

LEVELING THE PLAYING FIELD: LABOR PROTECTIONS AND THE U.S.-COLOMBIA TRADE PROMOTION AGREEMENT

The Obama Administration is pursuing an ambitious trade agenda that will help our economy grow and support more and better jobs for American workers. At the same time, the President has made clear that our trade agreements must be consistent with our core values and interests, including effectively protecting workers' rights, and enable American workers and businesses to compete on a level playing field. To achieve these twin objectives, we must ensure that our trading partners meet basic labor standards and protect basic labor rights.

The U.S.-Colombia Trade Promotion Agreement ("the Agreement") includes strong protections for workers' rights, based on the May 10, 2007, bipartisan Congressional-Executive agreement to incorporate high labor standards into America's trade agreements. In addition, President Obama insisted that a number of serious and immediate labor concerns be addressed before he would be willing to send the Agreement to Congress. These concerns included violence against Colombian labor union members; inadequate efforts to bring perpetrators of murders of such persons to justice; and insufficient protection of workers' rights in Colombia. As a result, the U.S. and Colombian governments announced, on April 7, 2011, an ambitious and comprehensive Action Plan that included major, swift and concrete steps for the Colombian government to take. The U.S. Government has confirmed that Colombia has met all of its Action Plan milestones to date. In addition, successful implementation of key elements of the Action Plan will be a precondition for the Agreement to enter into force. Listed below are key accomplishments to date under the Action Plan followed by some of the major provisions of the Agreement's Labor Chapter, which will apply once the Agreement enters into force.

ACCOMPLISHMENTS TO DATE UNDER THE ACTION PLAN

The Colombian Government has:

Protecting Internationally Recognized Labor Rights

- Formally requested the International Labor Organization (ILO) to significantly strengthen its presence in Colombia in order to help implement the measures outlined in the Action Plan related to Labor Rights, including by helping to monitor the use of collective pacts and supporting the tripartite process.
- Secured legislation to establish criminal penalties, including imprisonment, for employers that undermine the right to organize and bargain collectively or threaten workers who exercise their labor rights. The law includes a provision making it a crime to offer a collective pact to non-union workers that has superior terms to those offered to union workers.
- Accelerated the effective date from July 2013 to June 2011 of new legal provisions, including significant fines, to prohibit and sanction the misuse of cooperatives and other employment relationships that undermine workers' rights.
- Issued regulations that implement these new legal provisions on cooperatives and other employment relationships, clarify earlier cooperatives laws, and ensure coherence among these laws. The regulations include significant fines for companies that violate these laws and create tools for the Government to promote the establishment and maintenance of direct employment relationships between the user companies and affected workers. The new regulations also strengthen and clarify rules to ensure that only legitimate, autonomous, and self-directed cooperatives are allowed to operate.
- Launched an outreach program through television, newspapers and electronic media to inform workers of their labor rights.

- Secured legislation to establish a separate Labor Ministry to provide better institutional capacity to protect labor rights.
- Began hiring 100 additional labor inspectors and budgeted for the hiring of 100 more labor inspectors in 2012, as part of a commitment to double the labor inspectorate by hiring 480 new labor inspectors over the next four years.
- Assigned 50 of these new labor inspectorate positions exclusively to cases involving cooperatives, and 35 of the remaining 50 new positions to address abuses of workers' rights in the priority sectors of palm oil, sugar, mines, ports, and flowers. Began conducting preventive inspections in these sectors.
- Improved systems for citizens to file labor-related complaints, including anonymously, via phone or internet.
- Launched preventive inspections to address improper use of temporary service agencies and developed an improved enforcement regime to prevent abuses.
- Established a robust enforcement regime to detect and prosecute the use of collective pacts to undermine the right to organize and bargain collectively, including through preventive inspections of all companies in which both union-negotiated collective bargaining agreements and collective pacts are present.
- Established and began to conduct a series of workshops to train labor inspectors and other Ministry of Social Protection personnel in conflict resolution, with a focus on conciliation and Alternative Dispute Resolution, and launched a related outreach program to the public, employers, and workers.
- Developed and began disseminating relevant Colombian laws and jurisprudence on essential public services, with guidance on how to challenge the constitutionality of any law establishing a public service as essential and therefore exempt from the right to strike.

Preventing Violence against those Exercising Labor Rights

- Expanded the scope of the existing government protection program for union leaders to also provide protection for labor activists (such as shop stewards and bargaining committee members), workers who are trying to organize or join a union, and former union activists who may be threatened because of their past activities on behalf of workers.
- Significantly increased (by over 30 percent) the proposed budget to provide this expanded protection for labor activists.
- Issued a decree reforming the scope and functioning of the interagency committee that reviews risk assessments for the government protection program.
- Eliminated the backlog of risk assessments for applicants to the government protection program for threatened union members and activists.
- Strengthened the separate teacher protection program, in consultation with teachers' union representatives, including by eliminating disincentives for those seeking relocation due to threats. The program recognizes the particular risks faced by teachers, many of whom work in remote areas.

Prosecuting Perpetrators of Violence against those Exercising Labor Rights

- Completed an analysis by the Prosecutor General's Office of closed unionist homicide cases in order to extract lessons to improve the investigation and prosecution of future cases.
- Completed the reassignment of 50 new judicial police investigators to criminal cases involving union members and activists.
- Issued internal guidance to prosecutors to accelerate action on labor violence cases with leads, including a special focus on the priority labor cases identified by Colombian labor unions as well as labor violence cases from recent years.
- Mandated early identification in all new homicide cases of whether the victim was a union member or activist.
- Developed improved training for judicial police investigators and prosecutors on cases of violence related to union activity and began conducting such training.
- Developed a plan to strengthen the capacity and number of prosecutors and judicial police investigators in regional offices of the Prosecutor General.
- Included in the 2012 budget proposal the necessary financial resources to increase the Prosecutor General's Office's institutional capacity and to expand personnel and measures designed to reduce impunity. This includes funding for an additional 14 prosecutors, 14 assistant prosecutors, and 56 judicial police investigators to be assigned to the Prosecutor General's Labor sub-unit in 2012.
- Developed a plan and identified budgetary needs for victims' assistance centers specializing in human rights cases, including those involving crimes against unionists.
- Posted sentences resulting from all labor violence cases concluded since January 1, 2011, on the Prosecutor General's website.
- Began holding meetings with labor stakeholders to reconcile the list of outstanding unionist homicide cases compiled by the National Union School with that of the Prosecutor General.
- Developed a methodology for posting aggregate information about all completed criminal cases involving labor violence to date on the Prosecutor General Office's website.

LABOR PROVISIONS IN THE U.S.-COLOMBIA TRADE PROMOTION AGREEMENT

The U.S.-Colombia Trade Promotion Agreement includes a range of provisions to protect workers' rights and ensure a level playing field for U.S. workers. This includes a commitment to all of the elements agreed to in the May 10, 2007, bipartisan Congressional-Executive agreement:

- Commitment by the United States and Colombia to adopt and maintain the ILO's five fundamental workers' rights and to submit to legal proceedings if either side fails to meet that commitment. The fundamental rights are:
 - Freedom of association – the right to form and join a union;
 - The right to collective bargaining;
 - Elimination of all forms of compulsory or forced labor;
 - Effective abolition of child labor; and
 - Elimination of employment and occupation discrimination based on gender, race, or other factors.
- Commitment not to waive or otherwise fail to apply labor laws in a manner affecting trade or investment.

- Commitment to effectively enforce fundamental workers' rights as well as wage and hour and occupational safety and health laws.
- Commitment to establish procedures that allow members of the public to raise concerns about labor violations directly with either of the two governments, which must be reviewed and considered.
- Commitment to guarantee workers and employers access to tribunals where their rights can be enforced and to ensure that proceedings before those tribunals are fair, equitable, and transparent.
- Commitment to improve labor standards and to cooperate on a wide range of labor issues, including labor relations, labor inspection, employment opportunities and working conditions.
- Commitment to the same level of dispute settlement accountability for meeting labor obligations as for meeting commercial obligations. Available remedies for violations of labor commitments will include trade sanctions and fines.

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