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**A Contentious U.S. – Andean Free Trade Agreement:  
Do It Right, or Not at All**

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*Executive Summary*

The United States and the Andean countries of Ecuador, Colombia and Peru are meeting this week in Washington to continue negotiations for a Free Trade Agreement. Significant issues remain to be resolved, particularly in the areas of agriculture, intellectual property, labor standards, and environmental requirements. Yet negotiators have set an ambitious time frame, aiming for conclusion of negotiations in this round and ratification by the middle of 2006. Interviews with U.S. policymakers and analysts, and with a broad range of Andean policymakers and representatives of farmer, worker, and industry organizations reveal serious concerns about the pace of the negotiations, the lack of communication and engagement between the administration and society in the Andean nations, and ultimately the effects of the agreement on livelihoods in the three South American countries.

A free trade agreement between the United States and the Andean countries has the potential not only to increase trade and promote economic growth, but also to develop stability and democracy in the Andes. However, if the negotiations are treated as a zero-sum competition, in which each side attempts to maximize the concessions received from the other while ignoring their larger implications, the agreement has the potential to undermine those very goals: it may worsen already severe unemployment and inequality in the Andes, fuel the drug trade, and aggravate political and civil conflict. This risk is increased by the rushed pace of negotiations. If the U.S. and the Andean countries establish a free trade agreement, it must support, rather than undercut, the larger goals of cooperation and economic development within the hemisphere. For this to occur, the following steps should be taken:

- **The pace of negotiations should be slowed to allow thorough negotiation and consensus building in all four countries on contentious issues. The U.S. Congress should renew the Andean Trade Promotion and Drug Eradication Act (ATPDEA) to enable this. Negotiations should not exclude Ecuador in the rush to reach completion.**
- **U.S. and Andean governments should actively engage all sectors of society, particularly the Andean groups most vulnerable to the dislocations of trade liberalization, in order to build consensus and ensure the trade agreement does not undermine the goal of political stability and strengthening of democracy.**
- **U.S. and Andean governments should build a broader base of support for ratification of the agreement by including strong labor and environmental provisions.**
- **Andean countries should prepare comprehensive plans for a smooth transition to take advantage of trade opportunities and adjust to the short term challenges of free trade. The U.S. should assist in this preparation by allowing special treatment for areas which generate significant employment in the Andes, by lengthening phase-outs, and by sufficiently funding targeted capacity building to ensure the Andean countries can utilize their access to U.S. markets, and can develop alternatives to uncompetitive sectors.**

## ***I. Context***

Negotiations for a U.S.-Andean Free Trade Agreement (AFTA) began in early 2004. The initiative included Colombia, Ecuador, Peru and Bolivia; the latter moved to observer status at the end of July 2005 because of political upheaval in the country.<sup>1</sup> The AFTA is one of a series of bilateral agreements the U.S. is negotiating concurrently with the World Trade Organization Doha round. The Free Trade Area of the Americas, a U.S. vision for hemispheric integration, is currently stalled by disagreement on political perspectives and over agricultural subsidies, among other issues. AFTA is being negotiated on the sidelines of these larger initiatives.

In this context of uncertain multilateral and regional progress in trade, negotiations for a regional agreement present an alternative channel for the U.S. and the Andean countries to pursue trade liberalization. While these countries are also discussing trade agreements with the EU and other South American nations, negotiations with the U.S. were prioritized for a number of reasons. The U.S. is the market for approximately 41% of Andean exports; it is also a potential source for significant foreign investment.<sup>2</sup>

The U.S. has a number of reasons to pursue AFTA. The Andean economies import only \$8.1 billion a year from the U.S., which is relatively little for the size of their economies: the DR-CAFTA countries, with half the total Gross Domestic Product, import \$12.6 billion annually from the U.S.<sup>3</sup> There is a strong U.S. interest in further tapping their markets. AFTA relates to U.S. energy interests as well, since Ecuador is its second largest supplier of oil in South America. The U.S. also has significant strategic interests in the region related to the illicit drug trade, immigration, and regional stability. It is precisely because of these larger interests, which prompted the parties to initiate negotiations in the first place, that the AFTA warrants special caution.

## ***II. Current status of the negotiations***

At the start of this week's negotiation round, five negotiation topics have been settled: technical barriers to trade, trade capacity building, safeguards, financial services, and customs. There are fourteen other areas which remain open for negotiation: textiles, market access, intellectual property rights, agriculture, investment, government procurement, sanitary and phytosanitary measures, telecommunications (electronic commerce is part of this area and is closed), environment, labor, dispute settlement, competition policies, rules of origin, and services.

According to policymakers and negotiators we interviewed off the record, the four most sensitive areas of negotiation are agriculture, intellectual property, labor and environment. Agriculture is still the most difficult area; it has been discussed at a bilateral level for the last few months, but will be a key issue for this round. U.S. and Andean policymakers interviewed identified the most contentious points in these areas, below.

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<sup>1</sup> "EEUU pone en observación a Bolivia para firmar un TLC." *La Jornada* (La Paz). July 26, 2005.

<sup>2</sup> "Programa de Apoyo a Las Negociaciones Comerciales," Comunidad Andina, available at <http://www.comunidadandina.org/panc/> (last visited Nov 10,2005).

<sup>3</sup> DR-CAFTA is the United States-Dominican Republic-Central American Free Trade Agreement. Trade statistics from United Nations Commodity Trade Database, available online at <http://unstats.un.org/unsd/comtrade/> (last visited November 15, 2005). Gross Domestic Product data aggregated from World Bank World Development Index, available online at <http://devdata.worldbank.org/data-query/>.

<b>Area</b>	<b>Controversies</b>
Agriculture	<p><b>Exemption of Sensitive crops; Safeguards; Tariff Phase-outs</b></p> <p>The Andeans are pushing for certain crops to be excluded from tariff reduction or to be subject to a permanent safeguard because of their importance for the economies and livelihoods. Rice, corn, and chicken parts are the sensitive crops emphasized most by the Andean negotiators, while wheat, sugar, soy beans, beef, dairy products; and cotton (especially for Colombia) are also significant for these countries. The U.S. wants all safeguards to be temporary, and to be determined by volume of imports rather than by price, while the Andean countries would like to maintain a price band system, which adjusts the import tariff periodically to maintain the price of the product within a range, or “band.” There is also a dispute over which products will be included in the four categories that determine the length of tariff phase-outs.</p>
Intellectual Property and Environment <sup>4</sup>	<p><b>Pharmaceutical Access:</b> Andean civil society and media, along with UN agencies, have expressed concern that the following U.S. proposals could have an impact on citizens’ access to medicine.<sup>5</sup></p> <ul style="list-style-type: none"> <li>• <b>Length of terms for patents</b> The U.S. proposes an extension of patent protections from 20 to 25 years to compensate for delays in processing patents in the Andean countries.<sup>6</sup></li> <li>• <b>Test data</b> U.S. negotiators want a five-year delay before the test data originally submitted for approval of a medicine can be used to seek approval of generic medicines.</li> <li>• <b>Second use patents and pharmaceutical access</b> These allow a new patent if a new use is found for an existing medicine, extending the company’s exclusive right to produce it.</li> </ul> <p><b>Patenting of genetic material</b> U.S. negotiators want the agreement explicitly to allow the patenting of plants and animals, while the Andean negotiators are concerned that this could have a negative impact on farmers’ and researchers’ use of seeds, and on biodiversity.</p> <p><b>Biodiversity and Indigenous Knowledge</b> The Andean countries want to include biodiversity language in the agreement, including a requirement for patent applicants to reveal the sources of genetic material and indigenous knowledge, and to show evidence that they have obtained informed consent from the communities involved, as well as made arrangements for fair benefit sharing from the invention. The U.S. so far has not agreed to inclusion of this language.</p>
Labor <sup>7</sup>	<p><b>National or International Standards</b> National law or international standards may be used as a basis for the labor provision.</p> <p><b>Enforcement</b> Sanctions for ineffective enforcement of labor rights and the possible inclusion of non-discrimination in the list of labor rights are potential issues.</p>

<sup>4</sup> A number of environmental issues overlap with Intellectual Property issues, so they are grouped together here.

<sup>5</sup> “ONU demanda proteger la salud pública en negociaciones del TLC,” *La Republica* (Peru), July 14, 2005.

<sup>6</sup> Letter from Representative Jan Shakowsky et al. to USTR Rob Portman, October 31, 2005.

<sup>7</sup> The labor issues are more contentious within the U.S., particularly in the U.S. Congress, than between U.S. and Andean negotiators. The challenge of building consensus within the U.S. is discussed in section IV(D).

There are several other sensitive issues, such as tuna (which is controversial in the discussions of market access and rules of origin) for Ecuador; apparel and textiles (which are disputed in market access) for Colombia and Peru; and controversy over the authority of the WTO dispute settlement body or a regional committee for dispute resolution on sanitary and phytosanitary (SPS) issues.

If negotiations are to be completed this year, these complex issues must be resolved in this week's round of talks in Washington. The trade ministers of Colombia and Ecuador have both expressed doubt that this will be possible: Jorge Humberto Botero of Colombia said that time is short for coming to an agreement in the agriculture sector in AFTA,<sup>8</sup> Jorge Illingworth of Ecuador mentioned that talks in the agricultural area had not progressed for months, and "may not be solved by late November."<sup>9</sup> Most recently Assistant USTR Regina Vargo has said it would be "incredibly challenging" to complete the negotiations on schedule.<sup>10</sup>

There is also a risk that Ecuador might be left out of the agreement if it is rushed to a conclusion. This is an issue partially because the political opposition to the agreement is greater there and thus the concessions the administration is willing to make may be less than Peru or Colombia; it has also arisen partially because of political instability in the country, which may give the United States an incentive to allow it to be left behind. This could have severe consequences for the country, including an increase in informal and black market transactions; these issues will be discussed further in section III. This risk is also intensified by the fast pace of negotiations; it should be avoided.

If negotiations are rushed to a conclusion, the parties run the risk of submitting to their legislatures an agreement which will not only require a great deal of political capital to ratify in all four countries, but may have flaws that undermine their larger foreign policy objectives.

### ***III. Interviews Reveal Concerns with Serious Consequences of a Shortsighted AFTA***

Twenty-five individuals were interviewed for this essay, nine from the U.S., six from Ecuador, four from Peru and six from Colombia. Respondents represented negotiation teams, other policymakers, NGOs, and in the Andean countries, associations of industry, labor and farmers. The U.S. respondents were trade policymakers and analysts representing a range of political perspectives. The Andean groups represent a broad base of society and economy, encompassing sectors that provide the livelihoods of the majority of the population, including rural and indigenous people. While not large enough to be a representative sample, these respondents contribute perspectives that do serve the interests of the majority of people in Ecuador, Colombia, and Peru. Collectively we refer to such organizations as "civil society," which we use to imply representation of the whole population rather than only specific interests. Ten of the respondents preferred to comment off the record; their thoughts are incorporated without identification into our analysis and recommendations.

We asked respondents for their assessment of the current negotiations situation, as well as any involvement in the process their organizations had taken, and any concerns they had about specific issues in the negotiations. Eight of eighteen respondents to a question about the likely impact of AFTA on the people of the Andean countries identified it as a net negative impact for the majority of Andeans, while two others identified significant challenges and an ambiguous net impact. However, when asked what their recommendations would be to their governments, none of those who predicted a negative or ambiguous impact stated unequivocal opposition to AFTA. Rather, three expressed a preference that their governments not sign the AFTA they expect to come out of negotiations, and gave specific changes that would make it beneficial in their view. Six gave specific recommendations without expressing opposition to the AFTA in its current state. Four explicitly mentioned a need for more time for negotiations, for specific purposes including economic analysis of sensitive areas and consultation with the public and civil society. Of the eight respondents who predicted a net positive effect, seven had specific recommendations to improve AFTA. While the sample of interviewees was relatively small, it is significant that many who foresee a negative impact of AFTA, even those who oppose it at present,

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<sup>8</sup> "Disputa agrícola en negociación con Estados Unidos pone en peligro TLC." *Gestión*. Lima. October 31, 2005.

<sup>9</sup> Meeting at Inter-American Dialogue. October 20, 2005

<sup>10</sup> "Levin Sees Little USTR Willingness to Compromise on Labor in FTAs." *Inside U.S. Trade*, November 10, 2005.

have specific and reasonable recommendations and are open to supporting an agreement they perceive as mutually beneficial. While proponents sometimes dismiss the concerns of the opposition as simplistic protectionism and unwillingness to accept change, this is not the case for all groups. It is important to consider the interests of some groups, such as the indigenous populations of the Andean countries, even where it is not feasible to create an AFTA which they would support. This is true not only from a development and poverty alleviation perspective, but also for the pragmatic reason that they wield considerable political power, and strongly alienating them could have damaging consequences for civil stability. But there is also room for a broader consensus on AFTA if it is seen as mutually beneficial.

As all the leaders and analysts we interviewed recognize, free trade has an unambiguous positive impact on some sectors of the economy and population; however, it will certainly also have a negative impact – at least in the short term – on others. Decreased consumer prices particularly benefit urban consumers; some industries will benefit from export growth or foreign investment. Other domestic producers, particularly agriculture products in the Andean countries, will be exposed to negative effects. The brunt of the adjustment costs are likely to fall on farmers and the rural population in the Andean countries. Studies of the potential impact of the FTA on agriculture show that Colombia could experience a 57% reduction in income and a 35% reduction in employment in nine agricultural sectors, and that Ecuador would experience a significant decrease in agricultural employment.<sup>11</sup> Another model developed by Inter-American Development Bank economists predicts a net employment gain, but still points out that labor will be displaced from some sectors, entailing “structural adjustments in production and labor markets; this could be painful, particularly in the short term.”<sup>12</sup> This is likely to aggravate socio-economic inequality in the Andean countries, which is already among the most extreme worldwide.<sup>13</sup> Any negative impact on the rural population provides a stimulus for rural – urban migration and emigration to other countries. The average growth rate of the urban population from 1990-2003 was 2.6% in Colombia (compared to 1.8% in the population as a whole), 2.7% in Ecuador (1.8% overall) and 2.2% in Peru. (1.7% overall); much of this difference is caused by already high rates of rural – urban migration.<sup>14</sup> Emigration to other countries is also common: all three countries have negative net migration rates, while Ecuador’s is one of the highest in the world, with on average 6.07 individuals leaving per 1,000 citizens – or to put it another way, for every four babies born, one person emigrates.<sup>15</sup> Because inequality and migration has the potential to worsen political instability in the region and lead more people to turn to the drug trade and migration as solutions to their poverty, these are serious geopolitical issues. More broadly, extreme inequality is thought to stunt long-term development, poverty alleviation, and even economic growth, an outcome which

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<sup>11</sup> Colombian Ministry of Agriculture and Rural Development, *Colombian Agriculture Before the Free Trade Agreement with the United States*, July 2004. CEPAL, “Los Impactos diferenciados del Tratado de Libre Comercio Ecuador - Estados Unidos de Norte America sobre la agricultura de Ecuador.” (January 5, 2005).

<sup>12</sup> Josefina Monteagudo, Laura Rojas, Augusto Stabilito, and Masakazu Watanuki, “The New Challenges of the Regional Trade Agenda for the Andean Countries,” paper presented at the seventh annual conference on global economic analysis, June 17-19, 2004, Washington DC. Available online at <https://www.gtap.agecon.purdue.edu/resources/download/1853.pdf> (last visited November 16, 2005).

<sup>13</sup> “Inequality and Human Development.” *Human Development Report 2005*. United Nations Development Program. p. 55.

<sup>14</sup> *The State of the World Children’s 2005*. UNICEF. Available online at: <http://www.unicef.org/sowc05/english/statistics.html> (last visited Nov 16, 2005).

<sup>15</sup> Central Intelligence Agency World Factbook, available online at <http://www.cia.gov/cia/publications/factbook/geos/ec.html> (last visited November 16, 2005).

<sup>19</sup> See World Bank: *World Development Report 2006: Equity and Development*, World Bank: Washington, DC, 2006. See also Branko Milanovic, *Worlds Apart*, Princeton, New Jersey: Princeton University Press, 2005.

would be in the worst interests of all concerned, including the U.S. producers who hope to increase consumer exports to the Andean markets.<sup>19</sup>

In the long term, the negative impacts of trade liberalization also worsen anti-Americanism in Latin America, which has been increasing in recent years. This tendency was clearly visible in the Summit of the Americas, which took place on November 4-5 in Mar del Plata, Argentina, not only from more than ten thousand protestors gathered for a “counter-summit,” but also through the attitudes of some delegates to the Summit itself.<sup>20</sup> Many Latin Americans are extremely hostile to the U.S. trade agenda, which they see as a strategy to obtain economic benefits at their expense. While economic self interest is natural for all states to pursue, the U.S. has broader interests at stake. Its capacity to win political and economic support in the region for the long term depends in part on seen as a partner, not a bully.

Because of the larger implications of large-scale economic destabilization in the Andean region, no AFTA may be better than a badly negotiated AFTA; however, a mutually beneficial AFTA is certainly the best possible outcome. All our respondents recognize and accept the fact that some sectors of the population will be negatively affected by any free trade agreement; their concern arises from the need to mitigate and manage the negative impact. The negative effects of free trade can be managed if the parties sequence the trade liberalization carefully and plan for the transition. This requires treating sectors that currently provide significant employment in the Andean countries with flexibility; ensuring a sufficient time period for industries to adjust, to allow the gradual movement of labor into new jobs rather than creating a wave of unemployment; and building capacity for growth in sectors that could take advantage of access to the U.S. market, helping to compensate for losses in uncompetitive areas. To manage the inevitable dislocations, robust safety nets are needed. These must be targeted to ensure that households which lose income, particularly in rural areas, are able to cope effectively, preventing migration and illicit activities.

#### ***IV Recommendations***

##### ***A) Allow Sufficient Time for Thorough Negotiation and Preparation for Implementation***

The fast pace of negotiations, cited as a concern by four of our interviewees, is the result of a number of political factors. The push to conclude negotiations by the end of 2005 has come principally from the Andean leaders and negotiators, spurred by the elections that will take place next year in the three of the countries, the expiration of the Andean Trade Promotion and Drug Eradication Act (ATPDEA), and the expiration of the U.S. President’s Trade Promotion Authority. The political challenges, however serious, pale in comparison with the potential consequences of disrupting economic and political stability in the Andean region. Therefore, none of these events provide sufficient reason to rush to conclude FTA negotiations. ATPDEA can and should be renewed, reducing the pressure on the Andean countries. Upcoming elections and TPA expiration should not be treated as deadlines, but rather addressed through more effective engagement and coalition building in all four countries. Additionally, the AFTA should not be implemented without the participation of all three Andean countries, because of the potential for severe economic consequences which might affect Ecuador if it is left out of the agreement.

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<sup>20</sup> “Summit of Americas Protest Turns Violent,” CBC News, November 4, 2005. Available online at <http://www.cbc.ca/storyview/MSN/world/national/2005/11/04/summit-violence051104.html> (last visited November 15, 2005).

## **The Andean Trade Promotion and Drug Eradication Act should be renewed.**

The impending expiration of the Andean Trade Promotion and Drug Eradication Act (ATPDEA) is a central reason for the Andean governments' push to conclude AFTA negotiations before the end of the year. Preferential duty-free treatment for many exports from Ecuador, Bolivia, Peru, and Colombia began in 1991 with the Andean Trade Preference Act (ATPA), and was continued and extended to more products by ATPDEA on October 31, 2002.<sup>21</sup> U.S. trade with the Andean countries has grown substantially since ATPA was enacted in 1991, at times growing as rapidly as 10-27 percent a year.<sup>22</sup> In 2004 Ecuador's exports of nontraditional products (such as cut flowers, broccoli, and pineapple) to the United States increased from \$719 million in 2002 to \$876 million in 2004, and total Colombian exports to the U.S. grew to a record \$7.36 billion, increasing over \$2 billion since the ATPDEA was implemented.<sup>23</sup> This unilateral preference program has increased trade and generated employment in some sectors of the Andean region, without the Andean countries having to liberalize their economies to the same degree. Unless it is renewed, ATPDEA will expire in December 2006, and the Andean countries fear that they would lose preferential access to American markets. This would certainly have a negative impact on their economies, as sectors which have developed in response to trade preferences would be forced to adjust suddenly.

Although we did not ask about the preference program, seven of our respondents expressed concern about ATPDEA renewal. According to Beethoven Herrera Valencia, professor of economics at the National University of Colombia, an American delegation of legislators, who visited the Andean Countries in October to analyze the state of the negotiations, had suggested that ATPDEA would not be renewed.<sup>24</sup> Laura Carlsen, Director of the Americas Program of the International Relations Center (ICR), pointed out:

“[US negotiators] have threatened to withdraw or not renew the current trade preferences these countries enjoy--under the Andean Trade Promotion and Drug Eradication Act in the Andean case and the Caribbean Basin Initiative and others in Central America. Since many industries had already oriented production toward markets assured under these measures, the threats have real weight. Even government officials have complained that in effect the FTA process means that these nations are forced to concede in non-trade areas such as intellectual property and investor protection only to assure the market access they already have.”<sup>25</sup>

The perception of the use of preference withdrawal as a tool for negotiation hurts the U.S. image in Latin America, and should be avoided. The leaders of Ecuador, Peru and Colombia should ask Congress to renew ATPDEA, a request which is legitimized by their active participation in AFTA negotiations. Congress should renew the preference program, allowing negotiations to proceed under a more flexible time frame, and thus giving Andean policymakers the opportunity to ensure livelihood security for their own populations, and improving stability in the region.

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<sup>21</sup> Andean Trade Promotion and Drug Eradication Act, December 31, 2002. available online at [http://www.cbp.gov/xp/cgov/import/international\\_agreements/atpa/](http://www.cbp.gov/xp/cgov/import/international_agreements/atpa/), (last visited Nov 10, 2005)

<sup>22</sup> United States Trade Representative. “Second Report to Congress on the Operation of the Andean Trade Preference Act as Amended.” April 30, 2005. available online at [http://64.233.167.104/search?q=cache:nNYUWNn1fmoJ:www.ustr.gov/assets/Trade\\_Development/Preference\\_Programs/ATPA/asset\\_upload\\_file337\\_7673.pdf+ATPDEA+has+increased+trade+and+employment&hl=en](http://64.233.167.104/search?q=cache:nNYUWNn1fmoJ:www.ustr.gov/assets/Trade_Development/Preference_Programs/ATPA/asset_upload_file337_7673.pdf+ATPDEA+has+increased+trade+and+employment&hl=en) (last visited Nov 10, 2005)

<sup>23</sup> Ibid.

<sup>24</sup> Phone interview. Oct 17, 2005.

<sup>25</sup> Laura Carlsen. “Cafta and Afta.” Foreign Policy in Focus. Oct 20, 2005, available at <http://www.fpiif.org/fpiftp/2896> (last visited Nov 13, 2005).

## **Upcoming elections present an opportunity for popular and bipartisan engagement**

Presidential elections in all three countries will take place in 2006: Peru in April, Colombia in July, and Ecuador in October. Andean public opinion on AFTA is highly polarized. In numerous cases, the platforms of politicians and political parties are centered around their position on the AFTA negotiations. This has encouraged leaders in the Andean countries to push for AFTA negotiations to be concluded well before elections, to avoid presidential elections becoming a referendum on the trade agreement, which has grown less popular over time. However, this strategy runs the risk of widening the fissures between government and society that destabilized Bolivia and are threatening Ecuador. (These issues are discussed at greater length in section B.) It is in the interest of Andean society and of the governments themselves to take the more labor intensive route of building support for an agreement (and building an agreement that can be supported) rather than trying to push it through.

U.S. Congressional elections in November 2006 are likely to have the opposite effect on the schedule of AFTA, because the administration is unlikely to want a potentially controversial vote on a free trade agreement to take place near the elections. Yet it is clear after the controversial close vote on CAFTA, and what some analysts have called a “near-total collapse of a bipartisan trade consensus in Washington,” that the administration must work during the negotiation process itself, not after the fact, to build a trade agreement that can enjoy a broad base of support.<sup>26</sup> Constructive engagement between the parties is necessary to secure an agreement that can be ratified without great rancor or expenditure of political capital. This is good policy because it has the potential to help rebuild bipartisan cooperation on trade in the United States, and to reinforce democratic consultation processes within the Andean societies, rather than undermining their efforts at democratic development.

## **Trade Promotion Authority will not make or break the FTA**

A great deal of attention has focused on submitting AFTA to the U.S. Congress before the expiration in 2007 of U.S. Trade Promotion Authority, or TPA. TPA mandates a simple yes or no vote to ratify trade agreements once they are negotiated. It is important to note, however, that any agreement negotiated while TPA is in place will be subject to this ratification process, regardless of when it is submitted to the Congress, even if it is ratified after TPA expiration. In addition, the President may submit the agreement to Congress at any time after it has been signed, and may delay submission for years if it is politically expedient. It is also important to note that TPA has not been the decisive factor in whether FTAs have been completed: the U.S.-Jordan FTA was negotiated and ratified when the President did not have TPA. Regardless of whether AFTA negotiations are concluded in time to fall under TPA, it is clear that consensus building between political parties and civil society will be necessary in the United States as much as in the Andean countries to develop a broad base of support for the FTA.

## **AFTA should not be implemented without all three Andean partners**

Ecuador’s participation in the conclusion of the negotiations may be in doubt. The option of an AFTA between only the U.S., Peru and Colombia has been suggested in the public arena; some observers of U.S. politics on Latin America suggested it is likely that the Agreement would pass with these two countries.<sup>27</sup> However, from the Ecuadorian perspective, the situation of being left behind in the agreement has risks. Ecuador could be impacted by cheap American imports through smuggling from Peru and Colombia, but it would not be able to

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<sup>26</sup> Daniel Erickson and Eric Jacobstein, “Free Trade isn’t free of partisan politics.” *Los Angeles Times*. September 26, 2005.

<sup>27</sup> Eric Jacobstein, Inter-American Dialogue. Interview. Oct 21, 2005.



export its products to the U.S duty-free unless ATPDEA is extended.<sup>28</sup> In other words, Ecuador would receive some of the negative effect of the FTA but it would not benefit from it. This situation is dangerous for the whole region because it would stimulate the black market economy and migration. This alone provides compelling reason not to leave behind Ecuador in the haste to conclude an agreement; it would be preferable to slow down negotiations to ensure that all three Andean countries can stay on board.

### ***B) Engage Civil Society***

We conducted numerous interviews with members of Andean society for this essay, including farmer, business and worker organizations. One of the problems mentioned most frequently by our interviewees was the lack of knowledge and participation of civil society in decisions about the trade agreement. With no outlets for engagement, popular opinion has turned to widespread opposition to AFTA, reflected in the media in each of the three countries, especially in Ecuador. This politicization of the agreement means that more effort will have to be expended for its ratification, compounding the existing political challenges faced by each administration.

When civil society leaders were asked what influence their perspectives have had on the AFTA process, their answers were generally negative. Some national organizations (like Central Unitaria de Trabajadores, Sintratextil (Colombia), Conveagro (Peru), Confederacion de Organizaciones Clasistas (Ecuador) and others) have attempted to initiate dialogue with their national administrations without much success.<sup>29</sup> Luis Zuñiga, President of Conveagro (Convencion Nacional del Agro-Peru), commented that many people feel “deceived by the government” by the process of the AFTA.<sup>30</sup> Mesias Tatamuez, president of the Confederacion de Organizaciones Clasistas del Ecuador, commented: “we are not against the FTA, but we want more dialogue and discussion to include the population in the decisions.”<sup>31</sup>

The response from some of the administrations has been to increase the information available on the web sites of their institutions, such as the Ministries of Commerce. However, in countries where the access to internet is 4% in Ecuador, 5% in Colombia, and 9% in Peru, enhancing the information available on Web sites is insufficient for addressing the concerns of the population and attaining civil society engagement.<sup>32</sup> Andean administrations should initiate dialogue with the population, especially those sectors that will be exposed to the short term negative impacts of the FTA.

### ***C) Build Consensus through Strong Labor and Environmental Provisions***

After the CAFTA ratification debate, it is clear that labor and environmental issues are part of the key to building broader support for trade pacts. Incorporating strong labor and environmental provisions into the FTA holds the greatest promise for building robust, genuine consensus in the U.S. and the Andes in favor of the agreement. A wide range of groups, from organized labor and environmentalists to indigenous peoples, would be more supportive of an agreement which includes stronger labor and environmental provisions than the standard language used in U.S. bilateral FTAs.

Far from being an imposition of U.S. values on the Andean countries, incorporation of stronger environmental and labor standards into AFTA is supported by many Andeans. Sources close to the Andean

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<sup>28</sup> The Bolivian situation has some similarities to what Ecuador could experience if left out of AFTA. However, Bolivia would likely be affected less severely because it has only a 900km border with Peru, while Ecuador shares a 590 km border with Colombia and a 1,420km border with Peru. Nevertheless, the possible negative effects on Bolivia if AFTA is concluded without it and ATPDEA is not renewed are serious; this makes renewal of ATPDEA all the more important.

<sup>29</sup> Mesias Tatamuez, National President, Confederacion de Organizaciones Clasistas del Ecuador. Phone Interview. Oct 21, 2005. Alvaro Morales, Secretary of Informal Economy and Construction, CUT Colombia. Phone Interview, October 17, 2005.

<sup>30</sup> Phone Interview. Oct 19, 2005

<sup>31</sup> Phone Interview. Oct 21, 2005

<sup>32</sup> *The State of the World Children's 2005*. UNICEF. Available online at: <http://www.unicef.org/sowc05/english/statistics.html> (last visited Nov 10, 2005).

administrations have indicated a willingness to include stronger labor provisions in the agreement, for example, but this has not been taken up by U.S. negotiators. Environmental protections through intellectual property rights would ensure that the citizens of Ecuador, Colombia and Peru benefit from any use of the wealth of biological diversity and indigenous knowledge for medicine or research. This is clearly in the economic interest of the majority of the Andean populations, and is supported by indigenous organizations, which represent a powerful political force in the Andean countries: in Bolivia and Ecuador indigenous movements have successfully forced changes in policy and even the resignation of top officials through mass mobilization. Rafael Pandam, the head of international relations of Ecuador's largest indigenous coalition, Confederacion de Nacionalidades Indigenas del Ecuador (CONAIE), expressed opposition to AFTA; he listed concern about "natural resources, biodiversity and our ancestral knowledge" among his key reasons for opposition, along with food security.<sup>33</sup> This is among the reasons that have prompted some indigenous organizations, including CONAIE, to oppose AFTA so strongly that they threaten the government should "pack its bags" if it decides to sign the agreement.<sup>34</sup> Even where it is not possible to gain support of indigenous organizations, some compromise is indispensable to avoid alienating them to the point of instigating political upheaval.

We will elaborate on measures that could be taken to include robust labor standards in AFTA and thus build a stronger, mutually beneficial agreement. We make this case in part to demonstrate the room for consensus building, and use labor as an in-depth example of that potential. The areas of environment and intellectual property are not covered in detail here, but they hold similar potential for compromise and consensus.

As broad a range of observers as ILO Committees of Experts, union representatives, academic institutions, the U.S. State Department, and NGOs, have noted serious deficiencies in labor law and enforcement in Ecuador, Colombia, and Peru. This was confirmed by the majority of our interviewees in the region: fifteen interviewees said there were serious problems in labor law or enforcement in the Andean countries, while only two said there were not major problems, or the situation was generally acceptable. Eight said that major problems existed primarily with labor law enforcement, two said the problems lie with the laws themselves, and three with both. Two union leaders and one representative of an intergovernmental organization drew attention in particular to violence against union leaders in Colombia; four respondents mentioned problems with the rights to association and collective bargaining, and three specified child labor as a serious issue. Many of the civil society leaders and observers we interviewed were concerned with the lack of dialogue and focus on this issue in particular. Flander Falconi of FLACSO-Ecuador expressed concern that differences in competitiveness could lower labor standards, causing "social dumping."<sup>35</sup> Members of the U.S. Congress have also expressed concern publicly as well as directly to U.S. negotiators about labor standards issues in the Andean countries.<sup>36</sup>

Some concerns exist about the impact of labor regulation on economic growth and employment; three respondents brought this up in their interviews, and two touched on the issue. Of course, ideal policies would improve both the quantity and the quality of employment in Ecuador, Colombia, and Peru. But what are the policy options in reality? A number of economic studies have attempted to model the likely impacts of externally imposed labor standards on quantity of employment.<sup>37</sup> The outcomes of such studies vary greatly,

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<sup>33</sup> "CONAIE Anticipa que si gobierno de Ecuador firma el TLC debe hacer maletas," CONAIE press release September 21, 2005. Available online at <http://conaie.org/?q=node/96&PHPSESSID=ce88d455a41075c846e5199bb3842017> (last visited November 16, 2005).

<sup>34</sup> Ibid.

<sup>35</sup> Phone Interview. Oct 19, 2005.

<sup>36</sup> See, among others, "Levin Sees Little USTR Willingness to Compromise on Labor in FTAs." *Inside U.S. Trade*, November 10, 2005. Rep. Nita Lowey, speech to annual conference of Corporacion Andina de Fomento, "Trade and Investment in the Americas," Carnegie Endowment for International Peace, Washington D.C., September 8, 2005. Letter from Representative Jan Shkowsky et al. to USTR Rob Portman, October 31, 2005.

<sup>37</sup> Maskus, Keith, "Should Core Labor Standards Be Imposed Through International Trade Policy?" Policy Research Working Paper 1817. Washington: World Bank, 1997. Brown, Drusilla, Alan Deardorff and Robert Stern, "International Labor Standards and Trade: A Theoretical Analysis" in Bhagwati and Hudec, Eds. *Fair Trade and Harmonization*:

depending on the assumptions, variables and data sets the models include; there is no broad consensus on the relationship between the two. It is also important to note that the labor standards promoted by any trade agreement do not involve impositions such as a specific minimum wage determined by the trading partner. Rather, internationally agreed basic standards for issues like child labor, forced labor, and the right to free association are enforced. For example, the inclusion of non-discrimination into the labor rights required under the agreement, which is under question (see below), has the potential to add significant quality to employment in the Andean countries without detracting significantly from quantity of employment. The possibility of the negative impact on quantity of employment is questionable; if strong labor provisions are applied in conjunction with planning and targeted assistance to boost employment creation in industries which can take advantage of duty-free market access, the overall effect should be positive. Strong labor standards can thus form a part of a larger strategy to ensure a positive economic impact for the Andean countries. The following measures have the potential to enhance greatly the labor provisions in the AFTA as well as to build broad support for the agreement in the U.S. and the Andes:

<b><u>Recommendation</u></b>	<b><u>Rationale</u></b>
Make all labor provisions subject to dispute settlement, as in the U.S.-Jordan FTA.	Most labor commitments in recent U.S. FTAs were merely hortatory, making labor commitments less robust than commercial commitments.
Allow the complainant to choose whether to impose a fine or to suspend benefits for enforcement of labor disputes.	Previous FTAs have shown that linking trade and labor standards is most effective when the incentives facing private firms are aligned with those of the governments who are parties to the trade agreement. <sup>38</sup> Such configuration of incentives is not attainable if the only option is a monetary assessment against the government. At a minimum, fines should be paid by violating firms rather than from tax revenues.
Evaluate the possibility of applying positive incentives as enforcement mechanisms of labor norms to encourage improvement of labor standards.	This method is more likely to be effective in countries without well-functioning judicial systems and rule of law, which is the case of the Andean countries, because it gives employers a greater incentive to comply without a threat of punishment.
Define labor rights provisions that would obligate parties to bring their national labor laws into line with ILO core labor standards.	Address deficiencies in national labor law, rather than only requiring the enforcement of existing national standards, which have key weaknesses in each of the Andean countries. Stimulates political will for labor standards reform where it may not exist among politicians and elites. President Toledo of Peru has publicly expressed willingness to do this.
Include non-discrimination in the list of labor rights in the agreement.	This right is part of the ILO core labor standards. Sources in the Andean administrations have made statements off the record indicating a willingness to include it in the agreement.
Include systems to monitor compliance with labor laws in each country to ensure transparency and credibility.	Especially important in the Andean Countries, which have monitoring capacity and governance constraints.
Provide resources and appropriate commitment from the U.S. for government protections programs that deal effectively with high levels of violence against trade union leaders in Colombia.	Ensures the right to organize in Colombia, and promotes the rule of law over impunity for violence.

*Prerequisites for Free Trade?* Cambridge, MA: Cambridge University Press 1996. Rodrik, Dani, "Democracies Pay Higher Wages." *Quarterly Journal of Economics*, August 1999.

<sup>38</sup> Sandra Polaski, "Protecting Labor Rights through Trade Agreements: An Analytical Guide," *Journal of International Law and Policy*, July 14, 2004. Available online at <http://www.carnegieendowment.org/pdf/files/2004-07-polaski-JILP.pdf> (last visited November 18, 2005).

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We asked all our Andean interviewees about their opinion of the success of labor provisions in previous trade agreements. Only two of them mentioned other agreements that have incorporated some of these recommendations, such as the U.S.-Jordan FTA, as models of stronger labor provisions; most of the others were unaware of differentiation between labor provisions. All the others who were concerned about the labor issues expressed an interest in learning more about different options for labor clauses, some asking extensive questions. This demonstrates some room for engagement on the labor issue if the administrations want to build a stronger base of support for the agreement.

### ***E) Manage the Transition for Stability and Equity***

#### **Allow reasonable concessions in high-employment sectors**

Seven respondents mentioned a compelling need to reduce the impact of AFTA on sectors which provide significant livelihoods in the Andean countries, particularly agriculture. Agricultural organizations have recently staged large-scale protests, such as a recent march in Peru in which ten thousand farmers and supporters called for a special agricultural safeguard on sensitive products.<sup>39</sup> Nineteen percent of the population in Colombia, twenty-four percent in Ecuador, and twenty-nine percent in Peru are farmers, compared to less than two percent in the United States;<sup>40</sup> this translates into significant effects on rural livelihoods and poverty if agricultural markets are flooded with subsidized U.S. products. This runs directly against the efforts of U.S. foreign policy in the region to provide alternatives to coca production by encouraging cultivation of other crops; in addition, the increase in rural poverty will contribute to rural – urban migration, and urban unemployment. Allowing the most sensitive crops to be subject to a permanent safeguard, and extending phase-out periods for tariff reductions on other important crops, would reduce this negative impact on the rural economies of the Andes, making it possible for excess labor to be absorbed gradually into new sectors, rather than creating a wave of unemployment. Several studies have established the potential for job loss on a very large scale, and the need for a great deal of labor absorption in growing industries to make up for it (discussed in section III). Allowing permanent safeguards for the Andean countries' most sensitive agricultural products, and sufficiently long phase-out periods for others, is an investment in a stable development trajectory for the region.

#### **Ensure Transitional Programs are Funded and Ready**

Beyond the negotiating table, economic and technical support will be necessary to allow a smooth transition for the Andean countries into freer trade with the United States and with each other. Even with the best possible agreement, there will still be both sectors which need assistance to take advantage of access to the U.S. market, and households which lose employment and income and will have to make a difficult transition. The U.S. must ensure that all three of its Andean partners are preparing sufficient transition plans to accommodate change at a macroeconomic and at a household level, and that they have enough time to make support programs operational before implementation of the free trade agreement, not afterwards. Such programs must include support programs for households which are negatively impacted by the agreement. Trade capacity building (mentioned explicitly by two respondents as an area requiring more attention) is also needed to ensure that the Andean countries are able to take advantage of their duty free access to the U.S. and Andean markets, particularly expanding into sectors that have the potential to be competitive, replacing jobs and production lost in

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<sup>39</sup> “Agro marcha contra el TLC,” September 11, 2005, *La Ultima* (web news based in Lima), available online at <http://www.laultima.com/noticia.php?id=14607&idcategoria=4>.

<sup>40</sup> United Nations Food and Agriculture Online Statistical Database. Available online at [http://www.fao.org/waicent/portal/statistics\\_en.asp](http://www.fao.org/waicent/portal/statistics_en.asp) (last visited November 12, 2005).

uncompetitive sectors. This includes institutional capacity building in customs reforms, sanitary regulations, the legal system, labor and environmental law enforcement, fair competition policy (especially in relation to medium and small companies).<sup>41</sup> The Andean administrations have expressed a willingness to undertake ambitious regulatory reform, but need planning and focus on their commitments, reinforcement from the U.S., and technical assistance to do so. The U.S., along with multilateral institutions such as the Inter-American Development Bank, must provide such assistance and funding where necessary for this transitional process.

### ***III. Conclusion***

A slower, more thorough negotiation process will allow all four governments to engage civil society and build greater consensus. The negotiators must fashion an agreement that will have broad benefits across society and can enjoy widespread support, by allowing sufficiently long transition periods and, where necessary, special treatment for goods that provide livelihoods to large sectors of the population, and by including strong protections for labor and environmental standards. Not only more time, but also greater effort, are needed to allow governments to elaborate comprehensive plans to assist those who are negatively impacted by the agreement and ensure that they are funded and operational by the time AFTA comes into force. A rushed, poorly negotiated and planned AFTA may be worse for all concerned than no AFTA at all; so it is important that the governments and negotiators of United States and Ecuador, Peru and Colombia ensure AFTA is done right.

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<sup>41</sup> “Pequeñas y Medianas Empresas en America Latina y Articulación Productiva.” ECLAC Website. Available at <http://www.eclac.cl/cgi-bin/getProd.asp?xml=/cooperacion/noticias/cooperacion/4/14084/P14084.xml&xsl=/cooperacion/tpl/p32f.xsl&base=/cooperacion/tpl/top-bottom.xsl>. (last visited Nov 13, 2005).