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## **Andean-U.S. Free-Trade Agreement Negotiations**

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# Andean-U.S. Free-Trade Agreement Negotiations

## Summary

In November 2003, the Administration notified Congress that it intended to begin negotiations on a free-trade agreement (FTA) with Colombia, Peru, Ecuador, and Bolivia. The notification said that an FTA would reduce and eliminate foreign barriers to trade and investment and would support democracy and fight drug activity in the Andean region. The Andean governments wanted to ensure access to the U.S. market, especially since their current trade preferences will terminate at the end of 2006. In the United States, the business community strongly supports the trade agreement, labor opposes it, and agriculture is split.

The first round of negotiations was held with Colombia, Peru, and Ecuador (with Bolivia participating as an observer) in Cartagena, Colombia, in May 2004. Twelve rounds have been held thus far. The latest round was held in Cartagena, Colombia on September 19-23, 2005. Reports suggest that progress was made and that negotiators expect to conclude the agreement by the end of 2005. The next round, scheduled in mid-October in Washington, D.C., is expected to be the final round of negotiations and the final agreement is expected to be concluded in November. The Cartagena talks drew an estimated 7,000 protestors while Ecuador and Peru also faced strong protests. Of note, after the negotiations Ecuador announced that its entry into the agreement would be delayed. In the last few months, Ecuador and Bolivia have had sudden changes in their presidencies.

The United States currently extends duty-free treatment to imports from the four Andean countries under a regional preference program. The Andean Trade Preference Act (ATPA) authorized the President to grant duty-free treatment to certain products, and the Andean Trade Promotion and Drug Eradication Act (ATPDEA) reauthorized the ATPA program and added products that had been previously excluded. Over half of all U.S. imports in 2004 from the Andean countries entered under these preferences.

In 2004, the United States imported \$15.5 billion from the four Andean countries and exported \$7.7 billion. Colombia accounted for about half of U.S. trade with the region. Peru and Ecuador almost evenly split the other half, and Bolivia represented a very small share. The leading U.S. import from the region in 2004 was crude petroleum oil, which accounted for 37% of imports. Leading U.S. exports to the region were mining equipment, wheat, broadcasting equipment, and maize.

There are several important issues in the FTA negotiations. The trade negotiators have stated that the main obstacles to concluding an agreement are in agriculture and intellectual property rights. Another major concern is the treatment of trade unionists, especially in Colombia, where union leaders are targeted by death squads. If an FTA is concluded, it is uncertain when an implementing bill might be considered in Congress. Legislation to implement the U.S.-Central American-Dominican Republic FTA (CAFTA-DR) was enacted on August 2, 2005 (P.L. 109-53). Given that CAFTA-DR passed only by a small margin, it is unclear how much support the U.S.-Andean FTA will have.

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# Andean-U.S. Free-Trade Agreement Negotiations

## Background

At a meeting with President George W. Bush on April 28, 2003, in Washington, Colombian President Alvaro Uribe sought a free-trade agreement (FTA) with the United States as a means to improve Colombia's economy, provide employment, and offer an attractive alternative to drug activity in his country. President Bush was reluctant to agree to free-trade talks, however, because he wanted to achieve broader market opening through the hemispheric Free Trade Agreement of the Americas (FTAA).<sup>1</sup> Because the FTAA talks appeared to be stalled though, President Bush reportedly offered at the meeting to send then-U.S. Trade Representative (USTR) Robert Zoellick to Colombia to discuss bilateral trade between the two countries.

At the time, some Members of Congress supported free-trade talks with Colombia. On June 11, 2003, Senator Max Baucus, Ranking Member of the Senate Finance Committee, and three Democratic Members on the House Ways and Means Committee urged USTR Zoellick to give "significant weight" to market size in selecting countries for FTAs and included Colombia in a list of possible FTA partners.<sup>2</sup> On August 1, 2003, Senator Charles Grassley, Chairman of the Finance Committee, and a bipartisan group of four other Senators on the Senate Finance Committee sent the USTR a letter asking for "serious consideration of initiating [FTA] negotiations with Colombia...."<sup>3</sup>

The USTR traveled to Bogota and met with Colombia's President and others on August 8, 2003. The purpose of his trip, according to the USTR, was "...to clearly lay out the scope and depth of such a possible negotiation, what it would involve, and to listen and learn from Colombians about their goals and expectations."<sup>4</sup> Peru and Ecuador also expressed interest in FTA negotiations with the United States.

On November 18, 2003, USTR Zoellick formally notified Congress of the Administration's intent to begin FTA negotiations with Colombia, Peru, Ecuador, and Bolivia. A press release that accompanied the notification said that the

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<sup>1</sup> "Bush Plays Down Prospects for Colombia Trade Pact." *Reuters*. April 30, 2003.

<sup>2</sup> Brevetti, Rossella. "Pro-Trade Democrats Urge Zoellick to Consider Market Size in FTA Choices." The Bureau of National Affairs, Inc. *International Trade Reporter*. June 19, 2003.

<sup>3</sup> Letter reprinted at website of *Inside U.S. Trade*, [<http://www.insidetrade.com>].

<sup>4</sup> Office of the USTR. "Zoellick to Visit Colombia, Meet with President Uribe on August 8." Press Release. August 7, 2003. Available at [<http://www.ustr.gov>].

Administration planned negotiations to begin the second quarter of 2004, initially with Colombia and Peru, and that the United States would work with Ecuador and Bolivia “with a view to including them in the agreement as well.”<sup>5</sup>

The USTR’s letter of notification to Congress identified economic reasons for the negotiations. It said that an FTA would help U.S. interests “...by reducing and eliminating barriers to trade and investment between the Andean countries and the United States. The FTA will also enable us to address impediments to trade and investment in the Andean countries...” The combined markets for the four Andean countries, according to the USTR, have a gross domestic product (on a purchasing power parity basis) of \$463 billion and a combined population of 93 million people.<sup>6</sup> The letter of notification also stated that an Andean FTA would add momentum to the broader negotiations on an FTAA. Those negotiations were still stalled, primarily because of differences between the United States and Brazil.

The notification identified political reasons for the talks as well. It said that an FTA “...will also enhance our efforts to strengthen democracy and support for fundamental values in the region.” It said that one reason for negotiating with all four countries was that a regional strategy would help in combating narcotrafficking.<sup>7</sup> It also pointed out several issues of concern to the United States: protection of worker rights in Ecuador; disputes involving U.S. investors in Peru; violence against trade unionists and disputes with U.S. investors in Colombia; and the need to work with Bolivia and the other Andean countries on capacity building.

In the United States, the business community supports an Andean FTA. The National Association of Manufacturers (NAM), for example, states in its trade agenda that one of its key objectives is the congressional approval of the Andean FTA and other FTAs now being negotiated. The NAM has written comments on its position in various aspects of the negotiations some of which include the removal of tariff and non-tariff barriers, transparency and accountability in technical regulations, enforcement of national customs laws, protection of U.S. investment abroad, and strengthening and enforcement of intellectual property rights laws.<sup>8</sup> NAM’s trade

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<sup>5</sup> Office of the USTR. “USTR Notifies Congress of Intent to Initiate Free Trade Talks with Andean Countries.” Press Release. November 18, 2003.

<sup>6</sup> Ibid.

<sup>7</sup> On a regional approach to combating illegal drug activity, the letter of notification stated: “Narcotrafficking is a regional scourge that respects no borders. Experience has shown that to combat it effectively requires coordination and effective strategies among all four Andean countries.” For more information on Andean countries and issues of interest to Congress, see CRS Report RL32250, *Colombia: Issues for Congress*, by Connie Veillette; CRS Report RL32580, *Bolivia: Political and Economic Developments and Implications for U.S. Policy*, by Connie Veillette; CRS Report RS21687, *Ecuador: Political and Economic Situation and U.S. Relations*, by Clare Ribando; and CRS Report RL32733, *Latin America and the Caribbean: Issues for the 109<sup>th</sup> Congress*, coordinated by Mark P. Sullivan.

<sup>8</sup> National Association of Manufacturers website at [<http://www.nam.org>]. See “NAM Written Comments on the Proposed United States-Andean Free Trade Agreement”, March 30, 2004.

agenda states, “The NAM supports FTAs because U.S. manufacturers face much higher barriers in foreign markets than foreign producers face here.”

A number of other groups, however, oppose an Andean FTA. A coalition of 51 labor, religious, and environmental groups wrote to the USTR on September 9, 2004, urging him to suspend the negotiations. They argued that the negotiations have been conducted in secret, there has been no meaningful dialogue with the public, and the Andean negotiations are modeled on failed trade agreements.<sup>9</sup> Among the signatories were the AFL-CIO, American Friends Service Committee, and Public Citizen.

The Andean governments are pursuing an FTA with the United States to assure access to the immense U.S. market. They have preferential access now under unilateral U.S. programs (see following section), but that access is scheduled to expire at the end of December 2006. An FTA would lock-in those preferences and additional duty-free treatment. The Andean governments also want to attract foreign investment and see an FTA with the United States as a way to establish a more secure economic environment and increase foreign investment.

Within the Andean countries, however, there is broad grass-roots opposition to an FTA. Opponents argue that any economic benefits from increased trade under an FTA will be realized by only a small segment of the economy, worsening the separation of the classes. They also argue that a large part of the Andean population is poor farmers, who are especially vulnerable and cannot compete against increased agricultural imports from the United States, which some Andean officials claim are heavily subsidized. The Development Group for Alternative Policies states that one of the few remaining mechanisms protecting family farmers in the Andean region is the Andean Community’s “price band” system which, they argue, has served to cushion farmers from the vagaries of international commodity prices.<sup>10</sup> A further argument is that an FTA would mean reduced revenues for the Andean governments, and some opponents state that revenue losses will have to be replaced with regressive domestic taxes.<sup>11</sup>

On March 23, 2004, the USTR issued a press release announcing that the United States and Colombia would begin FTA negotiations between the two countries, and possibly other Andean countries, on May 18-19, 2004.<sup>12</sup> The naming of only Colombia made it clear that there were still concerns with Peru and Ecuador that had not been addressed. The press release mentioned outstanding disputes between U.S. investors and the Peruvian government and concerns about protection of worker rights and investor disputes in Ecuador. According to the press release, “We [the

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<sup>9</sup> Alliance for Responsible Trade website at [<http://www.art-us.org>].

<sup>10</sup> Hansen-Kuhn, Karen, *The Development Gap, Andean FTA: Threats to Development*, July 2004.

<sup>11</sup> Several arguments against the Andean FTA are presented in: Hansen-Kuhn, Karen. “Andean FTA: Threats to Development,” available on The Development Group for Alternative Policies (The Development Gap) website at [<http://www.developmentgap.org>].

<sup>12</sup> Office of the USTR. “U.S. and Colombia to Begin FTA Negotiations on May 18.” Press Release. March 23, 2004.

U.S. government] hope that in the coming weeks these countries will take the follow-on steps that will enable us to include them at the negotiating table, along with Colombia, at the start of the negotiations. We look forward to including Bolivia at a later stage, and are working with them to increase their readiness.” On May 3, 2004, the USTR announced that issues with respect to Peru and Ecuador had been addressed, and those two countries would join with Colombia in the first round of the negotiations.<sup>13</sup>

The first round of FTA negotiations was held in Cartagena, Colombia on May 18-19, 2004. Fourteen working groups were established. The negotiators agreed on a schedule that, according to chief U.S. negotiator Regina Vargo, would probably involve seven rounds by early 2005 — one round every five to seven weeks.<sup>14</sup> On the day that negotiations began, students, union members, farmers, and others in Cartagena held a one-day protest against the negotiations because of feared job loss in the agriculture sector.<sup>15</sup>

Bolivia has attended the negotiating sessions as an observer, but is not expected to be a party to an agreement. The USTR said, “We want to maintain the door being open....but we also have to recognize realities,” and noted that Bolivia’s government had “some basic stability issues.”<sup>16</sup> In mid-June 2005, the Bolivian president resigned amid widespread opposition to foreign participation in the natural resource sectors and other policies, and an interim president took office.

Political change has occurred recently in Ecuador as well. On April 20, 2005, during the ninth round of FTA negotiations, the Congress in Ecuador impeached Ecuador’s president Lucio Gutierrez and replaced him with the vice president, Alfredo Palacio. The new president appointed the country’s trade minister as head of a new negotiating team. Ecuador has been active in the negotiations, but in the most recent round (September 18-23 2005), Ecuador’s new trade minister Jorge Illinworth confirmed that his country will not be ready to complete the free trade agreement in October 2005 because it decided to opt out of additional discussions on intellectual property.<sup>17</sup>

Twelve rounds of negotiations have been held so far: Cartagena (May 18-19, 2004); Atlanta (June 18, 2004); Lima, Peru (July 26-30, 2004); San Juan (September

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<sup>13</sup> Office of the USTR. “Peru and Ecuador to Join With Colombia in May 18-19 Launch of FTA negotiations with the United States.” Press Release. May 3, 2004.

<sup>14</sup> Mozzo, Javier. “U.S. Toasts Strong Start to Andean Trade Talks.” *Reuters*. May 19, 2004.

<sup>15</sup> Toro, Juan Pablo. “U.S., South American Nations Complete First Round of Free Trade Talks, Meet Next in Atlanta.” *The Associated Press. Associated Press Newswires*. May 19, 2004.

<sup>16</sup> Brevetti, Rossella. “Zoellick Hopes Progress in Global Round Will Help Lagging Hemispheric Trade Talks.” *Daily Report for Executives*. Bureau of National Affairs, Inc. September 10, 2004.

<sup>17</sup> Jones, Kate. “Minister Confirms Delay to Ecuador’s Entry in Andean Trade Deal.” *Global Insight Daily Analysis*. Global Insight Limited. September 22, 2005.

13-17, 2004); Guayaquil, Ecuador (October 25-29, 2004); Tucson (November 20-December 4, 2004); Cartagena (February 7-11, 2005); Washington (March 14-18, 2005); Lima (April 18-22, 2005); Guayaquil (June 6-10, 2005); Miami (July 18-22, 2005); and Cartagena (September 19-23, 2005). In the latest round, negotiators discussed rules of origin, market access, institutional questions, cross-border services, intellectual property, sanitary and phytosanitary measures, textiles, financial services, and dispute settlement. After the meetings, negotiators announced that a treaty may be signed by mid-November despite disagreements over agriculture and intellectual property rights. Peru's chief negotiator stated that the negotiating parties sorted out many difficulties in the negotiations and had entered the final phase "of this obstacle course."<sup>18</sup> One of the major setbacks in the meetings was the Ecuadorian team's decision to abandon the negotiations on intellectual property issues, consequently delaying their country's entry into the agreement. Despite this setback, Ecuador's chief negotiator reaffirmed his country's commitment to the process.<sup>19</sup>

The Cartagena meetings drew thousands of Colombian citizens protesting the trade agreement with the United States. News accounts reported that an estimated 7,000 anti-free trade activists gathered in Cartagena and Bogota, while protesters in Peru erected roadblocks.<sup>20</sup> Ecuador also faced strong public protests to the trade negotiations. Around 120 protestors temporarily occupied the Ministry of Energy in Ecuador on September 20, 2005, demanding the annulment of a U.S. company's contract in Ecuador and protesting the proposed trade deal with the United States.<sup>21</sup> The protests in Ecuador may have influenced the government to delay entry into the agreement.<sup>22</sup>

Trade negotiators announced that they expect to conclude the negotiations in October but that they will have until mid-November to refine the details. They said that the meetings were successful on some issues, such as financial issues, which have already been settled. Although the talks on agriculture resumed (agriculture was not addressed in the prior round), they will likely require an extra bilateral round of negotiations between the United States and Colombia.<sup>23</sup> There is a possibility of having separate accords on agriculture. The final round of talks is expected to take place October 19-21 in Washington, D.C.

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<sup>18</sup> *Reuters News*. "Andeans see U.S. Trade Pact by Mid November". September 23, 2005.

<sup>19</sup> Delgado, Diana. "DJ Columbia: US-Andean Free Trade Talks Could Wrap Up By Nov." *Dow Jones Commodities Service*. Comtex News Network. September 23, 2005.

<sup>20</sup> Joynes, Kate. "Protests Overshadow Andean FTA Talks". *Global Insight Daily Analysis*, Global Insight Limited. September 23, 2005.

<sup>21</sup> Joynes, Kate. "Protesters Occupy Ecuador's Energy and Mining Ministry," *Global Insight Daily Analysis*, Global Insight Limited. September 21, 2005.

<sup>22</sup> Joynes, Kate. "Protests Overshadow Andean FTA Talks." September 23, 2005.

<sup>23</sup> Delgado, Diana. "DJ Colombia: US-Andean Free Trade Talks Could Wrap Up By Nov." September 23, 2005.

## U.S.-Andean Trade

The United States extends special duty treatment to imports from Bolivia, Colombia, Ecuador, and Peru under a regional trade preference program. This program accounted for about half of all U.S. imports from the four countries in 2003.

The program began under the Andean Trade Preference Act (ATPA; title II of P.L. 102-182), enacted on December 4, 1991. ATPA authorized the President to grant duty-free treatment to certain products from the four Andean countries that met domestic content and other requirements. It was intended to promote economic growth in the Andean region and to encourage a shift away from dependence on illegal drugs by supporting legitimate economic activities. ATPA was originally authorized for 10 years and lapsed on December 4, 2001.

After ATPA had lapsed for months, the Andean Trade Promotion and Drug Eradication Act (ATPDEA; title XXXI of P.L. 107-210), was enacted on August 6, 2002. ATPDEA reauthorized the ATPA preference program and expanded trade preferences to include additional products that were excluded under ATPA. The additional products under ATPDEA included petroleum and petroleum products, certain footwear, tuna in flexible containers, and certain watches and leather products. ATPDEA also authorized the President to grant duty-free treatment to U.S. imports of certain apparel articles, if the articles met domestic content rules. Duty-free benefits under ATPDEA end on December 31, 2006.

In 2004, a major share (42%) of all U.S. imports from the four Andean countries entered duty-free under ATPDEA, and a smaller share (12%) entered duty-free under ATPA.<sup>24</sup> A very small share (2%) entered duty-free under the U.S. Generalized System of Preferences, which applies to most developing countries throughout the world. Of the remaining 44% of imports, most entered duty-free under normal trade relations, which applies on a nondiscriminatory basis to almost all U.S. trading partners. Only 10% of the value of U.S. imports from the four countries was dutiable in 2004. Thus, compared to the status quo, only a relatively small share of U.S. imports would become duty-free under an FTA. That small share, however, might include products that are relatively import-sensitive in the United States or disproportionately important to the Andean countries.

In 2004, the United States imported \$15.5 billion, or 1% of total U.S. imports, from the four countries. The same year, the United States exported \$7.7 billion, or 1% of all U.S. exports, to the four countries. Colombia accounted for almost half of those U.S. imports and over half of the U.S. exports (see **Table 1**). Peru and Ecuador split nearly all of the other half of imports and exports, and Bolivia accounted for a very small share.

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<sup>24</sup>Data from USITC Interactive Tariff and Trade DataWeb at [<http://dataweb.usitc.gov>]. For more information on U.S. imports under ATPDEA and ATPA, see, U.S. International Trade Commission (USITC). *The Impact of the Andean Trade Preference Act*. USITC Publication 3725. September 2004; and USITC. "The Expanded Andean Trade Preferences Act and a U.S. Free Trade Agreement with its Beneficiaries." *International Economic Review*. USITC Publication 3742. November/December 2004. P. 14.

The leading U.S. import from the region in 2004 (35% of imports) was petroleum oil, principally crude oil from Ecuador and Colombia. Other leading U.S. imports were gold, coal, cut flowers, coffee, articles of copper, and bananas. Leading U.S. exports to the region were mining equipment, wheat, broadcasting equipment, and maize.

**Table 1. U.S. Trade with the ATPA Countries, 2004**

Country	U.S. Imports		U.S. Exports	
	Region Share (%)	Leading Items	Region Share (%)	Leading Items
Bolivia	2	jewelry, tin	2	jewelry, mining machinery
Colombia	48	crude oil, coal	54	maize, vinyl chloride
Ecuador	27	crude oil, bananas	19	mining machinery, kraft paper
Peru	24	gold, refined copper	24	wheat, gasoline

**Source:** USITC Interactive Tariff and Trade DataWeb at [<http://dataweb.usitc.gov>]. Data are for U.S. imports for consumption (Customs value) and domestic exports (Fas value). Regional shares may not add to 100% due to rounding.

## Selected Issues in the Negotiations

The following highlights some of the more difficult issues in the negotiations. In addition to the following, the negotiations also cover other issues such as services trade, electronic commerce, and government procurement. Trade negotiators from the Andean countries have stated that despite the recent political crises in Bolivia and Ecuador, the parties have reached important agreements in many areas. They identify the difficulties in agriculture and intellectual property rights as the main obstacles in reaching agreement and that the United States needs to be more flexible in these areas. U.S. trade officials have said that the United States is very interested in reaching agreement in these areas and concluding the negotiations. U.S. trade officials have also pointed out that the United States had laid out its expectations before the negotiations began.<sup>25</sup>

### Investor/State Disputes

One of the most important issues in the negotiations is unresolved disputes involving U.S. investments in Andean countries. On October 6, 2004, the House

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<sup>25</sup> See Brevetti, Rossella, "Andean Officials Stress Importance of Finishing FTA Talks in October," *International Trade Reporter*, September 15, 2005; and National Association of Manufacturers (NAM), "Andean FTA," in the NAM website [<http://www.nam.org>].

Committee on International Relations, Subcommittee on the Western Hemisphere, held a hearing on U.S. investment disputes in Peru and Ecuador. At the hearing, E. Anthony Wayne, Assistant Secretary of State for Economic and Business Affairs, testified, “Nearly every U.S. company doing business in Ecuador has faced problems with Ecuadorian government entities, from regulatory bodies to the courts and the customs agency.” He said that the situation in Peru was “...considerably better,” although there still were problems. He stated that both countries had been cautioned that, “...left unresolved, these disputes are a stumbling block to achieving an FTA.” A few months later in October 2004, Deputy USTR Peter Allgeier warned that Peru and Ecuador could be dropped from the FTA, if outstanding investor disputes were seen as endangering congressional approval of an FTA with Colombia.<sup>26</sup>

On April 13, 2005, the House Committee on International Relations, Subcommittee on the Western Hemisphere, held a hearing on U.S. trade agreements with Latin America. At the hearing, John Murphy, Vice President for Western Hemisphere Affairs of the U.S. Chamber of Commerce, said that the situation regarding investment disputes with Peru and Ecuador was difficult and that persistent disputes could “...stand as a substantial obstacle that could block the participation of these countries [in an FTA].” These disputes have been discussed at the negotiations.

Since the beginning of 2005, Peru has been making progress in resolving disputes with U.S. companies. A nine-year dispute involving California Northrop Grumman Corporation was recently settled, but the Peruvian Administration is still working to resolve two others that may be more politically difficult. Ecuador is further behind in addressing issues on investment disputes raised by U.S. negotiators.<sup>27</sup>

## Agriculture

U.S. negotiators have refused to talk about rules for agricultural subsidies, saying that subsidies should be dealt with in the on-going multilateral trade negotiations in the World Trade Organization. Nevertheless, an important goal for the United States in the FTA talks has been elimination of a practice called the “price-band mechanism.” Under this mechanism, a fluctuating tariff is imposed on an import for the purpose of keeping the import’s price within a specific range. The band addresses changes in world commodity prices. Colombia and Ecuador have these variable duties on over 150 items, including corn, rice, soybeans, and powdered milk.<sup>28</sup> Andean negotiators have said that the price-band mechanism is necessary to protect their farmers, especially small farmers, against subsidized imports. A spokesperson for small farmers in Colombia said that there is a large rural population

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<sup>26</sup> Brevetti, Rossella. “Allgeier Says Peru, Ecuador Face Omission From FTA Unless Investor Disputes Resolved.” The Bureau of National Affairs, Inc. *Daily Report for Executives*. October 4, 2004.

<sup>27</sup> Chauvin, Lucien O. “Peru Will Go It Alone in Free Trade Talks with U.S. if Andean Partners Fall Behind.” Bureau of national Affairs. *Daily Report for Executives*. July 13, 2005.

<sup>28</sup> USTR. *2004 National Trade Estimate Report on Foreign Trade Barriers*. Pgs. 96 and 117.

and high unemployment in Colombia, and without protected alternative crops, the people will produce drugs.<sup>29</sup>

Some specific products are especially important to the trading partners. For example, access to the U.S. market is critical for Andean producers of cut flowers (Colombia and Ecuador) and asparagus (Peru). These products, however, had the largest potential displacement effects on U.S. producers under ATPDEA<sup>30</sup>, so they are worrisome to U.S. growers. Also, U.S. sugar producers are concerned about increased imports from the Andean countries. Conversely, Andean farmers see some U.S. products, such as corn and chicken parts, as threatening.

## Intellectual Property Rights (IPR)

A major area of disagreement is so-called “data exclusivity.” This term refers to an additional period of patent protection that is given to test data, especially data on pharmaceuticals and agricultural chemicals. The United States wants rules on data exclusivity in an FTA to protect the results of research by pharmaceutical companies for five years.<sup>31</sup> In related action, the Pharmaceutical Research and Manufacturers of America (PhRMA) has petitioned the U.S. government to withdraw ATPDEA benefits for Peru and Ecuador because they have no data exclusivity laws.<sup>32</sup> Oxfam has argued, “Guaranteeing exclusive rights over pharmaceutical data will result in delays and limit generic competition in cases where the patent has expired or a compulsory license has been granted.”<sup>33</sup> The Andean countries had opposed rules on data exclusivity, arguing that the additional period keeps generic pharmaceuticals from entering the market and thus hurts poor people. Most recently, however, there have been reports that some Andean countries might be considering a three-year period of protection for test data.

Another IPR issue is so-called “bio-piracy.” Andean negotiators want IPR provisions to go beyond those contained in the WTO. They want protection against the use of “traditional knowledge” and “genetic resources” without fair compensation. The United States wants “second use” protection, where a product

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<sup>29</sup> Otis, John. “Tree Oil Plan Tries to Bear Fruit; Growing Palm Extract Instead of Lucrative Coca is a Hard Sell for Colombia Farmers.” *Houston Chronicle*. February 6, 2005.

<sup>30</sup> USITC. *The Impact of the Andean Trade Preference Act*. P. 3-11.

<sup>31</sup> The United States negotiated rules on data exclusivity in the Central American-Dominican Republic FTA. Guatemala subsequently approved a law that the USTR claims is inconsistent with the data exclusivity provisions of the FTA. A bill to repeal that law was introduced in the Guatemalan congress on January 28, 2005. See, Brevetti, Rosella. “Guatemala Takes Steps Toward Repeal of Data Law USTR Claims Violates CAFTA.” Bureau of National Affairs, Inc. *Daily Report for Executives*. February 1, 2005.

<sup>32</sup> The Colombian government issued decrees in 2002 and in 2003 that gave protection of data for drugs and for agricultural chemicals respectively. See, USTR. *2004 National Trade Estimate Report on Foreign Trade Barriers*. P. 98.

<sup>33</sup> Oxfam. “Make Trade Fair for the Americas; Agriculture, Investment and Intellectual Property: Three Reasons to Say No to the FTAA.” Oxfam Briefing Paper 37. Available at the Oxfam website a [<http://www.oxfam.org>].

gets additional protection if it is found to serve a use other than the original one under the patent. It also wants protection against parallel imports, which are products legitimately made in one foreign country, but imported into another country without the approval of the IPR holder. The Andean countries oppose these U.S. positions.

## **Worker Protections and Human Rights**

Some unions and labor rights groups have protested against trade negotiations with Ecuador and Colombia, because they claim that these countries have unacceptable records on worker rights and permit violence against trade unionists. For example, an official with the International Confederation of Free Trade Unionists (ICFTU) criticized Colombia's president for negotiating with paramilitary forces, who are the killers of trade unionists according to the ICFTU official, and said that the more a union protests the president's economic policy, the more the union is persecuted.<sup>34</sup> The Colombian government responds that through several programs it has instituted, it "...has clearly demonstrated its commitment to the protection of human rights and has given special priority to the protection of union members."<sup>35</sup> The U.S. State Department country report on human rights for Colombia identifies many legal rights for unions, but recognizes problems with protecting those rights.<sup>36</sup> For example, the report states that in Colombia, the Constitution provides a right for most workers to organize unions, but in practice, "...violence against union members and anti-union discrimination were obstacles to joining unions and engaging in trade union activities...."

Ecuador's record on human rights is also controversial. On February 1, 2005, 38 House Members (37 Democrats, 1 Independent) wrote to the foreign trade minister of Ecuador, expressing concern with "...serious workers' rights violations in Ecuador and Ecuador's failure to live up to commitments made to the U.S. government in October 2002, as part of a review of Ecuador's benefits under the [ATPDEA]."<sup>37</sup> They said that they would recommend the gradual withdrawal of Ecuador's ATPDEA benefits and that Ecuador's continued failure to observe the ATPDEA commitments "...casts doubt on whether Ecuador will be able to follow through with obligations..." under an FTA.<sup>38</sup> (As mentioned earlier, Ecuador's president was replaced on April 20, 2005.)

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<sup>34</sup> Interview on ICFTU web page [<http://www.icftu.org>].

<sup>35</sup> Written Comments by the Government of Colombia Regarding Its Commitment to Human Rights and Labor Rights. Before the Trade Policy Staff Committee. April 2, 2004.

<sup>36</sup> U.S. Department of State web page at [<http://www.state.gov>].

<sup>37</sup> Letter from World Trade Online at [<http://www.insidetrade.com>].

<sup>38</sup> On December 17, 2004, Human Rights Watch reported that in a special session of Ecuador's congress called the preceding week by the president, "...52 members of the 100-seat congress voted to replace 27 of the 31 justices with their own political allies." Human Rights Watch saw this action as a violation of judicial independence. Available at [<http://hrw.org>].

## Textiles

A small but significant share of U.S. apparel imports from Andean countries still pay full duty under ATPDEA. The Andean region is not considered a major supplier, but there could be some increase in imports. In addition, the rule of origin for textiles and apparel has been an important issue in the negotiations.

## Visas

Andean countries, especially Colombia, wanted to have visa and immigration issues in the talks. They said that heightened U.S. security has made it hard for their business representatives to enter the United States. U.S. negotiators have insisted that immigration issues are not negotiable.

## Environment

An important environmental issue concerns investment provisions. In a letter dated September 13, 2004, a number of environmental groups, including Friends of the Earth, Natural Resources Defense Council, and Sierra Club, expressed concern about the possible inclusion in an Andean FTA of an investment chapter similar to Chapter 11 of the North American Free-Trade Agreement.<sup>39</sup> That chapter allowed private investors from one signatory country to seek binding arbitration against the government of another signatory. Such provisions, environmental groups argue in their letter, could allow "... foreign companies to completely bypass domestic courts to challenge public interest safeguards." On the other hand, U.S. negotiators have sought such provisions in trade agreements, since U.S. companies want such protections for their foreign investments.

## Prospects

The most recent (twelfth) round of negotiations was held September 19-23 in Cartagena, Colombia. The chief negotiators from Colombia, Ecuador, and Peru coordinated their positions prior to the twelfth round of negotiations. According to Colombia's chief negotiator, Hernando José Gómez, the three Andean countries maintained a unity in the Cartagena negotiations "that totally exceeded" his expectations.<sup>40</sup> Trade negotiators from the different countries stated that the negotiations were moving ahead smoothly. Discussions on agriculture were the ones that made the least progress, with agreement in only 30% of the questions according to Colombian Trade Minister Jorge Humberto Botero. The three Andean countries plan to continue the agriculture discussions and possibly have agreements that would

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<sup>39</sup> The letter is available at [[http://www.choike.org/documentos/ngos\\_us.pdf](http://www.choike.org/documentos/ngos_us.pdf)]. For further information on Chapter 11, see CRS Report RL31638, *Foreign Investor Protection Under NAFTA Chapter 11*, by Robert Meltz.

<sup>40</sup> Vieira, Constanza. "Trade: Talks Between U.S., Andean Countries in Final Stretch." *Inter Press Service*. Global Information Network. September 22, 2005.

be complementary to the U.S.-Andean free trade agreement.<sup>41</sup> As stated earlier in this report, Ecuador stepped out of the discussions on intellectual property rights and has announced that it is firmly committed to the process but will delay its entry into the agreement.

If a trade agreement with the United States is not concluded, Andean countries face the possibility of losing their duty-free benefits under the ATPDEA after they expire in December 2006. In September 2005, the House Ways and Means Committee released a report on a bipartisan congressional trade mission to Colombia, Ecuador, and Peru.<sup>42</sup> The purpose of the trip was to focus on the ongoing negotiations of the U.S.-Andean free trade agreement and to discuss investment and security issues in the region. One of the conclusions of the report was that the current unilateral trade preferences received by the Andean countries are set to expire in December 2006, and that the only way that the countries can replicate their access to the U.S. market after the current preferences expire is through a comprehensive bilateral free trade agreement. The report states that a “reciprocal, mutually beneficial arrangement must take the place of the unilateral access.”<sup>43</sup>

In September 2005, Peruvian President Alejandro Toledo was in Washington, D.C. promoting the trade agreement. He stated that Peru would accept the inclusion of language on core labor rights in the text of the accord. President Toledo is seeking to broaden support within the U.S. Congress for an U.S.-Andean FTA. He highlighted three reasons for entering into the agreement: 1) to support regional stability; 2) to replace the ATPDEA which expires in December 2006; and 3) to provide alternatives to narcotics trafficking. He also acknowledged that agriculture market access issues remain difficult areas in the talks.<sup>44</sup>

Negotiators had originally intended to conclude an FTA in time to meet the current deadlines under trade promotion authority (TPA). Under current TPA deadlines, expedited legislative procedures apply to implementing bills for trade agreements, if, among other requirements, the agreements are entered into by June 30, 2005, and the President gives notice of the signing at least 90 days before. The Andean FTA talks did not meet the original TPA deadline, but a two-year extension of TPA appears likely. As long as Congress did not pass an extension disapproval resolution before July 1, 2005, negotiators would have another two years to conclude an Andean FTA with an implementing bill considered under expedited legislative procedures (deadlines for congressional action, no amendments). A possibly more important, earlier deadline for negotiators, however, would be the year-end 2006 expiration of U.S. trade preferences for the Andean countries.

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<sup>41</sup> Vierira, Constanza, “Trade: Talks Between U.S., Andean Countries in Final Stretch,” September 22, 2005.

<sup>42</sup> Committee on Ways and Means, U.S. House of Representatives, *Report on Trade Mission to Colombia, Ecuador, and Peru*, WMCP: 109-6, September 2005.

<sup>43</sup> *Ibid*, p. 1.

<sup>44</sup> Sparshott, Jeffrey, and Tom Carter. “Peru Promotes Free-Trade Pact.” *The Washington Times*. September 17, 2005.

It is uncertain if a U.S.-Andean FTA might be reached by the end of 2005 and whether Congress might consider action on an implementing bill. Legislation to implement the U.S.-Central America-Dominican Republic FTA (CAFTA-DR) was passed by the House of Representatives on July 28, 2005, by a 217-215 vote, while the Senate approved the agreement on June 30, 2005, by a 54-45 vote. The passage of CAFTA-DR (P.L. 109-53) had been widely viewed as an indicator of how much congressional support a U.S.-Andean FTA would have. Given that CAFTA-DR passed by only a small margin, it is unclear how much support the U.S.-Andean FTA will have.