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before the  
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**Introduction**

Chairman Baucus, Ranking Member Hatch, and distinguished members of the Committee, on behalf of the Department of Labor and Secretary Hilda L. Solis, thank you for the opportunity to discuss labor conditions and labor rights in Colombia, the U.S.-Colombia Trade Promotion Agreement (Colombia TPA) and the Action Plan announced by President Obama and Colombian President Juan Manuel Santos on April 7, 2011.

President Obama is committed to pursuing an ambitious trade agenda that will help grow our economy and support good jobs for U.S. workers by opening new markets. An essential component of this agenda is ensuring that our trading partners respect fundamental labor rights. This is consistent with our core values as a nation and important so that U.S. businesses and workers compete on a level playing field. As you know, Colombia is only now recovering from a devastating era of violence that spanned two generations; a difficult time in which no sectors of society, especially union leaders, were spared. In addition, repeated observations by the International Labor Organization (ILO) underscored that fundamental labor rights had not been sufficiently protected in the country, although they recognize Colombia's accomplishments to date. An ILO Committee of Experts' 2010 report recognized Colombia's efforts to combat violence in general and the decrease in violent acts against trade unionists in particular. Consequently, action to ensure that more progress on fundamental labor rights protection continues, has been the most important remaining issue affecting progress on the Colombia TPA.

Today I would like to discuss the work we have undertaken with the Colombian government to address our concerns through the development of the Colombian Action Plan Related to Labor Rights (Action Plan). The Action Plan and our partnership with the new Administration of President Santos provide a way forward to improve labor rights in Colombia and ensure the benefits of this trade agreement are broadly shared in Colombia as well as in the United States.

**Background and History of Labor Rights in Colombia**

Colombia has a long tradition of multi-party constitutional democracy and a history of trade unionism. However, for the last 40 years Colombia has experienced violence between government forces, left-wing insurgents and right-wing paramilitaries. In the 1980's and 1990's, escalating violence was further fueled by the drug cartels. Violence

against trade unionists, including murders, increased rapidly during the 1990s, significantly weakening the trade union movement.

The new Administration of President Santos has publicly denounced the problems of anti-union violence and impunity for the perpetrators and has recognized that widespread abuses of worker rights must be addressed. This presents an opportunity for our two governments to work together to accelerate progress to achieve the important goals of protecting rights of workers and the security of those who advocate on their behalf.

### ***Labor Violence***

Labor-related violence in Colombia has fallen substantially over the past decade, along with overall levels of violence. In 2006, the Colombian Prosecutor General's Office established a special Labor Sub-Unit of the Human Rights Unit to address the impunity of perpetrators of violence against trade unionists. The Sub-Unit investigates and prosecutes cases of violence committed against trade unionists. Since then, there has been progress in prosecuting cases involving the murder of trade unionists, including over 350 convictions. However, most cases remain unresolved, including the vast majority of cases from the 1980's and 1990's.

The Action Plan contains steps to address the problems of violence and impunity as a matter of urgency. As discussed below, the Government of Colombia's successful implementation of the Action Plan is a critical step in addressing both past violence and impunity and ensuring that violence does not continue in the future.

### ***Worker Rights***

Apart from violence and intimidation, other challenges to the free exercise of worker rights in Colombia include the misuse of cooperatives, temporary service agencies and collective pacts to undermine unions and collective bargaining.

*Cooperatives* – Some employers in Colombia have used cooperatives in an inappropriate way to sever the direct employment relationship with their workforces. Such employers eliminate jobs but then utilize workers (often the same individuals) hired through a cooperative rather than directly employing them. The workers hired in this manner are vulnerable to exploitation because they are considered cooperative “owners,” rather than “workers,” and are thus excluded from Labor Code protections, including the right to organize and bargain collectively. While Colombian law allows for cooperatives, they cannot legally be used to undermine workers' legal rights. Until now, the system of enforcement and penalties for abuse has not been sufficient to prevent widespread violations.

*Temporary Service Agencies* – Colombian law also authorizes temporary service agencies to serve as labor contractors to furnish temporary workers. The law includes provisions to prevent these agencies from undermining workers' rights. These include limits on the types of work that can be performed and the number of times contracts can be renewed.

However, there is concern that these provisions have not been adequately enforced in the past and that their use may grow in the future as the government reforms other labor laws and practices, such as the use of cooperatives.

*Collective Pacts* –Two types of collective employment contracts are permitted under the Colombian Labor Code: collective bargaining agreements and collective pacts. Collective pacts are direct agreements made between an employer and non-union workers and are permitted under Colombian law when a union represents one-third or less of a company’s workforce. In practice, some employers have used the pacts to undermine unions.

### **Labor Provisions in the US-Colombia Trade Promotion Agreement**

The Colombia TPA includes strong protections for workers’ rights, based on the May 10, 2007, bipartisan Congressional-Executive agreement. These are the strongest provisions to-date related to labor in U.S. free trade agreements.

In the Colombia TPA’s *Labor Chapter*, Colombia and the United States commit to adopt and maintain in their laws and practices the rights as stated in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up* (1998), and to submit to legal proceedings if either side fails to meet that commitment. The fundamental rights are:

- Freedom of association – which protects the right to form and join a union;
- The right to collective bargaining;
- Elimination of all forms of compulsory or forced labor;
- Effective abolition of child labor, and for purposes of the Colombia TPA, a prohibition on the worst forms of child labor; and
- Elimination of discrimination in respect of employment and occupation.

These and other commitments in the *Labor Chapter* are subject to the same level of dispute settlement procedures as commercial obligations in the Colombia TPA. Remedies for violations of labor commitments under the agreement include trade sanctions and fines. As with our other free trade agreements, the Department of Labor’s Bureau of International Labor Affairs (ILAB) will receive submissions from the public on any perceived violations of the labor provisions of the agreement. Upon entry into force of the Colombia TPA, we will closely monitor the implementation of the labor provisions and will use the mechanisms of the agreement to ensure the labor commitments are upheld.

### **Labor Rights Action Plan**

In addition to including stringent labor commitments in the TPA Agreement itself, President Obama insisted that Colombia address serious labor concerns before he would send the agreement to Congress. As a result, the U.S. and Colombian governments agreed to an ambitious and comprehensive Colombian Action Plan Related to Labor

Rights that includes major, swift, and concrete steps the Colombian government has agreed to take to address outstanding labor concerns. The full Action Plan can be found at [https://www.ustr.gov/webfm\\_send/2787](https://www.ustr.gov/webfm_send/2787) and a Fact Sheet is available at [http://www.whitehouse.gov/sites/default/files/rss\\_viewer/LaborProtectionsandtheColombiaTradeAgreement.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/LaborProtectionsandtheColombiaTradeAgreement.pdf).

The Action Plan includes specific steps to prevent violence and prosecute perpetrators and to effectively protect worker rights.

### ***Preventing Violence and Prosecuting the Perpetrators***

Under the Action Plan, the Colombian Government expanded the scope of its existing protection program for union leaders to provide protection for labor activists (such as shop stewards and bargaining committee members), workers who are trying to organize or join a union and former union activists who may be threatened because of their past activities on behalf of workers. Members of the teachers union, particularly those that work in remote areas, have faced particular risks. To address this, the Colombian Government has revised its teacher relocation and protection program and will work together with the U.S. government to ensure that the program effectively protects them.

The Colombian Government has committed to seek passage by June 15, 2011, of reforms to the Colombian Criminal Code to criminalize actions or threats that could adversely affect fundamental workers' rights. This includes threats against labor organizers and actions that interfere with worker's rights to organize and bargain collectively, penalizing such activity with up to five years' imprisonment.

By July 30, 2011, the Colombian Government has committed to eliminate the current backlog of risk assessments for union members who have requested protection and to take the necessary steps to allow the Colombian National Police to process all risk assessments within 30 days. This is essential to ensure that unionists who are at risk receive protection promptly.

The Colombian President has already directed the National Police to assign 100 full-time judicial police investigators to support prosecutors handling cases of crimes against union members to address the backlog of cases and speed up prosecutions.

In addition, the Prosecutor General of Colombia has committed to:

- Implement recently issued directives to judicial and investigative police and prosecutors that will enable them to better detect, investigate and prosecute anti-union crimes.
- Undertake an analysis of past homicide cases to identify steps to improve future efforts to identify motives, including identifying the "intellectual authors" who ordered the murders, and successfully prosecute them.
- Develop an improved training program for police and prosecutors with the assistance of the U.S. Departments of Justice and Labor.

- Hold meetings with each union confederation and the National Union School (ENS) to reconcile the list of outstanding cases of unionist homicide cases compiled by the ENS with that of the Prosecutor General.
- Develop, by May 20, 2011, a plan to strengthen the capacity and number of prosecutors and judicial police investigators in regional offices.

### ***Protecting Workers' Rights***

In addition to bolstering protections for unionists against violence and impunity, the Action Plan also addresses laws and practices that have undermined workers' fundamental rights. Under the plan, Colombia will take concrete steps to stop the misuse of cooperatives and ensure better enforcement of labor laws by increasing the number of inspectors and strengthening penalties for violations.

For example, the Colombian government has committed to:

- Accelerate the effective date from July 2013 to June 2011 of legal provisions, including significant fines, to prohibit the misuse of cooperatives and other employment relationships that undermine workers' rights. Legislative action is expected by May 31, 2011.
- Issue regulations by June 15, 2011, that implement a new cooperatives law, clarify earlier cooperatives laws and ensure coherence among these laws. The regulations will include significant fines for companies that violate these laws and use methods including positive incentives to create and maintain direct employment relationships for affected workers.
- Double the labor inspectorate by hiring 480 new labor inspectors over the next four years, including 100 new hires in 2011.
- Dedicate 100 labor inspectors exclusively to address abuse of cooperatives to deny workers' rights by the end of 2012. Preventive inspections will begin immediately in the following priority sectors: palm oil, sugar, mines, ports, and flowers.
- Conduct an outreach program, starting in June 2011, to inform workers of their rights under the relevant laws and the remedies available to them to enforce recognition of a direct employment relationship.
- Improve, by June 15, inspection and enforcement to prevent the use of temporary service agencies to circumvent workers' rights.
- Launch, by June 15, a robust enforcement regime to detect and prosecute the use of collective pacts to undermine the right to organize and bargain collectively and conduct a public awareness campaign. The amendment to the Criminal Code referred to above will include a provision to make it a crime, punishable by imprisonment, to offer a collective pact to non-union workers that has superior terms to those of union workers.
- Seek the advice and assistance of the ILO to implement these measures.

## **A New Partnership with Colombia**

Colombia is recovering from a devastating period of civil strife and violence. The new administration of President Santos has committed to move forward to create a more peaceful and just society. With the Action Plan and other measures, the United States is assisting Colombia to achieve these goals.

The administration of President Santos has already begun to take significant steps under the Action Plan and has committed to further important reforms in the weeks ahead. The Colombia TPA also provides strong enforcement provisions to ensure that commitments are fully enacted and maintained. These obligations are in the interest of the United States and in the interest of Colombia and its workers. Our two nations have much to gain from expanding our economic relationship in a way that generates broad-based economic growth, creates good jobs for our workers and guarantees that workers can exercise their fundamental rights.

As I noted previously, the President is committed to pursuing an ambitious trade agenda that will help grow our economy and support good jobs by opening new markets. An essential piece of this agenda is supporting U.S. workers adversely affected by trade in the changing global economy. That is why the Administration and the Department of Labor strongly support the reauthorization of the Trade Adjustment Assistance (TAA) for Workers provisions of the 2009 Trade and Globalization Adjustment Assistance Act (TGAA). Reforms to the TAA for Workers program enacted by the TGAAA helped tens of thousands of trade-impacted workers get the job training, placement assistance and income support they need to succeed in a tough job market - an estimated 435,000 workers were certified to receive TAA services, approximately 185,000 of those workers might not have been eligible without the 2009 reforms. The TGAAA passed by Congress in 2009 strengthened the TAA for Workers program by extending coverage to workers in the service sector and expanding workers' opportunities to receive job training and other services. Those reforms expired on February 12, 2011. As we expand access to other markets abroad, we need to ensure that our workers are provided the tools needed to take advantage of these opportunities and are not left behind in the global economy. In addition to TGAAA, we urge the reauthorization of the Generalized System of Preferences (GSP) and the Andean Trade Preference Act (ATPA) – two preference programs that enjoy broad bipartisan support and are important, time-tested tools for promoting economic growth in the developing world. All three programs support U.S. jobs and help to enhance U.S. competitiveness.

Again, thank you for the opportunity to testify today. I am happy to answer any questions the Committee may have on the Department of Labor's work to improve labor conditions and labor rights in Colombia as part of the United States - Colombia Trade Promotion Agreement.