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November 2014

# FREE TRADE AGREEMENTS

U.S. Partners Are  
Addressing Labor  
Commitments, but  
More Monitoring and  
Enforcement Are  
Needed

## Why GAO Did This Study

The United States has signed 14 FTAs, liberalizing U.S. trade with 20 countries. These FTAs include provisions regarding fundamental labor rights in the partner countries. USTR and DOL, supported by State, are responsible for monitoring and assisting FTA partners' implementation of these provisions.

GAO was asked to assess the status of implementation of FTA labor provisions in partner countries. GAO examined (1) steps that selected partner countries have taken, and U.S. assistance they have received, to implement these provisions and other labor initiatives and the reported results of such steps; (2) submissions regarding possible violations of FTA labor provisions that DOL has accepted and any problems related to the submission process; and (3) the extent to which U.S. agencies monitor and enforce implementation of FTA labor provisions and report results to Congress. GAO selected CAFTA-DR and the FTAs with Colombia, Oman, and Peru as representative of the range of FTAs with labor provisions, among other reasons. GAO reviewed documentation related to each FTA and interviewed U.S., partner government, and other officials in five of the partner countries.

## What GAO Recommends

DOL should reevaluate its submission review time frame and better inform stakeholders about the submission process. USTR and DOL should establish a coordinated strategic approach to monitoring and enforcement labor provisions. USTR's annual report to Congress should include more information of USTR's and DOL's monitoring and enforcement efforts. The agencies generally agreed with the recommendations but disagreed with some findings, including the finding that they lack a systematic approach to monitor and enforce labor provisions in all FTAs. GAO stands by its findings.

View [GAO-15-160](#). For more information, contact Kimberly Gianopoulos at (202) 512-8612 or [gianopoulosk@gao.gov](mailto:gianopoulosk@gao.gov).

# FREE TRADE AGREEMENTS

## U.S. Partners Are Addressing Labor Commitments, but More Monitoring and Enforcement Are Needed

### What GAO Found

Partner countries of free trade agreements (FTA) that GAO selected—the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA-DR) and the FTAs with Colombia, Oman, and Peru—have taken steps to implement labor provisions and other initiatives to strengthen labor rights. For example, U.S. and foreign officials said that El Salvador and Guatemala—both partners to CAFTA-DR—as well as Colombia, Oman, and Peru have acted to change labor laws, and Colombia and Guatemala have acted to address violence against union members. Since 2001, U.S. agencies have provided \$275 million in labor-related technical assistance and capacity-building activities for FTA partners, including \$222 million for the four FTAs GAO reviewed. However, U.S. agencies reported, and GAO found, persistent challenges to labor rights, such as limited enforcement capacity, the use of subcontracting to avoid direct employment, and, in Colombia and Guatemala, violence against union leaders.

Since 2008, the Department of Labor (DOL) has accepted five formal complaints—known as submissions—about possible violations of FTA labor provisions and has resolved one, regarding Peru (see fig.). However, for each submission, DOL has exceeded by an average of almost 9 months its 6-month time frame for investigating FTA-related labor submissions and issuing public reports, showing the time frame to be unrealistic. Also, union representatives and other stakeholders GAO interviewed in partner countries often did not understand the submission process, possibly limiting the number of submissions filed. Further, stakeholders expressed concerns that delays in resolving the submissions, resulting in part from DOL's exceeding its review time frames, may have contributed to the persistence of conditions that affect workers and are allegedly inconsistent with the FTAs.

### Five Labor Submissions Accepted by DOL Regarding Free Trade Agreements

FTA	Year accepted	Alleged violations	Status
Bahrain	2011	Violation of right to freedom of association, discrimination	Open
Dominican Republic	2012	Human trafficking, forced labor, retaliatory firing of workers for union activities	Open
Guatemala	2008	Violation of right to freedom of association, violation of rights to organize and bargain collectively, unacceptable work conditions	Open
Honduras	2012	Violation of right to freedom of association, violations of rights to organize and bargain collectively, child labor	Open
Peru	2011	Failure to comply with labor laws related to collective bargaining	Closed as resolved (2012)

Source: GAO analysis of Department of Labor (DOL) information. | GAO-15-160

In 2009, GAO found weaknesses in the Office of the U.S. Trade Representative's (USTR) and DOL's monitoring and enforcement of FTA labor provisions. In the same year, the agencies pledged to adopt a more proactive, interagency approach. GAO's current review found that although the agencies have taken several steps since 2009 to strengthen their monitoring and enforcement of FTA labor provisions, they lack a strategic approach to systematically assess whether partner countries' conditions and practices are inconsistent with labor provisions in the FTAs. Despite some proactive steps, they generally rely on labor submissions to begin identifying, investigating, and initiating steps to address possible inconsistencies with FTA labor provisions. According to agency officials, resource limitations have prevented more proactive monitoring of all FTA labor provisions. As a result, USTR and DOL systematically monitor and enforce compliance with FTA labor provisions for only a few priority countries. USTR's annual report to Congress about trade agreement programs provides limited details of the results of the agencies' monitoring and enforcement of compliance with FTA labor provisions.

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## Abbreviations

AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
CAFTA-DR	Dominican Republic-Central America-United States Free Trade Agreement
CICIG	International Commission against Impunity in Guatemala
DOL	Department of Labor
DPPS	División de Protección de Personas y Seguridad
DRL	Bureau of Democracy, Human Rights, and Labor
ENS	Escuela Nacional Sindical
FTA	free trade agreement
ILO	International Labour Organization
INL	Bureau of International Narcotics and Law Enforcement
NAFTA	North American Free Trade Agreement
NGO	nongovernmental organization
SENA	Servicio Nacional de Aprendizaje
SINAUT	National Union of Tax Administration Workers
SUNAUT	National Superintendency of Tax Administration
TPSC	Trade Policy Staff Committee
UNP	Unidad Nacional de Protección
USAID	U.S. Agency for International Development
USTR	Office of the U.S. Trade Representative

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November 6, 2014

The Honorable George Miller  
Ranking Member  
Committee on Education and the Workforce  
House of Representatives

The Honorable Sander M. Levin  
Ranking Member  
Committee on Ways and Means  
House of Representatives

As global economic competition has intensified, concerns in the United States that competitors' labor practices may disadvantage U.S. workers and producers have become acute. Recent U.S. free trade agreements (FTA) contain a provision requiring partner countries to commit to respect internationally accepted core labor rights, such as freedom of association and the right to bargain collectively.<sup>1</sup> FTAs phase out barriers to trade with particular countries or groups of countries and contain rules and other commitments to improve access for services and investment. FTAs represent a major component of U.S. trade policy, as the United States has signed 14 FTAs with 20 countries covering, according to the Department of Commerce, more than 35 percent of all U.S. imports—\$2.3 trillion in 2013.<sup>2</sup> The status of the implementation of FTA labor provisions

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<sup>1</sup>For example, FTAs that have entered into force since February 2009 contain a provision stating that "[e]ach Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the ILO [International Labour Organization] Declaration on Fundamental Principles and Rights at Work and Its Follow-up (1998)." For example, see United States-Colombia FTA (entered into Force May 2012), art. 17.2. According to the Department of Labor (DOL), freedom of association is the right of workers and employers to organize to defend their interests, including for the purpose of negotiating salaries, benefits, and other conditions of work, and is a fundamental right that underpins democratic representation and governance; collective bargaining is an essential element of freedom of association that helps to ensure that workers and employers have an equal voice in negotiations and provides workers the opportunity to seek to improve their living and working conditions.

<sup>2</sup>As of July 2014, the United States had entered into FTAs with Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, South Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore. The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) covers six of these countries (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua).

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is of particular relevance, as the United States is negotiating the Trans-Pacific Partnership—a trade agreement with 11 Pacific Rim countries, in which the administration is seeking to negotiate high-standard labor provisions. The effective implementation of labor provisions is also relevant as Congress considers renewal of the President’s lapsed Trade Promotion Authority, most recently in effect from 2002 through 2007.<sup>3</sup>

In 2009, we reported significant challenges connected with the enforcement of labor provisions in four FTAs.<sup>4</sup> We also reported that the U.S. agencies responsible for the monitoring and implementation of labor provisions in the FTAs in many cases engaged in only minimal oversight and assistance with FTA partner countries to address these challenges. We recommended that the Department of Labor (DOL), in consultation with other agencies, initiate regular contact with all FTA partners’ ministries of labor to review implementation of FTA labor provisions and to develop ongoing priorities and plans for technical cooperation on labor matters. We also recommended that the Office of the U.S. Trade Representative (USTR), in cooperation with other agencies, prepare updated plans to implement, enforce, monitor, and report on compliance with and progress under the FTAs’ labor provisions and that these plans should reflect ongoing trade developments, be provided to Congress, and be summarized in USTR’s annual trade agreements report. In 2012, both agencies were taking actions to address the recommendations.<sup>5</sup>

As the main U.S. point of contact for all FTAs, USTR has general oversight responsibility for commitments in FTAs. DOL is responsible for monitoring partner countries’ labor conditions and compliance with FTA labor provisions, addressing complaints regarding violations of these provisions, and providing technical assistance. The Department of State

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<sup>3</sup>Trade Promotion Authority, previously known as “fast track” negotiating authority, established conditions and procedures under which the President could submit legislation to approve and implement trade agreements, such as FTAs, that Congress could approve or disapprove but could not amend or filibuster. See Bipartisan Trade Promotion Authority Act of 2002, Pub. L. No. 107-210, Div. B, § 2103, 116 Stat. 933, 1004–08.

<sup>4</sup>GAO, *International Trade: Four Free Trade Agreements GAO Reviewed Have Resulted in Commercial Benefits, but Challenges on Labor and Environment Remain*, [GAO-09-439](#) (Washington, D.C.: July 10, 2009). Our 2009 report reviewed implementation of the U.S. FTAs with, respectively, Chile, Jordan, Morocco, and Singapore.

<sup>5</sup>Additional information about U.S. agencies’ monitoring and reporting on compliance with, and progress under, FTA labor provisions is presented later in this report.

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(State) supports USTR and DOL in discharging their responsibilities and also monitors labor conditions in each partner country. In some instances, the U.S. Agency for International Development (USAID) supports partner countries in implementing FTA labor obligations and initiatives by administering technical assistance projects, carried out by USAID's implementing partners. In 2009, USTR announced that it would take steps jointly with DOL and State to improve interagency cooperation; proactively monitor the implementation of labor provisions; and address identified problem areas, including foreign practices that would constitute violations of FTA requirements. Furthermore, the President's 2014 Trade Policy Agenda indicates that the administration will focus on implementation of the numerous agreements into which the United States has entered and that the United States will work with key trading partners around the world to address specific labor issues.

You asked us to assess the current status of the implementation of FTA labor provisions as well as the United States' and trade partner countries' responses to related challenges, such as reported violence against unionists in some partner countries. This report examines the following (see app. I for a detailed description of our scope and methodology):

- 1) steps that selected partner countries have taken, and U.S. assistance they have received, to implement FTA labor provisions and other labor initiatives and the reported results of such steps;
- 2) complaints—known as submissions—about possible violations of FTA labor provisions that DOL has accepted and any problems related to the submission process; and
- 3) the extent to which USTR, DOL, and State monitor and enforce partner countries' implementation of FTA labor provisions and report results to Congress.

In addition, appendix II describes reported violence against labor unionists in selected FTA partner countries as well as steps that the countries have taken to address such occurrences. Appendix III describes U.S. agencies' efforts to monitor implementation of other labor initiatives.

For our review, we selected four FTAs—the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), the United States-Colombia Trade Promotion Agreement (Colombia FTA), the United States-Oman Free Trade Agreement (Oman FTA), and the United States-Peru Trade Promotion Agreement (Peru FTA). We also visited five partner countries—El Salvador and Guatemala, both of which are



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CAFTA-DR partners; Colombia; Oman; and Peru. We selected these FTAs and countries in part because of the extent of known labor issues in each country; because of the timing of the FTAs' entry into force; and to reflect regional dispersion across Central America, South America, and the Middle East.<sup>6</sup> In addition, we selected the Colombia and Peru FTAs in part because the labor chapters in those agreements contain provisions reflecting labor language as delineated in the May 10, 2007, Bipartisan Trade Agreement on Trade Policy, popularly known as the May 10th Agreement.<sup>7</sup> However, the results of our review of these selected FTAs and partner countries cannot be generalized to all FTAs and partner countries.

To address our objectives, we reviewed relevant documents, including the labor chapters of the four selected FTAs; labor submissions received by DOL; labor rights reports and trade agreement reports compiled by U.S. agencies, international organizations, and FTA stakeholders; and documents pertaining to U.S. monitoring and enforcement plans. In addition, we reviewed documentation related to labor conditions in partner countries that we obtained from partner country governments as well as from business associations, labor unions, the International Labour Organization (ILO), and nonprofit organizations. We interviewed representatives of these organizations; relevant foreign government officials; and U.S. agency officials in Colombia, El Salvador, Guatemala, Oman, and Peru during fieldwork in those countries. We also interviewed U.S. agency representatives in Washington, D.C., and Geneva, Switzerland.<sup>8</sup> We collected data on U.S. funding for labor assistance

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<sup>6</sup>According to USTR, FTA provisions provide for the FTA's entry into force through an exchange of formal diplomatic notes among the parties. USTR also notes that, in the United States, the President must first determine that the trading partner has come into compliance with obligations that will take effect when the agreement enters into force. When an FTA enters into force, it generally means that the agreement becomes legally binding on the parties to the agreement.

<sup>7</sup>Congressional leaders and the Bush administration jointly agreed to the May 10th Agreement, resulting in a new trade policy template that calls for, among other things, (1) enforceable reciprocal obligation for the countries to adopt and maintain in their laws and practice the five basic internationally recognized labor principles, as stated in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work and (2) labor obligations subject to the same dispute settlement procedures and remedies as commercial obligations.

<sup>8</sup>The views expressed by these officials and organizations cannot be generalized to all officials or organizations knowledgeable about labor provisions in the selected FTAs.

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programs in FTA partner countries from 2001 to 2013 and on reported violence against unionists in Colombia—the only selected FTA partner country with such data—and we assessed these data’s reliability by interviewing agency officials knowledgeable about the data sources and by tracing the data to source documents. We determined that the data were sufficiently reliable for the purposes of describing U.S. assistance for implementation of labor provisions in FTA partner countries and describing general trends in reported violence against unionists in Colombia. (See app. I for further details of our scope and methodology.)

We conducted this performance audit from May 2013 to November 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### FTA Labor Provisions and Other Initiatives to Address Labor Concerns

The current and prior administrations have expressed concerns that poor labor standards in FTA partner countries may affect workers in the United States and other parts of the world, incentivizing a global “race to the bottom” that unfairly distorts global markets and prevents U.S. businesses and workers from competing on a level playing field. According to DOL, to address such concerns, each FTA signed in the past decade, including those we selected, contains a “labor chapter” that differs in detail across the FTAs but generally includes labor provisions, establishes points of contact for labor matters, and provides a recourse mechanism for matters arising from the labor provisions.<sup>9</sup> The provisions in the labor chapters of

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<sup>9</sup>All of the selected FTAs contain mechanisms to address matters arising under the respective labor chapters. CAFTA-DR and the Colombia, Oman, and Peru FTAs each include labor provisions that state that each party shall designate an office within its labor ministry that shall serve as a contact point with the other party and with the public. Furthermore, the FTAs state that each party’s contact point shall provide for the submission, receipt, and consideration of communications on matters related to the respective labor chapter and shall make such communications available to the other party and, as appropriate, to the public. While either party can request consultations regarding any matter addressed in the labor chapter, FTA dispute settlement procedures may be invoked only under specified circumstances, which vary by FTA.

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the four FTAs that took effect most recently generally reflect the trade policy template created by the May 10th Agreement.<sup>10</sup>

- In FTAs that entered into force from January 2004 through January 2009, including CAFTA-DR and the Oman FTA, the labor chapter contains a provision that a party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the parties.<sup>11</sup> Under CAFTA-DR and the Oman FTA, matters related to this obligation are the only matters under the respective labor chapters for which parties can seek recourse through dispute settlement that may result in possible fines and sanctions.<sup>12</sup> These FTAs also contain a provision whereby parties commit to “strive to ensure” that the labor rights enumerated in the respective labor chapter are protected by their laws; however, matters arising under this provision do not have recourse through the dispute settlement chapter of the respective FTA.<sup>13</sup>
- In FTAs that entered into force after January 2009, including the Colombia and Peru FTAs,<sup>14</sup> the labor chapter includes language echoing the May 10th Agreement that obligates each partner to adopt and maintain in its statutes, regulations, and practices certain

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<sup>10</sup>FTAs with Colombia, Panama, Peru, and South Korea contain language reflecting the labor provisions of the May 10th Agreement.

<sup>11</sup>United States-Singapore Free Trade Agreement (entered into force in January 2004), art. 17.2; United States-Chile Free Trade Agreement (entered into force in January 2004), art. 18.2; United States-Australia Free Trade Agreement (entered into in force January 2005), art. 18.2; United States-Morocco Free Trade Agreement (entered into force in January 2006), art. 16.2; CAFTA-DR (entered into force between 2006 and 2009 for the various countries), art. 16.2; United States-Bahrain Free Trade Agreement (Bahrain FTA) (entered into force in January 2006), art. 15.2; and Oman FTA (entered into force in January 2009), art. 16.2.

<sup>12</sup>CAFTA-DR, art. 16.6.7; Oman FTA art. 16.6.5.

<sup>13</sup>CAFTA-DR, art. 16.1.1 and 16.6.7; Oman FTA, art. 16.1.1 and 16.6.5.

<sup>14</sup>United States-Peru FTA (entered into force in February 2009), art. 17.2, 17.3; United States-Colombia FTA (entered into force in May 2012), art. 17.2, 17.3; United States-Korea Free Trade Agreement (entered into force in March 2012), art. 19.2, 19.3; and United States-Panama Free Trade Agreement (entered into force in October 2012), art. 16.2, 16.3.

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fundamental labor rights as stated by the ILO.<sup>15</sup> Although the text of the respective FTAs' labor chapters varies, this language generally relates to, for example, the rights to freedom of association and collective bargaining and the elimination of compulsory or forced labor. The labor chapters of these FTAs also obligate the parties not to fail to effectively enforce these labor laws in a manner affecting trade between the parties. Pursuant to the labor chapters of these FTAs, if consultations fail, the parties can seek to resolve matters arising under the labor chapters by pursuing recourse through the respective FTAs' dispute settlement chapters, which may result in possible fines and sanctions.<sup>16</sup>

In addition, other labor initiatives—one known as the White Paper<sup>17</sup> and the other titled *Colombian Action Plan Related to Labor Rights* (Labor Action Plan)<sup>18</sup>—were developed in the context of CAFTA-DR and the Colombia FTA, respectively.<sup>19</sup>

- **White Paper.** Before Congress enacted implementing legislation for CAFTA-DR,<sup>20</sup> a group of vice ministers responsible for trade and labor in the partner countries developed the White Paper to address labor concerns in Central America and the Dominican Republic. The White

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<sup>15</sup>International Labour Organization, *Declaration on Fundamental Principles and Rights at Work and Its Follow-Up* (1998), <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>, accessed August 18, 2014. The principles and rights stated by the ILO are (1) freedom of association and the effective recognition of the right to collective bargaining, (2) the elimination of all forms of forced or compulsory labor, (3) the effective abolition of child labor, and (4) the elimination of discrimination in respect of employment and occupation.

<sup>16</sup>United States-Peru FTA, art. 17.7; Colombia FTA, art. 17.7; United States-Korea Free Trade Agreement, art. 19.7; and United States-Panama Free Trade Agreement, art. 16.7.

<sup>17</sup>Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic, *The Labor Dimension in Central America and the Dominican Republic: Building on Progress: Strengthening Compliance and Enhancing Capacity* (April 2005), accessed June 7, 2013, <http://www.ilo.org/sanjose/lang--es/index.htm>.

<sup>18</sup>*Colombian Action Plan Related to Labor Rights* (April 7, 2011), accessed May 29, 2013, [http://www.ustr.gov/webfm\\_send/2787](http://www.ustr.gov/webfm_send/2787).

<sup>19</sup>These labor initiatives were created outside an FTA framework.

<sup>20</sup>Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, Pub. L. No. 109-53, 119 Stat. 262 (Aug. 2, 2005).

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Paper detailed six areas of focus and included recommendations to enhance the implementation and enforcement of labor standards and to strengthen the region's labor institutions.<sup>21</sup> According to DOL, the U.S. government did not participate in preparing or negotiating the White Paper's recommendations. The ILO Verification Project, funded by DOL, was created to monitor implementation of the White Paper commitments and released verification reports every 6 months between 2007 and 2010.

- **Labor Action Plan.** Colombia and the United States agreed in 2011 to the Labor Action Plan, in furtherance of Colombia's commitment to protect internationally recognized labor rights, prevent violence against labor leaders, and prosecute the perpetrators of such violence. The plan listed nine issue areas to strengthen labor rights that Colombia was required to address before the FTA could receive congressional approval.<sup>22</sup> USTR and DOL are jointly responsible for monitoring Colombia's ongoing progress in fulfilling these requirements.

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## U.S. Agencies' Responsibilities Related to Monitoring Implementation of FTA Labor Provisions

USTR, DOL, and State have key responsibilities related to monitoring partner countries' implementation of FTA labor provisions. These roles involve both discrete and shared responsibilities that require both formal and informal coordination. USAID has provided funding for cooperative projects to improve labor capacity.

- **USTR.** The U.S. Trade Representative is the President's principal adviser and spokesperson on trade and has lead responsibility for negotiating trade agreements, including FTAs, as well as for

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<sup>21</sup>Under the White Paper, the labor ministers of the six CAFTA-DR countries agreed to address the following priority areas: (1) labor law and implementation, (2) budget and personnel needs of the labor ministries, (3) strengthening the judicial system for labor law, (4) protections against discrimination in the workplace, (5) worst forms of child labor, and (6) promoting a culture of compliance.

<sup>22</sup>The nine areas that Colombia agreed to address under the Labor Action Plan were (1) creation of a specialized Ministry of Labor; (2) criminal code reform; (3) prohibiting the misuse of cooperatives; (4) preventing the use of temporary service agencies to circumvent labor rights; (5) criminalizing the use of collective pacts to undermine the right to organize and bargain collectively; (6) collecting and disseminating information on the definition of essential services; (7) seeking the ILO's assistance in implementing the Labor Action Plan and working with the ILO to strengthen its presence, capacity, and role in Colombia; (8) reforming protection programs; and (9) criminal justice reforms.

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developing and coordinating U.S. trade policy and issuing policy guidance related to international trade functions. USTR is responsible to the President and Congress for administering the trade agreements program, including periodic reporting to Congress as required.<sup>23</sup> USTR is also responsible for coordinating the administration's activities to create a fair, open, and predictable trading environment by identifying, monitoring, enforcing, and resolving the full range of international trade issues. According to USTR, this includes asserting U.S. rights; vigorously monitoring and enforcing bilateral and other agreements; and promoting U.S. interests, including labor interests, under FTAs.

- **DOL.** DOL's Bureau of International Labor Affairs is responsible for monitoring implementation of FTA labor provisions for all FTAs. The bureau's Office of Trade and Labor Affairs is designated as the point of contact for implementation of the labor provisions of the FTAs as well as for the labor cooperation mechanisms. Before congressional approval and implementation of an FTA, DOL's responsibilities include preparing reports for Congress, in consultation with USTR and State, about the partner country's labor rights protections and child labor laws and the FTA's potential effect on employment in the United States. After an FTA enters into force, DOL's responsibilities include receiving, reviewing, and acting on any public complaint submitted about the partner's compliance with FTA labor obligations (submissions).<sup>24</sup> Both before and after an FTA is implemented, DOL is responsible for assisting the partner country as needed—for example, planning, developing, and pursuing cooperative projects related to labor matters—to strengthen the partner country's capacity to promote respect for core labor standards.

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<sup>23</sup>19 U.S.C. § 2171. Generally, the trade agreements program includes all activities consisting of, or related to, the negotiation or administration of international agreements that primarily concern trade and that are concluded pursuant to the authority vested in the President by the Constitution, 19 U.S.C. § 1351, the Trade Expansion Act of 1962, and the Trade Act of 1974 as amended.

<sup>24</sup>In addition, DOL is responsible for convening the FTA labor affairs councils among partner government's labor ministries, which oversee the FTA labor chapters, and for administering the U.S. Labor Advisory Committee for Trade Negotiations and Trade Policy. The committee consists of representatives of labor organizations and is tasked with providing information and advice with respect to negotiation and implementation of U.S. trade agreements. DOL also administers the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements, which consists of 12 representatives (4 from the business community, 4 from the labor community, and 4 from the public sector).

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- **State.** State is responsible for supporting USTR and DOL in implementing and monitoring FTAs. State's Bureau of Democracy, Human Rights, and Labor (DRL) coordinates State's in-country labor officers, who are tasked with carrying out regular monitoring and reporting and day-to-day interaction with foreign governments regarding labor matters. State annually produces *Country Reports on Human Rights Practices*, which includes information about countries' labor practices. In addition, State participates with USTR and DOL in the USTR-led interagency team that negotiates FTA labor provisions, contributes critical input to the research and analysis of reports produced by DOL, and provides technical assistance funding to strengthen some countries' labor capacity. Because USTR and DOL do not maintain a presence in other countries, they often rely on State for outreach, monitoring, and reporting activities related to FTA labor provisions.
  - **USAID.** USAID administers technical assistance programs to address labor-related matters. USAID administers trade-capacity-building programs globally in both FTA and non-FTA partner countries. In addition, during the FTA negotiations, USAID provides USTR input on draft FTA text as well as input on possible trade-capacity-building programs to address labor-related issues.

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## Selected Countries Have Taken Steps, with U.S. Assistance, to Address FTA Labor Commitments and Other Labor Initiatives but Have Limited Enforcement Capacity

Each of the FTA partner countries that we selected for our review has taken steps to strengthen labor rights pursuant to its FTA with the United States, and some of these countries have also implemented other labor initiatives outside the FTA framework. The U.S. government has provided some technical assistance to help FTA partner countries meet their labor commitments. However, stakeholders reported that limitations in partner countries' capacity to enforce labor laws cause gaps in labor protections to persist.

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## Selected Countries Have Taken Steps to Implement FTA Labor Commitments and Other Labor Initiatives, Including Strengthening Labor Institutions

### CAFTA-DR: El Salvador and Guatemala

El Salvador and Guatemala, the CAFTA-DR countries we selected for our review, have both taken steps to implement labor initiatives responding to their FTA commitments and areas of focus identified in the White Paper. According to the ILO, and as reported by DOL, these countries have addressed these areas of focus by implementing changes to improve labor protections, such as increasing the number of labor inspectors and increasing the number of judges and courts that hear labor cases.

**El Salvador.** According to DOL and ILO verification reports, El Salvador increased its Ministry of Labor's enforcement budget by about 120 percent from 2005 to 2010, leading to an increase in the number of labor inspectors during the same period as well as increases in both the number of inspections conducted and the number of fines imposed on employers.<sup>25</sup> Ministry of Labor officials reported that with the increase in size and budget, which resulted from the White Paper recommendations, the ministry is now able to accommodate workers' requests for workplace inspections and labor inspectors can issue fines for violations not addressed by employers.<sup>26</sup> In addition, according to officials from the Supreme Court in El Salvador, the labor courts have created a comprehensive statistical system to track labor issues identified in the White Paper, and unions have successfully advocated for legislation that, if passed, would speed labor case reviews and allow plaintiffs to participate more actively.

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<sup>25</sup>Department of Labor, *Progress in Implementing Chapter 16 (Labor) and Capacity-Building under the Dominican Republic-Central America-United States Free Trade Agreement* (Washington D.C.: May 11, 2012). According to DOL, this report relies on information collected by the ILO as part of its project to verify the results of actions taken to address the White Paper recommendations.

<sup>26</sup>Stakeholders reported challenges related to the issuance of fines, as discussed later in this report



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**Guatemala.** Guatemala has taken some steps to address labor conditions in accordance with commitments outlined in an Enforcement Plan that the United States and Guatemala agreed to in 2013 as a result of negotiations to resolve a labor case initiated through a labor submission to DOL.<sup>27</sup> The actions that the plan calls for include, among others, increasing the budget for labor law enforcement at the Ministry of Labor and verifying employer compliance with court orders.<sup>28</sup> Officials from the Ministry of Labor reported improvements in labor rights implementation in response to the Enforcement Plan. For example, the number of labor inspections rose from about 5,000 nationwide in 2011 to about 36,800 nationwide in 2013. Also, according to ministry officials, the ministry now conducts labor inspections regularly, rather than in response to complaints, and has increased its legal education requirements for labor inspectors, to further fulfill its Enforcement Plan commitments.

## Colombia

According to USTR, Colombia has taken steps to implement labor protection commitments outlined in the Labor Action Plan, such as reforming the criminal code to establish criminal penalties for employers that undermine the right to organize and bargain collectively, enacting legal provisions and regulations prohibiting the use of temporary service agencies to circumvent labor rights, and reforming the criminal justice system. USTR and DOL have reported that the Colombian government took concrete steps and made meaningful progress under the Labor Action Plan, which fulfilled the condition for advancing the FTA to Congress and resulted in the FTA's entering into force in May 2012. The government's steps included securing legislation to establish a separate labor ministry and expanding its labor inspectorate by hiring additional

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<sup>27</sup> *Mutually Agreed Enforcement Action Plan between the Government of the United States and the Government of Guatemala* (2013), accessed August 1, 2013, <http://www.dol.gov/ilab/programs/otla/guatemalashub.htm>.

<sup>28</sup> The commitments outlined in the Enforcement Plan are (1) reaching an interagency information exchange agreement, (2) providing police assistance for Ministry of Labor inspectors, (3) allocating resources for Ministry of Labor enforcement of labor laws, (4) allowing for the ministry to issue fine recommendations and expedited judicial review, (5) standardizing time frames for Ministry of Labor inspections, (6) ensuring labor law compliance for certain enterprises, (7) ensuring labor law compliance for enterprises receiving export benefits, (8) ensuring labor law compliance upon enterprise closure, (9) employer substitution, (10) developing a system for tracking compliance with court orders, (11) verifying employer compliance with court orders, (12) monitoring judicial enforcement of court orders, (13) applying certain labor code articles, (14) ensuring transparency and tripartite coordination on Enforcement Plan implementation, (15) publishing labor law enforcement statistics and data.

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inspectors. Additionally, USTR and the Colombian Ministry of Labor reported that the government enacted a series of laws and ministerial decrees that expanded labor protections as a result of the Labor Action Plan. According to USTR and the Colombian Ministry of Labor, these laws and decrees include, for example, legislation to establish criminal penalties, including imprisonment, for employers that undermined the right to organize and bargain collectively as well as new provisions and regulations to prohibit and sanction with significant fines the misuse of cooperatives<sup>29</sup> and other employment relationships that undermine workers' rights.<sup>30</sup>

## Oman

Oman has taken steps to implement labor protections that have allowed for unionization and collective bargaining. Officials from Oman's Ministry of Manpower—the ministry responsible for labor affairs—reported that Oman's interest in entering into a free trade agreement with the United States helped lead to the introduction of labor reforms, including the establishment of unions. According to USTR, in order to meet its commitments made in connection with the FTA, Oman has enacted a number of labor law reforms including, among others, a royal decree in 2006 that established the right to organize labor unions, allowed for collective bargaining, prohibited the dismissal of workers for union activity, guaranteed the right to strike, and guaranteed unions the right to practice their activities freely and without interference from outside parties. According to union and Ministry of Manpower officials we met with in Oman, the General Federation of Trade Unions held its first election in 2010 and served as the starting point for the union movement in Oman. The federation serves as an umbrella organization representing workers from various sectors and, according to union officials, represents about 200 company-level unions and one sector-level union, established in 2013 in the oil and gas sector.

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<sup>29</sup>According to DOL, associated work cooperatives are self-governed, autonomous enterprises, under which associated workers are considered cooperative owners, rather than workers, and are excluded from many Labor Code protections.

<sup>30</sup>According to DOL's 2011 *Labor Rights Report on Colombia*, until late 2010, penalties for the misuse of cooperatives to avoid direct employment relationships were not enforced against third-party employers. According to DOL, as a result, cooperatives became a vehicle widely used by employers to end direct employment relationships with their workforces while retaining the same workers through cooperatives and continuing to act as their de facto employers.

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Peru

According to USTR, Peru committed to steps to implement labor protection commitments in the context of FTA negotiations with the United States. During our fieldwork, officials at Peru's Ministry of Labor told us that Peru recently established a new labor inspection regime and that the ministry has focused on improving inspections in the workplace. For example, in 2013, according to Ministry of Labor officials, the ministry took action to centralize authority for labor inspections and help ensure that inspectors are applying the same criteria across the country. Ministry of Labor officials also reported that the ministry took steps to improve labor inspections by modernizing its information systems to allow for digital record keeping, with technical assistance provided by USAID. According to USAID, as a result of these programs, the time required to adjudicate labor cases has decreased from 2 years to 6 months. Additionally, according to a 2007 U.S. House of Representatives, Committee on Ways and Means report, in order to bring Peruvian labor laws into alignment with the obligations under the FTA, the government of Peru took steps to change Peru's legal framework governing temporary employment contracts, subcontracting and outsourcing contracts, the right of workers to strike, recourses against unit-union discrimination, and workers' right to organize. Ministry of Labor officials reported that the ministry has progressively increased the number of labor inspectors, in connection with the commitments Peru made during the FTA negotiation, to double its labor inspectorate. As of September 2013, the ministry reported having about 400 labor inspectors on staff nationally.

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**U.S. Agencies Have Provided Technical Assistance to Help FTA Partner Countries Meet Labor Commitments, with Largest Amounts for CAFTA-DR**

From fiscal year 2001 through fiscal year 2013, the U.S. government provided a combined total of about \$275 million in labor-related assistance for all FTA partner countries.<sup>31</sup> All CAFTA-DR countries, Colombia, and Peru received a combined total of about \$222 million in labor-related technical assistance and capacity-building activities since the passage of implementing legislation for these FTAs. In contrast, the U.S. government provided about \$53 million in labor-related assistance for all other FTA partner countries during the periods since those FTAs were implemented.<sup>32</sup>

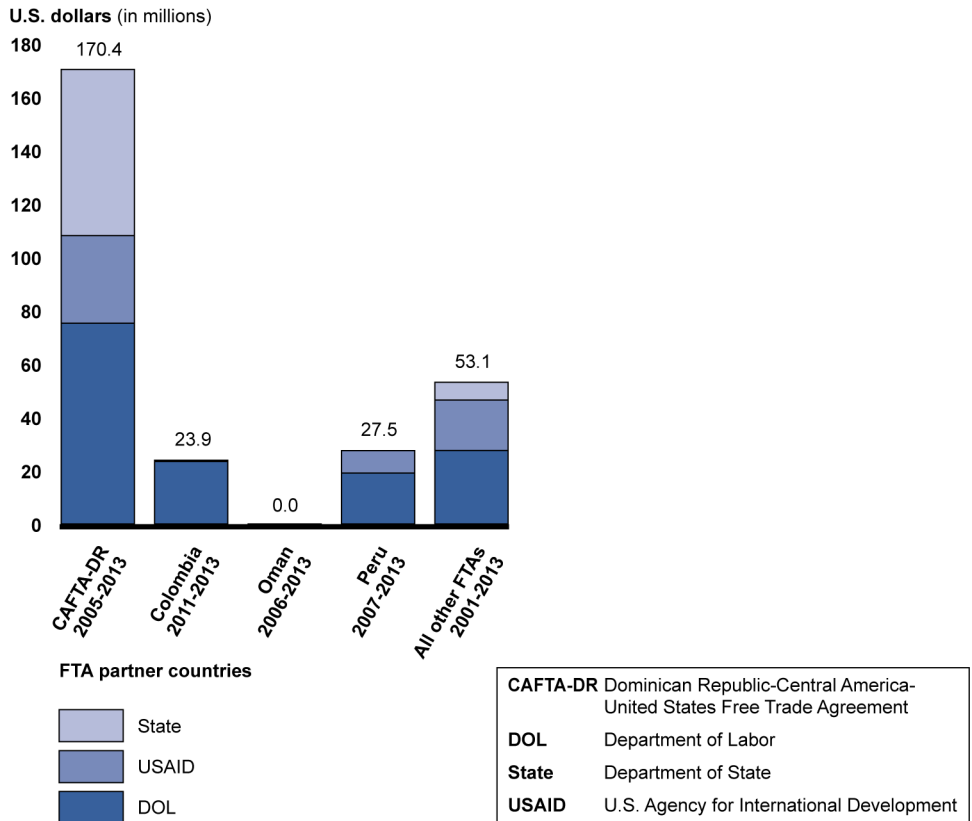
Figure 1 shows the labor-related technical assistance that U.S. agencies provided under CAFTA-DR and the Colombia, Oman, and Peru FTAs during the periods beginning, respectively, with the year that Congress passed the FTA's implementing legislation and ending in 2013. Figure 1 also shows labor-related technical assistance that U.S. agencies provided from 2001 through 2013 under all other FTAs that entered into force in or after 2001.

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<sup>31</sup>This amount includes both FTA and non-FTA labor-related assistance provided to FTA partner countries. This amount does not include labor-related technical assistance to Oman that DOL provided for a joint project in Oman and Bahrain. DOL's records show that it obligated \$758,000 for the project in 2006 but do not show how the funds were divided between the two countries, because, according to DOL, standard financial reports for federal grants to more than one country do not allow the grantor to report amounts received by each country. In addition, this amount excludes any assistance provided under the United States-Israel Free Trade Agreement (Israel FTA), which does not contain a specific article on labor provisions, and the North American Free Trade Agreement (NAFTA), which addresses labor-related issues under a related agreement, the North American Agreement on Labor Cooperation.

<sup>32</sup>This amount excludes the Israel FTA and NAFTA.

**Figure 1: Labor-Related Technical Assistance Administered by U.S. Agencies under Selected Free Trade Agreements (FTA) and All Other FTAs**



Source: GAO analysis of DOL, State, and USAID data. | GAO-15-160

Notes: Time periods for the data shown for CAFTA-DR and the Colombia, Oman, and Peru FTAs each begin with the year that the respective FTA's implementing legislation was passed by Congress, before the FTA entered into force. Data for "All other FTAs" exclude the only FTAs that entered into force before 2001—the U.S.-Israel Free Trade Agreement (1985) and the North American Free Trade Agreement (1994).

Totals for projects that DOL administered under CAFTA-DR include projects that Congress funded through appropriations to DOL for technical assistance to reduce child labor as well as projects that State's Bureau of Western Hemisphere Affairs funded through transfers to DOL from State's Economic Support Fund and Development Assistance Account.

Data shown exclude funding that DOL provided for a regional labor-related technical assistance project in Oman and Bahrain in 2006. According to DOL officials, data showing country-specific funding for regional projects are not available.

Data shown for Colombia include \$500,000 that State provided for promotion of labor rights.

CAFTA-DR

CAFTA-DR's six partner countries have received the largest amounts of U.S. assistance for labor-related projects undertaken pursuant to the FTA or independent of the FTA. From 2005, when the CAFTA-DR

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implementing legislation was passed by Congress, through 2013, the U.S. government provided about \$170 million for such projects. According to DOL, this amount included funding appropriated by Congress to fund labor-capacity-building activities as well as funds appropriated to DOL for child labor technical assistance projects to assist these partner countries in addressing labor-related priorities outlined in the White Paper.<sup>33</sup> According to DOL officials, DOL, State, and USAID established an interagency group to develop FTA labor-related projects in consultation with USTR and CAFTA-DR partner governments and to allocate funding among these projects, with funds transferred from State. DOL reported that from 2005 to 2013, these three U.S. agencies administered more than 20 technical assistance projects in support of the White Paper's priority issue areas.

#### Colombia

U.S. technical assistance for labor-related projects in Colombia totaled about \$24 million from 2011, when the Colombia FTA implementing legislation was enacted, through 2013. U.S. agencies provided \$9 million of that amount for projects to combat child labor and about \$13 million to address workers' rights. DOL has also provided in-kind resources, sending a staff person with labor expertise to support the Colombian government in taking initial steps to implement the Labor Action Plan. The United States is currently funding multiple labor-related projects in Colombia, including State's award of about \$500,000 to the ILO for the promotion of core labor rights and DOL's award of about \$7.8 million for the ILO office in Colombia.

#### Oman

Oman has not received U.S. technical assistance specifically for labor-related projects since the FTA was enacted. According to State, the United States is not involved in any labor-capacity-building or labor-related assistance programs in Oman because of the Omani government's reluctance to accept foreign assistance. However, officials at Oman's Ministry of Manpower told us that the United States has provided information and advice on supporting unions and the role of unions in the economy and has expressed support of ongoing labor reforms, including the establishment of unions.

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<sup>33</sup>Beginning in 2005, Congress appropriated funds for labor-capacity-building activities relating to the free trade agreements with the countries of Central America and the Dominican Republic. For example, see Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, §570, 118 Stat. 2809, 3026 (2004).

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Peru

U.S technical assistance for labor-related projects in Peru totaled about \$27.5 million from 2007, when the Peru FTA implementing legislation was enacted, through 2013. Of that amount, \$13 million was dedicated to combat child labor, with the remainder dedicated to labor-capacity-building and education projects. USAID officials stated that, for example, the agency expended \$3.3 million over a 3-year period to target labor issues. Of this amount, \$2.7 million was granted to the Solidarity Center, a labor nongovernmental organization (NGO) affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), to strengthen union negotiation capacity, and \$600,000 was granted to an implementing partner—Nathan Associates—for improving information systems, providing training for labor inspectors, and training judges on the implementation of labor laws.

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Stakeholders Reported Limited Enforcement Capacity and Gaps in Labor Rights in Selected Partner Countries

CAFTA-DR: El Salvador and Guatemala

**El Salvador.** Stakeholders we met with during our fieldwork in El Salvador identified concerns related to the enforcement of labor rights. Further, State and DOL reports show that workers are often unable to benefit from the legal rights afforded in the labor laws. For example, according to NGO officials, although labor courts have improved their ability to process cases, court decisions are often not enforced. U.S. officials stated that the Ministry of Labor's increases in its budget and number of labor inspectors have not improved the labor inspectorate's effectiveness. According to Ministry of Labor officials, although the ministry's labor inspectors can fine employers for labor law violations, the ministry does not collect the fines and workers must petition the labor courts to enforce the penalties. Moreover, according to an ILO official, although the government of El Salvador has greatly reduced the amount of time that the courts take to accept a case, resolution of most labor disputes still takes 2 to 4 years. Officials from the Supreme Court in El Salvador told us that about 51 percent of labor court sentences are not enforced, primarily because the plaintiffs do not have the funds required to continue the claims. Union and NGO officials we met with in El Salvador emphasized their concerns over enforcement, stating that because of the length of time the courts take to adjudicate labor cases,

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workers often take buyouts from the company and drop the cases. State's 2013 Human Rights Report echoes these concerns. For example, the report states that in 2013, the government of El Salvador did not always effectively enforce the laws on freedom of association and the right to collective bargaining, and that legal remedies and penalties are ineffective.

**Guatemala.** According to stakeholders we met with during our fieldwork in Guatemala, as well as State reports, concerns related to the enforcement and application of labor rights persist. According to USTR, Guatemala has taken steps to address labor reforms outlined in the Enforcement Plan, but additional steps are needed, including passing legislation providing for an expedited process to sanction employers that violate labor laws and implementing a mechanism to ensure payments to workers in cases where enterprises have closed.<sup>34</sup> Additionally, according to USTR, Guatemala will need to demonstrate that the legal reforms it has undertaken and still needs to undertake are being implemented effectively and are leading to positive changes.<sup>35</sup> Union representatives reported concerns related to freedom of association—specifically, that union leaders have been offered monetary compensation to resign from their jobs and to influence other workers against joining the union. Union officials we met with also noted that workers have been terminated for their union affiliation or for not disbanding unions. State's 2013 Human Rights Report echoed these concerns, stating that the government of Guatemala did not effectively enforce legislation on freedom of association, collective bargaining, or antiunion discrimination. Further, according to this report, as a result of inadequate allocation of budget resources and inefficient legal and administrative processes, the relevant government institutions did not effectively investigate, prosecute, and punish employers who violated freedom of association and collective

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<sup>34</sup>According to USTR, as of September 2014, this bill had not been passed by the Guatemalan congress.

<sup>35</sup>For more information about the status of implementation of the Guatemala Enforcement Plan, see app. III.



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bargaining laws, and the institutions did not reinstate workers illegally dismissed for engaging in union activities.<sup>36</sup>

## Colombia

Stakeholders we met with in Colombia identified concerns related to the enforcement of labor rights and not benefiting from rights afforded in the labor laws. According to USTR, the government of Colombia has made meaningful progress under the Labor Action Plan, but work remains to build on this progress and address remaining and new challenges.

- According to USTR, the collection of fines for labor violations remains problematic. USTR and DOL have reported that although Colombia's national training and apprenticeship system, Servicio Nacional de Aprendizaje (SENA), is responsible for collecting fines for labor violations, until recently SENNA has been barred from collecting fines from companies that filed a judicial appeal.<sup>37</sup> According to a joint USTR-DOL statement, as of April 2014, SENNA was authorized to hold monetary payment as collateral payment from businesses, pending the outcome of the judicial appeal of their fines, but had not yet begun to exercise this authority. Additionally, although the Ministry of Labor increased the number of inspectors, labor unions and NGOs reported that this action has not resulted in more effective inspections or improved working conditions.
- USTR has reported that new forms of abusive contracting remain problematic to the protection of labor rights in Colombia. For example, according to USTR, although the number of illegal cooperatives has dropped, many employers have shifted to various forms of subcontracting, including entities known as simplified stock companies, to avoid direct employment relationships.<sup>38</sup> ILO, NGO,

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<sup>36</sup>According to U.S and Guatemalan officials, as well as union representatives and the ILO, violence against unionists has occurred in Guatemala. The government of Guatemala reported that it had taken steps to address the violence. However, stakeholders were unsure of the extent of the problem because of a lack of statistics collected by the government. For more information about violence against unionists in Guatemala, see app. II.

<sup>37</sup>According to DOL, Colombia's Minister of Labor heads SENNA's board of directors.

<sup>38</sup>According to DOL, a simplified stock company is a corporate model that holds shareholders liable only up to the amount of their investment. DOL further stated that these companies are easy to create and dissolve and are a legitimate business model in Colombia. In cases where a simplified stock company is used for contracting—either legal or illegal—an employer hires the company to carry out a task and the company provides the labor through its own employees.

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and labor union officials we met with described this form of subcontracting as a legal loophole that is used to undermine workers' rights. According to union officials, a law passed by the Colombian government in 2013 prohibiting the misuse of cooperatives was also intended to increase formalized employment and encourage companies to hire workers directly instead of as temporary labor.

State's 2013 Human Rights Report noted that the Colombian government generally enforced applicable labor laws and took steps to increase the enforcement of freedom-of-association laws. However, the report identified weaknesses in labor protections in Colombia, echoing concerns expressed to us by labor union and NGO representatives, related to labor inspections, collecting fines for labor violations, and employers' use of outsourcing contracts.<sup>39</sup>

#### Oman

Ministry of Manpower and union officials we met with in Oman reported that collective bargaining and freedom of association are allowed by law and largely respected. However, State has raised concerns about the enforcement of labor law among Oman's foreign worker population. State's 2013 Human Rights Report notes that Oman's Ministry of Manpower effectively enforces the labor law as it applies to Omani citizens but has not effectively enforced regulations related to working conditions and hours for foreign workers.

#### Peru

Despite steps that the government of Peru has taken to address labor conditions, union and NGO officials we met with reported that enforcement of labor laws remains weak and labor conditions have not improved in certain respects. According to State, Peru's labor laws place a 5-year limit on the continuous renewal of short-term labor contracts not leading to permanent employment in most sectors of the economy. However, State's 2013 Human Rights Report notes that a sector-specific law covering nontraditional export sectors such as apparel exempts employers from this 5-year limit and allows them to hire workers through indefinite series of short-term contracts. Union officials we met during our fieldwork also reported poor labor conditions in Peru's nontraditional

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<sup>39</sup>In addition, although murders of unionists have generally been decreasing over the past 10 years, and despite actions by the Colombian government to reduce homicides of union members and labor activists, stakeholders we interviewed reported that violence against unionists continues. For a more detailed description of reported violence against union members and activists in Colombia, see app. II.

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export sectors, which these officials described as not affording the same labor rights as other sectors in the economy.<sup>40</sup> More generally, according to NGO officials, Peru's large informal sector makes it difficult for the government to enforce labor rights, because informal companies, which are not registered with the government and therefore are not subject to labor inspections, typically do not follow labor laws.

State's 2013 Human Rights Report also identifies continuing labor concerns in Peru's nontraditional export sectors, such as the effect of the use of temporary service contracts and subcontracting on workers' freedom of association. State's report also notes that in 2013, penalties for violations of freedom of association and collective bargaining were rarely enforced, the judicial process was prolonged, and employers were seldom penalized for dismissing workers involved in trade union activities. In addition, union officials whom we met with stated that Peru's agricultural law allows for workers to be paid less than the legal minimum wage and to be continuously hired on temporary contracts for 2- to 3-month periods. These officials stated that this limits workers' ability to collectively bargain and exercise freedom of association, because of fear that if they join a union, their contracts will not be renewed.

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<sup>40</sup>According to State, Peru's nontraditional export sectors include fishing, wood and paper, nonmetallic minerals, jewelry, textiles and apparel, and the agriculture industry.

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## One of Five Labor Submissions Has Been Resolved, but Reporting Deadlines and Limited Public Awareness of the Process Present Problems

DOL has accepted five of six labor submissions—that is, formal complaints alleging that FTA labor provisions had been violated—that it has received since 2008<sup>41</sup> and has closed one submission as resolved. However, DOL did not meet its original deadlines for reviewing and reporting on any of the submissions, exceeding the established 6-month submission review time frame by an average of about nine months and possibly delaying resolution of the submissions. Stakeholders whom we interviewed in the selected five partner countries generally expressed a lack of awareness or understanding of DOL’s submission process, which may have limited the number of submissions filed. Moreover, stakeholders we interviewed expressed concerns about delays in resolving labor concerns detailed in the submissions for Guatemala and Honduras.

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## DOL Announced Its Process for Receiving and Evaluating Submissions in 2006

According to DOL, FTA labor provisions establish official processes for receiving submissions from interested organizations that believe a trading partner is not fulfilling its labor commitments. In the United States, DOL generally receives and reviews submissions made under the labor chapters of each trade agreement. DOL issued procedural guidelines pertaining to this function via publication of a *Federal Register* notice in 2006.<sup>42</sup> The guidelines contain deadlines and substantive criteria for acceptance and investigation of submissions. For example, DOL shall determine whether to accept a submission within 60 days and is to consider, among other things, whether it contains statements that, if substantiated, would constitute a failure by the other party to comply with its commitments under an FTA. If DOL determines that the circumstances require, the 60-day timeframe can be extended. According to DOL, its decision to review a public submission does not indicate any determination as to the validity or accuracy of the allegations contained in the submission; the submission’s merit is addressed in the public report that follows DOL’s review and analysis. DOL officials noted that although DOL has responsibility for investigating submissions, USTR, DOL, and State work together to engage diplomatically to address concerns.

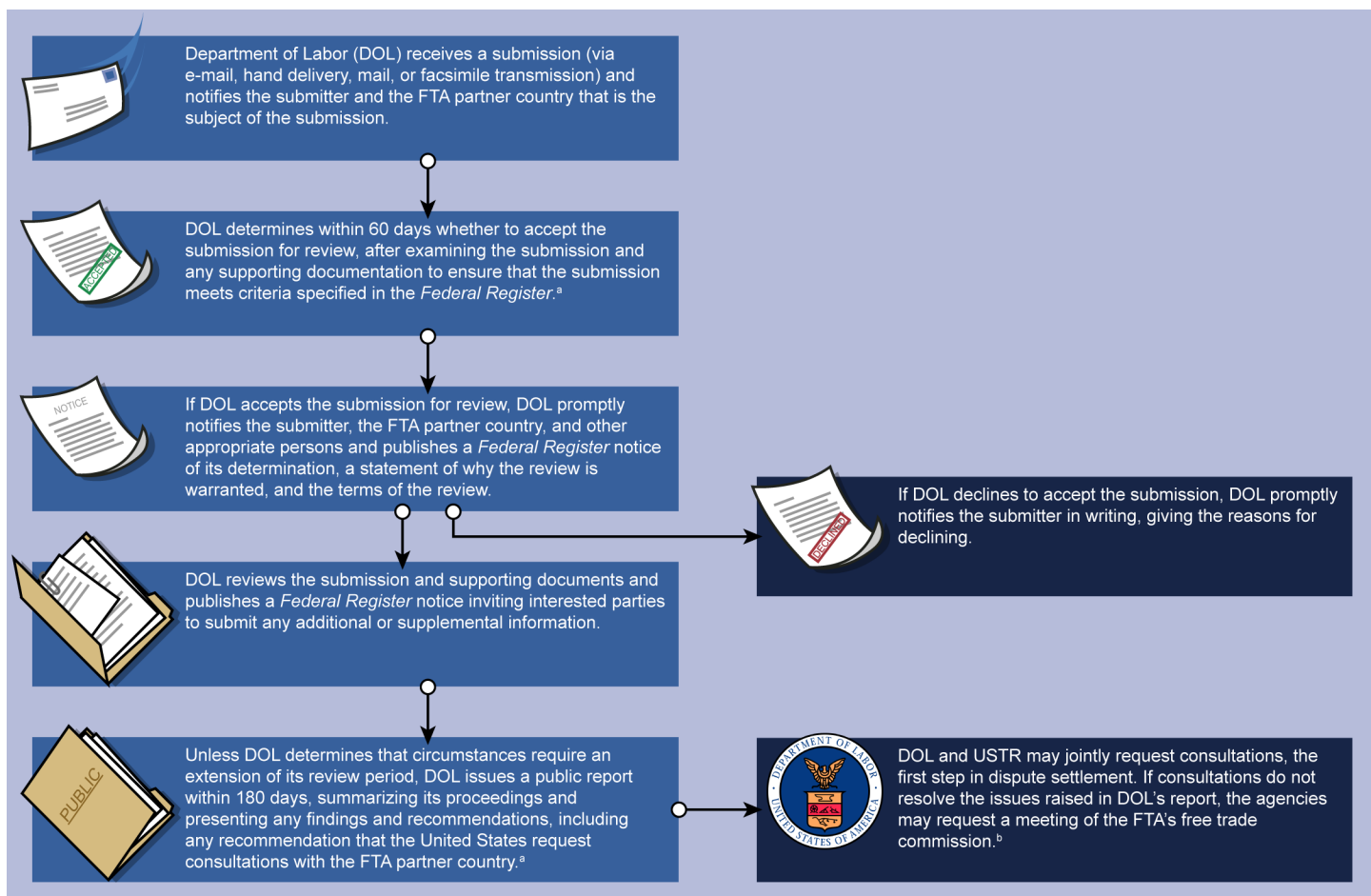
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<sup>41</sup>According to DOL officials, DOL also received a sixth submission, filed under the Costa Rica FTA in July 2010, which the filing party withdrew before DOL decided whether to accept it. DOL has also accepted other labor submissions under the North American Agreement on Labor Cooperation (one of three accords supplementary to NAFTA), which we did not examine.

<sup>42</sup>71 Fed. Reg. 76691 (Dec. 21, 2006).

Figure 2 illustrates DOL's submission process, including the established time frames for accepting and reviewing submissions.

Figure 2: U.S. DOL Labor Submission Process



Source: GAO analysis of 71 Fed. Reg. 76691. | GAO-15-160

Legend: FTA = free trade agreement, USTR = Office of the U.S. Trade Representative.

<sup>a</sup>DOL may extend the timeframe if it determines that circumstances require such an extension.

<sup>b</sup>The free trade commission established for each FTA is the primary forum for bilateral dialogue about the FTA's implementation.

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## DOL Has Closed One of Five Labor Submissions Accepted since 2008

Since 2008, DOL has accepted labor submissions filed under the Bahrain, Dominican Republic, Guatemala, Honduras, and Peru FTAs and has closed the Peru FTA submission.<sup>43</sup> The submissions for Bahrain, the Dominican Republic, and Guatemala—accepted in 2011, 2012, and 2008, respectively—remain open while the U.S. government engages with the governments to address the concerns that the submissions raised. The submission for Honduras, accepted in 2012, remains open while DOL reviews its allegations. Figure 3 presents information about the five submissions (see app. III for further details).

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<sup>43</sup> DOL has also accepted other labor submissions under the North American Agreement on Labor Cooperation (one of three accords supplementary to NAFTA), which we did not examine.

**Figure 3: Free Trade Agreement (FTA) Labor Submissions Accepted by DOL as of July 2014**

FTA	Year accepted	Alleged violations	Status	Notes
Bahrain	2011	<ul style="list-style-type: none"> <li>• Violation of right to freedom of association</li> <li>• Discrimination</li> </ul>	Open	U.S. government held second-round consultations with Bahraini government on June 22-23, 2014.
Dominican Republic	2012	<ul style="list-style-type: none"> <li>• Human trafficking</li> <li>• Forced labor</li> <li>• Retaliatory firing of workers for union activities</li> </ul>	Open	U.S. government is engaging with Dominican Republic government.
Guatemala	2008	<ul style="list-style-type: none"> <li>• Violation of right to freedom of association</li> <li>• Violation of rights to organize and bargain collectively</li> <li>• Unacceptable work conditions</li> </ul>	Open	U.S. and Guatemalan governments signed an Enforcement Plan in April 2013, addressing concerns raised in the submission. U.S. government granted Guatemalan government a 4-month extension in April 2014 to continue implementing the plan and granted a further 4-week extension in August 2014. U.S. government determined in September 2014 to proceed with dispute settlement, because Guatemala had not met the Enforcement Plan's terms.
Honduras	2012	<ul style="list-style-type: none"> <li>• Violation of right to freedom of association</li> <li>• Violations of rights to organize and bargain collectively</li> <li>• Child labor</li> </ul>	Open	U.S. government engagement is pending DOL's submission reviews.
Peru	2011	<ul style="list-style-type: none"> <li>• Failure to comply with labor laws related to collective bargaining</li> </ul>	Closed as resolved (2012)	

Source: GAO analysis of Department of Labor (DOL) information. | GAO-15-160

Notes: DOL has also accepted other labor submissions under the North American Agreement on Labor Cooperation, which we did not examine.

Alleged violations shown for the Bahrain, Dominican Republic, Guatemala, and Honduras submissions are examples of those detailed in the submissions.

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## DOL Did Not Meet 6-Month Time Frame for Any Submission, Showing the Time Frame to Be Unrealistic

Although DOL accepted most of the submissions it received within the 60-day time frame established by its guidelines, it did not complete its reviews of the submission within the established 180-day time frame.<sup>44</sup> A DOL official we met with indicated that DOL cannot complete within the 180-day time frame the types of comprehensive investigations and reports it has been providing.

For each of the submissions, DOL determined at the end of the original 180-day review time frame to extend the review period and reported its findings and recommendations an average of 262 days after the original time frame had ended. According to USTR and DOL, before DOL publishes its review of a submission, both agencies engage informally with the relevant partner country to explore ways to address the concerns raised in the submission. However, USTR and DOL do not request formal consultations with a partner country to address DOL's recommendations until DOL has issued its report. As a result, extensions of DOL's review time frame may delay resolution of the submission.

- **Bahrain.** DOL received the Bahrain submission on April 21, 2011, and accepted it on June 10, 2011, or 50 days later. In December 2011, DOL extended the submission review period to consider and review additional information received from the government of Bahrain and Bahraini workers, amendments made to the Bahraini Trade Union Law, and labor-related developments in international forums. DOL issued its report on December 20, 2012, 559 days after accepting the submission.
- **Dominican Republic.** DOL received the Dominican Republic submission on December 22, 2011, and accepted it on February 22, 2012, or 62 days later. In August 2012, DOL extended the review time frame to consider public comments about the submission as well as information gathered by a Bureau of International Labor Affairs delegation during a visit to the Dominican Republic. DOL issued its report on September 27, 2013, 583 days after accepting the submission.
- **Guatemala.** DOL received the Guatemala submission on April 23, 2008, and accepted it on June 12, 2008, or 50 days later. DOL issued

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<sup>44</sup>DOL may extend the timeframe if it determines that the circumstances require such an extension. 71 Fed. Reg. 76691.



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its report on January 16, 2009, 218 days after accepting the Guatemala submission.

- **Honduras.** DOL received the submission on March 26, 2012, and accepted it on May 14, 2012, or 49 days later. On November 2, 2012, 5 days before DOL's 180-day reporting deadline, DOL extended its review because of the scope of the submission, the scope of the alleged labor law violations, and the large amounts of information received from the Honduran government and stakeholders. As of September 2014, DOL officials were continuing to review documentation of the allegations and prepare their report. DOL officials were unable to estimate when they would issue a public report.
- **Peru.** DOL received the submission for Peru on December 29, 2010, and accepted it on July 19, 2011, or 202 days later. On January 20, 2012, 185 days after accepting the submission, DOL concluded that circumstances required an extension of time for a thorough and detailed review of the Peru submission. DOL issued its report for the Peru submission on August 30, 2012, 408 days after accepting it.

Although DOL has periodically reviewed and updated the submission process since establishing it in 1994, DOL officials told us that they have not reviewed or adjusted the submission review time frame to reflect the time it takes DOL to issue its reports after accepting the submissions. DOL's extensions of each submission review period since 2008 have shown this time frame to be unrealistic. Federal standards for internal control call on agency management to monitor and assess the effectiveness and efficiency of their operations over time and to promptly resolve any deficiencies.<sup>45</sup>

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<sup>45</sup>GAO, *Auditing and Financial Management: Standards for Internal Control in the Federal Government*, AIMD-00-21.3.1 (Washington, D.C.: Nov. 1, 1999).

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## Interviewed Stakeholders Generally Did Not Understand the Labor Submission Process, and U.S. Agencies Have Made Minimal Efforts to Explain It

Our interviews with union and other nongovernmental stakeholders in the selected partner countries suggested that little or no awareness and understanding of the FTA labor submission process may have affected the number of submissions filed. Union representatives we interviewed in our five case study countries—Colombia, El Salvador, Guatemala, Oman, and Peru—were generally either unaware of DOL’s labor submission process or considered it difficult to understand and use. For example, a union representative in Colombia stated that the union would have filed a submission if the representative had known about the process. In another example, representatives of one of the larger El Salvador unions—GMIES, an NGO that monitors the actions of the Salvadorian government—stated that it was difficult for a “typical worker” to file a submission with DOL and that the information required for the submission is generally difficult, if not impossible, to obtain and document. A small number of union representatives who were aware of the process attributed their knowledge to information received from AFL-CIO or their country’s Solidarity Center.<sup>46</sup> For instance, in Guatemala, a representative of a union that had signed the current Guatemala submission stated that without the help of the Solidarity Center, the union would have been unable to locate submission instructions and file the submission.

Moreover, although the government officials we interviewed in the five countries knew of the labor submission process, only in El Salvador did these officials express an understanding of how DOL evaluates a submission and conducts its fact-finding investigations. For example, the Guatemalan Ministry of Labor officials we interviewed could not provide information about how the process works or describe the criteria DOL uses to evaluate a submission’s merits. The Ministry of Manpower officials whom we interviewed in Oman did not understand the purpose of the submission process or how submissions could be filed.

In addition, U.S. agencies have made minimal efforts to publicize the process for nongovernment stakeholders, who are most likely to file submissions. Federal standards for internal control pertaining to information and communication call for agencies to have relevant,

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<sup>46</sup>The American Center for International Labor Solidarity, better known as the Solidarity Center, is a nonprofit organization affiliated with the AFL-CIO labor federation whose mission is to help build a global labor movement by strengthening the economic and political power of workers around the world through effective, independent, and democratic unions.

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reliable, and timely communications relating to internal as well as external events, to ensure control of their operations.<sup>47</sup> According to DOL officials, DOL relies exclusively on its website and its 2006 *Federal Register* notice to inform the public about the process.<sup>48</sup> Moreover, U.S. officials whom we interviewed in the countries we visited indicated that they do not advertise the existence of the submission process. Without additional efforts to inform nongovernment stakeholders in FTA partner countries about the DOL labor submission process, U.S. agencies are limited in their ability to use the submission process as a means of holding FTA partners accountable for fulfilling their labor commitments.

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### Some Stakeholders Expressed Concern about Delays in Resolving Labor Submissions

Several stakeholders we spoke with expressed concerns about delays in U.S. agencies' efforts to resolve the matters raised in the Guatemala and Honduras submissions. Because of the complexity of these matters, resolving them has proven difficult and time-consuming, according to USTR. Moreover, according to USTR, no process or time frames for U.S. agencies' efforts to engage diplomatically with FTA partners to resolve labor matters related to DOL submission reports are outlined in any active FTA that had entered into force or in U.S. implementing guidance.

According to USTR and DOL, they engage with FTA partners through informal and formal communication to resolve any FTA concerns. For example, according to a USTR official, USTR has informally engaged with FTA partners—through labor affairs council discussions, telephone conversations, and e-mail exchanges—for an average of 6 months regarding concerns raised in a submission before requesting formal consultations with the partner government.<sup>49</sup> If an FTA partner does not address USTR's and DOL's labor concerns or is unwilling to informally engage, USTR and DOL may request formal consultations under the FTA's labor chapter. USTR officials stated that an FTA partner's willingness to engage determines in part how quickly potential labor

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<sup>47</sup>AIMD-00-21.3.1.

<sup>48</sup>U.S. Department of Labor, *Submissions under the Labor Provisions of Free Trade Agreements*, accessed Aug. 5, 2014, <http://www.dol.gov/ilab/trade/agreements/fta-sub.htm>. See also, 71 Fed. Reg. 76691.

<sup>49</sup>The labor chapters of some FTAs call for the establishment of a bilateral labor affairs council to oversee, and review progress in, implementation of the labor chapter's provisions.

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violations are addressed. According to USTR officials, some FTA partners are willing to engage informally to resolve labor violations, while other partners engage only after USTR and DOL have jointly requested formal consultations under the FTA's labor chapter.

Examples of stakeholders' concerns include the following.

- AFL-CIO representatives in Washington, D.C., who were involved with the Honduras and Guatemala submissions expressed appreciation of DOL's care in investigating cases and were eager to provide requisite evidence. However, they expressed disappointment that both cases have taken longer than they anticipated, stating that justice delayed can mean justice denied when workers' livelihoods are at stake.
- A union representative in Guatemala expressed disappointment that 6 years after the submission was filed, it had not been resolved. He also said that the steps outlined in the enforcement plan were mainly administrative and did not address all complaints detailed in the submission. As a result, according to the union representative, the conditions of workers identified in the submission have not improved.
- Four government officials from CAFTA-DR partner countries whom we interviewed in Washington, D.C., described DOL's submission process as lacking fairness and transparency. According to these representatives, DOL does not give partner governments clear information about next steps or access to evidence supporting the submissions and deprives the countries of the opportunity to respond to allegations presented by any member of the public.<sup>50</sup> The CAFTA-DR representatives added that in their opinion, DOL conducts the submission process in an adversarial manner and that the process therefore does not function as a mechanism for addressing concerns

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<sup>50</sup>In commenting on a draft of this report, DOL noted that during its submission review, the partner government has the opportunity to provide input and DOL visits the partner country and reviews any information that the partner government provides. DOL also noted that the submission review process is a fact-finding exercise intended to evaluate the merits of allegations raised in a submission and that acceptance of a submission for review does not imply that the allegations are correct. In addition, DOL stated that its decision to review a public submission does not indicate any determination as to the validity or accuracy of the allegations contained in the submission; instead, the submission's merit is addressed in the public report that follows DOL's review and analysis. According to DOL, after its submission review report is issued, USTR and DOL engage with the partner country to address any recommendations in DOL's report and to attempt to find a mutually agreeable solution to any potential violation of FTA labor provisions.

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on a cooperative basis. The representatives noted that this, in turn, can delay or complicate resolution of problems.

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## U.S. Agencies Provide Limited Monitoring, Enforcement, and Reporting on FTA Labor Provisions

Since 2009, USTR and DOL, with State's assistance, have taken steps intended to strengthen monitoring and enforcement of FTA partners' compliance with FTA labor provisions, but their monitoring and enforcement remain limited.<sup>51</sup> After USTR announced in July 2009 that the agencies would take a more proactive, interagency approach to monitoring and enforcing FTA labor provisions, USTR and DOL developed mechanisms to track labor conditions and practices in priority trade partner countries. They also took some proactive monitoring steps with several FTA partners. However, although they jointly address labor submissions and work together to engage with partner countries regarding labor concerns, USTR and DOL have not established a coordinated strategic approach to systematically assess and address other possible inconsistencies with the FTA labor provisions, such as concerns that DOL identifies in internal management reports. The lack of such an approach may be inconsistent with USTR's 2009 announcement as well as with best practices for interagency collaboration. Agency officials cited limited funding and staffing as constraints on their ability to monitor and enforce FTA labor provisions. USTR's, DOL's, and State's annual reports to Congress provide information about labor conditions in partner countries. However, reflecting in part USTR's and DOL's limited monitoring and enforcement of FTA labor provisions, the reports generally do not detail concerns about the implementation of FTA labor provisions by partner countries that have not been the subject of labor submissions.

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<sup>51</sup>For information about USTR's and DOL's efforts to monitor Guatemala's and Colombia's implementation of other labor initiatives, see app. III.

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## USTR and DOL Pledged in 2009 to Strengthen Monitoring and Enforcement of FTA Labor Provisions

In 2009, USTR made a public statement pledging to address weaknesses in monitoring and enforcement of FTA labor provisions such as those we identified in our July 2009 report.<sup>52</sup> In its statement, USTR—which has principal responsibility for monitoring and enforcing statutory trade agreements—publicly announced its intention to adopt a proactive, interagency approach to monitoring and enforcing FTA labor provisions in cooperation with DOL and State.<sup>53</sup> According to USTR’s announcement, for example, the agencies would no longer enforce labor obligations only in response to complaints, would hold trading partners to their obligations on labor standards, and would work in close partnership to immediately identify and investigate labor violations. In addition, USTR’s July 2009 announcement stated that the agencies would deploy resources more effectively to identify and solve problems at the source and would jointly engage with governments of countries that violate the rules, to quickly restore workers’ rights, assist partner countries to find a way to fix identified labor problems, and pursue legal remedies when other options are closed.

A broad range of activities underpins federal monitoring and enforcement efforts. For the purposes of this report, “monitoring” refers to federal activities that are undertaken to identify instances where foreign laws, regulations, and practices may be inconsistent with trade agreement provisions; “enforcement” refers to actions taken by USTR to secure foreign compliance with trade agreements, which can include initiating dispute settlement procedures that certain trade agreements provide.<sup>54</sup> When agencies identify possible inconsistencies with FTA provisions, agencies take a variety of actions to encourage and obtain foreign compliance with trade agreements. As we previously reported, according to records and staff at USTR and other agencies, monitoring and enforcement of trade agreements typically involves several key steps: identifying compliance problems, setting priorities, gathering and analyzing information, developing and implementing responses, taking

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<sup>52</sup>[GAO-09-439](#).

<sup>53</sup>Office of the U.S. Trade Representative, “Ambassador Kirk Announces New Initiatives for Trade Enforcement” (press release), July 16, 2009, accessed July 18, 2013, <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2009/july/ambassador-kirk-announces-new-initiatives-trade>.

<sup>54</sup>See GAO, *International Trade: Strategy Needed to Better Monitor and Enforce Trade Agreements*, [GAO/NSIAD-00-76](#) (Washington, D.C.: March 2000).

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actions to enforce agreements, and coordinating with other agencies.<sup>55</sup> Systematic implementation of these key steps is necessary to ensure that the agencies effectively and efficiently accomplish their objective and help ensure that management's directives are carried out.

In our July 2009 report, we found that U.S. agencies had not proactively monitored FTA partners' compliance with labor commitments and did not consider that they were required to do so.<sup>56</sup> Moreover, U.S. interaction with partners regarding labor issues after FTAs entered into force had been limited, usually in part because of the low priority attached to this function. Further, we found that U.S. agencies generally gave attention to problematic labor situations in certain FTA partners' export sectors only after media exposure of the situations.

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### USTR and DOL Track Partner Countries' Labor Conditions but Do Not Systematically Monitor and Enforce Compliance with FTA Labor Provisions

Since July 2009, USTR and DOL have taken steps intended to strengthen monitoring and enforcement of FTA partners' compliance with FTA labor provisions.<sup>57</sup> USTR staff indicated that an important component of USTR's and DOL's work occurs between an FTA's finalization and its entry into force. For example, for the Colombia FTA, the agencies worked with the Colombian government to establish the Labor Action Plan, outlining steps that the government was required to take before the FTA could receive congressional approval. (See app. III for information about the agencies' efforts to monitor Colombia's implementation of the Labor Action Plan).<sup>58</sup> In addition, DOL and other U.S. agencies have supported cooperative activities to assist the countries to be better positioned to meet their labor commitments after FTAs have entered into force.<sup>59</sup> In general, after FTAs have entered into force, USTR and DOL have

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<sup>55</sup>[GAO/NSIAD-00-76](#). To identify these five steps, we reviewed agency records and interviewed agency officials and staff at several U.S. agencies.

<sup>56</sup>[GAO-09-439](#).

<sup>57</sup>For information about other steps that DOL took in response to our 2009 report's recommendations, see <http://gao.gov/products/GAO-09-439>.

<sup>58</sup>App. III also discusses the agencies' efforts to monitor implementation of the CAFTA-DR White Paper and the Guatemala Enforcement Plan.

<sup>59</sup>See fig. 1 for information about U.S. agencies' cooperative project funding by FTA partner. In comments on a draft of this report, USTR indicated that 12 of the 20 FTA partners have received, or are expected to receive, some technical assistance from State or Labor.

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engaged in discussions with partner countries, gathering information about labor conditions in the countries and responding to FTA labor concerns. In doing so, the agencies have addressed some of the typical key elements of monitoring and enforcement that we previously identified, such as gathering and analyzing information and setting priorities. However, the agencies' approach for countries other than Jordan, Panama, and, to some extent, Colombia and Peru generally does not incorporate other key elements, such as identifying compliance problems, developing and implementing responses, and taking enforcement actions.

## USTR

In October 2012, USTR established the Trade Policy Staff Committee (TPSC) Subcommittee on Labor Monitoring and Enforcement to focus on monitoring and enforcing labor provisions in partner countries, with members from various agencies, including DOL and State.<sup>60</sup> USTR charged the subcommittee with monitoring and enforcing labor issues in 20 FTA partner countries as well as 146 countries that participate in U.S. trade preference programs. According to a USTR document, the subcommittee participates in efforts to enforce labor obligations, such as through submission reviews, consultation, and dispute settlement under FTAs.<sup>61</sup> However, according to DOL and State staff who have participated in the Subcommittee on Labor Monitoring and Enforcement, the subcommittee's meetings generally serve as an information-sharing mechanism rather than a monitoring and enforcement mechanism.<sup>62</sup> State participants described the subcommittee as an interagency process for reviewing and discussing labor conditions and assessing risks in trade partner countries, including FTA and trade preference program partners. State added that although this process does not entail a regular, detailed review of each FTA partner country's compliance with labor obligations, it

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<sup>60</sup>USTR divided the existing TPSC Subcommittee on Labor to form the Subcommittee on Labor Monitoring and Enforcement and the Subcommittee on Labor Policy and Negotiations.

<sup>61</sup>In addition, according to USTR, the subcommittee is responsible for satisfying public reporting requirements and making eligibility determinations tied specifically to labor standards, such as those in specific preference programs. According to USTR, other TPSC subcommittees may also address enforcement of labor provisions.

<sup>62</sup>USTR staff noted that they also receive information about labor conditions in partner countries from the subcommittee as well as by other means, such as direct coordination with DOL and State staff, discussions with stakeholders such as unions and advocacy groups, communication with FTA partner government officials, and reviews of State cables and reports and news articles.



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facilitates discussion of concerns and development of next steps to address these concerns based on input from each agency. A USTR official stated that when the subcommittee met in October 2012 and February 2013, it decided that an emphasis on overseeing labor conditions in parts of Africa and Haiti was needed and that monitoring of FTA labor provisions' implementation would be based mainly on addressing DOL labor submissions. USTR officials noted that information sharing is a key part of its process to assess labor conditions in FTA partner countries relative to their commitments and to identify matters that are appropriate for further action.

According to a USTR official, work by the subcommittee and ad hoc interagency country teams has led to increased actions and engagement in countries such as Jordan, Panama, Peru, and Morocco, where, according to USTR, it has conducted, or expects to conduct, high-level labor meetings and monitoring trips in 2014. Further, according to USTR officials, USTR has used input from the subcommittee to develop a matrix to more comprehensively track monitoring activities and technical capacity-building assistance across FTA partner countries. USTR officials indicated that this tool has served as a point of departure for soliciting the subcommittee's input on priorities and coordination of future activities. In addition, according to USTR officials, USTR regularly coordinates and communicates with other agencies, industry, labor unions, the ILO and other external stakeholders to identify possible inconsistencies with the labor provisions of trade agreements.

USTR officials said that the agencies routinely address labor issues identified in the subcommittee or by other stakeholders through bilateral consultations and formally established FTA mechanisms, such as the labor affairs councils established by most FTAs and the FTA free trade commissions, which are the main forums for bilateral dialogue about FTA implementation for each FTA. USTR has publicly reported on such meetings, as we recommended in 2009. However, the labor affairs councils for most FTAs have in most cases met only once and in two

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cases have not met at all since the FTAs entered into force.<sup>63</sup> Moreover, the FTA free trade commissions' discussions reportedly do not address labor issues in depth. For example, officials from the Ministry of Labor in Peru indicated that in the last free trade commission meeting they attended, labor issues were not substantively addressed; instead members of the commission agreed that a meeting on the topic could be held later in the year.

USTR officials stated that monitoring and enforcement covers a large spectrum of activities and that in some cases USTR has taken steps to resolve issues in countries where submissions have not been filed. For example, according to USTR officials, USTR and DOL negotiated an implementation plan in 2012 to address concerns regarding foreign workers in Jordan's garment sector and have continued to monitor Jordan's implementation of its FTA labor commitments. USTR officials also cited as examples of proactive monitoring and enforcement USTR's engagement with Colombia regarding the Action Plan, cooperation with Panama in passing administrative and legal changes to address labor concerns as part of the FTA ratification process in 2011, and discussions with Peru regarding commitments that the government made in 2007 to improve respect of labor rights for temporary and subcontracted workers.

Our analysis shows that in Jordan and Panama, USTR's and DOL's activities have addressed the typical key elements of monitoring and enforcement. Regarding Jordan, USTR documents indicate that USTR and DOL have addressed all key elements of monitoring and enforcement, such as by putting in place a concrete plan to fix an identified problem and taking steps to assure that the plan is implemented. Regarding Panama, USTR documents show that the agencies took steps to assure that Panama met its commitments both before and after the FTA entered into effect in 2012 and have been pursuing steps, such as holding several recent meetings, that may help in

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<sup>63</sup>According to DOL, the labor affairs councils for the Singapore and Australia FTAs have not met since the FTAs went into effect (in 2004 and 2005, respectively). The labor subcommittee (which serves the same purpose as a labor affairs council) for the Jordan FTA has met twice since the FTA took effect, and the labor affairs councils under the remaining FTAs have each met once. The last labor affairs council meeting under CAFTA was in 2008. According to DOL staff, meetings of the labor affairs councils under the Morocco and Peru FTAs have been planned. The labor chapters of the Israel FTA and NAFTA did not provide for labor affairs councils.

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resolving outstanding concerns about implementation of FTA labor provisions.

However, while USTR's and DOL's reported monitoring activities in Colombia and Peru can assist the countries to be better positioned to meet their FTA labor commitments and help to better inform USTR of labor concerns in these countries, the evidence that we examined does not demonstrate systematic implementation of the typical key elements for monitoring and enforcement of labor provisions.

- **Colombia.** Documentation that USTR and DOL provided, as well as evidence that we gathered in Colombia and in interviews with agency officials, indicates that the agencies took several of the key steps of monitoring and enforcement. For example, a report that USTR and DOL jointly prepared in 2014 showed that the agencies have been gathering and analyzing information, setting priorities, assessing implementation, and identifying compliance problems. However, we did not see evidence that a current plan is in place to address the outstanding concerns that USTR and DOL have identified.
- **Peru.** Documentation that USTR and DOL provided demonstrates a systematic approach to some, but not all, of the monitoring and enforcement steps that we identified. Specifically, both agencies have engaged to some extent with Peru regarding labor matters in the 5 years since the Peru FTA went into effect. The agencies' documentation shows that at least some of their efforts to gather and analyze information regarding Peru relate to verifying the government's implementation and enforcement of previous reforms, such as reforms of its labor inspection regime and of its legal framework for temporary employment and subcontracting. USTR and DOL documents also show that the agencies have identified several possible compliance concerns and have engaged with the government by scheduling meetings and asking questions. However, we did not see evidence of a plan to resolve outstanding U.S. concerns. Further, in July 2014, Peru announced that it had enacted legal changes that rolled back previously implemented improvements in its labor laws in areas such as health and safety protection for workers, to improve the business climate and attract investment.

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DOL

To strengthen its monitoring and enforcement of FTA labor provisions, in 2012, DOL established the Monitoring and Enforcement of Trade Agreements Division within the Bureau of International Labor Affairs' Office of Trade and Labor Affairs.<sup>64</sup> The division's objectives are to ensure that partner governments (1) effectively enforce their labor laws and implement policies that protect worker rights; (2) understand their commitments under the FTA labor chapters; and (3) revise or adopt laws, regulations, and policies consistent with international labor standards. The division mainly monitors implementation of FTA labor provisions through its review of FTA labor submissions and through the use of internal documents called management reports, according to DOL officials.<sup>65</sup> However, DOL uses management reports to identify labor concerns rather than to fully assess consistency with FTA labor provisions.

- **FTA labor submissions.** DOL's review of the five FTA labor submissions—for Bahrain, the Dominican Republic, Guatemala, Honduras, and Peru—that it has accepted since 2008 have led to recommendations in three of its submission reports that the partners address alleged violations of FTA labor provisions.<sup>66</sup> According to USTR officials, labor submissions are a central component of the FTAs' framework for monitoring and enforcement of labor obligations and USTR and DOL invest extensive time and resources in addressing submissions. For the Bahrain and Guatemala submissions, DOL, with USTR, formally requested labor consultations under the FTAs' labor chapters to address the concerns raised in the submissions. In Guatemala's case, after consultations failed to address the concerns, the U.S. government invoked dispute settlement proceedings; during these proceedings, the two governments negotiated the Enforcement Plan, outlining steps that

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<sup>64</sup>According to DOL staff, DOL has been monitoring compliance with FTA labor provisions since NAFTA entered into force in 1994. Before DOL established the Monitoring and Enforcement of Trade Agreements Division, the Trade Agreement Administration and Technical Cooperation Division, in the Bureau of International Labor Affairs' Office of Trade and Labor Affairs, oversaw administration of FTA labor provisions.

<sup>65</sup>According to DOL, the Monitoring and Enforcement of Trade Agreements Division also monitors implementation of FTA labor provisions and other labor conditions through phone calls, e-mails, and interactions with numerous stakeholders, as well as through periodic visits to partner countries, as resources allow.

<sup>66</sup>The five FTA labor submissions exclude any submissions that DOL has received under the North American Agreement on Labor Cooperation.

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Guatemala agreed to take. (See app. III for a discussion of DOL's monitoring of Guatemala's implementation of the Enforcement Plan.)

- **Internal management reports.** In 2012, according to DOL staff, DOL began consistently monitoring FTA-related labor issues in 13 FTA partner countries. The management reports provide, among other information, a synopsis of labor conditions in partner countries based on sources such as State, ILO, the International Trade Union Confederation, local stakeholders, and the press. The reports include updated contact information for each partner and identify labor conditions or practices—for example, related to freedom of association and collective bargaining—that may be inconsistent with the FTA labor provisions. They also outline steps that DOL staff propose to take to address any identified concerns, subject to approval and resource availability. According to DOL officials, DOL uses the management reports to identify labor concerns, rather than potential FTA violations for enforcement purposes, and to facilitate engagement on technical assistance projects with FTA partner countries. DOL officials noted that claiming and proving a violation of FTA labor provisions would be very costly and legally complicated. The officials explained that when a management report identifies labor concerns, DOL may request formal or informal consultations with the partner country's ministry of labor to discuss these concerns and will attempt to cooperatively address them. The officials also noted that a persistent condition may result in a submission from a stakeholder.

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## USTR and DOL Lack a Coordinated Strategic Approach to Address Identified Labor Issues

USTR and DOL work together on an ad hoc basis to address labor concerns identified in submissions and to engage with partner countries regarding labor matters. However, the agencies have not developed a coordinated strategic approach to systematically assess and address other possible inconsistencies with FTA labor provisions, such as the issues that DOL's management reports identify, in other partner countries. This lack of a joint approach may be inconsistent with USTR's 2009 statement that the agencies would work in close partnership to immediately identify and investigate labor violations.

Further, while the agencies take steps such as gathering facts from credible and reliable sources and prioritizing their monitoring of the partner countries, they have not jointly operationalized other key steps that we previously identified as typical for monitoring and enforcement of trade agreements. For example, although DOL's management reports are its primary means, other than submissions, of monitoring and identifying issues that may be inconsistent with FTA labor provisions, the agencies

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have not established a coordinated strategic approach to identify and carry out steps necessary to address issues identified in the reports. According to DOL, the management reports are available to USTR and State and the three agencies routinely discuss the reports' contents. USTR confirmed that DOL shares information from the reports with the Subcommittee on Labor Monitoring and Enforcement for discussion and consideration. However, USTR officials noted that USTR regards the management reports as one of multiple information sources that it considers before deciding to engage with a country about a labor concern, rather than as an indicator of a need to engage with the country. USTR officials also noted that USTR views the management reports as a new internal DOL tool and is assessing how best to use these reports in the interagency process.

Moreover, USTR, DOL, and State have differing perspectives on how to monitor and enforce FTA labor provisions, according to agency officials. According to a USTR official, each agency approaches monitoring and enforcement in relation to its mission, and as a result, some of the 13 countries that DOL has identified internally as priorities differ from countries that USTR has identified as priorities in the context of the FTAs. The USTR official stated that USTR must assess whether a labor issue constitutes a breach of obligations set forth in the relevant FTA before it pursues dispute settlement, whereas DOL and State—as observers of labor conditions and human rights, respectively—approach labor issues more strictly as labor rights concerns. According to a State official, USTR prefers to address identified partner countries' labor issues without the intent to invoke the FTA.

Our prior work identifying best practices for interagency collaboration has shown that agencies can enhance and sustain their collaborative efforts by engaging in eight practices.<sup>67</sup> For example, to achieve a common

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<sup>67</sup>These eight practices are as follows: (1) define and articulate a common outcome; (2) establish mutually reinforcing or joint strategies; (3) identify and address needs by leveraging resources; (4) agree on roles and responsibilities; (5) establish compatible policies, procedures, and other means to operate across agency boundaries; (6) develop mechanisms to monitor, evaluate, and report on results; (7) reinforce agency accountability for collaborative efforts through agency plans and reports; and (8) reinforce individual accountability for collaborative efforts through performance management systems. GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, GAO-06-15 (Washington, D.C.: October 2005). An updated version of this guidance is available at [http://www.gao.gov/key\\_issues/leading\\_practices\\_collaboration/issue\\_summary](http://www.gao.gov/key_issues/leading_practices_collaboration/issue_summary).

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outcome, collaborating agencies need to, among other things, not only define and articulate the outcome but also establish strategies that work in concert with their partners' or are joint in nature. Such strategies help in aligning the partner agencies' activities, core processes, and resources to accomplish the common outcome.

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### U.S. Agencies Focus Limited Monitoring and Enforcement Resources on a Few Priority Countries

Agency officials cited limited staffing and resources as constraints on their ability to proactively monitor and enforce implementation of FTA labor provisions as the number of FTAs increases, leading the agencies to focus most of their efforts in a few priority countries. The agencies described enforcement activities as particularly resource intensive. DOL officials told us that because they had to focus much of their available resources on enforcing the Colombia Labor Action Plan and the Guatemala Enforcement Plan, their ability to monitor and enforce FTA partners' compliance with their FTAs' labor provisions in the last year was limited. Given the staffing and resource constraints that USTR, DOL, and State officials cited, effective interagency collaboration—including joint strategies that assist in aligning partner agencies' activities, core processes, and resources to more effectively accomplish the common outcome—is essential to maximize the agencies' ability to monitor and enforce compliance with these provisions.<sup>68</sup>

**USTR.** Staffing and funding constraints have, at times, limited the office's engagement with FTA partner countries regarding labor matters, according to USTR officials. Notably, according to the officials, recent sequestration-related cuts at USTR sharply limited travel. The officials told us that USTR's Office of Labor Affairs has four staff members—an Assistant U.S. Trade Representative for Labor, two Deputy Assistant U.S. Trade Representatives for Labor, and the Director for Labor Affairs—whose responsibilities include, among others, negotiating labor provisions in new agreements such as the Trans-Pacific Partnership, overseeing labor matters for 20 FTA partner countries and 120 trade preference countries, and engaging with countries to address labor complaints. According to USTR officials, although the Office of Labor Affairs staff has doubled from two to four since 2008, the number of trade partner countries for which they are responsible has increased from 14 to 20. USTR staff stated that because so few staff are available, they cannot

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<sup>68</sup>[GAO-AIMD-00-21.3.1.](#)

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engage with partner countries regarding every labor issue identified and must address such issues in cooperation with other agencies. USTR staff also noted that they depend on DOL and State for day-to-day monitoring of labor conditions in partner countries.

**DOL.** Resource constraints limit DOL's ability to monitor implementation of FTA labor provisions except in partner countries that DOL has identified as priorities, such as countries cited in labor submissions, according to DOL officials. DOL reported that in fiscal years 2013 and 2014, the Monitoring and Enforcement of Trade Agreements Division had five to eight full-time staff, with primary responsibilities that include monitoring labor conditions in 20 FTA partners and addressing and following up on labor submissions—for example, assessing implementation of submission report recommendations and engaging in consultations with the FTA partner. DOL officials stated that over the past year, the division's staff spent 80 percent of their work hours monitoring implementation of the Guatemala Enforcement Plan; following up on activities initiated under the Colombia Labor Action Plan; and addressing labor submissions for Honduras, the Dominican Republic, Bahrain, and Mexico.<sup>69</sup> The employees' remaining work hours were available to monitor and engage with the other 14 FTA partner countries. DOL officials expressed concern that challenges related to resource limitations will grow as the number of FTAs increases. For example, according to DOL and State officials, Vietnam is among the countries participating in the Trans-Pacific Partnership negotiations with a poor record of protecting labor rights.

**State.** State has limited resources available to support USTR's and DOL's monitoring of FTA labor provisions, according to State officials. State's Bureau of Democracy, Human Rights, and Labor (DRL) coordinates State's in-country labor officers or labor reporting officers, who carry out regular monitoring and reporting and day-to-day interaction with foreign governments on labor matters. However, these staff are not responsible for monitoring implementation of labor provisions in the FTAs. State informs USTR and DOL about labor concerns identified in FTA partner countries, through reporting cables and other means, and supports them in investigating labor submissions and addressing related

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<sup>69</sup>In January 2012, DOL accepted a labor submission for Mexico under the North American Agreement on Labor Cooperation.



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recommendations. DRL has seven staff at State's headquarters in Washington, D.C., one of whom focuses on trade-related issues, who are supported by labor affairs officers and labor reporting officers at the embassies in each of the 20 FTA partner countries.<sup>70</sup> State officials explained that each of these labor affairs officers and labor reporting officers has other responsibilities. Overall, the amount of time that these officers dedicated to labor issues varied from 5 percent (in Australia) to 75 percent (in Mexico).

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### U.S. Agencies' Annual Reports Address FTA Partners' Labor Conditions to an Extent

USTR, DOL, and State provide required annual reports to Congress that contain some information about labor conditions in FTA partner countries. However, the annual reports generally do not detail concerns about the implementation of FTA labor provisions by partner countries that have not been the subject of labor submissions, in part reflecting the agencies' limited monitoring and enforcement of the provisions.<sup>71</sup> USTR has statutory responsibility to report to Congress about trade agreement programs on an annual basis. According to DOL and State, they do not have such a responsibility, although some of their required reports include related information.

**USTR.** Each year, USTR provides Congress with the current Trade Policy Agenda for the current year, as well as the *Annual Report of the President of the United States on the Trade Agreement Programs*. The agenda and the annual report include information about trade policy

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<sup>70</sup>DRL also includes a position of Special Representative for International Labor Affairs, which State reported to be vacant during the time of our review.

<sup>71</sup>Section 163 of the Trade Act of 1974, as amended (19 U.S.C. § 2213), requires the President to annually submit to Congress the Trade Policy Agenda and the *Annual Report of the President of the United States on the Trade Agreements Program*. The President delegated this function to USTR in 2004. 69 Fed. Reg. 10133 (Mar. 1, 2004). The President is required to submit a biennial report about labor issues for CAFTA-DR. 19 U.S.C. § 4111(a). This function was delegated to DOL in 2008. 73 Fed. Reg. 38297 (June 30, 2008). State is required to report to Congress annually about human rights in every country worldwide. 22 U.S.C. §§ 2151n and 2304. The Trade Act of 1974 (19 U.S.C. § 2464) requires the President to submit an annual report to Congress on the status of internationally recognized worker rights within each beneficiary developing country (i.e., countries that benefit from U.S. trade preferences), including the findings of the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor. According to DOL, this commitment historically has been fulfilled by State's Human Rights Reports and DOL's Trade and Development Act of 2000 reports on child labor.

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priorities and actions taken to implement FTAs. For example, the 2014 agenda indicates, among other things, that USTR will seek to ensure that trade partners meet their obligations related to labor rights, will focus on implementation of FTAs, and will work with key partner countries to address specific labor issues. The 2013 annual report describes, among other things, the status of the labor submissions regarding Bahrain, Guatemala, the Dominican Republic, and Honduras and USTR's efforts to address the concerns that the submissions identify; in some cases, possible inconsistencies with the FTA may be discussed. However, the annual report generally does not detail concerns about the implementation of FTA labor provisions by partner countries that have not been the subject of labor submissions, reflecting in part USTR's and DOL's limited monitoring and enforcement of these provisions. Including appropriate information resulting from more extensive monitoring and enforcement could help inform Congress and other U.S. stakeholders about the extent to which trade partners are fulfilling their FTA labor commitments.

**DOL.** DOL is required to report to Congress every 2 years regarding labor issues related to CAFTA-DR but is not required to report on the implementation of labor provisions in other FTAs. For CAFTA-DR, DOL is required to submit a biennial report to Congress on the progress made by the CAFTA-DR partner countries in implementing the labor chapter provisions and labor cooperation and capacity-building activities.<sup>72</sup> DOL's 2011 report on CAFTA-DR summarizes the progress made by each CAFTA-DR partner country in implementing these provisions and activities, although the report generally does not detail concerns about the implementation of CAFTA-DR labor provisions.

**State.** Every year, State provides Congress with the annual *Country Reports on Human Rights Practices*, which covers all countries receiving assistance and all United Nations member states, including all U.S. FTA partners. Each of the country reports includes a section on labor issues, covering topics such as internationally recognized individual, civil, political, and worker rights, as set forth in the Universal Declaration of Human Rights and other international agreements. In addition, most of the country reports for FTA partner countries that we reviewed include information about unfavorable conditions faced by workers and any

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<sup>72</sup>19 U.S.C. § 4111(a).

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challenges to the partner countries' implementation of their labor laws. The reports generally do not—and, according to State, are not intended to—detail concerns about the implementation of FTA labor provisions.

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## Conclusions

The United States' recent FTAs have served as means of securing commitments from trade partners to uphold and protect internationally recognized labor rights. Although the FTA partners we selected for our review have made some progress, with U.S. assistance, in implementing their FTA labor commitments, enforcement weaknesses and problematic labor conditions persist. In addition, nongovernment stakeholders we interviewed in partner countries had little or no awareness of the labor submission process that DOL established to allow such stakeholders to register concerns about FTA partners' labor practices. Further, DOL's extensions of its 6-month submission review time frame by an average of nine months per submission has shown the time frame to be unrealistic. Moreover, U.S. agencies' work with the partners to resolve these concerns has in some cases been very time consuming. For example, 6 years after DOL received the Guatemala labor submission, the submission remains open, and according to U.S. agencies, Guatemala has not fully addressed the weaknesses in its labor law enforcement or the resulting hardships on workers.

Further, although USTR and DOL jointly pledged in 2009 to adopt a more assertive, interagency approach to monitoring and enforcing FTA labor provisions, in practice the agencies systematically investigate possible inconsistencies with these provisions primarily in response to labor submissions. In addition, despite ongoing interaction between USTR and DOL—for example, in addressing submissions—they have not developed a strategic approach to jointly set priorities and coordinate efforts to respond to labor concerns such as those identified in the DOL management reports. Without such strategic coordination, and given constraints on resources, both agencies have focused their monitoring and enforcement activities, apart from addressing labor submissions, on a few priority countries. As a result, consistency with FTA labor provisions in most partner countries is generally not monitored and enforced systematically. Moreover, USTR may be limited in its ability to report to Congress regarding concerns about FTA partners' implementation of their respective FTA labor commitments.

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## Recommendations for Executive Action

To improve the capacity of the U.S. government to monitor and enforce FTA partners' compliance with mutually agreed FTA labor provisions, we are making four recommendations to the U.S. Trade Representative and the Secretary of Labor.

- We recommend that DOL reevaluate and adjust, if necessary, its FTA labor submission review time frame to ensure that it more accurately reflects the time required to thoroughly investigate and to report on most labor submissions.
- We recommend that DOL take steps to better inform stakeholders in FTA partner countries about its FTA labor submission process.
- We recommend that USTR and DOL, in cooperation with State, establish a coordinated strategic approach to monitoring and enforcing FTA labor provisions, to ensure that they systematically assess the consistency of priority FTA partner countries' laws, regulations, and practices with trade agreement labor provisions and address any identified concerns.
- We recommend that USTR ensure that the *Annual Report of the President of the United States on the Trade Agreement Programs*, which USTR provides each year to Congress, includes results of USTR's and DOL's efforts to proactively monitor partner countries' compliance with FTA labor provisions.

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## Agency Comments and Our Evaluation

We provided a draft of our report to USTR, DOL, State, and USAID. USTR and DOL provided written comments, which are reproduced in appendixes V and VI, respectively. USTR, DOL, and State also provided extensive technical comments, which we incorporated or addressed as appropriate. USAID did not provide comments.

In their written comments, USTR and DOL expressed general agreement with our recommendations. USTR wrote that it embraced the recommendation to improve coordination with the Departments of Labor and State, to identify and address areas of concern, and to ensure that its reporting to Congress effectively reflects the results of these efforts. DOL committed to reevaluate its internal submission review process, in consultation with USTR and State, to determine whether internal adjustments may be necessary. DOL also said that it will evaluate additional available actions to expand its ability to inform stakeholders in FTA partner countries about the FTA labor submission process. Finally, DOL said that it will evaluate additional options to increase its proactive

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monitoring and enforcement of labor provisions in FTAs and its coordination with USTR and State on such issues.

Nevertheless, USTR and DOL took issue with our findings that the agencies do not systematically monitor and enforce labor provisions for all FTA partners and lack a coordinated strategic approach to monitoring and enforcement. Although we made some adjustments in response to new information that USTR and DOL provided with their comments, we maintain that, in general, the two agencies have not systematically implemented all key elements of monitoring and enforcement with regard to FTA labor provisions. (See app. V for our full response to USTR's written comments and descriptions of our adjustments to the report in response.) We acknowledge that USTR, DOL, and State generally collaborate in engaging with partner countries on labor issues and in addressing submissions. However, the evidence that we reviewed, such as agendas for interagency meetings and our interviews with USTR and DOL staff, did not show that the agencies have developed a coordinated, strategic approach to systematically address possible inconsistencies with FTA labor provisions in most partner countries that have not been the subject of labor submissions. For example, we did not see evidence of a coordinated approach to address issues such as those identified by USTR in the partner countries it designates as high risk or that DOL identifies in its management reports.

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As agreed with your office, unless you publicly announce the content of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the U.S. Trade Representative, the Secretary of Labor, the Secretary of State, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

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If you or your staff have any questions about this report, please contact me at (202) 512-8612 or [gianopoulosk@gao.gov](mailto:gianopoulosk@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VII.



Kimberly Gianopoulos  
Acting Director, International Affairs & Trade

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# Appendix I: Objectives, Scope, and Methodology

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This report examines (1) steps that selected partner countries have taken, and U.S. assistance they have received, to implement free trade agreement (FTA) labor provisions and other labor initiatives and the reported results of such steps; (2) complaints—known as submissions—about possible violations of FTA labor provisions that DOL has accepted and any problems related to the submission process; and (3) the extent to which the Office of the U.S. Trade Representative (USTR), Department of Labor (DOL), and Department of State (State) monitor and enforce partner countries' implementation of FTA labor provisions and report results to Congress. In addition, appendix II describes reported violence against labor unionists in selected FTA partner countries as well as steps that the countries have taken to address such occurrences. Appendix III describes U.S. agencies' efforts to monitor implementation of other labor initiatives. Appendix IV describes the status of labor submissions received by the Department of Labor.

We chose to concentrate our review on four FTAs and five partners to these FTAs, so that we could examine the unique set of circumstances for FTA partner countries with some specificity. The FTAs and partner countries on which we chose to focus—the Dominican Republic-Central America-United States (CAFTA-DR), among whose six partner countries we selected El Salvador and Guatemala; the Colombia FTA; the Oman FTA; and the Peru FTA—are FTAs that contain labor provisions and countries with regional dispersion across Central America, South America, and the Middle East. We also selected CAFTA-DR because of the CAFTA-DR White Paper labor initiatives, and we selected El Salvador and Guatemala among CAFTA-DR countries because of the extent of U.S. assistance for labor programs and, in Guatemala's case, the FTA-related Enforcement Plan. In addition, we selected the Colombia FTA because of the Labor Action Plan, and we chose the Colombia and Peru FTAs because they contain language echoing the Bipartisan Trade Agreement of May 10, 2007, popularly known as the May 10th Agreement. However, the results of our review of these selected FTAs and partner countries cannot be generalized to all FTAs and partner countries.

In gathering information for each of our objectives, we engaged in three types of activities:

- We obtained information and perspectives from U.S. government, foreign government, nongovernmental organization (NGO), labor union, and private sector officials; stakeholders such as umbrella business associations; and experts.

- We obtained information and analysis from legal and secondary literature sources.
- We obtained information through visits to partner countries.

During our visits to Colombia, El Salvador, Guatemala, Oman, and Peru, we met with U.S. officials; foreign government officials responsible for the implementation of labor provisions of the FTAs and other labor initiatives; umbrella business groups, such as chambers of commerce; officials of international organizations such as the International Labour Organization (ILO), trade unions, NGOs, and other subject matter experts. Additionally, we visited Costa Rica to meet with ILO officials in their Central America regional office, in San Jose. The views expressed by these officials and organizations cannot be generalized to all officials or organizations knowledgeable about labor provisions in the selected FTAs.

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**Objective 1: Examine Steps That Selected Partner Countries Have Taken, and U.S. Assistance They Have Received, to Implement FTA Labor Provisions and Other Labor Initiatives and the Reported Results of Such Steps**

To examine the steps that the selected FTA partner countries have taken to implement labor protection commitments under the respective agreements and other labor initiatives in the context of the respective FTAs, as well as the reported results of these steps, we obtained, reviewed, and analyzed documents from a variety of sources, including the four selected FTAs and their associated labor annexes as well as the CAFTA-DR White Paper and the Colombia Labor Action Plan. For this analysis, we included steps taken by partner countries, beginning with FTA negotiations for each FTA through May 2014. We also reviewed congressionally mandated reports, such as State's *Country Reports on Human Rights Practices* (Human Rights Reports), of which the 2013 reports were the latest available; USTR's annual trade agenda and trade report; and DOL's biennial *Progress in Implementing Chapter 16 (Labor) and Capacity Building under the Dominican Republic-Central America-United States Free Trade Agreement*. In addition, we reviewed reports submitted to Congress in conjunction with FTA implementing legislation, such as DOL's *Labor Rights Reports* for each of our selected FTAs.

Additionally, we interviewed officials from DOL's International Labor Affairs Bureau and the Office of Trade and Labor Affairs; USTR's Labor Affairs office; and State's Bureau of Democracy, Human Rights, and Labor. We also interviewed State desk officers responsible for selected partner countries and labor, political, and economic officers at U.S. embassies. In each of the selected countries, except Colombia, we interviewed officials from the relevant ministries, including the ministry of labor. (Colombia's Ministry of Labor chose to provide written responses to



our questions.) We did not independently identify or evaluate FTA partner countries' enforcement or compliance with laws and procedures but rather relied on evidence obtained from U.S. and partner government as well as stakeholder sources. Because of the ILO's role in interpreting, assessing, and improving signatories' compliance with ILO Conventions and Fundamental Principles, we conducted a series of meetings at the ILO in Geneva as well as with umbrella organizations participating in the ILO's tripartite (government-business-labor) governance structure.

To examine U.S. funding for labor-related assistance projects, we collected data on such funding obligations—from the date when Congress passed the respective FTA implementing legislation through 2013—from relevant officials at State, DOL, and USAID and publicly available data on trade-related labor assistance from USAID's Trade Capacity Building Database. We assessed the reliability of the data by (1) interviewing agency officials knowledgeable about the data sources and (2) tracing the data to source documents. We determined that the data were sufficiently reliable for the purposes of describing U.S. assistance for labor provisions in FTA countries.

In addition, to identify any changes in levels of reported violence against workers exercising labor rights in the selected countries and the partner governments' responses (see app. II), we obtained, reviewed, and analyzed documents from USTR, DOL, and State, such as State's Human Rights Reports and DOL's *Labor Rights Reports*. During our fieldwork in each selected country, we interviewed U.S. and foreign government officials, labor unions, and NGOs to learn of any violence against unionists. Of the countries we selected for review, violence against unionists was reported only in Colombia and Guatemala. During our fieldwork in Colombia, we interviewed and obtained information from entities responsible for collecting and reporting data on violence against unionists, including the Colombian Prosecutor General's office; ENS (Escuela Nacional Sindical)—a labor rights NGO—and State's Human Rights and Labor officers at the U.S. embassy in Bogota. We assessed the reliability of ENS's and the Colombian Prosecutor General's data by (1) interviewing officials from each entity about their criteria and data collection methodology for determining whether a victim's union activity was a motive in the killing and (2) interviewing State's Human Rights and Labor officers, who report ENS and Colombia's Prosecutor General's data in the annual Human Rights Report for Colombia. We determined the data to be sufficiently reliable for the purposes of describing reported violence against unionists in Colombia. In Guatemala, we interviewed, and obtained information from, the Guatemalan Prosecutor General's

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Office, which is responsible for prosecuting crimes against unionists, and the Guatemalan Ministry of the Interior, which investigates crimes against unionists at the direction of the Prosecutor General's Office. Because Guatemala did not collect data on violence against unionists, we did not review such data on homicide rates over time. We also interviewed State's political officer responsible for labor affairs at its embassy in Guatemala City, labor unions, and NGO officials. We reviewed ILO reports and discussed steps by Colombia and Guatemala to address violence with ILO officials. Our analysis was based on reputable secondary sources. We did not make any independent determination regarding the merit of any evidence of violence against unionists.

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**Objective 2: Examine Submissions about Possible Violations of FTA Labor Provisions That DOL Has Accepted and Any Problems Related to the Submission Process**

To examine labor submissions that have been filed under FTA agreements and any problems related to the submission process, we obtained, reviewed, and analyzed documents, including each labor submission filed with DOL. We interviewed officials from DOL's Office of Trade and Labor Affairs—the office responsible for investigating and reporting on submissions—as well as USTR and State officials who review DOL's reports and are involved in following up with FTA partner countries, if needed. During our fieldwork, we interviewed union and NGO representatives involved in filing submissions, as well as relevant government ministries, including the Ministries of Labor in Peru and Guatemala.

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**Objective 3: Examine the Extent to Which USTR, DOL, and State Monitor and Enforce Partner Countries' Implementation of FTA Labor Provisions and Report Results to Congress**

To examine the extent to which USTR, DOL, and State monitor and enforce implementation of FTA labor provisions and associated commitments (see app. III) and report results to Congress, we requested, reviewed, and analyzed documents from each agency. These documents included strategic plans and documents reflecting monitoring activities, such as DOL's management reports for 13 selected FTA partner countries, State cables, and USTR monitoring documents. In addition, we interviewed selected members of the USTR-chaired Trade Policy Staff Committee and its subcommittee on FTA labor monitoring and enforcement. To examine the resources that USTR, DOL, and State dedicate to monitoring labor provisions in FTAs, we obtained and analyzed data on staffing and other resources such as travel. We interviewed officials from DOL's International Labor Affairs Bureau and its Office of Trade and Labor Affairs; USTR; and State's Bureau of Democracy, Human Rights, and Labor, as well as State's in-country labor, labor reporting, political, and economic officers at U.S. embassies during our fieldwork. In addition, during our fieldwork, we interviewed

officials from the partner countries' various ministries, including the ministries of labor, as well as representatives from labor unions and NGO officials implementing programs funded by U.S. agencies. To determine whether USTR, DOL, and State report the results of their monitoring activities to Congress, we reviewed and analyzed the agencies' reports, such as USTR's Trade Policy Agenda and Annual Report (2009 to 2013), DOL Annual Performance Reports (2010 to 2013), and State's Human Rights Reports (2009 to 2013).

We conducted this performance audit work from May 2013 to November 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Reported Violence against Trade Unionists in Colombia and Guatemala

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## Colombia

### Violence and Threats of Violence against Unionists, Undermining Freedom of Association, Have Been Reported in Colombia

U.S. and Colombian officials and representatives of unions, nongovernmental organizations (NGO), and private sector groups we met with reported that violence against unionists continues to exist in Colombia, which union leaders and NGOs reported undermines workers' ability to freely associate because of the fear that their union activities may lead them to become victims of violence.<sup>1</sup> NGO officials in Colombia reported that although murders of unionists are a serious concern, threats of violence against union members also create a significant deterrent to workers organizing, with one NGO official noting a greater impact in rural areas than in major cities. According to this NGO official, authorities are less likely to have the capacity to investigate and respond to threats made in rural areas, with the result that victims flee the area or disengage from labor activities.

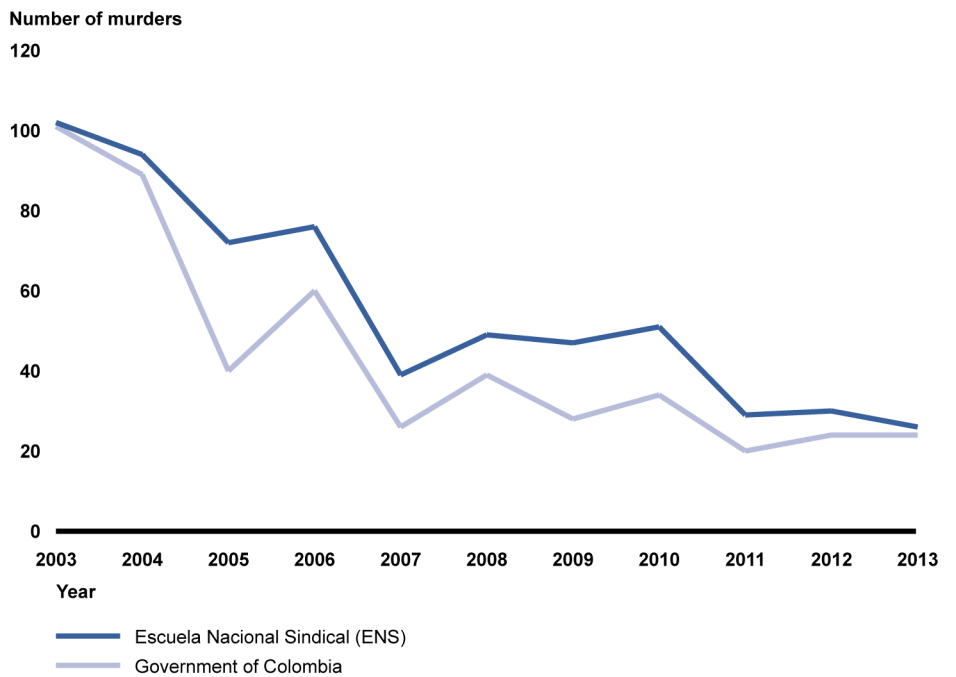
Data collected by the NGO Escuela Nacional Sindical (ENS) and the Colombia Prosecutor General's Office, as reported in the U.S. Department of State's Human Rights Reports, show that murders of trade unionists have generally decreased over the past decade, although homicides continue to occur (see fig. 4).<sup>2</sup> For example, according to DOL, as of July 2014 ENS had recorded 35 murders in 2013, compared with 102 murders of union members and labor activists in 2003. This trend continued in the period since the Labor Action Plan—which contains specific commitments to address labor violence—was announced in 2011. Labor union officials acknowledged the number of homicides has decreased, but they noted that violence continues to exist.

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<sup>1</sup>Of the countries we selected for our review, violence against unionists was reported only in Colombia and Guatemala.

<sup>2</sup>ENS and Colombia's Prosecutor General's Office have used different methodologies to determine whether a victim was murdered because of union affiliation. In some cases, ENS has considered a murder union related, while the Prosecutor General's Office has classified the murder as unrelated to union activities. For more information on the differences in data collection methodologies, see Congressional Research Service, *U.S.-Colombia Free Trade Agreement: Labor Issues*, RL34759 (Washington, D.C.: January 2012).

Figure 4: Murders of Unionists in Colombia, 2003-2013



Source: GAO analysis of ENS and government of Colombia data, as reported by Department of State and Congressional Research Service | GAO-15-160

Further, according to ENS, as a result of the Labor Action Plan, ENS and the Prosecutor General's Office have developed a collaborative relationship, with the Prosecutor General's Office consulting with ENS on cases involving murders or threats that may be linked to the victims' union activities.

Government officials and labor groups we met with in Colombia all reported that threats of violence against unionists have been increasing. However, ENS is the only source of such threat data, and its reports do not show a clear pattern over the past decade.<sup>3</sup> ENS's data represent only reported threats; threats of violence against unionists may go unreported.

<sup>3</sup>We did not determine the cause of the variation, because it was beyond the scope of our work.

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Colombia Has Taken Agreed Steps to Prevent and Investigate Violence against Trade Unionists, but Unions Report That Violence Persists

The government of Colombia committed to a number of reforms related to labor violence in April 2011 in the Labor Action Plan. Such commitments included broadening the scope of the government of Colombia's protection program, Unidad Nacional de Protección (UNP), to include labor activists, union members, and people engaging in efforts to form a union, increasing the budget for the additional resources necessary to support the expansion of the protection program, eliminating the backlog of protection applications awaiting risk assessments, completing future risk assessments within a 30-day period (as described below), and reforming the Colombian interagency committee that reviews risk assessments. In addition, Colombia committed to criminal justice reforms in the Labor Action Plan, which included

- assigning 95 additional full-time judicial police investigators to support the investigations of criminal cases involving union members and activists;
- analyzing closed cases of union member homicides to determine patterns relating to targets, criminal methods, and any evidence of motives;
- identifying budgetary needs for training investigators and prosecutors on issues related to labor cases; and
- instructing investigators to determine whether a homicide victim was an active or retired union member, or was actively engaged in union formation and organization, during the initial phase of the investigation.

According to the Office of the U.S. Trade Representative (USTR) and the Department of Labor (DOL), in accordance with Colombia's Labor Action Plan commitments, the Colombian government has implemented changes to a number of institutions and programs. For example, union members, in addition to union leaders, are now included in the UNP's jurisdiction. As of April 2014, the UNP protects more than 670 unionists, with about 24 percent of its budget dedicated to the protection of unionists and labor activists.

Additionally, USTR has reported that the Colombian government reformed the risk assessment process at the UNP and eliminated the backlog of hundreds of applicants to the protection program. During our fieldwork in Colombia, UNP officials described changes to the risk assessment process. For example, when an application is received, instead of a single individual investigating the case, as occurred before the process's reform, a committee now conducts interviews and fieldwork

to investigate the nature of the threat and determine a risk score. The case is then forwarded to another committee, comprising representatives from organized labor, other vulnerable populations, and government agencies, that determines the risk level in each case as ordinary, extraordinary, or extreme. UNP officials reported that, based on the outcome of the risk assessment, protection measures ranging from providing a cell phone to providing an armored car and armed bodyguards are taken. State's 2013 Human Rights Report notes that between January 1 and October 31, 2013, the UNP conducted 565 risk assessments of union leaders or members. Of those, the UNP classified 203, about 36 percent, as having an extraordinary threat or extreme threat and provided the leaders or members with protection measures. According to UNP officials, prior to the Labor Action Plan–related reforms, about 10 to 15 percent of risk applicants were determined to be under extraordinary or extreme risk. Additionally, according to State, approximately one-half of the unionists enrolled in the program were provided with “hard” protection measures that included a bodyguard.

According to USTR, Colombia increased the budget of its Prosecutor General's Office, in part to investigate and prosecute cases involving union members or labor activists as victims. Further, USTR has reported that the Prosecutor General's Office has issued a mandate that assigned over 20 prosecutors exclusively to crimes against union members and labor activists. In addition, the National Police have assigned an additional 100 full-time judicial police investigators to support the prosecutors in investigating cases involving union members and labor activists. To implement the Labor Action Plan commitments to identify and effectively prosecute intellectual authors of labor homicides, the Prosecutor General's Office created a context and analysis directorate tasked with investigating the patterns and context of similar cases, including labor homicides. Officials from this unit we met with during our fieldwork in Colombia described the unit as taking an integrated approach to analyzing cases across the spectrum of human rights crimes to determine common themes and perpetrators.

Despite the actions Colombia has taken to reduce violence against union members and labor activists, Colombian union and NGO officials, as well as USTR officials, report that violence and impunity remain problems. Union members we met with during our fieldwork in Colombia reported the existence of a high impunity rate for violent crimes against unionists. According to DOL, of the 100 unionist murders that have occurred since 2011, Colombia's Prosecutor General's Office has obtained only one conviction. Union officials we met with acknowledged that the government

of Colombia has taken positive steps to address violence, that the number of labor-related homicides has decreased, and that reforms have been implemented at the UNP. However, they also reported they are concerned for their safety because of their union activities. Additionally, union officials voiced the concern that risk was not being assessed at the UNP in a way that accurately captured the dangers union leaders and members face. UNP officials we met acknowledged that two union leaders who were receiving “light” protection were murdered and another union leader was murdered while he awaited the UNP’s risk assessment.

U.S. Government Has  
Provided Assistance to  
Colombia to Address  
Violence, Including  
Violence against Unionists

In support of reducing violence in Colombia, including violence against unionists, U.S. agencies have funded multiple assistance projects. According to U.S. Agency for International Development (USAID) officials, from 2001 to 2010, the agency provided about \$11.6 million in funding through its Human Rights fund to establish and support Colombia’s UNP. The UNP, which is under the Colombian Ministry of Interior, received between 10 and 18 percent of its total annual budget from USAID funding from 2001 to 2005 (ranging from about \$916,000 in 2001 to about \$2.5 million in 2005). According to USAID, its assistance for the UNP has steadily decreased as budget support from the government of Colombia and the effectiveness of the UNP have increased. For example, from 2011 to 2014, USAID provided approximately \$150,000 per year in assistance to the UNP.

In support of Colombia’s Labor Action Plan commitment to seek cooperation, advice, and technical assistance of the International Labour Organization (ILO), DOL is currently funding a 5-year (2011 to 2016), \$7.82 million technical cooperation project implemented by the ILO. The objectives of this project include strengthening the institutional capacity of the Colombian government to enhance protection measures for trade union leaders, members, activists, and organizers and combating impunity for perpetrators of violence against them. Under this project, the ILO is training Colombian prosecutors, investigators, and judges on labor rights and investigating crimes against union leaders and labor activists. In addition, Colombia’s Prosecutor General’s Office officials reported that the office has received assistance from the U.S. Department of Justice on broad criminal justice reforms, including transitioning from an inquisitorial to an accusatory legal system. USTR reports that State has funded, and the Department of Justice has implemented, assistance to train investigators and prosecutors throughout Colombia in best practices for crime scene investigation, including forensic evidence handling, investigating threats, and prosecutorial management of cases for trial. The Department of Justice’s and State’s programs are aimed at broader



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criminal justice reform; however, Colombia's Prosecutor General's Office reported to us that the reforms apply to investigating and prosecuting violence against unionists.

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## Guatemala

### Instances of Violence and Threats of Violence against Trade Unionists Have Been Reported in Guatemala

U.S. and Guatemalan government officials and ILO and union representatives reported that violence against unionists exists in Guatemala; however, the extent of the problem is unclear because disaggregated statistics on violence against unionists are not collected. Nevertheless, a union collected information on 63 cases in which union leaders or members were killed from 2007 through 2013. The unions alleged that the motive for these murders was related to the victims' union activities and that the government of Guatemala has not done enough to investigate and resolve the cases. In addition, ILO officials stated that they have detailed extremely serious and systematic violations of the right to freedom of association in Guatemala, including murder.

A 2012 ILO complaint against the Guatemalan government cited 63 murders of trade unionists and called for the establishment of an ILO commission of inquiry.<sup>4</sup> Guatemalan officials confirmed that violence against trade unionists exists but reported that many of the cases cited in the ILO complaint were the result of general, extensive violence and crime in the country rather than violence directed against trade unionists. According to Ministry of the Interior officials, the ministry's initial investigation of the 63 murder cases was unable to identify any link between the perpetrators' motives and the victims' union activity. Furthermore, as part of a cooperative agreement with the Guatemalan Attorney General's Office, the International Commission against Impunity in Guatemala (CICIG) began a review of the 58 cases cited in the ILO

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<sup>4</sup>A commission of inquiry, the ILO's highest-level investigative procedure, is generally established when a member state is accused of committing persistent and serious violations and has repeatedly refused to address them. According to DOL, as of August 2014, 12 commissions of inquiry had been established.

Guatemala Has Taken Steps to Prevent and Investigate Violence against Unionists in Response to ILO Review

complaint to ensure the adequacy of the investigations.<sup>5</sup> According to DOL, as of June 2014, CICIG had completed its review of 56 cases and concluded that 6 of the cases indicated a possible link to union activity.

In addition, unions reported other violent acts, such as threats, bribes, and intimidation against union members. According to union representatives we interviewed, threats of violence begin with harassing phone calls to a union leader or member. The union representative stated that if the phone calls do not get the desired results, the harassment is escalated to include physical intimidation and threats of kidnapping. If the physical intimidation fails, then kidnapping or murder occurs.

To address the complaint filed by the unions, the ILO initiated the process to establish commissions of inquiry. To avoid the establishment of the commission, the government of Guatemala signed a memorandum of understanding in March of 2013, committing to take specific steps to address the issues in the complaint and establishing a plan called the Road Map that outlined the actions needed. In response, the ILO decided to postpone the establishment of the Commission of Inquiry and has been working with Guatemala to implement the Road Map.

According to information that the government of Guatemala provided to the ILO, as of March of 2014, steps that the government had taken to address violence against unionists included

- a cooperative agreement signed with the International CICIG to support the Public Prosecutor's Office in analyzing cases of violence against trade unionists;
- the transfer of 20 trained investigators to the Attorney General's Office and the creation of the new post of assistant prosecutor in the special unit investigating crimes against trade unionists;
- improvement in the time periods for trial and convictions, including those for some of the 58 murders reported to the ILO; and

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<sup>5</sup>As a result of a 2006 agreement between the United Nations and the government of Guatemala, CICIG was established as an independent international body designed to support the Guatemalan Public Prosecutor's Office, National Civil Police, and other government institutions in the investigation of crimes committed by members of illegal security forces and clandestine security structures and, in a more general sense, to help disband such groups.

- submission by the Ministry of the Interior, in the context of analyzing assaults on trade unionists, of a draft protocol for implementing immediate and preventive security measures for trade union leaders, unionized workers, and workers from trade unions in the process of being established.

Following are descriptions of some of the Guatemalan government's ongoing efforts to address violence against trade unionists.

**Cooperative agreement with CICIG.** According to a March 2014 ILO report, the Guatemalan Attorney General's Office signed a cooperative agreement with CICIG on September 24, 2013.<sup>6</sup> As part of the agreement, the Attorney General's Office established a coordination mechanism with CICIG for the analysis of specific cases of violence against trade union members. CICIG agreed to support the Attorney General's Office in the analysis of specific cases of violence against union members, providing recommendations to strengthen the investigation of those cases. Under the new coordination mechanism, the 58 murder cases cited in the ILO complaint were transferred to CICIG to continue the investigation process. In addition, the Attorney General agreed to cooperate with CICIG in the analysis of crime trends based on landmark cases of attacks and violence against union members known to the different units and offices of the Public Prosecutor's Office.

**Additional trained investigators.** The Ministry of the Interior and the Attorney General's Office established interinstitutional links for cooperation to strengthen the investigations and criminal prosecution. Through this mechanism, the Ministry of the Interior transferred 20 trained investigators to the Attorney General's Office, with the effort to provide additional support to investigate cases of violence against unionists.

**Timely trials and convictions.** The government of Guatemala has worked to improve the length of time it takes to bring perpetrators of crimes to trial and issue convictions. In regard to the 58 murder cases cited in the ILO complaint, the Attorney General's Office provided an

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<sup>6</sup>International Labour Organization Governing Body, *Complaint Concerning Non-Observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Made by Delegates to the 101st Session (2012) of the International Labour Conference under Article 26 of the ILO Constitution*, GB.320/INS/9 (Mar. 19, 2014).

update of the status of the 28 cases that have been brought to court and reported that extinction of criminal liability has been applied in 4 cases, arrest warrants have been issued in 13 cases, rulings have been handed down in 6 cases, and 5 cases are pending trial.<sup>7</sup>

**Strengthening analysis of attacks against human rights defenders.**

The Attorney General's Office restructured and strengthened the unit that analyzes attacks against human rights defenders, a category that includes unionists. As part of this process, representatives of unionized workers will meet regularly to study trends in attacks against human rights defenders and draw up recommendations for investigations by the Attorney General Office to assist both criminal investigations and the conviction of the perpetrators. An adequately staffed office will be created to carry out the relevant investigations.

The government of Guatemala reported several other steps it intends to initiate or has initiated to address the issues in the ILO complaint. For example, according to the ILO's March 2014 report, the Ministry of Labor and Social Welfare proposed amendments to the Labor Code and other relevant laws, incorporating the amendments proposed by the ILO supervisory bodies.<sup>8</sup> The ILO's report stated that legislative reforms have also been proposed by the Ministry of Labor to enable the general labor inspectorate to fulfill its mandate to ensure the effective application of labor legislation. On the basis of the progress demonstrated in addressing points in the Road Map reported by the government of Guatemala, the ILO decided in March 2014 to again postpone the implementation of the Commission of Inquiry and reevaluate progress in November of 2014.

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<sup>7</sup>The Guatemalan Attorney General's Office stated that extinction of criminal liability is defined as an instance in which the government is unable to prosecute as a result of the death of the offender.

<sup>8</sup>International Labour Organization Governing Body, *Complaint Concerning Non-Observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention*.

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U.S. Government Has  
Provided Assistance to  
Guatemala for Law  
Enforcement Reform and to  
Address Violence, Including  
Violence against Unionists

The United States has provided some funding through State's Bureau of International Narcotics and Law Enforcement (INL) to assist Guatemalan authorities to provide better protection to unionists. INL provided Guatemala \$2 million dollars in assistance for fiscal years 2012 through 2016 to implement reform and capacity-building projects. The goal of the INL funding is to increase the investigative capabilities of law enforcement officers within the Ministry of the Interior. Part of the funding focuses on defenders of human rights, including addressing violence against trade unions. Assistance provided by INL has ranged from the provision of equipment to technical training and exchanges. For example, INL provided the Ministry of the Interior's recently established security division, División de Protección de Personas y Seguridad (DPPS), with filing cabinets to organize files on union leaders for which it was providing protection. INL officials stated that DPPS lacked a tracking system and had rooms stacked with disorganized files and, as a result, could not accurately track the number of people receiving protection. According to INL officials, as of December 2013, DPPS was providing protection for about 1,000 union leaders and members. INL officials also stated that they had discussed the possibility of creating a risk analysis unit in DPPS, similar to Colombia's UNP.

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# Appendix III: U.S. Monitoring of Implementation of Other Labor Initiatives

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In addition to being responsible for monitoring partner countries' implementation of free trade agreement (FTA) labor provisions, U.S. agencies are responsible for monitoring the implementation of labor initiatives such as the White Paper<sup>1</sup> and the Labor Action Plan,<sup>2</sup> which were developed in the context of, respectively, the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) and the United States-Colombia Trade Promotion Agreement (Colombia FTA).<sup>3</sup> U.S. agencies are also responsible for monitoring Guatemala's Labor Enforcement Plan, developed in response to a CAFTA-DR labor submission to the Department of Labor (DOL).<sup>4</sup>

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## CAFTA-DR White Paper

To discharge its responsibility for monitoring implementation of the CAFTA-DR White Paper projects, in 2007 DOL provided a \$10 million grant to the International Labour Organization's (ILO) Verification Project.<sup>5</sup> The Verification Project prepared reports every 6 months from 2005 through 2010 regarding the implementation of the White Paper projects. The Verification Project and most White Paper projects concluded in 2012.

The ILO Verification Project tracked spending and implementation of every White Paper project, requiring grant recipients to submit periodic reports to ILO for the biannual report. ILO staff provided the reports to DOL, which used the reports to ensure transparency and progress of the

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<sup>1</sup>Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic, *The Labor Dimension in Central America and the Dominican Republic: Building on Progress: Strengthening Compliance and Enhancing Capacity* (April 2005), accessed June 7, 2013, <http://www.ilo.org/sanjose/lang-es/index.htm>.

<sup>2</sup>*Colombian Action Plan Related to Labor Rights* (April 7, 2011), accessed May 29, 2013, [http://www.ustr.gov/webfm\\_send/2787](http://www.ustr.gov/webfm_send/2787).

<sup>3</sup>These labor initiatives were created outside an FTA framework. Consequently, matters arising from these initiatives would not be addressed through the dispute settlement provisions of an FTA.

<sup>4</sup>*Mutually Agreed Enforcement Action Plan between the Government of the United States and the Government of Guatemala* (2013), accessed August 1, 2013, <http://www.dol.gov/ilab/programs/otla/guatemalashub.htm>.

<sup>5</sup>According to DOL, its funding for the ILO Verification Project in 2007 and subsequent years totaled \$11.6 million. According to ILO staff, the Verification Project represents one of the ILO's most comprehensive evaluation efforts in the region.

U.S.-funded projects. Entities implementing White Paper projects included, among others, the U.S. Agency for International Development (USAID), partner countries' ministries of labor and labor courts, and nongovernmental organizations. According to ILO staff, although the Verification Project did not measure the impact of the projects on labor conditions, the reports reflected improvements of government institutions and other entities and demonstrated the benefit of addressing some issues faced by workers. ILO officials noted that, besides providing accountability for the expenditure of funds and tracking the progress of projects, the Verification Project led to improvements in data gathering and reporting capabilities of the ministries of labor.

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## Colombia Labor Action Plan

The Office of the U.S. Trade Representative (USTR), in cooperation with DOL and the Department of State (State), is responsible for monitoring the implementation of the Colombia Labor Action Plan, most of which Colombia was required to implement by 2012. The plan listed steps to improve labor conditions, mutually agreed on by the U.S. and Colombian governments, that the Colombian government agreed to take before the President of the United States would put the FTA forward for congressional consideration. The conditions that the Labor Action Plan addressed included violence against Colombian labor union members, inadequate efforts to bring to justice perpetrators of crimes against labor union members, and insufficient protection of workers' rights in Colombia. According to USTR staff, the plan continues to serve as a framework for cooperation with Colombia. The plan includes regular meetings between officials from both countries to monitor and implement the plan through 2013, and both governments announced an extension of these meetings through at least 2014.

On April 2012, USTR announced that the Colombian government had taken important steps to fulfill the Labor Action Plan and that the FTA would go into effect. USTR officials did not provide records or documentation of these steps, stating that they did not request such records because the website for the Presidency of Colombia supplied documentation of all actions taken. On reviewing some of the documentation on the website, we found that the documents were not structured so as to readily provide information about steps that the Colombian government had taken to meet its Labor Action Plan commitments. In written responses to our questions, Colombia's Ministry of Labor indicated that the government had met all Labor Action Plan commitments, and the ministry provided examples of the government's actions to meet these commitments.

USTR officials reported that USTR, DOL, and State had engaged extensively with the Colombian Ministry of Labor and other government institutions in Colombia to discuss and confirm Colombia's progress in implementing each element of the Labor Action Plan. According to USTR, as of August 2014, USTR and DOL staff had made seven visits to Colombia since the FTA entered into force to address these issues. USTR fact sheets and a USTR and DOL report from April 2014 provided information about Colombia's accomplishments under the Labor Action Plan—for example, the report detailed the number of labor inspectors hired, the number of special prosecutors and investigators hired, and the number of convictions in cases of violence against labor leaders—as well as remaining challenges. In addition, according to DOL, a DOL staff member, detailed to the U.S. embassy in Bogota from 2011 to 2012 to oversee implementation of the Action Plan, met during that period with Colombian government officials, nongovernmental organizations, union representatives, and other stakeholders to discuss the Labor Action Plan's implementation, among other topics.

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## Guatemala Enforcement Plan

USTR, in cooperation with DOL and State, is responsible for monitoring implementation of the Guatemala Enforcement Plan, agreed to by the U.S. and Guatemalan governments in April 2013, to address concerns identified in a labor submission filed under CAFTA-DR. USTR provided us with internal documents that it had used to track Guatemala's progress in taking the steps required by the plan. For example, USTR provided a matrix tracking the status of legal instruments required under the Enforcement Plan; USTR also provided quarterly progress reports submitted by the Guatemalan Ministry of Labor, identifying steps that the ministry had taken to address commitments in the Enforcement Plan. USTR officials said that since 2009, USTR and DOL had directly engaged with Guatemala on the labor case through 17 trips, including 7 trips that involved staff at the Assistant Secretary level or higher. In addition, officials at the Guatemalan Ministry of Labor told us that they had interacted extensively with DOL and USTR, including through multiple video-teleconferences, meetings in person, and correspondence, to update them on progress in implementing the Enforcement Plan.



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In April 2014, USTR told us that although it recognized steps that Guatemala had taken under the Enforcement Plan, it had not seen sufficient progress to close the case. USTR officials stated that if the Guatemalan government did not take the steps delineated in the plan by the specified dates, USTR might decide to pursue arbitration. In September 2014, USTR announced that the U.S. government was pursuing dispute settlement proceedings against Guatemala because it had not met the terms of the Enforcement Plan.

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# Appendix IV: Status of Labor Submissions

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The following provides details about the status of the five labor submissions that the Department of Labor (DOL) has accepted since 2008.<sup>1</sup>

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## Bahrain

In June 2011, DOL accepted a labor submission regarding Bahrain, 50 days after receipt. The submission remains open, with consultations ongoing. The submission, received from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with a statement from the General Federation of Bahrain Trade Unions, alleged that Bahrain had violated free trade agreement (FTA) labor provisions regarding the right of association, particularly nondiscrimination against trade unionists. In December 2012, DOL issued a public report that found that the government of Bahrain's actions appeared inconsistent with its commitments under the labor chapter. Specifically, the report found that trade unionists and leaders were targeted for dismissal, and in some cases prosecuted, in part for their role in organizing and participating in a general strike and that the dismissals reflected discrimination based in part on political opinion and activities. The report also found sectarian discrimination against Shia workers. The Department of Labor's (DOL) report outlined nine recommendations focused on legal and administrative changes to Bahraini labor law for the U.S. government to pursue during consultations with Bahrain and also recommended that the parties develop a plan of action.

On May 6, 2013, more than 4 months after DOL issued its report, the U.S. government formally requested cooperative labor consultations with the government of Bahrain in a joint letter from the Acting Secretary of Labor and the Acting U.S. Trade Representative. Consultations began when an interagency delegation met with the government of Bahrain in Manama, Bahrain, on July 15 and 16, 2013. However, according to DOL, the first round of consultations did not resolve all issues DOL had identified, and consultations were ongoing as of September 2014. The Office of the U.S. Trade Representative (USTR) attempted to schedule second-round consultations but agreed to a request from Bahrain to delay them. The United States and Bahrain held a second round of consultations on June 22 and 23, 2014, according to DOL. During the consultations, the two

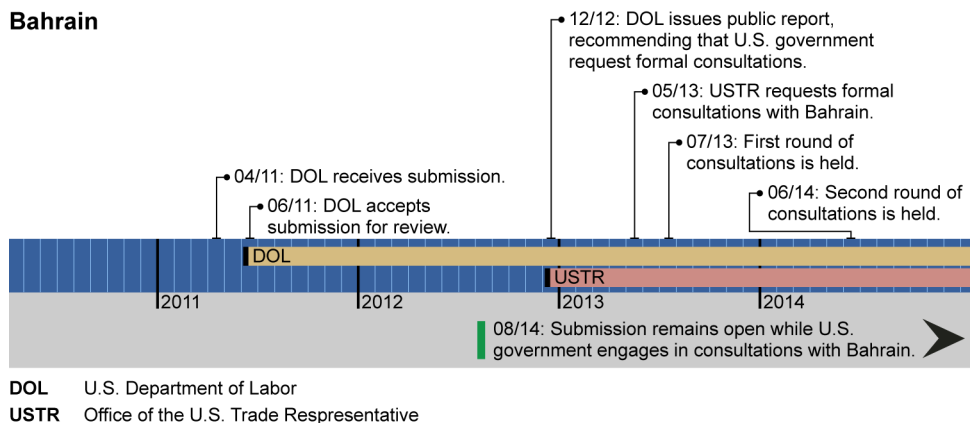
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<sup>1</sup>DOL has also accepted other labor submissions under the North American Agreement on Labor Cooperation, which we did not examine.

parties used the recommendations in the DOL report as a basis for jointly developing an action plan, which includes concrete steps for the government of Bahrain to address the concerns that the report raises. USTR officials noted that the allegations raised in the submission are subject to resolution through the consultation procedures but are not subject to dispute settlement.<sup>2</sup>

Figure 5 shows the timeline and status of the Bahrain labor submission.

**Figure 5: Timeline and Status of Labor Submission Regarding Bahrain**



Source: GAO analysis of Department of Labor information. | GAO-15-160

Legend: DOL = U.S. Department of Labor.

## Dominican Republic

In February 2012, DOL accepted a labor submission regarding the Dominican Republic, 62 days after receipt. The submission remains open and unresolved while DOL monitors the Dominican Republic’s progress in

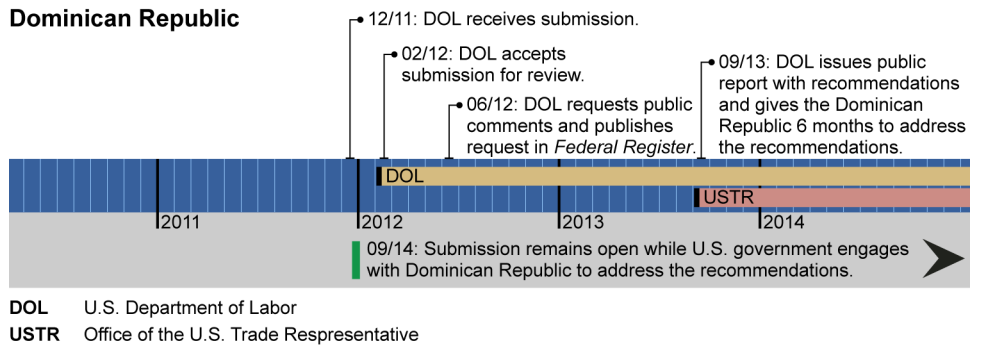
<sup>2</sup>Pursuant to the Bahrain FTA Labor Chapter, parties may only have recourse to dispute settlement under the FTA for matters arising under the commitment to not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the parties. Seeking recourse through the dispute settlement chapter of the FTA could lead to the imposition of a monetary assessment or other trade measures. Matters arising under the other commitments in the labor chapter cannot have recourse to dispute settlement under the FTA, but parties are entitled to request consultations on any matter arising under the chapter in an effort to find a mutually agreeable solution. Bahrain FTA, art. 15.6 and ch.19.

addressing concerns that the submission raises. The submission, submitted by a private individual, alleged the failure of the Dominican Republic's government to enforce its labor laws in the sugar sector as required under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). The submission alleged nine violations, ranging from human trafficking and forced labor to retaliatory firing of workers for affiliation with, or attempts to organize, labor groups or unions. In September 2013, DOL issued a public report that found evidence of apparent and potential violations of the Dominican Republic's labor laws pertaining to the sugar sector. DOL's report also identified significant concerns about procedural and methodological shortcomings in the inspection process that undermine the government's capacity to effectively identify labor violations. In addition, the report cited concerns regarding freedom of association, the right to organize, and collective bargaining. DOL's report offered 11 recommendations to the government of the Dominican Republic to address the report's findings and improve enforcement of Dominican labor laws in the sugar sector and stated that DOL would reassess the situation in 6 and 12 months after the report's publication. The recommendations range from administrative changes to help the government of the Dominican Republic improve its enforcement of Dominican labor laws to outreach suggestions for better informing sugar sector workers about their labor rights.

In April 2014, DOL issued its 6-month assessment, noting that the Dominican Republic's Ministry of Labor had committed to measures that, if instituted, would begin to address some of the recommendations in DOL's public report. DOL's assessment also noted that the government of the Dominican Republic had not yet indicated plans or taken actions to address most of the public report's recommendations.

Figure 6 shows the timeline and status of the Dominican Republic labor submission.

**Figure 6: Timeline and Status of Labor Submission Regarding the Dominican Republic**



Source: GAO analysis of Department of Labor information. | GAO-15-160

Legend: DOL = U.S. Department of Labor.

## Guatemala

In June 2008, DOL accepted a submission regarding Guatemala, 50 days after receipt. The submission remains open and unresolved and is currently in arbitration. The submission, from the AFL-CIO and six Guatemalan worker organizations, alleged that Guatemala had violated its obligation under CAFTA-DR to effectively enforce its labor laws regarding freedom of association, the rights to organize and bargain collectively, and acceptable conditions of work. In January 2009, DOL issued a public report that found significant weaknesses in Guatemala’s labor law enforcement. The report outlined 10 recommendations for the government of Guatemala, including administrative and technical changes, to address the issues raised in the submission. The report also recommended that DOL reassess Guatemala’s progress in implementing the recommendations within 6 months after the publication of DOL’s report to determine whether further action is warranted.

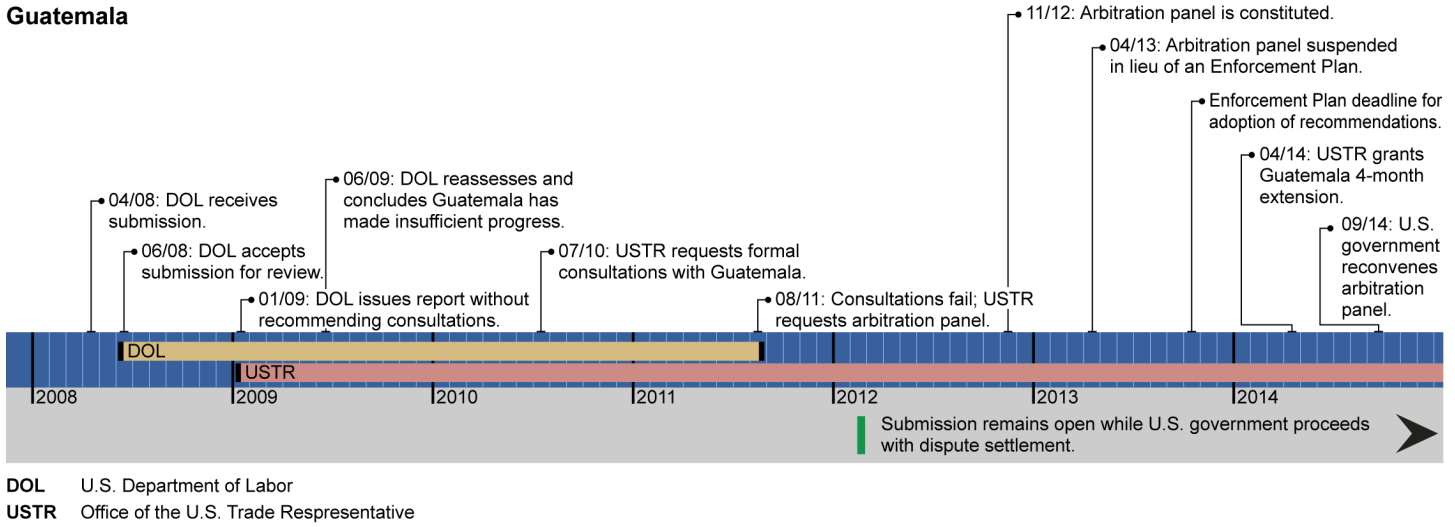
USTR and DOL engaged with the Guatemalan government in an effort to address DOL’s recommendations for systemic improvements in the enforcement of labor laws in Guatemala. In July 2010, after Guatemala’s actions proved insufficient to address the concerns raised in the report, USTR and DOL jointly requested cooperative labor consultations with Guatemala under the CAFTA-DR Labor Chapter. The consultations failed to resolve the matter, and on May 16, 2011, USTR requested a meeting of the CAFTA-DR’s free trade commission pursuant to the agreement’s Dispute Settlement Chapter. The commission met in June 2011 but did not resolve the dispute, and in August 2011, the United States requested

the establishment of an arbitral panel. After the panel was constituted in November 2012, the parties agreed to suspend it to allow for additional negotiation. In April 2013, the parties reached agreement on a comprehensive 18-point Enforcement Plan with concrete benchmarks and timelines for implementation. The plan extended the arbitration panel's suspension for 6 months, with the possibility of an additional 6-month extension based on Guatemala's progress in implementing the plan. In October 2013, 6 months after the signing of the Enforcement Plan, USTR, in consultation with DOL, determined that Guatemala had taken sufficient steps to enact the legal instruments called for under the plan. USTR and DOL granted the 6-month extension, noting that significant work remained to ensure the full implementation of the Enforcement Plan.

In April 2014, USTR, in consultation with DOL, granted Guatemala a 4-month extension to continue its implementation of the Enforcement Plan but retains the right to reactivate the arbitration panel at any point during this period. In September 2014, the United States reactivated the panel after determining that Guatemala had not met the terms of the Enforcement Plan and that concerns over the enforcement of Guatemala's labor laws had not been resolved.

Figure 7 shows the timeline and status of the Guatemala labor submission.

**Figure 7: Timeline and Status of Labor Submission Regarding Guatemala**



Source: GAO analysis of Department of Labor information. | GAO-15-160

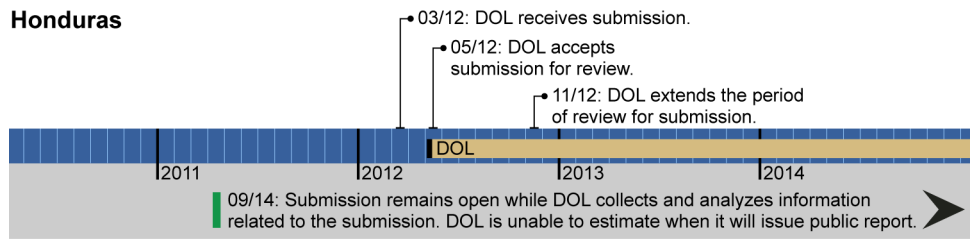
Legend: DOL = U.S. Department of Labor; CAFTA-DR = United States-Dominican Republic-Central America Free Trade Agreement.

**Honduras**

In May 2012, DOL accepted a submission regarding Honduras, 49 days after receipt. The submission remains open and unresolved, pending publication of DOL’s report. The submission, from the AFL-CIO and 26 Honduran organizations, alleged that the government of Honduras had violated its obligation under CAFTA-DR to enforce its labor laws relating to freedom of association; the right to organize; child labor; the right to bargain collectively; and the right to acceptable conditions of work in the Honduran apparel and auto manufacturing, agriculture, and port sectors. According to DOL officials, DOL has received over 1,200 documents in Spanish and visited Honduras four times to meet with stakeholders, reflecting the breadth of the allegations and detailed information reviewed and analyzed. As of May 2014, DOL was continuing to review documentation of the allegations and, according to DOL officials, is preparing its report.

Figure 8 shows the timeline and status of the Honduras labor submission.

**Figure 8: Timeline and Status of Labor Submission Regarding Honduras**



Source: GAO analysis of Department of Labor information. | GAO-15-160

Legend: DOL = U.S. Department of Labor.

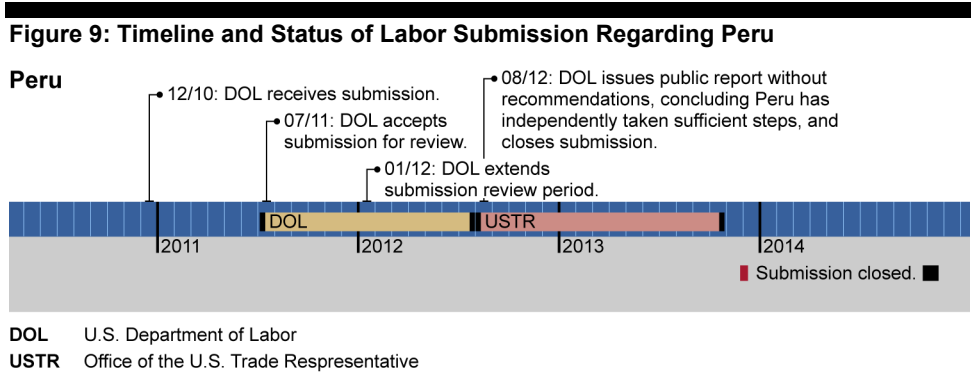
**Peru**

In July 2011, DOL accepted a submission regarding Peru, 202 days after receipt, which DOL closed as resolved in August 2012. The submission, from the Peruvian National Union of Tax Administration Workers (SINAUT), alleged that Peru’s National Superintendency of Tax Administration (SUNAT), an executive branch agency of the Peruvian government that oversees both customs and tax administration, had failed to comply with Peru’s labor laws as they relate to collective bargaining, in violation of the United States-Peru Trade Promotion Agreement. In August 2012, DOL issued a public report finding that although the Ministry of Labor and Promotion of Employment appeared to have fulfilled its duties during the collective bargaining processes at issue, SUNAT had failed to comply with certain elements of the Peruvian Collective Bargaining Law, including deadlines for launching negotiations. Further, with regard to all other issues raised in the submission, DOL determined that important legal ambiguity during the period at issue prevented a finding that SUNAT had failed to comply with the law or that the government of Peru had failed to comply with, or enforce, its own labor laws during that time. DOL’s report did not recommend formal consultations between the U.S. government and the Peruvian government. According to DOL, because the government of Peru had taken important steps to address some of the issues raised in the submission, including issuing legal instruments to help clarify legal ambiguity and facilitate collective bargaining, DOL did not believe that formal consultations were needed to continue positive engagement and progress on these matters. As a result, DOL closed the submission as resolved in August 2012.



In September 2011, according to DOL, while it was reviewing the submission, the government of Peru issued two executive orders that clarified the parties' collective bargaining duties in this and similar cases. DOL's report on the submission explained that on March 29, 2012, after applying the recent executive orders, an arbitral panel reached a decision favorable to SINAUT that contained both economic and noneconomic awards for the union. Moreover, DOL reported that the government of Peru appealed the ruling, contending that the ruling reflects a misapplication and misinterpretation of the Public Sector Budget Law. According to the DOL report, on appeal, the Peruvian labor courts overturned the economic elements of the arbitral award, based on a ruling that those elements conflicted with Peru's Public Sector Budget Law, but sustained the noneconomic elements of the award.

Figure 9 shows the timeline and status of the Peru labor submission.



Source: GAO analysis of Department of Labor information. | GAO-15-160

Legend: DOL = U.S. Department of Labor; USTR = Office of the U.S. Trade Representative.

# Appendix V: Comments from the Office of the U.S. Trade Representative

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

September 16, 2014

Mr. Loren Yager  
Managing Director  
International Affairs and Trade  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Yager:

We appreciate the opportunity to comment on the draft of the Government Accountability Office's (GAO) report, *Free Trade Agreements: U.S. Partners are Addressing Labor Commitments, but More Monitoring and Enforcement are Needed* (Report) and the recognition that U.S. trade agreements have resulted in improved labor laws and working conditions in trading partner countries. This has been, in great part, a direct result of proactive and coordinated efforts by USTR, the U.S. Department of Labor (DOL) and other U.S. agencies, working together with congressional and other stakeholders and international partners, such as the International Labor Organization (ILO).

The Obama Administration has made unprecedented efforts to maximize the use of the tools available in our free trade agreements (FTAs) to address labor concerns in trading partner countries. GAO has recognized many of these efforts in its past reporting on enforcement of labor provisions of our FTAs. For example, in 2012, GAO conducted an assessment of how USTR and DOL had implemented recommendations in an earlier report entitled *International Trade: Four FTAs GAO Reviewed Resulted in Commercial Benefits, but Challenges on Labor and Environment Remain*. That assessment covered many of the same issues as in this report as well as an overlapping period of time (from 2009 to 2012). In the 2012 assessment, GAO reported that it had "seen steady progress" in USTR and DOL's efforts to implement, enforce, monitor, and report on compliance with and progress under the FTA's labor provisions. GAO also found that, "Labor and USTR have intensively engaged current FTA partners.... This has involved monitoring and assessing their current labor laws and practices, as well as engaging with them directly on how our existing agreements have worked in practice."

In the course of this investigation, we too have surveyed our monitoring and enforcement efforts in recent years and have gained important insights that will inform our efforts to continue to strengthen our monitoring and enforcement efforts. In that vein, we embrace the GAO's recommendations to improve our coordination with the Departments of Labor and State to identify and address areas of concern and to ensure that our reporting to Congress effectively reflects the results of these efforts.

However, in our review of GAO's draft report, we have also found a number of important areas in which the GAO's reporting on agencies' activities is factually incorrect and at odds with

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See Comment 1

GAO's own earlier assessments. We have identified specifically the areas of inaccuracy, supplied a large volume of documents to GAO to support revision of the report, and made our staff available for technical assistance. Unfortunately, in many cases, GAO has disregarded the submitted information without explanation and has declined our most recent offers to meet. We would welcome the opportunity to engage further with GAO to ensure that its final report is factually accurate.

Systematic Monitoring and Enforcement

See Comment 2

Contrary to the unsupported assertion of the draft report, USTR and DOL engage in monitoring and enforcement activities in each of the FTA countries. These activities are tailored to the unique circumstances of each country, taking into account such factors as the nature of the labor situation in the country, priorities of stakeholders, engagement opportunities, and the level of cooperation we have from governmental and non-governmental actors on the ground. The GAO draft suggests a five-element framework for monitoring and enforcement: (1) gathering facts from credible and reliable sources, (2) identifying compliance problems, (3) setting priorities, (4) developing and implementing responses, and (5) taking enforcement actions. That is precisely what we and DOL do.

See Comment 3

Monitoring and enforcement of FTA labor provisions covers a large spectrum of activities. For example, we work with U.S. Embassies to monitor conditions on the ground – such as what local unions and workers are reporting, what the country's labor ministry (or equivalent) has been concerned about or the kinds of issues that are being raised with local authorities by stakeholders. As evidence, the U.S. Department of State provided GAO with a large number of cables documenting this kind of monitoring. USTR and DOL routinely receive and analyze information such as this – as well as information directly from local and U.S. stakeholders (both workers and businesses), and international partners such as the ILO – about labor conditions on the ground.

See Comment 4

In an additional proactive step, DOL has funded the placement of labor officers in certain U.S. Embassies to collect and assess facts and support the implementation of our efforts to address concerns. DOL has placed such officers in Colombia and Bangladesh, and is looking to expand to other countries with which the United States has particularly close engagement on labor issues. All of the information gathered through labor and other embassy officials, stakeholders, and international partners is important to our systematic assessment of the labor conditions on the ground and whether there are any problem issues that may raise concerns under our FTAs. Where such problems come to our attention, whether through informal or formal (e.g., a labor submission) means, we deploy a range of tools to seek to resolve the concerns. Almost always, however, we start with informal engagement such as informal dialogue and consultations, often through the channels established under the FTA, with our trading partner country. In many cases, such as Jordan and Peru, such engagement has helped us determine and implement strategies for addressing the concerns. Where the use of such informal tools is insufficient,

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however, we also look to the use of dispute settlement under the FTA to seek to address the concerns. In every case, however, whether with informal or formal engagement, our goal remains exactly the same – to seek to address the concern that we have identified.

Our monitoring and enforcement activities are concentrated in certain countries. These countries include those with respect to which we have received formal labor submissions filed by stakeholders (Bahrain, the Dominican Republic, Guatemala, Honduras and Mexico) as well as a number of other countries in which we have concerns or potential concerns, but have received no formal labor submission. Colombia, Jordan, Panama and Peru<sup>1</sup> are just four examples that are detailed in the submissions that we have provided to GAO over the last year, and are discussed in summary below (based on those submissions):

Colombia: USTR and DOL worked closely with Congressional stakeholders and the Government of Colombia before the United States-Colombia FTA was sent to Congress to identify and catalog concerns relating to the FTA labor obligations, including the core obligation of adopting and maintaining fundamental labor rights. We worked cooperatively to put together an Action Plan that identified concrete steps that Colombia could take to address the concerns. Colombia took key actions to implement the Action Plan before the Colombia FTA was submitted to Congress for a vote, and took further steps after passage and implementation.

The work with Colombia did not end with ratification of the FTA, as GAO suggests in the draft report. For example, from 2011 to 2012, subsequent to the ratification of the FTA, a DOL officer was detailed to the U.S. embassy in Bogotá to oversee implementation of the Action Plan during the first year of operation of the FTA and Action Plan. USTR and DOL have also made seven visits to Colombia (four jointly and three by DOL) since the FTA entered into force in May 2012 to assess conditions on the ground and address implementation-related issues. In addition, Colombian officials have made numerous trips to the United States to meet with USTR, DOL and State Department officials on matters relating to implementation and to consult with Members of the U.S. Congress who have historically had, and continue to have, a strong interest in monitoring implementation of the U.S.-Colombia FTA, including members of the Congressional Monitoring Group on Labor Rights in Colombia (CMG). USTR and DOL have also had extensive engagement with the CMG and work closely with that group and with organizations like the Solidarity Center and with the ILO on issues of concern in Colombia.

The GAO draft report details much of the work that USTR and DOL are doing on labor monitoring and enforcement in Colombia in an annex, but does not recognize this work as evidence of USTR and DOL's "systematic" work on labor monitoring and enforcement. GAO counterintuitively suggests that USTR and DOL efforts in Colombia are "unique to the U.S.-Colombia FTA" and therefore not appropriate for GAO to consider in its analysis on labor monitoring and enforcement. GAO also suggests that our level of cooperation with Colombia "is

<sup>1</sup> A submission on Peru regarding public sector collective bargaining issues unrelated to those detailed here was resolved in 2012.

See Comment 5

See Comment 6

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not present in any of the other FTAs.” In fact, there are numerous other FTA countries with which USTR and DOL have had extensive engagement on labor concerns and with which we have had (or are developing) implementation strategies and plans similar to the Colombia Action Plan, including Jordan, Bahrain, and Panama.

The specific level and type of engagement on labor issues in each of our FTA partner countries is tailored to the unique situation and needs in each country. There have been fewer labor issues raised with respect to Canada, Australia, Singapore, and Chile, for example, than with respect to Colombia. It is not surprising, therefore, that we have more extensive engagement with Colombia than with Canada. We disagree with GAO’s assumption that tailored, country-specific approaches to labor monitoring and enforcement should be excluded from GAO’s evaluation of our monitoring and enforcement efforts.

Peru: In the lead-up to Congressional consideration of the Peru FTA, Peru made a number of reforms to its labor laws and practices to bring itself into compliance with the commitments it had undertaken in the FTA. After ratification, USTR and DOL have systematically monitored Peru’s implementation of its FTA commitments – including, importantly, commitments relating to the labor rights of temporary and subcontracted workers. Since January 2009, when the Peru FTA went into force, USTR and DOL have taken three trips, and held several video and phone conferences with Peruvian officials to monitor these issues, as well as countless informal contacts through calls and emails and day-to-day monitoring in conjunction with U.S. Embassy officials on the ground.

More recently, in August 2014, USTR traveled to Peru to meet with labor officials and stakeholders on recent reforms to Peru’s labor code regarding Occupational Safety and Health and fines for labor violations, which have raised concerns from labor stakeholders in the United States and Peru. USTR and DOL will hold a Labor Affairs Council meeting and open public session in Peru in October 2014, to follow up on the previous commitments as well as the new labor reforms.

USTR and DOL have provided GAO with a large number of documents demonstrating the engagement with Peru to assess conditions on ground, monitor implementation of the changes made in 2007 to come into compliance with the FTA, and examine more recent changes. GAO argues that it has chosen not to evaluate this evidence because “[i]n Colombia, Panama, and Peru, USTR has engaged with the country to ensure that it fulfills commitments to take certain steps in anticipation of the FTA’s ratification, rather than to address specific issues related to compliance with FTA labor provisions.” This is simply incorrect and reflects a fundamental lack of understanding of the tools that we have used through trade agreements to improve labor conditions on ground.

First, the steps Colombia, Panama, and Peru took in anticipation of the ratification of each country’s FTA were steps “to address specific issues related to compliance with FTA labor

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provisions.” This is an ordinary part of any FTA process -- before an FTA goes into effect, an FTA partner must bring its laws and practices into compliance with the obligations under an FTA. In some cases, these steps are taken after ratification and before entry into force of an FTA. But in the case of the labor chapters of Colombia, Panama and Peru, Congressional stakeholders asked that most of the steps be taken before, and as a condition to, sending the FTAs to Congress for a vote. This fact is clear from the extensive documentation publicly available regarding each FTAs passage. For example, the Ways and Means Committee report for the Peru FTA (issued at the time of Congressional consideration) notes that:

Peru has already been bringing its laws, regulations, and practices into compliance with internationally-recognized labor standards. Most recently, in August 2007, Peruvian President Alan Garcia announced his commitment to change Peru's legal framework in a number of key areas to implement obligations under the FTA. President Garcia has since followed through on his commitment by implementing changes to the legal framework governing: (1) temporary employment contracts; (2) subcontracting/outsourcing contracts; (3) the right of workers to strike; (4) recourse against anti-union discrimination; and (5) workers' right to organize. The Committee applauds the changes made by the Peruvian government. The Committee believes that, with these and other recent changes, and the commitments and mechanisms under the FTA, Peru has in place a framework to ensure compliance with basic international labor standards.<sup>2</sup>

Second, as evidenced in the large number of documents supplied to GAO over the past year and as detailed in summary form here, USTR and DOL monitoring and enforcement efforts in Colombia, Peru and Panama -- as well as other FTA countries -- have extended long past ratification. Indeed, as discussed above, a USTR delegation has just returned from Peru having engaged that country's government on certain recent labor law reforms and USTR/DOL will be holding a Labor Affairs Council meeting next month to engage further with Peruvian counterparts on these and other labor issues. Congress considered the Peru FTA seven years ago, in 2007.

Panama: Working together with key Congressional Members, USTR and DOL pressed Panama to enact a series of administrative and legal changes to address labor concerns as part of the FTA ratification process in 2011. As with Peru, these steps were needed to address issues relating to compliance with the FTA labor obligations. As a 2012 report by the Congressional Research Service explains, a variety of labor issues, including issues relating to Panama's enforcement of ILO fundamental rights, “were cited by Members of Congress as needing to be addressed before the FTA could be considered.”<sup>3</sup>

<sup>2</sup> Available at: <http://www.gpo.gov/fdsys/pkg/CRPT-110hrpt421/html/CRPT-110hrpt421.htm>.

<sup>3</sup> Hornbeck, The U.S.-Panama Free Trade Agreement, Congressional Research Service at 29 (November 8, 2012).

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In response to efforts by USTR and DOL, Panama issued decrees and reformed labor laws, including to improve labor protections for subcontracted and temporary workers, and to remove restrictions to collective bargaining and strikes in Export Processing Zones. As Ways and Means Trade Subcommittee Ranking Member Levin stated in April 2011, “[d]espite our active efforts in discussions with the previous Panamanian Government to fully meet [internationally recognized labor] standards – as spelled out in the May 10 agreement – they did not do so. . . . The Obama Administration has now worked with the new Panamanian Administration to take the necessary steps before asking action by Congress.”

Since entry into force of the FTA in 2012, USTR and DOL have actively monitored the implementation of Panama’s labor commitments through two trips and multiple video and phone conferences, including a meeting of the Labor Affairs Council in January 2014 – in addition to informal contacts through calls and emails and day-to-day monitoring in conjunction with U.S. Embassy officials on the ground. In addition, the United States—Panama Free Trade Commission under the FTA met in May 2014, and discussed Panama’s labor commitments and progress since entry into force. Since then, the U.S. Ambassador to Panama met with the Labor Minister in July 2014 and discussed potential technical assistance to support implementation of the labor commitments. USTR and DOL are currently discussing potential assistance to train labor inspectors in Panama on labor conditions, child labor, and minimum wage compliance, and exploring a monitoring trip to Panama for late 2014.

*Jordan:* In January 2013, more than 11 years after the entry into force of the Jordan FTA, concerns regarding foreign workers in Jordan’s garment sector led USTR and DOL to negotiate and sign an Implementation Plan with the Government of Jordan. USTR and DOL have been monitoring the implementation of the plan since then, including through a monitoring trip in June 2014, which included site visits to several factories and worker dormitories. The plan includes specific measures by the Government of Jordan to address union rights for foreign workers, workplace discrimination including sexual harassment and living conditions in worker dormitories. In addition, the U.S. Department of Labor signed a Memorandum of Understanding with the Government of Jordan in December 2013 to develop a Labor Cooperation mechanism that establishes priorities for cooperative activities on labor matters. As part of this cooperation, DOL is funding the ILO Better Work program that monitors and reports publicly on worker rights and working conditions in more than 90 percent of factories with foreign workers in Jordan.

USTR and DOL also travelled to Jordan in June 2014 to engage directly with Jordanian senior officials on the Implementation Plan and the MOU, including by convening the FTA Labor Subcommittee. The Subcommittee held in-depth discussions on several topics related to FTA labor commitments, including: (1) activities to strengthen institutional capacity and labor law enforcement and compliance; (2) child labor and the protection of vulnerable populations; and (3) protections against gender discrimination and sexual harassment in the workplace, occupational safety and health, and the promotion of tripartite social dialogue. The

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Subcommittee meeting also included a public session and roundtable discussion with stakeholders from Jordan's worker organizations, businesses, international buyers and other interested parties, to foster direct dialogue with civil society and a broader participatory process.

These examples – and the numerous others that USTR and DOL have detailed for GAO and for which USTR and DOL have provided supporting documentation – demonstrate USTR and DOL's extensive monitoring and enforcement of FTA labor provisions. This documentation contradicts the assertions in GAO's draft report about a lack of systematic efforts to address labor concerns in partner countries.

Labor Submissions: The GAO draft report incorrectly states that USTR and DOL restrict their monitoring and enforcement activities largely to FTA countries about which stakeholders have submitted a formal labor submission. As detailed in submissions to GAO over the past year, USTR and DOL have engaged in systematic monitoring and enforcement efforts in other countries for which there have not been formal labor submissions such as Colombia, Peru, Panama and Jordan.

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Moreover, GAO fails to acknowledge that the labor submission process is a central component of the framework in our FTAs for systematic monitoring and enforcement of labor obligations. In fact, Labor and Environment are the only FTA chapters that allow for a formal process to consider stakeholder submissions. Congress and numerous stakeholders view the submission process as a critically important element in our FTAs. And stakeholders often invest significant resources in putting together submissions, such as the AFL-CIO submissions relating to Guatemala and Honduras. By design, these submissions are an important factor in how we prioritize engagement efforts and resources.

See Comment 10

While submissions may help alert USTR and DOL to specific problems and to signal that these are priority issues for stakeholders, there is extensive engagement required of USTR and DOL to assess the facts and make our own determinations of whether there are problems of non-compliance and how best to address those problems. Some submissions provide extensive information on labor issues in the subject country, while other submissions provide only summary information and/or allegations. In either case, we do not rely on what is presented in a submission alone to identify problems, decide how to proceed, and take appropriate actions. In the cases of Bahrain and the Dominican Republic under CAFTA-DR, for example, USTR and DOL undertook extensive additional work to obtain, analyze and verify the allegations found in the summary documents provided by the submitters. Even in the case of Guatemala, for which was a detailed submission with several documented cases was provided in 2008, USTR and DOL have undertaken an unprecedented fact-finding process in the years since, and have gathered extensive additional information to put together formal pleadings. To be precise, since 2009, USTR and DOL have directly engaged with Guatemala on the labor case through 17 trips, of which seven were at the Assistant Secretary level or above. In addition, there have been more



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than two dozen interagency video and conference calls with Guatemala to engage on the submission and enforcement plan.

Interagency Coordination: The GAO draft Report also states that there is no “systematic approach” among agencies for labor monitoring and enforcement. This assertion, once again, is not supported by the facts. USTR coordinates and monitors compliance with FTA labor provisions with DOL and other agencies in many ways, including through the TPSC Subcommittee on Labor Monitoring and Enforcement, ad hoc interagency groups for each FTA partner country with labor concerns, regular engagement with labor stakeholders through the Labor Advisory Committee, as well as in extensive briefings with Congress, and through regular day-to-day contacts such as emails, phone calls and meetings. The agencies regularly use all of the channels described above to discuss and coordinate an appropriate response on behalf of the U.S. government. None of the agencies approaches a labor issue in isolation and without such coordination.

USTR provided GAO with evidence of our coordinated interagency approach in well-documented action plan efforts with Colombia and Jordan, and also in engagement with Panama and Peru. USTR also coordinates regularly with labor union representatives through meetings of the Labor Advisory Committee for Trade Policy and Negotiations, chaired by the U.S. Trade Representative and the Secretary of Labor, as well as in regular meetings with labor advisors. In all of these venues, USTR both seeks and shares detailed information on concerns in FTA countries, and works to develop approaches to resolve issues.

USTR Annual Reports: The GAO draft Report states that USTR does not include information in its annual report to Congress on FTA partner country compliance with labor provisions that have not been subject to a labor submission, and that this limits Congress’ information on these issues. In fact, USTR’s annual report provides country-specific information on labor issues. In our most recent annual report, for example, we included itemized labor activities for: Bahrain, the CAFTA-DR countries (overall and on a country-specific basis for Guatemala, the Dominican Republic and Honduras), Chile, Colombia, Jordan, Korea, Morocco, the NAFTA countries, Oman, Panama, and Peru. Our annual report does not, however, explicitly accuse countries of trade violations. There are a number of reasons for this policy, both legal and policy-based:

- First, it is difficult for us to determine consistency with international trade obligations definitively before formal consultations with the trading partner in question. Such confidential consultations allow us to evaluate the practice of partners in greater detail.
- Second, Article 23(2)(1) of the WTO Dispute Settlement Understanding states that Members “shall not make a determination to the effect that a violation has occurred ... except through recourse to dispute settlement.”

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- Third, public assertions of non-compliance create pressure to prematurely disclose sensitive legal reasoning, which could undermine our ability to pursue the most vigorous enforcement of labor standards and hurt our chances of success in disputes.

In addition to its annual report, USTR ensures that Congress has extensive information on FTA labor issues through regular engagement with Congress, via meetings and phone conferences. For example, since 2009, there have been 40 labor-related meetings and conference calls with Congress on Colombia alone. This is part of hundreds of meetings we have had with Congress on labor issues in FTA and non-FTA trading partner countries. Indeed, formal reports are not the primary way that we communicate with Congress. We have very close contact and dialogue with our committees of jurisdiction and many interested Members. Those contacts serve as a critical, and in many cases, primary channel of communication.

\* \* \* \* \*

USTR's comments above, and the volumes of supporting documents provided to GAO to date, demonstrate our coordinated and systematic efforts to monitor and enforce labor provisions in FTA countries where concerns exist. We respectfully request that GAO update its draft report to reflect the factual record and we offer our resources to help GAO achieve a more accurate reflection of USTR's and DOL's monitoring and enforcement efforts.

The Administration will continue to work to ensure that our FTAs benefit Americans through improved conditions for trade that expand opportunities for workers and their families, farmers, ranchers, and businesses, including through a special focus on the fundamental labor rights enshrined in the FTA Labor Chapters. By increasing respect for labor rights, we can help ensure the benefits of trade are shared broadly throughout the United States and our partner countries.

Sincerely,

Timothy M. Reif  
General Counsel

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## GAO Comments

The following are GAO's comments regarding the Office of the U.S. Trade Representative's (USTR) letter dated September 16, 2014.

In its letter, USTR questions our evaluation of its monitoring and enforcement of free trade agreement (FTA) partners' compliance with their labor commitments and expresses concern that we do not give sufficient credit to U.S. agencies for their multifaceted work to help FTA partners comply with their labor commitments. We acknowledge in our report that the agencies have given, overall, greater political and organizational priority to monitoring and enforcement of FTA labor commitments since we last reported on this topic in 2009.<sup>1</sup> The evidence that USTR and the Department of Labor (DOL) provided demonstrate that their monitoring and enforcement activities have sometimes led to a strengthening of FTA partners labor laws and practices that might not have occurred absent these activities. Nevertheless, we stand by our current assessment that USTR and DOL have not demonstrated a proactive and systematic approach to monitoring and enforcing FTA partners' compliance with their FTA labor commitments, with the exception of a few partner countries.<sup>2</sup> On the contrary, the evidence that the agencies provided shows that USTR's and DOL's approaches and actions are generally ad hoc and leave important gaps.

Our review focuses on steps that USTR and DOL have taken, with support from the Department of State (State), to monitor and enforce the labor provisions in the FTAs. In reviewing USTR's and DOL's monitoring and enforcement of the provisions in the FTA labor chapters, we looked for

- evidence that USTR and DOL took steps to ensure that each FTA partner had the requisite laws in place by the time the President determined that the FTA could enter into force, as well as
- evidence that USTR and DOL have taken steps to ensure that the partners are enforcing their laws and maintaining labor rights in law and practice since the FTAs entered into force.

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<sup>1</sup>GAO, *International Trade: Four Free Trade Agreements GAO Reviewed Have Resulted in Commercial Benefits, but Challenges on Labor and Environment Remain*, [GAO-09-439](#) (Washington, D.C.: July 10, 2009).

<sup>2</sup>At the same time, we stand by our prior decision to close recommendations from our 2009 report because USTR and DOL had taken steps to increase engagement with all FTA partners on labor matters and to identify and address labor compliance concerns in several partners.

Further, because USTR announced in 2009 that it would not wait for complaints (e.g., labor submissions) to investigate and address possible inconsistencies with FTA provisions, we looked for evidence that the agencies had established means or mechanisms to anticipate, analyze, and resolve problems in the absence of a submission.

We consider the approach to monitoring and enforcement that USTR outlines in its letter to be broadly compatible with the definitions of monitoring and enforcement and with the key elements of monitoring and enforcement that we have identified in our report. That is, enforcement involves taking action to secure compliance by the partner, and monitoring and enforcement typically involve six key steps: (1) gathering and analyzing information, (2) setting priorities, (3) identifying compliance problems, (4) developing and implementing responses, (5) taking enforcement actions, and (6) coordinating with agencies.

Following are specific comments in response to USTR's letter.

**Comment 1:** Throughout our year-long review process, we requested documentation of USTR's monitoring and enforcement of labor provisions. However, USTR provided a large number of documents very late in the process and provided most documents only after receiving our draft report. We thoroughly reviewed and considered all documents that USTR provided and made changes in our report as appropriate to ensure its accuracy and completeness. Several of these changes are described in the comments that follow.

**Comment 2:** The evidence that we obtained from USTR and DOL does not support USTR's assertion that the two agencies actively and systematically monitored and enforced labor provisions in all 20 FTA countries, implementing all of the key elements that we identified, regardless of whether the country had been the subject of a submission. USTR and DOL submitted evidence that they had taken some of these key steps in several FTA partner countries, three of which—Colombia, Jordan, and Panama—were not the subject of labor submissions. In addition, to support its technical comments about a draft of our report, USTR submitted further evidence of certain proactive steps, which we have incorporated in our report as appropriate. However, in the absence of evidence that USTR and DOL have taken steps to analyze and address possible inconsistencies with FTA labor provisions in most partner countries that have not been the subject of a labor submission, we could not conclude that the agencies had implemented a systematic approach to monitoring the implementation of all labor provisions in all FTAs. Moreover,

according to DOL—on which USTR relies for day-to-day monitoring of the FTA partners—the division’s staff spent 80 percent of their work hours in the past year monitoring implementation of the Guatemala Enforcement Plan, addressing submissions for five other countries, and following up on activities initiated under the Colombia Labor Action Plan. This left the employees’ remaining work hours available to monitor and engage the other 14 FTA partner countries. With the exception of Colombia, stakeholders in countries we visited indicated that their recent interactions with USTR and DOL had been very limited. Stakeholders in these countries also told us that the FTA labor affairs councils in their countries had been largely inactive and that the councils’ meetings were considered a formality.

**Comment 3:** Having reviewed all of the cables that State provided, we consider them a useful tool for DOL and State to obtain information about labor conditions in partner countries. Our report acknowledges that USTR is an addressee on such cables and is generally well informed about labor conditions in partner countries as a result of this and other input. Obtaining and analyzing information from credible sources such as State is integral to completing the first step of the monitoring and enforcement process.

**Comment 4:** USTR states that it deploys a range of tools to try to resolve concerns, whether they were identified formally or informally. However, we found that USTR’s and DOL’s approach to addressing concerns that were identified formally, such as by a submission, is more systematic than their approach to addressing concerns that they have identified informally. For example, in responding to a labor submission, DOL conducts a formal review and issues an official report, which generally identifies any possible inconsistencies with labor provisions in the FTA and contains specific recommendations to resolve the issue. DOL and USTR typically use the report’s findings to further engage with the FTA partner country and develop an action plan, such as in the case of Guatemala. When they have identified a concern informally, USTR and DOL may engage with the partner country to discuss the concern, usually in the context of an established FTA mechanism such as the FTA labor affairs council or free trade commission. However, we found that USTR and DOL use these mechanisms infrequently, and USTR and DOL officials told us that except for a few high-priority countries such as Colombia, the agencies do not typically perform in-depth analysis of a partner country’s compliance with its FTA labor commitments unless the country has been the subject of a submission.

**Comment 5:** We acknowledge that USTR’s work with Colombia did not end with the ratification of the FTA. We added text to our report to indicate our concurrence with this point and to illustrate USTR’s postratification monitoring and enforcement activities.

**Comment 6:** We acknowledge that USTR and DOL have engaged extensively with the government of Colombia to monitor the implementation of the Labor Action Plan, in the process addressing several of the key elements of monitoring and enforcement FTAs. However, we cannot conclude that a systematic approach to monitoring and enforcement labor provisions is in place, because we did not see evidence of certain key elements—for example, an approach to respond to outstanding issues identified since the implementation of the Labor Action Plan.

USTR also indicates that its level of engagement to monitor and enforce labor provisions in Colombia is not unique and that USTR and DOL have engaged with other FTA countries to a similar extent as with Colombia. However, we did not see evidence of such a level of engagement with other countries that have not been the subject of a submission. In fact, DOL reported that in the last year, its monitoring division staff spent 80 percent of their time following up on the Colombia Labor Action Plan activities and addressing submissions.

**Comment 7:** We do not assume or indicate that a tailored, country-specific approach to labor monitoring and enforcement is inappropriate, and we do not exclude such approaches from our evaluation. We reviewed the documentation that USTR and DOL provided, looking for evidence that key elements of monitoring and enforcement have been implemented. We recognize that USTR and DOL have successfully implemented certain steps, such as gathering information and identifying compliance problems, using different methods in different countries. However, we did not see evidence of an overarching strategy that assures that priorities and problems are systematically addressed.

**Comment 8:** We evaluated all evidence that USTR and DOL provided, including documentation that USTR provided with its technical comments, and we made changes to our report. Specifically, we incorporated language acknowledging that in some partner countries, the agencies took steps before and after FTA ratification that were consistent with key elements of monitoring and enforcement and that likely contributed to assuring that the partners met certain labor commitments.

**Comment 9:** We acknowledge that the labor submission process is a central component of USTR's and DOL's approach to addressing possible inconsistencies with FTA labor provisions in partner countries and that the agencies have done extensive work to investigate allegations in the submissions that DOL has accepted. However, in our view, reliance on labor submissions to assess compliance and take enforcement actions is inconsistent with USTR's 2009 commitment to no longer enforce FTA partners' labor commitments "only on a complaint-driven basis" but instead to "immediately identify and investigate labor violations."<sup>3</sup>

**Comment 10:** As stated, the report acknowledges that labor submissions are a key component of USTR's and DOL's monitoring and enforcement of FTA labor provisions and that the agencies undertake considerable research and analysis in the process of addressing submissions. We modified the text of the report to clarify that after DOL receives a submission, it works with USTR and State to engage diplomatically to address concerns, as well as independently to investigate and analyze the issues.

**Comment 11:** We acknowledge that USTR and DOL work together to address labor concerns identified in submissions and to engage with partner countries regarding labor matters. Our review of evidence obtained from the agencies and in FTA partner countries generally confirmed that USTR and DOL also coordinate on an ad hoc basis. However, the evidence that we reviewed did not show that the agencies have developed a coordinated, strategic approach to systematically address the key steps of monitoring and enforcing labor provisions in all FTAs and to address labor conditions that may be inconsistent with FTA provisions, such as the conditions identified in DOL's management reports. For example, agendas that USTR provided for two meetings of the interagency Subcommittee on Labor Monitoring and Enforcement list meeting topics but do not detail expected actions or outcomes; USTR provided no record, beyond a general description, of what transpired at the meetings or of any intra-agency correspondence following the meetings. Further, during our interviews with USTR officials, the officials discussed items that the interagency process had not produced, such as up-to-date assessments of risk; agreed-on priorities; and formal action plans for partners other than

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<sup>3</sup>Office of the U.S. Trade Representative, "Ambassador Kirk Announces New Initiatives for Trade Enforcement" (press release), July 16, 2009, accessed July 18, 2013, <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2009/july/ambassador-kirk-announces-new-initiatives-trade>.

Colombia, Guatemala, and Jordan. For example, USTR officials indicated that a previous interagency effort to develop a comprehensive risk-based approach had been overtaken by events and not revised. DOL officials indicated that in general, there had been no discussion of cross-agency resource use. However, our work on best practices in collaboration has shown that agencies can enhance and sustain their collaborative efforts by engaging in the following eight practices: (1) define and articulate a common outcome; (2) establish mutually reinforcing or joint strategies; (3) identify and address needs by leveraging resources, (4) agree on roles and responsibilities; (5) establish compatible policies, procedures, and other means to operate across agency boundaries; (6) develop mechanisms to monitor, evaluate, and report on results; (7) reinforce agency accountability for collaborative efforts through agency plans and reports; and (8) reinforce individual accountability for collaborative efforts through performance management systems.

**Comment 12:** Our report does not state that USTR should explicitly accuse partner countries of trade violations in its annual report to Congress. Our report states that, reflecting in part USTR's and DOL's limited monitoring and enforcement of these provisions, USTR's annual report generally does not detail concerns about the implementation of FTA labor provisions by partner countries that have not been the subject of labor submissions. Our report also states that appropriate information resulting from more extensive monitoring and enforcement could help inform Congress and other U.S. stakeholders about the extent to which trade partners are fulfilling their FTA labor commitments.



# Appendix VI: Comments from the Department of Labor

U.S. Department of Labor

SEP 26 2014

Deputy Undersecretary  
for International Affairs  
Washington, D.C. 20210



Kimberly Gianopolous  
Acting Director, International Affairs and Trade  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Gianopolous:

Thank you for the opportunity to comment on the Government Accountability Office's (GAO) draft report, *Free Trade Agreements: U.S. Partners Are Addressing Labor Commitments, but More Proactive Monitoring and Enforcement Are Needed*. The stated purpose of the GAO report was to assess the current status of implementation of free trade agreement (FTA) labor provisions as well as the United States' and trade partner countries' responses to related challenges. The Department of Labor (DOL), through the Bureau of International Labor Affairs' (ILAB) Office of Trade and Labor Affairs (OTLA), is strongly committed to monitoring compliance with and enforcing FTA labor commitments and engages regularly with U.S. FTA partners to raise and address labor issues.

Your report made four recommendations, three of which were made to the Secretary of Labor and relate to recommended DOL actions:

- 1. That DOL reevaluate and adjust, if necessary, its FTA labor submission review time frame to ensure that it more accurately reflects the time required to thoroughly investigate.**

After a coordinated interagency review process involving the Office of the United States Trade Representative (USTR) and the Department of State (State), on December 21, 2006, DOL published in the Federal Register a notice of procedural guidelines regarding the receipt and review of FTA labor submissions. Under the guidelines, "[w]ithin 180 days of the acceptance of a submission for review, unless circumstances as determined by the OTLA require an extension of time, the OTLA shall issue a public report" with "any findings and recommendations." When the guidelines were published, DOL had received labor submissions under only the North American Agreement on Labor Cooperation (NAALC) and not under FTA labor chapters. However after reviewing labor submissions under both the NAALC and FTA labor chapters, DOL recognizes that under the existing internal OTLA submission review processes, it is difficult, within 180 days, to conduct a thorough and detailed review and assessment of all of the information obtained related to the allegations in a submission and publish a report describing the review and providing "any findings and recommendations," as called for under OTLA guidelines. As a result, DOL commits to reevaluate existing internal submission review processes, in consultation with USTR and State and working closely with stakeholders, to determine whether internal adjustments may be necessary to ensure that the process best serves its purpose of providing the public a mechanism to raise, and have DOL review

and assess, concerns regarding trading partners' compliance with FTA labor commitments.

**2. That DOL take steps to better inform stakeholders in FTA partner countries about its FTA labor submission process.**

DOL makes significant efforts to inform stakeholders in the 19 U.S. trading partners with FTA labor commitments about our FTA labor submission process, as well as about our proactive labor-related engagements with FTA partners on areas of concern identified by stakeholders and/or uncovered through our monitoring efforts. DOL regularly shares labor submission procedural guidelines with stakeholders during visits to trading partner countries; engages with AFL-CIO Solidarity Center representatives in such countries, who in turn communicate and coordinate with local labor stakeholders, including in many cases on the FTA labor submission process; and refers stakeholders to the procedural guidelines now available in English, Spanish, Arabic, and French on the recently redesigned and more user-friendly ILAB website. Nevertheless, DOL acknowledges that more stakeholder outreach would benefit our existing efforts to monitor and enforce compliance with FTA labor obligations. We will evaluate additional available actions to expand our ability to inform stakeholders in FTA partner countries about the FTA labor submission process, as well as about our labor-related engagements under FTAs more generally.

**3. That USTR and DOL, in cooperation with State, coordinate their approaches to monitoring and enforcing FTA labor provisions to ensure that they proactively assess the consistency of priority FTA partner countries' laws, regulations, and practices with trade agreement labor provisions and address any identified concerns.**

DOL and USTR, in cooperation with State, regularly coordinate monitoring and enforcement activities related to assessing and ensuring the consistency of FTA partner countries' labor laws, regulations, and practices with FTA labor provisions, both within and outside the context of labor submission reviews. DOL and USTR, in cooperation with State, undertake such proactive and coordinated monitoring and enforcement through formal FTA labor mechanisms, including Labor Affairs Council and Labor Subcommittee meetings and direct communications between DOL and trading partners' FTA labor contact points designated under the FTA labor chapters, as well as through more informal internal and bilateral activities, including interagency sharing of country-specific DOL management reports, interagency monitoring trips, interagency discussions, and wide-ranging interagency engagement with stakeholders both in the United States and in trading partner countries. In particular, DOL and USTR, in cooperation with State, have undertaken extensive proactive monitoring and enforcement activities in countries where we have particular existing or potential labor concerns, whether or not there is a submission under review. All three agencies share information, collaborate on monitoring and enforcement efforts, and consult each other on key concerns and responses to ensure proactive assessment of FTA partner countries' compliance with FTA labor provisions.

For example, there have been no formal labor submissions under the FTAs with Colombia, Jordan, or Panama, but DOL and USTR, in cooperation with State, have been proactively engaged for several years monitoring labor conditions in the context of FTA labor commitments and working to resolve identified concerns. Similarly, unrelated to the labor submission against Peru that was resolved in 2012, DOL and USTR, in cooperation with State, have engaged with Peru since 2009, with a particular focus on labor laws, regulations, and practices related to temporary and subcontracted workers.

- In the case of Colombia, DOL and USTR, in cooperation with State, began proactively monitoring and assessing Colombian labor laws, regulations, and practices before the Colombia FTA went into effect, to identify and address concerns. DOL and USTR, in cooperation with State, worked with the Government of Colombia to craft the April 2011 Colombian Action Plan Related to Labor Rights (Action Plan), with concrete Colombian commitments related to the protection of internationally recognized labor rights and the prevention and prosecution of violence against labor leaders. DOL and USTR, in cooperation with State, have monitored Action Plan implementation, including through formal technical- and high-level meetings required under the Action Plan and countless informal monitoring calls, emails, and meetings with counterparts in Colombia. Additionally, from late 2011 through late 2012, DOL detailed a full-time staff person to the U.S. embassy in Bogotá to help facilitate implementation of the Action Plan; this was the first time DOL has provided for such a detail in the context of an FTA.
- In Jordan, DOL and USTR, in cooperation with State, negotiated with the Government of Jordan an implementation plan in January 2013, with specific measures to be taken by the Government of Jordan, to address labor concerns regarding foreign workers in Jordan's garment sector, including concerns related to freedom of association, discrimination including sexual harassment, and living conditions in worker dormitories. DOL and USTR, in cooperation with State, have been monitoring the measures taken by the Government of Jordan under the plan, including through an inter-agency monitoring trip in June 2014 that included site visits to several garment factories and worker dormitories.
- Since the Panama FTA entered into force in 2012, DOL and USTR, in cooperation with State, have proactively monitored the implementation of Panama's FTA labor commitments. This monitoring included two interagency trips to Panama City, three interagency videoconferences with the Government of Panama, and a meeting of the Labor Affairs Council in Panama City in January 2014, in addition to numerous regular, informal monitoring calls and emails with counterparts in the Panamanian government.
- In the case of Peru, DOL and USTR, in cooperation with State, have proactively monitored Peru's implementation of its FTA labor commitments since the FTA's entry into force in January 2009, in particular with respect to temporary and subcontracted workers. USTR and DOL have taken three trips to Lima, in cooperation with State, and held several video- and phone conferences with Peruvian officials to monitor these issues, in addition to regular, informal

monitoring through numerous calls and emails with counterparts in the Peruvian government and contacts with stakeholders in Peru.

Following GAO's recommendation, DOL will evaluate additional options to increase our proactive monitoring and enforcement, as well as our coordination with USTR and State on these issues.

In closing, DOL reiterates our gratitude to GAO for the time and effort dedicated to reviewing our work to monitor and enforce FTA partner countries' labor commitments. We appreciate GAO's recognition that, subsequent to DOL engagement, partner countries including El Salvador, Guatemala, Colombia, Oman, and Peru, have taken steps to implement FTA labor commitments and other initiatives to strengthen labor rights. As we continue to build upon our existing work of monitoring and enforcing FTA partner countries' labor commitments, DOL remains committed to using all available mechanisms and processes to improve global working conditions, raise living standards, protect workers' ability to exercise their rights, and address the workplace exploitation of children and other vulnerable populations.

Sincerely,



Carol Pier  
Deputy Undersecretary for International Affairs

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# Appendix VII: GAO Contact and Staff Acknowledgments

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## GAO Contact

Kimberly Gianopoulos, (202) 512-8612 or [gianopoulosk@gao.gov](mailto:gianopoulosk@gao.gov)

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## Staff Acknowledgments

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