

**THE PENDING TRADE AGREEMENT WITH  
COLOMBIA**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON TRADE  
OF THE  
COMMITTEE ON WAYS AND MEANS  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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**THURSDAY, MARCH 17, 2011**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
WASHINGTON, D.C.

The subcommittee met, pursuant to notice, at 10:02 a.m., in Room B-318, Rayburn House Office Building, the Honorable Kevin Brady [chairman of the subcommittee] presiding.  
[The advisory of the hearing follows:]

# *HEARING ADVISORY*

## **Brady Announces First in a Series of Three Hearings on the Pending, Job-Creating Trade Agreements**

Thursday, March 10, 2011

Congressman Kevin Brady (R-TX), Chairman, Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a series of hearings on the pending trade agreements with Colombia, Panama, and South Korea. According to the President's own statements, these agreements have the ability to create over 250,000 American jobs. The first hearing will address the agreement with Colombia. The hearing will take place on Thursday, March 17, 2011, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10 a.m. The Subcommittee will soon advise regarding hearings on the trade agreements with Panama and South Korea.

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing. A list of invited witnesses will follow.

### **BACKGROUND**

In 2007, the United States concluded a trade agreement with Colombia, which is still awaiting Congressional consideration. On January 25, 2011, the Ways and Means Committee held its first hearing on this agreement, along with the pending trade agreements with Panama and South Korea.

The Colombia trade agreement was also discussed at the Ways and Means Committee hearing with Ambassador Kirk, on February 9, 2011. At that hearing, in response to Chairman Camp's request that Ambassador Kirk set forth a concrete timeline for Congressional consideration of the Colombia trade agreement within the first six months of the year, Ambassador Kirk said that he would be sending a delegation to Colombia and would then develop "a workable plan" for moving the Colombia agreement forward. Ambassador Kirk stated that, prior to the submission of the FTA, "it will be imperative to resolve issues regarding laws and practices impacting the protection of internationally-recognized labor rights, as well as issues concerning violence against labor leaders and the prosecution of the perpetrators." He further noted that the President had "directed us to intensify our engagement with Colombia so that we can resolve these outstanding issues this year." The delegation sent by Ambassador Kirk was in Colombia the week of February 15.

The U.S.-Colombia Trade Promotion Agreement would open new markets to U.S. exports and, in turn, benefit American businesses, farmers, workers, and consumers. The independent U.S. International Trade Commission (ITC) has estimated that implementing the agreement would increase U.S. exports by \$1.1 billion and add \$2.5 billion per year to U.S. GDP. The benefits of trade agreements are also long-lasting. Since 2000, U.S. exports to the 13 countries with which the United States has implemented trade agreements have grown almost twice as fast as our worldwide exports.

Colombia has concluded trade agreements with major trading partners and export competitors of the United States, so U.S. failure to implement our own trade agreement with Colombia could severely disadvantage U.S. exporters and jeopardize U.S. job creation. The Canada-Colombia trade agreement is expected to enter into force around July 1 of this year, removing significant Colombian tariffs for Canadian agriculture exporters while similar tariffs remain in place against U.S. agriculture exports. In 2008, Colombia implemented a trade agreement with the MERCOSUR

countries, including Argentina and Brazil. Subsequent to implementation of that agreement, key U.S. agricultural exports to Colombia have decreased significantly.

Over the years, several objections have been raised to our trade agreement with Colombia. Some have argued that sustained progress to address concerns about Colombian labor law and violence against workers in Colombia must occur before it is appropriate to consider the agreement. However, supporters of the agreement argue that passing the agreement will improve labor protections and express frustration the Administration has not identified concrete steps for Colombia to take to address concerns.

In announcing this hearing, Chairman Brady said, **“Failure to move forward with the U.S.-Colombia trade agreement is undermining U.S. influence and leadership in our own hemisphere and putting at risk both good U.S. jobs and the competitiveness of U.S. exporters. The United States cannot afford to sit on the sidelines while Colombia implements trade agreements with other major countries, putting American workers, farmers, ranchers, manufacturers, service providers, and other exporters at a competitive disadvantage. We need a concrete plan now from the Administration for moving forward with the Colombia agreement, to allow Congressional consideration of all three pending trade agreements by July 1.”**

#### **FOCUS OF THE HEARING:**

The focus of the hearing is on Congressional consideration of the pending trade agreement with Colombia. The hearing will address the economic benefits this agreement will bring to American businesses, farmers, workers, consumers, and the U.S. economy. In addition, the hearing will examine the national security and geopolitical implications of the agreement and will explore developments within Colombia that have occurred since the trade agreement was concluded.

#### **DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select “Hearings.” Select the hearing for which you would like to submit, and click on the link entitled, “Click here to provide a submission for the record.” Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by the close of business on Thursday, March 31, 2011. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225-6649.

#### **FORMATTING REQUIREMENTS:**

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word or WordPerfect format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or para-

phrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available at <http://www.waysandmeans.house.gov/>.

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Chairman BRADY. Well, good morning. I would like to welcome all of you, especially Colombian Ambassador Silva, to our first Trade Subcommittee hearing of the 112th Congress. Today's hearing is the first in a series of three hearings we will hold on the pending trade agreements with Colombia, Panama, and South Korea. This continues the examination the full committee began in its hearings on January 25th and February 9th.

In this first of our hearings, we examine the U.S.-Colombia trade promotion agreement. It is important to understand today's hearing in the context of the full series of hearings we will be holding. I strongly believe that we should consider all three agreements by July 1st. I hope that the President has heard the repeated bipartisan calls from Congress to move forward promptly with all three of these agreements, rather than leaving one or another to lag behind. These are all good agreements. The time to move forward with all three is now.

Why the sense of urgency? The answer is simple. America is being left behind. Take the case of Colombia. We concluded our trade agreement with Colombia in June 2007, going on 4 years ago. Other countries have taken advantage of our delay. They have moved aggressively to sign trade agreements with Colombia. And, as a result, many U.S. exporters now operate at a competitive disadvantage. They are forced to pay higher tariffs on exports to Colombia, and the exporters from some of our key competitors.

The U.S. share of Colombia's ag imports plummeted from 71 percent to 27 percent in just the 2 years since the agricultural provisions of the Colombia Mercosur trade agreement went into effect. Direct cause of that dramatic decline is our failure to implement our trade agreement.

It will only get worse if we delay further. The Canada Colombia trade agreement is expected to enter into force by July 1st. Colombia's agreement with the EU is also expected to enter into force this year. Colombia is rapidly concluding its negotiations with South Korea. Implementation of agreements by these other countries, and continued inaction on our agreement, will result in further missed opportunities to create U.S. jobs. In fact, it will result in a decline in existing U.S. jobs. We either move forward or we

move backward; the choice is ours. Staying still is just not an option.

I have stressed repeatedly how troubled I am by the failure to advance a Latin trade agenda. I am holding out hope that the President's departure this Saturday for Brazil, Chile, and El Salvador, his first trip to South and Central America as President, will mark the beginning of re-engagement with the region.

But the key is, where is Colombia on this agenda, and where is Panama? We cannot afford foot-dragging on these agreements, nor shabby treatment of these two important friends and trading partners. It is noticed by all our neighbors, threatens to undermine U.S. leadership in our hemisphere. And in the face of our inattention, our neighbors are forced to look elsewhere for dependable economic and geopolitical alliances.

The consequences of such a plunge in our influence would extend not only the economic losses, but also the national security. Colombia is a strategic ally in the war on drugs. It's a steadfast democratic friend and a reason to include several increasingly undemocratic and anti-American leaders, like Venezuela and President Hugo Chavez. We need to stand with our friends, and we should start by moving forward with the Colombia trade agreement and our other two pending trade agreements by July 1st.

I respect the views of our ranking member and the Administration about labor violence and labor rights, although I believe that Colombia's dramatic improvements justify congressional consideration. However, to the extent that some believe that more progress is necessary, it's only fair that they identify specifically what they would like to see, an action plan for achieving that goal, and a timetable for completing it promptly. We need to do this to keep the—rather than keep the agreement in limbo forever.

I would like to welcome all of our witnesses today, who—I appreciate their leadership and their advice and efforts in this effort. I want to thank them for being with us. I look forward to hearing the testimony of both panels. And at this time I would like to yield to Ranking Member McDermott for the purpose of an opening statement.

Mr. MCDERMOTT. Thank you, Mr. Chairman. And I am pleased to see the witnesses here today.

I have to admit I was a little disappointed when I heard about this hearing. I hoped this would be the mark-up for the Korean free trade agreement. That agreement is done. The Korean free trade agreement creates incredible new export opportunities for American goods. It has the support of business, it has the support of labor. It has the support of Democrats, Republicans. The Administration says it is ready to submit the implementing legislation. Really, no obstacles remain. We should be moving on the Korea FTA now.

But, for whatever reason, House and Senate Republicans have decided they can't do anything on trade until the Colombia FTA is ready. I simply don't get that. For years, Republicans have cried that passing the Korea free trade agreement puts American workers in businesses at risk of falling behind their European counterparts. In a September 2009 letter, Republican leadership argued that unless we approve the U.S.-Korea free trade agreement before

the EU–Korean pact goes into effect, “U.S. workers will lose \$1.1 billion in exports to Korea, injuring industries vital to the U.S. economy, including machinery, auto parts, chemicals, plastic, food, meat, and the dairy sectors.”

Well, the Obama Administration fixed the Korea free trade agreement and the EU free trade agreement is going into effect on July 1st. So why are we not dealing with Korea? Why aren’t we working on the implementing legislation, is really my question today.

No one is saying we should forget about Colombia. Just the opposite. Colombia has been a strong and critical ally. This agreement will strengthen the U.S.-Colombia relationship even further. But it makes no sense to hold up Korea while the concerns of the Colombian FTA are being addressed—badly needed fixes that the Administration is working on very actively now.

We have a partner in this process, President Santos, who, unlike his predecessor, wants to work with us. In terms of what needs to be done in Colombia, here are some specifics that I believe we ought to be considering.

Basic human rights are a big problem. Workers and labor rights are killed every day by the dozen. The rampage goes on year after year, and there is no justice. Between 2005 and 2009, there were more union workers murdered in Colombia than in the rest of the world combined. And the workers who are not killed are intimidated to prevent them from exercising the basic human right to organize.

Let me give you a real world example taken from the Colombian flower sector. This is an export sector. Seventy-nine percent of Colombian flowers come to the United States. Mothers Day is just around the corner and the flowers are coming. And almost all the flower workers are women. They are single moms. When flower section unions have attempted to assert their rights, they have been met with threats and violence.

For instance, last year, workers at the Guacari plantation struck over unpaid wages and benefits. The company brought in thugs who beat the workers and intimidated them into resigning. Then the company replaced them with temporary workers. Not one perpetrator was arrested.

The Republicans are obsessed with the Colombia FTA, but none of them would volunteer their wives or daughters to go to work for a Colombian flower company.

And even if workers survive the violence, they can’t exercise the basic right to organize, because of loopholes in Colombian labor law. One example is the use of cooperatives, which are shell entities employers use to hire workers precisely so that workers cannot form a union. And the use of cooperatives is rampant in export sectors like the ports, sugar cane industry, and the flower sector. For workers that can form a union, employers use another loophole, known as collective pacts, to effectively break the union.

If there is the political will, Colombia can address these issues in months, not years. They can change their laws to prevent union busting. They could implement a work plan to significantly increase the size of its labor inspection force, train the inspectors, and improve enforcement. Colombia can make concrete, measur-

able progress on investigating and prosecuting violence against union workers. Until Colombia makes concrete progress, the rest of the trade agenda that will get Americans the jobs they desperately need should move forward.

So, let's move the Korea FTA. It is ten times more valuable to the American economy than the Colombian FTA. Let's move the MTB. It's worth two-and-a-half Colombian FTAs. Let's move China currency. Fixing that would be worth about 100 Colombian FTAs. And we can extend our expired preference program in GSP and ATP. There are a lot of things we should be doing.

There was broad bipartisan support for all these initiatives in the last congress. The question is, what happened? My fear is that it really isn't about trade. My fear is that a decision has been taken that the whole trade agenda will be held hostage, and that millions of jobs that come with it, for purely political reasons, will be held up. They want the Administration to fail, no matter what the cost to the American people.

On Monday, the Senate Republicans announced they were blocking the nomination of the new Commerce Secretary and any other trade-related nominees until Colombia FTA is passed. That's throwing down the gauntlet. This is absurd at a time when we need jobs in this country. It is time for the Republicans to end their Colombia obsession, and for the first time since they took over the House 11 weeks ago, get to work creating jobs for the American people, starting with the Korean free trade agreement.

My friend, Mr. Brady, and I have discussed this already in private. And I think everybody knows it is ready to be sent up. What is necessary is for the House to say, "We are ready to have the mock-up." They will send it up, and they will start. And I hope that happens rather soon. Thank you.

Chairman BRADY. Thank you. For the Members in the audience, we expect to have votes called around 10:15. So right now we will move ahead with our witnesses. And then, if the votes are called, we will recess for a brief period.

And today we will have two panels of witnesses. The first is composed of two witnesses from the Administration whom we hope succeed in moving an aggressive trade agenda forward.

Our first witness will be Ambassador Miriam Sapiro, deputy U.S. trade representative from the Office of the U.S. Trade Representative. We will also hear from the Honorable Robert Hormats, under secretary for economic, energy, and agricultural affairs at the U.S. Department of State. And we welcome both of you, and we look forward to your testimony. I would also ask our witnesses to keep their testimony to five minutes.

Ambassador Sapiro, your written statement, like those of all the witnesses, will be made part of the record, and you are recognized for five minutes.

**STATEMENT OF AMBASSADOR MIRIAM SAPIRO, DEPUTY U.S. TRADE REPRESENTATIVE, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

Ambassador SAPIRO. Thank you. Thank you very much, Chairman Brady, Ranking Member McDermott, Members of the Com-

mittee. It is an honor and a pleasure to testify today about the U.S.-Colombia trade promotion agreement.

The Obama Administration is committed to a comprehensive trade agenda that opens global markets, dismantles barriers, and vigorously enforces America's trade rights. Central to these efforts are the three pending free trade agreements. Our goal is to have all three agreements, with their outstanding issues addressed, approved by Congress as soon as possible.

Last week we notified the Ways and Means Committee that we are ready to begin collaborative work on the text of the implementing bill for Korea. We are working hard so that we can also move the Panama and Colombia agreements forward with the broadest possible support.

With respect to Panama, our governments have agreed upon steps needed to resolve outstanding issues relating to labor laws and tax transparency that, when taken by Panama, will ready that agreement for congressional consideration.

Today I want to discuss the Colombia FTA and its importance to the United States. Colombia is a key trading partner. It has a dynamic and growing economy, which is the third largest in South America. Colombia is also a vital partner of the United States more broadly, both in the region and globally.

The Colombia FTA holds the prospect of substantial trade benefits for U.S. workers, businesses, farmers, and ranchers by eliminating tariffs on U.S. exports, in my cases, upon entry into force. The International Trade Commission has estimated that the FTA would expand exports of U.S. goods to Colombia by more than \$1.1 billion, and increase U.S. GDP by \$2.5 billion.

The agreement's benefits go beyond elimination of tariffs on goods. It will also provide significant new access to Colombia's services market, improve standards for intellectual property rights protection, open government procurement opportunities, and safeguard U.S. companies operating in Colombia against discriminatory or unlawful treatment.

This agreement will also help U.S. products remain competitive as Colombia forges new relationships with the EU, Canada, and other trading partners.

Finally, it will help strengthen the Colombian economy, bolstering a steadfast partner in the hemisphere.

As important as these benefits are, President Obama has made it clear that any trade agreement we send to Congress must be in the interest of Americans, and also be consistent with our values. The Administration has heard from a broad range of stakeholders, and has subsequently made clear to Colombia that three areas of concern must be addressed: first, the protection of internationally recognized labor rights; second, prevention of violence against labor leaders; and third, the prosecution of the perpetrators of such violence.

We understand these concerns are shared by the Santos Administration, and we are encouraged by their recent actions. But more needs to be done. We now have a window of opportunity to work on securing important improvements, and we are not losing a moment to do so. I am pleased to announce that shortly after my testi-

mony today, I will meet with senior officials from the Colombian Government who have flown in to continue our discussions.

As you know, on February 9th, Ambassador Kirk announced that the President had directed him to intensify our engagement with Colombia to resolve the outstanding issues as quickly as possible this year, and submit the Colombia FTA to Congress immediately thereafter. Less than a week later, I met with Colombia Ambassador Silva. Shortly thereafter, during the week of February 14th, USTR led an interagency team composed of State Department, Labor Department, and White House officials to Bogota to obtain up-to-date information.

Last week, I met in Washington with a high-level delegation from the Santos Administration to discuss how best to promote our shared goals of protecting worker rights and addressing violence and impunity.

We are also intensifying consultations with key stakeholders and Members of Congress, including House and Senate leadership. We are working quickly, but thoughtfully. The Obama Administration shares both the sense of urgency and the concern for worker rights that we have heard from many Members of Congress, as we seek to advance the Colombia FTA.

In the meantime, Congress can immediately support the United States' economic and strategic partnership with Colombia by renewing the Andean Trade Preference Act for as long as possible. We also call on you to keep faith with America's workers by renewing trade adjustment assistance as soon as possible.

We look forward to working with you on both the Colombia FTA and our broader trade agenda in a manner that builds bipartisan support. Thank you.

[The statement of Ambassador Sapiro follows:]

**Statement by Ambassador Miriam Sapiro  
Deputy United States Trade Representative**

**House Committee on Ways and Means  
Subcommittee on Trade**

**Washington, DC  
March 17, 2011**

Chairman Brady, Ranking Member McDermott, members of the Committee, it is a great pleasure to have the opportunity to appear before you to discuss the U.S.-Colombia Trade Promotion Agreement.

The Obama Administration is committed to a robust trade policy that reduces barriers, boosts exports, and supports jobs for America's workers and their families. As detailed in our 2011 Trade Policy Agenda, we are building upon our progress to date with a comprehensive strategy to open global markets, dismantle barriers, and vigorously enforce America's trade rights – steps that will aid our economic recovery by helping our businesses grow and support more and better jobs for Americans.

Already we are beginning to see results. Indeed, over the past twelve months U.S. exports grew at an annualized rate of nearly 17%, which puts us on pace to meet the Administration's goal under the National Export Initiative of doubling U.S. exports by 2015. With 95% of the world's customers living outside the United States, maintaining and enhancing American competitiveness through trade initiatives that increase our ability to compete in the global marketplace is more important than ever.

The Administration is pursuing progress this year on multiple fronts. We are advancing steadily on the Trans-Pacific Partnership Agreement; we are continuing to press for an ambitious and balanced outcome in the Doha Development Round; and we are continuing our efforts to bring Russia into the World Trade Organization, including working with you to grant Russia Permanent Normal Trade Relations this year.

Central to the Administration's efforts are the three pending free trade agreements. Our goal is to have all three agreements, with their outstanding issues addressed, approved by Congress. Last week, we notified the full Committee that we are ready to begin collaborative work on the text of the implementing bill for the Korea agreement as soon as you are able to schedule those sessions.

As Ambassador Kirk has emphasized, the Administration believes that the Korea agreement provides a good template for how to address outstanding issues related to a pending FTA while building bipartisan and stakeholder support. We are working hard so that we can move the Panama and Colombia agreements forward with the broadest possible support once such issues are resolved.

With respect to Panama, on February 10 – a day after Ambassador Kirk testified before the full Committee – he met with Vice President Varela to discuss the path forward. At the end of February, I met with Vice Minister Alvarez De Soto to review the progress made by our teams. We agreed upon the remaining steps needed to resolve outstanding issues relating to labor laws and tax transparency that, when taken by Panama, will ready that agreement for Congressional consideration. We understand that these steps could be taken fairly quickly.

The agreement we want to focus on today is the Colombia FTA and its importance to the United States. We all know that Colombia is one of our key trading partners. It has a dynamic and growing economy, which is currently the third largest in South America. In 2010, Colombia purchased \$12 billion of U.S. goods, an increase of \$2.6 billion from 2009. And we all recognize Colombia's geo-strategic importance, both in the region and globally, as Under Secretary Hormats will address in his testimony.

The Colombia FTA holds the prospect of substantial benefits for U.S. workers, businesses, farmers and ranchers. The current average trade-weighted tariff faced by U.S. exporters in Colombia is over 9%. The agreement, if approved by Congress, will eliminate many of these tariffs upon entry into force. For example, within each of the following key industrial sectors, a large majority of all products will gain immediate duty free access to the Colombian market: agriculture and construction equipment, aircraft and parts, auto parts, fertilizers and agro-chemicals, information technology equipment, medical and scientific equipment and wood.

The agreement's benefits go beyond the elimination of tariffs on industrial and consumer goods. Many agricultural commodities, including wheat, barley and soybeans, also will benefit from the agreement, as more than half of current U.S. farm exports to Colombia will become duty free immediately. Virtually all remaining tariffs will be eliminated within 15 years. Overall, the International Trade Commission has estimated that the agreement would expand exports of U.S. goods to Colombia by more than \$1.1 billion, and increase U.S. GDP by \$2.5 billion. It will also provide significant new access to Colombia's \$134 billion services market, supporting increased opportunities for U.S. service providers. In addition, the agreement will provide for improved standards for the protection and enforcement of a broad range of intellectual property rights, will

open government procurement opportunities to U.S. suppliers, and will ensure that U.S. companies in Colombia are protected against discriminatory or unlawful treatment.

As important as these benefits are, the President has made it clear that we will not adopt agreements for agreements' sake. They must be enforceable, reflect high standards, and be in the clear interests of our workers, farmers, ranchers, and businesses. And they must be consistent with our values as Americans.

At the President's direction, we are working to address the outstanding issues that have impeded broader support for the Colombia FTA. The Administration has conducted extensive outreach to stakeholders through meetings and a request for public comment that yielded nearly 300 responses. We also have held a number of rounds of consultations with the Colombian Government. However, as Ambassador Kirk has said, there remain serious issues to be resolved before the agreement can be submitted for Congressional consideration. These outstanding concerns focus on: (i) the protection of internationally-recognized labor rights; (ii) prevention of violence against labor leaders; and (iii) the prosecution of perpetrators of such violence.

We are working closely with the Santos Administration to address these issues so that we can advance the agreement for your consideration. Ambassador Kirk and I raised our concerns with Colombian Vice President Garzon when he visited Washington in January.

On February 9, Ambassador Kirk advised the full Committee that President Obama had directed him to intensify our engagement with Colombia to resolve the outstanding issues as quickly as

possible this year and submit the Colombia FTA to Congress immediately thereafter. Less than a week later, I met with Colombian Ambassador Silva. Shortly thereafter, during the week of February 14, USTR led an interagency team comprised of State Department, Labor Department, and White House officials to Bogota, Colombia. The team met with relevant branches of the Colombian Government and with a wide range of stakeholders to secure up-to-date information regarding our concerns. Last week, I met in Washington with senior officials from the Santos Administration to discuss how best to promote our shared goals of protecting worker rights and addressing violence and impunity. These discussions went well, and we agreed to meet again within two weeks. The Administration has also intensified its consultations with key stakeholders and Members of Congress, including House and Senate leadership.

We have been encouraged by the actions the Santos Administration has already taken, but there is more that needs to be done to ensure that internationally-recognized labor rights are freely exercised in Colombia. We believe the Colombian Government wants to identify solutions to these issues, and that we have a window of opportunity now to work jointly to address them by securing important improvements.

The Obama Administration shares the sense of urgency we have heard from many Members of Congress to advance the Colombia FTA. It is this sense of urgency that we are bringing to our intensified efforts to resolve outstanding issues in a way that keeps faith with American workers, ensuring that they enjoy a level playing field with an accountable partner as we move forward to ratify the deepest form of trade relationship that the United States ever forges with another country.

As we work quickly toward this goal, Congress has an immediate opportunity to help both workers in the United States and Colombia who are suffering from the lapse in benefits under the Andean Trade Preference Act. The program has enjoyed bipartisan support since it was first enacted twenty years ago. Normally, Colombia could rely on the Generalized System of Preferences program for some of its exports, but that program has expired as well. Both programs merit renewal for as long as possible. Meanwhile, here at home, the enhancements to the Trade Adjustment Assistance program that were contained in the Recovery Act have also expired, leaving thousands of American workers without the ability to receive training on new job skills for the future. A long-term extension of the expanded program would help many who are facing layoffs and seeking re-employment in a persistently challenging job market. I encourage the full Committee to renew all of these important programs.

Trade is vital to our economy, to our society, and to the creation of new and better jobs that can help ensure America's sustained economic recovery and future prosperity. We look forward to working with you on both the Colombia FTA and our broader trade agenda in a manner that builds public and bipartisan support.

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Chairman BRADY. Thank you, Ambassador.  
Under Secretary Hormats, thank you for joining us today. And you are recognized.

**STATEMENT OF THE HONORABLE ROBERT HORMATS, UNDER SECRETARY FOR ECONOMIC, ENERGY, AND AGRICULTURAL AFFAIRS, U.S. DEPARTMENT OF STATE**

Mr. HORMATS. Thank you, Mr. Chairman, Ranking Member McDermott—and Happy Saint Patrick's Day—and member of the

committee. It's a great honor for me to testify before you today. I have testified before this committee numerous times in the past, and always look forward to doing that. I do so today with particular enthusiasm, because of the importance of this topic for the American people, and for our strategic relations with Colombia and the hemisphere.

With your permission, I will briefly summarize my remarks and submit a full statement for the record. Ambassador Sapiro has noted our concerns related to the protection of internationally recognized labor rights, violence against labor leaders, and the prosecution of perpetrators.

Congressional approval of our trade agreement with Colombia, once our concerns have been met, will be important for both the economic and the national security interests of the United States for several reasons.

Colombia has been a steadfast partner. This agreement, in addition to providing considerable economic benefits here at home, will strengthen our relationship with this key friend, and increase our influence in the entire region. This agreement will also enhance Colombia's gains over the past decade in key areas, such as human rights and the rule of law. It will help consolidate and strengthen the Santos Administration's labor rights reforms, and allow Colombia to make progress on the social inclusion issues that President Santos has identified as his principal challenge.

Finally, the agreement is key to regaining our competitive edge in an important market where we are increasingly losing market share, as you have indicated in your opening statement, Mr. Chairman. We believe strong bipartisan U.S. support has helped Colombia to make historic progress, improving security for its citizens, and stemming the flow of drugs to the United States.

Since 2002, homicides are down 45 percent, kidnapping is down 92 percent, and terrorist attacks down 71 percent. Since 2001, cocaine production potential has fallen 46 percent, and the area under cultivation has decreased by roughly 20 percent.

Since 2002, Colombia has extradited over 1,149 criminals, including major drug traffickers, to face justice in the United States. Colombia is a valued partner, sharing its expertise and confronting transnational crime throughout the hemisphere and beyond.

Since 2007, Colombia has trained approximately 6,000 Mexican police and judicial officials, and provided security assistance to Mexico, Haiti, Central America, Afghanistan, among others.

Colombia is also an emerging global leader. It sits on the UN Security Council and chairs the Iran and the Sudan sanctions committees. It participates in peacekeeping operations in many other parts of the world.

This is a decisive moment in our hemisphere. Moving ahead with the Colombia agreement is key to restoring our regional leadership and credibility. The agreement will help Colombia consolidate its success in putting its democracy and economy on a sound footing by adopting additional market reforms and strengthening effective social policies. It will silence critics who claim we are ceding leadership in the region and unable to deliver for our closest partners.

The Santos Administration has denounced threats to labor and human rights leaders, increased penalties for violence against

human rights defenders, made it clear it respects the role of labor and human rights groups, and increased funding for its protection program, which now cover over 11,000 at-risk individuals. Colombia's prosecutor general's office reports that it is investigating more than 1,300 labor-related cases, and has obtained 344 convictions.

There is, of course, more to be done, and we are working with the Santos Administration to build on these achievements.

This winter Colombia also suffered major flooding. As a close friend and partner, Colombia deserves our assistance in that respect, as well.

I also join Ambassador Sapiro in urging Congress to re-authorize the Andean Trade Preference Act, as well as GSP and TAA at the earliest opportunity and for the longest possible period. These programs will support U.S. jobs and promote economic development overseas and provide greater certainty for American businesses and investors.

Colombia is a growing market of 46 million customers. In 2010 Colombia bought \$12 billion in U.S. goods, more than Russia, Spain, or Turkey. It plans to invest over \$15 billion in infrastructure projects over the next 5 years. Without an agreement, U.S. exporters could miss out on these promising commercial possibilities, and that would cost us jobs at home. And therefore, that export element is particularly important to a lot of American workers in a lot of industries.

Colombia is currently pursuing FTAs with our toughest competitors, including the EU, Japan, and South Korea. China is now Colombia's second-largest trading partner, and we are losing market share to Brazil, Canada, and the EU. We are no longer Colombia's leading agricultural supplier, either. The Colombia-Canada FTA enters into force in July, further jeopardizing our wheat exports.

In closing, I would just like to emphasize that securing approval of a high-standard agreement with Colombia is paramount for both our bilateral partnership and for our regional influence.

Thank you very much, Mr. Chairman and Members of the Committee.

[The statement of Mr. Hormats follows:]

**Statement by Robert D. Hormats  
Under Secretary of State for Economic, Energy and Agricultural Affairs**

**House Committee on Ways and Means  
Subcommittee on Trade**

**Washington, DC  
March 17, 2011**

Thank you, Mr. Chairman, Ranking Member McDermott, and all members of the committee. It is an honor to have the opportunity to testify at this hearing today. I have testified before this Committee numerous times in the past and always look forward to doing so. I do so today with particular enthusiasm, because of the importance of the current topic for the people of our country and of Colombia and for our strategic relations with Colombia and the hemisphere.

Ambassador Sapiro has noted our concerns related to the protection of internationally-recognized labor rights, violence against labor leaders, and the prosecution of the perpetrators. Securing Congressional approval of our Trade Promotion Agreement with Colombia, once our concerns have been met, will be important for several reasons.

Colombia has been a steadfast partner; one we've worked with closely for over a decade. In addition to the considerable economic benefits, the agreement will help consolidate and enhance Colombia's gains over the past decade in such areas as human rights and rule of law. It will help consolidate and strengthen labor rights reforms the Santos administration is taking. And it will allow Colombia to make progress on the social inclusion issues President Santos has identified as his principal challenge.

The Agreement will deepen our strategic partnership. It helps us pursue our national interests in the hemisphere and increases our capacity to influence events in the region. Finally, the Agreement is key to regaining our competitive edge in an important market where we are increasingly losing market share.

With strong bipartisan U.S. support, Colombia has made historic progress improving security for its citizens and stemming the flow of drugs into the United States. Since 2002, homicides are down 45 percent, kidnapping down 92 percent, and terrorist attacks down 71 percent. Since 2001, cocaine production potential

has fallen 46 percent and the area under coca cultivation has decreased 19.4 percent. Since 2002, Colombia has extradited over 1,149 criminals, including major drug traffickers, to face justice in the United States.

Colombia is a valued and trusted partner, sharing its expertise in confronting transnational crime throughout the hemisphere and beyond. Since 2007, Colombia has trained approximately 6,000 Mexican police and judicial officials and has provided security assistance to Mexico, Haiti, Central America, and Afghanistan, among others.

Our partnership with Colombia has been a foreign policy success that continues to grow. Last October, Deputy Secretary Steinberg launched a High Level Partnership Dialogue to discuss areas for cooperation including the environment, social inclusion, science and technology, and deepening the important discussion of human rights.

Colombia is also an emerging global leader. Colombia currently sits on the UN Security Council and chairs the Iran and Sudan Sanctions Committees. Colombia is participating in peacekeeping operations in Haiti, Sierra Leone, and the Sinai Observer Mission. Last August, Colombia sent its sixth contingent of National Police officers to support the UN Stabilization Mission in Haiti (MINUSTAH). During its one-year deployment, the mission is carrying out a variety of law enforcement duties, including intelligence, criminal investigation, anti-narcotics, anti-kidnapping, and border security. It has also provided valuable humanitarian relief to Haiti after last year's earthquake.

Moving ahead with the Colombia Agreement—once our labor concerns have been addressed—will be important for our regional leadership and credibility. This is a decisive moment in our hemisphere. The Agreement will facilitate consolidation of Colombia's success in putting its democracy and economy on sound footing--by adopting additional market reforms and strengthening effective social policies.

It will help silence critics who have claimed that we are ceding leadership in the region and are unable to deliver for our closest partners. It would be a powerful sign of support for the region's other reformers, and an action that goes to the core of President Obama's use of smart power to support those who believe democratic governance, respect for human rights, and open markets are the keys to inclusive prosperity.

As we work with Colombia to address the remaining issues, we will reinforce the significant progress the Santos administration has made in addressing human rights and labor issues. The Santos administration has: denounced threats to labor and human rights leaders; increased penalties for violence against human rights defenders; made clear it respects the role of labor and human rights groups; and increased funding of its protection program, which now covers over 11,000 at-risk individuals. Colombia's Prosecutor General's Office reports that it is investigating more than 1,300 labor-related cases, and has obtained 344 convictions. There is more to be done, and we are working with the Santos Administration to build on these achievements.

This winter, Colombia suffered flooding on the relative magnitude of Hurricane Katrina, affecting over 2 million people, ruining hundreds of thousands of hectares of cultivated land, and destroying countless roads and other infrastructure. Estimated reconstruction costs are \$6.6 billion. Our Agreement would give Colombia a long-term helping hand at a time of significant need.

In the short-term, as this close friend and partner endeavors to recover from this tragic natural disaster, I also join DUSTR Sapiro in urging Congress to reauthorize the Andean Trade Preference Act (ATPA), as well as GSP, at the earliest opportunity and for the longest period possible; this will support U.S. jobs, promote economic development overseas, and provide greater certainty for American businesses and investors.

Colombia is a growing market of 46 million customers. In 2010, Colombia bought \$12 billion in U.S. goods—more than Russia, Spain, or Turkey, for example. It plans to invest over \$15 billion in infrastructure projects over the next five years. Without an Agreement, U.S. exporters could miss out on these promising commercial possibilities. And that would cost us high quality jobs at home.

Colombia is currently pursuing free trade agreements with our toughest competitors. China is now Colombia's second largest trading partner. And we are losing market share to Brazil, Canada, and the European Union (EU). We are no longer Colombia's leading agricultural supplier; the Colombia-Canada FTA enters into force in July, jeopardizing our wheat exports. Colombia expects to sign its agreement with the EU this year and to negotiate FTAs with South Korea and Japan.

In closing, addressing our outstanding labor-related concerns and securing approval of a high-standard Agreement with Colombia is paramount for both our

bilateral partnership and our regional influence. An Agreement that opens markets and strengthens labor and human rights protections would bolster Colombia and other market reformers in the region. It can strengthen the collective security and inclusive prosperity of the United States, Colombia and the Americas.

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Chairman BRADY. Thank you both. Ambassador Sapiro, I want to thank you about the timetable and the status of a concrete, workable action plan, and, Under Secretary Hormats, about China's rising influence in Colombia.

Ambassador Sapiro, first, please let Ambassador Kirk know I appreciate the work, very good work, that was done to close out Korea. I understand technical discussions are underway on that agreement. And since Colombia and Panama will not have changes in text, I see no reason we shouldn't move forward with those technical discussions on those two, either. And I appreciate Amba-

sador Kirk's engagement in the Asia-Pacific region, through the Trans-Pacific partnership. I think that's important, as well.

Part of the goal of moving these three pending agreements is not just new sales for U.S. businesses and workers, but also to clear the way for further trade engagement throughout the world.

Ambassador Sapiro, when Ambassador Kirk appeared here before the committee and before the Senate committee, he talked about the intensifying efforts on closing out these pending trade agreements. And he heard at the time a lot of frustration on both sides of the aisle about how long the agreement has taken place.

So, at this point, have you now given the Colombians a workable, concrete action plan, and schedule for resolving any outstanding concerns?

Ambassador SAPIRO. Thank you, Mr. Chairman, for that question, and also for your kind words that I will certainly relay to Ambassador Kirk. He is fully engaged, as we all are, in moving ahead on multiple fronts, including TPP and other important trade issues that we believe have market opening opportunities for American workers, farmers, and ranchers.

Just as we took the time to get a good Korea agreement, we are taking our time, although moving fairly rapidly, as I indicated, to ensure that we are in a position to advance the Colombia agreement to you. To do that, we have sat down intensively with the Colombian Government to discuss our concerns and develop what are clearly shared goals.

The Colombian Government is now considering what initiatives they can take in order to show clearly that we are advancing towards our shared goals. We have an opportunity, a terrific opportunity, working closely with the Santos Government, to achieve these goals. As Ambassador Kirk has said, we are pushing on an open door. The government is dedicated and ready to work with us, and we are working intensively. We are working quickly, and we are working thoughtfully.

Chairman BRADY. Thank you. Let me reiterate the need for that concrete, workable plan. Colombia has responded positively to every request we have made. Now, we promised a working team and benchmarks 18 months ago, and didn't provide it. It's critical that they understand what is expected of them, so that they can respond accordingly.

So, again, reiterate the need to tell them what is expected of them, to work together with them to create those benchmarks now, in days—in your meeting this afternoon, for example—in order to be in the close-out stage of this agreement.

And, Under Secretary Hormats, a couple of weeks ago, 11 former assistant secretaries of state who served both Democratic and Republican presidents, strongly endorse this trade agreement and our other two pending agreements, calling on the present congress to work together to ensure passage by July 1st of this year. In this letter they express serious concerns about the harm caused by our delay, both economically and with regard to our influence in the hemisphere. And I very much share that concern, and would like to ask you about whether you do, too.

And, specifically, I would appreciate your views on China's rising influence in Latin America. I am concerned that China may step

in and assert its own leadership in our own hemisphere, because of the vacuum created by the inability to lead on trade and other issues in Latin America. Would you comment?

Mr. Hormats. Sure. First, just let me underscore what Ambassador Sapiro said. That is, they are working very hard to put together a good agreement. And I can tell you she has been working, and Ambassador Kirk, and their colleagues have been working very hard, and with as much speed as they possibly can to move forward. This is a very high priority for them, for USTR, and for everyone in the government associated with this.

With respect to the China issue, I'm very glad you underscored this. It does illustrate a point that I mentioned in my testimony, and that is we are in a more competitive world than we were 5 or 10 years ago. And the competition is coming from places not just within our hemisphere, and not just Europe, but we are getting competition from countries in Asia—like China, as you have mentioned, Mr. Chairman.

And, therefore, one of the reasons that USTR is working so hard on this is to put together a really good agreement that does defend America's trading interests, that advances America's trading interests, so that we will be able to be more competitive, and we will not lose competitive share to countries such as China.

China is making a move throughout the hemisphere. They're a big trading partner with Brazil. They are big trading partners with other countries in the region. And one of the reasons we consider progress on this agreement, and coming up with a really good agreement to be so important to strengthen our ability to compete vis a vis the Chinese in Colombia. And we aim to do that in as many ways as we possibly can.

As I also pointed out, it's not just from China. An agreement like this will help us to compete on wheat sales with Canada, for instance. So we are very cognizant of the fact that there is competition. President Obama said that this was a Sputnik moment. We are seeing Sputniks coming from all over the world, which means we are seeing more competitive pressures from all over the world, which is why we regard progress on this as so important, and why so much work is being done to make progress as quickly as possible.

Chairman BRADY. Thank you, sir. Appreciate it. Ranking Member McDermott is recognized.

Mr. MCDERMOTT. Thank you. To both of you I have a question. And I understand that you are in negotiation—

Chairman BRADY. If I may, we have about two minutes left in the vote. I would like Mr. McDermott to lead off the questioning when we return. We will recess until just immediately after the last vote is taken. Thanks.

[Recess.]

Chairman BRADY. The subcommittee will reconvene. Again, I apologize to Mr. McDermott for the interruption of votes, and yield to lead off questioning.

Mr. MCDERMOTT. Thank you, Mr. Chairman. I realize, Ambassador, that you do not want to negotiate in public, or talk about the specifics of what is on the table with the Colombians at this point, but I would appreciate anything you can do to help us under-

stand a time line. I know the Chairman has asked for a time line, and you do not want to give a time line, because with negotiations, it is over when it is over. But I would like to hear from you if there are any issues that you think are particularly problematic in the process.

I hear the question about whether we get it done or we are going to fall behind. And I notice from your testimony that, actually, exports have increased by 27 percent to Colombia in the last year. So I would like to understand what we are falling behind on. Explain to me how that develops, or why people say that. They can say it but I want to know if there is any basis for it.

Ambassador SAPIRO. Thank you, Congressman. I am pleased to be able to report to you that exports are increasing. Our concern about competitiveness is that our share of the market in many key sectors is shrinking. And, as both I mentioned and Under Secretary Hormats, Colombia is understandably forging ahead to develop new trading partnerships with the European Union, with Canada, with Japan, with Korea, and with other partners.

So, we do not want to be in the position of ceding market share, if we can help it. And so, for that reason, we would like to advance this agreement, provided that the core concerns that we have identified are addressed. And we believe that the Santos Government shares the goals that we have set forth on labor rights and on violence and on impunity. And, together, we are working as quickly and thoughtfully as possible to finish this process and to be able to submit the agreement immediately thereafter to the congress for its consideration.

Mr. MCDERMOTT. Could you give us a little bit of details about how quickly it's worked? Because I understand that you went down there and they came back and there has been almost a continuous flow of people between here and Bogota around this agreement. So it sounds like you are working a little bit faster than bureaucracies sometimes move on things.

Ambassador SAPIRO. We are working faster than intensively, perhaps. We are being responsive to those that have asked us to work more quickly, and we're also being responsive to those who have asked us to be sure to identify concrete steps that the Colombian Government can take to address the serious concerns that we have identified.

Mr. MCDERMOTT. Do you see anything that cannot be resolved?

Ambassador SAPIRO. I am optimistic that we will be able to reach a good resolution fairly quickly. And that is why we have worked so intensively over the past several weeks, both in Washington and in Bogota, to try and achieve such a result.

Mr. MCDERMOTT. One of the things that is a question for me in thinking about these agreements is that trade is good. I mean, okay, we will accept that. Then we get to the question of why people are working for \$1 an hour, and why poverty still exists and has not changed in these countries. It seems to me that that is the seed bed for the Hugo Chavezes and others to spring up, if there is no advancement for the ordinary citizen.

And I would like to hear either of you. It seems to me that it is counterproductive just to have trade if you, in fact, are continuing the repression of workers and so forth.

Ambassador SAPIRO. We believe that trade is one way that we can help develop a growing middle class in our trading partners.

I had the good fortune of representing the United States at the CAFTA–DR ministerial in San Salvador last month. And that agreement, for example, is one where we have seen tremendous growth in our partner countries, and we continue to see such growth, which serves both their economies, as well as ours, and stability in the region.

Mr. MCDERMOTT. Thank you, Mr. Chairman.

Mr. HORMATS. May I just comment very briefly on that, just to underscore what Ambassador Sapiro has said. And that is your point about trade and its link to development is a very important one. One of the things we find when we look around the world is that trade does open up new opportunities for what one might call inclusive growth. And the more opportunities there are for trade, the more opportunities there are for growth in these countries.

And one of the things that the Santos Administration has been focusing on very directly, and is a very high priority of the president and his vice president, who, as you know, is a former labor union leader, is to expand opportunities in Colombia for more and more people to participate productively in the economy, for just the reasons you've mentioned. Because, as you know, the country has a history of difficulties with FARC and other groups.

They are not focusing entirely on trade, but they're using a lot of internal measures, as well, to strengthen their development programs, and to give more people opportunities to participate in productive sectors of the economy. And we think that this agreement can complement and reinforce and help them to consolidate some of those broader efforts that they are making to give more people more opportunity. So, it's a very important element of this overall equation.

Chairman BRADY. Thank you, Under Secretary. Mr. Davis is recognized.

Mr. DAVIS. Thank you, Mr. Chairman. I find it ironic that Ambassador Sapiro is citing the Central America free trade agreement as an example of lifting people up, economically, when, in fact, the same opponents of the Colombia free trade agreement were using the exact same false arguments during the CAFTA negotiations, and moving to pass that through the House, which—Mr. Brady and I were actively working behind the scenes to move that bill.

What we see is economic opportunity opening up if this agreement which the Colombians desperately want to see pass passed, and it has languished for four years now. This is not a question of getting more information, it is a question of domestic politics, and one party intruding upon what is not only good for the country economically, but more importantly, from a security standpoint, which leads to my question.

Under Secretary Hormats, our economic relationship with Colombia is, in fact, very important in its own right in so many ways. We gain a dramatic amount of benefit by that agreement passing. However, it is also a key ally in South America.

You mentioned FARC. Hugo Chavez is actively helping them. He is helping them to destabilize this democracy. More than that, he is working with narcoterrorists. He has ties all over the world with,

frankly, evil groups that stand against every value that we have when we talk about propagating American values. Colombia has been a light in its movement towards liberty down there.

And I see our interests being sorely hurt, not only by this four-year delay over domestic politics that, really, are going to hurt the very workers that say they want this in the long run, but it is also a key link in the inter-American drug trade, north and south. If we do not implement the agreement, I think we are allowing people in Latin America to question our commitment to the region. We have lagged. The EU, China, other areas are moving in. We are seeing a drop off in our exports significantly, a drop off in our trade, a drop off in our influence. And the security concern is growing.

I am not alone in this belief. In fact, in May of 2008, 5 former commanders in chief of the U.S. Southern Command, Generals James Hill, Peter Pace, George Wilhelm, George Jowan, and Barry McCaffrey, who we are going to hear from later, who is here today, he wrote an open letter to Congress, urging the support for the Colombia free trade agreement.

We will be hearing General McCaffrey's testimony a little later. But in light of the significant U.S. strategic interest in this area, what is the importance of this agreement in avoiding a setback in U.S. influence?

As we have been dallying through the years with the back-and-forth same-old political arguments that were used against the Central America free trade agreement, I know there is a great concern in the military that if Chavez can completely destabilize the region, as I have heard from other chiefs of staff in Latin American countries—CAFTA country military chiefs of staff have asked me very candidly, "What have you not gotten this agreement ratified?" It is so important to us in dealing with our security threats?" Could you comment on that?

Mr. HORMATS. Yes, I would be glad to. As I mentioned in my testimony in a very short sentence—but I think it makes the point—one of the reasons we want to have a good agreement, one of the reasons that Ambassador Sapiro and her colleagues are working so hard to get one—

Mr. DAVIS. Why does it take four years to get a good agreement?

Mr. HORMATS. Well, I cannot comment on the past, but all I can tell you is that they are working very hard at the moment to get a good agreement as soon as they possibly can.

And one of the reasons is the fact that we think it will help promote jobs and growth in the United States. But another reason is exactly the reason that you have mentioned, and that is as I said in my statement, that we want to demonstrate in the region that we can deliver for our closest partners. And Colombia is a very close partner in dealing with issues that you have mentioned. While others in the region who are intent on destabilizing, rather than stabilizing the region.

Mr. DAVIS. Wouldn't it be in our compelling interest to expedite this agreement, rather than a game going on for years?

Mr. HORMATS. I think that is what the USTR is trying to do. They are trying to make as much progress as they can to get a

good agreement, and—as soon as they can. And one of the reasons is we recognize fully your point on the security element.

They are a very important security partner for the United States, both in terms of dealing with their neighbors, and they have been very helpful in a lot of UN peacekeeping operations. And as a provider of assistance, technical assistance, they are helping other countries—including Mexico—to deal with drug issues—

Mr. DAVIS. If I could reclaim my time, sir.

Mr. HORMATS. Sure.

Mr. DAVIS. I appreciate that. I served with the Colombian military in the Middle East, running flight operations in an international peacekeeping force. As a soldier, I have an intimate interest in seeing the changes that have taken in place from when we were providing direct technical military assistance just to maintain law and order.

Mr. HORMATS. Right.

Mr. DAVIS. When I see where we are now, and the dallying over—yes, we are expediting. Expedite means to move quickly. Again, it is four years. The Speaker of the House dropped this down. Then, when the new Administration came in, the ambassador said that this issue was in our court here. We are continuing to delay. It needs to move. And frankly, I believe we are rubbing the Colombian Government in the mud if we do not move this agreement in an expedited fashion.

Chairman BRADY. Thank you. Mr. Reichert is recognized.

Mr. REICHERT. Thank you, Mr. Chairman. Welcome to both of you. And I want to add to the chairman's comments, earlier comments. I appreciate all the hard work that you both have done, and Ambassador Kirk included, and the President, on the Korean agreement. And it is a privilege to serve with you both on the economic council, as we look for ways to double our exports.

And I think all of us in the room recognize that one of the ways that we do that is to pass trade agreements. And one of the figures that keeps being repeated, especially by myself lately, is the fact that the last time we did double exports was from 1995 to 2007, when we passed 9 trade agreements.

So, I think all of us recognize how critical this is, and that we are all working for the same purpose, and that is really to create jobs here in the United States and turn this economy around.

So, you are right to push for a swift movement on Korea. But the questions remain, certainly, around Colombia. It has been sitting here since 2007, as has been mentioned. So we are looking at July 1st? At least that has been the date that has been given to us, as a possible arrival date of a Korean agreement for consideration by the House. But there are some similarities, I think, in these agreements as we look at Korea and Colombia. And so I think some of us get a little confused as to the delay, the reasons for the delay.

So, I really like yes or no answers, it speeds the process up a little bit. So, Mr. Secretary, like Korea, doesn't the same argument hold true for Colombia, when you look at the loss of market share? That is a true statement. We are losing market share—I think you just mentioned that in your testimony—in both Korea and Colombia, correct?

Mr. HORMATS. Yes, we are losing market share.

Mr. REICHERT. Especially concerned about Canada, because they are moving forward with a July 1st date also.

Mr. HORMATS. Yes, and that will cause us to lose market share in wheat, in particular.

Mr. REICHERT. Especially important to the eastern side of Washington State.

Also, like Korea, doesn't the Colombian agreement contain some of the same strong language surrounding labor protections?

Mr. HORMATS. I will leave the details of the agreement to Ambassador Sapiro.

Mr. REICHERT. But essentially it is the same language, is it not, Ambassador?

Ambassador SAPIRO. Thank you, Congressman. We do have a strong labor chapter in our FTA with Colombia. We want to make sure that the provisions in that agreement with respect to internationally recognized labor rights—

Mr. REICHERT. Could I interrupt, just for a second? I am sorry.

Ambassador SAPIRO. Certainly.

Mr. REICHERT. But isn't the language in the Korean agreement and the Colombian agreement essentially the same? We are looking at passing Korea. It is essentially the same language, right? So the Korean agreement must meet the same standard, internationally, as the Colombian language does. Yes or no?

Ambassador SAPIRO. Congressman, our goal is to present to you high-standard agreements—

Mr. REICHERT. Yes, ma'am. No, I understand that. But isn't—and my question is, isn't the language the same in the—

Ambassador SAPIRO. There are strong—

Mr. REICHERT. In the Korean agreement and the Colombian agreement, when it comes to labor? And, matter of fact, we can throw in the environmental language also. Is that not the same as the Korean agreement?

Ambassador SAPIRO. There are strong—

Mr. REICHERT. Yes or no, ma'am, please. I hate to—you know, I know you are trying to answer in a politically correct way, but we all have—we know what the language says. So is it the same language, or not?

Ambassador SAPIRO. There are strong provisions in the Colombia agreement and there are strong provisions in the Korean agreement—

Mr. REICHERT. Does the Korean agreement meet the international standards on labor and the environment?

Ambassador SAPIRO. The Korean agreement? Yes.

Mr. REICHERT. Yes. So, if the same language exists in the Colombian agreement, then does that not also meet the international standards?

Ambassador SAPIRO. I have not had an opportunity to do a side-by-side comparison. So what I can say is that we have high standards in both agreements. There are, however, serious concerns with respect to the situation on the ground in Colombia that does not exist with respect to Korea. We did—

Mr. REICHERT. Okay. I would like to just say that my time is about to expire—excuse me for interrupting again—but we know that the arguments are the same. We have got to bring the Colom-

bian agreement, along with the Panama agreement and the Korean agreement. Hopefully, looking for that July 1st. And there is no reason, really, to delay any further. I yield back.

Chairman BRADY. Thank you. Mr. Herger is recognized.

Mr. HERGER. Thank you, Mr. Chairman. Ambassador Sapiro, you stated in your testimony that the Obama Administration shares our sense of urgency to advance the Colombia free trade agreement and that "it is this sense of urgency that we are bringing to our intensified efforts to resolve outstanding issues."

I must say that I am, frankly, disappointed that it took the Administration over two years to develop this newfound sense of urgency, since the Administration has been saying all along, starting with the President's first trade agenda in 2009, that it was in the process of developing a plan of action and establishing benchmarks for progress on Colombia.

Yet all this time we have been waiting for this leadership from the Administration. We have seen our agricultural exports to Colombia plummet as the Mercosur agreement went into effect, and watched Argentina's share of the Colombian market climb from 7 percent to 30 percent, taking away exports from American farmers and ranchers.

The Administration has made clear that it wants to see the agreement passed by Congress by July 1, demonstrating a sense of urgency because that is the date of implementation of the EU-Korea free trade agreement, which the Administration recognizes as a threat to U.S. exports.

Yet there has been no sense of urgency demonstrated by the Administration to Colombia, despite the fact that we are already facing the competitive disadvantage in that market, which will only worsen as Canada, one of our strong competitors, will implement a new free trade agreement with Colombia on the exact same date, July 1st. This will further decimate our agricultural exports to what has traditionally been our number one agricultural market in Latin America.

Ambassador SAPIRO, I hope that this new sense of urgency you are expressing turns out to be more than the rhetoric coming out of the Administration in the last two years, because Americans deserve better. They deserve action on this important agreement, and all the benefits to our economy that comes with it.

Now, Secretary Hormats, in your testimony, you state that the agreement with Colombia will consolidate and strengthen Colombia's gains in such areas as human rights, the rule of law, and labor rights reforms. Would you expand on how the implementation of the Colombia FTA will help the U.S. further engage Colombia in these areas, and build on the progress that has been made thus far, Mr. Hormats?

Mr. HORMATS. Well, yes. Very briefly, I think that the kind of points that Ambassador Sapiro was making in her testimony and in her comments to the committee underscore the fact that we are asking for a number of measures in the areas that you have just described that will be included in the agreement. And we cannot go into detail at this point, because it is under negotiation. But the fact is that, by including particularly important areas in the agree-

ment that she is working on, it will help to consolidate the progress that is already made.

Moreover, to the extent that we can strengthen ties between our two countries, it will strengthen the dialogue between Washington and Bogota. And we have a number of ongoing discussions with the Colombians on a variety of issues, human rights being one of them, and a number of the others, as well. So, to the extent a good agreement can be reached, it will, within the agreement, contain areas that will help them to consolidate their gains. But it will also strengthen the relationship which will broaden the dialogue about the kind of issues that you and others are concerned about.

So, it is a double benefit within the agreement and also strengthening the dialogue in a broader sense.

Mr. HERGER. Well, Mr. Ambassador [sic] and Mr. Secretary, let me express to you the overwhelming frustration that the constituents I represent—which is one of the largest agricultural areas in the world, the northern Sacramento Valley—have with—that we have fallen from number one exporter to number two, because this agreement has not gone through. And I yield back.

Chairman BRADY. Thank you, Gentleman. Mr. Smith is recognized.

Mr. SMITH. Thank you, Mr. Chairman, and thank you to our witnesses today. You may already know that this week is National Agriculture Week. And a lot of my constituents in rural Nebraska are very anxious to see this trade agreement passed.

Ambassador SAPIRO, I understand that Colombia maintains what is known as a price band system, which imposes additional duties on top of the regular tariffs on U.S. ag imports, based on price. Could you tell us if the Colombia agreement addresses this barrier?

Ambassador SAPIRO. I can tell you, Congressman, that the agreement would reduce a great deal of both tariff and non-tariff barriers. I am happy to look into that specific question. I know that the agreement, once in force, will provide great relief to our farmers, our ranchers, as well as our manufacturers and our service providers.

I would also like to say that it is—we do share the sense of urgency behind your question, and that is precisely why we are working so intensively and so thoughtfully to address the serious concerns that we have identified in the right way, and to be able to move ahead as soon as we have done so.

Mr. SMITH. Okay, thank you. And I appreciate your getting back to me. If you could perhaps advise what I should tell constituents when they inquire what a time line is, can you give us any sort of a time line?

Ambassador SAPIRO. Let me go back to last summer, when we started working intensively on the Korea agreement, and we were able, through hard work, close consultation with Congress and our stakeholders, particularly those with a vested interest in that agreement, to improve the agreement, and to be able to advance it in a way that is very consistent with American interests and American values.

We are working very, very hard with that same template in mind to approach this issue, so that the serious concerns that we have

on the labor code, to be able to ensure that the labor laws and their enforcement protect and promote worker rights, so that they are not undermined, and they are not denied, that we can reach those goals together, so we are working quickly and.

And, as I mentioned, we are going to be fortunate to resume our high-level discussions with senior officials from the Santos Government when we conclude our testimony here today. To show you just how concerned we are, and that we do share the sense of urgency, we are working rapidly in a thoughtful way in the right direction.

Given the fact that we share common goals—it is clear to me that we do share common goals with the Santos Administration. Under Secretary Hormats indicated they are already doing a lot on their own initiative to address the labor concerns, as well as broader human rights concerns. So I am confident that we will be able to report back to you in the near future on progress.

Mr. SMITH. Okay. Would you agree that perhaps our ag producers, among other producers here in our country, remain at a competitive disadvantage, as long as the agreement languishes?

Ambassador SAPIRO. We do not want to see any export opportunity or any job left on the table.

Mr. SMITH. Yes.

Ambassador SAPIRO. So we will work very hard to ensure that that does not happen.

Mr. SMITH. Thank you very much. I yield back the balance of my time.

Chairman BRADY. Thank you. The chair recognizes Ms. Jenkins.

Ms. JENKINS. Thank you, Mr. Chair, and thank you all for joining us.

Ambassador SAPIRO, with near six-and-a-half million cattle on ranches and in feed yards in my home state of Kansas, we rank second in the nation in beef production. At home, the cattle outnumber the people by more than two-to-one. And the beef industry generated more than \$5.5 billion in cash receipts in 2009. And with all due respect to the chairman, I think in Kansas we have the best beef in the world, we just cannot eat it all ourselves.

There is no doubt that lowering Colombian tariffs on U.S. agriculture products will greatly help our farmers and ranchers. However, the Colombian agreement would also address sanitary and phytosanitary barriers to agriculture trade. So it appears that this will make it easier to sell Kansas beef to our friends in Colombia.

But could you please explain for us, first, how the agreement addresses these barriers, and second, how resolving these barriers in other agreements have helped America's farmers and ranchers? And then, finally, do you expect similar results in this case?

Ambassador SAPIRO. Thank you, Congresswoman. The simple answer is yes. We are confident that this agreement will be of great value to our farmers and our ranchers. It does address SPS issues. It does address the tariff question.

And just as our other trade agreements have benefitted U.S. exporters across the board, including agricultural commodities, and especially beef, we do believe that this agreement, once it is in force—in other words, once we have been able to address the issues that I outlined earlier, and—we will be able to present it to you im-

mediately thereafter, and look forward to your positive consideration of it.

Ms. JENKINS. Okay. Thank you, Mr. Chairman. I would yield back.

Chairman BRADY. Thank you. The Chair recognizes Mr. Crowley.

Mr. CROWLEY. Thank you, Mr. Chairman, and Happy Saint Patrick's Day to you, my friend from Texas. No Saint Patrick's Day back to me?

Chairman BRADY. Absolutely.

Mr. CROWLEY. Thank you very much. I was, like, a little concerned here.

Chairman BRADY. Singing out of my heart, Mr. Crowley.

Mr. CROWLEY. What has happened to comedy around here?

[Laughter.]

Mr. CROWLEY. Let me thank you, the witnesses, for being here today.

Let me just go back to what my friend and colleague, Mr. Reichert, was alluding to. Ambassador Sapiro, is it—the language is virtually the same, in terms of the agreement between the U.S. and Colombia and the U.S. and Korea as it pertains to labor, human rights, and the environment. Correct?

Ambassador SAPIRO. I—

Mr. CROWLEY. The language.

Ambassador SAPIRO. I have not done a side comparison.

Mr. CROWLEY. Virtually.

Ambassador SAPIRO. But I believe that they are similar.

Mr. CROWLEY. But the real question here is whether or not the parties have met the standards of the agreement, in terms of labor.

I point that out because the ILO has indicated on a recent mission to Colombia the need for the Colombians to still address the issue of reforms, as it pertains to the abuse of cooperatives, as well as the use of collective pacts to prevent, in essence, the ability of workers to organize within Colombia.

Is that correct, in terms of what the ILO is saying? Not what you are saying, what the ILO is saying. Is that correct?

Ambassador SAPIRO. I know that there are concerns regarding the situation in Colombia, in terms of the enforcement and the full protection of worker rights. And those concerns include ways to avoid creating a direct employment relationship. Those are concerns that we have, and that I know the Colombian Government shares. And they are looking at different ways to address them in a concrete way—

Mr. CROWLEY. So would you agree that there is a difference between the standards that are set within the agreement and maybe the country's having fulfilled those standards?

Ambassador SAPIRO. There are certainly different situations on the ground in both countries. With respect to Colombia, we do have serious concerns about the question of worker rights and their full enforcement, the question of violence against workers for exercising those rights, and the question of impunity, and the importance to punish those perpetrators of such violence. We did not have those concerns with respect to—

Mr. CROWLEY. Korea.

Ambassador SAPIRO.—Korea.

Mr. CROWLEY. I thank you for your comments on that, just to clarify that point of my friend, Mr. Reichert.

Given that the Korean agreement is completed, and there is some level of concern that we are waiting too long to move, could this disadvantage—for either one of you—could this disadvantage our service industries?

And I am interested to hear, because I hear a lot from my friends on the other side of the aisle about the need for speed on two deals which we are still working on which have not yet fully been completed by this Administration, make the argument that the former Administration had finished the deal. The new president and our new Administration are still working on these deals. And while I do have some sympathy, and I do have—Kevin, you know this sympathy that I have about these concerns—I think we have also lost the sense of urgency about Korea.

And I just want to point out on beef and cattle, my in-laws are from Montana. And I would only question whether or not the beef in Montana may be a little bit better than the beef from Kansas. But having said that, under this provision with Korea, 775 million, compared to 12.5 million with Colombia, the difference is in terms of the scale of these agreements.

I mean it has been compared that the Korean deal is 10 times the Colombia deal. Is there some concern here, in terms of—I mean you talk about the impact of waiting. Are you concerned that Korea is being held hostage by Colombia at this point? Is there any concern here by either one of you?

Ambassador SAPIRO. We notified the full committee earlier this week that we are ready to proceed to discuss the implementing legislation for Korea. We worked very hard last year to improve the Korea agreement, to make sure that it met U.S. interests. And it does. And so we are indeed ready, Congressman, to move on that agreement as soon as the committee can schedule a session.

Mr. CROWLEY. Well, I thank you very much, and I yield back the balance of my time.

Chairman BRADY. Thanks to my Irish friend. And let me weigh in that Texas beef, indeed, is the greatest in the world.

Mr. CROWLEY. I have a beef with that.

Chairman BRADY. It actually makes you smarter and better looking.

[Laughter.]

Chairman BRADY. Let me just say that for the record.

Mr. CROWLEY. And since I am looking more and more like you, I tend to agree with you.

[Laughter.]

Chairman BRADY. I may need to eat more.

Mr. Buchanan is recognized.

Mr. BUCHANAN. Thank you, Mr. Chairman. Ambassador, I wanted just to—being a Member here for four years, and many of my colleagues have been here four years or less—but being here for four years—and the gentleman said the need for speed—this has been an issue that we have been dealing with for four years. Where is the good faith negotiation?

I represent Florida, happen to be the only member of Ways and Means in Florida. This is a big issue to Florida. And it is just—it just seems like a complete lack of good faith, in terms of its negotiation. It is one hoop after another, moving the goal post constantly. I have been in business for 30-some years. At some point, just—if you are not going to do it, tell me you are not going to do it, and we will give the business to China.

But the bottom line, enough is enough. It has just gone on way too long. And I think the gentleman mentioned—the Secretary mentioned \$15 billion in exports. Is that right, Secretary, is that what you mentioned, the U.S. exports into Colombia?

Mr. HORMATS. Something like that, yes.

Mr. BUCHANAN. Yes. So I am looking at what has been the lost opportunities, the lost jobs in the U.S., and what is the lost opportunities going forward if we do not deal with this?

Because you have other countries—you mentioned you are losing market share—but after four years, if we do not get this done, in my opinion, in the next three or four months, you end up in the political season after the summer. It is not going to get done. And there is always issues for not doing a deal.

I mean, again, if we do not want to do the deal, the Administration or someone else, then we should just tell our friends in Colombia that we do not want to do the deal.

So I guess I bring that up to you in my frustration, what I hear from constituents all over Florida. Enough is enough. That is why we are trying to get a time line on this. I am excited about Korea, but we would like to see these other trade agreements get done.

And I will say just the same thing about Panama. It has just gone on and on and on.

So, I guess I would like to ask the Secretary, was that your number, the \$15 billion? I think that was what you quoted, that exports—we export into Colombia. Is that your figure?

Mr. HORMATS. I will check—

Mr. BUCHANAN. I think that was in your opening statement.

Mr. HORMATS. \$12 billion.

Mr. BUCHANAN. \$12 billion.

Mr. HORMATS. Colombia bought \$12 billion in U.S. goods.

Mr. BUCHANAN. Do you have any estimate of what, in the last four years we have been negotiating this and not having an agreement, what does that cost us in exports? Or maybe, going forward, what is this going to cost us as China and other folks are coming in there and—

Mr. HORMATS. I do not have a precise estimate on that. It would be hard to make an estimate—

Mr. BUCHANAN. Do you have some thoughts on it?

Mr. HORMATS [continuing]. that would be credible. Well, let me just make one broad point in answer to the point you have made on this, and that is I have worked for Republican administrations and Democratic administrations. And I am a strong believer—as I mentioned in my testimony—in the strategic importance of our relationship with Colombia for a variety of reasons that I have indicated.

And I just want to say that I have had a chance to work very closely with Ambassador Sapiro, Ambassador Kirk, and the people

who are working on this. And I can assure you they are working very hard, as expeditiously as possible, to make real progress on this, because they regard it as important, as well.

And I understand the points that have been made about the past. But if we are talking about the present, and we are talking about the level of commitment, and we are talking about the level of expedition that is going in to fulfilling this commitment, they are working very, very hard to come up with something that serves the interests of the American people, that is a good agreement, and that can be done as quickly as possible, bearing in mind the kind of results that Ambassador Sapiro and Ambassador Kirk have indicated.

And I can assure you this is given enormously high priority at all levels of the Administration, and they are working very expeditiously. When she gets out of this meeting she is going to meet with Colombians right away. These are senior, credible Colombians. There will be a very senior—

Mr. BUCHANAN. Mr. Secretary, let me just—I want to—because we got a limited time—what—how long, best to your knowledge, have we been working on this agreement?

Mr. HORMATS. We have been working—

Mr. BUCHANAN. I mean when did this agreement—and it is not just this Administration. A couple of years, but—I mean, how many years—because I remember in the last two years of the Bush administration, there must have been 50 Members of Congress that went down to Colombia in a good faith effort to try to get something done. Have we been working on this for six years? I have been here four, and I know it has been front and center for four years. I mean how long does something like this take? I think they are good partners. There is a lot of issues. We need to do something about it.

Ambassador SAPIRO. Congressman.

Chairman BRADY. All time has expired in this witness, and I would encourage you to answer in writing, if you would.

Mr. HORMATS. Thank you.

Chairman BRADY. Thank you. The Chair recognizes Mr. Kind.

Mr. KIND. Thank you, Mr. Chairman. And I want to thank you for holding this hearing today. I think it is very important that we, as a committee, explore what remaining obstacles remain to move these three bilaterals forward. But, obviously, the focus is on Colombia today.

Madam Ambassador and Mr. Secretary, I want to thank you for the intense focus that you have placed on this issue.

Obviously, if we are going to meet the President's goal of doubling exports in the next five years, these bilaterals are going to be an important step to achieving that. And they are important in their own right for geopolitical considerations, for economic considerations. I mean we are celebrating National Agriculture Week back home in Wisconsin this week.

And I am just looking at some of the analysis done with South Korea: 6.5 billion in additional ag exports to the South Korean market, when we can finalize that agreement. And we are looking at roughly 2.2 billion, just in the Colombia market alone. That is nothing to sneeze at.

But, having said that, there are some legitimate concerns that are ongoing with Colombia. I commend the Obama Administration for hitting the pause button when it related to South Korea, because I thought there was a better deal to be had. And, quite frankly, given the additional time that they went and negotiated some of the remaining items dealing with auto, making progress on beef, we were able to achieve a better deal with South Korea, one that I think will garner greater bipartisan support now in congress, once it is submitted for our consideration.

But in Colombia specifically, there are still some lingering concerns about worker rights and the violence against labor in that country. The previous Administration, either they chose to ignore it or didn't press this issue, but I am glad to see that this Administration has renewed focus on that.

And the question I have for you now—and to help us analyze whether progress is being made on that—are the obstacles in Colombia that many people are raising in regards to the ILO, worker rights, the violence against labor, in particular, is it a question of will in the country, or is it a question of institutional capacity or capability of doing something significant to crack down on some of these measures? Maybe we can start with you, Madam Ambassador.

Ambassador SAPIRO. Thank you, Congressman. I think those questions are related. We have a terrific opportunity here. Since the Santos Administration came in last August, they have been clear about their own commitment to making progress.

In our discussions with them over the last couple of months more publicly, and I would say before that more privately, they have made clear that they want to address these concerns. They share our goals. And so, we are now in the process of determining what specific concrete initiatives could be clear indication that these issues are being and will be addressed.

Just as we took the time last year to get the Korea right, with a lot of support from Chairman Camp, Ranking Member Levin, and many others, we are taking the time to get this right. But we share the sense of urgency that we have heard from all of you. And so we are doing it expeditiously, we are doing it intensively, we are doing it thoughtfully. We want to be in a position where we can advance this agreement; I am optimistic that we will get there, and we will get there in the near future with your continued support from all of you.

Mr. KIND. Let me ask you—and to get back to my friend from Florida's concern in regards to moving the goal post sense that some folks have around here—is there a way that we can proceed with the agreement with Colombia by establishing some metrics that will not end just at the signing of the agreement, but will require or call for a remaining engagement on our part to help them with the institution-building or the capacity in order to make progress, especially in the area of the ILO provisions and worker rights in that country?

Ambassador SAPIRO. I would add that it is good indication of the Santos Administration's commitment to these questions that it has invited the ILO back into Colombia. I think that is a very positive step—again, one of many that they are taking, and one of

many reasons why we see eye to eye, and it is truly a joint partnership, in terms of addressing these serious problems, so that we can immediately thereafter advance this agreement to you for your consideration.

We do share the sense of urgency that has been expressed here today.

Mr. KIND. Mr. Secretary, let me ask you. Has there been a sense of moving of the goal posts in our negotiations with Colombia, or have we been up front with them from the beginning, as far as what we are hoping to see in any final agreement?

Mr. HORMATS. I think the Administration and USTR have clearly laid out a number of very specific points. I think the Colombians are very clear on those points, and the points that we have laid out are under discussion as we speak. And I think there is a lot of clarity in this current environment that enables us and the Colombians to focus on the same issues, and to make progress on those issues.

A lot of work went into making sure that there was clarity. There were interagency meetings to discuss this, to be sure that we were giving clear signals to them, and that we were getting clear signals from them. And I think that has proved to be the basis for the kind of potential for progress that Ambassador Sapiro has laid out.

And let me also address, while I am speaking, the agricultural issue. You know, the people of Chico and the people of Nebraska, and many other parts of the country, I think do have a very strong interest in the agricultural aspects of this agreement. And those are one of the very important elements that USTR is pursuing. And that will, to the extent that they can make progress in the areas that they are now working on, will be very beneficial to the kinds of constituencies that you represent.

So, we look at this as a broad agreement that has a lot of things in it. And we have met—I have met, Ambassador Sapiro has met, Ambassador Kirk has met—with representatives of the farm community—

Chairman BRADY. Thank you, Mr. Secretary.

Mr. HORMATS [continuing]. And we understand these points very well, and the interest—

Chairman BRADY. Thank you, Under Secretary. Appreciate it. Mr. Schock is recognized.

Mr. SCHOCK. Thank you, Mr. Chairman. Well, there seems to be some confusion over the amount of clarity. So let me review some history.

Last June at the G-20 summit in Toronto, the President announced his intention to resolve the outstanding issues with the South Korea trade agreement by the time the G-20 met in Seoul less than 6 months later. The Administration promptly identified a finite set of issues that were made public: improved market access for U.S. exports of autos and beef, and a clear and achievable time frame.

In setting the deadline, the Administration did not say that it would conclude the deal on that date, no matter what. Instead, the Administration took an extra couple of weeks to, in their words, “cut the right deal.”

I think that was the right approach. And I commend them for being open and transparent about it. We should not be afraid of deadlines. In fact, they are action-forcing events. And they do not give away our leverage, as evidenced by the South Korean agreement. The Administration used a deadline and an action plan successfully in the Korea deal. I believe we need this type of leadership now for the Colombia agreement.

Yet, despite committing, as was evidenced by the remarks by my colleagues to “established benchmarks for progress,” as the Administration has said more than two years ago, the Administration still has not identified clear and definite issues, and also identified an achievable time line for resolution.

It is clear, however, we must recognize that the President can lead on trade when he wants to.

So, my first question would be: When will the President lay out a specific time table, specific action steps, as he did successfully to achieve an agreement with South Korea, but this time with Colombia? Ambassador.

Ambassador SAPIRO. Thank you, Congressman, for that question. We have laid out very clear concerns that we have. With respect to the labor code, we want to ensure that those labor laws are fully protecting worker rights and implementing those rights. With respect to violence, we want to ensure that the government is taking adequate steps to prevent violence against those Colombians seeking to exercise their worker rights. And on the question of impunity from justice, we want to ensure that sufficient efforts are being made to prosecute perpetrators of such violence.

These are very clear goals. We are happy that the Colombian Government shares them and understands the seriousness of them. We are not moving any goal posts. These have been our consistent goals.

We now have, I think, a unique opportunity, because the Santos Administration is so dedicated to working with us to achieve these goals, to lay down more specific actions. We are working with them intensively, possibly around the clock over the next few days, to be able to reach that kind of consensus on initiatives that they are either already taking, but may not be publicizing as they are working on them, or—

Mr. SCHOCK. Ambassador, forgive me for interrupting.

Ambassador SAPIRO. Certainly.

Mr. SCHOCK. I appreciate what you are saying, and I genuinely trust what you are saying to be true. The problem for us is that when we hear, “in the matter of a couple of days, reaching consensus,” I don’t know whether that means conclusion. Is consensus resolution to those issues? And, more importantly, what is the date? What is the time frame?

I mean the Administration did not dodge the question, was not shy about laying out a time frame and a date certain by which they were going to reach the deal with South Korea. What is the apprehension with Colombia?

Ambassador SAPIRO. There is no apprehension. We are engaged—

Mr. SCHOCK. But why don't we have a date certain? Why don't we say, "By the end of April, our goal is to bring—is to have resolution on this agreement?"

Ambassador SAPIRO. What I can say, with definiteness, is that we are working very hard, we have been, intensively, rapidly, and thoughtfully, to address these concerns with the Colombian Government. These are sensitive issues. These are complex issues. These are not the kind of issues that lend themselves, in my view, to a deadline.

I share your sense of urgency. We all do. That is why we are working so intensively.

Chairman BRADY. Thank you, Ambassador.

Ambassador SAPIRO. But I cannot say if it would be a few days or longer. I can promise to work very hard to report back to you soon.

Chairman BRADY. Thank you. Time has expired. I want to thank the witnesses for their excellent testimony and thank the Members for their thoughtful questions.

Clearly, closing out the remaining issues on Colombia and Panama, presenting them for congressional consideration by July 1st is crucial. And I still see no reason, since the texts on all three are done, that we cannot start technical discussions on them to continue this pace, moving forward.

I want to thank you both very much for being here today.

Mr. HORMATS. Thank you, Mr. Chairman.

Chairman BRADY. Thank you.

Ambassador SAPIRO. Thank you, and Happy Saint Patrick's Day.

Chairman BRADY. Same to you. And I did notice the green on you, Ambassador Sapiro.

Ambassador SAPIRO. Subtle.

Chairman BRADY. There is a hint of it.

I would like to welcome our second panel to step forward at this time. Today we are joined by five witnesses. Our first witness will be the Honorable Thomas Dorr, president and chief executive officer of the U.S. Grains Council, formerly the under secretary for rural development at the U.S. Department of Agriculture.

We will then hear from William Marsh, who is vice president of legal for the western hemisphere, Baker Hughes. He is also testifying on behalf of the National Association of Manufacturers.

Our third witness will be Ambassador Peter Romero, currently president and CEO of Experior Advisory LLC, and formerly our ambassador to Ecuador and assistant secretary for western hemisphere affairs at the Department of State.

Fourth, we will hear from Adam Isaacson, director of the regional security policy program at the Washington office on Latin America.

And we will conclude with General Barry McCaffrey, who is currently president of BR McCaffrey Associates, and formerly director of the office of national drug control policy and commander of the U.S. Southern Command.

We welcome all of you, and look forward to your testimony. I would also ask that their witnesses keep their testimony to five minutes.

Mr. DORR, good to see you.

**STATEMENT OF THOMAS C. DORR, PRESIDENT AND CHIEF EXECUTIVE OFFICER, U.S. GRAINS COUNCIL, FORMER UNDER SECRETARY FOR RURAL DEVELOPMENT, U.S. DEPARTMENT OF AGRICULTURE**

Mr. DORR. Thank you, Chairman Brady, Ranking Member McDermott, and distinguished Members of the Subcommittee on Trade. My name is Thomas Dorr. I am president and CEO of the U.S. Grains Council. The U.S. Grains Council appreciates the efforts of the subcommittee in holding hearings regarding the importance of ratifying the pending free trade agreements with Colombia, Panama, and South Korea. I will confine my remarks to the significant challenges we face in Colombia.

Colombia is a strategic market with economic growth projected to exceed four percent annually over the next five years. Colombia's per capita income is projected to increase from \$9,000 to nearly \$12,000 by 2015, and this income growth will result in substantive increased consumption of animal proteins.

While Colombia is a net exporter of agricultural commodities, it imports over 80 percent of the corn it uses domestically. It imports over 95 percent of the wheat and soybean products it consumes. In 2008, total U.S. agriculture exports to Colombia reached 50 percent market share, and exceeded \$1.6 billion.

Since 2008, U.S. market share has declined rapidly to only 21 percent, or approximately 800 million. For U.S. coarse grains, the decline has been more dramatic. In 2008, U.S. agricultural exports of coarse grains approached \$635 million, and accounted for 83 percent of the total Colombian coarse grains import. By 2010, U.S. coarse grain exports had declined to \$118 million, and market share fell to 18 percent.

Conversely, in 2008, Argentina held just an 11 percent share of coarse grain imports, primarily corn. By 2010, Argentina's market share was 66 percent. Over the same time period, Brazil's market share of coarse grain imports to Colombia increased from 5 to 16 percent.

Colombia protects its local production with common external duty of 15 percent. This includes corn and other agricultural commodities. Colombia is also member to the Mercosur Andean community agreement. This agreement includes a price band mechanism that levies additional duties. Colombia's trade agreement with Mercosur allows member countries to receive a preferential duty.

Argentina and Brazil receive an annual duty reduction on corn imports to Colombia, which completely phases out the basic duty by 2018. Beginning in 2006, the duty preference granted Brazil and Argentinian corn provided a nearly 5 percent advantage over corn imports from the U.S. In 2011, the duty preference of 6 percent will give a 9 percent advantage over U.S. corn imports. And this approximates a \$20-a-ton advantage.

Even with these duty preferences, the U.S. remained competitive until 2008, due in large part to our close proximity to Colombia. However, the increased duty preference to corn imports for Mercosur has virtually eliminated this advantage.

Equally disconcerting as the grain flow to Colombia shifts from the U.S. to Brazil and Argentina, their shipments to Colombia now include tonnages of corn over and above those required for their Colombian contracts. These added quantities are shipped in split shipments to Colombia, and then on to Latin American countries such as Panama and the Dominican Republic. This has further eroded U.S. market share, despite our clear freight advantage.

Once trade flows become established and relationships are formed with other trading partners, it is very difficult to win back these markets. The Council has established a strong partnership with the Colombian feed, livestock, and poultry industries, to build capacity and increase sufficiency utilizing U.S. coarse grain products. As a result of these ongoing efforts, we have gained their trust as a consistent, reliable supplier of quality products. Without ratification of the FTA, we will lose this relationship.

The Colombian feed and livestock industries wish to retain and build on this relationship. Representatives of the Colombian feed milling, swine, and wheat industries were in Washington earlier this year. They provided briefings to this committee, the Senate Finance Committee, and both the House and Senate Agriculture Committee. Their message was clear. Although the U.S. has been a reliable, preferred supplier, Colombia has no choice but to import corn and other commodities from Argentina and Brazil because of the lower duties. They stated that the U.S.-Colombia FTA would allow them the opportunity to acquire more U.S. commodities. However, price is paramount, and the competition is fierce.

[The statement of Mr. Dorr follows:]



**U.S. GRAINS  
C O U N C I L**

Developing Markets | Enabling Trade | Improving Lives

**STATEMENT  
OF THE  
U.S. GRAINS COUNCIL**

**TO THE U.S. HOUSE WAYS AND MEANS  
SUBCOMMITTEE ON TRADE**

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**REGARDING THE ECONOMIC IMPLICATIONS OF PENDING  
FREE TRADE  
AGREEMENT WITH COLOMBIA**

**MARCH 17, 2011**

**THOMAS C. DORR  
PRESIDENT & CEO**

Thank you Chairman Brady, Ranking Member McDermott, and distinguished members of the Subcommittee on Trade. My name is Tom Dorr. I am President and CEO of the U.S. Grains Council (USGC). Founded in 1960, The Council is a private, non-profit corporation with 10 international offices and programming in more than 50 countries. Its unique membership includes barley, corn and sorghum producer organizations and agribusinesses from across the United States with a common objective in developing export markets.

The Council appreciates the efforts of subcommittee in holding hearings regarding the importance of ratification of the existing free trade agreements (FTAs) with Colombia, Panama and South Korea. All are important export markets for the coarse grains and important co-products (i.e., distiller dried grains, corn gluten feed, corn gluten meal) we represent and offer significant opportunities for growth and each of which the Council has had extensive involvement in capacity-building and increasing demand for these products.

I will confine my remarks to the subject of this hearing—the extraordinary challenges we face in Colombia with an increasing loss of market share in what is one of the strongest growth markets in our own hemisphere.

#### **Colombia—Key Strategic U.S. Agricultural Export Market**

Colombia is a key strategic market with exceptional growth potential. Colombia has the second-largest population in South and Central America and the Caribbean, and is the third-largest economy in the region. Colombia is experiencing strong economic growth, projected to exceed 4 percent annually over the next three years. Colombia's per capita income has grown steadily over the last decade, exceeding \$9,000, and is projected to increase to nearly \$12,000 by 2015. As a result, its middle class continues to grow and is projected to increase to more than 25 percent of the total population by 2020.

This higher growth income has resulted in more consumption of animal proteins with an increase in pork production (32 percent), poultry (32 percent) and eggs (12 percent) in the last five years. While Colombia is a net exporter of agricultural commodities, it imports over 80 percent of the corn it uses domestically. Similarly, it imports over 95 percent of the wheat and soybeans products it consumes.

Colombia is an important market for America's farmers and ranchers. Total U.S. agricultural exports exceeded \$1.6 billion in 2008. Colombia is the fifth-largest market for U.S. coarse grains, eclipsed only by Mexico, Japan, Taiwan and South Korea.

Until 2008, the U.S. agricultural sector had been the beneficiary of Colombia's growing need for imports of agricultural commodities. U.S. market share of Colombia's total agricultural imports grew steadily from 2005 to 2008 reaching nearly 50 percent. However, since 2008, U.S. market share has declined rapidly to only 21 percent. Conversely, Argentina's market share of Colombia's total agricultural imports rose sharply from 8 percent to nearly 30 percent over the same time period.

For U.S. coarse grains, the decline has been even more dramatic. At its peak, U.S. exports of coarse grains approached \$635 million and accounted for 83 percent of the total Colombian coarse grains imports. In 2010, U.S. coarse grains exports declined to \$118 million and market share fell to 18 percent, a residual supplier level. The loss of market share can be attributed to major inroads by Argentina and Brazil. In 2008, Argentina held an 11 percent share of coarse grains imports, primarily corn. By 2010, Argentina's market share was 66 percent. Over the same time period, Brazil's market share of coarse grains imports to Colombia increased from 5 to 16 percent.

#### **Tariff Constraints Erode US Competitiveness**

Colombia protects its local production with a common external duty (15 percent) that includes corn (and other agricultural commodities). In addition, Colombia is a party to the MERCOSUR-Andean Community agreement, under which it has implemented bilateral agreements with Brazil, Argentina and Paraguay. Under that agreement exists a price band mechanism which levies additional duties on the 15 percent duty when international corn prices are lower than a preference and conversely reduces the basic duty when international corn prices are higher. This price band mechanism operates as a protective policy when international prices are lower by increasing the import duty, while high international prices act as natural protection for the local production.

Colombia's trade agreement with MERCOSUR allows member countries to receive a preferential duty treatment. Argentina and Brazil receive an annual duty reduction on corn imports to Colombia, which completely phases out the basic duty by 2018. Beginning in 2006, the duty preference on the basic duty (15 percent) granted for corn was 31 percent or a duty of 10.35 percent— a 4.65 percent advantage over corn import from the United States. By 2009, the duty preference reached 49 percent and then 54 percent in 2010. In 2011, the duty preference increased to 60 percent, which represents a 9 percentage point advantage over corn imports from the United States. Even with the duty preferences in place, the United States remained competitive until 2008. However, the increased duty preference to corn imports from MERCOSUR has virtually eliminated that advantage.

This is despite the fact that the United States, with its close proximity to Colombia, has a freight transportation advantage over Argentina and Brazil. According to estimates provided by Colombian feed importers, the lower import tariff by itself currently provides a \$20/ton advantage over U.S. shipments.

Corn makes up a larger percentage of grain imported into Colombia, which leads importers to combine it with other grain imports, such as soybeans, wheat and other grain co-products to complete their grain cargo. As U.S. corn imports have declined, the same has occurred with other bulk products. The decline of U.S. imports has lowered the incentive to import other U.S. grains as well.

Equally troubling, the shift in grain flows from the United States to Argentina and Brazil has allowed those countries to include additional quantities of corn over and above the shipments to Colombia that are later shipped to Latin American countries such as Panama and the Dominican Republic. The lower tariff rates allow Argentina and Brazil to import corn into these markets despite the transportation disadvantage. These are markets where the United States has a clear competitive advantage and yet we are seeing them be eroded because of the pernicious effects of the lower duty preferences. Once trade flows become established and relationships are formed with other trading partners, it is very difficult to win back these markets.

In addition to the MERCOSUR-Andean Community Agreement, Colombia currently has free trade agreements (FTA) in place with Chile, El Salvador, Guatemala, Honduras, Mexico and Uruguay. It is also a member of the Andean Community Customs Union (Bolivia, Ecuador and Peru). In 2010, Colombia finalized FTAs with Canada and the European Union, and is presently negotiating new FTAs with Panama, South Korea and Singapore. Without the U.S.-Colombia FTA, U.S. coarse grains producers as well as the producers of other U.S. agricultural commodities will cede this market to our competitors.

#### **USGC Capacity-Building Efforts in Colombia**

The Council works closely with the Colombian feed, livestock and poultry industries to build capacity and increase efficiency to utilize U.S. coarse grains products. Several of the numerous Council programs include: Capacity-building to the poultry and dairy sectors in disease management and training in feed formulation; training in nutritional and price benefits associated with using distiller's dried grains and an introduction of U.S. sorghum into the Colombian livestock sector; and U.S. grain trade promotion through grain marketing and risk management training for major Colombian grain importers. The resulting productivity gains have greatly enhanced Colombia's ability to meet the needs of their growing middle class and supply high-quality protein products at low cost to their consumers.

Separately, the Council and the United Soybean Board participated in a technical cooperation agreement with the Inter-American Institute for Cooperation on Agriculture on a 2004 study on the impact of the elimination of Colombian trade protection on corn, sorghum and soybeans. That study revealed that with the elimination of Colombia's tariff barriers, prices of corn and sorghum would fall by 33 percent. Imports of corn and sorghum would increase by 92 percent with a value of \$192 million. The lower feed prices would increase the demand for feed and the Colombian livestock and poultry sector would benefit through projected increases in the value of production of poultry (17 percent); pork (14 percent); and eggs (11 percent).

As a result of these ongoing efforts, the Council has established a strong partnership with Colombia's livestock and poultry sectors. U.S. producers gained their trust as a long-term, reliable supplier that provides consistent, quality products. As valued customers, the Council consistently provides technical support and outreach to meet their needs.

The Colombian feed, livestock and poultry industries want to retain and build on that relationship. Representatives of the Colombian feed milling, swine and wheat industries traveled to Washington, D.C., earlier this year and provided Congressional briefings to this Committee as well as the Senate Finance Committee and House and Senate Agriculture Committees. They explained that Colombia must import agricultural commodities at competitive prices to meet their growing demand for protein products. While the United States has been a reliable supplier, they stressed that duty preferences afforded to Argentina and Brazil has eroded the competitiveness of U.S. commodities and they have no choice but to import corn and other commodities from those markets. They stated that the U.S.-Colombia FTA would allow them the opportunity to acquire more U.S. commodities. However, price is paramount and if the United States cannot compete they will continue to source products from our competitors.

#### **US-Colombia FTA Removes Tariff Constraints—Levels Playing Field**

The benefits provided under the U.S.-Colombia FTA will eliminate the tariff constraints that are eroding the competitiveness of U.S. agricultural exports. Upon implementation of the FTA, the applied tariffs are eliminated, providing immediate duty-free access to coarse grains and more than 80 percent of current U.S. agricultural exports to Colombia. Colombia will immediately eliminate its price band system, which in addition to corn, affects more than 150 agricultural products.

For yellow corn, Colombia will provide immediate duty-free access through a 2.1 million tariff rate quota (TRQ) with 5 percent annual growth. Colombia will phase out its out-of-quota tariff of 25 percent over 12 years. For white corn, a staple product for Colombia's consumers, the agreement will provide immediate duty-free access through a 136,500 ton TRQ with 5 percent annual growth. Colombia will phase out the out-of-quota tariff on 20 percent over 12 years.

The Council has worked aggressively to promote the use of grain sorghum in feed rations in Colombia. Under the agreement, Colombia will provide immediate-duty free access through a 21,000 ton TRQ with 5 percent annual growth. Colombia will phase out the out-of-quota tariff of 25 percent over 12 years.

Tariffs on barley and barley products, with the exception of feed barley, will be eliminated immediately. Important co-products – distiller's dried grains, corn gluten feed and corn gluten meal – will also be provided immediate duty-free access.

#### **Concluding Remarks**

In summary Mr. Chairman, Colombia is a key strategic market with exceptional growth potential right in our own hemisphere. The United States is already losing hundreds of millions of dollars in annual exports and this is compounded by the loss or non-creation of thousands of U.S. jobs. If U.S. agriculture is to remain competitive and capitalize on this significant opportunity it must also maintain its leadership role. Without removal of these trade constraints, the U.S. coarse grains producer will lose this market.

If we are to collectively meet the critical objectives of the National Export Initiative, we see great opportunity and progress if there is ratification of the Colombia, Panama and South Korea FTAs. Equally important, should Congress ratify these FTAs it will enhance the credibility of the United States with its global trading partners on the overall trade agenda and increase its ability as the world's largest trading partner to marshal completion of the Doha Development Round and the Trans-Pacific Partnership agreement.

Again, Mr. Chairman, ranking member McDermott, and members of the subcommittee, I appreciate the opportunity to present the views of the U.S. Grains Council. I would be pleased to answer any questions of the Committee. Thank you.

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Chairman BRADY. Thank you, Under Secretary Dorr. I apologize. Our five minutes has expired. But we had the opportunity to read the testimony that you supplied to us. We appreciate it very much. Thank you.

Mr. Marsh, you are recognized.

**STATEMENT OF WILLIAM D. MARSH, VICE PRESIDENT LEGAL,  
WESTERN HEMISPHERE, BAKER HUGHES, INC. ON BEHALF  
OF BAKER HUGHES, INC. AND THE NATIONAL ASSOCIATION  
OF MANUFACTURERS**

Mr. MARSH. Thank you. Good morning, Chairman Brady, Ranking Member McDermott, members of this subcommittee. I am William Marsh, vice president legal, western hemisphere, for Baker Hughes Incorporated. I am pleased to testify today as a member of the National Association of Manufacturers. I have been practicing law for 22 years, with 13 years exclusively in the oil and gas industry, and substantial experience working in Latin America, including Colombia.

Hughes Baker is a top-tier oil field service company with a century-long track record. We deliver technology solutions that help oil and gas operators maximize their reservoirs through high-performance drilling and evaluation, completions and productions, fluids and chemicals, and reservoir analysis. We work side by side with our customers to engineer reliable, application-specific products and services.

While we operate globally, Baker Hughes is headquartered in Houston, Texas, and is a United States employer and manufacturer. We have a diverse workforce of more than 21,000 highly skilled professionals in science, engineering, manufacturing, and operations support in the United States, and we are located in 28 states.

In addition to providing services globally, Baker Hughes manufactures products in the United States, like pumps, motors, and valves, and exports them to countries worldwide, including Colombia. Roughly 75 percent of Baker Hughes Colombia's total global imports are from Baker Hughes facilities in the United States. We employ 450 workers in our Colombian operations, and Baker Hughes offers a multitude of products and services in Colombia, ranging from reservoir development services, to intelligent production systems, to integrated operations.

As you have heard today, the U.S.-Colombia trade promotion agreement will replace a one-way preferential agreement with one that is mutually beneficial and reciprocal. Because of trade preferences, Colombia's exports have been entering the United States duty free, though that has been temporarily.

By contrast, Colombia's average duty on our imports from the United States averages 5 percent, with some tariff peaks at 10 to 20 percent. Eliminating that duty would allow Baker Hughes to more effectively compete in Colombia, increase our exports to serve Colombia's expanded plans for oil and gas projects, and create more highly-skilled jobs here at home.

Colombia is a significant market for the United States, second only to Brazil and South America. The United States exports to Colombia exceeded \$12 billion in 2010, and over 90 percent of that total was in manufactured goods. According to the United States Department of Commerce, those exports supported nearly 90,000 United States jobs and 10,000 U.S. small and medium-sized businesses.

More specifically, Colombia is a major prospect for new oil and gas development. According to media reports, the Colombian Gov-

ernment plans to increase oil production up to one million barrels per day by the end of 2012, and activity is likely to remain high for the next decade. As a market leader in oil-field services, Baker Hughes intends to be a substantial part of that market. The United States trade policy should facilitate our participation in that responsible development.

From a security perspective, there are advantages to developing western hemisphere energy sources like those in Colombia. Colombia is considered a U.S. ally with a relatively stable government and economy. Oil and gas from Colombia could displace oil from less secure foreign sources of supply.

Helping Colombia maintain a strong economy is also in our national interest. Therefore, adopting this reciprocal treaty is a win for both countries. Thank you.

[The statement of Mr. Marsh follows:]

**Testimony**

**Of William D. Marsh**

Vice President, Legal, Western Hemisphere

Baker Hughes Incorporated

On *behalf* of the National Association of Manufacturers

*before* the Committee on Ways and Means

Subcommittee on Trade

*on* The Pending Free Trade Agreement with Colombia

March 17, 2011

WRITTEN TESTIMONY OF  
WILLIAM D. MARSH, BAKER HUGHES INCORPORATED  
BEFORE THE  
COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON TRADE  
MARCH 17, 2011

Good morning Chairman Brady, Ranking Member McDermott, members of the Subcommittee: I am William Marsh, Vice President, Legal, Western Hemisphere, of Baker Hughes Incorporated. I am pleased to testify today as a member of the National Association of Manufacturers (NAM). NAM has a great deal of experience and expertise on trade-related matters, and I am submitting the Association's testimony for the record, which is attached. I have been practicing law for 22 years, with 13 years exclusively in the oil and gas industry and substantial experience working with Latin American countries, including Colombia.

Baker Hughes is a top-tier oilfield service company with a century-long track record. We deliver technology solutions that help oil and gas operators maximize their reservoirs through high-performance drilling and evaluation, completions and production, fluids and chemicals, and reservoir analysis. We work side-by-side with our customers to engineer reliable, application-specific products and services.

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The U.S.-Colombia Trade Promotion Agreement will replace a one-way preferential agreement with one that is mutually beneficial and reciprocal. Because of trade preferences, Colombia's exports have been entering the United States duty free (though that has temporarily expired). By contrast, Colombia's average duty on our imports from the United States averages five percent with some tariff peaks at 10 to 20 percent. Eliminating that duty would allow Baker Hughes to more effectively compete in Colombia, increase our exports to serve Colombia's expanded plans for oil and gas projects, and create more highly-skilled jobs here at home.

Colombia is a significant market for the United States—second only to Brazil in South America. United States exports to Colombia exceeded \$12 billion in 2010 and over 90 percent of that total was in manufactured goods. According to United States Department of Commerce, those exports supported nearly 90,000 United States jobs, of which 10,000 are U.S. small- and medium-sized businesses.

More specifically, Colombia is a major prospect for new oil and gas development. According to media reports, the Colombian government plans to increase oil production up to one million barrels per day by the end of 2012, and activity is likely to remain high for the next decade. As a market leader in oilfield services, Baker Hughes intends to be a substantial part of that market. United States trade policy should facilitate our participation in that responsible development.

From a security perspective, there are advantages to developing Western Hemisphere energy sources like those in Colombia. Colombia is considered a U.S. ally with a relatively stable government and economy. Oil and gas from Colombia could displace oil from less secure foreign sources of supply. Helping Colombia maintain a strong economy is also in our national interest. Therefore, adopting this reciprocal treaty is a win for both countries.

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Chairman BRADY. Thank you, Mr. Marsh.  
Under Secretary Romero?

**STATEMENT OF AMBASSADOR PETER F. ROMERO, PRESIDENT AND CHIEF EXECUTIVE OFFICER, EXPERIOR ADVISORY LLC, FORMER ASSISTANT SECRETARY FOR WESTERN HEMISPHERE AFFAIRS, U.S. DEPARTMENT OF STATE, FORMER U.S. AMBASSADOR TO ECUADOR**

Mr. ROMERO. Thank you, Mr. Chairman, and thank you for the promotion. I was assistant secretary and retired a couple years ago, but—

Chairman BRADY. It is Saint Patrick's Day, we are doing—  
[Laughter.]

Mr. ROMERO. Thank you. Mr. Chairman, thank you for the invitation, ranking senior Member and others, thank you for the invitation.

I think I would like to start out with some good news. And the good news is that, through almost 10 years of U.S. investment in Colombia, that investment, through Plan Colombia and other support, is paying off. Colombia is more democratic, it is safer, it has got a strengthened rule of law, it is more prosperous. And, according to most of your surveys, is the second most business-friendly country, after Chile, in the hemisphere.

The bad news is that, after having spent this taxpayer money, and having results that were probably beyond our expectations early on, literally the Chinese, the Koreans, the Canadians, and the European Unions are the ones that are cashing in on this. This, at a moment when the Chinese—and there has been a lot of discussion about the Chinese and their investment in Latin America—but it has gone up tenfold over the last couple of years. Their FDI over the period has increased to 17 percent of all Chinese FDI. And, at the same time, the U.S. share of all exports to the region fell from 48 percent to 37 percent. We are losing ground, Mr. Chairman.

If these numbers are not bad enough, the other downside is that when the Chinese cut deals in Latin America, they do not particularly care about the rule of law. They do not particularly care about human rights, labor rights, and foreign corrupt practices, or the environment. And that is basically what is happening, in terms of the reality of Latin America. Certainly the sanctity of their contracts is important to them. But the rest of it really is of little or no importance when it comes to political or ethical practices.

I think it is useful to just take a minute to go back to where we were in the year 2000, when we started Plan Colombia. Colombia was on the verge of ceding swatches of its country to bad guys: paramilitaries, gangs, narcos, guerillas, you name it. You could not travel from one city to the other without taking an airplane. The line around the consulate to leave, to get visas to come to the United States to leave, went around the block. You could not get a visa interview for six months.

This has changed dramatically. President Uribe first turned it around. President Santos is continuing it through his process of democratic security, which is empowerment at the local level. This has worked, this whole of government approach has worked so well, that we have versions of it going on in Afghanistan and Iraq today. We have put a lot of stock behind using it, okay? So it has worked. Colombia is not perfect. It is not Sweden. It will not be, for some time to come.

I have spent 35 years, both in the public sector and the private sector, railing against the double standard towards Latin America. Latin America has a different set of standards that we apply, with respect to foreign policy, than we do the rest of the world. There is not one person in this room that has talked about our negotiations with Vietnam, that has a history of repression against labor and organized labor in that country, and yet that is not even a discussion. And in Colombia, Colombia has to wait for five years, even to get a response.

I would also argue with the Administration that was here. Colombia has not gotten clear guidelines, in terms of what would satisfy the U.S. Government, in terms of whatever change to the laws and reform, that the Administration appeared to suggest when they were here.

Just a few words on labor. Mr. Chairman, I belong to four labor unions in my professional life. I joined them gladly. I was a teacher for a number of years. A lot of the labor issues that are of concern to this committee are, indeed, legitimate issues. But there has been a significant improvement across the board, whether it be assassinations of labor leaders or organizers or even members out in the field, there has been labor reform. There is a robust dialogue at the national and local level labor reform which puts management and labor continually together.

There have been increasing reforms and efforts to address this issue, including special prosecutors and \$13 million spent last year to protect labor leaders and labor organizers and labor members in the field. Colombians have done their part.

[The statement of Mr. Romero follows:]

Testimony of Ambassador (Ret.) Peter F. Romero Before the House Ways and Means Committee, March 17, 2011

The good news is that our longstanding investment in Colombia is now paying off. The bad news is that others are literally "cashing in" as we appear unwilling to claim it for ourselves through a Free Trade Agreement (FTA). In the last year we have: downgraded our assistance through Plan Colombia; eliminated trade preferences of more than 18 years standing; have made no effort to help get Colombia into APEC (Asian Pacific Economic Cooperation); and after five years, refuse to tell the Colombian government what is deficient in the existing draft trade agreement.

There has been little official US acknowledgement of Colombia's commitment to assisting other countries in their fight against global drug trafficking, to include Mexico and Afghanistan. The reality is that US tax payers (through our previous support for Colombia) have now subsidized Chinese, Korean, Canadian, European Union investment and exports to a safer, more democratic and lawful Colombia.

The short shrift that the Administration has given to Colombia and the region at large could not have been predicted from his first days in office. Barack Obama's participation in the Fifth Summit of the Americas was heralded with great promise, ushering in a new beginning in our relationships between the United States and the rest of the Western Hemispheres' nations. Our first president of color, his victory was a cause for great celebration, particularly among the poor and the politically marginalized in the region. Secretary Clinton has done what she could to fill this void by visiting the region frequently, by accepting our shared responsibility for the violence plaguing Mexico and for the devastation in Haiti. Her challenge to the region to better empower women has created real resonance. But this does not substitute for a well crafted hemispheric agenda, an accompanying action plan or for the President's engagement.

While the Administration deals with unprecedented domestic and international security issues, it appears to believe that there is nothing that can be done to arrest the persistent deterioration of essential democratic principles and institutions in the region. The policy seems to rely heavily on the clock to take care of the likes of Chavez, Ortega, Morales and Castro.

There is no better example of how polarized and politicized the region has become than that of Honduras. Hondurans now have a democratic government with the imprimatur of internationally-monitored free elections and none of whose leaders were involved in a 2008 coup. They have not even been successful in even getting a hearing to be re-admitted into the Organization of American States (OAS). This as some members in good standing, such as Venezuela are never questioned as they eviscerate vital democratic institutions, use the law selectively against political opponents and corruption and narco trafficking are rampant. By controlling all levers of government Hugo Chavez has

become a dictator and the countries of the hemisphere do nothing to hold him accountable.

Lying in the midst of all this is Colombia. Situated in a tough neighborhood, Colombia has run afoul of its neighbors by defending its territory against guerrilla groups that are supplied, find rest and recuperation and support in neighboring countries. An attack, against the second highest ranking FARC commander, 1.5 kilometers inside Ecuador, provoked a heavy rebuke by other South Americans. When Colombia tried to take the information gleaned from the captured laptops at the scene of the attack to regional and hemispheric fora, it was virtually ignored. When the Colombian government complained that Swedish-made, shoulder-fired missiles sold to the Venezuelan military had been discovered in Colombia in a captured FARC cache, there was no hemispheric solidarity. Finally, when the Colombian government decided to formalize an agreement to permit the US to use some of its military bases in the fight against drug trafficking, the outcry throughout South America was deafening. During all this Colombians looked to the US for validation and support and in the end were on their own.

What they see is a Washington pulling away. The US has lowered its support for Plan Colombia, this at a time when Plan Colombia has become a bipartisan success story in Washington and a security game changer in Bogota. It has provided the tools for the Colombian government to establish authority in places that had been under the control of narcos, guerrillas, paramilitaries and gangs for decades. The grassroots "Whole-of-Government" approach undertaken by then-President Uribe and now President Santos has succeeded in winning back large tracts of Colombia's previously ungoverned spaces.

At its core, Colombia's "Democratic Security" policy starts and ends with local empowerment. The government follows through on its project commitments, but village/town dwellers and their leaders set the project agenda and monitor progress. "Democratic Security" has become the gold standard in effective counterinsurgency operations. Versions of this strategy have been employed by US forces to positive effect in Iraq and Afghanistan. Even Mexican state and local officials are now hosting Colombian officials and sending teams for training there. Colombians are determined to defend their security and democracy gains, but to do so would require generating jobs for the tens of thousands of youth who enter the job market every year. The FTA would do just that. It would help the Colombian government in finishing the job that we undertook together over a decade ago, by providing a legitimate livelihood instead of growing coca or taking up arms.

Colombia had been our strongest and most longstanding strategic ally in the region. It has provided troops for Korea, the Sinai and now Afghanistan. It chairs the UN committee charged with implementing US-backed sanctions against Iran. Nevertheless, after over five years of waiting for the US to ratify a Free Trade Agreement, and now seeing its trade preferences evaporate because of a lapsed ATPDEA, it has begun to look elsewhere for new trade opportunities and is beginning to mend fences with its neighbors by distancing itself from the US. On the trade front this was not always the case.

Colombia had been the largest purchaser of US agricultural products in South America. In the five years prior to 2008, US exports of wheat, corn, soybean and soy oil had been expanding by about 38% per year, accounting for nearly \$4 billion a year in US exports. In the last two years, while the US has failed to ratify the FTA, Colombia has concluded trade deals with our competitors, Canada, Chile and the European Union and deepened existing agreements with Argentina, Brazil, Paraguay and Uruguay. As a result, in the last two years US exports of agricultural products have fallen by almost half and our market share has gone from 71% to around 27%!

Passing the FTA would stop the erosion of our market share and would create new opportunities for trade and investment in this market of 46 million consumers, the third largest market in Latin America, after Brazil and Mexico. Critically, it would generate thousands of jobs at home at a time of great need. Ratifying the FTA now would also give the US an opportunity to re-assert its leadership in the region and begin again to shape events there, instead of seeming powerless to react. Conversely, failure to act will send the US further into a crisis of credibility in the region from which we may not be able to return.

Many members of the House and Senate are uneasy about bringing the Colombia FTA to a vote because of threats to labor, particularly violence against labor leaders there. This is a legitimate concern. Throughout my work life I have eagerly joined four labor unions and I am currently a board director for the Foundation of the largest teacher association in the US. After having spent considerable time in Colombia analyzing labor issues, I can say that the Colombian government, its courts and the independent prosecutor have performed admirably in changing what had been an anti-union culture in the country. Officers of the Colombian police now protect threatened labor unionists. Attacks on labor organizers have fallen off dramatically to single digits, the country's labor laws are being better respected and, most importantly, there is an ongoing formal dialogue between labor and management at the national and local levels.

President Obama leaves for the region tomorrow. Regrettably, he will not be visiting Colombia. If he did, he would see first-hand the enormous progress on labor rights and the rule of law that has taken root there. One of President Santos' earliest acts, after being inaugurated, was to reach out to the country's judiciary, placing a high value on the rule of law and also re-establishing the Ministry of Justice. He has emphasized time and again that public officials will be held accountable for their actions under the law.

Congress should do the right thing and pass the Colombia FTA as soon as possible. Colombia is reeling from the worst rains in its history. Over three million people have lost their homes due to flooding. There is no better time to give these suffering people hope by passing an FTA. I hope that the Obama administration soon realizes that enough progress has been made in Colombia to warrant passage. The President and the American people should know that the nations of our hemisphere are watching this very closely. If the US does not deliver on an FTA for Colombia, our closest ally in the region, they will continue to ask themselves whether there are any benefits in aligning their countries with the US.

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Chairman BRADY. Ambassador, thank you, and we will submit your testimony for the—full testimony for the record.

Mr. ROMERO. Thank you.

Chairman BRADY. Mr. Isaacson.

**STATEMENT OF ADAM ISAACSON, DIRECTOR, REGIONAL SECURITY POLICY PROGRAM, WASHINGTON OFFICE ON LATIN AMERICA**

Mr. ISAACSON. Chairman Brady, Ranking Member McDermott, thank you for inviting me to participate in this hearing.

I have a very deep affection for Colombia. I spend most of my adult life visiting it. I have been there about 50 times. I have met some of the bravest people in the world there, labor leaders high among them. And, after all these years, to be honest, I still do not always get it. I cannot fathom how you can carry on, day to day, knowing that, at any time, you could be murdered because you want to improve your workplace or you want to find out who killed your spouse, or you want to recover land that was stolen from you. And you know that your killer has no reason to fear being sent to prison, and could go on to victimize someone else.

It takes a special person to keep believing in her country, or to keep defending his fellow citizens. But Colombia has an amazing number of these people. When I ask them how they keep going, it is also amazing how often they just sort of shrug their shoulders, as though the answer should just be obvious.

I want my country to be on these people's side. I also want Colombia to take off economically, and put its conflict behind it. I want the United States to contribute to that through its aid and trade policies. That is why my colleagues at the Washington Office on Latin America and I believe that, instead of jumping in, we need to work with the Colombian Government on some clear, achievable benchmarks for progress, and see meaningful results before considering the FTA.

Over the four-and-a-half years since the FTA was signed, there are four areas where this progress has not been sufficient. They are labor law, protection, impunity, and land. On labor law, we hope to see Colombia align its laws with ILO core labor rights. The FTA itself requires this. This means doing away with cooperative trade associations, collective pacts, an expansive definition of "essential workers," and other obstacles to the right to bargain collectively. These labor laws should have to be enforced, too. So Colombia would need to increase funding and political backing for the parts of the government that are supposed to be doing that.

Second is protection. It's crucial that there be a sharp drop, ideally to zero, in homicides, attacks, and threats against trade unionists, human rights defenders, victims' advocates, and Afro-Colombian and indigenous leaders. Colombia is different from the United States' other free trade debates. This time we have signed an agreement with a country that is in conflict. Elsewhere, the discussion focused on labor laws, wages, and work conditions.

Those are important. But in Colombia, there is a more immediate life-or-death issue. Trade unionists and other people fighting for justice continue to be murdered in shockingly high numbers. These killings have to stop. This stoppage should result from the government's own rapid response to threats when they occur, its dismantling of new paramilitary groups who are growing quite quickly right now, its protection of the population from the leftist guerillas, and its effective investigations and prosecutions of homicides. And that last one is important.

Third, impunity. This is so critical that, in my view, it is the chief reason for waiting a bit on the FTA. Colombia has got to get the killers behind bars to dissuade future killings. This is where the least progress has been made. After four-and-a-half years we have seen the impunity rate for labor killers only move from 98 percent to 94 percent. That is a tragedy. Progress on impunity takes a while to measure, but there is no substitute. If you do not address impunity you have no guarantee that this will not flare up again.

So, Colombia needs to sharply increase its prosecutions, investigations, and verdicts on labor killings. The same goes for other recent abuses, like the 3,000 civilians that the armed forces are alleged to have murdered in the past 10 years.

Finally, the fourth point, land and victims. Land is at the core of Colombia's long conflict. The violence has forced more than 5 million—mostly rural Colombians—from their homes and farms in a country of 45 million. The FTA must neither lock in this injustice nor knock thousands of small farmers out of business. If it does, we could feel the consequences right here, as more cocaine coming to the United States.

On land, the government of President Juan Manuel Santos has a plan that deserves our support. A land and victims law is nearing final approval in Colombia's congress. This is a decent law, but its test will be its implementation, not just its passage.

These four areas I lay out here are not a recipe for a perfect society, or a Sweden. These are minimal standards to keep the FTA from having unintended consequences that could undermine U.S. interests and values. They are reasonable.

Although I am impressed by the Santos Administration's policy proposals, we cannot settle just for promises. A new policy or strategy, a new task force or working group or commission, a new directive, order, even a new law, these are great. They are welcome. But they are no substitute for measurable results. And as we measure progress toward these minimal standards, my advice is, to quote Ronald Reagan, "Let us trust, but verify." And verifying will take some time. That is why we advise engaging Colombia in a constructive discussion of how to get this done right, and verifying that meaningful progress happens.

I look forward to your questions, and to discussing this with you at any time. Thank you.

[The statement of Mr. Isaacson follows:]

**Testimony of Adam Isacson, Washington Office on Latin America**  
**House Committee on Ways and Means Subcommittee on Trade**  
**Thursday, March 17, 2011**

**Hearing on the Colombia Free Trade Agreement**

Chairman Brady, ranking member McDermott, I want to thank you for holding this hearing, and for giving me this opportunity to share the perspective of my organization, the Washington Office on Latin America, on the U.S.-Colombia Trade Promotion Agreement (Free Trade Agreement, or FTA).

Since its founding in 1974, WOLA has advocated equitable economic development, strong democratic institutions, and respect for human rights in Latin America and the Caribbean. I have worked on, and in, Colombia since 1997. My focus has been security, governance, conflict resolution and U.S. assistance, while other WOLA staff have focused on economic development, drug policy and displacement.

Let me be clear: we are for expanded trade. We want to see freer and fairer trade relations between the United States and Colombia. But we want this trade relationship to develop in a way that is in line with U.S. values of fairness, justice and democracy. Only by pursuing our values do we truly protect our interests, build our respective economies fairly, and strengthen our influence as a good neighbor in Latin America.

My testimony today will seek to lay out what needs to happen before Congress should consider this agreement. It is important to keep two things in mind as we begin this discussion.

First, let's stop thinking in cold-war terms about incurring some sort of geopolitical cost if we do not act immediately. We don't have to sacrifice our values to compete with countries like Venezuela before Latin American opinion. In fact, waiting a bit longer while we engage Colombia in a practical discussion of results and objectives could *improve* the U.S. image in the region. It will show us to be consistent in our concerns about basic human rights and freedoms. The U.S. government regularly and rightly condemns the human rights failings of regional adversaries like Cuba and Venezuela. By taking this course, we show that we don't have a double-standard: when our friends fall short, we don't just overlook it and reward them anyway.

Second, our discussion must take place amid an immediate reinstatement of unilateral preferences under the Andean Trade Preferences and Drug Elimination Act. Raising U.S. tariffs on Colombian goods now – especially as Colombia contends with the impact of devastating floods – sends a perverse message to the region, and the longer we have to wait before ATPDEA is renewed, the more it hurts our relationship with Colombia and its neighbors. This backwards movement away from freer trade is punishing Colombia for nothing, at a time when we should be working with them to get past this.

**Why goals and benchmarks?**

I'm going to offer some suggested actions here. But first I should explain why my organization, WOLA, has taken the position that these actions are necessary, and should be taken before considering the Colombia pact.

Colombia is a democracy and a friend of the United States. But it is different from the countries with which we have signed free-trade agreements in the past. Elsewhere, the debate focused on labor laws, wages and work conditions. In Colombia, these are critically important, but the most immediate issue is violence amid an internal armed conflict that continues to be fought intensely. In much of the country, to advocate for better work conditions is an act requiring uncommon courage.

Colombia is one of the most unequal places on the planet, in which the writ of the state doesn't extend throughout the entire territory. This means that, unless it comes with some important changes, applying a cookie-cutter free-trade agreement to Colombia can worsen some existing distortions and have some severe unintended consequences.

Some of you have perhaps been to Bogotá, Medellín or Cartagena. These are world-class cities. They have great restaurants, compelling architecture, order and safety in the central neighborhoods, and the people who run things are very cultured and educated.

But go fifty miles past the limits of one of the major cities — or even into these cities' marginal slums — and things change dramatically. You fall off the edge of the world of governance. In provincial towns and vast rural zones, in jungles and along drug-trafficking corridors, the government presence is scarce and local power matters more.

It is here that the consequences of having one of the world's worst income distributions distorts life in Colombia's democracy. Local political power overlaps with economic power, which is in few hands, and overlaps further with illegality and violence. In far too many territories, large landholders, guerrilla leaders, narco-traffickers, paramilitary leaders, corrupt politicians and other local "barons" exercise arbitrary power with little concern for the policies and edicts that come out of Bogotá, and little fear of running afoul of the justice system. In much of the country, because of wealth, power or ruthlessness, some Colombians have grown quite used to being above the law — to the extent that they regularly threaten, intimidate and kill their adversaries with impunity. Often, these "adversaries" have been regular Colombians working peacefully to improve their lives and their communities.

It is in this Colombia that trade unionists wear bulletproof vests and work behind barbed wire. It is here that hundreds of massacres have taken place over the past 20 years, with nearly all of the killers still at large. It is here that thugs with deep connections to local government fight each other for the ability to send boatloads of drugs to the United States. It is here from where more than 5 million Colombians have been forced to abandon their lands in the past 20 years; 280,000 more, according to the monitoring group CODHES, were newly displaced last year. It is here where, even after twenty years of government human rights commitments, successful prosecutions for crimes against humanity are virtually unheard of.

Paramilitary groups, who have often served as the trigger-pullers in the murders of labor organizers, are a big part of this impunity phenomenon. Though the United Self-Defense Forces of Colombia (AUC) national paramilitary organization no longer exists, old AUC mid-level commanders are at the head of a new proliferation of paramilitaries, with somewhere between 5,000 and 10,000 members, who continue to terrorize unionists, human rights defenders, and Afro-Colombian and indigenous communities throughout the country. Nationwide, these new groups — who have consolidated into five or six main organizations — drove a 40 percent increase in massacres last year.

The FARC and ELN guerrillas and narco-trafficking groups continue to take advantage of the huge gaps left by the weak government presence throughout Colombia's territory. (Though weakened in the past nine years, the FARC still killed about 450 military and police personnel, and hundreds of civilian noncombatants, in 2010.) The paramilitaries and narco-traffickers have also worked to infiltrate, penetrate and undermine the government in many areas, which makes it dangerous for union members and other civil-society leaders even when a government presence does exist.

Also above the law have been large landowners, who at times overlap with paramilitaries, narco-traffickers, powerful and corrupt local politicians, and some retrograde sectors of the armed forces. A major scandal that erupted in 2006, known in Colombia as "parapolitics," revealed the close and corrupt relationships that existed between numerous regional politicians — including up to 30 percent of the Congress Colombia elected in 2006 — and the paramilitaries. The revelations, which Colombian media commonly portray as the "tip of the iceberg," made clear the extent to which illegal, violent actors from Colombia's "off the edge" regions have managed to penetrate national-level politics.

To work in a climate like that — where someone knows he can kill you and get away with it — gives an idea of how brave Colombia's labor leaders really are. The same goes for human rights defenders, scholars, jurists, politicians, journalists and others working for peace, legality and justice in Colombia's "off the edge" zones — and past killings have shown that even the cities offer no safety from an assassin's bullet. Only the most audacious and determined would dare to organize under these conditions.

#### ***Violence and Impunity***

In this atmosphere of inequality and statelessness, the most disturbing consequence is rampant, widespread impunity for even the most violent victimizers. This is why, if you were to ask us what the number-one obstacle to immediate FTA approval would be, we would answer in one word: "Impunity."

Impunity feeds Colombia's shocking level of anti-union violence. When nearly all labor killings go unpunished, there is little disincentive to ordering the killing of a union leader — or any other local leader, human rights defender, journalist or whistleblower who might be causing trouble for a locally powerful actor.

Its level of labor violence is what really sets Colombia apart from past free-trade agreements. In other FTA debates (Central America, Peru, Panama), critics focused on labor laws and poor working conditions. In Colombia, though, it is literally a matter of life and death.

We are considering a free-trade agreement with the country that, for many years running, the International Trade Union Confederation has ranked as the single most dangerous place in the world to be a union member. Nowhere else comes close in levels of killings and threats. Colombia's widely-cited *Escuela Nacional Sindical* (ENS) counts 2,857 trade unionists murdered in the past 25 years, and 51 in 2010, up from 47 in 2009. The Colombian government counted 26 union members killed in 2010, up from 25 in 2009. In 2009 the ITUC counted 48 killed in Colombia; its number-two country, our CAFTA partner Guatemala, saw 16 murders — one-third of Colombia's total. Meanwhile, in 2010 the ENS counted 338 death threats issued against unionists, 21 cases of attempted murder, and 16 cases of assault.

Although the reduction from 200 unionist killings per year in the early 2000s to about 50 per year today is positive, the number remains horrifying. But even this is not the indicator that matters most.

The indicator to watch is the number of convictions of those who planned and ordered the killings of union members. Not just the trigger-pullers, but the so-called "intellectual authors" — the people who told the trigger-pullers whom to target.

This — the level of impunity for labor killings — is an absolutely crucial metric. It has not moved an inch since the trade agreement was signed. And it remains virtually unchanged since then.

Of all cases of unionists murdered since 1986, the Colombian Commission of Jurists counts only about one-quarter to have ever been under investigation by the country's Prosecutor-General's Office (*Fiscalía*). Only 6 percent of these cases, the ENS says, have ever reached a verdict. Of these, a large portion — roughly a quarter — were handed down *in absentia*, many are on appeal, and very few managed to identify more than the trigger-pullers, not those who ordered and planned the murders. That is at least a 94 percent impunity rate.

Since the Free Trade Agreement was signed, with U.S. assistance, Colombia added a Labor Sub-Unit to its Prosecutor-General's office, with nineteen prosecutors (who took with them their existing caseloads from other departments). They have chosen to try a total of 1,387 union murder cases, with 1,885 victims, before three specially assigned judges — a total of 73 cases per prosecutor and 462 cases per judge. By July of last year, the unit had obtained convictions in 192 cases; today it has likely reached, or barely surpassed, 15 percent of the total number of cases it chose to prosecute.

While this is an improvement over past inaction, it is also an alarmingly slow success rate: it would take twenty years to clear this caseload at this rate, even as new cases accumulate at a rate of about four per month. This slowness, even in the face of strong international pressure, is a consequence of a glaring lack of the resources and political will needed to do this right.

The failure to hold killers accountable to the justice system goes way beyond labor cases. Even some of Colombia's most infamous human rights cases have moved at a snail's pace through the courts, if at all, because of the power enjoyed by their traditionally "above-the-law" perpetrators.

An egregious recent example is a mid-2000s epidemic of murders of civilians at the hands of the U.S.-aided military. Apparently in order to reap rewards for high body counts, soldiers murdered non-combatants and reported them as armed-group members killed in combat. The February 2011 report of the Office in Colombia of the UN High Commissioner for Human Rights (OHCHR) lays out in stark terms what we know about a scandal that Colombians refer to as "False Positives":

The National Human Rights Unit of the Attorney General's Office is investigating 1,488 cases with 2,547 victims. More than 400 additional cases are being investigated through its sectional units. More than 448 active cases still remain in the military justice system. Moreover, an unknown number of cases in the military justice may have been closed without taking appropriate judicial action. Based on the available data on cases and victims, OHCHR Colombia estimates that more than 3,000 persons may have

been victims of extrajudicial executions, primarily attributed to the Army. The majority of these killings were carried out between 2004 and 2008.

Colombia has slowed the pace of these killings to a trickle since 2008, when a major scandal broke surrounding the murder of sixteen young men from the poor Bogotá suburb of Soacha. But that means that nearly all “false positives” cases are now three years old, or older. And despite this long wait, only 6 percent of these cases have arrived at any verdict at all.

Impunity is the ultimate determinant of whether labor killings are going to decline or worsen. Proponents of immediate FTA ratification note that while Colombia still accounts for the majority of the world’s union-member murders, the overall number is down from the shocking heights it reached during the first half of the 2000s. As we consider the trade pact, we need assurance that those heights will never be reached again, and that even after the FTA is signed — and pressure to act abates — the number will go down, quickly, to zero. The only real way to do this is to determine whether the justice system is condemning and sentencing those who order unionist killings. Quickly, systematically and transparently punishing those responsible is by far the best way to prevent a resurgence of anti-union and other violence, and to dismantle “new” paramilitary groups.

Why should this matter to U.S. interests, even setting aside our own moral standards and values? *Because it is unfair competition.* In the same industries, a country that does not punish murders of workers who seek to organize will always have an unfair wage advantage over a country that does punish such murders.

#### **Blaming the Justice System**

In discussions about impunity in Colombia, a frequent reflex is to pin the blame on the country’s justice system, in which the Prosecutor-General’s Office and the courts are separate branches of government from the executive. Those who blame the judiciary point out byzantine, cumbersome procedures, extreme measures to guarantee defendants’ rights, and severe managerial shortcomings.

These may be an important factor. But there’s another, perhaps even stronger reason the justice system doesn’t act against powerful defendants: it is thoroughly intimidated. The closer one gets to the “intellectual authors” of serious crimes, the more dangerous the case gets for the largely unprotected judges, prosecutors, investigators, and witnesses.

Colombia’s justice system is professional, more than those of most of its Latin American neighbors, and quite independent. It draws its personnel heavily from the middle class and does not run in the same social circles, or feel a kinship with, the political and military elite. This is good from an independence standpoint, but it also means they are easily intimidated.

Threats against prosecutorial and judicial branch personnel are frequent. The OHCHR reported that “in March [2010], the Supreme Court publicly warned of threats to the integrity and security of judges, magistrates and their families. Five magistrates of the Court (two of them ended their tenure in September 2010) have been granted precautionary measures by the InterAmerican Commission on Human Rights.” And this is the *Supreme Court*.

Colombia’s last presidential administration increased the judicial and prosecutorial branches’ budgets, but did so amid an atmosphere of executive-judicial tension that intimidated many. President Álvaro Uribe accused top judges of carrying out political vendettas against him, sued one for slander, and accused others of “lending themselves” to terrorism and “trafficking in witnesses.” In June 2010, after a court found a retired colonel guilty in the disappearance of eleven people in a high-profile, 25-year-old case, President Uribe appeared the next night on national television, flanked by the entire high command, to denounce the decision. The judge and her young daughter fled Colombia immediately.

Perhaps the most notorious recent example of judicial intimidation has been ongoing revelations that, during President Uribe’s tenure, the presidential intelligence service or “secret police,” known as the DAS, illegally wiretapped and followed several top judges, including those investigating ties between the President’s political supporters and paramilitary groups. One judge had 1,900 hours of his phone conversations recorded in a three-month period. (The wiretapping extended well beyond the justice system; hundreds of human rights defenders, opposition politicians, journalists and other perceived political opponents either had their phones tapped or were

subject to surveillance, email intercepts, threats and theft. International NGOs, including WOLA, had their correspondence with Colombian counterparts intercepted.<sup>1</sup>)

Of course it is true that inefficiencies and management shortcomings are an important reason why cases don't move in Colombia. But even if Colombia's justice system brought in teams of MBAs from McKinsey to perform a top-down overhaul, its judges, prosecutors, investigators and witnesses would still be subject to widespread intimidation from violent and powerful people who remain convinced that they are "above the law."

#### **Labor Conditions**

Concern about labor rights in Colombia goes beyond impunity for union killings, however. In a country where only 4 to 7 percent of the workforce is unionized, the conditions that workers are organizing to improve remain poor, despite recent reforms.

Colombia has ratified all eight of the core ILO conventions, and some of its labor legislation is quite progressive — although not all of its laws meet the standards of compliance with the ILO core labor rights, as the text of the Free Trade Agreement requires. As a result, Colombian employers are able to use a series of schemes that deny workers their legal rights to bargain collectively and to enjoy labor protections.

Most notorious is the widespread practice of forcing workers to join involuntary "cooperatives" (Cooperative Trade Associations, or CTAs) controlled by the employers. As many as 1.4 million Colombian workers must intermeditate with their employers indirectly, through these CTAs. This problem is especially acute, and conditions notoriously abusive, in the oil palm, sugar and port industries.

The word "cooperative" would seem to imply an independent organization that represents workers' interests, or even a worker-owned business. In reality, the CTAs are organizations that fundamentally lack the very independence they need to function. Instead of being employee-focused entities, they are instead heavily influenced by employers, most importantly in the selection of their leadership. They in effect serve as a means for employers to hire workers indirectly, thus evading most of the responsibilities of the employer-employee relationship.

Their lack of independent leadership effectively cripples CTAs' ability to negotiate with employers for fair salaries and decent labor conditions. "Most CTAs are nothing more than camouflaged employment agencies, which promote unfavorable labor conditions and wages," the ENS contends. In addition, this system absolves employers of any economic or social responsibilities to their workers such as health care or disability, which are left up to the cooperatives.

By forcing workers to join CTAs, Colombian employers have made it nearly impossible to form unions and engage in collective bargaining. "The continued growth and prevalence of CTAs," wrote the State Department's 2009 human rights report on Colombia, "further diminished collective bargaining because CTA workers were not covered by the labor code and hence could not bargain collectively."

To remedy this, the ILO's February 2011 High-Level Tripartite Mission to Colombia recommended passing laws putting "an end to the labor intermediary activities of cooperatives (CTAs), and to all other legal and practical obstacles to freedom of association and collective bargaining."

A "Law for the Formalization and Generation of Employment" passed in December is a step forward, as are frequent statements condemning the CTAs from Vice-President Angelino Garzón, a former labor leader. The new law holds the promise of the government taking greater measures against the CTAs, including a prohibition on using them for "intermediation" (i.e. acting like an employment agency) between employers and employees. But it does not take effect until 2013, and it does not outlaw them outright.

Meanwhile, the law does not take on some of the other tactics used to treat employees like independent contractors, and it does little to improve labor inspection or to increase enforcement against practices that discriminate against, and intimidate, workers who seek to organize. Among these is a proliferation of "collective pacts," a relatively new arrangement in which, even when a portion of a workplace is unionized, some of the workforce may enter into a separate contract, whose terms are nearly always dictated by the employer. Often, as

<sup>1</sup> See *Far Worse Than Watergate*, the June 2010 report by WOLA, LAWG, CIP and USOC, at [http://www.wola.org/publications/far\\_worse\\_than\\_watergate](http://www.wola.org/publications/far_worse_than_watergate)

part of a “divide and conquer” strategy to weaken existing unions, individuals are offered choice incentives to get them to disaffiliate, bringing the union below the one-third threshold needed and allowing the employer to engage in direct discussions with the vast majority of employees who are non-union. In February, the ILO recommended ensuring “that collective accords concluded by employers with non-union workers are not used against the exercise of freedom of association and collective bargaining.” Any additional benefits to workers, however, nearly always come at the cost of giving up their rights to collective bargaining and association.

Still another strategy used to undermine worker rights is a tendency to overclassify jobs as “essential services” for which it is prohibited to go on strike. Colombia’s labor code, and a number of decrees, classify as “essential” a host of professions normally not considered essential. These include some utility and telecommunications workers, some transportation and sanitation workers, all oil workers, and even employees engaged with “salt production and distribution.” This means that in a broad swath of Colombia’s formal economy, to strike for better conditions is to break the law.

When labor standards are codified and the law meets ILO standards, enforcement can frequently be too lax. Child labor laws, for instance, do not stop as many as 1.6 million children from working illegally today, according to government statistics. Extremely precarious safety conditions, meanwhile, are all too common, especially in the mining sector, where safety inspectors are very few and lack resources to do their job. Colombia has suffered several fatal mine accidents in the past few years. Improved safety enforcement is a very frequent demand of workers in these sectors; its absence is a direct result of their weak collective-bargaining rights.

#### **Land, Displacement, and Victims**

The issue of land tenure, displacement and victims’ restitution may seem peripheral, but it relates directly to the agricultural trade provisions of the free trade agreement. The United States could be expanding agricultural trade with a nation whose countryside has seen, during the past 30 years, one of the bloodiest concentrations of landholding in modern history.

Violence has forced more than 5 million mostly rural Colombians from their homes in the past twenty years. Much of their land — estimates range from 3 million to 7 million hectares (7.5 to 17.5 million acres) — has been stolen by “above-the-law” figures: paramilitaries, unscrupulous landowners and ranchers, narcotraffickers, and corrupt politicians who have benefited from the violence. Among the hardest-hit are Afro-Colombian and indigenous populations. More than 60 percent of the Afro-Colombians who possess legal titles to their lands are now internally displaced. Indigenous groups are facing a worsening threat of extinction: 32 indigenous groups have less than 500 members left; of these, 18 groups have less than 200. These groups’ cultural and physical extinction is due in large part to violence and displacement over the mineral wealth, natural resources and biodiversity found in their territories.

Colombia is exceptional in that Afro-Colombian and indigenous communities have the constitutionally recognized right to land titles to a portion of their collective territories. In accord with Colombia’s Law 70 of the Black Communities, article 330 of the Colombian Constitution for the indigenous *cabildos* and ILO Convention 169, if a project is going to be implemented in an ethnic collective territory it must be previously consulted in a free, transparent and informed manner with the territories’ ethnic authorities.

WOLA’s Afro-Colombian and indigenous partners indicate that the FTA itself was not previously consulted with ethnic minorities, and they fear that economic projects imposed upon them due to the FTA will generate more violence and displacement of their people. While internal displacement is caused by multiple factors, not least the continuing armed conflict, we are concerned that economic interests generate violent displacement in Afro-Colombian and indigenous territories. Colombia’s Constitutional Court has evidenced the correlation between economic projects, violence and displacement for ethnic minorities and as a result issued Orders 004 and 005 to protect these groups from further displacement. It is precisely for this reason that we want to guarantee that Afro-Colombian and indigenous territorial rights are protected, not undermined, by this agreement.

Land is at the center of Colombia’s conflict. It is also at the center of the drug trade: when people relocate into remote jungle zones far from markets and beyond the government’s writ, there is only one crop that can put food on the table: coca (or, at high altitudes, opium poppy).

This is an important point. A post-FTA flood of cheap agricultural goods from the United States (and already, a significant flood from Mercosur and soon Canada) could well knock thousands of the remaining smallholding

Colombian farmers out of business, as it did in Mexico. Unlike Mexico, though, Colombia's farmers always have another option: they could join the tens of thousands of rural families who have chosen a different, consistently profitable, but illegal crop. This result would gravely undermine alternative development programs that have received about a billion dollars in U.S. investment since "Plan Colombia" began in 2000.

A failure to cushion its blow on small farmers could be felt in increased world cocaine supplies. What can Colombia do to prevent this outcome — as well as the other security fallout that could result from a new shock to a historically conflictive countryside?

The Santos government has an ambitious plan, laid out in a Land and Victims' Law currently passing through Colombia's Congress. Later this year, it will introduce an even more ambitious bill seeking to rationalize Colombia's historically chaotic land tenure patterns.

The stated goals of the Land and Victims' law include returning at least 2 million hectares (5 million acres) of land to displaced people, providing reparations to victims of the conflict going back at least 20 years, and handing out hundreds of thousands of land titles. The proposed law is admirable, although it lamentably lacks a commitment to restore collectively held lands stolen from Afro-Colombian and indigenous communities, who are a big portion of the pool of victims with stolen assets. These communities, the government says, must await the other, later land-use bill, which is expected to be introduced mid-year.

Colombian observers believe that the Land and Victims' bill will pass as early as April. It has had a relatively easy course through the Congress, although a similar bill for victims died in mid-2009.

We hope that the law passes. But once it does, the hard part begins. While the law has faced little legislative pushback, things could potentially get quite ugly once the government attempts to take land from powerful people who stole it, and to distribute it to vulnerable peasant communities. The government could find itself directly confronting individuals — some of them backers of the political parties in President Santos' coalition — who are convinced that their "above the law" status will allow them to respond violently to any attempt to restore "their" land to its original occupants. When that happens — when it comes time to confront the powerful and protect the weak at the local level — we will know the true extent of the Colombian government's commitment to land and victims' restitution.

Already, being an advocate for land rights may actually be more dangerous in today's Colombia than being an advocate for human rights. Nine members of groups seeking to win the return of stolen lands were killed during the first six months of Juan Manuel Santos' administration (and 44 internally displaced leaders, many of whom were advocating for their land rights, have been murdered since 2008). At the moment, the killers of all nine are at large. I don't have a sense of how vigorously these killings are being investigated, but one thing is clear: for the new law to be successful, these must be model criminal and judicial processes. The Colombian state must nip the trend of land-related killings in the bud now by making a shining example of these nine murders' perpetrators.

#### ***The Credibility of the Colombian Government's Past Commitments***

The Land and Victims' law is a great example of an unexpected change in the Colombian government's focus and priorities since Juan Manuel Santos took power last August. Speaking on behalf of WOLA, I really value and appreciate the tone that Colombia's new government is taking. For eight years I saw top officials publicly slander friends of mine in Colombia's human rights community and political opposition, calling them terrorists and guerrilla supporters and making their work much more dangerous than it had to be. Merely putting an end to that nonsense is a huge step forward.

The Santos government has made several other important commitments on human rights, strengthening the judiciary, labor reforms and land and victims' rights. In advance of the law, the government has already begun handing out hundreds of thousands of acres to displaced families on a pilot basis. (Most of this land is unused land owned by the government, not land recovered from paramilitaries, narco-traffickers or other victimizers.) In February, the government rolled out a policy to combat the "new" paramilitary groups, known as "D6," as top officials for the first time called these groups the country's "principal threat" to security. Official sources tell me that according to a new order, police investigative bodies have been required to determine quickly whether a murder victim was a union member, so that the case may pass to the proper prosecutorial unit. President Santos has meanwhile worked to repair relations with the judicial branch, ceasing verbal attacks and appointing a Prosecutor-General (a position left vacant for a year and a half) with a reputation for independence.

These policy shifts are important, but on their own they don't change our position on what remains to be done before the FTA can come up for consideration. My past experience on Colombia tells me that commitments alone aren't enough. I've been told a lot of things to my face in the past thirteen years that haven't quite turned out as promised. There's no substitute for results.

In the past, when the Colombian government is pressured to do something that involves challenging powerful government-supportive interests, we have seen it take some step that creates the illusion of action but fails to bring results. This step can be a new law that doesn't get enforced, a policy, order or directive that only gets halfheartedly carried out, or the creation of a commission, task force or some other official body that ends up taking in a lot of input but producing very little output.

One of the sorriest examples has been the government's policies toward paramilitary groups. For years, successive governments promised action against the groups, who during the 1990s and early 2000s far outstripped even the guerrillas as the country's main human-rights abusers. The groups were declared illegal by a presidential decree in 1989. However, the security forces' collaboration with them continued — often quite openly — in conflictive areas around the country, as human rights groups' reports and demobilized paramilitaries' own testimonies have amply shown.

In November 1998, as the AUC paramilitary organization underwent enormous growth in its size and brutality, the government announced the creation of a military-police "search block" to fight them in the Magdalena Medio region in the center of the country. By 2000, the AUC had, with almost no apparent resistance, come to control nearly all major towns in this region. In February 2000, the government announced a "Coordination Center for the Fight Against Self-Defense Groups," from which little was heard afterwards. The same fate befell an "Anti-Assassin Committee" declared in January 2001.

All the while, allegations of military-paramilitary collaboration continued to mount. Then in 2005, the Colombian government passed a "Justice and Peace Law" to govern the AUC's decision to demobilize in exchange for lighter jail sentences for its leaders. As amended by Colombia's Constitutional Court, the Justice and Peace Law was to require demobilizing paramilitary leaders to confess to all of their crimes, give information about the politicians, businessmen, soldiers and others who supported them, hand over their massive illegal assets and distribute them to victims.

While the law provided the framework to demobilize over 32,000 people claiming to be paramilitaries, the vast majority of whom were immediately amnestied, the "Justice and Peace" experience did not work out as promised. Five and a half years later, only three paramilitary leaders have been sentenced, to terms of eight years each, for crimes against humanity. (Another two dozen are in the United States facing narco-trafficking charges, but providing very little in the way of information about their support networks or assets stolen from victims.) More than half of the roughly 4,000 leaders required to give confessions have not yet done so. The Justice and Peace process's failure to uncover paramilitary networks is a direct cause of the alarming proliferation of "new" paramilitary groups today.

In each of these examples, we were assured that the government was committed to turning the page. Within a year or two, though, it was evident that the page we were looking at was the same.

Other examples include directives to try human rights violations in civilian courts instead of the military justice system, where "not guilty" verdicts were all but assured. Progress on civilian jurisdiction for human rights crimes halted sometime in late 2008 or early 2009, and worsened in 2010, as the UN High Commissioner for Human Rights' most recent report notes.

Also in the past year, a colleague at WOLA has received two e-mail death threats from a "new" paramilitary group. After the first threat, the Uribe government responded not with concern, but with a statement attacking us for some of the wording in our own statement. After the second threat, the new government's vice president, Angelino Garzón, called us to voice his concern. While this change in tone and approach is greatly appreciated, we note that — just like these other policies and directives — it is no substitute for action. Even better than a high-level phone call would be an effective investigation of the threats' origin, periodic updates on the investigation's progress, and legal action against whoever issued the threats.

Another example of a "policy change" that didn't quite pan out is the above-mentioned experience of the Labor Sub-Unit of the Prosecutor-General's Office, with the three dedicated judges to hear 1,387 labor cases. Had

this sub-unit been able to achieve more than a 15 percent clearance rate over the past four years, we wouldn't be having this conversation about labor impunity. But this has ended up being another in the list of lapsed commitments.

Perhaps Colombian officials genuinely underestimate the cost of these commitments, or the difficulty of taking on powerful and violent interests who push back hard. Or maybe there's an expectation that, a few years from now, the U.S. and other diplomatic officials, and much of the UN and NGO community, will have had so much personnel turnover that very few "old timers" will be around to hold them accountable to past promises. For those of us who have stuck with this, though, the result has been to severely devalue official promises. The creation of a new commission or task force, the promulgation of a new policy or directive — these actions don't impress us. They look like the illusion of action.

The tragic result is that now, even as Colombia has a government that appears willing to do the right thing, it is impossible to assume that "this time is different" and trust that effective reforms are taking place. It would be unacceptable for the trade agreement to be ratified this year only to see, a few years later, the Colombian government's commitments to reform on impunity and labor rights turn out just to have been pieces of paper. We need to see actual progress.

#### **Recommendations: Measuring Progress**

These are very serious concerns, and we want to address them pragmatically at this time, when Colombia has a government that is committing to important reforms. We need to know that change is taking root and that what we see is not more commissions or laws that won't be enforced, but real reform. Now, four and a half years since the FTA was signed, what is it reasonable to ask of Colombia before introducing the agreement in Congress?

Results, almost by definition, are hard to measure in the short term. On impunity, results can take years — and the past 4 1/2 years have seen few results on impunity. Worse, past disappointments mean that commitments made in the coming months, no matter how solemnly promised, aren't convincing by themselves.

We can't completely solve all of the problems listed in my testimony before ratifying the FTA. It is not fair to require Colombia first to become a worker's paradise. But we must make sure that Colombia is taking steps that will bring dramatic change as soon as possible. And that these actions are real, not just the illusions of the past.

How can we tell whether real change is happening and that Colombia is on the way to achieving results? What can the Colombian government do now to show that it has broken with the past and is now "for real" about labor and justice? That the terror is irreversibly ending? That Colombia's leaders are willing to take on powerful, violent interests that have long been above the law?

Here are a few short-term indicators that are minimally required to judge whether real, irreversible progress is truly occurring in Colombia. We will know that true change is occurring if we see:

1. **Colombia aligning its labor laws with ILO core labor rights**, in accordance with the recent recommendations of the ILO High Level Mission to Colombia, not to mention the FTA's own requirements.
2. **A sharp drop in homicides, attacks, and threats against trade unionists, human rights defenders, victims' advocates, and Afro-Colombian and indigenous leaders** in Colombia, as a result of rapid response to threats when they occur and effective investigations and prosecutions of homicides.
3. **A resulting sharp increase in prosecutions, investigations and verdicts on labor killings**, especially on the most recent, less cold-case killings. Special attention must be placed on the "intellectual authors."
4. Judicial authorities continuing or accelerating the progress they have been making on **investigations and prosecutions of illegal wiretaps and surveillance** against unionists, human rights defenders, journalists, opposition politicians, judges and others, while reforms to the intelligence system, as outlined in the UN High Commissioner for Human Rights' latest annual report on Colombia, are carried out.
5. **Dramatically increased resources and political backing for the beleaguered justice system** so that the last three conditions can be met. All roads — land, victims' rights, labor killings, human rights cases, post-conflict transitional justice, protection of investments, property rights — lead through the justice system, and its ability to do its job is an absolutely critical indicator for the credibility of the FTA.

6. **An increase in the number of prosecutors and investigators within the Prosecutor-General's Labor Sub-Unit**, with those with the most experience in such cases assigned to the unit. Non-labor cases on these officials' dockets would be assigned to other prosecutors, so that this group may focus exclusively on union cases. The Prosecutor-General's Office's Unit for Human Rights and International Humanitarian Law would see a further increase in its own personnel and budget in order to meet the large demand for expeditious performance of its duties.

7. **A sharp increase in the number of verdicts in cases of extrajudicial executions allegedly committed by the military**, as well as an increase in the number of cases that move from the investigation to the trial phase. This would, of course, come with a continuation of the apparent current drop in military and police involvement in extrajudicial executions of civilians.

8. Along with a continued campaign to protect citizens from FARC and ELN abuses, **a significant increase in arrests of leaders of the "new" paramilitaries, and of corrupt officials who aid, abet, or deliberately fail to combat them**. This should come with a significant increase in resources for the "D6" or similar strategy to dismantle these groups and provide police protection to civilian populations currently at risk.

9. **A large increase in funding and political backing for state bodies — especially a reconstituted, standalone Ministry of Labor — that enforce existing laws** on labor inspections, workplace safety inspections, halting anti-union discrimination, and resolving labor disputes. This would include strong and explicit protections for workplace whistleblowers.

10. **Passage of the land and victims' law, but with effective implementation**: the true measure of the law's success will be the number of displaced families who get their land back and receive restitution for the terror they survived, and their ability to do so with minimal red tape and without facing violent retribution. Achieving this — particularly in the face of stiff resistance from paramilitaries, narco-traffickers, large landowners and their corrupt associates — will mean giving the justice system and other agencies the tools, resources, physical protection and high-profile political backing they need to carry them out. **Returns of land to Afro-Colombian and indigenous communities**, along with prevention of their displacement by "new" paramilitary groups and large-scale economic projects, must be an integral part of the land restitution strategy. This would include strengthening the previous consultation mechanism with Afro-Colombian and indigenous communities to guarantee free and informed consultation about any project affecting Afro-Colombian territories. There would be a sharp increase in the return of territories illegally usurped by armed groups and companies to Afro-Colombian community councils and indigenous *cabildos*.

11. **Funding for the Colombian government's protection program for threatened individuals maintained at or above current levels**, while the government continues to abstain from the practice, common in the previous administration, of publicly and baselessly stigmatizing its critics as terrorist supporters. The protection and "early warning" programs would address some of the serious shortcomings that led the UN High Commissioner for Human Rights, in its latest annual report on Colombia, to cite "delays in assessing risks, slow implementation of measures, absence of a differential approach, and transfer of protection schemes to private companies."

### Conclusion

These standards are achievable. All they require is a generous but smart investment of financial resources and political capital. The Colombian government has expressed its dedication to many of them for years, so awaiting progress on them should by no means be viewed as "punishing" Colombia. Compliance with them will be quickly and easily measurable through quantitative means.

We need evidence of structural change. Our watchword, to quote President Reagan, must be "trust but verify." By being clear about the change in justice and human rights that needs to take place, you have the opportunity — indeed, the power — to engage with Colombia and help secure real reform.

I thank you for giving me this chance to share with you our concerns, hopes and recommendations. I look forward to your questions, and am happy to discuss this further anytime.

Chairman BRADY. Thank you, Mr. Isaacson.  
General McCaffrey?

**STATEMENT OF BARRY R. MCCAFFREY, USA (RETIRED), PRESIDENT, BR MCCAFFREY ASSOCIATES, LLC, FORMER DIRECTOR, OFFICE OF NATIONAL DRUG CONTROL POLICY, FORMER COMMANDER, U.S. SOUTHERN COMMAND**

General MCCAFFREY. Mr. Chairman, thank you and Congressman McDermott for the opportunity to be here.

And, by the way, I share the remarks that Adam just made. He had a tutorial for me yesterday. I think many of his conclusions are right, although I am here to strongly urge passage of the FTA with Colombia almost immediately, certainly by this summer.

I have spent much of my adult life working with the Colombians in one aspect or another. I worked with Presidents Pastrana, Uribe, and now Santos. I think these issues have been discussed at great length, and I would offer a set of facts for you to consider.

Number one, let us remind ourselves that Colombia is one of the most important allies we have, democratic regimes, law-based regimes, on the face of the earth. In the 200-year history, much of it has been democratically-elected governments.

Secondly, I would remind us that Colombian National Police, arguably one of the best in the Americas, and the Colombian Army, have had 5,500 killed in action, and 17,000 wounded since 2002. There was a war going on in Colombia, which is largely entering its end phase. Thanks to their courage and their determination, Colombia is still free.

Third, drug production is down by 60 percent. It is phenomenal. This is a commitment not just by the CNP and the armed forces and the political leadership, but also by the Colombian people, who essentially do not wish to be involved in criminal activity.

Fourth, the major security problem in Colombia for the last 25 years has been the FARC, ELN, and the AUC. They are badly wounded. The AUC is largely dismantled, although, as Adam correctly says, many of them have gone to criminal activity. The FARC are down about 8,000 people and 2,500 in ELN.

The war does go on. There may be as many as 6,000-plus hardened criminals in so-called “buckram” organizations, and many of them are in collusion with the FARC and the ELN. This is now becoming a law enforcement issue, and it is also one based correctly, as one of the congressmen previously said, on poverty. It is moving into a different phase.

The Santos Administration, as I look at them, is—has enormous focus on improving governance, reform of the judicial system, which is going to be the hardest 20-year task they face, poverty action, drug criminal gangs, and refugees. They have got maybe a million internal refugees and maybe 400,000 pushed out into Ecuador or Venezuela. But I think that is the commitment of the Administration we are looking at in Colombia today.

Finally, I think we ought to take into account the enormous reduction of violence in Colombia. It is simply unbelievable. I was down there in 2001, just before I left office. There were 2,000 people in my security detachment. When I went back again a couple of years ago, I had a dozen CNP officers. There were no violent incidents in Bogota the week I was there. It is astonishing.

And, by the way, the most trusted, respected institution in Colombia today is the Colombian armed forces, with a 79 percent approval rate in the latest poll numbers. Colombian people understood their determination, their commitment, their courage, and their change, rapid change—I have been listening to the Colombians brief me on comprehensive human rights policies and training.

They are trying to understand how you deal with something that, on one hand, was multi-battalion attacks by the FARC, using indirect fire weapons systems, and now a war that is changing into one in which these young soldiers have to carry two cards, one red, one white—blue, excuse me—to understand what nature of violent incident they are now confronting, and what the different rules of engagement are. It is a magnificent change in the short period of time that I have observed them.

Final one, and a point that I would offer—and a lot of others have already addressed this—this is a huge economic problem in the United States. We have lost massive amounts of market share in agricultural products and other areas.

And, oh, by the way, the Colombians are now a major energy-producing nation. Coal number one, oil up to—pushing a million barrels a day. And I will bet you in two or three years they out-produce Venezuela.

I personally consider the way we have dealt with Colombia an embarrassment, a nation that is a democratic regime under the rule of law coming out of an era of enormous violence. And I urge congressional action in support of the FTA. Thank you, sir.

[The statement of General McCaffrey follows:]



**STATEMENT FOR THE RECORD  
 SUBMITTED BY GENERAL BARRY R. McCAFFREY (USA, Ret.)  
 TO THE SUBCOMMITTEE ON TRADE  
 COMMITTEE ON WAYS AND MEANS  
 U.S. HOUSE OF REPRESENTATIVES  
 MARCH 17, 2011**

Chairman Brady and Ranking Member McDermott it is an honor to appear before this committee to strongly endorse rapid Congressional approval this year of the three Free Trade Agreements which were signed by the US Government so many years ago. (Colombia 22 November 2006—Panama 28 June 2007—South Korea 30 June 2007).

During much of my adult life I have been privileged to work with all three of these vitally important US Allies as they have made the transition to increasingly sophisticated democracies and advanced economies. All three nations will be increasingly important partners in US global international diplomacy. The passage of these three FTA agreements will likely increase our exports by \$13 billion and create 250,000 jobs to help offset our disastrous US unemployment rate.

I have lived in Panama for several years on two assignments as a military officer and consider that beautiful country a second home. It is obviously a crucial US Latin-American strategic partner and a national security obligation because of the vital importance of the Panama Canal. We understand the Administration's perspective that Panama needs to provide more effective tax transparency. However, the totality of our interests suggests the immediate need to pass the FTA for Panama.

The vital importance of South Korea to our economy, our national security, and our diplomatic influence on the Pacific Rim needs no explanation. This FTA alone could substantially increase US employment and further strengthen the crucial economic ties with this brave ally which is central to our defense of the region. It is hard to find a more dramatic record in history of a nation that has risen from the ashes of destruction to become a vibrant democracy and economic power. We simply must move forward on this Korean FTA.

Let me focus much of my support in this Hearing to discuss the enormous importance of passage of the Free Trade Agreement with Colombia. I consider it an embarrassment to the United States that we have so painfully treated such a vital and loyal ally in a region where Colombia's public alliance with the US has been badly received by many of her neighbors. I am a friend of Colombia and have worked closely with their national political, military, and law enforcement leadership for more than sixteen years. I admire the enormous courage of their people and the commitment to the rule of law of their political Administrations under the leadership of first President Pastrana --then President Uribe-- and now President Santos.

Colombia has a bloody and chaotic national history since the 1948 beginning of "La Violencia" which plunged the nation into internal murderous conflict with the FARC, the ELN, the AUC, and criminal drug cartels. This bitter internal struggle was marked by extreme cruelty, injustice, and poverty inflicted on the 45 million Colombian people -- principally by internal terrorist organizations -- but also sadly sometimes by rogue Government forces and also by private citizens acting as vigilantes. By 1996 Colombia was on the edge of internal collapse.

The personal courage of Colombia's political and judicial leadership backed by the extraordinary bravery of the Colombian National Police and the Colombian Armed Forces turned around a disaster which was about to engulf the third largest population in Latin-America. The US played a crucial supportive role in that successful comeback struggle with "Plan Colombia" which was signed by President Clinton and President Pastrana in Cartagena in 1999. The Colombian Police are now back in strength in all the provinces of Colombia. They have become a world class law enforcement organization. Colombia has made enormous progress in disarming the dreaded AUC private militias. The FARC and the ELN have completely lost public support and have suffered horrendous defeats by the re-vitalized Colombian Security Forces. The Colombian military have made significant strides in increasing their combat capability--- and even more importantly their commitment to the rule of law and subordination to civil authority.

There can be no doubt that Colombia has made huge strides in strengthening the rule of law, protecting human rights, reducing poverty, and promoting civil governance. President Santos has strongly committed his administration to continuing to address the protection of labor rights, to reducing any violence against labor leaders, and to the essential issue of land reform. Colombia stands as a dramatic successful example of a nation committed to democratic principles which is now emerging from sixty-four years of dreadful violence. They are without question the most valued ally the US has in the America's.

The stalled FTA with Colombia has allowed the EU, Canada, Brazil, Argentina, Chile and others to forge ahead of the US and sign trade deals with Colombia. The US is Colombia's largest trading partner. Colombia is our third largest trading partner in Latin-American. More than 250 US businesses are present in Colombia. More than 60,000 Americans live in Colombia. However, the stalled FTA has been a disaster for US economic interests. US farm exports to Colombia fell 48% between 2008 and 2009. Farm exports fell another 45% in 2010. Our market share of Colombia's agricultural imports fell from 75% to under 25% in two years.

What are we thinking of? The competitive entry of the EU and Canada into Korea and Colombia alone create conditions under which we risk losing 383,000 US jobs. Treasury Secretary Timothy Geithner said in reference to Colombia that "the longer we wait, we lose more business and other countries come in. It makes no sense to us as a country to wait." I join my former colleagues US Trade representatives Mickey Kantor and Charlene Barshefsky in urging support for the accelerated passage of all three FTA's.

In my judgment, it is a serious political mistake to decouple the Korea FTA from the Congressional approval of agreements on Panama and Colombia. We must remember the enormous political and economic importance of both Panama and Colombia to US national interests. Strongly recommend that Congress act now to approve all three FTA's.

March 14, 2011

Dear Member of Congress:

Last week the U.S. State Department released its 2011 International Narcotics Control Strategy Report, which focuses on the efforts of key countries in fighting international drug trafficking, including Colombia. One of the Report's conclusions is that:

- Colombia continues to make important advances in combating the production, exportation, and consumption of illicit drugs. These efforts have kept several hundred metric tons of drugs each year from reaching the United States, and have helped stabilize Colombia.

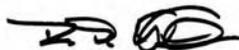
The State Department's conclusions are supported by last year's announcement by the United Nations' Office on Drugs and Crime that Colombian coca cultivation has decreased by nearly 60 percent since a decade ago. Recent reports from the Central Intelligence Agency's Crime and Narcotics Center also confirm the steady progress in Colombia.

The impact of anti-drug efforts in Colombia over the past decade are remarkable, and should be attributed not only to the will of the Colombian people and their government, but also to the steadfast support of the United States through programs such as Plan Colombia, and the Andean Trade Preference Act and Drug Eradication Act (ATPDEA). While Plan Colombia focuses on drug interdiction, the ATPDEA was enacted to help develop and strengthen legitimate industries by providing duty free access for certain products to the U.S. market. Originally enacted in 1991, the trade preference program has been a resounding success in helping Colombia to provide alternatives to the illicit drug economy.

**As you know, the ATPDEA expired on February 12, 2011. We write today to urge Congress to take immediate action to restore the program.**

Our joint counter narcotics program with Colombia, of which ATPDEA is a critical element, is a bipartisan foreign policy success story. If allowed to lapse, 20 years of progress will be put at risk – and America's drug interdiction efforts through Plan Colombia will be made all the more difficult. An immediate extension is necessary, and the right thing to do.

Sincerely,



General Barry McCaffrey  
Former Director,  
Office of National Drug Control Policy



John P. Walters  
Former Director,  
Office of National Drug Control Policy

Chairman BRADY. General, thank you. This has been very useful and interesting testimony, and I thank the witnesses.

Mr. Dorr, your testimony shows exactly how American agriculture is being harmed and will be harmed further if we delay this pact.

Mr. Isaacson, I read your testimony at length last night. And, in my view, Colombia is making extraordinary improvement. I agree with you, the new Santos Administration is committed to con-

tinuing that progress. And I agree with you, any violence and any impunity associated with that is condemnable. That is why we push so hard to lay out these points. We have pushed the Administration to step forward with an action plan so that Colombia can address this. Now, the longer we are stuck in limbo, unfortunately, I think the less we can lock in both the progress and continued improvement.

Ambassador Romero and General McCaffrey, I am struck both by your expertise, sense of experience in the region. Your points about the loss of national security and the consequences of our failure to act, I think that is an important part of this debate and of this agreement.

Finally, Mr. Marsh, you talk about the consequences of further delay on a company like yours. You mentioned Colombia is a major prospect for new oil and gas development, and may more than double its oil production in two years. I know the infrastructure effort in Colombia is impressive, as well, as they rebuild their ports and their airports and roads.

And I want to ask you—in fact, I would like to ask unanimous consent to introduce for the record a paper by the Ways and Means Committee outlining the infrastructure opportunities in Colombia that could create jobs here in the United States.

[No response.]

Chairman BRADY. Without objection.  
[The information follows: Brady Insert]



**The U.S.-Colombia Trade Agreement:  
An Opportunity to Expand the U.S. Infrastructure Sector & Create U.S. Jobs**

President Obama stressed in his 2011 State of the Union address that rebuilding our infrastructure is essential to America's future. Opening new markets abroad provides opportunities for U.S. infrastructure firms and strengthens the sector's capacity and global competitiveness. Colombia's economy is projected to grow on average over five percent annually and, as a result, has major infrastructure needs. Colombia is a promising market for infrastructure-related exports from the United States and for investment in infrastructure-related sectors that will help U.S. firms expand their global market leadership in construction, engineering, and other infrastructure-related services.

**Colombia's strong economic growth prospects will require significant new infrastructure**

- **Public and private-sector infrastructure:** Colombia projects infrastructure spending of more than \$50 billion over the next decade, focused especially on energy, oil & gas, roads, ports, and airports.
  - Colombian public infrastructure investment will be enriched by significant investment from the World Bank and regional development banks.
  - Colombia aims to use public-private partnerships to incentivize private infrastructure investment.
  - Colombia's Program for Development of World Class Sectors includes a major energy & communications infrastructure component, aiming to increase revenue ten-fold by 2032.
- **Economist Intelligence Unit.** This leading, independent source of global market analysis named Colombia in 2010 as the first of six "CIVETS" – emerging economies with the best growth prospects for this decade. The others are Indonesia, Vietnam, Egypt, Turkey, and South Africa.

**Transportation infrastructure opportunities are promising**

- **Public mass transit:** Five major Colombian cities are in the process of upgrading their systems.
  - All but one of these cities exceeds 1 million inhabitants, with the Medellin and Bogota metro areas exceeding 3.5 million and 8.5 million, respectively.
  - Most of the rapid transit bus systems are complete or nearing completion, and \$800 million in World Bank loans to augment Colombian Government funds have already been disbursed – an example of why it is important not to delay implementation of the Colombia agreement in the face of steady infrastructure improvements. These new bus systems will now generate additional opportunities for U.S. bus exporters because demand for buses is now substantially increased.
  - Bogota's first metro line is still in the design stage, with completion slated for 2015 – so it is not too late for the Colombia trade agreement to help U.S. firms compete for contracts.
- **Roads/vehicles:** Colombia is a promising market for U.S. vehicle exports, as roads are upgraded.
  - Colombia has about one-third as many cars per capita as Argentina, so sector participants expect rapid expansion as Colombia's median income continues rising and as road systems expand.
  - The Colombian government is replacing 285,000 of its vehicles, because they have an average of 23 years of service – representing a good opportunity for U.S. vehicle manufacturers.

- **Ports/airports:** International flights have increased 120% since 2000, and Colombia's existing Atlantic and Pacific ports are taxed by Colombia's emergence as a major hub.
  - The Bogota airport's capacity is being expanded from 8 million passengers to 25 million.
  - The government plans to double port capacity through concessions at the Cartagena and Buenaventura container port terminals as well as at smaller ports on the Atlantic & Pacific.

#### Telecommunications infrastructure prospects abound

- **China:** Colombia is soliciting private interest in laying a trans-Pacific submarine cable to diversify entry points for communications with China and other Asian countries, as Asian trade expands.
- **Broadband:** Access increased 46% in 2009, but penetration remains low by international standards.
- **Mobile telecom:** Nearly all Colombian territory has mobile coverage, but roll-out of next-generation technology requires significant investment. Smart phones have very low penetration, but the government's "Live Digital" plan raised awareness of – and demand for – new mobile applications.

#### Energy and electric infrastructure provide opportunities for U.S. companies and employees

- **Energy generation:** Colombia currently seeks investment in several large-scale projects, including:
  - \$1.5 billion sale of the government's majority stake in Colombia's third-largest power generator;
  - Sale of two public-sector generation companies, representing one-third of installed thermal capacity and four percent of hydropower capacity, for a total of 1500 megawatts;
  - Development of a \$2.4 billion facility that will have installed capacity of 2,400 megawatts, representing 20 percent of Colombia's currently installed capacity; and
  - Development of an \$810 million facility that will have an installed capacity of 400 megawatts.
- **Oil:** Already the fifth-largest oil reserves in Latin America and conducting extensive exploration, thanks to significantly increased recent foreign investment, which exceeded \$3 billion in 2010.
- **Gas:** Natural gas reserves spread over 18 basins, so Colombia has over 2,000 miles of pipeline, providing U.S. service firms opportunities in exploration, drilling & pipeline maintenance.
- **Mining:** Second-largest coal reserves in South America and fifth-largest exporter of coal in the world. Infrastructure needs include mining operations as well as transportation.
- **Rural electric:** Recent new substantial financial incentives for infrastructure investment to supply energy to non-interconnected zones, a 1.8 million-person market with only 34% electricity coverage.
- **China:** China has invested over \$1.5 billion in Colombia's oil sector since 2006 because China's oil consumption is projected to double by 2030. China also announced this year plans to develop a railroad to compete with the Panama Canal in moving coal and other energy products between the Atlantic and Pacific coasts and from the Colombian interior.

#### Tourism infrastructure shows promising potential

- Colombia has few all-inclusive resorts, which creates opportunities for U.S. hotels and cruise lines.
- Ranks first in Latin America for the percent of its land under protection – 11 million hectares – so Colombia's infrastructure investments will not endanger this environmental & tourism asset.

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Chairman BRADY. Could you talk a minute about the impact of these longer-term contracts? You are not selling copy paper that gets replenished every quarter. You are selling major equipment. And when you are at a disadvantage to other countries, you know, it is not a matter of a loss of six months or a year. You are losing the life of this equipment, of the services, of the accessories that go with you.

So, can you talk about for us, so we understand exactly the consequences of delaying this agreement further?

Mr. MARSH. Certainly you are correct, Chairman Brady. As we bid on projects—and these are long-term projects—if we are not able to be competitive and win those projects, we lose not only that project, which may be a long-term project in and of itself, we lose the opportunity to build the infrastructure that goes along with

those projects, which puts us at a further competitive disadvantage by not having that infrastructure to support future projects.

At the same time, competitors from other countries are developing infrastructure because they were successful in bids that we were disadvantaged and not successful in obtaining. So it is not just the life of the equipment, but it is also building that infrastructure within the country that will impact our future work and our ability to export from the United States into Colombia in the future, because we do not have that infrastructure in-country to support the jobs in the U.S.

Chairman BRADY. So these are longer-term consequences and losses.

Mr. MARSH. Absolutely. Not only are our contracts long-term contracts, but along with those contracts come infrastructure that we will build in-country that will support future contracts.

Chairman BRADY. Do you believe we should delay any further on this agreement?

Mr. MARSH. Any further delay continues to put us at a competitive disadvantage. So, no, we would not delay any further and we should support immediate action with respect to the agreement.

Chairman BRADY. General McCaffrey, you finished your testimony very strongly, saying that this was an embarrassment that we have not moved forward on this four years later on a key ally. Do you feel Colombia feels that same way, that an ally of that strength in that region—can they even understand why their strongest partner would delay an agreement for so many years?

General MCCAFFREY. Well, you know, I would remind all of us the media and the political attention of all three of these nations—Korea, Panama, and Colombia—is fixed on this hearing today. And so, tonight on TV, the Colombian people are going to try to sort out in their mind how they can be one of the predominant allies of the United States—they are working with us now in Mexico, and training people in Afghanistan, they are a democratically-elected regime, they produce dramatic changes and results, and yet we are diddling them for over four years on an economic trade deal.

I say that recognizing—and I really mean this—that Adam's concerns are valid. And yet, in the same note, Pete Romero pointed out you do not hear that kind of conversation about the outrages going on in Bolivia and Venezuela, with Mr. Chavez. So it has been a selective focus on Colombia that sometimes escapes me. They are a remarkable group of sophisticated people who are mystified by our behavior.

Chairman BRADY. Thank you, General. Mr. McDermott is recognized.

Mr. MCDERMOTT. Thank you, Mr. Chairman. I ask unanimous consent to introduce the recent ILO mission report regarding Colombia. It really notes continuing problems with labor and violence.

Chairman BRADY. Without objection.

[The information follows: ILO High Level Mission]

## **Conclusions of the High-level Tripartite Mission to Colombia**

**14-18 February 2011**

### **1. Introduction and Overview**

At the invitation of the Government of Colombia, an ILO High-level Tripartite Mission (the Mission) visited the country from 14 to 18 February 2011 to review the the implementation of the Tripartite Agreement on the Right of Freedom of Association and Democracy signed during the International Labour Conference in June 2006. This Mission takes place as a follow-up to the High-level Tripartite Visit of 2005, the visit by the Director of the International Labour Standards Department in October 2009 and the Direct Contacts missions that were conducted in 2010 concerning various cases before the Committee on Freedom of Association.

The Mission met with the President of the Republic, the Vice-President of the Republic, the Minister of Social Protection, the Vice-Minister of Labour, the Prosecutor General of the Nation, the Attorney General of the Nation, the Vice-Minister of Defense, the Vice-Minister of the Interior and Justice, the Constitutional Court, the Supreme Court, the Higher Council of the Judiciary, the Governor of Antioquia, the National Association of Employers of Colombia (ANDI), the Single Confederation of Workers of Colombia(CUT), the General Confederation of Workers (CGT) and the Confederation of Workers of Colombia (CTC).

Representatives of Government at all levels with whom the Mission met displayed great openness and transparency and a readiness to address all issues raised. Full respect of all human rights including fundamental principles and rights at work was underlined as being a key policy of Government, on which Colombia's progress and future depended. Insistence on improvements recorded went with clear recognition of the very considerable challenges remaining, and the urgent need to overcome the

many obstacles which remained to the effective implementation of the Tripartite Agreement of 2006 and Conventions Nos. 87 and 98.

The Mission received with the same openness and cooperation from all members of the legal and judiciary bodies with whom it met. They provided important information and insights into complex issues. The Mission came to a clear appreciation of the central role these bodies are and must continue to play in ensuring full respect for freedom of association and collective bargaining.

The Employers' representatives with whom the Mission met displayed great readiness to engage with the Government and the trade union movement in substantive social dialogue. They stressed their positive attitude towards the role of strong trade unions and the hope that it would prove possible to build on the major progress that had been made, particularly in the fight against impunity, to establish constructive industrial relations which would be beneficial to Colombia's economic performance and prosperity.

The views expressed by the three trade union Confederations varied substantially in some regards. Some of the representatives felt that there had been little improvement since 2005 and expressed doubts about the intentions of the Government and of employers. Others, however, did point to improvements in several areas while concurring in the general trade union view concerning the severity of the attacks on the practice of freedom of association and collective bargaining.

The Mission was able to note that the overall level of violence in Colombia had fallen considerably since 2005, including that directed against trade union leaders and trade union members. While opinion was divided on the extent to which trade union leaders and trade union members continued to be targeted because of their trade union activities, all were agreed that the only acceptable situation was one in which all acts of violence have ceased and that there was a need to act with determination to bring this about.

The Mission devoted particular attention to the fight against impunity which has been a key concern of the ILO for many years. All those with whom the Mission met recognized that impunity had prevailed in Colombia for a long period and had caused immense damage to the country and suffering to its people. The Mission was able to note the higher levels of prosecutions and convictions recorded and the significant efforts deployed to strengthen investigation and relevant police and judicial capacity. It commended the start made and the political will behind it. Nevertheless, the Mission was conscious that the great majority of homicide cases remained unresolved, with negative consequences that were made abundantly clear to it by testimonies given by some relatives of the victims.

The Mission identified three main reasons why it is essential that the fight against impunity be carried forward vigorously to a successful conclusion:

1. It is a basic responsibility of Colombian society to provide justice to the victims of violence and their families;
2. Ending impunity is the strongest deterrent to acts of violence in the future; and
3. Effective action against impunity will do much to overcome the painful heritage of Colombia's past and to build trust for the future.

In this regard, the Mission was strongly of the view that the lack of trust between Colombia's tripartite constituents is the most important obstacle to progress towards full respect of the rights guaranteed by ILO Conventions Nos.87 and 98 and towards a better future for all Colombian society.

Distrust generated by the mistakes and abuses of the past remains strong and will not be eliminated easily. Many of those with whom the Mission met expressed open mistrust of the motives and objectives of others, and this clearly constrained their readiness or ability to react positively to the initiatives or actions taken by them. Colombia must break this cycle of distrust. For this reason, the Mission attached the highest priority to the task of strengthening processes of social dialogue. Colombia has the potential for fruitful social dialogue. But renewed and sincere efforts are needed from all

parties to realize that potential. Above all, the Mission urged all parties to dedicate themselves to that task with the assistance of the ILO.

The Mission was deeply concerned at the repeated and detailed information it received concerning acts of anti union discrimination at the enterprise level and in the public sector as well as the failure to take effective action to stop it. Trade union representatives spoke of a generalised climate of anti trade unionism which contrasted strongly with the statements of representatives of both Government and of Employers of their firm support for the role of strong trade unions in Colombian society.

In that light, the Mission noted with regret that the level of trade union density in Colombia, variously estimated at between 4 and 7 per cent, remained very low and collective bargaining lower still. It identified key areas where urgent action is needed to contribute to overcoming this situation:

- Renewed legislative and enforcement measures to put an end to the labour intermediary activities of cooperatives (CTA's), and all other legal and practical obstacles to freedom of association and collective bargaining
- Additional effective legal and practical action to ensure that collective accords concluded by employers with non-union workers are not used against the exercise of freedom of association and collective bargaining
- A major effort to strengthen labour inspection, enforcement, and effective sanctions so that acts of anti union discrimination, including dismissals and intimidation are prevented, or addressed through expeditious, accessible, and effective procedures and remedy.

The Mission is convinced that Colombia has a moment of opportunity that it has not had for many years. That includes the opportunity to ensure full respect of the rights of freedom of association and collective bargaining, and all other fundamental principles and rights at work. That, in turn, would open perspectives for a new phase of its development characterized by decent work, and social and economic justice. The Mission was able to observe the political will which, together with the favourable economic climate of strong

growth, make these objectives achievable if the obstacles and distrust which are the legacy of the past can be overcome.

The Mission expresses the profound hope and conviction that this is the path that Colombians will take. It is equally convinced that the principles, values and expertise of the ILO can be of great value in this regard.

While it received differing views on the effectiveness of the follow-up to the Tripartite Agreement of 2006, the Mission took the view that the Agreement had been of considerable value both as an expression of common commitment to work together for shared objectives and in triggering action in a number of areas, including the fight against impunity. The Mission believes that the Agreement provides a sound foundation for immediate and additional action..

In the light of experience with the 2006 Agreement, whatever the difficulties in its follow-up, and the circumstances now prevailing in Colombia, the Mission invited the tripartite Colombian constituents to give consideration to the possibilities and advantages of updating it, with a view to establishing firm consensus on action to be taken to address the matters identified in this report and to agree how the ILO can best assist in that process. That might involve a renewed ILO presence in Colombia.

## **Specific Issues**

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### **1. Social Dialogue**

In the light of the importance attached by the Mission to promoting trust between the constituents, it strongly urges that priority action be taken to strengthen social dialogue. In this regard, the National

Commission on Policy Dialogue and Salaries ( Comisión Nacional de Concertación de Políticas Laborales y Salarios ) has a fundamental role to play, particularly as it is the only tripartite body that meets on a regular basis including meetings with the President of the Republic. In addition to action at the national level, good practices of social dialogue at the enterprise, regional and local levels should be actively promoted.

The functioning of the Special Commission for the Handling of Conflicts before the ILO (CETCOIT), does not seem to have met the expectations of some of the tripartite constituents. Nevertheless, the Mission considers that it has a crucial role to play in addressing in some of the issues that the Mission has been examining. Therefore the Mission urges all constituents to engage positively in a new effort to make CETCOIT function effectively. To this end, the Mission urges by April 2011 that:

- An early agreement on an independent personality acceptable to all parties should be reached to Chair the CETCOIT;
- Consideration be given to the establishment of departmental structures of the CETCOIT;.
- An analysis of the functioning and the possibilities of assistance and strengthening of the CETCOIT, including a review of its terms of reference. (March/April)

Consideration should be given as to whether additional mediation mechanism should be created.

## **2. Violence and Impunity**

Notwithstanding improvements, violence and impunity remain present in the society and therefore a major challenge.

Concerning cases 1787 and 2761 before the ILO Committee on Freedom of Association, the Mission heard testimony that there continued to be murders and other acts of violence against trade union leaders and trade unionists. At the same time, information provided demonstrated that the number of these serious crimes have significantly reduced in recent years. The importance of continued protection by the Government for trade union leaders and trade union members was highlighted.

The Mission also took note of the important improvements made in the investigations of the cases of murders and the sentencing of the material authors of these crimes against trade union leaders and trade union members. In this regard, the Mission notes the contribution made by the Trade Union Members Sub-Unit of the National Human Rights Unit of the Office of the Attorney General of the Nation as well as by the Judiciary in sentencing those found guilty. The Mission noted that this development was a direct result of the 2006 Tripartite Agreement.

The Mission, while taking into account the above, underlined that the majority of the cases have not yet been investigated nor have the perpetrators, including the intellectual authors of these crimes, been brought to justice.

The Mission noted the adoption of legislation in 2009 (Act 1309) which significantly increased the sanctions for perpetrators of acts of violence against trade unionists as well as the prescriptive period for such crimes as a positive development.

The Mission noted that the 25 more recent cases of homicides included in Case 2761 before the ILO Committee on Freedom of Association are not currently with the Sub-Unit on Human Rights but that a decision had been made to transfer these cases to the Sub-Unit. It is clear to the mission that in

order for the Sub-Unit to make greater progress in the investigations to enable prosecution and sentencing to take place, the number of prosecutors and investigators assigned to that Unit would have to be increased in accordance with the commitment made by the Government to the ILO mission in 2009. The Mission also emphasizes the importance of strengthening the direct contacts with trade union organizations in these investigations either through the Prosecutor-General's Office or the Attorney General.

The Mission received information that the Draft Law on Reparations for Victims of Violence includes provisions for individual reparations as well as collective reparations for trade union organizations affected by the violence. The Mission expressed the firm hope that the trade unions would be consulted in the process of the elaboration of the Draft Law and that when it is adopted, it would provide effective reparations for those concerned. .

With regard to on-going ILO processes, the Mission recommends that:

- in the framework of the National Commission on Social Policy and Salaries, the complainants in cases Nos. 1787 and 2761 before the ILO Committee on Freedom of Association should provide by April 2011 all the available information concerning the alleged facts to enable the Prosecutors' Office to undertake the corresponding investigations.
- the Government should send by August 2011 additional observations concerning cases Nos. 1787 and 2761, indicating the stage of the investigation of each case and if those responsible have been identified.

The Mission was made aware of considerable divergences of opinion about the number of acts of violence against trade unionists which were motivated by their trade union activity and those which were the result of various other factors. In order to promote greater clarity and accuracy in this matter, the Mission encourages tripartite cooperation with a view to reaching an agreed

position on the classification of homicides so that those pertaining to freedom of association can be clearly identified and effectively pursued.

The Mission also proposes that an analysis, involving the participation of trade unions, should be undertaken by May 2011 of the protection that should continue to be provided to trade union officials, trade union members and the premises of trade unions.

**2. Acts of anti-union discrimination and other obstacles to the exercise of freedom of association and collective bargaining**

During the meetings not only with the trade unions but also with the courts, serious concern was expressed regarding the increasing use of associated work cooperatives as well as collective accords in enterprises with non-unionized workers which were having a severe impact on the exercise of the right to freedom of association and collective bargaining. It was also indicated that this was having a direct impact on trade union membership. Information was also provided on frequent cases of anti-union dismissals as a consequence of the exercise of the right to create or join a union.

The Mission is particularly concerned by the information given during its meeting with the Supreme Court that in cooperatives only dependent workers would enjoy the right to form or join trade unions. In the light of this information, the Mission believes that the legal provisions regulating Cooperatives should be modified to bring them in line with the ILO Conventions concerning freedom of association and the recognition of the right to collective bargaining. The Mission also received information that outsourcing of workers from cooperatives and various forms of contracting served as obstacles to the full exercise of freedom of association. The Mission recommends that effective

measures be taken, with the assistance of the ILO, to eliminate the legal and practical obstacles to freedom of association and collective bargaining.

### **3. Pending legislative questions**

To date, limited legislative measures have been taken to address outstanding issues concerning compliance with freedom of association and collective bargaining Conventions. The Mission welcomes several Constitutional Court rulings addressing some of the legislative issues that have been raised by the supervisory bodies of the ILO. However, the Mission underlines that extensive legislative action would need to be vigorously pursued to ensure full application of Conventions Nos. 87 and 98.

The Mission proposes that the Government submits by September 2011 proposals on legislative measures for consultation to the National Commission on Social Policy and Salaries prior to their submission to Congress. In this regard, priority should be given to cooperatives (CTAs) and collective accords.

### **4. Labour Inspection**

The Mission noted the consensus among the tripartite constituents on the importance of and urgency to strengthen the labour inspectorate in the country. This would be crucial to address respect for and compliance with the national legislation, including the issues raised concerning the use of associated work cooperatives and the acts of anti-union discrimination in the enterprise. The Mission takes note of the information provided by the Vice-Minister of Labour of the recent

action taken to dedicate more resources to the labour inspectorate. Welcoming these measures, the Mission urges that further steps are taken to ensure that labour inspectors would be able to adequately and effectively undertake their functions in respect of the most important issues concerning the enforcement of the labour legislation and preventive measures and eventual remedies, with a special attention to freedom of association and collective bargaining.

The Mission noted with interest that a separate Ministry of Labour would be established in August and trusts that this will provide the improved responsiveness of the Government to all issues raised with it.

#### **7. Training**

With a view to strengthening social dialogue in the country, continued training and capacity building for all the tripartite constituents would be indispensable. The training efforts already being undertaken would need to be strengthened. In addition to the social partners, training should also be extended to the various State institutions, including the Prosecutor General's Office, the Ministry of Defence, the Ministry of the Interior and Justice, the Attorney General's Office, the Supreme Court, the Constitutional Court as well as the Higher Council of the Judiciary.

#### **8. Role of the ILO**

The Mission concludes that there is an important role for the ILO in capacity and skills-building and other activities to support the fulfilment of the conclusions of this Mission and the full implementation of Conventions Nos. 87 and 98.

(Signed) Mr. Sergio Paixao Pardo

Chair, Conference  
Committee on Applications  
of the 99<sup>th</sup> Session of the  
International Labour  
Conference

Mr. Ed Potter, Vice-Chair,  
Employers Group,  
Conference Committee on  
Applications of the 99<sup>th</sup>  
Session of the International  
Labour Conference

Mr Luc Cortebeek

Vice-Chair, Workers'  
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Sir Roy Trotman, Vice-  
Chair, ILO Governing Body

Mr. Lima Dagoberto Lima  
Godoy, Employer Member,  
ILO Governing Body

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Mr. MCDERMOTT. I just want to correct one thing here. I hear a lot of talk about, the Chinese this and the Chinese that. This is not going to change. If we pass this agreement with Colombia, it is not going to change the fact that the Chinese are the biggest trading partner. We have free trade agreements with Chile, and the Chinese are outdoing us there. And we have got free trade

agreements with Peru, and the Chinese are outdoing us there, as well.

So, to hold it up as an answer to this whole issue that is going to stop the Chinese—I think we need a hearing on what is going on with Chinese. That is a legitimate question. But I do not think that one should portray this as being something that is going to deal with China.

What I would like to ask Mr. Isaacson is the question, when General McCaffrey says, “Put this thing in right now,” what does that do to labor violence? What does that do to impunity? What does that do to labor conditions? How would you spin out the effect of that?

Because what we are arguing here whether this glass is half full or is it half empty. That is what we are arguing about. And some of us are saying we want more in the pitcher, and others are saying there is already enough, and that we should move forward. So I would like to hear your suggestions about what you think would happen.

Mr. ISAACSON. Sure. If the agreement was to be approved right now, the conversations—and there are some, actually, constructive conversations going on, as we heard in the last panel, between the U.S. and Colombian officials about benchmarks, about improvements, about reducing killings, about punishing—those conversations would stop. Why continue them? You have got an agreement now.

If those conversations stopped, sure, there are people in Colombia’s government who, out of their own good will and their belief in what is right, would probably try to continue some of these prosecutions, and would probably try to continue pushing funding into some of the right categories to keep these going.

But, you know, these good people in the Colombian Government face some very powerful opposition who do not exactly share their view of the necessity of not circling the wagons and actually—and seeing these things reformed. They could lose. I think we give them a lot of leverage right now, as they try to push for these reforms. And we could, in fact, in just a relatively short time, bring some major historic institutional change that benefits both of our countries.

Mr. MCDERMOTT. I would like to characterize why it has taken four years, because that is the issue. Why has it been here four years, and have people not been paying attention? Is it fair to say that the Uribe government talked a good game, but it was the implementation of the game of what they talked that was minimal, at best? Is that a fair characterization of why we are still hung up on this point?

Mr. ISAACSON. Sure. The Uribe government, on a lot of things, was not even talking a good game. President Uribe, on many occasions in public, often flanked by the high command of the armed forces, would get up and call reformers, labor leaders, independent journalists, “terrorists,” or “friends of the guerrillas,” without producing any evidence to that.

At the same time, in 2008, an enormous scandal, which I alluded to in my testimony, exploded. And we suddenly learned that thousands of civilians had been killed on his watch, and with impunity

there. That certainly, while not directly related to labor, cast a shadow over this whole thing.

A further scandal where we found out that the Uribe government's presidential intelligence agency was spying on judges, on reporters, on opposition politicians, listening to their phone conversations, following them around, and even issuing threats, cast a further shadow over this.

So, you know, any time you had momentum, something would happen that slowed it down.

Mr. MCDERMOTT. Let me just say one thing. I have also heard some suggestions here that we are not paying any attention to what is going on in Vietnam, and we are talking about the trans-Pacific partnership and so forth.

The fact is that those are some of the sticking points about whether or not the Vietnamese will be included in a TPP. I am personally one of those people who thinks that is maybe more important than Colombia. And I think that we will have to work hard to bring in both Malaysia and Vietnam, because of these kinds of issues.

And I think—I yield back the balance of my time.

Chairman BRADY. Thank you, sir. Ms. Jenkins is recognized.

Ms. JENKINS. Thank you, Mr. Chair. Mr. Dorr, you talked extensively about the horrific loss in U.S. ag exports to Colombia because of our failure to pass this trade agreement. We have fallen from 71 percent to 27 percent in market share for Colombia imports of key ag products just since 2008.

So, looking ahead, first of all, what happens to our market share in wheat, for example, if we do not ratify this agreement, and Canada's agreement goes into force on July 1st, as expected?

And secondly, what happens if we are able to implement the trade agreement? Will the U.S. market share jump right back to where it was, or how long would that be expected to take?

And then, finally, is there any difference between getting it past by July 1st and, say, getting it past by the end of the year?

Mr. DORR. Well, certainly, I think the numbers on the Canadian FTA versus the pending FTA with the U.S. are well known. And while the Colombians clearly prefer the U.S.-quality wheat, markets dictate. And, as a result of the price differentials, it is clear that we are losing market share to Canada, and would continue. I would presume, unless there was some other extraordinary events, to do so, as well.

However, if you look at time lines for successful conclusion of these agreements, there are differing harvest periods in both hemispheres. And, for example, in the case of corn, if an FTA were concluded earlier than later, when there is a period of time in which there are no supplies available from the southern hemisphere, it gives U.S. producers an opportunity to get back into that market.

And, based on the relationships, the historical relationships that we have had, it is clearly a large market, one that we anticipate could be as much as two million tons of corn. And in today's environment, that could be anywhere from \$3.5 billion to \$4 billion worth of business, as opposed to what we are seeing this year, at about \$118 million.

So, obviously, timing is of the essence. And when these things are delayed, what you end up with is development of market relationships with other suppliers that, once you are able to get back in the market, you have to displace. And that is always more difficult.

Ms. JENKINS. So, how long does it take, if they were signed, for us to regain our market share? Do you have any idea?

Mr. DORR. Well, I—in the case of corn, which is something—and sorghum DDGs, which I am more familiar with, and wheat, we are fairly comfortable that if there was a successful conclusion to the agreements, we would be able to re-engage our customers and begin to recapture those markets, because there are innate advantages, logistical advantages, and the ability—and the quality systems and the way in which we deal with our customers, we think, would make us a preferred supplier. And we believe we could re-establish those relationships.

The longer we go, because of price differentials, it will be more difficult.

Ms. JENKINS. Okay. Well, there is some urgency among, I think, Kansas producers that if we delay this beyond the summer, that we will miss an entire year, based on the growing season. And the buying—would you agree with that?

Mr. DORR. Absolutely. And that is what I was alluding to. Because if you have a market coming—or if you have a crop coming on stream in the next two to three months, and you are in a position to capture that market, to delay it for a longer period of time gets you into the following year, sets up your competitor to capture the market, and clearly you have been displaced for at least another period of time that will make it quite difficult to recapture.

Ms. JENKINS. If we want to begin to replace and recapture our percentage of the market, we really need to get this ratified within the next few weeks, as opposed to the next few months.

Mr. DORR. It is clear that, as a market developer—and I want to make sure that this is clear, we are not lobbying this issue. But we clearly understand what the timing issues are, relative to when crops are produced and when markets are available. And the longer these sorts of things are in an abeyant state, the more difficult it is to capture those markets. And that is very obvious.

Ms. JENKINS. Okay. Thank you, Mr. Dorr. Mr. Chairman, I would yield back.

Chairman BRADY. Thank you. Mr. Davis?

Mr. DAVIS. Thank you, Mr. Chairman. General McCaffrey, it is a delight to have you here. My first battalion commander is your classmate from the Military Academy, and my best friend at Fort Bragg was your IG in the 24th Division in Desert Storm. So it is great to have an opportunity to reconnect in a less formal environment than the one you ran as a general officer. But I appreciate your insight very much.

Energy security is a very important component of our national security in so many ways. As gas prices are spiking, developments in Libya, the Middle East, some of the bluster of Hugo Chavez, with his rabid anti-Americanism is making it very clear to me that we are too reliant on foreign energy sources and, in particular, creating a dependency relationship on countries that are not nec-

essarily our friends, and seeing large amounts of our capital leaving the country.

I appreciated yours and Mr. Marsh's comments about Colombia as an energy provider that is seeking to expand its capacity. And I was wondering if you would elaborate some on your thoughts today on how this trade agreement will contribute long-term to the United States energy security.

General MCCAFFREY. Well, certainly it is not a central area of my expertise, but you know, I spend a lot of time on TV, nonetheless, talking about it.

Mr. DAVIS. Most of Congress has a tradition of speaking on things that are not their expertise, too.

General MCCAFFREY. Right.

Mr. DAVIS. We will definitely consider you at a higher category—

General MCCAFFREY. I think there is some central facts. One is—the biggest fact is the U.S. has no national energy strategy, which is shameful, and particularly in terms of reducing use of energy.

The second reality is that, when we look at our imports, thankfully, the majority of our external imports come out of Canada and Mexico, thank God.

The next reality is Venezuela is our next supplier. And there has been a continuing unbelievable confrontation with Mr. Chavez with the Chinese in the wings, with their voracious appetite for energy and mineral deposits in the global context, putting that at some risk.

Thankfully, Colombia is now becoming a major energy supplier, both coal and oil—and natural gas, potentially, along with Ecuador. And I think it is going to grow in the future. It would be hard pressed for us to ignore the reality—and, by the way, to underscore, Bogota is a three-hour flight from Miami. This is not the eastern Pacific. These are our friends, our allies, and our next-door neighbors. And they are an important potential source of energy for the United States, and we ought to exploit that.

Mr. DAVIS. I remember back in the summer of 2001 you shared with a group of us that Hugo Chavez was probably the greatest emerging threat in the western hemisphere, particularly to American and democratic interests.

Do you feel that moving towards a strategy of energy independence, and particularly embracing the Colombian agreement, and working closely with them as they develop their energy, will help to neutralize that, or mitigate that threat?

General MCCAFFREY. Well, I think it is. You know, Chavez is a different problem. This giant, beautiful country of Venezuela, it has been traditionally an ally of the United States, has increasingly slipped into what essentially is one-man rule, where Chavez is now—clearly dominates all the institutions of the state: The armed forces, the congress, the media. The Catholic Church has been intimidated, he is wrecking his own oil industry. At some point we will have to develop a notion on what are we supposed to do about Chavez, in conjunction with our Latin American allies.

But in the short run, I think the argument on the FTA stands on its own merits with Colombia. These people are a democratic re-

gime, they are implementing the rule of law, violence has decreased dramatically since 2002—and, by the way, a lot of that through the Uribe Administration. I am a little bit uneasy about the comments that imply that only now that Santos is in office we can start moving forward. The Colombian people think Uribe is a national hero. They will study him for the next 100 years because of what he did to turn the situation around.

But, nonetheless, the group we are dealing with now, the Santos regime, as Adam correctly points out, he is focused on land reform, he is focused on reducing violence against labor leaders, better governance. These people are moving in the right direction.

Mr. DAVIS. All right. Thank you very much, General. I yield back, Mr. Chairman.

Chairman BRADY. Mr. Reichert?

Mr. REICHERT. Thank you, Mr. Chairman. This is for anyone on the panel. Colombia is promising—is a promising market for U.S. exports of green technology. Colombia's traditional industries have increasingly become committed to energy cogeneration in their plants, creating the opportunity for U.S. firms to export engines, generators, spoilers, and heat recovery systems across a lot of sectors.

Colombia is also very big for hydro-power, solar, thermal, and wind markets. They are small, but they are all growing. And, unfortunately, Colombia's tariffs on clean energy technology and other green tech imports are very high, ranging from 5 to 15 percent. The World Bank has identified these tariffs as tariff barriers to Colombia's adequate development of clean technology. This is good news for the environment and for U.S. exporters. And the Colombian trade agreement would eliminate these tariffs for U.S. products that touch all of these energy-efficient technologies.

So, I understand that several of you have experience with new energy technology. I would like to ask anyone on the panel whether you believe this trade agreement will help expand the markets for clean energy technology, and thereby incentivizing American innovation and global competitiveness of our American companies in this sector. So, anyone wish to address that question?

Mr. ROMERO. In the vein of not being an expert on this, as Barry alluded to with his question, let me just say that the Colombian Government has set objectives for the use of clean technology in the years ahead.

I do know that they have completed mapping of the country, in terms of wind power, and where the best places to install wind power would be. They are heavily involved already in the African palm oil industry. And I think that there is all kinds of opportunities for solar there.

This would be a particularly good captive moment, if you will, to pass the FTA, because our equipment, our expertise, our services, would be able to enter into the country duty-free. And it is a particularly good moment because President Santos has put a high priority on alternative energy and green technology in his Administration. So it would be a particularly good moment for U.S. exporters.

Mr. REICHERT. All right, thank you.

General MCCAFFREY. I wonder if I might add one comment.

Mr. REICHERT. Yes, sir.

General MCCAFFREY. Just the business platform in Colombia—I always have to remind people 60,000 Americans live in Colombia; 250-plus American businesses are on the ground in Colombia. They are the easiest people in Latin America to do business with. They are smart, they are tough, many of them are educated here. They are committed to the rule of law. So this is another opportunity, I think, Mr. Congressman, you have accurately pointed out.

Mr. REICHERT. Thank you, sir. Mr. Dorr?

Mr. DORR. I would just make one very quick comment, in that in a collaborative manner, they make an excellent market for distiller's dry grains that are an outgrowth of the ethanol industry in this country. And it is a short market hop down there. It is a great feed product that is very, very well priced. And it mitigates a lot of food cost issues, particularly when you look at the number of very poor people in Colombia that, right now, with the tariffs in place, are dependent upon white corn, for example, with a high tariff level.

And so, these are opportunities to blend the use of green technologies throughout the hemisphere. And this is one that I think makes a lot of sense.

Mr. REICHERT. Thank you. One real quick question. General McCaffrey, during Ambassador Kirk's testimony before the full committee on February 9th, he said that he could not move forward with the Colombian trade agreement because of "labor-related concerns that go to the core American values."

I agree that the importance of our core values does—like keeping drugs and drug violence off our streets and away from our children. What do you think about that comment, that this goes right to the core American values—and we all recognize keeping drugs and drug violence off our streets—help a country raise their children with those values?

General MCCAFFREY. Well, I actually—you know, I strongly endorse his remarks. I think these are core American values. And I say that as someone whose family, you know, in the Depression era, was strongly pro-union.

I think what we need to underscore, though, is the astonishing commitment over the last—certainly since 2002, to making Colombia safer, to lowering violence, to increasing the rule of law, to transferring thousands of cases from military courts to civilian courts, to include cases that are already in front of military justice, to locking up rogue army or police officers—a general—for 40 years behind bars.

So, there have been significant changes for the better in Colombia.

Chairman BRADY. General, thank you—

General MCCAFFREY. I personally believe the FTA will contribute to that, and add leverage. A point of disagreement, though—

Chairman BRADY. General, if I may, thank you so much for your testimony today. And I would encourage any written response—this is a great dialogue—for all the witnesses, by the way.

Mr. Herger.

Mr. HERGER. Mr. Chairman, thank you very much for holding this hearing on this incredibly important issue. Trade is so important, certain important in my district, important to our nation, important to growing jobs, establishing jobs in our country.

Mr. Isaacson, you testified that WOLA supports expanding trade, but that WOLA does not support moving forward with this trade agreement until concerns regarding Colombian labor and human rights have first been resolved. I believe the opposite, that with the tremendous progress that Colombia has already made in this area, that we should be moving forward, and engage Colombia through this trade agreement which will, in turn, be a benefit to the Colombian workers.

WOLA's position also appears to be inconsistent with the approach espoused in this April 2008 WOLA special report, which is entitled, "Opting for Engagement." One of the report's principal arguments is that increased commercial engagement, increased trade, is a promising way of exerting a positive influence on a country's policies and practices with regard to human rights.

In fact, the report recommends that the United States take that approach, but towards Cuba. It does not mention Colombia. Now, everyone agrees that implementation of our agreement with Colombia would result in increased trade with the United States. But in my view, increased trade with the United States also helps us exert a positive influence on another country's labor and human rights conditions.

Now, I would like to ask—and with my time, Mr. Isaacson, I think I know what your opinions are—but I would like to ask of our other panelists, please describe how they have seen labor conditions in developing world impacted by expanded trade with the United States. Mr.—yes, Mr. Romero?

Mr. ROMERO. Free trade does not resolve all outstanding conflicts between labor and management. And it does not lift all boats in the way that we would like to see those boats lifted. But it does force local entrepreneurs and owners and managers to compete with U.S. entrepreneurs and owners and managers that have best practices, that practice the kind of respect for labor law that we have in this country in their own countries.

I have seen this on the ground, in places like El Salvador, and even in Guatemala, where the entrance of U.S. entrepreneurs into these areas has lifted up not just wage scales, but also respect and benefits for workers in that area. And I think it would do the same thing in Colombia.

Just one thing to add to that, and that is that passing a free trade agreement with Colombia now—which I strongly believe is long overdue—would also provide us not only the mechanism of raising standards, but it would also give us the opportunity to employ mechanisms when the Colombians failed. There is all kinds of mechanisms that—the special trade representative having to do with labor—that you can register complaints. There are hearings, et cetera. It is not like we have one bite at this apple, and then forever and ever we are subject to whatever happens in Colombia. We have a lot of control after we pass a free trade agreement.

Mr. MARSH. I would just add to what the ambassador said, that within Colombia we hire a very highly-specialized workforce, and

we have a strong commitment and track record of treating employees fairly in the United States and worldwide. We apply our labor standards worldwide. We view the immediate passage of the agreement as essential so that we can continue to create jobs not only in the U.S., but jobs in Colombia, where we can hire those people and apply the same ethical labor standards to our employees in Colombia.

Mr. HERGER. Thank you. General?

General MCCAFFREY. Well, I would add, having spent hours listening to the two Castro brothers at close range, that I strongly endorse engagement with Cuba, lifting the trade embargo, getting our people in there, and trying to improve the miserable lot of the Cuban workforce, as well as opening them to U.S. agricultural products, pharmaceuticals, et cetera.

So I think that argument is correct, and it applies to Colombia in a very different sense, since Colombia is at the top of the heap of democracies in South and Central America.

Mr. HERGER. Thank you.

Chairman BRADY. I thank you.

Mr. HERGER. Thank you, Mr. Chairman.

Chairman BRADY. I want to thank the witnesses for their excellent testimony, for the Members, for their thoughtful questions. And let me note that Members may submit questions to our witnesses for the record. And if they do, I hope you will respond promptly. I know you will.

And our witnesses today made clear that the pending trade agreement with Colombia offers significant economic and geostrategic benefits. A continued delay will only harm American interests in the region and the ability of American workers, businesses, and farmers to compete in these markets, as our competitors move ahead.

Witnesses have made clear moving forward to show—to allow congressional consideration of this agreement by July 1st is in the national security interests of the United States, and will help us re-engage as leaders within our hemisphere.

I hope the Administration will lay out a clear strategy and action plan for—and time table for considering the Colombia agreement. I strongly believe that we should consider all these agreements by July 1st. I hope that we can work together to make that happen.

But for now, this committee is adjourned. Thank you.

[Whereupon, at 12:46 p.m., the subcommittee was adjourned.]

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**[SUBMISSIONS FOR THE RECORD]****Statement of The Council of the Americas**

COUNCIL OF THE Americas

**Trade with Colombia Supports U.S. Interests**

The Council of the Americas appreciates the opportunity to provide a statement for the record concerning the pending free trade agreement between the United States and Colombia. The Council is a business organization representing almost 200 member companies invested in and doing business throughout the Western Hemisphere. Since our founding in 1965, the Council has been dedicated to the promotion of democracy, open markets, and economic and social development based on the rule of law, and we are widely recognized for our policy and commercial leadership throughout the Americas.

As we have testified on multiple occasions, the Council strongly supports the U.S.-Colombia Free Trade Agreement and urges the Obama Administration to submit it for congressional consideration as swiftly as possible.

The case for urgency is simple: the longer the U.S. delays, the larger market share U.S. producers lose, as global competitors fill the void. While the agreement awaits ratification more than four years after signature, U.S. exporters continue to face high tariffs in a crucial foreign market. In the meantime, Canada, China, and other countries have rapidly increased exports to Colombia, and U.S. market share has declined.

We are particularly concerned that a free trade agreement between Colombia and Canada, to enter into force on July 1, 2011, will disadvantage U.S. agricultural and other exporters. For example, U.S. wheat producers estimate that the U.S. share of the Colombian wheat import market could fall from about 70 percent to 30 percent due to the Canadian-Colombian agreement. In addition, Colombia has implemented a trade agreement with the MERCOSUR countries, including Argentina and Brazil, causing key U.S. agricultural exports to Colombia to decrease significantly.

The geopolitical arguments are even more compelling. Passage of the trade agreement would solidify the close partnership between the United States and Colombia, avoiding the risk of alienating a valuable ally in a strategically important region where U.S. allies are scarce. Regional observers rightly ask about the benefits of friendship with the United States when arguably our closest friend in South America has difficulty concluding a straightforward agreement on trade. Moreover, Colombia has witnessed progress as a nation on all fronts—on respect for human rights, reduction of violence against union leaders, and economic and social development. Since the August 2010 inauguration of President Juan Manuel Santos, progress has accelerated.

Business leaders, trade associations, economists, think tanks, and U.S. exporters all support the idea of building U.S. competitiveness through free trade with an important ally. The Council of the Americas joins them in calling on the Administration and Congress to act now on the pending agreement with Colombia.

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**Statement of Colombian American Chamber of Commerce**



**Written Statement for the Record**

**Submitted by the Colombian American Chamber of Commerce (AmCham Colombia)**

**to the**

**Subcommittee on Trade of the Committee on Ways and Means**

**U.S. House of Representatives**

**First of Three Hearings on the Pending, Job-Creating Trade Agreements**

**U.S. – Colombia Free Trade Agreement**

**March 17, 2011**

The Colombian American Chamber of Commerce (AmCham Colombia) appreciates the opportunity to submit a written statement for the first of three hearings on the pending, job-creating trade agreements.

For 56 years, AmCham Colombia has worked to strengthen trade and investment ties between the United States and Colombia and represented U.S. business interests. AmCham Colombia is a non-profit business association with its principal office in Bogotá and branches in Barranquilla, Cali, Cartagena, and Medellín. AmCham Colombia member companies support jobs throughout the United States that are tied to trade and investment in Colombia. Our more than 900 member companies nationwide include U.S. multinational companies, small and medium U.S. companies, Colombian companies that are representatives and distributors for U.S. companies, owners of U.S. franchises, as well as Colombian companies that import from the United States, and export to and invest in the United States. AmCham member companies are committed to contributing to the prosperity of both countries and are leaders in corporate social responsibility.

Our members remain steadfast in their strong support for the U.S.-Colombia Free Trade Agreement (FTA), which will contribute to economic growth and jobs in both countries. Below we outline some of the many reasons why our members support prompt action on the agreement.

**Colombia is an important and growing market for U.S. exports.**

Colombia is the fourth largest market for U.S. exports in Latin America and the Caribbean and the fourth largest economy in the region. With a population of 45 million and strong economic growth, Colombia represents a growing consumer market. U.S. merchandise exports to Colombia in 2010 were over US\$12 billion.

Colombia is an important market for U.S. agricultural exports: it is the largest U.S. agricultural export market in South America and third largest in Latin America, after Mexico and Canada. U.S. agricultural exports to Colombia were US\$906 million in 2009.



Approximately 85% of the U.S. companies that export to Colombia are small and medium enterprises (SMEs). SMEs represent a dynamic sector of the U.S. economy and accounted for almost 55% of private sector employment in the first quarter of 2009. SMEs created about 64% of net new jobs during the period from 1992-2009. The FTA addresses non-tariff trade barriers that affect U.S. businesses and which are particularly burdensome for small and medium companies.

U.S. exporters of services will benefit from the implementation of the FTA. Services represent nearly one-third of all U.S. exports worldwide and account for about 80% of U.S. employment. The FTA will improve market access for U.S. services exporters and generate new opportunities for a diverse range of U.S. service providers such as financial services, express delivery, telecommunications, information technology, audiovisual, and many others.

Colombia will be making significant investments in infrastructure in the coming years that will generate new business opportunities for U.S. exporters. For example, the Colombian Ministry of Transportation estimates that investment in road, rail, mass transit, airport and port infrastructure will total US\$42 billion during the 2011-2018 period. The country is continuing to attract significant foreign investment in the oil and gas and mining industries. Investment and exploration in oil and gas was approximately US\$4 billion in 2010. The Colombian oil company, Ecopetrol, plans to invest at least US\$6.73 billion in 2011.

According to a September 9, 2010 ITA Export Fact Sheet, the U.S. Trade Promotion Coordinating Committee has identified Colombia as one of six markets worldwide where U.S. companies have growing export opportunities over the next 5-10 years. The U.S. Export-Import Bank has identified Colombia as one of its key markets.

Every US\$1 billion in exports of goods and services creates 6,000 new jobs, according to U.S. Department of Commerce estimates. The USDA estimates that every US\$1 billion in agricultural exports supports approximately 8,000 jobs. Agricultural exports support jobs in the 41 states that export agricultural goods to Colombia. One in three of U.S. manufacturing jobs depends on exports.

**Colombia has become a more competitive market as Colombia carries out policies to diversify its international trade.**

Colombia has opened its economy to international trade and investment. Colombia's trade agreement with Canada is expected to enter into force by October 2010. Colombia has also signed an agreement with the European Union and is negotiating agreements with South Korea and Panama. Agricultural producers from Argentina, Brazil, and Chile are among the countries that already enjoy preferential access to the Colombian market. China has dramatically increased its share of the Colombian market in the last ten years. In terms of Colombia's imports, China now ranks second after the United States. Imports from China increased 40% from January to September 2010, compared to the same period in 2009.

**The implementation of the FTA can support the reform process in Colombia.**

Through the ratification and implementation of the U.S. -Colombia FTA, the United States has an important opportunity to reinforce and advance the significant progress that Colombia has made in the human rights and labor arena. The FTA will help strengthen the U.S. partnership with the new administration of President Juan Manuel Santos, which is committed to continued improvements as part of the country's development policy.

The U.S.-Colombia FTA was amended to incorporate the provisions of May 2007 Congressional-Executive Agreement on Trade Policy, which reflected bipartisan agreement on labor and

environment provisions in U.S. trade agreements. The Colombian Congress approved the amended treaty.

The FTA makes the enforcement of International Labor Organization (ILO) core labor standards subject to binding dispute resolution. It provides a vehicle for continued U.S. engagement with the Colombia on labor issues through the creation of a Labor Affairs Council, cooperative labor consultations and labor cooperation and capacity building.

As Colombia carries out an active policy to negotiate new trade agreements, it should be noted that Colombia's FTA with the United States is the only agreement that Colombia has signed that contains ambitious and binding provisions regarding labor rights.

#### **Social Reforms Underway in Colombia.**

The administration of President Juan Manuel Santos is committed to making continued progress in labor and human rights. Since taking office in August 2010, the government has taken concrete actions to demonstrate this commitment and to consolidate an integral human rights policy.

#### *National Policies on Human Rights*

- The National Development Plan 2011-2014 "Prosperity for All," which serves as the foundation for the government's policy priorities and national budget, sets forth the government's plans to address Human Rights, International Humanitarian Law, and Transitional Justice as part of the process of consolidating peace in Colombia.
- The government is creating a National System for Human Rights and International Humanitarian Law, which will be coordinated by a multi-sector commission headed by Vice President Angelino Garzón.
- The plan includes increased coordination with state and municipal government authorities and education programs on human rights. It also includes a focus on public policies to prevent human rights violations by developing prevention plans with the participation of civil society, public forces, and territorial authorities.

#### *High-Level Leadership within the Government*

Vice President Angelino Garzón has a long-standing commitment to labor and human rights, having served as a union leader, Secretary General of the Central Union of Workers, and Minister of Labor and Social Security, among other positions. Vice President Garzón is widely respected and plays a key leadership role in government initiatives and newly created commissions related to labor and human rights.

#### *Legislative Agenda*

- Land Restitution and Victims Reparation. In late September 2010, the Santos Administration submitted to Congress draft legislation to provide victims of violence with the right to truth, justice and reparations. Victims are defined as those who have been subject to violations of human rights or international humanitarian law, irrespective of the perpetrator of the violations. Reparations will include housing and property restitution, compensation, rehabilitation and guarantees that the crimes will not recur. The bill requires the government to develop a long-term action plan for the continuity of reparation programs. The government is conducting consultations with the indigenous and Afro-Colombian communities in order to incorporate their input into the program implementation.

- Separate Ministries of Justice, Labor, and Environment. The Colombian Congress recently approved legislation that will create separate Justice, Labor, and Environmental Ministries from the existing Ministry of Interior and Justice, Ministry of Social Protection (combines Labor and Health), and Ministry of Housing, Environmental and Territorial Order. This process is expected to be completed by July 2011.
- Integral Anti-Corruption Law. Presented by the Santos Administration to create administrative, penal and disciplinary penalties for corruption cases.
- Royalties Reform Law. This law will involve the redistribution of income from royalties paid by extractive industries to all of Colombia's departments (states) in order to provide additional resources to economic and social development projects in Colombia's poorest regions.

*Judicial Branch: Efforts to Strengthen the Administration of Justice and Fight Impunity*

**New Prosecutor General:** The new Prosecutor General, Viviane Morales, took office in January 2011, filling a critical position in the justice system that had been vacant for 18 months. Among her top priorities, Prosecutor General Morales has pledged to address the problem of congestion in the court system.

**Judicial Reform Process:** Colombia is implementing a significant judicial reform process that will facilitate the effective prosecution of crimes against unionists. In 2004, the Colombian Congress enacted legislation to reform the criminal justice system from an inquisitorial closed-door system to a more transparent and expeditious accusatorial system with oral procedures and open trials.

Law 1149 passed in 2007 establishes new oral procedures for labor court proceedings. The implementation of this reform is being phased-in over four years from its inception on January 1, 2008. Courts already using the oral procedure report a decline of 66 percent in the time spent to reach a decision. As a result of these changes, continued progress in the fight against impunity can be expected.

**Conclusion**

In closing, AmCham Colombia wishes to express our members' strong support for the free trade agreement with Colombia, which will benefit both countries. The FTA will help U.S. exporters compete and increase U.S. exports to the growing Colombian market, which in turn, will help sustain and create jobs in the United States. The agreement provides an opportunity for the United States to strengthen its partnership with Colombia and to support the Santos government's commitment to continued progress in labor and human rights in Colombia.

**Supplemental Fact Sheet for the Testimony submitted by the Colombian American Chamber of Commerce (AmCham Colombia)**

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**Title of Hearing:** First of Three Hearings on the Pending, Job-Creating Trade Agreements,  
U.S. – Colombia Free Trade Agreement, March 17, 2011

**Statement of U.S. Labor Education in the Americas Project (USLEAP)**

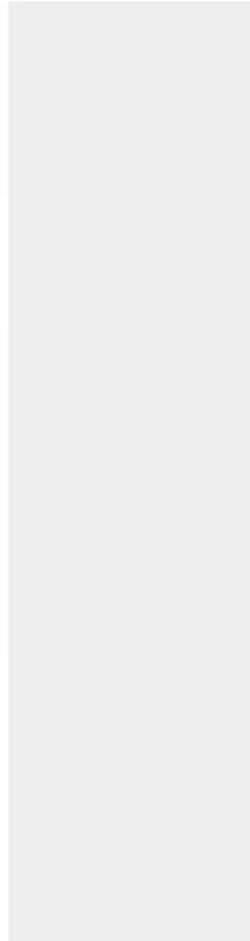
**Comments to the House Committee on Ways and Means  
Concerning the Colombia Free Trade Agreement**

Submitted by the  
**U.S. Labor Education in the Americas Project (USLEAP)**

March 31, 2011

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**Comments to the House Committee on Ways and Means  
Concerning the Colombia Free Trade Agreement**  
Submitted by the  
**U.S. Labor Education in the Americas Project (USLEAP)**  
March 31, 2011

This submission is for the House Committee on Ways and Means Trade Subcommittee's hearing held on the Colombia Free Trade Agreement (FTA) on Thursday, March 17, 2011.

**Organization Background and Colombia**

The U.S. Labor Education in the Americas Project (USLEAP) is an independent non-profit organization founded in 1987 that supports the basic rights of workers in Latin America. USLEAP supports global trade but believes that without trade rules that protect the rights of workers, the benefits of trade will not be shared by workers abroad and unfettered trade will accelerate the race to the bottom for workers in the United States.

In 2001, USLEAP, which until 1998 was known as the U.S./Guatemala Labor Education in the Americas Project, began working in Colombia with various non-governmental organizations, unions, labor centrals, and human rights organizations. Over the past decade, USLEAP has led worker rights fact-finding delegations to Colombia, produced a special bulletin on violence against trade unionists in Colombia, was the principle author of "*Justice for All: The Struggle for Worker Rights in Colombia*," released in 2006 by the AFL-CIO's Solidarity Center, and for the past three years has produced an annual impunity report analyzing convictions achieved by special labor courts established in 2007 to consider cases of violence against trade unionists.

In March 2004, USLEAP testified at a public hearing at USTR concerning the Bush Administration's intent to enter into negotiations for an Andean Free Trade Agreement with Colombia and other countries. USLEAP argued then that negotiations should not be initiated with Colombia until it had met minimum conditions regarding respect for the basic rights of workers, emphasizing Colombia's well-known standing as the most dangerous country in the world to be a trade unionist, with more trade unionists murdered in Colombia than in any other country in the world. Seven years later that stark fact has not changed. Indeed, since then more trade unionists have been murdered in Colombia than in the rest of the world combined (see graph on page three). Colombia did not meet the minimum threshold for initiating negotiations in 2004, and in 2011 it does not meet the minimum threshold for Congress to ratify a FTA with Colombia.

USLEAP, because of our own mandate, focuses on worker rights, impunity, and violence against trade unionists. Much of the political and public debate about worker rights in Colombia has centered on the more easily understood issues of violence and impunity, which indeed constitute grave violations. However, Colombian trade unions themselves argue that the need for labor law reform and for genuine enforcement represent at least as great a threat as violence and impunity to the ability of workers to exercise core worker rights like freedom of association and the right to collective bargaining. We agree: if violence were to end tomorrow and all perpetrators of violence brought to justice, the deficiencies in Colombian labor law and its enforcement would continue to deny millions of Colombian workers their basic rights.

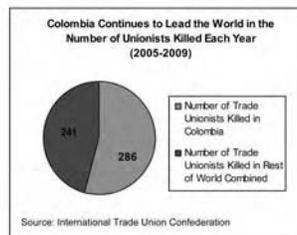
In addition, as we have previously testified, progress on worker rights is not a sufficient condition for moving forward an FTA with Colombia. The Colombian labor movement, and we, believe that the current FTA as negotiated is based on a deeply flawed model that fails to address concerns about the impact of FTAs on farmers, consumers, health care, the environment, investment rules, and Afro-Colombians.

In this submission, we highlight three labor issues: violence, impunity, and, as a prime example of non-violent worker rights violations, subcontracting. These are areas in which we have particular expertise.

#### I. Anti-Union Violence

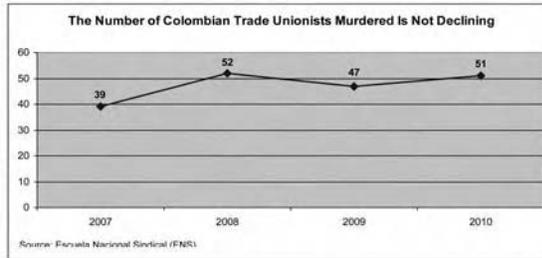
**Summary:** The steps the Colombian government has taken to decrease violence against trade unionists are hardly adequate, given the results. Colombia continues to be the most dangerous place in the world in which to be a trade unionist.

- Colombia leads the world in the number of unionists killed. In 2009, as with previous years, more unionists were killed in Colombia than the rest of the world combined.<sup>1</sup>
- In 2010, the number of trade unionists murdered in Colombia, 51, actually increased over the previous year, 47, and is higher than in 2007, the first full year following the signing of the FTA.<sup>2</sup>



<sup>1</sup> International Trade Union Confederation (ITUC).

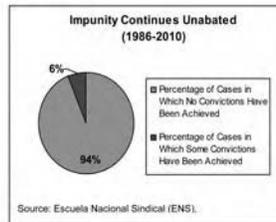
<sup>2</sup> Escuela Nacional Sindical (ENS). You can access the most recent report published by the ENS and the Colombian Commission of Jurists, entitled "Impunity and the Violation of the Human Rights of Trade Unionists in Colombia, 2009-2010 and 2002-2010," here: <http://www.usleap.org/files/ENS%20October%202010%20English.pdf>.



Murder is not the only form of violence against trade unionists in Colombia. Along with the more than 2,725 trade unionists that have been murdered from January 1, 1986 to August 22, 2009, in 2010 there were 21 attempted murders, 338 death threats, 35 forcible displacements, 7 disappearances, 5 kidnappings, and 16 cases of harassment against trade unionists documented by the Escuela Sindical Nacional (ENS), the leading Colombian human rights organization.

## II. Impunity

**Summary:** In 2009, the government of Colombia made no progress on impunity. (Compilation, and therefore analysis, of 2010 convictions will not be available until spring 2011 at the earliest.) The backlog of unresolved cases of murdered trade unionists actually increased in 2009: of the 59 murdered trade unionist convictions achieved in 2009, 41 represented new convictions while 18 were for victims for whom some convictions had previously been achieved. Given that 47 trade unionists were murdered in 2009, the backlog of totally unresolved cases increased in 2009, continuing the 94% rate of impunity in cases of violence against trade unionists from 1986 to 2010.



The USLEAP analysis of sentences for convictions for murder in Colombia in 2009, published in December 2010 in the report "*Colombia: Falling Further Behind in the Fight Against the Impunity of Anti-Union Violence*," also revealed the following:

- In 2009, the Colombian government achieved convictions in cases of 59 murdered trade unionists, with 77 individuals convicted for these murders, according to 71 rulings made from January 1, 2009 to December 31, 2009. This compares to 2008 figures of convictions in the cases of 49 murdered trade unionists, with 46 individuals convicted for these murders, and 2007 figures of convictions in the cases of 29 murdered trade unionists.
- Seventeen individuals were convicted in absentia in cases involving 14 victims. Seven of these cases were part of the 41 new convictions, leaving only 34 of the 59 cases of murdered trade unionists as achieving first time convictions and resulting in imprisonment.
- Of the 77 individuals convicted for murder in 2009, 69 were paramilitaries, 3 members of the armed forces, 3 from guerilla groups (1 from the FARC and 2 from the ELN), and 2 not affiliated with any armed group.
- An increasing percentage of convictions was derived from the Justice and Peace process. In 2009, the Justice and Peace process accounted directly or indirectly for 63 of the 77 individuals convicted for murder, with only 14 individuals convicted without contributions from the Justice and Peace process (down from the 22 convictions achieved by the specialized units in 2008).
- In only three of the 59 conviction cases of murdered trade unionists were convictions achieved for both the material and intellectual authors. Of the 77 individuals convicted, 32 were considered material authors and 45 intellectual authors.
- With the advent of the Justice and Peace process, there have been a growing number of convictions for intellectual authors. In 2009, 42 of the 45 intellectual authors convicted were due directly or indirectly to the Justice and Peace process. Outside of the Justice and Peace process, material authors continued to dominate, with 11 out of 14 convictions resulting in the prosecution of material authors.
- There have been few convictions for murders committed in recent years, possibly one of the factors undermining the deterrent value of recent progress against impunity. In 2009, only four convictions were achieved for the 236 murders committed during the previous four years, 2005-2008.
- A significant limitation is that the individuals convicted as the intellectual authors and therefore those ultimately responsible do not extend beyond the level of paramilitary commanders. The vast majority of convictions have not uncovered the real instigator of the crimes, particularly those who benefited from the murders in economic and

government sectors. Incomplete justice in each of these cases conceals the role of these acts of violence as part of an overall anti-union strategy, limiting progress.

### III. The Colombian Labor Law Regime

Despite ratifying all principle United Nations covenants on human and worker rights under the International Labor Organization (ILO), Colombian labor law and enforcement mechanisms fail to effectively protect the rights of workers.

At the beginning of the 1990s, the Colombian government began to put into effect legislation promoting a form of "labor flexibility" that weakens labor law protections, deprives workers of their basic rights, and helps create an unstable and informal workforce deprived of basic rights and incapable of earning a living. The majority of minimum wage workers in Colombia are hired on a temporary contractual basis that undermine the fundamental rights of workers, failing to provide a living wage, healthcare, and pension while neglecting core worker rights, including the right to freedom of association and the right to collective bargaining. The casualization of work and shifting of permanent, stable work to temporary contract work is being achieved through the abuse of temporary contracts, pseudo-cooperatives, and temporary services agencies. Workers under temporary contracts do not receive health insurance, vacation, or social security, even if they have been employed by the same company for years.

Employers can also avoid providing employee benefits through the tactic of subcontracting, or hiring workers through Associated Labor Cooperatives (CTA). These workers are considered "associates" and not formal employees, and as such they are not legally entitled to the same rights under Colombian law. Many cooperatives are in fact managed by the employers and not the workers themselves, as should be the case. Reports indicate that many employers pressure their workers to join a cooperative or face dismissal.

Companies also use this mechanism as a means to violate workers' right to freedom of association. Given that workers associated to cooperatives are treated as independent contractors in matters of wages and benefits, the government does not give them the autonomous right to form or join worker organizations. This is a direct violation of ILO Convention 87.

In 2010 the Colombian government passed Law 1429, the Formalization and Generation of Employment Law, which moves towards challenging involuntary cooperatives by increasing penalties for employers who hire workers to perform basic operations. However, the law does not ban cooperatives directly or prevent other forms of indirect employment that undermine access to fundamental labor rights. It is also not scheduled to begin implementation until July 2013, which delays an analysis of its effectiveness and potential benefits for cooperative workers

*Case Study: Worker Rights Violations in the Flower Industry*

U.S. consumers spend over \$18 billion annually on flowers, 60% of which are imported from Colombia. The Colombia flower industry is the recipient of U.S. trade benefits, and as such eighty-four percent of the flowers produced in Colombia are exported to the United States.

It has been extremely difficult for Colombian flower workers to exercise their basic rights. Until 2008 there were no independent unions with collective bargaining agreements in the flower sector. With the support of an international campaign, two contracts were signed in 2008 with Dole Fresh Flowers at the Splendor and Fragancia plantations. In early 2009, Dole sold its Colombian flower operations, the largest in the country, to the Nannetti group, which retitled the former Dole business as FlorAmerica in Colombia and as Sunburst Farms in the U.S. In the fall of 2010, workers reported that the company began withholding wages and fell behind on the legally-required payments for health insurance and social security, spawning a wave of strikes that the company has met with union-busting, violent intimidation, and fired workers. In spite of repeated calls to the Colombian government to intervene, the Ministry of Social Protection (MSP) has yet to effectively enforce the law with respect to this company. Two unionized plantations offer case studies.

**Plantation Guacari:** Workers went on strike from September 9-24, 2010 in protest of the company's failure to pay wages for one month and legally-required benefits for more than three months. The workers ended the strike when the company promised to provide at least some of what was owed. After the company reneged on its promises, on November 16 workers went back on strike.

On November 29, at a meeting with the MSP, the company demanded that the strike be lifted and agreed to provide back-pay; the union asked for a written agreement that would promise prompt payment of wages and would address the social security obligations. The company representatives reportedly walked out in anger.

The violent eviction took place the next day, on November 30. According to the union, "a group of scabs, spurred by a few supervisors and engineers in the service of the company... lashed out brutally against peaceful strikers [at Guacari] who were demanding payment of wages, paychecks and social security arrears.

"Union members, trying to avoid confrontation at all costs, ... were victims of insults and beatings with sticks and stones by strikebreakers, who apparently included common criminals recruited by the company, shouting that they wanted to work for free.

"From a distance, members of the Administration imparted instructions to continue the barbaric attack, which caused bruises to several people and wounded in the head union official Marina Rodriguez, who has hit with a wooden bench. After more than an hour of aggression, the employers broke down the gates, causing damage that they perversely tried to blame on the workers." On November 30, the company brought in thugs to beat workers, injuring several.

No one has yet been arrested for the beatings, while the company has filed criminal charges against the workers for disturbing operations. On December 1, approximately 100 Guacarí workers resigned and the company brought in sub-contracted workers. The sub-contracted laborers later went on strike as a result of failure to receive wages.

**Plantation Splendor:** Splendor plantation workers went on strike on December 7 after the company shut down the plantation. Some resigned after signing an agreement with the company that guaranteed them a small amount of compensation in exchange for not demanding back-pay or benefits, money they have not yet received. On January 25, 76 workers were fired. The company has filed charges against the workers that went on strike. Negotiations were continuing underway as of mid-March 2011, without a resolution.

#### IV. Recommendations

USLEAP supports the March 2011 benchmarks proposed by Representatives Jim McGovern, George Miller (D-CA), Rosa DeLauro (D-CT), Mike Michaud (D-ME), Jan Schakowsky (D-IL) and Linda Sanchez (D-CA) as minimum steps the Colombian government should meet before Congress considers a vote on the Colombia FTA, as put forth in their memo to President Obama, "*Advancing Colombian Labor and Human Rights and Congressional Consideration*," and submitted to the Ways and Means Committee.

With respect to the need to address impunity, USLEAP supports additional recommendations, as presented in the latest impunity report, "*Colombia: Falling Further Behind in the Fight Against the Impunity of Anti-Union Violence*." These recommendations include:

- The Colombian government should establish a comprehensive investigative and legal policy that identifies anti-union violence as a specific type of violence and recognizes the impact of impunity on victims' rights;
- To support this policy, the Colombian government should dedicate increased human resources with adequate political and financial support to investigate the enormous backlog of cases of murdered trade unionists;
- The Colombian government should publicly support and work with Colombian trade unions and human and labor rights organizations, especially those who have worked to end impunity in cases of violence against unionists;
- The Colombian government should guarantee the safety of the family members and trade unions of the murdered trade unionists, as well as the witnesses in these cases;
- The Prosecutor's Office should investigate all cases of anti-union violence, but focus efforts by grouping cases by region, industry and union affiliation;
- The Prosecutor's Office's investigations should incorporate a socio-political analysis of the regional context, including its history of violence, the presence and operation of all armed groups, and the current social, economic and political situation. It should also include a

union-specific analysis that documents other crimes against members of the same union, prior crimes against the victim, the work of the union, and the victim's role in his or her union;

- The Prosecutor's Office should carry out a full analysis of the motives that does not overly depend on the perpetrator's version of the truth but rather is based on a socio-political analysis and the victim's union background, the activities he or she carried out, and those who may have had an economic or political interest in the crime being committed;
- The Prosecutor's Office should prosecute all responsible parties, especially those with economic or political interest in the crime and those who would have benefited from them.
- The Prosecutor's Office should carry out a thorough investigation of the facts, not only with respect to the crime of murder, but also the commission of other violent crimes, including forced disappearance, torture, and sexual violence;
- In these cases, the presiding judges should use their powers to urge the defendants entering into plea bargain agreements to reveal the full extent of their knowledge of the crimes before receiving reduced prison sentences or other legal benefits;
- These judges should convict the perpetrators of these murders for aggravated homicide, as opposed to homicide of a protected person, as a means to recognize the generalized and systematic nature of the crimes committed;
- The Prosecutor General's Office should create and implement effective coordination mechanisms between the Justice and Peace subunit and the specialized subunit on violence against trade unionists;
- Colombian prosecutors and investigators as well as the victims and their legal representatives from Colombian human rights organizations should be guaranteed full access to paramilitaries held in U.S. prisons; and
- The U.S. government should provide incentives for extradited commanders to fully reveal their human rights crimes and connections with the Colombian government and security force officials and ensure that their plea bargain agreements do not prevent further disclosures on these crimes.

#### **Conclusion**

Pro-FTA advocates maintain that the Colombian government has made significant progress in improving respect for worker rights over the past four years. As reflected in this submission, we take issue with that premise. Some steps have been taken, but not enough.

Approval of the FTA will remove the greatest incentive the government of Colombia has to take steps to improve labor conditions and decrease violence and impunity. To the degree that the Colombian government has taken any positive steps, it has done so solely because of the carrot of the pending FTA. It would be a grave mistake, with the potential for an upsurge of anti-union intimidation with violent consequences for trade unionists in Colombia, if the pending FTA were

passed before the government has demonstrated in practice a systemic commitment to ensure respect for worker rights, stop violence, and end impunity.

The experience of worker rights in Guatemala and the application of U.S. trade leverage is highly instructive. Guatemala and Colombia have historically been the two Latin American countries with the greatest level of violence against trade unionists, and there are significant parallels, and lessons.

USLEAP had extensive engagement with Generalized System of Preferences (GSP) worker rights petitions filed on behalf of Guatemalan trade unions from 1991 until 2006, when CAFTA replaced the GSP program. The worker rights conditions of the GSP program, and the threat of lost benefits, provided significant leverage to the U.S. government. Over the course of the GSP process (which included reviews, threats of review, and threats of suspension), the Guatemalan government set up new labor courts, passed labor law reforms, increased sanctions for violators, approved the first unions in the maquiladora sector, and broke through the previously-impenetrable wall of impunity. In 2003, negotiations over CAFTA led the Guatemalan government to pass the only contracts in the maquila sector, among other steps, thanks in part to the interest of former Ways and Means Chairman Sander Levin.

Violence also ebbed. In the two years before CAFTA was implemented, no Guatemalan trade unionists were reported murdered in a country long known as one of most repressive in the region. But since the implementation of CAFTA in June 2006, violence against trade unionists has surged. No trade unionists were murdered in Guatemala in 2006, the year of CAFTA's implementation. In 2009, there were 16, making Guatemala the second most dangerous country in Latin America to be a trade unionist.

While some argue that this violence against trade unionists in Guatemala is simply a reflection of a larger upsurge of violence, an analysis by an independent human rights group in Guatemala found that trade unionists have been disproportionately targeted. *"When looking at who has been assaulted during [January to June 2008], one can see that the attacks have been concentrated against union leaders. The concentration of attacks against trade unionists is unprecedented and should motivate an immediate reaction both condemnation and prevention."*<sup>3</sup> The forces behind this upsurge of anti-union violence in Guatemala, much of it directed at trade unionists working directly or indirectly for major U.S. companies, are not unaware of the changes wrought by CAFTA's replacement of the GSP process. They know that under CAFTA, there are no sanctions of employers and that it has so far provided very limited trade leverage with respect to labor violations.

What will be the consequences in Colombia if the FTA is passed? Will the Colombian government "continue to move forward?" Or is it not much more likely that without the incentive of trying to persuade the U.S. government that it has made progress that any forward steps will cease? Our historical experience in Latin American countries with a reputation for violence against trade demonstrates that passage of the FTA would free anti-union forces to intensify anti-union behavior, including violence against trade unionists.

<sup>3</sup> "Preliminary Report on the Situation Facing Human Rights Defenders, January-June, 2008." The Human Rights Defenders Protection Unit of Guatemala.

In sum:

*The most important step the U.S. government can take to support progress on worker rights in Colombia, including progress against violence and impunity, is to not pass the pending FTA until there has been significant and systemic progress.*

**Statement of International Labor Rights Forum**



**INTERNATIONAL LABOR RIGHTS FORUM**

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March 31, 2011

Re: Written comments for the record to the Subcommittee on Trade of the Committee on Ways and Means in response to the hearing on the pending Free Trade Agreement with the Republic of Colombia.

The International Labor Rights Forum hereby submits these comments for the record to the Subcommittee on Trade of the Committee on Ways and Means in response to the hearing on the pending Free Trade Agreement with the Republic of Colombia. The International Labor Rights Forum (ILRF) is an advocacy organization dedicated to achieving just and humane treatment for workers worldwide. Since 2002, ILRF has worked alongside Colombian trade union and NGO partners advocating for labor rights and witnessed how violence and intimidation to labor rights defenders creates a chilling effect to workers attempting to organize for their basic rights at work.

**I. The U.S. Government must require the successful implementation of benchmarks as preconditions to ensure Colombian workers can freely exercise their right to freedom of association prior to entering into a free trade agreement.**

Colombia is the world's most difficult and dangerous environment for workers to establish and join unions. Union leaders are assassinated, attacked, or threatened at alarming rates. Moreover, Colombian workers' are placed in precarious work situations due to expanding forms of labor contracting in violation of the workers' right to organize and bargain collectively. As a result, union density remains low in Colombia; where workers have the opportunity to form unions, they fear organizing due to threat of persecution, or worse, violence. In order for free trade to provide broad-based economic growth, trade unions and the workers who form them must have a voice to promote their own social and economic empowerment. Prior to entering into a Free Trade Agreement with Colombia, the U.S. Government must ensure that the Government of Colombia meets the benchmarks (hereinafter "benchmarks") outlined by Representatives McGovern, Miller, DeLauro, Michaud, Schakowsky, and Sanchez to address the underlying factors that have lead to

serious violations of the right to freedom of association, including the murder of labor activists and the widespread impunity enjoyed by those responsible.<sup>1</sup>

ILRF is particularly concerned about the mounting pressure to pass the Colombian Free Trade Agreement when Colombia is fundamentally unprepared to enter a free trade agreement. However, the U.S. should thoughtfully examine the human and labor rights considerations at stake in Colombia, in order to not move ahead with an agreement in a country that does not have adequate legal protections for all workers, or institutions in place with capacity to investigate and prosecute violence against human rights defenders. Labor rights considerations and conditionality are now part and parcel of U.S. trade policy.

Congress should not vote on the Free Trade Agreement until the Government of Colombia has met the benchmarks. ILRF echoes the call for meaningful and sustainable change in order to:

- 1) End violence against trade unionists and other human rights defenders;
- 2) Strengthen and increase investigations, prosecutions, and convictions of intellectual and material authors of trade union violence and intimidation; and
- 3) Guarantee fundamental worker rights by making policy changes and improving labor rights enforcement.

**II. The Government of Colombia must take concrete steps to reduce violence against trade unionists, which continues to occur at alarming rates.**

Colombia is the most dangerous environment for workers to establish and join unions. Contrary to the myths circulated by those pushing for a quick passage of the agreement, union leaders continue to be assassinated, attacked, or threatened at alarming rates. In 2010, 51 trade unionists were murdered, 47 were murdered in 2009, and 51 were murdered in 2008.<sup>2</sup> There is a clear pattern and recurrence of assassinations of trade union leaders. In 2011, three trade union murders have already occurred. Colombia continues to lead the world in the number of unionists killed each year. From 2005 to 2009, 241 trade unionists were killed in Colombia, while 286 unionists were killed in the rest of the world combined over the same period.<sup>3</sup>

The Escuela Nacional Sindical (ENS), the National Labor School, a non-profit organization that monitors labor rights in Colombia, reported that 2857 trade unionists were murdered in past 25 years. In 2010, ENS reported 338 death threats issued against unionists, 21 cases of attempted murder, and 16 cases of assault. The violence, threats, and intimidation result in extremely low levels of union density in Colombia where only four to seven percent of workers are union members.<sup>4</sup>

In the past ten years the murder rate has reduced, however 50 killings a year is still far too many to be considered acceptable. During the February 2011 visit, the International Labor Organization (ILO) High Level Tripartite Mission to Colombia concluded that “the only acceptable situation is one in which all acts of violence have ceased and there is need to act

<sup>1</sup> Letter to President Barack Obama, Mar. 17, 2011. “Advancing Colombian Labor and Human Rights and Congressional Consideration of the U.S.-Colombia Free Trade Agreement.” From Representatives James P. McGovern, George Miller, Rosa L. DeLauro, Michael H. Michaud, Jan Schakowsky, and Linda T. Sánchez.

<sup>2</sup> International Trade Union Confederation, “2010 Annual Survey of Violations of Trade Union Rights for the Americas.” Accessed at: <<http://survey.ituc-csi.org/+Americas-Global-+.html>>.

<sup>3</sup> ITUC, 2010, and U.S. Labor Education in the Americas Project, “Violence Against Colombian Trade Unionists: Fact vs. Myth” March 2011.

<sup>4</sup> Id.

with determination to bring this about.”<sup>5</sup> Until Colombia is able to take steps to approach “the only acceptable situation,” it is unable to be an equal trading partner with the U.S.

The new administration in Colombia has taken some small steps to improve the situation for labor rights defenders, although much more needs to be done. According to the Latin American Working Group, 20 trade unionists have been killed since the new government took office.<sup>6</sup> The Government of Colombia continues to be fundamentally unprepared to enter into a free trade agreement with the U.S. due to the violence and threats experienced by trade unionists. However, if Colombia, with support of the U.S., were to implement the steps outlined in the benchmarks, and create an environment where trade unionists are able to organize without fear of violence or discrimination, it would be more adequately prepared to enter into a free trade agreement with the U.S. without putting its workers at risk.

**III. The culture of impunity toward crimes against trade unionists and human rights defenders must be addressed through tangible improvements in investigations, prosecutions, and convictions of intellectual and material authors of crimes.**

Labor leaders and human rights defenders are targeted for violence and intimidation, and the overwhelming majority of those that committed the crimes enjoy impunity. While the numbers of murders has decreased, the level of investigation and prosecution has not increased regardless of the recently constituted Labor Sub-Unit in the Prosecutor General’s office, with nineteen prosecutors.

Since 1986, the Attorney General’s office has only investigated 25.5 percent of union killings.<sup>7</sup> Over the past 25 years, convictions were achieved in only 6 percent of the murders of trade unionists, leaving the country with an impunity rate of 94 percent.<sup>8</sup> According to the Colombian Commission of Jurists, nobody has been held accountable in 98 percent of crimes against unionists. These rates of impunity are disturbing and must be improved prior to the U.S. entering into a free trade agreement with Colombia.

The Government of Colombia has dedicated some resources to crimes against trade unionists, and created a Labor Sub-Unit of the Attorney General’s office, however, prosecutions of murders have advanced very slowly. There is an enormous backlog of cases, and prosecutors are unable to keep up with the new murders that occur.<sup>9</sup> The ILO High Level Tripartite Mission to Colombia found that “in order for the Sub-Unit to make greater progress in the investigations to enable prosecution and sentencing to take place, the number of prosecutors and investigators assigned to that Unit would have to be increased.”<sup>10</sup> Taking further steps to end impunity, as outlined in the benchmarks, is not only the responsibility of the Government of Colombia to provide justice, but also will serve as a deterrent to acts of violence against trade unionists in the future.

<sup>5</sup> International Labor Organization, “Conclusions of the High-level Tripartite Mission to Colombia” February 2011.

<sup>6</sup> Latin America Working Group Education Fund, “Colombia, Human Rights under the Santos Administration: Better Words, But Violence Still Unchecked” March 2011.

<sup>7</sup> Comisión Colombiana de Juristas, “Impunity and the Violation of the Human Rights of Trade Unionists in Colombia 2009-2010 and 2002-2010” October 2010. Accessed at: <<http://www.coljuristas.org/LinkClick.aspx?fileticket=ml2x73n8ynf%3d&tabid=36&language=es-CO>>

<sup>8</sup> Id.

<sup>9</sup> U.S. Labor Education in the Americas Project, 2009 Annual Impunity Report, “Colombia: Falling Further Behind in the Fight Against the Impunity of Anti-Union Violence” December 2010. Accessed at: <<http://www.usleap.org/files/2009%20Annual%20Impunity%20Report%20Final%20Web.pdf>>

<sup>10</sup> ILO, February 2011.

Allowing for free trade between the U.S. and Colombia provides Colombia with an unfair comparative advantage. Workers whose rights to organize and bargain collectively are undermined by violence, intimidation, and structural contract employment schemes will always have an unfair wage advantage in comparison with U.S. workers.

**IV. Labor policy and practice in Colombia needs to be improved in order to guarantee the minimum rights for workers set out in the eight core ILO Conventions.**

Colombia has ratified the eight core ILO Conventions,<sup>11</sup> however its laws and regulations do not guarantee the minimum rights set forth in these conventions. Colombian labor law and policy fail to meet internationally recognized standards on freedom of association as much of the Colombian workforce is denied the right to join or establish unions. Weak labor rights enforcement is another obstacle that denies Colombian workers access to justice for labor rights violations. As a result, Colombians working to produce goods for export to the U.S. are unable to exercise their basic rights.

Employers benefit from systematic abuse and overuse of subcontracted and short-term contract labor that has increasingly replaced permanent and direct forms of employment. In addition, many subcontracted workers are denied government and social security benefits, minimum wage, and are left in a state of insecurity of employment through short term contracts. Employers use a variety of strategies to undermine direct employment relationships and avoid regular employer obligations under the Labor Code.

One of the most widely used practices of promoting precarious work in Colombia is requiring employees to form associated labor “cooperatives” (CTAs) that are controlled by the employer. Labor “cooperatives (CTAs) differ from worker owned cooperatives because they are not democratically run by workers, but are controlled by employers. CTA associates are prohibited from joining or establishing unions. CTAs are a means for employers to hire workers indirectly, and evade responsibilities of direct employment relationship under Colombian labor code. People do not freely choose to join “cooperatives” or become “contract” workers. Rather, companies are requiring workers, many who are full-time employees, to agree to new contracting arrangements. Any full-time employee who leaves or is fired is replaced by a contractual worker.<sup>12</sup>

According to the Washington Office on Latin America (WOLA), CTAs became the primary form of contracting sugar cane cutters during the Uribe Administration from 2002-2010.<sup>13</sup> In Valle del Cauca, WOLA found that more than 12,000 manual laborers in the sugar cane sector are affiliated with CTAs, totaling more than 40 percent of the workforce.<sup>14</sup> Many sugar cane cutters are required to belong to a CTA in order to gain employment. Workers contracted with CTAs typically pay out 45.9 percent of their gross income back to their contractor for various fees, credit payments, and social security; due to these extra fees, workers employed under CTAs make on average 44.6 percent less than those directly employed by the refineries, and

<sup>11</sup> The eight core ILO Conventions cover four core labor standards: ban of forced labor and slavery (Conventions 29 and 105), freedom of association and collective bargaining (Conventions 87 and 98), ban of workplace discrimination (Conventions 100 and 111), and minimum working age and ban of worst forms of child labor (Conventions 138 and 182).

<sup>12</sup> Corporación Cactus, “Prácticas Laborales en Empresas con Certificaciones de Buenas Prácticas: El Caso de Elite Flowers” March 2011. and Corporación Cactus, “Cooperativas de Trabajo Asociado: Regulación y Realidad” 2007.

<sup>13</sup> Washington Office on Latin America, “Workers without Rights: Labor Activists in Valle del Cauca’s Sugar Sector under Fire” January 2010. Accessed at:

<<http://www.wola.org/sites/default/files/Workers%20without%20Rights.pdf>>.

<sup>14</sup> Id..

less than the Colombian monthly minimum wage.<sup>15</sup> As a result, sugar cane cutters employed under CTAs make less than the monthly minimum wage.<sup>16</sup>

In December 2010, Colombia passed Law 1429, the Law on Formalization and Generation of Employment. Article 63 of the law is a step forward in guaranteeing labor rights by increasing penalties for employers that violate the prohibition of using CTAs to hire workers that perform permanent core functions of a business. The law does not provide a blanket prohibition of the use of cooperatives; rather it allows CTAs to be used for temporary, fixed duration work that is not part of the core permanent work of a business or public entity. The law is also vague with regard to what employees carry out permanent core functions. The new law does not take effect until July 2013. The ILO High Level Tripartite Mission has recommended that CTAs be outlawed entirely, and as quickly as possible.<sup>17</sup>

Other strategies of indirect hiring where employers avoid responsibilities owed to employees under the Labor Code occur when employers hire workers under commercial contracts rather than employment contracts or hire workers through temporary employment service companies.

Other trade related industries, such as mining and cut flower production, are plagued by health and safety concerns. Improvements to labor inspections, enforcement, and sanctions are necessary to combat anti-union discrimination, health and safety concerns, and to eradicate child labor. Labor rights grievance procedures must be swift, accessible, transparent, and independent in order to be effective.

According to Article 77 of the Colombian Labor Code, businesses can contract labor through "Temporary Service Agencies" when the work is considered temporary, incidental or transitory, when it is necessary to fill in for workers on vacation, disability, sickness or maternity and in order to attend to increases in production or seasonal harvests. The law establishes that workers can be contracted for periods of six months, extendable for another six months. In Colombia, the illegal use of temporary contracts to fill actual permanent positions, displacing direct contracts between employers and employees, is quite common.

The cut-flower industry has also increasingly become characterized by indirect employment relationships, including fix short-term contracts, contracts based upon quotas, subcontracting through temporary employment agencies, and subcontracting through CTAs. In the year 2002, 86 percent of employees were directly contracted with by the flower farms, while in 2010, only 58 percent have direct contracts.<sup>18</sup> The cut-flower industry in Colombia generates 100,000 direct jobs, of which 42 percent are contracted through intermediaries: 30 percent of workers are employed through temporary employment agencies, eight percent by CTAs, and four percent by contractors.<sup>19</sup> Temporary employment agencies fill permanent positions with temporary workers by contracting with workers for six months, extending the contract for another 6 months, and then giving the worker a "break" in order to return to contract the worker for 6 months under the same system. The illegal contracting of a worker on a temporary basis for several years, a practice denounced by unions and NGOs working in the

<sup>15</sup> A sugarcane cutter employed by a CTA nets between \$440,000 and \$520,000 COP a month (\$235.24-\$278.00 USD), while the minimum wage in Colombia for 2011 is \$535,600 COP per month (\$286.35 USD). Washington Office on Latin America, "Workers without Rights: Labor Activists in Valle del Cauca's Sugar Sector under Fire" January 2010, quoting Grupo Semillas, "Deuda Social y Ambiental del Negocio de la Caña de Azúcar" March 2009. Accessed at: <<http://www.wola.org/sites/default/files/Workers%20without%20Rights.pdf>>.

<sup>16</sup> Id.

<sup>17</sup> ILO, February 2011.

<sup>18</sup> Corporación Cactus, March 2011.

<sup>19</sup> Id.

flower industry, permits the employer to avoid paying indemnifications for ending contracts without just cause when the employer wants to dismiss a worker for trying to protect his or her own rights or for health reasons.

Another common practice that hinders the exercise of freedom of association are “collective agreements” (*pactos colectivos*) with non-unionized workers. The “collective agreements” are contracts unilaterally imposed by employers on unorganized workers, and are often used to undermine the existing union’s work to negotiate for better conditions of employment. The agreements provide an incentive for workers to disaffiliate from the union. The ILO High Level Tripartite Mission to Colombia recommended that collective accords concluded by employers with non-union workers should not be used against exercise of freedom of association and collective bargaining.<sup>20</sup>

Colombian labor policies that violate the right to freedom of association include: the prohibition of public employees from collective bargaining, the prohibition of national level unions the right to negotiate for industry wide agreements, and prohibitions on the right to strike for workers in “essential services.”<sup>21</sup>

In order to ensure benefits of trade will be broadly shared and ultimately lead to long-term sustainable economic development, workers must be guaranteed the right to organize unions, bargain for wages and working conditions, enjoy the benefits of stable, direct employment, and not be subject to subcontracting arrangements. The above-mentioned political and practical obstacles that undermine the standards set out in the core ILO Conventions must be remedied prior to U.S. consideration of the free trade agreement.

#### V. Conclusion

The International Labor Rights Forum is in agreement with Representatives McGovern, Miller, DeLauro, Michaud, Schakowsky, and Sanchez that prior to entering into a free trade agreement with Colombia, there is a “window of opportunity for the United States and Colombia to advance the rule of law and the rights and security of trade unionists—and by extension, of all civil society.”<sup>22</sup> Rather than feigning ignorance of the serious labor rights concerns in Colombia, the U.S. government should support Colombia to address violence against trade unionists, end impunity for human rights violations, bring labor legislation and enforcement to the standards set out by the core ILO conventions, and create an environment where workers can exercise their rights, and free trade can serve as a viable means of broad-based economic development. Specific concrete and sustainable measures must be taken prior to consideration of the free trade agreement.

Prior to submitting the Free Trade Agreement to Congress for consideration, the U.S. should ensure the Government of Colombia takes concrete steps to meet the benchmarks to:

1. Demonstrate a dramatic and sustained decrease from current levels in murders and attacks against trade unionists and rights defenders, with clear recognition that the only acceptable situation is one where all murders have ceased;
2. Demonstrate a dramatic increase from current levels in the rate and significant improvement in the quality of criminal investigations and prosecutions of

<sup>20</sup> ILO, February 2011.

<sup>21</sup> “Essential services” has been broadly interpreted to include a series of non-essential industries, such as oil production, salt production, telecommunications, and utilities, among other sectors.

<sup>22</sup> Letter to President Barack Obama, March 2011.

- perpetrators of anti-union violence, members of paramilitary successor groups, state actors responsible for extrajudicial killings; and state actors who have collaborated with, benefited from, or tolerated the criminal acts of paramilitaries.
3. Ensure that Colombian labor law must explicitly provide for the full range of rights contained in the ILO Declaration on Fundamental Principles and Rights at Work and in the eight core ILO Conventions ratified by Colombia, including but not limited to: “the rights of all workers, public and private, to freedom of association and to collectively bargain over terms and conditions of employment, revising the legal definition of “essential services” in which employees are banned from striking in conformity with ILO definitions,” prohibitions of anti-union discrimination and other obstacles to the exercise of freedom of association, such as the use of associated work cooperatives (CTAs), collective accords (*pactos colectivos*), and misuse of temporary contracting.

These benchmarks must serve as preconditions for consideration of the free trade agreement in order to improve the labor rights situation and access to justice for Colombian workers.

The benchmarks must be preconditions to consideration of a free trade agreement with Colombia. As witnessed in Guatemala, when serious labor rights enforcement and impunity for violence co-exist, signing a free trade agreement with labor rights clauses and providing additional capacity building funds will not remedy the situation. Moreover, free trade under those circumstances will not promote equitable sustainable development. The U.S. should ensure that financial resources are available to Colombia to achieve the measures outlined in the benchmarks.

While the Government of Colombia, with the support of the U.S., is taking the steps necessary to remedy and improve the dangerous and disconcerting labor rights situation on the ground, the U.S. should renew Andean Trade Preferences and Drug Elimination Act benefits. Renewal of benefits would allow Colombian goods to enter the market without tariffs while the Government of Colombia works to meet the benchmarks.

ILRF concurs that the U.S. Administration should ask “those most affected by the lack of rights and the threat of violence” to evaluate how well the Government of Colombia has addressed the benchmarks. The U.S. Government must ask those most affected by the lack of rights and the threat of violence by consulting directly with Colombian labor leaders, trade unionists, and human rights defenders.

Respectfully submitted,



Brian Campbell  
Director of Policy and Legal Programs  
International Labor Rights Forum



### Statement of United Auto Workers Local 879

My name is Jim Reinitz. I am the President of the United Auto Workers Local 879. Most of our 800 members assemble the Ford Ranger truck. I am writing today to urge the defeat of the Columbia Free Trade Agreement as it written. I believe that the agreement should be modeled after the TRADE Act, which several of your Congressional colleagues are sponsoring.

I believe that the Columbia Free Trade Agreement is flawed in many ways. The trade agreement does not recognize the damage that it would do for both Columbia and the United States. The United States needs trade agreements that both would benefit equally our economy and Columbia's. We need agreements that will not lead to trade deficits, but trade surpluses for the United States. We need trade deals that would allow the middle class to grow through out the world, giving citizens of Columbia and the rest of the world purchasing power to buy American goods. This would help reduce the United States trade deficits.

I believe the United States can be an example in creating the middle class in Columbia. In America, the trade union movement did help workers achieve the middle class dream. These union jobs, helped give United States citizens the ability to purchase items made both in the U.S. and abroad.

Columbia's labor movement is trying to bring up labor standards in their country. They however are getting thwarted by their own government. The government is either failing to protect or conspiring to kill these labor leaders. When the government refuses to bring these labor leaders' murderers to justice, they claim these leaders are subversives and are a part of FARC. The majority of working people in the world would not agree that labor leaders are subversive when they are fighting for better pay and working conditions.

The United Nations International Labor Organization looks out for the workers of the world. The International Labor Organization has pointed out that Columbia is failing to meet the minimum standards regarding the right to organize and the right to collectively bargain. By Columbia failing to meet these minimum labor rights, the chances of reducing or eliminating the United States trade deficits are nil.

In a report called "Labor Rights Can Be Good Trade Policy: An Analysis of U.S. Trade with Less Industrialized Economies with Weak or Strong Labor Rights," by American Progress.org details why countries with labor rights help decrease our nations trade deficits.

In the report it details that:

- Between 2000 and 2007 , the gap between U.S. exports and U.S. imports widened faster for countries with limited or no labor rights than for countries with some or strong labor rights.
- The United States has also smaller trade deficits with countries that have better labor rights.
- U.S. exports tend to be larger when worker rights are stronger.
- Stronger labor rights are associated with smaller U.S. imports. U.S. imports grew faster from 2000 to 2007 for countries with limited or no labor rights than for countries with some or even strong labor rights.

If the Columbia labor leaders are allowed to organize their workers and push for higher wages, this would lead to a bigger middle class in their nation. With a stronger middle class, these people will have larger incomes and the ability to purchase items made in America.

Currently our trading system is set up to the advantage of those countries that don't have labor rights. The producers of Columbia can gain a trade advantage over US manufacturers by exploiting their workers. The only way many manufactures know how to make profits is to pay their workers lower wages. By having better labor standards and better pay, manufacturers must account for the true cost of their production in form of social turmoil due to the lower standards of living. Manufactures in both of our countries would have to compete on the quality of their product instead of how well they can unload their costs onto society

Can the Columbian businesses and manufactures working with labor unions learn to compete in the United States? The answer is yes. I belong to the United Auto Workers union. This union has had a history in working with our employers to create profitable businesses through productivity and quality gains.

Fred Zimmerman is a professor that teaches international management at St. Thomas University and has served on fourteen corporate boards. He is a frequent writer for the Twin Cities newspaper , Minneapolis Star Tribune. In a recent article "Boosting quality and productivity is not impossible", Professor Zimmerman points out in his work on

corporate boards that he has been able to meet many business leaders, and likewise in his lifetime he has met labor leaders. He notes that most highly regarded, forward looking business and labor leaders share many the same similarities. Both these business and labor leaders "similarities would include realistic understanding of the issues, a bias toward getting problems solved and a more appreciative view of the problems on the other side of the table." Professor Zimmerman interviewed a top-ranking executive from General Motors who stated that a UAW International labor leader had as much to do with the resurgence of the U.S. auto industry in the 1980's as anyone else in the industry.

In the article, it mentions Bob Killeen, a former UAW leader from the plant I work in, who gained local and national attention by encouraging union members to back both productivity and quality improvements so "our employers don't go broke." The current leadership of the St Paul Ford Assembly Plant still believes that productivity increases, quality improvements and cost containment help us keep our membership employed and keep Ford Motor Company profitable.

Can the Columbian business and manufacturing community work with labor unions and become profitable? Yes, by adopting some of the best practices that the U. S. companies and labor unions have been using. In the St. Paul Ford Twin Cities Assembly plant we have continued to push to become the best assembly plant we can, driving Ford Motor Company to profitability. As a Local Union we have worked with our plant management to help

We have agreed to give Ford Motor Company back some benefits and money to help regain profitability.

- The Twin Cities Plant was one of the most productive plants. According to the Harbour Reports, a vehicle took an average of 20.77 hours of labor to roll through our assembly line, 3.5 hours faster than might be expected in comparison to other plants.
- The Twin Cities Assembly plant has continued deliver a quality unit. One that has shown increased customer satisfaction, and increased quality year after year.
- We have worked with the company finding savings in the way we manufacture. Sometimes to increase profitability the UAW and Ford have looked for other cost savings inside our four walls

As the United States we should highlight our best practices in labor and management cooperation and encourage Columbia, and all our other trading partners, to adopt them. We then could have a trading model where we compete on quality and productivity and not on how little we pay people.

Again, I urge you not to pass the Columbia Free Trade Agreement as written but push for a trade agreement modeled after the TRADE Act. I thank you for your time on behalf of the 800 UAW members I represent.

Jim Reinitz  
 President  
 United Auto Workers Local 879

**Boosting quality and productivity not impossible**  
 FRED ZIMMERMAN

Much of the current debate on Minnesota's pressing fiscal budget problems often involves the practical imperative to find ways to do things better -- to improve quality and productivity simultaneously. This is difficult, but not impossible.

My purpose here is not to advance one position or another but to reflect on some of the individual character traits of leaders who have been effective in finding solutions to similar problems before.

After all, this is not the world's first need for adjustment. In the past, some of America's best companies such as Ford, Deere, Winnebago have successfully lived through difficult times in which revenue declined by 60, 70, and even 80 percent -- far more than Minnesota's current shortfall. Yet, these companies survived and became better.

My years in industry and as a long time corporate director have allowed me to know many business leaders. At the same time, I have had the privilege of knowing quite a wide variety of labor leaders. Though there are clearly variances in both groups, it has been encouraging to see the good spirit and competent foresight existing among the more highly regarded labor and management leaders. Indeed, there are often more similarities than differences. The similarities would include realistic understanding of the issues, a bias toward getting problems solved and a more appreciative view of the problems on the other side of the table.

A couple of decades ago, several high ranking auto executives and Douglas Fraser, the recently retired president of the United Auto Workers (UAW), spoke to our students at St. Thomas. We were pleased that everyone seemed to know one another -- and their problems.

Fraser was a very dignified speaker -- often sounding much like an Oxford don. On one occasion, he was approached after his speech by an attendee saying, "Sir, you don't sound much like a labor leader. I always thought a labor leader would be a cigar-smoking, fist-pounding person with a loud voice."

Fraser kindly replied: "My good man, you've just described Lee Iacocca," a long time personal friend of Fraser's.

On another occasion, I interviewed a top-ranking executive from General Motors who said in candor, "I think Don Ephlin [then No. 2 person at the UAW] had as much to do with the resurgence of the U.S. auto industry in the late 1980s as anyone in the industry."

**Making adjustments**

Minnesota has been blessed with some forward-looking union officials of its own. Bob Killeen of the UAW at the St. Paul Ford plant became a state and national leader encouraging union members to enthusiastically back both quality and productivity improvements "so our employers don't go broke." After retiring from Ford, Bob Killeen became co-director of the Minnesota Council on Quality.

Industry provided its own slate of capable executives who knew enough to see a coincidence of interest between management and labor: Donald Peterson, Philip Caldwell, and Lew Veraldi of Ford, Lee Iacocca and Robert Lutz of Chrysler, among others.

American industry survived the troubled early 1980s, and much of it is surviving today, due in part to practical cooperation in reducing the bad practices that did neither side any good.

These lessons should inform efforts to solve Minnesota's current budget dilemma.

We are all in this together. Adjustments need to be made. There will not be anywhere enough money to do everything as we did in the past. Enlightened leaders of labor and industry recognize that reality and they work together to reduce costs and improve quality simultaneously. Otherwise there is no future for anybody. It is very foolish for either side to claim immunity from improvement.

Education provides a good example of where cooperation is desperately needed. In spite of many dedicated teachers, the country's K-12 schools are a national embarrassment. More of the costs need to be directed to the classroom and away from time off and early retirements for employees and to less-effective administration. Yet the dedicated teachers I know would appreciate greater ability to control classroom discipline and the weeding out of teachers who are not serious about their jobs.

At the college level, it is not fair to the students to be increasing tuition at three times the rate of inflation while faculty members and staff spend so much time in unproductive non-essential activities. We have too much time off and we have too many meetings. Here, also, we could weed out some people. The lessons we are teaching in our classes have relevance to our own performance.

Greater efficiency and productivity are needed in other areas; regulation, permitting, economic development, health and human services, and more.

The labor and management leaders who have been memorable in the past would know what to do: understand the issues and work productively together to get the problems solved. I am hopeful this could still happen in Minnesota.



**Statement of John I. Laun, President CSN****SOME OBSERVATIONS ON THE COLOMBIA-U.S. BILATERAL TRADE AGREEMENT SUBMITTED TO THE SUBCOMMITTEE ON TRADE, OF THE WAYS AND MEANS COMMITTEE, BY THE COLOMBIA SUPPORT NETWORK**

Madison, March 31 2011

The proposed Colombia-U.S. "Free Trade Agreement" (FTA), if passed by the U.S. Congress and implemented by the two countries, will have several negative effects upon Colombia. Among these are the following:

1. The Colombian government has failed to provide adequate protection for unionized workers and their leaders. While President Obama expressed concern about the large number of union workers being murdered in Colombia—a large number of them by paramilitaries hired by U.S.-based companies, such as Drummond Coal and Chiquita Brands—insufficient steps have been taken to reduce these killings, which continue unabated. And very few murders of union members result in convictions. Without a strong commitment to ending this union-busting-through-murder phenomenon and impunity for these crimes, violence will continue to threaten workers seeking to protect themselves and their employment from employers' repressive actions. And the U.S. should press Colombia to outlaw a procedure permitting Colombian employers to sponsor "cooperatives" as an alternative to labor unions. These "cooperatives" are associations which eliminate a direct employment relationship between the workers and the employer, who is then able to avoid providing benefits to the workers and whose wage payments to them are often scandalously low.
2. Colombian campesinos, small-scale farmers with very limited economic resources, will suffer the loss of their traditional markets. Subsidized food crops from the United States will undercut prices in Colombia for such products, leaving the campesinos with nowhere to market their products, such as corn, rice and other staple products. This will increase poverty in rural areas, already a very serious concern, since hundreds of thousands of campesinos were forced off their lands during the Presidential terms of Alvaro Uribe Velez from 2002-2010. Colombia has some 4 million internally displaced persons, and the FTA will only add to this problem.
3. Some larger Colombian agricultural producers, such as those of cotton and sugar cane, may find imports from the U.S., subsidized by the U.S. government, threatening their markets, for example for cotton and sugar.
4. Colombian manufacturing businesses will face increased competition from the entry of U. S. manufacturing concerns into the Colombian market on a preferential basis. This combined with intellectual property protections allowed to the U.S. companies will likely force some Colombian businesses to close. For

example, Colombian pharmaceutical manufacturers may find it impossible to compete and to market their products successfully.

5. Indigenous peoples in Colombia are very concerned that intellectual property provisions relating to patent rights may have the effect of cutting off their access to traditional medicines, a fundamentally important part of their culture.

6. Preference for products produced in the United States may result in the decline and disappearance of traditional Colombian products. Thus favorable treatment for wheat may undermine local growing of quinoa and other traditional cereal crops.

7. As products from the U.S. take market share from local Colombian products, the advertisements for such products will become ever more pervasive, leaving native Colombian culture and mores ever more difficult to preserve.

John I. Laun, President CSN  
March 30, 2011

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**Statement of The National Corn Growers Association (NCGA)**



March 29, 2011

The Honorable Kevin Brady, Chairman  
Subcommittee on Trade of the Committee on Ways & Means  
United States House of Representatives  
1102 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Jim McDermott, Ranking Member  
Subcommittee on Trade of the Committee on Ways & Means  
United States House of Representatives  
1139E Longworth House Office Building  
Washington, D.C. 20515

Dear Chairman Brady and Ranking Member McDermott:

The National Corn Growers Association (NCGA) appreciates the opportunity to provide testimony as part of the Subcommittee on Trade of the Committee on Ways & Means' hearing regarding the pending trade agreement with Colombia. NCGA represents 35,000 corn farmers from 48 states, as well as the interests of more than 300,000 growers who contribute through corn checkoff programs in their states.

The United States is the largest corn producer in the world, and the export of corn and corn products is essential to producer income. During the 2009-10 marketing year, the United States exported 50.4 million metric tons of corn worldwide. Additionally, corn increases the value of U.S. beef, pork and poultry exports. Corn co-products such as dried distiller's grain represent a growing export market for domestic producers.

Colombia is traditionally one of the top ten export markets for U.S. corn. During marketing year 2007-08, the United States exported 114 million bushels of corn to Colombia, with an estimated value of nearly \$627 million. Unfortunately, U.S. corn exports declined dramatically during the 2009-10 marketing year. Only 36 million bushels of corn were exported to Colombia during that time, valued at \$152 million. The decline in exports reflected a loss of \$475 million to the U.S. economy.

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Under the Colombia Free Trade Agreement, U.S. corn producers would gain immediate access to the Colombian market for 2.1 million metric tons of corn at zero percent duty. Over the course of the 12 year phase out of corn's 25 percent over-quota base tariff, the rate would be reduced each year by 2 percent, while the volume of the tariff rate quota would increase by 5 percent, compounded annually.

Currently, Colombia is importing corn from U.S. competitors including Argentina, Brazil, Paraguay and the majority of Mercosur members because of an import duty preference. We cannot afford to watch important export markets slip away, particularly to our largest competitors, Brazil and Argentina. Failure to implement a trade agreement with Colombia will place U.S. corn producers at a competitive disadvantage in the world market.

NCGA supports a consistent U.S. trade policy so that corn and corn co-products are not disadvantaged for the benefit of another sector. We support the pending Free Trade Agreement with Colombia, as well as those with Korea and Panama. In finalizing these agreements, NCGA emphasizes the need to eliminate sanitary and phytosanitary barriers that are not based on the unique science of agriculture products derived from biotechnology.

NCGA remains committed to the development and maintenance of fair and open global trade policies. We appreciate efforts by U.S. trade negotiators to increase meaningful and achievable access to foreign markets. Moreover, U.S. corn producers stand ready to develop and provide corn products to meet the demands of modern global consumption.

Sincerely,



Barton Schott  
President

**Statement of Whirlpool Corporation**

Page 1 of 7



701 PENNSYLVANIA AVE NW • SUITE 750 • WASHINGTON, DC 20004

March 17, 2011

The Honorable Kevin Brady  
Committee on Ways & Means  
Subcommittee on Trade  
United States House of Representatives  
Washington, D.C. 20515

**WRITTEN STATEMENT IN SUPPORT OF THE FREE TRADE AGREEMENT WITH THE REPUBLIC OF COLOMBIA**

Whirlpool Corporation is the world's leading manufacturer and marketer of home appliances, with more than 71,000 employees and 67 manufacturing and technology centers around the world. This year, Whirlpool Corporation is marking its 100<sup>th</sup> year in business. We are a global company, and we are extremely proud of our U.S. heritage. We are committed to the U.S. market, to U.S. jobs, and to manufacturing in the United States. In fact, we're investing \$1 billion dollars in just capital expenses right here at home in the United States from 2010-2014. In the United States, Whirlpool Corporation has nine major manufacturing divisions and over 23,500 active employees.

Whirlpool Corporation supports the proven mechanisms of the WTO, for expanding global free trade, for completion of the Doha Round, and support for all free trade agreements both those that are in effect and those that are still pending before the U.S. Congress. We believe in fair trade and support all trade agreements to open foreign markets. Free, fair trade is good for our business, our employees, our industry, and our customers and consumers. At Whirlpool Corporation, we welcome the challenge to compete globally with foreign suppliers if subject to the same rule of law. This is made possible by U.S. trade agreements that level the terms of trade. A significant percentage of our U.S. export production is product that is shipped to countries in which we have free trade agreements like Canada and Mexico.

Whirlpool Corporation strongly supports passage of the United States – Colombia Trade Promotion Agreement (CTPA) as amended in the May 10, 2007 Congressional-Executive Agreement on Trade Policy because it removes barriers to trade that disadvantage U.S. companies that export to Colombia. **Whirlpool Corporation exports of U.S. manufactured products to Colombia are disadvantaged by preferential arrangements within the hemisphere that foreign appliance manufacturers take advantage of by producing product in Mexico to export within Latin America.**

**BENEFITS OF THE UNITED STATES - COLOMBIA TRADE PROMOTION AGREEMENT TO WHIRLPOOL CORPORATION**

Since 1991, Colombia has enjoyed duty-free access to the U.S. market for most goods and services as a result of the Andean Trade Preference Act, and subsequently by the Andean Trade Promotion and Drug Eradication Act, which unfortunately expired in February, 2011. The positive effects in Colombia of these laws were significant and they led to numerous political and economic reforms that have helped Colombia's gross domestic product grow significantly. The United States – Colombia Trade Promotion Agreement has the potential to spur even more development and growth in Colombia's economy by encouraging trade, creating jobs, and attracting investment. The economic prosperity that has typically accompanied expanded trade helps generate the national resources needed to address other issues including environmental protection and labor standards. **In 2010, Whirlpool Corporation exports of U.S. manufactured appliances to Colombia totaled \$19.6 million dollars; however, those exports have been declining over the last four years as the United States continues to be at a competitive disadvantage to Colombia's other trading partners.**

The Colombian market represents nearly six times the value of Whirlpool Corporation's U.S. exports to South Korea, another market with a pending trade deal before the U.S. Congress. Whirlpool Corporation's U.S. exports to Colombia come from many of our U.S. manufacturing operations, including those in Arkansas, Iowa, Ohio, Oklahoma, and Tennessee. Trade with Colombia is sustaining both union and non-union jobs at our manufacturing facilities here in the United States. Colombia is one of the most profitable and important countries we sell into outside of the United States. In fact, in terms of relative Latin America market importance to Whirlpool Corporation, Colombia trails only Brazil. Colombian consumers have demonstrated a tremendous appetite for our U.S. major appliance brands and the product configurations we build in America. **Colombia is a very large growth opportunity for Whirlpool Corporation and we intend to maintain and increase our presence in Colombia. The percentage of households classified as middle class continues to increase every year and many of these households are first time buyers of our products.** An increase in exports to Colombia will help us further invest in U.S. jobs to support our global operations.

Whirlpool Colombia serves as a hub for our Andean and Central America Operations. The United States – Colombia Trade Promotion Agreement will provide new market opportunities for U.S. manufacturers by eliminating or reducing tariff and non-tariff barriers, and advance Whirlpool Corporation's U.S. exports of home appliances to Colombia. In addition, forging new and lasting relationships in the region will provide Whirlpool Corporation with an opportunity to remain competitive and achieve economies of scale in the Western Hemisphere. Healthy markets in Latin America will translate into greater development of infrastructure to facilitate the movement of product into the region.

**WHIRLPOOL CORPORATION IS DISADVANTAGED COMPARED TO FOREIGN COMPETITORS**

Currently, our U.S. exports to Colombia are disadvantaged by preferential arrangements within the hemisphere that foreign appliance manufacturers take advantage of by setting up operations in Mexico to export within Latin America. In particular, we have moved sourcing of

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some products for the Colombian market from our facilities in the United States to facilities in Mexico. This was done to compete with competitors' products which are not subject to similar tariffs. **In the last four years U.S. exports have been losing share against other countries – In clothes washers from 28 percent to 14 percent and in large capacity refrigerators from 9 percent to 3 percent. The United States – Colombia Trade Promotion Agreement will allow Whirlpool Corporation to maintain U.S. jobs rather than relocate or expand operations in other Latin American locations to increase exports to the region because exports from the United States will become more competitive.**

Specifically, Whirlpool Corporation exports of refrigerators, freezers, clothes washers, dryers, dishwashers, microwave ovens, ovens and cook-tops will enter Colombia duty-free upon the agreement's entry into force, with a handful of products facing tariff phase-outs over five to ten years. **Tariffs in the range of 15-20 percent will be eliminated, which will level the playing field for U.S. exporters and save Whirlpool Corporation at least \$2.75 million dollars per year in duties not paid.** Colombian duties on appliances in 2010 were as follows:

HTS Code	Product	Colombian Duty Rate
7321.11.00	Stoves	20%
8418.10.00	Combined refrigerator-freezers, fitted with separate external doors	20%
8418.21.00	Electrical refrigerators, household type, one door	20%
8418.30.00	Freezers of the chest type, not exceeding 800 liters capacity	20%
8418.40.00	Freezers of the upright type, not exceeding 900 liters capacity	20%
8418.69.90	Other ice making machines	15%
8422.11.00	Dishwashing machines of the household type	15%
8450.11.00	Washing machines fully-automatic of a dry linen capacity not exceeding 10 kg	15%
8450.20.00	Washing machines fully-automatic of a dry linen capacity more than 10 kg	15%
8450.12.00	Thin Twin	20%
8509.80.00	Trash Compactor	20%
8516.50.00	Microwave Ovens	5%
8516.60.20	Electrical Cooktops	20%
8516.60.10	Electrical Ovens	20%
8516.60.30	Warming Drawers	20%

#### COMBATING OF GRAY MARKETS

The desire by Colombians for U.S. product combined with the high tariffs on imported products has had the undesirable effect of stimulating the gray market for appliances shipped from Miami, Florida. Although Whirlpool Corporation has worked cooperatively with the U.S. and Colombian customs authorities to minimize the shipments, a free trade agreement would have an important effect on drying up this illegal trade. Nonetheless, Whirlpool Corporation has collaborated closely with the Colombian authorities to eradicate the gray market of appliances

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in Colombia. In 1998, 70 percent of total units in Colombia were sold in the gray market. In 2001, this number declined to 20 percent after work with Colombian authorities and is almost zero today. We pre-report and identify planned shipments, ports of exit and entry and invoice value to make detection of diverted shipments much easier at Colombian customs. Whirlpool Corporation recognizes and applauds the Colombian Government's efforts in "Democratic Security" and Foreign Investment stimulation, which are essential for Whirlpool Corporation, in order to increase commercial activity in Colombia.

#### **THE RULE OF LAW**

The United States – Colombia Trade Promotion Agreement (CTPA) will strengthen protection and enforcement of U.S. trademarks, patents, and copyrights, creating new opportunities for U.S. innovation-based and creative industries in Peru. In specific terms, CTPA includes strong intellectual property enforcement mechanisms and penalty provisions, including the criminalization of end-user piracy and counterfeiting and the authority to seize and destroy not only counterfeit goods but also the equipment used to produce them. The Agreement also provides necessary mechanisms to fight the problem of trans-shipment of counterfeit goods with specific provisions that are aimed at goods-in-transit.

In addition, U.S. direct investors in Colombia will benefit from the strong investment chapter in the Agreement, particularly the sections dealing with investment protections and dispute settlement. The Agreement enables binding third party arbitration for investor-state disputes not only for investments concluded after the Agreement goes into effect, but also for many types of investments that pre-date the Agreement.

The Agreement provides for rights that are consistent with U.S. law and also contains fully transparent dispute settlement procedures that are open to the public and allow interested parties to provide their input. As such, these trade agreements provide an opportunity for the partner countries to improve their investment climate by undertaking legal and judicial reforms, and resolving investment disputes (e.g., the criminalization of commercial disputes).

#### **ADDITIONAL BENEFITS**

The United States – Colombia Trade Promotion Agreement includes the following important provisions that create new market access opportunities and eliminate discriminatory practices for U.S. manufacturers:

- Non-discriminatory, national treatment in all aspects of our business
- Transparency and efficiency in administering customs procedures, including the agreement's rules of origin. Rules of origin are designed to provide clarity, predictability, and certainty to manufacturers.
- Enhanced commitments in distribution services such as wholesaling, retailing and franchising

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- Greater protection for intellectual property rights (IPR). U.S. companies will enjoy equal protection to domestically domiciled companies.
  - criminalizing end-user piracy, providing strong deterrence against piracy and counterfeiting
  - limits the grounds for revoking a patent, thus protection against arbitrary revocation

Losing access to the U.S. market would mean losing millions of dollars in revenue and thousands of Colombian jobs. Without these jobs, many Colombian workers will be forced to find other employment opportunities in a country that has a very high unemployment rate and where nearly half of the population lives in poverty. However, the CTPA makes Colombia's favorable access to our markets permanent and provides additional benefits in the form of improved market functioning and enhanced economic growth. In other words, CTPA will provide continuity for the long-term U.S. policy goals of economic development and democratic consolidation in Colombia.

In addition to contributing strongly to the expansion of trade and economic relations between the United States and Colombia, the CTPA will lend a helping hand to our close ally and will enhance U.S. efforts to strengthen democracy in the region. The embrace of democratic norms throughout the hemisphere over the past 25 years has been remarkable. But in some countries, poor economic policy and weak political parties, among other factors, have recently endangered this progress. The recent surge in populist victories, especially in South America, underscores the fact that democratic elections do not guarantee the rule of law.

While questions of the rule of law in the region may legitimately be addressed in a number of ways, we believe that the promulgation of ambitious and comprehensive free trade agreements would do more to enhance the rule of law and transparent governance in the region than any other possible step by the United States. While the commercial benefits are substantial, they go beyond just opening overseas markets for America's workers, farmers and companies. These agreements assist in the creation of a transparent, rules-based economic environment, which is a critical element in the success of democratic institutions and market-based economic policies.

Like much of Latin America, the Andean region is struggling against corruption, which undermines growth, security, and stability. CTPA contains critical provisions to enhance transparency and accountability in governance, providing the countries with important tools to fight the scourge of corruption. As an example, the Agreement provides for the criminalization of bribery in government procurement, providing for more efficient procurement and a more competitive marketplace.

CTPA also promotes U.S. security interests by forging a deeper partnership with Colombia through a framework for government-to-government relationships that is grounded in the tangible national interests of all parties. Such a framework is vital to enhancing cooperation in the fight against terrorism and narcotics trafficking; it also sets an example for other countries around the world as we pursue our global security goals. By promoting

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economic growth in Colombia, the CTPA will help stabilize its economy and provide its citizens with long-term alternatives to narcotics trafficking or illegal immigration.

**CONCLUSION**

We appreciate this opportunity to share our strong support for the United States – Colombia Trade Promotion Agreement. Whirlpool Corporation believes that trade expansion is an essential ingredient in any recipe for economic success in the 21st century, and this agreement is an excellent model in this regard. If U.S. companies, workers, and consumers are to thrive amidst rising competition, new trade agreements such as this one are critical. U.S. business is more than capable of competing in the global marketplace when trade barriers are removed and markets are open. The United States – Colombia Trade Promotion Agreement is good for Whirlpool Corporation and other U.S. manufacturers, and it will promote economic growth and prosperity in both the United States and Colombia. In short, we are confident that, if this trade agreement is passed, Whirlpool jobs in the United States will be preserved and grow as we increase our exports to Colombia, and Colombian consumers are better able to afford the products our workers make. We urge the Congress to move quickly to pass this agreement to ensure strengthened export opportunities for U.S. manufacturers.

Mr. Chairman and members of the subcommittee, thanks again for the opportunity to submit this testimony.

Page 7 of 7

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March 17, 2011 Hearing on the Pending Trade Agreement with Colombia



## Statement of United States Conference of Catholic Bishops



## Committee on International Justice and Peace

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 WEBSITE: WWW.USCCB.ORG/JPID • FAX 202-541-3339

March 24, 2011

Representative Dave Camp  
 Chairman  
 Committee on Ways and Means  
 U. S. House of Representatives  
 Washington, DC 20515

Representative Sander Levin  
 Ranking Member  
 Committee on Ways and Means  
 U. S. House of Representatives  
 Washington, DC 20515

Dear Congressman Camp and Congressman Levin:

I am writing on behalf of the United States Conference of Catholic Bishops (USCCB) regarding the Free Trade Agreements (FTAs) which Congress may consider in the near future. While I address the three agreements in general, I focus mainly on the Free Trade Agreement with Colombia because of the possible impact of the agreement on the complex situation in Colombia.

The U. S. Bishops' Conference addresses the moral and human dimensions of trade policy because of trade's potential to promote integral human development in the poorest countries and among the poorest communities around the world. As pastors and teachers in a global Church, our experience of the impacts of trade and other aspects of economic integration, their possibilities and perils, is both broad and deep. The fostering of stronger economic relationships and growth is a shared priority. Trade should also play an essential role in reducing poverty and conflict by helping to shape more just domestic and international legal and commercial frameworks.

The Bishops' Conference does not take specific positions for or against particular trade agreements. Rather we offer a moral framework for examining such agreements. As Pope Benedict XVI, in his encyclical *Caritas in Veritate*, stated, "*The economy needs ethics in order to function correctly* — not any ethics whatsoever, but an ethics which is people-centered (No. 45)." Our teaching and experience puts people—especially the poorest and most vulnerable—first. Our moral vision urges strong and enforceable protections for workers and the environment, the provision of access to technology and knowledge for those at the margins of society, and ways to ensure that the rural poor are not displaced and left without a livelihood.

The ability of small farmers to adapt to market forces and develop their farming operations in ways that maintain their livelihoods and the stability of their communities should be enhanced, not undermined, through increased trade opportunities. In Colombia, well over four million people are currently displaced due to the decades-old conflict which greatly affects the rural areas. Colombia now has the highest number of internally displaced people in the world. Further displacement exacerbated by inadequate trade agreement provisions will hurt the poorest people in Colombia's rural areas. Pope Benedict XVI maintains: "Just and equitable international trade in agricultural goods can be beneficial to everyone, both to suppliers and to customers" (*Caritas in Veritate*, No. 58). We ask the Administration and the Congress to give careful consideration to how the rural poor in Colombia would be impacted by a trade agreement and how to ensure they are adequately protected and assisted.

Rural desperation could lead to increased coca production with dire consequences not only for Colombia, but also for the United States and the entire region. Taking steps to mitigate the

Letter to Representatives Camp and Levin  
 March 24, 2011  
 Page 2

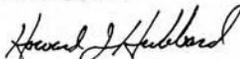
considerable risks and to stabilize the livelihoods of small agricultural producers is consistent with the U.S. goal of reducing the illegal production of coca and drug trafficking in the Andean region. Helping to provide ways for Colombian farmers to grow and export other crops should be part of this goal. As Pope Benedict notes: “[T]here are those who fear the effects of competition through the importation of products — normally agricultural products — from economically poor countries. Nevertheless, it should be remembered that for such countries, the possibility of marketing their products is very often what guarantees their survival in both the short and long term” (*Caritas in Veritate*, No. 58).

Death threats and assassinations against human rights defenders (including some members of the Church) and labor leaders in Colombia have been far too common in the last few years. There have been improvements in protection efforts, but more is needed to overcome a sense of impunity. The free trade agreement should not lead to a deepening of labor uncertainty and must promote the creation of a climate in which workers’ rights are upheld. There seems to be a welcome initiative in Colombia to bring about greater justice for victims of the conflict and those who have been displaced. The Administration and Congress should support the government of Colombia in this effort and ensure that the trade agreement promotes greater justice for the victims and increased economic opportunities for the displaced.

Extractive industries often severely and negatively impact the rural communities in which most projects are located. Effective environmental standards require serious attention in trade agreements. Colombia has a booming palm-oil industry and an emerging mining industry that can place the country on better ground for economic development using energy and mining as economic engines. Environmental protection laws need to be strengthened and more resources need to be devoted to ensuring that environmental laws and standards are properly respected. Trade agreements should support, not undermine, environmental protections, local communities and provide a more level playing field for economic competition.

Our Conference’s priorities flow from a moral commitment to defend the lives, rights and dignity of those who are most vulnerable—and have most to gain from a just and effective trade agreement. With good wishes for your efforts to make trade work for all, especially “the least of these,” I remain,

Sincerely yours,



Most Reverend Howard J. Hubbard  
 Bishop of Albany  
 Chairman, Committee on International Justice and Peace

Cc: Representative Kevin Brady, Chairman, House Subcommittee on Trade  
 Representative Jim McDermott, Ranking Member, House Subcommittee on Trade

**Statement of Mingas FTA**

Dear members of the House Ways and Means Committee, trade subcommittee:

We address this letter to you as part of the hearing you are holding on the Colombia-US Free Trade Agreement (FTA).

Mingas-FTA urges you to explore the long-term effects of this treaty. This agreement is not beneficial for the people of either the United States or Colombia, and there are many reasons to oppose it.

The FTA would increase drug availability on U.S. streets, and it would damage Colombia's agriculture, destroying the country's food self-sufficiency. Increased import of U.S. crops to Colombia would force peasants into the cultivation of illicit crops. Growing coca and poppies would be the only economically viable option for many decent peasants and rural workers.

The FTA would also contribute to global warming by causing severe ecological damage to the tropical forests and virgin lands of Colombia, in addition to the negative environmental effects which are already caused by the chemicals used to spray coca crops. The FTA limits itself to demanding that Colombia's government comply with its own very lax environmental laws, which have been aggressively weakened in recent years.

The FTA would result, like other treaties with Mexico and Central America, in increased unauthorized migration to the United States. NAFTA has been a disaster for Mexican farmers. It has driven many of them off the land, into the cities and northward to the United States in search of employment and income. If the Colombia FTA passes, we can expect more undocumented migrants.

The FTA would result in more unemployment among U.S. workers and pressure to lower wages in this country, as large, highly-technical corporations keep gaining control of the market, and small-scale producers lose the ability to compete. U.S. workers are struggling for a living wage, and this would be a setback in that struggle.

The United States has provided the Colombian government with military and financial aid for over 10 years, but this strategy has failed completely in their publicly stated goal of reducing coca and opium poppy production by 50%. Instead, this has resulted in enormous ecological damage caused by fumigation and disproportional displacement of indigenous and Afro-Colombian communities. The Colombian military has used U.S. aid to strengthen its campaign against guerrilla groups. In the name of fighting the guerillas, severe violations of human rights and attacks against the civilian population have taken place. Some of these operations, which in numerous cases appear closely connected with paramilitary depredations, have forced peasants off their land.

Colombia has the largest population of internally displaced people in the world, over 4 million people. Small plots abandoned by peasants, Afro-Colombians, and indigenous people have been taken over by elements linked to drug traffickers and turned into large landholdings. The FTA would exacerbate and make permanent the victimization of the peasant population and would have a very negative impact on

agriculture in general.

Property acquired by force and/or drug money has been used for either coca cultivation or, as per the FTA model, transformed from food staples cultivation to large-scale export crops, such as tropical fruits, or large-scale plantations of African palm for bio-fuel production. These changes undermine local food self-sufficiency, while benefiting a few corporate giants.

The FTA is so fundamentally flawed that no number of "letters of intent", or special attachments and amendments, can fix it. If you vote for this agreement, you would be voting for increased availability of drugs on U.S. streets, increased environmental destruction, increased unauthorized immigration, increased suffering for the middle class, support for a humanitarian crisis of gigantic proportions in Colombia, and increased damage to our international moral standing.

Please oppose the US Colombia FTA.

Sincerely,

Natalia Fajardo  
On behalf of  
Mingas-FTA

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*Mingas-FTA is a group of individuals from across the United States, Canada and Colombia who are concerned with promoting sovereignty, strengthening democracy and improving labor conditions in Colombia. We oppose war and the exercise of violence as an instrument of political action. We believe that today the path of social transformation is democratic and peaceful mass struggle. We repudiate all forms of terror and State terrorism, including targeted killings, kidnapping, extortion, and armed attacks on the civilian population; none of these are legitimate expressions of the struggle of the people, and thus we condemn all such acts.*



**Statement of Consumer Electronics Association**

Securities Industry and Financial Markets Association  
Emergency Committee for American Trade  
National Oilseed Processors Association  
California Table Grape Commission (Colombia)  
California Table Grape Commission (Korea)  
**American Forest & Paper Association**  
USA Rice Federation  
National Grain and Feed Association  
Distilled Spirits Council of the United States, Inc.  
PepsiCo  
American Natural Soda Ash Corporation  
Campbell Soup Company  
ConAgra Foods  
**American Association of Port Authorities**  
International Dairy Foods Association  
Intel Corporation  
Corn Refiners Association  
Herbalife Ltd.  
National Cattlemen's Beef Association  
National Potato Council  
Council of the Americas  
California Coalition for Free Trade  
Public Citizen's Global Trade Watch  
**American Meat Institute**  
The Financial Services Roundtable  
*National Milk Producers Federation & U.S. Dairy Export Council*  
**Retail Industry Leaders Association**  
American Manufacturing Trade Action Coalition, National Textile  
Association, U.S. Industrial Fabrics Institute, American Fiber  
Manufacturers Association  
**The Association of Colombian Flower Exporters**  
The Advanced Medical Technology Association  
American Apparel & Footwear Association  
Consumer Electronics Association

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**Statement of California Cut Flower Commission**

KASEY CRONQUIST, CEO/AMBASSADOR  
CALIFORNIA CUT FLOWER COMMISSION  
STATEMENT FOR THE RECORD

BEFORE THE HOUSE WAYS AND MEANS COMMITTEE, TRADE SUBCOMMITTEE  
HEARING ON THE PENDING FREE TRADE AGREEMENT WITH COLOMBIA

WASHINGTON, DC  
MARCH 17, 2011

**Introduction**

Chairman Brady, Ranking Member McDermott, members of the Trade Subcommittee, thank you for the opportunity to submit testimony today. On behalf of the California Cut Flower Commission (CCFC) and California's cut flower farmers, and in light of the possibility of the passage of a Colombia Free Trade Agreement, I thank you for this venue to explain how cut flower imports from Colombia have affected and will continue to affect domestic cut flower farms, specifically California's flower farmers, which now make up almost 80% of U.S. cut flower production.

While the purpose of free trade with Colombia is to advance the United States' geopolitical interests in the region, it will have real and adverse affect on domestic cut flower farmers and their ability to compete with cheaper imports that benefit from lower labor costs, limited environmental and business regulations, duty free access and direct U.S. and Colombian government subsidies. Therefore, we ask Congress to consider the real and adverse effects of free trade on domestic cut flower growers and work with us to mitigate the problem before final passage of this trade agreement with Colombia.

First, allow me to explain the role of the CCFC and provide a profile of our industry. The CCFC is a state commission, created by the state legislature. The CCFC is overseen by the California Department of Food and Agriculture and is funded by assessments on our cut flower farms that gross sales above \$500,000 dollars.

Based on our most recent survey, there are approximately 225 farms growing flowers and foliage throughout the state. In 2008, California's cut flower farms represented \$314 million dollars farmgate value, down slightly from 2007's \$328 million dollar value, with most losses reflected in rose and snapdragon sales.<sup>1</sup> Based on CCFC's 2008 Economic Impact Study, *The Flower Factor*, California's Floral Industry has a \$10.3 billion annual overall impact on the state and generates more than 121,000 jobs. Specifically, California's flower farms employ over 7,500 people directly, but have a "ripple effect" that generates an additional 19,000 jobs for California. California's farms also currently generate \$177,320 of taxes per day for a total of \$64.7 million annually that help to fund vital state programs.<sup>2</sup>

<sup>1</sup> USDA/National Agricultural Statistics Service, *California Agriculture Statistics(2009-2010)* at 35.

<sup>2</sup> CCFC, *The Flower Factor, 2008 California Cut Flower Economic Impact Study*, at 4-5 (Nov. 2008).

**Impacts: Qualitative and Quantitative**

In the face of increased import competition, California flower farms have extensively diversified their crop varieties to better compete. For example, California was known historically for its carnation production, but that was overtaken by cheaper imports. Many farms diversified to Chrysanthemums, but they too fell to import pressures. California may have been best known for its rose production in the 80's and early 90's, however the added incentives offered by the Andean Trade Preferences and Drug Eradication Act (ATPDEA) further exacerbated import pressures and left California farmers unable to compete any longer on that crop as well. Today, California cut flower farms are growing more high-end flowers such as several varieties of lilies, hydroponic gerbera daisies, tulips, protea, orchids, and hydroponic roses.

In the meantime, the California flower industry is aggressively working to remain competitive by offering different products than its foreign competitors. For example, California growers have been successful in their production of gerbera daisies and tulips. California's production of Gerbera daisies increased 17 percent by value and 13 percent by volume between 2003 and 2009.<sup>3</sup> Even more remarkable, California's production of tulips increased 84 percent by value and 63 percent by volume between 2003 and 2009.<sup>4</sup>

Still, over the past 20 years, California has seen generations of flower farms close their doors, give up and sell out due to the increasing import pressures, and this trend continues today. Making the trade preferences permanent in a Colombia FTA will compound the negative impacts affecting the California cut flower industry. In fact, according to the USDA, between 2002 and 2007, there was a 22.3 percent decline in the number of acres dedicated to cut flower production in the U.S.<sup>5</sup> At the same time, U.S. imports of cut flowers from Colombia have been steadily increasing in volume and value from 2002 to 2010. By value, U.S. imports from Colombia increased 89 percent between 2002 and 2010. By volume, Colombia's exports of cut flowers have increased from roughly 1.96 billion flowers in 2002 to 2.54 billion flowers in 2010, an increase of 30 percent. After a slight decline in the volume of imports in 2008 due to the U.S. recession, U.S. imports of cut flowers from Colombia have again continued to grow from 2008 through 2010. Comparing 2009 and 2010 figures shows that in 2010, in only one year, there was an increase in import volume of 10 percent, and as the economy continues to improve, U.S. imports of cut flowers from Colombia will likely increase as well.

<sup>3</sup> USDA, National Agriculture Statistics Service, Floriculture Crops Summaries, (2005-2010).

<sup>4</sup> *Id.*

<sup>5</sup> USDA 2007 Census of Agriculture, at 3, available at: [http://www.agcensus.usda.gov/Publications/2007/Online\\_Highlights/Fact\\_Sheets/nursery.pdf](http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/nursery.pdf).

U.S. Imports of Cut Flowers from Colombia  
2002-2010

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Quantity (in 1,000s)	1,966,732	2,016,343	2,155,800	2,253,974	2,341,192	2,390,455	2,288,588	2,305,907	2,545,076
Value (in \$1,000s)	\$289,553	\$343,637	\$415,001	\$418,345	\$448,578	\$507,696	\$501,552	\$506,712	\$548,429
AUV (in \$\$ per number)	\$0.15	\$0.17	\$0.19	\$0.18	\$0.19	\$0.21	\$0.22	\$0.22	\$0.18

Source: Compiled from USITC Databse.

Foreign nations, primarily Colombia, have replaced much of what California growers were providing and now supply an estimated 82 percent of cut flowers sold in the United States. This shows that Colombia is not only becoming more competitive under U.S. legislation, it has become dominant.

Today's California flower farms are certainly not the same as 20 years ago. Flower farmers today have to be extremely creative, resourceful and *careful* just to stay in business. Farmers are constantly innovating, because they recognize that the flowers they are planting today may be the same flowers that Colombia has on a plane destined for Miami or Los Angeles tomorrow. They have to stay ahead, they have to be smart and they have to avoid going head to head with import competition, because, while the access maybe "free," the marketplace is certainly not "fair."

#### **Over \$210 Million in Colombian Government Support to Its Flower Industry, 2005-09**

A primary frustration with the Colombia FTA is not just the permanent duty free access, but the fact that the agreement does not ensure or safeguard a fair competitive market for domestic cut flower growers. When you combine the natural advantages of sunlight, climate, cost of labor and the price of land, with significant government support and subsidies, domestic farms simply cannot compete with the foreign imports. In addition, in Colombia, the government has explicitly told the Colombian flower producers that it will do everything it can to keep them competitive, including providing unfair subsidies, because many people rely on the flower industry for their livelihood. In 2009, the U.S. State Department reported that Colombian flower growers continued to receive Colombian government support in the form of incentives or subsidies, and, since 2005, this has amounted to roughly \$210 million.<sup>6</sup> These subsidies continue today.

These varied programs reward producers either for hedging their exports, implementing sanitary programs, maintaining their workforce or for obtaining credits to support their activities.

Four specific programs benefitting Colombian flower growers are highlighted below:

<sup>6</sup> U.S. Department of State, Bureau of Economic, Energy and Business Affairs, *2009 Investment Climate Statement*, available at <http://www.state.gov/e/eb/rls/othr/ics/2009/117429.htm>.

1. The **Exchange Rate Hedge Incentive** (“Incentivo de Cobertura Cambiaria”- ICC) which was created in 2004 to counter the negative effects of peso appreciation on exporters’ cash flows by paying beneficiaries an amount equal to approximately ten percent of FOB exports hedged against exchange rate fluctuation.
2. The **Sanitary Measures Incentive** (“Incentivo Sanitario Flores y Follaje”- ISFF) began in 2007 as a direct subsidy to improve phytosanitary conditions and protect employment by paying producers approximately \$3,514 for every hectare of cultivated flowers that fulfilled the “Integral Plague Management Plan” as long as they provided proof of retention of at least 80% of their workforce. A note on the Colombian Ministry of Agriculture (MOA) website notes that the government allotted \$75 billion pesos for flower and banana growers under this program.
3. The **Salary Protection Program for Producers of Exportable Agricultural Goods** “Programa Protección Ingresos Productores de Bienes Agrícolas Exportables” was developed in 2008 to subsidize the purchase of hedging instruments by flower producers for up to 90% of their cost.
4. Finally, the **Special Credit Line for Exporters** subsidizes part of agricultural exporters’ interest expenses derived from banking credits and fully guarantees the liabilities undertaken through the program.

Moreover, in January 2007, the Colombian Ministry of Agriculture (MOA) initiated another important program which indirectly benefitted Colombian flower growers, the “Agriculture Guaranteed Income Fund” (‘Agro Ingreso Seguro- AIS’). This specialized program aimed to protect local producers and improve the overall competitiveness of Colombia’s agricultural sector.

Four main programs constitute the AIS:

1. A special credit line to finance investments by all agricultural producers interested in modernizing and increasing their competitiveness, which guarantees an interest rate of DTF (Colombia’s reference term-deposit savings rate) minus 2%, for up to fifteen years;
2. The “Rural Capitalization Incentive” (“Incentivo a la Capitalización Rural- ICR”), through which discounts are granted for credits issued to undertake new investments in infrastructure construction, acquisition of machinery and equipment, and water resource management, among other projects;
3. The “Irrigation and Drainage Program” (“Convocatoria Pública de Riego y Drenaje”), through which up to 80% of the costs of all projects destined to improve water resource management is covered by the MOA; and
4. The “Technical Assistance Incentive” (“Incentivo a la Asistencia Técnica”), which seeks to cover up to 80% of all technical assistance costs incurred by agricultural producers in

project and credit structuring, good practices implementation, adequate sanitary and phytosanitary management, and post-harvest management.

According to the U.S. State Department, in 2007-2008, the AIS program awarded approximately USD \$450 million, and in 2009 the total budget amounted to approximately USD \$280 million.<sup>7</sup> In December 2010, the Colombian government announced that it was going to restructure the AIS program to increase its support to small and medium size farmers who would be most affected by Colombia's pending free trade agreements.<sup>8</sup>

In late 2010, Colombian financial authorities investigated flower exporters who received millions of dollars in 2008 in loans to compensate the appreciation of the peso, and allegedly used the money to buy farmhouses in Ecuador and contribute to the primary campaign of former Agriculture Minister Andres Felipe Arias, who granted the subsidies. Subsequently, the Colombian government announced the immediate suspension of the payment of USD \$27 million in subsidies to the country's flower sector, amid growing concerns about corruption and the mismanagement of subsidies and loans. Agriculture Minister Juan Camilo Restrepo said that the government will not release the subsidies, granted by the previous government of Alvaro Uribe just days before the end of that administration's term, until there is clarity concerning the allegations.

In summary, even with the pending subsidy scandal, Colombian government subsidies to the flower industry continue to help Colombian flower growers expand their industry and increase their exports to the U.S.

#### **U.S. Assistance to the Colombian Flower Industry**

Along with substantial support from their own government, the Colombian flower sector is supported by the U.S. government. The U.S. government has dedicated millions of dollars to aid for Colombia, primarily through the "Plan Colombia" program which began in 1999 and through other programs implemented by USAID and the State Department. Although exact amounts dedicated to the flower sector are difficult to ascertain, according to the U.S. State Department, "since 2007 nearly \$570 million has been invested...in socio-economic and humanitarian assistance to Colombia."<sup>9</sup> A portion of this funding is directed to the cut flower industry under economic development and drug eradication programs. Moreover, the State Department notes that on November 17, 2009, the U.S. and Colombia signed a new multi-year Country Assistance Agreement, with first-year funding of nearly \$212 million.<sup>10</sup>

<sup>7</sup> U.S. Department of State, Bureau of Economic, Energy and Business Affairs, *2010 Investment Climate Statement*, available at <http://www.state.gov/e/eeb/rls/othr/ics/2010/138050.htm>.

<sup>8</sup> USDA FAS Gain Report, "Colombian Government Plans to Restructure the Agricultural Program," December 3, 2010, available at <http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Colombian%20Government%20Plans%20to%20Restructure%20the%20Agricultural%20Program%20Bogota%20Colombia%2012-3-2010.pdf>.

<sup>9</sup> U.S. Department of State, Bureau of Western Hemisphere Affairs, "Background Note: Colombia," October 2010. Available at <http://www.state.gov/r/pa/ei/bgn/35754.htm>.

<sup>10</sup> *Id.*

Some notable assistance programs are administered by USAID including the School of Floriculture and the “Cultivating Peace” program. The “Cultivating Peace” program teaches flower farm workers, as well as their families and communities, to manage conflicts in a rational nonviolent way. The School of Floriculture provides economic opportunities and social support to Colombians displaced by violence. Participants receive classroom and hands-on training in flower cultivation and internships with a large flower farm. Most receive full time job offers after the internships. The program has benefited more than 2,000 families and helps increase exports. Regarding actual funding, in 2007 the President of Asocolflores announced that the American government made a strong endorsement (over \$2 million), through USAID, to strengthen and expand these two programs.<sup>11</sup>

Additionally, in 2009, USAID initiated a new program to help Colombia successfully market its flowers in the U.S. and transport them through Miami. USAID created an alliance between Tecnovo, an NGO that provides support to people affected by armed conflict, and Grower-2-Buyer, a Miami-based company which distributes fresh-cut Colombian flowers to 174 wholesalers and 11 supermarket chains in the United States and Canada. As a result of this program, 100 stores in Maryland, Virginia, Washington, D.C., and Delaware carried the USAID-branded products.<sup>12</sup>

#### **Fighting for a Way Forward**

California’s flower farmers are a resilient and creative group and they continue to make a significant effort to help level this playing field. A major cooperative effort to improve floral transportation in and out of California has been underway for the past two years, and CCFC continues to work on gaining federal support for this innovative system.

Due to the low volumes of flowers and decreased number of flower farms, farmers are currently developing a plan to reduce transportation costs by combining their individual flower shipments to fill more trucks. Working together, growers will employ a third party logistics freight company to coordinate their flower volume in the most efficient and cost productive way. This grower cooperation would allow the ability to ship more full truckloads and eliminate the trucking duplicity that exists today which currently drives up prices. These reductions in overhead costs associated with multiple carrier companies will allow California’s growers to compete with the truck rates out of Miami and Los Angeles, while getting more California-grown flowers to more people everywhere and in a more environmentally friendly method. Limited by the ability to “invent” new flower varieties and having transitioned from every profitable flower variety currently available, California’s growers continue to get creative with

<sup>11</sup> See U.S. Embassy Bogota, “En Que Va El Apoyo: Success Stories of U.S.-Colombia Cooperation,” June 7, 2006, available at <http://bogota.usembassy.gov/media/success-stories/wwwfpce002.pdf>. See also USAID, “Telling Our Story: Colombia-Flower Industry Gives Jobs to Displaced.” Available at <http://www.wffsa.org/pdf/Robin/netWORK/usaidasocolflores.pdf>. (Last updated July 6, 2009). See also Ernesto Velez, “Colombian Floriculture: A Case of Competitive Entrepreneurship, With Social and Environmental Responsibility, in a Country Under Difficult and Changing Conditions,” March 2007, available at <http://aggie-horticulture.tamu.edu/ellisonchair/media/ErnestoVelez-paper.pdf>.

<sup>12</sup> See USAID Press Release, “Flower Sales Help Cultivate Peace in Colombia,” February 13, 2009, available at <http://www.usaid.gov/press/releases/2009/pr090213.html>. See also “Love Bunch” website, available at <http://www.love-bunch.com/>.

any and all controllable expenses possible, even if that means sharing trucks with competing California flower farms.

The FY 2010 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Conference Report, urged the USDA to “use all available resources to support domestic flower growers in their efforts to develop an efficient and environmentally friendly transportation, storage, and distribution system to better compete with foreign producers.” CCFC’s endeavor to create a transportation hub is a direct reflection of the language in that report. This proposed transportation system has now been endorsed by the U.S. Chamber of Commerce, the California State Floral Association, and the Society of American Florists.

On behalf of the 225 flower farms in California, the CCFC continues to seek federal attention and support for its proposed transportation center to help mitigate the current and future losses experienced due to Colombian cut flower imports. This transportation center will level the playing field before the passage of the Colombia FTA to ensure that U.S. consumers continue to have access to a domestic supply of fresh cut flowers.

In closing, we would like to thank the USDA for their continued assistance and grants as well as the California Congressional Delegation for their bipartisan support over the past three years. Finally, we want to thank the Ways and Means Trade Subcommittee for giving us the opportunity to present our views today. We hope that we can work together to ensure that the Colombia Free Trade Agreement does not eradicate this important domestic industry.

**Statement of Department of International Relations, Boston University**

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Testimony of Kevin P. Gallagher<sup>1</sup>

**Hearing on Pending Trade Agreements**  
House Committee on Ways & Means, Subcommittee on Trade  
Rep. Kevin Brady, Chair  
March 16, 2011

Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to discuss the United States-Colombia trade agreement.

The agreement between the United States and Colombia was signed before the global financial crisis. As Congress and the President convene to rework the agreement, it will be important to ensure that the agreement is designed so that it given both nations the flexibility to put in place macro-prudential regulations to prevent and mitigate financial crisis.

As the treaty now stands, a number of actions that Colombia has successfully deployed in the past to prevent and mitigate treaties in the past would be deemed actionable under the agreement's chapters on financial services and investment.

The global financial crisis has demonstrated that sound regulations are needed to stem the ability of speculative capital to create financial bubbles that burst and then leave ordinary Americans and Colombians worse off.

In this short note I outline how the negotiators fell short of recognizing this need. And, I provide specific remedies to amend the treaty in order for the treaty to better enable meeting its stated goals.

Specifically, this short note discusses new evidence in the economics profession showing that capital controls are important macro-prudential measures that nations should have in their toolkit to prevent and mitigate financial crises. I then discuss the success that Colombia has had in using these prudential measures to prevent and mitigate

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<sup>1</sup> Kevin P. Gallagher is associate professor of international relations at Boston University where he directs the Global Development Policy Program. He is also senior research associate at the Global Development and Environment Institute, Tufts University. Contact: kpg@bu.edu

financial crises. I will then show that the US-Colombia treaty does not reflect the emerging consensus on capital controls.

There is a unique opportunity to rectify this problem as the United States is considering amending the agreement in order for it to improve the economies of Colombia and the United States and the livelihoods of their citizens.

#### **New Research on Capital Controls and Financial Stability**

Capital flows—cross-border non-foreign direct investments—can help developing countries grow. Indeed, many developing countries may lack the savings or financial institutions that can help finance business activity. Capital from abroad can fill that gap. Therefore, under normal circumstances, the more capital flowing into a developing country, the more the country benefits. However, cross-border capital flows tend to be "pro-cyclical": too much money comes in when times are good, and too much money evaporates during a downturn.

A key characteristic of the global financial crisis has been the mass swings of capital flows across the globe. Indeed, international investment positions now surpass global output. Developing and emerging markets are no strangers to these flows. When the crisis hit, capital rapidly left the developing world in a flight to the "safety" of the United States market. In the attempt to recover, many industrialized nations, including the U.S., have resorted to loose monetary policy with characteristically low interest rates. Relatively higher interest rates and a stronger recovery have triggered yet another surge in capital flows to the developing world. The result has been an increasing concern over currency appreciation, asset bubbles, and even inflation.

Under these circumstances, capital controls can help smooth the inflows and outflows of capital and protect developing economies. Most controls target highly short-term capital flows, usually conducted for speculative purposes.

For example, Colombia's 2007 capital controls required foreign investors to park a percentage of their investment in the central bank, which helped that nation escape some of the damage from the global financial crisis.<sup>2</sup> Chile and Malaysia, two nations that form part of the TPP negotiations, successfully used capital controls in the 1990s to avoid the worst of the damages during crises in that decade.<sup>3</sup>

In the wake of the financial crisis, nations such as Brazil, Indonesia, South Korea, Taiwan and Thailand have all used capital controls to stem the massive inflows of speculative investment entering their economies and wreaking havoc on their exchange rates and

<sup>2</sup> Coelho, B., Gallagher K.P. (2010, January). *Capital Controls and 21st Century Financial Crises: Evidence from Colombia and Thailand*. PERI Working Paper No. 213. Retrieved from [http://www.ase.tufts.edu/gdae/policy\\_research/KGCapControlsPERIJan10.html](http://www.ase.tufts.edu/gdae/policy_research/KGCapControlsPERIJan10.html)

<sup>3</sup> Magud N., Reinhart, C. (2006, January) *Capital Controls: An Evaluation*. NBER Working Paper No. 11973. Retrieved from <http://www.nber.org/papers/w11973>

asset markets. South Korea, where the won has appreciated by 30% since 2008, has direct limits on foreign exchange speculation, for example, and has also levied an outflows tax on capital gains of foreign purchases of government bonds.

A pathbreaking IMF study finds that capital controls like these have helped developing nations stem currency appreciation and asset bubbles in the past.<sup>4</sup> Moreover, the IMF study found that capital controls helped buffer some of the worst effects of the financial crisis in some developing countries. In lieu of these findings, the IMF now endorses the use of capital controls as a part of the macroeconomic policy toolkit. The IMF permitted capital controls<sup>5</sup> on outflows in Iceland, Ukraine and Latvia as the crisis hit, and has recently recommended<sup>6</sup> that nations such as Brazil, Colombia, and India use controls on inflows to tame the mass influx of capital that herded to emerging markets in 2009-2010. In 2010 the IMF took a step further and recommended that a system of global coordination be put in place for capital controls, an initiative that the G-20 will take up in 2011.<sup>7</sup>

#### **Colombia's Use of Capital Controls During the Crisis**

Colombia has had a long experience with capital controls. It started the liberalization of its capital markets in 1991, but some controls remained in place until 2000, including an unremunerated reserve requirement (URR) that was effective between 1993 and 2000, with the goal of stemming the appreciation of the Colombian Peso<sup>8</sup>. The 1993 URR designated percentage of foreign loans with a maturity of less than a designated maximum be kept as a deposit in local currency, at zero interest for a certain percentage of the loan and a stated period of time (approx 47 percent for one year). Economists have shown that the URR during this period was effective in Colombia in reducing the volume of net capital inflows, improving the term structure of foreign borrowing, and granting more independence to monetary authorities. In some cases these effects were "speed bumps" however, rather than serving as full stops on inflows<sup>9</sup>.

<sup>4</sup> Ostry, J., Ghosh, A., Habermeier, K., Chamon, M., Qureshi, M., Reinhardt D., (2010, February). *Capital Inflows: The Role of Controls*. International Monetary Fund. Retrieved from <http://www.imf.org/external/pubs/ft/spn/2010/spn1004.pdf>

<sup>5</sup> The Strategy, Policy and Review Department (2009, September). *Review of Recent Crisis Programs*. International Monetary Fund. Retrieved from <http://www.imf.org/external/np/pp/eng/2009/091409.pdf>

<sup>6</sup> IMF backs capital controls in Brazil, India. *Agence-France Presse* (2011, January 6). Retrieved from <http://www.deccanherald.com/content/127011/imf-backs-capital-controls-brazil.html>

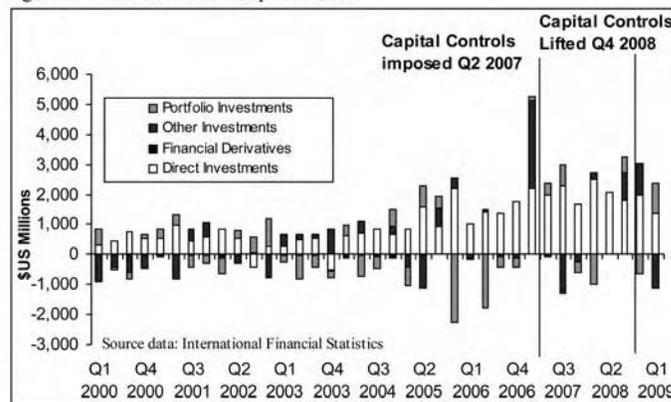
<sup>7</sup> G-20 to Address Hot Money. *The Wall Street Journal* (2011, February 12). Retrieved from <http://online.wsj.com/article/SB10001424052748704629004576136080912756002.html>

<sup>8</sup> Concha, Alvaro, and Arturo Jose Galindo. 2009. An Assessment of Another Decade of Capital Controls In Colombia: 1998-2008: Inter-American Development Bank.

<sup>9</sup> Ocampo, Jose Antonio and Camilo Tovar 2003. Colombia's Experience with Reserve Requirements on Capital Inflows. *CEPAL Review* 81 (December):7-31.

Like most developing countries, Colombia received large inflows of foreign capital between 2005 and 2007, with a particularly sharp increase in the first quarter of 2007 (see figure 1). In order to stem the appreciation of the Peso, the central bank (Banco de la Republica) intervened in the exchange market by buying foreign currency, resulting in a large accumulation of foreign reserves (see figure 2). The intervention did not prevent the Colombian Peso from appreciating further. Between June 28, 2006 and May 04, 2007, the Peso rose 28% against the dollar.

Figure 1 – Colombia's Net Capital Flows

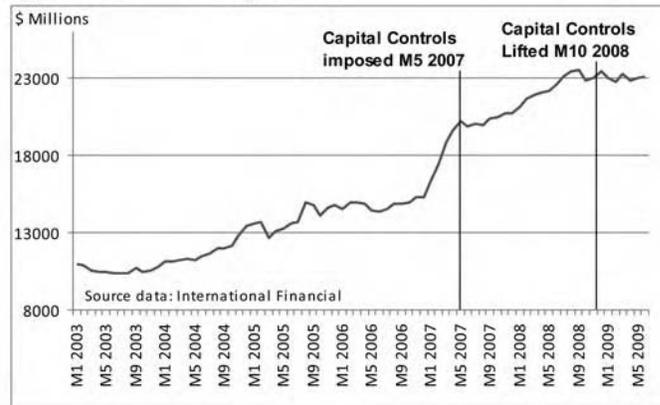


On May 07, 2007, an URR was reintroduced on most type of external borrowings. 40% of the funds were to be kept in an unremunerated account in pesos or US dollars with the Banco de la Republica for six months. Other restrictions were also imposed, including a limit of 500% of the overall gross exposure of each participant in the foreign exchange derivatives market and lower URR for other current account related credit advances. On May 23 the 40% URR requirement was extended to include all portfolio inflows by foreign investors.

In addition to a URR, Colombia also deployed three other measures: limits on maturity mismatches; limits on open positions of foreign exchange of financial intermediaries; and limits on the amount of foreign currency pensions funds are able to hedge. These measures were seen to have a stabilizing role during the current crisis<sup>10</sup>.

<sup>10</sup> Villar, Leonardo. 2010. Latin America: Comments on Financial Regulation and International Capital Flows in Latin America. *Journal of Globalization and Development* 1 (1):1-9.

Figure 2 – Colombia's Foreign Reserves



Clements and Kamil point out that excluding Colombian institutional funds from the capital controls is of particular importance, since they are highly active in the trading of the foreign exchange market.<sup>11</sup> They also remark that Colombian residents and firms, also exempted from the URR requirements, accounted for three-fourths of the of portfolio inflows in the pre-controls era. In June 2007, an exemption was granted for equities issued abroad, which allowed the issuance of stock through American Depository Receipts (ADRs) controls-free.

The capital controls underwent several modifications in late 2007 and in 2008, including further exemptions for initial public offerings of equities in December 2007, an increase of the URR on portfolio inflows from 40% to 50% and a minimum stay requirement of two-years on FDI in May 2008 (for further details, see Clements and Kamil 2009; IMF 2008).

The collapse of Lehman Brothers on September 15, 2008 and the subsequent aggravation of the financial crisis in the United States reversed the trend of capital as investors rushed to safer assets in the developed world. Between mid-June and early October 2008, the Colombian Peso fell almost 30% against the U.S. dollar. On October 09, 2008 the Colombian government announced that the URR as well as the two-year minimum stay requirement on FDI were being lifted.

<sup>11</sup> Clements, Benedict, and Herman Kamil. 2009. Are Capital Controls Effective in the 21st Century? The Recent Experience of Colombia: IMF

### Capital Controls in the US-Colombia Trade Treaty

In contrast with the treaties of many other industrialized nations, the US-Colombia treaty does not leave adequate flexibility for nations to use capital controls to prevent and mitigate financial crises.<sup>12</sup> The US-Colombia treaty sees restrictions on the movement of speculative capital as a violation of their terms. The safeguards in the treaty were not intended to cover capital controls. A special annex on capital controls that appears in the treaty is inadequate.

This shortcoming in U.S. trade treaties has recently been the subject of significant controversy. In January of 2011, 250 economists from the United States and across the globe, including a Nobel Laureate, former IMF officials, two former ministers of finance, and members of pro-trade think tanks such as the Peterson Institute for International Economics sent a letter to the U.S. government calling on the U.S. to address this imbalance in U.S. trade treaties.<sup>13</sup> That letter was followed by a rebuttal letter signed by many of the major corporate lobby organization in the United States and has since become elevated as an important issue in pending treaties and negotiations.<sup>14</sup>

Under the treaty with Colombia and in other treaties, the use of capital controls to prevent and mitigate financial crises is actionable under the treaty. This means that private investors may file arbitral claims against nations that deploy controls. The Transfers provisions Chapter 10 (investment) of the treaty requires that capital be allowed to flow between trading partners "freely and without delay". This is reinforced in Chapter 12 on financial services that states that nations are not permitted to pose "limitations on the total value of transactions or assets in the form of numerical quotas" across borders.

Article 12:10 of the treaty discusses "exceptions" that pertain to that chapter and Chapter 10's transfers provisions. Informally referred to as the "prudential exception," it reads:

<sup>12</sup> Gallagher, K.P. (2010, May). Policy Space to Prevent and Mitigate Financial Crises in Trade and Investment Treaties. Discussion Paper, United Nations. Retrieved from [http://www.ase.tufts.edu/gdae/policy\\_research/CapControlsG24.html](http://www.ase.tufts.edu/gdae/policy_research/CapControlsG24.html)

<sup>13</sup> *Economists Issue Statement on Capital Controls and Trade Treaties* (2011 January 11). Retrieved from [http://www.ase.tufts.edu/gdae/policy\\_research/CapCtrlsLetter.html](http://www.ase.tufts.edu/gdae/policy_research/CapCtrlsLetter.html)

<sup>14</sup> *USCIB Pushes Back Against Efforts to Permit Capital Controls Under FTAs* (2011, 8 February). United States Council for International Business. <http://www.uscib.org/index.asp?DocumentID=4052A>

Financial Services chapter: Article 12.10: Exceptions

1. Notwithstanding any other provision of this Chapter or Chapter Ten (Investment), Fourteen (Telecommunications), or Fifteen (Electronic Commerce), including specifically Articles 14.16 (Relationship to Other Chapters) and 11.1 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapter Ten (Investment), Fourteen (Telecommunications), or Fifteen (Electronic-Commerce), including specifically Articles 14.16 (Relationship to Other Chapters) and 11.1 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit or exchange rate policies. **This paragraph shall not affect a Party's obligations under Article 10.9 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or under Article 10.8 (Transfers) or 11.10 (Transfers and Payments).**

Capital controls are not seen as permissible under this exception. This has been communicated by the United States Trade Representative and in 2003 testimony by the Under Secretary of Treasury for International Affairs to the U.S. Congress.<sup>15</sup> In general this is because the term "prudential reasons" usually interpreted in a much narrower fashion, pertaining to individual financial institutions. Concern has also been expressed that the last sentence is "self-canceling," making many measures not permissible.

The prudential exception in services chapters or BITs is usually followed by an exception for monetary policy that often reads like (again to use the US-Peru Trade treaty):

This second exception could be seen as granting nations the flexibility to pursue necessary monetary and exchange rate policy (of which capital controls are a part). Yet

<sup>15</sup> *Financial Services and Capital Transfer Provisions in Recent Free Trade Agreements* (2003, April 1). John B. Taylor, Under Secretary of Treasury for International Affairs Testimony before the Subcommittee on Domestic and International Monetary Policy, Trade and Technology Committee on Financial Services U.S. House of Representatives. Retrieved from [http://www.stanford.edu/~johntayl/taylorspeeches/Financial%20Services%20and%20Capital%20Transfer%20Provisions%20\(1%20Apr%2003\).doc](http://www.stanford.edu/~johntayl/taylorspeeches/Financial%20Services%20and%20Capital%20Transfer%20Provisions%20(1%20Apr%2003).doc)

the last sentence in that paragraph specifically excludes transfers.

These provisions were very controversial with the US-Chile and US-Singapore trade treaties in the early 2000s. U.S. trading partners repeatedly asked for a safeguard that would include capital controls but the United States has denied that request. In a few instances, U.S. negotiators granted special annexes that allowed U.S. trading partners to receive an extended grace period before investor-state claims can be filed with respect to capital controls, as well as limits on damages related to certain types of controls.

The United States-Colombia treaty has one such annex, Annex 10-E. This annex is inadequate in the wake of the financial crisis for at least four reasons. First, the annexes still allow for investor-state claims related to capital controls—they just require investors to delay the claims for compensation. An investor has to wait one year to file a claim related to capital controls to prevent and mitigate crises, but that claim can be for a measure taken during the cooling off year. The prospect of such investor-state cases could discourage the use of controls that may be beneficial to financial stability. Second, many other nations' treaties allow for capital controls. **Indeed, the Canada-Chile FTA, the EU-Korea FTA, the Japan-Peru BIT, and the Japan-Korea BIT** (just to name a few) all grant greater flexibility for capital controls. This gives incentives for nations to apply controls in a discriminatory manner (applying controls on EU investors but not on US investors). Third, the IMF has expressed concerns that restrictions on capital controls in U.S. agreements, even those with the special annexes, may conflict with the IMF's authority to recommend capital controls in certain country programs, as they have done in Iceland and several other countries. Finally, the special dispute settlement procedure included in the US-Chile and Singapore FTAs did not become a standard feature of U.S. agreements. It is not in CAFTA, any U.S. BIT, or the pending US-Korea FTA.

### **Reforming U.S. Treaties for Financial Stability**

This problem should be rectified. It is in the interests of the U.S. and its trading partners to have adequate policy space to prevent and mitigate financial crises. A number of (non-exclusive) options are possible. First, some IMF officials have gone so far as to recommend that speculative capitals in the form of derivatives and other financial “innovations” be omitted from the definition of investment in treaties.<sup>16</sup> Such an option was also recommended in the International Institute for Sustainable Development's *Model Investment Treaty*. Another option, more recently advocated by the IMF, is to come up with a uniform safeguard language that can be used by all nations.<sup>17</sup> Finally, and more specific to U.S. treaties, the “exceptions” language in U.S. treaties could be broadened to explicitly allow for the flexibility to deploy controls and other measures now recognized as prudential to prevent or mitigate a crisis.

<sup>16</sup> *Transfer of funds* (2000) United Nations Conference on Trade and Development. Retrieved from UNCTAD/ITE/IIT/20. <http://www.unctad.org/en/docs/psiteiitd20.en.pdf>

<sup>17</sup> *The Funds Role Regarding Cross-border Capital Flows* (2010, November 15).

Prepared by the Strategy, Policy, and Review Department and the Legal Department. International Monetary Fund. Retrieved from <http://www.imf.org/external/np/pp/eng/2010/111510.pdf>

The prudential exception paragraph could have a footnote with an explicitly non-exhaustive list that clarifies that prudential measures include capital controls, among other measures. The last sentence in that paragraph could be deleted (as it is in the North American Free Trade Agreement), as could the omission of “transfers” from last sentence in the “monetary policy” exception also quoted above.

Finally, resorting to “state-to-state” dispute settlement for matters as serious as financial crises may be more appropriate. Nation states seek to weigh the benefits of financial stability versus the costs to individual firms. However, in the treaty, this equation is tipped upside down. Even in situations where the benefits of stability through capital regulations may far outweigh the costs to individual investors, individual investors may have the ability to file claims and dismantle regulation.

This issue should be rectified in the pending trade deals with South Korea, Colombia, and Panama. Moreover, it should be corrected in the soon to be completed review of US model BIT and taken forward in negotiations for a TPP, and elsewhere.

The global financial crisis has made it all too obvious that granting our trading partners the flexibility to use legitimate policies to prevent and mitigate financial crises is also good for the United States. When its trading partners fall into financial crisis, the United States loses export markets and subsequently jobs in the export sector. Capital controls can help stabilize exchange rates, which is good for long-term investors and for exporters and importers from the United States. When countries abroad cannot control financial bubbles that drive up currency values, American consumers may be hurt by rising prices on imported goods. As we have learned all too well, financial instability in a globalized world can be contagious, and quickly come back to the United States.



**Statement of Human Rights Watch**



Written Testimony of José Miguel  
Vivanco,  
Executive Director of the Americas  
Division,  
Human Rights Watch:

United States House of Representatives  
Committee on Ways and Means  
Subcommittee on Trade

March 17, 2011

“Anti-Union Violence, Human Rights,  
and the

US-Colombia Free Trade Agreement”



Mr. Chairman, Committee members:

Thank you for inviting me to convey to the Committee Human Rights Watch's concerns regarding the human rights situation in Colombia and, specifically, the problem of ongoing violence against trade unionists.

I am the executive director of the Americas Division of Human Rights Watch, where for nearly two decades I have been closely monitoring human rights abuses committed by left-wing guerrillas, right-wing paramilitaries, and state security forces in Colombia.

For the last several years, ratification of the U.S.-Colombia Free Trade Agreement (FTA) has been held up because of human rights abuses in Colombia. A chief concern has been the plight of Colombia's trade unionists, who defend the rights of the workers producing the goods to be traded with the U.S., and who continue to be killed, attacked and threatened every year. The great majority of these abuses remain in impunity.

Since taking office, President Juan Manuel Santos' government has promoted important human rights initiatives, including draft legislation to recover and return stolen and abandoned land to displaced persons. It is encouraging that the Santos government has stated its commitment to pursuing new strategies to address the threat posed by successor groups to paramilitaries. But these steps have not yet been fully implemented, and they face powerful opposition from the armed groups and their political supporters. And as these successor groups continue to operate throughout Colombia, levels of violence against trade unionists remain alarmingly high.

Human Rights Watch takes no position on free trade per se. But we believe any free trade agreement should be premised on respect for fundamental human rights, especially the rights of the workers producing the goods to be traded. In Colombia, those conditions are far from being met. That is why we consider

that the United States should continue to delay ratifying the U.S.-Colombia FTA until Colombia demonstrates concrete and sustained results in addressing violence against trade unionists and its underlying causes.

Specifically, we believe that the FTA should not be ratified until the Government of Colombia demonstrates:

- 1) Significant progress in dismantling the successor groups to paramilitaries and a dramatic reduction from current levels in abuses committed by these groups;
- 2) A dramatic decrease from current levels in killings of and threats against trade unionists; and
- 3) A dramatic increase in the quantity and improvement in the quality of criminal investigations and prosecutions of cases of anti-union violence, including a significant number of the more than 2,800 killings of trade unionists reported since 1986.

#### 1) Paramilitaries and Their Successors

Between 2003 and 2006, the Colombian government implemented a demobilization process for the brutal, mafia-like, paramilitary coalition known as the AUC, which is believed to have killed more than 100,000 persons over the past several decades. The government claimed success, as more than 30,000 persons went through demobilization ceremonies. Since then, the government has repeatedly said that the paramilitaries no longer exist.

But almost immediately after the demobilization process had ended, new groups cropped up all over the country, taking the reins of the criminal operations that the AUC leadership previously ran. Often led by mid-level commanders of demobilized paramilitary organizations, these successor groups exercise territorial control in certain regions and are responsible for widespread atrocities against civilians, including massacres, killings, rapes, and forced displacement. They also frequently threaten or attack trade unionists, human rights defenders,

journalists, indigenous and Afro-Colombian leaders, and victims of paramilitaries who seek land restitution or justice.

Successor groups to paramilitaries drove a dramatic increase in massacres in 2010, making for the highest annual total of massacres since 2005. In February 2011, the United Nations High Commissioner for Human Rights representative in Colombia said that the successor groups are the primary threat to human rights and the rule of law in the Colombia. Indeed, Colombian National Police Chief Oscar Naranjo recently acknowledged that the illegal groups, which the government calls "emerging criminal gangs," are responsible for the majority of violence in Colombia.

As stated in the U.N. High Commissioner's 2010 report on the situation of human rights in Colombia, "these groups have benefited from the acquiescence, tolerance and even collusion of members of security forces, including the National Police." State complicity with paramilitaries is not limited to the armed forces: in recent years, more than 100 members of Congress have come under investigation for alleged ties to paramilitaries. The former director of the national intelligence agency (DAS) from 2002-2005 currently stands trial for delivering information to paramilitaries about trade unionists and other social leaders who the paramilitaries subsequently assassinated.

Most trade unionist killings have never been investigated, so it is impossible to know exactly who is responsible and why all the killings have been committed. What is clear is that in many cases, the killers have been mafia-like paramilitary groups, who have admitted to deliberately persecuting unions.

To achieve the goal of significant progress in dismantling the successor groups to paramilitaries and a dramatic reduction from current levels in abuses committed by these groups, the following conditions must be met:

The Government of Colombia must:

- Establish and effectively enforce a credible mechanism to identify land and illegal assets that paramilitaries, members of successor groups to the

paramilitaries, or their accomplices may be holding, and ensure their recovery and restitution to victims;

- Substantially strengthen the presence of civilian police, who are charged with taking the lead in confronting the successor groups, in regions where those groups have a presence (particularly in rural areas where police often are not present); and
- Strengthen the Early Warning System (EWS) of the Ombudsman's Office by ensuring that it has the necessary resources and stability to continuously monitor potential threats to civilians posed by successor groups, that the EWS's risk reports are made public, and that other state agencies take necessary actions to respond to those reports and address the threats.

The Office of the Attorney General of Colombia must:

- Strengthen and increase the size of the specialized unit of prosecutors charged with investigating successor groups, and assign them sufficient resources to carry out their work effectively;
- Conduct thorough investigations not only of individual members of successor groups, but of their criminal networks, including their financial backers and collaborators within the state; and
- Vigorously investigate and prosecute *all* state officials, including politicians and members of the security forces, who are credibly alleged to have collaborated with or tolerated paramilitaries or their successor groups.

## 2) Anti-Union Violence

Over the last couple of decades, Colombia's unions have suffered extreme violence, mostly at the hands of right-wing paramilitary groups that have deliberately targeted unions. Colombia leads

the world in killings of trade unionists, with more than 2,800 reported killings since 1986, according to the National Labor School (ENS), Colombia's leading NGO monitoring labor rights.

Despite the success story often painted by government officials in Colombia and the U.S. alike, the rate of trade unionist killings in Colombia remains unacceptably high. According to statistics maintained by ENS, after dropping to 39 in 2007, the number of killings of unionists has increased once again, to 51 in 2008, 47 in 2009, and 51 in 2010. Annual killings of Colombian unionists often equal or surpass the total number of union killings in all other countries combined: the ENS reports that 63% of the 1,717 murders of unionists worldwide over the past decade occurred in Colombia.

Some commentators have sought to downplay the gravity of the problem by arguing that it is safer to be "in a union than to be an ordinary citizen," noting that the rate of unionist killings is lower than the national homicide rate. But this rhetorical claim compares apples and oranges: the supposedly "ordinary" citizen includes many people at unusually high risk of being killed, including drug traffickers, criminals, and people living in combat zones, which skew statistical results. The national homicide rate is exactly the same for all these people as it is for civilians in the safest neighborhood in the capital, Bogotá.

Setting aside the statistical discussion, it is important to bear in mind that trade unionists are not random victims who are being killed accidentally or in crossfire. Evidence indicates that unionists are frequently victims of targeted attacks by armed groups, particularly paramilitaries and their successor organizations. According to the information compiled by the Attorney General's Office and analyses made by the ENS, by far the largest share of the killings have been attributable to paramilitaries, who view labor organizing as a threat to their interests and stigmatize unionists as guerrilla collaborators. Moreover, threats issued by successor groups to paramilitaries against unionists indicate they are responsible for many of the recent killings: according to the ENS, of the over 900 threats

trade unionists reported receiving in 2008 and 2009, 401 were identified as having come from successor groups.

### 3) Impunity

An important factor perpetuating anti-union violence has been the failure to bring those responsible for it to justice. The unit within the Attorney General's Office mandated to prosecute such crimes is only investigating 25 percent of the more than 2,800 ENS-documented killings of unionists since 1986. Out of the reduced number of cases of anti-union violence investigated by the specialized unit, only 15 percent had resulted in convictions as of October 2010, according to official sources.

Even the limited number of convictions have been marred by serious flaws in the methodology that authorities have employed to investigate violence against trade unionists. It is our understanding that cases of crimes against trade unionists are investigated in a piecemeal manner, and many investigations are being closed without a proper inquiry as to whether the motive of the killing was related to the victim's trade union activities. Cases are frequently closed without identifying and holding accountable all persons who bear criminal responsibility, including those who ordered the crimes.

For example, former paramilitaries giving voluntary confessions in the Justice and Peace process have confessed their responsibility for the murder of a trade unionist by justifying it as the assassination of a guerrilla. Instead of opening an investigation based on the copy of the confession received from the Justice and Peace Unit, the specialized unit dedicated to investigating crimes against unionists has used this self-incrimination to close the case, determining the unionist was a terrorist solely on the basis of the former paramilitary's testimony.

These deficient investigation methodologies have led to impunity for cases of anti-union violence. They have also engendered unfounded conclusions about the nature of union killings, such as the notion that the killings are isolated cases of common crime. These baseless interpretations only aggravate the problem

of union killings in Colombia, where 20 unionists have already been killed during the government of President Santos, according to the ENS.

To achieve a dramatic increase in the quantity and improvement in the quality of criminal investigations and prosecutions of cases of anti-union violence, the Colombian government must, among other steps:

- Ensure that the specialized prosecutors for labor union cases handle all the reported cases, not just the small fraction they are currently investigating; and
- Ensure that authorities investigate union killings as part of a pattern of crimes that takes into account the victims' union, the time period and location in which the crimes occurred, as well as the context of armed groups operating in the region where the crimes were committed. Prosecutors should identify the motives behind the crime and prosecute not only the direct perpetrator of the killing, but all persons who bear criminal responsibility, including those who ordered the assassination. The convictions should be based on more than the mere admissions of guilt by paramilitary commanders participating in the Justice and Peace process.

Given what is at stake for Colombia—the success or failure of a generational struggle to break the hold of brutal mafias over the country's political life, and in turn the ability of Colombia's workers to exercise their rights—the United States should not seek FTA ratification prematurely or in exchange for partial measures.

The Santos government has stated its commitment to resolving the key human rights challenges it inherited from past governments. The United States should seize this opportunity by standing firm on the need for fundamental changes in Colombia, and providing support to achieve those changes. By continuing to delay the deal's approval, the United States will show that human rights

are not just words, but rather basic values that have real consequences for US policy.

—◆—

**Statement of Interfaith Working Group on Trade and Investment**

***INTERFAITH WORKING GROUP  
ON TRADE AND INVESTMENT***

A WASHINGTON-BASED WORKING GROUP WITH REPRESENTATIVES FROM A RANGE OF FAITH-BASED ORGANIZATIONS COMMITTED TO  
ASSERTING A STRONGER PRESENCE OF COMMUNITIES OF FAITH IN PUBLIC POLICY DISCUSSIONS ON INTERNATIONAL TRADE AND INVESTMENT.  
25 E St. NW, Ste. 200 • Tel: (202) 347-9797 ext. 212 • Email: [dgolemboski@networklobby.org](mailto:dgolemboski@networklobby.org)

Dear Member of Congress,

The Interfaith Working Group (IWG) on Trade and Investment includes religious denominational offices and faith-based organizations working in the U.S. and abroad. We represent a broad coalition, and we bring the wisdom of our traditions to bear on decisions concerning U.S. trade policy. As the work of the 112<sup>th</sup> Congress begins to take shape, we want to share our concerns regarding trade policy with you.

The IWG is particularly focused on the effects of U.S. trade policy on impoverished people in our trading partner countries. Our international partners in Latin America, Africa, and Asia tell us that trade liberalization in its present form has caused tremendous harm to impoverished communities around the world.

In coming months, you will likely have the opportunity to consider the pending trade agreements with South Korea, Panama, and Colombia. Moreover, the Obama Administration is currently negotiating a Trans-Pacific Partnership Agreement that will include Pacific-rim nations. As you engage these and other trade-related discussions, we hope that you will take the following priorities into consideration:

**Trade should not undermine rural livelihoods.** While farming is a way of life for many of the world's poor, trade in agriculture is dominated by multinational corporations that control and distort the market. Import deregulation has been especially devastating for local agriculture.

- We believe that trade agreements should permit countries full flexibility to determine food policy and protect small-holder farmers from dumping and import surges.
- Tools such as tariffs, quotas, strong anti-trust regulations, and public support for farm inputs and food reserve programs have an important role to play in ensuring stability in food prices and agricultural incomes.

**Trade should empower countries to regulate investment in order to facilitate development.** Developing countries should not be deprived of the ability to ensure that the benefits of trade are widely shared. So-called "investor-state" processes included in trade agreements grant foreign corporations greater rights than national businesses through access to tribunals that can overrule government decisions. This often leads to the dismantling of environmental, public health, or safety protections.

- We believe that investor-state processes should be excluded from all trade agreements.
- Governments should remain free to utilize performance requirements (such as local content requirements, local hiring minimums, etc.) to achieve development goals.

**Trade should not impede access to medicines in poor countries.** Nearly two billion people lack regular access to medicines in developing countries, and one contributing factor is the high price of monopolized medicines. Intellectual property provisions in trade agreements can restrict generic competition, leading to medicine prices that are unaffordable for most people.

- Trade agreements should look to the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) as the maximum standard of intellectual property protection required, and should build in flexibilities to support public health in developing countries.

**Trade agreements should be formulated with full democratic accountability and citizen participation.** Under "fast track" Trade Promotion Authority, Congressional involvement is limited, and public input is restricted. The result is that global trade rules are driven by narrow commercial interests. Fast track authority last expired in 2007.

- We urge you to oppose any legislation that would reinstate this antidemocratic mechanism. Full public participation is needed to create a moral and legal framework for trade agreements.

Our hope is to help shape an approach to U.S. trade policy that complements rather than hinders international development efforts. Trade agreements must strike a balance between creating a predictable structure for international trade and preserving the policy space necessary for governments to foster economic, social and human development for all their citizens. **A framework for a new way forward for trade can be found in the TRADE Act**, introduced in the 111<sup>th</sup> Congress by Sen. Sherrod Brown and Rep. Michael Michaud.

We affirm the importance of international trade in an interdependent world. Our concern is for the character and quality of these trade relationships. NAFTA and CAFTA have demonstrated that the current trade model hurts people living on the economic edge in both the U.S. and developing countries. It is time to make a change. It is time to place trade in the service of the common good for people here and abroad.

We are more than happy to make our member groups available as a resource. Please contact us through David Golemboski at 202-347-9797, ext. 212 or [dgolemboski@networklobby.org](mailto:dgolemboski@networklobby.org), or Martin Shupack at 202-481-6934 or [mshupack@churchworldservice.org](mailto:mshupack@churchworldservice.org).

Sincerely,

*The following members of the Interfaith Working Group on Trade and Investment:*

Center of Concern  
 Church World Service  
 Columban Center for Advocacy and Outreach  
 Conference of Major Superiors of Men  
 Holy Cross International Justice Office  
 Leadership Conference of Women Religious  
 Maryknoll Office for Global Concerns  
 Medical Mission Sisters, Alliance for Justice  
 Mennonite Central Committee U.S. Washington Office  
 Missionary Oblates of Mary Immaculate, Justice Peace/Integrity of Creation Office  
 NETWORK: A National Catholic Social Justice Lobby  
 PLANT (Partners for the Land & Agricultural Needs of Traditional Peoples)  
 Presbyterian Church (U.S.A.), Office of Public Witness  
 Sisters of Notre Dame de Namur, Justice and Peace Office  
 United Church of Christ, Justice and Witness Ministries  
 United Methodist Church, General Board of Church and Society  
 Witness for Peace

**Statement of U.S. Chamber of Commerce and the Association of American  
Chambers of Commerce in Latin America**



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**Statement**  
of the  
**U.S. Chamber**  
of Commerce

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**ON:** First in a Series of Three Hearings on the Pending, Job-Creating Trade Agreements (specifically on the U.S.-Colombia Trade Promotion Agreement)

**TO:** U.S. House of Representatives Committee on Ways and Means Subcommittee on Trade

**BY:** U.S. Chamber of Commerce and the Association of American Chambers of Commerce in Latin America

**DATE:** March 17, 2011

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The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

More than 96% of the Chamber's members are small businesses with 100 or fewer employees, 70% of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business manufacturing, retailing, services, construction, wholesaling, and finance — is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 115 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

The U.S. Chamber of Commerce (the Chamber) and the Association of American Chambers of Commerce in Latin America appreciate the opportunity to share their strong support for the U.S.-Colombia Trade Promotion Agreement (CTPA) on the occasion of this important hearing of the House of Representatives Committee on Ways and Means Subcommittee on Trade. The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber serves as secretariat for the Latin American Trade Coalition, which represents more than 1,200 American companies, business and agricultural organizations, and chambers of commerce that support approval of the pending free trade agreements with Colombia and Panama.

This testimony is also submitted on behalf of Association of American Chambers of Commerce in Latin America (AACCLA). The 23 American Chambers of Commerce in Latin America and the Caribbean making up AACCLA together represent more than 20,000 companies and over 80% of U.S. investment in the region.

No priority facing our nation is more important than putting Americans back to work. Nearly 9% of the U.S. workforce is unemployed — a figure that doubles when those who have stopped looking for jobs and the millions of part-time workers who want to work full time are included. As a nation, the biggest policy challenge we face is to create the 20 million jobs needed in this decade to replace the jobs lost in the current recession and to meet the needs of America's growing workforce.

World trade will play a vital role in reaching this job-creation goal. When President Barack Obama delivered his State of the Union address in January 2010, the U.S. Chamber and the rest of the business community welcomed his call for a national goal to double U.S. exports within five years. The rationale is clear: We cannot rely on domestic consumption to generate more demand for the goods and services we produce. The American consumer is likely to spend more frugally in the years ahead, and the federal government faces unsustainable budget deficits.

Most importantly, outside our borders are markets that represent 73% of the world's purchasing power,<sup>1</sup> 87% of its economic growth,<sup>2</sup> and 95% of its consumers. The resulting opportunities are immense.

Trade already sustains millions of American jobs. More than 50 million American workers are employed by firms that engage in international trade, according to the U.S. Department of the Treasury.<sup>3</sup> President Obama has noted that one in three manufacturing jobs depends on exports,<sup>4</sup> and one in three acres on American farms is planted for hungry consumers overseas.<sup>5</sup>

Nor is trade important only to big companies. Often overlooked in the U.S. trade debate is the fact that more than 97% of the quarter million U.S. companies that export are small and medium-sized enterprises (SMEs), and they account for nearly a third of U.S. merchandise exports, according to the U.S. Department of Commerce. In fact, the number of SMEs that export has more than doubled over the past 15 years.

The bottom line is simple: If America fails to look abroad, our workers and businesses will miss out on huge opportunities. Our standard of living and our standing in the world will suffer. With so many Americans out of work, opening markets abroad to the products of American workers, farmers, and companies is a higher priority than ever before.

#### **The Problem: Foreign Tariffs and Other Trade Barriers**

For all of these firms — large and small — the chief obstacle to reaching the goal of doubling U.S. exports by 2014 is the complex array of foreign barriers to American exports. Those barriers are alive and well, and they pose a major competitive challenge to U.S. industry and agriculture and the millions of U.S. workers whose jobs depend on exports.

From the perspective of the U.S. business community, the foremost goal of U.S. trade policy should be to tear down those barriers. Casting light on this challenge, the World Economic Forum issues an annual *Global Enabling Trade* report, which ranks countries according to their competitiveness in the trade arena.<sup>6</sup> One of the report's several rankings gauges how high the tariffs are that a country's exporters face. Leading the pack as the country whose exporters face the lowest tariffs globally is Chile, with its massive network of free trade agreements with more than 50 countries around the globe.

While the report found the United States did well in a number of areas, America ranked a disastrous 121st out of 125 economies in terms of "tariffs faced" by our exports overseas. In other words, American exporters face higher tariffs abroad than nearly all our trade competitors. It is also worth noting that tariffs are just part of the problem, as they are often found alongside a wide variety of non-tariff barriers that shut U.S. goods and services out of foreign markets.

Historically, the only way the U.S. government has ever enticed a foreign government to open its market to American exports is by negotiating agreements for their elimination on a reciprocal basis. This is done in bilateral free trade agreements (FTAs), such as those pending with Colombia, Panama, and South Korea or the Trans-Pacific Partnership (TPP), which is under negotiation. In addition, reciprocal market openings can be accomplished multilaterally, as in the Doha Round, the global trade agreement currently being negotiated under the WTO by the United States and 152 other countries.

#### **The Solution: Free Trade Agreements**

The pending FTAs with Colombia, Panama, and South Korea are pro-growth agreements will create good American jobs, bolster important allies, and confirm that America is not ready to cede its global leadership role in trade. They will generate billions of dollars in new American exports within a few short years.

Most importantly, these are "fair trade" agreements that promise a level playing field for American workers and farmers. Many Americans don't know that the U.S. market is already wide open to imports from these countries, with most imports from Colombia, Panama, and South Korea entering our market duty free. However, these countries impose tariffs on U.S. products that often soar into the double digits, limiting our competitiveness overseas. These

agreements would knock down those barriers, opening the door for American companies to sell to these consumers.

If the United States is to double exports within five years, the proven export-boosting record of these reciprocal trade agreements will be indispensable. In 2003-2008, for example, U.S. exports rose 79%, their fastest growth in nearly two decades. It is no coincidence that this period also saw the United States implement FTAs with 10 countries and saw earlier agreements such as NAFTA attain their full implementation with the elimination of all tariffs.

To settle once and for all the debate over whether these FTAs have benefitted American workers and companies, the U.S. Chamber commissioned a study entitled *Opening Markets, Creating Jobs: Estimated U.S. Employment Effects of Trade with FTA Partners*,<sup>7</sup> which was released in May 2010. The study examined U.S. FTAs implemented over the past 25 years with a total of 14 countries. It excluded three other countries where FTAs have only recently been implemented. The study employs a widely used general equilibrium economic model which is also used by the U.S. International Trade Commission, the WTO, and the World Bank.

The results of this comprehensive study are impressive: 17.7 million American jobs depend on trade with these 14 countries; of this total, 5.4 million U.S. jobs are supported by the increase in trade generated by the FTAs.

No other budget neutral initiative undertaken by the U.S. government has generated jobs on a scale comparable to these FTAs, with the exception of the multilateral trade liberalization begun in 1947. The study also shows that U.S. merchandise exports to our FTA partners grew nearly three times as rapidly as did our exports to the rest of the world from 1998 to 2008.

The trade balance is a poor measure of the success of these agreements, but deficits are often cited by trade skeptics as a reason why the United States should not negotiate free trade agreements. However, according to the U.S. Department of Commerce, the United States is now running a *trade surplus* in manufactured goods with its 17 FTA partner countries — taken as a group — on top of the U.S. global trade surpluses in services and agricultural products.

#### **America Left Behind**

The success of reciprocal trade agreements has led to their proliferation around the globe. Countries are rushing to negotiate new trade accords — but America is being left behind.

According to the WTO, there are 283 regional trade agreements in force around the globe today, but the United States has just 11 FTAs with just 17 countries.<sup>8</sup> There are more than 100 bilateral and regional trade agreements currently under negotiation among our trading partners. Unfortunately, the United States is participating in just one of these (the Trans-Pacific Partnership).

The United States is standing on the sidelines while other nations clinch new trade deals. This is painfully evident in the case of Colombia, Panama, and South Korea. The pending U.S.

agreements with those countries would create good American jobs, bolster important allies, and confirm that America is unwilling to cede its global leadership role in trade.

While these U.S. agreements languish, other nations are moving forward. The European Union has concluded a comprehensive FTA with South Korea, and Canada has done so with Colombia; both of these FTAs are expected to enter into force in mid-2011. Also, in May 2010, the EU signed FTAs with Colombia and Panama, and Canada has signed an FTA with Panama.

If Washington delays, U.S. exporters will be put at a marked competitive disadvantage in Colombia, Panama, and South Korea. Canadian wheat farmers will be able to sell their crop to Colombians and Panamanians at a huge discount, and European manufacturers will easily undercut their American competitors in the South Korean market.

The cost of these delays will be high. According to a study commissioned by the U.S. Chamber, the United States could suffer a net loss of more than 380,000 jobs and \$40 billion in lost export sales if it fails to implement its pending trade agreements while the European Union and Canada move ahead with their own agreements.<sup>9</sup>

Unfortunately, this scenario is already unfolding. Following implementation of a new trade accord between Colombia and Mercosur (a customs union that includes Argentina and Brazil), "U.S. exports of agricultural products to Colombia dropped by 48% in 2009 and an additional 45% in 2010. Meanwhile, Argentina's and Brazil's sales to Colombia have climbed by over 20 percent. In dollar figures, U.S. exports of corn, wheat, and soybeans to Colombia dropped from \$1.1 billion in 2008 to \$343 million in 2010, a decline of 68%.<sup>10</sup>

In the absence of an FTA, the average tariff paid by American farmers shipping their goods to Colombia is 16.9%, while competitors in the Mercosur countries have duty-free access to the Colombian market. When the Canada-Colombia FTA enters into force — an event expected in June — American farmers risk losing more of their market share and sales.

The implications have a profound significance in the rapidly growing Asia-Pacific region. U.S. trade with Asia continues to grow, but our market share is dropping as other countries boost their own commerce more rapidly. Over time, expanding Asian production supply chains will tend to shut out U.S. suppliers of intermediate goods and undermine U.S. manufacturers. U.S. farmers are shut out because highly protected agricultural markets are open to U.S. competitors but not to American food products. The United States will be left on the outside, looking in.

Washington's failure to negotiate more trade agreements not only hurts U.S. companies and workers, but it limits America's ability to advance its broader interests around the globe. A stronger U.S. economic presence abroad would boost America's ability to achieve its security, political, and economic goals.

#### **Details on CTPA**

CTPA is a critical component to increasing U.S. exports and strengthening a longstanding partnership with the second largest Spanish-speaking country in the world. CTPA's provisions

are virtually indistinguishable from those in the U.S.-Peru Trade Promotion Agreement, which Congress approved by an overwhelming bipartisan majority in 2007. Like the agreement with Peru, CTPA is a comprehensive agreement that will accelerate Colombia's progress as a resilient and strong democracy and a committed ally of the United States.

U.S. exports to Colombia have more than tripled since 2003, exceeding \$11 billion in 2010. A wide range of industries — including food and other agricultural products, chemicals, computers and electronic products, electrical equipment and appliances, and motor vehicles to name just a few — have seen exports grow into the hundreds of millions of dollars each year. More than 10,000 U.S. small and medium-sized businesses export to Colombia, totaling 85% of all U.S. companies exporting to Colombia.

Building on these strong ties, CTPA will do away with a trade relationship built on temporary unilateral preferences and replace it with one that is mutually beneficial, reciprocal, and permanent. In 1991, Congress approved the Andean Trade Preference Act (ATPA), which has been renewed by bipartisan majorities several times in recent years. Thanks to the ATPA, the average U.S. import duty imposed on imports from Colombia was a stunningly low 0.1% in 2009, according to the U.S. International Trade Commission.<sup>11</sup> By contrast, Colombia's average duty on imports from the United States is 14% for manufactured goods and far higher for key agricultural exports. In short, Colombians enjoy nearly free access to our market while our access to theirs remains limited.

In fact, since the agreement was signed in November 2006, U.S. exports to Colombia have been penalized by the imposition of over \$3.4 billion in tariffs that could have been eliminated by the implementation of the agreement (*see Colombia Tariff Ticker* — [www.latradecoalition.org](http://www.latradecoalition.org)). This sum is not only money out of the pockets of U.S. companies; it likely deterred hundreds of millions of dollars worth of additional sales.

This agreement will remedy the unfairness of today's U.S.-Colombia trade relationship by sweeping away most of Colombia's tariffs immediately, ushering in a mutually beneficial, reciprocal partnership. The day the agreement enters into force, four-fifths of U.S. consumer and industrial products and more than half of current U.S. farm exports will enter Colombia duty-free. Remaining tariffs will be phased out, most in just a few years. For example:

Without the U.S.- Colombia FTA		Products	With the U.S.- Colombia FTA	
We Pay	They Pay		We Pay	They Pay
35%	2.5%	Automobiles	0%	0%
20%	0%	Furniture	0%	0%
5-15%	0-3.9%	Audiovisual (film and DVDs)	0%	0%
5-15%	0%	Mineral fuels and coal	0%	0%
10%	0%	Cotton	0%	0%
5-15%	0-3.9%	Copper, gold, silver products	0%	0%
5-21%	0-1.9%	Cereals (oats, corn, soybeans)	0%	0%
10%	0%	Computers & related products	0%	0%

In addition, the agreement will open services markets, secure the intellectual property of U.S. inventors, researchers, and creative artists, and introduce enforceable protections for worker rights and the environment.

#### **The U.S. National Interest**

However, the U.S. failure to approve and implement CTPA is not only harming U.S. workers, farmers, and businesses; it is hurting one of the most important U.S. strategic allies in the hemisphere.

Colombia has long been America's most stalwart ally in South America. Colombia chairs the UN committee implementing sanctions against Iran and has partnered with the United States to provide extensive training and assistance to help the Mexican government defeat violent drug cartels along the U.S.-Mexico border. In Afghanistan, at the request of the United States, Colombia has provided counter-narcotics training and assistance to the Karzai government.

Over the past 50 years, Colombian governments have had to contend with the combined terrorist activities of left-wing guerrillas, drug cartels, and paramilitary self-defense forces. But in 1999, the Pastrana administration unveiled its "Plan Colombia," and successive Colombian administrations since that time leveraged more than \$7 billion in U.S. assistance to fight drug trafficking, promote sustainable development, and protect human rights.

Since that time, coca production in Colombia has been reduced by 40%, reaching the lowest level in 11 years, according to the U.S. Office of National Drug Control Policy. In the past ten years Colombian security forces have interdicted cocaine and heroin shipments with an estimated street value between \$35 billion and \$40 billion. According to official statistics, guerrillas were reduced from 24,000 fighters in 2002 to 9,500 in 2010, and paramilitaries have been completely demobilized. These labors were recognized on March 1, 2011, when Colombia was removed from the UN Drugs Watch List.

Colombia has pursued its dream of security, peace, and prosperity and has achieved impressive results. Colombia has created more than three million jobs since 2002, cutting the unemployment rate by nearly half from 20.5% in 2000 to 11.7% in 2008. In many parts of today's Colombia, children can walk safely to school, families can visit friends, and relatives and all Colombians can enjoy the natural beauty of their country. In less than 20 years, the enrollment rate for Colombian children in school has increased from 71% in 1991 to 93.5% in 2008. The Colombian government also spends 12.7% of the entire country's GDP on education, health care, and social programs.

The Colombian government clearly recognizes the benefits of free trade agreements, and while the United States has delayed CTPA, Colombia has negotiated or is in the process of negotiating free trade agreements with Canada, the European Union, Argentina, Brazil, Korea, Panama, and Singapore. In the meantime, the United States has lost more than just our market share. We have also raised questions about our leadership in the region and our reputation as a reliable partner. By not approving CTPA now — after four years of delay — the United States risks alienating its closest ally in the region.

### **Labor Provisions in CTPA**

One of the noteworthy benefits of U.S. free trade agreements is the boost that they give to reformers in our developing country partners. As in the United States, economic and social reform is often hard-earned, piecemeal, and subject to high political cost. By providing a strong economic incentive, U.S. free trade agreements provide developing country reformers with the leverage they need to secure improvements in areas such as government procurement, governmental transparency and accountability, investor protections, and labor and environmental standards, among other areas.

In many cases, these reforms have been built into the trade agreement itself. For instance, CTPA includes dedicated chapters on labor, the environment, and transparency. CTPA contains the strongest provisions on labor ever incorporated into a U.S. trade agreement. These measures incorporate the provisions of the May 10, 2007, Congressional-Executive Agreement on Trade Policy. That agreement directly linked enforcement to the principles of international labor standards as recognized by the International Labor Organization's (ILO) Declaration on Fundamental Principles and Rights at Work. Having agreed to tough, enforceable labor provisions in the agreement as originally negotiated and signed, the Republic of Colombia then agreed on June 28, 2007, to bind itself to the new, stricter standard established by the May 10 Agreement. In fact, the Colombian government did so even though its Congress had already approved the trade agreement.

These measures in CTPA are identical to labor provisions in the U.S.-Peru Trade Promotion Agreement, which was approved by Congress in 2007 by an overwhelming bipartisan majority. These provisions require Colombia to enforce its labor laws, or be subject to dispute settlement under the agreement, backed by the threat of sanctions.

Since that time, various U.S. policymakers in both the Congressional and Executive branches have implied that further, unspecified labor concessions from Colombia will be necessary to secure U.S. approval of the trade agreement. Notwithstanding that Colombia has already signed this agreement with the United States *twice*, and already gone to its legislature for approval of the agreement *twice*, leaders in Colombia have remained willing to work with their U.S. government counterparts to take further steps.

It should be noted in this regard that Colombia's labor laws were generally strong when CTPA was signed in 2007, but have since undergone substantial reform through major labor legislation. Colombia years ago ratified all eight of the ILO core conventions. Since 2007, the Government of Colombia has worked closely with the ILO to identify and implement further reforms. In 2007, the ILO opened an office in Colombia to identify a joint program of work and implement cooperative programs. In June 2010, the ILO dropped Colombia from its list of countries subject to monitoring for failure to comply with international labor rights

Colombia has also taken significant steps to protect labor union members from violence. The Colombian government has established a protection program for vulnerable individuals, including union leaders. More than 1,900 union members and 10,000 judges, human rights workers, and journalists have been included in this program, which has a budget of \$360 million

and an unblemished record of success. It has created a special unit to investigate and prosecute individuals charged with violence against labor union members and as a result of these and other measures, the homicide rate of union members has declined by nearly 90% since 2002.

The results are dramatic. The homicide rate of union members is now just one-sixth the national homicide rate, and a resident of the District of Columbia is eight times more likely to be murdered than a Colombian trade unionist. Far from being persecuted, Colombia's labor unions have grown significantly in recent years. The number of Colombian workers affiliated with labor unions rose from 850,000 (4.9% of workforce) in 2002 to 1,500,000 (7.9%) in 2009 — an increase of more than 75% and one of the most dramatic rises in unionization anywhere in the world.

In addition, the Colombian Congress is poised to approve legislation proposed by President Juan Manuel Santos to establish a separate Ministry of Labor. The new ministry's sole focus would be to protect the rights of workers and promote job growth. This legislation would also create a separate Justice Ministry to step up the prosecution of violent offenders. President Santos has proposed groundbreaking initiatives to compensate victims of violence and return land to poor farmers they lost during the violence of past decades.

Today, the challenge in Colombia is to sustain and enhance the progress that has been made over the past decade. Trade has a critical role to play. Colombia's economic resurgence has been a defining factor in its recent progress. Robust investment has boosted economic growth and development. The creation of new jobs has provided tens of thousands of Colombians with alternatives to narcotics trafficking. CTPA will help reinforce this powerful and positive dynamic.

#### **Conclusion**

For the Chamber, the agenda is clear. The United States needs a laser-like focus on opening foreign markets. This means approving the pending trade accords with Colombia, Panama, and South Korea and negotiating more of them, including the Trans-Pacific Partnership and an ambitious Doha Round agreement. To this end, Congress should renew the traditional trade negotiating authority that every president since Franklin D. Roosevelt has enjoyed.

World trade is again expanding rapidly, and it is generating new opportunities around the globe. However, this is too often a story of missed potential. The business community could be doing much more to create jobs, lift people out of poverty, foster greater understanding and stability among nations, and solve vexing social problems if we weren't missing so many of the opportunities that global commerce can create.

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- <sup>1</sup> David Wessel, "Asia's Latest Export: Recovery," *The Wall Street Journal*, February 24, 2010, <http://online.wsj.com/article/SB10001424052748703510204575085280515242598.html>.
- <sup>2</sup> Office of the U.S. Trade Representative, Executive Office of the President, *The President's 2010 Trade Policy Agenda*, March 2010, [http://www.ustr.gov/webfm\\_send/1673](http://www.ustr.gov/webfm_send/1673). "IMF forecasts indicate that nearly 87% of world growth over the next 5 years will take place outside of the United States."
- <sup>3</sup> U.S. Department of the Treasury: <https://ustreas.gov/press/releases/hp285.htm>.
- <sup>4</sup> The White House: <http://www.whitehouse.gov/the-press-office/remarks-president-announcing-presidents-export-council>.
- <sup>5</sup> American Farm Bureau Federation: <http://www.fb.org/index.php?fuseaction=newsroom.fastfacts>.
- <sup>6</sup> World Economic Forum, *The Global Enabling Trade Report 2010*, May 19, 2010, <http://members.weforum.org/en/initiatives/gcp/GlobalEnablingTradeReport/index.htm>.
- <sup>7</sup> U.S. Chamber of Commerce, *Opening Markets, Creating Jobs: Estimated U.S. Employment Effects of Trade with FTA Partners*, May 2010, <http://www.uschamber.com/trade>.
- <sup>8</sup> WTO: [http://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](http://www.wto.org/english/tratop_e/region_e/region_e.htm).
- <sup>9</sup> U.S. Chamber of Commerce, *Trade Action—or Inaction: The Cost for American Workers and Companies*, September 2009, <http://www.uschamber.com/trade>.
- <sup>10</sup> Doug Palmer, "Bush and Clinton aides prod Obama on Latam trade deals," *Reuters*, March 2, 2011, <http://www.reuters.com/article/2011/03/02/us-usa-colombia-trade-idUSTRE7217CN20110302>.
- <sup>11</sup> United States International Trade Commission, *Andean Trade Preference Act: Impact on U.S. Industries and Consumers and on Drug Crop Eradication and Crop Substitution* (Investigation No. 332-352, USITC Publication 4188, September 2010), p. 2-2, <http://www.usitc.gov/publications/332/pub4188.pdf>.

**Statement of American Association of Exporters and Importers**

American Association of Exporters and Importers

1050 17<sup>th</sup> Street, N.W., Suite 810  
Washington, DC 20036

Comments of the American Association of Exporters and Importers on  
"Pending, Job Creating Trade Agreements"  
before the House Ways and Means Committee, Subcommittee on Trade

March 15, 2011

A. Introduction and Overview

AAEI appreciates the opportunity to offer these comments on the upcoming series of hearings on "Pending, Job Creating Trade Agreements", the first of which will be held by the House Ways and Means Committee on March 17, 2011.

AAEI has been a national voice for the international trade community in the United States since 1921. AAEI represents the entire spectrum of the international trade community across all industry sectors. Our members include manufacturers, importers, exporters, wholesalers, retailers and service providers to the industry, which is comprised of brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. Many of these enterprises are small businesses seeking to export to foreign markets. AAEI promotes fair and open trade policy. We advocate for companies engaged in international trade, supply chain security, export controls, non-tariff barriers, import safety and customs and border protection issues. AAEI is the premier trade organization representing those immediately engaged in and directly impacted by developments pertaining to international trade. We are recognized as the technical experts regarding the day-to-day facilitation of trade.

B. AAEI's Statement on Free Trade Agreements

AAEI has written this testimony to provide policymakers with practical reasons why the United States should pass the three pending free trade agreements (FTAs) with Colombia, Korea, and Panama. From both an import and export perspective, an expanding network of FTAs is necessary for U.S. companies to maintain international competitiveness.

a. FTAs Keep the United States Competitive

The current challenges posed by the difficult economic climate and the effects of increased global competition require U.S. companies (of all sizes) to focus on customs planning to reduce operational costs now more than ever.

Specifically, U.S. companies evaluate customs duties as an element of the total landed cost to fully consider raw material sourcing and global product distribution decisions. FTAs can be leveraged to reduce or eliminate customs duties (as well as reduced Customs administration fees), which improves cash flow and/or reduces above-the-line costs.

U.S. companies export a diverse range of products, including vast amounts of raw commodities such as timber and agriculture (e.g., wheat and corn). In addition, small, medium and large U.S. manufacturers export finished products such as petroleum derivatives, civilian aircraft, automobiles, medical supplies, pharmaceuticals, machinery and construction equipment. These finished products are often high-value products which require specialized skill, high-quality control and technology produced by American workers.

The United States is currently a signatory to 13 FTAs. Accordingly, these FTAs enable U.S. companies to export goods made by American workers (and technology) to reduce or eliminate the customs cost when shipping to these 13 foreign markets; thus, making the U.S. commodities and finished goods more competitive against foreign producers.

For instance, approximately 80% of U.S. exports to Colombia will receive duty free treatment upon entry into force, including: certain agricultural goods, construction equipment, aircraft and parts, automobile parts, fertilizers and agro-chemicals, information technology equipment, medical supplies and equipment, and pharmaceuticals. For these goods, U.S. companies will immediately become more competitive in the Colombian market.

For U.S. importers, FTAs also play an important role in providing U.S. companies with the ability to source low value components duty-free (or reduced duty) from other countries. The FTAs affect on operating income is immediate to U.S. companies, who can then produce cost-competitive products for consumption in the U.S. and abroad.

**b. FTAs Help Many U.S. Companies**

We believe it is important to note that FTAs benefit all major industry sectors. As such, there are a significant number of U.S. companies utilizing FTAs.

AAEI conducts an annual Benchmarking Survey asking trade compliance professionals over 200 questions about importing goods to and exporting goods from the United States. It is the most comprehensive survey conducted in the international trade industry. Some of the questions asked in the survey focus on FTAs. For example, one question asks "How much [customs] duty do you avoid annually by claiming NAFTA on US imports?" The significant plurality of respondents (61%) claim duty-free entry on NAFTA importations, of which 29% save more than \$1 million in duties. See, AAEI 2010 Benchmarking Survey Results.

Moreover, FTAs have become a permanent feature of the U.S. trade environment. In AAEI's 2010 Benchmarking Survey, only 29% of the respondents indicated that they do not use any FTAs. Among the most popular FTAs are: NAFTA (42%), Australia (29%), Israeli (21%), Singapore (18%), Chile (15%), and DR-CAFTA (11%).

**c. FTAs Create Supply Chain Efficiencies and Flexibility**

Global supply chains are constructed (and modified) based upon multiple variables that change quickly -- attractiveness of low-cost manufacturing locations, ability to produce large volumes economically, emerging market demand and rising commodity prices affecting transportation costs. U.S. companies need to build efficient and flexible supply chains that can help tame complexity, save money, and serve customers better.

More than just reducing customs duties, FTAs enable supply chain planners to more rapidly respond to changing market conditions (some of which are listed above). FTAs create faster and more predictable trade operations as foreign Customs and Commerce authorities are required to modernize their infrastructure and standardize their import and export regulations for FTA implementation. In many ways, the

adoption of common international tax principles and rules by tax authorities is a comparable experience. FTAs, like the international tax treaties, allow U.S. companies to make informed decisions on how to best plan, manage and operate international supply chains.

d. The United States Has Experience with FTAs

FTAs have been part of U.S. law since 1979 when Congress passed the U.S.- Israel Free Trade Agreement. As a result, the U.S. trade community has a significant experience in using FTAs and how to comply with the rules adopted with each new FTA. The experienced trade compliance functions provide U.S. companies an additional advantage to more effectively utilize FTA duty preferences than foreign competitors.

The U.S. spends considerable time developing each FTA, which results in complex and varying Rules of Origin. However, U.S. companies utilizing FTAs have developed robust trade compliance programs so that the risk for abuse of the duty preference or non-compliance is minimal. The proliferation of automated global trade management solutions further simplifies the data gathering process and Rule of Origin analysis.

C. Conclusion

In conclusion, we appreciate the opportunity to submit these comments and hope that the House Ways and Means Committee, Subcommittee on Trade carefully considers passing the outstanding Free Trade Agreements. We hope this paper helps to reaffirm the importance and impact that FTAs can have on U.S. companies to realize substantial advantages in the immediate future and over the long term. AAEI looks forward to working with the Committee on this important issue.

**Statement of BR McCaffrey Associates, LLC**

**STATEMENT FOR THE RECORD  
 SUBMITTED BY GENERAL BARRY R. McCAFFREY (USA, Ret.)  
 TO THE SUBCOMMITTEE ON TRADE  
 COMMITTEE ON WAYS AND MEANS  
 U.S. HOUSE OF REPRESENTATIVES  
 MARCH 17, 2011**

Chairman Brady and Ranking Member McDermott it is an honor to appear before this committee to strongly endorse rapid Congressional approval this year of the three Free Trade Agreements which were signed by the US Government so many years ago. (Colombia 22 November 2006—Panama 28 June 2007—South Korea 30 June 2007).

During much of my adult life I have been privileged to work with all three of these vitally important US Allies as they have made the transition to increasingly sophisticated democracies and advanced economies. All three nations will be increasingly important partners in US global international diplomacy. The passage of these three FTA agreements will likely increase our exports by \$13 billion and create 250,000 jobs to help offset our disastrous US unemployment rate.

I have lived in Panama for several years on two assignments as a military officer and consider that beautiful country a second home. It is obviously a crucial US Latin-American strategic partner and a national security obligation because of the vital importance of the Panama Canal. We understand the Administration's perspective that Panama needs to provide more effective tax transparency. However, the totality of our interests suggests the immediate need to pass the FTA for Panama.

The vital importance of South Korea to our economy, our national security, and our diplomatic influence on the Pacific Rim needs no explanation. This FTA alone could substantially increase US employment and further strengthen the crucial economic ties with this brave ally which is central to our defense of the region. It is hard to find a more dramatic record in history of a nation that has risen from the ashes of destruction to become a vibrant democracy and economic power. We simply must move forward on this Korean FTA.

Let me focus much of my support in this Hearing to discuss the enormous importance of passage of the Free Trade Agreement with Colombia. I consider it an embarrassment to the United States that we have so painfully treated such a vital and loyal ally in a region where Colombia's public alliance with the US has been badly received by many of her neighbors. I am a friend of Colombia and have worked closely with their national political, military, and law enforcement leadership for more than sixteen years. I admire the enormous courage of their people and the commitment to the rule of law of their political Administrations under the leadership of first President Pastrana --then President Uribe-- and now President Santos.

Colombia has a bloody and chaotic national history since the 1948 beginning of "La Violencia" which plunged the nation into internal murderous conflict with the FARC, the ELN, the AUC, and criminal drug cartels. This bitter internal struggle was marked by extreme cruelty, injustice, and poverty inflicted on the 45 million Colombian people -- principally by internal terrorist organizations -- but also sadly sometimes by rogue Government forces and also by private citizens acting as vigilantes. By 1996 Colombia was on the edge of internal collapse.

The personal courage of Colombia's political and judicial leadership backed by the extraordinary bravery of the Colombian National Police and the Colombian Armed Forces turned around a disaster which was about to engulf the third largest population in Latin-America. The US played a crucial supportive role in that successful comeback struggle with "Plan Colombia" which was signed by President Clinton and President Pastrana in Cartagena in 1999. The Colombian Police are now back in strength in all the provinces of Colombia. They have become a world class law enforcement organization. Colombia has made enormous progress in disarming the dreaded AUC private militias. The FARC and the ELN have completely lost public support and have suffered horrendous defeats by the re-vitalized Colombian Security Forces. The Colombian military have made significant strides in increasing their combat capability--- and even more importantly their commitment to the rule of law and subordination to civil authority.

There can be no doubt that Colombia has made huge strides in strengthening the rule of law, protecting human rights, reducing poverty, and promoting civil governance. President Santos has strongly committed his administration to continuing to address the protection of labor rights, to reducing any violence against labor leaders, and to the essential issue of land reform. Colombia stands as a dramatic successful example of a nation committed to democratic principles which is now emerging from sixty-four years of dreadful violence. They are without question the most valued ally the US has in the America's.

The stalled FTA with Colombia has allowed the EU, Canada, Brazil, Argentina, Chile and others to forge ahead of the US and sign trade deals with Colombia. The US is Colombia's largest trading partner. Colombia is our third largest trading partner in Latin-American. More than 250 US businesses are present in Colombia. More than 60,000 Americans live in Colombia. However, the stalled FTA has been a disaster for US economic interests. US farm exports to Colombia fell 48% between 2008 and 2009. Farm exports fell another 45% in 2010. Our market share of Colombia's agricultural imports fell from 75% to under 25% in two years.

What are we thinking of? The competitive entry of the EU and Canada into Korea and Colombia alone -- have caused us to lose 383,000 US jobs. Treasury Secretary Timothy Geithner said in reference to Colombia that "the longer we wait, we lose more business and other countries come in. It makes no sense to us as a country to wait." I join my former colleagues US Trade representatives Mickey Kantor and Charlene Barshefsky in urging support for the accelerated passage of all three FTA's.

In my judgment, it is a serious political mistake to decouple the Korea FTA from the Congressional approval of agreements on Panama and Colombia. We must remember the enormous political and economic importance of both Panama and Colombia to US national interests. Strongly recommend that Congress act now to approve all three FTA's.

