

# Congress of the United States

Washington, DC 20515

November 7, 2005

Ambassador Robert Portman  
Office of the U.S. Trade Representative  
600 17th Street, N.W.  
Washington, D.C. 20508

Dear Ambassador Portman,

We take this opportunity to raise with you some concerns that we have regarding the current negotiations between the U.S. and Colombia, Ecuador and Peru for an Andean Free Trade Agreement (AFTA). After eleven rounds, the negotiations appear to be at or near an impasse on several issues, including agriculture and intellectual property. Indeed, current demands by the USTR on agriculture may well jeopardize the viability of a stable, prosperous rural sector in the region, leading to the very real possibility of increased coca production and, consequently, transnational crime. Such a result would be at complete odds with current U.S. counter-drug and alternative development policy. Similarly, current intellectual property demands have been criticized as jeopardizing access to affordable medicines to the poorest in the Andean region, which could lead to increased levels of disease and premature death. At the same time, serious concerns with regard to labor law and compliance in the Andean region, including the frequent assassination of trade unionists in Colombia, have not been adequately addressed.

As discussed more fully below, these concerns lead us to question whether the Andean FTA will in fact promote economic development in the Andean region, while at the same time generating new opportunities in the United States, or whether the agreement will bring with it more unemployment, greater insecurity, and crime.

## 1. Trade in Agriculture

In preparation for agriculture negotiations, the Colombian Ministry of Agriculture released a report entitled *Colombian Agriculture and the FTA with the United States* in July 2004. The report predicts that if Colombia eliminated its price band system and undertook substantial tariff reductions in sensitive products, as the U.S. continues to request, farmers could experience an overall 57 percent reduction in income and a 35 percent reduction in employment among workers in nine major agricultural sectors.<sup>1</sup> Indeed, the report sounded a striking warning:

“[If] . . . Colombia [does not take] adequate measures in defense and support of agricultural producers, rural problems could worsen and many of its inhabitants would have no more than three options: migration to the cities or to other countries (especially the United States), working in drug cultivation zones, or affiliating with illegal armed groups. Thus the agreement, if not adequately negotiated, could worsen these three problems that Colombia is trying to remedy and that would be in the interest of the United States to overcome.”<sup>2</sup>

Former World Bank Chief Economist Joseph Stiglitz agrees, explaining in an October 2004 interview, “the United States is spending billions trying to eradicate the cocaine trade and here we are giving them an incentive to grow more coca. . . . If their income from corn and rice and other legitimate crops goes down, they will switch to something else, and the most lucrative alternative is coca.”<sup>3</sup>

Similarly, a 2005 report by the UN Economic Commission for Latin America and the Caribbean (ECLAC) found that Ecuador’s rural sector would be adversely affected, with 21 of 36 products studied reducing their representation in the domestic market.<sup>4</sup> In evaluating Ecuador’s agricultural sector under the terms of a trade agreement with the U.S., the report concluded, “The Ecuadorian agricultural sector loses in any scenario. This includes the improbable case in which the U.S. eliminates subsidies, supports and maintains its tariffs at zero. The net effect is marginally negative, but will impact especially subsistence and medium size producers in rice, corn (white and hard), meat and some dairy products.”<sup>5</sup> In a more likely scenario, where tariffs are eliminated but U.S. subsidies and supports are maintained, the report anticipates that the rural sector will be hit hard in terms of the gross value of its production and much worse in terms of employment.

## **2. Intellectual Property**

The U.S. proposals for the AFTA include several provisions that undermine access to affordable medicines. These include the extension of patent protections from 20 to 25 years to compensate for delays in processing patents, a five-year ban on the use of the originator company’s test data for the approval of generic medicines, and the granting of “second use” patents when a new use is discovered for an existing medicines. The proposed rules would virtually eliminate local pharmaceutical laboratories and result in sharply increased prices. A recent study undertaken by the Pan-American Health Organization in Colombia predicts that the economic impact of these rules in Colombia will exceed \$ 4.9 billion.<sup>6</sup> According to Dr. Pier Paolo Balladelli, PAHO - Colombia, the restrictions set forth in the trade agreement could have an enormous impact on health services and would result in the reduction in access of Colombian to quality medicines.<sup>7</sup>

Similar concerns were recently raised by the U.N. Special Rapporteur for Health, Paul Hunt, who warned that the agreement would put medicines out of reach for millions in Peru and urged the United States not to pressure the country into a trade agreement. He explained, “I am concerned because the free trade negotiations between the U.S. and

Peru could create a greater protection for patents than those that are currently required under the rules of the WTO. Greater patent protection could restrict governments from taking actions to protect the right to health in the future.”<sup>8</sup> Similarly, the Health Ministry of Peru made public a report on the potential effects of the trade agreement on June 2, 2005. The study indicated that 700,000 to 900,000 people would be excluded from access to medicines under the agreement unless the budget of the Ministry of Health were substantially increased.<sup>9</sup>

### 3. Labor

In Colombia, workers continue to face several legal and practical obstacles to the exercise of their rights to freely associate, join a trade union and bargain collectively. Limitations on the right to bargain collectively and to strike in the public and private sectors, and laws and practices that permit employers to circumvent unions and bargain directly with employees or with non-union associations, are characteristic of the hardships that exist in Colombia. As a result of these and other labor violations, the number of workers covered by collective bargaining agreements fell from 409,918 in 1994-95 to 176,774 in 2002, according to the U.S. State Department’s most recent human rights report.

However, it is the alarming level of violence against trade unionists that sets Colombia apart. In the last decade, over 2,000 trade unionists have been murdered in Colombia, making it by far the most dangerous place in the world to be a trade unionist. To date, the government of Colombia has failed to take necessary measures to prevent crimes against trade unionists, and has failed to investigate and prosecute more than a handful of the total number of cases. It is within this context of near total impunity that 94 trade unionists were murdered in 2004, up from 91 in 2003.<sup>10</sup> Further, death threats have almost doubled in the same time, from 296 to 445, creating a chilling effect on further trade union activity.

Although the ENS 2005 mid-year report reflects a decline in the number of trade unionists assassinated, 29 (which stood at 54 at the same time last year) other violations, such as death threats against trade unionists, continued apace.<sup>11</sup> According to ENS, this reflects a change in tactics by the responsible parties, primarily the paramilitaries, given their need to demonstrate a will to disarm. Thus, the paramilitaries have opted to threaten trade unionists and their families— an act which has the same impact but which provokes less concern from the international community.<sup>12</sup>

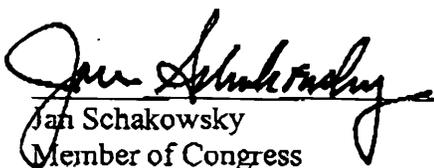
In Ecuador, labor rights violations were documented in Human Rights Watch’s 2002 report, entitled *Tainted Harvest*.<sup>13</sup> The report uncovered serious deficiencies in Ecuador’s labor code and detailed numerous labor rights violations in the banana industry, including the pervasive use of hazardous child labor and the use of various tactics, at times violent, to violate workers’ right to freedom of association. Labor and human rights organizations, including the U.S. Labor Education in the Americas Project, the AFL-CIO and Human Rights Watch, have filed petitions against Ecuador under the ATPDEA to push the U.S. government to investigate these problems and the Ecuadorian government to take steps to resolve them. The U.S. government, however, has yet to rule on any of

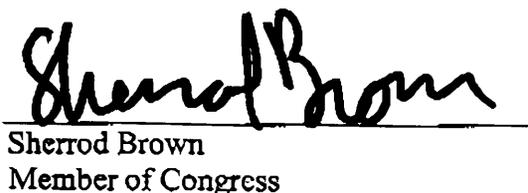
these petitions, and Ecuador has largely failed to live up to its promises to resolve these problems, including the passage of much needed reforms to improve its weak labor code.

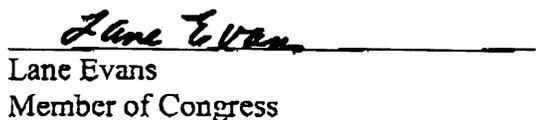
### Conclusion

Certainly, no one is opposed to the expansion of economic relations with the Andean region. We must ensure, however, that our trade policies with the Andean region are mutually beneficial and promote growth and employment opportunity for all parties. We believe that the concerns outlined above must be taken into consideration if, in the long run, the AFTA will prove a benefit to us all.

Sincerely,

  
Jan Schakowsky  
Member of Congress

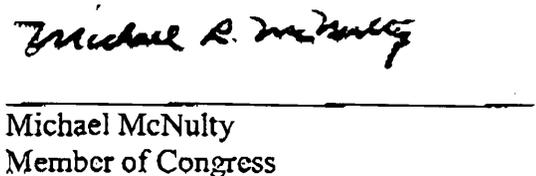
  
Sherrod Brown  
Member of Congress

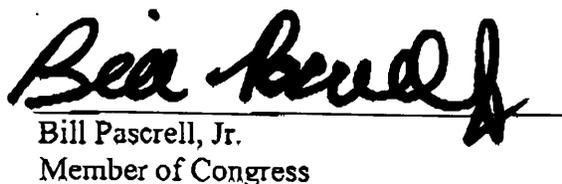
  
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Rush Holt  
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Loretta Sanchez  
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<sup>1</sup> Ministry of Agriculture and Rural Development, *Colombian Agriculture Before the Free Trade Agreement with the United States*, July 2004, p. 162-63

<sup>2</sup> *Id.* at p. 180.

<sup>3</sup> Bronstein, Hugh, *Colombia must be firm in U.S. trade talks – Stiglitz*, Reuters, Oct. 21, 2004, available at [http://www.colombiaemb.org/opencms/opencms/extras/news\\_item.html?id=751](http://www.colombiaemb.org/opencms/opencms/extras/news_item.html?id=751).

<sup>4</sup> See, CEPAL, *Los Impactos diferenciados del Tratado de Libre Comercio Ecuador – Estados Unidos de Norte America sobre la agricultura de Ecuador* (January 5, 2005).

<sup>5</sup> *Id.*

<sup>6</sup> See, Panamerican Health Organization, *Modelo Prospectivo Del Impacto De La Protección A La Propiedad Intelectual Sobre El Acceso A Medicamentos En Colombia* (Noviembre 2004) available at <http://Www.Col.Ops-Oms.Org/Noticias/2004/09genericos.Asp>.

<sup>7</sup> *Id.*

<sup>8</sup> Manrique, Rosanna, *ONU demanda proteger la salud pública en negociaciones del TLC*, La Republica (Peru), July 14.

<sup>9</sup> Ministerio de Salud del Peru, *Evaluacion de los Potenciales Efectos Sobre Acceso a Medicamentos del Tratado de Libre Comercio que Sse Negocia con los Esrados Unidos de America*, (Abril 2005).

<sup>10</sup> See, Escuela Nacional Sindical (ENS), *Informe sobre la violación a los derechos humanos de los sindicalistas colombianos - enero 1º- 31 de diciembre 2004* (March 2005).

<sup>11</sup> Escuela Nacional Sindical, *Violaciones A La Vida, A La Libertad Y A La Integridad De Los Trabajadores Sindicalizados En Colombia* (1 de Enero -10 de Junio de 2005), p. 2.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> See Human Rights Watch, *Tainted Harvest: Child Labor and Obstacles to Organizing on Ecuador's Banana Plantations* (April 2002)