

Requests Received

- Institute of Labor Studies, Indigenous and Peasant Guatemala
- American Federation of Labor & Congress of Industrial Organizations
- Guatemalan Exporters' Association
- International Trade Union Confederation
- Guatemalan Labor Law Association
- Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations
- Chamber of Agriculture of Guatemala
- Trade Union Confederation of the Americas
- Apparel and Textile Industry Association
- Global Labor Unions of Guatemala, Autonomous and Popular Labor Union Movement of Guatemala, Labor Federation of Banking Employees and State Services of Guatemala, and the Confederation of Labor Unity of Guatemala

Guatemala, February 9, 2015

Messrs

In the Dispute Arbitration Panel

Between the State of Guatemala and the United States of America

Urged within the Free Trade Agreement between Dominican Republic

Central America and the United States of America DR-CAFTA

Respectable gentlemen

Yours sincerely Institute of Labor Studies, Indigenous and Peasant Guatemala -INESICG- technical body of the Central Association, Guatemalan labor, indigenous and campesino movement -MSICG-, Central Union more representative of Guatemala with membership of workers in all sectors productive country and client status recognized by the international Labour Organization and is at present the main complainant against the State of Guatemala for violations of human rights and workers among others to:

- a) The CFA -CLS- ILO.
- b) The Committee of Experts on the Application of Conventions and Recommendations - CEACR- ILO.
- c) The Committee on the Application of Standards of the International Labour Conference (all supervisory bodies of the ILO).
- d) In court the exclusive jurisdiction of Guatemala work.e) Before the Constitutional Court.
- f) Before the courts of criminal bouquet of Guatemala.
- g) Before the Public Ministry and Ministry of Labour of the Republic of Guatemala.

Apart from being the Trade Union Confederation that more litigation engages in the courts of the country to defend the rights and working through INESICG the INESICG as a technical body of MSICG is the entity with greater expertise on issues related to human rights of Guatemalan workers and free trade agreements having been insistently driving under the DR-CAFTA and counting in their publications, among others, the following research reports:

- 1. Herod to Pilate, the Guatemalan labor justice system.
- 2. The textile and clothing in Guatemala: Opportunity and development?
- 3. Status of Freedom of Association in Guatemala.
- 4. Guatemala: The paradigm of the absence of freedom of association, the systematic failure and lack of political will.
- 5. Guatemala: The Paradigm of the Lack of Trade Union Freedom, and the Systemic Failure Lack of Political Will.
- 6. Second Report: Guatemala, the cost of freedom.
- 7. DR-CAFTA, proposal in the consultation process.
- 8. Freedom of Association and Protection of the Right to Organize.
- 9. Guatemala: The Cost of Freedom of Association.
- 10. Proposal of MSICG to provide power to sanction the Labour Inspectorate.
- 11. Analysis MSICG Initiative Act 4703 by the legislature to Congress.

They all like documentaries and various analyzes and proposals can be downloaded from the website of Association Central www.movimientosicg.org

The INESICG as a technical body of MSICG have a union nature and is headquartered in the State of Guatemala and may be notified at the 5th Avenue 10-68 zone 1, the municipality of Guatemala, Guatemala department, office 511, Fifth Level , Building Helvetia, telephone 502 22305282 and email movimientosicg@gmail.com

In its submission, the INESICG submitted to the Arbitration Panel related information:

1. Both judicial and administrative resolutions that prove that the State of Guatemala has maintained since the adoption of DR-CAFTA a course of action sustained and recurrent violation of labor laws and international conventions the International Labour Organisation covered in the DR CAFTA and how this course of action has affected and affects trade.
2. Statements of victims affected by these violations belonging to exporting sectors.
3. Courses sustained and recurring to obstruct the formation of unions in export sectors of the country action.

The information and opinions of INESICG are different from those that may present either Party because they are presented as direct victims of these violations and the expertise that gives him the technical body in charge of all domestic dispute defense of workers in the Guatemalan courts and other departments of the State of Guatemala responsible for the implementation of labor laws. Also the INESICG present new allegations relating to the matters to be put into the case who knows the Arbitration Panel and have subsequently emerged at the presentation of the case by the United States against the State of Guatemala.

The INESICG states that have no direct relationship with any party and that for this case does not receive financial assistance to any State Party or any other person or entity or government members and their advisors in preparing the request to submit or its written opinions.

No more for now and waiting for the presentation of opinions and information of INESICG is accepted to resolve the dispute better we subscribe you;

Yours Truly



Efren Emigdio Sandoval Sanabria
Legal Representative INESICG

Request to Submit Written Views Pursuant to Article 20.10.1(d)
of the Dominican Republic – Central America – United States Free Trade Agreement
& Rule 54 of Model Rules of Procedure

Description of the AFL-CIO

1. The American Federation of Labor & Congress of Industrial Organizations (AFL-CIO) is the umbrella federation for United States (U.S.) labor unions, with 56 member unions representing 12.5 million working men and women. The AFL-CIO works to ensure that all people who work can exercise their rights under national and international law and receive the rewards of their labor—decent paychecks and benefits, safe jobs, respect and fair treatment. We are located in Washington, District of Columbia, in the U.S.

The AFL-CIO Will Present Issues of Fact and Law Relevant to Issues Under Consideration by the Panel

2. Along with five Guatemalan labor unions and one Guatemalan labor union federation, the AFL-CIO filed a submission with the Office of Trade and Labor Affairs, housed in the U.S. Department of Labor, on April 23, 2008. Since that time, along with partners and allies in Guatemala, we have been monitoring the labor rights situation for Guatemalan workers, both in the cases presented in the original filing and a large number of subsequent cases.
3. The AFL-CIO requests the opportunity to submit written views to the panel that will address Guatemala's failure to effectively enforce its labor laws pursuant to Article 16.2.1(a) of the Dominican Republic – Central America – United States Free Trade Agreement (CAFTA-DR), particularly with respect to:
 - a. The Right of Association;
 - b. The Right to Organize and Bargain Collectively; and
 - c. The Right to Acceptable Conditions of Work
4. If the AFL-CIO receives permission to submit written views, we intend to raise issues of law and fact that will demonstrate features of Guatemalan labor law that impede, rather than assist, effective enforcement of labor law pursuant to the obligation of Article 16.2.1(a) of CAFTA-DR, and provide additional evidence of Guatemala's failure to effectively enforce its labor laws.
5. Each of these issues is relevant to the question of whether or not Guatemala is in breach of its obligation in Article 16.2.1(a) of CAFTA-DR and support but do not duplicate the arguments made by the United States in Section III of its brief, submitted on November 3, 2014.

The AFL-CIO's Views Will Contribute to Resolving the Dispute and Do Not Merely Repeat Legal and Factual Arguments Made by the Parties

6. The views of the AFL-CIO will contribute to resolving the dispute by providing additional context to the case from the perspective of the victims of labor rights violations. In this case,

the United States argues that its rights under CAFTA-DR have been breached because Guatemala has failed to effectively enforce its labor laws through a sustained and recurring course of inaction, in a manner affecting trade and investment between the Parties. Our views will be valuable as they reflect the impact of Guatemala's breach of CAFTA-DR on workers who are supposed to be protected by the agreement.

7. The labor laws in question are intended to protect the workers of Guatemala, but workers have no formal role or voice in this case. To obtain a more complete picture of the ways in which Guatemala has failed to comply with Article 16.2.1(a) of CAFTA-DR, and the ways in which such failure harms the United States, the panel should consider the views of organizations, including the AFL-CIO, that represent workers and defend worker rights.
8. The AFL-CIO and its partner and allied organizations have been collecting data on violations of worker rights in Guatemala in relation to this dispute since 2006. As such, we have not only a unique perspective on Guatemala's sustained and recurring failures to enforce its own labor laws, but also unique knowledge of the obstacles that Guatemalan workers face when they seek enforcement of those very laws.
9. Therefore, our submission will provide the panel with facts and legal arguments that will shed additional light on the arguments made by the Parties.
10. Moreover, the issues of fact and law that we intend to present will enhance, rather than duplicate, the legal and factual arguments made by the Parties. We do not intend to merely restate arguments made by the complaining Party, but to make complementary arguments and augment the factual record. As such, we intend to provide the panel with useful issues of fact and law that will further develop the issues of fact and law presented in the brief of the United States. We believe that our submission will assist the panel in its work.

Disclosure Statement

11. The AFL-CIO has no direct or indirect relationship with either Party and has not received and will not receive any assistance, financial or otherwise, from any Party or other government in the preparation of this request for leave to present written views. Nor do we intend to receive any such assistance, financial or otherwise, in the preparation of our written views. We have received assistance in the form of information from the Coalition of Avandia Workers, the Federation of Food and Similar Industries Workers of Guatemala (FESTRAS), the International Trade Union Confederation, the Union of Fribo Company Workers (SITRAFRIBO), the Union of Port Quetzal Company Workers (STEPQ); the Union of Izabal Banana Workers (SITRABI); the Union of Int'l Frozen Products, Inc. Workers (SITRAINPROCSA), and the Solidarity Center.

Respectfully submitted,



Cathy Feingold
Director, International Department
AFL-CIO
815 16th Street NW
Washington, DC 20006
202-637-5244
cfeingold@aflcio.org

February 6, 2014

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

In reference to: Guatemala – issues relating with obligations under
CAFTA-DR Article 16.2.1(a)

LUIS FERNANDO GODOY LEHNHOFF, sixty-seven years of age, Industrial Engineer, Guatemala, a resident of Guatemala City, Department of Guatemala, with Personal Identification Document DPI 2565331480101, appear before you and respectfully **STATE**:

That I act as the Legal Representative of **ASOCIACIÓN GUATEMALTECA DE EXPORTADORES** (*Guatemalan Exporters' Association*), hereinafter “AGEXPORT”, that is registered under item 14, page 310 of Book 42 of Legal Persons of the Civil Register of the Municipality of Guatemala, Department of Guatemala. Its by-laws were approved through Government Resolution number 1245-88 and published in the Official Gazette, the *Diario de Centroamérica*, on February fifteen nineteen eighty-nine. I attach simple authenticated photocopies of the record of registration as well as of my appointment as the legal representative of the organization.

That I appear before you in compliance with Rules of Procedure 53 to 64 for Chapter 20 of the Dominican Republic, Central America and United States Free Trade Agreement, specifically Article 20.10.1 (d) Rule 54(a) to request authorization from the Arbitration Panel that hears the complaint promoted by the Government of the United States of America against the Government of Guatemala, for the **GUATEMALAN EXPORTERS' ASSOCIATION** to submit its written views within the aforementioned arbitration procedure, in accordance with the following considerations:

I. THE GUATEMALAN EXPORTERS' ASSOCIATION (AGEXPORT)

DESCRIPTION OF THE ENTITY, NATURE OF ITS ACTIVITIES, MEMBERSHIP, LEGAL STATUS AND LOCATION:

- a) The Guatemalan Exporters' Association –AGEXPORT–, is a private, apolitical, non-profit organization that engages in the promotion of Guatemalan products and services abroad, to develop the exportable supply of the country and to provide technical and institutional support for companies and businesspersons to consolidate and import said products and services.
- b) AGEXPORT has assumed a nation-wide role with its vision to “make of Guatemala an exporter country” through the promotion of exports growth based on competitiveness, to thus contribute to the sustainable economic and social development of Guatemala.
- c) The main functions of the Association are to promote and foster Guatemalan exports, seek to eliminate barriers to exports, promote sector-wide development projects, take advantage of international market opportunities, advise and guide members on foreign market requirements in order to make them competitive, coordinate and implement training and technical assistance programs, engage in commercial promotion and market intelligence and create awareness on the benefits that exports account for in the economic and social development of Guatemala.

- d) Members: AGEXPORT gathers together around one thousand small, medium-size and large companies and exporters.
- e) AGEXPORT facilities are located at fifteenth Avenue fourteen dash seventy-two zone thirteen in the Municipality of Guatemala, Department of Guatemala, Republic of Guatemala.

II. IDENTIFICATION OF SPECIFIC FACTUAL AND LEGAL ARGUMENTS UNDER CONSIDERATION BY THE ARBITRATION PANEL AND THAT AGEXPORT COULD MAKE REFERENCE TO IN ITS WRITTEN VIEWS.

Factual arguments:

- a) The United States filed an action with the Arbitration Panel against Guatemala for failure to effectively enforce its labor laws in the following sense: (1) for not ensuring compliance with Court orders; (2) for not having acceptable work conditions in place, not conducting required inspections and lack of enforcement of mandatory sanctions; and (3) for issues related to the Right of Association, to the Right to Organize and Bargain Collectively by not registering unions in a timely fashion. These are the three main arguments contained in the complaint relating to the violation of Article 16.2.1(a) of the Dominican Republic, Central America and United States Free Trade Agreement.
- b) It is extremely important for the Arbitration Panel to be able to fairly analyze the evolution of the trade relationship between Guatemala and the United States in the context of this complaint, particularly how exports are diversifying and how each year more small and medium-size companies send their products and services to that market while fully complying with legislation in place and the demands of international customers, particularly as concerns labor considerations.
- c) From the perspective of AGEXPORT, it is important for the Arbitration Panel to be aware that exporter companies are formally established and that they meet labor regulations and are subject to frequent labor inspections by the General Labor Inspectorate, they have private labor certifications, and they abide by customers' Codes of Conduct which, in addition to labor matters, address considerations relating to property rights, environmental protection, animal and plant health and others.

Legal arguments:

- a) Inputs from AGEXPORT in this dispute as a non-governmental entity will allow the Arbitration Panel to learn of the reality experienced by workers and companies of the exporter sector and of the fact that labor relations have accomplished ongoing progress resulting both from actions undertaken by State agencies (the Judiciary, the Ministry of Labor, the Social Security Institute) as well as the commitment and actions by exporters to the United States.
- b) We believe that AGEXPORT's experience of over 30 years promoting Guatemalan product and service exports abroad will contribute important and novel inputs that are very closely related to the Arbitration Panel process underway.

III. STATEMENTS ABOUT AGEXPORT RELATIONS:

In the name of and on behalf of the **GUATEMALAN EXPORTERS' ASSOCIATION** (AGEXPORT), I state that for the purpose of this procedure, AGEXPORT has no direct relationship with the Guatemalan State or with the United States of America and that therefore, this request and the views that may be expressed within the framework of this process shall be

drawn and submitted by AGEXPORT without the direct or indirect intervention or assistance from any State, Institution, Organization, Body or natural or legal person.

IV. REQUEST:

For the reasons listed above and under CAFTA-DR Rules, with all due respect I request:

A TO THE RESPONSIBLE OFFICE OF THE MINISTRY OF ECONOMY OF GUATEMALA:

- To promptly submit the request that I put forward to the Arbitration Panel and to each participating Party and that it make it available to the public.

TO THE ARBITRATION PANEL:

- Acknowledgement of receipt of this request for the GUATEMALAN EXPORTERS' ASSOCIATION (AGEXPORT), to submit its written views;
- My address to receive notices is: 15 Avenida 14-72, zona 13, Guatemala City, Department of Guatemala, Republic of Guatemala. E-mail: nevi.lemus@agexport.org.gt and vera.calderon@agexport.org.gt. Telephone number (502) 23621995.
- To consult with the participating Parties about our request.
- Prior to proceeding with the steps of Law and in due time, to authorize the GUATEMALAN EXPORTERS' ASSOCIATION (AGEXPORT) to submit its written views within the deadline established by the Arbitration Panel.

Guatemala, January twenty-ninth two thousand fifteen.


LUIS FERNANDO GODOY LEHNHOFF


AGEXPORT
ASOCIACIÓN GUATEMALTECA DE EXPORTADORES
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JOÃO ANTONIO FELICIO
PRESIDENT
PRÉSIDENT
PRÄSIDENT
PRESIDENTE

SHARAN BURROW
GENERAL SECRETARY
SECRÉTAIRE GÉNÉRALE
GENERALSEKRETÄRIN
SECRETARIA GENERAL

Clara Luz Marroquín de Lucero
Oficina Responsable de Guatemala
Dirección de Administración del Comercio
Exterior –DACE-
Cuarto Nivel
Ministerio de Economía
Gobierno de Guatemala
8 av. 10-43 zona 1, Guatemala C.A.

clucero@mineco.gob.gt

9 February 2015

Request to Submit Written Views

Dear Ms Marroquín:

The International Trade Union Confederation (ITUC) submits this request to submit its written views in the arbitration, *In the Matter of Guatemala—Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR*, pursuant to Article 20.10.1(d) of the Dominican Republic – Central America Free Trade Agreement (DR-CAFTA) & Rule 54 of Model Rules of Procedure. This correspondence provides the information required pursuant to the aforementioned model rules. Should any additional information be required for the panel to make its decision, the ITUC will endeavour to provide that information as quickly as possible.

Rule 54 (a) Description of the International Trade Union Confederation

The ITUC is a global confederation of trade unions representing over 176 million workers in 161 countries and territories and has 328 national affiliates - including national affiliates in both the United States and Guatemala. It is governed by four-yearly world congresses, a General Council and an Executive Bureau and adheres to the principles of trade union democracy and independence. The ITUC's headquarters is located at Blvd du Roi Albert II, #5, Brussels 1210, Belgium. The ITUC also maintains an office at 888 16th Street NW, Washington, DC 20006. The ITUC's primary mission is the promotion and defence of workers' rights and interests, through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. For many years, the ITUC has made the situation of workers in Guatemala a major focus of its advocacy and campaign work in the Americas.

Rule 54(b) The ITUC Will Present Issues of Fact and Law Relevant to Issues Under Consideration by the Panel

The ITUC will provide detailed information concerning the Government of Guatemala's failure to effectively enforce its labour laws through a sustained or recurring course of action or inaction, in violation of Article 16.2.1(a) of the DR-CAFTA. In particular, we will present information (as outlined in the next section) with respect to the government's failure to effectively enforce the following internationally recognized workers' rights: 1) the right to Freedom of Association; 2) the right to Organize and Bargain Collectively; and 3) the right to Acceptable Conditions of Work. We will also provide information that shows that these violations are also sustained and recurring. The information submitted will supplement but will not duplicate the arguments or evidence already made by the government of the United States in its November 3, 2014 brief.

Rule 54(c) The ITUC's Views Will Contribute to Resolving the Dispute and Do Not Merely Repeat Legal and Factual Arguments Made by the Parties

The ITUC's written views will provide substantial additional information that is absent from the briefs of the Parties and thus will not merely restate the arguments of the complaining Party. This information, described below, will assist the panel in its work in determining whether there was in fact a failure by the Government of Guatemala to effectively enforce its labour laws through a sustained or recurring course of action or inaction. Our views should also assist the panel in determining the appropriate remedial measures should it find that the Government of Guatemala did in fact violate Art. 16(2)(a) of DR-CAFTA as alleged by the United States Government. The ITUC brings a unique perspective to this dispute given its lengthy involvement in promoting workers' rights in Guatemala, as well as its global perspective and experience on international labour law matters.

The brief of the USG concerns workers' rights violations in a relatively limited number of workplaces. Though we believe this information is more than sufficient to sustain a claim under Article 16(2)(a), the ITUC's views will place these violations in a broader context. The ITUC's written views will establish that the Government of Guatemala's failure to effectively enforce its labour laws is indeed widespread in Guatemala and affects nearly every workplace in the country today. Further, our written views will establish that this failure is not a recent phenomenon but has been a serious problem for several decades (and which continues today).

Our written views will also survey relevant information regarding Guatemala from the reports of the supervisory mechanism of the International Labour Organization (ILO). This authoritative information is absent in the briefs of the Parties. Here, we intend to provide a summary of the observations and recommendations of the ILO supervisory system most relevant to this case. We will also detail the failure of the Government of Guatemala's to comply with the terms of an ILO-brokered Memorandum of Understanding (MOU) signed by the Government in 2013. The MOU was negotiated following the submission of a complaint to the ILO's International Labour Conference seeking the establishment of a Commission of Inquiry concerning violations of the right to freedom of association protected by ILO Convention 87 in Guatemala. Indeed, the Commission of Inquiry was

sought to address many of the same violations which led to the filing of the submission under Chapter 16 of DR-CAFTA.

If space permits, we will also cite to other recent and credible reports that detail violations of the labour law that the government has not effectively addressed.

Together, this supplemental information should help the panel resolve the dispute by providing further evidence establishing the violation of the labour provisions of DR-CAFTA.

Rule 54(d) Disclosure Statement

The ITUC has no direct or indirect relationship with either Party. It has not received nor intends to receive any assistance, financial or otherwise, from any Party, other government, person or organization in the preparation of this request for leave to present written views other than its members or counsel. This request was prepared in consultation and coordination with ITUC's member unions in the United States and Guatemala.

Sincerely

A handwritten signature in black ink, appearing to be 'A. B.', with a stylized flourish at the end.

General Secretary

RECIBIDO

09 FEB 2015

Hora: _____
DIRECCIÓN DE ADMINISTRACIÓN DEL
COMERCIO EXTERIOR -DACE-

Reference:

Guatemala – *Issues relating to obligations under CAFTA-DR Article 16.2.1 (a)*

MRS. CLARA LUZ DE LUCERO

RESPONSIBLE OFFICE OF GUATEMALA

MINISTRY OF ECONOMY OF GUATEMALA

AUGUSTO VALENZUELA HERRERA, fifty-four years, married, Guatemalan, Attorney-at-Law and Notary Public, resident of the Department of Guatemala, with Personal Identification Document (DPI) bearing Single Identification Code (CUI), number two thousand three hundred forty-seven, thirty thousand two hundred seventy-seven, zero six hundred three (2347 30277 0603) issued by the National Register of Persons –RENAP– of the Republic of Guatemala, RESPECTFULLY appear before you and

STATE:

- I) That I act in my capacity as CHAIRMAN OF THE BOARD OF DIRECTORS AND LEGAL REPRESENTATIVE OF THE GUATEMALAN LABOR LAW ASSOCIATION. I certify this through the Notarial Record of my appointment of January 12, 2015 by Notary Public Pedro Guillermo Monterroso Campollo, which is recorded in the Register of Legal Persons of the Ministry of the Interior under number 27, page 27, of Book 17 of Appointments, of January 14, 2015;
- II) My address to receive notices is Third Avenue, twelve dash seventy-four zone nine, Guatemala City; telephone number +502 2314-4646; e-mail: laborguatemala@gmail.com;
- III) I appear in the capacity that I list above to:



REQUEST AUTHORIZATION from the Arbitration Panel that hears the case initiated by the United States of America against Guatemala for the Guatemalan Labor Law Association, a non-governmental entity, to submit written views within this arbitration procedure, under CAFTA-DR Article 20.10.1(a) and Rules of Procedure 53 to 64 for Chapter Twenty of the Dominican Republic, Central America, United States of America Free Trade Agreement.

I base this request on the following

STATEMENT OF FACTS:

NECESSARY CLARIFICATION: In this request, when I refer to the Guatemalan Labor Law Association I will refer to as ASGUATRA, and when I refer to the United States of America I will use the acronym USA.

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DESCRIPTION OF THE GUATEMALAN LABOR LAW ASSOCIATION

- a) **NATURE OF ITS ACTIVITIES:** ASGUATRA is a civilian, non-governmental, non-profit Association, which was created under the Guatemalan Civil Code and gathers together Lawyers who specialize in Labor Laws and Social Security, and engages in the study, promotion, dissemination and advocacy of Labor Law. It is funded through compulsory member fees, which are decided by them, and no funds are received from any public or private, domestic or international entity.

- b) **MEMBERSHIP:** The members of the Association must be Guatemalan Lawyers who specialize in Labor Law and Social Security, join the Association freely with no entry cost and with the approval of the Board of Directors of ASGUATRA. In the field of academia, ASGUATRA is a member of the Central

America and Caribbean Labor Law and Social Security Association as well as of the Guillermo Cabanellas Ibero-American Labor Law and Social Security Association. It has signed cooperation agreements with Rafael Landívar University to conduct academic activities in the area of Labor, particularly congresses to address labor issues.

c) **LEGAL STATUS:** ASGUATRA was created on January 22, 1999 through Public Record number 20, authorized by Notary Public José Gudiel Toledo Paz and registered on February 19, 1999 in the Civil Register of the Municipality of Guatemala under item 58, page 282 of Book 46 of Legal Persons.

d) **LOCATION:** ASGUATRA is located at Third Avenue, twelve dash seventy-four zone nine, Guatemala City.

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DIRECTLY RELEVANT SPECIFIC POINTS

FACTUAL AND LEGAL ELEMENTS:

USA has requested the establishment of an Arbitration Panel against Guatemala under CAFTA-DR Article 20.6.1 with the argument that Guatemala has violated CAFTA-DR Article 16.2.1(a) in three ways:

1. By failing to guarantee compliance with Court orders that require that employers reinstate and compensate workers following unlawful dismissals of union members, and failing to pay a fine for their action;
2. By failing to conduct investigation under the Labor Code and failing to impose the appropriate sanctions when the MOL has identified employer violations; and
3. By failing to register unions or to establish reconciliation processes within the timeframe required by the Law.

The presumptions for CAFTA-DR Article 16.2.1(a) violations to occur according to the Initial Written Submission by the USA¹, are: a) that the laws in question must be “Labor Legislation” under the meaning in CAFTA-DR; b) if the Defendant has failed to effectively enforce these laws; c) if the omission by the Defendant occurs through a sustained or recurring course of action or inaction; and d) if the omission has occurred in a manner affecting trade among the Parties.

Contribution of legal elements and their application. In view of the above, there is no doubt that the Arbitration Panel must analyze and discuss whether Guatemala has failed to effectively enforce its labor laws in a sustained or recurrent course of action or inaction. ASGUATRA, made up entirely by Guatemalan Labor Lawyers, will make reference in its written views to the labor justice system of Guatemala and to the institutional platform used to substantiate and resolve disputes or conflicts promoted to claim labor rights. Reference will be made also to the disputes, which are heard by the administrative labor authority, the Labor Inspectorate of the Ministry of Labor and Social Welfare, and its role in labor law compliance.

Contribution of factual elements of this dispute: The reference and views that ASGUATRA can contribute is based on real cases and claims where its members participate actively and permanently in the entire country. With that we would seek to provide a broad doctrinal and legal picture to the Arbitration Panel to resolve this dispute on the basis of outcomes, experiences, events and ups and downs that give labor lawyers objective information to obtain evidence of the enforcement of labor

¹ Paragraph 20, Initial Written Submission of November 3, 2014 by the Arbitration Panel.
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rights and of the effectiveness of the justice system and, above all, about the justification or not of the dispute which is the object of this Arbitration Panel.

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CONTRIBUTION TO THE ARBITRATION PANEL

ASGUATRA is formed by lawyers that engage in Labor Law and Social Security-related business prevention and corrective practice advice in the private and public sectors. Its members are professors of various Labor Law and Social Security undergraduate and postgraduate courses. Members also participate as administrative advisors in litigation before the Labor Inspectorate of the Ministry of Labor and Social Welfare as well as before the Labor and Social Security Courts of the Republic of Guatemala. In the opinion of ASGUATRA, its perspective is completely different from that of the Parties participating in the dispute being heard by the Arbitration Panel and contributes objective and first-hand information from litigating attorneys and labor advisors regarding compliance with labor rights in Guatemala and the effectiveness of the Labor Justice system as a fundamental and substantial element for the discussion, analysis and evaluation of the arguments submitted by the Parties to the Arbitration Panel.

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RELATIONSHIP WITH THE PARTIES

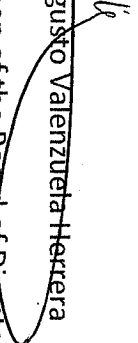
ASGUATRA has no direct or indirect relationship with the Plaintiff or the Defendant, it has not received nor will it receive financial or any other form of assistance from them or from any other Government, person or organization in the preparation of this request or of its written views.

For the reasons set forth above, I respectfully

REQUEST:

1. TO THE RESPONSIBLE OFFICE FOR GUATEMALA OF THE MINISTRY OF ECONOMY:
 - 1.1. To submit this request to the Arbitration Panel and each participating Party, and to make it available to the public.
2. TO THE ARBITRATION PANEL:
 - 2.1. To accept this request for the GUATEMALAN LABOR LAW ASSOCIATION to submit its written views within this procedure;
 - 2.2. To consult with participating Parties about this request;
 - 2.3. In due time, to authorize the GUATEMALAN LABOR LAW ASSOCIATION to submit its written views, within the timeframe established by the Arbitration Panel for this purpose.

Guatemala City, February 6, 2015


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



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

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

I, **HERMANN FEDERICO GIRÓN DELERY**, forty-five years of age, married Guatemalan, Business Administrator, a resident of Guatemala City, in the Republic of Guatemala, with Personal Identification Document bearing Single Identification Code number 2576 54631 0101, issued by the National Register of Persons of the Republic of Guatemala, respectfully

STATE:

- I. that I act in my capacity as President, and as such, in legal representation of the **COMITÉ COORDINADOR DE ASOCIACIONES AGRÍCOLAS, COMERCIALES, INDUSTRIALES Y FINANCIERAS** (COORDINATING COMMITTEE OF AGRICULTURAL, COMMERCIAL, INDUSTRIAL AND FINANCIAL ASSOCIATIONS, CACIF), as certified in my appointment contained in notarial record authorized in Guatemala City on April twenty-second, 2014 by Notary Public Guido Doménico Ricci Muadi, and recorded in the Register of Legal Persons of the Ministry of the Interior under item 195, page 195 of book 9 of Appointments;
- II. My address, for the purpose of receiving notices, is the address of CACIF, located at Ruta 6, 9-21, zone 4, Guatemala City, 9th floor, Cámara de Industria de Guatemala building, telephone number +502 22 01 00 00, e-mail: presidencia@cacif.org.gt;
- III. I appear before you to request authorization from the Arbitration Panel in charge of the complaint promoted by the Government of the United States of America – Plaintiff – against the Government of Guatemala – Defendant – for the non-governmental entity CACIF to submit written views in this arbitration procedure under Article 20.10.1(d) of the Dominican Republic, Central America and the United States Free Trade Agreement, hereinafter “the Agreement” and under rules 53 to 64 of the Rules of Procedure for Chapter Twenty of the Dominican Republic, Central America, United States Free Trade Agreement, pursuant to the following

FACTS:

- (a) **Legal status.** CACIF is a civil entity under the Laws of the Republic of Guatemala; it is registered in the Civil Register of the Municipality of Guatemala under number 454, pages 212 and 213 of book 36 of Legal Persons, and under number 24,397, page 24,397 of book 1 of the Single Electronic Register of Legal Persons of the Ministry of the Interior.

Its by-laws were approved through Government Resolution of April 24, 1961 and subsequently amended through public record number 74, authorized in Guatemala City on October 23rd, 2009 by Notary Public Guido Doménico Ricci Muadi.

Location: CACIF is located in Guatemala City and is headquartered at the address provided in paragraph II.

Description of the organization and nature of its activities: Its major functions are to coordinate the efforts of the private sector represented through member organizations for the benefit of the economic and social development of the country, to develop and



advocate for free enterprise in Guatemala, as well as other functions included in its by-laws.

Membership: The members of CACIF are business chambers which are in turn formed by guilds and companies. Most areas of the economy are represented through its members as follows:

- Chamber of Industry of Guatemala
- Chamber of Commerce of Guatemala
- Sugarcane Growers' Association of Guatemala
- Chamber of Agriculture of Guatemala
- Guatemalan Construction Chamber
- Chamber of Finance
- Guatemalan Exporters' Association
- Guatemalan Federation of Small and Medium-size Enterprises
- Business Chamber of Trade and Services
- Chamber of Tourism of Guatemala

- (b) **Factual issues under consideration by the Arbitration Panel.** In its initial submission, Plaintiff argues that the Defendant has ceased to effectively enforce its domestic labor legislation both at the administrative and judicial levels, a conduct that leads to commercial benefits for them, all of which, in the opinion of Plaintiff, violates the standard contained in Article 16.2.1(a) of the Agreement.

- (c) The previous statement would mean that labor justice has deteriorated since the entry into force of the Agreement.

The companies that are members of the associations and chambers that form CACIF are all part of the formal sector of the economy and, as such, users of the country's system of justice, both at the administrative level, i.e. the General Labor Inspectorate, as well as at the judicial level, i.e. the Courts system throughout the country.

As a result, as users of the system that is the object of analysis in this arbitration process, the companies that are members of associations and chambers that make up CACIF are strategic players in the social and legal development of Guatemala and are familiar with the developments of the issue under discussion in their business areas, and have full and abundant knowledge of the evolution of agencies in charge of enforcing labor laws in Guatemala since the entry into force of the Agreement. This local information that CACIF is in the position to provide will allow the Arbitration Panel to learn the underlying truth in this case, without prejudice to other evidence and arguments that the participating Parties may contribute to the litigation.

The experiences that CACIF seeks to contribute to the process are therefore factual in nature.

- (d) **Contribution and novelty in the contribution.** We trust that perspective that CACIF seeks to share with the Arbitration Panel will help enrich the Panel's view of Guatemalan reality as concerns the development and current status of administrative and justice agencies of our country in charge of labor affairs. This is the view of one of the strategic and historic social players of this country and hence the originality of our arguments, which may not necessarily agree with the arguments by participating Parties. This contribution is essential to the process and for the decisions by the Panel to be based on the legal and social realities of Guatemala.

- (e) Finally, and in compliance with Rule 54, I state that CACIF has no direct or indirect relationship with the Plaintiff or the Defendant, that it has not received nor will receive from any of them, or from another Government, person or organization, financial or



any other type of assistance in making this request or to draw the written opinion that we may submit as a result of this request.

For the aforesaid reasons, I respectfully

REQUEST:

to the Responsible Office for Guatemala at the Ministry of Economy:

- To submit this request to the Arbitration Panel and each participating Party, and to make it available to the public.

To the Arbitration Panel:

- To accept this request for the COORDINATING COMMITTEE OF AGRICULTURAL, COMMERCIAL, INDUSTRIAL AND FINANCIAL ASSOCIATIONS, CACIF to submit its written views as part of this procedure;
- To consult with the participating Parties about this request;
- That, in due time, it authorize the COORDINATING COMMITTEE OF AGRICULTURAL, COMMERCIAL, INDUSTRIAL AND FINANCIAL ASSOCIATIONS, CACIF, to submit its written views within the time frame defined by this Arbitration Panel.

Guatemala, February 5, 2015.



RECIBIDO

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

09 FEB 2015

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

**DIRECCIÓN DE ADMINISTRACIÓN DEL
COMERCIO EXTERIOR -DACE-**

I, **JOSE SANTIAGO MOLINA**, forty-eight years of age, married, Business Administrator, Guatemala, a resident of the Department of Guatemala, with Personal Identification Document (DPI) bearing Single Identification Code (CUI) number two thousand five hundred seventy-three zero nine thousand three hundred sixty-five zero nine hundred one (2573 09365 0901) issued by the National Registry of Persons of the Republic of Guatemala, respectfully appear before you and

STATE

That I act on behalf of the **CÁMARA DEL AGRO [CHAMBER OF AGRICULTURE]** incorporated under the Laws of the Republic of Guatemala, in my capacity as its President and Legal Representative, which I certify through notarial record authorized in Guatemala City on May twenty-six two thousand fourteen by Notary Public Edgar Stuardo Ralón Orellana, duly registered in the Register of Legal Persons under number four hundred nineteen (419), page four hundred nineteen (419) of Book ten (10) of Appointments, of which I attach a simple copy to obtain authorization FOR **CÁMARA DEL AGRO [CHAMBER OF AGRICULTURE]** to offer written views in the process related to the case: Guatemala - issues relating to obligations under CAFTA-DR Article 16.2.1(a).

Pursuant to the provisions of the Rules of Procedure contained in Chapter 20 of the Dominican Republic, Central America and United States Free Trade Agreement (CAFTA-DR), I submit on behalf of and in the name of the Chamber of Agriculture, a non-governmental organization, and in compliance with provisions 53 to 64 of the aforesaid rules, written request for **CÁMARA DEL AGRO [Chamber of Agriculture]** to PRESENT WRITTEN VIEWS in the aforementioned case, based on the following considerations:

I. CÁMARA DEL AGRO [The Chamber of Agriculture]:

CÁMARA DEL AGRO [The Chamber of Agriculture] of Guatemala is a non-governmental organization established on March 14, 1973, that gathers together grower and livestock breeder associations of the country. It is an apolitical, non-profit organization and with legal status that is separate from the legal status of each one of the Associations that form it.

CÁMARA DEL AGRO [The Chamber of Agriculture] is a civilian non-profit association. Its by-laws were approved through Government Resolution of September fourteen nineteen seventy-three, and amended through Government Resolution number three hundred forty dash ninety-two of May fourteen nineteen ninety-two. It is duly registered in the Civil Register of the Municipality of Guatemala, in the Department of Guatemala under item number ninety-four (94), pages one hundred thirty-eight (138) and one hundred thirty-nine (139), of Book forty (40) of Legal Persons.

Our members are:

- Asociación de Azucareros de Guatemala [Guatemalan Sugar Association] –ASAZGUA–
- Asociación de Exportadores de Café [Coffee Exporters' Association] –ADEC–
- Asociación de Exportadores de Guatemala [Association of Exporters of Guatemala] – AGEXPORT–
- Asociación de Ganaderos del Sur de Occidente de Guatemala [Association of Cattle Breeders of the South-West of Guatemala] –AGSOGUA–
- Asociación de Porcicultores de Guatemala [Pork Breeder' Association of Guatemala] – APOGUA–
- Asociación de Productores Independientes de Banano [Association of Independent Banana Growers] –APIB–
- Asociación Guatemalteca de Criadores de Ganado Brahman [Guatemalan Association of Brahman Cattle Breeders] –ASOBRAHMAN–
- Asociación Nacional del Café [National Coffee Association] –ANACAFE–
- Asociación Unión de Cañeros del Sur [Association of the Union of Sugar Cane Growers of the South] –UCS–
- Cámara de Productores de Leche [Chamber of Dairy Farmers] –CPLG–
- Consejo Nacional del Algodón [National Cotton Council]
- Gremial de Huleros de Guatemala [Rubber Growers Association of Guatemala] – GREMHULE–
- Gremial de Palmicultores de Guatemala [Palm Growers Association of Guatemala] – GREPALMA–

CÁMARA DEL AGRO [The Chamber of Agriculture] is an association that values and advocates for Rule of Law Principles and Responsible Job Generation.

The Association focuses on coordinating the efforts and resources of every player in the agricultural sector to carry out actions which add value to the whole sector and prevent duplication of efforts thanks to the knowledge it has of the country's reality and of the way the various associations work and of their needs.

It is a politically and institutionally strong organization with expert knowledge of nation and sector-wide affairs because it enjoys the support and trust of its members.

The facilities of CÁMARA DEL AGRO [the Chamber of Agriculture] are located at 12th street 1-25 zone 10, Géminis 10 Building, North Tower, Suite 909, Guatemala City, Guatemala, Republic of Guatemala.

II. Directly relevant specific points:

Through its intervention before the Arbitration Panel, CÁMARA DEL AGRO [the Chamber of Agriculture] will make the following arguments:

Legal points:

- Formal logical flaws

In its written view, CÁMARA DEL AGRO [the Chamber of Agriculture] will provide an analysis of the effects of the starting point of this dispute, the "US Initial Written Submission", for the role of the Panel (legal) and for the country (factual) with the aim to identify the logical/formal flaws contained in the document.

The analysis of the document and of its effects will be done through formal logic, since the initial written submission is characterized by a strong and frequent use of formal logic (or deductive logic).

Formal logic is interested in the form or structure of arguments regardless of the contents that they allude to, in order to find the right method for deriving a truth from another truth, so what matters is a well-founded path from the premises to the conclusion.

III. Contribution to the Arbitration Panel:

The agricultural sector is essential to the economic and social development of Guatemala thanks to the active and efficient contributions made by the members of CÁMARA DEL AGRO [the Chamber of Agriculture].

CÁMARA DEL AGRO [The Chamber of Agriculture] is an essential, strategic and strong political player as well as a valuable point of reference because it analyzes reliable and updated sector information through which it can offer strategic proposals for the comprehensive development of the sector, which is of benefit for the country.

CÁMARA DEL AGRO [The Chamber of Agriculture] has an authentic interest in contributing to the transformation of agriculture as the backbone of Rural Development, Food Security and Competitiveness and makes contributions to it.

Today, talking about Guatemalan agriculture is synonymous with talking about dignified productive employment... talking about prosperity for all... talking about "being at the forefront".

The contribution that CÁMARA DEL AGRO [the Chamber of Agriculture] will make to the Arbitration Panel is novel; the "US Initial Written Submission" document has been extensively reviewed in order to point out the legal and factual effects of the formal logical flaws in it, which is extremely important to the analysis by the Arbitration Panel of the arguments made, as it would be able to also confirm, with the accomplishments of CÁMARA DEL AGRO [the Chamber of Agriculture] on the ground, that labor rights are respected and that the State does not follow a policy of relaxation in the enforcement and protection of Labor Laws.

IV. Relationship with the Parties:

In the name of and on behalf of CÁMARA DEL AGRO [the Chamber of Agriculture], I state that, for this purpose, CÁMARA DEL AGRO [the CHAMBER OF AGRICULTURE] has no direct relationship with the State of Guatemala or the United States of America, and has not

received nor will it receive financial assistance or otherwise, from any government, or from any person or organization other than from the members or advisors of CÁMARA DEL AGRO [the Chamber of Agriculture].

Consequently, this request and its views in the context of this process will be drawn and submitted solely by CÁMARA DEL AGRO [the Chamber of Agriculture] without direct or indirect intervention or assistance from any State, institution, organization, agency or natural or legal person.

REQUESTS:

For the reasons listed above and under CAFTA –DR Rules, with all due respect I REQUEST:

From the Responsible Office for Guatemala at the Ministry of Economy:

That the request that I hereby file be promptly submitted to the Arbitration Panel and to each participating Party, and that it be made available to the public.

From the Arbitration Panel:

- I.** Acknowledgement of receipt of this request for CÁMARA DEL AGRO [the Chamber of Agriculture] to submit its written views on the complaint filed in the case Guatemala: issues relating to obligations under CAFTA-DR Article 16.2.1 (a).
- II.** To consult with participating Parties on our request.
- III.** Prior to proceeding with the steps of Law, and in due time, to authorize CÁMARA DEL AGRO [the Chamber of Agriculture] to submit its written views within the deadline established by the Arbitration Panel.

My address for the purpose of receiving notices is 12 calle 1-25 zona 10, Edificio Géminis 10, Torre Norte, Oficina 909, Guatemala City, Guatemala. Email: jsmolina@gmail.com, and telephone numbers (502) 23353003, (502) 23352996 to 97

Guatemala, February nine, two thousand fifteen.

Cámara del Agro
Guatemala



Clara Luz Marroquín de Lucero
Oficina Responsable de Guatemala
Dirección de Administración del Comercio Exterior
–DACE–
Cuarto Nivel
Ministerio de Economía
Gobierno de Guatemala
8 av. 10-43 zona 1, Guatemala C.A.

Teléfono: +502-2412-0326 ext.4208
clucero@mineco.gob.gt
fvasquez@mineco.gob.gt
adeleon@mineco.gob.gt

9 February 2015

Request to Submit Written Views

Dear Ms Marroquín:

The Trade Union Confederation of the Americas (TUCA) submits this request to submit its written views in the arbitration, *In the Matter of Guatemala—Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR*, pursuant to Article 20.10.1(d) of the Dominican Republic – Central America Free Trade Agreement (DR-CAFTA) & Rule 54 of Model Rules of Procedure. This correspondence provides the information required pursuant to the model rules. Should any additional information be required for the panel to make its decision, TUCA will endeavor to provide that information as quickly as possible.

Rule 54 (a) Description of the Trade Union Confederation of the Americas

TUCA is a regional trade union organization representing 53 trade union national centres in 23 countries in the Americas, including in Guatemala and the United States. It is governed by its Congress an Executive Council and adheres to the principles of trade union democracy and independence. TUCA's headquarters is located at Rua Formosa, 367, 4o. Andar, Cjto. 450, Centro, 01049-000, Sao Paulo, Brazil. TUCA's primary mission is the promotion and defence of workers' rights and interests, through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. For many years, TUCA has made the situation of workers in Guatemala a major focus of its advocacy and campaign work in the Americas.



Rule 54(b) TUCA Will Present Issues of Fact and Law Relevant to Issues Under Consideration by the Panel

TUCA will provide detailed information concerning the Government of Guatemala's failure to effectively enforce its labor laws through a sustained or recurring course of action or inaction, in violation of Article 16.2.1(a) of the DR-CAFTA. In particular, we will present information (as outlined in the next section) with respect to the government's failure to effectively enforce the following internationally recognized workers' rights: 1) the right to Freedom of Association; 2) the right to Organize and Bargain Collectively; and 3) the right to Acceptable Conditions of Work. TUCA will also provide information that demonstrates clearly that these violations are not isolated but rather sustained and recurring. Indeed, the government's failure to effectively enforce its laws represents a systemic problem, affecting workers' enjoyment of these rights in nearly every workplace in Guatemala. Indeed, workers in export-oriented industries such as textile and apparel and agriculture have been particularly affected, as the suppression of workers' rights was part of a strategy to attract investment and to boost trade. The information submitted will supplement but will not duplicate the arguments or evidence already made by the Government of the United States in its November 3, 2014 brief.

Rule 54(c) TUCA's Views Will Contribute to Resolving the Dispute and Do Not Merely Repeat Legal and Factual Arguments Made by the Parties

TUCA's written views will provide substantial additional information that is absent from the briefs of the Parties and thus will not merely restate the arguments of the complaining Party. This information, described below, will assist the panel in its work in determining whether there was in fact a failure by the Government of Guatemala to effectively enforce its labor laws through a sustained or recurring course of action or inaction. Our views should also assist the panel in determining the appropriate remedial measures should it find that the Government of Guatemala did in fact violate Art. 16(2)(a) of DR-CAFTA as alleged by the Government of the United States. TUCA brings a unique perspective to this dispute given its lengthy involvement in promoting workers' rights in Guatemala, as well as its regional perspective and experience on international labour law matters.

TUCA's written views will describe in detail the legal and practical obstacles to the effective enforcement of Guatemala's labour laws, with particular emphasis on export sectors such as the garment and agricultural sectors. In the rural sector, e.g., there is a near total absence of labour inspection, the state does not take sufficient efforts to overcome employer resistance to efforts to undertake inspections, and in some cases have prepared inspection reports or reached agreements which are fundamentally at odds with Guatemalan law. In those cases where violations are noted, the state again has made little effort to ensure that those reports are enforced. Similarly, in export processing, employers have through gross violations of the law kept the garment sector nearly union free. This is again possible due to a failure of labour inspection and enforcement procedures, despite having several tools at its disposal relevant to the export processing sector. Based on this information, TUCA will propose remedies which would be most effective in overcoming the obstacles to enforcement presented. Together, this supplemental information should help the panel



resolve the dispute by providing further evidence establishing the violation of the labour provisions of DR-CAFTA.

Rule 54(d) Disclosure Statement

TUCA has no direct or indirect relationship with either Party. It has not received nor intends to receive any assistance, financial or otherwise, from any Party, other government, person or organization in the preparation of this request for leave to present written views other than its members or counsel. This request was prepared in consultation and coordination with TUCA's member unions in the United States and Guatemala.

Sincerely,

Víctor Báez Mosqueira
General Secretary

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


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

I, **LUIS OSCAR ESTRADA BURGOS**, fifty-one years of age, Business Executive, Guatemalan, a resident of Guatemala City, Department of Guatemala, with Personal Identification Document (DPI) number 2313 29512 0101, appear before you and respectfully:

STATE:

I act in my capacity as the Legal Representative of the entity **ASOCIACIÓN DE LA INDUSTRIA DEL VESTUARIO Y TEXTILES** (*Apparel and Textile Industry Association*) – **VESTEX**- hereinafter VESTEX, that is registered in the Register of Legal Persons under item 165, page 165 of Book 4 of Appointments, which I certify through Legal Representation Appointment Notarial Record of the Association, signed in Guatemala City on October 3, 2013 before Notary Public William Fredy Martínez Molina; my address to receive notices is **FOURTEEN STREET, FOURTEEN DASH THIRTY, ZONE THIRTEEN, ZONE SECOND FLOOR, GUATEMALA CITY, DEPARTMENT OF GUATEMALA**, with e-mail address lestrada@apparel.com.gt. I appear before you on behalf of VESTEX, a non-governmental organization, to request authorization from the Arbitration Panel that hears the complaint promoted by the Government of the United States of America against the Government of Guatemala for **VESTEX** to submit its written views within the arbitration procedure pursuant to Rule 54 of Article 20.10.1(d) of Rules of Procedure 53 to 65 for Chapter 20 of the Dominican Republic, Central America and United States Free Trade Agreement, pursuant to the following considerations:

I.

- 
- a) Description of the entity. The Apparel and Textile Industry Association, –VESTEX–, is an apolitical and non-profit organization, created under the form of a civil association to contribute to the productivity of companies of the apparel and textile sector that operate in Guatemala, the creation of employment and to help improve Guatemala's competitiveness in this important sector of the economy;
 - b) The principles that are the foundation of the Apparel and Textile Industry Association are to defend the right to industry freedom, to work, to private property and respect for the liberty and rights of man, to contribute to the economic and social progress of the country through apparel and textile exports, to contribute to training and technical development of the textile and apparel industry, to advocate in favor of the interests of the sector, while aiming for the general interest for the provisions of the Constitution and of all the other laws of the country to prevail.
 - c) Activities: The main functions of the Association are to promote and foster Guatemalan apparel and textile exports, to seek the elimination of barriers to exports, to promote and implement development projects, to advise and guide members on the requirements of foreign markets in order to make them competitive, to provide members with information, advice and alternative solutions to problems relating to apparel and textiles exports, to coordinate and carry out training programs, to conduct commercial promotion activities as well as all activities aimed at strengthening apparel and textile exports, to support bilateral or

multilateral negotiations for the promotion of exports and to carry out every activity that may contribute to meet the social and legal obligations of the Association.

- d) Membership: The Apparel and Textile Association is a highly productive sector formed by apparel, textile and related product and service companies that operate in Guatemala and sell mainly abroad. Article 20.10.1 (d) Rule 54 (a)

II.

- a) Factual arguments: The United States filed an action with the Arbitration Panel against Guatemala for failure to effectively enforce its labor laws in the following sense: (1) for not ensuring compliance with Court orders; (2) for not having acceptable work conditions in place, not conducting required inspections and lack of enforcement of mandatory sanction; and (3) for issues related to the Right of Association, to the Right to Organize and Bargain Collectively by not registering unions in a timely fashion. These are the three main points contained in the complaint relating to the violation of Article 16.2.1(a) of the Dominican Republic, Central America and United States Free Trade Agreement.
- b) Inputs from VESTEX: Based on this and as users of the Guatemalan justice system, we have a qualified opinion on the matter under discussion, that is, as concerns the effectiveness of the agencies in charge of enforcing labor laws in Guatemala since the arguments and opinions of this industry will serve to guide an enhanced evolution of the arbitration process.
- e) The Apparel and Textile Industry Association has promoted constant advances in the area of labor compliance and hopes to make a contribution to the Arbitration Panel to enrich its view of the justice organizations of our country in charge of labor affairs and of the development of the labor aspect of the Apparel and Textile Industry, in view of the high impact that the decisions of the Arbitration Panel have on the industry.
- f) Novel contributions: Every exporter Company from this industry is a user of CAFTA-DR trade benefits and is therefore subject to complying with it rules. For this reason, companies will be affected by the outcome of the arbitration process against the Government of Guatemala for possible inconsistencies relating to Chapter 16 (the Labor Chapter) of the Agreement. We have sufficient knowledge related to the origin of the complaint and its evolution, arguments and knowledge that may be taken into account by the Arbitration Panel, in view of the nature of this industry.
- g) Finally, on behalf of and in representation of the APPAREL AND TEXTILE INDUSTRY ASSOCIATION (VESTEX), I state that, for this purpose, the Association has no direct relationship with the Guatemalan State or with the United States of America and has not received financial or other forms of assistance from the Government or from any person or organization other than the members or advisors of the Association. Therefore, this request to submit our views within the framework of this process shall be drawn and submitted by the Apparel and Association, VESTEX, without the direct or indirect intervention or assistance from any State, Institution, Organization, Body or natural or legal person.

REQUEST:

For the reasons indicated above, and under CAFTA-DR Rules, with all due respect, I request:

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

- To submit this request to the Arbitration Panel and each participating Party, and to make it available to the public.

TO THE ARBITRATION PANEL:

- Acknowledgement of receipt of the request for the APPAREL AND TEXTILE INDUSTRY ASSOCIATION (VESTEX) to submit written views relating to the complaint filed by the United States against Guatemala;
- To take note of the electronic address indicated above to receive notices;
- To consult with participating Parties on our request to submit written views relating to the complaint filed by the United States against Guatemala.
- Prior to proceeding with the steps of Law and in due time, to authorize the APPAREL AND TEXTILE INDUSTRY ASSOCIATION (VESTEX) to submit its written views within the deadline established by the Arbitration Panel.

Guatemala, February nine, two thousand fifteen



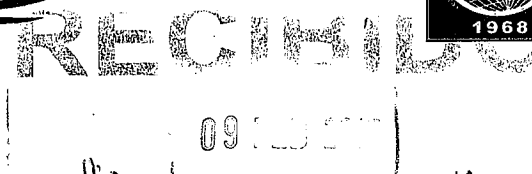
LUIS OSCAR ESTRADA BURGOS



Asociación de la Industria
del Vestuario y Textiles
VESTEX



Guatemala City, 9 February 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 CAFTA–DR

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

RE: Request to Intervene as Non-Governmental Entities

We, the *Sindicatos Globales de Guatemala* (Global Labor Unions of Guatemala), the *Movimiento Sindical Autónomo y Popular de Guatemala* (Autonomous and Popular Labor Union Movement of Guatemala), the *Federación Sindical de Empleados Bancarios y de Servicios 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 Labor Unions*'), address ourselves to the Arbitral Tribunal to request leave to submit written opinions as non-governmental entities, pursuant to Rules 54 to 56 of the Model Rules of Procedure of the Dominican Republic – Central America – United States Free Trade Agreement (hereinafter, '*CAFTA–DR*').

1. Description of the Labor Unions in accordance with Rule 54(a)

We are the main labor unions of Guatemala and we represent Guatemalan workers before institutions, including the Guatemalan State, the International Labour Organization (hereinafter '*the ILO*'), the United Nations (hereinafter '*the UN*') and to Organizations of American States (hereinafter '*the OAS*'), among others. Within our activities for the defense of the interests of workers, we have monitored the situation concerning labor rights in Guatemala, especially as far as the obligations in the framework of the CAFTA-DR are concerned.

2. Identification of the specific issues that will be addressed in the written views in accordance with Rule 54(b)

In our intervention, we will refer to three main issues of fact and law raised by the United States of America (hereinafter '*USA*') in its initial written submission (headings A, B and C of the 'Argument' of the USA). Specific reference will be made to:

Period	Conduct of Guatemala	CAFTA-DR Rights that have been affected
2011 - 2015	Does not guarantee the fulfilment of judicial orders	Freedom of Association and Collective Bargaining
	Does not carry out mandatory inspections	Acceptable conditions of Work
	Does not impose mandatory sanctions	



Does not register labor unions in a timely manner	Freedom of Association and Collective Bargaining; Acceptable conditions of Work
Does not establish conciliation mechanisms	

3. Justification of the written views of the Labor Unions in accordance with Rule 54(c)

Our intervention will make a positive contribution to the Panel's decision, not only because of the novelty of our factual and legal arguments in relation to the submissions of the USA, but also because it will offer a perspective that is different from those of the USA and Guatemala.

3.1 THE LABOR UNIONS WILL MAKE A POSITIVE CONTRIBUTION WITH NEW FACTUAL ARGUMENTS

Almost all the facts reported by the USA in its written submission occur no later than the year 2012. Through periodic reports, the Labor Unions have directly and strictly monitored all the facts of this dispute and in particular the commitments assumed by Guatemala in the framework of the CAFTA-DR through the Enforcement Plan of April 2013.

We would like to present these facts to the Panel, thus completing the factual arguments of the USA. This first-hand information will provide the Panel with an updated relation of the facts after 2012, which will further demonstrate that Guatemala's shortfalls amount to a continued and recurrent course of action.

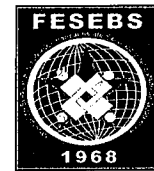
3.2 THE LABOR UNIONS WILL MAKE A POSITIVE CONTRIBUTION WITH NEW LEGAL ARGUMENTS

3.2.1 *Joint interpretation of the CAFTA-DR with other applicable sources and pronouncements of International Law*

The legal arguments submitted by the USA have been limited to the violation of Article 16.2.1(a) of the CAFTA-DR. The Labor Unions support the arguments submitted by the USA. Additionally, pursuant to Article 31.3(c) of the Vienna Convention on the Law of Treaties, we consider that the CAFTA-DR must be interpreted in light of "*any relevant rules of international law applicable in the relations between the parties*", which includes the ILO Convention Concerning Freedom of Association and Protection of the Right to Organize, the International Covenant on Economic, Social and Cultural Rights (hereinafter, "*ICESCR*") and the legal texts of the Inter-American Human Rights System.

On the one hand, in our written submissions we will expand on the facts and the labor rights that have been considered violated in the framework of pronouncements made by the ILO and the ICESCR Committee of the UN. We will explain how such pronouncements can provide the Panel with valuable input for its decision. In particular, we will draw the Panel's attention to the fact that these international bodies –specialized in labor issues– have come to findings of a violation of the same labor rights that are alleged to have been violated in the present proceedings.

On the other hand, the Labor Unions will put forward a joint reading of the terms of the CAFTA-DR with the Inter-American Convention on Human Rights and the San Salvador



Protocol on Economic, Social and Cultural Rights as rules of international law that are pertinent to interpret the relationship between the State parties.

Given that both the USA and Guatemala are ILO, UN and OAS Member States, we understand that all the international obligations incumbent on Guatemala as a Member State of those organizations, as well as of the CAFTA-DR, must be interpreted harmoniously.

3.2.2 Relationship between labor standards and international trade

The relationship between labor standards and the “affecting of trade” is still fairly unclear under WTO case law and even more so under the CAFTA-DR, given that this is the first case in history in which these issues are being scrutinized.

We will present legal arguments in line with the object and purpose of the CAFTA-DR in order to define the terms “in a manner affecting trade” and the manner in which the conduct of Guatemalan State organs negatively affects trade between the Parties.

3.3 THE LABOR UNIONS WILL BRING A NEW PERSPECTIVE TO THE DISPUTE

In addition to the above, the Labor Unions will bring a perspective that is different from that of the USA or Guatemala, as victims and as privileged witnesses of the alleged violations, and also as experts on Guatemalan unionized labor issues.

3.3.1 As victims or directly affected persons

In International Law, the notion of “victim” comprises persons who individually or collectively suffered harm that impairs their fundamental rights.¹ The violations alleged by the USA and the factual and legal grounds of those allegations, which the Labor Unions support, resulted in direct breach of the minimal standards required by International Law for work in conditions of dignity.

To summarize, the workers individually considered and the Labor Unions are victims of the wrongs perpetrated by Guatemala. Therefore, there is no non-governmental entity that can more legitimately –both politically and legally- intervene in these proceedings. We therefore consider that our perspective, as directly affected persons, will allow the panel to more adequately establish the facts underlying this dispute.

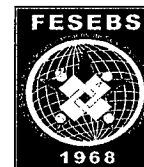
3.3.2 As privileged witnesses of the facts

Because they are victims of the violations alleged by the USA, the Labor Unions suffered the systematic infringements against the labor standards that protect unionized workers. In this regard, the Labor Unions can bring clarifications to these proceedings, which neither of the Parties to this dispute can provide.

3.3.3 As experts on Guatemalan unionized labor issues

Given their longstanding and demonstrated experience in the matter, the Labor Unions have the necessary expertise to provide the Panel with “information or technical advice” on

¹ Resolution 60/147 approved by the UN General Assembly on 16 December 2005, articles V.8 and V.9.



unionized labor, but also on specific Guatemalan labor law issues which the panel must examine within its substantive decision. Consequently, the possibility of presenting written opinions would facilitate bringing to the process all technical and legal information which the Panel may deem necessary.

In view of the above, the Labor Unions consider that, if our intervention as non-governmental entities is accepted, we will be able to provide information that is of interest to the Panel and the parties and which is essential for a complete analysis of the circumstances of this case and the measures that should be adopted by the Guatemalan State in order to correct its violations and to enhance respect of labor rights in Guatemala.

4. Statement on the relationship with the Parties or with third Parties in accordance with Rule 54(d)


We, the Labor Unions, are associations that have been formed on Guatemalan territory. We operate with the contributions of our associates and the cooperation of international sister organizations. For the preparation of this submission and any further written submissions for which the Panel may give us permission, we have not received and do not plan to receive any financial or other assistance from any Party or from any other government. The information that we will use has been obtained from carrying out our mission of assisting and counselling workers and their organizations on the exercise of the right to freedom of association.

5. Contact information in accordance with Rule 55

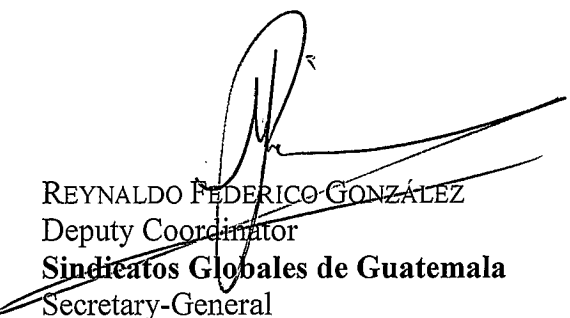
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- *Telephone:* (502) 2220-7875 - (502) 2238-3654

The Labor Unions thank the Panel for this opportunity to intervene through written opinions and look forward to contributing to these proceedings with novel information and perspectives.

Yours sincerely,


CARLOS ENRIQUE MANCILLA GARCÍA
Coordinator
**Movimiento Sindical Autónomo y
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