



### **KEY EXPORTS TO THE UNITED STATES:**

Crude oil, gold, spices, coffee, cut flowers, bananas

### **LABOR FORCE:**

23,107,300 workers

### **RELEVANT TRADE/LABOR POLICY TOOLS:**

U.S.-Colombia Trade Promotion Agreement and Colombian Action Plan Related to Labor Rights

# COLOMBIA

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## OVERVIEW

Through the United States-Colombia Trade Promotion Agreement (TPA), the Obama Administration has sought to address some of the longest-standing and most intractable concerns about labor rights and working conditions of any trading partners. In 2006, when the Bush Administration concluded the Colombia TPA, the State Department's Human Rights Report identified a range of labor concerns in Colombia, including violence and discrimination against trade union members to discourage workers from joining unions and engaging in union activity; impunity for acts of labor-related violence; a proliferation of fake worker "cooperatives" that were used to undermine workers' rights; and use of "collective pacts" with favorable terms negotiated directly with individual workers to weaken existing unions and avoid collective bargaining.

At that time, many in Congress were also demanding that all pending free trade agreements, including the Colombia TPA, be renegotiated to include strong labor protections, including an enforceable commitment to adopt and maintain fundamental rights as stated in the ILO *Declaration on Fundamental Principles and Rights at Work*. A bipartisan agreement between the Congress and the Administration, known as the "May 10, 2007, agreement," reflected these concerns.

In June 2007, the Colombia TPA was renegotiated to include elements of this bipartisan "May 10" agreement. However, it was not until after the Obama Administration came into office in 2009 that efforts were made to address the specific concerns raised in the Colombian context and to develop a roadmap for moving forward.

## *Labor Action Plan*

Working closely with Congressional and other stakeholders, the U.S. Government negotiated with the Colombian Government a detailed “Colombian Action Plan Related to Labor Rights” (Action Plan). The Action Plan specified concrete steps that Colombia would take to address the major areas of concern, including with respect to violence against unionists, impunity for the perpetrators of the violence and protection of labor rights. The two governments initiated the Action Plan on April 7, 2011.

The United States has worked with Colombia on implementation of the Action Plan, including supporting the establishment of a separate Ministry of Labor to elevate the importance of labor issues within the Colombian Government. Regular meetings and ongoing engagement between the U.S. and Colombian Governments have also focused on achieving the underlying goals of the Action Plan, including through technical assistance and cooperation activities to help build the institutional capacity of Colombia’s Ministry of Labor.

Today, Colombia presents a record of both meaningful progress in areas of key importance under the Action Plan, as well as areas of concern that will require additional effort to address.

### *Working to End Violence & Impunity*

The Action Plan took a two-pronged approach to addressing the long-standing concerns about violence against unionists and labor activists and impunity for the perpetrators:

- (1) It called upon Colombia to strengthen and make more accessible protections offered by Colombia’s National Protection Unit (UNP), a unit housed within Colombia’s Ministry of Interior that protects individuals, groups and communities facing an extraordinary or extreme risk of targeted violence.
- (2) It committed Colombia to more effectively prosecute perpetrators of violence against trade unionists and labor activists.

### **PROGRESS**

Colombia has made progress in a number of areas:

- **An increase in resources.** The Santos Administration increased the UNP’s budget by over 30 percent and hired additional personnel from 2010 to 2014. \$47 million was allocated to the UNP in 2014 specifically for protection of union members and labor activists. The Santos Administration also increased the budget of the independent Prosecutor General’s Office, in part to expand law enforcement resources and personnel to investigate and prosecute cases of violence against union members and labor activists.

- **Improving confidence in the protection program.** 677 union members are currently in the protection program. 248 vehicles and 609 bodyguards are assigned to union leaders and labor activists for full-time protection. To date, no unionist under the protection program has been killed.
- **Additional prosecutors and police investigators.** In 2011, Colombia’s Prosecutor General assigned over 20 prosecutors exclusively to crimes against union members and labor activists and Colombia’s National Police assigned an additional 100 full-time judicial police investigators to support the prosecutors. Currently, 23 prosecutors across the country comprise the specialized sub-unit of the Prosecutor General’s Office that focuses on violence against unionists and labor activists. Approximately 80 judicial police investigators support the work of the prosecutors.

- **Conviction of Intellectual authors.** In two landmark cases in 2013, Colombian courts convicted the “intellectual authors” of the 2001 murders of two union leaders in the coal sector and one in the agriculture sector and sentenced the perpetrators to 38 years and 17 years in prison, respectively. Stakeholders have long pressed the Colombian authorities to investigate and bring to justice such “intellectual authors” and not just the trigger men who directly commit the crimes.



- **A steady decline in Colombian homicide rates,** including for union members and labor activists. This trend continued in the period since the Action Plan was announced. From 2001 to 2010, Colombian experts reported an average of close to 100 murders per year of union members. From 2011 to 2014, the number dropped to an average of 28. The United States is committed to working with Colombia to ensure that this trend continues until there are no more labor-motivated murders and union members no longer fear for their lives.

## REMAINING CHALLENGES

- **The slow pace of prosecutions and convictions in recent labor homicides.** According to the Prosecutor General’s Office, in the 110 labor homicides that have occurred since

2011, there have been only four convictions. The Prosecutor General reports having arrested 28 suspects in an additional 16 cases.

- **An increase in threats against labor leaders and activists**, particularly through text messages, phone calls, letters, emails and other forms of communication that are often difficult to trace. The Prosecutor General has assigned prosecutors and investigators to cases of threats against labor leaders and activists. However, to date, no threat case, of the over 1,100 reported by the Government since 2011, has been successfully resolved.
- **Concerns that bodyguards hired through private contractors may not undergo adequate background checks and may be more susceptible to corruption.** The Colombian Government is transitioning to direct hiring of all bodyguards who provide protection.

More progress is needed to lower the incidence of threats and violence, and the U.S. Government is engaged with the Government of Colombia and international partners, like the ILO, to provide critical assistance. For example, the U.S. Agency for International Development (USAID) is providing roughly \$125,000 per year to the UNP. In addition, DOL has been funding a five-year, \$7.8 million ILO project that includes a focus on building the institutional capacity of the Colombian Government to combat impunity for perpetrators of violence against trade union leaders, members and activists, including through training of Colombian prosecutors, investigators and judges on labor rights and on investigating such crimes.

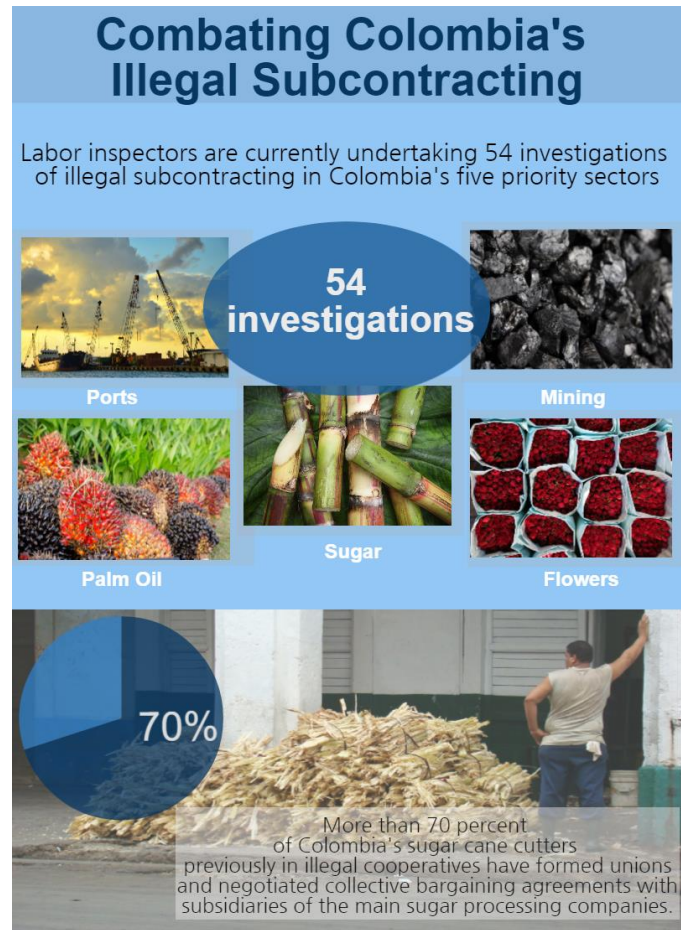
## *Strengthening Labor Laws & Enforcement*

### **PROGRESS**

Colombia has also taken important steps to strengthen labor laws and their enforcement.

- **Ban on abuse of cooperatives and other similar employment relationships.** The Colombian Government enacted new legal provisions and regulations in 2011 and 2013 to prohibit and sanction with significant fines, the misuse of cooperatives and other employment relationships that undermine workers' rights. A recent ruling by the Colombian Constitutional Court strengthens inspectors' ability to investigate these relationships.
- **Increase in labor inspectors.** Starting in June 2011, the Ministry of Labor has increased the size of the labor inspectorate from 424 inspectors to 718 inspectors, with an additional 188 slated to be hired.

- **Inspections conducted in priority sectors.** Since January 2014, labor inspectors have undertaken 54 investigations in the five priority sectors of palm oil, sugar, mines, ports and flowers for illegal subcontracting.
- **Fines imposed for unlawful subcontracting.** The Ministry of Labor has levied \$31 million in fines for unlawful subcontracting that undermines workers' rights (e.g., unlawful cooperatives), from 2011 to date. In 2013, the agency charged with collecting fines for labor violations announced new rules to improve its fine collection ability, in particular authorizing the agency to require and hold collateral payment from an enterprise pending the outcome of a judicial appeal of a fine.



- **Decline of cooperatives in sugar sector.** As of April 2014, more than 70 percent of sugar cane cutters (totaling roughly 7,000 workers) who were previously in unlawful cooperatives have formed unions and negotiated collective bargaining agreements with subsidiaries of the main sugar processing companies. Although the workers are employees of the subsidiaries and not the main companies themselves, labor unions in the sugar sector report that the subsidiaries are properly funded and that the unions are able to negotiate over wages and working conditions with them.
- **Reform of criminal code.** In 2011, as specified in the Action Plan, the Colombian Congress reformed the criminal code, establishing criminal penalties and possible imprisonment for employers that undermine the right to organize and bargain collectively, including by extending better conditions to non-union workers through collective pacts. It will be important to see whether any investigations under these reforms lead to convictions and, where warranted, successful "conciliations" (Government-led efforts to resolve alleged violations through voluntary negotiations between workers and employers).

## REMAINING CHALLENGES

There are also areas where further work is needed to strengthen Colombia’s labor law regime and practices, including the following:

- **Limited fine collection.** The Colombian authorities have only collected roughly five percent of the \$31 million in fines levied for illegal subcontracting since 2011, according to the most recent information from the Colombian Government.
- **Increased abuse of other forms of indirect employment.** The number of unlawful cooperatives has dropped significantly, largely in response to Colombia’s focus on strengthening and applying labor laws intended to combat such arrangements. However, many employers have shifted to other forms of unlawful subcontracting that similarly avoid direct employment relationships and undermine workers’ rights, such as simplified stock companies (known as SASs). The Colombian Government is developing tools to address this problem, including a new legal instrument explicitly targeting such alternative forms of unlawful subcontracting.
- **Implementation of certain “formalization agreements” that undermine workers’ rights.** Colombia has established a mechanism—known as “formalization agreements”—to hire workers previously in unlawful subcontracting relationships, in part to bolster the Action Plan goals of shifting those workers into long-term direct employment relationships. While the development of the “formalization agreement” mechanism is positive, there have been concerns about implementation in some cases. That includes, for example, negotiation of agreements that do not require direct employment relationships or permanent contracts with the main enterprise benefiting from the labor and agreements that do not cover all workers affected by illegal subcontracting.

To help Colombia meet the labor law and enforcement challenges that still exist, DOL is funding a five-year, \$7.8 million ILO project that is focused on strengthening the overall capacity of the Colombian Ministry of Labor. DOL is also funding a three-year, \$1.5 million project started in 2012 with Colombia’s National Union School (Escuela Nacional Sindical), a labor rights NGO, to create “Workers’ Rights Centers” in four Colombian cities. The centers provide free legal advice to workers to raise awareness of labor laws and improve workers’ ability to protect and claim their labor rights, for example, by filing well-documented complaints with the Ministry of Labor.

## LOOKING AHEAD

Most of the issues that are the subject of the Action Plan have a long history in Colombia and addressing them will require continued engagement. Towards that end, U.S. Trade Representative Froman met with Colombian Minister of Commerce Industry and Tourism, Santiago Rojas Arroyo, on April 4, 2014, to urge additional actions in areas where concerns remain. On October 21, 2014, Secretary of Labor Perez met with Colombian Minister of Labor Luis Eduardo "Lucho" Garzón to discuss remaining challenges such as collecting fines in cases of unlawful subcontracting, effectively targeting shifting forms of unlawful subcontracting and investigating and prosecuting the most recent cases of violence against trade unionists. Further engagement is also being discussed for 2015 and beyond.

USTR and DOL are committed to continuing to work in close collaboration with stakeholders in both countries and with the Colombian Government to achieve the underlying goals of the Action Plan and to support the efforts of workers to exercise their fundamental rights.