

BEFORE THE UNITED STATES TRADE REPRESENTATIVE

POST-HEARING BRIEF

ON THE PETITION TO REMOVE

GEORGIA

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

filed by

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

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I. Information Required Pursuant to 15 CFR § 2007

A. Party Submitting Petition:

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B. Country Subject to Review:

Georgia

C. Section of Law Warranting Review

19 U.S.C. § 2462(c)(7)

D. Basis for Petition:

As explained below, while the new Government of Georgia (GOG) has not attacked trade unions, appears to treat them as legitimate social organizations, and has leaned in the direction of affording a greater degree of internationally recognized worker rights (in particular, by having drafted amendments to the current Georgian Labor Code to bring it closer to compliance with International Labor Organization (ILO) Conventions) than the previous government, it is too soon to conclude that Georgia is taking steps to afford internationally recognized worker rights, as is required by the Generalized System of Preferences (GSP), 19 U.S.C. § 2462(c)(7).

Specifically, the new GOG has not secured enough change, either legislatively or practically, to stop violations of basic workers' rights. The new GOG, though it inherited rather than caused the serious problems in Georgia's labor relations system, has not yet had time to correct most of these violations. The proposed amendments do not ensure the creation of an inspectorate or an effective enforcement mechanism. The institutions needed for a functioning industrial relations system have not yet been created. There are still serious cases in which the government, as an employer, interferes with workers' right to join a union of their choosing; disregards valid collective bargaining agreements (CBAs); prevents the resumption of valid dues check-off agreements; and refuses to engage in collective bargaining in good faith. Finally, workers continue to have little opportunity to obtain effective redress for alleged freedom of association violations in the private sector (e.g., at Geosteel and the Port of Poti).

Given the initial efforts made by the new government to change the law, the AFL-CIO remains hopeful that this government will embark on a new direction of affording internationally recognized worker rights, and that its initial efforts will be followed by more concrete action that will eventually meet the GSP standard.

However, since that standard has not yet been reached, the AFL-CIO urges the President to use his discretion under 19 U.S.C. § 2462(d) to withdraw, suspend, or limit the application of the duty-free treatment pursuant to the GSP unless the new Government of Georgia demonstrates that it is taking prompt, concrete, and effective steps to change its law and practice to ensure that workers can exercise their internationally recognized worker rights. Closing this petition before securing evidence of concrete and effective steps would fail to protect Georgia's workers and would send the wrong signal to all GSP beneficiary countries.

The AFL-CIO is optimistic that the new GOG will eventually make needed changes to law and practice that will establish a reliable system to afford fundamental labor rights for all. When and if the government takes these steps, we are prepared to call on the President to end this review. However, the promise of future "steps" to secure those rights does not provide the evidence needed to close this petition at this time.

This petition updates prior submissions and should be read as a supplement to prior filings.

II. Responses to Questions Asked at the Hearing

A. Regarding participation in the labor code reforms, was the GTUC satisfied that their views were heard and taken into account? Does the GTUC have specific recommendations on what could be done to improve the process of writing labor code reforms? (pp. 114-15)

The GTUC feels that the process of composing the first draft of amendments to the labor code was a marked improvement over past practice; however, they were concerned that the consultation process was neither comprehensive nor sufficiently substantial. In particular, when changes were made to the original amendment proposals—on which the GTUC had initially been consulted—those changes were made unilaterally by the GOG without further consultation with the GTUC.

Had the GTUC been an active participant throughout the amendment process, tripartite participation could have achieved an iterative process in which concerns could have continued to be addressed until an amendment acceptable to all parties had been reached, or in the case that no such solution could be found, workers at least would have felt confident that their input was comprehensive and taken as seriously as that provided by employers.

B. Does the GTUC have any specific ideas about how to address labor inspections? (p. 116)

Although the GOG has said it will establish a labor inspectorate at an unspecified time in the future, the GTUC proposes that the GOG include the establishment of a labor inspectorate in the

initial round of labor code amendments.¹ The GTUC had no specific recommendations regarding the structure or methods of the labor inspectorate. The GOG may wish to seek technical assistance from the International Labor Organization or compare best practices amongst members of the European Union, which the GOG seeks to join.

C. With regard to the concern about the right to maternity leave, is that a unique problem, or is that a symptom of a general problem with Section 37 of the labor code, which allowed at-will termination? (p. 121)

The GTUC proposed that the amendments to the labor code include language specifically addressing women workers' rights, particularly with regard to affording women workers in the private sector the same reasonable length of leave afforded to women working in the public sector to return to work following maternity leave. The GTUC also proposed an increase in the currently legislated minimum amount paid by employers to women on maternity leave, as that minimum amount forces women on maternity leave to lose money. However, the GTUC requests were not included in the amendments submitted to parliament by the GOG, which said it would address these issues separately, consulting with the GTUC and Georgian NGOs working on women's rights at an unspecified time in the future. The GTUC is hopeful that these issues will indeed be addressed in the near future. Ensuring that women have access to adequate maternity leave and the right to return to work are important to eradicating discrimination against women in the workplace, and they also help maintain and support productivity in the workplace.²

III. Conclusion

For the reasons above, the AFL-CIO urges the President to use his discretion under 19 U.S.C. § 2462(d) to withdraw, suspend, or limit the application of the duty-free treatment pursuant to the GSP unless the new Government of Georgia demonstrates that it is taking prompt, concrete, and effective steps to change its law and practice to ensure that workers can exercise their internationally recognized worker rights. Closing this petition before securing evidence of concrete and effective steps would fail to protect Georgia's workers and would send the wrong signal to all GSP beneficiary countries.

¹ The AFL-CIO understands that the Parliament has already passed a first reading of the proposed labor code amendments. If the creation of a labor inspectorate and an effective dispute resolution mechanism are not included in this legislative package, the USG should ensure that these two structures are created before closing this review. It is difficult to comprehend how the GOG could be considered to be taking "steps to afford to workers in [Georgia] (including any designated zone in that country) internationally recognized worker rights" (as required by 19 U.S.C. § 2462(c)(7)) without any effective labor inspectorate or enforcement and dispute resolution mechanism.

² See, e.g., "Failing its Families: Lack of Paid Leave and Work-Family Supports in the US," Human Rights Watch, February 2011 (available at: <http://www.hrw.org/sites/default/files/reports/us0211webwcover.pdf>) and "The Impact of Different HRM Regimes on Labour Productivity: National Results and a Regional Perspective," Ann Hodgkinson, University of Wollongong Department of Economics Working Paper Series, 2002 (available at: <http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1062&context=commwkpapers>).