

Progress under the U.S. – Honduras Labor Rights Monitoring and Action Plan

March 14, 2016

On February 27, 2015, the U.S. Department of Labor's Office of Trade and Labor Affairs (OTLA) released its *Public Report of Review of U.S. Submission 2012-01 (Honduras)* (Public Report). The Honduran Secretariat of Labor and Social Security (STSS) and the U.S. Department of Labor (USDOL) released a Joint Statement pledging to work together to implement the recommendations set forth in the Public Report, which was issued in response to a submission filed by the American Federation of Labor and Congress of Industrial Organizations and 26 Honduran unions and civil society organizations pursuant to the Dominican Republic – Central America – United States Free Trade Agreement (CAFTA-DR).

The Public Report recommended consultations between the Government of Honduras (GOH) and the Government of the United States (USG) through the contact points designated in the Labor Chapter of the CAFTA-DR to develop a monitoring and action plan that would address concerns identified in the Public Report regarding the GOH's enforcement of its labor laws. Accordingly, between March and October 2015, the USG and the GOH held a series of bilateral meetings and engaged in discussions with representatives from business and labor groups in Honduras. These efforts culminated in the development of the *Labor Rights Monitoring and Action Plan* (MAP), which was signed by U.S. Secretary of Labor Thomas E. Perez and Honduran Minister of Labor Carlos Madero on December 9, 2015.

Consistent with the Public Report, the OTLA has reviewed the progress made by the GOH in addressing the identified concerns over the 12 months since the Report's publication, in particular the specific actions taken by the GOH through February 26, 2016, to meet the benchmarks set out in the MAP.

Overall, the STSS has made significant progress toward meeting the MAP benchmarks, in most cases within the timeframes specified in the MAP. Illustrative of this progress is the 35,000,000 HNL (US \$1.6 million) funding increase for the STSS Inspectorate, nearly doubling the Inspectorate's budget, and an agreement with labor and business representatives, reflected in the Draft Inspection Law, to substantially increase fines for labor law violations. Where the STSS has missed activity deadlines, the STSS has taken concrete steps to overcome obstacles and move forward with the activities at issue.

The OTLA will continue its intensive collaboration with the GOH and close monitoring of the implementation of the MAP, including by posting a full-time Labor Attaché from the USDOL to the U.S. Embassy in Tegucigalpa this year. The OTLA, in consultation with the U.S. Trade Representative and the U.S. Department of State, will also continue to assess progress under the MAP.

The following section is a summary of the status of GOH efforts through February 26, 2016 to address the concerns identified in the Public Report and meet the benchmarks in the MAP.

I. Enhancement of Policy, Legal, and Regulatory Frameworks

Access to worksites

- The Tripartite Follow-Up Commission of accredited representatives from employer associations and worker organizations agreed to the Draft Inspection Law (*Anteproyecto de Ley de Inspección de Trabajo*, LIT) on January 21, 2016.
- The Tripartite Follow-Up Commission submitted the Draft LIT to the Social and Economic Council (*Consejo Economico y Social*, CES) of Honduras on February 9, 2016.
- The CES approved the Draft LIT on February 16, 2016, for submission to Congress.
- The Draft LIT includes seven articles that improve upon the existing framework in the Labor Code for providing labor inspectors access to worksites, including by:¹
 - Raising the fine for access denial from 5,000 HNL to 250,000 HNL (from US \$224 to \$11,210);² and
 - Eliminating the requirement that a judicial warrant be obtained prior to calling for police or other assistance in gaining access to worksites.³

*Procedure to Guarantee Fuero Sindical and Protección del Estado*⁴

- A ministerial accord outlining the administrative procedure to give effect to *fuero sindical* and *protección del estado* was approved on June 26, 2015, and went into effect immediately thereafter.

Calculation, Imposition, and Collection of Fines

- The Draft LIT increases sanctions for labor law violations in an attempt to ensure that the fines are an effective deterrent to those violations. Specifically, the Draft LIT:
 - Provides that the calculation and imposition of fines for violations that cause economic damage to workers will be applied per worker affected based on a percentage of the economic damage caused and increases the minimum fine to 5,000 HNL (US \$224);
 - Increases all other fines to a range of 100,000 HNL to 300,000 HNL (US \$4,484 to \$13,452);
 - Increases the fines annually in proportion to the rate of inflation; and
 - Provides that fines shall be increased by 25%, 30%, and 40% for repeat violations.⁵
- On September 8, 2015, the STSS and the Honduran Attorney General approved an interagency cooperative agreement that establishes a direct link between the two agencies for expediting and prioritizing the process of collecting fines imposed for labor law violations.

¹ Draft LIT, Articles 13, 21, 22, 37, 44, 84, and 90.

² Draft LIT, Article 90; *see also*, U.S. Department of the Treasury official exchange rate as of December 31, 2015, available at: <https://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/currentRates.htm>.

³ Draft LIT, Article 13(e).

⁴ See Labor Code of Honduras, Articles 516 and 517, available at: <http://trabajo.gob.hn/biblioteca-y-documentos/leyes/codigo%20de%20trabajo%20y%20sus%20reformas.pdf>.

⁵ Draft LIT, Articles 88 - 92.

Other Interagency Coordination

- The Draft LIT establishes a database of employers for use by the STSS.⁶
- The Executive Directorate of Revenue is transitioning to a different institutional structure and will be able to sign an interagency agreement with the STSS in the coming months to ensure that the STSS has electronic access to labor-related information. The STSS is seeking to identify other agencies with similar labor-related information and exploring possible additional information-sharing agreements with any such agencies.
- In 2015, six regional sub-commissions began functioning in La Ceiba, Choluteca, Danlí, Intibucá, El Progreso, and San Pedro Sula under the National Commission for the Gradual and Progressive Elimination of Child Labor.

II. Strategic Planning, Institutional Improvements, and Capacity Building

Strategic Planning and Resource Allocation

- On December 17, 2015, the Honduran National Congress approved a 35,000,000 HNL (US \$1.6 million) budget increase for the STSS, and the STSS had access to the funds as of January 6, 2016.
- On January 13, 2016, the STSS advertised an open competition for 63 new positions, including 34 inspectors who will be distributed throughout the country.
- The STSS has developed a draft national inspection strategy and announced that it will preview the strategy at the next meeting of the Tripartite Follow-up Commission.
- The ILO audit of the STSS administrative process related to inspections is in process.

Inspection Manual and Trainings

- On November 17-21, 2015, mediators from the U.S. Federal Mediation and Conciliation Service provided training on mediation techniques for 31 STSS inspectors, conciliators, and supervisors.

Internal Audits for Ongoing Performance Improvement

- On December 8, 2015, the USDOL's Wage and Hour Division provided expert advice to the STSS on its model for overseeing the work of regional offices.
- On December 8, 2015, the USDOL's Office of the Inspector General provided expert advice to the STSS on its internal oversight model.

III. Intensified, Targeted Enforcement Actions

- The STSS completed initial consultations on remediation plans for identified labor law violations with the employers named in the Public Report by September 30, 2015.
- The STSS reported that it completed inspections of 13 of the employers named in the Public Report.⁷ The STSS identified labor law violations at 11 employers and is pursuing administrative sanctions as appropriate.⁸

⁶ Draft LIT, Article 3.

⁷ Of the remaining four employers, three (A.tion, Agroexportadora Dome, and La Pradera) have closed. The STSS did not provide any information related to the *Empresa Nacional Portuaria* although documents available on the

- The STSS did not begin implementing inspection plans based on the above-referenced national inspection strategy because the strategy is still under development.
- The STSS notified the OTLA that it will delay the creation of an email address for receiving copies of notifications from workers intending to organize a union until the LIT comes into effect. This electronic notification is codified in Article 68 of the Draft LIT.
- The STSS did not receive any requests to register collective pacts.

IV. Transparency, Outreach, and Engagement

- The Tripartite Follow-up Commission met on March 24, 2015, May 28, 2015, June 30, 2015, August 24, 2015, and January 14, 2016.
- The STSS continued to engage with business, labor, civil society, and other stakeholders within the framework of the USDOL-funded project.

GOH's transparency portal indicate that the STSS is pursuing administrative sanctions against the company for unspecified labor law violations.

⁸ The STSS did not find any labor law violations at Ceiba Textiles or Hanesbrands.