recognized worker rights in practice. A primary example is provided by the treatment of the Educators and Scientists Free Trade Union of Georgia (ESFTUG). The GOG's refusal to abide by a valid dues check-off agreement and its efforts to prevent nominally but not functionally "independent" local schools from making their own dues check-off agreements with the Educator's union have severely crippled that union, which has been one of the leading unions in the effort to reform the union movement in Georgia.²

¹ See "Observations of the Committee of Experts on the Application of Standards and Conventions" in Report of the Conference Committee on the Application of Standards, 99th International Labour Conference, Geneva, June 2010 (observing that the Labour Code does not provide adequate protection against anti-union discrimination or meaningful promotion of collective bargaining) ; 356th Report of the Committee on Freedom of Association, Case No. 2663 (Georgia), ILO Governing Body, Geneva, March 2010 (requesting GOG to take necessary measure to amend the Labour Code so as to ensure specific protection against anti-union discrimination, including anti-union dismissal, and provide for sufficiently dissuasive sanctions against such Acts). See also 357th Report of the Committee on Freedom of Association, Case No. 2678 (Georgia), ILO Governing Body, Geneva, June 2010.

² The refusal to cooperate with the ESFTUG is particularly galling given that the GOG is allowing a non-trade union organization, the Syndicate, to collect dues from teachers in at least ten counties via the check-off system.

II. FOLLOW UP QUESTIONS

1. The Government of Georgia has stated that its labor inspectorate was abolished because it was both corrupt and ineffective. According to the Government, other agencies of government, including the police, are conducting the functions of the former labor inspectorate. To what extent have unions in Georgia witnessed or have knowledge of enforcement of labor laws by any government entity? (Written)

Unfortunately, the AFL-CIO has not received reports from workers of examples of **effective** labor law enforcement since the abolition of the labor inspectorate in 2005. In addition to the reports the AFL-CIO has received regarding worker interactions with the police in connection with the 2011 strike at the Eurasian Steel-Herkules Plant in Kutaisi, the AFL-CIO has received reports of interaction with the police in connection with a strike at Geosteel, a privately-owned steel mill in the city of Rustavi in June 2010.

In that instance, on the third night of the strike, the police arrived and detained about 15 organizers of the strike for five hours. The police told them to stop the strike and to never again get involved in such a protest before releasing the detained workers. Three days after the end of the strike, the strike committee founded a trade union and immediately asked the management to start collective bargaining in order to resolve the issues which had precipitated the strike (including wages and health and safety concerns), but the employer refused. About a week later, all of the main leaders and activists of the new union were fired by the employer.

2. Are you aware of other countries where there is no formal labor inspectorate and, if so, what effect has this had on the enforcement of labor law? Please also address any shortcomings you see with the existing inspectorate mechanisms in Georgia. (Written and Oral)

The AFL-CIO is not aware of any other countries without a formal labor inspectorate.

However, by way of comparison, Colombia dissolved its labor ministry and merged it with the health ministry to form the "Ministry of Social Protection," an endeavor that was such a disaster that Colombia promised to reconstitute its labor ministry as part of the "Action Plan on Labor Rights" it agreed to in order to advance a vote on the Colombia FTA in the US Congress. Colombian trade unionists alleged that, with regard to labor, both the policymaking and regulatory functions of the MSP, as well as its capacity to function, were simply inadequate to the task. The MSP was unable to keep with the demands, and compliance with labor rights suffered as a consequence. Indeed, the USG recognized and affirmed this failure when it included the commitment to re-establishment of a stand-alone labor ministry with a sufficient budget and an increase of over 400 inspectors as part of the aforementioned Action Plan.

With regard to the effect of the dissolution of the inspectorate on the enforcement of labor law in Georgia, the dissolution means that there is no longer an agency that can address questions of industrial relations in a comprehensive manner. In fact, the AFL-CIO understands that neither

the police nor the Technical & Construction Inspectorate of Georgia (TCIG)³ have been provided legal jurisdiction to intervene in or inspect issues involving workplace disputes and labor law violations.

Furthermore, aside from lacking legal jurisdiction to address workplace disputes, the police are not trained in employment and industrial relations and are therefore ill-equipped to deal with complaints about workplace disputes and violations. In particular, the police are trained to view matters through a law enforcement lens.

And, as was demonstrated in the Herkules Steel and Geosteel cases, the police themselves committed serious abuses of labor rights, including violating the workers' right to freedom of association. In the Herkules case, the police detained workers and pressured them to sign statements that they would never again take part in protest activities. The police also went to workers' homes and escorted them to and from work. Police surveillance and intimidation of workers both at the factory and their homes continued for a month after the strike. Moreover, the police did nothing to stop the management of the Herkules Steel plant from requiring workers to sign documents in which they resigned from the union in order to keep or regain their jobs.

Such behavior is simply inconsistent with a respect for freedom of association. As the ILO's Committee on Freedom of Association has noted, "[a]ll appropriate measures should be taken to guarantee that, irrespective of trade union affiliation, *trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind.*"⁴ It is difficult how to see how this same police force that intimidated and detained workers can be charged (and trusted) with upholding the labor code at the same time.

Finally, in the Georgian Ministry of Labor, Health and Social Affairs, the AFL-CIO understands there are no labor lawyers or specialists. We also understand that there are no departments that even have the word "labor" in the title. The Ministry has reportedly informed the GTUC that the ministry's governing statute provides no jurisdiction to address labor-related issues, except to issue a technical decree about the amount of compensation for sick and maternity leave.⁵ Although the Prime Minister issued a decree to create the Tripartite Commission and appointed the Minister of Labor, Health and Social Affairs to the post of chair, the decree did not provide any specific additional jurisdiction regarding labor issues.

³ According to the GTUC Health and Safety Specialist, the statute establishing the TCIG provides it the authority to inspect and investigate accidents *after* they have taken place and only in certain workplaces of high risk (such as mines, steel mills, etc.). The TCIG also has the authority to check a workplace in response to a request by a worker therein to investigate an immediate safety issue (e.g., a possible gas leak). According to the GTUC Health and Safety Specialist, there is nothing in the TCIG statute authorizing enforcement of labor laws.

⁴ Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, Geneva, International Labour Office, Fifth (revised) edition, 2006 (hereinafter "CFA Digest of Decisions"), ¶ 35.

⁵ In addition, the labor code instructs the Minister of Labor, Health and Social Affairs to come up with a list of hazardous and dangerous professions.

The AFL-CIO strongly urges the USG to follow up swiftly with the GOG to re-establish a labor inspectorate forthwith and ensure that appropriate government officials have the authority and technical skills to effectively enforce all aspects of labor law in the interim.

3. In its testimony, the Government of Georgia proposed several areas of legislative reforms. To what extent do these changes address the concerns you have raised? To what extent have unions in Georgia been a part of any dialogue, including via the Tripartite Dialogue Mechanism, with the Government on these potential reforms?
(Written)

In its written and oral testimony, the GOG proposed to implement several reforms consistent with ILO guidance, but did not provide any specific legislative language. The AFL-CIO is reluctant to pre-judge which promises the GOG will act upon and to what extent the as-yet-to-be-seen legislation will fully accord all workers in Georgia internationally recognized labor rights. As we stated in testimony at the hearing, we welcome the proposed changes and encourage the GOG to obtain technical assistance from the ILO and to work closely with the GTUC to draft and implement all necessary changes.

With regard to union participation with respect to these potential reforms, the GTUC reports that the GOG has not yet discussed proposed changes to the labor code in the Tripartite Commission or in any other forum. The GTUC stands ready to work with the Tripartite Commission to discuss the reforms and in fact drafted a set of proposed reforms in 2008 in cooperation with the Georgian Employers' Association (GEA) and the GOG. These draft reforms were presented to the ILO in June 2008. However, by July 2008, the American Chamber of Commerce in Georgia (AMCHAM Georgia) had reportedly made its opposition known, and the GOG ceased work on that set of reforms.⁶

Stated in the broadest terms, the GTUC's preference is for labor code reform that would prioritize, but not be limited to, immediate action on the following issues:

- Establish *effective* provisions to deter and punish anti-union discrimination;⁷
- Require employers and unions both to negotiate promptly and in good faith once either party has made a request to begin collective bargaining, and ensure that the law provides adequate penalties to deter a refusal to bargain in good faith
- Establish *effective* provisions to swiftly address other types of labor disputes (including unfair labor practice allegations and other worker-employer conflicts);
- Create an *effective* labor inspectorate; and
- Create a truly neutral governmental agency to enforce the reforms.

⁶ The USG and GOG should have copies of the 2008 proposed reforms. However, the GTUC is willing to provide additional copies upon request.

⁷ The December 2011 decision by the Georgian Supreme Court's Collegium of Cassation held that the Labor Code, which lacks any effective provisions to prevent anti-union discrimination, trumps the Law on Trade Unions. In practice, the decision underscores the argument the AFL-CIO has presented in prior written and oral submissions that there is an urgent need to make immediate changes in Georgian labor law to effectively prohibit anti-union discrimination, a change critical to affording workers the internationally recognized right to freedom of association.

These changes must be consistent with internationally recognized worker rights. In addition, they must be made to the Labor Code, given that it supersedes any provisions of the Trade Union Law that may already address the priorities listed.

4. Based on your testimony, legislative reforms that improve protections against anti-union discrimination should be a priority. Do the AFL-CIO or the unions in Georgia have specific proposals for reforms they would like to see in this area? (Written)

The AFL-CIO recommends that the USG urge the GOG to institute reforms in law and practice that are consistent with the guidance of the ILO, specifically, any guidance in relation to Convention Nos. 87 (Freedom of Association and Protection of the Right to Organise), 98 (Right to Organise and Collective Bargaining), and 111 (Discrimination (Employment and Occupation)).⁸

The GOG may also want to consult other relevant resources to ensure its laws are in compliance. For example, in the European Convention on Human Rights, which Georgia has signed and ratified, parties agree to uphold "Freedom of Assembly and Association."⁹ Georgia has also acceded to the International Covenant on Economic, Social and Cultural Rights, in which parties undertake to ensure "[t]he right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests."¹⁰ Finally, the GOG may want to ensure its anti-discrimination proposals are consistent with the European Social Charter, which it has also signed and ratified. The European Social Charter guarantees the right to organize, protection in case of dismissal, and non-discrimination in the application of all rights enumerated therein.¹¹

The legal system should contain explicit and specific prohibitions on discrimination and retaliation against workers and others engaged in protected, concerted activity; workers and others engaged in all phases of union formation; and union office-holders and any other worker representatives; as well as provide sanctions and penalties sufficient to fully compensate victims of employer discrimination and retaliation and to deter such conduct. These prohibitions, penalties, and sanctions should apply to employers and their agents and those acting in concert with them. The legal and administrative machinery established to implement these rights and impose these sanctions and penalties must be capable of deciding controversies quickly and cheaply and must be accessible to workers. Procedures that simply allow complaints to endure without resolution or impose high costs on workers would not meet workers' needs.

⁸ See "Conventions and Recommendations," International Labour Organization, available at <<http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>>, last accessed Feb. 22, 2012.

⁹ See European Convention on Human Rights as amended by Protocols Nos. 11 and 14, Council of Europe Treaty Series, No. 5, Jun. 1, 2010, available at <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf>, last accessed Feb. 22, 2012.

¹⁰ See "International Covenant on Economic, Social and Cultural Rights," Office of the United Nations High Commissioner for Human rights, available at <<http://www2.ohchr.org/english/law/cescr.htm>>, last accessed Feb. 23, 2012.

¹¹ See European Social Charter (revised) CETS No.: 163, available at <<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=163&CM=8&CL=ENG>>, last accessed Feb. 23, 2012.

The GOG can likely obtain technical assistance as necessary from the ILO. It may also want to consult with members of the European Union—France and Sweden in particular have comprehensive regimes to protect workers from discrimination on the basis of trade union membership and activity.

5. The AFL-CIO cited a number of instances in which automatic dues deductions have been discontinued. The Government claims that this has been done, in part, to protect workers who have contributed one percent of their wages to the union involuntarily for years. What steps can be taken to ensure that all union members who are contributing dues are doing so voluntarily? (Written)

The GOG has no right to unilaterally withdraw from a valid dues collection agreement, regardless of its opinion of the quality of the union.¹²

The AFL-CIO understands that current practice in Georgia allows workers to leave a union any time they wish. All they need do is inform the trade union leader in their workplace in writing of their wish to leave the union. Upon receipt of the written notice, union membership is immediately terminated and dues deduction ceases (absent a legally binding provision requiring the payment of agency fees). If such practice is not enshrined in law, and the GOG determines there is a need, such practice could be codified. What is crucial is that there be no role, formal or otherwise, for the employer or the GOG in the process—such a role could allow for undue influence and persuasion. It is important to note in this regard that the GTUC alleges that the GOG is presently doing everything in its power to get workers to leave trade unions, including coercion in mandatory group meetings and drafting letters of resignation for workers to sign. As a result, according to the GTUC, workers are afraid to stay in the unions: workers do not fear the unions, but they do fear the GOG, which can fire them or get them fired.

Instead of taking unilateral action that starves unions of funds, the GOG ought to abide by a neutral process whereby individual workers can request to withdraw from membership in the union if they so desire, free from government or employer coercion or interference, and thereby cease dues payment, absent a legally binding provision requiring payment as a condition of employment. The GOG should not make assumptions about whether workers are unknowing or unwilling members of unions.¹³ The GOG has apparently made such assumptions in the past,

¹² CFA Digest of Decisions” ¶ 475 (“The withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided.”). See also CFA Digest of Decisions, ¶ 693 (Even “[i]f it was found that certain members of the trade union had committed excesses going beyond the limits of normal trade union activity, they could have been prosecuted under specific legal provisions and in accordance with ordinary judicial procedure, **without involving the suspension and subsequent dissolution of an entire trade union movement.**” (emphasis added) Because a unilateral abrogation of a valid dues agreement undermines a union and is a step toward dissolution by starving the union of funds, the same principle should apply here: the GOG had other options to address its concerns with the functioning of the union short of its decision to unilaterally end dues collection.)

¹³ See 344th Report of the Committee on Freedom of Association, Case No. 2470 (Brazil): Interim report, ILO Governing Body, Geneva, March 2007 (“The Committee considers that the distribution of resignation forms and the setting up of a toll-free telephone line providing information on how to resign from the Union constitute interference in the internal affairs of the Union.”).

which led it to unilaterally abrogate contractual obligations and leave thousands of workers without effective representation.¹⁴

As above, the GOG can likely obtain necessary technical assistance from the ILO.

6. More specifically, with the unions that you're involved with, can you provide any statistics now or in the post-hearing comments about the change in their union membership given the circumstances that you've alleged are occurring? (Oral)

The GTUC maintains that most, if not all, of the net membership losses in recent years are due to the GOG's abrogation of valid agreements to collect dues, failure to protect workers from anti-union discrimination, and other policies that have been anti-union in effect if not in purpose. Exact figures are not available for all unions, but the AFL-CIO has obtained the following round figures:

- The Railway Workers Union has gone from more than 14,000 to about 13,000 members.
- The Public Servants Trade Union has lost 2,400 members.
- The Health Care Workers Trade Union has lost nearly 1,000 members.
- Agricultural Workers Trade Union has lost 600 members.
- While the ESFTUG could not provide any accurate estimates on the number of teachers who have actually resigned from the union, it did provide monthly dues collection figures, which show that dues collection went from 90,935.96 GELs in March 2010 to 354.83 GELs in December 2011 (the most recent figures available).

III. ADDITIONAL COMMENTS IN RESPONSE TO THE GOG'S ORAL AND WRITTEN TESTIMONY

1. Report on January 23 ESFTUG-MOES Meetings That Indicates GOG Does Not Support Internationally Recognized Worker Rights (Relevant to USG Questions to GOG, Nos. 1, 7, and 8)

On January 23, the day before the GSP hearing, a meeting was scheduled between the lawyers of the Ministry of Education and Science (MOES) and the ESFTUG. The meeting occurred as scheduled, but no one from the MOES legal department attended. Instead, the head of the Education Quality Department of the MOES, Mr. Petre Tsurtsunia, and a woman from the MOES (we believe it was Tamuna Mamukelashvili) were present.

The ESFTUG president, Maia Kobakhidze, and her remaining lawyer (the other more experienced lawyer left the week prior after having forgone some pay due to the severe financial constraints of the union in the face of the cutoff of dues) also attended.

¹⁴ The GOG's actions are clearly not consistent with ILO Guidance. 357th Report of the Committee on Freedom of Association, Case No. 2678 (Georgia), *supra*, at ¶ 73.

At the meeting, Mr. Tsurtsunia repeatedly stated that in any school where Ms. Kobakhidze could prove that she had at least one-third of the school's employees as members, the school principal would conclude a collective bargaining agreement (CBA) with the ESFTUG. In this discussion, it was understood that any such CBA would include a dues check-off agreement and that the school accountant would deduct and transfer ESFTUG member dues to the ESFTUG account.

Mr. Tsurtsunia's statements were clearly inconsistent with the GOG's contention, in its oral and written statements, that "schools are independent legal entities" over which the MOES exercises "neither financial nor decision making powers."¹⁵ If the GOG can promise to enter into collective bargaining with ESFTUG at any school at which the ESFTUG can prove a particular membership threshold, this is an indication that the GOG has more control over schools than it has previously admitted¹⁶ and that the abrogation of dues check-off agreements and the refusal to engage in collective bargaining with ESFTUG have other, unstated motives.

Ms. Kobakhidze responded that she could not understand why the MOES was insisting on the minimum number of members to be one-third. She gave examples of schools in which she had 100% membership and where she had only 18% membership. She asked why teachers at certain schools would be prevented from exercising their right to join a union and be covered by a CBA.

The MOES then indicated that the schools would need to hire new bookkeepers and accountants to implement a check-off system for the ESFTUG. Ms. Kobakhidze replied that the difficulties of administering dues check-off were apparently being overcome to benefit the Syndicate (the GOG-supported education-sector "union," which has few members and did not meet the requirements—at least at the time it registered—to become an actual union)¹⁷ and that she knew of no new bookkeepers or accountants hired as a result.¹⁸

The MOES also asked why the ESFTUG was seeking CBAs given that it had instituted some interim measures to try to collect dues in the absence of a dues check-off agreement. ESFTUG explained that a CBA is much more than just dues collection.

Importantly, Mr. Tsurtsunia also reportedly told Ms. Kobakhidze that CBAs are just like any other contract and that neither the MOES nor school principals are obliged by law to enter into

¹⁵ In addition, ESFTUG maintains that the proposal was inconsistent with Georgian law, which allows unions to set the threshold for membership in a local or primary workplace. In ESFTUG's constitution, that number is set at three.

¹⁶ The non-independence of local schools implied in this meeting is consistent with the conclusions of Transparency International Georgia. See <<http://www.transparency.ge/en/post/report/setting-georgia%E2%80%99s-schools-free-an-assessment-whether-decentralisation-reforms-have-made-g>>, last accessed Feb. 22, 2012.

¹⁷ The Syndicate was founded by three people even though Georgian law requires a trade union to be founded by a minimum of 100 people. The three founders were Mr. Davit Shavshiashvili, who at the time was the head of a private education institute and is currently the school principal of school number 53 in Tbilisi; Mr. Shavshiashvili's wife, Ms. Nato Chakvetadze; and Ms. Lali Raminishvili, the school principal of school number 102 in Tbilisi.

¹⁸ Kobakhidze also noted that since the beginning of the 2011-12 school year, the MOES has "handed out" cell phone cards to each teacher and has begun to deduct the equivalent of two dollars in Georgian currency from the salaries of every teacher, which it has then transferred to a cell phone company. This process has caused no apparent problems for accountants and bookkeepers in schools.

such a contract. Such a statement is clearly inconsistent with the respect for and commitment to internationally recognized worker rights that the GOG repeatedly professed during the hearing.

Finally, Ms. Kobakhidze noted that the ESFTUG had, in late 2010, as part of a joint effort by GTUC, ESFTUG, and MOES, developed a model CBA to be implemented at the school level and that some 600 of them had been concluded. She asked the MOES why it was not enforcing these CBAs, as the school principals involved had signed them, but were not observing them.

The MOES indicated that perhaps the school principals were not happy with the terms of the CBAs in question and sought renegotiation. Such a response is a further indication of a lack of understanding of the legally-binding nature of CBAs and lack of commitment to internationally recognized worker rights.¹⁹

2. Response to USG Interest in Steps Taken toward Establishment of Dispute-Settlement Mechanisms (Relevant to USG Questions to GOG, No. 5)

The AFL-CIO does not believe that the Georgian Tripartite Social Partnership Commission, or any similar structure composed of employers or workers, is an appropriate entity to perform **initial investigations** of unfair labor practice complaints, anti-discrimination complaints, or any similar type of worker-employer conflict. Workers and employers both must be able to trust the integrity and expertise of the system. Giving a tripartite board, rather than neutral government authorities, the responsibility to fairly and thoroughly investigate anti-union discrimination or other unfair labor practice complaints is not likely to ensure swift, fair, or certain justice or inspire confidence in either workers or employers.²⁰

Once disputes have been thoroughly and fairly investigated pursuant to the Government's obligation, the question of dispute settlement may arise. The AFL-CIO urges the USG and GOG to work together to create dispute-settlement procedures that are above reproach, and that can swiftly resolve disputes in a manner that both workers and employers will regard as fair and unbiased.

The current Tripartite Commission does not function well and has apparently lost the trust of workers; it would therefore not likely meet ILO recommendations for an effective dispute-settlement body at the present time. Indeed, given the testimony provided by Mr. Lasha Akhaladze of the Business Association of Georgia (BAG) at the GSP hearing (which accused the GTUC of "'colluding' against workers" (page 2 of written testimony and page 72 of oral testimony), "theatric victimization" (page 73 of oral testimony), and simply wanting a

¹⁹ Attached as an Annex to this brief are several letters and statements to and from the ESFTUG which document the ongoing problems it faces with trying to reach accommodation with the MOES. The documents demonstrate that, despite its statement of commitment to internationally recognized worker rights at the January 24, 2012 hearing, the GOG is not working to afford those rights to the teachers of Georgia.

²⁰ Cf. CFA Digest of Decisions, ¶ 817 ("The government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned." (emphasis added)) and ¶ 820 ("Respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial." (emphasis added)).

monopolistic position, automatic transfer of dues, and immunities and privileges for their leaders (pages 76 and 77 of oral testimony)), it is difficult to believe that that the Tripartite Commission will regain the confidence of the workers any time soon. Further, the GTUC reports that since the BAG has taken over the leadership of the employers who sit on the Tripartite Commission from the GEA, the situation has steadily deteriorated. Any spirit of cooperation has devolved into antagonism, and the workers feel intimidated and without effective recourse to a neutral body willing to give them a fair hearing.

To create dispute settlement procedures that are effective and have the confidence of Georgian workers, the AFL-CIO recommends that the GOG obtain necessary technical assistance from the ILO.

3. Response to the GOG's Argument that the Complaining Unions Had No Valid Dues Collection Agreements in Place, Have Not Freed Themselves of Their Soviet Legacy, and Are "Highly Defunct and Corrupt"

The GTUC is a reform oriented trade union confederation, which has been working hard to be a free and democratic institution with free and democratic affiliates whose mission is to advance the economic and social interests of its members. As such, the GTUC provides the following specific information on the membership of several of its affiliate unions, how they were constituted, and how members knowingly gave consent to pay dues.

ESFTUG: The ESFTUG (Educators Union) was created as the result of a merger between the new, democratic alternative union, "Solidarity," and the successor teachers union to the former Soviet teachers union. One of the conditions for the merger was that any and all teachers who wished to join the new union, the ESFTUG, had to write statements to the effect that they wanted to join the ESFTUG and that they wanted their trade union membership dues to be deducted from their salaries/wages and transferred to the ESFTUG bank account. When this process was completed, the ESFTUG issued new plastic trade union membership cards in 2006 to all of its members. In 2010, to meet the ministry of education's wishes, ESFTUG once again had its members sign both statements in order to get the 600 model CBAs signed. Any GOG arguments that imply that its abrogation of dues collection agreements with teachers was motivated by an effort to protect teachers "who didn't know they were even members of a union" are false on their face.

Public Servants Trade Union: The Public Servants Trade Union is a new union, not a Soviet successor union. During its organization, it had all of its members sign membership statements and agreements to have their dues deducted and transferred to the union account.

Railway Workers Trade Union: In 2005, the Railway Workers Trade Union at its annual congress (convention) voted to increase trade union dues from 1% to 2%. As a result of this decision, the union required all of its members to sign a new agreement to have 2% in dues deducted from their pay and transferred to the union's account. The union thereafter obtained 14,700 signed dues agreements from almost all of the employees in the Georgian State Railways.

Health Care Workers Trade Union: Prior to the election of the current president in 2009, the Health Care Workers Trade Union had all of its members write individual statements making clear that they wanted to be in the union and that they agreed to have their union membership dues deducted and sent to their trade union's account. Due to the reform of the health care system, which has led to the privatization of almost all of the medical institutions, the Health Care Workers Trade Union is currently in the process of once again renewing its members' trade union membership and agreements to deduct and dues. Like the ESFTUG, the Health Care Workers Trade Union is engaging in this process a second time.

GTUC: The GTUC leadership, elected in September 2005, required all of the national unions affiliated to the GTUC to require their members to reconfirm both their membership and their agreement to have their trade union dues deducted, as the GTUC wanted to know just how many members it really had.

This evidence indicates the great lengths that these unions went to in order to throw off the shackles of the past and demonstrate the voluntary nature of their membership. This principle was one of the cornerstones of the democratic reforms introduced to the Georgian unions by the GTUC leadership elected in 2005.

IV. CONCLUSION

When read in conjunction with the AFL-CIO's prior written submissions and oral testimony, the facts and analysis make clear that Georgia has failed to take steps to afford internationally recognized worker rights and instead has engaged in seemingly purposeful efforts to deny those rights. GSP benefits should be suspended unless the Government of Georgia agrees to a **binding, comprehensive work-plan** and demonstrates concrete evidence of **immediate and substantial implementation**.

Annex
