

**Mutually Agreed Enforcement Action Plan between the Government of the United States and
the Government of Guatemala ("Enforcement Plan")**

As a Party to the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), Guatemala reiterates its ongoing commitment, consistent with the terms of the CAFTA-DR, to effectively enforce Guatemala's labor laws. In furtherance of this commitment, and in order to resolve the dispute, *Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR* (hereafter, CAFTA-DR Labor Dispute), Guatemala and the United States agree as follows:

A. Ministry of Labor Investigation of Alleged Labor Law Violations in Guatemala

1. Inter-Agency Information Exchange Agreement

1.1. The Ministry of Labor (MOL) shall have access to the most up-to-date information maintained by Guatemala related to ownership of enterprises, addresses of enterprise worksites, and operational status.

1.2. On June 20, 2012, Guatemala signed an Inter-Agency Cooperation Framework Agreement for the Exchange of Information among the MOL, the Ministry of Economy (MOE), and the Superintendency of Tax Administration (SAT) (Inter-Agency Cooperation Agreement), establishing in relevant part that: (i) the MOE shall provide to the MOL up-to-date information related to all enterprises, including each enterprise's address, operational status, any transfer of ownership, and any information related to cancellation of its registration; and (ii) the SAT shall provide to the MOL non-confidential tax information related to all enterprises, including information on enterprise closure.

1.3. Within 30 days, Guatemala shall prepare an addendum to the Inter-Agency Cooperation Agreement that adds the Social Security Institute (IGSS) as a party to the Inter-Agency Cooperation Agreement, requiring that the MOE and the SAT also provide to the IGSS the information referenced in (i) and (ii), above, and providing that each party shall: (i) have access to any IGSS, MOL, MOE, or SAT databases containing the above-referenced information related to enterprises; (ii) immediately exchange any such information received after the Inter-Agency Cooperation Agreement enters into force; and (iii) immediately inform the other agencies upon receipt of notice of any enterprise closure or dissolution and of indicators of impending enterprise closure or dissolution, such as failure to pay required taxes, significant decreases in exports or the purchase of raw materials for production, and failure to make required social security payments.

1.4. Within 60 days, Guatemala shall publish the final Inter-Agency Cooperation Agreement with the addendum on the MOL, MOE, SAT, and IGSS websites, and shall provide copies to all MOL, MOE, SAT, and IGSS personnel whose responsibilities could be affected by the Inter-Agency Cooperation Agreement.

1.5. Within 60 days, Guatemala shall designate the personnel within the MOL, MOE, SAT, and IGSS responsible for implementing the Inter-Agency Cooperation Agreement with the addendum, in particular those personnel responsible for managing or exchanging the information in accordance with the Inter-Agency Cooperation Agreement.

2. Police Assistance for MOL Inspectors

2.1. MOL inspectors shall seek police assistance to ensure that a worksite visit is carried out pursuant to the May 26, 2011, Ministerial Accord No. 106-2011; Guide on Procedures in Case of Resistance to Inspectors' Duty to Inspect, and in such cases, police assistance shall be provided upon request of the inspectors, pursuant to the January 10, 2013, Inter-Agency Agreement Related to the Procedure in Case of Resistance to the Work of Labor Inspectors between the Ministry of Interior (MOI) and the MOL (MOI-MOL Agreement).

2.2. Ministerial Accord No. 106-2011 provides that: (i) an MOL inspector shall seek police assistance to visit a worksite when: (a) "immediate action" is required, (b) an inspector is not permitted access to a worksite, (c) the inspector's life or safety is in danger, or (d) when the circumstances otherwise

merit;¹ (ii) if an inspector is denied access to a worksite, the inspector shall immediately submit a complaint to the appropriate Labor and Social Welfare Court (Labor Court); and (iii) if police assistance is not provided upon request, the Inspector General of Labor shall inform the MOI within three days of the request, and the MOI shall initiate the corresponding legal procedures.

2.3. The MOI-MOL Agreement establishes that police officers shall provide assistance to labor inspectors, upon request, to ensure that the worksite visit is carried out when immediate action is required, when an inspector is not permitted access to a worksite, when the inspector's life or safety is in danger, or when the circumstances otherwise merit.

2.4. **Within 30 days**, Guatemala shall publish the MOI-MOL Agreement on the MOI and MOL websites and shall inform all MOI and MOL personnel whose responsibilities could be affected by the MOI-MOL Agreement.

2.5. **Within 30 days**, the MOI, through the National Civil Police, shall issue an order instructing all police officers and their commanding officers to provide assistance to labor inspectors, upon request, in accordance with Guatemalan labor laws, Ministerial Accord No. 106-2011, and the MOI-MOL Agreement.

3. Allocation of Resources for MOL Labor Law Enforcement

3.1. Guatemala allocated additional resources for the MOL's enforcement of labor laws, including the hiring and training of 100 additional permanent labor inspectors in the MOL's Inspection Department and five additional attorneys for the MOL's Legal Advisory Office of the Inspectorate General of Labor (IGT). Guatemala's allocation of additional resources includes increased resources to conduct labor inspections throughout the country. Resources and inspectors were distributed to the places with the highest incidence of labor rights violations, based on information reported by the IGT.

3.1(a). **On August 16, 2012**, the MOL completed the hiring of 100 additional permanent inspectors in the Inspection Department.

3.1(b). **In September 2012**, the MOL completed the hiring of five additional attorneys in the Legal Advisory Office of the IGT.

3.1(c). **On December 12, 2012**, the MOL launched the Department of Guatemala metropolitan division of the IGT and its Supervisory Unit.

3.1(d). **In August 2012**, the MOL assigned each of the 100 additional labor inspectors to the places with the highest incidence of labor rights violations in the country based on the information reported by the IGT and in response to the most immediate needs, including the regions in which the agriculture and *maquila* sectors operate.

3.1(e). **On November 17, 2012**, the MOL completed the training of the 100 additional labor inspectors and the five additional attorneys.

3.1(f). **During the first week of December 2012**, the MOL acquired 20 vehicles to strengthen the work of the MOL, with a particular focus on helping IGT personnel reach the most remote and difficult to access areas, thereby facilitating their inspection work.

3.2. Guatemala shall provide, on an ongoing basis, the resources necessary for the MOL's effective enforcement of Guatemalan labor laws.

3.3. Guatemala shall provide, in its annual budget, the necessary resources for the MOL to conduct labor inspections throughout the country, including the regions in which the agriculture and *maquila* sectors operate, to ensure that the inspections can be undertaken effectively. These resources shall

¹ The requirement in Article 4 of Ministerial Accord No. 106-2011 for labor inspectors to seek police assistance to visit a worksite "when the circumstances otherwise merit" shall be interpreted to require a labor inspector to seek police assistance whenever a labor inspector is not permitted access to a worksite.

include the cost of maintaining an appropriate number of vehicles.

4. MOL Authority to Issue Fine Recommendations and Expedited Judicial Review

4.1. **Within 60 days**, the MOL shall prepare a legislative proposal to amend the Labor Code to grant the MOL the authority to issue fine recommendations and establish an expedited process for the judiciary to adopt MOL fine recommendations, unless they are not reasonable, collect fines, and order remediation of labor law violations. The legislative proposal shall consist of the following elements:

4.1(a). If an employer fails to remedy an alleged labor law violation within the timeframe prescribed by the MOL, the MOL shall, within five days of the timeframe's expiration, file a complaint with the appropriate Labor Court. The MOL's complaint shall indicate the identified labor law violation, the MOL's fine recommendation, and a request for the Labor Court judge to order remediation of the violation where the complaint is found to be valid.

4.1(b). Within three days of receiving the MOL's complaint, the Labor Court judge shall accept it, provided it satisfies the established procedural requirements, and issue an order notifying the employer of the complaint and setting a date for an oral hearing to be held within 15 days of the Labor Court judge's acceptance of the complaint.

4.1(c). The employer may choose not to contest the MOL's complaint and agree to pay the fine to the Labor Court, or it may contest the violation identified by the MOL and/or the MOL fine recommendation at an oral hearing.

4.1(c)(i). If the employer chooses not to contest the MOL's complaint, the employer shall inform the Labor Court judge in writing within five days of receiving the Labor Court judge's order. Upon receipt of the written notice, the Labor Court judge shall adopt the MOL fine recommendation, unless it is not reasonable, and issue an order requiring the employer to pay the fine within five days of receiving the order and to remedy the violation within a specified time period. The order shall indicate that if payment is made within five days, the fine amount shall be reduced by 50 percent, provided that the reduced fine is not less than the minimum fine established in the law, and shall order remediation of the violation within a specified time period. In such cases, the oral hearing would not be held.

4.1(c)(ii). If the employer chooses to contest the MOL's complaint at the oral hearing, the Labor Court judge, respecting due process and having received evidence, shall issue an order at the hearing that: (i) adopts the MOL's fine recommendation, unless it is not reasonable, or (ii) absolves the employer. If the Labor Court judge imposes a fine, it shall issue an order requiring the employer to pay the fine within five days of receiving the order and to remedy the violation within a specified time period.

4.1(c)(iii). If the employer does not submit a written document in which he does not contest the MOL's complaint and fails to appear at the oral hearing on the date set by the Labor Court judge, the Labor Court judge shall adopt the MOL fine recommendation at that same hearing, unless it is not reasonable, and issue an order requiring the employer to pay the fine within five days of receiving the order and to remedy the violation within a specified time period.

4.1(d). A party may appeal the Labor Court judge's order at the hearing or within three days of receiving notice of the order. Within two days of receiving notice of the appeal, the Labor Court judge shall refer the case to the corresponding Labor Court of Appeals, which shall issue a decision within ten business days. If the Labor Court of Appeals confirms the Labor Court judge's order adopting a fine, the Labor Court judge shall order the employer to pay the fine within five days of the date of receiving the Labor Court of Appeals' order and to remedy the violation within a specified time period.

4.1(e). Any final order issued by a Labor Court judge directing an employer to remedy a violation within a specified time period shall be transmitted to the Unit for Execution and Verification of Reinstatements and Special Procedures related to Labor Matters within the judiciary (Verification

Unit),² immediately after the expiration of the specified time period, to verify that the violation has been remedied within the specified period. The Verification Unit shall seek the assistance of the police, if necessary, and of the IGT in cases where the IGT's knowledge or expertise may be required or as otherwise needed. If the violation is not remedied within the specified time period, the Labor Court judge shall refer the matter to the corresponding Criminal Court for failure to obey a court order and shall take any action that is necessary to ensure compliance with the order.

4.1(f). If the employer does not pay a fine within the time period specified by the Labor Court judge, the Labor Court judge shall immediately issue an order calling for the necessary embargos or seizures of assets to ensure payment of the imposed fine. If the employer does not have sufficient assets to ensure payment of the fine, the Labor Court judge shall order the employer to include the amount of the fine as a debt in its accounting projections for the following year. If the violating employer fails to comply with such order, the Labor Court judge shall refer the matter to the corresponding Criminal Court for failure to obey a court order.

4.1(g). The Labor Court judge shall notify and provide copies of all final court orders to the MOL, as a party to the case.

4.2. **Within 60 days**, the President shall submit this legislative proposal to the Congress of Guatemala.

4.3. The Congress, upon receiving the legislative proposal, shall put it on the agenda for the purpose of complying with the procedures established in the Constitution of the Republic.

4.4. The Executive Branch of Guatemala shall make every effort to enact this proposed legislation within 180 days. If, once that period expires, the proposed legislation has not been enacted, the United States may request the panel to resume its work, and the provision set out in Section 18.4 of this Enforcement Plan, regarding termination of the process, shall not apply.

5. Standardized Timeframes for MOL Inspections

5.1. Guatemala, through the MOL, shall adopt and implement standardized timeframes for: (i) conducting labor inspections after the MOL receives complaints; (ii) remediation of violations identified by labor inspectors; and (iii) conducting verification visits to verify that employers have remedied the violations identified by labor inspectors consistent with any applicable timeframes set by the Labor Code.

5.2. **Within 90 days**, Guatemala shall prepare an MOL Ministerial Accord that establishes standardized timeframes for the items listed above.

5.3. **Within 110 days**, Guatemala shall publish on the MOL website these standardized timeframes and shall inform all MOL personnel whose responsibilities could be affected by the Ministerial Accord.

6. Labor Law Compliance for Enterprises Receiving Benefits under Decree No. 29-89: Revocation of Benefits

6.1. Guatemala shall strengthen the enforcement of Article 33(f) of Decree No. 29-89 of the Congress of the Republic, Law to Promote and Develop Export and Maquila Activity (Decree 29-89), which requires that all enterprises classified as exporters or *maquilas* under the Temporary Admission and Reimbursement of Duties Regime shall "comply with the laws of the country, particularly labor laws." While respecting due process, the benefits of these enterprises under Decree 29-89 shall be revoked for labor law violations.

² The Verification Unit was created pursuant to Accord No. 26-2012 to verify employer compliance with all Labor Court judge orders.

6.2. **Within 90 days**, Guatemala shall publish on the websites of the MOL, the MOE, and the judiciary, a Government Accord repealing Government Accord No. 196-96 and shall inform all MOL, MOE, and judicial personnel whose responsibilities could be affected by the changes. The new Government Accord shall require that:

6.2(a). If an enterprise receiving benefits under Decree 29-89 does not comply with the order of the appropriate Labor Court within the time period specified by that court, the Labor Court shall give notice to the MOE within five days of that failure to comply and provide the MOE with a copy of the order; and

6.2(b). Within five business days of receiving such notice from the appropriate Labor Court, the MOE shall immediately revoke the benefits the enterprise receives under Decree 29-89.

6.3. **Within 90 days**, Guatemala shall publish on the MOL website a Ministerial Accord requiring the MOL to conduct ongoing inspections of enterprises receiving benefits under Decree 29-89 and shall inform all personnel whose responsibilities could be affected by the Ministerial Accord. The Ministerial Accord shall require the MOL to conduct, for each enterprise receiving Decree 29-89 benefits:

6.3(a). At least one annual inspection to confirm the enterprise is complying with all applicable labor laws; and

6.3(b). Verifications, every 120 days, through the use of data tracking or other means, that the enterprise is not in violation of any MOL, Labor Court, or Criminal Court orders against the enterprise or its predecessor(s), in cases where employer substitution has been confirmed.

6.4. **Within 90 days**, Guatemala shall undertake the first annual inspections and verifications for all enterprises receiving benefits under Decree 29-89.

6.5. **Within 120 days and every 180 days thereafter**, Guatemala shall publish on the MOE website a list of enterprises that received benefits under Decree 29-89 during the prior 180 day period, and indicate which of those enterprises had Decree 29-89 benefits revoked as a consequence of violating Article 33(f) of Decree 29-89.

7. Labor Law Compliance for Enterprises Receiving Benefits under Decree 29-89: Qualification Procedures

7.1. Guatemala shall strengthen compliance with labor laws by enterprises receiving benefits under Decree 29-89, based on Article 33(f) of Decree 29-89, through the following actions:

7.2. **Within 60 days**, the MOE shall prepare an amendment to Chapter II (“Qualification Procedures”) of Government Accord 533-89, which regulates Decree 29-89, that shall:

7.2(a). Require the MOE to publish on its website and in at least one nationally circulated daily newspaper the names of all enterprises applying for benefits under Decree 29-89 and provide the public with a period of 30 days from the date the names are published to submit comments to the MOE with respect to the enterprise’s compliance with Article 33(f) of Decree 29-89. The MOE shall not approve an application for benefits until the 30-day comment period has closed. If the MOE receives information indicating that the enterprise, or any potential predecessor(s) within the meaning of Article 23 of the Labor Code, may be in violation of one or more labor obligations, it shall promptly provide this information to the MOL;

7.2(b). Require the MOE, before approving an application for benefits under Decree 29-89, either by an existing enterprise or an enterprise with respect to which the MOE receives information indicating that a potential predecessor within the meaning of Article 23 of the Labor Code may be in violation of one or more labor obligations, to request the MOL to confirm, in coordination with the Verification Unit, that the enterprise is not presently violating any labor laws or MOL, Labor Court, or Criminal Court orders, including against its predecessor(s) in cases where the judiciary has determined that employer substitution has occurred pursuant to Article 23 of the Labor Code. The MOE shall reject the application if such violations are confirmed;

7.2(c). Require each enterprise seeking to qualify for benefits under Decree 29-89 to attach to its application a sworn statement by the enterprise's Guatemalan legal representative, notarized by a Guatemalan notary public, stating that, as of the date of the application, the enterprise is in compliance with all labor obligations, including labor laws and MOL, Labor Court judge, and Criminal Court judge orders against the enterprise or its predecessor(s). The enterprise's Guatemalan legal representative may be prosecuted criminally for the offense of perjury if the application contains any false statements; and

7.2(d). Require each enterprise approved for benefits under Decree 29-89 to submit, by January 20 of each year, a sworn statement by the enterprise's Guatemalan legal representative, notarized by a Guatemalan notary public, stating that the enterprise has complied with its labor obligations during the prior year and provide that failure to submit the statement shall result in the termination of the benefits within 30 days of the January 20 deadline. The enterprise's Guatemalan legal representative may be prosecuted criminally for the offense of perjury if the application contains any false statements.

7.3. Within 60 days, the MOE shall publish this amendment to Chapter II on its website and shall inform all of its personnel whose responsibilities could be affected by the amendment.

Mechanism to Ensure Worker Payments upon Closure of Enterprises Receiving Benefits under Decree 29-89

7.4. Within 30 days, Guatemala, in cooperation with the United States, shall make a request that shall be submitted to the Inter-American Development Bank (IDB) and any other cooperating international institution, for the development of a project to establish a contingency mechanism that is commensurate with the extent of the potential need, and commercially and legally viable, to address cases of closures of enterprises receiving benefits under Decree 29-89, designed to ensure payments owed to workers.

7.5. Guatemala shall present the information required by each international institution, in order for the request to be considered, within 60 days from the date it was submitted.

7.6. The Executive Branch of Guatemala shall make every effort to implement the mechanism that results, which must be commensurate with the extent of the potential need and commercially and legally viable.

8. Labor Law Compliance upon Enterprise Closure

8.1. Guatemala shall establish procedures to confirm enterprise closures or dissolutions, or imminent closures or dissolutions, and take the necessary measures to obtain the payment of remuneration owed to workers in the case of closure or dissolution, including wages, indemnification, bonuses, overtime pay, and any other payments required by law.

Procedures Applicable to All Enterprises

8.2. Within 30 days, Guatemala shall prepare an MOL Ministerial Accord, requiring that:

8.2(a). The IGT shall initiate a labor inspection of an enterprise immediately upon receiving information of its closure or dissolution or of indicators of its impending closure or dissolution, including information obtained: (i) through the Inter-Agency Cooperation Agreement signed on June 20, 2012; (ii) from a worker's complaint; or (iii) directly by the MOL. The labor inspection shall include:

8.2(a)(i). In the case of a closure or dissolution or impending closure or dissolution in Guatemala City and the Department of Guatemala, inspectors from the Special Unit of Conflicts;

8.2(a)(ii). Notice within a period of 24 hours to the National Civil Police pursuant to Ministerial Accord 106-2011;

8.2(a)(iii). In the case of impending closure or dissolution, an assessment of the likelihood of such closure or dissolution and risk of non-payment of remuneration owed upon closure or dissolution, including by seeking Labor Court authorization under Labor Code Article 281(b) to review enterprise accounting books and by taking into account repeated instances of non-payment of remuneration owed to workers; and

8.2(a)(iv). Notice to the workers of the inspection results, through their representative(s), by posting them on the MOL website, or through other appropriate means.

8.2(b). If the IGT concludes, as a result of the inspection, that an enterprise presents a risk of non-payment of remuneration owed to workers at the time of closure or dissolution and that such closure or dissolution is ongoing or impending, or if the IGT concludes that an enterprise has closed or dissolved without paying remuneration owed to workers, the IGT shall undertake the following actions:

8.2(b)(i). Petition the appropriate Labor Court to embargo or seize assets to ensure payment of the remuneration owed to workers;

8.2(b)(ii). Immediately notify the IGSS so that it can verify compliance with certain employer obligations;

8.2(b)(iii). Order the employer to immediately make payment of all remuneration owed to workers upon closure or dissolution; and

8.2(b)(iv). If the IGT determines that an employer has failed to make the required payments within the timeframe provided, the IGT shall, within five days of the timeframe's expiration, file a complaint with the appropriate Labor Court judge, initiating the sanction process provided for in Section Four of this Enforcement Plan.

8.2(b)(v). The actions described in paragraph 8.2(b) and its subparagraphs shall be taken with respect to enterprises receiving benefits under Decree 29-89 as specified in paragraph 8.6 and its subparagraphs.

8.2(c). After an inspection, and upon a determination that enterprise closure or dissolution is ongoing or impending, the IGT shall undertake a preliminary determination of remuneration owed to workers, such as wages, bonuses, benefits, indemnifications, and any other payments required by law, to the workers who request it in accordance with the Labor Code.

8.3. **Within 60 days**, Guatemala shall publish this Ministerial Accord on the MOL website and shall inform all personnel of the MOL, MOE, and judiciary whose responsibilities could be affected by the Ministerial Accord.

8.4. **Within 90 days**, Guatemala shall train all labor inspectors and all other MOL personnel affected by this Ministerial Accord, which shall include training by a qualified governmental or non-governmental entity on reviewing accounting books to determine whether existing assets are sufficient to cover the remuneration owed to workers upon enterprise closure or dissolution.

Additional Procedures for Enterprises Receiving Benefits under Decree 29-89

8.5. Guatemala, through a Rapid Response Team (GRI) composed of the MOL, which coordinates it, the MOE, MOI, SAT, IGSS, and the judiciary, shall verify the imminent closure or dissolution of enterprises receiving benefits under Decree 29-89 through procedures established for this purpose and shall take the necessary measures to seek employer compliance with labor law obligations and attempt to prevent possible enterprise closures or dissolutions.

8.6. **Within 90 days**, Guatemala shall prepare an MOL Ministerial Accord for the establishment of the GRI, requiring that:

8.6(a). The IGT shall initiate the labor inspection described in subparagraph 8.2(a) of an enterprise receiving benefits under Decree 29-89 within 24 hours of receiving information of its

closure or dissolution or of indicators of its impending closure or dissolution. If the IGT verifies, as a result of the inspection, that an enterprise receiving benefits under Decree 29-89 presents a risk of non-payment of remuneration owed to workers at the time of closure or dissolution and that such closure or dissolution is impending, the MOL shall convene a meeting of the GRI within 48 hours to analyze the case. If the IGT verifies that such closure or dissolution has occurred, the processes described in subparagraphs 8.2(b) and 8.2(c) shall apply. If the GRI is convened, the MOL shall summon the employer to appear before the GRI within 24 hours of the initial GRI meeting to present relevant documentation, including the accounting books of the enterprise, unless, due to geographical distance of the enterprise, the employer is unable to appear within 24 hours, in which case the timeframe shall be no greater than 48 hours;

8.6(b). If the employer appears before the GRI, the GRI shall propose options to find a satisfactory solution to avoid the closure or dissolution of the enterprise and for the employer to ensure payment of remuneration owed to workers upon closure or dissolution if the closure or dissolution is not avoided. If the GRI, the employer, and the workers reach an agreement on a satisfactory solution, the IGT shall document it so as to generate an enforceable legal instrument, and the IGT shall monitor and follow up on compliance with the agreement;

8.6(c). If the employer does not comply with the summons to appear before the GRI or no agreement is reached as a result of the meeting, the IGT shall undertake a preliminary determination of remuneration owed to workers, unless such determination has already been undertaken, and shall take the actions described in subparagraph 8.2(b); and

8.6(d). If the IGT determines that the employer has failed to make the required payments within the timeframe established in the agreement or has otherwise failed to comply with the agreement, the IGT shall undertake a preliminary determination of remuneration owed to workers, unless such a determination has already been undertaken, and shall take the actions described in subparagraph 8.2(b).

8.7. **Within 90 days**, Guatemala shall publish this Ministerial Accord on the MOL, MOE, IGSS, SAT, and judiciary websites and shall inform all personnel whose responsibilities could be affected by this Ministerial Accord.

8.8. **Within 120 days**, Guatemala shall train all labor inspectors and all other MOL, MOE, IGSS, SAT, or judiciary personnel whose responsibilities could be affected by this Ministerial Accord.

9. Employer Substitution

9.1. Guatemala, through the MOL, shall develop, publish, and apply objective criteria for determining provisionally whether an employer substitution has occurred under Article 23 of the Labor Code. If the MOL determines provisionally that, based on the totality of circumstances, employer substitution has occurred, the MOL shall issue a provisional determination of the substitution and Guatemala shall apply Article 23 of the Labor Code.

9.2. **Within 60 days**, Guatemala shall prepare criteria for determining provisionally whether employer substitution has occurred under Article 23 of the Labor Code. The criteria shall include factors such as whether the facilities, machinery, equipment, workers, jobs, working conditions, production methods, and products or services produced or supplied by the new entity are the same or similar to those of the previous entity.

9.3. **Within 60 days**, Guatemala shall publish on the MOL website the criteria for determining provisionally whether employer substitution has occurred and shall inform all MOL and judiciary personnel whose responsibilities could be affected by the new criteria.

9.4. **Within 90 days**, Guatemala shall prepare an MOL directive, or similar legal instrument, to direct the application and administration of such criteria and shall inform all MOL personnel whose responsibilities could be affected by this directive.

9.5. **Within 90 days**, Guatemala shall: (i) publish on the MOL website a list of provisional employer substitution determinations issued by the MOL and subsequent final determinations issued by the

Labor Courts in the prior month, including the names of the predecessor and successor enterprises and the dates of the determinations, and thereafter update the list on a monthly basis; (ii) indicate on the MOL website, in the context of the list, that such employer substitution determinations may serve as evidence that employer substitution has occurred in any MOL and Labor Court proceedings involving the same employers; and (iii) provide copies of such final determinations to workers who request them.

B. Enforcement of Labor Court Orders

10. System for Tracking Compliance with Court Orders

10.1. **In September 2012**, Guatemala incorporated new fields into the standardized electronic case management system (the “Court Management System”) to be used by all Labor Courts to effectively and systematically track: (i) employer compliance with Labor Court orders within the timeframes established by law; and (ii) the judicial measures taken to enforce such court orders. Guatemala shall maintain this Court Management System, ensure that it contains all information relevant to the enforcement of Labor Court orders and to actions taken against employers for failure to comply with Labor Court orders, and provide access to the Court Management System appropriate to the parties to the case, which includes the MOL in all cases, and to the MOE.

10.2. **Within 30 days**, Guatemala shall ensure, including through any necessary technical amendments, that this Court Management System includes, at a minimum, the following information:

10.2(a). All information that may be relevant to the enforcement of a Labor Court order, including: the names and the addresses of the parties; the case number; the procedural status of the case; the date(s) of any final orders; the Labor Code articles violated; any amount determined by the court to be owed to workers; applicable fine amount; the deadline for complying with the order; and the status of compliance, including the dates on which the Verification Unit assessed compliance and any findings thereof; and

10.2(b). All information concerning court actions taken against a party for failing to comply with a court order, including: the date on which the Labor Court attempted to embargo or seize the employer’s assets to secure payment of any unpaid fines and/or remuneration due to workers and the result of such action; and whether the Labor Court has referred the employer’s failure to comply with the court order to the corresponding Criminal Court and, if so, the date on which it did so and the results thereof.

10.3. **Within 90 days**, Guatemala shall ensure that all parties to a case have secure internet access to all information related to their case that is maintained in the Court Management System. Such access may be provided using an individual username and password.

10.4. **Within 60 days**, Guatemala shall ensure that the Labor Courts make the following information on closed cases publicly available, upon prior written request: case status; all final court determinations; the status of compliance with those orders; and all actions taken by the Labor Court to enforce Labor Court orders against a party found to have violated labor laws.

10.5. **Within 90 days**, Guatemala shall ensure that in those cases to which the MOE is not a party, the judiciary shall provide the MOE with read-only access to the information contained in the Court Management System through secure internet access, so that the MOE can verify the enforcement of court orders, as required in Sections Six, Seven, and Eight of this Enforcement Plan.

10.6. **Within 120 days**, Guatemala shall complete the training for all Labor Court personnel responsible for maintaining and updating the Court Management System.

11. Verification of Employer Compliance with Court Orders

11.1. **On July 20, 2012**, the Guatemalan Supreme Court issued Accord No. 26-2012, which created the Verification Unit within the judiciary to verify employer compliance with all Labor Court orders within the timeframes required by law. Accord 26-2012 requires the Verification Unit to document

electronically, and prepare monthly reports with statistics on, actions taken by the Verification Unit and the status of employer compliance with Labor Court orders.

11.2. **Within 30 days**, Guatemala shall ensure that the Verification Unit shall verify compliance with all Labor Court orders within the timeframes required by law, including orders for reinstatement, remediation of labor law violations, remittance of amounts owed to workers, and payment of fines assessed by the court.

11.3. **Within 30 days**, Guatemala shall prepare standardized procedures, criteria, and forms to be used by the Verification Unit and other Labor Court executors when verifying employer compliance with a Labor Court order.

11.4. **Within 60 days**, Guatemala shall publish and provide copies of the standardized procedures, criteria, and forms to all judicial personnel whose responsibilities could be affected by the changes, including all members of the Verification Unit and Labor Court executors.

11.5. **Within 120 days**, Guatemala shall assign sufficient resources to the Verification Unit to enable it to carry out its functions effectively.

12. Monitoring Judicial Enforcement of Labor Court Orders

12.1. Guatemala, through the judiciary, shall ensure that Labor Courts take the necessary measures required by law, within the timeframes required by law, to enforce Labor Court orders against employers found to have violated labor laws.

12.2. **Within 60 days**, Guatemala, through the judiciary, shall develop a program to monitor Labor Courts' enforcement of orders, which, at a minimum, shall include the following:

12.2(a). A review of all Labor Courts and Labor Courts of Appeal at least every 180 days to verify whether court orders were issued within the timeframes prescribed by law and whether all measures required by law were taken to ensure compliance with such orders, including increases in fines, embargos or seizures of assets, and referrals to the Public Ministry (PM) for failures to obey court orders, through periodic visits to the Labor Courts and Labor Courts of Appeal, as well as reviews of the Court Management System and the Verification Unit's monthly reports;

12.2(b). Designation of a coordinator and supervisor executor to conduct the periodic monitoring visits to the Labor Courts and Labor Courts of Appeal and reviews of the Court Management System and monthly Verification Unit reports and to prepare reports every 180 days documenting instances where Labor Courts and Labor Courts of Appeal fail to take measures required by law to enforce court orders, which shall include the date on which a court order was issued, the timeframe provided for compliance, and what measures were taken, if any, by the Labor Courts to enforce the order; and

12.2(c). The application of disciplinary procedures established in Title V, Chapters I and II, of the Judicial Career Law to judges who do not adopt measures required by law to enforce court orders.

12.3. **Within 75 days**, Guatemala shall publish on the website of the judiciary a description of the monitoring program, implement it by initiating the review of Labor Courts, and inform and provide copies to all Labor Court personnel whose responsibilities could be affected by the monitoring program, including Labor Court judges and the Office of the General Court Supervisor.

13. Application of Labor Code Articles 209, 379, and 380

13.1. Guatemala, through the judiciary, shall clarify the application of Labor Code Articles 209, 379, and 380 to improve the protection of workers actively engaged in protected associational activity, including but not limited to, union formation and collective bargaining.

13.2. **Within 45 days**, Guatemala, through the judiciary, shall prepare a training program to be provided to Labor Court judges and magistrates regarding the application of Labor Code Articles 209, 379, and 380, clarifying, at a minimum, that:

13.2(a). The protections established in Articles 379 and 380 take effect from the moment workers submit their list of demands to the relevant Labor Court, establishing a collective conflict;

13.2(b). The protections established in Article 209 take effect from the moment workers give notice, in any written form, to the IGT, directly or through regional offices with delegated authority, that they are forming a union, and that these protections exist for 60 days from the date of registration of the union, regardless of when or whether the relevant employer is notified;

13.2(c). A Labor Court shall, within 24 hours of receiving a complaint of unlawful dismissal in violation of the above provisions, issue immediate reinstatement orders for workers dismissed in violation of such articles and designate Labor Court executors to enforce such reinstatement orders against the employer; and

13.2(d). If an employer fails to comply with an order under Articles 209 and 379 within seven days, the Labor Court shall increase by 50 percent the penalty imposed. If an employer fails to comply with an order under Article 380 within seven days, the Labor Court shall double the penalty imposed, and where an employer still fails to comply within seven days after the Labor Court has doubled the penalty, the Labor Court shall immediately refer the matter to the Criminal Court for failure to obey the Labor Court order.

13.3. **Within 60 days**, Guatemala, through the Public Ministry, shall develop the legal procedure necessary to ensure effective criminal prosecution of cases referred by Labor Courts of employer failures to comply with Labor Court orders, in conformity with Articles 209, 379, and 380. The procedure shall comply with the timeframes established in the relevant labor laws and shall establish a notification mechanism to inform Labor Courts of the outcomes of referred cases, which shall also be recorded in the Court Management System referenced in Section 10.

13.4. **Within 90 days**, Guatemala shall publish on the websites of the Public Ministry and the judiciary the procedure described in the preceding paragraph and shall inform all Public Ministry and judicial personnel whose responsibilities could be affected by the procedure, including Labor Court judges and Criminal Court judges.

13.5. **Within 120 days**, Guatemala shall complete training of all relevant Labor Court personnel on the application of Labor Code Articles 209, 379, and 380.

13.6. **Within 120 days** Guatemala, through the judiciary, shall train all judicial personnel whose responsibilities could be affected by the procedure described above.

13.7. **Within 120 days**, Guatemala, through the Public Ministry, shall train all prosecutors and Public Ministry personnel whose responsibilities could be affected by the procedure described above.

C. General Provisions

14. Transparency and Tripartite Coordination on Enforcement Plan Implementation

14.1. Guatemala, through the MOL, shall present the content of this Enforcement Plan to the Tripartite Commission on International Labor Affairs, established to represent the distinct sectors on labor issues, in conformity with International Labor Organization Convention 144, and shall discuss implementation of the Enforcement Plan with the Tripartite Commission on an ongoing basis.

14.2. The institutions involved with implementing this Enforcement Plan shall publish its content on their websites, and for the purpose of transparency, shall receive and consider comments from interested parties and shall meet with interested parties as appropriate.

15. Publication of Labor Law Enforcement Statistics and Data

15.1. **Within 120 days and annually thereafter**, Guatemala shall publish on the MOL website:

15.1(a). Statistics on inspection visits conducted by the MOL in the preceding year, by region and sector (*i.e.*, commerce, industry, agriculture and services), as well as statistics on confirmed violations, their resolution, and referral of cases to the Labor Courts; and

15.1(b). Statistics on complaints or reports received by the IGT, in the Department of Guatemala and other departments, and the application of standardized timeframes for inspections.

15.2. **Within 120 days and every 180 days thereafter**, Guatemala shall publish a report on the judiciary's website, based on the information compiled from the Labor Courts' Court Management System, that shall include, at a minimum, the number of rulings issued to enforce labor laws and statistics on the following, with disaggregated data on cases of violations of Labor Code Articles 209, 379, and 380:

15.2(a). Labor Court verification of employer compliance with court-issued reinstatement orders within the legally established timeframes [Sections 4, 11];

15.2(b). Labor Court verification of employer remediation of identified labor law violations within the legally established timeframes [Sections 4, 11];

15.2(c). Labor Court verification of employer payment of fines assessed and amounts owed to workers within the legally established timeframes [Sections 4, 11];

15.2(d). Embargos or seizures of assets and other preventive measures taken by Labor Courts to ensure the payment of overdue fines assessed and amounts owed to workers [Section 4];

15.2(e). Labor Court referral to the PM of cases of failure to comply with court orders, including the total number of cases in which employers received criminal sanctions for failure to comply [Sections 4, 13];

15.2(f). Sanctions against Labor Court judges who have not undertaken all measures required by law, within the timeframes required by law, to enforce their orders [Sections 12, 13]; and

15.2(g). Sanctions against judicial personnel who have not followed procedures required by law for effective criminal prosecution of cases referred by Labor Courts of employer failure to comply with worker reinstatement orders [Section 13].

15.3. Guatemala shall make every effort to continuously improve the judiciary's website and update the information that is published, as well as the respective search options.

16. Verification of Enforcement Plan Implementation

16.1. Guatemala shall provide information at the end of July, October, January, and April, to publicize the progress of this Enforcement Plan. If a Party identifies a concern regarding the operation of this Enforcement Plan, the Parties shall promptly meet, in person or by other appropriate methods, to discuss the concern.

16.2. The Parties shall share information relevant to determining whether this Enforcement Plan is being implemented within the timeframes established.

16.3. Guatemala shall provide the United States with a copy of any instrument, mechanism, or procedure directly relevant to the implementation of this Enforcement Plan prior to its finalization and again upon issuance.

17. Support and Cooperation from the United States in Implementing the Enforcement Plan

17.1. The United States, upon request of Guatemala and as appropriate, shall support Guatemala's successful implementation of this Enforcement Plan by providing technical advice and information regarding best practices, sharing expertise, and assisting with outreach to international institutions.

18. Final Provisions

18.1. The United States and Guatemala shall jointly request the CAFTA-DR Labor Dispute Panel (Panel), established under CAFTA-DR Article 20.6 on August 9, 2011, to suspend its work for a period of six months from the date of the signing of this Enforcement Plan.

18.2. The United States and Guatemala shall review the operation of this Enforcement Plan and jointly request the Panel to extend the suspension for an additional six months, unless a Party considers that the Enforcement Plan has not been implemented in the timeframes set out herein.³

18.3. A Party may request the Panel to resume its work only: (a) if it considers that this Enforcement Plan has not been implemented in the timeframes set out in this Enforcement Plan; or (b) in the circumstance described in Section 4.4.

18.4. The United States shall terminate the Panel proceeding one year from the date of the signing of this Enforcement Plan, provided it considers that this Plan has been implemented in the timeframes set out herein.

18.5. The timeframes referenced in this Enforcement Plan shall commence on the date this Enforcement Plan is signed by both Parties or, if the Parties sign this Enforcement Plan on different days, on the date this Enforcement Plan is signed by the second Party.

18.6. Unless otherwise specified in this Enforcement Plan, all timeframes referenced in this Enforcement Plan shall consist of calendar days, not business or working days.

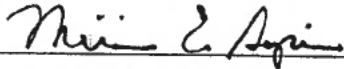
18.7. This Enforcement Plan shall enter into force once it is signed by both Parties.

18.8. The English and Spanish texts of this Enforcement Plan are equally authentic.

³ For greater certainty, the Parties' joint request(s) to the Panel to suspend its work in paragraphs 18.1 and 18.2 shall specify that the Panel shall resume its work: (1) automatically at the end of the six-month suspension, unless otherwise directed by joint request of the Parties; or (ii) at any time upon request of either Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

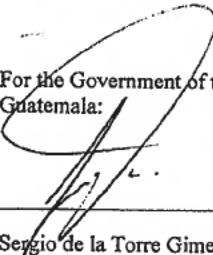
For the Government of the United States of America:



Ambassador Miriam E. Sapiro
Deputy United States Trade Representative

Date April 25, 2013

For the Government of the Republic of Guatemala:



Sergio de la Torre Gimeno
Minister of Economy

Date Abril 26/2013