

May 11, 2004

Bennett Harman
Deputy Assistant USTR for Latin America
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Dear Mr. Harman,

This letter is in response to the request for comments on the proposed draft U.S. texts for the Andean Free Trade Agreement (FTA). We are gravely concerned that USTR is proposing to table labor chapter and dispute settlement chapter text that appears identical to the text of CAFTA. CAFTA's labor provisions have met with strong resistance from U.S. and Central American unions and from members of Congress. As you are aware, the AFL-CIO believes that these flawed labor provisions are clearly inadequate for Central America, where labor laws fall far short of international standards and there is little political will to enforce the labor laws that do exist. A detailed critique of these labor provisions is included in the Labor Advisory Committee (LAC) report on the CAFTA submitted to USTR on March 19, 2004.

In the Andean region, as in Central America, labor laws fall short of international standards and governments turn a blind eye to abuses of workers' rights. Even more troubling, many workers who try to form trade unions face not only intimidation and threats of dismissal, but, in far too many cases, physical violence and even murder. Colombia is the world's most dangerous place to be a trade unionist. Since 1991, more than 3000 trade unionists have been murdered in Colombia, yet in only two of these cases have those guilty been convicted and sentenced.

Governments in the region must take aggressive steps to prosecute those responsible for the violence, to protect workers' fundamental human rights and physical security, and to ensure that their domestic labor standards meet international norms in both law and practice. Unfortunately, simply extending the flawed labor chapter of CAFTA to the Andean region will not guarantee that such necessary reforms take place. The CAFTA labor rights model only requires governments to enforce their own labor laws, not to improve or maintain those laws to meet international standards. In addition, the proposed enforcement remedies for labor rights violations are markedly weaker than those available for violations of commercial provisions.

In fact, if USTR moves forward with the proposed language, employers and governments in the Andean region will actually enjoy more freedom to deny workers their fundamental human rights than they currently have under our unilateral trade preference programs. These programs – both the Generalized System of Preferences and the Andean Trade Preference program –

require countries to afford internationally recognized worker rights, and thus allow the U.S. government to scrutinize not only labor law enforcement, but also the adequacy of labor laws, when granting preferential market access. The preference programs also provide the exact same enforcement procedures and remedies for commercial and labor provisions. If USTR rewards Andean employers and governments with an FTA that grants additional and guaranteed market access, while also markedly weakening labor rights conditionality, it will not only undermine workers' rights in Andean countries – it will also send exactly the wrong signal to other countries where workers' fundamental human rights are routinely violated.

USTR plans to table the proposed language prior in the first round of FTA negotiations beginning on May 18. Yet LAC advisors were only given access to the draft language on May 7, allowing fewer than three business days to comment on the language. We sincerely doubt that USTR will have time to adequately take into account these comments, input from Congress, and input from a variety of human rights organizations that have testified before USTR on the Andean FTA before the first negotiating round next week. The issue of workers' rights in the Andean FTA is far too serious and contentious to be resolved after such short, pro forma consultations.

Therefore we strongly urge you to delay tabling any labor rights language in the Andean FTA negotiations until these issues have been addressed in a meaningful and constructive manner. Even if USTR is committed to replicating the CAFTA labor language in this FTA regardless of opposition from cleared advisors and members of Congress, a delay in tabling the language could, at the very least, provide the U.S. government with additional negotiating leverage to secure improvements in the region's labor laws and practices before the FTA is completed and sent to Congress for approval.

The administration will never have more negotiating leverage to win compliance with international labor standards in the Andean region than it has at this moment. It is exactly this leverage that enabled the U.S. government to recently secure a series of labor rights commitments from Ecuador. While these commitments are important, USTR should continue to use its leverage to make sure the current commitments are actually implemented, and to stimulate progress in the other FTA countries as well. If USTR moves forward now with the draft labor chapter it is proposing, it will not be able to come back with a stronger proposal at a later date.

We ask that USTR not table any labor rights language in the Andean negotiations until:

- 1) USTR has worked with the State Department and Department of Labor, members of Congress, unions, and human rights organizations to develop a written list of the specific changes that need to be made to Andean labor laws to bring them into compliance with internationally recognized worker rights, and of the specific steps that need to be taken to address enforcement and impunity problems in the region;
- 2) The Andean countries have agreed in writing that these steps will have to be taken before the FTA can come into effect, and have begun to meet preliminary benchmarks in each of the identified areas;

- 3) USTR has developed a labor rights chapter that will bind Andean countries to maintain their laws in compliance with international standards during the life of the agreement and subject that obligation to dispute resolution and remedies; and
- 4) USTR has developed dispute resolution language that provides effective enforcement remedies for each obligation in the labor chapter, and these remedies, at a minimum:
 - Are equivalent to those available for commercial disputes;
 - Do not include arbitrary caps on the level of fines;
 - Do not allow fines to finance activities in the violating country absent an oversight system that ensures resources devoted to labor rights within the country increase overall and the labor rights violations in question are truly remedied; and
 - Provide swift recourse to meaningful trade sanctions not only if a fine is not paid, but also if workers' rights violations are not remedied by the payment of a fine.

We hope USTR will take the time to give these vital issues the consideration they deserve, and look forward to a response from your office.

Sincerely,

Thea M. Lee
Assistant Director for International Economic Policy
AFL-CIO