

First Periodic Review of Progress
to Address Issues Identified in the U.S. Department of Labor's
Public Report of Review of Submission 2015-01 (Peru)

December 16, 2016

On March 18, 2016, the U.S. Department of Labor (USDOL) issued a report in response to a submission filed under Chapter 17 (the Labor Chapter) of the United States-Peru Trade Promotion Agreement (PTPA). The report is available in full at https://www.dol.gov/ilab/reports/pdf/Public_Report_of_Review_of_US_Submission_2015-01.pdf. USDOL's Public Report of Review of Submission 2015-01 identified significant concerns regarding whether the system in place to protect the right to freedom of association of workers employed on unlimited consecutive short-term contracts in the non-traditional export (NTE) sectors – which include exports of textiles, apparel, and certain agricultural products – is sufficient to protect that right. The report also raised questions regarding labor law enforcement in Peru more generally, and particularly in the NTE sectors. To help guide subsequent engagement between the U.S. government (USG) and the Government of Peru (GOP), the report provided six recommendations aimed at addressing the questions and concerns and noted USDOL's commitment to assess any progress by the GOP within nine months and thereafter, as appropriate.

On June 5, 2016, Peru elected President Pedro Pablo Kuczynski to replace President Ollanta Humala. President Kuczynski was sworn into office on July 28, 2016. Since publication of the USDOL's report, the USG has engaged with both the Humala administration and the current Kuczynski administration to discuss the issues identified in the report and a path forward. Recently, in October 2016, a USDOL technical-level delegation visited Peru to continue gathering information related to the submission report. In November 2016, U.S. Secretary of Labor Thomas E. Perez led a U.S. delegation that met with President Kuczynski and other senior GOP officials to discuss the concerns and questions raised in USDOL's report and underscore the importance of the GOP taking the recommended actions, or similar measures, to address those issues. President Obama reiterated that message in a subsequent November 2016 meeting with President Kuczynski. As of the publication of this review statement, the USG continues to engage with the GOP and to encourage the GOP to adopt measures that would address the issues identified in the March 2016 USDOL report.

During this review period, the GOP took some steps and also committed to actions that would represent progress towards addressing the concerns and questions identified in the USDOL report. In May 2016, the federal labor inspection superintendency (SUNAFIL) issued a protocol for inspections involving workers employed under the short-term contract provisions of Law 728, the law that governs short-term contracts for most sectors, though not workers in the NTE sectors. This protocol establishes the standards that inspectors must use to determine whether an employer has satisfied the requirements of Law 728 for using short-term employment contracts. The protocol does not, however, include similar standards or criteria for determining whether an employer is compliant with the requirements of the NTE law for using short-term contracts or for determining when short-term contracts are illegally being used to limit workers' freedom of association. In the final days of President Humala's administration, Peru's Ministry of Labor

and Promotion of Employment (MTPE) convened a tripartite working group to discuss a draft Supreme Decree that would more closely regulate the use of temporary contracts to help protect workers' rights. While the group reached agreement on some procedural protections, such as requiring that employers provide just cause for all non-renewals of temporary contracts in the NTE sectors and mandating that all NTE contracts be submitted to the MTPE for approval at least 10 days prior to their entry into force, it could not reach an agreement on all terms before the Humala administration ended. In December 2016, the Kuczynski administration reconvened the tripartite working group for the same purpose.

In addition, in October 2016, the GOP opened a new SUNAFIL office in the Arequipa region. The MTPE also requested funding from the Ministry of Economy and Finance to open four additional new SUNAFIL regional offices in the coming months. This would mean that 14 of Peru's 26 regions would have SUNAFIL offices, up from nine regions when the USDOL report was published in March 2016. This would be a positive step and the further expansion of SUNAFIL offices to all 26 regions would provide additional support to the effective enforcement of labor laws throughout Peru.

While USDOL recognizes that these commitments by the GOP, if fully implemented, would represent progress towards addressing the questions and concerns identified in the March 2016 report, USDOL also notes a number of areas where Peru has not addressed key recommendations in the report, including: adopting and implementing a legal instrument that places a limit on the consecutive use of short-term employment contracts in the NTE sectors, consistent with the limit governing all other sectors and limiting employers' ability to use such contracts to restrict workers' associational rights; increasing the authority of SUNAFIL and the MTPE to convert temporary employees into permanent employees in cases of identified violations of workers' associational rights and while administrative or legal proceedings are still pending; issuing protocols that SUNAFIL and MTPE labor inspectors would use to verify that short-term contracts in the NTE sectors meet all legal requirements for use and are not being used to restrict workers' rights; increasing the number of regional Labor Courts of First Instance; and increasing the support for SUNAFIL's enforcement activities.

With respect to this final recommendation, since the publication of the report and through engagement with the GOP, USDOL has gathered additional information which clarify the specific supportive actions that could help ensure more effective and expeditious labor law enforcement in all regions of Peru, including: increasing staffing at SUNAFIL offices to help ensure labor inspections can be conducted in accordance with the timeframes established by Peruvian law; increasing the number of fully empowered labor inspectors in SUNAFIL regional offices, rather than relying principally on auxiliary inspectors unauthorized to conduct all phases of a labor inspection; and because it appears short-term contracts are frequently used to employ staff in the administrative sanction process, increasing the use of long-term, stable employment contracts of SUNAFIL and MTPE staff to support a consistent and reliable sanctions process.

USDOL reaffirms the commitment of the U.S. government to continue to engage with the GOP to identify a path forward on these questions and concerns and to support the GOP's progress. USDOL, together with the Office of the U.S. Trade Representative and the U.S. Department of

State, will continue to monitor and assess progress by the GOP in addressing these issues over the next six months.