Post-Hearing Comments Submitted by the Government of Georgia

on the

Petition of the AFL-CIO to Remove Georgia from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC 2462(d) of the Generalized System of Preferences (GSP) Statue Dated September 10, 2010

Case 001-CP-10

February 24, 2012
A. Introduction

The Government of Georgia (GoG) appreciates the opportunity to respond to the post-hearing questions and other relevant issues raised during the public hearing regarding Petition dated September 10, 2010 submitted by the AFL-CIO pursuant to 19 USC 2462(d) of the Generalized System of Preferences (GSP) statute.

General Overview

Georgia is a young democracy in the making that has continued to undertake numerous reforms in order to show its zeal to uphold the principles of democracy. The reforms have accelerated at an unparalleled pace after the Rose Revolution of 2003, when the Government, resting on an unprecedented public trust, launched a series of wide-ranging reforms addressing virtually all aspects of public life.

Notably, after the bilateral meeting between Mr. M. Saakashvili, the President of Georgia, and Mr. B. Obama, the President of the United States on January 30, 2012, Mr. B. Obama stated: “...I think Georgia should be extraordinarily proud of the progress that is made in building a sovereign and democratic country... Finally, I wanted to say to the President that we appreciate the model of democracy and transparency that they’ve been setting not just for their own country but also for the region as a whole. And we think that with continued progress over the next several years that a lot of countries will say to themselves that if Georgia can perform these transformations, then we can as well. They’ve been a responsible player on the world scene and in multilateral fora.”

The GoG carried out important anticorruption activities. As a result Transparency International’s 2009 Corruption Perception Index ranked Georgia 66th out of 180 countries. In the period of 2003-2009, Georgia improved its rating from being 127th to 66th. No Other Country did such a substantial progress since the rating is conducted.

According to the 2010 Global Corruption Barometer survey by Transparency International, Georgia ranked at 7th out of 69 countries.

The World Bank and UNICEF have named Georgian education system as one of the most progressive and very important education reforms undertaken.

The Way Forward

The GoG re-confirms its genuine political commitment expressed in pre-hearing submissions and during public hearing to address the issues regarding core labor standards and its intention to bring its labor laws to a higher level of compliance with the international labor conventions and best practices.

For this purpose and in response to issues raised at the public hearing held on January 24, 2012, the GoG wishes to declare its decision to move forward in additional two new areas, on top of those already expressed in its pre-hearing submission:

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1 The meeting marked the 20th anniversary of diplomatic relations between the Georgia and United States.
2 “Education System Realignmment and Strengthening Program for Georgia”
1. The GoG will initiate amendments in its labor laws regarding essential services to address the additional issue expressed by the Petitioner regarding the potential limitation of right to strike because of the impossibility of a work suspension due to the involved workers’ technological mode of the work.

Although the GoG regards that the current regulation of the issue in its essence conforms to the international standards and has not caused any problem in practice, the amendments would better articulate the definition of ‘essential services’.

2. Further the GoG commits to explore the possibility of establishing the mediation mechanism for labor disputes. The GoG is working closely with its social partners in the framework of the Tripartite Social Partnership Commission for further enhancement of the conciliation and mediation mechanisms with the assistance of the ILO.

The last two sessions of the Tripartite Social Partnership Commission were dedicated to the discussion on the conciliation and mediation mechanisms. Currently, the tripartite partners are elaborating their proposals regarding functions, competencies, type of structure, etc. of the conciliation and mediation facility.

The GoG stresses once more the proposed actions it will take to encompass and address all the themes covered by the Petition4, such as:

- **Enhancement of the capacity of relevant actors to apply Georgia’s labor laws in practice:**
  - Continuing the dialogue with the ILO and in the framework of the Tri-partite Commission
  - Training the judges on labor issues
  - Training the employers’ and workers’ organizations on their rights and in conducting negotiations

- **Initiating amendments to Georgia’s labor laws regarding:**
  a. **Effective facilitation of freedom of association:**
     - Make more specific the grounds and procedures by which a union or other association could be suspended. Doing so would unambiguously limit the possibility of suspension only to associations involved in criminal activities.
     - Abolish the minimum trade union membership requirement to further refine and simplify the procedures necessary for establishment of trade unions.
  b. **Further development of collective bargaining:**
     - Enhance the collective bargaining and related provisions in Georgia’s labor laws to ensure and further promote collective bargaining and bring related legislative provisions to a higher level of compliance with the international standards.
     - Ensure a clear and better articulated prohibition of discrimination based on trade union membership during pre-contractual as well as contractual labor negotiations.
     - Provide effective and dissuasive sanctions against acts of interference into trade union activities.

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4 Petition of the AFL-CIO to Remove Georgia from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC 2462(d) of the Generalized System of Preferences (GSP) Statue Dated September 10, 2010 (Case 001-CP-10)
c. **Further enhancement of the right to strike:**
- Avoid misinterpretation of the Labor Code provisions regarding the voluntary character of arbitration.
- Remove the 90-day limitation on a strike.
- Ensure and streamline workers' rights to participate in sympathy or protest strikes.

d. **Effective protection of the rights of children:**
- Clearly define the minimum age for employment to eliminate ambiguity.
- Clarify the provisions regarding restrictions on working hours for child labor.
- More precisely determine the minimum-age requirement for undertaking hazardous work.

e. **Further ensure acceptable conditions of work:**
- Clarify the provision regarding employer’s right to make “insubstantial” amendments to an employment agreement.

Again, the GoG appreciates the opportunity to respond to the GSP subcommittee’s questions. Regrettably, addressing several of the issues was impossible given the inaccurate and sometimes lacking information provided by the Petitioner to the GSP subcommittee.

**B. Responses of the GoG on Post-Hearing Questions**

**Question 1 – Dues Collection**

Since 2005, public schools became autonomous entities - Legal Entity of Public Law (LEPL) – in effect meaning that each public school is an organization that is legally separated from the Government of Georgia and the Ministry of Education and Science of Georgia (hereinafter “MoES”) and independently carries out its activities, including negotiations and implementation of the collective agreements, and respectively collection of dues.

According to the Paragraph 1 of Article 2 of the Law of Georgia on Legal Entity of Public Law, “LEPL is an organization independent and separated from legislative and state governmental bodies”.

Pursuant to the above-mentioned, since 2005, the transfer of trade union membership dues is a matter to be regulated between schools and the trade unions, and not between MoES and the trade unions. The MES does not have any authority to interfere in school affairs (except in matters of national curriculum, teachers’ certification, infrastructure of schools and alike). Any attempt to mandate dues collection by the central government would contravene the independence of schools.

According to the Article 2 of the Law of Georgia on Trade Unions, trade union is a voluntary public association. Paragraph 3 of the Article 25 of the same Law ascertains that “the employer, administration of enterprise, company, organization, shall transfer membership fees from the employee's monthly salary to the account of trade union on the basis of a personal written statement of a member of a trade union, in accordance with the terms and conditions defined in the collective agreement.”

Consequently, a public school can transfer the membership dues from the employee's monthly salary to the account of the trade union (a) on the basis of a collective agreement and (b) a personal written application of a teacher. The MoES has no role in this interaction as a party and therefore, does not and can not conduct, among others, monitoring of this process.
Execution of money transfer by the school is a result of the collective agreement and written statement of a teacher. Based on a respective collective agreement and teacher’s consent to transfer the dues, the school is responsible for transferring the specified amount from the teacher’s salary. In this case, the process is administered by a public school and there is no necessity for external intervention.

In a hypothetical case when both, a collective agreement and teachers’ written statement are in place and administration of school still does not transfer collected dues to the account of trade union, the parties may apply to court for the breach of the contract.

The MoES does not have any official information on such breaches of the contracts and unless the allegations by the Petitioner are substantiated and provided, there can be no official ramifications from MoES. The GoG urges all the interested parties to provide with such documentations in order to take appropriate action and further investigate the circumstances of this case.

The MoES is willing to facilitate the process of collective bargaining between schools and teachers’ union. For this reason, the MoES organized meetings with the ESFTUG and other trade unions to facilitate and probably to come up with a possible solution how to facilitate collective bargaining between schools and teachers’ union. However, this has not to be understood as the MoES interference in relations between schools and unions. The MoES just comes up with recommendations and its role is limited to facilitation.

In January, 2012 the Minister of Education and Science of Georgia met with the current leader of the ESFTUG, proposing kind of a new formula that may be able to facilitate negotiations between schools and unions.

The GoG would like to provide an important context. The backdrop of the change in the dues check-off system was the concurrent the World Bank project and GoG policy changes that “…addressed the drastic fall in funding to education between 1998 to 2002 [which] put the education sector under a serious challenge5”. Decentralization would also result in graduating better-educated students who would have greater higher education opportunities, resulting in a better skilled workforce. The project also acknowledged the need to work with schools and their management cores to improve their record-keeping capabilities. Also, the above-mentioned document states that: “…The progress in implementing the reform program has been impressive. A new financing system was introduced, the management of the education system was decentralized granting increased autonomy to schools, and a wide range of measures to improve the quality of education including transparent national examinations and a regular cycle of national and international assessments (PIRLS, TIMSS) was implemented…The project was instrumental in building capacities for institutional change, particularly in the areas of finance and governance of education institutions. Some of the key activities and innovations supported by the project have been institutionalized into the new legislation promoting decentralized management and increased efficiency and transparency of the education system”.

According to the UNICEF Report 2011⁶: “Georgia has increased spending on education and decentralized school management. As part of the education reform all educational institutions were established as public legal entities. Each school is governed by a Board of Trustees empowered by a financial management authority and made up of teachers, parents and government officials. The administrative structure of the education system was also adapted. A network of Education Resource Centres was established, providing support to schools through data collection, organizing training, conducting research, and monitoring accounting. ...Extensive reforms have been implemented in the secondary school sector since the 2003 Rose Revolution in Georgia. These have included increased expenditure on education, the removal of widespread corruption from the university entrance examination and funding process, decentralization and local management of both secondary and primary education... Transparency International Georgia (TI) surveyed perceptions on government reform and found that education reform was the single policy issue recognized as successful by nearly all those interviewed. Two particularly successful components were (i) the introduction of school boards to decentralize decision making, and (ii) national exams that give students the opportunity to enter universities on a competitive basis free from corruption.”

**Question 2 and Question 3 – Inspections and Child Labor**

**Protection of Workplace Safety**

The Technical and Construction Inspection under the Ministry of Economy and Sustainable Development of Georgia is responsible for performance of official control and surveillance of objects defined by Georgia’s laws as technically hazardous.

One of the mechanisms of the official control is inspection, which consists of (i) the documentary check and (ii) inspection on site. The inspection encompasses, among others, checking the workplace safety regulations in accordance with the relevant technical regulations.

For this purpose, the Technical and Construction Inspection deploys 35 inspectors.

The Technical and Construction Inspection carries out inspection of the of facilities with risks of technical hazard: construction sites, quarry/mine/pit, landfill of hazardous waste, landfill of industrial and household waste, production of oxygen and other operations acquiring a risk of explosion, production of liquid oxygen, pumping of oxygen in a vessel or cylinder, oil terminals, industrial oil pipeline, industrial gas pipeline, hydro technical buildings (dams, regulating objects, hydro energetic objects and other hydro technical objects), etc.

According to the Law on Control of Technical Hazard of Georgia, the employer is obliged to ensure establishment of workplace safety conditions in the undertaking, identify a person responsible for workplace safety, train and inform workers and implement preventive measures in order to avoid the accidents.

Inspections of the above-mentioned facilities includes examination of rules and procedures (a) needed for ensuring of the workplace safety and (b) the fulfillment of duties by the persons responsible for the workplace safety taken into account the following principles:

- Ensure workplace safety by the employer
- Identify persons responsible for ensuring protection of the workplace safety rules

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• Ensure that employees have medical assistance in order to avoid damage of employees' health
• Provide information to the employees about workplace safety rules through the introducing instructions, trainings, etc based on risk assessment

The employer is obliged to provide information about technical hazard to employees, namely:
• Type of the technical hazard
• Results of non-fulfillment of the workplace safety rules both for the employee directly performing the work and the environment
• Prevention measures which should be performed for ensuring workplace safety

One of the triggers to undertake the inspection on-site is violation of workplace safety rules.

During the performance of the inspection on-site, inspector may require from the management of a company introduction of the restrictive and corrective measures as deemed necessary.

102 on site inspections (except the hundreds of inspections of the construction sites and the lift inspections) were carried out on the facilities with technical hazard during the last 2 years, on average 1 inspection per week.

The last 4-day on-site inspection was performed by the Technical and Construction Inspection on January 23-27, 2012 at mining company. The non-compliances with requirements envisaged by Georgia’s laws were identified and reasonable time was given to the company for eradication of the non-compliances.

The Technical and Construction Inspection performs inspections at the construction sites based on the Government Decree on Construction Safety Rules.

Inspection is carried out on the bases of the following legislation:
• Law on Control of Technical Hazard of Georgia
• Regulation on Organization and Realization of State Supervision in Technical Safety Field approved by the decree #243 of Georgian Government, dated November 8, 2007
• Safety Rules for Hazardous Industrial Objects (where mining operations are held) approved by the decree #53 of Georgian Government, dated March 10, 2006
• General Safety Requirements for Gas Systems approved by the order #1-1/525 of the Ministry of Economic Development, dated April 14, 2010
• Safety Rules for Production of Ferroalloys approved by the order #1-1/58 of the Ministry of Economic Development, dated January 16, 2008
• Safety Rules for Oil Bases approved by the order #1-1/2287 of the Ministry of Economic Development, dated October 7, 2009
• Safety Rules on Operation, Conformity Assessment with Technical Requirements and Installation of Air Balloons on Vehicles approved by the order #1-1/2571 of the Ministry of Economic Development, dated November 16, 2009
• Safety Rules for Attraction approved by the order #1-1/753 of the Ministry of Economic Development, dated May 14, 2007
• Safety Rules for Coal Mines approved by the order #1-1/560 of Ministry of Economic Development, dated March 17, 2009
• Regulation of Technical Regulation of Safety of Lifts approved by the decree #289 of Georgian Government, dated July 26, 2011
Protection of Children’s Right

The protection of minors’ right is coordinated by various relevant state authorities in order to ensure identification/reaction/rehabilitation of all types of children’s right violence: the GoG’s prosecutor’s office, Ministry of Internal Affairs (hereafter MIA, Special Operations Department within MIA), the Interagency Anti-Trafficking Coordination Council, the Ministry of Labor, Health and Social Assistance (and MOLHSA’s Social Service Agency and Department of Social Protection). Consequently, not only the MIA or the police deal with tracking and enforcement of preventions of illegitimate child labor.

The competencies of Patrol Police Department and District Police Units are divided according to regions/districts of Georgia. Within the MIA, the Patrol Police and the District Police are responsible for detection and response to the facts of children’s right violation.

The district police inspectors have information on minors, who are in the areas of their coverage and they implement individual work with them. The district police inspectors visit families and have regular conversations with children and their parents on their rights.

It should be emphasized, that in the framework of mutual project of the MIA and MoES, the district police inspectors with school teachers give lessons at schools on children’s right and infringement.

Taken into account children’s psycho-social specificities, the police inspectors working with children are obliged to have special knowledge in pedagogic-psychology related issues. For this purpose, the fundamental course of the Police Academy of the MIA envisages detailed training and acquaintance of police inspectors with the essentials of the Convention on Children’s Rights, other relevant international conventions and Georgia’s laws related to the children’s right.

The staff of the Division on Fight against Trafficking and Illegal Migration of Special Operative Department within the MIA has permanent trainings on investigation issues of infringements related to the labor exploitation, trafficking in minors, as this Department leads criminal investigations of labor exploitation and trafficking in minors. During 2009-2011, the Division on Fight against Trafficking investigated six cases of labor exploitation out of which one case was related to forced labor of minor.

The Interagency Anti-Trafficking Coordination Council for the Implementation of Measures against Human Trafficking coordinates government efforts against trafficking in persons and children. The Coordination Council includes representatives from state agencies and non-state entities.

The Department of Social Protection within MOLHSA focuses on policy recommendations related to child adoption, foster care and the rights of children, including child labor. The Division of Child Protection and Social Programs is responsible for developing policies to protect children from illegal labor. The Division, among others, receives and forwards complaints of child labor violations to the Social Service Agency (within MOLHSA) and law enforcement agencies for investigation and potential prosecution.

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The Social Service Agency implements the policies of the Department of Social Protection and assesses cases of actual and potential child victims and determines how to proceed either through consulting, oversight or placement of the child in special facilities.

In 2010, the Government of Georgia’s Prosecutor’s Office registered two alleged offenses for involving children in begging or prostitution.

In this context, of the Office of Rescore within the MoES 8 should be mentioned. The Office of Rescore is responsible for monitoring of security of school pupils. In some cases, the rescors provide legal consultations to teachers, pupils and their parents.

The GoG pays a vital attention to street children as a main risk group for forced labor. In order to ensure wellbeing of the street children the Inter-Agency Commission was created composed of relevant ministers and deputy ministers. Inter-Agency Commission elaborated a new Strategy, which will be followed by the National Action Plan. The activities envisaged by the National Action Plan will be obligatory to implement for all relevant state authorities.

The GoG has worked actively in cooperation with international organizations, NGOs and foreign aid agencies to improve the welfare of children and address the plight of street children. The GoG implemented a voucher system for street children, enabling them to receive support.

The GoG finances shelters and day-time services for street children. The GoG finances also Crisis Centers in Tbilisi, the aim of which is psycho-social rehabilitation of such children, provision of vocational education, and eradication of academic backwardness. For efficient functioning of the Crisis Centers, social workers, physiologists, and teachers are hired by the Crisis Centers in order to ensure educational and vocational development of street children.

It should be emphasized that on May 31, 2010, the Joint Order of the Minister of Labor, Health and Social Assistance, Minister of Interior and Minister of Education and Science on the Child Referral Mechanism was adopted, which defines procedures for children, subject to any form of violence, including labor exploitation, reactive measures and responsible authorities.

It should be emphasized, that in case of children subject to the trafficking, they are located at shelters of State Fund for Protection and Assistance of Victims of Human Trafficking.

In November 2011, MOLHSA initiated formation of the Interagency Steering Committee, which will be the major decision-maker and supervisory body of the state policy towards highly vulnerable children. It will define state approaches, vision and policies towards highly vulnerable children and attract all possible resources for its implementation.

The Steering Committee includes representatives of MoLHSA, Social Service Agency, MIA, Ministry of Justice, MoES, Ministry of Finance, Public Defender’s Office, Tbilisi Municipality, State Fund for Protection and Assistance of Victims of Human Trafficking, the EU Delegation and UNICEF. In the framework of this cooperation, a Project on Street Children was elaborated, which envisages: 1. Renovation of equipment of three new crisis/drop-in/day-care centers. The staff of the centers will be trained to provide qualified service. The service running costs will be financed by the GoG. 2. Recruitment and training of four mobile teams to provide

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service primarily for street children. 3. Enhancement of the technical capacity of Social Service Agency to manage, coordinate and monitor services for highly vulnerable children.

The Code on Administrative Offences of Georgia empowers the courts to levy sanctions against employers found in violation of child labor laws. The Article 171 of the Criminal Code of Georgia provides sanctions for persuading a minor to beg and involving or employing a minor in prostitution. The Criminal Code prohibits the trafficking of minors and the possession, production, sale, distribution or promotion of child pornography. Stringent penalties on persons convicted of committing these crimes are imposed by the Criminal Code.

**Question 4 - Tripartite Social Partnership Commission**

The social partners undertook the following activities under the framework of tripartite cooperation:

- Discussion and analysis of Georgia’ labor laws
- Establishment of the Tripartite Social Partnership Commission (hereafter – TSPC)
- Establishment of Secretariat for the TSPC
- Studying and mediation of alleged anti-union discrimination cases
- Discussion of possibility of creation a mediation unit.

**Discussion and Analysis of Georgia’ Labor Laws**

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

The 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. The Tripartite Group has started discussing the issues of the compliance of Georgia’s laws with the ILO conventions. The GTUC and GEA were fully involved in discussions regarding legislative reforms, including many of those outlined by the GoG in its pre-hearing submission.

**Establishment of the TSPC**

It should be mentioned that tripartite cooperation was institutionalized based on mutual agreement between the GoG, the GTUC and employers’ associations at the Tripartite Roundtable held on October 21-22, 2009, in Tbilisi, Georgia. The ILO delegation attended the Tripartite Roundtable.

The parties of the Tripartite Roundtable agreed on the following issues:

- To strengthen social dialogue in Georgia by institutionalizing tripartite cooperation.
- To establish secretariat to support effective and productive cooperation between social partners.

For the institutionalization of a tripartite cooperation: a) tripartite Working Group was established based on the Decree of the Prime Minister of Georgia (Decree #335, November 12, 2009) and b) the ILO provided technical and advisory services. The ILO consultant worked with Working Group representatives of each social partner on elaboration of the Statute of a Tripartite
Social Partnership Commission for enhancing institutionalization of tripartite cooperation and social dialogue in Georgia.

In December, 2010, permanent Working Group meetings were held for drafting the statute of a TSPC. The constituent’s representatives had the opportunity to express their concerns and views regarding the TSPC’s status, mandate, relationship to media, working priorities and areas. The Statute of the TSPC was drafted and adopted by the Order of the Minister of Labor, Health and Social Assistance of Georgia in March, 2010, which became the basis for establishment of the TSPC and institutionalization of tripartite cooperation and Social Dialogue.

Establishment of Secretariat for the TSPC

It should be mentioned, that in May, 2010 the Secretariat of the TSPC was established to support the effective and productive cooperation between social partners.

Studying and Mediation of Alleged Anti-union Discrimination Cases

As a newly established body in an environment where tripartite cooperation and social dialogue is a recent development, the TSPC is currently more oriented toward analysis and mediation of alleged anti-union discrimination cases. Pursuant to the recommendation of the Committee on Freedom of Association (CFA) the anti-union cases should be investigated by the Government. However, the GoG has delegated to the TSPC to study the alleged anti-union cases and to ensure the involvement of all interested parties in the process.

For studying specific cases of alleged anti-union discrimination, a special tripartite Working Group was created under the framework of the TSPC. The Working Group is comprised of equal representation of all employers, representatives of the GoG and GTUC.

The Eurasian Steel-Herkules Plant case was discussed, studied, and successfully resolved by the TSPC. On September 19, 2011 a meeting of the tripartite Working Group was held in order to discuss the above-mentioned case. On September 21, 2011 the session of the Tripartite Social Partnership Commission was held, where the parties had the opportunity to present relevant evidence around the case. The GoG worked diligently to study and resolve the case.

Consequently, on October 4th, 2011 Mr. Irakli Petriashvili, the Head of the GTUC, made a public statement on one of the Georgia’s TV Channel “Kavkasia”, that all problems in Kutaisi plant was settled and the settlement of the case was possible through collective efforts (See page 24, Case of Eurasian Steel-Hercules Plant, Kutaisi).

The Tkibuli Mining Company case was also studied and discussed at the sessions of the TSPC. Workers of the Mining Company demanded; re-equipment of the company, increase of salaries, etc. The TSPC discussed the case and as a result collective bargaining between the management of the mining company and the Metallurgical, Mining, Chemical Industry Workers Trade Union (affiliated member of the GTUC) started. As a result of the collective bargaining all essential demands of the workers were satisfied except of re-equipment of the company. It should be emphasized, that on June, 2011, the ILO experts visited to the company and gave a 3-day training on workplace safety related issues. At the TSPC, Mr. I. Petriashvili, Head of the GTUC and Mr. T. Dolabridze, President of the Metallurgical, Mining, Chemical Industry Workers Trade Union announced that the relations between company management and trade union are coordinated.
Regrettably, other cases have had less success. From April 29 to May 7, 2010, the tripartite Working Group with the ILO consultant had daily meetings to study the Poti Sea Port and BTM Textile cases. The tripartite Working Group studied all relevant materials related to these cases and moreover, the Working Group representatives invited the CEO of the Poti Sea Port (who was the CEO during the period mentioned in the case) to the meetings to testify and they asked questions in order to gather information regarding the Poti Sea Port Case.

The tripartite Working Group prepared a report to summarize the work and this report was presented to the TACP. At the meeting of the TSCP, where the ILO consultant was also present, the Head of the GTUC refused to discuss and further study the Poti Sea Port and BTM Textile cases and left the meeting, arguing that result of the work can not have any sense as the Court had already decided on the case (that was known before the Working Group was assigned the task). For this reason, the TSCP was unable to proceed with further investigation and discussion of the above-mentioned cases. The GoG is of an opinion that by blocking the process the GTUC has preempted possible outcome that would not coincide with the interpretations of the cases by the GTUC that has been beforehand widely circulated by them internationally, and that in turn would harm the credibility of their reporting.

The Railway Case was studied under the TSPS. As a result, the TSCP made recommendation to the parties to start collective negotiations (See page 22, Case of Railway Workers Trade Union of Georgia (RWU)).

In general, efforts of the GoG to discuss and analyze alleged anti-union discrimination cases with the GTUC were unsuccessful, due to the GTUC’s decision not to bring these issues before the TSCP within the framework of tripartite social dialogue and, instead, to focus its efforts on sending complaints and claims to organizations outside of Georgia. The GoG urges the GTUC and AFL-CIO to provide with any and all relevant information that is consistently missing and that might enable the GoG to investigate and follow-up on alleged anti-union discriminations. All the cases presented in the Petition and the Testimony by the Petitioner failed to provide necessary minimum of details to follow-up the cases. As a standard for that, the suggestion of the Head of GTUC expressed in his interview can be adopted (see link: http://gtuc.ge/en/partners/582-2012-01-04-08-56-00), where he informs the reader that he refused to certify to Ms. Guruchmeladze (former head of the ESFTUG) her alleged intimidation by the authorities, justifying his refusal by the absence of any evidence.

It should be emphasized, that one of the main issues discussed by the Tripartite Social Partnership Commission is workplace safety. The parties provided their suggestions regarding the facilitation of workplace safety and studied and analyzed the ILO requirements in this regard.

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9 The ILO provided technical and advisory services and the ILO consultant worked with the tripartite Working Group representatives in order to analyze Poti Sea Port and BTM Textile cases.

10 Quote of Mr. I. Petriashvili, the Head of the GTUC from the interview: “She was mad at me, because I didn’t write to Canadian government and didn’t ask them to provide political asylum to her because as she affirmed, she was persecuted by the Government of Georgia. I had no information about the facts of persecution and as she did not write an official letter to Georgian Trade Union Confederation, I was not going to support her in the implementation of the scenario that she had composed. Her interview was her response to my refusal to support her. And it should be noted that she was interviewed abroad. She could not write such things while being in Georgia. I have to admit that Gocha Aleksandria and me made a mistake when we not directly but indirectly supported Ms. Guruchmalidze to become the President of ESFTUG.” (see link: http://gtuc.ge/en/partners/582-2012-01-04-08-56-00)
As a result, Memorandum of Understanding on Enhancement of Safety at Workplace was signed by the Georgian Employers’ Association (GEA) and the GTUC.

The last sessions of the Tripartite Social Partnership Commission were dedicated to the discussions on the creation conciliation and mediation unit (See page 13, A conciliation and mediation mechanism).

**Question 5 - A Conciliation and Mediation Mechanism**

The conciliation and mediation mechanisms have been incorporated in the TSPC. The Statute of the TSPC has established a special tripartite Working Group dedicated to mediating disputes.

In addition, the GoG is working closely with its social partners within the TSPC for further enhancement of conciliation and mediation mechanisms with the assistance of the ILO.

The main aim of the ILO assistance is to facilitate the creation of a mediation unit. For this purpose, the following steps will be undertaken under the framework of the Tripartite Social Partnership Commission:

1. Elaboration of the statute of future mediation unit
2. Selection of the members of the mediation unit
3. Training of selected members of the mediation unit.

By the end of the January, 2012 the ILO consultant under the framework of the ILO assistance had meetings with each social partner in order to discuss issues related to the conciliation and mediation mechanisms. The meeting of the Tripartite Working Group was held on February 1, 2012 where the parties had the opportunity to express their proposals, views, suggestions regarding structure, competences, functions, etc of the mediation unit and the ILO consultant provided information about various practices of the mediation unit to the parties.

The latest session of the TSPC was held on February 6, 2012, where the parties agreed that they will elaborate their own visions regarding the structure, scope of activity, members of conciliation and mediation unit.

Currently, the parties of the TSPC are elaborating their visions regarding the mediation unit. These proposals will be sent to the ILO consultant.

In April, 2012, the ILO consultant will visit Georgia in order to follow up.

**Question 6 – Protection from Discrimination during Termination of a Labor Contract**

**Notification during the Termination of Contract**

Articles 37 and 38 of the Labor Code do not allow the employer to terminate an employee without prior notice. Effectively the one month mandatory payment defined by the Labor Code (if higher payment and/or other notification period is/are not defined by the labor contract) translates into one month notification period and goes beyond that by not requiring the employee to perform work in this period.

Also, there is misinterpreted information in the comment by the Petitioner, namely the Petition states, that: “...the worker is given one month’s pay ...” According to the Georgian Labor Code, in the case of employment termination, the employer must grant at least one-month pay unless a larger amount is stipulated by the agreement between the parties. At the same time, the employee
is not obliged to work during this one month, which gives the opportunity to stop working immediately and look for new employment.

According to the above-mentioned, the Labor Code stipulates notification and severance payment and employee is not obliged to work during the period after notification.

Relation between the Labor Code and Law on Trade Unions

The Labor Code take precedence over only one paragraph of the Law on Trade Unions as there is a collision between these two law and the Labor Code as a "newer" one takes precedence only over the Article 23 Paragraph 3 of the Law on Trade Union.

There is only one collision between these two laws regarding the provision of the dismissal of a worker. The Labor Code stipulates procedures for dismissal of a worker, at the same time the Law on Trade Unions also provides provisions regarding dismissal of a trade-union elected member. According to the Article 23, Paragraph 3 of the Law on Trade Unions, "Dismissal, transfer to other job or disciplinary punishment of a chairman, member or organizer of the elective trade union on the basis of employer's initiative is inadmissible without the prior consent of respective trade union, except the cases defined by legislation." The Labor Code takes precedence only over the above-mentioned Article of the Law on Trade Unions, as the dismissal related issues are regulated by the both law and in this concrete case there is a collision between these 2 laws.

It should be emphasized, that the requirement of a prior consent of trade union on dismissal of trade union member is not an international labor standard or requirement.

Accordingly, there is no ruling of the Supreme Court or Courts of Appeal that in general that the Labor Code takes precedence over the Law on Trade Unions. Such ruling can not possibly exist. The only issue when Labor Code takes precedence over the Law on Trade Union is related to dismissal of a worker.

The testimony of the Petitioner fails to demonstrate the knowledge of Georgian legislation to critically and credibly review it.

Protection of a Worker from Termination for Illegitimate Reasons

According to Georgia’s laws, a dismissed worker can claim unfair dismissal through appealing to arbitration as well as to the court.

If a dismissed worker considers that the reason of the termination of labor contract is illegitimate, the worker appeals to the Court and the employer is obliged to provide reasoning of dismissal during the court hearings.

The parties of court proceedings (a plaintiff and defendant) must provide facts and arguments and burden of proof lies to both of them (Article 102 of the Civil Procedural Code of Georgia). Accordingly, an employer is obliged to provide facts to justify that the dismissal of a worker was not based on an illegitimate reason.

During the court proceedings, a plaintiff can ask questions to the employer, including questions regarding the reason for termination of the labor contract. During the questioning procedure, the parties have the right to perform questioning of counterparts regarding important circumstances concerning the case without prior approval by the court. The court only opens the questioning procedure (Articles 127 and 221 of the Civil Procedural Code of Georgia).
Further, during the court proceeding, the judge can ask questions to the parties regarding important circumstances concerning the case (Article 128 of the Civil Procedural Code of Georgia).

Based on the above-mentioned, it should be concluded that during the court proceedings, a plaintiff has the opportunity to obtain information regarding the grounds for the termination of the contract and an employer is obliged to provide facts that justify that termination of a labor contract was not based on an illegitimate reason.

Meaningful Investigation of Discriminating Grounds

As for the case law regarding discriminatory treatment, according to the latest ruling of the Supreme Court (Supreme Court, Case No. 343-327-2011, December 1, 2011) in the course of the termination of the labor contract, the fundamental human rights, also prohibition of discrimination envisaged by the Labor Code should be protected and ensured (Article 2, Paragraphs 3 and 6 of the Labor Code). In case of the dismissal of a worker challenged in the court, it should be meaningfully investigated whether the dismissal was based on discriminating grounds. In this case burden of proof lies on employer. Namely, if employee claims that his/her dismissal was discrimination, the employer must prove that in fact the dismissal does not have discriminating ground.

There are no cases available with alleged pre-textual justifications known to the GoG. In such cases the employ would have to prove that the actions were not perpetuated for the purpose of shielding the discriminatory dismissals.

Court Cases

It should be emphasized, that most of the cases the GTUC defines and claims as ‘discrimination’ are filed to the courts not as such. The complaints of trade unions have always been on requesting to abolish the order of dismissal of employee on the legalistic grounds, among others referring to the Article 23, Paragraph 3 of the Law on Trade Unions, stating that for the dismissal of a trade union elected member prior consent of the trade union is needed.

The GoG was able to retrieve 10 cases when trade union members appealed to the court (the database may not be complete). In 2 cases the plaintiffs were resorted in their position and the compensation was granted. 2 cases were forwarded to the court of a higher instance. 2 cases were declined. In 4 cases the issue was passed to the lower instance court. Only one case was on alleged anti-union discrimination, and the court did not find the fact of discrimination.

Question 7 – Bargaining Partner for the Teachers’ Union

According to Article 3, Paragraph 10 of the Law on Trade Unions, “an employer (a person who is a job provider) means an organization or a legal person, represented by its chief executive officer (administration), or a natural person, with whom a worker (employee) officially concluded an agreement (contract) of employment.” According to the Article 43, Paragraph 1, Sub-Paragraph “f” of the Law of Georgia on General Education, “a public school principal is

11 “Dismissal, transfer to other job or disciplinary punishment of a chairman, member or organizer of the elective trade union on the basis of employer’s initiative is inadmissible without the prior consent of respective trade union, except the cases defined by legislation”.

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responsible to sign and execute the employment agreement with teachers and all other school personnel according to the conditions and regulations approved by the Ministry of Education and Science of Georgia.”

Therefore, a public school as an employer in relations with the respective trade union is represented by its head, the principal, who is authorized to conclude an employment agreement. Interference of the MoES in this process contradicts with Georgia’s laws.\(^{12}\)

The above-mentioned approach is in compliance with the decision of the Court, according to which the MoES was held responsible to carry out negotiations with the trade unions, however without stipulating that the MoES is an employer of a teacher. The court decision was for the MoES to start negotiations with the teachers union, but this implies negotiations regarding a number of affairs such as the school policy, teachers’ capacity building, teachers’ working conditions, etc, but that cannot address the issue of centralized due check-offs because the MoES is not empowered to order schools to deduct the dues from teachers’ salaries, as the MoES is not the teachers’ employer and this is beyond the MoES's responsibility.

The MoES fulfils the above-mentioned court decision as the MoES has negotiations with trade unions:

- In the framework of the social dialogue, the MoES has conducted a number of meetings with the participation of representatives of parliamentary and non-parliamentary opposition parties, ESFTUG, and other stakeholders. Every initiative being implemented by the MoES in 2010-2011 was discussed during these meetings, including: necessary changes to school infrastructure; teachers’ professional development through a certification process; relations between educational institutions and trade unions. The ideas and opinions of the above-mentioned stakeholders are shared and decisions are made in concert with one another.

- Following intensive consultations and meetings with stakeholders, including ESFTUG, at large, Order #131 of the Minister of Education and Science of Georgia established the Public Board at MoES in 2010. Since then, the MoES Board members have held meetings on a regular basis and have discussed urgent and ongoing issues in the education system and strategies for resolving them.

It should be emphasized, that The MoES is willing to facilitate the process collective bargaining between schools and teachers’ union, however the MoES role cannot be extended beyond the facilitator (See page 4, Dues Collection).

It should be emphasized, that currently there are more than ten trade unions and more than seventy NGOs active in the field of education in Georgia. For instance, the trade unions operating in education sector are: ESFTUG, Professional Union of Education Workers, Independent Professional Union of National Union of Education and Teachers, Educational Union- Korbuda, Teachers’ Union Teacher and World, Association of the Preschool and Primary Classes Teachers Association of the teachers of Georgian Language and Literature, Association of the Teachers of Math, Association of the Teachers of Russian Language, Union Georgia Education League, etc. This clearly illustrates the pluralistic environment that exists within the education sector.

\(^{12}\) According to the Paragraph 1 of Article 2 of the Law of Georgia on Legal Entity of Public Law, “LEPL is an organization independent and separated from legislative and state governmental bodies”.
Question 8 - Model Agreement between Schools and Trade Unions

In regards to signing of so called “Model Agreement” (This is a new term. The GoG believes that the Petitioner is referring to sectoral collective agreement), it does not fall under the competence of the GeG, taken into account the following: 1. A public school is an organization independent and separated from the MoES. 2. The employer of teachers is school principal, not the MOES, as school is legally independent from the MoES. 3. It is prohibited to interfere in labor relations of the schools by the MoES. 4. The collective agreement is an agreement between an employer and trade unions (according to the Article 3, Paragraph 14 of Law of Georgia on Trade Unions), therefore to be conducted between a school and trade union.

Consequently, the GoG (including the MoES) is not a party to any such agreement between the schools and unions and according to the Georgia’s laws a collective agreement between school’s and trade unions does not need any kind of recognition from the government side.

Question 9 – Enhancement of Sanctions against Interference and Collective Bargaining Mechanisms

The GoG stated that it plans to enhance sanctions against interference and to also enhance collective bargaining mechanisms. In order to implement these plans, the GoG will initiate legislative amendments to:

- Provide effective and dissuasive sanctions against acts of interference into trade union activities, for example to increase the sanction envisaged by Georgia’s laws.
- Bring collective bargaining related legislative provisions to a higher level of compliance with international standards, for example introduce provisions regarding principles of collective bargaining in Georgian laws in line with the international conventions.

As it was mentioned above, the scope of work of the tripartite cooperation is, among others, discussion and analysis of labor legislation related issues. The legislative amendments that the GoG has proposed in pre-hearing submission reflect various positions expressed by social partners in the tripartite cooperation process.

The amendments to the respective Georgian laws will be drafted and submitted to the Parliament for adoption.

As for the protection of the collective bargaining from undermining by the parallel direct negotiations that are not prohibited by any of the international law, the GoG stated in its pre-hearing submission, that unionized workers have privileges over non-unionized workers regarding collective negotiations per Georgia’s labor laws. An employer is obliged and cannot refuse to carry out collective negotiations with trade unions (including primary trade unions, trade unions, associations of trade unions) on labor, social and economic issues if the latter comes up with such an initiative (Article 12(2) of the Law on Trade Unions of Georgia). The employer does not have the same obligation for starting collective negotiations with non-unionized workers in case the latter comes up with such an initiative.

Question 10 – Grounds of Prohibition of a Right to Strike

As it was stated by the GoG in its pre-hearing submission, the Labor Code of Georgia establishes the minimum criteria for essential services whose workers are limited in their ability to strike. There are 3 conditions that must be met simultaneously for this provision to apply: 1) the employee is in the process of directly performing his/her duty; 2) this duty is
related to human health and life and 3) it is impossible to interrupt work process due to the duty’s technological mode.

Technological mode is understood by Georgia’s laws as the process, which if stopped and/or interrupted, could create devastating and hazardous results, e.g., stopping operation and control of a water level in hydropower plant dam.

In this regard, Georgia’s laws are in compliance with the ILO requirement that employees providing essential services (for which strike action may be prohibited) are those “the interruption of which would endanger the life, personal safety or health of the whole or part of the population” (ILO, 1983b, para. 214).

Since adoption of the Labor Code in 2006, there have been no observations or complaints that this provision, in practice, has undermined the bargaining power of workers in negotiations or caused problems in the application of the right to strike.

The minimum service requirements envisaged by the Section 51(2) of the Labor Code are so specific that they apply only to small fraction of the employees performing technologically essential special duties. This implies that translation that strikes are banned in sectors where “work is impossible to suspend due to the technological mode of work,” refers to those employees that are employed in essential services.

Despite the above-mentioned explanation, the GoG will initiate amendments in its labor laws regarding essential services to address the additional concern expressed by the Petitioner regarding the potential prohibition of strikes because of the impossibility of a work suspension due to the involved workers’ technological mode of the work in order to streamline any ambiguity in this regard.

Although the GoG regards that the current regulation of the issue in its essence conforms with international standards regarding this issue and has not caused any problem in practice, the amendments will better articulate the definition of ‘essential services’.

The issues related to the essential services were never discussed by the TSCP, because neither GTUC nor employers’ associations have ever raised these issues during the sessions of the TSPC.

**Question 11 - Grounds of Prohibition of a Right to Strike**

Regrettably, the concern of the Petitioner is based on the incorrect interpretation of the Law. Further, the hypothesis is not supported by any precedent.

A strike shall not serve as the grounds for termination of labor relations (Labor Code, Article 49). In case employees are going to strike, they shall notify the employer on the purpose of the strike. After the notification, the strike starts. Accordingly, the employer cannot prevent the strike by terminating contract or giving such notice, because from the moment of notification, the strike starts and during the strike labor contract cannot be terminated.

**Question 12 – Relation between the Law on Trade Unions and the Labor Code**

See Response to the Question 6 – “Protection from discrimination during termination of a labor contract” (namely: Relation between the Labor Code and Law on Trade Unions; Meaningful Investigation of Discriminating Grounds) that resembles answers to these questions as well.
C. Responses of the GoG on the AFL-CIO Testimony

1. Case of Educators and Scientists Free Trade Union of Georgia (ECTUG)

In reply to the allegations of the ESFTUG regarding the alleged violation of the trade union rights in the education sector, the GoG would like to provide comments to shed light on misleading and erroneous information provided in the Petition.

Valid Agreement Providing Check-offs

The GoG would like to stress that agreement between the MoES and ESFTUG signed in 1998 is not valid since 2005, when public schools by law became autonomous of the MoES, including their financial and human resources management autonomy.

The MoES also would like to emphasize that in 1998, when the Ministry of Education and Republic Council of Georgian Trade Unions signed the sectoral agreement, (registered at the Ministry of Social Affairs, Labor and Employment, as #01, 22 April, 1998) the general educational institutions were functioning under the Ministry of Education and Science. In accordance to Minister’s decree # 448 dated 15 September 2005, the educational institutions were changed legal status and were formed as legal entities of public law – this means, nowadays that schools are independent legal entities, and school principals independently regulate the labor relations with teachers. In effect, this means that school principals became the party in labor relations equipped with financial and decision-making autonomy (i.e., responsible for implementing a national curriculum, managing the educational process at schools, managing budgetary issues, etc). In accordance with the Georgian Law on General Education, the school principal independently regulates the labor relations with teachers. The school principals themselves are elected by school boards (Law of 8 April, 2005, Articles 42-42). Therefore, since 2005 the agreement concluded between the MoES and trade unions in 1998 was not valid as the schools obtained independence from the MoES and the latter does not have authority to interfere in the school affairs any more.

It should be emphasized that schools are financed through vouchers. Accordingly, the pupils finance the schools, not the MoES.

The school principals are elected by school boards, and the principals, among, others, independently regulate labor relations with teachers and school staff without any involvement by the MoES side. Therefore, the principal, and not the MoES, is the employer of the teachers at a school and consequently the counterpart for the ESFTUG.

As it was mentioned, since 2005, the transfer of trade union membership dues is a matter to be regulated between schools and the trade unions, and not between MoES and the trade unions. The MoES does not have authority to interfere in the school management affairs. That would be illegitimate.

The GoG seeks to emphasize that there are two possible ways to transfer trade union membership dues to the account of trade unions:
- The Employer shall transfer membership dues from the employee’s monthly salary to the account of trade unions on the basis of the personal written application of the employee that is a member of a trade union (Article 25 (3) of the Law on Trade Unions of Georgia) and under the condition that the collective agreement is in place; or
Each member of a trade union is free to transfer any amount of money from his/her salary account to an account of a trade union through any commercial bank.

Every teacher in Georgia receives his/her salary via direct deposit into a personal bank account held in commercial banks. If a trade union wants membership dues to be transferred by school administrations instead of by its members employed by these schools, then, in accordance with Article 25(3) of the Law on Trade Unions of Georgia, there should be: 1) a written application by the teacher affiliated with the trade union and 2) signed contract between the school and the trade union.

The question should be asked: why are not the unions operating in the educational sector attempting to cover universities by collective agreements? It is very telling that the ESFTUG does not request to the MoES to sign a collective agreement to cover the universities (the potential dues base could be as high as 50% that of schools, thus that cannot be dismissed as irrelevant for the unions). The answer is that the GTUC has admitted that the MoE does not have any authority to sign any agreement that would infringe the autonomy of the Universities. Notably the financing system and the human resources management of the universities are quite comparable with that of the schools (i.e. through vouchers that imply that not the MoES, but the students finance the universities).

Also, the existence of the ESFTUG non-affiliated unions in the Universities is admitted without irritation (not called ‘yellow’, in contrast to those at the school level). The oldest and by far the biggest universities in Georgia (e.g. the Tbilisi State University and Georgian Technical) do have the ESFTUG non-affiliated unions.

Hence, this proves that the MoES is consistent and legitimate in relations with unions and application to different sectors of the education system, while the ESFTUG is inconsistent. It is paradoxical, that the ESFTUG has acknowledged the independent legal status and institutional changes in the universities; at the same time it resists to recognize the same independent legal status and institutional changes at the school level.

ESFTUG Election

To misguide the audience the petition intentionally conceals the fact that the contenders in the election where members and the leaders of the same union (the ESFTUG).

There was no ‘government candidate’ participating in ESFTUG election and the so called ‘government candidate’ in reality is the elected Head of the Tbilisi unit of the ESFTUG, by far the biggest unit of the ESFTUG. To indicate the significance of that unit, it is notable that approximately 20% of teachers of Georgia are employed in the Tbilisi schools. After the alleged winning of the election by Ms. Kobakhidze, the dispute about the legitimacy of the elections of ESFTUG chair has emerged between Ms. Kobakhidze and Ms. E. Cherkezishvili, Head of the Tbilisi unit of ESFTUG. Ms. E. Cherkezishvili is not a government candidate, as she is the head of the largest unit of the ESFTUG. Regrettably, the ESFTUG consistently tries to ‘sell’ the story not mentioning this decisive circumstance for the fair judgment about this case.

The dispute about the legitimacy of the elections of ESFTUG leader was brought to court by conflicting parties. Notably, the contender of Ms. Kobakhidze is still the Head of the Tbilisi Unit of the ESFTUG.
When the GTUC and the ESFTUG were asked at the session of the TSCP to comment on the above, they did not deny the above fact (that is anyway verifiable) but failed to provide any explanation. During the 4th meeting of the TCSP held on the 2nd of June, 2011, the president of GTUC, Mr. I. Petriashvili confirmed that the dispute under consideration was taking place between two fractions of ESFTUG. At the same time, the chair of ESFTUG, Ms. Kobakhidze who present in this meeting, also emphasized that conflicting parties were, in fact, branches of the same trade union and that the whole issue was an internal affair of ESFTUG (the minutes of this meeting had been agreed among social partners and the GoG can provide it if needed). In addition, during the next, 5th session of the TSCP, Mr. I. Petriashvili stated that he was grateful for the effort of the MoES to find a solution of the existing disagreement, it was an internal problem of the trade unions and it needed to be solved by the trade unions themselves.

The GoG has an impression that the GTUC chairperson in not neutral in this internal conflict and prefers one candidate over the other for the reason of less loyalty personally to him of the leader of Tbilisi Unit of ESFTUG, and supports the smear-campaign against her by picturing her as a ‘government stooge’.

The MoES took numerous efforts to continue its negotiations with the ESFTUG. With support of the Ambassador of United Kingdom of Great Britain and Northern Ireland to Georgia, the MoES hosted UK Advisory, Conciliation and Arbitration Service (ACAS) representatives in Georgia to conduct a round of negotiations with the ESFTUG. In the format of these talks, the Minister of Education and Science met both conflicting leaders of the ESFTUG in order to avoid being biased and avoid further accusations and personal attacks. The aim of this meeting was to discuss the possibility of the future cooperation between MoES and ESFTUG and starting the partnership from a new page. Unfortunately, the meetings proved to be unsuccessful due to the acute internal dispute between Ms. Kobakhidze and Ms. Cherkezishvili that made the negotiations impossible. Nevertheless, MoES expressed its willingness to continue talks with the ESFTUG but the ongoing dispute creates obstacles to achieve this goal.

The GoG uses this opportunity to declare again that it regards the Case as an internal affair of the GTUC discussed by the court, is neutral and refuses to act in any manner that could be interpreted as support to any on the conflicting parties.

Announcement of Prohibition of Collection of Dues by Hand in School Buildings

Announcement of prohibition of collection of dues by hand in school buildings is a grave misinterpretation of the real facts, aimed at misinforming the audience.

The claims that the GoG (the MoES) announced about prohibition of the money (cash) collection within school buildings (a) and the Minister of Education and Science of Georgia prohibited dues collection by hand on National Television (b) are unsubstantiated and groundless.

What was actually announced by the Minister of Education and Science of Georgia on that day on national television (easily verifiable) was that parents (not the teachers) were not allowed to collect cash for school principals for school needs, and that any such activity would be thoroughly investigated in GoG’s effort to fight against corruption. And, if parents wished to contribute to school infrastructure, learning process, etc., they could transfer this money in the school’s fund. Doing so would ensure that all transactions would be transparent and have traceable methods of payment, as opposed to giving cash to school principals without any means
to track the allocation of the donated sums of money. Accordingly, the statement on national television has no relation with the trade union membership dues.

As for the claim by the AFL-CIO, as if the MoES, through its regional offices, has communicated to school principals that dues collection of any kind are not to be tolerated, it should be emphasized, that the GoG does not have and was not provided by the ESFTUG with any details of such an alleged communications to trace the facts.

**Government Pressure**

As for the claim that government pressured Ms. Kobakhidze, the GoG has previously and repeatedly responded to such misleading information that it is willing to study the alleged case. Thus, the GoG urges all interested parties to provide its arguments or accusations with proper prove and concrete evidence in order for the GoG to take appropriate action and further study the circumstances of the claims of the ESFTUG.

The GoG is disappointed that the ESFTUG appears to provide only unsubstantiated arguments and does not provide any concrete evidence or proof for its sweeping allegations of the GoG’s ‘sustained and systematic government interference in trade union activities.’

All the cases presented in the Petition and the Testimony by the Petitioner failed to provide minimum amount of details necessary to look out the cases. Notably, that most of claims regarding the ESFTUG were raised by Ms. Ghurchmelidze when she was the Head of the ESFTUG. The Head of GTUC expressed in his interview (see link: http://gtuc.ge/en/partners/582-2012-01-04-08-56-00) informs the reader that: “It should be noted that Ms. Ghurchumalidze often offered money to journalist in order to publish the false information. She used to offer me money as well. ...She has allocated 3,000GEL as monthly salary for her husband... She concluded a contract with him to print and publish books; hired her daughter in the project and etc. Is this not considered as corruption? ... Ms. Ghurchumalidze knew how to blackmail people ... Afterwards she did not want to disburse membership dues ...” (Underline by the GoG)

Accordingly, it is not surprise that claims raised by Ms. Ghurchumalidze when she was the Head of the EFSTUG are inaccurate, unsubstantiated and groundless.

**2. Case of Railway Workers Trade Union of Georgia (RWU)**

Below please find the response to the arguments presented in ALF-CIO claim in relation with Railway Workers Trade Union of Georgia (RWU) case:

The GoG requested information regarding court decision on November 15, 2011 referring to reinstate the union’s right to dues check off from Georgian Railway LLC (hereinafter “GR”). The GR is not aware of the above-mentioned court decision, was not party of it, and can not comment.

The only court decision regarding the collective bargaining agreement executed between GR and RWU is the decision made by the Tbilisi City Court in 2010. The court then considered that termination of collective agreement between GR and RWU was in compliance with the requirements of Georgian legislation and **GR order on termination of due check-offs has not**

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hindered RWU right/ability to continue collecting dues from trade union members without direct involvement of GR in this process.

As concern of the Petitioner regarding the elections of the union’s president, allegation that the opponent to Hamlet Lomidze was the government handpicked candidate is totally groundless. There are no evidences or arguments in the ALF-CIO claim proving the aforementioned. The president’s elections were entirely independent from the Government or GR control.

The GoG requested information regarding Hamlet Lomidze from the GR and it was found out, that he is a member of RWU. Accordingly, if there was some kind of conflict between Hamlet Lomidze and elected president of union regarding legitimacy of elections, this is an internal affair of RWU as conflicting parties are members of the same union.

As for the ignorance of the recommendation of the TSPC, the GR has never ignored the TSPC meetings and attended almost all of them. The Minutes of the TSPC meetings maintained by the MOLHSA can serve as a proof thereof. As for claim, that the GR disregarded recommendation of the TSPC, this is groundless as well.

First of all it needs to be stated that the GR is securing rights of its employees, by establishing various social benefits to the workers and providing them with decent working environment. Secondly, it needs to be highlighted that the GR always takes notice of TSPC’s recommendations and is ready to start dialog with RWU in order to agree on mutually beneficial terms for further cooperation. This is evidenced by official letter (dated August 13, 2010) of the company providing the GR candidates for participation in bilateral committee that would work on elaboration of a new collective agreement.

As for the AFL-CIO statement, that in case of the ESFTUG and RWU, employers are state agencies and organizations, it should be emphasized, that this statement is groundless based on the following facts:

- **In case of the ESFTUG, the employers are school principles.** As it was mentioned above, from 2005, a public school became Legal Entity of Public Law (LEPL). **LEPL is an organization independent and separated from legislative and state governmental bodies** (According to the Paragraph 1 of Article 2 of the Law of Georgia on Legal Entity of Public Law). Therefore, a public school is a separate organization from the Government of Georgia and the MoES.

- **In case of RWU, the employer is Georgian Railway LLC (the GR).** Organizational legal form of GR is Limited Liability Company, which is established for the purposes of generating profit and despite state ownership it is an independent entity, authorized to take decisions related to its core business and operations without involvement from its partners. In addition it needs to be highlighted that GR is non-budgetary organization and the only source of financing is profit generated as a result of company’s business and operations.

3. Case of Eurasian Steel-Hercules Plant, Kutaisi

Discussions within the TSPC

A very important circumstance of the case is not reported by the Petitioner: the verified fact that the factory management was not informed on and aware of the existence/formation of the union. Hence, this implies that there could not possibly have been union targeting in the case.
On September 21, 2011 a meeting of Tripartite Committee Working Group (TCWG)\textsuperscript{14} was held. The parties had the opportunity to present relevant evidence around Kutaisi case. Mr. Tamaz Dolaberidze - President of the Metallurgical, Mining, Chemical Industry Workers Trade Union (affiliated member of the GTUC) — briefed the TCWG members on the reasons and the evolution of the conflict in Kutaisi plant and provided updated info on the matter.

A short discussion followed the presentations. During the above-motioned meeting of TCWG, Mr. Dolaberidze himself asserted that his organization (affiliate of GTUC), which assisted some of Kutaisi plant employees to create a primary trade union unit within the factory. He also informed that the fact of creation and existence of such a union and membership to it was completely unknown to the management of the factory. Logically, as the employer was not aware of creation of the primary trade union as well as names of its members, the case cannot be assessed as anti-union dismissal or targeting union members.

This fact is supported by the official letter to the Ministry of Labor, Health and Social Assistance (MOLHSA) received from the Eurasia Steels Company - the owner of Kutaisi plant. This letter was sent in response to Ministry’s (MOLHSA) written enquiry to check the information that there were a number of trade union activists dismissed on the ground of trade union membership. They answered that they did not know about the existence of any trade union units within their Plant. Moreover, they confirmed that out of 6 people — former employees of Kutaisi plant mentioned in the letter, I left the factory on his own will, and the others were dismissed because of repeated breach of labor discipline. It should still to be verified whether dismissed persons have been union members at the moment of dismissal at all.

It should be emphasized, that on October 4\textsuperscript{th}, 2011 Mr. Irakli Petriashvili made a public statement on the TV channel Kavkasia: “...I hope, that all the challenges that the Georgian trade unions and consequently, employed persons have, will be solved and settled in such way as it was settled in Kutaisi. You are informed that these people are reinstalled, negotiations regarding trade union started, and the trade union membership is not hindered. These were made possible through collective efforts”.

The above mentioned public statement of Mr. Ir. Petriashvili was confirmed by the Mr. Kari Tapiola in the e-mail communication to the Office of the Prime-Minister of Georgia informing that at the meeting with Mr. Guy Rider and Mr. Kari Tapiola, Mr. Ir. Petriashvili has personally confirmed that the issue was resolved.

**Detentions of “Hercules” Kutaisi Steel/Metallurgical Factory Workers**

On 13 September 2011, Mr. Lebanidze, the Deputy Director of the Kutaisi Metallurgical Factory “Hercules”, called the Kutaisi city police noting that a group of strikers had set up a tent at the entry of the factory, thereby blocking entrance to it and paralyzing its work (see the video record filmed by an independent reporter, where the representatives of the management of “Hercules” Plant urges Mr. I. Petriashvili (Head of the GTUC) for the protesters not to block the entrance of the factory and to give access to the (majority of) workers not participating in strike to enter to the factory to  work

https://www.youtube.com/watch?v=ig0zlozbhzc&feature=player_embedded).

\textsuperscript{14} Tripartite Committee Working Group – is established under the framework of the Tripartite Social Partnership Commission and includes members from trade unions, employers’ association and Government.
The Kutaisi police arrived immediately on the site and communicated to the strikers that they were obliged by the law not to obstruct the work of the factory and urged them to relocate the tent away from the factory’s entrance. After refusal from the strikers, the police removed the tent from the entrance of the factory, leaving it in the possession of the strikers and left the area.

On 15 September, Mr. Lebanidze, sent a written complaint to the Kutaisi City Police, stating that the strikers continued to obstruct the work of the factory by blocking its entrance and, moreover, stirring up confrontation with other employees that refused to join the strike. Mr. Lebanidze requested that the police immediately implement appropriate measures envisaged by law to allow for the restoration of the normal work of the factory.

In the evening of 15 September, the Kutaisi police arrived to the factory site and summoned eighteen strikers, directly involved in the blocking of the entrance, to a nearby police station. The police explained to these eighteen strikers that by blocking the entrance to the factory and hindering its work, they were violating Georgian legislation (including Articles 190 and 226 of the Criminal Code of Georgia and Article 9 of the Law of Georgia on Assembly and Manifestations). The police emphasized that although they had the legal right to continue to strike, in so doing they were prohibited by the law to obstruct the work of other workers and therefore, the normal functioning of the factory as a whole. The said eighteen strikers signed a protocol confirming the receipt of a warning from the police against undertaking any illegal actions while on strike.

On 18 September, in an incident that has no factual or legal correlation to the events described above, the Kutaisi city police received a telephone call from the management of a local pub, noting that three drunken customers were violating public order by behaving aggressively towards other customers and the staff. When the police arrived shortly after the phone call, the three drunken individuals disobeyed and violently resisted the orders of the police. Subsequently, they were detained by the police and identified as Malkhaz Gogava, Emelian Gumberidze and Irakli Iobidze, coincidentally employed by the Kutaisi Metallurgical Factory “Hercules”. When detaining an individual, if the police officer has reasonable doubt, based on criteria defined by the law, that the individual is under the influence of narcotics, the police officer has the right to subject the individual to a narcotics test. Given such reasonable doubt, Gogava, Gumberidze and Iobidze were checked for drug abuse, with test results returning negative. Gogava, Gumberidze and Iobidze were charged with disobeying lawful orders of the police, according to Article 173 of Code of Georgia on Administrative Offences. On 19 September, the Kutaisi City Court sentenced the individuals to 10 days of administrative detention.

**Alleged Trafficking Case in Kutaisi Plant (Criminal Case #088260911801)**

On 26 September 2011, the West Georgia Regional Prosecutor’s Office initiated a criminal investigation (case no. 088260911801), based on Article 143(1) of the Criminal Code of Georgia, on the alleged trafficking of a group of Indian nationals working at the “Hercules” Kutaisi Metallurgical. In course of investigation, the law enforcement authorities have questioned up to 300 persons including 80 Indian workers, 98 strikers, management of the Kutaisi Metallurgical, employees of the Civil Registry Agency and etc. The following has been established in the course of the investigation:
The “Hercules” Kutaisi Metallurgical Factory was founded by an LLC, “Eurasian Steels,” and is currently owned by an Indian national. The CEO of the factory is an Indian national with two Georgian deputies. Since 2009, Indian nationals have been employed at “Hercules” Kutaisi Metallurgical Factory. Currently, there are 128 Indian workers at the factory.

During the investigation, law enforcement authorities apart from questioning 85 Indian workers inspected their working and living conditions.

- The workers live in a newly constructed dormitory near the factory. Living conditions are acceptable: each person is provided with a bed, cold/hot water, a closet and a cleaning service. In 2011, the shower and toilet facilities within dormitory and toilet facilities outside of the dormitory have been refurbished; Workers have access to the Internet and computers at the dormitory. Additionally, each worker owns a mobile telephone; Workers, who choose not to live in the dormitory, receive an additional allowance to cover rent-related expenses.
- The average minimum salary for workers (general laborers) is 400-450 GEL per month, while specialist and managers receive up to 1000 - 1200 GEL per month; Workers receive their salary on a monthly basis without delay as observed through retrieved invoices and bank transfer data. Workers receive salaries on hand (in cash) and the issuance of the salary is confirmed by each worker’s signature on an invoice.
- On several occasions, based on their personnel request Indian workers were either paid in advance part of their monthly salary or accumulated part of the salary for several months; in all instances overall salary paid to each Indian worker equated to the total amount of salary envisaged in the contract (for example, according to invoices and bank transfers Indian worker that had a 6 month contract with 400 GEL monthly salary was overall paid 2 400 GEL in accordance with contractual term lasting 6 months);
- Since October 2011, upon the request of several Indian employees, part of their salaries is being transferred to their families in India. Namely, LLC “Eurasian Steels” transfers money to Dubai-based “Eurasian Venture” which itself transfers the workers’ salaries to the bank accounts specified by workers themselves. The investigation inquired whether or not the money transferred by the “Eurasian Steel” was delivered to workers’ families in India. Namely, investigation examined salary issuance sheets for October, November and December of 2011 as well as documentation confirming bank transfers to India either to workers’ personal accounts or to the accounts of their family members. Indian workers confirmed abovementioned information in their testimonies.
- In addition to their salary, the factory provides workers with three meals a day free of charge and each Indian worker holds health insurance from “Imedi L”; the costs for meals and insurances are covered by LLC “Eurasian Steels”. The employees’ travel costs to and from India are also covered by LLC “Eurasian Steels”. Investigation particularly inquired into abovementioned facts - examining all salary histories and concluded that the sum/costs covered by “Eurasian Steels” are not deducted from employee’s salaries.
- Notably, factory administration covers expenses related to corporate events, i.e. excursions to Sataplia, Anaklia and other sea resorts. Muslim workers are provided with transportation to mosques in Batumi and Sarp.
- All Indian workers enjoy freedom of movement while passports or travel documents have never been seized or removed from the possession of any of the worker. On several occasions, the management of the factory has only assisted Indian workers with prolongation of the

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15 Payment is made between 10th and 12th date of each month;
16 Please note that salary noted in contracts is deducted income tax in line with Georgian legislation;
residence permits at the Civil Registry Agency (CRA) by organizing group visits to CRA. However, it has never confiscated documentation. Furthermore, representatives of the CRA of Kutaisi testified that Indian nationals have been extending their visas or residence permits since 2009 in accordance with law. In all instances, the Indian nationals personally presented their passports and other relevant documentation (work permit, contract, etc.) to Kutaisi CRA Office with the assistance of an interpreter. The questioned workers confirmed this information.

- Its worth to note that in case of trafficking, retention of the passport/travel document's aims at restricting freedom of movement of an alleged victim. As noted above, Indian workers freedom of movement has never been restricted internally or externally: they travelled inside of Georgia without any impediment. In course of investigation, the law enforcement authorities not only examined witness (workers) testimonies but carried out undercover surveillance. As for their traveling outside Georgia, apart from witness testimonies, investigation examined Indian workers border crossing and traced case of 28 workers who either traveled home (to India) for holidays and voluntarily returned to Georgia or who re-applied for work at Hercules after the expiration of the contract and their return to India.

Important Issues related to the Conditions of Georgian Workers of “Hercules” Kutaisi Metallurgical Factory

In course of investigation of trafficking case, the law enforcement authorities also questioned 98 Georgian workers in relation to treatment of Indian workers by the management of the factory as well as their treatment in course of a September strike by the management and the police.

Georgian workers confirmed that the representatives of trade unions organized a strike and requested improvement of their working conditions. Workers organized a demonstration in front of the entrance area of the factory and around 100-120 persons participated in the strike. All of the questioned 98 Georgian workers confirmed that there has been no abuse of power either from the side of management or police. Participants ceased to strike after strikers met director of the factory Roman Lebanidze and received from him a promise satisfying their requests. As for today, all the requests of the workers have been satisfied.

Following the strike, working conditions of Georgian employees have considerably improved; namely: 1. The 24 hour healthcare unit was established at the premises of the factory. It should be noted, that previously, the medical services (assistance of the doctor) was available during the day time. 2. The separate dining space has been established for Georgian workers. Though, meals are not for free and workers have to pay for it. 3. Administration of the factory has built additional shower/bath spaces for workers. 4. Employees are provided with special work clothing. In case the uniforms are damaged, the outfit is shortly replaced with the new one. 5. Administration of the factory allocated a bus for transportation of the workers, who live in suburbs of Kutaisi. Consequently, workers are being transported to their homes free-of-charge.

Concerns were raised with regard to payment of the half-month wage (for May) to the workers of the “Hercules” Kutaisi Metallurgical Factory. In this regard its worth to note the following:
- Factory has always applied the hourly payment system whereas the workers were paid on hourly basis. In April 2011, administration decided to pilot new system whereas the workers were remunerated through task-based payment. In April, employees received their salary according to task-based system;
In May, administration decided to continue through existing hourly payment system and not to implement task-based payment. Employees of the factory where informed about this decision of the administration. Consequently, the salary payment took place according to old system in May; in this regard, some workers expressed concern. Despite the fact that employees were informed of the aforementioned decision, administration still decided to reimburse May’s salary in task-based payment by compensating difference in June and July (if they earned more through task based system). Hence, workers were compensated already in June and July for May’s salary.

The testimony mentioned complaint filed against Revaz Diakonidze, head of economic security at the “Hercules” Kutaisi Metallurgical Factory. As noted above, investigation questioned 98 strikers in relation to measures and actions undertaken by police and administration of the factory. Strikers have noted that there has been no abuse of power from the side of management. Mr. Diakonidze has also been questioned in relation to the aforementioned issue; he has asserted that he has heard about the membership of workers in the trade union only several days prior to the strike. He has never abused his authority to discriminate members of the trade unions, though Diakonidze noted that five workers were already dismissed from work prior to the strike, due to frequent absences. Therefore, their dismissal was not associated with membership in the union, or strikes, but with the non-fulfillment of their working obligations. Out of aforementioned dismissed workers, one person (Irakli Sirbiladze) was re-employed upon his personal application/request.

There were other issues related to the Case provided by the Testimony of the Petitioner:

- **The ending of strike by the intervention of the approximately 50 police vehicles** – The strike was not intervened by the 50 police vehicles. The police officer arrived at the Kutaisi Plant and explained to the strikers that putting camp near the transport road is violation of public order (see link: http://www.youtube.com/watch?v=telgGtyKpsSs).

- **The claim regarding the visits of the police officer at home of rehired workers is groundless.** The GoG persistently requires from the GTUC to provide any facts in this regard.

4. **Case of Public Servants Trade Union of Georgia**

The GoG is not aware of this case. Moreover, the Case of Public Servants Trade Union of Georgia has never been brought for discussion at the TSPC by the GTUC.

5. **Case of Health Care Workers Union**

The following points should be taken into consideration:

- The GoG is not aware of this case.
- The case was not brought for the discussion at the Tripartite Partnership Commission by the GTUC.

On the latest session of the TSPC held on February 6, 2012 (after the public-hearing), the GoG has attempted to get more information on the alleged cases presented by the AFL-CIO related to Mr. Janashia, the President of Health Care Workers Union and Ms. Kobakhidze, Head of the ESFTUG with an intent to follow up on them.

At this session of the TSPC, the Head of the GTUC, Mr. I. Petriashvili stated that he was not aware about the Mr. Janashia’s case reflected in the Testimony by the Petitioner, despite the fact that the Health Care Workers Union is an affiliated member of the GTUC.
On the Ms. Kobakhidze’s case, the GTUC responded that they heard of such a fact but were not equipped with necessary details to provide them at the session of the TSPC and would provide it later (not available for the moment of the post-hearing response deadline).

It is notable, that Mr. Janashia and Ms. Kobakhidze are often present sessions of the TSPC and have never raised the issues reflected in the AFL-CIO Testimony.

It should also be noted that all the facts related to the activities of the TSPC, statements and events related to them are public, recorded and thereby verifiable.

D. Responses of the GoG on Certain Issues Raised During the Public Hearing Held on January 24, 2012

Two Years of Public Discussions for Adoption of the Labor Code
During the public hearing, the representative of the AFL-CIO stated, that without consulting the trade unions, the Government of Georgia quickly passed a new Labor Code.

The GoG would like to emphasize, in 2006, Georgia adopted a new Labor Code as a result of almost two years of debates and public discussions, and not as a surprise for the GTUC as stated in the testimony of the AFL-CIO. The new Labor Code replaced the opaque Soviet Labor Code bring the logistical framework in compliance with the international standards.

The new environment enabled establishment in practice of previously restricted freedom of association and emergence of the new trade unions. In particular, 36 new trade unions registered since the adoption of the new Labor Code.

It should be mentioned that the Petition does not contain issues of any other trade union rather than problematic issues of the GTUC.

Labor Code as Organic Law
The Labor Code became Organic Law as a result of the amendment to the Constitution of Georgia, which is the supreme law. In general, the amendments aimed at changing the distribution of powers between the different branches of the state, but among others, these amendments to the Constitution defines that the law governing labor issues should be an Organic Law. The ground to the amendment was that labor is one of the human rights and rights should be guaranteed by a higher standard of legislation than the ordinary law.

According to the Constitution, the draft of amendments to the Constitution should be submitted to the Parliament of Georgia, which publishes the draft of amendments for public discussions. The discussion within the Parliament on the draft amendments starts in 1 month after its publication.

Accordingly, the amendments to the Constitution are result of very broad public discussions and consultations and all interested parties were aware of amendment that Labor Code would become Organic Law, as the Labor Code regulates labor issues.
List of Abolished Controlling Agencies

In its effort to curb corruption the GoG has abolished significant number of controlling/inspection agencies. The motive of the abolishment was the fact that those agencies provided very little if any, public good, as compared to the significant damage they created by terrorizing businesses through corrupt practices. The list of the abolished controlling agencies during 2003-2006 years is provided in the IFC Project. In this period the GoG abolished 22 controlling agencies, for example: Sanitary/Hygience Inspection, Pharmacy & Narcotics Inspection, Goods & Services Inspection of Sakstandari, Sakminkhiltskali – beer & soft drink inspection, Labor Inspection, Price Inspection, Medical Service Quality Inspection, Borcier Phyto-sanitary Inspection, etc.

Composition of the TSPC

The TSPC consists with five members from each party, 15 members in total. The TSPC includes:

1. The representatives from following different state authorities: the Ministry of Labor, Health and Social Protection; Ministry of Regional Development and Infrastructure; Ministry of Economic and Sustainable Development; Ministry of Justice; and Advisory Group to the Prime Minister.

2. From the employers’ side, different employers’ associations: the Business Association of Georgia (hereafter BAG), the Employers Association of Georgia, and the Small and Medium Business Association, as the BAG has the memorandum of cooperation with the Small and Medium Business Association.

3. Form the unions’ side, only the GTUC is representing the unions and labor movement in the TSPC.

During the elaboration of the Statute of the TSPC, the parties had to agree about representative of the TSPC. The GoG suggested to the GTUC to give the opportunity to other trade unions to be represented in the TSPC, but the GTUC blocked this proposal and persistently required that unions should be represented only by the GTUC in the TSPC. As a result, in the TSPC the employers are represented by three different employers’ associations, while unions are represented only by the GTUC.

E. Conclusion

Considering the clarifications and commitments provided in the present document, the GoG asks that the GSP Subcommittee members deny the Petition dated September 10, 2010, which was submitted by the AFL-CIO pursuant to 19 USC 2462(d) of the Generalized System of Preferences (GSP) statute.


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