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**LABOR CHAPTER 16 SUBMISSION UNDER  
THE DOMINICAN REPUBLIC-UNITED  
STATES FTA:**

**DSI RESPONSE TO RELEASE OF SIXTH  
PERIODIC REVIEW BY US DEPARTMENT  
OF LABOR ON MAY 16, 2018**

**TIME TO MOVE FORWARD**

**JULY 2018**

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## 2013 DOL Report Findings Lack Foundation; Review Process Should be Closed

1. On February 22, 2012, the U.S. Department of Labor's Office of Trade and Labor Affairs ("OTLA") accepted a [submission](#) filed by Father Christopher Hartley for a full review under Chapter 16 of the Dominican Republic-Central America-United States Free Trade Agreement ("DR-CAFTA"). Chapter 16 of DR-CAFTA contains labor principles and internationally recognized labor rights that parties to the agreement must adhere to, as well as mechanisms to address violations or non-compliance with the labor commitments required under the agreement.
2. The original submission by Father Hartley was made on December 22, 2011, and alleges that labor abuses were widespread in the sugar industry of the Dominican Republic ("DR"). The submission alleges that the DR has not fulfilled its commitments required under Chapter 16, and requests the U.S. Department of Labor ("DOL") to conduct a full investigation into the alleged labor abuses.
3. Even before the submission under DR-CAFTA, the DOL had, in 2009, placed "sugarcane" from the Dominican Republic on its "List of Goods Produced by Child Labor or Forced Labor." The [list](#) is prepared by the DOL's Bureau of International Labor Affairs ("ILAB") under the Trafficking Victims Protection Reauthorization Act ("TVPRA"), and is intended to include "goods and their source countries which [ILAB] has reason to believe are produced by child labor or forced labor."
4. According to Father Hartley, his DR-CAFTA Chapter 16 submission is meant to "focus the attention of the Office of Trade and Labor Affairs on the laundry list of abuses which are still in practice on the sugarcane plantations owned and/or operated by the [redacted] families of the Dominican Republic." (pg. 2 of submission). This "laundry list of abuses" referenced by Father Hartley includes nine allegations: (1) human trafficking and/or forced labor; (2) child labor; (3) deplorable and unsanitary living conditions; (4) denial of medical, pension, and other benefits due; (5) refusal to inform and publish the current rate and terms of pay; (6) hazardous working conditions; (7) refusal to issue written work contracts; (8) manipulation in the weighing of sugarcane; and (9) retaliatory firing of workers for affiliation with or attempts to organize labor groups or unions and/or for their participation in legal proceedings against employers.
5. Since the names of the families owning the sugar plantations that were the subject of the Hartley submission are redacted, it is not certain which families and plantations Hartley's submission targeted. We can reasonably conclude that the submission references one or more of the three large privately-owned Dominican sugar companies, *Central Romana Corporation* ("CRC"), *Consorcio Azucarero de Empresas Industriales* ("CAEI"), and *Consorcio Azucarero Central* ("CAC"), known collectively as the Dominican Sugar Industry ("DSI"). These companies collectively addressed the

allegations in the submission with their own detailed [report](#) published on August 8, 2013.

6. The DSI examined each of Father Hartley’s allegations and presented the record of the industry. For the most part, the types of abuses that were alleged by Father Hartley in 2011 were anachronistic and, to the extent they existed, were found largely in the state-owned sugarcane sector of the last century operated by the *Consortio Estatal del Azucar* (“CEA”), or State Sugar Council. The state operations have been largely closed since 1999, and the sugarcane sector of the Dominican Republic is almost entirely operated by the three private companies of the DSI. The CEA has more recently leased land to a small mill operated as *Porvenir* which sources sugar from small producers, or *colonos*, including those under the *Federacion Dominicana de Colonos Azucareros*, an association established by the producers active with the CEA. The Hartley submission, however, did not address the CEA operations or the *colonos*. *Porvenir* produces less than four percent of the country’s sugar and does not export to the United States.
7. Following an eighteen-month investigation, in which it focused on the sugar operations of the three private companies of the DSI, the DOL released its [Public Report of Review of Submission](#) on September 27, 2013. While the DOL did not determine that violations of the Chapter 16 requirements had taken place; it found “evidence of apparent and potential violations of labor law” in four areas: (1) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health; (2) the right of association and the right to organize and bargain collectively; (3) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (4) a prohibition on the use of any form of forced or compulsory labor. The report listed eleven recommendations for the Government of the Dominican Republic (“GODR”) to improve its labor inspection process and strengthen enforcement of labor laws.
8. In December 2013, the DSI published its [response](#) to the DOL’s Public Report of Review of Submission. The DSI response was further [updated](#) in April 2016. This document represents a further update by the DSI.
9. In its 2013 response, the DSI identified considerable shortcomings in the DOL’s data-collection process and methodology as well as noted the DOL’s failure to provide any evidence for its three primary findings related to child labor, forced labor, and anti-union discrimination. The DSI’s response also explained that the DOL’s fourth area of findings on violations of acceptable working conditions relied on outdated, unverified, and inaccurate information, and ignored actual evidence to the contrary.
10. For evidence on child and forced labor, the DOL relied on Verité’s [report](#), *Research Into Indicators of Forced Labor in the Supply Chain of Sugar in the Dominican Republic*, published in 2012. The Verité report was funded by the DOL. However, 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.

11. Further, the DSI requested under the Freedom of Information Act that the DOL and Verité provide it with the background data for the 2012 report. However, the DOL stated they did not have the data, and refused to request Verité to provide it to the DSI, in spite of the fact that the DOL itself had funded Verité's research. Verité also refused to share the data with the DSI, citing confidentiality claims, even though it was possible to withhold information identifying any individuals and to provide the remaining data.
12. Even before the DOL released its report in September 2013, the DSI had acknowledged the continued need for improvements in its operations, including with regard to the tracking of hours worked, occupational health and safety ("OSH") equipment and training, and on-going improvements to housing infrastructure in some areas. The DSI also has continued to maintain that no credible evidence has been presented or reported as to the other findings and allegations contained in the DOL report, including the allegations of trafficking and forced labor, child labor, denial of medical and pension benefits, refusal to provide workers information on the rates and terms of pay, manipulation of weighing of sugarcane, or the retaliatory firing of workers for anti-union reasons.
13. The DOL has published six update reviews since the initial report in 2013.<sup>1</sup> These reviews are from one to three pages, and focus on whether the GODR has followed the DOL's inspection recommendations. In addition, the reviews refer to specific labor or working condition violations being assessed by the DOL, and specific actions taken by the companies of the DSI. None of the reviews have presented any evidence of the DOL's 2013 report findings of forced and child labor and anti-union discrimination in the DSI, or even mentioned such findings.
14. There is a clear disconnect between Father Hartley's allegations in the original 2011 submission, the conclusions about those allegations made by the DOL in its September 2013 report, and more recently the types of issues being addressed in the six periodic reviews released by the DOL between 2014 and 2018. In brief, the periodic reviews largely focus only on the tracking of hours and improvements in the OSH programs of the DSI, issues the DSI itself acknowledged publicly since August 2013, even before the September 2013 DOL report was issued.
15. In its sixth periodic review, dated May 16, 2018, the DOL for the first time mentions *colonos* or smaller sugar farmers. The DOL update notes with regard to the challenges posed to Ministry of Labor ("MOL") inspections and compliance efforts *colonos* may have a "limited" knowledge of legal obligations and "violations [are] more likely to

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<sup>1</sup> The six update reviews have been released by DOL on the following schedule: (i) April 14, 2014; (ii) October 16, 2014; (iii) April 22, 2015; (iv) December 30, 2015; (v) October 5, 2016; and (vi) May 16, 2018. They are available [here](#).

occur.” The sixth review also states the *colonos* are more “challenging to inspect because they are remote and have shorter production periods than larger farms.” With regard to the DSI, the update notes that minimum wage requirements have been posted in some *colonos*. In addition, the DOL refers to the “supply chain” (versus *colonos*) of the major companies, and the efforts to communicate labor compliance and good working conditions policies being “inconsistent in effectiveness and oversight.”

16. It is not entirely clear to which “major” companies the DOL is referring to with regard to *colonos* and *supply chain* issues, and whether they are using those terms interchangeably. We do know that in the 2013 report the DOL refers only to the three major companies, CRC, CAEI and CAC, and the Hartley submission only focused on sugar cane plantations owned by certain families, most likely CRC and/or CAEI. Nor in the May 2018 update does the DOL mention any example of non-compliance concerns it has identified in the supply chain of the major companies except for one instance of a supplier inconsistently using a biometric tracking system. There are no findings in the DOL update of child labor, forced labor or anti-union actions in the supply chain of the major companies.
17. No doubt some compliance concerns do exist in the *colonos* and independent suppliers, as there are with the operations of the DSI companies, but both CRC and CAEI continue to work on improving compliance throughout their operations including with their *colonos* and smaller suppliers. CAC, meanwhile, does not have any outside suppliers and produces and mills all of its own sugar. CRC and CAEI provide written requirements to their *colonos* and independent growers, requiring them to adhere to policies prohibiting child and forced labor, as well as other labor compliance requirements including minimum wage and working hours. CRC requires *colonos* to work with CRC production teams on labor law compliance, while CAEI provides its independent growers training on the application of labor compliance and human rights principles, and compliance requirements are discussed in regular CAEI-supplier meetings. CAEI is also assisting suppliers with putting in place biometric systems to record hours worked to ensure that they comply with minimum wage and working hour regulations.
18. It is also the case that some *colonos* are not affiliated with the DSI companies and sell their sugarcane to the state-leased lands supplying the *Porvenir* mill, which produces about four percent of Dominican sugar, none of which is exported. But these operations were never a part of the Hartley 2011 submission, never referenced in the DOL 2013 report, or in any of the subsequent DOL updates to the 2013 report. Indeed, the word *colonos* never previously appeared in DOL documents related to the submission and review report in 2013. Nor are sugar operations unrelated to the major companies mentioned in the May 2018 DOL update, so there is no indication that the DOL has changed its focus from the DSI companies to only the residual CEA-affiliated sugar operations in the DR.

19. In the most recent review, the DOL recognizes “certain Dominican sugar companies” for taking “positive steps towards addressing some of the labor issues identified in the [2013] public report.” These include first, modernizing systems to record hours and compensation due, facilitating compliance with work hours and minimum wages; second, free and adequate personal protective equipment (“PPE”) and sufficient potable water; third, verifiable systems to assure 36-hour break periods; fourth, orientation sessions in Spanish and Creole on applicable labor rights, prohibitions on child labor, and OSH practices; fifth, written employment contracts; and sixth, posting minimum wage signs in Spanish and Creole in major *bateyes* and payment stations, including in some *colonos*.
20. As mentioned, the DOL has never provided any evidence or observations in its periodic reviews since 2013 that the DSI has violations of child and forced labor, or violations of trade union rights, as alleged in Father Hartley’s submission and validated in the DOL’s September 2013 report. In fact, in its periodic updates, the DOL no longer even mentions child labor, forced labor, or trade union rights violations with regard to the DSI. There is simply no evidence of such violations, and certainly no pattern of tolerating any such violations by the DSI should aberrational abuses occur. Moreover, to the extent that the DOL is now looking at *colonos* operations, this is further confirmation that the Hartley submission and the DOL report are no longer relevant reference points, as neither ever raised or included such operations within their scope of concern or review.
21. Further, with regard to other labor compliance issues raised by the DOL in its 2013 report with regard to the DSI companies, these were already identified as areas for improvement by the DSI more than six years ago. The DOL has again, as it has in prior reviews, acknowledged these efforts in its sixth periodic review released in May 2018. With the positive trend on these issues and the fact that the DOL is no longer focusing on unproven allegations of child and forced labor and trade union rights violations that were the foundation of the initial submission and report, it is clear there is simply no value to the continuation of these periodic reviews, and certainly none that continues to focus on the companies of the DSI. Should the DOL have any technical input on “best practices” and improvements on labor compliance and industrial relations in the sugarcane sector, the DSI has made it clear since 2012 that it would welcome such input.
22. Thus far, the DOL has offered no cooperative input to the DSI. The DOL has offered proposals to address child and forced labor and trade union violations in the sugarcane sector, which are issues that have not been verified to be of on-going concern in the companies of the DSI. This focus by DOL would misapply scarce resources. It is time to move past the current DOL framework, and refocus efforts on initiatives that could actually improve the labor and living conditions of the workers in the sugarcane sector and their communities.

23. Consequently, the current DOL review process lacks any foundation or strategic direction and should be ended. Further, the DOL should also remove sugarcane from the DR from the TVPRA list, since under the DOL's own criteria there is no basis for the DOL to keep sugarcane from the DR on the list.
24. Should the DOL be in a position to provide technical assistance to the GODR on best practices to address issues that actually remain of concern in the Dominican sugarcane sector, specifically the effective tracking of hours for piece rate workers in agriculture and continuous improvement in occupational safety and health equipment and training, such assistance would be welcomed by the DSI.

### DOL Periodic Reviews: No Evidence of Serious Compliance Issues by DSI

25. Following its 2013 Public Report of Review of Submission, the DOL has published six update reviews. The first review was released on April 14, 2014; the second on October 16, 2014; the third on April 22, 2015; the fourth on December 30, 2015; the fifth on October 5, 2016; and the sixth on May 16, 2018.
26. The DOL's periodic reviews largely update developments on labor compliance issues related to the tracking of hours, improvements in the occupational health and safety ("OSH") programs of the DSI, and more recently the regularization process for migrant workers, issues the industry itself has addressed publicly since August 2013, even before the September 2013 DOL report was issued.
27. In these reviews, the DOL provides no evidence and no observations consistent with its findings that the DSI has violations of child and forced labor, trade union rights, or other serious abuses as alleged in Father Hartley's submission and presented in the September 2013 DOL report.
28. The DOL's first review,<sup>2</sup> dated April 14, 2014, is one page, and refers to its September 2013 report and the "11 recommendations to the Government of the Dominican Republic ("GODR") to address the report's findings and improve enforcement of Dominican labor laws in the sugar sector." It also references a DOL delegation visit to the DR in March 2014, including to meet with representatives of the sugar industry. While most of the discussion relates to whether the GODR will take measures to implement the DOL inspection recommendations, the only specific references to labor law concerns are when the DOL "underscores its offer of technical assistance to help

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<sup>2</sup> First periodic review, available [here](#).

build labor law enforcement capacity and reduce child labor and improve labor rights and working conditions in the Dominican agriculture sector.”

29. The DOL’s second review,<sup>3</sup> dated October 16, 2014, mentions that it “funded a \$10 million technical assistance project to reduce child labor and improve labor rights and working conditions in the Dominican agriculture sector, including the sugar sector.” However, due to a “lack of support from the GODR, USDOL discontinued project activities in the Dominican Republic in September [2014].”
30. Initially, there was apparently an unfortunate lack of dialogue by the DOL with the Dominican government to assess the validity of the September 2013 report or the DOL’s proposed technical assistance program for moving forward. There was no agreement at the government-to-government level, and no engagement between the DOL and the DSI.
31. In the third review,<sup>4</sup> dated April 22, 2015, the DOL acknowledged for the first time that that “the DSI has taken positive steps to address a number of the labor issues identified in the report, though the efforts and progress vary widely across companies.” The DOL mentioned steps taken by the DSI in implementing systems to better record sugarcane cutters hours of work and compensation due and facilitate compliance with hours of work and minimum wage requirements; ensuring that workers are provided with free and adequate PPE and sufficient quantities of potable water; and in the case of two of the three major companies, having verifiable systems in place to ensure that the workers receive a 36-hour weekly rest period each week and taking steps to provide workers with written work contracts.
32. These issues had been reported as requiring attention by the DSI itself in August 2013, almost two years before the third DOL review was published. Indeed, the DSI reported in 2013 that based on the record keeping systems the companies were confident that all cutters received wages based on tonnage cut that well-exceeded the minimum wage, but the DSI acknowledged without a system that tracked hours that could not be verified. Consequently, as stated earlier, the companies of the DSI have implemented technology systems that permit such additional verification. Likewise, similar changes have been put in place to assure that all mandatory PPE is properly distributed with necessary training.
33. The fourth review<sup>5</sup> is dated December 30, 2015, and focuses on the November 12, 2015 resolution by the Dominican Social Security Council (“CNSS”) determining that migrant workers with regularized status are entitled to participate in the Dominican

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<sup>3</sup> Second periodic review, available [here](#).

<sup>4</sup> Third periodic review, available [here](#).

<sup>5</sup> Fourth periodic review, available [here](#).



Social Security System, and that employers are required to submit the required paperwork for such enrollment.

34. One of the conclusions of the September 2013 DOL report was that employers were making deductions for social security contributions from workers that were not eligible for enrollment in the system because they did not have regularized work status – and in this review the DOL cautioned that deductions should not be made for any workers still employed in the sector without regularized status. This, however, was another allegation in the 2013 DOL report that was not substantiated. No DSI company was making deductions for workers not eligible to be enrolled in the social security system.
35. In its fifth review,<sup>6</sup> the DOL also indirectly acknowledges that it has no evidence for its 2013 finding of widespread underpayment of wages to sugarcane cutters by focusing, for the first time, on the issue of verifying minimum wage payments not for sugarcane cutters, but for other cultivation workers in the sector. This again is an issue already identified by the DSI companies three years earlier in their rebuttal to the 2013 report. Since other cultivation tasks besides cutting are also done on a piece rate basis, the DSI had earlier indicated it was working on verifying the hours worked by such individuals so that it could also be validated that they received more than the legally-mandated minimum wage.
36. The DOL’s sixth review<sup>7</sup> was published on May 16, 2018. The sixth review also recognizes advancements made by DSI with respect to improving labor law compliance, particularly in terms of tracking hours and wages, OSH practices involving PPE and potable water, written contracts, and orientation sessions for workers to inform them of their rights and obligations. As stated earlier, these were areas for improvement that the DSI had acknowledged even before the original DOL report was issued in 2013, and much has been done to improve these areas during the last five years.
37. The DOL for the first time in its sixth review in May 2018 mentions compliance in the *colonos* and the “wider supply chain.” In this latest review, the DOL suggests that labor violations in *colono* operations are “more likely to occur.” This is a clear acknowledgment of what the DSI has long said, that the allegations against the companies of the DSI that led to the investigation and report in 2013 have not been well-founded and the process and focus on the sector remains misplaced and distorted. The DOL is now advancing a new line of concern; the DSI is not doing enough to assure compliance in the supply chain and such efforts “are inconsistent in effectiveness and oversight.” But, as has often been the case, no evidence is provided to substantiate the concern expressed.

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<sup>6</sup> Fifth periodic review, available [here](#).

<sup>7</sup> Sixth periodic review, available [here](#).

38. As the DSI indicated in its 2013 report, only CRC purchases sugarcane from *colonos* while CAEI purchases from independent growers. CAC produces all the sugarcane that it crushes and does not buy sugarcane from external sources. Historically, *colonos* have had more integrated relationships with mills, which may include a mill supporting growing and harvesting cane and a commitment to purchase the sugarcane produced. In contrast, independent farmers manage their own operations and independently decide to which mill they will sell their sugarcane.
39. In many cases, *colonos* or small farmers are not even affiliated with the DSI. They may have a legacy of involvement with the *Consortio Estatal del Azucar* (“CEA”), or State Sugar Council which largely shut down mill operations but has a relationship with the *Porvenir* mill, which is not part of the DSI, and which produces under four percent of Dominican sugar, and does not export to the United States. There are *colonos* selling sugar to *Porvenir*, including those under the *Federacion Dominicana de Colonos Azucareros*, an association established long ago by the producers active with the CEA. The Hartley submission and the 2013 DOL report, however, did not address the CEA operations or their *colonos*.
40. Both CRC and CAEI have provisions in the contracts they sign with *colonos* or independent growers specifying that those operations must adhere to labor compliance requirements. In addition, the companies have mechanisms to monitor compliance with these provisions and when violations are identified action is taken to address the violations. In the most serious cases, such as those involving child and forced labor, CRC and CAEI may notify the appropriate government agencies of the violations found. They could terminate their relationship with that supplier and refuse to purchase sugarcane from the supplier.
41. In short, the DOL periodic reviews generally report on issues and reforms identified and initiated by the DSI itself. These issues, including record keeping reforms, the calculation of certain benefits, and improved PPE and training, and are categorically different than the charges of forced labor, child labor, and anti-union actions that are contained in the September 2013 DOL report and for which the DOL had been proposing an agreed plan of action. They are also far different than the DOL’s report findings of systematic under-payment of wages, illegal deductions, wrongful withholding of social security benefits, and cheating on the weighing of sugarcane. The DSI also made clear that the violations alleged on these matters were not verified, and were certainly not a practice or pattern in the DSI. Further, the DSI committed that any isolated violation found, although the DOL never provided evidence of any, would not be tolerated.
42. The most recent May 2018 DOL review has now for the first time raised an issue about the labor compliance profile of *colonos* or independent growers, without offering any evidence for these concerns with regard to CRC and CAEI practices. That is not to say that there may not be some compliance issues, but again these would not be tolerated

by the two mills and they have on-going continuous improvement programs to assure any compliance gaps are being addressed. Once again, these are also no issues of child or forced labor, or trade union violations. Indeed, it is hard to know what the alleged issues may entail since other than reference to the ineffective use of tracking technology by one supplier, the DOL provides no specific concern about any specific supplier that could be investigated or addressed. Moreover, the legacy of concerns about *colonos*, as has been made clear in other documents produced by the DSI, largely involves the part of the sugarcane sector operated by the CEA. Most of these operations have been closed for many years, and the only remaining mill outside the DSI working with *colonos* is the government-affiliated operation *Porvenir*, which produces a small volume of sugar that is not exported.

## Conclusion

43. There is simply no record indicative of serious problems of child labor, forced labor, trade union rights violations or other fundamental labor rights violations to necessitate a continuous focus by the DOL on the Dominican sugarcane sector. Further, the evidence does not justify the investment of a large technical assistance program to address child and forced labor and trade union rights in the sugarcane sector, nor would this be an effective use of scarce resources.
44. Rather the resources that may be available could be more usefully committed to improved local community infrastructure for workers and their families in the sugar producing regions. At the same time, the DSI has made clear as it continues to improve its compliance and sustainability practices it would be willing to jointly develop a cooperative program of technical support on “best practice” compliance approaches in the sugarcane sector should the DOL wish to support such an effort.
45. It remains important to note that although the large majority of the DOL’s September 2013 report focused on alleged violations of forced labor, child labor, trade union rights and retaliation against workers, there has been no evidence presented for these allegations and related conclusions contained in the 2013 report or in any other document, including the DOL’s own periodic reports, published since then, despite repeated requests to the DOL to provide it.
46. Further, labor compliance issues raised by the DOL in terms of working hours, minimum wages, PPE, potable water, etc. have all been addressed by the DSI, which has been acknowledged by the DOL. There is no purpose therefore being served by the DOL review process as the DSI in cooperation with Dominican labor authorities is capable of addressing any labor compliance requirements and resolving any labor violations in alignment with Dominican labor laws.

47. Consequently, the DOL review from its 2013 report on the DSI, which remains open, lacks a rationale for remaining open. As has been demonstrated in prior publications and this document, the review under Chapter 16 of DR-CAFTA has not revealed any evidence of violations of Chapter 16 in six years and is not likely to do so. Consequently, the review under Chapter 16 should be ended. Any further engagement should be on the basis of a cooperative labor program mutually-agreed between the two governments, and, hopefully, in consultation with the DSI.
48. In addition, the DOL should also remove sugarcane from the DR from the TVPRA list. As has also been demonstrated in prior documents, the references used by the DOL to keep sugarcane from the DR on the list are uncorroborated, unverified, and dated, and do not meet the DOL's own guidelines for information to be used in preparing the TVPRA list. There is simply no rationale for the DOL to keep sugarcane from the DR on the list.
49. Finally, the DOL should instead focus its limited resources on technical and cooperative assistance programs to implement and institutionalize best practices in the agricultural sector in the DR. The DSI would welcome a cooperative and targeted program of technical assistance in the sugarcane sector, and remains available to assist any effort of the U.S. and Dominican Governments in moving forward on such an initiative.