

**In the Matter of Guatemala—Issues Relating to the Obligations  
Under Article 16.2.1(a) of the CAFTA-DR**

**Written Views of the American Federation of Labor-Congress of Industrial Organizations  
Submitted Pursuant to Article 20.11 of the  
Dominican Republic – Central America – United States Free Trade Agreement  
& Rules 58-59 of Model Rules of Procedure**

**April 27, 2015**

The government of Guatemala has failed to enforce its labor laws, through a sustained and recurring course of inaction, in a manner that affects trade, in violation of the Dominican Republic – Central America – United States Free Trade Agreement (“CAFTA-DR”).<sup>1</sup> The cases and issues presented by the United States demonstrate an entrenched, systematic disregard for both national law and fundamental worker rights. This disregard has distorted the labor market, injured the United States and other CAFTA-DR parties, and harmed workers in each CAFTA-DR party.

The first section of this submission discusses the Mutually Agreed Enforcement Action Plan between the Government of the United States and the Government of Guatemala (“the Enforcement Plan”).<sup>2</sup> The Enforcement Plan was intended to rectify Guatemala’s continued non-compliance with CAFTA-DR’s labor chapter and forgo the necessity of this Panel.<sup>3</sup>

Guatemala did not fully or meaningfully implement the reforms outlined in the Enforcement Plan. However, as the Guatemalan labor movement has emphasized,<sup>4</sup> the critical issue regarding labor rights enforcement has never been a lack of tools, but a lack of political will on the part of the Guatemalan government. The reforms offered some streamlined procedures, but could not alter the country’s entrenched dynamics. The Enforcement Plan merely extended the length of time before Guatemala appeared before this panel to face possible trade consequences for its prolonged non-conformity with CAFTA-DR’s labor chapter.

In the second section, we respectfully request that this Panel take notice of Guatemala’s failure to adequately investigate and prosecute cases of violence against labor leaders and union members. The consequences of Guatemala’s failure to enforce the right to freedom of association are

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<sup>1</sup> Dominican Republic – Central America – United States Free Trade Agreement, Article 16.2.1(a) (“CAFTA-DR”)

<sup>2</sup> Mutually Agreed Enforcement Action Plan between the Government of the United States and the Government of Guatemala April 25, 2013 *Available at*

<https://ustr.gov/sites/default/files/04292013%20Guatemala%20Enforcement%20Plan.pdf> (“Enforcement Plan”)

<sup>3</sup> United States Trade Representative, Acting U.S. Trade Representative Marantis and Acting Labor Secretary Harris Announce Groundbreaking Labor Rights Enforcement Agreement with Guatemala, Press Release, April 11, 2013 *Available at* <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2013/april/marantis-harris-labor-enforcement-guatemala#>

<sup>4</sup> Recommendations of the Guatemalan Union Movement for the Action Plan between the Governments of Guatemala and the United States Within the CAFTA-DR Complaint, Introduction (January 2013) *Available at* [http://www.aflcio.org/content/download/153691/3855131/DR-CAFTA\\_Plan\\_de\\_Accion\\_recomendaciones\\_Guatemala\\_21\\_enero\\_2013.pdf](http://www.aflcio.org/content/download/153691/3855131/DR-CAFTA_Plan_de_Accion_recomendaciones_Guatemala_21_enero_2013.pdf)

exceptionally severe. Prolonged, widespread impunity has profoundly distorted the labor market in Guatemala, and taken an unconscionable toll on workers and their families.

By signing CAFTA-DR, Guatemala committed to “protect, enhance, and enforce basic workers’ rights.”<sup>5</sup> Every party further agreed to “not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade.”<sup>6</sup> Guatemala has failed to uphold its obligations under CAFTA-DR, and profoundly failed to ensure that fundamental rights are protected in its territory.

## **I. GUATEMALA FAILED TO IMPLEMENT THE ENFORCEMENT PLAN**

The Enforcement Plan, signed on April 25, 2013, was designed to address Guatemala’s non-conformity with CAFTA-DR obligations by ensuring the enforcement of court orders,<sup>7</sup> improving labor inspections<sup>8</sup> and increasing transparency and cooperation with the labor movement in the reform process.<sup>9</sup> None of these reforms were meaningfully implemented.

### **A. Enforcement of Labor Court Orders**

Guatemala has routinely failed to enforce labor court orders with respect to laws enforcing the right to freedom of association and the right to acceptable conditions of work, through a sustained and recurring course of inaction, in a manner that affects trade. The Enforcement Plan attempted to remedy this issue by enhancing oversight and verification, expediting the process of applying penalties, and increasing accountability mechanisms. However, Guatemala failed to ensure these measures were fully or meaningfully implemented.

#### Verification Unit

In Article 11 of the Enforcement Plan, the Guatemalan government agreed to create a specialized Verification Unit to confirm compliance with court orders.<sup>10</sup> Guatemala was required to produce monthly reports with statistics detailing “actions taken by the Verification Unit and the status of employer compliance with Labor Court orders.”<sup>11</sup> The government did create a web page, but has only periodically released information, and the data available does not include details necessary to assess progress. The last report available as of this writing, from January 2015, does not include the status of employer compliance or actions taken by the Verification Unit.<sup>12</sup> There is no way to ascertain whether orders are being issued in a timely fashion; whether all available legal mechanisms have been utilized; and even simply if there are staff members actively investigating cases.

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<sup>5</sup> CAFTA-DR, *supra* note 1, Preamble.

<sup>6</sup> CAFTA-DR Article, *supra* note 1, 16.2.1(a).

<sup>7</sup> Enforcement Plan, *supra* note 2, Section B.

<sup>8</sup> Enforcement Plan, *supra* note 2, Section A.

<sup>9</sup> Enforcement Plan, *supra* note 2, Section C.

<sup>10</sup> This commitment was codified in Supreme Court Accord No. 26-2012.

<sup>11</sup> Enforcement Plan, *supra* note 2, Article 11.1; Supreme Court Accord No. 26-2012, Articles 1, 2, and 5.

<sup>12</sup> The Guatemalan government has produced the following website regarding the Verification Unit:  
[http://www.oj.gob.gt/estadisticalaboral/index.php?option=com\\_content&view=article&id=212&Itemid=541](http://www.oj.gob.gt/estadisticalaboral/index.php?option=com_content&view=article&id=212&Itemid=541)  
Screenshots and downloads of the information available on April 15, 2015 on file with the AFL-CIO.

In April 2014, Guatemalan labor unions identified thirty-eight cases that still had outstanding court orders,<sup>13</sup> but to date have received no response from the government. This included several cases discussed in the Initial Submission of the United States,<sup>14</sup> but even the enhanced scrutiny of being singled out in the ongoing trade dispute did not prompt action. Guatemala failed to create an effective Verification Unit as required by the Enforcement Plan, and failed to meaningfully improve the monitoring and enforcement of court orders.

### Sanction Processes

While there are myriad factors contributing to the lack of enforcement against persistent employer violations, one of the critical issues that leads to unconscionable delays, denials of justice and a general diffusion of responsibility is the necessity of going through both the Ministry of Labor (MOL) and the courts before a judgment against an employer can be applied.

Guatemalan labor unions and the International Labor Organization (ILO) have called on the government to re-authorize the MOL to directly apply fines in cases of employer violations.<sup>15</sup> In 2001, a Congressional Decree briefly modified Article 415 of the Guatemalan Labor Code to give the MOL this ability, with oversight from the courts.<sup>16</sup> This reform led to a marked increase in penalties being appropriately applied.<sup>17</sup> However, on August 3, 2004, a Constitutional Court ruling invalidated several aspects of the Decree. While the case did not address Article 415,<sup>18</sup> the government has seized on the ruling to justify refusing to reinstate the authority to apply fines. A 2009 ruling called the government's interpretation directly into question, but this has not succeeded in altering the Guatemalan government's position.<sup>19</sup>

The Enforcement Plan presented a compromise. Guatemala was required to put forward legislation that enabled the MOL to issue fine recommendations, and establish an expedited judicial review process.<sup>20</sup> This proposal was supposed to be developed in consultation with labor

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<sup>13</sup> Letter to Carlos Contreras Solórzano, Guatemala Minister of Labor; Michael Froman, United States Trade Representative; Thomas Perez, United States Secretary of Labor and Sergio de la Torre, Guatemala Minister of the Economy from the AFL-CIO and Sindicatos Autónomos y Globales en Guatemala, Appendix (sent April 19, 2014) Available at

[http://www.aflcio.org/content/download/124811/3438201/file/April2014\\_Guatemala+Enforcement+Plan.pdf](http://www.aflcio.org/content/download/124811/3438201/file/April2014_Guatemala+Enforcement+Plan.pdf) ("April 2014 Letter")

<sup>14</sup> Including Koa Modas S.A. and Alianza Fashion S.A. See Initial Written Submission of the United States In the Matter of Guatemala-Issues Relating to the Obligations Under Article 16.2.1(a) of CAFTA-DR (November 3, 2014).

<sup>15</sup> En Defensa del Código Laboral: Posicionamiento y Propuesta del Movimiento Sindical y Popular Autónomo Guatemalteco, ante la Iniciativa 4703 del Congreso de la República paragraph 66 (July 11, 2014) Available at [http://cusg.com.gt/media/download\\_gallery/5%20Motivos\\_Contra\\_4703.pdf](http://cusg.com.gt/media/download_gallery/5%20Motivos_Contra_4703.pdf) ("En Defensa"); Complaint before the Governing Body of the International Labor Organization Concerning Non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention (October 2013) Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_227080.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_227080.pdf).

<sup>16</sup> On May 14, 2001, the Guatemalan Congress approved Decree 18 – 2001, which contained a package of reforms, including granting the MOL authority to impose fines. Congressional Decree 18-2001 (May 14, 2001).

<sup>17</sup> En Defensa, *supra* note 15, at 7.

<sup>18</sup> Constitutional Court of the Republic of Guatemala, Consolidated Unconstitutionality Proceedings Numbers 898 – 2001 and 1014 – 2001 (August 3, 2004); En Defensa, *supra* note 15, at 8.

<sup>19</sup> En Defensa, *supra* note 15, at 9.

<sup>20</sup> Enforcement Plan, *supra* note 2, Article 4.

unions.<sup>21</sup> Instead, the government presented a bill before Congress on June 25, 2013 with no consultation.<sup>22</sup> The language in the proposed bill specifically prevents the MOL from acquiring sanction authority anytime in the future. Guatemala failed to adhere to the requirements of the Enforcement Plan and actively tried to prevent reforms that have a proven track record of improving performance. In so doing, the government demonstrated a profound lack of interest in ensuring that labor laws are enforced and workers' rights protected.

### Criminal Sanctions

Article 13 of the Enforcement Plan was intended to enhance existing provisions in the Labor Code to address prolonged employer noncompliance by transferring cases to the criminal justice system. However, these oversight mechanisms did not result in meaningful action against repeat offenders.<sup>23</sup>

In addition to the issues raised with Koa Modas S.A. in the United States submissions, there are also outstanding reinstatement orders regarding 43 cases of unjust dismissals against union leaders and members.<sup>24</sup> In 2014, a labor judge certified the cases and sent them to the Public Ministry. Criminal proceedings should have commenced for all 43 cases.<sup>25</sup> However, even after a conciliatory hearing failed to rectify the situation, only four cases are being actively pursued.<sup>26</sup>

The Enforcement Plan recommends cases of non-compliance be escalated to criminal sanctions within a matter of weeks.<sup>27</sup> Most of the cases discussed in the United States submission have been languishing for years. Criminal sanctions would, at this point, be appropriate in most of the

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<sup>21</sup> Enforcement Plan, *supra* note 2, Article 14 (requires consultation and soliciting comments on implementation of the Enforcement Plan).

<sup>22</sup> Unions presented their own bill to the Ministry of Labor in January 2014.

<sup>23</sup> April 2014 Letter, *supra* note 13; Letter to Carlos Contreras Solórzano, Guatemala Minister of Labor; Michael Froman, United States Trade Representative; Thomas Perez, United States Secretary of Labor and Sergio de la Torre, Guatemala Ministry of the Economy from the AFL-CIO and Sindicatos Autónomos y Globales en Guatemala (sent October 22, 2013) Available at <http://www.aflcio.org/content/download/153821/3856641/file/Letter+-Guatemala-US+Enforcement+Plan.pdf> ("October 2013 Letter").

<sup>24</sup> Fiscalía de Derechos Humanos, Unidad Especial de Delitos Contra Sindicalistas MP001 – 2014 – 78755, MP001 – 2014 – 78776, MP001 – 2014 – 78771, MP001 – 2014 – 87751, MP001 – 2014 – 88623, MP001 – 2014 – 94413, MP001 – 2014 – 94431, MP001 – 2014 – 94436, MP001 – 2014 – 94800, MP001 – 2014 – 94811, MP001 – 2014 – 94821, MP001 – 2014 – 94831, MP001 – 2014 – 101313, MP001 – 2014 – 111906, MP001 – 2014 – 94429, MP001 – 2014 – 94423, MP001 – 2014 – 94416, MP001 – 2014 – 94805, MP001 – 2014 – 94817, MP001 – 2014 – 94829, MP001 – 2014 – 94433, MP001 – 2014 – 78751, MP001 – 2014 – 101278, MP001 – 2014 – 111902, MP001 – 2014 – 94414, MP001 – 2014 – 94419, MP001 – 2014 – 94425, MP001 – 2014 – 94803, MP001 – 2014 – 94825, MP001 – 2014 – 68644, MP001 – 2014 – 78755, MP001 – 2014 – 111866, MP001 – 2014 – 111911, MP001 – 2014 – 94814, MP001 – 2014 – 84735, MP001 – 2014 – 78762, MP001 – 2014 – 78770 and MP001 – 2014 – 78761 (Issued from May – October 2014).

<sup>25</sup> *Id.*

<sup>26</sup> Fiscalía de Sección de Derechos Humanos, Unidad Fiscal Especial de Delitos Contra Sindicalistas, MP001-2014-68636, Causa Penal -1186- 2014-05561, Juzgado Primero de Paz Penal, Municipio y Departamento de Guatemala, (filed November 12, 2014); Fiscalía de Sección de Derechos Humanos, Unidad Fiscal Especial de Delitos Contra Sindicalistas, MP001-2014-78764, Causa Penal -1186- 2014-05565, Juzgado Primero de Paz Penal, Municipio y Departamento de Guatemala (filed November 12, 2014); Fiscalía de Sección de Derechos Humanos, Unidad Fiscal Especial de Delitos Contra Sindicalistas, MP001-2014-68649, Causa Penal -1186- 2014-05563, Juzgado Primero de Paz Penal, Municipio y Departamento de Guatemala (filed November 12, 2014).

<sup>27</sup> Enforcement Plan, *supra* note 2, Article 13.2(d).



cases discussed. Sanctions could be a critical mechanism to incentivize compliance with the law, but they are very rarely applied. Guatemala has demonstrated a continued failure to ensure that employers who repeatedly break labor laws face meaningful consequences.

## **B. Measures to Ensure Investigation of Alleged Labor Law Violations**

Guatemala has routinely failed to conduct adequate inspections of labor law violations with respect to the right to acceptable conditions of work, through a sustained and recurring course of inaction, in a manner that affects trade.

The Enforcement Plan contained specific measures to address inadequate inspections and information-gathering, including enhanced procedures to address cases of employer closure and better communication between state agencies to confirm violations and ensure appropriate responses. However, Guatemala failed to meaningfully implement these procedures and ensure that the underlying violations they were designed to address were adequately investigated and remedied.

### Employer Closure

Employers close worksites or cease operations entirely without providing wages and legally mandated compensation so frequently that the issue received lengthy, specific attention in the Enforcement Plan. Articles 7-9 address various aspects of employer closure,<sup>28</sup> with particular measures aimed at employers receiving export benefits under Decree 29-89, as this practice is particularly common among export-oriented businesses.<sup>29</sup> However, enhanced scrutiny failed to produce tangible improvements in enforcement by Guatemalan authorities.

One measure aimed at enhancing the ability of workers to recover payments owed focused on the process of employer substitution. Under the Guatemalan Labor Code, existing obligations to workers can be transferred between employers if it can be shown that the same owners continue to operate other facilities, or if new owners have taken over the operations of an existing worksite.<sup>30</sup>

The Enforcement Plan included measures designed to clarify the guidance in employer closure cases. However, this has not improved the quality of investigations, as workers involved in a protracted struggle to recover payments owed for an apparel manufacturer originally known as Cambridge Industrial S.A. discovered when they tried to utilize the revised mechanism.

Workers at the apparel factory operated by Cambridge Industrial S.A. originally obtained a court order for payments owed in 2008, when the factory closed down and the company ceased operations.<sup>31</sup> Workers had warned the MOL of the impending closure, but inspectors did not act on the information, even when workers were being offered payment to resign their positions.

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<sup>28</sup> Enforcement Plan, *supra* note 2, Articles 7-9.

<sup>29</sup> Enforcement Plan, *supra* note 2, Articles 6, 7, 8.6.

<sup>30</sup> Guatemalan Labor Code, Article 23; Instructions for Unified Criteria on the Part of the General Labor Inspectorate for the Application of Article 23 of the Labor Code, Corr D-GIT – 158 – 2013 (June 2013)

<sup>31</sup> Cambridge Industrial S.A. Eighth Tribunal for Labor and Social Concern, Ordinary Labor Proceeding No 01087 – 2008 – 00235 (August 14, 2008). The employer did not appeal, and the ruling became final on August 27, 2008.

Instead of instigating closure procedures, inspectors encouraged workers to accept the payments, below what they were legally owed.<sup>32</sup> Despite this, 80 workers pursued a successful case that they have spent the subsequent six years trying to get enforced.

In March 2014, Cambridge workers presented information that their former employer was operating a new factory under the name NBG Too and requested an inspection.<sup>33</sup> On March 27th, the MOL held limited interviews with company representatives and unidentified workers. Both denied a link between NBG Too and Cambridge Industrial S.A.<sup>34</sup> Despite this inadequate methodology, no further attempts to investigate the matter were made. This reflects the poor investigatory procedures outlined in the United States submission. Despite making commitments to better training and oversight in the Enforcement Plan, Guatemala failed to improve its labor inspections to adequately assess violations.

### Information Sharing

Article 1 of the Enforcement Plan requires enhanced inter-agency cooperation, particularly information-sharing, to ensure complete inspections and verification of violations. Workers called for a registry with information on labor inspections, annual employer reports, judicial records from courts and prosecutors, loan and property records and other business information. This would greatly enhance transparency and efficient, effective inspections. The Guatemalan government ignored this suggestion, and has been unable to even implement a simple requirement to ensure information collected by government agencies is shared.

Article 1 specifically requires information-sharing between the MOL and the Guatemalan social security system (IGSS). Employers are required to make contributions to IGSS on behalf of their workers.<sup>35</sup> The MOL already has the obligation to ensure required payments go to the social security system, and to coordinate with the IGSS.<sup>36</sup> However, in practice, information is frequently not shared between these agencies. Article 1 was intended to simply underscore that obligation. However, it did not result in increased inter-agency investigations and information-sharing in cases where workers and the state are owed social security contributions.

For example, in addition to the issues at Koa Modas S.A. discussed in the U.S. brief,<sup>37</sup> a number of workers at Koa Modas are missing up to eight years of payments into the social security system. At an inspection conducted on April 22, 2013, the labor inspector noted that the employer was not making payments to the IGSS.<sup>38</sup> At a subsequent inspection conducted on November 20, 2013, workers reported they were still unable to obtain permits employers are

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<sup>32</sup> Procurador de los Derechos Humanos, Factual Report on Cambridge, drafted and signed by Lic. Marco Vinicio Hernández, Procurador de los Derechos de los Trabajadores de los Derechos Humanos, undated document.

<sup>33</sup> Letter from Cambridge workers to Sergio de la Torre, Ministry of Economy (sent March 4, 2014); Letter from Cambridge workers to Carlos Contreras Solórzano, Guatemala Minister of Labor (sent March 21, 2014).

<sup>34</sup> General Labor Inspectorate, Adjudications 0101 – 05006 – 2014 and 0101 – 05384 – 2014 (March 27, 2014).

<sup>35</sup> Instituto Guatemalteco de Seguridad Social, Acuerdo 1118, Articles 3, 5, and 6 (published in the *Diario de Centro America* March 14, 2003).

<sup>36</sup> Guatemalan Labor Code, Article 274; Ministerial Accord No 128 – 2009 (approving *Protocolo de Buenas Practicas de la Inspección General de Trabajo*; *Protocolo de Investigación (Fiscalización)*, Bloque 4, 4.1.3.).

<sup>37</sup> Initial Submission, *supra* note 14, ¶¶ 136-37, 166-72, 207-11.

<sup>38</sup> General Labor Inspectorate, Adjudicación No 0101 – 05601 – 2013 (April 22, 2013).

supposed to issue to employees to access healthcare.<sup>39</sup> The MOL was supposed to convey this information to the IGSS, but did not do so. These workers then approached the IGSS directly, where officials confirmed IGSS had not received payments from the employer on behalf of the workers. However, neither the MOL nor the IGSS took action to recover the balance. In March 2015, following prolonged inaction from the MOL, the Koa Modas Workers Union sent a request directly to the IGSS Executive Board requesting that it start an investigation.

### **C. Transparency and Worker Participation**

Public transparency and meaningful civil society participation are critical to create credible, effective public institutions, but the Guatemalan government has completely failed in its obligations under the Enforcement Plan and Guatemalan law. Under the Enforcement Plan, Guatemala was required to create a space for workers to engage with the implementation process. However, not even the tripartite consultations designed to give workers the mere opportunity to voice opinions were fully realized. Further, when reducing the minimum wage for some manufacturing workers last year, Guatemala failed to include democratic mechanisms for worker representation when it was legally obligated to do so.

#### **Article 14 Consultations**

In Article 14 of the Enforcement Plan, Guatemala committed to building a comprehensive consultative process that would give workers a voice in implementation. However, the government consistently failed to engage in meaningful dialogue with unions, on everything from proposed labor reforms to the appointment of officials to manage inter-agency cooperation. It did not even hold required meetings with regularity.<sup>40</sup>

#### **2015 Minimum Wage Adjustments**

The Guatemalan government failed to include worker representation even where it was required by pre-existing law. In December 2014, President Perez Molina issued four executive decrees<sup>41</sup> that lowered the minimum wage in the light manufacturing sector to only 1,500 *quetzales* a month in four municipalities.<sup>42</sup> The decrees have been enjoined pending legal challenges, but the government continues to press for their adoption.<sup>43</sup>

Article 105 of the Guatemalan Labor Code explicitly requires minimum wage changes be negotiated in consultation with workers representatives through the formation of a Joint Commission on Minimum Wages.<sup>44</sup> Commissions should consist of two democratically selected

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<sup>39</sup> General Labor Inspectorate, Adjudicacion No 0101 – 13191 – 2013 (November 20, 2013).

<sup>40</sup> April 2014 Letter, *supra* note 13; October 2013 Letter, *supra* note 22.

<sup>41</sup> Government Accords 471 – 2014; 472 – 2014; 473 – 2014, and 474 – 2014.

<sup>42</sup> Estanzuela in Zacapa Department; San Agustín Acasaguastlán and Guastatoya, both from the department El Progreso and Masagua of the Escuintla department.

<sup>43</sup> See, e.g., Government of Guatemala, Secretary of Social Communication of the President of the Republic, Ejecutivo solicita a Corte ratificar salario diferenciado, March 12, 2015 Available at <http://www.guatemala.gob.gt/index.php/2011-08-04-18-06-26/item/11283-ejecutivo-solicita-a-corte-ratificar-salario-diferenciado>.

<sup>44</sup> Guatemalan Labor Code, Article 105.

representatives from labor unions, two employer representatives and one representative from the Ministry of Labor.<sup>45</sup>

The mandated process for determining this minimum wage change was ignored. Workers were not allowed to choose their own representatives. It is unclear how the representatives purporting to represent labor unions were selected, but it was not through a transparent, democratic process that involved consultation with the major labor associations of Guatemala.<sup>46</sup>

The lower minimum wage rates were specifically and explicitly designed to garner increased investment from export-oriented light manufacturing enterprises.<sup>47</sup> This constitutes a violation of the CAFTA-DR commitment to refrain from encouraging “trade or investment by weakening or reducing the protections afforded in domestic labor laws.”<sup>48</sup> While Article 16.2 violations cannot be the subject of arbitration, this action is indicative of Guatemala’s general regard for its obligations under the agreement.

#### **D. Conclusion**

Guatemala has repeatedly failed to improve its dismal track record on labor law enforcement. The Enforcement Plan process demonstrates that this is not the result of a lack of tools or resources. It is instead the result of a persistent and profound lack of political will. The Guatemalan government did not meaningfully implement measures in the Enforcement Plan designed to improve the enforcement of court orders or labor inspections. It did not, as required, involve workers in the process. Instead, Guatemala demonstrated a continued disregard for its obligations under CAFTA-DR, including those designed to guard against lowering labor standards to attract trade and investment.

This Panel is empowered to make recommendations when it issues its final report,<sup>49</sup> with the aim of eliminating non-conformity with CAFTA-DR commitments “whenever possible.”<sup>50</sup> Article 20.15(3) suggests that “where appropriate” the Parties may agree on an action plan. We hope this

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<sup>45</sup> Guatemalan Labor Code, Articles 105 and 108; Government Accord 1319, Articles 7, 13 and 14.

<sup>46</sup> Letter from Union Representatives of the National Wage Commission Regarding Differentiated Wages (November 2014). All legally constituted unions should have the right to vote on representatives. Instead of an announcement issued in national papers in January, as required by Article 108 of the Guatemalan Labor Code and Acuerdo Gubernativo No 1319, announcements were made in local newspapers in May.

<sup>47</sup> Julio E. Santos, *Empresas amenazan con abandonar el país*, El Periodico (March 31, 2015) Available at <http://www.elperiodico.com.gt/es/20150313/pais/9858/Empresas-amenazan-con-abandonar-el-pa%C3%ADs.htm>  
ONU critica la rebaja del salario mínimo en Guatemala, La Prensa (February 17, 2015) Available at <http://www.laprensa.com.ni/2015/02/17/internacionales/1784145-onu-critica-la-rebaja-del-salario-minimo-en-guatemala>; Government of Guatemala, Ministry of Labor, Presidente de la Republica Anuncia Salarios Diferenciados Available at <http://www.mintrabajo.gob.gt/index.php/nota-principal/628-presidente-de-la-republica-anuncia-salarios-diferenciados.html>.

<sup>48</sup> CAFTA-DR, *supra* note 1, Article 16.2 “Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 16.8 as an encouragement for trade with another Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.”

<sup>49</sup> CAFTA-DR, *supra* note 1, Article 20.13(3)(c).

<sup>50</sup> CAFTA-DR, *supra* note 1, Article 20.15.

Panel determines Guatemala is not in conformity with the CAFTA-DR labor chapter, and that it will consider lessons from the original attempt to implement an action plan.

## **II. GUATEMALA FAILED TO ENFORCE FREEDOM OF ASSOCIATION BY ADDRESSING VIOLENCE AGAINST TRADE UNIONISTS**

We respectfully request that this Panel take notice of Guatemala's failure to adequately investigate and prosecute cases of violence against labor leaders and union members.

The right to freedom of association is guaranteed by the Guatemalan Constitution<sup>51</sup> and the Guatemalan Labor Code.<sup>52</sup> The ILO's Committee on Freedom of Association states "freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed, and the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected."<sup>53</sup>

Guatemala has utterly failed to enforce its own laws with respect to freedom of association, by failing to provide a minimal baseline of security that would allow workers to freely exercise their rights. For example, our original complaint detailed harassment and intimidation of leaders at the union Sitrabi, including the 2007 assassination of Marco Tulio Ramirez.<sup>54</sup> This murder remains unsolved, and violence against Sitrabi union members continues. Miguel Angel González Ramírez was murdered on February 5, 2012, in the midst of negotiations over failures to pay the minimum wage.<sup>55</sup>

In 2013 and 2014, Guatemalan trade unions reported a total of seventeen labor activist murders.<sup>56</sup> This includes the 2014 deaths of Gerardo de Jesus Carrillo Navas on March 25, William Retana Carias on April 7, and Manuel de Jesus Ortiz Jimenez on April 8, all public sector workers with the Union of Municipal Workers of Jalapa (Sindicato de Trabajadores Municipales de Jalapa). The murders occurred during a dispute with the local government over owed back-wages and terminations.<sup>57</sup> It does not include countless incidents of harassment and intimidation, most of which go unreported, as many workers fear coming forward.

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<sup>51</sup> Constitution of Guatemala, Article 102(r).

<sup>52</sup> Guatemalan Labor Code, Article 10 (prohibits any measure taken against a worker with the purpose of impeding, partially or totally, the exercise of his or her rights under the Constitution)

<sup>53</sup> Public Submission to the Office of Trade & Labor Affairs Under Chapters 16 and 20 of the Dominican Republic-Central American Free Trade Agreement 8 (April 23, 2008) Available at <http://www.dol.gov/ilab/reports/pdf/GuatemalaSub.pdf> ("Public Submission") (citing International Labor Organization, Committee on Freedom Of Association ¶ 813).

<sup>54</sup> Public Submission, *supra* note 53, at 8-12.

<sup>55</sup> International Trade Union Confederation, SITRABI Target of Deadly Anti-Union Repression in Guatemala, February 10, 2012 Available at <http://www.ituc-csi.org/sitrabi-target-of-deadly-anti>

<sup>56</sup> International Labor Organization Governing Body, Complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 323rd Session (March 2015) Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_350501.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_350501.pdf)

<sup>57</sup> Statement of the Movimiento Sindical Popular Autonomo Guatemalteco CUSG – CGTG – UNSITRAGUA – MTC (April 2014).

The country has systematically failed to conduct adequate investigations into cases of violence against trade unionists, or take necessary steps to hold the actors and intellectual authors of these crimes accountable. This failure completely distorts the Guatemalan labor market, creating a climate of impunity that impedes workers' ability to effectively advocate for their own rights and hold employers to account. This artificially lowers the cost of labor, as workers fear coming forward to report violations or seek redress. This in turn impacts workers in trading partners, including in the United States.

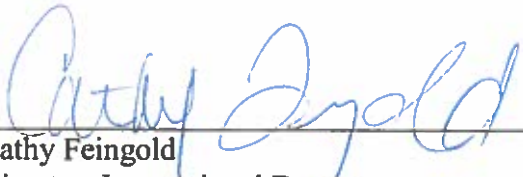
The Guatemalan labor movement has called for measures to address violence and impunity, including reforming the criminal code; better protection measures; capacity-building for prosecutors to conduct credible investigations; and enhanced accountability for state officials that fail to act.<sup>58</sup>

We urge the panel to consider the gravity of Guatemala's failures when weighing its decision, and consider including measures to ensure the underlying ability of workers to advocate for their fundamental rights without fear of violence.

### III. CONCLUSION

Guatemala has demonstrated a complete disregard for its commitments under CAFTA-DR's labor chapter by failing to enforce its labor laws, through a sustained and recurring course of inaction, in a manner that affects trade. The United States and Guatemala entered into an agreement in 2013 that was designed to ensure adequate inspections, enforce court orders and create more transparent and responsive institutions. The Government of Guatemala did not honor its commitments, and this inaction reflects the ongoing failure to secure compliance with court orders and conduct adequate inspections. Guatemala has also failed to enforce labor laws related to freedom of association by failing to create a minimum baseline of security so that workers can exercise their rights without fear of violence and intimidation. These failures are reflective of Guatemala's fundamental disregard for its obligations under CAFTA-DR, which has injured the United States and workers in both parties.

Respectfully submitted,

  
Cathy Feingold  
Director, International Department  
AFL-CIO, 815 16<sup>th</sup> Street NW, Washington, DC 20006  
202-637-5244; [cfeingold@aflcio.org](mailto:cfeingold@aflcio.org)

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<sup>58</sup> Recommendations of the Guatemalan Union Movement for the Action Plan, Section 2, *supra* note 4.



**Reference:**

*Guatemala – Issues Relating to the Obligations under Article 16.2.1(a)  
of CAFTA-DR*

**MRS. CLARA LUZ DE LUCERO  
RESPONSIBLE OFFICE FOR GUATEMALA  
MINISTRY OF ECONOMY OF GUATEMALA**

**I, AUGUSTO VALENZUELA HERRERA**, with personal identification and acting capacity known to the parties to this dispute, RESPECTFULLY appear on behalf of the GUATEMALAN LABOR LAW ASSOCIATION (ASOCIACIÓN GUATEMALTECA DE DERECHO DEL TRABAJO) to:

Submit our **OPINION** as a non-governmental organization in the dispute brought by the United States of America against Guatemala on issues relating to the obligations under Article 16.2.1(a) of CAFTA-DR.

For this purpose, I state the following:

**LEGAL AND FACTUAL POINTS**

**IN THE JUDICIAL-LABOR AREA:**

The Arbitration Panel gave permission to the Guatemalan Labor Law Association to submit its written opinion concerning the labor justice system in Guatemala and the institutional platform on which disputes or conflicts promoted in the field of labor rights are substantiated and resolved and also regarding disputes that are settled before the labor administrative authority, namely, the General Labor Inspectorate of the Ministry of Labor and Social Welfare and its role in the enforcement of labor laws.

To this end it is necessary to start off by stating that very important changes are being promoted in labor matters and these materialize through the implementation of the “New Labor Ministry Management Model”, that involves, among other aspects, the following:

- a) The designation of a single building to house all of the Labor Courts and Labor Courts of Appeals. (Only in the Department of Guatemala)
- b) The creation of two Labor and Social Welfare Courts to hear cases. (Only in Department of Guatemala)
- c) The creation of the Center for Labor Justice Administration Ancillary Services. (Only in Department of Guatemala)



- d) The implementation of electronic notice serving
  - e) Recognition of electronic communications and signatures
  - f) Implementation of courtrooms where hearings are oral and public, and are video-taped.
- Their implementation is gradual and started in the department of Guatemala.

This New Labor Ministry Management Model that our Association helped to make known to trial lawyers is not the result of legal reform, but of the dynamics and the enforcement of several standards that reflect substantial positive changes in labor justice administration that can be summarized and structured as we present below:

- I.** In the Department of Guatemala, the Judiciary centralized Labor and Social Welfare Courts in one single building called “Labor Justice Center”, located at building number 18-29 of 18<sup>th</sup> Street in zone 10 of Guatemala City, and houses sixteen (16) Labor Courts of the Department of Guatemala and four Labor and Social Welfare Courts of Appeals, of the five that exist in the country. These courts are:
  - i.** Two (2) Labor and Social Welfare Courts created through Resolution 31-2011 of the Supreme Court of Justice. Its functions include: to receive the cases filed orally or in writing; to have defects corrected; to issue the decision to process the case; to decide regarding precautionary measures requested; to determine the day and time for the parties to appear at the oral trial according to the Single Agenda of Hearings at the Court Management System; to approve agreements concluded and authorized at the Centers for Mediation and Conciliation of the Judiciary, and to hear all the cases and first requests brought in the department of Guatemala related to issues and claims set out in Article 292 of the Labor Code. In addition, they hear and rule on typical prevention measures in every economic/social collective conflict. These cases are distributed by the Center for Labor Justice Administration Ancillary Services randomly through the Court Management System.
  - ii.** Fourteen (14) Labor and Social Welfare Courts which are presided by a Judge who specializes in Labor Law. These Courts hear individual and collective economic conflict cases arising between employers and workers as well as complaints against the Social Security system, particularly against the Guatemalan Social Security Institute, for refusal to provide the benefits resulting from social security coverage.
  - iii.** Five (5) Labor and Social Welfare Courts of Appeal. These are the second instance courts that hear labor and social welfare cases; each one of them is formed by three justices who specialize in Labor Law and are appointed by the Congress of the Republic of Guatemala.
- II.** In the Department of Guatemala, the Judiciary created the Center for Labor Justice Administration Ancillary Services through Resolution 1-2009 of the Supreme Court of Labor Justice on January 21, 2009 and restructured it through Resolution 26-2012 of the Supreme Court of Justice on May 23, 2012. The Center was created with the purpose of streamlining communications, requirements, orders for embargos and





reinstatements, rulings and other orders from Labor and Social Welfare Courts and from the Labor and Social Welfare Courts of Appeals in Guatemala City. In addition to this, the Center seeks to maximize the efficiency and effectiveness of process servers and implementers in the labor and social welfare section in Guatemala City by organizing their work in such a way that it ceases to be a hindrance to the swift administration of justice. The Center has the following units:

- a) Claims Receipt Unit, Writings and Customer Service;
- b) Unit of Internal Reporting and Notice Printing;
- c) External Process Server Unit;
- d) Unit for the Implementation and Verification of Reinstatements and Special Orders in the area of Labor;
- e) Unit of Electronic Process-Serving.

The Center for Labor Justice Administration Ancillary Services is performing excellent work that has led to the streamlining of labor cases. This is significant support to advance in the substantiation of legal labor cases.

**III.** In the area of labor, the Judiciary implemented a Single Agenda for Hearings as a system for the registration and publication of the hearings scheduled by Labor and Social Welfare Courts. The process followed by the Labor Justice Administration is also published in the web page of the Judiciary, which makes it possible to better identify and monitor cases.

- i. The Judiciary has made available to the public the Oral Hearing Protocol for a Regular Labor Case through its WEB page. The Court management system was also modified and now there are detailed platforms to individualize cases of labor law infringement and payment, records and other forms of verification that have been implemented. A handbook was written for justice operators on the process to monitor cases, which now means that not only litigators have access to the process but also the parties involved can open the electronic window and monitor their cases. This introduces transparency to labor justice and provides modern and remote access.
- ii. The Law for the Recognition of Electronic Communications and Signatures, Decree 47-2008 of Congress was passed. This makes e-mails and other electronic communications admissible in Court. This has a positive impact since the main communication channel used today in labor relations is electronic. Recognition of electronic communications and signatures as a valid form of communication will integrate Guatemala to global electronic trade through the adoption of technical and legal instruments based on international Law models that seek to standardize this specialized branch and which also gives legal and technical certainty to electronic contracts, communications and signatures by making them equivalent to physical documents and signatures.



- IV. Electronic delivery directly to banks of public records of orders of attachment, claim annotations, orders to prohibit citizens from leaving the country, and others, through Resolution 55-2012 of the Supreme Court of Justice on September 26, 2012. This measure is significant for labor matters because it allows celerity and immediate enforcement of coercion measures that Labor Judges impose to guarantee the required outcomes.
- V. The Law to Regulate Process-Serving Electronically at the Judiciary, Decree 15-2011 of Congress, and the Regulations for the Law to Regulate Process-Serving Electronically at the Judiciary, Decree 11-2012 of the Supreme Court of Justice, dated February 15, 2012 have been enacted. This Law is one of the fundamental pillars of the New Labor Ministry Management Model and the legal grounds for Labor and Social Welfare Courts and Courts of Appeals to serve notices electronically and this leads to more agility. This measure has made it possible for litigators to have more control over labor cases and gives certainty to their substantiation since notice is served through this means and may be viewed anywhere in the world through the internet.
- VI. A solid push has been given to oral labor proceedings through the New Labor Ministry Management Model, as a tool that allows their prompt management. Promoting oral proceedings does not involve regulatory changes but rather the Judiciary invested in improving the physical facilities of Labor and Social Welfare Courts and Courts of Appeals in the country. The changes involved building Chambers and videotaping the hearings, which makes it possible for trial lawyers to defend their case orally and for rulings in those hearings to be communicated orally as well. This has been instrumental to gain speed and procedural concentration, because in the past, a hearing took four hours, and now, with the implementation of the New Labor Ministry Management Model, it takes thirty to forty-five minutes.

The best observers and critics of changes in justice administration are usually lawyers, its main users. Therefore it is worth discussing their points of view to confirm if changes have been successful or not.

It is first of all important to highlight that, for a litigator attorney, labor justice administration has become visibly more agile, concentrated and efficient. That is evident in cases processed where, for example in the past, it would take no less than 4 months between the filing of the lawsuit and the first hearing. Now, scheduling a hearing takes no more than one month. Another clear example of this is the hearing itself, since in the past, a plea hearing could take 4, 6, 8 or more hours because some litigator attorneys used the “oral” procedure but they actually literally dictated their plea or defense arguments to the clerk who took time to write one letter at a time, with dots, commas and everything that dictation entails. Things have now changed much and plea hearing and other defense arguments will take not more than one hour with the use of videotaping and the production of summarized rather than detailed minutes as was the case in the past. One can state that speed in labor cases is the major accomplishment and the emblem of the New Labor Ministry Management Model. The changes, tools, instruments and mechanisms for justice operators have given them everything they need to make the principles of concentrated oral hearings a reality. This is the speed required to claim labor rights and to obtain immediate



outcomes through the presence of the judge in the oral hearing, as the judge is there to hear the points of view of the parties to the specific case first-hand and to personally receive the evidence.

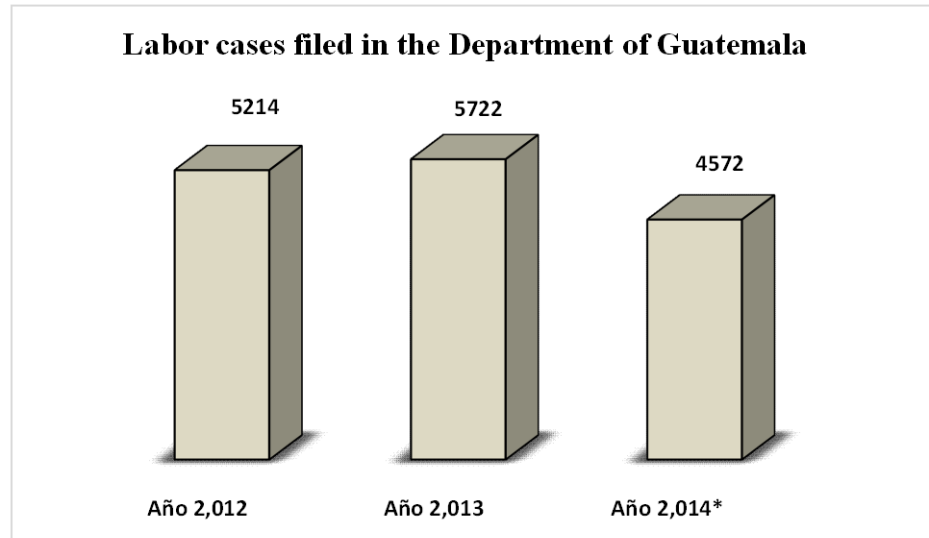
The implementation of the New Labor Ministry Management Model has forced Judges to become more knowledgeable about the cases since more procedural steps are taken during hearings and these cannot be substantiated if the Judge is not familiar with the case and its status or with Procedural Law, or with the general theory of the case. But beyond simple knowledge about the case, Judges have enhanced their use of the Law since oral actions or defense arguments and their immediate oral response require from them an immediate resolution that cannot be deferred since that would go against the celerity and concentration required by the new system and by Labor Code standards. It is interesting that the system that has sought to promote speed in the management of cases through more efficient communications and shorter hearings has also made it possible for Judges to rule on cases faster, that is, they now can pass judgment in the shortest possible amount of time. That swiftness in issuing rulings is reflected also in the program promoted by the Judiciary to unify criteria among Judges and Justices and in periodic training courses offered by different agencies and entities, including the International Labor Organization (ILO).

The New Labor Ministry Management Model has provided excellent tools to litigators, particularly information on cases and statistical information published in various electronic channels on a monthly basis. In the previous model, finding information about the existence of a case made it necessary to consult the physical books of the Courts. Now, through the Center for Labor Justice Administration Ancillary Services it is easy to have access and find out if there is a case filed or find every case filed which may be of interest to an individual. There is no question that the new model is undeniable support for labor justice and its major users, litigators, and that it is ideal to promote and make prompt, swift and effective labor justice administration a reality.

There is no question that the New Labor Ministry Management Model has streamlined labor cases, and faster rulings have been obtained. This has led to reaching the enforcement phase faster. This streamlining of the proceedings gives greater certainty to workers, resulting in more cases filed with the labor courts as shown in the following graph of the Department of Guatemala.



## RECEIPT OF LABOR CLAIMS IN THE DEPARTMENT OF GUATEMALA



\*Statistical information available for 2014 until August.

Source: Prepared by author with data from: <http://www.oj.gob.gt/estadisticalaboral/Reportes/Region1/Guatemala/Ido%201a.%20Instancia/Asignaciones/2014%20Guatemala%20Juzgados%20de%20Instancia%20de%20Trabajo.pdf>, April 16, 2015

Changes in labor law administration have not only involved furnishings, support staff and implementation of technology, but the process of modernization and streamlining that is underway has led Labor and Social Welfare Judges to assume an important role and have established criteria that also have a positive impact on labor right claims. For example, several judicial warnings have been issued that are stricter and have real authority. These do not come from laws or new rules, but from the enforcement of the Law already in force, obviously within the limits of legality, which has motivated the effective enforcement of such court orders like penalties for not paying fines for professional misconduct.

Added to this, Judges have unified criteria regarding the preliminary rejection of appeals or defense mechanisms which are considered to be frivolous *a priori*, in addition to not delaying the process due to appeals which formerly led to case suspensions. It is evident that Labor Courts have gradually eliminated every obstacle for the case to reach the ruling stage. These measures have changed the strategy of litigators and introduce agility in the proceedings since if the defense mechanisms used by litigator attorneys fail to cause a delay, quite possibly many of these mechanisms will no longer be used.

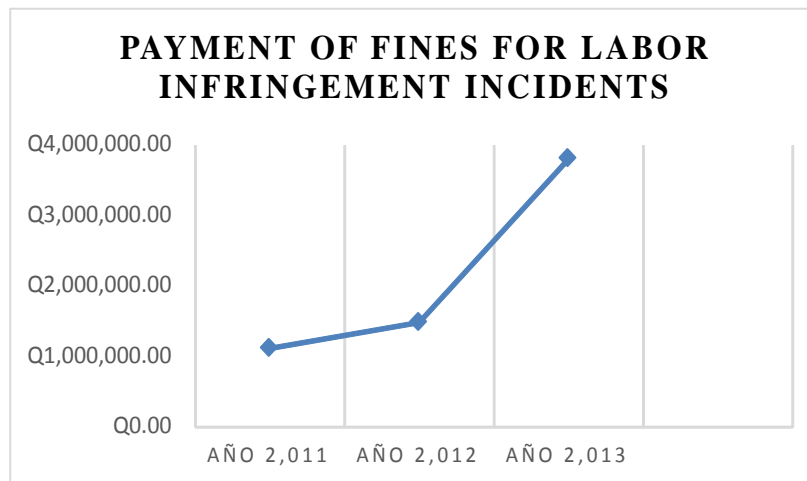
By Constitutional mandate, labor proceedings can be heard by a Labor and Social Welfare Judge and by a Labor and Social Welfare Court of Appeal. No further actions may be filed after those two levels are exhausted and for that reason litigators have largely sought to turn special protection measures (“Amparos”) into a third mechanism to review the rulings by the two lower



courts. Before the implementation of changes in labor justice administration, this action had some effects at least to delay finalization of the proceedings. At present, Labor and Social Welfare Judges no longer allow such delays through these protection measures (amparos), but rather a temporary amparo is granted, and in the absence of such temporary protection, proceedings continue unhindered. So, the only possibility for a Labor and Social Welfare Judge to suspend proceedings as a result of a protection measure is if a temporary amparo is granted or if said action is admitted.

Changes made in labor justice administration have impacted every labor case and note should be made here of “Labor Infringement Incidents” through which the infringement of labor standards is judged and said infringement is the object of fines based on minimum wages. Ruling on labor infringement through the “Incidental” mechanism is the direct result of a General Partial claim of unconstitutionality against Decree 18-2001 of Congress that contains the most recent amendments to the Labor Code of Guatemala. Said Decree 18-2001 sought to establish a labor infringement sanction process where the General Labor Inspectorate would be the one to impose fines. The Court of the Constitution ruled that this authority cannot be given to an administrative body, and therefore declared some of the articles of said Decree unconstitutional.

The “Incidental” process is in use since 2004, when the Court of the Constitution ruled that Decree 18-2001 for labor infringement cases was unconstitutional. The recent changes in labor justice administration allow said incident to be processed peremptorily to quickly achieve the imposition and collection of fines. The following table is an example of the improvement in the imposition, effectiveness and payment of fines for violations of labor and social security rules:



Source: Prepared by author with data from: <http://www.oj.gob.gt/estadisticalaboral/files/Pago%20de%20Multas%20Pagina%20Web.pdf>, of April 16, 2015.

Guatemala has been criticized and accused of not having a labor infringement sanction system where the Labor Inspectorate is the one to impose the fines. However, the Court of the Constitution of Guatemala has already ruled that said system is unconstitutional since it is up to a



Labor Court to judge labor infringements. Then, since there cannot be a system where the Labor Inspectorate is charged with this task, it must be a Labor Judge who takes it up and the amounts charged as shown in the previous table is evidence of the substantial improvement in that sanctioning authority of the State.

The system that would have been established under Decree 18-2001 of Congress would have allowed the Labor Inspectorate to impose fines. However, if the fines exceeded Q5,000.00, a Contentious-Administrative action could be filed to review said sanction. This Contentious-Administrative action is not filed with a Labor Judge and it is petitioned by the parties. This means that it is a formal and slow process that would, at any rate, have a negative result in the collection of fines. Therefore, the current process to rule on labor infringement has improved with the changes made to labor justice administration and there is already a bill in Congress introduced by the Executive Branch to allow for an even more agile process in these cases. We should note that if the direct sanctioning system by the Labor Inspectorate established through Decree 18-2001 had remained in place, the sanctioning process would now be a fiasco because most fines imposed for labor infringement exceed Q5,000.00 and therefore there would be innumerable Contentious-Administrative cases filed that would have annulled any positive effect of said sanctions. This shows that the current procedure, or the one proposed through bill 4703 that is currently at Congress, are far better than Decree 18-2001.

## **IN THE ADMINISTRATION-LABOR FIELD:**

The Ministry of Labor and Social Welfare hired one hundred (100) new Labor Inspectors, who were properly trained before they started their work. With the support of these new personnel, the presence of the Labor Inspectorate has increased nation-wide, particularly through the constant visits they make to companies that aim to ensure that employers meet every labor law.

Added to this, there are Ministerial-level provisions that promote labor right protection, namely:

- a) Instructions to address every case where there is a claim or knowledge of the closing of a company or in the process of getting closed without the corresponding payment of labor benefits, Ministerial Resolution 111-2013.
- b) Creation of the Permanent Trade Union Technical Working Group for Comprehensive Protection, Ministerial Resolution 241-2013.
- c) Instructions to call on the Immediate Reaction Group (IRG) in the possible event of the closing of a company which receives the benefits granted by Decree 29-89 of Congress, the Law for the Promotion and Development of Exports and Outsourcing Activities, Ministerial Resolution 160-2013.
- d) Instructions for the Annual Inspection of companies that benefit from Decree 29-89 of Congress, the Law for the Promotion and Development of Exports and Outsourcing Activities, Ministerial Resolution 160-2013
- e) Instructions for ongoing inspections of companies that benefit from the Law for the Promotion and Development of Exports and Outsourcing Activities, Ministerial Resolution 243-2013.



- f) Instructions for the establishment of terms in the work of the General Labor Inspectorate, Ministerial Resolution 177-2013.
- g) Instructions for the establishment of terms in the work of the General Labor Inspectorate, Ministerial Resolution 112-2014.
- h) Instructions to call on the Immediate Reaction Group (IRG) in the possible event of the closing of a company which receives the benefits granted by Decree 29-89 of Congress, the Law for the Promotion and Development of Exports and Outsourcing Activities, Ministerial Resolution 152-2014.
- i) Procedure to follow in the event of resistance to labor inspectors' work.

And agreements that are important for Labor have been signed, such as:

- a) Inter-agency framework cooperation agreement for the exchange of information among the Ministry of Labor and Social Welfare, the Ministry of Economy, the Tax Administration and the Guatemalan Social Security Institute.
- b) Inter-agency agreement on the procedure to follow in the case of resistance to inspectors' work, between the Ministry of Labor and the Ministry of the Interior.

Within the context of the ILO in Guatemala, we note the existence and functioning of the Commission for the Treatment of International Conflicts that is already hearing cases of alleged violations of rights of Freedom of Association and Collective Bargaining. It operates in Guatemala with nation-wide authority. It is headed by a moderator who is a former Judge and President of the Court of the Constitution of Guatemala and has the typical three-party structure of the ILO.

Members of the Arbitration Panel: sound and consistent changes are taking place in Guatemala in the field of labor justice administration, with positive results in favor of workers, employers and litigators.

For this reason, I respectfully

#### **REQUEST:**

#### **TO THE RESPONSIBLE OFFICE FOR GUATEMALA AT THE MINISTRY OF ECONOMY OF GUATEMALA:**

- That it submit this document that contains opinions of the GUATEMALAN LABOR LAW ASSOCIATION on the labor dispute under Article 16.21(a) of CAFTA-DR between the Government of the United States of America and the Government of Guatemala and to make it available to the public.





Asociación Guatemalteca de Derecho del Trabajo  
Organización No-Gubernamental

**TO THE ARBITRATION PANEL:**

- 1.1 That it accept this document from the GUATEMALAN LABOR LAW ASSOCIATION in the labor dispute brought by the Government of the United States of America against the Government of Guatemala relating to obligations under Article 16.2.1(a) of CAFTA-DR;
- 1.2 That the legal and factual points of the arguments in this document that contains the opinions of the GUATEMALAN LABOR LAW ASSOCIATION be noted, and that it be deemed shown that the State of Guatemala has ensured that labor rights are met and that the effectiveness of the labor justice system in Guatemala is evident.

Guatemala City, April 27, two thousand fifteen.

**Augusto Valenzuela Herrera**  
**Chairman of the Board of Directors**  
**Guatemalan Labor Law Association**

3a. avenida, 12-74, zona 9, Ciudad de Guatemala  
(Third avenue, twelve dash seventy-four, zone nine, Guatemala City)  
Telephone +502 2314-4646  
E-mail address: asguatra@gmail.com



**MRS. CLARA LUZ DE LUCERO  
RESPONSIBLE OFFICE FOR GUATEMALA  
MINISTRY OF ECONOMY OF GUATEMALA**

Ref: Guatemala – Issues relating to the obligations under Article 16.2.1(a) of CAFTA-DR

I, **HERMANN FEDERICO GIRÓN DELERY**, with personal identification and capacity in which I act known in this dispute, respectfully

**STATE TO YOU:**

- I. My address, for the purpose of receiving notices, is the address of **COMITÉ COORDINADOR DE ASOCIACIONES AGRÍCOLAS, COMERCIALES, INDUSTRIALES Y FINANCIERAS**, known by its acronym **CACIF**, located at Ruta 6, 9-21, zone 4, Guatemala City, 9<sup>th</sup> floor, Cámara de Industria de Guatemala building, telephone number +502 22 01 00 00, e-mail: presidencia@cacif.org.gt;
- II. I appear before you to submit written opinion to the Arbitration Panel that hears the dispute brought by the Government of the United States of America - Plaintiff – against the Government of Guatemala – Defendant – under Article 20.10.1(d) of the Dominican Republic, Central America and the United States Free Trade Agreement, hereinafter “*CAFTA-DR*” and under rules 58 to 64 of the Rules of Procedure for Chapter Twenty of the Dominican Republic, Central America, United States Free Trade Agreement;
- III. I do so with the authorization of the Arbitration Panel to make reference to the points included in the request submitted by CACIF, that can be summarized as follows: The companies that are members of Associations and Chambers that make up CACIF, as users of the system that is being subjected to analysis in this arbitration process, have a highly qualified opinion on the matter, that is , as to whether the agencies in charge of enforcing labor laws have or not deteriorated since the entry into force of the Agreement in Guatemala, and the arguments are presented pursuant to the following

**FACTS:**

1. The central argument by the Plaintiff is the presumed fact that the Defendant has ceased to effectively enforce its domestic labor laws both at administrative as at judicial levels, obtaining commercial benefits from said behavior, all of which infringes the rule contained in Article 16.2.1 (a) of the Agreement.
2. This would mean that the State of Guatemala, both the Administrative level – the Executive Branch – as the Judicial level – the Supreme Court of Justice and other competent courts –since 2006 to date, through a coordinated strategy, are deliberately seeking to enforce labor laws incorrectly in an aim to prevent the workers of exporter companies in the country from filing complaints about them, and with that, the companies

are obtaining economic benefits, and are creating unfair competition that *CAFTA-DR* seeks to prevent through the rules contained in Chapter sixteen.

3. The experience of our members and our own experience as the most representative entity of Guatemalan employers and which provides inputs in bipartite and tripartite discussion fora in order to strengthen the agencies in charge of the effective enforcement of the Law, as we shall explain below, is the total opposite of the argument outlined in the previous paragraph.
4. In fact, in the last ten years we have seen and witnessed the strengthening of agencies in charge of imparting justice, particularly in two areas: criminal justice through the professional development of the Prosecution, and labor justice, as we shall outline below, even at the cost of other significant areas for the private sector, like the courts in charge of imparting justice in civil and trade matters, that have not received the same amount of resources nor have been the object of modernization plans or programs.

**5. Labor Inspectorate**

CACIF represents the private sector in social dialogue fora existing in the country; these include the Tripartite Committee for International Labor Affairs that was created over twenty years ago to monitor issues relating to International Labor Organization's Convention 144. That working group has access to information on progress accomplished in the Ministry of Labor and Social Welfare.

According to figures presented to the Tripartite Committee, the number of labor inspectors has increased notably in the last three years, through the hiring of new professionals and the reassignment of some officials who held inspector positions but were doing other work.

Likewise, the new forms of inspection by geographic area, by branches of industry or by specific benefit verification, whose outcomes have been presented to the Committee, show work that is better organized and with specific outcomes that translate into warnings to correct conducts when the Laws are found to be breached, and in the imposition of sanctions when those corrections are not made, all of it for the direct benefit of workers.

The companies that are members of Associations and Chambers that form our organization are being audited by the Labor Inspectorate through these methodologies, that are increasingly rigorous and they can attest to it.

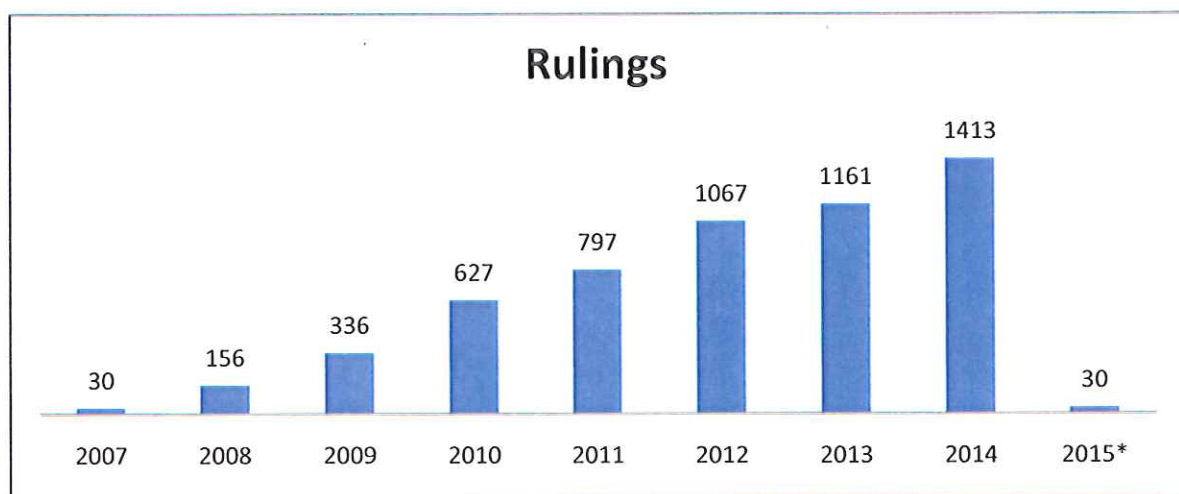
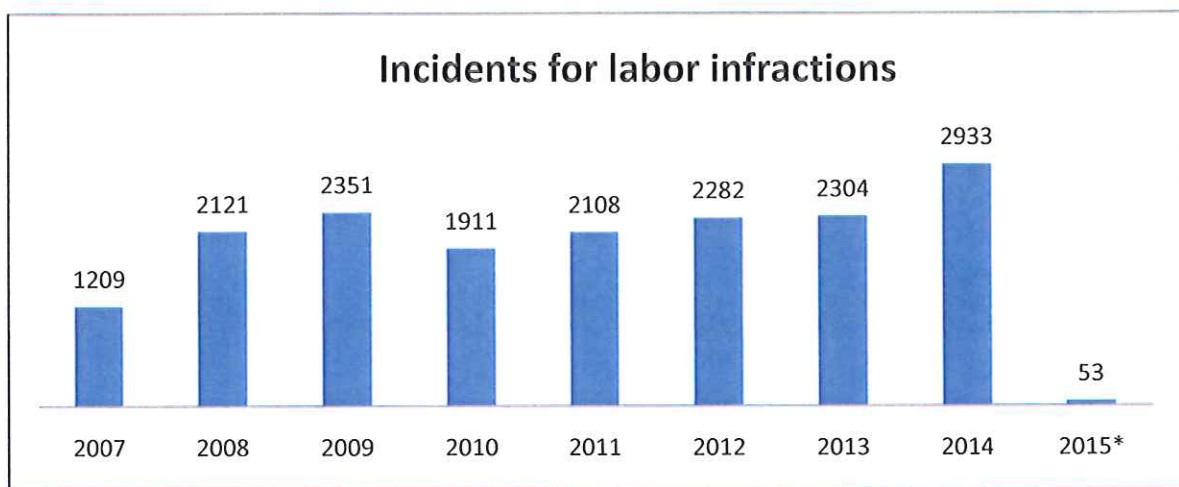
On the other hand, but directly related to the previous statement, the country is being accused of not having an adequate process to sanction breach of labor provisions. This has been happening since the entry into force of *CAFTA-DR*. It is a known fact that a ruling by the Court of the Constitution nullified the infringement-sanctioning process established through Decree 18-2001 of Congress that involved an administrative procedure handled by the Labor Inspectorate.

In addition to being unconstitutional, because there is a specific provision in the Constitution that orders that every labor conflict be subject to the exclusive jurisdiction of



Labor Courts, the process in question failed to guarantee prompt solution of cases. In fact, by establishing an administrative procedure to impose sanctions, the procedure allowed a jurisdictional review of the ruling, as it must be, because our legal system includes the Constitutional guarantee of jurisdictional control of administrative acts through a Contentious-Administrative procedure which is not only slow but also admits appeals that are heard by the Supreme Court of Justice and is the most formal recourse of our legislation (and was not applicable to violations whose sanctions would amount to less than five thousand quetzales, which involved another notorious unconstitutional feature).

At any rate, the process recognized by the Court of the Constitution itself as valid to process these cases involved in the ruling of unconstitutionality mentioned above, that is, the process of incidents that Labor Courts have been using, has proven effective and speedy for those purposes as demonstrated in practice according to figures from the Judiciary that are shown below:



(\*Data for 2015 show rulings up to January 15)

These figures show, on the one hand, that the procedure is adequate to handle the cases, provided that there is due diligence both on the part of the party promoting a sanction process as on the part of the Court in charge of hearing and solving the case, as we shall see below. Note the increased number of rulings starting three years ago, when these reforms took place at the Labor Inspectorate.

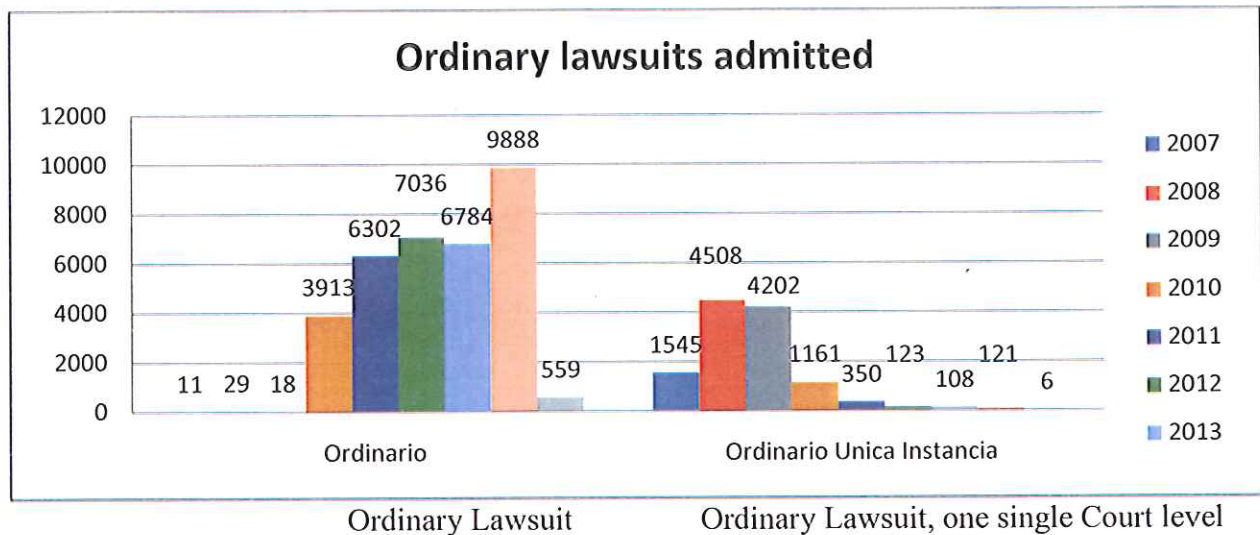
## **6. The Judiciary**

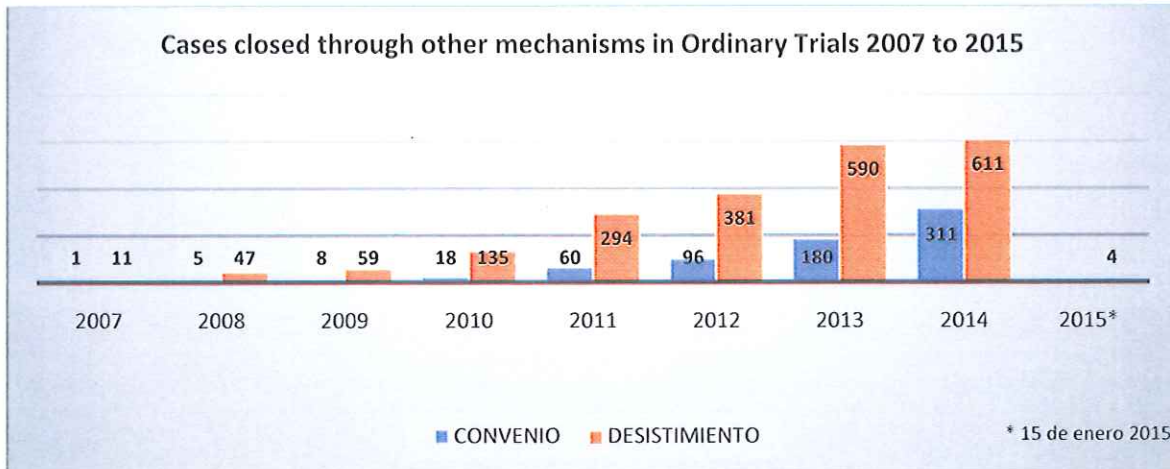
This is the area with more progress is seen in recent years, through the so-called New Labor Ministry Management Model, implemented by the Supreme Court of Justice through several administrative provisions and the enforcement of existing laws, particularly in the Department of Guatemala, as we explain below.

- 6.1 The creation of the Center for Labor Justice in Guatemala City, where the sixteen Labor Courts of the Department of Guatemala and five Chambers of the Labor Courts of Appeals are located. This involved significant investment in infrastructure as users, workers employers and trial lawyers were given an easy-to-access building where all the necessary services are located to hear labor disputes.
- 6.2 The creation of specialized Courts. Resolution 31-2011 of the Supreme Court of Justice created two Labor and Social Welfare Courts to handle the admissibility and clearing of cases. Its functions include: to receive the cases filed orally or in writing; to correct errors that they may have; to issue the decision to process cases; to admit them to be heard, to decide regarding precautionary measures requested and to schedule the day and time for the parties to appear at the oral trial according to the system known as Single Agenda of Hearings of the Court Management System that has the function to unify and organize the system as we will further mention below. It is also charged with the responsibility of approving agreements concluded in the mediation centers of the Judiciary, which is a system of case referral that seeks to relieve the Courts from their heavy workload by resolving disputes through alternative methods. The rest of the First Instance Courts are in charge of hearing individual and collective conflict cases that are distributed by the Center for Labor Justice Administration Ancillary Services to which we make reference in the next paragraph, after the clearing indicated above, all of which makes a huge contribution in terms of speed.
- 6.3 Resolution 1-2009 of the Supreme Court of Justice created the Center for Labor Justice Administration Ancillary Services to serve notices, make requirements, order embargoes, reinstatements and other similar actions mandated by Labor Courts. Since its creation we have seen the positive work of this Center that has permitted the specialized development of Courts which, relieved from these functions, may focus their energy on the substantive aspects of cases brought before them, as is also the case of the Center that has accomplished greater efficiency in its work since the actions listed above are its only responsibilities.

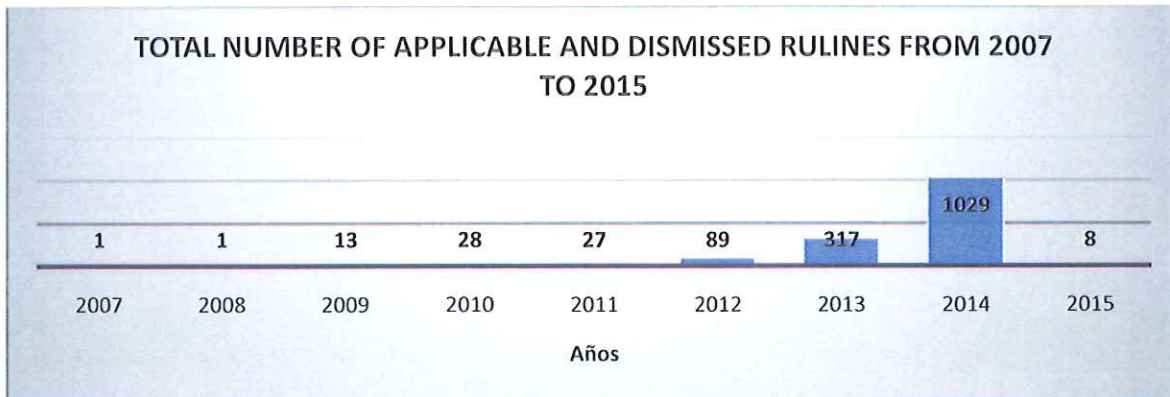


- 6.4 The Single Agenda for Hearings was implemented. It schedules the hearings ordered by Labor Courts, through public record that allows the public to monitor their cases on line and leads to better management by the Parties as well as by their lawyers.
- 6.5 Other instruments that have helped to improve the system are the use of electronic devices to directly send to the banks of the system the orders of embargo, orders of attachment, claim annotations, orders to prohibit citizens from leaving the country, as well as electronic notice serving.
- 6.6 Perhaps what is most important for us to state is how these measure have had a positive impact that can be verified in practice in Labor and Social Welfare Courts of our country. Oral hearings, permitted through our Labor Code already in 1947 are finally a reality; Labor Judges now receive cleared files with hearings scheduled within time frames that are close to the filing of the lawsuits; Judges hear the cases and reject frivolous appeals and defense mechanisms that they receive, with which cases are solved far faster than in the past. In addition, this has led Judges to become better acquainted with Labor procedural and substantive Laws, because they must rule the moment the incidents are brought before them, and this favors the principle of specialized knowledge. Below we present the figures of the Judiciary showing the number of ordinary trials filed in recent years and the ones that were solved through rulings as through other mechanisms:





Agreement      Dismissal



(\*Data for 2015 cover up to January 15)

### CONCLUSIONS:

The Private Sector represented at CACIF is witness to the policies implemented by the authorities of the Executive Branch through the Ministry of Labor and Social Welfare that seek to improve the audit capabilities of the General Labor Inspectorate, specifically, through a higher budget, an increased number of labor inspectors and improved inspection practices.

1. Likewise, it has witnessed the reform in the justice application system in the areas of labor and social welfare, starting in the Department of Guatemala, with a number of improvements put in practice by the Supreme Court of Justice and that have resulted in notable progress in the administration of labor justice, both in terms of the quality of care for service users as in the amount of time involved in solving cases and in the specialized education of officials in charge of hearing these cases.
2. We value and recognize these efforts as a Guatemalan State policy, carried out formally and systematically by two high Bodies, the Executive and the Judicial Branches, and

which are aimed at meeting labor and social welfare legislation to thus meet Constitutional mandates and international commitments assumed by the country.

3. For the arguments listed above, I

**REQUEST:**

**To the Foreign Trade Administration Directorate of the Ministry of Economy of Guatemala (DACE):**

- That it submit the opinion of the COORDINATING COMMITTEE OF AGRICULTURAL, COMMERCIAL, INDUSTRIAL AND FINANCIAL ASSOCIATIONS, known by its acronym CACIF, to the Arbitration Panel and to each Party, which I submit with four printed copies and three electronic copies, and that it make it available to the public.

**To the Arbitration Panel:**

- That it take into account this written opinion submitted by the COORDINATING COMMITTEE OF AGRICULTURAL, COMMERCIAL, INDUSTRIAL AND FINANCIAL ASSOCIATIONS, known by its acronym CACIF.

Guatemala, April 13, 2015.



**HERMANN FEDERICO GIRÓN DELERY**



**MRS. CLARA LUZ DE LUCERO**  
**RESPONSIBLE OFFICE FOR GUATEMALA**  
**MINISTRY OF ECONOMY OF GUATEMALA**  
**Dominican Republic, Central America and the United States (CAFTA-DR) Free Trade Agreement**

**I, NILS PABLO LEPOROWSKI**, forty-nine years of age, married, Agronomist, Guatemala, a resident of the Department of Guatemala, with Personal Identification Document (DPI) with Single Identification Code (CUI) number one thousand eight hundred thirteen, fifty-six thousand nine hundred eighty-eight zero one hundred one (1813 56988 0101) issued by the Office of Vital Statistics of the Republic of Guatemala, respectfully appear before you and

**STATE**

that I act on behalf of CÁMARA DEL AGRO (Chamber of Agriculture), an organization established under the Laws of the Republic of Guatemala, in my capacity as its President and Legal Representative, facts which I prove through Notarial Record authorized in Guatemala City on April nine, two thousand fifteen by Notary Edgar Stuardo Ralón Orellana. This appointment is duly registered in the Legal Persons Register under item number four hundred eight (408), page four hundred eight (408) of book nineteen (19) of Appointments, of which I attach a copy. I appear before you for the purpose of submitting written opinions in the case: Guatemala – issues relating to the obligations under Article 16.2.1(a) of CAFTA-DR.

I further state that we have permission from the Arbitration Panel to participate in the above-named case to submit the OPINION of the CHAMBER OF AGRICULTURE, which we do in time and form on behalf of the organization that I represent pursuant to the Rules of Procedure of Chapter 20 of the Dominican Republic, Central America and United States Free Trade Agreement. Our OPINION is the following:

**I. INTRODUCTION**

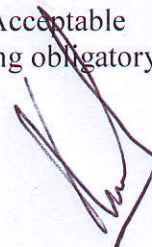
Cámara del Agro (Chamber of Agriculture) appreciates the opportunity that the Arbitration Panel gives us to submit our points of view as a non-governmental stakeholder that is affected by the dispute brought by the United States against Guatemala. According to the Arbitration Decision, Cámara del Agro presents a brief logical legal analysis of the initial written submission by the United States as well as of the contributions made by the agricultural sector to ensure compliance with CAFTA-DR provisions.

Honorable members of the Arbitration Panel: the government of the United States seeks to demonstrate, through its initial submission, that Guatemala violated its obligations under Article 16.2.1(a) of CAFTA-DR. To that end, the U.S. government put forth 3 main arguments, namely:

(1) Guatemala has failed to effectively enforce its Labor Laws directly related to the Right of Association and the Right to Organize and Bargain Collectively by not securing compliance with Court Orders, in breach of CAFTA-DR Article 16.2.1(a). (This argument is identified in the initial submission with the letter A and is included in numbers 19 to 111 of said submission);

2) Guatemala has failed to effectively enforce its Labor Laws directly related to Acceptable Conditions of Work by not conducting inspections as required and by not imposing obligatory

**Cámara del Agro**  
Guatemala





penalties, in breach of CAFTA-DR Article 16.2.1(a) (this argument is identified in the initial submission with the letter B and is contained in paragraphs numbers 112 to 191 of said submission); and,

3) Guatemala has failed to effectively enforce its Labor Laws directly related to the Right of Association, to the Right to Organize and Bargain Collectively, and to Acceptable Conditions of Work by not registering Unions in a timely fashion or instituting Conciliation Processes, in breach of CAFTA-DR Article 16.2.1(a) (this argument is identified in the initial submission with the letter C, and is included in paragraphs numbers 192 to 254 of said document). To demonstrate that Guatemala is in breach of its obligations under Article 16.2.1(a) of CAFTA-DR, the government of the United States attempted to show, in the case of each one of the arguments listed above, that each and every one of the legal assumptions involved in the allegedly violated Article are met:

- 1) that the standards in question are labor laws;
- 2) that the defendant has failed to effectively enforce those laws;
- 3) that said failure occurred through a sustained and recurrent course of inaction; and
- 4) that those failures occurred in a way that influenced trade (and conditions of competition). However, Honorable Arbiters, the government of the United States fails to prove its arguments because they are inconsistent and/ or insufficient to argue violation of Article 16.2.1 (a) of CAFTA-DR.

## II. FORMAL LOGICAL ANALYSIS OF THE INITIAL SUBMISSION BY THE UNITED STATES:

- 1) The argument identified with the letter A, based on 9 cases related to Industria de Representaciones de Transporte Marítimo (ITM), Negocios Portuarios, S.A. (NEPORSA), Operaciones Diversas (ODIVESA), Fribo, Representaciones de Transporte Marítimo, S.A. (RTM), Mackditex, Alianza, Avandia y Solesa:

**1.1) Is inconsistent.** The argument identified with the letter A is inconsistent because in paragraphs 85 to 95, the government of the United States seeks to demonstrate that Guatemala has failed to effectively enforce some labor laws through a sustained and recurrent course of inaction (legal assumption 3). However, paragraphs 92 and 93 of the initial submission prove the exact opposite: according to paragraph 92, the workers who were presumably affected were fewer year after year, from 65 in 2008 to 24 in 2009 (41 fewer persons affected); and, according to paragraph 93, the number of apparently affected employees also went down year after year, from 94 in 2010 to 17 in 2011 (77 fewer persons affected). In conclusion, through a sustained and recurrent course of action, Guatemala is struggling to effectively enforce its labor legislation.

**1.2) Is insufficient to argue breach of Article 16.2.1(a) of CAFTA-DR.** The argument identified with the letter A is insufficient to argue breach of Article 16.2.1(a) of CAFTA-DR because in paragraphs 96 to 111 the government of the United States seeks to demonstrate that this failure by Guatemala to effectively enforce some labor laws through a sustained and recurrent course of inaction (i) has influenced conditions of competition (specifically, the supply of, and relationship to, labor) of Guatemalan companies that engage in trade, including exports, with CAFTA-DR Parties (you may refer to paragraph 96 of the initial submission by the United States; (ii) has changed, influenced or affected cross-border economic activity, including conditions of competition





within and among CAFTA-DR Parties – see paragraph 103 of the initial submission by the United States –; and (iii) has allowed Guatemalan companies to face different conditions of competition – you may refer to paragraph 104 of said document – (legal assumption 4). However, Honorable Arbiters, this conclusion by the government of the United States is groundless because it is based on 8 of the 9 cases of the companies listed. In only 8 cases! And for the conclusion by the United States to be valid with only 8 cases, this country should be substantiated with facts that would determine the weight, size and significance of: (i) Alianza, Fribo and Mackditex in the apparel industry in Guatemala, and the participation of these companies in annual exports, and their shipments to CAFTA-DR Parties (you may refer to paragraph 107 of the initial submission); (ii) the 4 shipping companies in the export shipping industry and their participation in exports through Puerto Quetzal to CAFTA-DR Parties (you may refer to paragraph 108 of the initial submission); and (iii) Solesa in the agricultural sector of Guatemala, and its participation in exports to other countries members of the Agreement (you may refer to paragraph 109 of the initial submission).

The absence of facts relating to the size, weight or relevance of the companies listed in their respective export sectors, and their share of exports to other member countries of the Agreement constitutes fallacy of *petitio principii*, because the government of the United States takes them for granted and proven but omits providing evidence. That lack of factual information (fallacy) prevents the subsumption of the fourth legal assumption because it is not possible, except through fallacy of hasty generalization by that country, that 8 companies represent 100% of the Guatemalan companies that engage in trade (concepts from paragraphs 96 and 104) or that they have the weight, strength or relevance to influence, change or affect cross-border economic activity, including conditions of competition within and among the Parties to CAFTA-DR (paragraphs 96, 103 and 104).

2) The argument identified with the letter B that is based on 78 cases:

**2.1) is inconsistent.** The argument identified with the letter B is inconsistent because it states that Guatemala has failed to effectively enforce its labor legislation directly related to acceptable conditions of work by not verifying inspections (you may refer to letter B in page 24 of the initial submission) but this argument constitutes fallacy of *petitio principii* because the government of the United States must demonstrate violations to labor rights related to acceptable conditions of work, and not take them for granted and proven. This inconsistency is evident because, in paragraph 131 of the initial submission, the government of the United States declares that the complaints filed with the General Labor Inspectorate are related to “potential violations” of the Labor Code. In conclusion, the government of the United States is inconsistent and ambiguous in submitting its argument B. And if inspections were not conducted by GLI for “potential” violations to the Labor Code, said lack of inspections is not proof of the “effective violation” of labor rights relative to acceptable work conditions, as this needs to be demonstrated.

**2.2) It is insufficient to claim violation of Article 16.2.1(a) of CAFTA-DR.** The argument identified with the letter B is insufficient to claim violation of Article 16.2.1(a) of CAFTA-DR because in paragraphs 184 to 191, the government of the United States attempts to demonstrate that the failure by Guatemala to effectively enforce some of its labor laws through a sustained and recurrent course of inaction has affected trade between the parties domestically and cross-border (legal assumption 4). However, Honorable Arbiters, this conclusion lacks grounds because it is based on 78 cases of companies listed in the initial submission. In only 78





companies of the entire apparel and palm oil export industries in Guatemala! For the conclusion by the United States to be valid, it should be substantiated with facts that determine the weight, size and relevance of the companies listed in their respective export sectors. Omission of these facts constitutes fallacy of *petitio principii* because the government of the United States takes them for granted and proven and fails to provide evidence. This lack of factual information (fallacy) prevents the subsumption of the fourth legal assumption because it is not possible, except through fallacy of hasty generalization by that country, that 78 companies represent 100% of the Guatemalan companies that engage in trade (concepts from paragraphs 96 and 104) or that they have the weight, strength or relevance to influence, change or affect cross-border economic activity, including conditions of competition within and among the Parties to CAFTA-DR (paragraphs 96, 103, 104 and 108).

**3)** The argument identified with the letter C that is based on 7 cases of the companies Mackditex, Koa Modas, Serigrafía, Las Delicias, Avadia, Fribo and Ternium:

**3.1) is inconsistent.** The argument identified with the letter C is inconsistent because it states that Guatemala has failed to effectively enforce its Labor Laws directly related to the Right of Association, to the right to organize and bargain collectively, and to acceptable conditions of work by not registering Unions in a timely fashion or instituting conciliation processes, in breach of CAFTA-DR Article 16.2.1(a) (you may refer to letter C in page 42 of the initial submission), but this argument is false because, if Unions were not registered, there is no failure in the effective enforcement of the laws that protect the right of acceptable work conditions, because every worker has the right or the ability to appear before competent bodies to exercise his/her right to action; and, if conciliation processes were not instituted in a timely fashion, there is no failure to effectively enforce the laws that protect the rights of acceptable work conditions either. Once again in this argument, the fallacy of *petitio principii* is evident, because the government of the United States must prove that labor rights related to acceptable conditions of work were violated and not take these violations for granted and proven.

**3.2) It is insufficient to claim violation of Article 16.2.1 (a) of CAFTA-DR.** The argument identified with the letter C is insufficient to argue breach of Article 16.2.1(a) of CAFTA-DR because in paragraphs 249 to 254, the government of the United States seeks to demonstrate that said failure by Guatemala to effectively enforce some of its labor laws through a sustained and recurrent course of inaction has affected trade among the Parties domestically and cross-border (legal assumption 4). However, Honorable Arbiters, this conclusion lacks grounds because it is based on 7 cases of companies listed in the initial submission. In only 7 companies of the entire apparel, agricultural and steel industry sectors! For the conclusion by the United States to be valid, it should be substantiated with facts that determine the weight, size and relevance of the companies listed in their respected exports sectors. Omission of these facts constitutes fallacy of *petitio principii* because the government of the United States takes them for granted and proven and fails to prove them. This lack of factual information (fallacy) prevents the subsumption of the fourth legal assumption because it is not possible, except through fallacy of hasty generalization by that country, that 7 companies are 100% of the Guatemalan companies that engage in trade (concepts from paragraphs 96 and 104) or that they have the weight, strength or relevance to influence, change or affect trade, market or cross-border economic activity, including conditions of competition within and among the Parties to CAFTA-DR (paragraphs 96, 103, 104 and 249).





### III. PROGRESS IN THE FIELD OF LABOR IN THE AGRICULTURAL SECTOR:

Cámara del Agro's purpose is to coordinate sector-wide strategies to promote the economic and social development of Guatemala. Its members are agricultural and livestock, agricultural and agro-exporter sectors that are also members of sector associations.

Cámara del Agro produced the "Labor Policy for the Agricultural Sector" jointly with the Ministry of Labor. Its objective is to promote more formal employment with social coverage and to promote a culture of compliance with labor laws that allows the creation of dignified employment in the agricultural-livestock, agro-industrial and agro-exporter sectors according the long-term vision of the sector to *"produce food for the world by generating productive, dignified and sustainable employment in Guatemala"* through a tool that helps the private sector to proactively reduce the high levels of informal work in the country. The policy was signed in a public event in March of this year with the participation of the Minister of Labor and the President of the Republic of Guatemala. It includes the Declaration of the Principles of Labor Adherence, based mainly on Guatemalan legislation in force, the basic Conventions of the International Labor Organization and the Roadmap for the Eradication of Child Labor of the ILO.

It is based on nine basic principles, namely:

1. You will be treated without distinctions (Equality)
2. To organize is your choice (Freedom of Association)
3. Your compensation will be fair (Wages and Work Hours)
4. Your efficiency defines your growth (No Discrimination)
5. Our future collaborator (Child Labor)
6. You come first in your workplace (Occupational Health and Safety)
7. Dignified work builds a person (Prohibition of Forced Labor)
8. We care for resources in your workplace (Environment)
9. Your integrity is our responsibility (Respect for the Physical Integrity of Individuals)

The sector-wide Labor Policy involves three strategic implementation pillars: (1) Compliance with the Laws; (2) Building Social Coverage; and (3) Generating Social Conditions to Eradicate Child Labor. These include specific actions to be undertaken by the Government and the private sector. We summarize below the major advances:

#### 1) **"Compliance with the Laws" strategic pillar:**

- a. **Institutional strengthening: Creation of the Labor Monitoring Unit:** Before 2012, the Chamber of Agriculture had only one external labor consultant. In May 2012, Cámara del Agro created the Legal and Labor Section in order to build the organization to ensure implementation of the Labor Policy plan of action, to provide support and advice on labor issues to its members and to actively participate in different tripartite social dialogues.
- b. **Building Social Dialogue:** Cámara del Agro and its members have participated actively by making proposals to improve compliance with the laws through the following tripartite and joint dialogue committees: 1. National Salary Committee; 2. Joint Committee on Minimum Wages for Agricultural Activities. 3. Tripartite Committee on International Labor Affairs. 4. Labor Commission of the Coordinating Committee of Agricultural, Trade, Industrial and Financial Associations (CACIF). 5. National Occupational Health and Safety Council (CONASSO). 6. National Food and Nutrition Security Council (CONASAN). 7. National Committee for the Eradication of Child Labor (CONAPETI), among others.



- c. **Proposal of basic forms pre-authorized by the General Labor Inspectorate and the General Labor Directorate of the Ministry of Labor of the Government of Guatemala:** Starting in February 2013 and to streamline and ensure compliance in the agricultural sector, the Chamber of Agriculture requested from the Ministry of Labor, and the Ministry approved the following standard forms in accordance with the requirements of the law: Individual Work Contract Form, Work Certification Form, and Standard Work Regulations Form. These will enable agriculture and agriculture-livestock employers to meet the hiring requirements under the Law as indicated in the legal opinion issued by the Ministry.
  - d. **Dissemination and Promotion of a Culture of Compliance with the Law:**
    - i. **System of Information to Members: Systematic reminder by e-mail to members on terms under the Law** to comply with payment of labor obligations and labor legislation updates.
    - ii. **System of Information to Stakeholders:** In order to disseminate the Labor Policy and create discussion fora and proposals for the implementation of actions to accomplish the objectives proposed, several presentations have been made to many Government Agencies, the private sector and the International Community both domestically as well as internationally.
    - iii. **Good Labor Practice Handbook of the Chamber of Agriculture:** The Good Labor Practice Handbook of the Chamber of Agriculture was presented in April 2013. It was written jointly with the Ministry of Labor as a training, support and consultation tool to disseminate the content and application of labor legislation in force among the companies of the sector.
- 2) **Strategic pillar to Build Social Coverage:**
- a. **Proposal to update the Legal Framework to Guarantee Coverage and the Provision of Services in Rural Areas:** In order to reduce the high levels of informal work in the country, the Labor Policy of the Chamber of Agriculture includes strategic actions to allow formal companies to comply with the law regarding their Social Security Institute records, for the purpose of ensuring social coverage for the largest number of workers possible. This also includes actions to build institutional capacity to expand coverage and service quality, which includes helping in the process of institutional building and modernization.
  - b. **Participation and Proposal for Social Security Regulations and Law:** As a result of the tripartite social dialogue, the Board of Directors of the Social Security Institute published Resolution Number 1292 on December 27, 2012 in the Official Gazette: **“Regulations for the Special Protection Program for Temporary Agricultural Workers”** as part of the line of action related to the proposal to update the legal framework to guarantee coverage and the provision of social security services in rural areas. These Regulations seek to establish special standards for **Illness, Maternity and Accidents (IMA)** for the provision of services and money in the case of temporary disability for **Temporary Agricultural Workers** within a temporary period of time consistent with the special characteristics and peculiar conditions of the sector and under Guatemalan legislation. This was not regulated in the past for temporary workers.
  - c. **Expansion and Systematization of Programs to help meet the Millennium Goals:** For several years now, the members of the Chamber of Agriculture have been implementing various programs aimed at accomplishing the Millennium Goals. And for the purposes of the Labor Policy, we refer to HIV/AIDS prevention programs that are currently implemented by the sugar, banana and coffee sectors with the support of the ILO and the Joint UN Program on



HIV/AIDS (UNAIDS). In December 2013, the Chamber of Agriculture signed the **Declaration of the Commitment to Promote and Apply ILO Recommendation on HIV/AIDS and the World of Work, 2010 (No. 200)** for the purpose of preventing discrimination and promoting equal treatment pursuant to Labor Policy Principles.

- d. **Occupational Health and Safety Program:** In the same manner, through tripartite social dialogue, the Chamber of Agriculture is represented and participates actively in the National Occupational Health and Safety Council (CONASSO), in addition to the specific programs implemented by members and sector companies.

3) **Strategic Pillar for the Creation of Social Conditions for the Elimination of Child**

**Labor:** As part of the Social Dialogue and together with the Ministry of Labor, the Chamber of Agriculture organized a workshop in 2012 with all the members of the Chamber to communicate the components and legal basis of the Roadmap proposed for Guatemala by the ILO.

- a. **Participation in Working Groups in the Departments:** the Chamber of Agriculture appointed representatives to the various Working Groups in rural areas organized by the National Committee for the Eradication of Child Labor, to help with proposals and actions.
- b. **Participation in the Executive Secretariat of the National Committee for the Eradication of Child Labor:** the Chamber of Agriculture joined this Committee in March 2014 by appointing representatives that participate actively to represent the private sector.
- c. **Submittal of the bill for the “Harmonization Law for the Prevention and Eradication of Child Labor in Guatemala”:** The Report on the Worst Forms of Child Labor of the Department of Labor of the United States of America recommends the implementation of actions that have a direct and effective impact on the prevention of child labor, which should include: amendments to laws and regulations, institutional coordination and building, Government policies and social programs. For this reason and with the support of 21 members of Congress, the endorsement of the National Committee for the Prevention and Eradication of Child Labor and the Ministry of Labor, Bill No. 4849 called “Harmonization Law for the Prevention and Eradication of Child Labor in Guatemala” was submitted to Congress in June 2014. This bill seeks to address the commitment by the State of Guatemala, adopted in the Hemispheric Agenda on Decent Work in 2006 and the International Labor Organization’s Fundamental Conventions No. 138 on minimum working age and No. 182 on the Eradication of the Worst Forms of Labor. To date, the Legislative process to pass Bill 4849 into Law has made progress and has the joint favorable opinions of the Labor Commission and of the Commission on Minors and Family Affairs. We expect to be able to progress towards the final step of approval in the Congress’ plenary.
- d. **Signature of the Declaration of the Commitment by the Business Network for the Prevention and Eradication of Child Labor in Guatemala: “Boys and Girls to School”.** On March 3, 2015, the agricultural-livestock and agro-industrial sectors represented in the Chamber of Agriculture, together with the Organization of Businesspersons for Education, and the Ministry of Labor, the Ministry of Education, the Ministry of Agriculture and the International Labor Organization, in addition to representatives of the business leaders, signed the “Declaration of the Commitment by the Business Network for the Prevention and Eradication of Child Labor in Guatemala” in order to coordinate and implement actions





aimed at preventing child labor and promoting education quality and coverage building, particularly in rural areas. One of the actions promoted is the delivery of 462 transparency-related murals in rural schools and programs promoted through the Partnership for Nutrition, where some of the members of the Chamber of Agriculture participate by promoting value chain and food and nutrition security programs aimed at helping to reduce chronic child malnutrition.

#### IV. CONCLUSION:

Honorable Arbiters, even if you add up all the companies involved in the case: 9 companies in Argument A (although the government of the United States bases its conclusions only on 8); 78 in Argument B, and 7 in Argument C, so 93 in total, the claim lacks grounds because it is still contaminated with vices: the weight, relevance and size of the 93 companies in their respective exports sectors are taken for granted and demonstrated (fallacy of *petitio principii*) because it is not possible that 93 companies are 100% of the Guatemalan companies engaging in trade (concepts contained in paragraphs 96 and 104), nor that they have the weight, strength of relevance needed to influence, change, affect trade, CAFTA-DR market or cross-border economic activities, including conditions of competition within and among CAFTA-DR Parties (paragraphs 96, 103, 104, 184 and 249 of the initial submission). This lack of factual information (fallacy) prevents the subsumption of the fourth legal assumption of the Law that is claimed to be violated.

These defects are characteristic of the initial submission by the United States, Honorable Arbiters, and you are thus urged to reflect on the way in which the government of the United States submits the case to you in paragraph 17: the three predicates attributed to Guatemala as ways in which Article 16.2.1(a) of CAFTA-DR are presumably violated are expressed in terms of “universal concepts”, as if the State of Guatemala has failed to comply with “every” Court Order (letter –a-); and has failed in conducting “every” investigation and in not imposing appropriate sanctions when the Ministry of Labor has identified violations to Labor Laws by employers (letter – b-), for example. However, said universal concepts in the predicates are not consistent with reality, because the initial submission cites only some cases; therefore, the logically correct judgment, based on valid inference rules should be, should the claims by the United States prove true, for example: “the State of Guatemala has failed in some cases, or in the following cases: a, b, etc. to ensure compliance with Court Orders” (letter –a-); “has failed to carry out certain investigations (or has not started investigations in cases a, b, etc.) and has failed to impose appropriate sanctions when the Ministry of Labor has identified violations of Labor Laws by the employer of companies a, b, etc. (letter –b-))” etc. The purpose of submitting the case this way is to deceive you through fallacy of hasty generalization.

Likewise, it is important to point out that the actions that the Chamber of Agriculture has been conducting together with the Government of Guatemala through the Ministry of Labor and Social Welfare show the efforts by the State of Guatemala to comply with labor legislation.

For all of the above, Honorable Arbiters, the government of the United States fails in demonstrating its arguments, which are inconsistent and/ or not sufficient to claim breach of Article 16.2.1 (a) of CAFTA-DR.





## V. ANNEXES

	Document	Link
1	Labor Policy of the Members of the Chamber of Agriculture.	<a href="http://camaradelagro.org/wp-content/uploads/2014/01/Pol%C3%ADticaLaboralCAMAGRO.pdf">http://camaradelagro.org/wp-content/uploads/2014/01/Pol%C3%ADticaLaboralCAMAGRO.pdf</a>
2	Good Labor Practice Handbook of the Chamber of Agriculture.	<a href="http://camaradelagro.org/wp-content/uploads/2014/01/MANUAL-DE-BUENAS-PR%C3%A1CTICAS-LABORALES-VERSI%C3%93N-FINAL.pdf">http://camaradelagro.org/wp-content/uploads/2014/01/MANUAL-DE-BUENAS-PR%C3%A1CTICAS-LABORALES-VERSI%C3%93N-FINAL.pdf</a>
3	Proposal of Basic Formats Pre-authorized by the General Labor Inspectorate of the Ministry of Labor of the Government of Guatemala.	<p>Salary for a defined period of time:  <a href="http://camaradelagro.org/wp-content/uploads/2014/01/SALARIO-POR-PRODUCTIVIDAD-POR-TIEMPO-DEFINIDO.pdf">http://camaradelagro.org/wp-content/uploads/2014/01/SALARIO-POR-PRODUCTIVIDAD-POR-TIEMPO-DEFINIDO.pdf</a></p> <p>Productivity-based salary:  <a href="http://camaradelagro.org/wp-content/uploads/2014/01/SALARIO-POR-PRODUCTIVIDAD-POR-TIEMPO-INDEFINIDO.pdf">http://camaradelagro.org/wp-content/uploads/2014/01/SALARIO-POR-PRODUCTIVIDAD-POR-TIEMPO-INDEFINIDO.pdf</a></p> <p>Individual Contract:  <a href="http://camaradelagro.org/wp-content/uploads/2014/01/CONTRATO-INDIVIDUAL-DE-TRABAJO-CON-SALARIO-POR-HORA-A-PLAZO-INDEFINIDO.pdf">http://camaradelagro.org/wp-content/uploads/2014/01/CONTRATO-INDIVIDUAL-DE-TRABAJO-CON-SALARIO-POR-HORA-A-PLAZO-INDEFINIDO.pdf</a></p> <p>Work certificate:  <a href="http://camaradelagro.org/wp-content/uploads/2014/01/CONSTANCIA-DE-TRABAJO-SALARIO-POR-PRODUCTIVIDAD.pdf">http://camaradelagro.org/wp-content/uploads/2014/01/CONSTANCIA-DE-TRABAJO-SALARIO-POR-PRODUCTIVIDAD.pdf</a></p> <p>Fixed work certificate:  <a href="http://camaradelagro.org/wp-content/uploads/2014/01/CONSTANCIA-DE-TRABAJO-SALARIO-FIJO.pdf">http://camaradelagro.org/wp-content/uploads/2014/01/CONSTANCIA-DE-TRABAJO-SALARIO-FIJO.pdf</a></p>
4	Declaration of the Commitment to Promote and Apply ILO's Recommendation on HIV and AIDS.	<p>HIV Declaration:  <a href="http://camaradelagro.org/wp-content/uploads/2014/01/FolletoVIH_SidaNov2013-web-.pdf">http://camaradelagro.org/wp-content/uploads/2014/01/FolletoVIH_SidaNov2013-web-.pdf</a></p>





		Release on HIV: <a href="http://camaradelagro.org/wp-content/uploads/2014/01/C%C3%81MARA-DEL-AGRO-SUSCRIBIR%C3%81-DECLARACI%C3%93N-DE-COMPROMISOS-DE-LA-RECOMENDACI%C3%93N-No.pdf">http://camaradelagro.org/wp-content/uploads/2014/01/C%C3%81MARA-DEL-AGRO-SUSCRIBIR%C3%81-DECLARACI%C3%93N-DE-COMPROMISOS-DE-LA-RECOMENDACI%C3%93N-No.pdf</a>
5	Declaration on the Commitment by the Business Network for the Prevention and Eradication of Child Labor in Guatemala, "Boys and Girls to School"	<a href="http://camaradelagro.org/wp-content/uploads/2015/04/Declaraci%C3%B3n-Red-Empresarial-Prevenci%C3%B3n-Y-Eradicaci%C3%B3n-Trabajo-Infantil.pdf">http://camaradelagro.org/wp-content/uploads/2015/04/Declaraci%C3%B3n-Red-Empresarial-Prevenci%C3%B3n-Y-Eradicaci%C3%B3n-Trabajo-Infantil.pdf</a>
6	Labor Policy of the Coffee Sector on HIV/AIDS	<a href="http://www.anacafe.org/glifos/images/6/6e/Politica-laboral-VIH-Sida.pdf">http://www.anacafe.org/glifos/images/6/6e/Politica-laboral-VIH-Sida.pdf</a>
7	Education in the coffee sector	<a href="http://www.anacafe.org/glifos/index.php?title=14FUN:Funcafe_educacion">http://www.anacafe.org/glifos/index.php?title=14FUN:Funcafe_educacion</a>
8	Health in the coffee sector	<a href="http://www.anacafe.org/glifos/index.php?title=14FUN:Funcafe_salud">http://www.anacafe.org/glifos/index.php?title=14FUN:Funcafe_salud</a>
9	Advances in the coffee sector – Funcafé Express (Bulletins)	<a href="http://www.anacafe.org/glifos/index.php?title=14FUN:Noticias-Funcafe">http://www.anacafe.org/glifos/index.php?title=14FUN:Noticias-Funcafe</a>
10	HIV/AIDS Policy of Independent Banana Growers - APIB	<a href="http://www.apib.com.gt/rse.php?nota=vihsida.php">http://www.apib.com.gt/rse.php?nota=vihsida.php</a>
11	Corporate Social Responsibility, Association of Sugar Growers of Guatemala-ASAZGUA	<a href="http://www.azucar.com.gt/rse.html">http://www.azucar.com.gt/rse.html</a>

## VI. PETITIONS

For the reasons given before and under CAFTA-DR Rules, I respectfully ASK:

**TO THE RESPONSIBLE OFFICE FOR GUATEMALA, MINISTRY OF ECONOMY OF GUATEMALA:** That it submit promptly and in time to the Arbitration Panel and to each participating Party this OPINION that we submit in time and form and that it make it available to the public, both in Spanish and in English.

**TO THE ARBITRATION PANEL:** That it acknowledges receipt of this OPINION submitted on behalf of CAMARA DEL AGRO, take it into consideration and that it fully assess our arguments.

My address to receive notices is 12 calle 1-25 zona 10, Edificio Géminis 10, Torre Norte, Oficina 909, Guatemala City, Guatemala. Email: [northcoffee@gmail.com](mailto:northcoffee@gmail.com), and my telephone numbers are (502) 23353003, 23352996 to 97.

Guatemala, April 27, two thousand fifteen.



**Cámara del Agro**  
Guatemala



Guatemala City, April 27<sup>th</sup> 2015

Mr. KEVIN BANKS

Chair

**Arbitral Panel *In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the RD-CAFTA***

Attn.: Responsible Office- Directorate of International Trade Administration (MINECO)

## WRITTEN VIEWS OF THE GUATEMALAN LABOR UNIONS

We, the *Sindicatos Globales de Guatemala* (Global Labor Unions of Guatemala), the *Movimiento Sindical y popular Autónomo Guatemalteco* (Autonomous and Popular Labor Union Movement of Guatemala), the *Federación Sindical de Empleados Bancarios, de Servicios y del Estado de Guatemala – FESEBS-* (Labor Federation of Banking Employees and State Services of Guatemala) and the *Confederación de Unidad Sindical de Guatemala – CUSG-* (Confederation of Labor Unity of Guatemala), (hereinafter, '*the Unions*') hereby submit our written views as non-governmental entities to the Arbitral Panel, pursuant to the Model Rules of Procedure 54 – 59 of the Dominican Republic – Central America – United States Free Trade Agreement (hereinafter, '*DR-CAFTA*').

### **1. The Panel has the authority to take relevant rules of international law into account in order to interpret the terms of the DR-CAFTA**

Article 31(3)(c) of the Vienna Convention on the Law of Treaties provides that, in interpreting a treaty, the interpreter shall take into account "*any relevant rules of international law applicable in the relations between the parties*".

There are two elements that are relevant to the application of this provision to the present case: i) *any relevant rules of international law* in its different sources: rules set forth in other treaties, international custom and general principles of law<sup>1</sup>; y ii) *applicable in the relations between the parties*, which, as interpreted by the Panel in the *EC – Biotech*<sup>2</sup> dispute, does not require that the United States (hereinafter, '*US*') and the Republic of Guatemala (hereinafter '*Guatemala*') would also *all* be parties to the treaties relied on in order to shed light on the DR-CAFTA.

<sup>1</sup> United Nations. Report of the International Law Commission Fifty-seventh session (2 May-3 June and 11 July-5 August 2005). General Assembly Official Records. Sixtieth session. Supplement No. 10 (A/60/10)., pp. 220.

<sup>2</sup> Panel Report, European Communities – Measures Affecting the Approval and Marketing of Biotech Products WTO Doc WT/DS291 – 3/R (29 September, 2006) (7.94)





## 1.1. CASES IN WHICH THE WTO DISPUTE SETTLEMENT MECHANISM HAS RELIED ON OTHER RELEVANT RULES OF INTERNATIONAL LAW

In the *United States — Import Prohibition of Certain Shrimp and Shrimp Products*<sup>3</sup>, the Panel analyzed the terms “*exhaustible natural resources*” in Article XX(g) of the GATT 1994, for the purpose of which it took into account several rules of international law.<sup>4</sup> Similarly, in the *EC - Biotech*<sup>5</sup> protocol, the Panel debated the possibility of applying the Biosafety Protocol, for the purpose of which the Appellate Body referred to Article 31(3)(c) of the Vienna Convention on the Law of Treaties when stating that “*In our view, there can be no doubt that treaties and customary rules of international law are ‘rules of international law’ within the meaning of Article 31(3)(c)*”. Equally, in the *EC - Asbestos*<sup>6</sup> dispute, the Panel interpreted the WTO Agreements in light of the Convention 162 of the ILO and the WHO Convention, among others. Finally, in *EC - Hormones*<sup>7</sup> the rules in FAO’s *Codex Alimentarius* contributed to interpret WTO Law.

## 1.2. RELEVANT RULES OF INTERNATIONAL LAW FOR THE PURPOSES OF THIS DISPUTE

Taking the above into account, it should be noted that the International Covenant on Economic, Social and Cultural Rights of the UN, the Conventions 87 and 98 of the ILO, the American Convention on Human Rights and the Protocol of San Salvador are treaties to which Guatemala is a party imposing clear international obligations for the protection of labor and union rights.

**In conclusion**, pursuant to a strict application of Article 31(3)(c) of the Vienna Convention on the Law of Treaties or, more broadly, by virtue of its autonomous power to examine the arguments before it, this Arbitral Panel is authorized to consider rules of international law for the interpretation of Article 16 of the DR-CARFTA which inform or complement the relevant subject matters. In fact, any violation of instruments of international labor law –which are “relevant rules of international law” for the purpose of this dispute- allows the Panel to infer the violation of the obligations set forth in Article 16.2.1(a) of the DR-CAFTA.

## 2. Guatemala has incurred in a systematic, permanent and current violation of its labor obligations enshrined in Article 16.2.1(a) of the DR-CAFTA

### 2.1. THE THIRD PERIODIC REPORT FROM THE COMMITTEE ON ECONOMICS, SOCIAL AND CULTURAL RIGHTS (CESCR) CONCLUDED THAT GUATEMALA, AS AN UN MEMBER, FAILS TO RESPECT THE FREEDOM OF ASSOCIATION

The concluding observations of the Third Report on Guatemala, issued in December 2014, emphasize that the General Labor Inspectorate does not fully comply with its obligations. For this reason, the Committee recommends the adoption of necessary measures so that all the labor

<sup>3</sup> *Informe del Órgano de Apelación*. EUA – Prohibición De Las Importaciones De Determinados Camarones Y Productos Del Camarón (12 de octubre de 1998). WT/DS58/AB/R.

<sup>4</sup> For this purpose, the Panel took into account the 1982 UN Convention on the Law of the Seas, the 1992 Biodiversity Convention, Program 21 adopted in the 1992 UN Conference on Environment and Development, the Convention on Preservation of Migrant Species, among others.

<sup>5</sup> Reports of the Panel (29 September 2006). European Communities – Measures Affecting The Approval And Marketing Of Biotech Products WT/DS291/R, WT/DS292/R, WT/DS293/R

<sup>6</sup> Panel Report, European Communities - Measures Affecting Asbestos and Asbestos-Containing Products, WT/DS135/R (18 Sep 2000).

<sup>7</sup> Appellate Body (16 January 1998). European Communities- Measures Affecting Beef and Beef Products (Hormones), WT/DS26/AB/R.



rights violations committed by employers are duly investigated and, when appropriate, sanctioned.<sup>8</sup> Furthermore, the Committee observed that there is a serious limitation to the right to establish labor unions and, in general, to the exercise of all labor union rights, including numerous cases of violent deaths of union leaders, which usually go unpunished.<sup>9</sup>

## 2.2. THE 2012 TO 2015 REPORTS ISSUED BY ILO COMMITTEE OF EXPERTS ON APPLICATION OF CONVENTIONS AND RECOMMENDATIONS ESTABLISH THAT GUATEMALA, AS AN ILO MEMBER STATE, HAS SYSTEMATICALLY VIOLATED ITS LABOR OBLIGATIONS

In 2012, the Guatemalan Unions denounced before the ILO that Guatemala criminalizes our activities, going so far as to criminally prosecuting unionists for making peaceful demonstrations. Furthermore, we reported the lack of independence of the unions and the employers' recurring contempt of court in the reemployment of workers.<sup>10</sup> In consequence, there is a constant "anti-union atmosphere" in Guatemala, where only the 2.2% of the economically active population is affiliated to a labor union.<sup>11</sup>

The Committee's first report, issued in 2012, endorsed our complaint with great concern, pointing out the lack of clarity, effectiveness and political willingness of the Guatemalan Government.<sup>12</sup> The Committee also stressed the problems the unionists face when registering a labor union.<sup>13</sup> Also, the Committee made reference to the Conventions on Freedom of Association and Collective Bargaining, highlighting the ever-existing difficulties in court proceedings due to the "excessive slowness" and the lack of effectiveness of the unionists' reemployment proceedings, following judicial orders.<sup>14</sup>

In its second report, issued in 2013, the Committee, again, highlighted the current delays and denials in the registration of new labor unions.<sup>15</sup> The Committee noted that, even though various reforms had been demanded for years, Guatemala failed to undertake them.<sup>16</sup>

In its third report, issued in 2014, the Committee stressed the excess of working hours in the *maquila* sector, listing a dozen of companies supposedly requiring their workers to work more than 8 hours a day, without paying for overtime.<sup>17</sup>

Lastly, in the 2015 report, the Committee insisted in the obstacles for labor union registration.<sup>18</sup> With respect to the protection against anti-union discrimination, the Committee recalled that – to no effect – it had already recommended the Guatemalan Government to undertake reforms to overcome discrimination and the slowness of the Guatemalan labor justice. Moreover, the Committee endorsed our complaints about the lack of an effective reemployment proceeding,

<sup>8</sup> CESCR. *Concluding observations of the third periodic Report of Guatemala (E/C.12/GTM/CO/3)*, Committee on Economic, Social and Cultural Rights of the UN, December of 2014, p. 4.

<sup>9</sup> *Ibid*, p. 5.

<sup>10</sup> CEACR. *Report of the ILO Committee of Experts on Application of Conventions and Recommendations (ILC.101/III(1A))*, Report III (Part 1A), International Work Conference, 101.<sup>a</sup> Session (2012), ILO, p. 174.

<sup>11</sup> *Ibid*. 87.5% of the labor unions are founded in the public sector, a clear shortage in the private sector.

<sup>12</sup> *Ibid*, pp. 175 and 176.

<sup>13</sup> *Ibid*, p. 178.

<sup>14</sup> *Ibid*, p. 180.

<sup>15</sup> CEACR. *Report of the ILO Committee of Experts on Application of Conventions and Recommendations (ILC.102/III(1A))*, Report III (Part 1A), International Work Conference, 102.<sup>a</sup> Session (2013), ILO, p. 125

<sup>16</sup> *Ibid*, p. 127.

<sup>17</sup> CEACR. *Report of the ILO Committee of Experts on Application of Conventions and Recommendations (ILC.103/III(1A))*, Report III (Part 1A), International Work Conference, 103.<sup>a</sup> Session (2014), ILO, p. 513.

<sup>18</sup> CEACR. *Report of the ILO Committee of Experts on Application of Conventions and Recommendations (ILC.104/III(1A))*, Report III (Part 1A), International Work Conference, 104.<sup>a</sup> Session (2015), ILO, p. 94.



which, if occurs, can take years.<sup>19</sup> The report concludes by referring to the absence of effective action by the Labor Inspectorate, indicating that the Inspectorate cannot impose administrative sanctions against employers breaking the law.<sup>20</sup>

### 2.3. THE REPORT ISSUED BY THE ILO GOVERNING BODY EVIDENCES THE GRAVITY OF GUATEMALA'S SITUATION REGARDING FREEDOM OF ASSOCIATION

The ILO Governing Body, in resolutions dated November 2014 and March 2015, has reiterated Guatemala's need to take urgent actions to comply with its commitments on labor unions and, in general, labor rights. For this reason, in November 2015, Guatemala may become the twelfth Member State of the ILO, in which it has proved necessary to establish a Commission of Inquiry to review its emphatic denial to take substantial measures vis-a-vis constant violations of its labor obligations.<sup>21</sup>

This report, apart from reaffirming the pronouncements by the Committee of Experts, examined with concern the high number of judicial orders on reemployment of dismissed unionists, compared to the low number of compliance actions on such orders.<sup>22</sup> Even Guatemalan labor judges and magistrates recognize the very high level of non-compliance to their rulings, which is due to the fact that legislation allows for filing of multiple appeals, causing grave delay to judicial proceedings.<sup>23</sup>

### 2.4. THE INTER-AMERICAN COURT OF HUMANS RIGHTS' JURISPRUDENCE POINTS TO GUATEMALA'S NONCOMPLIANCE WITH ITS LABOR OBLIGATIONS WITHIN THE INTER-AMERICAN SYSTEM

In the OAS system, to which Guatemala and the US belong, labor rights arise from two treaties: the American Convention on Human Rights and the Additional Protocol to the American Convention in the area of Economic, Social and Cultural Rights.

These instruments have been developed by the Inter-American Court of Human Rights jurisprudence. We highlight three key points in this jurisprudence: i) Advisory Opinion No. 18, in which the Court stated that interpretation of labor laws must favor workers best interest<sup>24</sup>; ii) The *Baena vs. Panama* case, where the Court, drawing from the Preamble of ILO's Constitution<sup>25</sup>, proclaimed freedom of association as a part of the *corpus juris* of human rights<sup>26</sup>; and iii) The *Cinco Pensionistas vs. Peru* case, in which the Court emphasized that labor rights must be supported by an effective justice system to guarantee effective protection<sup>27</sup>.

As demonstrated above, Guatemala's actions fall far below the Inter-American system standards: the way in which Guatemalan law is applied does not favor workers, but undermines

<sup>19</sup> *Ibid*, p. 95.

<sup>20</sup> *Ibid*, p. 364.

<sup>21</sup> Governing Body. *Decision on the sixth item of the agenda: Complaint concerning the non-observance by Guatemala of the Freedom of Association and Protection of the Right of Organize, 1948 (number 87), made by delegates to the 101. Session (2012) of the International Labor Conference*, 25 March of 2014, paragraph 45.

<sup>22</sup> *Ibid*, p. 10

<sup>23</sup> *Ibid*.

<sup>24</sup> CIDH-Advisory Opinion, OC-18/03-September-17 of 2003-Requested-by-Mexico

<sup>25</sup> ILO Convention Number 87 concerning the freedom of association and the right to organize and the ILO Convention Number 98 concerning the right to organize and collective bargaining.

<sup>26</sup> CIDH. *Baena Ricardo y others case*. Ruling of the 2th of February 2001. Serial C No.72. Par. 156

<sup>27</sup> CIDH. "Cinco Pensionistas" case. Ruling of the 28th of February 2003. Serial C No. 98. Par 136. In the same line: *Community Mayagna (Sumo) Awas Tingni case*, par. 113; *Ivcher Bronstein case*, par. 136-137; and *Advisory Opinion OC-9/87 of September 6 of 1987*. Serial A No. 9, par. 24.



their interests. This is done by disregarding freedom of association -part of the *corpus juris* of the Guatemalan law- and making labor justice virtually nonexistent.

## 2.5. RECENT GOVERNMENT ACTIONS REITERATE GUATEMALA'S LACK OF INTEREST TO COMPLY WITH ARTICLE 16.2.1(A) OF THE DR-CAFTA

With respect to the specific breach of the labor standards provided for in the DR-CAFTA, as recognized in the Implementation Plan of 2013, Guatemala assumed the following international obligations with the US<sup>28</sup>: i) to bestow labor inspectors with powers for greater action; ii) to allocate resources for an effective application of its laws; iii) to oversee that court decisions are observed by reluctant employers refusing to reemploy or pay lost wages to dismissed unionists; and iv) to train judges and magistrates on the enforcement of laws concerning workers, labor unions and collective bargaining.

The Unions bear witness that Guatemala blatantly failed to comply with any of the aforementioned obligations. Below, we present recent facts, different from the ones already alleged by the US, reasserting Guatemala's noncompliance pattern:

Firstly, the Governmental Agreements of December 2014 cut down the minimum wage in 4 municipalities up to 48%. As the UN Special Rapporteurs expressed, not only these agreements are unconstitutional, but also incompatible with several international instruments<sup>29</sup>. Furthermore, the agreements were orchestrated without prior consultations with the Unions, in spite of Guatemala's multiple commitments to encourage social dialogue, collective bargaining and respect for the freedom of association. As expected, in January 2015, the agreements were temporary suspended by the Constitutional Court of Guatemala<sup>30</sup>.

Secondly, in March 20<sup>th</sup> 2015, the President of the Republic issued an Executive Order directing all entities in the executive branch, including autonomous and decentralized entities, to limit public expenses for the 2015 fiscal year. Article 4 of said order mandates authorities to refrain from bargaining collective agreements on labor conditions, wages or economic benefits, if funded by the public treasury.

Thirdly, in March 25<sup>th</sup> 2015, Ministerial Agreement No 26-2015, issued by the Ministry of Labor and Social Security, created the South West's Tripartite Roundtable of Department and Regional Dialogue for the Social and Economic Development. However, when establishing the roundtable, the already existing labor unions were ignored. In fact, article 4 indicates that the Ministry shall provide "accreditation" to the representatives to the roundtable, leaving open the possibility that elected candidates may not belong to existent labor unions of the region. This constitutes a clear violation of ILO's Conventions Nos. 87 and 98.

**In conclusion**, i) the reports and pronouncements of various international organizations specialized in labor law on the same facts alleged by the US before the Arbitral Panel; ii) the lack of compliance with the Implementation Plan of 2013; and iii) the recent decisions by the Guatemalan Government on labor rights; demonstrate that Guatemala has breached and continues to breach the obligations set out in the article 16.2.1(a) of the DR-CAFTA. Guatemala

<sup>28</sup> Implementation Plan agreed upon by the United States Government and the Guatemalan Government, 2013.

<sup>29</sup> Guatemala-Decent Work-Decent Life (8-01-15). Letter to the constitutional President of the Guatemalan Republic, p. 2.

<sup>30</sup> Juárez, Tulio y Santos Julio. Salario Mínimo Diferenciado, manzana de la discordia, El Periódico, Guatemala, 12 of March 2015, available at: <http://www.elperiodico.com.gt/es/20150312/pais/9813/Salario-M%C3%ADnimo-Diferenciado-manzana-de-la-discordia.htm>



breaches its obligations in pursuit of the objective to increase its investments and trade by incurring in social dumping.

### 3. Relationship between Labor Standards and International Trade

Article 16.2 of the DR-CAFTA requires that, in addition to the recurring violations shown in the above paragraphs, those violations occur in a manner “*affecting international trade*.”

One of the fundamental objectives of a free trade agreement, such as the DR-CAFTA, is to increase commercial flows between the Parties to the agreement. The increase is pursued by means of the elimination of the removal of tariffs and non-tariff barriers, which levels the playing field, eliminates distortions to trade resulting from those barriers and, accordingly, allows the Parties to mutually benefit from their comparative advantages.

However, when mandatory labor and human rights are disregarded, the resulting trade flows arise, not from the elimination of barriers to trade, but from artificial advantages that are unduly obtained by way of the failure to uphold and act in accordance with those rights. It is through these undue and artificial advantages resulting from the abovementioned violations, that violations occur *in a manner affecting trade* within the meaning of Article 16.2 of the DR-CAFTA.

Learned authors have convincingly shown that a context in which the freedom of association and collective bargaining are disregarded, “*could result in lower manufacturing wages and higher levels of employment and output. In these situations, there would be a positive association between competitiveness and weak labor standards*.” In the case at hand, it is worth noting that the labor standards are not only weak, but also inconsistent with international human rights and labor rights.

**In conclusion**, the reduction of labor standards affects international trade because it grants artificial competitive advantages. In this manner, using social dumping, companies give a false appearance of efficiency with unfair trade as a result. This is clearly a violation *in a manner affecting trade* within the meaning of Article 16.2 of the DR-CAFTA

### 4. Recommendations of Measures that should be Adopted by Guatemala

As advanced in section 3 of our request for intervention as non-governmental entities, the Unions wish to introduce matters of interest to the Arbitral Panel and the Parties, including the necessary measures for Guatemala to adopt in order to correct its violations of the DR-CAFTA and promote full respect for labor rights.

Notably, in January 2013, the Unions submitted an extensive and detailed document to the authorities of both countries where we included a concrete roadmap to comply with the Implementation Plan, a document which we will be happy to put at the Arbitral Panel’s disposal upon request.

Below are specific suggestions that the Unions consider must be implemented by Guatemala to overcome the serious situation of violation of labor rights in the country.





#### **4.1. GUATEMALA MUST INCORPORATE THE UNIONS INTO THE IMPLEMENTATION OF SOLUTIONS**

There is no real participation from the organized workers for the identification of specific problems and the design or implementation of its solutions. Until now, except for some relative levels of participation, the workers have been hardly informed about the progress of the commitments assumed by Guatemalan Government. However, we have not yet been taken into account for the formulation and implementation of actions. For example, regarding the Implementation Plan signed in 2013 between USA and Guatemala, we have not taken part in its formulation, nor in its oversight and even less in its implementation.

Taking into consideration the principles of freedom of association, collective bargaining, promotion of social dialogue and the inherent tripartite character of the ILO; in stages to come, it is fundamental to guarantee the effective participation of the Unions as an essential part of the solution for the serious issues affecting work relations in Guatemala.

#### **4.2. GUATEMALA MUST ADOPT INTERNATIONAL CONVENTIONS PENDING RATIFICATION**

It is necessary that Guatemala expand its set of ratified labor conventions. Many among them could provide useful regulations on topics currently not covered under the Guatemalan domestic law. For example, it would be crucial to promote the ratification of Convention 155 concerning Occupational Safety and Health of Workers and Work Environment, Convention 173 on the Protection of Workers' Claims upon Employer's Insolvency, Convention 189 on Domestic Work, among others.

#### **4.3. GUATEMALA MUST COMPLY WITH ITS COMMITMENTS BEFORE THE US AND THE ILO**

As explained in section 2 above, throughout the last few years, as a consequence of the serious breaches documented and denounced by the Unions, Guatemala has been subject to international proceedings. These proceedings have resulted in concrete recommendations for Guatemala to reform its legal framework, to improve its institutions, and, in particular, to assume promotion and protection of labor rights as a fundamental component of its public policies (Implementation Plan of 2013 and Roadmap by ILO).

Given that Guatemala has expressly agreed to adopt such recommendations, the Unions can do nothing but insist in their effective implementation. The Arbitral Panel may observe, as the Unions do, that lack of compliance with prior commitments is one of the reasons why the grave violations discussed in these proceedings remain unsolved.

#### **4.4. GUATEMALA MUST MODIFY ITS LEGISLATION IN ACCORDANCE WITH THE RECOMMENDATIONS OF ILO'S SPECIALIZED ORGANS**

As to the legislative reforms included among the commitments signed by Guatemala in 2013, the Unions wish to draw attention to the necessary amendments to the Labor Code and other relevant laws to incorporate reforms proposed long time ago by ILO's supervising bodies on Freedom of Association and Collective Bargaining.

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In particular, Guatemala should soonest modify the following legal provisions:



- Article 215(c), of the Labor Code providing the need to count with half plus one of the workers in a particular sector in order to constitute industrial unions;
- Article 241 of the Labor Code providing that strike is declared not by the majority of the voters, but by the majority of the workers;
- Article 4, subsections d), e) and g), of Decree 71-86 modified by Legislative Decree 35-96 of March 7<sup>th</sup> 1996 allowing mandatory arbitration for non-essential services, and imposing other barriers to the right to strike;
- Article 390, subsection 2, and article 430 of the Criminal Code, as well as Decree 71-86 providing labor, civil and criminal sanctions in case of strike by public officials or workers of certain companies.

Guatemala should also adapt its current legislation so that all public sector workers, including contractors under line 029 and similar, enjoy the rights covered in international conventions on freedom of association and collective bargaining.

#### 4.5. GUATEMALA MUST BESTOW THE GENERAL LABOR INSPECTORATE WITH ENFORCEMENT POWERS

It is essential that Guatemala undertake legislative reforms allowing the General Labor Inspectorate to fulfill its mandate to enforce the effective application of labor legislation.

The Unions have presented to the Congress of the Republic a bill reinstating the General Labor Inspectorate's sanctioning powers for labor violations, without prejudice to the defense mechanisms for the affected parties. The Union's proposal has been prepared taking into consideration the guarantees and guidelines established in ILO's Conventions 81 and 129 on Labor Inspectorates. This proposal is also at the Arbitral Panel's disposal upon request.

If this bill is approved, an important tool will be created in order to solve the main structural issues identified in the Implementation Plan of 2013, including the verification and sanction for unionist dismissals, discrimination against female workers, use of children in the workplace and general violation of labor rights in agricultural work or in industrial premises.

The sanctioning system must regulate with special detail the institutional mechanisms in order to guarantee the application of "privileges suspensions" to export and *maquila* companies, as set forth in Legislative Decree 29-989 and more recent regulations. The main purpose of this is to guarantee commercial sanctions in cases of noncompliance.

The proposed reform provides for special procedures for the verification of violations related to fundamental rights (in accordance to ILO'S 1998 Declaration: equality at work, child labor, forced labor, freedom of association and collective bargaining). It will also have special provisions to enforce sanctions already contained in the Labor Code so as to contribute to the enforcement of court rulings or any other court orders involving payment of salaries or employment benefits.

The inspection and sanction system of the Ministry of Labor must guarantee the effectiveness of labor laws through the investigation of violations and the establishment of sanctions for such misbehaviors. The above, with the purpose to avoid competitiveness policies on the basis of labor rights breaches, as it currently is the case in Guatemala.



#### **4.6. GUATEMALA MUST HOLD ACCOUNTABLE ALL OFFICIALS WHO VIOLATE INSTITUTIONAL OBLIGATIONS**

The Unions constantly face situations of abuse of power, disregard of public functions, illegal judgments, malicious delays and omissions of complaints. Officials are never held accountable for these serious offenses.

The legal and institutional reforms referred to above will not have the expected impact if the administrative or judicial officials who notoriously fail to meet their obligations for the protection of labor rights are not controlled or held responsible for their actions.

Furthermore, it is necessary to enforce current legislation establishing mechanisms to promote liability on public officials incurring the described situations.

#### **4.7. GUATEMALA MUST APPLY ADMINISTRATIVE AND CRIMINAL SANCTIONS FOR VIOLATIONS TO THE LABOR AND SOCIAL WELFARE REGULATIONS**

In response to the Unions' frequent complaints, the Office of the Guatemala's Public Prosecutor and the Courts must sanction employers who commit crimes in the framework of labor relations. This is the case with misappropriations of social contributions, which are deducted from worker's payroll, but not transferred to the INSS. As a consequence, workers are prevented from having access to social services

#### **4.8. GUATEMALA MUST STRENGTHEN THE PREVENTION, PROTECTION AND REACTION MECHANISMS AGAINST THREATS AND ATTACKS TO UNIONISTS**

The alarming human rights situation of unionists and workers who try to establish labor unions is one of the reasons leading to the initiation of this procedure under DR-CAFTA. It is worth noting that the violation of freedom of association is a violation in itself, but also is a limiting factor for all labor rights given that free and strong unions exert a much needed control on businessmen and the State for the enforcement of those rights.

Therefore, the Unions believe that Guatemala should adopt appropriate measures on: i) Investigation and punishment on those responsible for serious human rights violations committed against unionists and workers seeking to establish unions. In addition to the murders of unionists in recent times, there are also threats, reprisals and other actions pertaining to criminal law, the vast majority of which, however, remains in impunity; and ii) effective strengthening of institutional bodies such as the Prosecutor's Office, the Judiciary and the Ministry of Interior who have the responsibility of providing protection and investigating crimes committed against workers and unionists. So far, very few administrative regulations related to this issue have been adopted, but there have not been any fundamental changes to meet the commitments assumed by Guatemala.

#### **4.9. GUATEMALA MUST IMPLEMENT A PUBLIC POLICY FOR THE RESPECT FOR THE FREEDOM OF ASSOCIATION**

We are witnessing new attacks against the Unions and its members on a daily basis. These attacks not only involve their physical integrity, but also their status and the meaning of workers' organizations as tools for the construction of social democracy.





The seriousness and reiteration of the aggressions against freedom of association in Guatemala make necessary proactive policies fostering and promoting the human right of association, specially demanding its defense by employers, public officials and by the citizenship as a whole.

Within this framework, Guatemala must adopt concrete measures promoting the respect for the freedom of association: from putting limitations to union's registration and establishment to an end; to affirmative actions to promote union's rights. This is Guatemala duty before the ILO, but Guatemala never delivered.

The Guatemalan Labor Unions thank the Arbitral Panel as the voices of the workers were heard in this procedure. We hope to have contributed to inform the Panel on the facts and legal issues of the present case.

Yours sincerely,

CARLOS ENRIQUE MANCILLA GARCÍA  
Coordinator  
**Movimiento Sindical Autónomo y  
Popular de Guatemala**  
Secretary-General  
**Confederación de Unidad Sindical de  
Guatemala- CUSG**

REYNALDO FEDERICO GONZÁLEZ  
Deputy Coordinator  
**Sindicatos Globales de Guatemala**  
Secretary-General  
**Federación Sindical de Empleados  
Bancarios y de Servicios del Estado de  
Guatemala -FESEBS**




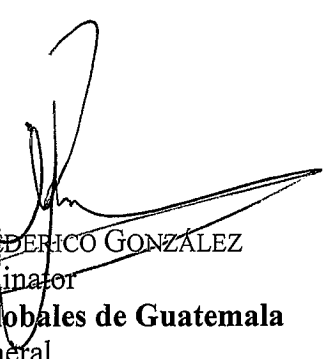
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CARLOS ENRIQUE MANCILLA GARCÍA  
Coordinator  
**Movimiento Sindical y Popular  
Autónomo Guatemalteco**  
Secretary-General  
**Confederación de Unidad Sindical de  
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Secretary-General  
**Federación Sindical de Empleados  
Bancarios, de Servicios y del Estado de  
Guatemala -FESEBS**



Arbitration Panel – Dominican Republic, Central America and United States Free  
Trade Agreement (CAFTA - DR)

*In the Matter of Guatemala—Issues Relating to the Obligations  
Under Article 16.2.1(a) of the CAFTA-DR*

Submittal by:

**Asociación Guatemalteca de Exportadores – AGEXPORT**

***(Guatemalan Exporters Association)***

Non-Governmental Organization



**MRS. CLARA LUZ DE LUCERO  
RESPONSIBLE OFFICE FOR GUATEMALA  
MINISTRY OF ECONOMY OF GUATEMALA**

In the matter of: Guatemala – Issues relating to the obligations  
under Article 16.1 (a) of CAFTA-DR

**I, JORGE ROLANDO PAIZ KLANDERUD**, forty-six years of age, Chemical Engineer, Guatemala, a resident of Guatemala City, Department of Guatemala, with Identification Document number 2604 39169 0101, appear in my capacity as the current President and Legal Representative of the Guatemalan Exporters Association (**ASOCIACIÓN GUATEMALTECA DE EXPORTADORES**) (**AGEXPORT**), a Guatemalan non-governmental organization, that is known in the case: Guatemala- Issues relating to the obligations under Article 16.2.1 (a) of CAFTA- DR.

I state that the Arbitration Panel has accepted our participation in the above-named case and to submit the OPINION of AGEXPORT, which I do in time and form on behalf of the organization that I represent, pursuant to the provisions of the Rules of Procedure for Chapter 20 of the Dominican Republic, Central America and United States Free Trade Agreement, as follows:

**I. INTRODUCTION**

1. The Guatemalan Exporters Association (AGEXPORT) appreciates the opportunity that the Arbitration Panel gives it to submit its points of view as a non-governmental stakeholder that is affected by the dispute brought by the United States against Guatemala.
2. According to the decision of the Arbitration Panel<sup>1</sup>, AGEXPORT hereby submits a brief explanation of the evolution and diversification of trade relations between Guatemala and the United States, to show how exports have become a way to generate employment and improve the quality of life of the citizens of the country, consistent with the objectives of Article 1.2 of CAFTA DR.
3. This document also describes the formal structure of exporting companies, compliance with applicable Law, including labor laws, and the challenges they face to meet a number of standards required by North American customers.
4. Moreover, deficiencies that firms face due to the lack of competitiveness within the country in infrastructure, logistics, electricity, lack of skilled labor and safety, among others are addressed.
5. Finally, we address how the way the process is being discussed in the Arbitration Panel creates uncertainty for investment and trade, which could affect the economy of the

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<sup>1</sup> Response by the Arbitration Panel to the request by non-governmental organizations to submit written opinions, of February 20, 2015.



country if opportunity windows that companies have earned over the years as suppliers in global markets are lost.

## II. EVOLUTION AND DIVERSIFICATION OF TRADE BETWEEN GUATEMALA AND THE UNITED STATES

### General Trade:

- a) Guatemala is a country with a small economy, therefore, domestic and regional markets are not enough to absorb the huge volumes of goods and services produced. In that regard, Guatemala has gradually improved its foreign trade numbers. For over two decades now, Guatemalan exports have risen at an average annual growth rate of 10%, this in the last 10 years, reaching USD10,833.9 million in 2014<sup>2</sup>. Exports represent approximately 19% of the Gross Domestic Product of the country. On the other hand, imports have doubled in the last 10 years, having reached USD 18,275.9 million in 2014<sup>3</sup>.
- b) Exports have also diversified the productive structure of the country. At the beginning of the nineties, 75% of the exportable production was of traditional commodities such as sugar, coffee and cardamom. At present, this trend has changed around and the country offers a growing supply of commodities, goods and services such as fruits, vegetables, plants, cut flowers, spices, organic products, furniture, crafts, manufactured products, foodstuffs, seafood, tourism, health and wellbeing, software, call centers, digital content development, among others; many of which are exported mainly to the United States. At present, the export of these new goods and services represents 74% of total exports. Additionally, the number of exporter companies grew from 237 to over 3,400 and destination markets have grown from 18 to 135.<sup>4</sup>

### Trade between Guatemala and the United States:

- c) Trade relations with the United States have historically been very important for Guatemala, since, for years, the United States has been one of the major trade partners for Guatemala. Even before the entry into force of CAFTA DR, the United States already imported approximately one third of all Guatemalan exports.
- d) At present, almost 9 years after the entry into force of CAFTA DR, foreign trade with the U.S. continues to keep its momentum, growing from USD 2,781.8 million in 2006 to USD 3,846.5<sup>5</sup> in 2014, a growth of over 38%.

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<sup>2</sup> Data from the Central Bank of Guatemala about FOB value of exports between 1994 – 2014, available at [http://www.banguat.gob.gt/inc/ver.asp?id=/estaeco/comercio/sercom/1\\_POR\\_PAIS/X\\_PAIS\\_1994\\_2014.htm](http://www.banguat.gob.gt/inc/ver.asp?id=/estaeco/comercio/sercom/1_POR_PAIS/X_PAIS_1994_2014.htm)

<sup>3</sup> Data from the Central Bank of Guatemala about the CIF of imports between 1994 – 2014, available at [http://www.banguat.gob.gt/inc/ver.asp?id=/estaeco/comercio/sercom/1\\_POR\\_PAIS/M\\_PAIS\\_1994\\_2014.htm](http://www.banguat.gob.gt/inc/ver.asp?id=/estaeco/comercio/sercom/1_POR_PAIS/M_PAIS_1994_2014.htm)

<sup>4</sup> Data compiled by AGEXPORT base on information provided by the Single Exports Window –VUPE-

<sup>5</sup> Data from the Central Bank of Guatemala on foreign trade with the United States of America in 2014, available at <http://www.banguat.gob.gt/estaeco/comercio/envolver2.asp?kpath=/estaeco/comercio%2Fpaíses%2F2014%2FCG%2Famerica+del+norte%2F&karchivo=America+del+NorteDB002%2EHTM>



- e) With the entry into force of CAFTA DR, several industries have increased their exports to the U.S. market, such as fresh or frozen fruits, (19%), vegetables (9%), paper and cardboard manufacturing (24%), fish, crustaceans and mollusk preparations (16%), among others. Other products such as ornamental plants, plantains, beans, sesame seeds, machines and electro-technical devices, prepared vegetables, chemical products, medical instruments and leather products, cereal-based products, footwear, greases and oils, crafts, insecticides, confectionery products and sauces and condiments have been able to find more moderate growths. New products that have found market niches in the United States are tomatoes, blueberries, nostalgic food, sawed timber and handicrafts. In 2014 alone, Guatemala exported products to the United States under over 1,200 tariff headings, over 125 sub-sectors according to the grouping by the Central Bank of Guatemala. In addition, in the last year, new commodities such flor de izote and chipilín (native to this region) have attained admissibility in the U.S. market.
- f) As to the impact of exports on employment, according to information available at AGEXPORT, approximately 1,100 companies export directly to the United States, involving thousands of smallholders and small and medium-size companies that form the exporting value chain. Examples are snow peas and other vegetables that involve over 45,000 small growers. As a result, in the opinion of AGEXPORT, the exporters' sector generates approximately 1.5 million direct and indirect jobs.<sup>6</sup>
- g) On the other hand, Direct Foreign Investment from the United States grew from USD 198.1 in 2006 to USD 357.7 in 2014<sup>7</sup>, a growth of approximately 80%.
- h) These figures show consistency with the objectives of Article 1.2 of CAFTA DR to stimulate trade growth and diversification among the Parties, as well as to substantially increase investment opportunities in the territories of the Parties.

### **III. FORMAL STRUCTURE OF COMPANIES AND COMPLIANCE WITH STANDARDS REQUIRED BY U.S. CLIENTS**

#### **Formal Structure of Companies:**

- a) An exporter or a Company interested in exporting must meet every tax, Customs, sanitation, environmental and of course labor law in force.<sup>8</sup>
- b) In terms of labor, exporters recognize that an essential condition to keep their competitiveness in global markets involves compliance with every salary and employer obligation provided for in the laws in force, which include the incentive bonus, the 14<sup>th</sup> Salary Bonus, Social Security, contribution to recreation and training programs, severance, among others. These employer obligations represent 41.76% of the salary and are the third

<sup>6</sup> Data obtained from the study of the Measurement of Employment Generated by Exports as a Model of Development and Growth in Rural Guatemala, produced by AGEXPORT with the support of USAID

<sup>7</sup> Data from the Central Bank of Guatemala on Direct Foreign Investment flows by country of origin 2007 - 2014, available at [http://www.banguat.gob.gt/inc/ver.asp?id=/Publica/v\\_man\\_bpagos/flujo\\_IED\\_2007\\_2014.htm&e=115653](http://www.banguat.gob.gt/inc/ver.asp?id=/Publica/v_man_bpagos/flujo_IED_2007_2014.htm&e=115653)

<sup>8</sup> Obligations that need to be met by companies to set up business in Guatemala available at <http://guatemala.eregulations.org/>



highest burden of the region, with Costa Rica at 48%, Nicaragua at 42.99%, Honduras at 38.71% and El Salvador at 22.97%.

- c) There are also a number of controls in place through the laws. Companies are subject to inspection schedules conducted under the Law of the General Labor Inspectorate of the Ministry of Labor. Other measures resulting from the dispute between the United States and Guatemala have been added and are part of the Implementation Plan. These include actions such as exchange of information among the Ministry of Economy, the Ministry of Labor, the Guatemalan Social Security Institute; continuous inspections for companies that benefit from incentive programs; specific plans and controls for cases of companies closing down; the obligation for companies that benefit from incentive programs to annually submit information on labor legislation compliance, among others.<sup>9</sup>
- d) Added to these are other private programs implemented by companies in the areas of training, occupational health and safety, to mention just a few. Since before the entry into force of CAFTA DR, exporter companies have prioritized adherence to and compliance with all labor laws in the country to earn the trust of international buyers. Proof of this are the programs promoted to meet labor provisions, such as the Code of Conduct of VESTEX (in place since 1996), Occupational Health and Safety programs (in place since 2002), the Center for Alternative Labor Conflict Resolution, the Business Diagnostic Guide to improve labor compliance under CACIF's program, the Labor Policy of the Agricultural Sector, training programs conducted by companies and organizations like AGEXPORT on the content of labor legislation, health and safety, corporate social responsibility programs, and others.
- e) This is an integral part of the sustainable development strategies implemented by exporters who understand that international market consumers are increasingly demanding that the products that they purchase come from ethical companies that meet all of their labor and environmental responsibilities, thus creating social benefits.

**Standards required by North American Customers:**

- f) In order to gain a position in the North American Market, exporters have engaged in significant efforts to ensure that their products or services fully meet every non-tariff measure provided for in CAFTA DR, such as rules of origin, sanitary and phytosanitary measures and other technical requirements. In addition, they have seen the need to adapt to every standard required by the customers, even if they are not required by the law, including technical quality standards. They must also follow the various Codes adopted by brands, that include good labor and environmental practices and which suppliers are under the obligation to abide by (Business Social Compliance Agreement, Supplier Ethical Code, Code of Vendor Product).
- g) Therefore, to be selected as a supplier, an exporter must meet standards beyond quality and price, in matters such as the environment, non-discrimination, respect for labor laws

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<sup>9</sup> Government and Ministerial Agreements available in the website of the Ministry of Labor of Guatemala  
<http://www.mintrabajo.gob.gt/index.php/leyes-conveniosyacuerdos/documentos-dr-cafta.html>



in force, safe labor conditions. Verification of compliance with these standards is done by subcontractors. Exporters are also subject to quarterly, bi-annual or annual evaluations and audits by External Business Audit Firms that include interviews of employees to confirm payment of all benefits and compliance with other rights.

- h) In this regard, each sector is subject to specific requirements by importers and consumers, for example, the Apparel and Textile Industry has been required to adopt costly and rigorous Codes such as WRAP<sup>10</sup> that even includes aspects such as compliance in the areas of Customs and security. Fruits and vegetables must meet stringent packing and labeling regulations as well as category and quality standards that include size, maturation, color and other requirements. The furniture and timber product sector is subject to product, quality, construction code, and technical regulation requirements to be in the market, and must also abide by regulations of the Convention on International Trade in Endangered Species of Wild Fauna and Flora – CITES – as appropriate. Other market requirement examples are the certification of organic products of the National Organic Program – NOP - or the requirements for hand-made toys of the Federal Hazardous Substance Act. Services in the area of information and communication technologies are not an exception. They must meet various strict labor, quality management, system functionality and other verification requirements. The provision of medical and sustainable tourism services are subject to all kinds of certifications.
- i) There are U.S. entry requirements that some sectors must meet, such as rigorous regulations for processed food by the Food and Drug Administration (FDA) that include meeting Good Manufacturing, Packing or Storage Practices for food and having an importer or representative at the port of destination to interact with the Agency. Agricultural commodities are subject to the submittal of entry permits for vegetable plants and their products, issued by the Animal and Plant Health Inspection Service (USDA-APHIS-PPQ), they must meet pesticide, fungicide and herbicide residue standards accepted by FDA, and they are subject to Customs inspections to confirm the absence of pests and diseases.
- j) Additionally, all exporters that manufacture, process, pack or store food for human or animal consumption must abide by the Public Health Security and Bioterrorism Preparedness Response Act. At present, companies are also working to adapt and thus meet the Food Safety Modernization Act (FSMA) whose objective is to guarantee food supplies to the United States through a change in approach from a response to contamination to one of prevention, which involves additional costs.
- k) Compliance with all of these requirements involves significant costs that exporters have borne. To provide assistance to them, associations like AGEXPORT have designed training and technical assistance programs and workshops to enable more companies to export to the United States.

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<sup>10</sup> Worldwide Responsible Accredited Production is based on 12 principles and there are 8 companies in the Guatemalan Apparel and Textile Industry that are certified in this code.



#### IV. COUNTRY CHALLENGES IN THE AREA OF COMPETITIVENESS

- a) In terms of country-wide competitiveness, exporters must face the high costs caused by deficiencies in infrastructure, logistics, electric power, labor productivity, security and other such challenges. Guatemala is currently in place 78 out of 144 countries in the Global Competitiveness Index produced annually by the World Economic Forum (WEF)<sup>11</sup>. According to that report, the biggest problems in Guatemala are crime and theft, corruption, inadequate supply of infrastructure, government inefficiency and bureaucracy and unskilled labor.
- b) In terms of logistics, the Logistics Performance Index places Guatemala in position 77 out of 160 countries<sup>12</sup>. According to this index, factors affecting logistics are: deficient infrastructure, particularly in roads, ports and logistics terminal networks (position 85); sea, air and ground freight costs (position 85). In the specific case of exports to the United States, companies pay sea freight rates ranging from USD 3,700 to USD 4,200 for refrigerated products and USD 1,900 to USD 2,900 for dry products.

Added to this is limited investment in infrastructure, only 2% of the GDP, and the lack of an agile, modern and secure Customs Service that is truly a trade facilitator (position 65). As a result of this, the country faces limitations to reach the levels of efficiency and productivity of other countries which compete with us in exports to the United States.

- c) Electric power costs, quality and supply are also important factors in sector competitiveness. It is a factor affecting exporter SMEs at different levels, depending on the technology used in their productive processes and in energy use efficiency. Because the electric power market is an open market, depending on levels of consumption and negotiation capacity, exporters face energy and power prices ranging between US\$ 0.11 and may reach even US\$ 0.20 and US\$0.24 kw/h, significantly higher than other competitors.
- d) Additionally, exporters must overcome other factors that impact their competitiveness, such as the appreciation of the local currency (the Quetzal) vis-a-vis the Dollar, which was 3.2% in 2014. Annual insecurity costs exceed US\$ 400 million per year<sup>13</sup>. A still limited supply of skilled labor continues to be a challenge to be able to develop new industries in the country.
- e) Another strong obstacle is the lack of institutional framework in areas of exportable supply promotion and country image. This has forced exporters to invest heavily to be present in trade fairs and commercial missions. Lack of resources in government programs related to food safety and plant safety has forced companies to develop their own programs on good

<sup>11</sup> Data from the World Economic Forum sobre el Global Competitiveness Report 2014 – 2015 Guatemala Index available at <http://reports.weforum.org/global-competitiveness-report-2014-2015/economies/#economy=GTM>

<sup>12</sup> Data from The Logistic Performance Index “Connecting to Compete 2014” produced by the World Bank. Position 1 is the country with the most efficient logistics index, while position 160 is the least efficient country.

<sup>13</sup> Data from the study on the Cost of Violence in Guatemala, UNDP 2007



agricultural practices and good manufacturing practices for the small growers that make up the exports value chain.

## **V. CLIMATE OF UNCERTAINTY FOR LOCAL AND FOREIGN CLIENTS AND INVESTORS**

- a) The impact of the dispute and the creation of the Arbitration Panel is a source of concern for exporters because the positive image that companies have built with huge efforts over many years is endangered.
- b) Like our North American customers, other important markets for Guatemala like the European Union, that represents 7% of the country's exports, are extremely careful in selecting their suppliers. That is why exporter companies fear that the dispute may have a negative social and economic impact on the country's exports that are still recovering after the international crisis of 2009.

## **VI. CONCLUSIONS**

- a) The evolution of trade and investment between Guatemala and the United States shows that since its entry into force, CAFTA DR has met the objectives of expanding trade and increasing opportunities to invest in our territories.
- b) The United States continues to be the major trade partner for Guatemala; our exports to this destination have promoted the diversification of the productive structure of the country and the inclusion of more small and medium-size companies, as well as grower associations in rural areas in the exporting sector, thus creating jobs and economic benefits throughout the country.
- c) Exporter companies operate within the framework of legality by meeting all of their labor obligations. In addition, through business programs and other efforts, with the support of associations like AGEXPORT, they are the main promoters of capability enhancement both for the companies as well as for their workers.
- d) Exporter companies have invested resources and time to earn a good image as a supplier for North American importers and investors through the voluntary adoption of codes and through compliance with domestic legislation in order to continue to generate benefits for the country, such as the creation of formal employment, particularly in rural areas of the country, where crops or export commodities come from, and where citizens have been able to improve the quality of their lives through the jobs created by these activities.
- e) Some of the obstacles that companies must overcome to export to the U.S. market are costs associated to the lack of country-wide competitiveness in the areas of logistics, electric power and security, among others. These have required companies to engage in significant efforts and investment in time and money to be able to access and consolidate their business in the North American market.

- f) Exports to the United States are a source of employment for many persons and their sustainability is important to the country, since they result in higher income for society, that significantly raise the quality of life of thousands of small and medium-size Guatemalan growers, the core productive force of the country.
- g) This has been the result of their efforts, innovation, specialization, added value and strict abidance by the Law, particularly labor laws, while remaining competitive and consolidated in the American market. AGEXPORT, as well as other business chambers, have acted as facilitators for companies to develop their technical skills, have access to programs that allow them to adapt their products to market requirements and offer them from the different sector-wide promotion platforms and/ or through their participation in international trade fairs and missions.

## **VI. PETITIONS**

For the reasons listed above and under CAFTA DR guidelines, I respectfully request:

### **TO THE FOREIGN TRADE MANAGEMENT OFFICE OF THE MINISTRY OF ECONOMY OF GUATEMALA**

- To submit this OPINION promptly and in a timely fashion to the Arbitration Panel and to each party and to make it available to the public.

### **TO THE ARBITRATION PANEL**

- To acknowledge receipt of this OPINION submitted on behalf of the GUATEMALAN EXPORTERS ASSOCIATION and, in that regard, to consider and assess each one of the arguments put forth.
- My address to receive notices is: 15 avenida 14-72 zona 13, Guatemala City, Department of Guatemala, Republic of Guatemala. Email: [nevi.lemus@agexport.org.gt](mailto:nevi.lemus@agexport.org.gt), [vera.calderon@agexport.org.gt](mailto:vera.calderon@agexport.org.gt). Tel. (502) 2362 1995 Fax. (502) 2422 3434.

Guatemala City, April twenty seventh, two thousand fifteen.

  
**JORGE ROLANDO PAIZ KLANDERUD**





ITUC INTERNATIONAL TRADE UNION CONFEDERATION CSI CONFÉDÉRATION SYNDICALE INTERNATIONALE  
CSI CONFEDERACIÓN SINDICAL INTERNACIONAL IGB INTERNATIONALER GEWERKSCHAFTSBUND

JOÃO ANTONIO FELICIO  
PRESIDENT  
PRÉSIDENT  
PRÄSIDENT  
PRESIDENTE

SHARAN BURROW  
GENERAL SECRETARY  
SECRÉTAIRE GÉNÉRALE  
GENERALSEKRETÄRIN  
SECRETARIA GENERAL

Clara Luz Marroquín de Lucero  
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27 April 2015

### **In the Matter of Guatemala—Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR**

The International Trade Union Confederation (ITUC) brings to the attention of the arbitration panel in the instant case additional information that supports the written submissions of the Government of the United States of America, which assert that the Government of Guatemala has violated Article 16.2.1(a) of the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR).<sup>1</sup>

In the first section of our written views, we will highlight the observations and conclusions of the supervisory mechanisms of the International Labour Organisation (ILO) and in particular with regard to ILO Convention 87 (Freedom of Association and Protection of the Right to Organise Convention) and ILO Convention 98 (Right to Organise and Collective Bargaining Convention) as applied to Guatemala.<sup>2</sup> Neither party to this dispute has cited to this important body of international law. While cognizant that the instant arbitration turns on whether there has been a failure to enforce the domestic labour laws of Guatemala, not ILO conventions, the observations of the ILO nevertheless shed important light on violations in areas of law actionable under the CAFTA-DR, namely the right to freedom of association and to collective bargaining. Further, many of the violations which are addressed by the ILO supervisory mechanisms also constitute violations of the domestic labour laws of Guatemala.<sup>3</sup> Further, the repeated criticisms of the ILO supervisory system as to the country's persistent noncompliance with its obligations under these two conventions has probative value, in particular, as to the elements "sustained and recurring" and "course of action or inaction."

In the second section, we wish to bring to the attention of the panel new and recent information that shows that, even during the pendency of this arbitration, which has attracted worldwide attention, the government continues to flaunt its legal obligations under ILO conventions and Chapter 16 of the DR-CAFTA. In our view, this information

<sup>1</sup> On 9 February 2015, the ITUC filed papers requesting leave to file written views. That request was granted on 20 February 2015.

<sup>2</sup> Guatemala ratified both Convention 87 and 98 in 1952.

<sup>3</sup> Additionally, international treaties, such as ratified ILO conventions, are enforceable and superior to the domestic laws of Guatemala. See, "Article 46: Preeminence of International Law. The general principle is established that in the field of human rights treaties and agreements approved and ratified by Guatemala have precedence over municipal law." See also "Article 102(t) The State will participate in international or regional agreements and treaties relating to labor matters and which grant better protection of conditions to workers. In such cases what is established in said agreements and treaties will be considered as part of the minimal rights enjoyed by the workers of the Republic of Guatemala."



demonstrates bad faith on the part of the government of Guatemala. This is in addition to the supplemental information filed by the AFL-CIO which establishes a record of continued violation of the terms of DR-CAFTA and the terms of the negotiated enforcement action plan.<sup>4</sup>

Should the panel find for the United States, the remedies will have to be carefully crafted to ensure that the government of Guatemala does not continue to evade its obligations under Chapter 16 of DR-CAFTA.

## I. ILO

This section provides a concise summary of recent relevant findings of the ILO supervisory mechanisms as to Guatemala. First, however, we note the extent to which the government has been called to answer for its alleged non-compliance with ratified conventions.

### *A. A Repeat Offender*

The Conference Committee on the Application of Standards (CAS) is established each year by the International Labour Conference. Among its tasks, the CAS selects around 25 especially serious or persistent cases and calls the relevant governments to appear before it to explain the reasons for their failure to promote and respect the obligations under the relevant convention(s). The conclusions of the CAS are meant to express the view of the tripartite constituents as to the measures the government in question should take in order to comply with the convention in question, as well as provide direction to the ILO in terms of appropriate follow up.

Over the last 25 years, Guatemala has the ignominious distinction of being hauled before the CAS more than any other country during the same period of time. Guatemala has been called to explain itself nearly every one of those 25 years – a total of **21** times (see the chart below). Few countries are close to being in the same league. They include notorious labour rights violators like Myanmar (20 times in the 25 years), which was eventually the target of comprehensive international trade, investment and financial sanctions due to serious and systematic violations of the Forced Labour Convention (Convention 29). Colombia has been called to account for its non-compliance 18 times, largely a result of the assassination of over 3,000 trade union leaders and members with almost total impunity. Others governments frequently before the CAS include Pakistan (18 times) and Turkey (17 times).

Guatemala has appeared on the CAS's list so often because it has consistently failed to act upon the observations and conclusions of the ILO supervisory mechanisms regarding freedom of association and collective bargaining.

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<sup>4</sup> Available at <https://ustr.gov/sites/default/files/04292013%20Guatemala%20Enforcement%20Plan.pdf>

## Guatemala 1990-2014

and incomplete information in CFA Case nos. 2948, 2811 and 2203, another demonstration of its lack of will to engage seriously in finding solutions to these long-standing issues.<sup>7</sup>

Given the above, it is no surprise that worker delegates to the International Labour Conference filed a complaint for the establishment of a Commission of Inquiry, the most serious form of ILO supervision, against Guatemala in June 2012 for failure to comply with ILO Convention 87.<sup>8</sup> In the history of the ILO, only 14 such Commissions have been established.

*B. Violations of the Rights to Freedom of Association and Collective Bargaining:  
The Observations and Conclusions of the ILO Supervisory System*

The ILO supervisory system has made a number of observations and conclusions which are directly relevant to the instant arbitration. The observations of the Committee of Experts, an independent body of experts in labour and international law, are given persuasive authority within and outside of the ILO system. Further, the conclusions of the Committee on Freedom of Association are the result of tripartite agreement, and thus represent the consensus views of the three constituent groups of the ILO. We urge the panel therefore to give great weight to their views.

Below are selections from the most recent observations of the ILO Committee of Experts, recent conclusions of the ILO Committee on Freedom of Association a 2013 ILO High Level Tripartite Mission report, which was sent to Guatemala in response to the complaint for the establishment of a Commission of Inquiry.

i. Registration of trade union organizations.

The Committee of Experts has for years noted that workers face numerous obstacles to the registration of trade unions. In 2015, they noted repeated complaints of handing over lists of union founders to employers – who then quickly dismiss those workers and that some unions were not being registered because of the form of contract used to employ workers, such as short term contracts or subcontracts.. The Committee of Experts observed:

The Committee notes the recurrent observations from the trade union organizations regarding obstacles to trade union registration. The Committee notes in particular: (i) objections to the labour administration's practice of referring to the employer the list of founders of the trade union which is being established in order to verify that they belong to the enterprise; and (ii) reports of numerous cases in which registration is denied because the union membership includes public employees on precarious contracts. **The Committee requests the Government to ensure that the aforementioned practices in the registration process are abolished and that the cases reported by the trade union organizations are examined in the context of the Committee for the Settlement of Disputes in the area of Freedom of**

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<sup>7</sup> The reports in the CFA complaints referenced above are available at [http://www.ilo.org/dyn/normlex/en/f?p=1000:20060:0::FIND:NO:20060:P20060\\_COUNTRY\\_ID,P20060\\_COMPLAINT\\_STATU\\_ID:102667,1495810](http://www.ilo.org/dyn/normlex/en/f?p=1000:20060:0::FIND:NO:20060:P20060_COUNTRY_ID,P20060_COMPLAINT_STATU_ID:102667,1495810).

<sup>8</sup>[http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012\\_COMPLAINT\\_PROCEDURE\\_ID,P50012\\_LANG\\_CODE:3088000,en:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:3088000,en:NO)



**Association and Collective Bargaining, so that the issues can be settled quickly.<sup>9</sup>**

ii. Effective action by the labour inspectorate.

For many years, trade unions have raised serious concerns with regard to the inability of labour inspection to remedy violations of the labour law. Unions have pointed to lack of autonomy of inspectors, lack of the tools necessary to undertake inspections, corruption and the inability of inspectors to impose administrative penalties. Few labour law violations are ever referred to the courts by inspectors that result in penalties. This latter issue was addressed in the ILO High Level Tripartite Mission in 2013, which concluded,

In addition to concerns regarding capacity and oversight, the mission remained concerned by the inability of labour inspection to impose administrative sanctions. It considered that urgent action should be taken to adopt legislative provisions to enable labour inspection to fulfil its mandate for the effective enforcement of the labour law. It was also important to strengthen the capacity of labour inspectors, including action to ensure transparency with a view to deterring corruption.<sup>10</sup>

The failure of labour inspection in Guatemala to effectively enforce its laws, including concerning acts of anti-union discrimination, has also been the subject of frequent comment by the Committee of Experts. In 2015, the Committee of Experts explained,

In its previous comments, in view of the serious problems of anti-union discrimination, the Committee had asked the Government to adopt additional measures to improve labour inspection. The Committee observes that the high-level tripartite mission, in its conclusions, expressed concern at the impossibility for the labour inspectorate to impose administrative penalties and considered that legislative reforms should be adopted urgently to enable the labour inspectorate to discharge its mandate of enforcing the labour legislation... *The Committee therefore requests the Government to take the necessary steps to ensure that the current legislative reform process results in greater effectiveness and speed in the imposition of dissuasive penalties for acts of anti-union discrimination. The Committee requests the Government provide information on any developments in this respect and to indicate the number of penalties imposed for anti-union acts, including the amounts of fines.*<sup>11</sup>

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<sup>9</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, Convention 87 Right to Freedom of Association and to Organise (Guatemala) published 2015, available at [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3190227](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3190227).

<sup>10</sup> ILO, GB.319/INS/7, Annex 1, Report of the High Level Mission, para 55.

<sup>11</sup> ILO Committee of Experts on the Application of Conventions and Recommendations, Convention 98 Right to Organise and Collective Bargaining (Guatemala) published 2015, available at [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3190239](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3190239)

iii. Anti-union discrimination

As with ineffective labour inspection, above, the lack of an effective judicial process has meant that justice is often significantly delayed, effectively denying workers the rights to which they are due under the labour law.

In its previous comments the Committee had requested the Government to push through the necessary procedural and substantive reforms to deal with anti-union discrimination and the slowness of the labour justice system, including more effective and rapid proceedings and more dissuasive penalties. In this respect, the Committee notes that the trade union organizations continue to report significant judicial delays with regard to anti-union acts, due in particular to the possibility of filing multiple appeals with a delaying effect. ... Lastly, the Committee observes that several cases are pending before the Committee on Freedom of Association relating to the situation of many workers dismissed on trade union grounds who have been waiting years for reinstatement orders handed down by the first instance court to be examined by the Appeals Court. **In view of the above situation and the undertakings made by the Government in the context of the “roadmap”, the Committee, while noting the steps being taken to speed up the system of labour justice, requests the Government to take the necessary steps to significantly reduce the time taken by the justice system to effect reinstatements.**<sup>12</sup>

iv. Non-Compliance with Reinstatement Orders

The issue of non-compliance with judicial orders has been a recurring issue in the information filed with the ILO supervisory system and has been the subject of numerous observations by same. Trade unions have noted on numerous occasions that founding members of trade unions have dismissed but not immediately reinstated, as required by the labour law. Often, reinstatement orders are suspended pending pro forma appeals by employers against orders for reinstatement, delaying reinstatement for years. The 2013 High Level Tripartite Mission “expressed its concern at the high rate of non-compliance with the judgments issued by the Labour Court. The mission highlighted the importance of the compliance and enforcement of court decisions for the promotion of the rule of law.”<sup>13</sup>

The 2015 Committee of Experts Report also stated,

The Committee also recalls that it has been asking the Government for many years to take the necessary steps to put an end to the widespread non-compliance with orders for the reinstatement of dismissed trade unionists and that this request forms part of the conclusions of the ILO high-level tripartite mission conducted in 2013.... *While duly noting the initiatives taken to tackle non-compliance with rulings ordering the reinstatement of dismissed trade unionists, the Committee requests the Government to significantly increase resources to effectively eliminate these defects and ensure compliance with judicial decisions.*<sup>14</sup>

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<sup>12</sup> Id.

<sup>13</sup> High Level Mission Report, supra fn 10, Para 56.

<sup>14</sup> CEACR Convention 98, supra fn 11.

v. Maquila sector.

The 2008 Submission included two cases of anti-union discrimination in the maquila (light manufacturing) sector. In this sector, which produced garments for export, workers have sought to form unions to combat the long hours and low wages while employers have sought and largely succeeded to keep it union free. The government has largely failed to ensure the reinstatement of those illegally fired, even though it had additional tools at its disposal by which it could have suspended generous tax and other benefits to exporters for violations of labour rights. These concerns have not escaped the attention of the ILO. In 2015, the Committee of Experts explained,

The Committee recalls that for some years it has been noting the comments from trade unions concerning serious problems of application of the Convention in relation to trade union rights in the *maquila* (export processing) sector. The Committee notes the Government's indication that there are three active enterprise unions in this sector. *In view of the above, the Committee requests the Government to intensify its efforts to ensure full respect for trade union rights in the maquila sector. The Committee invites the Government, in the context of the awareness-raising campaign which it undertook to implement in 2013, to give special attention to the maquila sector and to continue providing information on the exercise in practice of trade union rights in this sector.*<sup>15</sup>

vi. Anti-Union Violence

Though the United States did not raise the issue of anti-union violence, the ILO has repeatedly condemned the assassination of trade unionists as serious violation of the right to freedom of association. In its 2015 report, the Committee of Experts noted "with *regret*" that "it has been dealing with allegations of serious acts of violence against trade union officials and members, and the related situation of impunity." The Committee of Experts, referring to cases before the Committee on Freedom of Association, notes that the CFA has expressed "deep concern" with regard to the numerous murders. To date, 58 murders have been examined by the CFA since 2004. The Committee also noted that acts of violence against trade union leaders and members continue in a climate of persistent impunity."<sup>16</sup>

vii Tripartite Roadmap

In October 2013, the Government of Guatemala agreed to a tripartite Roadmap to address some of the issues raised by the supervisory mechanisms of the ILO, including the follow-up of the investigation into the 58 murders of trade union members reported to the CFA; Strengthen the prevention, protection and response mechanisms in respect of threats and attempts against trade union leaders; and propose amendments to the Labour Code to bring the national legislation in line with ILO Convention No. 87.

At the end of February 2015, after more than fifteen months into the implementation of the Roadmap, and almost a year of expiration of the agreed deadline for compliance, plus a high-level mission in 2013 and several Technical Missions of the Standards Department of

<sup>15</sup> CEACR Convention 87, *supra* fn. 9.

<sup>16</sup> *Id.*



the ILO, the assessment made by the ILO Governing Body was that there had been no progress on substantive issues.

The actions undertaken by the Government have not involved substantive changes to provide the country with an adequate legal and institutional framework for the protection of individual and collective labour rights. They have not clarified the murders of more than 58 trade unionists, and didn't contribute to secure freedom of association and labour rights and strengthening the relevant institutions.

## II. New Violations Occurring Since the Commencement of Arbitration

### 1. Derogation from Minimum Wage In Order to Attract Investment

Article 16.2.2 of DR-CAFTA provides,

The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 16.8 as an encouragement for trade with another Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

Article 16.8 defines labor laws to include "acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."

On 23 December 2014, the Government of Guatemala approved a substantial reduction to the minimum wage for workers in light industry in four municipalities - San Agustín Acasaguastlán and Guastatoya in El Progreso, Estanzuela in Zacapa and Masagua in Escuintla. This was done through four governmental accords: Nos. 471, 472, 473 and 474 of 2014. This sub-minimum wage was set at 1,500 *quetzales* (appx \$196) per month; the wage that would otherwise apply in light manufacturing in 2015 is Q2200 (\$287) per month.<sup>17</sup> The new wage rate was scheduled to enter into force on 1 January 2015 but the *Procurador de los Derechos Humanos (PDH) (Human Rights Ombudsman)* filed an objection to the Constitutional Court on 29 December 2014 arguing that the measure violated rights of workers in those areas protected in the constitution. The Constitutional Court granted a temporary injunction on 29 January and suspended the effect of the Governmental Accords.<sup>18</sup>

<sup>17</sup> Of note, according to the government, the amount needed to cover basic food needs 3,200 quetzales.

<sup>18</sup> The UN Special Rapporteur on Extreme Poverty, Philip Alston, and on the Right to Food, Hilal Elver, also denounced the government's decision. See UN Press Release, *Guatemala new low minimum wage "setback on sustainable development"*, 17 February 2015 available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15575&LangID=E#sthash.EuHWOCdW.dpuf> ("Having an exploited labour force is not a viable way to foster economic and social development," Mr. Alston said, reacting to the introduction of a differentiated minimum monthly wage 44 percent lower than the national one, for workers employed in light manufacturing in the municipalities of Estanzuela, Masagua, San Agustín and Guastatoya in Guatemala. The new local minimum wage of 1500 quetzals, the equivalent of US \$195, stands in sharp contrast with the national minimum wage of some 2650 quetzals (US\$350) that applies to agricultural and non-agricultural sectors. There are concerns that this decision may be extended to other sectors and regions, thereby triggering a "race to the bottom". "This

The government was open as to its reasons for the controversial decision; the wages were reduced in those municipalities with the expectation to attract investment of light manufacturing factories ("maquilas") to produce goods destined for export to the United States. Minister of the Economy, Sergio de la Torre, explained to *Elperiodico* that "... In order that companies invest in Guatemala we must offer a series of benefits, among them, the ability to pay less than the minimum wage set for the rest of the country, and tax benefits, by means of the Law for Investment and Employment..."<sup>19</sup> Mr Torre subsequently warned, though without any evidence to support his statement, "at least a hundred companies interested in investing in the four municipalities classified by the government as economic areas, will leave the country if the Constitutional Court (CC) suspends in final the differential salary of Q1, 500."<sup>20</sup> Vice President Baldetti defended the differential wage on the basis that low wages were better than nothing, stating, "what do you prefer, Q1200 or nothing in your pocket."<sup>21</sup>

The fact that the subminimum wage rate has been temporarily enjoined does not obscure the fact that the government of Guatemala did in fact derogate from the generally applicable minimum wage for light manufacturing in order to attract investment (and to then export the good produced from that investment to the United States). This issue goes to the heart as to why there are labour chapters in trade agreements. The initial rationale of such chapters was to ensure that no government would attempt to obtain a competitive advantage over US workers on the basis of the repression of fundamental labour rights (which leads to artificially low wages). It is unclear whether the measure will be permanently enjoined and, if so, whether the government will attempt some other means to drive down wages in order to fulfil its objective of attracting investment. In any case, the actions of the government display a gross disregard for its obligations under Chapter 16 of DR-CAFTA.

## 2. Government Announces Refusal to Bargain Collectively with Unions

In February 2015, the government announced unilaterally that it would no longer negotiate collective bargaining agreements in the public sector - contrary to its own laws. The executive branch institutions currently maintain 15 collective agreements. The government argues that a budget shortfall requires this extreme measure; however, while public sector collective bargaining must of course consider budget limitations, the government may not

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minimum wage only covers a quarter of the basic costs of living for an average Guatemalan family. Paid so little, already vulnerable households are left in a precarious situation, unable to ensure a decent standard of living for themselves and their families, with food security and access to an adequate and nutritional diet seriously undermined," Ms. Elver noted. Guatemala is facing international scrutiny over complaints of labour rights violations, including the inadequate amount of minimum wage, the widespread violations of the minimum wage guarantee, the practice of linking wages to unrealistically high production targets, and violations of the freedom of association and protection of the right to form unions.)

<sup>19</sup> *El Periodico*, Guatemala: Se necesitan salarios mínimos diferenciados, 13 March 2015, available at

[http://www.centralamericadata.com/es/article/home/Guatemala\\_Se\\_necesitan\\_salarios\\_mnimos\\_diferenciados](http://www.centralamericadata.com/es/article/home/Guatemala_Se_necesitan_salarios_mnimos_diferenciados)

<sup>20</sup> *El Periodico*, Empresas amenazan con abandonar el país, 13 March 2015, available at <http://www.elperiodico.com.gt/es/20150313/pais/9858/Empresas-amenazan-con-abandonar-el-pa%C3%ADs.htm>

<sup>21</sup> [http://www.7dias.com.do/economia/2015/02/19/i182717\\_vicepresidenta-defiende-salario-diferenciado-cuatro-municipios-guatemala.html#.VS5fc5PD-DA](http://www.7dias.com.do/economia/2015/02/19/i182717_vicepresidenta-defiende-salario-diferenciado-cuatro-municipios-guatemala.html#.VS5fc5PD-DA)

simply refuse to bargain.<sup>22</sup> There appears to be no limitation to the period of time for which bargaining is to be suspended. While the freeze applies to the public sector, it is possible that such a freeze could affect trade in that some sectors, such as transport and port operations, are covered by public sector collective agreements.

### III. Conclusion

There can be no doubt that the Government of Guatemala has engaged in a “sustained and recurring course of inaction” with regard to the enforcement of its labour laws. As the ILO supervisory system demonstrates, Guatemala has a documented track record of failure to respect the right to freedom of association and collective bargaining. As a result, it has been called before the Conference Committee on the Applications of Standards to account for its non-compliance more than any other country in the last 25 years. Its promises to enforce its laws, made pursuant to the ILO MOU of 2013 and the Enforcement Action Plan of 2013, have led to inconsequential reforms and no meaningful follow through. Workers are no better off today than when the AFL-CIO and six Guatemalan unions filed the submission to the OTLA in 2008 which gave rise to this arbitration. And, the backwards steps taken by the government, including during the arbitration process, are testament to a complete lack of political will to take the reforms necessary to make the labour laws of Guatemala more than dead letters on the page.

We therefore urge the panel to find that the Government of Guatemala has violated Article 16.2.1(a) of DR-CAFTA and order the Government of Guatemala to comply with a time-bound series of measures (an action plan) necessary to ensure that the labour laws are enforced. Guatemalan unions have previously drawn up recommendations as to what should be included in such a plan.<sup>23</sup> Given the Government’s refusal to follow through on its commitments, we would strongly urge the panel not to take a checklist approach but to insist on both reforms in law, regulation and practice, so that there is an established record of effective enforcement which the panel can review. Only after a record of effective enforcement has been demonstrated should the panel close this case. If the Government of Guatemala fails to respect such a plan, the panel should recommend that maximum fines be issued in order to attempt to compel compliance.

These written views are submitted on 27 April 2015 by the ITUC.



General Secretary

<sup>22</sup> The ILO has explained that where a financial crisis exists, temporary restraints on wage rises may be imposed; however, the government must continue to bargain collectively with the union on other matters. See, CFA Digest ¶ 1027, “Where wage restraint measures are taken by a government to impose financial controls, care should be taken to ensure that collective bargaining on non-monetary matters can be pursued and that unions and their members can fully exercise their normal trade union activity.”

<sup>23</sup> [http://www.aflcio.org/content/download/153691/3855131/DR-CAFTA\\_Plan\\_de\\_Accion\\_recomendaciones\\_Guatemala\\_21\\_enero\\_2013.pdf](http://www.aflcio.org/content/download/153691/3855131/DR-CAFTA_Plan_de_Accion_recomendaciones_Guatemala_21_enero_2013.pdf)



**Arbitration Panel**

**Dominican Republic, Central America and United States Free Trade Agreement**

**CAFTA-DR**

**Subject matter: Guatemala – Issues related to obligations under Article 16.2.1 (a) of  
CAFTA – DR**

**Document submitted by:**

**Asociación de la Industria del Vestuario y Textiles**

*(Association of the Apparel and Textile Industry)*

**VESTEX**

**Non-governmental association**

**Guatemala, April 27, 2015**


Document submitted by Asociación de la Industria del Vestuario y Textiles (*Association of the Apparel and Textile Industry*) – VESTEX - a non-governmental association

**Chapter 20 Conflict Resolution**  
**Issues relating to Article 16.2.1(a) of DR CAFTA**

**MRS. CLARA LUZ DE LUCERO**  
**RESPONSIBLE OFFICE FOR GUATEMALA**  
**MINISTRY OF ECONOMY OF GUATEMALA**

**LUIS OSCAR ESTRADA BURGOS**, whose general identification information is known in the dispute between the Government of the United States of America and of Guatemala within the framework of Chapters 16 and 20 of DR CAFTA respectfully appear before the ARBITRATION PANEL and in my capacity as the Legal Representative of **ASOCIACIÓN DE LA INDUSTRIA DEL VESTUARIO Y TEXTILES –VESTEX- STATE** our appreciation to the ARBITRATION PANEL for giving us the opportunity to present points of view and opinions as a non-governmental association, pursuant to the resolution issued by said arbitration panel on February 20 of this year, which authorizes the participation of non-governmental entities in the labor dispute, all in accordance with the provisions of Article 20.10.1 (d) Rule 54 of the Rules of Procedure for Chapter 20 of the Free Trade Agreement among the Dominican Republic, Central America and the U.S. Therefore, on behalf of Industry Apparel and Textile Industry Association I hereby submit written opinions regarding the dispute in question.

**INTRODUCTION:**

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- a) As the Arbitration Panel knows, the Apparel and Textile Industry Association –VESTEX- is an apolitical and non-profit organization that was created as a civilian organization to contribute to the productivity of the apparel and textile sector companies operating in Guatemala, to create employment and to promote an enhanced competitiveness in Guatemala in this important sector of the economy;
  - b) We reiterate that the guiding principles for the Apparel and Textile Industry Association are to defend the right to the freedom of industry, labor, private property and the respect for the liberty and rights of mankind, to make a contribution to the economic and social progress of the country through the exports of apparel and textiles, to make a contribution in the training and technical enhancement of the textile and apparel industry, to defend the interests of this sector while seeking common good to prevail over individual interests and meeting the Constitution of the Republic of Guatemala and other internal laws;
  - c) The main functions of the Association are to promote Guatemalan apparel and textile exports, to seek the elimination of barriers to exports, to promote and implement development projects, to provide advice and guidance to members on the demands of foreign markets in order to make them competitive, to provide information, advice and alternative



solutions to members in problems related to apparel and textile exports, to coordinate and implement training programs, trade promotion and all kinds of programs aimed at building apparel and textile exports, to support bilateral or multilateral negotiations to promote exports and to carry out activities that help meet the legal and social obligations of the Association;


- d) The Apparel and Textile Industry of Guatemala is a very productive sector made up of 152 apparel companies, 39 textile companies and 260 companies that offer related products and services operating from Guatemala and that sell mainly abroad, to their largest trade partner, the United States of America. The Apparel industry provides formal and direct employment currently to over 60,000 workers in different geographic areas of the country and therefore generates 300,000 indirect jobs. Of this number of jobs, over 50% are held by women. Over time, the industry has generated over 100,000 jobs.
- e) Apparel and textile factories employ thousands of workers, thus making a highly significant contribution to the economy of exports and therefore to the economy of Guatemala. 97% of these exports go to the CAFTA DR region. Currently, close to 566 shippers from the United States of America place contracts with companies that are previously evaluated on labor and environmental compliance. As a result of this, each company is evaluated an average of 5 times per year, particularly in the area of labor. In 2014 alone, the FOB value of exports to the United States was \$1,171,354,775.34.
- f) Regarding the labor programs managed by VESTEX, the Apparel and Textile Industry Association of Guatemala develops and implements labor programs that have been and are a tool to build a culture of labor legality for the sector. These programs have brought knowledge to the industry and have enhanced compliance of labor laws. The more important of these programs are:
- VESTEX Code of Conduct: This is a voluntary program implemented in 1996 based on the Fundamental Principles of the ILO and the Guatemalan Labor Law. Its purpose is to promote adherence to and compliance with labor laws in force in Guatemala as well as ILO Conventions. Another one of its objectives is to prepare companies to properly address labor audit reviews by customers, by the General Labor Inspectorate and the Guatemalan Social Security Institute.
  - Occupational Health and Safety Program: This program was implemented in 2002 with the objective of promoting and implementing safe practices in the area of occupational health and safety in the workplace. It involves identifying sources of risk, and thus preventing work-related accidents and illness. Labor risk analyses and risk mapping are done with the aim of creating a prevention and safety culture. Presently we continue with the program with the support of the International Labor Organization (ILO).
  - Labor-related Training Program: it involves monthly training for Human Resource managers on the proper enforcement of labor legislation related to Labor Rights and Obligations, Minimum Wage, Alternate Conflict Resolution, Social Security, Bonuses, Monitoring System, the Payment of Labor Benefits and Respect for the Physical Safety of



Persons. It also promotes the dissemination and promotion of International Labor Organization conventions that have been ratified by Guatemala.

- Labor Conflict Prevention: This is an alternative Labor Conflict Resolution system that involves a neutral, impartial third party engaging in efforts for the parties to the conflict to restore communications between them to reach an agreement that meets the interests of both to the degree possible. Its main purpose is to restore the violated right of the stakeholders. Cases have been heard which have favored over 10,000 workers individually and collectively on issues of labor benefits, changes of employers, the payment of social security fees, work-related accidents, collective bargaining agreements and other.
- g) The Apparel and Textile Industry Association participates as an organization belonging to the Organized Private Sector of Guatemala in working groups, fora and social dialogue to discuss labor issues in Guatemala, including trade agreements and free trade agreements in their different phases. VESTEX currently participates in: the Tripartite Commission on International Labor Issues, the National Occupational Health and Safety Council, the Tripartite Commission on Minimum Wages for Export and Outsourcing activities, the Advisory Council to the General Labor Inspectorate (tripartite), the National Committee for the Eradication of Child Labor, the National Committee for Employment Generation, the Council of Ministerial Advisors, the National Committee to Build Labor Justice, participation in the International Labor Conference since 2003, and the National Occupational Health and Safety Council.
- h) The Apparel and Textile Industry Association makes a contribution to help build labor justice in Guatemala through the implementation of its labor programs and inputs by means of its institutional participation. Its main purpose is to guide companies towards compliance with labor legislation and to demand adequate, swift and effective justice from the relevant authorities.

#### **ABOUT THE DISPUTE:**

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1. The arguments made by the United States to the Arbitration Panel against Guatemala are, in summary, the following: (a) Guatemala has Failed to Effectively Enforce its Labor Laws Directly Related to the Right of Association and the Right to Organize and Bargain Collectively by not Securing Compliance with Court Orders; (b) Guatemala has Failed to Effectively Enforce its Labor Laws Directly Related to Acceptable Conditions of Work by not Conducting Inspections as Required and by not Imposing Obligatory Penalties; (c) Guatemala has Failed to Effectively Enforce its Labor Laws Directly Related to the Right of Association, to the Right to Organize and Bargain Collectively, and to Acceptable Conditions of Work by Not Registering Unions in a Timely Fashion or Instituting Conciliation Processes.
  2. In addition, the United States argues that trade has been affected by the assumed failure to enforce labor laws, and argues that Guatemalan companies have been allowed to *evade the costs associated to effective conciliation processes, particularly where participating workers were prevented from obtaining the support of unions through delays in the*



registration process. Consequently, by not enforcing labor laws effectively, Guatemala has altered the conditions of competition for those companies, which has affected trade. We believe this has been substantiated.

3. *Additionally, in its initial submission, the United States presents and mentions several individual cases of companies from different productive sectors of the country whereby it tries or attempts to show that resulting from the presumed unlawful conduct of these work centers and of knowledge by the administrative and judicial bodies in charge of hearing these cases, it is possible to demonstrate or show inadequate enforcement of labor justice.*
4. The Apparel and Textile Industry Association is respectful of the legal framework of the country and in the same manner, we respect the good faith, common sense and above all the judgment of judges when they enforce labor justice. Particularly, we defend the principle of due process and judicial independence. In this context also, we respect and trust the good judgement of the ARBITRATION PANEL for which reason we will not provide an opinion directly on the substance of this process; we will limit ourselves, as indicated above, to present contextual and factual opinions that may help to make a decision that will not hinder the building of labor justice administration, employment and investment. In this regard, it is absolutely valid and healthy to state that we are familiar with the current process to make the General Labor Inspectorate more professional and with the process to build justice administration at the Judiciary through many nation-wide efforts.
5. All the exporters from this industry are users of the CAFTA-DR Trade Agreement and therefore must abide by its rules. For that reason, the image of these companies is seriously tarnished as a result of the filing of an arbitration process against the Government of Guatemala due to possible inconsistencies related to Chapter 16 (the Labor Chapter) of the Agreement. This results in a serious decline in the number of their contracts from foreign customers, which harms employment and the economy of the country. For that reason, we repeat that we trust the timely and discretionary judgment of the ARBITRATION PANEL.
6. The Apparel and Textile Industry Association believes that Guatemala has acted in accordance with the obligations of Chapter 16 of CAFTA-DR, whose implementation has had a positive influence in improving the enforcement of Guatemala's labor legislation. Since U.S. and Guatemalan Trade Union organizations filed complaints for labor law violations by national companies with the Labor Department of the United States in June 2008, Guatemala has been the object of several reviews on these presumed violations. Thus, from that moment to the beginning of cooperative labor consultations in 2010, Guatemala sought to improve its justice system and has shown significant progress. Later, in 2011, the United States Government requested the establishment of an ARBITRATION PANEL which was suspended several times at the request of both parties. This led to the signature of a labor implementation plan that Guatemala has been complying with by carrying actions such as hiring more labor inspectors, strengthening and training the members of the General Labor Inspectorate, streamlining labor-related proceedings in labor courts, streamlining labor infraction hearing procedures, creating

new specialized labor courts, etc. However, despite all these efforts, in the Arbitration Panel was reactivated in August 2014 and we entered a phase where we believe that it is necessary to show the good direction the country has taken in the labor context, so as not to harm employment or investment.

7. VESTEX contribution. Based on the comments above, and as users of CAFTA-DR, our opinions aim to provide guidance for the better development of the arbitration process. We are a perception-dependent industry and rely on the sales of our products abroad, particularly in the United States of America. Any reduction in sales harms local companies and therefore the level of employment. We should reiterate that American customers constantly review and audit Guatemalan companies they place contracts with in order to protect the good name of their brands. Guatemala has made significant progress in the area of labor compliance as a result of this.
8. The Apparel and Textile Industry Association has promoted labor programs for the companies of the sector and this has resulted in the creation of a culture of legality. VESTEX expects to make contributions to the Arbitration Panel for it to have more accurate views of the social and economic reality of the country, about justice sector agencies that are in charge of labor matters and about the evolution of labor affairs in the Apparel and Textile Industry.

For the reasons listed above and under CAFTA-DR rules, I respectfully request:


**TO THE RESPONSIBLE OFFICE FOR GUATEMALA AT THE MINISTRY OF ECONOMY OF GUATEMALA:**

- That it submit this document that contains opinions by the Apparel and Textile Industry Association on the labor dispute between the Government of the United States of America and the Government of Guatemala, to the Arbitration Panel and to each participant.

**TO THE ARBITRATION PANEL:**

- That it acknowledge receipt of this document from the APPAREL AND TEXTILE INDUSTRY ASSOCIATION (VESTEX) which contains opinions related to the dispute brought by the United States against Guatemala.
- That these opinions be considered and assessed in the right perspective in order that the panel of arbitrators can make a decision under the Law within the context of Chapter 16 of CAFTA-DR, International Standards of Law, as well as international and local Guatemalan labor standards.

Guatemala, April twenty-seven, two thousand fifteen

  
**LUIS OSCAR ESTRADA BURGOS**  
Executive Director  
Apparel and Textile Industry Association  
VESTEX



Asociación de la Industria  
del Vestuario y Textiles  
VESTEX