



1615 H Street NW, Washington, D.C., 20062 • tel: (202) 463-5485 • fax: (202) 463-3126

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VIA ELECTRONIC SUBMISSION

<http://www.regulations.gov> – Docket No. USTR-2009-0021

From: U.S. Chamber of Commerce and the Association of American Chambers of Commerce in Latin America

To: Office of the U.S. Trade Representative

Re: Request for Comments Concerning Free Trade Agreement with the Republic of Colombia (74 FR 37759, July 29, 2009)

The comments below are submitted in accordance with the Request for Comments published in the Federal Register by the Office of the U.S. Trade Representative on July 29, 2009. The U.S. Chamber of Commerce (the “Chamber”) and the Association of American Chambers of Commerce in Latin America (AACCLA) appreciate this opportunity to share its strong support for the U.S.-Colombia Trade Promotion Agreement (“CTPA”), and address the issue of labor standards as they relate to the agreement. The U.S. Chamber of Commerce is the world’s largest business federation, representing more than three million businesses of every size, sector, and region. The 23 American Chambers of Commerce in Latin America and the Caribbean joined together to form the Association of American Chambers of Commerce in Latin America represent more than 20,000 companies and over 80% of U.S. investment in the region.

The Chamber and AACCLA believe that open trade is essential to the continued vitality of the U.S. economy and its millions of workers, farmers, and businesses. Likewise, it provides a boost to our trading partners, who benefit from a stable and open trade and investment relationship with the United States. Open, reciprocal trade is quite simply a win-win proposition.

U.S. Trade Leadership Shapes Globalization and Spreads American Values

Trade agreements like the CTPA are the principal vehicle by which the United States exercises its policy leadership in the global trade arena. U.S. trade agreements foster the development of a global, rules-based trading system, with clear, agreed-upon, and enforceable rules. **Rules-based trade is fair trade.** Global trading rules will be developed with or without U.S. participation. However, active U.S. leadership is critical to ensure that the rules of trade are reflective of American values and interests. Rules-based trade through free trade agreements is one important way America is working to shape the dynamic of

globalization to ensure that it is a force for positive change and development both here at home and around the world.

An ambitious, market-opening U.S. trade agenda will provide growth opportunities for U.S. workers by securing access to new markets, while helping Americans provide for their families through access to affordable goods and services. Artificial trade barriers that raise the cost of a given product or service reduce the value of every U.S. consumer's dollar. And U.S. producers can't be competitive in global markets if they are forced to pay artificially high prices for the industrial inputs they require.

Trade agreements are indispensable to trade enforcement. Absent a defined, rules-based system for international trade, foreign unfair trade practices go largely un-prevented and unpunished. Since World War II, the United States has led global efforts to ensure that international trade takes place under a rules-based system. The U.S. ability to prevent foreign unfair practices is undermined if our own rules are not perceived to be fair and up-to-date. We know that many countries frequently pursue practices that unfairly expand their own market share at the expense of U.S. interests; therefore, it is imperative that our own practices in this area be above reproach. Recent U.S. trade agreements require transparency and accountability in day-to-day governance and regulation of commerce, fostering an environment of openness and fairness in global markets.

It is important to have agreements at every level. Multilateral agreements are essential to the critical mass necessary to build a truly global rules-based trading system; bilateral and sub-regional agreements meanwhile play a critical role by continually raising the bar, implementing the very best practices among those countries that are prepared to show leadership and set the standard for the more cumbersome multilateral process. U.S. bilateral and sub-regional trade agreements, such as CTPA, have established important precedents with positive ramifications for global negotiations.

Through its trade agenda, the U.S. has promoted the gradual opening of world markets over time. U.S. trade agreements have been designed to open trade between the U.S. and its partners in a steady, pragmatic way. All recent U.S. trade agreements provide for gradual phase-outs of trade barriers such as tariffs (taxes on imports) and import-restricting quotas, maximizing growth opportunities for both U.S. and foreign workers while providing the time to adapt to changes in a modernizing economy. Most agreements are implemented over a period of 10 to 20 years. Safeguard mechanisms in most U.S. agreements give us the ability to moderate excessive growth of trade when necessary to match the pace of globalization to the ability of our workers to adapt.

The U.S. trade agenda supports the modernization and growth of developing economies. Agreements with the United States give poor and developing countries much-needed assistance in adapting to a newly-globalized economy. Developing countries in particular cannot afford to isolate themselves from global trade flows, or they risk becoming backwaters in the world economy. One-way trade preference programs leading over time to two-way, fully-reciprocal trade agreements is proving to be a successful model for the gradual integration of developing countries into the global economy. U.S. trade agreements provide necessary incentives for developing countries to address issues regarding labor and environmental standards.

Labor Provisions in the CTPA

One of the noteworthy benefits of U.S. free trade agreements is the boost that they give to reformers in our developing country partners. As in the United States, economic and social reform is often hard-earned, piecemeal, and subject to high political cost. By providing a strong economic incentive, U.S. free trade agreements often provide developing country reformers with the leverage they need to secure improvements in areas such as government procurement, governmental transparency and accountability, investor protections, and labor and environmental standards, among other areas.

In many cases, these reforms have been built into the trade agreement itself. For instance, the CTPA includes dedicated chapters on labor, the environment, and transparency. As signed in November 2006, CTPA contained the strongest provisions on labor ever incorporated into a U.S. trade agreement. They are identical to labor provisions in the U.S.-Peru Trade Promotion Agreement, which was approved by Congress in 2007 by an overwhelming bipartisan majority. These provisions require Colombia to enforce its labor laws, or be subject to dispute settlement under the agreement, backed by the threat of sanctions.

It should be noted in this regard that Colombia's labor laws are generally strong, and underwent substantial reform through major labor legislation enacted in 2000. Since then, the Government of Colombia has worked closely with the International Labor Organization ("ILO") to identify and implement further reforms. In 2006, the ILO opened an office in Colombia to identify a joint program of work and implement cooperative programs.

However, CTPA now goes beyond even the strict labor standards of the initial agreement, to incorporate the provisions of the May 10, 2007, Congressional-Executive Agreement on Trade Policy. That agreement directly linked enforcement to the principles of international labor standards as recognized by the ILO's Declaration on Fundamental Principles and Rights at Work. Having agreed to tough, enforceable labor provisions in the agreement as originally negotiated and signed, the Republic of Colombia then agreed on June 28, 2007, to amend its signed agreement with the United States and bind itself to the new, stricter standard established by the May 10 Agreement.

Since that time, various U.S. policymakers in both the Congressional and Executive branches have implied that further, unspecified labor concessions from Colombia will be necessary to secure U.S. approval of the trade agreement. Notwithstanding that Colombia has already signed this agreement with the United States *twice*, and already gone to its legislature for approval of the agreement *twice*, leaders in Colombia have remained willing to work with their U.S. government counterparts to take further steps. To the best of our knowledge, the United States has yet to identify specific actionable items to Colombia.

In that context, the current outreach for comments regarding Colombian labor laws and standards is welcome if it signals a willingness to engage the Government of Colombia in a meaningful way with a view toward securing final approval and implementation of the CTPA.

In response to the three specific questions posed by the July 29 Request for Comments:

- 1) *Are there gaps in Colombia's labor law regime, including its enforcement mechanisms, with respect to providing for the fundamental labor rights of its citizens? If there are gaps, please identify them and provide specific suggestions for improvement.*

Chamber Response: Colombia has demonstrated ample willingness to engage the advice and assistance of the United States and the ILO to make necessary improvements to its domestic labor regime. However, inadequate labor laws are largely not the issue in Colombia. According to the U.S. Department of State's 2008 Human Rights Report: Colombia (February 25, 2009), "The law provides for the right to organize unions, and the government generally respected this right in practice. ... The law provides workers the right to organize and bargain collectively, and the government respected this right in the private sector; however, collective bargaining was not implemented fully in the public sector."

Given Colombia's history of social unrest, and the extreme levels of violence it has produced in the past, the issue of enforcement is a more pertinent issue. It is also one that is directly addressed by the CTPA. As previously noted, the agreement makes Colombia's enforcement of its labor laws, as well as the labor provisions of the ILO Declaration, subject to binding dispute settlement backed by sanctions.

- 2) *Is the Colombian government taking adequate steps to protect Colombia's workers from acts of intimidation or violence that impede the exercise of their fundamental labor rights? If there are gaps, please identify them and provide specific suggestions for improvement.*

Chamber Response: Colombia has taken extraordinary measures to protect civic leaders, including numerous union leaders, from political intimidation or violence. In 1997, Colombia established a security protection program that provides individual security to vulnerable union members. This unique program to provide protection for trade unionists and other at-risk populations has been recognized by the International Labor Organization and the Inter-American Court of Human Rights. This remarkable initiative underscores the Colombian government's commitment to protecting the basic rights of labor union members. In 2008, Colombia budgeted \$42 million for the program, a four-fold budget increase since 2001. Over 1,700 union members are voluntarily protected under this program, which has been extremely successful.

The long-term trend in violence against labor union members and leaders has been highly positive as homicides of union members have plummeted since 2002, closely tracking the downward trend in homicides overall. Notably, the homicide rate for union members is actually below the overall homicide rate in Colombia.

The following table places violence against labor union members in Colombia in an international context:

Homicide rates (per 100,000)¹

Caracas, Venezuela	130 ²
New Orleans	57
Baltimore	37
Detroit	34
Southern Africa	34
Colombia	33
Washington, D.C.	22.4 ³
World	7.6
Colombian labor union members	6.1 ⁴
United States	5.6
Singapore	0.4

¹ U.S. city figures are from the FBI, 2008 data, unless otherwise noted; country figures are from the Geneva Declaration's 2008 report unless otherwise noted.

² *Christian Science Monitor*.

³ Metropolitan Police, figures for first six months of 2009.

⁴ Colombia's *National Labor School* (ESN), figures for 2008.

- 3) *Has the government of Colombia made sufficient progress in its efforts to prosecute the perpetrators of violence and intimidation against unionists exercising their fundamental labor rights? If there are gaps, please identify them and provide specific suggestions for improvement.*

Chamber Response: In 2004, Colombia undertook to entirely revamp its judiciary system, changing from a closed-door inquisitorial system to an open-court oral procedure with public trials. The budget for the judicial sector was also increased exponentially. And as part of a broader focus on ending impunity for crimes against union members, Colombia established a special sub-unit of the Prosecutor General's office to prosecute human rights cases involving union members, and appointed three specialized judges to hear criminal cases involving union members.

The Broader Context

Colombia's current labor conditions as well as its efforts to improve its labor laws and protect union members should be viewed in the context of the country's broader transformation since 2001. Less than a decade ago, there was a perception that Colombia was on the brink of becoming a failed state. According to the Embassy of Colombia in the United States:

"In 2002, Colombia registered 28,837 homicides, equivalent to 66 homicides per 100,000 inhabitants; kidnappings reached 1,708 per year and Colombians were victims of 1,645 terrorist attacks."

That year, Colombia implemented its Policy of Democratic Security, “aimed at recovering and restoring institutional and public order, and designed to guarantee and protect the fundamental rights of all Colombians.” Again, according to the Embassy:

“Since the implementation of this policy, there have been dramatic reductions in the number of homicides (45%), including violence against union members (79%); kidnappings (80%) and terrorist attacks (75%). The decline in these key indicators of violence has been progressive and consistent, and has contributed to economic growth, opened the door for increased social investments, and helped to consolidate the formal sector, productive employment and poverty alleviation.”

By all accounts, Colombia has undergone a remarkable transformation over the past decade. That is a triumph of brave and principled Colombians, but it is also in part an achievement of bipartisan U.S. foreign policy, which has provided strong support through Plan Colombia and the Andean Trade Preferences Act. In a 2008 publication, “Charting Colombia’s Progress,” the U.S. Department of State reported that:

- Colombia had demobilized over 40,00 terrorists;
- the “new accusatorial judicial system” was resolving cases “in months instead of years;”
- Fully 88% of Colombian children are enrolled in school, up from 71% in 2001;
- 73% of Colombians have health care coverage, up from 54% in 2002;
- GDP growth had averaged over four percent for the last six years, and poverty and unemployment were at the lowest levels in a decade;
- homicides were down 40%, kidnappings down 83%, and terrorist attacks down 76%;
- ridership on Colombian roads had nearly doubled between 2000 and 2008 as the security situation improved; and,
- the number of tourists visiting Colombia had nearly doubled in five years.

Today, the challenge in Colombia is to sustain and enhance the progress that has been made over the last decade. Trade has a critical role to play. Colombia’s economic resurgence has been a defining factor in its recent progress. Robust investment has boosted economic growth and development. The creation of new jobs has provided tens of thousands of Colombians with alternatives to narcotics trafficking. CTPA will help reinforce this powerful and positive dynamic.

Conclusion

Trade negotiations provide the United States with important opportunities to engage our trading partners in mutually reinforcing reforms. Indeed, trade agreements are essentially a process of institutionalizing economic reforms designed to create more open and competitive economies. Therefore, it is appropriate for the United States to seek commitments in trade agreements that advance a wide range of trade-related objectives, including in the area of labor standards.

However, there is ample established precedent in U.S. trade policy for stimulating progress toward a desired standard, rather than demanding the achievement of a specific standard — especially a subjective one — as a precondition for a formal trade relationship. We believe that Colombia has been a willing and engaged partner in good faith efforts to improve domestic labor conditions, standards and laws in the context of the CTPA. We further believe that ongoing U.S. demands in this area may be quickly passing the point of diminishing returns, and risk becoming punitive rather than constructive.

Colombia has stood by its commitments to the United States in this process. It is now time for the United States to stand by the commitment it has made to Colombia. We appreciate this opportunity to share our strong support for CTPA. For all of these reasons, we urge the Administration to send the CTPA to Congress for an immediate vote.

Thank you.