



Andean FTA: Threats to Development

by Karen Hansen-Kuhn

In May of this year -- just as it was becoming clear that U.S. Congressional opposition would postpone the consideration of the U.S.-Central America Free Trade Agreement (CAFTA) until after the November elections -- the Bush Administration began negotiating a free-trade agreement with Colombia, Ecuador and Peru. The Bolivian government, which is currently attending the talks as an observer, could also formally join at some point in the future. While the negotiations are being held in secret, all indications are that this accord would extend many of the most problematic aspects of NAFTA, the proposed Free Trade Area of the Americas (FTAA) and CAFTA to the Andean countries. These provisions could have a devastating impact on the region, particularly in light of the environmental, political, human-rights and economic conditions in the four countries.

Background

The Bush Administration formally announced plans to negotiate trade agreements with the Andean countries just days before the FTAA trade ministerial meeting in Miami last November. In its letter to Congress on the accord, the office of the U.S. Trade Representative (USTR) described its plan to negotiate an Andean Free Trade Agreement (AFTA) as one more step in the promotion of "competitive liberalization" in the Americas that would "lend momentum" to the stalled FTAA talks. Among the negotiating objectives listed by USTR were: increased market access for U.S. products, especially agricultural goods to Andean markets; the establishment of intellectual-property provisions that go beyond those agreed to in the World Trade Organization (WTO); increases in access to service sectors, including telecommunications and energy in the Andean countries; national treatment and new protections for U.S. investors in the region; and commitments from the Andean governments to enforce their existing labor and environmental laws.

The negotiations began in Colombia on 18 May, with a subsequent round held in Atlanta in June. Future negotiating sessions are scheduled for late July in Lima, Peru, in the

United States in September, then in Ecuador in November and again in the United States in December. The negotiations are scheduled to be completed by February 2005, in part so that the resulting agreement can be considered by the U.S. Congress before Trade Promotion Authority expires on 1 June 2005. This is a much shorter timeframe than existed for the completion of any previous U.S. trade agreement.

These four Andean countries, along with Venezuela, have already, as members of the Andean Community, reached numerous agreements on economic integration. The Andean Community structure also includes such bodies as the Andean Labor Advisory Council, a mechanism that many Andean NGOs and unions have found to be a useful forum for the promotion of labor rights in the region. It is important to note, therefore, that many features of these and other elements of the Andean Community agreements would be superceded by rules established in the U.S.-Andean free-trade agreement.

A similar situation exists in the case of accords previously reached with the United States. Colombia, Ecuador, Peru and Bolivia currently receive special access to U.S.

markets, for example, under the Andean Trade Preferences and Drug Eradication Act (ATPDEA). The ATPDEA, which was approved by Congress in 2002, expanded the market access for textiles and other commodities that had been granted by the 1991 Andean Trade Preferences Act (ATPA). The ATPDEA and ATPA are set to expire in December 2006. Governments in the region have stated that a key reason for negotiating this trade agreement is to ensure that the market-access provisions in the ATPDEA are made permanent. At the Atlanta negotiating session in June, however, Andean negotiators were surprised to learn that the U.S. position is that those trade concessions do not represent a starting point for additional market access. Rather, all tariffs on all products are on the table for negotiation.

Threats to family farmers

Andean citizens' organizations, and at least one government ministry, have expressed alarm over the impact that a wider opening of their markets to U.S. goods might have. Many of them point to the Mexican experience under NAFTA, where there was a huge influx of lower-cost, subsidized corn imports from the United States, which put severe pressure on Mexican farmers. During the NAFTA period, Mexican agricultural employment has dropped by more than 1.3 million. The current U.S. subsidy system leads to over-production of many crops, thus depressing world prices, something that hurts family farmers in all countries, including the United States.

Trade in agricultural goods in the Andean region was dramatically liberalized over the past decade under a series of World Bank and International Monetary Fund agreements. One of the few remaining mechanisms protecting family farmers is the Andean Community's "price band" system. Under that mechanism, if prices for such goods as wheat, corn, barley, sorghum or rice drop below certain levels, variable tariffs of up to 100 percent can be applied to imports of the good to restore prices. The duties fall when prices rise above certain levels. This has



Ecuadorian woman protests Andean FTA
Source: ECUARUNARI, Ecuador

served to cushion farmers from the vagaries of international commodity prices.

A study commissioned by the Colombian Ministry of Agriculture estimates that, if tariffs on agricultural imports from the United States were eliminated under an Andean FTA, gross incomes for producers of rice, corn, sorghum, soybeans, cotton, beans, palm oil and poultry would fall by 57 percent. The study also indicated that employment and wages for workers in those sectors would fall by 35 percent. The study concluded that if the Andean price-band system were maintained under an agreement, losses would be on the order of seven percent.¹ The U.S. government is pressing for that system to be abandoned, however, and for tariffs to be eliminated in stages. At the same time, it has argued that changes in the U.S. farm subsidy program are off the table.

Such drops in agricultural prices and incomes could have devastating consequences for the region. When prices for coffee, which tends to be grown by small-scale producers, plummeted over the last few years, Colombian farmers were driven to desperate measures, including the production of coca.² Andean farmers facing a flood of low priced U.S. imports under a free-trade agreement could also feel compelled to turn to the production of illegal crops.

Threats to Biodiversity and Public Health

Colombia, Ecuador, Peru and Bolivia contain some of the most environmentally important territories on the planet. Colombia alone contains 0.7 percent of the world's land mass but is home to over 10 percent of its species.³ These four countries are among 15 in the world considered to be mega-biodiverse and thus merit special measures to conserve the richness of their flora and fauna.

These countries are also the homes of sizeable indigenous populations, many of whom have considerable traditional knowledge of medicinal and other use of local plants. Regulations established under Andean Community agreements in 1996 recognize and protect the rights of indigenous, African-American and farm communities over such "traditional knowledge, innovations and practices associated with genetic resources and their derivative products", as well as prohibit patents on plants and animals.⁴ It has been widely reported in the Colombian and Ecuadorian press that the United States is seeking to overturn those laws, pressing for patents on plants, animals and diagnostic, therapeutic and surgical procedures. In fact, the Ecuadorian government, responding to pressure from the U.S. embassy, is promoting a new Law on Biodiversity that would pave the way for future patents on plants and animals.

The U.S. proposals for AFTA also include several new rights for patent holders that would undermine affordable access to medicines. These include the extension of patent protections from 20 to 25 years to compensate for delays in processing patents, a five-year ban on the use of trial data for the approval of generic medicines once the original patent expires, and the granting of "second use" patents when a new use is discovered for an existing medicine. These proposals, which go beyond commitments in the WTO or the Andean Community, were included in the U.S.-Chile FTA and CAFTA.

According to Juana Ramos, Director of the Latin American Pharmaceutical Laboratories Association, the current patent system encourages competition between multinational pharmaceutical companies and local generic medicines producers in the Andean countries, which reduces prices between 40 and 90 percent. The proposed rules, she states, would virtually eliminate local pharmaceutical laboratories and result in sharply increased prices, as well as the loss of some 14,000 jobs in those labs.⁵

Threats to National Sovereignty

One of the most controversial provisions in NAFTA is its "investor-state" clause, a provision in the agreement's investment chapter that gives foreign investors the right to sue national governments over public-interest laws that could undermine their potential profits. Some 28 cases have been brought against the United States, Mexico and Canada, many of which have been challenges to local environmental and public-safety laws. The U.S. government is promoting the inclusion of that clause in AFTA.



**Sovereignty Yes, FTAA and FTA No!
Colombians demonstrate against
Andean FTA Source: MRU, Colombia.**

For several years now, the Bolivian government has had to deal with a lawsuit brought under a similar clause in a Bilateral Investment Treaty. Aguas del Tunari, a subsidiary of the U.S.-based Bechtel corporation, sued the Bolivian government for US\$25 million in compensation for the latter's cancellation of a contract for water distribution in the city of Cochabamba. The government had taken this action in response to massive mobilizations and riots, which left one person dead and over one hundred wounded, that occurred when local consumers learned that they could be forced to pay as much as US\$15 a month for water (when the minimum wage was US\$60 a month). Even though the company had made only minimal investments in the project, it is demanding compensation under the investor-state clause for its lost potential profits.⁶

Only Bolivia and Colombia currently have Bilateral Investment Treaties with the United States. If the four countries were to approve an AFTA that included the investor-state clause, they could expect numerous suits such as the Bechtel case. Even now, the U.S. government has applied political pressure on all four governments to resolve pending investment disputes before entering into the trade talks. It has pressed the Peruvian government on arguments with U.S. investors arising from tax assessments, the Colombian government on disputes related to privatized telecommunications services, and the Ecuadorian government on issues related to ChevronTexaco's responsibility for the cost of a cleanup of toxic-waste dumping in the Amazon region ordered by the courts.

If enacted, AFTA would also result in serious reductions in local tax revenues. Administratively, tariffs are a simple tax to collect, making them attractive to many developing countries. A recent study on potential economic impacts of the FTAA on the Andean Community calculated that, if Andean countries were to eliminate tariffs, revenue losses could amount to a total of US\$657 million in Ecuador and Bolivia, US\$903 million in Peru, and US\$1.2 billion in Colombia. A study conducted for the Colombian government estimates that it would

need to increase regressive value-added taxes by two to three percent to compensate for the tariff cuts.⁷ While, in theory, governments could implement more progressive tax systems, in reality they are likely either to raise regressive value-added taxes, cut social spending or both, especially since the latter measures are so strongly promoted by the World Bank and IMF.

Threats to Labor Rights

Colombia is well-known as the most dangerous country in the world in which to be a union leader. According to the Colombian Escuela Nacional Sindical, more than 2,000 trade unionists have been murdered since 1991, including nearly 100 last year. The Colombian government has failed to prosecute, let alone punish, anyone in 99 percent of those cases. According to the CUT, Colombia's largest trade union confederation, in 2002 some 41 percent of the murders were committed by right-wing paramilitaries, 12 percent by the FARC guerrillas, and 47 percent by unknown assailants.⁸

While the number of assassinations of trade unionists has declined in the past year, other forms of attacks on union members and their families continue. In addition, the Colombian government and both national and foreign companies engage in practices that restrict workers' rights to organize and bargain collectively. As a result, the formal process of registering a new union can take several years, and, according to the U.S. State Department's 2003 report on Human Rights, the number of workers covered by collective bargaining agreements fell from 409,918 in 1994-95 to 176,774 in 2002.⁹

Serious labor-rights problems exist in Ecuador, as well. In 2002, Human Rights Watch issued a report, *Tainted Harvest*, which detailed abuses of labor rights, including the use of child labor, as well as violence against trade unionists, in the banana industry. The ATPDEA, passed by the U.S. Congress, includes a petition process for the review of alleged violations of internationally-recognized labor standards.

Table 1: Principal Andean Country Exports to the United States (2003)

Country	Exports to US	US\$ millions	Imports from US	US\$ millions
Bolivia	Precious stones	55.3	Machinery	53.6
	Apparel	31.0	Electronics	21.1
	Tin	26.8	Donated goods	14.7
	Wood	24.6	Grains	10.5
	Fruit	13.8	Photo & med. Equip.	9.9
Colombia	Petroleum	3,209.1	Machinery	874.9
	Precious stones	560.5	Organic chemicals	460.1
	Coffee and tea	368.3	Electronics	345.7
	Cut flowers	347.5	Grains	281.5
	Apparel	326.0	Plastics	199.0
Ecuador	Petroleum	2,720.9	Machinery	420.7
	Fish/shellfish	329.7	Electronics	212.5
	Fruit (bananas)	307.0	Petroleum products	115.7
	Processed foods	157.5	Paper	95.6
	Cut flowers	106.0	Plastics	72.5
Peru	Precious stones	503.4	Machinery	500.6
	Apparel	473.6	Electronics	200.1
	Copper	446.5	Plastics	116.7
	Petroleum	248.6	Grains	109.7
	Vegetables	112.8	Petroleum products	92.0

Source: International Trade Administration, TradeStats Express database.

Citizens' groups, including the U.S. Labor Education in the Americas Project, the AFL-CIO and Human Rights Watch, working with Ecuadorian unions, have utilized that process to push the U.S. government to investigate these problems and the Ecuadorian government to take steps to resolve them. In response, the U.S. government delayed Ecuador's entry into the ATPDEA program, insisting that the government adopt measures to improve the protection of worker rights. While the government has made many promises of improvements, it has yet to implement the necessary measures, such as hiring sufficient labor inspectors.^x Nevertheless, the review process has served to focus public attention, especially within Ecuador, on the violations and the actions needed to address them.

Unfortunately, under an Andean FTA, that process would likely be replaced with provisions like those in CAFTA and the U.S.-Chile FTA, which only require countries to enforce existing laws, no matter how inadequate those laws are. As indicated in Table 1, bananas, cut flowers, apparel and petroleum -- sectors that are notorious for

labor-rights violations -- are among these countries' leading exports.

USTR has acknowledged the serious labor-rights violations in these countries, but so far has made no proposals to address the extreme labor-rights situation or the impunity of violators of those rights.

Increasing Political Tensions and Threats to Democracy

Over the last few years, the Andean countries have experienced political turmoil. Ecuadorian civil-society groups, led by indigenous peoples and unions, have forced the resignation of two presidents in seven years, in large part because of their governments' promotion of privatization programs that exacerbated inequities and tensions between rich and poor. In 2003, indigenous and other organized civil-society movements in Bolivia similarly forced the resignation of President Sanchez de Lozada in the wake of his violent repression of demonstrations against the government's plans to export natural gas under terms that would not benefit the majority of Bolivians. As

of July 2004, President Alejandro Toledo of Peru had public approval ratings of just seven percent due to a string of corruption scandals and the fact that economic conditions for the majority of the population have not improved despite high levels of economic growth. On 15 July, speaking at a rally marking the first national strike since 1999, union leader Mario Huaman claimed that, "More than 85 percent of the population is demanding that Toledo go."^{xi}

In addition, there is little doubt that the longstanding civil war in Colombia, the recipient since 2000 of more than US\$2.5 billion in U.S. military and economic assistance, has been exacerbated by conflicts over important natural resources, especially oil. In fact, starting in 2003, the Bush Administration has used some of the aid funds to support the creation of a special military brigade to protect the Caño-Limón oil pipeline, which is jointly owned by ECOPEPETROL (the state oil company) and the U.S.-based Occidental Petroleum. That pipeline, which has been the subject of considerable controversy since it was built in a forestry reserve, has been the subject of repeated attacks by guerrilla groups.

Occidental, along with other U.S. oil companies such as ExxonMobil, has lobbied the Clinton and Bush Administrations for increased military aid to Colombia, and in 2000 requested that military operations be extended to the northeastern regions of Colombia, where Occidental operates. Occidental and other oil companies have also hired private security guards who have been implicated in numerous human-rights abuses, including massacres. Occidental also invests heavily in oil exploration in Ecuador.^{xii} Over the past year, the Colombian government has started to reduce its role in oil and gas production. It also granted an indefinite extension to Occidental to exploit the Caño Limón reserves and to ChevronTexaco for gas production in Guajira.^{xiii}

Current limitations on foreign investment in oil and gas production in Colombia will clearly be at issue in the AFTA negotiations. During the NAFTA negotiations, the U.S. government

was unsuccessful in its attempts to eliminate all such restrictions on foreign ownership in the Mexican petroleum sector, although the sector was opened up considerably to foreign investors. Unless the Andean countries, all of which have significant petroleum, gas and mineral reserves, specifically exempt those sectors from the Andean FTA, they will be subject to the terms of the agreement, including the requirement of "national treatment", i.e., that foreign investors be treated at least as well as national investors, and prohibitions on "performance requirements", designed to ensure that foreign investment serves local development needs.

Conclusions

There is little reason to believe that any agreement negotiated along these lines would generate development in the Andean region and even less reason to believe that rushing through such negotiations in record time would generate a well reasoned accord tailored to the region's specific needs. Given the recent mass mobilizations in the region, many of which have focused on privatization and deregulation programs that would be made permanent under such an accord, it is more likely that it would generate social and political conflict. The U.S. and Andean governments should avoid repeating this flawed approach and instead step back and open a public discourse in each country on the most appropriate approach to economic integration, one that would benefit the peoples and environments of all of the countries involved.

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Notes

¹ "Tratado de Libre Comercio: Pérdidas agrícolas de 57% sin franja de precios en TLC," by Paola Ramírez Leaño, *La República* (Colombia), 15 July 2004.

² "Coca Invades Colombia's Coffee Fields," by Scott Wilson, *Washington Post*, 30 October 2001.

³ *The Integration of Biodiversity into National Environmental Assessment Procedures: Case Study on Colombia*, UNDP/UNEP/GEF, September 2001, p 4.

⁴ "U.S.-Colombia: Free Trade without Biopiracy?," Constanza Vieira, *Inter-Press Service*, 22 June 2004. Available at www.grain.org.

⁵ "TLC: EEUU muestra sus cartas en el tema de medicinas," *Diario Hoy* (Ecuador), 1 July 2004.

⁶ *Bolivia's War over Water*, by Jim Shulz, The Democracy Center, 2003.

⁷ *Free Trade of the Americas Agreement: Economic Impacts for the Andean Community*, by Miles K. Light, University of Colorado, August 2003.

⁸ *Testimony for March 17, 2004 Public Hearing Concerning the Proposed U.S.-Andean Free Trade Agreement*, Stephen Coats, U.S. Labor Education in the Americas Project.

⁹ *Testimony on the Proposed U.S. – Andean Free Trade Agreement*, submitted by the American Federation of Labor and Congress of Industrial Organizations at the Inter-Agency Public Hearing on the U.S.-Andean Free Trade Agreement, 2 March 2004.

^{*}Testimony by Stephen Coats. Also see www.usleap.org for updates and public campaigns on labor rights.

^{xi} "Peru hit by major workers' strike," *BBC News*, 15 July 2004.

^{xii} Information on conflicts over oil in Colombia drawn from *The Cost of Doing Business: How Oil, U.S. Militarization and Corporate Activity Intersect in Colombia*, American Friends Service Committee Peace Fellowship Project, 2003.

^{xiii} *El tratado bilateral y el problema de ECOPETROL*, Red Colombiana de Acción frente al Libre Comercio y el ALCA, 10 May 2004.

For more information:

Alliance for Responsible Trade (ART)
927 15th Street, NW, 4th Floor
Washington, DC 20005
Tel. 202-898-1566
Web: www.art-us.org

U.S.-Labor Education in the Americas Project
P.O. Box 268-290
Chicago, IL 60626
Tel. 773-262-6502
Web: www.usleap.org

Latin America Working Group
110 Maryland Avenue NE, Box 15
Washington, DC 20002
Tel. 202-546-7010
Web: www.lawg.org

Oxfam America
1112 16th St., NW, Suite 600
Washington, DC 20036
Tel. 202-496-1180
Web: www.oxfamamerica.org

Washington Office on Latin America
1630 Connecticut Ave NW, Suite 200
Wash., DC 20009
Tel. (202)797-2171
Web: www.wola.org