
SUBMISSION OF COMMENTS TO THE U.S. DEPARTMENT
OF LABOR BY THE DOMINICAN SUGAR INDUSTRY

DOCKET NUMBER DOL-2019-0005 – CHILD LABOR,
FORCED LABOR, AND FORCED OR INDENTURED CHILD
LABOR IN THE PRODUCTION OF GOODS IN FOREIGN
COUNTRIES AND EFFORTS BY CERTAIN FOREIGN
COUNTRIES TO ELIMINATE THE WORST FORMS OF
CHILD LABOR

JANUARY 13, 2020

1. The Dominican Sugar Industry (“DSI”) appreciates this opportunity to submit public comments to the Bureau of International Labor Affairs (“ILAB”) with regard to Docket Number DOL-2019-0005 – Child Labor, Forced Labor, and Forced or Indentured Child Labor in the Production of Goods in Foreign Countries and Efforts by Certain Foreign Countries To Eliminate the Worst Forms of Child Labor (84 FR 53474).¹ This document supplements the DSI’s prior submission on January 14, 2014 under Docket Number DOL-2013-0003 (78 FR 72714),² which is included by reference herein.
2. This document restates the DSI’s position that the U.S. Department of Labor (“DOL”) has no reasonable basis to believe that sugarcane is produced in the Dominican Republic using child or forced labor in violation of international standards, and that continuing to include sugarcane from the Dominican Republic in the Trafficking Victims Protection Reauthorization List and Report (“TVPRA List and Report”) and the Trade and Development

¹ Bureau of International Labor Affairs, U.S. Department of Labor, *Child Labor, Forced Labor, and Forced or Indentured Child Labor in the Production of Goods in Foreign Countries and Efforts by Certain Foreign Countries to Eliminate the Worst Forms of Child Labor*, October 7, 2019. Available at <https://www.federalregister.gov/documents/2018/10/05/2018-21559/child-labor-forced-labor-and-forced-or-indentured-child-labor-in-the-production-of-goods-in-foreign>.

² Dominican Sugar Industry, *Analysis of the October 1, 2013 Bibliography Cited by the U.S. Department of Labor for the Inclusion of Sugarcane from the Dominican Republic on the List Required by the Trafficking Victims Protection Reauthorization Act of 2005*, January 14, 2014. Available at <https://www.dol.gov/agencies/ilab/analysis-october-1-2013-bibliography-cited-us-department-labor-inclusion-sugarcane>.

Act Report (“TDA Report”) are contrary to DOL’s own procedural guidelines in preparing both these reports.

3. The DSI comprises the three major private sector sugarcane companies in the Dominican Republic (“DR”), *Central Romana Corporation* (“CRC”), *Consorcio Azucarero de Empresas Industriales* (“CAEI”), and *Consorcio Azucarero Central* (“CAC”). These three companies are largely responsible for sugarcane production in the DR since the state-run sugar sector in the DR was mostly privatized in 1999, and the DSI companies are the source for all exports of DR sugarcane to the United States. The state-run *Consorcio Estatal del Azucar* (“CEA”), or State Sugar Council, does still operates a small mill called *Porvenir*, which sources sugarcane from small producers, or *colonos*. *Porvenir* produces only a small percentage of the country’s sugar and does not export to the United States.

TVPRA List and Report

4. With regard to the TVPRA List and Report, DOL published procedural guidelines in 2007 for the development of the TVPRA report (72 FR 73374).³ These were then updated via another Federal Register notice dated December 3, 2013 (78 FR 72714).⁴ The guidelines state that DOL evaluates information and documentation on a methodology consisting of five factors: a) Nature of information; b) Date of information; c) Source of information; d) Extent of corroboration; and e) Significant incidence of child labor or forced labor.
5. Sugarcane from the DR was included in the TVPRA list when it was first published in 2009. DOL cited 29 sources for the 2009 listing, none of which, in fact, provided then or now a basis to include sugarcane from the DR on the list. An analysis showing this lack of a foundation was provided in the DSI’s prior submission to DOL of January 14, 2014. In that document, the DSI stated that the October 1, 2013 bibliography cited by DOL for the inclusion of sugarcane in the 2013 edition of the TVPRA list used the identical sources cited by DOL in each annual edition of the list from 2009-13, with almost no modifications.
6. Most importantly, as the DSI sets out in the submission made on January 14, 2014, the 29 sources cited by DOL are either irrelevant or represent uncorroborated allegations not probative of child or forced labor in the DR sugarcane sector. Many of these 29 sources often refer back to the same source or undisclosed persons or entities. And many appear to rely upon allegations made by Father Christopher Hartley, who himself left the DR in 2006.

³ Bureau of International Labor Affairs, U.S. Department of Labor, *Notice of Procedural Guidelines for the Development and Maintenance of the List of Goods From Countries Produced by Child Labor or Forced Labor*, December 27, 2007. Available at <https://www.federalregister.gov/documents/2007/12/27/E7-25036/notice-of-procedural-guidelines-for-the-development-and-maintenance-of-the-list-of-goods-from>.

⁴ Bureau of International Labor Affairs, U.S. Department of Labor, *Child Labor, Forced Labor, and Forced or Indentured Child Labor in the Production of Goods in Foreign Countries and Efforts by Certain Countries To Eliminate the Worst Forms of Child Labor*, dated December 3, 2013. Available at <https://www.federalregister.gov/documents/2013/12/03/2013-28839/child-labor-forced-labor-and-forced-or-indentured-child-labor-in-the-production-of-goods-in-foreign>.

-
7. Some of those sources also cited the presence of child or forced labor in a historical context or in relation to the sugar operations that were earlier managed by the CEA, but are now largely limited to the *Porvenir* mill, which produces a small percentage of the country's sugar and does not export to the United States. Given the changes in the structure of the industry over the last 20 years, the sources cited do not provide a basis to conclude there is an existing problem about child or forced labor. Most sources that do mention the sugarcane sector, refer to a small number of workers or allegations involving a single or isolated instance without any further substantiation or proof, and do not include any analysis or data tending confirm a significant existence of child labor and forced labor.
 8. The only modification in the bibliography used by DOL as the basis to include DR sugarcane in the TVPRA list over the four reviews from 2009 through 2013 was the 2012 addition of a report published by the labor advocacy group Verité, *Research on Indicators of Forced Labor in the Supply Chain of Sugar in the Dominican Republic*.⁵ This study was financed by DOL. The DSI's prior submission in January 2014 made clear why it was inappropriate for DOL to use the Verité source as a basis for listing Dominican sugarcane in the TVPRA report, since the Verité report itself stated unequivocally that it could not be relied upon to determine whether there is forced or child labor in the DR sugar sector. In addition, the DSI also included as an Annex in its 2014 submission an independent review of the Verité monograph done by Professors Robert Bednarzik and Andreas Kern from Georgetown University, which laid out the flaws in its methodology.
 9. The DSI's 2014 submission also made clear that the fact that the same sources with almost no modification were used by the DOL for five consecutive reviews, raised important questions about whether DOL was applying its own procedural guidelines – and carrying out its annual reviews with a reasonable level of due diligence. Further, by 2014 none of the original 29 sources met the five-year criterion specified in DOL's procedural guidelines.
 10. Since the 2013 publication, ILAB has published three further editions of the list in 2014, 2016, and 2018. Dominican sugarcane has been included in each bi-annual edition and the same 30 sources have been cited (the 29 cited in 2009 and the Verité report). In 2014, DOL added three additional sources, which were retained in the 2016 and 2018 editions. Consequently, the 2016 and 2018 bibliographies are identical to the 2014 bibliography with 33 sources, of which 29 are being continuously cited without change since 2009.
 11. One of the sources added in 2014 was DOL's own Public Report of Review of Submission prepared with regard to a submission under the Dominican Republic-Central American Free Trade Agreement ("DR-CAFTA") by Father Christopher Hartley.⁶ The DSI has separately

⁵ Verité, *Research on Indicators of Forced Labor in the Supply Chain of Sugar in the Dominican Republic*, dated October 2012. Available at https://www.verite.org/wp-content/uploads/2016/11/Research-on-Indicators-of-Forced-Labor-in-the-Dominican-Republic-Sugar-Sector_9.18.pdf.

⁶ Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, *Public Report of review of U.S. Submission 2011-03 (Dominican Republic)*, dated September 27, 2013. Available at <https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/20130926DR.pdf>.

identified and provided to DOL the considerable shortcomings in DOL's data-collection process and methodology as well as noted DOL's failure to provide any evidence for its findings related to child and forced labor in this report. The DSI's response to the DOL report also explained that DOL's findings relied on outdated, unverified, and inaccurate information, and ignored actual evidence to the contrary.⁷

12. In addition, DOL's Public Report of Review of Submission cited the 2012 Verité's report, itself a source being cited by DOL in the TVPRA bibliography. As described earlier, the Verité report itself states it cannot be used as a basis to justify forced or child labor in the Dominican sugarcane sector and an assessment prepared by two Georgetown University Professors, Robert Bednarzik and Andreas Kern, at the request of the DSI, found that the data presented in the Verité report was not sufficient to conclude that child and forced labor existed in the DSI, and in fact suggested otherwise.
13. Further, when the DSI requested under the Freedom of Information Act that DOL and Verité provide it with the background data for the 2012 Verité and 2013 DOL reports, both refused to share the data, citing confidentiality claims, even though it was possible to withhold information identifying any individuals and to provide the remaining data.
14. The two other new sources added in 2014 to the TVPRA bibliography were interviews conducted by DOL officials from April 7-9, 2014, and reporting from the U.S. Embassy in Santo Domingo on February 19, 2014. As to both these sources, no information is available as to what the reporting might contain, and DOL has refused requests by the DSI to provide such information. Neither indicate any basis to establish a reasonable belief that child and forced labor are a significant problem in the sugarcane sector of the DR.
15. With regard to the next edition of the list to be published in 2020, none of the 33 sources cited by DOL in previous editions of the list now meet the five-year criterion for consideration. The most recent source is dated 2014. Further, the DSI has already highlighted how none of these sources meet any of the four criteria presented in the procedural guidelines.
16. Moreover, for the 2018 edition of the TVPRA list, DOL removed child labor in sugarcane production in Panama and child labor in cotton production in Uzbekistan and Paraguay, as well as forced labor in physics nuts in Myanmar. In the case of Panama, DOL determined that child labor "still occurred" in the production of sugarcane, but DOL "was unable to determine whether this was occurring beyond isolated incidents."⁸ So DOL decided to remove sugarcane from Panama from the TVPRA list. Meanwhile, in the case of Dominican sugarcane, DOL has identified no evidence during the last decade of even isolated incidents of child or forced labor in the sector, but still keeps Dominican sugarcane on the list.

⁷ Dominican Sugar Industry, *Response of the Dominican Sugar Industry to DOL's Public Report of Review of Submission*, dated December 2013. Available at <http://www.dominicansugar.org/documents>.

⁸ 2018 TVPRA Report, Page 27. Available at <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

-
17. Similarly, for Uzbek cotton, DOL had verifiable information from 2018 of multiple incidences of child labor in the sector, yet it concluded that Uzbek cotton could be removed from the list. DOL, meanwhile, has no information within its established guidelines to list the Dominican sugarcane sector for child or forced labor – but still it is listed. With regard to child labor in cotton production in Paraguay, DOL indicated that child labor had declined only because cotton production itself has declined, and not because of any specific initiatives taken either by the government or private sector. Further, DOL noted that if “cotton production were to increase in Paraguay, the prevalence of child labor may also increase.”⁹ Yet both Uzbek and Paraguay cotton were removed from the list, while Dominican sugarcane was retained.
 18. Going by the criteria used by DOL to conclude that child labor was no more than an isolated occurrence in Panamanian sugarcane or Uzbek cotton, it is clear that the information available supports a conclusion that child or forced labor, if it exists, is no more than an isolated occurrence in the Dominican sugarcane sector. If DOL concludes that there is a case for the removal of Panamanian sugarcane or Uzbek or Paraguay cotton from the list, it has a far more compelling case for the removal of Dominican sugarcane on the same grounds.
 19. DOL has no information within its established criteria to conclude it is appropriate to list the Dominican sugarcane sector for child or forced labor in the TVPRA List. The evidence that DOL cites for Dominican sugarcane is either not probative or credible, nor corroborated by any independent source. Further, DOL is not transparent about the methodology and results of its own claimed reports used as a basis to include Dominican sugarcane on the list. Effectively, DOL is involved in echo chamber of allegations without an evidentiary basis. No basis to conclude that either child or forced labor are systematic, widespread, or more than an isolated occurrence in the Dominican sugarcane sector, and therefore the sector should be removed from the TVPRA list.

TDA Report

20. The TDA Report is published each year by ILAB in accordance with the Trade and Development Act (“TDA”) of 2000, and documents DOL’s annual findings with respect to a country’s implementation of commitments to eliminate the worst forms of child labor. The first report was published in 2002; the most recent report was published in September 2019.
21. In Appendix 8 of the latest (2019) edition of the TDA report, ILAB published its criteria for assessing information used in preparing the report. These criteria were also published on October 10, 2018 as part of ILAB’s public notice in the Federal Register requesting information and/or comment from the public for the 2018 edition of the TDA report (83 FR 50411).¹⁰ The criteria are almost identical to those used for preparing the TVPRA report.

⁹ 2018 TVPRA Report, Page 29-30. Available at <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

¹⁰ U.S. Department of Labor, Bureau of International Labor Affairs, *Child Labor, Forced Labor, and Forced or Indentured Child Labor in the Production of Goods in Foreign Countries and Efforts by Certain Foreign Countries to Eliminate the Worst Forms*

-
22. Prior to 2012, ILAB’s criteria for the TDA Report only included the consideration of sources no more than five years prior to the year of compilation of the report. However, in the 2013 TDA report published in 2012, ILAB expanded the “Date of information” criterion to also include consideration of sources more than five years prior.
 23. This was indicated in Part 1 (Report Guide section) of the report where ILAB noted that “in cases in which previous editions of this report have asserted that the worst forms of child labor exist in the production of goods, and in the absence of evidence that the problem has been effectively eliminated, sources older than five years may be used.” Further, “statements that child labor exists in the production of goods will be removed when there is evidence that the problem has been effectively eliminated.” ILAB stated that the change was made to ensure the report’s information on such forms of child labor is “consistent” with the TVPRA list.
 24. This change contradicts the criteria for assessing the information used to identify the worst forms of child labor, and calls into question whether the TDA Report has any reliability at all. Under this criterion, DOL can use information from, say, 20 to 25 years ago to determine that child labor is being used in the production of particular goods in a country today. Even if the dated information was accurate and substantiated child labor when it was first published, which in many cases is questionable, continuing to use it after two or three decades, absent more current information confirming the continued existence of child labor in the sector of a country, calls into question the value of the TDA Report.
 25. DOL’s position justifying using decades old information to continue the inclusion of a product and country listing in the TDA Report, absent affirmative evidence of the now non-existence of such child labor, in order to justify the removal of the listing is an exercise that meets the precise definition of being Kafkaesque. Some undefined stakeholders, presumably the foreign government and foreign industry, must prove the negative – that no child labor exists. These stakeholders must show evidence they have effectively eliminated the problem, regardless of whether the references that led to the initial listing by DOL were valid and an actual problem existed in the first place. Moreover, there is no stated or accepted criteria for the evidence that DOL requires, nor a definition of what effective elimination means. As in a Kafkaesque world it is evidence when DOL deems it to be such, and effective elimination when DOL so concludes. It does not matter what the reality may be.
 26. This is in fact how DOL approaches the issue of child labor and forced labor in the DR sugar sector for the TDA and TVPRA reports. DOL has no evidence that substantiates a finding of child or forced labor in the Dominican sugarcane sector for inclusion in these reports, or that such labor was used in the production of sugarcane in the DR at all. DOL is simply recycling unsubstantiated allegations to justify its determinations. Indeed, for almost 20 years, DOL has

of Child Labor, October 5, 2018. Available at <https://www.federalregister.gov/documents/2018/10/05/2018-21559/child-labor-forced-labor-and-forced-or-indentured-child-labor-in-the-production-of-goods-in-foreign>.

failed to cite evidence to substantiate a reasonable belief that child labor or forced labor is a material issue in the sugarcane sector of the DR.

27. Expanding the timeline backwards allows DOL to continue to cite ad infinitum the same unsubstantiated sources to determine child labor is being used in sugarcane production in the DR, and to include it in the TDA and TVPRA reports. On the other hand, DOL does not consider abundant and clear evidence provided by the DSI that demonstrates child labor and forced labor are not evident in sugarcane sector. DOL continues to refuse all requests for evidence substantiating its findings, opposes transparency, and ignores the repeated offer and commitment by the DSI to immediately take action on any allegations of violations DOL wants to provide. Rather DOL continues to rely on unsubstantiated and unproven allegations from sources dated decades ago. This brings into question the purpose and reliability of the TDA and TVPRA Reports.
28. This is again made apparent in the 2018 TDA Report, the most recent edition published in September 2019. The DR chapter states that children engage in clearing land for sugarcane production, planting and harvesting sugarcane, and collecting cut cane; subsequently, it states that children of Haitian descent in the DR “work in agricultural production, including sugarcane, often alongside their parents...”.
29. As supporting evidence for these assertions, ILAB cites eight references (see Annex). Of these, seven are within the last five years, and one is from more than fifteen years ago. However, an analysis of these sources makes clear that none of them actually indicate any information from the last five years, but are simply recycling information from 2002 and prior.
30. Of the eight references cited, four do not mention child labor in the Dominican sugarcane sector at all. Three are references to U.S. Department of State country reports on human rights and reporting from the U.S. Embassy, and none of these actually contain any specific information of child labor with regard to the Dominican sugarcane sector.
31. One reference is to an undergraduate student paper that recycles allegations from 1991; one is a media article that also does not cite any source or evidence of child labor in the sugarcane sector in the DR.
32. None of these sources are “probative and relevant” as required by ILAB’s guidelines. None of the allegations contained in any documents have been corroborated by any other sources. The allegations can all be traced back to Father Christopher Hartley and other NGO reports, all of which are dated prior to 2007, and none of which have been substantiated with regard to the sugarcane production of the DSI.
33. As described earlier, the DSI has provided information to DOL that the sources cited by DOL for its child and forced labor findings on sugarcane production are unreliable. ILAB has not considered this information even though by its own criteria this would suggest that that both child and forced labor, to the extent they may have existed in the past, have been effectively

eliminated. The DSI has also communicated repeatedly to DOL that if there is any specific information or allegations of child or forced labor, the DSI will act on them immediately. DOL discards the evidence and demonstrated commitment to address child and forced labor by the DSI while continuing to rely on unsubstantiated and unproven allegations from sources dated decades earlier.

- 34 . Unfortunately, this brings into question the credibility of the TVPRA and TDA Reports. None of the sources used in either of these reports can be relied upon to reasonably determine that sugarcane is produced with child or forced labor in the DR. DOL's determination is not supported by evidence and in fact contradicts evidence that in fact there is no basis to determine that forced or child labor exists as a material and significant issue in the industry. At worst, any child or forced labor issues in the DSI, as could be the case in any sector in any country, are isolated instances in violation of DR law. DSI industry policy and practice would be to effectively and urgently address and such violation discovered to exist. The facts simply do not warrant the findings being made to the DR sugarcane industry. Consequently, DOL should immediately remove Dominican sugarcane from the TVPRA and TDA reports.

ANNEX

SOURCES CITED FOR INCLUSION OF SUGARCANE FROM THE DOMINICAN REPUBLIC IN THE 2018 TDA REPORT

Ref. No.	Author	Title	Year of Publication	Analysis
1	U.S. Department of Labor	DOL Interviews with DOL official on April 7-9, 2014	2014	No supporting evidence or details provided; request by DSI for such information refused by DOL
2	Andrea Nunes (undergraduate student at Lesley University); published in <i>Journal of Pedagogy, Pluralism and Practice</i> Volume 8, no. 1 (Fall 2016).	<i>Life in the Dominican Republic's Sugar Fields: Resistance from the Bateyes.</i> Available here .	2016	Allegations of child labor based on four uncorroborated sources from 2005 and prior
3	L. Revuelta; published in <i>El Confidential</i> .	<i>amargo: el 'apartheid' dominicano que sustenta la industria de la caña.</i> Available here .	2017	No evidence, direct observations or corroboration; cites Father Christopher Hartley for allegations
4	Minderoo Foundation.	Global Slavery Index. Available here .	2018	No mention of child labor in sugarcane in the DR
5	U.S. Department of State.	2016 Country Reports on Human Rights Practices for DR. Available here .	2017	No supporting evidence; identical allegations in all Dept. of State reports from 2012-17. No mention of child labor in sugarcane in the DR in 2018 report.

6	Inter-American Commission on Human Rights.	<i>Situation of Human Rights in the Dominican Republic.</i> Available here.	2015	No mention of child labor in sugarcane in the DR
7	Government of Dominican Republic.	GODR Regulation No. 52/2004 on Child Labor enacted on August 13, 2004. Available here.	2004	Government regulation to prohibit child labor in sugarcane in the DR
8	U.S. Department of State.	2018 Country Reports on Human Rights Practices for DR. Available here.	2019	No mention of child labor in sugarcane in the DR