

Pre-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) Statute
Dated September 10, 2010

Case 001-CP-10

January 10, 2012

A. Introduction and Executive Summary

The Government of Georgia (GoG) appreciates the opportunity to respond to 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.

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.

Before the Rose Revolution, **Georgia was one of the poorest performing economies of Eastern Europe and Central Asia**. The country's reforms since then have yielded spectacular results, which have been translated in a restructured, resilient and fast-growing economy, accompanied by extremely low levels of corruption. **Georgia can be seen as an exemplary, maturing democracy within the region** in terms of maintaining public order and trust in its law enforcement bodies, and the judiciary visibly maturing in parallel year-after-year.

These achievements have been attained despite the challenges Georgia faced in those years. They include a complete, **de-facto trade embargo from its then principal trade partner**, the Russian Federation. The embargo was imposed in 2006 and is still in effect. The most serious challenge was Russia's **full-scale military intervention in August 2008** and consequent occupation of Georgia's territories.

Georgia has weathered these crises successfully, **recording economic growth of more than 6% in the last two years and a decline in unemployment**. Georgia's unemployment is largely 'structural' as some of the expanding sectors have difficulty finding workers with the skills they need and have to wait an inordinately long time to fill their vacancies.

Although Georgia's export growth rate has grown at about the same pace as its gross domestic product (GDP), the overall trade share of its GDP has remained below that of the country's competitors. **Georgia continues to export less than what would be predicted by a simple gravity model to large markets, such as the United States**¹.

The availability of GSP has been an essential tool to increase the country's international trade with the United States, Canada, the European Union, Switzerland, Norway and Japan. Georgia's exports into the U.S. market under GSP have grown from \$17.3 million in 2002 to more than \$186.5 million in 2010. As for 2011, on 1st of January, 2011 GSP program lapsed.

To support employment, the Georgian payroll tax was decreased from 33% to 20% in 2007, and later merged with the income tax (flat 20%) in 2008, **making the country's tax wedge one of the lowest in the wider region**. The reformed labor markets facilitated economic restructuring, promoted productivity, increased competitiveness, and cushioned the economy against supply and demand shocks. Nominal earnings in all sectors rose on average by 375% (2003-2010) while the consumer price index rose only by 63%, **resulting in a large increase in real earnings**. In 8 sectors nominal earnings rose by more than 400%, and in 5 of those sectors, by more than 500%.

¹ The World Bank. Republic of Georgia: An Agenda for Sustainable Growth. Report No. 63500-GE. August 11, 2011

Grant of GSP in 2001 and Worker Rights in this Period

Georgia inherited from in soviet past highly defunct and corrupt labor relations in which freedom of association to form labor unions was effectively and legally blocked through the existence of a ‘silent’ conspiracy between the executive government and the sole trade union. The conspiracy ‘deal’ involved the government granting petty privileges to local union leaders, coupled with more significant privileges and immunities being given to national union leaders, in exchange for their loyalty to the government.

A vivid demonstration of this was that despite the fundamental overhaul of Georgia’s laws in the 1990’s, which aimed at departing from the legal system of the Soviet Union, the **Government of Georgia and the union failed to change the Soviet labor legislation**. This was legislation that deprived non-union members of the right to strike. It also allowed the union to approve the dismissal of employees without compensation. Despite these significant shortcomings in its protection of internationally recognized worker rights, **Georgia was granted GSP by the United States on July 5, 2001.**

Strengthening of Worker Rights and Tripartite Cooperation

Since then, **Georgia has addressed a number of major issues**, such as liberalization of association regulations, which facilitated trade union formation, and adoption of labor regulations implementing the GoG’s commitment under all of the core ILO conventions.

The GoG has restricted itself from interfering in union activities. Evidence of this occurred in the 2005 and 2009 union elections, which marked the first time in Georgia’s history in which union leader elections were freely held. These elections selected national leaders of the Georgian Trade Unions Confederation (GTUC), the heir of the Soviet Profsoyuz (Trade Union).

In 2006 Georgia adopted a new Labor Code, which replaced the soviet term Labor Code and brought the legislative framework to a higher level of compliance with the international standards.

Notably, according to the most recent data of the ILO,² the percentage of trade union members among wage and salaried earners (**Union Density Indicator**) in Georgia was **47.7% in 2007, which is the highest union density among all lower middle-income countries**³. Georgia’s union density out-performs 19 countries in Europe such as Austria, the Czech Republic, France, Germany, Latvia, Lithuania, and Hungary. It is also higher than that in the United States, Canada, Mexico, and Chile.

From the perspective of the **Collective Bargaining Coverage Rate, which is 25.9% in Georgia according this 2010 study**⁴, Georgia’s percentage is higher than, for example, the United States, Mexico, Chile, Armenia, Estonia, and Poland. According to the above-mentioned study, the reported proportion of the Collective Bargaining Coverage Rate is 17.0%, higher than e.g. 13.3% indicator of United States and higher than several countries in Europe.

² The ILO. “Trade Union Density and Collective Bargaining Coverage, International Statistical inquiry 2008-09”. ILO’s Industrial and Employment Relations Department (DIALOGUE) 2010

³ Georgia’s gross national income (GNI) per capita (2010) was \$2,690.

⁴ This is based on the number of workers covered by collective agreements as a percentage of all wage and salaried workers,

In general there are approximately 15,000 civil society organizations registered in Georgia. This represents one of the highest civil society densities in the Post-Soviet space, and also highlights the extent and applicability of freedom of association in Georgia.

The new environment enabled emergence of the new unions as a result of the reforms. In particular, 36 new trade unions registered in the period of 2006-2011, after the adoption of the new Labor Code in 2006.

Georgia has ratified and implemented 16 ILO Conventions, among them all eight core conventions.

In 2006 Georgia ratified the Social Charter of the Council of Europe, which essentially is a document concentrated on the worker rights.

In 2009, the Government of Georgia, in close cooperation with the ILO, initiated **and installed the tri-partite dialogue mechanism first informally and subsequently formally** in 2010. The Tri-partite Commission, chaired by the Minister responsible for labor issues, provides a forum and institutional mechanism to address labor issues through agendas defined by all parties involved, including the GTUC.

Summary

In summary, since becoming a GSP beneficiary in 2001, **Georgia ‘...has and is taking steps to afford to workers [in Georgia]... (including any designated zone in [Georgia]...) internationally recognized worker rights’⁵**

This paper provides the GoG’s position regarding each of the issues identified in the AFL-CIO Petition. The GoG also **takes the additional step of providing its vision for the way forward**. This vision identifies the GoG’s proposed actions to address the Petition’s concerns, including:

- Continuing the dialogue with the ILO and within the framework of the Tri-partite Commission
- Training the judges on labor issues
- Training the employers and workers organizations on their right and in conducting negotiations
- Initiating amendments to Georgia’s labor laws to:
 - Abolish the minimum trade union membership requirement
 - Streamline the definition of grounds and procedures for the suspension of an association
 - 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
 - Enhance the collective bargaining and related provisions in Georgia’s labor laws to ensure and further promote collective bargaining
 - Avoid misinterpretation of the Labor Code provisions regarding the voluntary character of an arbitration
 - Remove the 90-day limitation on strikes
 - Streamline workers’ rights to participate in sympathy or protest strikes

⁵ GSP statute (19 USC 2462(b)(2)(G))

- Clearly define the minimum age for employment to eliminate any ambiguity
- Strengthen the restrictions on working hours for legal youth employment
- Precisely determine the age of admission to hazardous work and
- Clarify the provision on an employer's right to make "insubstantial" amendments to an employment agreement.

B. Protecting Workers Rights under the Law

I. Freedom of Association in Georgia

Freedom of association is one of the fundamental provisions of the Georgia's laws and a vital principal examined in great depth in the day-to-day policy-making of the GoG. The right of employees to create and join associations of their own choosing is one of the main components of the wider democratic society of which Georgia seeks to be a part. The freedom of association is a core and fundamental labor standard, which the GoG consistently respects and protects.

The GoG demonstrates very healthy statistics on collective bargaining in practice. According to the most recent data of the ILO,⁶ the percentage of trade union members among wage and salaried earners (**Union Density Indicator**) in Georgia was **47.7% in 2007, which is the highest union density among all lower middle-income countries**⁷. Georgia's union density out-performs 19 countries in Europe such as Austria, the Czech Republic, France, Germany, Latvia, Lithuania, and Hungary. It is also higher than that in the United States, Canada, Mexico, and Chile.

In addition, in accordance with the data of the National Agency of Public Registry, after the adoption of the new Labor Code in 2006 - **36 new unions registered**. Namely:

- 17 trade unions in the industry and service sector;
- 10 trade unions in the education sector;
- 5 trade unions in the culture and sport sector;
- 2 trade unions with cross-sector coverage;
- 2 trade unions in the public sector.

The GoG understands and is going to address:

a. **The concerns expressed by the AFL-CIO regarding the definition of grounds and procedures for the suspension of a trade union** in order to further promote freedom of the association in Georgia.

b. **The abolishment of the minimum trade union membership requirement, as recommended by the ILO CEACR,**⁸ in order to further streamline the procedures needed for establishment of a trade union.

In this context, the GoG would like to provide additional information and legal context in this regard.

⁶ The ILO. "Trade Union Density and Collective Bargaining Coverage, International Statistical inquiry 2008-09". ILO's Industrial and Employment Relations Department (DIALOGUE) 2010

⁷ Georgia's gross national income (GNI) per capita (2010) was \$2,690.

⁸ ILO CEACR 2007/78th Session, Observation concerning Freedom of Association and Right to Organize Convention (No. 87) Georgia, 2007

Guarantees for the Freedom of Association

Georgia's laws provide guarantees of freedom of association and prohibit any kind of discrimination based on membership in any type of association including trade unions. Discrimination based on the membership in trade unions is forbidden by each Georgia's law that regulates labor relations (the Georgian supreme law - the Constitution of Georgia, the Labor Code of Georgia, the Law on Trade Unions of Georgia, and the Criminal Code of Georgia):

a. **Each person shall have the right to form and to join civil associations, including trade unions** (Article 26(1) of the Constitution of Georgia). Because the definition of 'civil association' includes trade unions, all the rights given by the law to civil associations are fully applicable to trade unions without any reservation.

b. **A trade union can be established at any enterprise, institution, organization and in other places of work** (Article 2(3) of the Law on Trade Unions of Georgia).

c. **Discrimination of an employee by an employer, based on membership or non-membership in a trade union, is prohibited** (Article 11(6) of the Law on Trade Unions of Georgia).

d. **Any type of discrimination based on race, color, ethnic and social category, ethnicity, origin, property and position, residence, age, gender, sexual orientation, disability, membership in religious or any other union, family conditions, political or other opinions is prohibited in employment relations** (Article 2(3) of the Labor Code of Georgia).

e. **In the course of employment relations, the parties shall adhere to basic human rights and freedoms** as defined by Article 2(6) of the Labor Code of Georgia. It should be emphasized, that freedom of the association is one of the basic and fundamental rights of the employee ensured by the Constitution of Georgia as it was mentioned above in the bullet-point "a" of this Chapter.

f. **Infringement of the equality of employees based on membership in trade unions is defined as a criminal offense and is subject to punishment by the Criminal Code of Georgia.**

The Criminal Code of Georgia stipulates that infringement of equality of individuals based on, among other conditions, membership in any civil association, is punishable as it violates individuals' human rights. The violation shall be punished by a penalty or by probation for a period of up to one year, or by imprisonment for up to two years (Article 142 of the Criminal Code of Georgia). If an employer hinders an employee's right to join a trade union, the employer will be held criminally liable.

g. **Any illegal impediment to creation or activities of a political, religious or civil association by violence, threat or using employment status shall be punishable** by a penalty or by probation for a period of up to one year or by imprisonment for up to two years (Article 166, of the Criminal Code of Georgia).

Grounds for Union Suspension or Prevention

The Petition expresses the concern regarding the grounds and procedures for the suspension of a trade union defined by Article 4 of the Law of Georgia on the Suspension and Prohibition of the Activities of Voluntary Associations.

The GoG would like to offer further clarifications in this regard.

Article 4 of the Law of Georgia on the Suspension and Prohibition of the Activities of Voluntary Associations does not and cannot be used to prohibit or limit any rights of trade unions because it

refers only to an association's **socially hostile actions** and not to actions that involve **social conflict**:

a. Article 4 applies only to union or other civil associations' actions that are violent or that could be considered as inciting violence. Article 4 does NOT apply to any non-violent actions and activities of associations.

b. In practice Article 4 **has never been applied**. Thus, the activities of a trade union or any other civil association have never been suspended since 1997, when the Law was adopted.

c. The Petition's analysis that Article 4 is used to prevent the creation of unions or is used to suspend their operation stems, in the opinion of the GoG, results from an important translation error in the International Trade Union Confederation (ITUC)⁹ reports. **The Georgian law does not use the word "social conflict", but the word "social hostility"¹⁰**. The Article 4 of the same Law clearly refers to the violence and not to conflict. The term "conflict" is a difference between interests, ideas and motives of the parties and it is not a violent action. However, the term "hostility" implies serious violent activity, such as provoking enmity between different social classes of society. Accordingly, "social hostility" cannot be interpreted as a conflict between employer and employee, but enmity in the society broadly speaking.

d. **On the basis of the Article 4, ONLY the courts have the right to ban the civil association**. The District and City Courts can prohibit an association only for those actions that are violent or are considered to be inciting violence, such as: activities of association that aim to overthrow the State or to forcibly change the constitutional structure of Georgia, infringing upon the independence and territorial integrity of the country, or inciting war or violence, provoking national, local, religious or social hostility, or creating or has already created armed (paramilitary) groups. Further, the decision of the District and City Courts on prohibition of associations based on the above-mentioned activities can be appealed to the Appeal Courts, and the decision of the Appeal Court can be appealed to the Supreme Court (Cassation).

e. Furthermore, any impediment to creation or to the activities of a civil association, including trade unions, is punishable as a criminal offense.

As mentioned above, in order to further enhance the freedom of association, the GoG intends to address the issue, as recommended by the AFL-CIO, by removing any possible ambiguity from the Article 4 of the Law of Georgia on the Suspension and Prohibition of the Activities of Voluntary Associations.

Procedures for Establishing a Trade Union

It should be emphasized, that under the Georgian legislation, procedures for establishment of a trade union as an association are simple and straightforward. Establishment of a trade union requires only payment of the registration fee equivalent to 60 USD.

Achieving a higher level of protection for the freedom of association is one of the priorities of the GoG, as mentioned above. For this reason, the GoG proposes further streamlining procedures

⁹ International Trade Union Confederation's (ITUC) Annual Survey of Violations of Trade Union Rights 2009, 2010

¹⁰ Article 4 of Law of Georgia on the Suspension and Prohibition of the Activities of Voluntary Associations: "The court has a right to prohibit civil association¹⁰, which is aimed at overthrowing or forcibly changing the constitutional structure of Georgia, infringing upon the independence and territorial integrity of the country, or propagandizing war or violence, provoking national, local, religious or **social hostility**, creates or has already created armed (paramilitary) groups".

needed for creating trade unions. This will be done by abolishing the minimum trade union membership requirement¹¹ as was recommended by the ILO CEACR.

II. Collective Bargaining

Enhancement of the right of employees to bargain freely with employers is one of the fundamental policies of the GoG.

As indicated earlier, the GoG demonstrates very healthy statistics on collective bargaining in practice. From the perspective of the Collective Bargaining Coverage Rate, which is 25.9% in Georgia according a 2010 ILO study¹², Georgia's percentage is higher than, for example, the United States, Mexico, Chile, Armenia, Estonia, and Poland. The reported proportion of the Collective Bargaining Coverage Rate is 17.0%, higher than e.g. 13.3% indicator of United States and higher than several countries in Europe.

In order to further ensure and promote collective bargaining in the country, the GoG will enhance collective bargaining and related provisions in Georgia's labor laws, namely:

- Ensuring a clear and better articulated prohibition of discrimination based on trade union membership during pre-contractual as well as contractual labor negotiations.
- Enhancement of effective and dissuasive sanctions against acts of interference into trade union activities.
- Enhancing of collective bargaining mechanisms in order to ensure further promotion of the collective bargaining and to bring related legislative provisions to a higher level of compliance with the international standards.

Prohibition of the Anti-union Discrimination during Recruitment and Termination of a Labor Contract

The Petition, based on the ILO CEACR recommendation, states that Georgia's labor laws do not provide sufficient protection at the time of recruitment and at the time of termination of a labor contract.

Effective prohibition of discrimination is one of the essential policies of the GoG. By bolstering freedom of association, the GoG seeks to ensure protection from discrimination, including anti-union-discrimination, as abolition of discrimination plays a significant role in the democratic transformation process of the country.

In particular, the GoG pays vital attention to the prohibition of anti-union discrimination. The GoG is ready to initiate amendments to the labor laws in order to ensure a clear and better articulated prohibition of discrimination based on trade union membership during pre-contractual as well as contractual labor negotiations.

In this context, the GoG would like to provide additional information, legal context and clarifications in this regard.

¹¹ Observation, CEACR 2009/80th Session: "...The Committee therefore once again requests the Government to provide information with its next report on the measures taken or envisaged to amend section 2(9) of the Law on trade unions so as to lower the minimum trade union membership requirement..."

¹² This is based on the number of workers covered by collective agreements as a percentage of all wage and salaried workers.

The Georgia's laws (e.g. the Constitution, the Law on Trade Unions, the Labor Code, and the Criminal Code) prohibit any type of employment discrimination, including anti-union dismissals, and protect against violations of these rights.

Georgia's laws prohibit discrimination in labor relations because of membership or non-membership in trade unions (for detailed information, see Chapter 1 of the GoG Response, "Guarantees for the Freedom of Association," bullets from "a." to "g.", pages 6).

It is notable that termination of employment and recruitment processes are part of labor relations. Accordingly, **prohibition of discrimination in labor relations based on membership in trade unions is applicable both in recruitment and employment termination processes.**

There are no reported cases when a person was not recruited based on his/her membership in trade union.

Furthermore, an employer's **request to disclose** membership in any association including trade unions in the recruitment process **is illegal and punishable.**

As for the concern related to the Article 37 (d) of the Labor Code of Georgia, the Labor Code does not provide that an employer can dismiss a worker without any reason. According to the Labor Code of Georgia, the ground for suspending labor relations can be termination of the agreement. Termination of the labor agreement is possible on the initiative of one of the parties of the agreement. The reasons of termination of a labor agreement can also be stipulated in the agreement.

If a dismissed worker appeals to the Court, the employer is obliged to provide reasoning of dismissal during the Court hearings. It should be emphasized, that according to Georgia's laws, an employee can claim unfair dismissal through appealing to arbitration as well as to the court.

During the court proceedings, a plaintiff can ask questions to the employer, including questions regarding the reason for termination of the individual's 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.

Also, there is misinterpreted information in the comment by the AFL-CIO provided in the Petition, 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 that the employee is not obliged to work during the period after notification.

Privileges of Trade Unions in Collective Bargaining Process

The Petition, based on the ILO CEACR recommendation, states that the position of trade unions should not be undermined by the existence of other employees' representatives or discriminatory situations in favor of the non-unionized staff in negotiation process.

Employees bargaining freely with employers help in identifying solutions to potential problems. They can advance amicable and rational mechanisms for dealing with problems, and helps to find solutions that take into account the priorities and needs both of employers and workers.

In this context, the GoG would like to provide relevant information, the legal context and clarifications in this regard.

a. **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 later 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.**

b. **Trade unions' independence from intervention of an employer is ensured by law** (Article 5(1) of the Law on Trade Unions of Georgia). The unions have full autonomy and discretion in their operations, as guaranteed by law. The aims and objectives, rules governing admitting or excluding a member, rights and responsibilities of members, structure, terms of competency and authority of management bodies, sources and rules governing use of revenues and accumulating property, the terms of making amendments to the trade union's operations and activities, the name, venue and territory of operation, as well as other important issues are determined by the statutes of trade unions in accordance with the law (Article 7(1) of the Law on Trade Unions of Georgia).

c. **Unionized workers have privileges over non-unionized workers regarding availability of office space for the fulfillment of the tasks of a trade union. A trade union and its members are able to hold meetings at work premises granted by the administration of an employer.** The administration of an employer, enterprise, establishment or organization is obliged to create the necessary conditions for the activities of a trade union within its material and financial capabilities and provide to the primary trade union office space, equipment, and communication means for job-related use at the expense of the enterprise, establishment or organization (Article 25(1) of the Law on Trade Unions of Georgia). Besides, an employee who is elected in the trade union body and is not free from his main work may be given free time off the enterprise to carry out trade union duties (Article 23(1) of the Law on Trade Unions of Georgia).

d. **The property and financial rights of trade unions are guaranteed by the Georgia's labor laws** (Article 22 of the Law on Trade Unions of Georgia):

- Trade unions and a coalition (association) of trade unions, in accordance with their own statute, may possess, use and manage the property and financial means available to them. The property and monetary means of trade unions are inviolable. No person has the right to use, take away or transfer a trade union's property and financial means without the consent of the collegial (selective) body envisaged by the respective trade union statute.

- A trade union independently manages its property and financial resources, including its salary policy.
 - Revenue received from membership fees, voluntary payments and charity, which is used to comply with the statutory objectives of a trade union, is not subject to taxation.
 - Financial activities of a trade union, carried out in accordance with its statute, are not subject to reporting towards state bodies.
- e. **The GoG covers all costs of traveling and subsistence expenses of the representatives of the GTUC attending the meetings of the Conference or the Governing Body** in accordance with Article 13(2) of the ILO Constitution.

To summarize, the unionized workers have a number of privileges over their non-unionized colleagues as described above. The position of trade unions cannot be undermined by the possible or potential existence of other employees' representatives or by situations that could favor non-unionized staff regarding collective negotiations because Georgia's labor laws provide unionized workers privileges over non-unionized workers regarding collective negotiations.

Independence of the Trade Unions

The Petition states that there are no express provisions for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference.

Georgia's labor laws ensure that trade unions are independent of and protected from intervention by an employer or employers' association(s). The independence of the trade unions is linked to the provisions of the freedom of association. As was noted earlier in the Response, the freedom of associations is actively supported by the GoG.

Further, the GoG will soon act on the ILO CEACR recommendation in order to promulgate effective and dissuasive sanctions against acts of interference into the law.

In this context, the GoG would like to provide additional information, the legal context and clarifications in this regard:

a. **Independence of trade unions from intervention of employer is ensured by law.** Trade unions as well as coalitions (associations) of trade unions are: 1) independent from bodies of state and local government, employers, employers' unions (unions, associations), political parties and organizations; 2) are not accountable to them; and 3) are not under their control (Article 5(1) of the Law on Trade Unions of Georgia).

b. **Interference in the autonomy of trade unions is prohibited by the Georgia's labor law.** Any illegal impediment of creation or activities of political, religious or civil association by violence, threat or using employment status shall be punished by a penalty or by probation for a period of up to one year or by imprisonment for up to two years (Article 166, of the Criminal Code of Georgia).

Article 42 of the Code of Administrative Violations stipulates that the violation of labor laws by an authorized official of an enterprise, legal entity, or organization will result in a penalty in the amount of a minimum of 100 times the salary. The same violation committed within one year following the imposition of an administrative penalty will result in a penalty in the amount of a minimum of 200 times the salary.

As for the rapid appeal procedures and the mediation, these functions are within the responsibility of the Tripartite Social Partnership Commission.

As indicated earlier, the GoG drafted the statute establishing the Tripartite Social Partnership Commission, with the assistance of the ILO. The Commission began meeting informally in 2009.

The statute of the Tripartite Social Partnership Commission was adopted in March, 2010. The Commission is chaired by the Minister of Labor, Health and Social Protection. Each party is represented on the Tripartite Social Partnership Commission by five members. The following GoG agencies are represented in the Commission:

1. Ministry of Labor, Health and Social Protection
2. Ministry of Regional Development and Infrastructure
3. Ministry of Economic and Sustainable Development
4. Ministry of Justice
5. Advisory Group to the Prime Minister

The formalized Social Dialogue format used by the Tripartite Social Partnership Commission is prepared to address all the concerns raised by the social partners, increase communications among the parties, and find commonly acceptable solutions.

The Statute of the Tripartite Social Partnership Commission has established a special tripartite Working Group dedicated to mediating disputes. As the Statute of the Tripartite Social Partnership Commission has been approved by the Prime Minister's order, it is a legal act and carries the force and effect of law. Accordingly, the Working Group is a statutorily established mechanism of the Tripartite Social Partnership Commission to facilitate dispute settlement between the parties.

The Tripartite Social Partnership Commission analyses alleged anti-union discrimination cases, as pursuant to the recommendation of the Committee on Freedom of Association (CFA) the anti-union cases should be investigated by the Government. However, the Government made a decision to study alleged anti-union cases in the framework of the Tripartite Social Partnership Commission to ensure the involvement of all interested parties in the process. To achieve these purposes, the conciliation and mediation mechanisms have been incorporated in the Tripartite Social Partnership Commission.

In May, 2010, the Secretariat of the Tripartite Social Partnership Commission was established to support the effective and productive cooperation between the social partners. The Secretariat of the Tripartite Social Partnership Commission establishes the agenda for each meeting. The items on the agendas are presented to the social partners before the meeting to allow receipt of comments and notes regarding the issues envisioned by the agenda.

It should be emphasized that from January 2010 to December 2011, approximately 27 Working Group meetings and approximately 11 Commission meetings were held. The Tripartite Social Partnership Commission meetings are held on average once in a quarter. The most recent session of the Tripartite Social Partnership Commission was held on December 22, 2011.

In addition, *ad hoc* meetings of the Tripartite Social Partnership Commission also occur, as authorized by the Statute of the Tripartite Social Partnership Commission.

Promotion of Collective Bargaining

The petition, based on the ILO CEACR recommendation, states that the Labor Code is insufficient to protect the right to collective bargaining and urged the Georgian government to undertake reforms.

The GoG pays vital attention to further enhancement of the collective bargaining.

The GoG proposes to enhance the collective bargaining and related provisions in the Georgia's labor laws to ensure and further promote collective bargaining and to bring related legislative provisions to a higher level of compliance with the international standards.

In this context, the GoG would like to provide additional information in this regard.

The relevant ILO statistical data and indicators regarding Collective Bargaining Coverage Rates (for detailed information, see Chapter 2 of the GoG Response, "Collective Bargaining," page 8), demonstrate clearly that Georgia fares well in this regard among other countries.

Further, most Georgian state organizations have collective agreements with trade unions on the basis of which trade unions use the property of these organizations and deduct a 1% membership fee from employees' salaries for union operations.

The following are examples of the largest companies that have collective agreements with trade unions:

- The number of employees in LTD Tbilisi Metro is 2,705, of which 1,975 workers (i.e. 71.4%) are members of the trade union, including members of senior management.
- The number of employees in JSC Madneuli is 1,429, of which 1,375 workers (i.e. 96%) are members of the trade union.
- The majority of employees of LTD Georgian State Electrosystem— 85.5% (898 employees) are members of the trade union. Currently, 35 trade union members hold high-level positions in the company management.

It is notable, that LTD Tbilisi Metro is 100 % owned by Tbilisi Municipality, and LTD Georgian State Electrosystem is 100% state-owned.

There are 2 recent examples of successful collective bargaining in Georgia. The outcome of the recent collective bargaining is collective agreement between the trade unions and administrations of the largest companies:

- In summer 2010, a collective agreement was signed between the LTD "Silknet" and the Communication Workers' Trade Union of Georgia. "Silknet" is a newly established organization, the founder of which is the "United Telecom", where Trade Unions have traditionally existed for many years. At present, more than 1000 employees are members of the United Union. The collective agreement signed between the LTD "Silknet" and the Communication Workers' Trade Union of Georgia is an outcome of a fruitful collective bargaining process that sought to ensure the protection of the workers' rights in "Silknet".
- Another case focuses on LTD "Georgian Manganese" (a mine factory). The employees of the company were on strike in spring 2010. In summer 2010, after effective collective bargaining between representatives of the company and GTUC, the collective agreement was achieved between the management of company and the trade union.

As demonstrated by the ILO statistical data and the cases presented above, collective bargaining mechanisms are both established and applied to a meaningful extent in Georgia, along with the GoG's promotion of collective agreements in practice.

III. Right to Strike

The right to strike is enshrined in Georgian law and practice as fundamental right Georgian citizens enjoy. The GoG supports the right to strike as a measure by which employees and their associations, including trade unions, may legitimately promote and defend their economic, social and labor interests.

Georgia's labor laws equip and enable trade unions for defending workers' socio-economic and occupational interests and to use this right to strike to enforce their position in the search for solutions regarding labor relations and terms and conditions of employment.

Therefore, the GoG will address the concerns presented in the Petition regarding the right to strike, namely:

- Address the ILO CEACR recommendation in order to avoid potential misinterpretation of the Labor Code provisions regarding arbitration.
- Remove 90-day limitation on strikes.
- Enhance the workers' right to participate in sympathy or protest strikes.

Warning Strike

The Petition, based on the ITUC recommendation, states that the "token strike" is to last between 1-14 days and prior to this, workers are unable to undertake a "real" strike.

The GoG would like to emphasize, that the term "warning strike" is the accurate translation, rather than "token strike". Analyses should be based on use of "warning strike," which is the correctly translated term.

The warning strike takes place after a written notification on the issue of dispute and its grounds, time, venue and nature of the strike. The warning strike signals to the employer to look for acceptable solutions. If there is no reaction from the employer, the warning strike can be converted into a real strike.

A warning strike can last between 1-14 days, which effectively means that after 24 hours from written notification, the warning strike can be converted into a real strike. Pursuant to the Article 49(6) of the Labor Code of Georgia, the right to strike or lockout shall arise within **no less than twenty-four (24) hours** and no more than fourteen (14) calendar days after the warning strike or warning lockout.

Workers are able to undertake a real strike immediately after the 24 hours expire from the initiation of a warning strike. Trade unions exercise the freedom to choose how long the warning strike lasts within the time frame provided by law (maximum of 14 days).

Therefore, there is only a 24-hour gap between when a warning strike ends and a real strike starts. This gap of 24 hours provides the opportunity for the parties to seek mutual agreement or to find acceptable solutions before a real strike begins.

The Labor Code of Georgia provides guarantees for the uninterrupted transition from a warning strike to a real strike after the 24 hours of a warning strike. The strike can be converted into the real strike without any other procedural measure other than waiting 24 hours.

There are no reported cases that the requirements for a warning strike have limited the workers' right to strike.

Appeal and Arbitration

The Petition, based on the ILO CEACR recommendation, states that Article 48(5) of the Labor Code permits either party to unilaterally submit the dispute for compulsory arbitration.

The GoG would like to underscore that it will address the ILO CEACR recommendation in order to avoid misinterpretation of the Labor Code provisions regarding arbitration.

In this context, the GoG would like to provide additional information, the legal context and clarifications in this regard.

As background, there is no requirement for compulsory arbitration stipulated by Georgia's laws, including the Labor Code. Appeal to the court or arbitration is not compulsory.

A trade union's negotiating ability cannot be undermined. Pursuant to Georgia's labor law, the parties have the right but NOT an obligation to appeal to the court or enter into arbitration. The parties can bring the dispute to arbitration only based on the free will, discretion and mutual agreement of the parties. One party of a dispute cannot force the other party to go to arbitration. The parties together select the arbitrators. The arbitration decision can be final only if there is a preliminary discretionary mutual agreement between the parties to do so.

The arbitration process creates a temporary private entity that is established especially for the specific dispute. Therefore, arbitration is not a state authority. It is a non-governmental (private) establishment.

The employee has the right to strike whether an appeal is filed or not. The appeal is not a reason for strike termination. Pursuant to Article 49, Paragraph 10 of the Labor Code, a strike shall not and cannot serve as grounds for termination of the labor relationship.

As for the ILO CEACR concern related to the Article 48, Paragraph 5 of the Labor Code, it should be noted that there is another translation error. Namely, the ILO concern states that "one of the parties is entitled to submit the dispute to the **court of arbitration**". However, according to the legislation, if in the course of a dispute, agreement has not been reached within fourteen calendar days *or* if a party has avoided participation in an amicable settlement, the other party is entitled to appeal to the **court or enter into arbitration and/or continue to use the right to strike**. Again, the Labor Code stipulates the rights of the parties, but they are not obligations.

It should be emphasized that the Labor Code of Georgia provides for the possibility of amicable settlement procedures. According to Article 48 of the Labor Code, amicable settlement procedures include:

- The party sends a written notice to the other party on commencement of the amicable procedure;
- The notice shall accurately reflect the grounds of the dispute and claims;
- The other party shall review the written notice;
- The other party shall send a decision in writing to the first party;

- The decision shall be sent within ten calendar days of receipt of the notice;
- Representatives of the parties or parties themselves make a written decision;
- The written decision becomes a part of the existing contract of employment; and
- If, in the course of dispute, agreement has not been reached within fourteen calendar days or if a party has avoided participation in the amicable settlement, the other party is entitled to appeal to court or enter into arbitration.

After a warning strike or lockout, the parties shall take part in the amicable settlement procedures according to the procedure established by the Labor Code (Article 49(5) of the Labor Code of Georgia). Further, during the period of strike or lockout, the parties shall continue with the amicable settlement procedures (Article 49(7) of the Labor Code of Georgia).

Strike Duration

The Petition, based on the ILO CEACR recommendation, states that the 90-day limitation on strikes seriously undermines one of the essential means through which workers and their organizations may promote and defend their economic and social interests.

The GoG would like to emphasize, that further enhancement of the right to strike is very important to the GoG in order to facilitate labor relations between the employer and employees. For this purpose, the GoG will take the necessary measures to remove the 90-day limitation on strike and lockout duration from the labor laws.

In this context, the GoG would like to provide additional information, the legal context and clarifications regarding the limitation of duration of the strike.

The Labor Code adopted in 2006, which stipulates a 90-day limitation on the right to strike, has not impeded, in practice, any application of the right to strike. After the expiration of the 90 days, a party can go to strike again on the same issue. The only procedure required to follow to restart a strike after the first 90 days is to initiate the second “warning” strike.

It should be emphasized, that according to the Article 49(8), the 90-day limit applies to both lockouts and strikes.

Essential Services

The Petition, based on the ILO CEACR recommendation, states that Article 51(2) of the Labor Code should be amended to establish a system of minimum services.

The GoG would like to provide additional information, the legal context and clarifications in this regard.

The Labor Code of Georgia establishes the minimum criteria for essential services whose workers are limited in their ability to strike. There are 3 cumulative conditions that must be met: 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.

Since adoption of the Labor Code in 2006, there have been no observations or complaints that this provision, in practice, has 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 special duties.

Sympathy and Protest Strikes

The Petition, based on the ILO CEACR recommendation, states that Articles 51(4) and (5) of the Labor Code do not allow workers to participate in sympathy or protest strikes and, therefore, the Articles should be amended.

The GoG would like to emphasize the importance of making further improvements in Georgia's labor laws pertinent to sympathy and protest strikes. For this purpose, the GoG will initiate labor legislation amendments in order to enhance workers' rights to participate in sympathy or protest strikes.

In this context, the GoG would like to provide additional information, the legal context and clarifications in this regard.

All workers can exercise their right to organize and participate in sympathy and protest strikes. This argument is supported not only by the legislation itself, but more importantly in practice. The GoG has received no evidence of cases that involve a limitation by employers on the right to strike.

Georgia's laws ensure rights of sympathy and protest manifestations and gatherings:

- a. **The Labor Code of Georgia does not stipulate that only directly affected persons have the right to strike.** Therefore, it permits anyone to use the right to strike on the basis of sympathy or protest.
- b. **The Law on Trade Unions of Georgia ensures the rights of trade unions to participate in the discussions and settlements of individual and collective labor disputes related to the violation of labor laws and the conditions of collective agreements.** Article 13 of the above-mentioned Law regulates the organization of strikes, demonstrations and other manifestations by trade unions in order to protect the labor and socio-economic rights of the employees.
- c. **The Law on Gatherings and Manifestations grants the right of gathering and manifestation to associations.** The initiator of such a gathering may be a political party, association (including a trade union), enterprise, and organization.
- d. **Impeding legitimate strikes is as a criminal offense.** According to the Georgian Criminal Code, any action that impedes or infringes on the right to strike is punishable by a fine, or probation for a period of up to one year or imprisonment for a period of up to two years.

Based on the summary of pertinent laws, Georgian employees may exercise their right to strike without any limitation. In April 2009, a sympathy strike organized by taxi-drivers working in a particular district took place, which was supported by other taxi-drivers on the basis of sympathy. No interference occurred. Another example of a sympathy strike, in August 2009, was the strike organized by mini-bus drivers in Kutaisi. A special tripartite commission to study that situation was established. The commission was chaired by the Head of Georgian Trade Unions Confederation (GTUC). In the process of examination of the case and bargaining, the following parties were involved: representatives of the GoG, City Hall of Kutaisi as an employer, and the GTUC. The problem was resolved by agreement of all parties.

It should be emphasized, that, as a general principle, participation of employees in a strike shall not be deemed as grounds for invalidation of the contract (Article 49(10) of the labor Code of Georgia).

Penalties for Strike

The Petition, based on the ITUC recommendation, states that when a violation of strike rules for peaceful, albeit illegal, strikes can result in two years of prison time or other penal sanctions for strike organizers, it runs afoul of international norms.

The GoG would like to provide additional information, the legal context, and clarifications in this regard.

A peaceful strike cannot be punished by civil and penal sanctions. Sanctions can be applied to the abuse of the right to strike by the strike organizer provided that such abuse caused serious damage (Article 348 of the Criminal Code of Georgia). Serious damage means a situation, when human life and health, natural environment or property of the third party is damaged. Accordingly, the present concern of the Petition derived from misinterpretation of the Article 348 of the Criminal Code of Georgia.

According to abovementioned, the sanction stipulated by the Article 348 of the Criminal Code of Georgia is necessary and proportionate, because it applies to situations when human life and health, national environment and property of the third party are damaged.

IV. Child Labor

The Petition indicated concern about sufficient protection of minors in employment.

Georgia has a strong tradition of education with almost universal primary school enrollment rates across the country. Most recent survey of UNICEF¹³ reports that 99% of girls and 95% of boys attend primary school, while boys and girls at the age of 12-16 attending school are 93% and 94% respectively. Considering the UNICEF statistics, as school enrollment rates are very high, child labor in Georgia does not inhibit children from registering of school and receiving education. Therefore, child labor cannot be considered as wide-spread and systemic problem in Georgia's social life.

The GoG pays vital attention to ensuring the rights of a child. For this purpose, the GoG will work to implement the ILO CEACR recommendations¹⁴ to further compliance of Georgia's laws with ILO Convention No. 138, namely the GoG will:

- Clearly define the minimum age for employment in Georgia's labor laws.
- Further enhance provisions regarding restrictions on working hours for child labor.
- More precisely determine the age of admission to hazardous work.

In this context, the GoG would like to provide additional information, the legal context and clarifications in this regard:

¹³ UNICEF, Georgia and the Convention of the Rights of the Children, 2011.

¹⁴ <http://www.ilo.org/ilolex/cgi-bin/ilolex/pdconv.pl?host=status01&textbase=iloilc&document=595&chapter=3&query=Georgia%40ref%2B%20Observation%40ref%2B%23YEAR%3D2011&highlight=&querytype=bool&context=0>

a. Minimum age for employment - According to the Article 2, Paragraph 3 of the Convention No. 138, the minimum age shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. **The Georgian Labor Code guarantees the protection of working children.** According to the Labor Code of Georgia, labor activity of physical persons is allowed from the age of 16 years, but only with the **consent of a legal guardian** and if labor relations do not contradict the interest of the underage person, harm his/her moral, physical and mental development and do not limit his/her rights and ability to get a basic education¹⁵. Accordingly, **from the age of 16 years, a person is permitted to work only if there exists a consent of a legal guardian and if the health, safety and morals of the young person concerned is fully protected. Consequently, the minimum age for admission to employment is not less (higher) than 15 years as regulated by the ILO Convention No. 138.**

b. Age of admission to hazardous work – Pursuant to the Article 4(5) of the Labor Code of Georgia, it is prohibited to conclude a contract with an underage person for performance of hard, unhealthy and hazardous work. **According to Article 12 of the Civil Code of Georgia, a minor is a person under 18 years of age.** The Labor Code of Georgia does not give the definition of a minor that is different from the Civil Code, and relies on the definition of the Civil Code.

c. Determination of hazardous work – In accordance with ILO Convention No.138 and Article 54 (1) of the Labor Code of Georgia, a legal document listing harmful and hazardous work was adopted. The Minister of Labor, Health and Social Affairs of Georgia adopted Order No. 147/N, on 3 May 2007, which provides a list of heavy, hazardous and harmful works.

d. Limitation on light work - According to Article 4 of Labor Code of Georgia, the labor agreement can be concluded with a 14-year-old under-age person only for fulfilling cultural, cognitive, sports or arts-related labor activities or advertising activities and only with permission of a legal guardian of the minor, provided that **those activities do not contradict the interest of the underage person, harm his/her moral, physical and mental development and do not limit his/her rights and ability to get a basic education.** Other forms of child labor are considered unlawful and are a subject to legal liability. According to the Labor Code, it is prohibited to conclude a labor agreement with an under-age person regarding gambling business, night entertainment establishments, pornographic production, pharmaceutical or toxic substances production, forwarding or selling activities. It is prohibited to conclude a labor agreement concerning work on hard or hazardous activities with an under-age person.

f. Working hours for child work - The Labor Code sets restrictions on the volume of working hours of minors: Article 18 prohibits hiring minors for night work and restricts working hours to the period of 10 pm to 6 am.

The competencies of Patrol Police Department and District Police Units are divided according regions/districts of Georgia. Within the Ministry of Internal Affairs, Patrol Police and District Police are responsible to detect and react to the facts of human right violation.

Considering that during fulfillment of their duties, inspectors, detectives and patrol policemen have the most frequent contacts with the minors, the fundamental course of the Police Academy of the Ministry of Internal Affairs of Georgia envisages detailed training and acquaintance with the

¹⁵ Basic education - The general education system of Georgia consists of three levels: primary (grades 1 through 6), basic (grades 7 through 9) and secondary (grades 10 through 12). According to Georgia's laws, basic education is compulsory in Georgia.

essentials of the Convention on Children's Rights and review of the local legislation. With the support of the Ministry of Education, the Ministry of Internal Affairs of Georgia implemented certification of the policemen working with the juveniles. Up to date 957 policemen have been re-specialized. Trainings are continuous.

The policemen have information on minors, who are in the areas of their coverage and they implement individual work with them. Inspectors regularly converse with children on various relevant topics, increase their awareness about adverse consequences of harmful habits, forced labor, and constantly control their attendance at school classes.

In March 2009, 48 workers of the police undertook trainings on the topic Minor and the Law, and from April 8 to June 1 in 185 schools of Georgia 520 lectures were held on the relevant topics.

The Ministry of Internal Affairs of Georgia is implementing action plans aimed at child protection in cooperation with state bodies and international organizations, such as the Protection of the Rights of Child Victims of Trafficking Project.

It should be emphasized that pursuant to Georgia's laws, trafficking in persons includes any kind of forced labor. Georgia's labor laws prohibit trafficking in minors. According to Article 1432 of the Criminal Code, among others, harboring or receiving a minor for the purpose of exploitation, is punishable by imprisonment from 8 to 12 years. Exploitation, among others, means using of person (including an under-age person) by the aim of forced labor or service (the Criminal Code of Georgia and Law on Fighting against Trading with Persons (Trafficking)).

The main Georgian state body providing protection and rehabilitation for the victims of trafficking is a specially created State Fund. The Fund was set up within the Ministry of Labor, Health and Social Protection in summer, 2006. The Ministry of Education runs a number of programs directed at the protection of child victims of trafficking. There are budgetary lump sums available at the Fund that can be used in emergency situations on *ad hoc* basis when the necessity arises and respond to different needs of the child victims of trafficking.

The following services are available to any child victim of trafficking: shelter, free legal aid, free medical and psychological counseling and treatment, telephone hot-line services, granting compensation, integration and rehabilitation activities.

In 2011, the GoG initiated a "Public outreach campaign". In this framework, Heads of the Ministry of Internal Affairs, Ministry of Economic and sustainable development, Ministry of Energy, Ministry of Science and Education and the National bank, meet high school students throughout the country. During the meeting, Ministers acquaint students with knowledge about their right and responsibilities. Also they give them information about: crime fight strategy, investment policy, economic development (including labor rights and employment issues). The format of the meetings contains interactive sessions.

V. Acceptable Conditions of Work

The Petition, based on the AFL-CIO recommendation, states that employers may change the check in and out times of the employment by up to 90 minutes, without renegotiating the employment contract with the employee or trade union. The Petition also goes to state that in practice, Article 11 of the Labor Code allows employers to force employees to work overtime without consent or remuneration.

The GoG will initiate relevant amendments to Georgia’s labor laws regarding the provisions concerning an employer’s right to make “insubstantial” amendments to an employment agreement. The purpose of the amendments will be to avoid misinterpretation of the provision and to ensure that an employer cannot force employees to work overtime without their consent or remuneration.

In this context, the GoG would like to provide additional information, the legal context and clarifications in this regard.

Regarding the concerns raised by the AFL-CIO Petition, employers may change the check in and out times of the employment by up to 90 minutes, but this change cannot exceed the number of daily working hours.

Article 11 of the Labor Code does not allow employers to force employees to work overtime. Article 11(3) of the Labor Code, specifically, gives an employer the right to make “insubstantial” amendments to the employment agreement if they are not within labor agreement. For instance, if the employment agreement defines or regards making “insubstantial” amendments to the employment agreement in a different manner, then the employer cannot make any amendments to the employment agreement.

Also, per Article 11(3), unless otherwise envisaged by the labor agreement, the following conditions are considered as ‘insubstantial’ amendments to labor agreement:

- a) An employer’s change of an employee’s indicated workplace if travel to and from the new workplace by public transport does not require more than 3 hours each day and, at the same time, does not lead to disproportionate expenses.
- b) A 90-minute change in start time or finish time of work
- c) A change required by an amendment of law that makes it impossible to fulfill the agreement as precisely written, but does not change a major aspect of the agreement.

According to the Article 11 (4), any **change of two conditions** simultaneously envisaged by Article 11 (3) should be discussed as **a substantial amendment** of the terms of the agreement. A substantial amendment to the employment agreement **is possible only if both parties agree.**

C. The Way Forward

The over-arching aim of the GoG, as demonstrated in the present Response, is to take relevant actions to further develop and refine the labor laws of Georgia so that they are in line with the international labor standards, among others, giving maximum possible consideration to the issues raised in the Petition.

The GoG has decided to insert a special Chapter “The Way Forward” in the present Response, in order to aggregate and present in a consolidated manner all of the issues that the GoG will be addressing.

In this frame, the GoG proposes actions to encompass and address all the themes covered by the Petition, including:

- **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 to:**
 - 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 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.
 - 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 protect 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 age of allowance to undertake hazardous work.
 - e. Further ensure acceptable conditions of work:**
 - Clarify the provision on an employer’s right to make “insubstantial” amendments to an employment agreement.

Thereby, the GoG manifests its genuine political commitment 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.

D. Protecting Workers Rights in Practice

1. The ESFTUG Case

In reply to the allegations of the Educators and Scientists Free Trade Union of Georgia (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.

Schools - Independent Legal Entities

Schools are independent legal entities, and school principals independently regulate the labor relations with teachers. From 2005, in accordance with the Minister of Education and Science’s Decree #448, dated 15 September 2005, the legal status of educational institutions (schools) was changed to be independent legal entities of public law. In affect, 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). As a result, the Ministry of Education and Science (MES) does not exercise neither financial and nor decision making powers for educational institutions.

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

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 MES side. Therefore, the principal, and not the MES, is the employer of the teachers at a school and consequently the counterpart for the ESFTUG.

Trade Union Membership Dues

Paragraph 4.13 of the previous sectoral agreement dated 22 April, 1998 (registered as M#01 at the Ministry of Social Affairs, Labor, and Employment), wherein the Trade Union of Georgian Educators (of which ESFTUG is the legal successor) **obliges administrators of educational institutions to transfer union dues from salaries of teachers with trade union memberships to the appropriate bank account and not the Ministry of Education** (of which MES is the legal successor).

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 MES and the trade unions. The MES does not have authority to interfere in school affairs.

The GoG seeks to emphasize that there are 2 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.**

Cooperation under the Framework of Social Dialogue

The MES has developed several initiatives in order to establish relevant coordination mechanisms between the representatives of civil society, including trade unions and the MES.

In the framework of the social dialogue, the MES 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 MES 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 MES in 2010. Since then, the MES 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.

Unsubstantiated Claims and Allegations

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.'¹⁶

The GoG has previously and repeatedly responded to such misleading information and is willing to provide any other interested organization with the true facts. 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 investigate the circumstances of the claims of the ESFTUG.

Cases provided by the ESFTUG as anti-union discrimination without any evidence:

- **Case of the Educational Resource Center in Bolnisi (February 5, 2008)** – The GoG does not have and was not provided by the ESFTUG with any official records of these communiqués. Unless these announcements or letters are documented and provided to the MES, there can be no official investigation by the MES.
- **Case of the Nursery School of Senaki (March, 2008)** – Nursery schools do not fall under the authority of the MES and therefore, the MES cannot comment on nor resolve this issue.
- **Dedoplistskaro Case** - The Georgian education system has undergone fundamental reforms in the very close cooperation with many international organizations. In particular, the World Bank has been very actively engaged in the implementation of these reforms. As a result, the current education system is fully decentralized and schools are all Legal Entities of Public Law that have full autonomy to run their educational programs independently. School principals are independent in developing and implementing procedures for hiring and dismissing faculty and staff. The MES is not entitled to interfere in schools' operational activities.
- **Claim concerning "Threats" made by the Minister of Education and Science of Georgia** - The Minister did not 'threaten' any of the heads of Educational Resource Centers or school principals. He appealed to them to follow the Law on Trade Unions of Georgia and to ensure the proper implementation of the administrative procedures of payment of membership dues that, according to current legislation, the payment of dues can be done in one of two ways: by the school administration for employees that are trade union members if they have provided written consent or by trade union members, themselves.
- **Claim regarding the Statement of the Minister of Education and Science of Georgia on National Television** – What was actually announced by the Minister of Education and Science of Georgia on that day on national television 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. If parents wished to

¹⁶ AFL-CIO Petition, p.5

contribute to school infrastructure, learning process, etc., they could transfer this money in the school's alumni fund; Doing so would ensure that all transactions would be transparent and have traceable methods of payment, as opposed to giving cash to teachers or 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.

- **Zugdidi Technological College Case** – This case addresses the “competition” between the 2 different unions: ESFTUG and Professional Syndicate of Education (PSE). No involvement of the MES or any state authority has been reported. Therefore, the GoG is unable to respond to this Case.

It should be emphasized, that currently there are more than ten professional associations and more than seventy NGOs active in the field of education in Georgia. This is a clear sign of democratic progress and illustrates the competitive environment that exists within the education sector.

Georgia is one of the few countries in the world where the student to teacher ratio is 10:1. In the United States, the average student/teacher ratio is 24:1 and in Europe, it is 18:1. Teachers' professional development and job security are priorities of the GoG. For this reason, the GoG arranges numerous training sessions that encourage teachers to improve their professional development and provide them with various skill-enhancing opportunities. These show the GoG's dedication to its teachers and the commitment to retain them. Furthermore, it is in the GoG's best interest to keep professional teachers in schools and at the same time give them the freedom to join any organization.

2. Georgian Railway Case

On April 16, 2006, the Georgian Railway Trade Union (Trade Union), an affiliated member of the GTUC and the Georgian Railway (GR) agreed to conclude and implement the Collective Agreement (Agreement). As part of its execution, there was to be an annual obligatory revision of the Agreement by the parties, and written confirmation in order to extend the duration of this Agreement on an annual basis. In July 2010, GR proposed to the Trade Union that the Agreement be revised in accordance with the provision mentioned above, and proposed several amendments to the Agreement. The parties failed to agree on the terms of the Agreement. As a result, the Agreement lost its legal standing.

However, the GR's employees continue to be free to transfer part of their salaries to any organization, including trade unions. **The GR would then make such transfers on the basis of receipt of a written request from those that are members of the TU and desire to do so.** None of the employees, however, has applied to GR with such a request, nor did any express a complaint regarding termination of such transfers.

Notably, despite the termination of the Agreement, the GR continues to provide its employees with the social benefits defined under the void Agreement based on the decision of the Board of Directors of GR. Termination of the Agreement has had no adverse affect on the benefits provided to the employees, which is of paramount importance to the GR.

Also despite termination of the Agreement, the GR has continued to allocate office space and land-line phones for the Trade Union members at the GR central office and regional offices. Unfortunately, the GR has been unable, despite repeated requests for the union's assistance, to identify the persons duly authorized to conduct negotiations by the decision making bodies of the Trade Union.

The Trade Union filed a brief to the Court of Georgia, basing its claim on the following article of the Civil Code of Georgia: "Article 54. Unlawful and Immoral Transactions. A transaction that violates rules and prohibitions determined by law, or that contravenes the public order or principles of morality, is void."

The Tbilisi City Court determined, based on applicable law, that the GR management's actions to annul the centralized transfer of membership dues, were not illegal or immoral. Thus, the City Court refused to grant the Trade Union's request. The Trade Union appealed the decision to the Court of First Instance in the Appellate Court, but due to the fact that it failed to comply with the appeal procedures for submitting a claim, the decision of the Tbilisi City Court entered into full legal force.

3. Poti Sea Port Case

In order to clarify all circumstances and to obtain full information regarding this case, in 2008 the Ministry of Economic Development of Georgia requested and studied many documents related to the dismissal of the Poti Sea Port workers, including: the Poti Sea Port trade union's letter with its requests; the collective address of the Poti Sea Port workers; and the letter of the Poti Sea Port Director General addressed to the Deputy Minister of Economic Development of Georgia.

Workers' Benefits

Based on the documents obtained, the GoG determined that there was an unresolved dispute regarding workers' benefits between the Port administration and the Port trade union. The GoG also determined that the trade union made several requests of the Port administration that were inappropriate and infeasible to guarantee. The Port trade union requested: 1) Provision of life-long monthly payments in the amount of 100 GEL for Port workers that retired in 2007; 2) A 100% increase in workers' salaries before the upcoming Port privatization; and 3) Three years' guaranteed employment for workers hired before October 15, 2007.

The Port administration's response to the union was that it was unable to satisfy all these requirements. The Port administration had already increased the workers' salaries several times within the previous years and had provided the workers with additional benefits. For example, in 2006-2007, the Port workers' salaries had been increased by 20% and several types of cash benefits had been provided, such as a cash payment in the event of the birth of a child or upon the death of a family member, annual bonuses, and other benefits.

Worker Terminations

Based on obtained information, the GoG determined that the reasons for terminating the labor contract workers, as raised by the GTUC, were based on the unsatisfactory fulfillment of their daily activities and tasks. Their termination was determined to have nothing to do with the workers' membership in the trade union, or their participation in the strikes organized by the trade union.

At the same time there had been no warning strike as required by Georgia's labor law (namely paragraphs 4 and 6 of Article 49 of the Labor Code stipulates that "4. Prior to commencement of a warning strike or lockout the parties no lesser than in three calendar days should notify in writing each other on the issue of dispute and its grounds, also time, venue and nature of the strike or lockout. ... 6. The right to strike or lockout shall arise only after the warning strike or lockout within no lesser than 24 hours and not exceeding fourteen calendar days."

Disagreement over Mandatory Union Dues Collection and Agreement Cancellation

According to information reviewed about this aspect of the case, the disagreement between Poti Sea Port management and the trade union arose from the Port management's request to establish voluntary and effective administrative mechanisms for membership and payment of dues in the trade union, including payment of the union membership dues by trade union members only.

As background, according to Article 2.1 of the terminated collective agreement of Poti Sea Port: "Conditions of the collective agreement apply to all employees, regardless of their membership in the trade unions. The fulfillment of these conditions is mandatory for both administration and employees." Thus, the conditions of the collective agreement included the obligation to pay the 1% membership due from the salary both of unionized and non-unionized workers.

Port workers disagreed with these conditions holding the view that the agreement and practice constituted discrimination against non-unionized workers and was a violation of the Georgia's labor laws.

The GoG, in reviewing the available documents, determined that 790 port workers (61% of total employed at the Port at that time) voted against the collective agreement and signed a statement addressed to the Port administration and the Port trade union. According to that statement, the Poti Sea Port workers supported the existence of trade unions. They noted, however, that membership in such unions was on a voluntary basis only, rather than "automatically," as practiced before, when most of the workers had been included on the union member list without their consent and a one-percent membership due had been deducted from their salaries against their will and without their written consent.

On the issue of property with respect to the Port trade union, the GoG would like to mention that according to the collective agreement between the Poti Sea Port administration and the Port trade union signed on February 2, 2004 "...the agreement is valid during 1 year." After this period, the parties should revise the agreement or sign a new one (article 2 of the agreement). In light of this, the Poti Sea Port trade union was informed by letter (No. 22/462-46-22, December 8, 2006), written by Poti Sea Port Director General, about the termination of the 2004 collective agreement, beginning on January 1, 2007. Accordingly, the agreement signed in 2004 between Poti Sea Port management and Poti Sea Port trade union was terminated on January 1, 2007, and no new agreement was agreed to by either party. As a result, there was no legal basis for the primary trade union organizations to use the property of Poti Sea Port, the Port management offered space to the trade union. The GTUC's claim of the illegal sealing of the trade union's office is unfounded.

4. BTM Textile Case

The GTUC claims that nine employees, whose labor contracts were terminated by BTM TEXTILE, were dismissed because of their membership in trade unions. However, according to the information provided by BTM Textile management, they dismissed the workers with no regard to their membership in trade unions and the company does not practice discrimination based on membership in unions. This is evident as 3 members of the trade union committee (apart from the 9 dismissed workers) still work in BTM TEXTILE.

In addition, the trade union activists organized a strike in BTM Textile, without a warning strike. This was a violation of the Labor Code of Georgia, which requires a warning strike. Apart from these facts, BTM Textile in its letter mentioned that the trade union held a sympathy strike with 30-50 people. Moreover, the trade union picked up the activists and paid for their participation in

the event, which included efforts to stop BTM Textile workers from entering the factory. They appealed to all 500 employees to join the trade union, but none of the 500 BTM Textile workers did so.

The company management mentions that BTM TEXTILE provides good working conditions, such as: free coffee breaks in the morning and afternoon, free lunch, free transportation, competitive remuneration, and the company pays half of the income tax of the employee (while normally employees pay their entire income tax).

5. Georgian State Electrosystem Case

In regard to the information provided by the GTUC, the following additional facts should be taken into consideration:

a. A three-month employment contract was concluded in late February 2008 with more than one-third (342) of Georgian State Electrosystem (GSE) employees - not just with Ms. Aduashvili – that were working in GSE’s Head Office and regional structural units. This is in direct conflict with GTUCs claims that: 1) Ms. Dali Aduashvili, the Safety Engineer in the GSE Tbilisi Service Centre, was discriminated and dismissed from the GSE for reason of her trade union membership; and 2) GSE’s management concluded six-month employment contracts with all of its workers, except Ms. Aduashvili, who was offered only a three-month employment contract. Based on the facts, any accusation or claim on the grounds of discrimination against Ms. Aduashvili is inaccurate.

b. The dismissal of Ms. Aduashvili was caused by the budget issues that caused a downsizing and reorganization of the GSE. According to the Georgian law “On Bankruptcy Proceedings”, the GSE has been under the special insolvency regime beginning in 2004 and afterwards under a special rehabilitation regime. Due to this situation, the company management had to perform necessary restructuring in the company, which led to staff changes and reductions. According to the above mentioned reason, Ms. Dali Aduashvili was offered an employment contract for the period, from May 1, 2008 to June 2, 2008 (a 3-month employment contract) at the Head Office of the GSE. According to GSE management, she was informed of this offer, but she categorically denied the proposed employment. Verbal discussions on these issues were held between the GSE and Dali Aduashvili, but she denied documenting her refusal of the offered employment.

Due to her refusal, coupled with limitations in other employment possibilities Ms. Aduashvili was dismissed. Her dismissal was not connected to her membership in the trade union; it was caused by the necessary rehabilitation process which the company had to undergo as a result of the special insolvency regime.

All the above-mentioned facts can be proved through the letter of the trade union. This letter contains details of the meeting held with Administration Director of the GSE, Mr. G. Godabrelidze, the trade union chairman and Ms. Aduashvili. During this specially organized meeting, the issue and the offer of company management regarding the proposed employment contract conditions for Ms. Aduashvili were discussed. Ms. Aduashvili, however, refused the offered conditions and chose to try to resolve the problem in court.

c. Tbilisi City Court did not satisfy Ms. Aduashvili’s appeal. In Ms. Aduashvili appeal to Tbilisi City Court, she requested abolition of her dismissal order, compensation for her “forced lay-off” and her reinstatement to her former position. The court did not accept Ms. Aduashvili’s

appeal and confirmed that the procedures used to dismiss her conformed with Georgian law and were not related to her activities in the trade union and/or her status in the trade union.

d. The GSE provides good working conditions for the company employees, including a safe working environment, adequately growing salaries, the mechanisms of encouragement by means of periodic bonuses, and the establishment of an insurance system for employees.

The GSE periodically organizes training and retraining courses for employees, internships for preparation of young staff, and financing of study trips and courses.

Despite the rehabilitation process of the GSE, salaries in GSE increased during 2007-2008.

f. The majority of the GSE's current employees are trade union members - 85.5% (898 employees) are the members of the company trade union.

6. LTD Tbilisi Metropolitan Case

The dismissal of Mr. Paata Doborjginidz was caused by the company's internal restructuring and was not based on the employee's membership in the trade union. In this case, the GTUC claimed, that Mr. Paata Doborjginidze, the Electrician in the Signaling and Communications Service of LTD "Tbilisi Metro," was dismissed due to his activities in the trade union. After the dismissal, Mr. Doborjginidze appealed to the court, but his claim was not accepted in either of the courts.

The letter of LTD "Tbilisi Metro," which was addressed to the Ministry of Economic Development, stated that, during the period of Paata Doborjginidze's employment, **the company management had to perform restructuring due to economic concerns. This caused a staff reduction of 20%.** At the time of Mr. Doborjginidze's dismissal (August, 2006), 367 other employees were dismissed, including other members of trade unions. The Company management sent Mr. Paata Doborjginidze and other employees a copy of the order on the restructuring and a **personal notification about his potential dismissal. His receipt of those documents has been verified by the presence of Mr Paata Doborjginidze's signature on them.** Accordingly, his dismissal was in line with existing legislation caused by the restructuring process in the company and was not based on his membership in a trade union.

a. **Article 2(5) of the Labor Code does not allow employers the unrestricted right to dismiss workers.** Article 2 (5) of the Labor Code states the following: discrimination shall not be allowed to be used to distinguish among employees. That results from the employees' work that is performed, its specifics or conditions, whether it serves a legitimate goal, and whether performance is a proportionate and necessary means to achieve this goal.

In the case of Tbilisi Metro, during the period of Paata Doborjginidze's employment, the company had approximately 3,073 employees (the majority of which were trade union members). There was the need, however, to restructure the company to avoid insolvency and become more efficient. Accordingly, company management had to perform restructuring, which caused a staff reduction. When Mr. Doborjginidze was dismissed (August, 2006), 367 other employees were also dismissed.

Based on the above:

- The company had a legitimate goal to avoid insolvency and become more efficient.
- Based on this legitimate goal, the company had to perform restructuring, which implies a necessity of distinction among employees.

- Restructuring resulted in a staff reduction of 20%, which was a proportionate and necessary means to achieve the legitimate goal.

b. **The majority of current employees are trade union members.** Out of 2,705 employees at Tbilisi Metro, 1,957 are trade union members, which is 71.4% of the company's employees. Among them are high level managers, including Technical Directors, Human Resource Directors, and other trade union members employed at higher management positions.

c. **A number of collective agreements had previously been concluded.** In addition to the above,, LTD "Tbilisi Metro" often negotiatiates with "LTD Tbilisi Metropolitan Workers Trade Union". They hold regular meetings and work jointly on various issues. The most recent collective agreement between LTD "Tbilisi Metro" and "LTD Tbilisi Metropolitan Workers Trade Union" was conducted on February 25, 2008 and includes a number of guarantees and benefits for employees.

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.