

Second 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)

April 20, 2018

The U.S. Department of Labor (USDOL)'s March 2016 Public Report of Review of Submission 2015-01¹ (Submission Report) identified significant concerns related to the adequacy of Peru's system to protect the right to freedom of association, particularly in the non-traditional export (NTE) sectors, which include exports of textiles, apparel, and certain agricultural products. The report also raised questions regarding labor law enforcement in Peru generally and provided six recommendations to the Government of Peru (GOP) aimed at addressing the questions and concerns. The USDOL committed to assess the GOP's progress in implementing the report's recommendations and published the first such assessment on December 18, 2016.²

Following publication of the first assessment, the USDOL closely monitored labor conditions in Peru and engaged frequently with the GOP over its response to the six labor rights recommendations. In June 2017, a joint USDOL-Office of the U.S. Trade Representative (USTR) technical-level delegation visited Peru to follow up on the issues identified in the Submission Report and continue gathering relevant information. The USDOL and USTR also held videoconferences with the GOP to discuss these issues in August and December 2017.

During this review period, the GOP has taken some steps that, if fully implemented, would represent progress towards addressing the USDOL report's recommendations. For example, the GOP opened four new national labor inspection superintendency (SUNAFIL) regional offices in 2017, commencing operations in Cuzco in July, in Piura in October, and in Callao and Lambayeque in November. The GOP reports that each of these offices has an initial staff of six to 15 inspectors, depending on the size of the region covered. The GOP now has SUNAFIL labor inspection offices in 14 of Peru's 25 regions and the Lima Province, an increase from the nine SUNAFIL offices at the time the USDOL published its original report in March 2016. The GOP plans to open as many as six more SUNAFIL offices in 2018 and to have operating offices in the remaining regions by January 2020, ensuring that SUNAFIL offices are in all of Peru's regions to support the enforcement of labor laws.

The GOP has also provided increased financial support for SUNAFIL. In February 2017, the Ministry of Labor and Promotion of Employment (MTPE) submitted a request to the Ministry of Finance for additional funds for SUNAFIL. That request was granted in July 2017, providing SUNAFIL an additional 16,004,904 soles (approximately USD 4.9 million), for a total 2017 budget of 102,384,904 soles (USD 31.6 million). The MTPE requested an overall budget increase for 2018 in the amount of 551,944,786 soles (USD 170.6 million), which was approved by the Peruvian congress in December 2017. The 2018 budget allotted 141,178,701 soles (USD 43.6

¹ The full report is available at:

https://www.dol.gov/ilab/reports/pdf/Public_Report_of_Review_of_US_Submission_2015-01.pdf.

² The First Periodic Report of Review is available at:

<https://www.dol.gov/sites/default/files/documents/ilab/Peru%20Review%20Statement.pdf>

million) to SUNAFIL, representing an increase of nearly 38 percent relative to 2017. SUNAFIL plans to dedicate approximately 54 percent of its 2018 budget to “personnel and social obligations,” which SUNAFIL and MTPE officials said will include hiring additional labor inspectors and converting some auxiliary labor inspectors, who have plenary inspection authority only for businesses with ten or fewer employees,³ to full inspectors.

The USDOL has underscored in its engagement with the GOP the importance of expanding SUNAFIL offices to all of Peru’s regions and increasing support for SUNAFIL’s enforcement activities. The USDOL has also recommended the following actions to assure more thorough and expeditious labor law enforcement in all regions of Peru: 1) increase labor inspector staffing at SUNAFIL offices to help ensure labor inspections can be conducted in accordance with the timeframes established by Peruvian law; 2) increase the number of full labor inspectors in SUNAFIL regional offices, rather than relying principally on auxiliary inspectors; and 3) expand the use of long-term employment contracts for SUNAFIL and MTPE staff in order to support a consistent and reliable sanctions process. The USDOL is reviewing several changes made by the GOP in 2017 related to labor inspections, including a revised fine schedule that lowers fines for labor law violations. As part of engagement efforts, the USDOL has sought to strengthen SUNAFIL’s work through a \$2 million technical assistance project that assists it in improving enforcement of laws and regulations on the use of subcontracting/outsourcing practices and short-term employment contracts, especially in the NTE sectors.

The USDOL also notes a number of areas where the GOP has not addressed key recommendations in the report, including: 1) adopt and implement a legal instrument that limits the consecutive use of short-term employment contracts in the NTE sectors, consistent with the limit governing all other sectors, so that the use of such contracts does not restrict workers’ associational rights; 2) increase the authority of SUNAFIL and the MTPE to convert short-term employees into permanent employees in cases of identified violations of workers’ associational rights and while administrative or legal proceedings are still pending; 3) issue protocols that SUNAFIL and MTPE labor inspectors can use to verify that short-term contracts in the NTE sectors meet all legal requirements and are not being used to restrict workers’ rights; and 4) increase the number of regional Labor Courts of First Instance.

In general, while the opening of new offices and provision of greater funding for SUNAFIL are encouraging, the GOP would need to take a number of additional actions to fully address the recommendations made by the USDOL. The USDOL will continue to engage closely with the GOP to support further progress and will work with the USTR and the U.S. Department of State to monitor and assess progress by the GOP in addressing these issues over the next year.

³ Law 28806, Article 6. Supreme Decree 019-2007-TR, Article 4. However, for employers with more than 10 employees, auxiliary inspectors can complete two of the three parts of the inspection process as long as a full inspector supervises and reviews all measures taken by the auxiliary inspector. Full inspectors must always personally complete at least one of the three inspection phases for all companies with more than 10 workers. Meeting between the OTLA and SUNAFIL, Trujillo, December 11, 2015.