Pre-Hearing Comments Submitted by the Government of Georgia

On the

UPDATE TO THE 2010 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)

September 12, 2017

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 that has continued to undertake numerous reforms in order to show its zeal to uphold the principles of democracy.

After the successful reforms that supported economic liberalization and business environment, recent ongoing and planed reforms is oriented on structural improvement of the economy, inclusive access to economic opportunities, enhancement of productivity and effective utilization of the country's advantages.

Economic policy of GoG is based on private sector competitiveness, development of SMEs and increase of employment. New tax reform that came into force in January, 2017 significantly reduces the effective tax rate and is aimed at boosting savings and investment, widening and modernization of production and more liquidity for the private sector, in particular SMEs.

Georgia has successfully weathered challenges in recent years. Despite the fact that during the last years, Georgia's economy was affected by negative external shocks, which had an impact on economic growth of the country, Georgia still maintained one of the best growth rates among neighbors and in a wider region. According to the projections of IFIs Georgia will have one of the highest growth among Eastern Europe and Central Asian countries in upcoming years. Real economic growth rate in 2010-2016 amounted to 4.8%, which is one of the highest in a wider region.

Due to implemented measures, tangible results are in place and improvements can be observed on the labor market as well. Unemployment rate has been permanently decreasing in 2009-2016. In 2016, the annual unemployment rate reached its lowest point in 13 years and amounted to 11.8%. 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.

The reformed labor markets facilitated economic restructuring, promoted productivity, increased competitiveness, and cushioned the economy against supply and demand shocks. Nominal average earnings in all sectors rose by 615% (2003-2015) while the consumer price index rose only by 87%, resulting in a large increase in real earnings. In 10 sectors nominal earnings rose by more than 600%, and in 7 of those sectors, by more than 800%.

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 $62.2 million in 2016. The main export products were ferroalloys, plants and parts of plants, Chocolate and chocolate products, fruit and vegetable juices, Mineral waters, wines.

Strengthening of Worker Rights and Tripartite Cooperation

For the last years, Georgia has undergone deep changes in its labour legislation and institutions and practices in managing human resources, which resulted in tense relationships and lack of trust among the tripartite constituents, particularly between the Government of Georgia (GoG) and the Georgian Trade Unions Confederation (GTUC).

The 2006 Labour Code was based on the assumption that deregulation of the labour market would attract investment and create jobs even at the price of not complying with International Labour Organization (ILO) Fundamental Conventions ratified by Georgia. It is only with the arrival of a new Government late 2012 that Georgian authorities started to take the necessary steps to amend the labour legislation in compliance with International Labour Standards (ILS).

The Ministry of Justice (MoJ) was mandated to prepare drafts amendments to the Labour Code aimed at making it compliant with ILS. The law amending the labour Code was adopted by Parliament on 12th June and did enter into force on 4th July 2013. The main features of the revised Labour Code are the followings:

- The provisions allowing for the termination at will of an employment contract by the employer have been repelled and replaced by a set of provisions stipulating grounds for legal and illegal termination and providing for a right of appeal against unfair dismissals, the employer having the burden of proving that the termination was done on legal grounds.

- A distinction has been introduced between open-ended and fixed-term employment contracts. Fixed-term contracts of less than one year shall be based on objective grounds, such as specific work, seasonal activities, temporary increase in work, and replacement of a temporarily absent employee. Fixed-term contracts of one year or more can be concluded at the employer's discretion. However, such contracts will be deemed open-ended contracts after 30 months of employment. Start-up companies benefit from more flexibility having the possibility to conclude successive 3-month employment contracts up to 48 months.

- Freedom of Association (FoA) and the right to organize are now adequately protected with the introduction of a completely new chapter complying with the principles and modalities of Conventions No. 87 and 98.

- The rules for Collective Bargaining (CB) have been clarified in accordance with ILS. The Code now stipulates that trade unions are the sole bargaining agent for negotiating collective agreements on behalf of the workers,and sets procedures for direct negotiations and provides an obligation for the parties to bargain in good faith.

- A labour mediation mechanism has been introduced to resolve collective disputes involving at least 20 employees, be they connected to the negotiation of collective agreements or the violation of human rights and freedoms, labour standards, employments contracts or collective agreements. Mediation shall go on for 21 days before the parties can legally exercise the right to strike or lockout.

- The law establishes a Tripartite Social Partnership Commission under the chairmanship of the Prime Minister to advise on employment and labour issues in replacement of the commission established in 2010 under a GoG Decree and chaired by the Minister of Labour.

The Labour Code of Georgia has established a “Tripartite Social Partnership Commission”, composed by members of the Government of Georgia and representatives of employers’ associations and workers’ associations operating in various industries across the country. Each party shall have six members who can represent the various organizations. The decision on admitting representatives of such organizations is made by the Chairperson. The Statute of the Tripartite Social Partnership Commission (TSPC) was adopted by Georgian Government’s Decree N258 of 7 October 2013. The committee meets on quarterly bases and additionally in necessary.

The Ministry of Labour, Health and Social Affairs of Georgia has taken concrete steps to afford workers internationally recognized workers rights in terms of elaboration of special mechanism in order to ensure inspection of working conditions at workplaces. The mechanism will be equipped with corresponding administrative and executive rights and will be in charge to introduce gradually the International Labour Organization’s standards. The Labour Conditions Inspection Department was established under MoLHSA according GoG’s Resolution N 81 designating March 2, 2015

Georgia has ratified and implemented 17 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. The last meeting of the Tripartite Social Partnership Commission was held on February 10 this year when the commission made several crucial decisions, in particular, approved candidates of labor mediators, made a decision to ratify **specific articles/paragraphs of European Social Charter, ILO Convention N144**.

In summary, t**he Government of Georgia expresses its genuine political assurance to address the issues regarding fundamental labor standards and its goal to bring its labor laws to a higher level of compliance with the international labor conventions and best practices.**

I. Georgian Labor Law Does Not Afford Workers Internationally Recognized Worker Rights

I. Labor Inspectorate

The Ministry of Labor, Health and Social Affairs of Georgia undertook concrete steps to further elaborate a legislative framework in OSH sphere besides establishing labor conditions inspecting department and adopting state programs on Inspecting Labor Conditions. Besides inspecting occupational health and safety the department is authorized to inspect the labor conditions with the aim to identify possible cases of forced labor/labor exploitation and respond the violations.
The amendments have been made to the Laws **- on 'Combating Human Trafficking' and on 'Control of entrepreneurial activity'.** The amendments in both of the above mentioned Laws envisage proactive **supervision** of this Inspection Department with other appropriate state agencies in the field of human trafficking (**forced labor and labor exploitation**) prevention. In particular the department is authorized to inspect the labor conditions with the aim to identify and respond the violations. It means that the labor inspectors have the ability and power to ensure the proactive supervision **mandatorily and** not voluntarily. That will contribute to effective planning and implementation of measures for prevention of forced labor and labor exploitation, as well as promoting identification and increasing efficiency of combating human trafficking. In order to prove the mentioned functions the Resolution of Government of Georgia **"On Approval of Rule of State Supervision/Labor Inspection of Prevention of and Responding on Forced Labor and Labor Exploitation**" was adopted in March 2016.

Draft law on "Occupational Safety" is prepared and is in the process of discussion at the Parliament of Georgia. Purpose of the law is to define general principles of basic requirements and preventive measures that are related to occupational safety at workplace, existing and anticipated risks, prevention of accidents and occupational diseases and creation of decent working conditions. Law will regulate the rights, obligations and responsibilities of state bodies, employers, employees and employee representatives that are related to the creation of safe and healthy work environment.

The law shall apply to the works with the hard, harmful and hazardous conditions and the companies will be inspected without prior consent of employers. For the purposes of this law the list of works with the increased harmful, hard and hazardous conditions shall be determined by the Government of Georgia. The law defines the forms of administrative sanctions for violations of this law, such as warning, fine and suspension of activity (for critical non-compliance).

Pursuant to the law the Labor Conditions Inspecting Department is determined as an institution that controls the enforcement and application of legislation on occupational safety, investigates accidents at workplaces.

A joint decree of the Minister of Labor, Health and Social Affairs of Georgia and Minister of Economy and Sustainable Development of Georgia was issued according to which occupational safety will be inspected in harm, hazardous and harmful working places mandatorily, without consent of the employer.

The Ministry of Labor, Health and Social Affairs of Georgia is currently working on the elaboration of national occupational health and safety strategy/policy document together with the action plan.

European experts actively support the Georgian Government in the implementation of the Association Agreement for review of national legislation in compliance of the Annex XXX in the framework of the

EU-Project „Technical Assistance to VET and Employment Reforms in Georgia“(EUVEGE). Currently, drafts of 8 EU directives are elaborated and will be adopted step by step after the Law on Occupational Safety comes into force.

Statistics:
Inspections have covered all sectors in Georgia including all regions.

- **In framework of 2015-2017 State programs:**

  In 2015 - 118 objects of 78 companies have been inspected;

  In 2016 - 187 objects of 96 companies have been inspected;

  In 2017 - 178 objects of 136 companies have been inspected so far;

- **In the framework of joint decree around 20 objects have been inspected.**
- **In terms of forced labor and labor exploitation:**

  In 2016- 91 companies have been inspected (8 unscheduled);

  In 2017- 92 companies have been inspected (6 unscheduled);

Overall, 6453 recommendations have been issued by the labor inspectors.

II. Labor Code/legislation

For the last years, Georgia has undergone deep changes in its labor legislation and institutions and practices in managing human resources. The 2006 Labor Code was based on the assumption that deregulation of the labor market would attract investment and create jobs even at the price of not complying with International Labor Organization (ILO) Fundamental Conventions ratified by Georgia. It is only with the arrival of a new Government late 2012 that Georgian authorities started to take the necessary steps to amend the labor legislation in compliance with International Labor Standards (ILS).

The Ministry of Justice (MoJ) was mandated to prepare draft amendments to the Labor Code aimed at making it compliant with ILS. After they were made public on 22nd January 2013, the GoG proposals were discussed comprehensively with employers, trade unions and NGOs before the introduction of a draft bill in Parliament. The law amending the labor Code was adopted by Parliament on 12th June and did enter into force on 4th July 2013. The main features of the revised Labor Code are the followings:

- The provisions allowing for the termination at will of an employment contract by the employer have been repelled and replaced by a set of provisions stipulating grounds for legal and illegal termination and providing for a right of appeal against unfair dismissals, the employer having the burden of proving that the termination was done on legal grounds.

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- The law establishes a Tripartite Social Partnership Commission under the chairmanship of the Prime Minister to advise on employment and labor issues in replacement of the commission established in 2010 under a GoG Decree and chaired by the Minister of Labor.

Since 2013 no amendments have been made to the Code but after concluding EU-Georgia Association Agreement Georgia took commitment to approximate its legislation to EU *acquis* meaning that EU directives envisaged in Annex XXX (Association Agreement) will be transposed into Georgian legislation. Ministry of Labor, Health and Social Affairs of Georgia was tasked to amend labor Code (in compliance with ILS) by TSPC and the working group under the tripartite commission was set up. The initial drafts are made in compliance with the EU directives <u>in 2017</u>: <u>Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;</u>

<u>The legislative package consists of drafts of amendments to the following organic laws and laws of Georgia:</u>

1. Organic Law of Georgia "Georgian Labor Code";
2. Organic Law of Georgia on " Public Defender";
3. Law of Georgia on the "Elimination of All Forms of Discrimination";
4. Law of Georgia on "Public Service";
5. Law of Georgia "Administrative Offences Code".

The amendments allow Public Defender of Georgia to issue a fine for not fulfilling recommendations on the facts of discrimination in labor and pre-contractual relations for public institutions, organizations, private and legal entities.

III. Social Partnership/Social Dialogue

Tripartism in Georgia is in process of the development. The Labour Code of Georgia has established a "Tripartite Social Partnership Commission", composed by members of the Government of Georgia and representatives of employers' associations and workers' associations operating in various industries across the country. The Statute of the Tripartite Social Partnership Commission (TSPC) was adopted by Georgian Government's Resolution N258 of 7 October 2013. Amendments have been made to the Government's Decree N258 "Approving a Statute of Tripartite Social Partnership Commission" in March 2016. Following the amendments Minister of Labor, Health and Social Affairs was entrusted to call the meeting in case of absence of the Prime-Minister and Labor and Employment Policy Department was determined as a secretariat. Strategic plan for 2016-2017 for TSPC was approved in 2016. The last meeting of the Tripartite Social Partnership Commission was held on February 10 this year. The commission made several crucial decisions, in particular, approved candidates of labor mediators, made a decision to ratify specific articles/paragraphs of European Social Charter, ILO Convention N144, pilot social dialogue in a form of TSPC in Adjara region, etc.

In order for the Ministry to fulfill the task given by the Commission (TSPC) with the support of ILO a strategic planning meeting was held in Batumi for piloting social dialogue at the regional level. Before the meeting TSPC secretariat and the government of Adjara communicated and the decision has been made about the composition of the TSPC in Adjara.

There have been three meetings of the TSPC:

May 1, 2014; April 11, 2016 and February 10, 2017.

In cooperation with the ILO, it is planned to strengthen capacity of the Tripartite Commission and its Secretariat, which will make the work of the Commission effective and will also influence positive outcomes of the social dialogue.

IV. Labor Mediation Mechanism

The labor mediation system in Georgia was introduced in 2013 when the Georgian Labor Code was amended. Along with the amendment to the Code, the legal base for the labor mediation mechanism is the Decree of the Government of Georgia N301 on "Labor Dispute Settlement Procedures".

The Labor Code introduces the mediation mechanism for effective resolution of collective disputes. A collective labor dispute shall be resolved through direct negotiations between the concerned group of employees (at least 20 employees) and the employer or between the concerned professional union and the employer or/and through mediation. As to the mediation, at any stage of negotiation and in order to reach an agreement, either of the parties may request in writing the Minister of Labor, Health and Social Affairs of Georgia to designate a mediator to undertake mediatory procedures. Written notice of such request must be given to the other party on the same day. Upon receiving such request, the Minister shall designate a mediator in accordance with the mediation mechanism. Moreover, at any stage of a collective labor dispute, if there is a high public interest, the Minister of Labor, Health and Social Affairs may, *ex officio*, designate a mediator and must inform the parties in writing of such appointment. Upon the designation of the mediator, participation in mediation procedures becomes obligatory for the parties of collective dispute. At any stage of the dispute, the parties can agree on referring the dispute to arbitration.

Following the Tripartite Social Partnership Commission meeting in 2016 and approval of the TSPC strategic plan 2016-2017 it has been decided to work on the concept of improvement of labor mediation mechanism within the working group set up under Tripartite Social Partnership Commission. The first task to deal with is to analyze strengths and weaknesses of existing labor mediation system/mechanism and based on that analytical work elaborate a concept for strengthening and developing the system.

The meeting of the Tripartite Social Partnership Commission (TSPC) was held on February 10, 2017 where a roster of mediators was approved. The roster consists of 11 independent, neutral, impartial, qualified mediators and is valid for three years.

Currently, Ministry of Labor, Health and Social Affairs of Georgia is working on the amendments to the decree N301 on "Labor Dispute Settlement Procedures" in order to make the mechanism more functional and effective.

The aim of the amendments is to establish a mechanism for effective resolution of collective labor disputes. Disputing parties will be able to resolve a collective labor dispute in a short period of time and no expenses. The amendments encompass setting ground rules, defining rights and obligations of parties, etc.

Statistics:

There have been 29 mediation cases since 2013 and half of them have been resolved.

As to the statistics from the previous year there have been 17 labor disputes in 2016 out of which:

8 cases have been resolved and parties agreed;

6 cases have not been resolved (no agreement at all);

1 case was partially resolved;

In 1 case there was not a labor dispute (labor mediator was appointed and he/she revealed that it was not a labor dispute);

1 case was transferred to 2017.

There have been 4 labor mediation cases in 2017 so far all disputes were resolved (agreements reached in all cases).

In 2013, the United States Department of Labor allocated 2$ million as the U.S. assistance to Georgia within the framework of the project (Improvement of the Labor Legislation Enforcement Mechanism). Within the framework of the same project, the Georgian representation to the International Labor Organization has intensive cooperation with the Ministry. In addition, it shall be noted that, the US Department of State allocated additional[1] $1 million in assistance[2], which will improve the Government of Georgia's ability to enforce the labor legislation in terms of effectiveness. The establishment of an effective and efficient system is recognized in the ILO program on decent work and is already included in the Declaration on Social Justice, where a role of all three parties - the state, the employer and the trade

[1] U.S.-Georgia Strategic Partnership Commission, Office of the Spokesperson, Washington, DC, July 6, 2016http://www.state.gov/r/pa/prs/ps/2016/07/259365.htm

[2] U.S.-Georgia Strategic Partnership Commission, Office of the Spokesperson, Washington, DC, July 6, 2016http://www.state.gov/r/pa/prs/ps/2016/07/259365.htm

unions are highlighted.[3] In the framework of the project International Labor Organization has trained and plans to train judges in labor relations, labor legislation, etc.

II. Workers Internationally Recognized Worker Rights in Georgia in Practice

Case of Georgian Post

Since August 2016 Georgian Post LLC ("Georgian Post" hereinafter) has worked out a new strategy related to the employment disputes. The legal and HR departments are responsible to pursue the new policy. Key points of the policy are to amicably settle the pending disputes in the court and increase the level of dialogue and interaction with the employees to avoid further inconveniences and misunderstandings with them.

By August 1 2016, 52 claimants (employees) were seeking relief from Georgian Post in different courts throughout the country. The total number of claims was 30.

Figures have been drastically changed in a year. On September 11 2017 only 25 employees with 14 claims are waiting for the final judgment. The rest of the cases are settled or won by Georgian Post.

During the year (from August 2016 until September 2017) only one claim was filed against Georgian Post. The company has won the first instance and the court of appeal. The case is pending in the Supreme Court. Georgian Post intends to launch private dispute resolution program with generous support of distinguished US Experts. The program will ensure to identify the potential dispute on its early stage and give broad discretion to employees to protect themselves more effectively as it happens in the court.

The first training for the legal and HR departments are planned in October. National Centre of ADR (Georgia)[4] in close cooperation with The Foundation for Sustainable Rule of Law Initiative[5] are responsible for the successful enforcement of the dispute resolution program.

The program will be the first precedent for Georgian companies setting up employment dispute resolution design ensuring more benefits and efficacy for all stakeholders involved.

Case of Georgian Railway

[3] INTERNATIONAL LABOR OFFICE, Governing Body 309th Session, Geneva, November 2010 .Labor administration and inspection: Challenges and perspectives .http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_145952.pdf

[4] http://ncadr.tsu.edu.ge

[5] http://www.fsriadr.org

Regarding the case brought before the Constitutional Court by union challenging Article 14 of the Labor Code, it has to be mentioned that the union's claim was dismissed by the Judgment (№2/2/565) of Constitutional Court of Georgia, dated April 19, 2016.

With regard to Mr. Vashakidze's case, claim was partially satisfied, namely: claim concerning the renewal on position and payment of damages due to enforced discharge was dismissed, claimant was awarded the compensation in the amount of salary for two months, plus the penalty imposed for each delay payment day in the amount of 0.07%.

In respect of the claim of workers employed at Global Business Solutions (department of GR) whose employment contracts were terminated with the company due to the reorganization process, the cases are still pending before courts.

Mediation statistics:

Since 2014 year there have been three labour disputes and accordingly three mediation processes in Georgian Railway. The Ministry of Labour, Health and Social Affairs of Georgia appointed mediator in all three cases out of which only one agreement in 2014 have been reached.

Case of Educators and Scientists Free Trade Union of Georgia (ESFTUG)

Educators and Scientists Free Trade Union of Georgia (ESFTUG) in March 2017 signed a sectoral agreement with the Ministry of Education and Science of Georgia. Accordingly, there is no dispute between the parties and the case is closed.

Conclusion

Considering the clarifications and commitments provided in the present document and in the other documents provided by GoG with regard of the petition, the GoG asks that the GSP Subcommittee members deny the Petition dated September 10, 2010.