

**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”).¹ 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”).² 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.³

Guatemala did not fully or meaningfully implement the reforms outlined in the Enforcement Plan. However, as the Guatemalan labor movement has emphasized,⁴ 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

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

² 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”)

³ 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#>

⁴ 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

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.”⁵ 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.”⁶ 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,⁷ improving labor inspections⁸ and increasing transparency and cooperation with the labor movement in the reform process.⁹ 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.¹⁰ 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.”¹¹ 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.¹² 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.

⁵ CAFTA-DR, *supra* note 1, Preamble.

⁶ CAFTA-DR Article, *supra* note 1, 16.2.1(a).

⁷ Enforcement Plan, *supra* note 2, Section B.

⁸ Enforcement Plan, *supra* note 2, Section A.

⁹ Enforcement Plan, *supra* note 2, Section C.

¹⁰ This commitment was codified in Supreme Court Accord No. 26-2012.

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

¹² 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
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,¹³ but to date have received no response from the government. This included several cases discussed in the Initial Submission of the United States,¹⁴ 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.¹⁵ 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.¹⁶ This reform led to a marked increase in penalties being appropriately applied.¹⁷ However, on August 3, 2004, a Constitutional Court ruling invalidated several aspects of the Decree. While the case did not address Article 415,¹⁸ 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.¹⁹

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.²⁰ This proposal was supposed to be developed in consultation with labor

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 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 ("April 2014 Letter")

¹⁴ 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).

¹⁵ 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 ("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.

¹⁶ 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).

¹⁷ En Defensa, *supra* note 15, at 7.

¹⁸ 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.

¹⁹ En Defensa, *supra* note 15, at 9.

²⁰ Enforcement Plan, *supra* note 2, Article 4.

unions.²¹ Instead, the government presented a bill before Congress on June 25, 2013 with no consultation.²² 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.²³

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.²⁴ In 2014, a labor judge certified the cases and sent them to the Public Ministry. Criminal proceedings should have commenced for all 43 cases.²⁵ However, even after a conciliatory hearing failed to rectify the situation, only four cases are being actively pursued.²⁶

The Enforcement Plan recommends cases of non-compliance be escalated to criminal sanctions within a matter of weeks.²⁷ 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

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

²² Unions presented their own bill to the Ministry of Labor in January 2014.

²³ 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").

²⁴ 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).

²⁵ *Id.*

²⁶ 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).

²⁷ 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,²⁸ with particular measures aimed at employers receiving export benefits under Decree 29-89, as this practice is particularly common among export-oriented businesses.²⁹ 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.³⁰

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.³¹ 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.

²⁸ Enforcement Plan, *supra* note 2, Articles 7-9.

²⁹ Enforcement Plan, *supra* note 2, Articles 6, 7, 8.6.

³⁰ 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)

³¹ 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.³² 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.³³ 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.³⁴ 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.³⁵ The MOL already has the obligation to ensure required payments go to the social security system, and to coordinate with the IGSS.³⁶ 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,³⁷ 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.³⁸ At a subsequent inspection conducted on November 20, 2013, workers reported they were still unable to obtain permits employers are

³² 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.

³³ 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).

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

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

³⁶ 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.).

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

³⁸ General Labor Inspectorate, Adjudicacion No 0101 – 05601 – 2013 (April 22, 2013).

supposed to issue to employees to access healthcare.³⁹ 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.⁴⁰

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 decrees⁴¹ that lowered the minimum wage in the light manufacturing sector to only 1,500 *quetzales* a month in four municipalities.⁴² The decrees have been enjoined pending legal challenges, but the government continues to press for their adoption.⁴³

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.⁴⁴ Commissions should consist of two democratically selected

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

⁴⁰ April 2014 Letter, *supra* note 13; October 2013 Letter, *supra* note 22.

⁴¹ Government Accords 471 – 2014; 472 – 2014; 473 – 2014, and 474 – 2014.

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

⁴³ 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>.

⁴⁴ Guatemalan Labor Code, Article 105.

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

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.⁴⁶

The lower minimum wage rates were specifically and explicitly designed to garner increased investment from export-oriented light manufacturing enterprises.⁴⁷ 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.”⁴⁸ 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,⁴⁹ with the aim of eliminating non-conformity with CAFTA-DR commitments “whenever possible.”⁵⁰ Article 20.15(3) suggests that “where appropriate” the Parties may agree on an action plan. We hope this

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

⁴⁶ 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.

⁴⁷ 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>.

⁴⁸ 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.”

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

⁵⁰ 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 Constitution⁵¹ and the Guatemalan Labor Code.⁵² 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."⁵³

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.⁵⁴ This murder remains unsolved, and violence against Sitrabi union members continues. Miguel Angel González Ramirez was murdered on February 5, 2012, in the midst of negotiations over failures to pay the minimum wage.⁵⁵

In 2013 and 2014, Guatemalan trade unions reported a total of seventeen labor activist murders.⁵⁶ 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.⁵⁷ It does not include countless incidents of harassment and intimidation, most of which go unreported, as many workers fear coming forward.

⁵¹ Constitution of Guatemala, Article 102(r).

⁵² 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)

⁵³ 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).

⁵⁴ Public Submission, *supra* note 53, at 8-12.

⁵⁵ 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>

⁵⁶ 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

⁵⁷ 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.

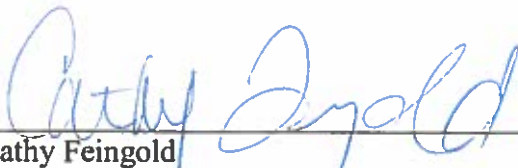
The Guatemalan labor movement has called for measures to address violence and impunity, including reforming the criminal code; better protection measures; capacity-building for prosecutors to conduct credible investigations; and enhanced accountability for state officials that fail to act.⁵⁸

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,



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