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AND CONSUMER CREDIT

October 29, 2013

Mr. Rafael Pardo Rueda
Minister of Labor
Carrera 14 No. 99-33
Bogotá, Colombia

Dear Mr. Pardo:

As a member of the Congressional Monitoring Group on Labor Rights in Colombia, I am writing to express concern with the implementation of the U.S.-Colombia Labor Action Plan (LAP), particularly the continued prevalence of third party subcontracting. The LAP was essential to solidifying the passage of the U.S.-Colombia Free Trade Agreement through the U.S. Congress. As you know, a key commitment of the LAP was to end the “worker cooperative” model and increase the formalization of the Colombian workforce. While cooperatives were officially banned in 2011, based on reports I have heard from Colombian labor leaders, they have ended in name only and subcontracting remains rampant.

I was recently scheduled to travel to Colombia to study the progress of the Labor Action Plan firsthand, but I was unfortunately unable to make the trip due to changes in the Congressional schedule. I know that we were scheduled to meet, and I hope to be able to travel to Colombia in the near future to meet in person. I did, however, send a representative from my office, Jamie Long, who met with a wide range of Colombian labor leaders as well as with Patricia Marulanda and other representatives from the Ministry of Labor.

Based on the reports from my staff, it is clear that subcontracting continues to proliferate and is preventing workers from exercising their rights to collective bargaining. Nearly every union that met with my staff reported problems with their ability to organize due to subcontracting, primarily through the use of Simplified Stock Companies (SAS). For example:

- The *Union Portuaria* estimated that up to 90% of workers at the Buenaventura port are in a subcontracting relationship, and reported the firing of 18 workers for seeking a direct contract, as well as the use of “mandatory vacations” to cancel previous contracts and prevent the accumulation of retirement benefits
- The *Union Sindical Obrera* estimated that 120,000 workers in the mining and oil sector are subcontracted

- The airline workers unions reported 6,500 workers subcontracted by Avianca, even though they wear Avianca uniforms and use Avianca equipment
- The *ANTOCH* health care union reported substantial hospital industry subcontracting
- The *Untaflores* flower workers union reported that 60% of the workers in their industry are employed through cooperative-like entities, and reported that these workers are not getting vacation, sick days, or overtime
- A beverage workers union reported the use of a collective pact instead of direct contracting, and indicated that collective pacts had actually increased in the bottling sector since the LAP
- A Coca-Cola workers union reported 9,000 individuals hired by Coca Cola in a SAS
- The sugar workers unions reported substantial third party contracting in their sector, including the use of “mandatory vacations” to liquidate prior contracts, and indicated that companies were redefining their “essential job functions” to increase the use of SAS

These unions, representing a broad range of Colombian industry, reported essentially no change in the move from the cooperative model to the SAS, and in many cases indicated that subcontracting had gotten worse since the LAP. Despite the elimination of the cooperative, Colombian corporations have consistently been able to find loopholes in the law that allow them to continue to avoid directly hiring workers, thereby preventing them from entering into substantive collective bargaining, depressing their wages, and limiting their access to health care, vacation, and retirement benefits. This continued indirect hiring is in plain opposition to the intent of the LAP.

I know that workforce formalization is a key goal of both of our governments and was the motivation for requiring that cooperatives be eliminated under the LAP. The banning of cooperatives, though, was plainly an insufficient step to achieve our shared goal of greater formalization. Therefore, I urge President Santos and the Colombian Government to put an end to the abuses of the SAS model and other forms of subcontracting. The following steps could be taken to demonstrate forward progress in formalization as intended by the LAP:

1. Define and disseminate to employers and employees what legally constitutes a core, permanent function and necessitates direct contracting.
2. Move beyond the mere issuing of fines for illegal subcontracting, and establish the infrastructure to collect fines in a timely manner.
3. Demonstrate that violations of the freedom of association will not be tolerated by taking the necessary steps for the rehiring of the 18 fired workers with the *Union Portuaria*.

I look forward to your response and to meeting when I reschedule my trip to Colombia.

Sincerely,



Congressman Keith Ellison