

# U.S.-COLOMBIA TRADE PROMOTION AGREEMENT

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## HEARING

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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MAY 11, 2011  
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## **U.S.-COLOMBIA TRADE PROMOTION AGREEMENT**

**WEDNESDAY, MAY 11, 2011**

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 10:09 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Kerry, Wyden, Stabenow, Nelson, Cardin, Hatch, Grassley, Snowe, Roberts, and Thune.

Also present: Democratic Staff: Russ Sullivan, Staff Director; Amber Cottle, Chief International Trade Counsel; Michael Smart, International Trade Counsel; Gabriel Alder, Senior International Trade Counsel; and Chelsea Thomas, Professional Staff. Republican Staff: Everett Eissenstat, Chief International Trade Counsel; David Johanson, International Trade Counsel; and Maureen McLaughlin, Detailee.

### **OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The hearing will come to order.

President John F. Kennedy once said, "Geography has made us neighbors, history has made us friends, economics has made us partners, and necessity has made us allies."

President Kennedy's words describe our relationship with Colombia. The United States and Colombia are neighbors in the Americas. Washington, DC is as close to Cartagena, Colombia as it is to Columbia Falls, MT.

While geography has made us neighbors, history has made us friends. The United States and Colombia are the two oldest democracies in the western hemisphere. When Colombia declared its independence from Spain in 1810, the United States was the first country to recognize its new sovereign neighbor. The historical roots of our friendship run deep.

As history has made us friends, economics has made us partners. Last year, the United States exported goods worth \$12 billion to Colombia, our third-largest market in South America. Colombia buys more U.S. farm products than all but one country in South America.

In fact, we trade more goods and services with Colombia than we do with Russia, Spain, and other larger economies. Rather than compete, our economies complement each other. Colombia buys

wheat, cars, machinery, and aircraft from the United States. We buy flowers, coffee, oil, and clothing from Colombia.

Our economic relationship with Colombia has helped U.S. businesses to grow, and that has created jobs for American workers.

While economics has made us partners, necessity has made us allies. A decade ago, Colombia was on the brink of collapse, nearly a failed state. Armed conflict raged, drug traffickers flourished, violence against workers flared, and the economy stagnated. Vital U.S. national interests were at risk.

As allies, the United States and Colombia joined forces to respond. The United States pledged its support for Plan Colombia. Under that plan, we provided more than \$7 billion to Colombia to fight drug trafficking, spur development, and protect human rights. We expanded the Andean Trade Preference Act to provide more duty-free access to the United States market for Colombian products. We created new opportunities for the Colombian people and new alternatives to the illegal drug trade.

With our help, Colombia has achieved impressive results. Since 2002, homicides have decreased by 46 percent, kidnappings have declined by 93 percent, terrorist attacks have fallen by 70 percent, and more than 50,000 former combatants have laid down their arms.

But we have unfinished business with our friend and ally. In 2006, the United States and Colombia signed a free trade agreement. It was overwhelmingly approved by Colombia. The International Trade Commission estimates that this agreement will boost the U.S. economy by \$2.5 billion, but it awaits action by the United States. Our approval of the FTA has been delayed by legitimate concerns for the rights and safety of Colombian workers.

During decades of armed conflict, Colombian workers were subject to threats, intimidation, and violence. I traveled to Colombia earlier this year to gauge firsthand the progress Colombia has made to address these concerns. This progress is real, it is impressive, and it will be enhanced once the FTA takes effect.

The FTA convinced both parties to protect fundamental labor rights. This commitment is fully enforceable, just like the commercial provisions in the agreement. This commitment is far stronger than those in Colombia's FTAs with other countries, including Canada and the European Union.

Colombian President Santos has also agreed to do far more. Last month, President Obama and President Santos agreed to a labor action plan. In that plan, Colombia committed to a series of concrete steps to strengthen labor rights, improve protection of workers from violence, and increase prosecutions of the perpetrators of violence.

The action plan has been embraced by all of the major labor unions in Colombia. And a prominent Colombian labor group in fact called the action plan "the most significant labor rights development in Colombia in 20 years." The action plan is also enforceable. It is divided into three stages to ensure that Colombia meets each of its core commitments.

Last week, the administration notified Congress that Colombia has met the first stage of the commitments. As a result, Congress

and the administration are now working on a bill to implement the FTA.

The second stage of commitments is due by June 15. Once these are met, we understand that the administration will be prepared to formally submit the FTA to Congress for a vote.

The third stage of commitments is due by December 15. Once Colombia implements these commitments and others related to the FTA, the administration will certify to Congress that Colombia has taken the necessary steps to allow the FTA to enter into full force.

We are now poised to approve our FTAs with Colombia, Panama, and Korea. As we move forward with these FTAs we must also help American workers meet the challenge of global competition. To do so, we must ensure that Congress enacts a robust, long-term extension of Trade Adjustment Assistance in tandem with the FTAs.

Colombia is our neighbor, our friend, our partner, and our ally. So let us work together to implement the labor action plan and move forward quickly and approve the FTA. And let us extend Trade Adjustment Assistance. Let us create new opportunities that will improve the economies and the lives of the people in both countries.

[The prepared statement of Chairman Baucus appears in the appendix.]

The CHAIRMAN. I am informed that Senator Hatch has been temporarily delayed. He, of course, will make his opening statement when he arrives. In the meantime, let us proceed with the testimony.

I will introduce the witnesses. First, we have Miriam Sapiro, Deputy U.S. Trade Representative for Europe, the Mideast, and the Americas. Welcome, Ambassador Sapiro.

Then we have Sandra Polaski, the Deputy Under Secretary for International Labor Affairs at the Department of Labor. Thank you, too, Ms. Polaski, for taking your time.

After Sandra Polaski we have General James Hill, a retired 4-star general from the U.S. Army. General Hill served as commander of U.S. Southern Command, with responsibility for all U.S. military operations and relationships in the Caribbean, Central America, and South America.

In addition, we have Jeff Vogt, deputy director of the AFL-CIO's International Labor Department. Thank you, Mr. Vogt, very much for attending.

And finally, I am pleased to welcome Gordon Stoner, last but not least, president of the Montana Grain Growers Association. Gordon is a 4th-generation Montanan, a rancher from Outlook, MT. He really should not be here today, he should be planting. It has been such a late, wet spring. But thank you, Gordon, for taking your time and coming.

I would also like to give a special welcome to Ambassador Silva, who is with us here today. Thank you, Mr. Ambassador, for all that you have done in hosting my trip, as well as the trips of many other members of Congress, to your country. I frankly urge all of my colleagues, if you have not been to Colombia, you are missing something. Go. It is a beautiful country. It is a wonderful place to visit.

As is our usual practice, all of your statements will be automatically included in the record, and I ask each of you to summarize your statements for about 5 minutes.

Ambassador Sapiro, you are first.

**STATEMENT OF HON. MIRIAM SAPIRO, DEPUTY U.S. TRADE REPRESENTATIVE, OFFICE OF THE U.S. TRADE REPRESENTATIVE, WASHINGTON, DC**

Ambassador SAPIRO. Thank you very much, Chairman Baucus, members of the committee. It is a great honor to testify before you today about the U.S.-Colombia trade promotion agreement.

The Obama administration is pursuing multiple initiatives to open global markets, dismantle barriers to our exports, and vigorously defend America's trade rights. As part of this comprehensive strategy, President Obama directed us to work with Congress and other stakeholders to build bipartisan support for the pending trade agreements with South Korea, Panama, and Colombia.

The President firmly believes that our trade agreements must advance both our economic interests and our core values. For each of the three pending agreements, we have worked intensively to address key issues of concern and to forge broader bipartisan support.

With South Korea, we succeeded in addressing several issues, including market access for autos. With Panama, we succeeded in addressing labor rights and tax transparency questions. With Colombia, we succeeded in developing an action plan related to labor rights to address serious concerns regarding labor protections, violence, and impunity.

Last week, staff from this committee made history when they joined with colleagues from the House Ways and Means Committee and USTR to begin informal drafting sessions on three trade agreements simultaneously. There is no question that Colombia has made important strides in protecting labor rights and reducing threats of violence over the past decade. But it was equally clear to the administration that more needed to be done, from preventing practices that undermine fundamental labor rights, to enhancing protection for union activists, to strengthening the investigation and prosecution of labor-related violence.

We have had a willing partner in President Santos, who has shown commitment to protecting the rights of all citizens and promoting social justice. Working together, the Obama and Santos administrations reached agreement, as the chairman indicated, on the action plan which we announced on April 7.

My colleague, Deputy Under Secretary of Labor Sandra Polaski, played a key role in developing and negotiating the action plan, which she will describe in more depth. Specific improvements that have already occurred include expanded eligibility for Colombia's protection program to include not only labor leaders, but also rank-and-file activists and those seeking to form a union. More than 95 judicial police investigators have been assigned exclusively to pursuing cases of labor violence, with early identification of any union affiliation now mandatory.

Ahead of schedule, Colombia enacted legislation to move up the effective date of new penalties for misuse of worker cooperatives. These and other actions by Colombia to date have enabled USTR



and Congress to begin the technical discussions now underway regarding the text of the implementing bill for the agreement. Colombia still has important work to do to accomplish the additional elements of the action plan before the President will formally submit the agreement to Congress for consideration.

I am pleased to announce that our work with Colombia on these remaining tasks is well underway and that I will meet on Friday with a high-level team flying up from Bogota. Once approved, our trade agreement will provide significant economic and commercial benefits for our exporters. The ITC has estimated that the agreement will expand our goods exports to Colombia by more than \$1 billion and increase U.S. GDP by \$2.5 billion, as well as support thousands of additional jobs for our workers.

U.S. companies will also enjoy new access to Colombia's \$134-billion services market, improved intellectual property rights protection, increased government procurement opportunities, and safeguards against discriminatory or unlawful treatment.

We must, of course, ensure that U.S. workers, businesses, farmers, and ranchers will be able to enjoy these substantial benefits as we recognize that Colombia has already negotiated trade agreements with some of our toughest competitors. Even as Colombia has been working closely with us, it has nevertheless suffered from a loss of preferential access to the U.S. market since the Andean Trade Preference Act lapsed earlier this year. The administration urges Congress to renew both the ATPA and the GSP programs for as long as possible. For Colombia, extension will restore these preferences until our agreement can enter into force.

We also urge Congress to keep faith with America's workers by renewing a robust Trade Adjustment Assistance program that will support Americans who need training and other services when their jobs are affected by trade. TAA is a key component of the President's legislative trade agenda, along with renewal of the preference programs I just mentioned and permanent normal trade relations for Russia as that country enters the WTO.

We are eager to work with this committee and Congress as a whole to accomplish all of these objectives this year. Thank you.

The CHAIRMAN. Thank you, Ambassador Sapiro.

[The prepared statement of Ambassador Sapiro appears in the appendix.]

The CHAIRMAN. We are joined today by our senior Republican member, the ranking member, Senator Hatch. We would be very honored, Senator, if you would like to give a statement.

**OPENING STATEMENT OF HON. ORRIN G. HATCH,  
A U.S. SENATOR FROM UTAH**

Senator HATCH. Well, thank you so much, Mr. Chairman. We welcome all of you to our hearing this morning. This is a very important hearing.

Today's hearing provides us with a great opportunity to talk about the many benefits of our free trade agreement with Colombia. I think it is important to put our agreement with Colombia in context. In the 1990s, Colombia was on the verge of becoming a failed state, as drug trafficking fueled urban and rural violence. Well-armed insurgents and paramilitary groups battled over terri-

torial control. Unemployment, corruption, and kidnapping were widespread. Today, Colombia is re-awakening.

Violence is down, employment is up, and the economy is growing. Institutional reforms are creating a stronger and more vibrant democracy. Land reform and reparations for victims of violence are being undertaken in an unprecedented effort to heal the wounds of the past.

Years of bipartisan cooperation through Plan Colombia and through programs such as the Andean Trade Preference Act helped to make this transformation possible. But our work is clearly not done. Colombia continues to face challenges. Through approval of our pending trade agreement with Colombia, we can help meet those challenges and take another step toward achieving our shared goal of a strong, prosperous, and democratic Colombia.

We will hear a lot today about the labor action plan recently concluded between President Obama and President Santos. This is a good development which has helped bring us to where we are today, even though it is not part of our trade agreement.

But let us be clear. Our trade goes far beyond the action plan. It transforms a 1-way preferential trade relationship into a 2-way street, giving U.S. exporters fair access to a large and growing consumer market. The agreement will affect the lives of workers across the United States in a positive way.

A good example of the agreement's effect will be found in my home State of Utah, where workers at AC Med, a Salt Lake company that exports hospital beds to Colombia, will see tariffs of 20 percent eliminated immediately upon implementation of this agreement.

The agreement also will provide better access for U.S. service providers, telecommunication companies, and agricultural exporters. So, while the action plan is important, let us not lose sight of the far more significant economic benefits of this agreement.

The agreement will also benefit Colombia, providing predictability and certainty to many Colombian businesses that export flowers and other products to the United States, as well as encouraging partnerships and investments between Colombian and American businesses. Once implemented, the agreement will sustain economic growth, help create jobs, and provide an opportunity to millions of Colombians to get out of poverty.

Nor can we lose sight of the agreement's geopolitical significance. Colombia sits between Venezuela and Ecuador, two countries which seek to distance themselves and others from the United States as they pursue radical models of economic development not based on free market principles. We ignore this political reality at our peril.

Colombia is also at the forefront in the fight against terrorism and drug trafficking. The drug trade directly impacts the lives of many Americans and Colombian citizens on a daily basis. Only by working together can we stop the tide of illegal drugs. In this critical battle, we cannot afford to turn our back on such a strong friend and ally by rejecting our trade agreement.

Now, this summer I will do all I can to assure that the Congress approves our trade agreement with Colombia. I, in particular, have appreciated our chairman's work in this regard. In doing so, we

will boost U.S. exports by obtaining improved access to the growing Colombian market. We will also be standing by a true friend and ally, and we will be helping millions of Colombian workers, as well as U.S. workers, to live better lives.

Despite facing many challenges, I believe Colombia is well on its way to being one of the most prosperous, stable, and democratic countries in our hemisphere. By approving this agreement, we can all be proud to play a small part in that success.

I am sorry I was a little bit late, Mr. Chairman, but I just could not get here any earlier. I appreciate your kindness in allowing me to give these few remarks.

I again welcome all of you to be here.

The CHAIRMAN. Thank you, Senator, very much.

[The prepared statement of Senator Hatch appears in the appendix.]

The CHAIRMAN. Ms. Polaski?

**STATEMENT OF SANDRA POLASKI, DEPUTY UNDER SECRETARY FOR INTERNATIONAL LABOR AFFAIRS, DEPARTMENT OF LABOR, WASHINGTON, DC**

Ms. POLASKI. Thank you, Chairman Baucus, Ranking Member Hatch, distinguished members of the committee. Thank you for giving me this opportunity to discuss the action plan on labor that President Obama and Colombian President Santos announced on April 7.

President Obama is committed to pursuing an ambitious trade agenda that will help our economy grow and create good jobs for U.S. workers. An essential component of this agenda is ensuring that all of our trading partners respect fundamental labor rights. This is consistent with our core values as a Nation, and it is also important to level the playing field for U.S. workers and U.S. firms.

President Obama recognized the need to improve the protection of worker rights, the safety of union activists, and the prosecution of perpetrators of violence in Colombia before he was ready to move forward on the Colombia trade agreement.

Fortunately, President Juan Manuel Santos has proven to be a strong and willing partner in these reforms. President Santos had already identified many of the problems that we believe require urgent attention and had started to take important steps in this direction. His administration has continued to work with us in a constructive, problem-solving fashion.

The action plan that we reached as a result of our efforts and our ongoing work to fully implement the action plan can provide a path forward to achieve the protection of worker rights, the improvement of workers' livelihoods, and the civility in economic relations that Colombia needs and that President Santos wants.

Our work together can help ensure that the benefits of this trade agreement are broadly shared in Colombia, as well as here in the United States. I would like to highlight, briefly, a few of the many significant points and commitments of the action plan and where we stand in their implementation.

An important group of commitments under the action plan addresses the protection of union activists from violence and the prosecution of the perpetrators of violence. Under the plan, the Colom-

bian government has expanded the scope of its existing protection program which previously covered only union leaders.

The program will now provide protection for threatened labor activists at the local level and workers who are threatened for trying to join a union, among others. The protection program has been effective in protecting the leaders, and the expansion of the program to local-level activities who are targeted is necessary and timely.

Members of the teachers' union have faced particular risks. Teachers are often community leaders and may work to shield their students from recruitment by criminal gangs. Teachers account for half or more of the union members who have been murdered in recent years. To address this, the action plan calls for changes to the Teacher Relocation and Protection Program, which have already been implemented by the Santos administration. Our governments will now work together going forward to ensure that the program effectively protects Colombian teachers.

When we started our discussions with Colombia, there was a backlog of over 300 pending applications for protection by trade unionists. As part of the action plan, the Colombian government committed to eliminate the backlog of risk assessments by July 30 this year and to ensure that the national police process all risk assessments within 30 days in the future, as required by Colombian law.

This is essential to ensure that those at risk receive protection promptly. I am happy to report that the Colombian government launched an emergency plan to reduce the backlog while we were still in discussions in March, and the number of pending applications for protection by trade unionists has already been reduced by more than half, to 140, and appears on track to being eliminated well before the July 30 deadline in the action plan.

The action plan also addresses the backlog of unresolved cases of violence against trade unionists. President Santos has directed the national police to assign 100 full-time judicial police investigators to handle cases of murder and other crimes against union members that have not yet been resolved. This is important because prosecutions serve as an essential deterrent to those who would commit violence in the future.

The second broad set of commitments in the action plan, beyond addressing violence and impunity, addresses worker rights in Colombia. The Colombian government has committed to seek passage by June 15 of this year of reforms to the Colombian criminal code to criminalize threats and actions that could adversely affect the fundamental rights of workers in Colombia.

This includes threats against workers and activists, which have increased in recent years, and actions that interfere with workers' exercise of their fundamental rights. Such activity would be penalized by possible imprisonment under the criminal code reforms, and we think this would be a very important component in the actions by the government to change the atmosphere of intimidation in Colombia.

The action plan also addresses the misuse of cooperatives, which has proliferated in recent years and denies many Colombian workers their rights under the country's labor laws. The Santos administration had already proposed, and the Colombia Congress had en-

acted, significant reforms to the legislation governing the use of cooperatives.

Under the action plan, the Colombian administration requested, and the Colombian Congress agreed, to accelerate the effective date of those reforms from July 2013 to June 2011, and the Colombian government will issue regulations by June 15, 2011 to implement the new law, clarify earlier cooperative laws, and ensure coherence among these laws.

The regulations will include significant fines for companies that violate the laws and use methods, including positive incentives, for employers that create direct employment relationships with their workers. Preventive inspections will begin immediately and will put particular focus on several sectors where there have been significant abuse of cooperatives and other irregular forms of contracting labor. They include palm oil, sugar, mines, ports, and flowers.

Colombia will also create a separate Ministry of Labor in August of this year, and double the Labor Inspectorate by hiring 480 new labor inspectors over the next 4 years, including 100 new hires whose jobs have already been posted.

In conclusion, let me say that our two nations have much to gain from expanding our economic relationship, particularly in a way that creates good jobs for workers and guarantees that workers can exercise their fundamental rights.

Here in the U.S., President Obama is committed to provide support for workers who may be adversely affected by trade as we pursue our ambitious trade agenda. That is why the administration is urging Congress to support the reauthorization of Trade Adjustment Assistance with the expanded provisions that were enacted in 2009. As we deepen our involvement in the global economy, we need to ensure that our workers are provided the tools needed to take advantage of the opportunities and not be left behind.

Thank you again for the opportunity to testify, and I look forward to your questions.

The CHAIRMAN. Thank you very much, Ms. Polaski.

[The prepared statement of Ms. Polaski appears in the appendix.]

The CHAIRMAN. General Hill?

**STATEMENT OF GENERAL JAMES T. HILL, U.S. ARMY (RET.),  
FORMER COMMANDER OF THE U.S. SOUTHERN COMMAND,  
CORAL GABLES, FL**

General HILL. Thank you, Mr. Chairman.

I served as the commander of the U.S. SouthCom from August 2002 until November 2004, assuming command within days of President Uribe's inauguration. It is not overstatement or exaggeration to describe Colombia of August 2002 as a failed or failing state. At best, it was a dysfunctional state.

On his inaugural day, only an equipment malfunction stopped FARC mortar rockets from raining down on the crowd. Colombians could not travel through the countryside. Three armed and very deadly insurgent groups vied for control of the country. Colombia was the homicide and kidnapping capital of the world. Colombia, in August of 2002, was simply one of, if not the, most dangerous and violent nations in the world.

The inability of the government to provide a safe environment for its citizens caused the concomitant deterioration of social and economic norms: taxes were not paid; wealthy Colombians abandoned the country, taking their money to Miami and other parts of the United States; huge tracts of the country were controlled by illegal armed groups, causing enormous displacement of the population; and coca growth and cocaine production fueled the fire that threatened to destroy the second-oldest democracy in the hemisphere.

Into that maelstrom stepped President Alvaro Uribe, armed with great personal and leadership qualities, backed up by the Colombian people and supported by the United States through Plan Colombia. What has transpired over the last decade under the inspired leadership of President Uribe, and now the continuing great leadership of President Santos, is a success story for both Colombia and the United States with few historical parallels.

U.S. investment through Plan Colombia has been about \$8 billion over the last decade. Put into a different perspective, it is 2 weeks of expenditure in Iraq at the height of the involvement in Iraq. The U.S. Government's funding for Colombia amounts to less than 5 percent of what they spend for themselves.

What have we gotten out of that? Colombia's military is a fully capable force today. It made great strides in respect for human rights and the rule of law. They do not tolerate extra-judicial killings. The FARC, while still an active terrorist organization, has been reduced by approximately 50 percent. The ELN is essentially non-existent. The AUC demobilized. Homicide is down 48 percent; kidnappings, 91 percent; attacks down 73 percent; attacks against infrastructure, down 88 percent; attacks against labor unionists have dropped significantly: 194 homicides in 2002, 51 in 2010. There is no indication in my view that those murders are state-sponsored or state-tolerated.

Cocaine production continues. We will never stop the drug trade. There is simply too much money and too much profit in it for too many people. But we did stop cocaine trafficking and narco-terrorists from creating a narco-state in Colombia, and I say that was \$8 billion well spent.

Colombia's success in this area and in the security area enables the Santos administration to focus on socio-economic and development issues. Colombia's national consolidation plan is a comprehensive reexamination of its whole-government approach to re-establishing State presence and the rule of law throughout the country.

President Santos's transformative legislation agenda, highlighted by land restitution, victims' reparations, and judicial reform initiatives, aims to lay the foundation for lasting peace by tackling the root causes of the decades-old Colombian internal conflict. This is classic counter-insurgency doctrine that accepts the fact that government cannot succeed without reform, and the support of the populace cannot be ensured without meaningful reform.

Simply put, building upon a foundation of greatly improved security, it is the natural progression of good governance begun in 2002. In my 27 months of command I visited every country in Central and South America, save Venezuela. If we were discussing our personal lives, I would put it this way: we have lots of acquaint-

ances in the region, but few really good friends. Colombia is one of those tried-and-true, lifelong friends we all seek in our personal lives. It makes no sense to damage this friendship.

If we fail to ratify the free trade agreement, we tell our friends that we really do not care about them all that much. If we fail to ratify, we do so at exactly the time when Colombia is emerging as a regional leader and full U.S. partner. Colombia is the only stable actor in the Andean ridge. It helps provide political leverage in our dealings with quixotic states like Ecuador and helps us counter the radical populism of Venezuela. Colombia has become a key partner in regional security cooperation, helping countries throughout the Americas more effectively confront transnational criminal organizations.

The U.S.-Colombia relationship begun in August of 2002 as an effort to defend democracy in Colombia and to stabilize the failing state has paid huge dividends. Ours is a maturing, increasingly sophisticated political relationship based on true partnership and valuable to both sides. Make no mistake, the free trade agreement ratification is at the heart of that relationship. Failure to ratify will make a strong relation weaker, decreasing our ability to meet our security, economic, and political goals in the region. Failure to ratify, using a sports analogy, would be like snatching defeat from the jaws of victory.

I strongly urge the Senate to ratify the agreement. Let us not waste a decade's worth of success.

The CHAIRMAN. Thank you, General, very much.

[The prepared statement of General Hill appears in the appendix.]

The CHAIRMAN. Mr. Vogt, you are next.

**STATEMENT OF JEFF VOGT, DEPUTY DIRECTOR, INTERNATIONAL AFFAIRS DEPARTMENT, AFL-CIO, WASHINGTON, DC**

Mr. VOGT. Chairman Baucus, Ranking Member Hatch, and esteemed members of the Senate Finance Committee, I thank you for this opportunity to testify today regarding the U.S.-Colombia Free Trade Agreement. Ever since trade negotiations began between the United States and Colombia in 2004, the AFL-CIO has raised serious well-documented concerns with regard to the horrifying levels of labor and human rights violations in the country. Since the conclusion of those negotiations, we have consistently opposed consideration of the trade agreement, largely on the basis of these continuing violations.

As explained in detail in my written testimony and in previous reports, we do not believe that conditions for Colombian workers have yet changed in any meaningful way. Any move, therefore, to ratify the trade agreement or to have it enter into force before there are verified, sustained, and meaningful changes on the ground will meet our continued and vigorous opposition.

In Colombia, anti-union violence still reigns at alarming levels. In 2010, 52 trade unionists were murdered and 21 were the objects of unsuccessful attempts on their lives. This was actually an increase in the level of violence over 2009. Each year, hundreds of trade unionists also receive explicit death threats which are often effective in chilling trade union activity.

The 2011 ILO high-level mission to Colombia also observed that impunity has prevailed in Colombia for a long period of time and has caused immense damage to the country, and suffering to its people. The great majority of homicide cases remain unresolved.

The country's labor laws also do not meet minimum international norms in a number of key areas, also as observed by the International Labor Organization. We also hear regularly from our trade union partners that violations of these rights continue unabated.

However, there is some room for optimism. The Santos administration has abandoned the heated anti-union rhetoric of the Uribe administration, which repeatedly equated labor leaders with terrorists or traders. Further, the Santos administration signed, on April 7, a labor action plan that contained several provisions that the Colombian trade unionists have long fought for. Prior to the launch of that action plan on March 31, President Santos met with the trade union confederations and made several commitments, including a promise to extend bargaining rights for public sector workers.

If fully implemented and effectively enforced, the action plan, together with the additional presidential commitments and follow-up on the several recommendations of the ILO higher-level mission, could help to put Colombia on a new path.

However, this will not be easy and will no doubt take considerable effort and time by all involved in Colombia and internationally to help undo the profound damage done and to build a new labor relations system founded on the basis of decent work. Opposition to these changes is, and will be, fierce, and we know and we have heard from the ground that some employers have already announced a refusal to comply with these proposed changes.

Again, the labor action plan contains several useful provisions. However, we have four fundamental concerns that I will address briefly. First, while we hope and expect that the proposed expansion of the protection program and the anticipated increase in the quantity and quality of prosecutions, if they occur, will have the effect of reducing anti-union violence, we are concerned by the lack of any specific commitments in the labor action plan with regard to dismantling the new illegal armed groups, the successors of the paramilitaries, which are responsible for much of the continuing anti-union violence in Colombia.

Second, the labor action plan commits the government of Colombia to issue new laws and regulations, create new institutions, issue reports, improve processes, and hire additional personnel by date certain. It does not, however, require Colombia to actually establish a meaningful record of enforcement of these commitments prior to the implementation of the FTA. Indeed, the action plan sets no such benchmarks. While it is important to have these new tools, we need to make sure that they are being used and are effective in actually reducing drastically murders and death threats, bringing down the rate of impunity, and creating a labor relations system in which workers can freely exercise their fundamental rights.

Third, the labor action plan is not part of the trade agreement and is not subject to any dispute settlement mechanism should the government of Colombia fail to fully comply with the plan, espe-



cially with regard to those commitments that extend years into the future.

Finally, the labor action plan falls short in a number of important substantive areas. The failure to include commitments with regard to collective bargaining in the public sector, collective bargaining above the enterprise level, or collective bargaining over pension ignores major concerns, both at the trade unions and the International Labor Organization.

Further, the labor action plan contains two provisions, those with regard to collective pacts and central public services, which are, on their face, inconsistent with the clear and unequivocal observations of the International Labor Organization.

Colombia, thus, will not be in full compliance with its commitments under the labor chapter of the FTA, even if it adopts these measures agreed to in the labor action plan. Each of these flaws with the action plan—violence, limitation, enforceability, and scope—we strongly feel must be addressed. Of course, we also remain deeply concerned about the trade agreement template used in the Colombia FTA.

As we have expressed before, the current trade model, we believe, provides enhanced rights and privileges to corporations at the expense of workers, consumers, and the environment. Moreover, we believe as a job creation strategy the U.S.-Colombia FTA will do nothing to improve the U.S. employment picture, as the U.S. International Trade Commission report on the FTA makes quite clear.

So, for these reasons set forth in the written testimony, the AFL-CIO continues to oppose the Colombia FTA. Thank you.

The CHAIRMAN. Thank you, Mr. Vogt, very much.

[The prepared statement of Mr. Vogt appears in the appendix.]

The CHAIRMAN. Mr. Stoner? Why don't you explain, Mr. Stoner, where you are from and why your town is named that way.

Mr. STONER. Mr. Chairman, I am from Outlook, MT. We are on a hill and we can see many, many miles, 50 to 100 miles. That is why it is called Outlook. The very northeast corner.

The CHAIRMAN. The very northeast corner. That is right.

Mr. STONER. Yes. I am six miles from Canada. I actually flew out of Canada to get here, my closest airport.

The CHAIRMAN. All right. Thank you very much.

**STATEMENT OF GORDON STONER, PRESIDENT, MONTANA  
GRAIN GROWERS ASSOCIATION, GREAT FALLS, MT**

Mr. STONER. Good morning, Chairman Baucus, Ranking Member Hatch, members of the committee. My name is Gordon Stoner. I am a 4th-generation farmer/rancher from Outlook located in the northeast corner near North Dakota and Canada. I am the owner/operator of Stoner Farms, a diversified dry-land farming operation where I raise durum wheat, peas, lentils, and cattle for both domestic consumption and export markets.

I thank you for the opportunity to comment on behalf of four organizations representing U.S. wheat and barley growers: the National Association of Wheat Growers, U.S. Wheat Associates, the National Barley Growers Association, and the Montana Grain Growers Association.

United States wheat and barley producers strongly support the pending free trade agreement with Colombia and encourage expeditious approval by Congress. The U.S. is the largest wheat exporting country in the world, exporting on average half of our total wheat crop every year. Free and open trade with other countries is vital to ensuring the financial viability of America's farmers.

Timely passage of the free trade agreement with Colombia is particularly critical at this juncture in order to maintain sales and market share in an increasingly competitive trade environment. It is estimated that U.S. wheat producers will lose \$100 million in sales to Colombia every year we do not have the FTA in place.

In 2009–2010, Colombia was the eighth-largest market in the world for U.S. wheat, and the second-largest market in South America for all U.S. agricultural products. Colombia imports 97 percent of the wheat it consumes and will continue to rely on imports to satisfy a steadily increasing demand for milling wheat.

But U.S. wheat exports to Colombia have suffered from the failure to implement the U.S.-Colombia FTA. The U.S. share of the Colombian wheat market has declined from 73 percent in 2008 to 43 percent in 2010. We risk losing our entire market following implementation of the Canada-Colombia Free Trade Agreement later this summer. Colombian millers and bakers prefer high-quality wheat available from the U.S.

In fact, Colombian bakers tell us they are unable to make a loaf of bread from Argentinean wheat and must blend it up with higher quality wheat imported from either the U.S. or Canada. But without the U.S. FTA, Colombia will increasingly look to Canada for its high-quality wheat needs.

U.S. agricultural exports to Colombia face tough competition. In the past 2 years, the U.S. has lost \$1 billion in agricultural exports to Colombia due to regional trade agreements and international competition. In 2010, for the first time in U.S.-Colombian agricultural trade history, the U.S. lost to Argentina its position as Colombia's number-one agricultural supplier.

Currently, more than 90 percent of Colombian imports enter the U.S. marketplace duty-free. By contrast, U.S. exports to Colombia, including wheat and barley, face tariffs that often soar into double digits. A fully implemented free trade agreement will immediately eliminate the country's price ban system and remove tariffs on U.S. wheat imports, leveling the playing field and ensuring that U.S. wheat producers can compete in the Colombian market. Without the agreement, U.S. wheat and barley producers face an uphill battle in this hard-fought, critical export market, resulting in millions of dollars in losses of both exports and jobs.

U.S. wheat and barley growers were very pleased to hear the announcement from the Obama administration that the United States and Colombia have successfully negotiated a path forward. We encourage the administration to prepare and submit the FTA to Congress for a vote as soon as possible, and we urge House and Senate members to support its swift passage.

I especially want to thank Chairman Baucus today for his strong leadership on the Colombian Free Trade Agreement and for your support for agriculture, and for the invitation to address you here

today. Thank you. I look forward to answering your questions at the appropriate time.

[The prepared statement of Mr. Stoner appears in the appendix.]

The CHAIRMAN. Well, thank you very much, Gordon. I appreciate that.

Could you tell us why U.S. exports of wheat and barley to Colombia have declined? What has been going on?

Mr. STONER. I think, two main reasons. First, the Mercosur agreement, of which Argentina is a member. Argentina, since 2005, has had duty-free import of wheat to the Colombian wheat market. The other factor that is leading millers to buy wheat other than the U.S., primarily Canadian wheat, is they are anticipating the Canadian Free Trade Agreement being implemented. They are ramping up their purchases of Canadian wheat, knowing it will be duty-free within a couple months.

The CHAIRMAN. So essentially Colombia has entered into agreements with other countries which allow those other countries to export more easily into Colombia—

Mr. STONER. Exactly.

The CHAIRMAN [continuing]. At the expense of the United States.

Mr. STONER. Exactly. We are on an uneven playing field. They have duty-free imports. We are paying anywhere from 10- to 15-percent duty at this point. We cannot compete.

The CHAIRMAN. Thank you.

Ms. Polaski, could you address some of the concerns that Mr. Vogt had? I guess to some degree, Mr. Vogt is saying, all this sounds good. He is not really sure a lot of this is going to enter into force or that these provisions are going to be enforceable and action will occur. Your reaction?

Ms. POLASKI. Yes, Senator. I think probably the most important point to note is that the action plan has a number of commitments which are on a schedule with benchmarks that mainly occur during the course of this year. In fact, the largest group of commitments were to be achieved either by April 22 or by June 15, so that we will see and we will have the results of the actions of the Colombian government on most of the commitments by June 15.

An additional large group of commitments will be implemented according to the action plan before the end of 2011, so we anticipate that, well before the Congress could take action, the President could certify all the requirements for implementing the agreement, and actually implement, we will have already passed the deadlines and the benchmarks for the vast majority of the commitments in the action plan. That provides us with the certainty that they will be implemented.

The CHAIRMAN. Or to state it differently, if I understand it—I do not want to put words in your mouth—the administration will not submit the agreement unless certain provisions in the action plan take effect, and beyond that will not certify, even presumably after the FTA is passed, the FTA unless certain provisions we have been talking about here have been enacted. Is that correct?

Ms. POLASKI. Senator Baucus, that is my understanding of the administration's position.

The CHAIRMAN. All right.

Ms. POLASKI. I think you have stated it correctly.

Two other points that I would mention. One is that, when the agreement actually does come into force after it is implemented, the labor chapter in the agreement has very strong commitments by both parties to adopt and enforce and practice laws that protect the fundamental labor rights and to not fail to effectively enforce those laws.

So, many of the commitments that Colombia has made and is currently enacting will in fact be required under the free trade agreement itself. The free trade agreement has an enforcement mechanism which is the same for labor provisions as it is for all of the commercial chapters, and so we are confident that under the agreement there is an enforceable mechanism for maintaining these protections of fundamental labor rights in law and in practice.

I think I do have to make a final point, because it would not be fair to our interlocutors in Colombia if I did not. We have confidence that the things that the Santos administration has committed to are things that that president and that administration want to do. They see them as necessary steps. We have not had a difficult negotiation.

It has been complex because there were many issues to address and the issues themselves in many cases are very complex, but it has not been a difficult negotiation of adversaries. It has been, rather, a problem-solving exercise with an administration that we believe wants to move Colombian society forward in very much the same ways that we have been asking them to.

So I think that, between the effective dates of the benchmarks and the action plan—occurring mainly before the end of this year and before implementation—the commitments in the free trade agreement itself with respect to labor rights and enforcement of those rights, and finally the relationship that we have established with the government of Colombia, leads us to have confidence that we will see this very profound change, this sea change as I would describe it, in the situation for workers to enjoy their rights in Colombia.

The CHAIRMAN. Mr. Vogt, let me give you a chance to just say a word or two in response. Also, it is my understanding that generally the labor unions in Colombia support this agreement. In fact, one group says this is the biggest development in labor rights in 20 years. But just to give you equal time, or not quite equal time because my time has expired. If you could be very brief in response to Ms. Polaski, I would appreciate it.

Mr. VOGT. All right. Thank you for the opportunity. I would just make a few points. As I note also in the written testimony, yes, I believe some of the commitments of the labor action plan, if not implemented, will also be violations of chapter 17. But as Ms. Polaski noted in her response, many commitments, but not all of those commitments, may be subject to dispute settlement under chapter 17.

The fundamental point I think we are trying to make with regard to the action plan is that, while there are, I think, a number of very useful provisions with a number of issues—and as we have said for a long time—not only do we want to have these new laws, regulations, institutions in place, but we feel that, given the hor-

rific history in Colombia, it is essential to see a period of time by which we can verify that workers and cooperatives are now actually being hired directly, that the murder rate is actually really going down, we see a long-term commitment to combatting impunity, and we see well-grounded sentences being produced by the Attorney General's Office. That is going to take time. I think it is important—

The CHAIRMAN. My time has expired. I have a hunch this question is going to arise in some of the others' questions, so you will get a chance to make that statement.

Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman.

Ambassador Sapiro, let me just ask you this question. I am pleased that we have started working with your team on drafting the implementing bills for the Colombia, Panama, and Korea agreements. Unfortunately, we have no idea when the implementing bill for the Colombia agreement will be sent to Congress. In fact, Ambassador Kirk's letter to the committee stated that Colombia still has important work to accomplish to address objectives of the action plan before the President will formally submit this agreement to Congress for consideration.

Now, we feel that the agreement has already been delayed for too long. Can you give me your commitment that the administration will submit the Colombia agreement to Congress for consideration this summer?

Ambassador SAPIRO. Thank you, Ranking Member Hatch. The action plan sets forward a very ambitious, broad, and comprehensive agenda that both we and the Santos administration believe addresses very serious outstanding concerns. Like you, we were very pleased to be able to begin the informal walk-through last week, and we understand that those discussions are proceeding well.

Senator HATCH. I understand all that. I just want to know if you think we can get this done during the summer.

Ambassador SAPIRO. As Ambassador Kirk's letter to the committee noted, there is still important work for Colombia to do. There are a number of milestones that we fully expect will be achieved by the middle of June, which is in the next few weeks. So I am optimistic that Colombia will complete that work, just as it has been working hard since the action plan was announced. We are also in discussions on our broader trade agenda, which we look forward to continuing and concluding with you.

Senator HATCH. Again, we hope that is so. The Colombian people have said they will get this done. I am sure you are aware that the administration's delay on the Colombia agreement hurts U.S. exporters. In fact, between 2008 and 2009, U.S. agricultural exports to Colombia dropped almost 50 percent, from \$1.6 billion to \$906 million.

In your testimony today you state that the implementation of the Colombia agreement will expand exports of U.S. goods to Colombia by more than \$1 billion, increase U.S. GDP by \$2.5 billion, and support thousands of additional jobs for our workers.

Now, despite the impact on American workers, you delayed taking any meaningful steps to address your concerns with the Colombia agreement for years. Now, having finally reached an agreement

on an action plan to address these concerns, in my opinion you appear to be conditioning submission of the agreement on congressional consideration of totally unrelated matters, such as PNTR for Russia and extension of TAA.

So, basically two questions. First, are you conditioning submission of the Colombia agreement on extension of TAA or PNTR for Russia? Second, while we understand that you expect Colombia to fulfill the action plan before you will agree to submit the Colombia agreement to Congress, are there any other issues that must be addressed or conditions that must be met before the administration will formally submit the agreement to Congress?

Ambassador SAPIRO. Senator, we share your sense of urgency, which is why we have worked expeditiously and intensively for quite a long period of time now to find the right path forward with Colombia. I am very pleased that we were able to do that. There are discussions ongoing about the exact sequencing and scheduling of being able to accomplish all of our trade initiatives this year, and we look forward to that discussion continuing and concluding as soon as possible. I would add also that it is hard to imagine approving trade agreements while at the same time we have not been able to renew Trade Adjustment Assistance that benefits American workers, particularly those in the services sector and those whose jobs might be affected negatively by trade as a result of non-FTA partners.

Senator HATCH. I understand all that. I understand all that. But yes or no? Are you conditioning the submission upon extension of TAA for Colombia or PNTR to Russia? Is that a precondition?

Ambassador SAPIRO. As Ambassador Kirk's letter said, there is important work still for Colombia to do. At the same time, we are deeply engaged in conversations with your team on exactly what the sequencing would be so that we could ensure that Trade Adjustment Assistance, which has always been a bipartisan goal, is going to be renewed in a robust fashion since it does relate to the question of trade agreements.

Senator HATCH. So your answer is yes, then, that you are preconditioning this treaty. We are going to have to do TAA as a precondition.

Ambassador SAPIRO. It is not a question of preconditions, in my view. It is a question of being able to decide together, in consultations, as to what the exact sequencing and the exact scheduling will be. We know this is an ambitious trade agenda overall, and it is one that you and others have been supportive of. So we look forward to continuing those conversations and being able to conclude them as early as possible, and then I will be able to answer your question more concretely.

Senator HATCH. My time is up. But the U.S. Trade Representative, Ambassador Kirk, said that he would submit these three treaties before August. Is he backing off on that, or are you backing off on that?

Ambassador SAPIRO. Our goal has always been to complete work on the outstanding issues as soon as possible.

Senator HATCH. He did not say it was a goal, he said he would submit these treaties before August so that we could vote on them.

Ambassador SAPIRO. That is our goal. We do want to be able to submit these formally to you as soon as we are in a position to do so. For Colombia, it regards further work, as I mentioned, and as Ambassador Kirk's letter to you mentioned. So we are already engaged with the Colombians in that intensive process of ensuring that the action plan is fulfilled, and also we are engaged in discussions with congressional leadership to make sure that the calendar will allow us to accomplish all of our trade objectives in a reasonable period of time.

Senator HATCH. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Kerry?

Senator KERRY. Thank you, Mr. Chairman.

Let me say to Senator Hatch and to others who are sort of wondering about the schedule, I completely understand and am sympathetic with the administration's target here. Historically, Senator Hatch, I have opposed the Colombia agreement on the basis of many of the arguments that Mr. Vogt has made here today. I am very sympathetic to the principles and objectives that Mr. Vogt is embracing as he articulates his reservations today. But I believe the time has come to ratify this treaty.

I have said that before, and I would say it again. I do think there are expectations that many of us have who are prepared to support the treaty that we want to see met. Some of those expectations are the completion of the action plan. I completely understand the reticence of the Trade Representative to say we are automatically, no matter what, going to put it in before we have that report and before we understand to what measure the expectations are going to be met.

I also have an expectation that, if we are going to ask some workers—not many—I think most of the advantages in this agreement fall to America, frankly. There are not many products, Mr. Vogt, that are going to be exposed where we compete, to be honest with you. So I do not see this as a fundamental threat to the interests of many of our workers.

I also, on the other side of the ledger, want to commend the testimony of General Hill here today. I served on the Banking Committee back in the 1980s and 1990s, and I have been on the Foreign Relations Committee throughout my tenure here. There just is no way to describe the level of the state of affairs in Colombia back in the 1980s.

I can remember in 1985 when I first came here, President Reagan was in, and there was an attack, a bold attack, on the Supreme Court of Colombia. Ninety-five people were killed by left-wing guerrillas at that moment, including 11 justices who were assassinated in one room at that moment in time. Eleven justices of the Supreme Court. Imagine if that happened across the street here with our nine, or presidential candidates were assassinated after declaring for the presidency and going out and standing up and campaigning and appealing to the people, and they were shot dead. This was as near to a failed state or narco-state as you can get. The journey of President Uribe, and now President Santos, is an extraordinary journey of courage, of taking on a massive enterprise, including the drug cartels, Pablo Escobar and all those peo-

ple whom we can remember who ruled the streets and terrified people.

If the United States of America were to mouth all of our words and have engaged in Plan Colombia and talked about the virtues of democracy and turn away from our single most reliable ally at this moment in time in that region and turn our back on the benefits, I think, to ourselves of the economic upside of this, I do not know. The message, the implications for the rest of Latin America and for a lot of other people would be a real serious scratching of the head and wondering about whether we had lost our marbles and our sense of rectitude of priorities. So I think it is really important for us to ratify at this point in time.

Fifty-one labor leaders is 51 too many killed. We all understand that. But it is not 200, it is not 150, it is not 100. It is moving in a direction that we have a vital interest in keeping them moving in.

I think I have suggested—and I hope, Ms. Polaski, maybe you can comment on this—that, if the Colombians can appoint a labor minister in these next days and sort of follow through on that promise, if they could make some progress perhaps on the palm oil worker situation and the port situation, where I understand about 90 percent of the workers are not full-time workers—there is a question of their protections and rights—it seems to me that it would go even further towards addressing many of the reservations that some of our colleagues up here still have, which we all understand.

I think skepticism is healthy, but I do believe this is the moment. I think if one looks at the record—and I really just ask that question, I only have a second left—of Colombian progress here, the annual budget for protection has been increased from \$11 million to \$72 million; 10,000 journalists, labor leaders, human rights defenders, opposition figures are protected by that. Not one participant in that program has been killed. I think you can go down a list of these kinds of things that are the measures by which we can make a judgment as to whether we are moving in the right direction.

So I hope, Senator Hatch, that we will reach an agreement on the Trade Adjustment Assistance, because I think that is important for American workers, and fair. I also hope we can get this action plan fully reported on with the kinds of add-ons that I have just suggested, and then I am confident that we can move forward. I think the time has come for this treaty to be ratified. Would you just comment quickly on those two sectors?

Ms. POLASKI. Yes, Senator.

The CHAIRMAN. Really quickly, because other Senators are waiting here. Very quickly.

Senator KERRY. Just really quickly.

Ms. POLASKI. I think the Colombian government has agreed to create the separate labor ministry. The legislation has passed the Congress. If the Santos administration were able to act very quickly and appoint a new labor minister, that would certainly be a confidence-building measure. They have exceeded our expectations on deadlines several times already in our work together, and this could be another pleasant example of early action.



On the palm oil and port sectors, among the others that I mentioned that have been problematic—sugar, mines and flowers—it certainly is the case that if some high-profile problems were resolved quickly, that would demonstrate, I think, to all that the political resolve exists, not only to adopt changes in law and regulations, not only to hire inspectors, but to actually go out and solve the problems for workers. So we would welcome——

The CHAIRMAN. Senator Grassley?

Senator GRASSLEY. Thank you, Mr. Chairman. A short statement to put in the record in addition to my statement before I ask a couple of questions.

[The prepared statement of Senator Grassley appears in the appendix.]

Senator GRASSLEY. A few points of irony about this whole debate. Number one is, I listen when they come to my town meetings, to labor union people in Iowa, and I always hear the words “a level playing field.”

If there is anything that levels the playing field for American workers, it is this agreement, because for decades Colombia has had access to our markets with hardly any tariffs whatsoever compared to the massive amounts of tariffs we have going into that country.

It seems to me that there is no doubt about what Senator Kerry said, that this is an advantage to Americans because Americans have been so fair to the Colombians, and now we are leveling the playing field. It is ironic that we have leaders of our union members in my State still saying that they do not want a level playing field, in essence.

The other irony is that I think it was 4 years ago and 1 day, so May 10, 2007, there was a great big fanfare made between the Bush administration and the new Democratic leadership of the Congress that we had reached an agreement, that there had been some renegotiation going on and we were ready to move ahead. Then we do not move ahead until now because the goal posts keep moving. So I hear possibilities of more goal post moving, and when will this treaty be submitted to the Congress of the United States because there is still some negotiation going on. I hope it is not a case of a repeat of the same.

My first question will be to Ambassador Sapiro. Back in 2009, I worked hard to help craft the most recent version of the Trade Adjustment Assistance legislation. While the program was expanded, we made significant improvement in the program’s transparency and in government accountability and oversight at the State and Federal level. We also made the program more responsive to worker needs.

However, we are now facing a different reality today regarding a Federal budget deficit situation that is far different than we faced back in 2009. We need to bring financial order to the Federal budget situation. Also, all programs are facing the real prospect of receiving fewer Federal dollars, not more.

So my question is, with the condition of the Federal budget and most government programs facing the prospect of receiving less funding, I would like that you to elaborate on your statement that you “look forward to working with Congress on a robust TAA program.”

Is there a funding level for the TAA that you have in mind? Because I do not believe the current level is sustainable in today's environment.

Ambassador SAPIRO. Thank you, Senator, for that question. You and Chairman Baucus have shown tremendous leadership, working with the House in particular and on a bipartisan basis, to secure the 2009 renewal. What we would like to do now is work with you on a robust, strong program that is going to share the goals.

We recognize we are in a different budget environment, but the goals of that program, in particular protecting those in the service sectors and also those whose work has been dislocated because of trade with non-FTA partners such as India and China, we believe those are important bipartisan goals.

So we very much want to have that conversation with you and with the leadership to find the right path forward so that we can altogether be justly proud of doing something for the American workers who will benefit from such a program.

Senator GRASSLEY. You do not have a thought in your own mind, or for the administration, on a level of funding that you could share with us?

Ambassador SAPIRO. If you have a number, Senator, I would be happy to take that back to OMB. But these are ongoing discussions that we are having and that we want to have with you and others, because we want to work together in light of the new budget environment, but at the same time to make sure that we can further the goals of the renewal that you worked so hard on.

Senator GRASSLEY. Yes.

Mr. Stoner, Senator Hatch discussed with you an issue I was going to discuss about agriculture. I just want to compliment you for coming and sharing views on the necessity of this agreement for agriculture. You represent not only Montana farmers on this point, but almost every division of agriculture, and I thank you for doing that.

The more you can come around this town where there is a terrible ignorance of agriculture—you know there are more Ivy League people who have never been on a farm who are experts on agriculture in this town, and we need working people like you to counteract and bring some common sense to this city that is an island surrounded by reality as far as agriculture is concerned. Thank you.

The CHAIRMAN. Thank you, Senator. I agree with you, there are a lot of Ivy Leaguers around here who do not know anything about agriculture. I find that more and more true with each day that I am in this town. It is really true, and I appreciate that statement. It is a problem.

Senator HATCH. It may be broader than not knowing about agriculture, too.

The CHAIRMAN. Maybe. I am not going to go there. [Laughter.]

I want to take this a step at a time. But I also do think it is appropriate to say that it is kind of in conjunction with the dialogue Senator Hatch had with Ms. Sapiro and others. That is, on Trade Adjustment Assistance. I think it is clear that we need Trade Adjustment Assistance acting in tandem with this FTA. We are not

going to get one without the other. It just behooves us to find ways just to get both accomplished.

The 2009 provisions are good. There are ways to pay for the implementation of 2009 TAA, and we just have to roll up our sleeves and do it, because that way we, first, get an FTA passed, which is extremely important for all the reasons that have been suggested here but, second, give some protection to American workers who lose their jobs or health insurance on account of trade. It is the only fair thing, the only right thing to do. So as far as I am concerned, the two must go together, one way or another. I am not saying what the sequence is or is not, but we have to find a way to make sure they are both passed this year.

Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

Ambassador Sapiro and Secretary Polaski, it looks to me that American trade policy is teetering on a one-legged stool. In my view, there are three pillars to the stool. The first is enforcing the trade remedy laws and any commitments our trade partners make. The second is protecting our workers in a tough global economy. The third is reducing foreign trade barriers.

Now, with respect to enforcement, the committee heard last week, for example, that Customs Commissioner Alan Berson thinks that our efforts are "disgraceful." Those are his words, not mine. Last year, critical components of the TAA law were left to expire, and, of course, it seems to me we have to focus on all of the pillars of our trade policy and not just one.

Now, the last point that I would want to make deals with the question of where we are now. We are going to enforce the trade remedy laws, protect our workers in a tough global economy, reduce the barriers. Those are the three pillars. Now the question is, where are we today?

So for you, Secretary Polaski, would you agree that we will not have the track record to assess whether many of the substantive commitments the Colombians have made to the Obama administration are being implemented until the fall of this year? That would just be a yes or no.

Ms. POLASKI. We will have a lot of experience by the fall of this year, Senator. We will have 6 or 8 months of experience.

Senator WYDEN. Now, my view is that the Congress ought to be sure that any legislation that would implement the FTA includes a statutory requirement that stipulates the agreement cannot go into force unless all of the elements of the Colombian action plan have been implemented.

Chairman Baucus asked you a very important question, and I thought you said, well, maybe some of the elements of the Colombian action plan have to be implemented. So I want to make sure that all of the elements have to be implemented. My question here is, would this be inconsistent with the requirements that the President would insist on before certifying and allowing the agreement to enter into force? That is a question for you, Ms. Polaski.

Ms. POLASKI. Yes. I think that the only commitment, the only substantive commitment, in the action plan that would not be scheduled for action before the end of this year is the hiring of labor inspectors in the second, third, and fourth year out in a hir-

ing plan. The commitment to the hiring plan has already been made, and the implementation which is due is already underway, but there would be additional hiring in 2012, 2013, and 2014, which depends on those budgets.

However, the commitment has been made by the Santos administration. That is the only example, Senator, that I can think of of a commitment that would not be fulfilled by the end of this year, even though it already is committed in principle, and we would not consider that to be a failure of commitment. I hope that that is responsive to your question.

Senator WYDEN. So you have said now it is not going to be that all of the elements have to be implemented. There would be one exception to that dealing with the inspection issue, but everything else would have to be implemented. It is not just some of the elements of the Colombia action plan.

Ms. POLASKI. I mean, to be fully responsive to your question, Senator, I have been going through, in my mind, the entire action plan, which is very long, rich, dense, and complex, but I cannot think of any other commitment that would not be implemented by the end of 2011.

Senator WYDEN. Mr. Chairman, my time is about to expire. I think you asked the key question, and that is, exactly where are we going to be on the Colombia action plan? I think it goes right to your point about how we are going to flesh out this kind of stool. I mean, we want to make sure that we reduce these trade barriers. I am a strong supporter of that, but we have to do a better job of enforcing the laws that are on the books.

Under the chairman's leadership, we made some headway, I think, on that last week. Then we have to get this TAA issue resolved to deal with the rights of our workers in a tough global economy. But I want to see how you respond to that question in writing as well. I will ask it that way as well, because I want to make sure that all of the elements—all of the elements—are put in place or that we have an actual set of dates about when it is going to be put in place.

Mr. Chairman, thank you.

The CHAIRMAN. Thank you, Senator.

Senator Stabenow?

Senator STABENOW. Thank you very much, Mr. Chairman.

First, I associate with your comments regarding agriculture. This year I am on the Agriculture Committee. We have work to do together. Certainly, I think this is, for me, a complicated issue, because there are many provisions. Obviously, this is positive for agriculture.

At the same time, I share the concerns of Mr. Vogt in terms of the ability to make sure that what has been very good work that has been done is actually able to be implemented and that there is a concrete sense of confidence that the action plan can actually be enforced.

So I guess my first question would simply be, because I am not sure this is clear to me at this point after the questions, but to Deputy USTR, Ambassador Sapiro, what recourse do we have if Colombia fails to actually follow through on the action plan, or if in 2 years they are backtracking on the improvements that have

been made on labor rights, other than to object through USTR? What recourse do we have?

Ambassador SAPIRO. Thank you, Senator Stabenow. The action plan is quite comprehensive and complex. Most of the commitments are front-loaded so that they, in many cases, have already been fulfilled, and in other cases will be fulfilled, in the next few weeks. There are, as Secretary Polaski indicated, a number of commitments that will extend throughout this year. There are also some commitments, such as the hiring of additional labor inspectors, approximately 380, that will go into future years, as well as reporting requirements that continue.

What we have learned—

Senator STABENOW. Let me just back up and say, so what happens if 2 years from now they change their mind and they are no longer doing this?

Ambassador SAPIRO. What we have is a commitment at the highest level that they are taking this very seriously, every word of this very comprehensive plan. We front-loaded the commitments so that we could see their clear willingness to implement and make these difficult decisions already.

In terms of going down the road the next few years, we have ongoing reporting requirements, we have ongoing monitoring, we have ongoing meetings at the technical level and the political level, so we have put together what we believe is a very robust package that is a process essentially that will continue.

At the same time, we have the FTA with the labor chapter. Once the FTA comes into force, you will have the strongest protections available in terms of protecting fundamental labor rights, the right of free association, the right to bargain collectively. All of those are protected by, if necessary, the dispute settlement provisions of the FTA. In other words, on the same basis as any commercial obligation that might be breached.

So we have every confidence going forward that we will see the action plan implemented as I laid forth because of these important monitoring mechanisms, and we also, where there is overlap, have the FTA there once it enters into force with the strongest remedies ever available in terms of being able to see fundamental labor rights adopted and maintained in Colombian law in perpetuity.

Senator STABENOW. Well, I very much appreciate the hard work and the focus that has gone into this by the administration. But my second question would be, after having Ambassador Kirk speak to us about lack of resources for enforcement and having worked on that very hard myself, trying to be able to pass an enforcement bill that would place somebody at USTR with sole responsibility for enforcement of trade agreements, I am wondering just how effective you are going to be able to be in enforcing new trade agreements like this and continuing to monitor labor rights if you do not have the resources that you need to do that. Is that an issue?

Ambassador SAPIRO. Well, thank you, Senator, for your concern and the concern of many of your colleagues to make sure that USTR has resources. Obviously we are all in a situation of belt-tightening, and we have tightened our belts as we need to to make sure that we are doing our part. But we are also fully committed to enforcement of existing and future FTAs. This administration, as

you know better than anyone, has taken a back seat to no one in terms of enforcement of these very important provisions, and also dismantling trade barriers outside of the FTA. So we are fully committed to this, and Colombia is—

Senator STABENOW. I have to interrupt just for one second because I am just about out of time. I wanted to hear from Mr. Vogt, but I have to ask you one other thing. That is, what is the timing of the reauthorization of TAA related to the trade agreements? Mr. Chairman, for me the timing is very important. I want to know that TAA, which has expired last week, the first petitions were denied of TAA. This is very serious for a whole generation of workers, as you know, and I appreciate your leadership on this. But this is critically important that TAA not just be talked about or even passed just in committee, but that we actually get it enacted and reauthorized. So the timing of these things is very important.

Ambassador SAPIRO. We agree. Ambassador Kirk has said that TAA renewal is critical and it must be part of the package.

Senator STABENOW. Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Cardin?

Senator CARDIN. Thank you very much, Mr. Chairman. I thank all of our panelists.

I just want to follow up very quickly on Senator Stabenow's point. TAA reauthorization should have been done by now. I understand people are concerned about the timing of different legislation here, but the TAA should have preceded these free trade agreements.

Let me also point out that there are ways that we can make more effective our current enforcement mechanisms, and it seems to me that it would have been helpful to have some legislation brought forward by the administration dealing with enforcement, because, Ambassador Sapiro, I think the issue here is not the good intentions of President Santos. President Santos is a reformer. He is doing the right thing for Colombia.

The history of Colombia is so violent and so extreme that it will take time to see the type of changes that we expect to take place. We all understand that, and we want to move forward to help in that regard. I do applaud you for getting the ILO standards in the core agreement. That is a very positive accomplishment of this trade agreement.

My question is—and this has been the issue, I think, that is raised by labor—why did you not seek to put more into the core trade agreement? Why did you use a sidebar agreement? We have had inconsistent success in past trade agreements using sidebar type of agreements. Why did you not push harder to get more into the basic agreement where you have formal dispute resolution procedures with enforcement, whereas in a side agreement you are basically dependent upon the good faith of not just the Santos administration, but future administrations in Colombia?

Once this agreement is ratified, I understand certain things have to take place before this agreement becomes effective. But the budget support or the commitment to law enforcement could very well change as the political atmosphere in Colombia changes. Yet,

we are dependent upon the continued efforts to change a long-standing violent history in Colombia.

So I am just puzzled why you did not do more to put these provisions in that are critically important for the development of Colombia, making it, I think, more likely that there would be long-term commitments to the type of reforms that President Santos is seeking.

Ambassador SAPIRO. Senator, the agreement was opened to include the fundamental labor rights that I mentioned and the commitment of Colombia to adopt and maintain them in perpetuity. We are very proud of what is in the FTA chapter. Once that enters into force, we will have a range of remedies, including, as I mentioned, if necessary, dispute settlement. We negotiated the action—

Senator CARDIN. And that is good. I applaud you for that. The problem is, if they back off their commitments on going after the violence against activists within the labor movement, that is not necessarily actionable under the ILO standards. It would be a stretch to say because you did not have enough inspectors out there, that you have violated the ILO standards.

Ambassador SAPIRO. There are very strong protections on the freedom of association, the right to bargain collectively, basic fundamental worker rights that Colombia must enforce in its law. It must have tribunals available to enforce those laws, and there are a series of mechanisms set up so that we will have, for example, a Labor Affairs Council that we will bring any concerns to—any member of the public here or in Colombia can bring concerns to the attention of the Labor Affairs Council—and then, if necessary, dispute settlement provisions. So I am comfortable that this is a broad labor chapter that will fundamentally change the nature of the game. Today we have no such ability to enforce these labor rights.

Senator CARDIN. I understand that for today, and you have a right to be proud about that. My point is, if you were to put the labor action plan specifics into the core agreement, there would be a lot more confidence that the enforcement mechanisms are available. It is ambiguous to us whether we have enforcement for the provisions in the labor action plan that do not fall under the ILO internationally recognized standards.

Ambassador SAPIRO. Do I have time to respond?

The CHAIRMAN. Yes.

Ambassador SAPIRO. Thank you. I will be brief.

The CHAIRMAN. Yes, you do. Go ahead.

Ambassador SAPIRO. There is overlap between the action plan provisions and the FTA chapter. Also, the action plan is action-oriented. There are very specific commitments, as well as more general ones. For example, we talk about the number of inspectors that need to be hired, when they need to be hired, how they need to be trained.

Those are commitments that reflect where we are today. They are not necessarily the kinds of long-term legal obligations one would put in an FTA, so we work very hard to be responsive to the situation on the ground and to craft an action plan that is both comprehensive, but also takes account of fast changes that the Santos administration has already engaged in. So it is more of a

rapid reaction response to what are fundamental problems that we believe both will deal with in a comprehensive manner. They complement each other.

Senator CARDIN. Thank you, Mr. Chairman.

The CHAIRMAN. Yes. Thank you very much, Senator.

It is my understanding—and I do not want to take too much time here from other Senators—that there are some provisions that are really core labor provisions which are part of the core agreement, but there are some that really do not belong in an FTA because they are not trade-related.

Let us say enforcement of criminal penalties of some of the labor laws, for example. I can think of some things that really are not directly trade-related, so it would raise the question whether that would be properly part of a core labor provision that would be enforceable under the labor provisions. This is not perfect, but it is progress. In my judgment, it is great progress. The old phrase—which I agree with here—is, you cannot let perfection be the enemy of the good. This is very good. It is not just good, it is, in my judgment, very good.

Senator THUNE?

Senator THUNE. Thank you, Mr. Chairman.

You know, it is 4½ years now since this agreement was approved. Colombia has passed it twice. October of 2007 was the last time they passed it, and that was after the U.S. insisted on changes to the agreement. So we have been sitting on this thing now for a really long time. In the meantime, we continue to lose market share. The folks I represent in farm country are very concerned about the lack of action on this agreement, and we still do not have it submitted to the Congress. We still do not have an agreement that has been brought up here. One of the major costs of not passing it is the lost market share, as I said, for agricultural exporters.

In January of 2009, Colombia's trade agreement with Argentina went into effect, giving Argentinean agricultural producers a competitive advantage over American farmers. As a result, U.S. exports of corn, wheat, and soybeans, three crops that we grow in my home State of South Dakota, have declined dramatically. U.S. market share for these products has plunged from 71 percent in 2008 to 27 percent in 2010.

At the same time, the market share of Argentina's exports of these crops has increased by 37 percentage points. So I think it is fairly clear—the numbers are pretty hard to dispute here—that during the time that this thing has been kicking around here, \$3.5 billion in tariffs have been imposed on U.S. exports to Colombia, and U.S. businesses and farmers have been steadily losing market share. So it is just, in farm country, a no-brainer.

But I wanted to ask the question of Mr. Stoner, if I could, about the implementation of this agreement and whether or not it will put our farmers on a level playing field in Colombia with our competitors, and do you expect that we can regain some, or hopefully much, of the lost market share for corn, wheat, and soybeans once this agreement has gone into effect.

Mr. STONER. Senator, I believe, with this agreement, we are on a level playing field. I have told my farm friends, I tell my urban



friends, that I am willing to compete on any level playing field. The U.S. raises the highest quality grains in the world. They are in demand worldwide. So, yes, I believe we can compete.

Senator THUNE. Do you think we can gain back some of the market share that we have lost?

Mr. STONER. That is going to be, I believe, a long-term effort. The mills, once they adjust to another country's wheat—because every country's wheat varies some—once they become accustomed to a product, they are reluctant to shift. So we will have to win back the markets we have lost these past few years.

Senator THUNE. Let me, if I could, direct this question to you, Ambassador, and to General Hill, whomever would care to comment. But, as you may know, China is quickly becoming a major player in Latin America, both a large export market for these nations, but also an exporter that increasingly competes with United States companies in that region. China's share of trade with South America has grown from 1 percent in 1995 to roughly 10 percent as of 2009.

China recently replaced the United States as the top trade partner of Brazil and Chile. There have been discussions between China and Colombia regarding a dry Panama Canal, a rail link connecting Colombia's Atlantic and Pacific Coast with a spur that would tie to Venezuela, thus providing a route for the Chinese to get Colombian coal and Venezuelan minerals to Far East ports.

Can you discuss the importance of approving this trade agreement in terms of how this could reinforce America's role in Latin America, and especially with respect to China's ambitions in the region? General, do you want to comment on that? Ambassador?

General HILL. Thank you, Senator. Every place I went throughout Latin America, the Chinese are there. They are everywhere, and many in every forum—economic, military, you name it. Colombia has free trade agreements with a host of nations, as Mr. Stoner brought out. If in fact you have a free trade agreement with China, it has to affect us. Simply has to. We begin to lose whatever leverage we have with Colombia because, if I am doing business with you, I have a monetary gain from you. I have political and other kind of leverage with you. So I think that it is an important issue. That is not a very good answer, but it is heartfelt.

Senator THUNE. Gives them more leverage.

General HILL. I think so.

Senator THUNE. Ambassador Sapiro, TPA expired in 2007 and has not been renewed. Given the administration's stated goal of doubling exports and its intention to bring TPA to a successful conclusion this year, would the administration support a renewal of TPA, and are the TPA procedures important to the passage of Colombia, Panama, and South Korea in terms of the agreements?

Ambassador SAPIRO. Thank you very much, Senator. We are hard at work on TPP, the Trans-Pacific Partnership, because Asia is such a dynamic and growing region. We would welcome having a conversation with you regarding TPA renewal as we get closer to the end game on TPP. So, thank you very much for raising that question.

With respect to the Colombia agreement, that agreement was completed before the expiration of fast track, so we would expect

that that agreement would still benefit from the provisions of the pre-existing fast track legislation.

Senator THUNE. All right.

Mr. Chairman, my time is expired. Thank you.

The CHAIRMAN. Thank you very much, Senator.

General Hill, you have already touched on it. In your judgment, what would be the result if the United States failed to reach this free trade agreement with Colombia?

General HILL. Can I build, Senator, on yours, Senator Hatch's, and Senator Grassley's comments about agriculture?

The CHAIRMAN. Absolutely. Any way you want to answer the question.

General HILL. In my 27 months of command of SouthCom, I visited Colombia 33 times. Since I retired, I have been in Colombia at least 5 times—and I think it is 6, I have to check on that a little bit. I have talked to military people, business people, dissidents, anti-government people, union leaders, all of that. We helped them save their nation, but the reality is, they saved it themselves. It was their blood, not ours. It was their help in the cocaine traffic that has kept us where we are today with making that more of a nuisance than making a narco-state. They did that.

For us now not to ratify this free trade agreement when they have other people whom they can do it with says to them that, well, we really appreciate your efforts, but not all that much. I think that Senator Kerry's comments are right on the mark. We become not a very good ally. We have done that over time in other places. We have not shown ourselves as good allies. I think this is absolutely critical to the relationship on a broad range of areas with Colombia.

The Colombian people—I wish Senator Cardin were still here—I believe will move forward, not backtrack, in every respect, just as they have done over the last 10 years. They know where they were, they know where they are, and they know where they are going. Democracy and human rights will help them achieve all those goals.

The CHAIRMAN. Thank you, General. Frankly, I think it would be a near travesty if we were to reject this agreement.

General HILL. I agree with you completely.

The CHAIRMAN. Given all the effort that Colombia has undertaken, given all the time to work with us, with you as General and Commander in that area, and just with a sense of the other things they are doing, their working of the land, the reformation programs, for example—I have forgotten the name of the program where people lay down their arms and come on in, how well that is working as well. It would be, as I said, a near travesty if we were to reject this.

General HILL. Yes, sir.

The CHAIRMAN. And we can work out some of the issues that still exist, but that is the case with all relationships. This is one we need to definitely cement, lock it in, because it will help us in so many ways—geographically, politically, economically, geopolitically—and I just thank you for your answers. I very much agree with you.

Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman.

General, I really personally appreciate the great service that you have given to our country and just want to compliment you for all that you have done. You have a big supporter here.

Let me just ask you this last question, and I will end it at this. You have traveled extensively in this hemisphere, so I assume you have an impression—some strong impressions—of the views of people in this region. What do you think would be the reaction of people in other countries in Latin America if the United States fails to implement the U.S.-Colombia Trade Promotion Agreement? Second, how would their reactions impact the standing of the United States in Latin America?

General HILL. It would show us a very fickle ally, that we will help you when it only serves us. That has been, in my opinion, one of the great things of Plan Colombia—we have stood by the Colombians and shown ourselves as a very strong ally. We all gain from the relationship.

Just this past Tuesday, in the *New York Times* there was this article: “Venezuela Asks Colombian Rebels to Kill Opposition Figures, Analysts Show.” This is an important piece, because it came out of the Raúl Reyes tapes. President Uribe went into Ecuador to capture or kill Raúl Reyes, much as we all applaud President Obama doing in Pakistan. This is important. Chavez and the thought process that comes out of radical populism is gaining ground in Latin America. We have to continue to battle that.

The most dangerous region in the world to the United States and Latin America is Central America, and it has to do with gangs and the dysfunctionality they can bring to governments. The Colombians are working in Central America and Mexico, showing them how to do better training and counter-insurgency operations, doing all those things, because they have grown as a military. It is important. It is very important. We just have to stand by really the best friend we have in the region.

Senator HATCH. Well, thank you. I appreciate that. Thanks to all of you.

The CHAIRMAN. I do, too. That concludes the hearing. I want to thank you again, Gordon, for flying all the way from Outlook. Get back home, get that crop in the ground.

The hearing is adjourned.

[Whereupon, at 11:53 a.m., the hearing was concluded.]



# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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### **Hearing Statement of Senator Max Baucus (D-Mont.) Regarding the U.S.-Colombia Free Trade Agreement**

President John F. Kennedy once said: "Geography has made us neighbors. History has made us friends. Economics has made us partners, and necessity has made us allies."

President Kennedy's words describe our relationship with Colombia. The United States and Colombia are neighbors in the Americas. Washington, D.C. is as close to Cartagena, Colombia as it is to Columbia Falls, Montana.

And while geography has made us neighbors, history has made us friends. The United States and Colombia are the two oldest democracies in the Western Hemisphere. When Colombia declared its independence from Spain in 1810, the United States was the first country to recognize its new sovereign neighbor. The historical roots of our friendship run deep.

As history made us friends, economics has made us partners. Last year, the United States exported goods worth \$12 billion to Colombia, our third-largest market in South America. And Colombia buys more U.S. farm products than all but one country in South America. In fact, we trade more goods and services with Colombia than we do with Russia, Spain and other larger economies.

Rather than compete, our economies complement each other. Colombia buys wheat, cars, machinery and aircraft from the United States. We buy flowers, coffee, oil and clothing from Colombia. Our economic relationship with Colombia has helped U.S. businesses grow and has created jobs for American workers.

And while economics has made us partners, necessity has made us allies. A decade ago, Colombia was on the brink of collapse. Armed conflict raged, drug traffickers flourished, violence against workers flared and the economy stagnated. Vital U.S. national interests were at risk. As allies, the United States and Colombia joined forces to respond.

The United States pledged its support for "Plan Colombia." Under that plan, we provided more than \$7 billion to Colombia to fight drug trafficking, spur development and protect human rights.

We expanded the Andean Trade Preference Act to provide more duty-free access to the U.S. market for Colombian products. We created new opportunities for the Colombian people, and new alternatives to the illegal drug trade.

With our help, Colombia has achieved impressive results. Since 2002, homicides have decreased by 46 percent, kidnappings have declined by 93 percent, terrorist attacks have fallen by 70 percent and more than 50,000 former combatants have laid down their arms.

But we have unfinished business with our friend and ally. In 2006, the United States and Colombia signed a free trade agreement. It was overwhelmingly approved by Colombia.

The International Trade Commission estimates this agreement will boost the U.S. economy by \$2.5 billion, but it awaits action by the United States.

Our approval of the FTA has been delayed by legitimate concerns for the rights and safety of Colombian workers. During decades of armed conflict, Colombian workers were subject to threats, intimidation and violence.

I traveled to Colombia earlier this year to gauge first-hand the progress Colombia has made to address these concerns. This progress is real, it's impressive and it will be enhanced once the FTA takes effect.

The FTA commits both parties to protect fundamental labor rights. This commitment is fully enforceable, just like the commercial provisions in the agreement. And this commitment is far stronger than those in Colombia's FTAs with other countries, including Canada and the European Union.

Colombian President Santos has also agreed to do far more. Last month, President Obama and President Santos agreed to a Labor Action Plan. In that plan, Colombia committed to a series of concrete steps to strengthen labor rights, improve protection of workers from violence, and increase prosecutions of the perpetrators of violence.

The Action Plan has been embraced by all of the major labor unions in Colombia. And a prominent Colombian labor group in fact called the Action Plan the most significant labor rights development in Colombia in 20 years.

The Action Plan is also enforceable. It is divided into three stages to ensure that Colombia meets each of its core commitments.

Last week, the Administration notified Congress that Colombia has met the first stage of commitments. As a result, Congress and the Administration are now working on the bill to implement the FTA.

The second stage of commitments are due by June 15. Once these are met, we understand that the Administration will be prepared to formally submit the FTA to Congress for a vote.

And the third stage of commitments are due by December 15. Once Colombia implements these commitments, and others related to the FTA, the Administration will certify to Congress that Colombia has taken the necessary steps to allow the FTA to enter into force.

We are now poised to approve our FTAs with Colombia, Panama and Korea. As we move forward with these FTAs, we also must help American workers meet the challenge of global competition. To do so, we must ensure that Congress enacts a robust, long-term extension of Trade Adjustment Assistance in tandem with the FTAs.

Colombia is our neighbor, our friend, our partner and our ally.

So let us work together to implement the Labor Action Plan. Let us move forward quickly and approve the FTA. Let us extend Trade Adjustment Assistance. And let us create new opportunities that will improve the economies and the lives of people in both of our countries.

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**Statement of Senator Charles E. Grassley  
On the United States–Colombia Trade Promotion Agreement**

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Senate Finance Committee Hearing  
May 11, 2011

Mr. Chairman, the trade agreement between the United States and Colombia is very important and deserves our support. This agreement is vital for our manufacturers, farmers, and small businesses, who always benefit from greater market access. For example, over the last five years, Colombia has been the largest market for U.S. agriculture exports in South America, with exports totaling more than \$5 billion. It is a key destination for U.S. wheat, corn, cotton, and soybeans. This agreement will help farmers increase their exports, which will increase their profitability.

In addition, I believe this trade agreement is important for the relationship between the U.S. and Colombia. As Co-Chairman of the drug caucus, I am keenly aware of the important role Colombia has in keeping drugs off American streets. The efforts made through Plan Colombia have been tremendously successful, and have been crucial to our efforts in fighting the drug trade. I believe it is important for us to continue our good relationship with the people of Colombia, and one way we can do that is by implementing this trade agreement.

I am encouraged that we are here today discussing this agreement, even though it should have been submitted to Congress long ago. I am hopeful that we are getting close to finally approving and implementing this trade agreement.

**STATEMENT OF HON. ORRIN G. HATCH, RANKING MEMBER  
U.S. SENATE COMMITTEE ON FINANCE HEARING OF MAY 11, 2011  
U.S.-COLOMBIA TRADE PROMOTION AGREEMENT**

WASHINGTON – U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, today delivered the following opening statement at a committee hearing examining the U.S.-Colombia Trade Promotion Agreement:

Today's hearing provides us with a great opportunity to talk about the many benefits of our free trade agreement with Colombia. Before turning to our witnesses, I think it is important to put our agreement with Colombia in context.

In the 1990's Colombia was on the verge of becoming a failed state as drug trafficking fueled urban and rural violence. Well-armed insurgents and paramilitary groups battled over territorial control. Unemployment, corruption and kidnapping were widespread.

Today, Colombia is reawakening. Violence is down, employment is up, and the economy is growing. Institutional reforms are creating a stronger and more vibrant democracy. Land reform and reparations for victims of violence are being undertaken in an unprecedented effort to heal the wounds of the past. Years of bipartisan cooperation through Plan Colombia and through programs such as the Andean Trade Preference Act helped make this transformation possible.

But our work is not done. Colombia continues to face challenges. Through approval of our pending trade agreement with Colombia we can help meet those challenges and take another step toward achieving our shared goal of a strong, prosperous and democratic Colombia.

We will hear a lot today about the *Labor Action Plan* recently concluded between President Obama and President Santos. This is a good development which has helped bring us to where we are today, even though it is not part of our trade agreement.

But let's be clear. Our trade goes far beyond the action plan. It transforms a one-way preferential trade relationship into a two-way street — giving U.S. exporters fair access to a large and growing consumer market. The agreement will affect the lives of workers across the United States in a positive way. A good example of the agreement's effect can be found in my home state of Utah where workers at AC Med, a Salt Lake City company that exports hospital beds to Colombia, will see tariffs of twenty percent eliminated immediately upon implementation of this agreement. The agreement also will provide better access for U.S. service providers, telecommunication companies, and agricultural exporters. So, while the action plan is important, let's not lose sight of the far more significant economic benefits of the agreement.



The agreement will also benefit Colombia, providing predictability and certainty to many Colombian business that export flowers and other products to the United States, as well as encourage partnerships and investments between Colombian and American businesses. Once implemented, the agreement will sustain economic growth, help create jobs and provide the opportunity to lift millions of Colombians out of poverty.

Nor can we lose sight of the agreement's geopolitical significance. Colombia sits between Venezuela and Ecuador-two countries which seek to distance themselves and others from the United States as they pursue radical models of economic development not based on free market principles. We ignore this political reality at our peril.

Colombia is also at the forefront in the fight against terrorism and drug trafficking. The drug trade directly impacts the lives of many American and Colombian citizens on a daily basis. Only by working together can we stop the tide of illegal drugs. In this critical battle, we cannot afford to turn our back on such a strong friend and ally by rejecting our trade agreement.

This summer, I will do all I can to ensure that the Congress approves our trade agreement with Colombia. In doing so, we will boost U.S. exports by obtaining improved access to the growing Colombian market. We will also be standing by a true friend and ally and helping millions of Colombian workers, as well as U.S. workers, live better lives.

Despite facing many challenges, I believe Colombia is well on its way to being one of the most prosperous, stable and democratic countries in our hemisphere. By approving this agreement, we can all be proud to play a small part in that success.

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WRITTEN TESTIMONY OF JAMES T. HILL, GENERAL, US ARMY RETIRED  
TO THE SENATE FINACE COMMITTEE, 11 MAY 2011

I served as the Combatant Commander, United States Southern Command from August 2002 until November 2004, responsible for all US military activity in South and Central America and the Caribbean. I assumed my command within days of the inauguration of the President of the Republic of Colombia, Alvaro Uribe. At the beginning of President Uribe's first term, in the nascent stages of Plan Colombia, it is not hyperbole, exaggeration or overstatement to describe Colombia of August 2002 as a failing or even failed state. At its very best it was a dysfunctional state.

On his inaugural day only an equipment malfunction stopped FARC mortar rockets from raining down on the assembled crowd. Colombians could not safely drive throughout the country side without fear of kidnapping. One illegal armed group, the FARC, held former presidential candidate, Ingrid Betancourt, captive along with hundreds of others. Three armed and very deadly insurgent groups, the FARC, ELN and AUC vied for control of the countryside. All these groups were fueled and funded through drug money. Colombia was the homicide and kidnapping capital of the world. Colombia in August 2002 was simply one of, if not the, most dangerous and violent nation in the world.

This lack of security, the inability of government to provide a safe environment for its citizens to work and live caused the concomitant deterioration of social and economic norms. Taxes were not paid. Wealthy Colombians abandoned the country in droves, taking their money to Miami and other parts of the US. Foreign investment, one of the drivers of an emerging economy, was non-existent. Huge tracks of the country were controlled by the illegals causing population displacement on a grand scale. Coca growth and cocaine production fueled the fire that threatened to destroy the second oldest democracy in the Americas.

Into this maelstrom stepped President Uribe, armed with great, personal leadership qualities, backed up by the commitment of the Colombian people tired of violence and demanding change and supported by the United States, determined through the funding of Plan Colombia to preserve Colombia's independence and stem the flow of cocaine into the US. What has transpired over the last decade, under the leadership of President Uribe, a man for whom I have enormous respect, and now President Santos, is a success story for both Colombia and the United States with few historical parallels.

US investment through Plan Colombia has been \$8B over the last decade. But to put those dollars in perspective, this is about two week's expenditure in Iraq. For further comparison, annual USG funding for Colombia amounts to less than 5% of what Colombia spends on its own defense annually. And what did we get out of it? The Colombian armed forces are now a fully capable force, able to counter FARC, ELN and other illegal armed groups. They have made great strides in respect for human rights and the rule of law; they do not tolerate extrajudicial killings. The FARC, while still an active terrorist organization, has been reduced by approximately 50% (from 20k in 2002 to about 8-9k in 2010); ELN is virtually non-existent; AUC demobilized, though some have become members of criminal gangs. Homicides down 48%; kidnappings down 91%; attacks down 73%; attacks against infrastructure down 88%. Attacks against labor unionists have dropped significantly in the past decade---from 194 homicides in 2002 to approximately 51 in 2010 and there is no indication that the murders are state sponsored or state tolerated. Cocaine production continues, but the two tiered approach of eradication at the source and international interdiction efforts in the transit zone have stopped enormous amounts of cocaine reaching the user in the US. We will never stop the drug trade; there is simply too much money and profit involved for too many people. But we have stopped cocaine trafficking and narco-terrorists from creating a narco-state in Colombia. I say that is \$8B dollars well spent.

President Uribe, by necessity, had to focus on security concerns. Colombia's success in this area enables the Santos administration to work socioeconomic and development issues through its National Consolidation Plan. As outlined in the US-Colombia High-Level Dialogue we now have a broad set of mechanisms to

advance our shared interests and values and a forum to engage on a broad range of non-security issues. The National Consolidation Plan is supportive of that dialogue. Colombia's National Consolidation Plan is a comprehensive reexamination of its whole-of-government approach to reestablishing state presence and the rule of law throughout the country. It builds on earlier work done through the Coordination Center for Integrated Action, developed during Uribe's first term, with our support. President Santos' transformative legislative agenda, highlighted by land restitution, victims' reparations, and judicial reform initiatives, aims to lay the foundation for lasting peace by tackling the root causes (social inequality, corruption, judicial inefficiency) of the decades-old Colombian internal conflict. This is classic counter-insurgency doctrine that accepts the fact that government cannot succeed without reform and the support of the populace cannot be ensured without meaningful reform. Simply put, building upon a foundation of greatly improved security, it is the natural progression of good governance begun in August 2002.

I commend to the Committee the Dear Colleague Letter from Senator Lugar, dated February 8, 2011 and entitled "Losing Jobs and Alienating Friends: The Consequences of Falling Behind on Free Trade With Colombia and Panama." This excellent study, written by Senior Senate Foreign Relations Committee staff member for Latin America and the Caribbean, Carl Meacham, makes the case for FTA ratification as well as any effort I have seen. Given that as context, let me make my case for the strategic importance of Colombia.

In my 27 months of command I visited every country in Central and South America, save Venezuela. If we were discussing our personal life I would say, using an analogy, that we have many acquaintances in the region, but few really good friends. Colombia is one of those tried and true, lifelong friends we all seek in our personal lives. It makes no sense to damage the friendship, to tarnish and diminish the steadfastness of the Colombian people. If we fail to ratify FTA we tell our friends we really don't care all that much for them, that we have a one-sided relationship. If we fail to ratify we do so at exactly the time that Colombia is emerging as a regional leader and US partner. Colombia is the only stable actor in the Andean Ridge. It helps provide political leverage in our dealings with quixotic

states like Ecuador and counter radical-populism in Venezuela. Colombian armed forces are involved in regional engagement activities in Mexico, Central America, and the Caribbean. Their engagement activities in Central America are particularly important because I believe Central America is the single greatest security threat facing the US in the region because of the destabilization potential of violent gang activity. They were involved in HA/DR activities in Haiti and Costa Rica last year. Colombia has become a key partner in regional security cooperation helping countries throughout the Americas to more effectively confront transnational criminal organizations.

The US-Colombian relationship begun in August 2002 as an effort to defend democracy in Colombia, to stabilize a failing state, paid for partially with Plan Colombia dollars and the sacrifice and blood of the Colombian people, has paid huge dividends. Ours is a maturing, increasingly sophisticated political relationship, based on true partnership and valuable to both sides. Make no mistake; FTA ratification is at the heart of this relationship. Failure to ratify will make a strong relationship weaker, decreasing our ability to meet our security, economic and political goals in the region. Failure to ratify, using a sports analogy, would be like snatching defeat from the jaws of victory. I strongly urge the Senate to ratify FTA for Colombia. Let's not waste a decade's worth of success.

UNITED STATES SENATE  
COMMITTEE ON FINANCE  
HEARING ON THE U.S.-COLUMBIA TRADE PROMOTION AGREEMENT  
MAY 11, 2011  
QUESTION FOR GENERAL JAMES T. HILL, U.S. ARMY (RET.) AND  
FORMER COMMANDER OF THE UNITED STATES SOUTHERN COMMAND,  
CORAL GABLES, FLORIDA

**Question from Senator Bingaman**

I want to ask about rural farmers in Colombia, particularly the 1.8 million small farmers. According to a 2009 study by Colombian economists and commissioned by Oxfam, small farms make up about half of the total farm area in Colombia. Two-thirds of rural households live in poverty -- half of those in extreme poverty. The poverty rate is even worse among small farmers, who earn on average about \$150 per month; 68% of small farm *households* earn less than the statutory minimum wage for *one person*.

ITC estimates the FTA could result in U.S. grain exports to Colombia increasing by 55-77% above the 2005 level of \$339 million. Rice exports would account for two-thirds of the increase and corn exports would make up most of the rest. Colombia currently imports significant amounts of rice and corn, and U.S. commodities could displace Colombia's imports from other countries, but the Oxfam study estimates that this increased competition could push rice prices down by 20% and corn prices down by 40% in Colombia. There would be a large drop in prices for beans and other staple food crops, too.

Increased U.S. exports will certainly be good for the U.S. economy, and lower prices will benefit consumers in Colombia. But the Oxfam study estimates there will be significant negative effects on small farmers. For example, 28% of small farmers, or nearly 400,000 people, will lose half their income or more.

The U.S. has invested over \$8 billion in counter-insurgency, counter-narcotics, and alternative development efforts in Colombia over the past decade. Colombia continues to face security threats from armed groups, including the BACRIM. It seems to me that the extreme level of rural poverty in Colombia makes the security problems more difficult, not least because poor farmers are more likely to turn to coca production. **Do you agree with that? Is it in Colombia's security interest to ramp up rural development efforts now given the potential affects of the FTA? Should the U.S. also ramp up the rural development assistance it provides to Colombia?**

**Answer from General Hill**

US aid and initiatives have always encouraged rural development in Colombia in an attempt to provide alternatives to coca production by poor farmers. We should continue doing that. I believe FTA ratification will improve the Colombian economy and increase opportunities, as yet undetermined, for all Colombians.

Statement of Sandra Polaski  
Deputy Undersecretary for International Affairs  
U.S. Department of Labor  
before the  
Committee on Finance  
United States Senate  
May 11, 2011

**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/LaborProtectionandtheColombiaTradeAgreement.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/LaborProtectionandtheColombiaTradeAgreement.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 (TGAAA). 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.

**UNITED STATES SENATE**  
**COMMITTEE ON FINANCE**  
**HEARING ON THE U.S.–COLOMBIA TRADE PROMOTION AGREEMENT**  
**MAY 11, 2011**  
**QUESTIONS FOR MS. SANDRA POLASKI, DEPUTY UNDER SECRETARY FOR**  
**INTERNATIONAL LABOR AFFAIRS, UNITED STATES DEPARTMENT OF LABOR,**  
**WASHINGTON, DC**

**Question from Chairman Baucus**

Ms. Polaski, I understand that Colombia has signed free trade agreements with Chile, Canada, Mexico, the Mercosur countries, and the European Union. Are the labor provisions in those agreements as strong as those in the U.S.-Colombia FTA?

**We believe the commitments in the U.S.-Colombia Trade Promotion Agreement (Colombia Agreement) are stronger than the labor commitments in the other trade agreements that Colombia has signed. In the Colombia Agreement, 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 dispute settlement proceedings if either side fails to meet that commitment. These commitments also match the strongest commitments in any U.S. free trade agreement.**

**Questions from Senator Robert Menendez**

**Question 1**

Since 2002, there have been 1230 homicides of union members, a number that the Office of the Vice President of Colombia and the Ministry of Social Protection recognize. The main drawback of this agreement is the fear by labor that deaths of labor leaders will be swept aside and forgotten. Major labor unions are not convinced that the government will actually follow through once the Free Trade Agreement is signed. According to the National Labor School (ENS), there were 47 homicides of union members in 2002 and 51 in 2010, a slight increase. In the face of this injustice, the Labor Action Plan calls for a STUDY of previous deaths of labor organizers. **What confidence do you have that if these crimes are not resolved any future violations by criminal groups (be they guerrillas or paramilitaries or criminal gangs at the employ of others) will be punished?**

**The Colombian Action Plan Related to Labor Rights (Action Plan) includes strong and specific steps to increase investigation and prosecution of the perpetrators of earlier violence against union activists because the Santos Administration recognizes that ending impunity is a major factor in deterring future crimes. In accordance with the Action Plan, President Santos has issued a directive to the National Police, which has already assigned**

**100 additional full-time judicial police investigators to support the investigation of violence against trade unionists. The Prosecutor General's office has issued directives, consistent with the Action Plan, to improve the investigation and prosecution of labor cases. It is also undertaking an analysis of past homicide cases of union members and activists, in order to extract lessons that can help improve the investigation and prosecution of future cases. Moreover, the Prosecutor General's office has analyzed its needs for additional investigators and prosecutors, and submitted its plan and budget request to the Santos Administration, which has committed to provide funding for the expanded staffing, including to strengthen capacity in regional offices. In addition, the Prosecutor General's office is working with the Colombian labor unions and the National Labor School (ENS) to reconcile the Government's list of union homicides since 1986 with that of the unions.**

**Question 2**

The Labor Action Plan establishes the sectors for palm oil, mines, sugar, port workers, and flowers as sectors that bear special monitoring to curb abuses of labor workers' rights and has provisions for assigning labor inspectors for these sectors. It would seem that if these are priority sectors for correcting labor abuses, the government would be seeking to bring abusers in these sectors to court. **When do you expect to see cases brought to court in any of these priority areas to demonstrate that the government is serious about its intent to prosecute abuses in these sectors?**

**The Colombian Government has already begun taking the necessary steps under the Action Plan to hire 100 new labor inspectors this year. It is assigning 50 of the new inspectors being hired in 2011 to cases involving cooperatives nationwide and 35 to the sectors mentioned. The effective date of a more stringent law banning certain irregular contracting arrangements, which are prevalent in these sectors, was moved up from July 2013 to May 2011, by an act of the Colombian Congress. The increase in enforcement personnel and improvements in their training, combined with changes in law and regulations, will begin to change the enforcement situation in the months ahead.**

**Question 3**

The ILO has been involved in tripartite talks among the government, labor, and business and reached agreements in 2006. Despite those agreements, labor's rights has not been respected -- as evidenced by the homicides of labor organizers and the use of *cooperativas* in the place of allowing unions to organize.

**What guarantees do we have now that the Labor Action Plan will not also turn into a nice document on paper without any improvements for the conditions of labor, especially in those critical priority areas identified by the Action Plan?**

Under the Action Plan, Colombia must take the most important actions during 2011. We have been working with Colombia to ensure that the deadlines are met, and we will continue to do so. Our trade Agreement also includes strong labor provisions that are subject to the same enforcement tools as the commercial obligations. Therefore, once the Agreement enters into force, the United States will have a labor rights enforcement mechanism for violations of the Labor Chapter that will continue as long as the trade Agreement is in force.

Can we expect to have a change in the mindset of business that has up until now maneuvered through the use of *cooperativas* to avoid dealing with labor as an independent partner in the productive process?

Under the Action Plan, Colombia will significantly change its regulations related to cooperatives and has already moved up by two years the date on which the Government can impose substantial fines for unlawful use of cooperatives. In addition, Colombia is significantly expanding its enforcement capabilities. These changes in law, regulation and enforcement will provide a strong deterrent to future misuse of cooperatives.

Can we expect to see meetings between labor and business leaders independent of any government or ILO representation that respects the standing of each in the creation of jobs, products, and services?

The Action Plan addresses some of the fundamental imbalances that have existed between business and labor in Colombia. By ensuring that Colombian labor law and practice is consistent with international labor standards, labor and business can engage on a more equal footing.

UNITED STATES SENATE  
COMMITTEE ON FINANCE  
HEARING ON THE U.S.–COLOMBIA TRADE PROMOTION AGREEMENT  
MAY 11, 2011  
QUESTIONS FOR MS. SANDRA POLASKI, DEPUTY UNDER SECRETARY FOR  
INTERNATIONAL LABOR AFFAIRS, UNITED STATES DEPARTMENT OF LABOR,  
WASHINGTON, DC  
AND  
QUESTIONS FOR THE HONORABLE MIRIAM SAPIRO, DEPUTY UNITED STATES  
TRADE REPRESENTATIVE, OFFICE OF THE UNITED STATES TRADE  
REPRESENTATIVE, WASHINGTON DC

Questions from Senator Bingaman

Question 1

Colombia agreed in the Labor Action Plan to take specific steps to expand the capabilities of its labor and justice institutions to address its labor rights problems. **Does Colombia need to expand the capacity of its labor and justice institutions in order to enforce its labor laws? Is it appropriate for the U.S. to provide capacity building assistance to Colombia's labor and justice institutions?**

Colombia has committed to expand its labor and justice institutions. The Government has begun the creation of a separate Labor Ministry (the labor ministry functions are currently part of the Ministry of Social Protection) and implementing its plan to double the size of its labor inspectorate over four years, beginning with the hiring of 100 new labor inspectors this year. Colombia is also improving its criminal justice institutions to address violence against labor activists. It has assigned 100 additional judicial police to support prosecutors in investigating labor cases. In addition, the Prosecutor General has requested, and the Santos Administration has committed to supporting, an expansion of the staff and resources of the regional offices of the Prosecutor General. The United States will provide technical support to Colombia to help ensure that the new Labor Ministry, the new labor inspectors, and the Prosecutor General have the ability to fulfill their duties, including the specific responsibilities highlighted in the Colombian Action Plan Related to Labor Rights (Action Plan). The U.S. Government, including the U.S. Departments of Labor and Justice, intend to be fully involved in this process, working closely with their Colombian counterparts.

Question 2

I congratulate you and your colleagues for the work you have done on the Labor Action Plan which, as you said in your testimony, Colombia labor leaders are describing as a historic opportunity to remedy the labor rights problems that have plagued Colombia for decades. In my view, to accomplish the goals of the Action Plan, Colombia will need to expand the capabilities of its labor and justice institutions to enforce its labor laws, which will take years to do. **Will the**



administration increase the capacity building assistance it provides to Colombia's labor and justice institutions? Is the administration committed to providing labor and justice capacity building assistance to Colombia until the Action Plan is fully implemented?

The Administration will assist Colombia to fulfill the provisions of the Action Plan. The U.S. Departments of Labor and Justice, in particular, intend to work closely with their Colombian counterparts to realize this goal. These efforts are being carried out using existing resources.

#### Questions from Senator Wyden

##### Question 1

Are there any commitments in the Colombian Action Plan that the president would not demand be implemented before the FTA went into force, and if so, what specifically are they?

The Action Plan was designed to include strong and concrete steps on all of the most challenging issues before the end of 2011. One important step—the doubling of the labor inspectorate—will require a few years to implement. However, the process has already started and will be well underway before the Agreement enters into force. Other actions will also be well underway in 2011 and continue thereafter, as Colombia builds capacity and demonstrates ongoing improvements. These include robust enforcement activities that continue indefinitely.

After that, when the U.S.-Colombia Trade Promotion Agreement enters into force, both Colombia and the United States will be obligated 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). This provision will be subject to the same enforcement mechanisms as the commercial obligations in the Agreement. The enforcement mechanism for violations of the Labor Chapter will continue as long as the Agreement is in force.

##### Question 2

Would the president support a statutory requirement added to the U.S.-Colombia Free Trade Agreement implementing legislation to require some or all of the commitments of the Colombian Action Plan to be met before the FTA can go into force?

As the Administration indicated when it announced the Action Plan on April 7, successful implementation of key elements of the Action Plan will be a precondition for the Agreement to enter into force.

**Question from Senator Carper**

We have heard detailed reports about the progress Colombia has made over the past decade from what many would describe as a failed state as recently as 2002. Unfortunately, violence against trade unionists and labor unions were no exception to this instability. In the short time since he took office, President Santos has taken historic steps to address the ongoing concerns from the labor community, including the selection of Garzon as his Vice President, who has over 30 years experience with unions as the founder of Colombia's largest labor unions. The concerns of labor are not taken lightly and the Labor Action Plan between the U.S. and Colombia is a significant step. I also believe there needs to be a commitment to fundamentally shifting the culture to build on this progress. **Could you tell us what actions or initiatives outside the Labor Action Plan Colombia has taken to improve labor rights and protections for the labor community?**

**Colombia had already been taking steps to address labor concerns prior to the Action Plan. These include, for example, developing a protection program for union leaders threatened with violence. Under the Action Plan, this program has been greatly expanded to cover labor activists and workers trying to organize a union. In addition, after the Colombian Government made improvements in the teacher protection program under the Action Plan, it met with representatives of the teachers' union and made additional improvements. More broadly, the labor community is among those benefiting from the Santos Administration's far reaching initiatives to promote social justice by compensating victims of violence and restoring land to displaced persons.**

**Statement by Ambassador Miriam Sapiro  
Deputy United States Trade Representative**

**Before the Senate Finance Committee**

**Washington, DC  
May 11, 2011**

Chairman Baucus, Ranking Member Hatch, Members of the Committee, it is an honor to have the opportunity to testify before you today about the U.S.-Colombia Trade Promotion Agreement (the "Agreement").

Supporting more and better paying jobs for Americans through trade is a top priority for President Obama. Our Administration is pursuing multiple initiatives to open global markets, dismantle barriers to our exports and vigorously defend America's trade rights. As part of this comprehensive strategy, President Obama directed us to work with Congress and other stakeholders to build bipartisan support for the pending trade agreements with South Korea, Panama, and Colombia.

The President firmly believes that our trade agreements must advance both our economic interests and our core values. The Administration had concerns about certain aspects relating to each agreement and determined that further improvements would be necessary to allow American workers, manufacturers, farmers and ranchers to compete on a fair and level playing field. In each case, we

worked intensively to address these concerns and forge broader bipartisan support. With South Korea, we succeeded in addressing market access issues for autos. With Panama, we worked hard to address labor rights and tax transparency questions. And with Colombia – the focus of today’s hearing – we succeeded in developing an Action Plan Related to Labor Rights (the “Action Plan”) to address serious concerns regarding labor protections, violence and impunity. Last week, staff from this Committee made history when they joined with colleagues from the House Committee on Ways and Means and USTR to begin informal drafting sessions on three trade agreements simultaneously.

There is no question that Colombia has made important strides in protecting labor rights and reducing threats of violence over the past decade. But it was equally clear that more needed to be done, from preventing practices that undermine fundamental labor rights, to enhancing protection for union activists, to strengthening the investigation and prosecution of labor-related violence.

We have a willing partner in the Santos Administration, already dedicated to protecting the rights of all citizens and promoting social justice. An early signal that President Santos would be a strong proponent of workers’ rights was his choice of a running mate, former labor leader Angelino Garzón. One of President Santos’ first initiatives was to pursue reparations for victims of state-sponsored

violence; another was to grant restitution of land to displaced persons on an unprecedented scale.

Working together, the Obama and Santos administrations reached agreement on the Action Plan, which the two Presidents announced on April 7. My colleague, Deputy Under Secretary of Labor Sandra Polaski, played a key role in developing and negotiating the Action Plan, which she will describe in more depth. Specific improvements that have already occurred under the Action Plan include expanded eligibility for Colombia's protection program to include not only labor leaders, but also rank and file activists and those seeking to form a union. Over 95 judicial police investigators have been assigned exclusively to pursuing cases of labor violence, with early identification of any union affiliation now mandatory. And ahead of schedule, Colombia enacted legislation to move up the effective date of new penalties for abuse of cooperatives to evade worker protections.

Colombian unions have reacted positively to the Action Plan. According to Julio Roberto Gómez, Secretary General of the Confederación General de Trabajo, it "is positive that President [Santos] put forth an agreement that includes issues such as freedom of association, human rights and guarantees for workers as they are related to the FTA." Or, as José Luciano Sanín, Director General of the Escuela Nacional Sindical, has observed, "we are witnessing a moment that we have not

had in at least twenty years. After the 1991 Constitution, this would be the most important agenda for the Labor Movement.”

Colombia’s actions to date have enabled USTR and Congress to begin the technical discussions now under way regarding the text of the implementing bill for the Agreement. As Ambassador Kirk’s letter to you noted, Colombia still has important work to accomplish to address additional elements of the Action Plan before the President will formally submit the Agreement to Congress for consideration. I am pleased to announce that our work with Colombia on the remaining tasks under the Action Plan is well underway.

As noted earlier, the Agreement will provide significant economic and commercial benefits for our exporters. The International Trade Commission has estimated that it will expand exports of U.S. goods to Colombia by more than a billion dollars, increase U.S. GDP by \$2.5 billion, and support thousands of additional jobs for our workers. We must of course ensure that U.S. workers, businesses, farmers, and ranchers will be able to enjoy these substantial benefits, as we recognize that the Colombian Government has already negotiated trade agreements with some of our toughest competitors.

Under our Agreement, tariffs on most U.S. goods sold in Colombia would be eliminated immediately. The rest would be phased out over defined time periods. U.S. companies would also enjoy significant new access to Colombia's \$134 billion services market, improved intellectual property rights protection, increased government procurement opportunities, and safeguards against discriminatory or unlawful treatment by Colombia.

In addition, the Agreement will help strengthen the Colombian economy and promote its growing middle class, thereby bolstering a steadfast strategic partner in this Hemisphere. Furthermore, the Agreement will help cement our broader relationship with a country that plays an increasingly important role both in the region and around the world, including at the U.N. Security Council and in peacekeeping operations.

While Colombia has been working closely with us on the Action Plan and other initiatives, it has nevertheless suffered from a loss of preferential access to the U.S. market since the Andean Trade Preference Act (ATPA) lapsed earlier this year. The Obama Administration urges Congress to renew both the ATPA and the Generalized System of Preferences (GSP) programs for as long as possible. This is the right thing to do for our preference program beneficiaries, and for the

American businesses that rely on these imports. In the case of Colombia, an extension would restore the preferences until our trade agreement enters into force.

Along with renewal of our preference programs, we urge Congress to keep faith with American workers by renewing Trade Adjustment Assistance (TAA). We look forward to working with Congress on a robust TAA program that will support Americans who need training and other services when their jobs are affected by trade. TAA is a key component of the President's legislative trade agenda, along with renewal of our preference programs and Permanent Normal Trade Relations for Russia as that country joins the World Trade Organization.

We are eager to work with this Committee, and Congress as a whole, to accomplish all of these objectives this year. America is strongest when our economic interests and our core values reinforce one another. Working together, Congress and the Administration can succeed in creating the balanced and comprehensive trade agenda that America deserves.

Thank you.



UNITED STATES SENATE  
COMMITTEE ON FINANCE  
HEARING ON THE U.S –COLOMBIA TRADE PROMOTION AGREEMENT  
MAY 11, 2011  
QUESTIONS FOR THE HONORABLE MIRIAM SAPIRO, DEPUTY UNITED STATES  
TRADE REPRESENTATIVE, OFFICE OF THE UNITED STATES TRADE  
REPRESENTATIVE, WASHINGTON DC

**Questions from Chairman Baucus**

**Question 1**

I commend the Administration for negotiating the Labor Action Plan to address legitimate concerns for the rights and safety of Colombian workers. I am convinced that the Administration is prepared to help Colombia implement the Labor Action Plan and move the FTA forward.

But it is critical for the Administration mount an aggressive, coordinated campaign to build support for the FTA in Congress and among the public. **Ambassador Sapiro, what does this Administration plan to do to build support for the FTA?**

The Administration has been working hard to build support for the U.S.-Colombia Trade Promotion Agreement. Senior Administration officials have highlighted the benefits of the Agreement in testimony, meetings with Members of Congress and stakeholders, and public speeches. The Administration has also prepared and posted information about the many benefits of the Agreement for our exporters and to increase public support. In addition, we are working closely with the Colombian Government on smooth implementation of the Action Plan to address our labor concerns. This will help increase bipartisan and public support for the Agreement. We look forward to working with you and your staff to secure the broadest level of support possible.

Based on my own experience, congressional delegations are among the most effective ways to convince Members of Congress to vote for this FTA. **Is the Administration planning to lead any congressional delegations to Colombia?**

The Administration is pleased that you and other Members of Congress have been able to visit Colombia recently. We strongly encourage additional Members of Congress to visit Colombia to see first-hand the progress the Government has made on labor issues, as well as the many benefits the Colombia Agreement will bring to both Colombia and the United States.

## Questions from Senator Bingaman

### Question 1

I appreciate the administration's support for extending the Trade Adjustment Assistance improvements that were enacted in 2009. These provisions expired in February because of opposition from Republican members of Congress, some of whom began in late 2010 to link the extension of TAA to movement on the FTAs, particularly the Colombia FTA. Others questioned the cost of the program. Yet the implementing bills for the three FTAs will also cost money because they will reduce U.S. tariffs on goods made abroad. CBO has told my office that extending the 2009 TAA provisions for 10 years would cost roughly \$6-7 billion. **Is it correct that the three FTAs will cost roughly \$8-9 billion? In other words, the cost of extending TAA for 10 years is less than the cost of the FTAs.**

The Administration believes that both the pending trade agreements and a robust TAA program, based on the objectives of the 2009 program, would bring significant benefits to the United States that outweigh the costs. The pending trade agreements will increase U.S. GDP and lead to increased U.S. exports, supporting thousands of additional jobs in the United States. The TAA program has helped thousands of American workers who need training and other vital services when they lose their jobs due to trade. The numbers you cite are CBO's scoring of the proposals in the President's 2012 Budget. The Administration's Budget estimates have TAA and the FTAs costing roughly the same at \$7 billion over 10 years. The precise costs of any final agreement over the FTAs and a robust TAA program may differ from the Budget estimates.

### Question 2

I want to ask about rural farmers in Colombia, particularly the 1.8 million small farmers. According to a 2009 study by Colombian economists and commissioned by Oxfam, small farms make up about half of the total farm area in Colombia. Two-thirds of rural households live in poverty -- half of those in extreme poverty. The poverty rate is even worse among small farmers, who earn on average about \$150 per month; 68% of small farm *households* earn less than the statutory minimum wage for *one person*.

ITC estimates the FTA could result in U.S. grain exports to Colombia increasing by 55-77% above the 2005 level of \$339 million. Rice exports would account for two-thirds of the increase and corn exports would make up most of the rest. Colombia currently imports significant amounts of rice and corn, and U.S. commodities could displace Colombia's imports from other countries, but the Oxfam study estimates that this increased competition could push rice prices down by 20% and corn prices down by 40% in Colombia. There would be a large drop in prices for beans and other staple food crops, too.

Increased U.S. exports will certainly be good for the U.S. economy, and lower prices will benefit consumers in Colombia. But the Oxfam study estimates there will be significant negative effects on small farmers. For example, 28% of small farmers, or nearly 400,000 people, will lose half their income or more. **What can the U.S. do to help the Colombia mitigate the adverse effects of the FTA on small-scale farmers?**

**The Agreement provides for long phase-out periods for tariffs on sensitive agricultural products. It also employs other tools, such as agricultural safeguards, which are designed to enable local populations to adjust gradually to trade liberalization. In addition, the phase-out of Colombia's barriers to agricultural imports from the United States will advance the competitiveness of Colombian agricultural interests who use U.S. inputs, and contribute to lowering the cost of food for Colombian consumers. The Agreement can also spur new economic activity that creates jobs and opportunities in the formal sector. Finally, the Agreement includes commitments by the Governments to coordinate trade capacity building programs in Colombia to help promote growth and reduce poverty.**

**Question from Senator Robert Menendez**

Since 2002, there have been 1230 homicides of union members, a number that the Office of the Vice President of Colombia and the Ministry of Social Protection recognize. The main drawback of this agreement is the fear by labor that deaths of labor leaders will be swept aside and forgotten. Major labor unions are not convinced that the government will actually follow through once the Free Trade Agreement is signed. According to the National Labor School (ENS), there were 47 homicides of union members in 2002 and 51 in 2010, a slight increase. In the face of this injustice, the Action Plan calls for a STUDY of previous deaths of labor organizers. **What efforts are being made not only to study these homicides but actually prosecute the perpetrators of these crimes?**

**The Action Plan includes a number of steps Colombia has taken, and will take, to increase the effectiveness of prosecuting crimes against unionists. These include a requirement for early identification of union affiliation at the start of an investigation, assignment of an additional 100 judicial police investigators to criminal labor cases, training for improved crime scene management, guidance to prosecutors to accelerate action on those cases with leads and to provisionally close cold cases, and an increase in the budget and resources of the Office of the Prosecutor General. In addition, the study you referenced should be an important tool for identifying how prosecutions in criminal labor cases can be more effective than they have been in the past.**

**Question from Senator Wyden**

The negotiation texts of the Trans-Pacific Partnership (TPP) Agreement are classified by USTR as "confidential." **Please explain how this classification is consistent with the requirements of President Obama's Executive Order 13526, which states that the "confidential" classification "shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe."**

How is the “confidential” classification of the texts that USTR unilaterally tables for consideration in the TPP talks consistent with Executive Order 13526?

Under Sec. 1.4(b) of Executive Order 13526, one of the types of information that is appropriate for classification is “foreign government information.” Sec. 6.1(s) of the Executive Order defines “foreign government information” to include not only information that the United States receives in confidence from foreign governments, but also information it produces pursuant to a joint arrangement with foreign governments that requires the information to be held in confidence. The parties participating in the TPP negotiations, including the United States, have collectively agreed not to make public the negotiating texts they provide to, or receive from, each other in the course of the negotiations. U.S.-produced TPP negotiating texts are classified under this authority.

Please identify and describe how release of the texts that the USTR tables in the TPP talks could cause damage to the national security, if that is the position of the USTR.

Section 1.1(d) of Executive Order 13526 provides that the unauthorized release of foreign government information is presumed to cause damage to national security. That presumption is warranted with respect to U.S. TPP negotiating texts as their release would breach a U.S. commitment to its TPP partners to keep negotiating texts confidential.

Has the USTR undertaken a comprehensive review of its classification procedures, pursuant to the requirements of Executive Order 13526? If so, will you make available to the public a report summarizing the results of the review?

Pursuant to the requirements of Executive Order 13526, USTR plans to complete its review of its classification guidance by June 2012 and provide a report of that review to the Information Security Oversight Office. We plan to release publicly an unclassified version of this report.

Questions from Senator Snowe

Question 1

In your opinion, and based on the series of steps outlined for implementing the “Action Plan Related to Labor Rights,” how long would it be until we could assess whether key elements of the Action Plan are being *enforced* effectively in Colombia? What benchmarks or metrics should we use to assess the government’s progress?

The Action Plan includes many tools for monitoring progress, including frequent updates from the Colombian Government regarding the implementation of their commitments. For instance, the Colombian Government is providing detailed monthly reports on the

**elimination of the backlog of protection program risk assessments and improvements to the protection program, as well as quarterly reports on the teacher relocation program, cooperatives enforcement results, collective pacts preventive inspections, and temporary service agency enforcement efforts. In addition, the Action Plan provides for a follow-up mechanism of meetings at both technical and senior levels through at least 2013.**

### **Question 2**

Since last year Colombia has been devastated by flooding. This situation underscores the many challenges that Colombia faces – from natural disasters to drug trafficking, organized crime, and battles with the FARC and paramilitary groups. **Given all of these challenges, how will our government ensure the Santos Administration dedicates the resources necessary to enforce the Action Plan in the timeframe required?**

**The Colombian Government has clearly made Action Plan implementation one of its top priorities. The Government has already moved swiftly to meet the Action Plan's early deadlines. In addition, under the Action Plan the Colombian Government will share with us the budgetary commitments it is making in support of the Plan's implementation, including with respect to: the Prosecutor General's Office's new and increased activities to implement the Action Plan, the hiring of at least an additional 100 labor inspectors in 2011; alternate dispute resolution programs; outreach programs on cooperatives and collective pacts; and the expansion of the Ministry of Interior and Justice Protection Program.**

### **Question from Senator Grassley**

As has been well documented, U.S. – Colombia trade has been a one-way street. U.S. products have faced high tariffs, while nearly all of the imports from Colombia have come in duty-free. Some of the highest tariffs on U.S. products going to Colombia have been on agriculture products. For example, tariffs on soybeans can be as high as 150 percent. Tariffs on some corn products can be as high as 194 percent.

These high tariffs have cost American farmers to lose market share for their products in Colombia. According to the department of agriculture, between 2008 and 2009 there was an almost 50 percent drop in U.S. agricultural exports to Colombia.

While the U.S. – Colombia agreement has stalled for four plus years, Colombia has entered agreements with other countries that will lead to U.S. farmers losing even more of their market share unless we get this trade agreement approved quickly.

**If this trade deal is not acted upon soon, and U.S. farmers lose additional market share in Colombia, how does the administration expect U.S. farmers will be able to get their foot back in the door in Colombia? They are already losing market share to farmers from countries who have trade agreements with Colombia, how are U.S. farmers suppose to compete without swift approval of this agreement?**

**The Administration shares your sense of urgency in ensuring that U.S. exporters are not disadvantaged as Colombia's other trade agreements enter into force. In February, the President directed Ambassador Kirk to intensify efforts to address the outstanding issues, which we have done. On May 4, Ambassador Kirk notified Congress that Colombia had taken the steps necessary, consistent with the April 22 milestones of the Action Plan, to move to the next stage in the process. We are working intensively with the Colombian Government on its implementation of the further steps in the Action Plan. That further progress, and Congressional agreement on a robust extension of Trade Adjustment Assistance based on the objectives of the 2009 program, will provide the foundation for all of the pending trade agreements to be considered by Congress.**

UNITED STATES SENATE  
COMMITTEE ON FINANCE  
HEARING ON THE U.S.–COLOMBIA TRADE PROMOTION AGREEMENT  
MAY 11, 2011  
QUESTIONS FOR MS. SANDRA POLASKI, DEPUTY UNDER SECRETARY FOR  
INTERNATIONAL LABOR AFFAIRS, UNITED STATES DEPARTMENT OF LABOR,  
WASHINGTON, DC  
AND  
QUESTIONS FOR THE HONORABLE MIRIAM SAPIRO, DEPUTY UNITED STATES  
TRADE REPRESENTATIVE, OFFICE OF THE UNITED STATES TRADE  
REPRESENTATIVE, WASHINGTON DC

Questions from Senator Bingaman

Question 1

Colombia agreed in the Labor Action Plan to take specific steps to expand the capabilities of its labor and justice institutions to address its labor rights problems. **Does Colombia need to expand the capacity of its labor and justice institutions in order to enforce its labor laws? Is it appropriate for the U.S. to provide capacity building assistance to Colombia's labor and justice institutions?**

Colombia has committed to expand its labor and justice institutions. The Government has begun the creation of a separate Labor Ministry (the labor ministry functions are currently part of the Ministry of Social Protection) and implementing its plan to double the size of its labor inspectorate over four years, beginning with the hiring of 100 new labor inspectors this year. Colombia is also improving its criminal justice institutions to address violence against labor activists. It has assigned 100 additional judicial police to support prosecutors in investigating labor cases. In addition, the Prosecutor General has requested, and the Santos Administration has committed to supporting, an expansion of the staff and resources of the regional offices of the Prosecutor General. The United States will provide technical support to Colombia to help ensure that the new Labor Ministry, the new labor inspectors, and the Prosecutor General have the ability to fulfill their duties, including the specific responsibilities highlighted in the Colombian Action Plan Related to Labor Rights (Action Plan). The U.S. Government, including the U.S. Departments of Labor and Justice, intend to be fully involved in this process, working closely with their Colombian counterparts.

Question 2

I congratulate you and your colleagues for the work you have done on the Labor Action Plan which, as you said in your testimony, Colombia labor leaders are describing as a historic opportunity to remedy the labor rights problems that have plagued Colombia for decades. In my view, to accomplish the goals of the Action Plan, Colombia will need to expand the capabilities of its labor and justice institutions to enforce its labor laws, which will take years to do. **Will the**

administration increase the capacity building assistance it provides to Colombia's labor and justice institutions? Is the administration committed to providing labor and justice capacity building assistance to Colombia until the Action Plan is fully implemented?

The Administration will assist Colombia to fulfill the provisions of the Action Plan. The U.S. Departments of Labor and Justice, in particular, intend to work closely with their Colombian counterparts to realize this goal. These efforts are being carried out using existing resources.

#### Questions from Senator Wyden

##### Question 1

Are there any commitments in the Colombian Action Plan that the president would not demand be implemented before the FTA went into force, and if so, what specifically are they?

The Action Plan was designed to include strong and concrete steps on all of the most challenging issues before the end of 2011. One important step—the doubling of the labor inspectorate—will require a few years to implement. However, the process has already started and will be well underway before the Agreement enters into force. Other actions will also be well underway in 2011 and continue thereafter, as Colombia builds capacity and demonstrates ongoing improvements. These include robust enforcement activities that continue indefinitely.

After that, when the U.S.-Colombia Trade Promotion Agreement enters into force, both Colombia and the United States will be obligated 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). This provision will be subject to the same enforcement mechanisms as the commercial obligations in the Agreement. The enforcement mechanism for violations of the Labor Chapter will continue as long as the Agreement is in force.

##### Question 2

Would the president support a statutory requirement added to the U.S.-Colombia Free Trade Agreement implementing legislation to require some or all of the commitments of the Colombian Action Plan to be met before the FTA can go into force?

As the Administration indicated when it announced the Action Plan on April 7, successful implementation of key elements of the Action Plan will be a precondition for the Agreement to enter into force.



**Question from Senator Carper**

We have heard detailed reports about the progress Colombia has made over the past decade from what many would describe as a failed state as recently as 2002. Unfortunately, violence against trade unionists and labor unions were no exception to this instability. In the short time since he took office, President Santos has taken historic steps to address the ongoing concerns from the labor community, including the selection of Garzon as his Vice President, who has over 30 years experience with unions as the founder of Colombia's largest labor unions. The concerns of labor are not taken lightly and the Labor Action Plan between the U.S. and Colombia is a significant step. I also believe there needs to be a commitment to fundamentally shifting the culture to build on this progress. **Could you tell us what actions or initiatives outside the Labor Action Plan Colombia has taken to improve labor rights and protections for the labor community?**

**Colombia had already been taking steps to address labor concerns prior to the Action Plan. These include, for example, developing a protection program for union leaders threatened with violence. Under the Action Plan, this program has been greatly expanded to cover labor activists and workers trying to organize a union. In addition, after the Colombian Government made improvements in the teacher protection program under the Action Plan, it met with representatives of the teachers' union and made additional improvements. More broadly, the labor community is among those benefiting from the Santos Administration's far reaching initiatives to promote social justice by compensating victims of violence and restoring land to displaced persons.**

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**Statement of**

**Gordon Stoner**

**Grain producer from Outlook, Montana**

**On behalf of the**

**Montana Grain Growers Association**

**National Association of Wheat Growers**

**U.S. Wheat Associates**

**National Barley Growers Association**

**Before the**

**Senate Finance Committee**

**On**

**The U.S. – Colombia Trade Promotion Agreement**

**May 11, 2011**

Chairman Baucus, Ranking Member Hatch and Members of the Committee:

My name is Gordon Stoner and I am a fourth generation farmer/rancher from Outlook, Montana, located in the north eastern corner of the state near the Canadian and North Dakota borders. I am the owner/operator of Stoner Farms, a diversified dryland farming operation where I raise durum wheat, peas, lentils, and cattle for both domestic consumption and for export markets. I am President of the Montana Grain Growers Association and Vice Chairman of the U.S. Wheat Associates and National Association of Wheat Growers Joint International Trade Policy Committee.

Thank you for this opportunity to comment on behalf of four organizations representing U.S. wheat and barley growers: the National Association of Wheat Growers, an organization of wheat growers from 21 states working together on domestic and trade policy issues affecting the livelihoods of U.S. wheat producers; U.S. Wheat Associates, who develop, maintain, and expand international markets in order to enhance the profitability of U.S. wheat producers; the National Barley Growers Association, who work to advance the national and international interests of U.S. barley growers in seven major barley-producing states; and the Montana Grain Growers Association, a grassroots producer organization whose members grow wheat and barley on over 5.5 million planted acres in Montana.

United States wheat and barley producers strongly support the pending free trade agreement (FTA) with Colombia and encourage its expeditious approval by Congress.

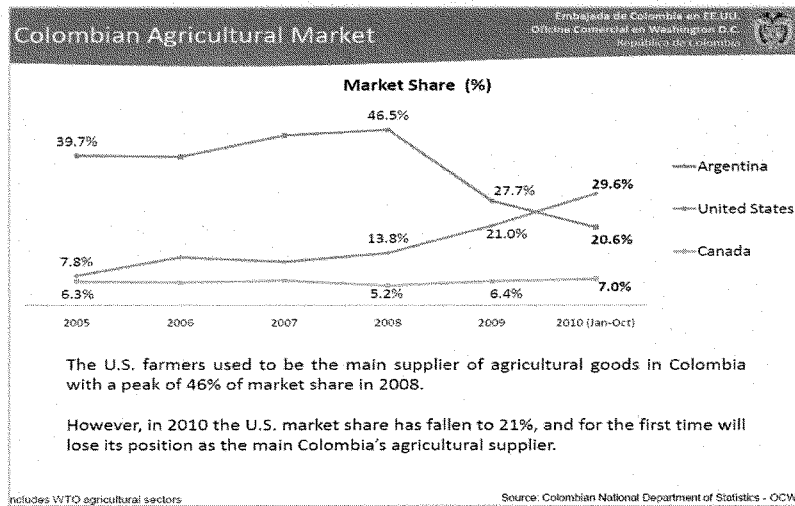
Nearly 96 percent of the world's consumers live beyond U.S. borders. The remaining 4 percent, those who live within the U.S., do not consume enough wheat products to sustain a viable wheat industry. It is critical that U.S. wheat producers have the ability to export to every market in the world.

The U.S. is the third largest wheat producing country in the world after China and India, and is the largest wheat exporting country in the world, exporting on average about half of our total U.S. wheat crop every year. As such, free and open trade with other countries is a vital component to ensuring the financial viability of our wheat farmers.

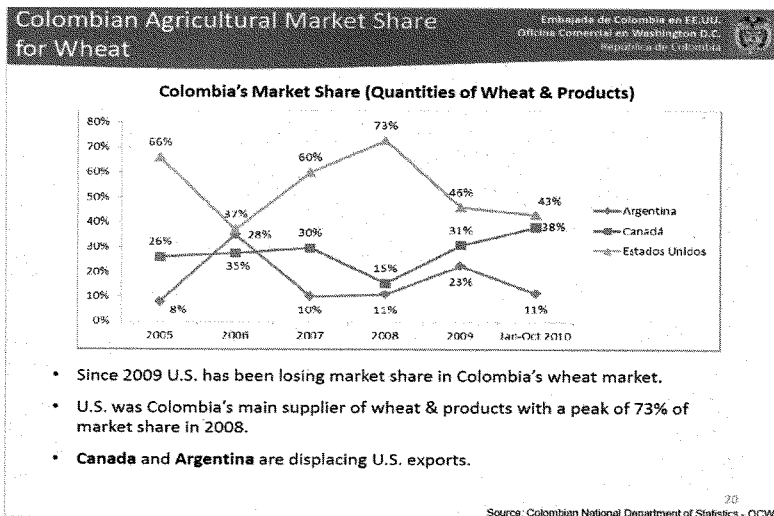
In Montana, agricultural export markets are even more important with nearly 80 percent of our annual wheat production entering export channels. With a large amount of productive land and a small population, Montana relies heavily on the ability to export wheat. In 2010, Montana growers produced more than 200 million bushels of wheat and the U.S. Census listed our state population at 989,415 people. If Montana citizens were required to consume all of the wheat we produce within our borders, every person would have to eat 400 loaves of bread every day.

Timely passage of the free trade agreement with Colombia is particularly critical at this juncture in order to maintain wheat sales and market share in an increasingly competitive trade environment. It is estimated that U.S. wheat producers will lose \$100 million in sales to Colombia every year without a free trade agreement.

Historically the main supplier of agricultural goods to Colombia, U.S. agricultural exports now face tough competition. In the past two years, the U.S. has lost \$1.0 billion in agricultural exports to Colombia due to regional trade agreements and international competition. In 2010, for the first time in U.S.-Colombian agricultural trade history, the U.S. lost to Argentina its position as Colombia's number one agricultural supplier. Despite strong historical and economic ties between the U.S. and Colombia, trading opportunities with other countries are becoming more viable and Colombia cannot be expected to sit idly by and wait for the U.S. to ratify an agreement.



In 2009/10, Colombia was the eighth largest market in the world for U.S. wheat. Colombia imports 97 percent of the wheat it consumes, and will continue to rely on imports to satisfy a steadily increasing demand for milling quality wheat. U.S. farmers have historically been the main supplier of wheat and wheat products to Colombia, but U.S. wheat exports have suffered recently from the failure to implement the U.S.-Colombia FTA. Our share of the Colombia wheat market has declined from 73 percent in 2008 to 43 percent in 2010 and industry representatives in Colombia indicate we could lose our entire market share following implementation of the Canada-Colombia FTA this summer.



Some of the decline in U.S. wheat market share can be attributed to Colombia's FTA with the Mercosur region (Argentina, Paraguay, Uruguay and Brazil). Implemented in 2005, this agreement allows duty free entry of Argentine wheat. Colombian millers and bakers, however, have indicated their preference for higher quality U.S. wheat. In fact, Colombian bakers report they are unable to make a loaf of bread from Argentine wheat and must blend it up with higher quality wheat imported from the U.S. or Canada. Without the U.S. FTA, Colombia will increasingly look to Canada for its high quality wheat needs.

A free trade agreement between Colombia and Canada is expected to enter into force this summer, and is a further threat to U.S. wheat market share. With this agreement, Colombia will eliminate tariffs on 98 percent of Canadian goods, in some cases immediately and in others over a 5 to 10-year period. Canadian products that will enjoy immediate duty-free access to the Colombian market include wheat, barley, corn, lentils, peas, beef, paper products, machinery and equipment. Colombia will also eliminate the use of its price band system on selected products, including wheat, barley and pork. Additionally, a Colombia- Peru-EU agreement is expected to be implemented in early 2012, Colombia is negotiating trade deals with South Korea, Panama and Japan, and they have indicated a desire to start free trade talks with Turkey later this year.

U.S. wheat producers face an increasingly competitive and uncertain market in Colombia. Despite long-standing relationships with Colombian millers, the U.S. wheat industry will continue to lose market share to Canada and Argentina and possibly to the EU when their trade agreement is implemented. Tariffs on U.S. wheat will fluctuate between 10 and 15 percent and could move as high as the WTO bound rate of 124 percent and Colombia could continue use of a "price band" scheme to control agricultural imports through

variable duties that fluctuate based on changes in world prices. A fully implemented free trade agreement would immediately eliminate the country's price band system and remove tariffs on U.S. wheat imports, leveling the playing field and ensuring U.S. wheat can compete in the Colombian market.

Although U.S. barley exports to Colombia have historically been small, Colombia represents a growing market for both malt and malting barley exports. Malt, feed and food industries that use barley as an input are growing rapidly, both for increased consumption in the Colombian domestic market and for use in processing products for export. Tariff preferences favor Mercosur countries and, soon, Canada, but there are excellent opportunities to expand purchases from U.S. suppliers, particularly from Montana where we raise high quality two-row malting barley favored by the Colombian brewing industry.

U.S. wheat and barley producers strongly support immediate ratification of the U.S.-Colombia free trade agreement so they can compete fairly in the Colombian market. Years ago, the U.S. opened its market to imports from Colombia through the Andean Trade Preference Act, offering duty free privileges on about 6,000 types of goods from Colombia, Bolivia, Ecuador, and Peru, in the hope that greater export opportunities would give farmers and businesses in these countries alternatives to drug trafficking. As a result, more than 90 percent of Colombian imports can enter the U.S. marketplace duty-free. By contrast, U.S. exports to Colombia, including wheat, face tariffs that often soar into the double digits.

The U.S.-Colombia FTA will repair this imbalance by forging a mutually beneficial, reciprocal partnership. Eighty percent of U.S. consumer and industrial products and more than half of all U.S. farm exports, including wheat, will enter Colombia duty-free immediately upon implementation of this agreement. An additional seven percent of duties will be eliminated within five years of implementation and the remainder within 10 years. Without the U.S.-Colombia FTA, U.S. wheat growers and producers will face an uphill battle in this hard-fought and critical export market resulting in millions of dollars in losses of both exports and jobs.

Ultimately, Mr. Chairman, this agreement is about jobs. In its report to the President of the United States on the National Export Initiative's (NEI) plan to double U.S. exports in five years, the Export Promotion Cabinet stated the following:

*“Exporting is good for American business, good for American workers and good for American jobs. Put simply, when America exports, America prospers. At a time when Americans are saving more and consuming less, exports can help to create the jobs needed to bring unemployment down and help to assure a strong and durable recovery.*

*“The NEI's goal of doubling exports over five years is ambitious. Exports need to grow from \$1.57 trillion in 2009 to \$3.14 trillion by 2015. This will only happen if U.S. companies, farmers and small and medium-sized enterprises – the engines of*

*economic growth – receive the encouragement and support they need as they seek new markets for their goods and services.”*

Signed by the U.S. in November 2006, ratified by Colombia’s legislature in October 2007 and approved by their Constitutional Court in 2008, ratification of the US-Colombia FTA has been held up in the United States in part due to ongoing labor issues in Colombia. I understand the concern by some in the U.S. regarding the violence directed towards labor union leaders, union organizers and the citizenry of Colombia. Government officials and industry executives in Colombia tell me that much progress has been made and the situation is continuing to improve.

Since 2002, under the leadership of popular president Alvaro Uribe, continuing with new president Juan Manuel Santos, and aided by U.S. investment in military training and drug eradication, Colombia has worked hard to restore security and curb violence. As a result, homicides, kidnappings and terrorist attacks have declined dramatically since free trade talks between our two countries began and conditions are expected to continue improving as their middle class expands and they become a bigger participant in world trade.

If the U.S. fails to ratify an FTA, we are likely to lose the opportunity to further Colombia’s progress in improving respect for human rights and lowering violence through enforceable commitments on trade-union protection and reforms of existing labor legislation. On April 6, 2011, the Obama administration and the Colombian government reached an agreement on an action plan that requires the Colombian government take several steps to protect labor rights and violence against labor leaders by December 15, 2011.

U.S. wheat and barley producers were very pleased to hear the announcement from the Obama Administration that the United States and Colombia have successfully negotiated a path forward. This advancement is the result of hard work by many individuals in both the United States and Colombia. In particular, I would like to thank Chairman Baucus for his strong leadership on trade issues. He is an effective and tireless promoter of agriculture in Montana and the U.S. and knows very well the importance of exports to our industry.

We encourage the Obama Administration to prepare and submit the FTA to Congress for a ratification vote as soon as possible and we urge House and Senate members to vote for its swift passage. Thank you again for this opportunity to offer our comments.

**TESTIMONY OF**  
**JEFFREY S. VOGT,**  
**DEPUTY DIRECTOR, INTERNATIONAL DEPARTMENT,**  
**AMERICAN FEDERATION OF LABOR &**  
**CONGRESS OF INDUSTRIAL ORGANIZATIONS**  
**BEFORE THE SENATE FINANCE COMMITTEE**  
**HEARING ON THE U.S.-COLOMBIA FREE TRADE AGREEMENT**  
**MAY 11, 2010**

Ever since trade negotiations began between the United States and Colombia in 2004, the AFL-CIO has repeatedly raised serious, well-documented concerns with regard to the horrifying levels of labor and human rights violations in the country. And, since the conclusion of those negotiations, we have consistently opposed consideration of the trade agreement largely on the basis of those continuing violations. As explained in detail in this testimony, we do not believe conditions for Colombian workers have yet changed in any meaningful way. Therefore, any move to ratify the agreement or to have it enter into force before there are verified sustained and meaningful changes on the ground will meet our continued and vigorous opposition.

Today, Colombia is characterized by a major deficit of decent work. This is due to a long-standing and systemic exclusion of workers and unions by means of unimaginable levels of violence and near total impunity for those responsible for those crimes; labor law and policy that by design undermine the free exercise of fundamental labor rights; the absence of meaningful social dialogue and the failure to adopt policies aimed at job creation and social protection. As a result, fewer than 5% of Colombian workers today are in a union and fewer than 2% of workers are covered by a collective bargaining agreement. The majority of Colombian workers, 58%, toil in the informal sector performing low-skilled jobs that provide no hope of building a secure future. The vast majority are also poor - about 75% of workers earn less than two monthly minimum wages and half earn less than the minimum wage.

Anti-union violence still remains at alarming levels. In 2010, 52 trade unionists were murdered and 21 were the objects of unsuccessful attempts on their lives. This is an increase from 2009, when 47 trade unionists were murdered. In 2011, another seven trade unionists have been killed.<sup>1</sup> Each year, hundreds of trade unionists also receive explicit death threats, which are often effective in chilling union activity. Workers know all too well that such threats, if unheeded, are often carried out. In the last 25 years, the Escuela Nacional Sindical (ENS) has recorded close to 2,900 assassinations. As the ILO High Level Mission stated on February 18, 2011, "the only acceptable situation is one in

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<sup>1</sup> During the Santos Administration, there have been 23 trade unionists assassinated and 133 death threats issued, among several other human rights violations.



which all acts of violence have ceased and ... there is a need to act with determination to bring this about.”

The ILO High Level Mission also observed that “impunity has prevailed in Colombia for a long period and has caused immense damage to the country and suffering to its people” and that “the great majority of homicide cases remained unresolved.” In part, this is due to a lack of full-time investigators and prosecutors dedicated to the backlog of murder cases. However, the deeply flawed methodology used by investigators and prosecutors also all but ensured that justice was unlikely to be obtained in most cases. Cases are not usually investigated in context but rather as individual, isolated cases. The failure to investigate related crimes together means that important connections are not made that could lead to identification of other perpetrators as well as intellectual authors and beneficiaries. Prosecutors have often also failed to follow up on credible evidence that implicates members of the armed forces, politicians or business leaders. And, all too often, when a trade unionist is murdered, investigators have proceeded under a theory that the murder occurred for some reason other than the victim’s union activity. As a result, the impunity rate for murder as of mid-2010 was estimated at 96%, and even higher for other crimes committed against trade unionists. The actual rate of impunity is even higher when one considers the numerous defects with those sentences and the fact that many of those sentenced are not in custody.

The country’s labor laws also do not meet minimum international norms in a number of key areas, as the International Labor Organization (ILO) has repeatedly observed. Compliance with existing laws remains poor. Indeed, the ILO High Level Mission expressed “deep concern” about anti-union discrimination, “as well as the failure to take action to stop it.” Of particular concern are the over one million workers employed in associated labor cooperatives. These workers have been for years largely excluded from the protections of the labor code and thus work in conditions of extreme exploitation. Similarly, about 900,000 workers are employed through temporary service companies, where strict legal limits on the use of temporary work are rarely respected in practice – undermining the exercise of these workers’ fundamental rights.

However, there is some room to be hopeful. The Santos Administration has abandoned the heated, anti-union rhetoric of the Uribe Administration, which repeatedly equated labor leaders with terrorists or traitors. The change in the public discourse is welcome. Further, the Santos Administration signed, on April 7, 2011, a Labor Action Plan that contains several provisions that the Colombian trade unions have long fought for, and which we have supported. And, prior to the launch of the Labor Action Plan, on March 31, 2011, President Santos met with the trade union confederations and made several commitments, including a promise to extending bargaining rights for public sector workers. If fully implemented and effectively enforced, the Labor Action Plan, together with the additional presidential commitments and follow-up on the several recommendations of the ILO High Level Mission, could help to put Colombia on a new path. However, this will not be easy and will no doubt take considerable effort and time by all involved, in Colombia and internationally, to help undo the profound damage done and to build a new labor relations system founded on the basis of decent work.

Again, the Labor Action Plan contains several useful provisions. However, we have four fundamental concerns that we will address below.<sup>2</sup>

First, while we hope and expect that the proposed expansion of the protection program and the anticipated increase in the quantity and quality of prosecutions, if they occur, will have the effect of reducing anti-union violence, we are concerned by the lack of any specific commitments in the Labor Action Plan with regard to the dismantling of new, illegal armed groups, which are responsible for much of the continuing anti-union violence in Colombia.

Second, the Labor Action Plan commits the government of Colombia to issue new laws and regulations, create new institutions, issue reports, improve processes and hire additional personnel by dates certain. It does not, however, require Colombia to actually establish a meaningful record of enforcement of these commitments prior to the implementation of the FTA. It is important to have these new tools, but we need to make sure they are being used and are effective in reducing murders and threats, bringing down the rate of impunity, and creating a labor relations system in which workers can freely exercise their fundamental labor rights without fear. Given the appalling history in Colombia, it is essential that there be meaningful and sustained results on the ground prior to certification and entry into force. Our experience in other countries with which the United States has negotiated free trade agreements, particularly in Central America, further underscores our concern.

We were also troubled to discover that Colombia had failed to fully comply with the nineteen "April 22nd" commitments under the Labor Action Plan. By May 1, Colombia had still failed to fully complete several commitments – most of them related to the issuing of reports or dissemination of information to stakeholders. For example, the Fiscalía had failed to meet with ENS to begin the process of reconciling the government's list of murder cases with those in the ENS's database – a necessary step to expanding the universe of murder cases under investigation and thus to bring down the rate of impunity for those crimes. After this failure was brought to the attention of the U.S. government, the Fiscalía then sent an invitation letter to ENS, which was received on the afternoon of May 4. Further, we understand that while the hotline and website for the receipt of complaints has been established, neither unions nor workers have received any information as to how to access these tools, making them of little present value.

Third, the Labor Action Plan is not part of the trade agreement and is not subject to any dispute settlement mechanisms should the government of Colombia fail to fully comply with the plan (especially with regard to those commitments that extend years into the future). It is true that the failure to follow through on most of the commitments may also be a violation of the labor chapter of the FTA; however, it remains unclear whether every commitment is fully subject to consultation and, if necessary, arbitration under the agreement. It is also unclear whether the dispute settlement mechanisms of the FTA, which are untested, will be effective in vindicating workers' rights in a timely manner. Even given the substantial (and appreciated) efforts undertaken by the Obama

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<sup>2</sup> A section-by-section analysis of the Labor Action Plan follows the testimony as Attachment I.

Administration with regard to the worker rights complaint against Guatemala under the Central America Free Trade Agreement (CAFTA), the complaint has still not moved beyond cooperative consultations - the first step - after over three years. Guatemalan workers also report little if any change with respect to the enforcement of their basic rights at work.

Finally, the Labor Action Plan falls short in a number of important substantive areas. The failure to include commitments with regard to collective bargaining in the public sector, collective bargaining above the enterprise level or collective bargaining over pensions ignores major concerns of both the trade unions and the ILO (though it appears that the Colombian government may separately address public sector bargaining). Further, the Labor Action Plan contains two provisions, with regard to collective pacts and essential public services, which are on their face inconsistent with the clear and unequivocal observations of the International Labor Organization (ILO). Colombia will thus not be in full compliance with its commitments under Chapter 17 of the FTA even if it adopts the measures agreed to in the Labor Action Plan.

Each of these flaws – violence, implementation, enforceability and scope -- with the action plan must be addressed.

Of course, we also remain deeply concerned about the trade agreement template used in the Colombia FTA. The current trade model, we believe, provides enhanced rights and privileges to corporations at the expense of workers, consumers and the environment. Thus, while the FTA may have the effect of slightly increasing the bilateral trade flow between our two countries, we believe that this will likely only benefit a small minority in both countries. Further, as a job creation strategy, the U.S.-Colombia FTA will do nothing to improve the U.S. employment picture - as the U.S. International Trade Commission report on the FTA makes quite clear.

A better agreement with Colombia is both desirable and possible. Such an agreement would include strong and effective mechanisms for the protection of labor, environment, fair rules on investment, services and agricultural trade and robust compensatory policies for those who will bear the brunt of the losses. Further, domestic policies oriented towards infrastructure development, lifelong workforce education and training, strong social protection measures and collective bargaining are also absolutely necessary for both our countries are to grow with equity.

For the reasons set forth in this testimony, the AFL-CIO opposes the U.S.-Colombia FTA. Any move to ratify the agreement or to have it enter into force before sustained and meaningful changes on the ground is premature and will meet our continued and vigorous opposition.

**ATTACHMENT I****COLOMBIAN ACTION PLAN RELATED TO LABOR RIGHTS  
ANNOTAEED****April 7, 2011**

The Colombian Government has confirmed its ongoing commitment to protect internationally recognized labor rights, prevent violence against labor leaders, and prosecute the perpetrators of such violence. In furtherance of this commitment, the Government of Colombia and the Government of the United States agree that the following measures have been taken, or will be taken in the time frames indicated below:

**I. LABOR MINISTRY (Currently the Ministry of Social Protection (MSP))**

The U.S. Government welcomes the creation of a specialized Labor Ministry as the appropriate institutional vehicle to implement a broader and more effective regime to protect labor rights. This decision can provide the framework for the Colombian Government to mobilize resources and strengthen enforcement.

The Colombian Government will plan and budget for the hiring of 480 new labor inspectors under the civil service system over a four-year period, including the hiring of at least 100 new labor inspectors during 2011. The Finance Ministry will approve a budget reallocation by April 15, 2011, to fund the hiring of the first 100 inspectors. The MSP will issue the hiring decree by April 22, 2011, and complete the hiring and training of these inspectors by December 15, 2011. The Colombian Government will ensure that funding for at least an additional 100 labor inspectors is included in the 2012 budget to be prepared by May 30, 2011, with final approval expected in October 2011.

The MSP will improve the system for citizens to file complaints, anonymously or otherwise, concerning labor rights violations. This improved system will include both a toll-free telephone hotline and a new web-based mechanism for registering complaints. The MSP will conduct outreach to promote awareness of these complaint mechanisms. The MSP will establish the telephone hotline and web-based mechanism by April 22, 2011, and begin publicizing the new complaint mechanisms immediately thereafter.

The Colombian Government will establish a plan to improve the MSP's mediation and conflict resolution system in all 32 Departments (states) by assigning specialized resources to the MSP's regional offices, training workers and employers in conflict resolution, and conducting outreach. The MSP will prepare a plan for workshops on conciliation and Alternative Dispute Resolution mechanisms for labor inspectors by April 22, 2011, begin the workshops by June 15, 2011, and complete an initial phase of training by December 15, 2011. The MSP will also start conducting outreach to the public, employers, and workers through TV programs and printed material by June 15, 2011.

*AFL-CIO: The reconstitution of the Ministry of Labor has been debated for some time, and we are pleased to see this finally come about. As to the structure of the new Ministry of Labor, it is important that the government engage in a tri-partite dialogue as to its mission, structure and leadership. For example, trade unions have long called for any new Ministry of Labor to formulate and lead policies on employment creation, social security and job training, in addition to labor inspection. The proper mandate and sufficient resources will be necessary to ensure that the Ministry of Labor is an effective institution.*

*The addition of nearly 500 new inspectors is very important; however, the parties need to avoid problems seen in many other countries in the region. For example, labor inspectors will need to be well-trained in law and inspection methodology and a corps should be trained as specialists for certain types of inspections (e.g., safety and health). Inspectors should be civil service employees and be paid fairly so as to remove incentives for corruption, which is common in the region and indeed around the world. Inspectors must also possess the materials necessary to perform their normal duties; all too often inspectors are not provided the materials necessary, such as transportation, equipment or lodging, to do their work. It is also likely that even the doubling of the cadre of inspectors will not be enough. There should be an evaluation to determine whether the inspectors hired are sufficient to adequately inspect Colombian workplaces.*

*Finally, the parties should be guided by the observations and recommendations of the ILO with regard to Colombia's compliance with Conventions 81 and 129 (on labor inspection).*

## **II. CRIMINAL CODE REFORM**

The Colombian Government has submitted to the Colombian Congress legislation to reform the Criminal Code by establishing criminal penalties for employers that undermine the right to organize and bargain collectively. This reform encompasses a wide range of practices that could adversely affect fundamental labor rights. The new article in the Criminal Code will penalize this conduct with up to five years of imprisonment. The Colombian Government will seek to have this legislation enacted by the Colombian Congress by June 15, 2011.

*AFL-CIO: This is a positive development. The government should be sure to consult with the trade unions as the legislation is being crafted.*

## **III. COOPERATIVES**

The Colombian Government has submitted legislation to amend the effective date of the provisions contained in Article 63 of the 2010 Law of Formalization and First Employment so that the provisions are effective immediately upon passage of the Development Plan legislation, rather than on July 1, 2013. Article 63 prohibits the misuse of cooperatives or any other kind of relationship that affects labor rights, and imposes significant fines for violations. The Colombian Government has introduced this

amendment in the Development Plan Bill. The Colombian Congress will vote on the bill by the end of May 2011.

The MSP will dedicate 100 labor inspectors exclusively to address cases involving cooperatives. The MSP decree referenced in Section I above will authorize the hiring of 100 new labor inspectors for the MSP's regional offices, and indicate that 50 of these labor inspectors will be assigned exclusively to cases involving cooperatives. As noted in Section I, the MSP will issue the hiring decree by April 22, 2011, and complete the hiring and training of these inspectors by December 15, 2011. The second group of 50 labor inspectors specializing in cooperatives will be hired during 2012.

The MSP will establish as priority sectors for labor inspections: palm oil, sugar, mines, ports, and flowers. These sectors will be identified as priorities in the MSP decree authorizing the hiring of the 100 new labor inspectors. The MSP will confirm to the U.S. Government by April 22, 2011, that it has begun conducting, and will continue to conduct, preventive inspections in these sectors.

The Colombian Government will issue regulations implementing the 2010 cooperatives law by June 15, 2011. These regulations will, inter alia, clarify earlier cooperatives laws, ensure coherence among these laws and the new 2010 cooperatives law, and:

- a) Set forth clear and sufficiently broad definitions of "permanent core function" and "intermediation" to adequately address abuses;
- b) In cases where the MSP has found that companies have denied worker rights through abuse of the provisions of these laws, promote compliance by the companies through a strategy of offering to waive fines, wholly or in part, when the employer agrees to create and maintain a direct employment relationship with the affected workers;
- c) Establish fine levels that are higher for repeat offenders and large-scale violators; and
- d) Establish that a cooperative should presumptively be considered to be engaged in violating the relevant laws if it does not exhibit financial independence, if its members do not have autonomy in conducting the work done by the cooperative, if the members were in any way coerced to join a cooperative in order to remain employed, if the cooperative is involved in any form of labor intermediation, if the workers do not have access to the economic proceeds of the cooperative or if the workers do not objectively own the capital, methods of production, and assets of the cooperative.

The MSP is preparing a draft of these regulations, and will work with the U.S. Government to ensure that the agreed issues are addressed. The MSP will provide a draft to the U.S. Government by April 22, 2011.

The MSP and the Superintendencia de Economía Solidaria will also strictly apply and enforce the requirements that cooperatives be autonomous and self-governing.

The MSP will develop and conduct through the “Subcomisiones Departamentales de Concertación Laboral,” among other mechanisms, an outreach program to inform and advise workers of:

- a) Their rights under the laws and regulations governing cooperatives;
- b) The remedies and courses of action available to workers through the courts in order to enforce recognition of a direct employment relationship, particularly when an MSP labor inspector has made a finding that such a relationship exists; and
- c) The existence of criminal penalties for employers who are responsible for undermining the right to organize and bargain collectively, once the reforms to the Criminal Code referenced in Section II above are adopted by the Colombian Congress. The initial phase of the outreach program will start by June 15, 2011. The program will be permanent and budgeted fully for 2012 and beyond. The MSP will:
  - a) Share with the U.S. Government a plan for these outreach efforts by April 22, 2011;
  - b) Work with the U.S. Government to ensure that the agreed objectives are addressed; and
  - c) Launch the program shortly thereafter.

The Colombian Government will provide quarterly reports on its enforcement results to all interested parties.

*AFL-CIO: Employers will now face steep sanctions if using a cooperative for intermediation to perform the permanent core functions of the enterprise. Cooperatives will only be permitted to legally provide services if: a) the cooperative is worker-owned and self-governed, that the profits are divided among its members, and that the cooperative and its members possesses the capital, skills, tools and materials necessary to do the work and b) the work performed by the cooperative is not the permanent, core work of the third-party. Cooperatives engaging in intermediation for ancillary services also will be sanctioned. If effectively implemented, this could be a substantial gain for Colombian workers.*

*Great care must be taken to ensure that terms such as “permanent core functions” are defined very broadly so as to prevent employers from continuing to hire cooperatives to perform a majority of the work of the enterprise. Similarly, the regulations must give full effect to Article 63 in not only prohibiting intermediation by cooperatives but also to eliminate as much as possible other forms of contracting which are meant to disguise what is otherwise a direct employment relationship. The use of commercial contracts in the place of employment contracts, or the imposition of lease agreements on rural workers in the place of employment agreements are common ways to hire workers outside of the protection of the labor laws.*

*With regard to both the crafting of any regulation and the development of any inspection strategy for of the new cadre of inspectors, this should be undertaken in close consultation with the trade union confederations. Further, it should be noted that a substantial number of cooperatives are in the public sector; the government itself should move immediately to dismantle labor cooperatives.*

#### **IV. TEMPORARY SERVICE AGENCIES**

The Colombian Government will implement a regime to prevent the use of temporary service agencies to circumvent labor rights. The regime will include such actions as improving the inspection process, designing a new training program for labor inspectors to raise their awareness of this issue, and building databases to identify regions and sectors where there has been abuse.

In addition, the robust enforcement regime will include a monitoring and reporting mechanism by which all interested parties can verify progress and compliance with labor laws. As a first step in building this mechanism, the MSP will issue quarterly reports for interested parties that include the results of the different measures, such as preventive inspections, penalties, fines, the cancellation of licenses and permits, and the list of those agencies found to be in violation. The first report will be issued by April 22, 2011.

The MSP will:

- a) Share a draft of the enforcement plan with the U.S. Government by April 22, 2011;
- b) Work with the U.S. Government to ensure that the agreed upon objectives are addressed;
- c) Conduct a series of preventive inspections by June 15, 2011; and
- d) Fully implement the enforcement plan by December 15, 2011.

*AFL-CIO: In addition to these actions, it will be important to ensure that workers who are working in temporary services companies that are operating illegally are hired directly by the primary employer.*

#### **V. COLLECTIVE PACTS**

The Colombian Government has included in the bill to amend the Criminal Code referenced in Section II above a provision stating that it is a crime, subject to imprisonment, to use collective pacts to undermine the right to organize and bargain collectively by extending better conditions to non-union workers in such pacts.

The MSP will conduct a public outreach campaign to promote awareness of the illegality of using collective pacts to undermine the right to organize and bargain collectively. The campaign should be ready to launch by June 15, 2011, by which date it is expected that the Criminal Code reform will be approved. The MSP will launch the campaign



immediately upon approval of the Criminal Code reform, and will continue the campaign through 2011. The Colombian Government will budget additional resources for the campaign for 2012.

The MSP will implement a robust enforcement regime, including preventive inspections and use of the anonymous labor complaint mechanisms referenced in Section I above to detect and prosecute violations. The Colombian Government will share quarterly reports of the preventive inspections with interested parties.

The Colombian Government will seek ILO technical assistance to monitor the use of collective pacts as part of a broader request for cooperation, as described in Section VII below.

The Colombian Government will develop a plan and timeline for the public outreach campaigns and for implementation of the robust enforcement regime, as well as its request for ILO technical assistance, all to be shared with the U.S. Government by April 22, 2011, and will work with the U.S. Government to ensure that the agreed objectives are addressed.

*AFL-CIO: The ILO Committee of Experts has repeatedly voiced its concern that the negotiation of collective accords could undermine the position of trade union organizations and has called on the government to amend the legislation so that direct negotiations with workers should only be possible in the absence of trade union organizations. The Action Plan still allows for an employer to negotiate directly with non-union workers, even where a union is present, so long as the collective pact is not superior to the collective bargaining agreement. This is facially inconsistent with international norms. If workers know that they can get a deal that is equal to what the union has (which may be difficult in practice to ascertain unless the agreement is actually the same), there is no incentive to join a union – thus undercutting the existing union in the enterprise. Colombia must amend its legislation so that direct negotiations with workers are only possible in the absence of trade union organizations. Further, collective pacts, when negotiated, must be treated as individual contracts collectively negotiated. They should provide no bar to the negotiation of a subsequent collective bargaining agreement.*

*In addition, the public campaign and labor inspection plan should be designed to reach initially companies where the collective pacts are currently in place. According to the ENS, there are 360 collective pacts as of mid-2010. These pacts should be dismantled and allow workers to freely exercise their trade union rights. The outreach campaign should also be crafted in consultation with the trade unions.*

## **VI. ESSENTIAL SERVICES**

The MSP will collect the body of Colombian doctrine, case law, and jurisprudence that has narrowed the definition of essential services. The MSP will disseminate this

information as well as relevant guidelines to labor inspectors, the judicial branch, unions, and employers by April 22, 2011.

*AFL-CIO Concerns: Articles 430 and 450 of the Labor Code prohibit strikes not only in essential services in the strict sense of the term but also in a wide range of services that are not essential. The ILO has found that strikes may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). The ILO has found that the following services on Colombia's list are not generally deemed essential: civil servants not exercising authority of the state, transportation, mining (salt) and oil. Some, but not all, work in telecommunications, hospitals and sanitation may be classified as essential.*

*The Labor Action Plan does not require Colombia to do anything other than to inform government, employers, unions and workers concerning existing jurisprudence that has limited slightly the list of essential public services – such as salt mining and some transportation. This leaves sectors which are not essential, such as oil, on the list improperly. Colombia must amend Article 430 of the Labor Code to remove from the list of essential public services those services that are not properly considered essential public services under international law.*

## **VII. INTERNATIONAL LABOR ORGANIZATION (ILO) OFFICE**

The Colombian Government will seek the cooperation, advice, and technical assistance of the ILO to help in the implementation of the measures outlined in this document related to labor rights. The Colombian Government will work with the ILO to strengthen the presence and expand the capacity and role of the Organization in the country. In addition, the Colombian Government will request ILO involvement to foster the Tripartite Process with the goal of ensuring the full protection of labor rights and compliance with labor laws.

As it prepares this request to the ILO, the Colombian Government will consult with the Tripartite Commission by June 15, 2011.

The U.S. and Colombian Governments will work together to identify the necessary resources and sources of support. The Government of Colombia will present a formal request to the ILO regarding the activities described above by September 15, 2011.

*AFL-CIO: We support the continued presence of the ILO in Colombia and hope that it becomes a more effective institution than in the past. Any new executive director of the office will need to be a senior representative and have the full support of the institution. The ILO office also needs to have a broad mandate that includes the promotion of social dialogue and the implementation of the observations and recommendations of the various supervisory bodies of the ILO, in addition to technical assistance programs.*

## VIII. PROTECTION PROGRAMS

The Ministry of Interior and Justice will issue by April 22, 2011, a Ministerial Resolution broadening the scope of the definition of who is covered by its protection program to include: (i) labor activists, (ii) persons who are currently engaged in active efforts to form a union, and (iii) former unionists who are under threat because of their past activities. The Ministry will consult with the relevant unions to verify the status of these individuals.

The Colombian Government will plan and budget for the additional resources necessary to support the resulting expansion of the protection program. The Colombian Government will initially increase funds by more than 50 percent for the 2011 fiscal year by reallocating COP 12 billion (approximately US\$6 million) in order to provide adequate support for the expansion of the program during the current fiscal year. Thereafter, the Colombian Government will assess the level of funding necessary to support the expanded program during the 2012 fiscal year and include such funding in the Budget Project to be presented to the Colombian Congress by July 30, 2011. The Colombian Government and the U.S. Government will work together periodically to evaluate utilization of the program and the level of funding to ensure that the objective of effectively protecting all those covered by the program is achieved.

The Ministry of Interior and Justice has begun an emergency plan to eliminate the backlog of risk assessments with respect to applications for protection filed by union members by July 30, 2011. Once the backlog is eliminated, the Colombian Government commits that the National Police will thereafter comply with the legal requirement to process all risk assessments within a 30-day period. The Colombian Government will provide monthly updates to interested parties beginning May 1, 2011.

The Colombian Government will issue a decree by September 15, 2011, reforming the scope and functioning of the interagency committee which reviews risk assessments. The newly constituted committee will include representatives of the Inspector General's Office and the Public Defender's Office in order to enhance the objectivity of the assessment process. The Colombian Government will share the relevant parts of the draft decree with the U.S. Government by April 22, 2011, and will work with the U.S. Government to ensure that the agreed objectives are addressed.

The Ministry of Interior and Justice will immediately implement administrative measures to strengthen the existing protection system, and will provide interested parties with monthly updates on the steps taken to achieve such improvements beginning April 22, 2011.

The Colombian Government will amend by April 22, 2011, its teacher relocation and protection program contained in Resolution 1240 of 2010, to ensure that meritorious requests are granted and to eliminate pecuniary sanctions against teachers found not to be under extraordinary risk. The Colombian Government will share the draft resolution with the U.S. Government and will work with the U.S. Government to ensure that the agreed

objectives are addressed. The Colombian Government and the U.S. Government will also work together to evaluate utilization of the program and the dynamics of threats and risks to ensure that the program is achieving the objective of effectively protecting those covered by it. The Colombian Government will share quarterly reports on the program with interested parties beginning July 1, 2011.

*AFL-CIO: The action plan provides substantial new protections for trade unionists, which is welcome. However, the proposal does not address the concerns raised about trade unions about the privatization process of the protection program, which include both the increased costs as well as safety risks. Further, both the adoption of an emergency plan and the reform of the scope and functioning of the inter-agency committee should be done in conjunction with trade unions and human rights defenders, who have meaningful insights as to how these programs should be reformed. There are also already numerous studies as to how the protection program could be improved, and they should be consulted.*

## **IX. CRIMINAL JUSTICE REFORM**

The President will issue a directive to the National Police by April 22, 2011, assigning ninety five (95) additional full-time judicial police investigators to support the prosecutors in charge of investigating criminal cases involving union members and activists. These judicial police investigators will be assigned exclusively to investigate labor cases. The Colombian Government will complete the assignment to these cases of 50 of the 95 new judicial police investigators by June 30, 2011, and of the remaining new judicial police investigators by December 15, 2011.

The Colombian Government will respond favorably to a request from the Prosecutor General's Office for the necessary resources to finance new and increased activities for reducing impunity in general and for implementing this Action Plan. The Prosecutor General's Office will submit the budget request by May 20, 2011.

The Prosecutor General's Office has informed the Colombian Government of the following actions it has taken, and plans to take, to combat impunity in the cases involving union members and labor activists:

The Prosecutor General's Office has issued a directive requiring the judicial police, the Technical Investigative Body (CTI), and prosecutors investigating criminal cases to determine during the initial phase of an investigation whether a victim was an active or retired union member, or was actively engaged in union formation and organization. The Prosecutor General's Office has issued a directive to the chiefs of the Unit of Justice and Peace and the Unit of Human Rights ordering them to share in an effective manner evidence and information about criminal cases involving union members and activists, as well as teachers, journalists, and human rights activists.

The Prosecutor General's Office will develop a plan and identify specific budgetary needs for training judicial police investigators and prosecutors on crime scene

management, as well as jointly training them in investigative techniques with specific reference to the issues involved in labor cases. The Prosecutor General's Office will send to the U.S. Government by April 22, 2011, the 2011 detailed training program and will work with the U.S. Government to ensure that the agreed objectives are addressed. The Prosecutor General's Office will request from the U.S. Embassy in Bogota its input and cooperation to refine, enhance, and support the training program. The U.S. Government will provide technical assistance coordinated by the U.S. Embassy in Bogota, the U.S. Department of Justice, and the U.S. Department of Labor.

The Prosecutor General's Office will present to the Colombian Government by May 20, 2011, its specific budget request associated with the financing of the training program, to be reviewed for the purpose of inclusion in the 2012 budget.

The Prosecutor General's Office will develop a plan and identify specific budgetary needs by May 20, 2011, to strengthen the institutional capabilities and the number of prosecutors and judicial police investigators assigned to process labor cases in the regional offices, based on an assessment of structural weaknesses or a lack of sufficient resources.

The Prosecutor General's Office will finalize by July 15, 2011, an analysis of closed cases of homicides of union members and activists, in order to extract lessons that can help improve the guidelines and protocols for effectively investigating and prosecuting future cases. The analysis will search for lessons learned in order to improve future efforts to identify the intellectual authors and other perpetrators of such crimes, any repeat offenders, the existence of any patterns relating to targets, criminal methods, and any evidence of motives. The results of this analysis will be made available to the public and widely publicized. The understanding gained from the analysis and its wide dissemination will serve as a tool to reduce impunity and deter future crimes.

The Prosecutor General's Office will develop a plan and identify specific budgetary needs for establishing victims' assistance centers specialized in human rights cases, including labor cases. The Prosecutor General's Office will staff these centers with professionals with expertise on human rights/labor issues. The Prosecutor General's Office will direct these centers and enable them to share information with the victims and their families about the status of the cases, as well as provide legal and psychological support. The Prosecutor General's Office will share with the U.S. Government the plans and budgetary allocations for this project by June 15, 2011, and will work with the U.S. Government to ensure that the agreed objectives are addressed.

The Prosecutor General's Office will develop a program to address the backlog of unionist homicide cases that will include:

a) Holding periodic meetings with representatives of the union confederations and the Escuela Nacional Sindical (ENS) to undertake a comparison of the unionist homicide cases in the ENS' database versus the Prosecutor General Office's database in order to try

to reconcile the discrepancies. The meetings will begin by April 22, 2011, with the aim of finalizing this process by the end of the year; and

b) Issuing internal guidance to prosecutors to accelerate action on those cases with leads and to provisionally close cold cases. This should include a special focus on the “priority labor cases” identified by the Colombian labor unions as well as labor cases from recent years. This will be accomplished by June 15, 2011.

The Prosecutor General’s Office will improve public reporting with respect to completed criminal cases involving labor violence:

a) The Prosecutor General’s Office will by April 22, 2011, publicize the results of the cases decided from January 1, 2011, and thereafter will similarly publicize the results of all subsequent cases; and

b) The Prosecutor General’s Office will by June 15, 2011, identify methods for posting aggregate information about all completed cases to date on its website.

The Colombian Government has submitted to the Colombian Congress amendments to the Criminal Code, referenced in Section II above, that: (1) broaden the definition of illegal threats to include such threats directed at individual union members and activists that are meant to intimidate those seeking to exercise their rights of freedom of association and to organize and bargain collectively; and (2) strengthen the penalties for illegal threats to include imprisonment.

The Colombian Government is seeking enactment of these reforms by the Colombian Congress by June 15, 2011.

*AFL-CIO: The issue of impunity, both as to the low quantity and quality of sentences, has been a central concern for the AFL-CIO. This action plan goes far in proposing measures that if effectively carried out over a sustained period of time, could have the effect of bringing the impunity rate down. The expansion of the universe of cases to all of those on the ENS database is important, as is the increase in the number of investigators, among other points. However, we have some concerns.*

*First and foremost, the action plan does not establish any specific measures either as to quantity or quality of cases. Again, the plan requires only that additional personnel and new procedures be put into place but it does not require that the government establish any track record of high-quality convictions. It is assumed that such sentences will be the result of the other requirements of the action plan with regard to impunity.*

*Over the last several years, we have outlined our concerns with regard to the methodologies used by investigators and prosecutors in these cases. We are aware that the Prosecutor General is undergoing an internal assessment of its performance on past cases (which it was already doing prior to the negotiation of the Labor Action Plan), to draw lessons from those cases. This is positive, but we are concerned that the self-analysis of the Prosecutor General may pull punches and not provide a complete analysis*

*of the problems or draw all of the proper conclusions. That is why we believe it is important that the analysis must take into account the observations of the union federations and organizations such as ENS, DeJusticia, the Colombian Commission of Jurists and the Corporacion Colectivo de Abogados. This is the only way we can be assured that the right lesson will be learned. Further, it is important that the analysis of closed cases focuses carefully on the plea bargains that resulted from voluntary depositions (versiones libres) under the "Justice and Peace" process and other processes. In the past, little effort was taken to ascertain the veracity of those confessions. In the future, thorough investigations must be undertaken to verify these statements made in these voluntary depositions. Finally, if the review of the previous cases identifies errors or omissions in those cases, new investigations should be opened so as to make sure that all perpetrators are brought to justice.*

*It is not clear whether it is the internal guidance as to cold and priority cases that is due by June, or the actual evaluation of the cases by that date. In any case, it is important that the trade unions be intimately involved in drafting that guidance as well as to identify the cases, both cold and priority. As suggested several times before, many murders are concentrated by union and geographically. Prioritization must take into account these realities, and ensure that investigations are done in a careful, systematic manner which leads to material authors, intellectual authors and beneficiaries.*

*Finally, the action plan makes no specific mention of hiring additional prosecutors or judges. Additional, full-time, dedicated prosecutors are sorely needed. Once the flow of cases increases, it will be necessary to hire additional, high-quality judges.*

*In addition to the legislation with regard to threats, police will need to be trained in proper criminal investigation methods. In the past, few threats were pursued and in many cases investigations in those few cases were not serious.*

#### **X. FOLLOW-UP MECHANISM**

To assess progress in implementing this Action Plan, the U.S. and Colombian Governments have agreed to meet as follows:

- a) For the balance of 2011: Every two months at the technical level and once at the senior officials level;
- b) For 2012: Four times a year at the technical level and twice a year at the senior officials level; and
- c) For 2013: Two times a year at the technical level and once at the senior officials level.

The 2013 meeting of Senior Officials will decide on further meetings.

*AFL-CIO: Starting now, it is absolutely critical that interested stakeholders in the United States and Colombia, including trade unions and other labor and human rights organizations, be regularly consulted. Consultations should be more than simply providing pre-scrubbed information to stakeholders but rather involving them directly into the development of laws, regulations, policies and plans.*

UNITED STATES SENATE  
COMMITTEE ON FINANCE  
HEARING ON THE U.S.-COLUMBIA TRADE PROMOTION AGREEMENT  
MAY 11, 2011  
QUESTIONS FOR MR. JEFF VOGT, DEPUTY DIRECTOR,  
INTERNATIONAL AFFAIRS DEPARTMENT, AFL-CIO, WASHINGTON, DC

**Questions from Senator Robert Menendez**

**Question 1**

The Labor Action Plan calls for the hiring and training of 100 inspectors this year and 480 over the next four years. Obviously, hiring and training inspectors is a process that takes time even under the best circumstances. **How confident are you that inspectors will be treated any differently than labor organizers who are intimidated and, in certain cases, even murdered for organizing workers?**

**Answer 1**

The key issues with regard to inspectors is whether they will receive the proper training in investigation methodologies, that those who will carry out specialized inspections are given proper training, that inspectors are given the tools necessary to carry out their jobs effectively (computers, transportation, etc.), that they are paid adequately so as to minimize the potential for corruption. Labor inspectors should also be hired as civil servants with attendant labor rights and protections. Finally, the Ministry of Social Protection must provide the inspectorate with the full political support necessary to carry out effectively its charge.

**Question 2**

Even if they are protected by the government, it will take four years to train and deploy 480 new inspectors. **At what point in the process and with what evidence would you feel confident that the government is in effect taking the protection of workers' rights seriously?**

**Answer 2**

We will have some comfort that labor inspections has been effective and that the government is taking labor rights seriously when a very substantial number of workers in illegal cooperatives have migrated to direct employment contracts, when collective pacts have been eliminated and collective bargaining becomes the norm and workers are generally able to freely associate and bargain collectively without fear of dismissal or death.



## COMMUNICATIONS

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The logo for the Emergency Committee for American Trade (ECAT), featuring the letters "ECAT" in a bold, white, sans-serif font inside a black rectangular box.

**Emergency Committee  
for American Trade**

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### **EMERGENCY COMMITTEE FOR AMERICAN TRADE (ECAT) URGES CONGRESSIONAL APPROVAL OF U.S.- COLOMBIA TRADE PROMOTION AGREEMENT**

#### **Written Submission in Connection with the Senate Finance Committee Hearing on the U.S.-Colombia Trade Promotion Agreement**

May 12, 2011

The Emergency Committee for American Trade – ECAT – strongly urges Congressional approval and the implementation of the pending U.S.-Colombia Trade Promotion Agreement (Colombia TPA) as soon as possible this year so that it may provide important benefits to the U.S. economy, U.S. enterprises and their workers. The Colombia TPA represents a comprehensive and high-standard agreement that will promote new economic opportunities for both countries and facilitate continued economic reform in Colombia. This agreement represents an important tool to foster improved ties and promote broader U.S. interests in the Western Hemisphere, and will deepen the United States' trade and investment relationship with the third-largest economy in South America.

This submission is provided on behalf of ECAT, an association of the chief executives of leading U.S. business enterprises with global operations. ECAT was founded more than four decades ago to promote economic growth through expansionary trade and investment policies. Today, ECAT's members represent all the principal sectors of the U.S. economy – agriculture, financial, high technology, manufacturing, merchandising, processing, publishing and services. The combined exports of ECAT companies run into the tens of billions of dollars. The jobs they provide for American men and women – including the jobs accounted for by suppliers, dealers, and subcontractors – are located in every state and cover skills of all levels. Their annual worldwide sales exceed \$2.45 trillion, and they employ more than 5.9 million persons. ECAT companies are strong supporters of agreements to eliminate tariffs, remove non-tariff barriers and promote trade liberalization and investment worldwide.

The Colombia TPA will eliminate major barriers in Colombia's market, promote important new economic opportunities, foster improved ties and help achieve key domestic goals set forth in the Administration's National Export Initiative. As the United States' 26<sup>th</sup>-largest trading partner, Colombia imported over \$12 billion in goods from the United States in 2010, with significant imports of U.S. machinery, fuel, electronics and chemicals. In the same year, U.S. imports from Colombia totaled \$15.6 billion, with major imports of oil and gas, metals and agricultural products. U.S. foreign direct investment in Colombia is also substantial, equaling approximately \$6.7 billion in 2009.

The robust U.S.-Colombian trade and investment relationship will be strengthened by the swift approval and implementation of the pending agreement. Currently, U.S. industrial and agricultural goods face prohibitively high tariff and non-tariff barriers in the region – barriers that disadvantage U.S. enterprises and limit their competitiveness in Colombia's economy. Importantly, the Colombia TPA will eliminate tariffs on U.S. exports of agricultural, consumer and industrial goods, and eliminate non-tariff barriers impeding access of U.S. goods and services, enabling U.S. companies to compete on a level playing field in Colombia's diverse and growing marketplace.

While the United States has continued to delay approving and implementing this agreement, other countries have moved forward to secure their own preferences in the Colombian market. For example, as a result of a trade agreement between Colombia and the MERCOSUR countries (Argentina, Brazil, Paraguay and Uruguay), wheat, yellow corn and soybean meal from MERCOSUR is already flowing into Colombia at reduced or zero duty. U.S. exports of these products, however, face significant tariffs, such as the 10-to-15 percent tariffs on wheat. Other MERCOSUR products enjoy similar competitive advantages over U.S. goods as a result of continued U.S. inaction. In addition, Canada completed its own trade agreement with Colombia in 2010, which is expected to enter into force this year. If the Colombia TPA is not implemented before the Canadian-Colombian agreement is implemented, U.S. exporters will face a further major disadvantage compared to Canadian exporters.

In addition to the key provisions eliminating tariff and non-tariff barriers, the Colombia TPA will also expand U.S. companies' access to Colombia's government-procurement market, and provide essential protections for U.S. property and investment. The Colombia TPA includes important provisions to promote transparency and nondiscrimination in government procurements, and will support a more open and fair framework for U.S. manufacturers and service providers participating in this sector. Further, the agreement will extend essential protections to U.S. intellectual property and investment in Colombia's market, which will provide U.S. enterprises with essential legal recourse to protect their property and investment, consistent with fundamental U.S. legal protections.

The Colombia TPA will help expand the valuable economic and diplomatic relationship between the parties, and bolster democracy and the rule of law in Colombia. The United States and Colombia are neighbors and longstanding allies in a region that is vitally important to the United States, given its hemispheric proximity, and both parties are concerned about threats to the rule of law within the region. To that end, Colombia has worked side-by-side with the United States to help fight illegal narcotics trade, while also working to tackle a violent insurgency that has been shown in recent years to be actively supported by Venezuela and others. Colombia's efforts to restore peace, reduce violence, maintain strong human rights protections and provide a better future for its citizens have been recognized and commended throughout the world.

With regard to labor practices, the Colombian government has taken concrete and substantial steps to improve its labor laws, protect trade unionists and prosecute perpetrators of violence against unionists. Colombia is working actively and constructively with the leading international body on labor issues, the International Labor Organization (ILO), and both domestic and international trade-union groups on a wide range of issues. As a result of these efforts, there has been an unprecedented decrease in violence overall in Colombia and violence against trade unionists in particular has also declined substantially. As well, prosecutions against perpetrators of labor-union intimidation and violence have also increased dramatically.

In addition to its efforts to reduce human rights violations, protect trade unionists and bring perpetrators of human-rights violations to justice, Colombia has also committed to address U.S. concerns of labor violations within the region through the April 2011 *Colombian Action Plan Related to Labor Rights*. In the Action Plan, Colombia committed to meet certain benchmarks, implemented in phases, with full implementation required before the trade agreement comes into force. In a demonstration of its commitment to reduce violence against trade unionists, Colombia has pledged to increase the capacity and to expand the operations of its Labor Ministry to broaden and improve the implementation and enforcement of its labor commitments; expand government-funded unionist protection programs; and work more intensely with the ILO to improve labor standards. These benchmarks represent a small sampling of those Colombia has committed to implement, and signify its continued work to ensure that workers' rights and protections are secured.

In light of the foregoing, there should be no further delay in Congressional approval and the implementation of the Colombia TPA as early as possible in 2011. Delaying implementation of the agreement will undermine the strong U.S.-Colombian relationship that has been forged through successive Administrations. Given the pressures in the region for Colombia to move away from a democratic and peaceful model, any erosion in the U.S.-Colombian relationship represents a severe risk every month that the United States fails to move forward on this agreement. Thus, swift enforcement of the Colombia TPA will not only help promote economic growth and development within Colombia, but also facilitate continued progress on restoring peace and reducing violence in the region.

Continuing to delay approval and implementation of the Colombia TPA will further undermine the important economic relationship between the parties, and disadvantage U.S. farmers, manufacturers and service providers seeking to compete on a level playing field in the Colombian market. Given the competition U.S. producers already face from the MERCOSUR producers and could soon face from Canadian producers, quick action is needed to ensure that the United States preserves and expands market share in this important economy. Further delay has highly negative consequences, including through undermining the important U.S. goal of creating economic opportunities here at home through the expansion of U.S. exports.

For all of these reasons, ECAT urges swift Congressional approval and the implementation of the Colombia TPA, so that the broad benefits of the agreement can be realized as early as possible.

Respectfully,

Calman J. Cohen  
President

TO: Members of the United States Senate Committee on Finance

Max Baucus MT, John Rockefeller WV, Kent Conrad ND, Jeff Bingaman NM

John Kerry MA, Ron Wyden ORE, Charles Schumer NY, Debbie Stabenow MI

Maria Cantwell WA, Bill Nelson FL, Robert Menendez NY,

Thomas Carper DE, Benjamin Cardin MD

FROM: Gilbert G. Gonzalez, Irvine, CA

Dear Senators,

I, along with many thousands of others, am very upset with the Democratic Party's embracing of the proposed Free Trade Agreements with Colombia. As you already know NAFTA proved to be a disaster for Mexico: peasants were uprooted from traditional farming communities and forced onto the migratory trail northward resulting in millions of undocumented entering the US. More than internal migration appeared in Mexico as the drug trade took over when Operation Gatekeeper kept migrants from entering the US. The cartels then became the choice for employment opportunities for many of the uprooted.

Given what has happened in Mexico why is the Democratic Party so keen on entering a new trade agreement, this time with a country which has a hellish record when it comes to assassinations of union activists. These murders were not just carried out by mobsters, the record shows that the government played an important role in the assassinations.

According to Human Rights Watch, " Congress should also insist on progress in confronting armed groups responsible for anti-union violence.

Colombia leads the world in killings of trade unionists, with more than 2,800 reported killings since 1986, according to the National Labor School (ENS), Colombia's main nongovernmental organization monitoring labor rights. Levels of violence against organized labor remain alarmingly high: the ENS reports that, after dropping to 39 in 2007, the number of killings of unionists increased again, to 51 in 2008, 47 in 2009, and 51 in 2010.

Those responsible for union killings are rarely held accountable: only 25 percent of more than 2,800 ENS-documented killings of unionists are being investigated by the unit of the Attorney General's Office mandated to prosecute such crimes. Out of the reduced number of crimes against unionists investigated by the specialized unit, only 15 percent of the cases had resulted in convictions as of October 2010, according to official sources.

While most union killings have never been investigated, there is considerable evidence that right-wing paramilitary organizations and their successor groups are responsible for the largest share of these

crimes. The successor groups frequently target trade unionists and commit widespread atrocities against civilians, including massacres, killings, rapes, and forced displacement. They are responsible for a 34 percent increase in massacres in 2010, and are estimated by Colombia's intelligence service to be responsible for 40 percent of the country's homicides. Toleration of these organizations by some local officials and members of public security forces is a significant factor in their growth....

In early February, President Santos announced a new plan to combat these paramilitary successor groups, which the government officially labels "emerging criminal gangs." But this plan has not yet been fully implemented and has yet to produce results in reducing abuses against civilians.

"While the Santos government has announced a new strategy to go after these groups, the omission of this issue from the Action Plan has eliminated an important incentive for following through."

There can be no doubt that Colombia is a nation ridden with a deadly anti-trade union campaign and the U.S. cannot ignore it nor turn its back on it. We must face the reality head on and insist that no agreement can go forward until every worker in Colombia is free to organize with his/her cohorts. To do otherwise is to grant the assassins a step forward.

Thank you for your attention to my request,



Gilbert Gonzalez

Professor Emeritus

University of California, Irvine



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# Statement of the U.S. Chamber of Commerce

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**ON:** The U.S.- Colombia Trade Promotion Agreement

**TO:** Senate Committee on Finance

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

**DATE:** May 11, 2011

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The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce (the Chamber) and the Association of American Chambers of Commerce in Latin America appreciate the opportunity to share their strong support for the U.S.-Colombia Trade Promotion Agreement (CTPA) on the occasion of this important hearing of the United States Senate Committee on Finance. The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber serves as secretariat for the Latin American Trade Coalition, which represents more than 1,200 American companies, business and agricultural organizations, and chambers of commerce that support approval of the pending free trade agreements with Colombia and Panama.

This testimony is also submitted on behalf of Association of American Chambers of Commerce in Latin America (AACCLA). The 23 American Chambers of Commerce in Latin America and the Caribbean making up AACCLA together represent more than 20,000 companies and over 80% of U.S. investment in the region.

No priority facing our nation is more important than putting Americans back to work. More than 9% of the U.S. workforce is unemployed — a figure that doubles when those who have stopped looking for jobs and the millions of part-time workers who want to work full time are included. As a nation, the biggest policy challenge we face is to create the 20 million jobs needed in this decade to replace the jobs lost in the current recession and to meet the needs of America's growing workforce.

World trade will play a vital role in reaching this job-creation goal. When President Barack Obama delivered his State of the Union address in January 2010, the U.S. Chamber and the rest of the business community welcomed his call for a national goal to double U.S. exports within five years. The rationale is clear: We cannot rely on domestic consumption to generate more demand for the goods and services we produce. The American consumer is likely to spend more frugally in the years ahead, and the federal government faces unsustainable budget deficits.

Most importantly, outside our borders are markets that represent 73% of the world's purchasing power,<sup>1</sup> 87% of its economic growth,<sup>2</sup> and 95% of its consumers. The resulting opportunities are immense.

Trade already sustains millions of American jobs. More than 50 million American workers are employed by firms that engage in international trade, according to the U.S. Department of the Treasury.<sup>3</sup> President Obama has noted that one in three manufacturing jobs depends on exports,<sup>4</sup> and one in three acres on American farms is planted for hungry consumers overseas.<sup>5</sup>

Nor is trade important only to big companies. Often overlooked in the U.S. trade debate is the fact that more than 97% of the quarter million U.S. companies that export are small and medium-sized enterprises (SMEs), and they account for nearly a third of U.S. merchandise exports, according to the U.S. Department of Commerce. In fact, the number of SMEs that export has more than doubled over the past 15 years.

The bottom line is simple: If America fails to look abroad, our workers and businesses will miss out on huge opportunities. Our standard of living and our standing in the world will suffer. With so many Americans out of work, opening markets abroad to the products of American workers, farmers, and companies is a higher priority than ever before.

### **The Problem: Foreign Tariffs and Other Trade Barriers**

For all of these firms — large and small — the chief obstacle to reaching the goal of doubling U.S. exports by 2014 is the complex array of foreign barriers to American exports. Those barriers are alive and well, and they pose a major competitive challenge to U.S. industry and agriculture and the millions of U.S. workers whose jobs depend on exports.

From the perspective of the U.S. business community, the foremost goal of U.S. trade policy should be to tear down those barriers. Casting light on this challenge, the World Economic Forum issues an annual *Global Enabling Trade* report, which ranks countries according to their competitiveness in the trade arena.<sup>6</sup> One of the report's several rankings gauges how high the tariffs are that a country's exporters face. Leading the pack as the country whose exporters face the lowest tariffs globally is Chile, with its massive network of free trade agreements with more than 50 countries around the globe.

While the report found the United States did well in a number of areas, America ranked a disastrous 121st out of 125 economies in terms of "tariffs faced" by our exports overseas. In other words, American exporters face higher tariffs abroad than nearly all our trade competitors. It is also worth noting that tariffs are just part of the problem, as they are often found alongside a wide variety of non-tariff barriers that shut U.S. goods and services out of foreign markets.

Historically, the only way the U.S. government has ever enticed a foreign government to open its market to American exports is by negotiating agreements for their elimination on a reciprocal basis. This is done in bilateral free trade agreements (FTAs), such as those pending with Colombia, Panama, and South Korea or the Trans-Pacific Partnership (TPP), which is under negotiation. In addition, reciprocal market openings can be accomplished multilaterally, as in the Doha Round, the global trade agreement currently being negotiated under the WTO by the United States and 152 other countries.

### **The Solution: Free Trade Agreements**

The pending FTAs with Colombia, Panama, and South Korea are pro-growth agreements will create good American jobs, bolster important allies, and confirm that America is not ready to cede its global leadership role in trade. They will generate billions of dollars in new American exports within a few short years.

Most importantly, these are "fair trade" agreements that promise a level playing field for American workers and farmers. Many Americans don't know that the U.S. market is already wide open to imports from these countries, with most imports from Colombia, Panama, and South Korea entering our market duty free. However, these countries impose tariffs on U.S. products that often soar into the double digits, limiting our competitiveness overseas. These



agreements would knock down those barriers, opening the door for American companies to sell to these consumers.

If the United States is to double exports within five years, the proven export-boosting record of these reciprocal trade agreements will be indispensable. In 2003-2008, for example, U.S. exports rose 79%, their fastest growth in nearly two decades. It is no coincidence that this period also saw the United States implement FTAs with 10 countries and saw earlier agreements such as NAFTA attain their full implementation with the elimination of all tariffs.

To settle once and for all the debate over whether these FTAs have benefitted American workers and companies, the U.S. Chamber commissioned a study entitled *Opening Markets, Creating Jobs: Estimated U.S. Employment Effects of Trade with FTA Partners*,<sup>7</sup> which was released in May 2010. The study examined U.S. FTAs implemented over the past 25 years with a total of 14 countries. It excluded three other countries where FTAs have only recently been implemented. The study employs a widely used general equilibrium economic model which is also used by the U.S. International Trade Commission, the WTO, and the World Bank.

The results of this comprehensive study are impressive: 17.7 million American jobs depend on trade with these 14 countries; of this total, 5.4 million U.S. jobs are supported by the increase in trade generated by the FTAs.

No other budget neutral initiative undertaken by the U.S. government has generated jobs on a scale comparable to these FTAs, with the exception of the multilateral trade liberalization begun in 1947. The study also shows that U.S. merchandise exports to our FTA partners grew nearly three times as rapidly as did our exports to the rest of the world from 1998 to 2008.

The trade balance is a poor measure of the success of these agreements, but deficits are often cited by trade skeptics as a reason why the United States should not negotiate free trade agreements. However, according to the U.S. Department of Commerce, the United States is now running a *trade surplus* in manufactured goods with its 17 FTA partner countries — taken as a group — on top of the U.S. global trade surpluses in services and agricultural products.

### **America Left Behind**

The success of reciprocal trade agreements has led to their proliferation around the globe. Countries are rushing to negotiate new trade accords — but America is being left behind.

According to the WTO, there are 283 regional trade agreements in force around the globe today, but the United States has just 11 FTAs with just 17 countries.<sup>8</sup> There are more than 100 bilateral and regional trade agreements currently under negotiation among our trading partners. Unfortunately, the United States is participating in just one of these (the Trans-Pacific Partnership).

The United States is standing on the sidelines while other nations clinch new trade deals. This is painfully evident in the case of Colombia, Panama, and South Korea. The pending U.S.

agreements with those countries would create good American jobs, bolster important allies, and confirm that America is unwilling to cede its global leadership role in trade.

While these U.S. agreements languish, other nations are moving forward. The European Union has concluded a comprehensive FTA with South Korea, and Canada has done so with Colombia; both of these FTAs are expected to enter into force in mid-2011. Also, in May 2010, the EU signed FTAs with Colombia and Panama, and Canada has signed an FTA with Panama.

If Washington delays, U.S. exporters will be put at a marked competitive disadvantage in Colombia, Panama, and South Korea. Canadian wheat farmers will be able to sell their crop to Colombians and Panamanians at a huge discount, and European manufacturers will easily undercut their American competitors in the South Korean market.

The cost of these delays will be high. According to a study commissioned by the U.S. Chamber, the United States could suffer a net loss of more than 380,000 jobs and \$40 billion in lost export sales if it fails to implement its pending trade agreements while the European Union and Canada move ahead with their own agreements.<sup>9</sup>

Unfortunately, this scenario is already unfolding. Following implementation of a new trade accord between Colombia and Mercosur (a customs union that includes Argentina and Brazil), "U.S. exports of agricultural products to Colombia dropped by 48% in 2009 and an additional 45% in 2010. Meanwhile, Argentina's and Brazil's sales to Colombia have climbed by over 20 percent. In dollar figures, U.S. exports of corn, wheat, and soybeans to Colombia dropped from \$1.1 billion in 2008 to \$343 million in 2010, a decline of 68%."<sup>10</sup>

In the absence of an FTA, the average tariff paid by American farmers shipping their goods to Colombia is 16.9%, while competitors in the Mercosur countries have duty-free access to the Colombian market. When the Canada-Colombia FTA enters into force — an event expected in June — American farmers risk losing more of their market share and sales.

The implications have a profound significance in the rapidly growing Asia-Pacific region. U.S. trade with Asia continues to grow, but our market share is dropping as other countries boost their own commerce more rapidly. Over time, expanding Asian production supply chains will tend to shut out U.S. suppliers of intermediate goods and undermine U.S. manufacturers. U.S. farmers are shut out because highly protected agricultural markets are open to U.S. competitors but not to American food products. The United States will be left on the outside, looking in.

Washington's failure to negotiate more trade agreements not only hurts U.S. companies and workers, but it limits America's ability to advance its broader interests around the globe. A stronger U.S. economic presence abroad would boost America's ability to achieve its security, political, and economic goals.

#### **Details on CTPA**

CTPA is a critical component to increasing U.S. exports and strengthening a longstanding partnership with the second largest Spanish-speaking country in the world. CTPA's provisions

are virtually indistinguishable from those in the U.S.-Peru Trade Promotion Agreement, which Congress approved by an overwhelming bipartisan majority in 2007. Like the agreement with Peru, CTPA is a comprehensive agreement that will accelerate Colombia's progress as a resilient and strong democracy and a committed ally of the United States.

U.S. exports to Colombia have more than tripled since 2003, exceeding \$11 billion in 2010. A wide range of industries — including food and other agricultural products, chemicals, computers and electronic products, electrical equipment and appliances, and motor vehicles to name just a few — have seen exports grow into the hundreds of millions of dollars each year. More than 10,000 U.S. small and medium-sized businesses export to Colombia, totaling 85% of all U.S. companies exporting to Colombia.

Building on these strong ties, CTPA will do away with a trade relationship built on temporary unilateral preferences and replace it with one that is mutually beneficial, reciprocal, and permanent. In 1991, Congress approved the Andean Trade Preference Act (ATPA), which has been renewed by bipartisan majorities several times in recent years. Thanks to the ATPA, the average U.S. import duty imposed on imports from Colombia was a stunningly low 0.1% in 2009, according to the U.S. International Trade Commission.<sup>11</sup> By contrast, Colombia's average duty on imports from the United States is 14% for manufactured goods and far higher for key agricultural exports. In short, Colombians enjoy nearly free access to our market while our access to theirs remains limited.

In fact, since the agreement was signed in November 2006, U.S. exports to Colombia have been penalized by the imposition of over \$3.5 billion in tariffs that could have been eliminated by the implementation of the agreement (*see Colombia Tariff Ticker* — [www.latradecoalition.org](http://www.latradecoalition.org)). This sum is not only money out of the pockets of U.S. companies; it likely deterred hundreds of millions of dollars worth of additional sales.

This agreement will remedy the unfairness of today's U.S.-Colombia trade relationship by sweeping away most of Colombia's tariffs immediately, ushering in a mutually beneficial, reciprocal partnership. The day the agreement enters into force, four-fifths of U.S. consumer and industrial products and more than half of current U.S. farm exports will enter Colombia duty-free. Remaining tariffs will be phased out, most in just a few years. For example:

Without the U.S.- Colombia FTA		Products	With the U.S.- Colombia FTA	
We Pay	They Pay		We Pay	They Pay
35%	2.5%	Automobiles	0%	0%
20%	0%	Furniture	0%	0%
5-15%	0-3.9%	Audiovisual (film and DVDs)	0%	0%
5-15%	0%	Mineral fuels and coal	0%	0%
10%	0%	Cotton	0%	0%
5-15%	0-3.9%	Copper, gold, silver products	0%	0%
5-21%	0-1.9%	Cereals (oats, corn, soybeans)	0%	0%
10%	0%	Computers & related products	0%	0%

In addition, the agreement will open services markets, secure the intellectual property of U.S. inventors, researchers, and creative artists, and introduce enforceable protections for worker rights and the environment.

### **The U.S. National Interest**

However, the U.S. failure to approve and implement CTPA is not only harming U.S. workers, farmers, and businesses; it is hurting one of the most important U.S. strategic allies in the hemisphere.

Colombia has long been America's most stalwart ally in South America. Colombia chairs the UN committee implementing sanctions against Iran and has partnered with the United States to provide extensive training and assistance to help the Mexican government defeat violent drug cartels along the U.S.-Mexico border. In Afghanistan, at the request of the United States, Colombia has provided counter-narcotics training and assistance to the Karzai government.

Over the past 50 years, Colombian governments have had to contend with the combined terrorist activities of left-wing guerrillas, drug cartels, and paramilitary self-defense forces. But in 1999, the Pastrana administration unveiled its "Plan Colombia," and successive Colombian administrations since that time leveraged more than \$7 billion in U.S. assistance to fight drug trafficking, promote sustainable development, and protect human rights.

Since that time, coca production in Colombia has been reduced by 40%, reaching the lowest level in 11 years, according to the U.S. Office of National Drug Control Policy. In the past ten years Colombian security forces have interdicted cocaine and heroin shipments with an estimated street value between \$35 billion and \$40 billion. According to official statistics, guerrillas were reduced from 24,000 fighters in 2002 to 9,500 in 2010, and paramilitaries have been completely demobilized. These labors were recognized on March 1, 2011, when Colombia was removed from the UN Drugs Watch List.

Colombia has pursued its dream of security, peace, and prosperity and has achieved impressive results. Colombia has created more than three million jobs since 2002, cutting the unemployment rate by nearly half from 20.5% in 2000 to 11.7% in 2008. In many parts of today's Colombia, children can walk safely to school, families can visit friends, and relatives and all Colombians can enjoy the natural beauty of their country. In less than 20 years, the enrollment rate for Colombian children in school has increased from 71% in 1991 to 93.5% in 2008. The Colombian government also spends 12.7% of the entire country's GDP on education, health care, and social programs.

The Colombian government clearly recognizes the benefits of free trade agreements, and while the United States has delayed CTPA, Colombia has negotiated or is in the process of negotiating free trade agreements with Canada, the European Union, Argentina, Brazil, Korea, Panama, and Singapore. In the meantime, the United States has lost more than just our market share. We have also raised questions about our leadership in the region and our reputation as a reliable partner. By not approving CTPA now — after four years of delay — the United States risks alienating its closest ally in the region.

### **Labor Provisions in 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 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, CTPA includes dedicated chapters on labor, the environment, and transparency. CTPA contains the strongest provisions on labor ever incorporated into a U.S. trade agreement. These measures 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 International Labor Organization's (ILO) 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 bind itself to the new, stricter standard established by the May 10 Agreement. In fact, the Colombian government did so even though its Congress had already approved the trade agreement.

These measures in CTPA 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.

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.

It should be noted in this regard that Colombia's labor laws were generally strong when CTPA was signed in 2007, but have since undergone substantial reform through major labor legislation. Colombia years ago ratified all eight of the ILO core conventions. Since 2007, the Government of Colombia has worked closely with the ILO to identify and implement further reforms. In 2007, the ILO opened an office in Colombia to identify a joint program of work and implement cooperative programs. In June 2010, the ILO dropped Colombia from its list of countries subject to monitoring for failure to comply with international labor rights

Colombia has also taken significant steps to protect labor union members from violence. Prior to the *Colombia Action Plan related to Labor Rights* reached with the United States on April 7, 2011, the Colombian government had established a protection program for vulnerable individuals, including union leaders. More than 1,900 union members and 10,000 judges, human

rights workers, and journalists have been included in this program, which has a budget of \$360 million and an unblemished record of success. It had created a special unit to investigate and prosecute individuals charged with violence against labor union members and as a result of these and other measures, the homicide rate of union members has declined by nearly 90% since 2002.

The results are dramatic. The homicide rate of union members is now just one-sixth the national homicide rate, and a resident of the District of Columbia is eight times more likely to be murdered than a Colombian trade unionist. Far from being persecuted, Colombia's labor unions have grown significantly in recent years. The number of Colombian workers affiliated with labor unions rose from 850,000 (4.9% of workforce) in 2002 to 1,500,000 (7.9%) in 2009 — an increase of more than 75% and one of the most dramatic rises in unionization anywhere in the world.

In addition, the Colombian Congress is poised to approve legislation proposed by President Juan Manuel Santos to establish a separate Ministry of Labor. The new ministry's sole focus would be to protect the rights of workers and promote job growth. This legislation would also create a separate Justice Ministry to step up the prosecution of violent offenders. President Santos has proposed groundbreaking initiatives to compensate victims of violence and return land to poor farmers they lost during the violence of past decades.

On April 7, 2011, President Santos reaffirmed his administration's ongoing commitment to protect internationally recognized labor rights, prevent violence against labor leaders, and prosecute the perpetrators of such violence when the governments of Colombia and the United States agreed to a series of additional measures the Colombian government would work to achieve. As part of the Action Plan, the Colombian government agreed to take a series of initial significant actions by April 22. On May 4, U.S. Trade Representative Ron Kirk announced that the administration had "reviewed the actions Colombia has taken and believe that they are a positive demonstration of Colombia's commitment to addressing the issues the Obama Administration identified." He subsequently announced that his "office is prepared to begin technical discussions with Members of Congress on the draft implementing bill and draft Statement of Administrative Action."

Today, the challenge in Colombia is to sustain and enhance the progress that has been made over the past 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**

The U.S. Chamber supports the work of the Administration and Congress to re-energize America's trade policy. In that effort, we urge the Administration and Congress to approve the pending trade accords with Colombia, Panama, and South Korea and to negotiate more of them, including the Trans-Pacific Partnership and an ambitious Doha Round agreement. But also, to find a way forward to ensure that the United States has in place an effective Trade Adjustment

Assistance program, as part of America's overall trade agenda. To this end, Congress should renew the traditional trade negotiating authority that every president since Franklin D. Roosevelt has enjoyed.

World trade is again expanding rapidly, and it is generating new opportunities around the globe. However, this is too often a story of missed potential. The business community could be doing much more to create jobs, lift people out of poverty, foster greater understanding and stability among nations, and solve vexing social problems if we weren't missing so many of the opportunities that global commerce can create.

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<sup>1</sup> David Wessel, "Asia's Latest Export: Recovery," *The Wall Street Journal*, February 24, 2010, <http://online.wsj.com/article/SB10001424052748703510204575085280515242598.html>.

<sup>2</sup> Office of the U.S. Trade Representative, Executive Office of the President, *The President's 2010 Trade Policy Agenda*, March 2010, [http://www.ustr.gov/webfm\\_send/1673](http://www.ustr.gov/webfm_send/1673). "IMF forecasts indicate that nearly 87% of world growth over the next 5 years will take place outside of the United States."

<sup>3</sup> U.S. Department of the Treasury: <https://ustreas.gov/press/releases/hp285.htm>.

<sup>4</sup> The White House: <http://www.whitehouse.gov/the-press-office/remarks-president-announcing-presidents-export-council>.

<sup>5</sup> American Farm Bureau Federation: <http://www.fb.org/index.php?fuseaction=newsroom.fastfacts>.

<sup>6</sup> World Economic Forum, *The Global Enabling Trade Report 2010*, May 19, 2010, <http://members.weforum.org/en/initiatives/gcp/GlobalEnablingTradeReport/index.htm>.

<sup>7</sup> U.S. Chamber of Commerce, *Opening Markets, Creating Jobs: Estimated U.S. Employment Effects of Trade with FTA Partners*, May 2010, <http://www.uschamber.com/trade>.

<sup>8</sup> WTO: [http://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](http://www.wto.org/english/tratop_e/region_e/region_e.htm).

<sup>9</sup> U.S. Chamber of Commerce, *Trade Action—or Inaction: The Cost for American Workers and Companies*, September 2009, <http://www.uschamber.com/trade>.

<sup>10</sup> Doug Palmer, "Bush and Clinton aides prod Obama on Latam trade deals," *Reuters*, March 2, 2011, <http://www.reuters.com/article/2011/03/02/us-usa-colombia-trade-idUSTRE7217CN20110302>.

<sup>11</sup> United States International Trade Commission, *Andean Trade Preference Act: Impact on U.S. Industries and Consumers and on Drug Crop Eradication and Crop Substitution* (Investigation No. 332-352, USITC Publication 4188, September 2010), p. 2-2, <http://www.usitc.gov/publications/332/pub4188.pdf>.



**U.S. GRAINS  
COUNCIL**

Developing Markets | Enabling Trade | Improving Lives

**STATEMENT  
OF THE**

**U.S. GRAINS COUNCIL  
1400 K Street NW  
Suite 1200  
Washington, D.C. 20005**

**TO THE U.S. SENATE FINANCE  
COMMITTEE**

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**REGARDING THE ECONOMIC IMPLICATIONS OF PENDING  
FREE TRADE  
AGREEMENT WITH COLOMBIA**

**MAY 11, 2011**

**THOMAS C. DORR  
PRESIDENT & CEO**



Chairman Baucus, Ranking Member Hatch, and distinguished members of the Senate Finance Committee. My name is Tom Dorr. I am President and CEO of the U.S. Grains Council (USGC). Founded in 1960, The Council is a private, non-profit corporation with 10 international offices and programming in more than 50 countries. Its unique membership includes barley, corn and sorghum producer organizations and agribusinesses from across the United States with a common objective in developing export markets.

The Council appreciates the efforts of the committee in holding hearings regarding the importance of ratification of the existing free trade agreements (FTAs) with Colombia, Panama and South Korea. All are important export markets for the coarse grains and important co-products (i.e., distiller dried grains, corn gluten feed, corn gluten meal) we represent and offer significant opportunities for growth and each of which the Council has had extensive involvement in capacity-building and increasing demand for these products.

I will confine my remarks to the subject of this hearing—the extraordinary challenges we face in Colombia with an increasing loss of market share in what is one of the strongest growth markets in our own hemisphere.

#### **Colombia—Key Strategic U.S. Agricultural Export Market**

Colombia is a key strategic market with exceptional growth potential. Colombia has the second-largest population in South and Central America and the Caribbean, and is the third-largest economy in the region. Colombia is experiencing strong economic growth, projected to exceed 4 percent annually over the next three years. Colombia's per capita income has grown steadily over the last decade, exceeding \$9,000, and is projected to increase to nearly \$12,000 by 2015. As a result, its middle class continues to grow and is projected to increase to more than 25 percent of the total population by 2020.

This higher growth income has resulted in more consumption of animal proteins with an increase in pork production (32 percent), poultry (32 percent) and eggs (12 percent) in the last five years. While Colombia is a net exporter of agricultural commodities, it imports over 80 percent of the corn it uses domestically. Similarly, it imports over 95 percent of the wheat and soybeans products it consumes.

Colombia is an important market for America's farmers and ranchers. Total U.S. agricultural exports exceeded \$1.6 billion in 2008. Colombia is the fifth-largest market for U.S. coarse grains, eclipsed only by Mexico, Japan, Taiwan and South Korea.

Until 2008, the U.S. agricultural sector had been the beneficiary of Colombia's growing need for imports of agricultural commodities. U.S. market share of Colombia's total agricultural imports grew steadily from 2005 to 2008 reaching nearly 50 percent. However, since 2008, U.S. market share has declined rapidly to only 21 percent. Conversely, Argentina's market share of Colombia's total agricultural imports rose sharply from 8 percent to nearly 30 percent over the same time period.

For U.S. coarse grains, the decline has been even more dramatic. At its peak, U.S. exports of coarse grains approached \$635 million and accounted for 83 percent of the total Colombian coarse grains imports. In 2010, U.S. coarse grains exports declined to \$118 million and market share fell to 18 percent, a residual supplier level. The loss of market share can be attributed to major inroads by Argentina and Brazil. In 2008, Argentina held an 11 percent share of coarse grains imports, primarily corn. By 2010, Argentina's market share was 66 percent. Over the same time period, Brazil's market share of coarse grains imports to Colombia increased from 5 to 16 percent.

#### **Tariff Constraints Erode US Competitiveness**

Colombia protects its local production with a common external duty (15 percent) that includes corn (and other agricultural commodities). In addition, Colombia is a party to the MERCOSUR-Andean Community agreement, under which it has implemented bilateral agreements with Brazil, Argentina and Paraguay. Under that agreement exists a price band mechanism which levies additional duties on the 15 percent duty when international corn prices are lower than a preference and conversely reduces the basic duty when international corn prices are higher. This price band mechanism operates as a protective policy when international prices are lower by increasing the import duty, while high international prices act as natural protection for the local production.

Colombia's trade agreement with MERCOSUR allows member countries to receive a preferential duty treatment. Argentina and Brazil receive an annual duty reduction on corn imports to Colombia, which completely phases out the basic duty by 2018. Beginning in 2006, the duty preference on the basic duty (15 percent) granted for corn was 31 percent or a duty of 10.35 percent— a 4.65 percent advantage over corn import from the United States. By 2009, the duty preference reached 49 percent and then 54 percent in 2010. In 2011, the duty preference increased to 60 percent, which represents a 9 percentage point advantage over corn imports from the United States. Even with the duty preferences in place, the United States remained competitive until 2008. However, the increased duty preference to corn imports from MERCOSUR has virtually eliminated that advantage.

This is despite the fact that the United States, with its close proximity to Colombia, has a freight transportation advantage over Argentina and Brazil. According to estimates provided by Colombian feed importers, the lower import tariff by itself currently provides a \$20/ton advantage over U.S. shipments.

Corn makes up a larger percentage of grain imported into Colombia, which leads importers to combine it with other grain imports, such as soybeans, wheat and other grain co-products to complete their grain cargo. As U.S. corn imports have declined, the same has occurred with other bulk products. The decline of U.S. imports has lowered the incentive to import other U.S. grains as well.

Equally troubling, the shift in grain flows from the United States to Argentina and Brazil has allowed those countries to include additional quantities of corn over and above the shipments to Colombia that are later shipped to Latin American countries such as Panama and the Dominican Republic. The lower tariff rates allow Argentina and Brazil to import corn into these markets despite the transportation disadvantage. These are markets where the United States has a clear competitive advantage and yet we are seeing them be eroded because of the pernicious effects of the lower duty preferences. Once trade flows become established and relationships are formed with other trading partners, it is very difficult to win back these markets.

In addition to the MERCOSUR-Andean Community Agreement, Colombia currently has free trade agreements (FTA) in place with Chile, El Salvador, Guatemala, Honduras, Mexico and Uruguay. It is also a member of the Andean Community Customs Union (Bolivia, Ecuador and Peru). In 2010, Colombia finalized FTAs with Canada and the European Union, and is presently negotiating new FTAs with Panama, South Korea and Singapore. Without the U.S.-Colombia FTA, U.S. coarse grains producers as well as the producers of other U.S. agricultural commodities will cede this market to our competitors.

#### **USGC Capacity-Building Efforts in Colombia**

The Council works closely with the Colombian feed, livestock and poultry industries to build capacity and increase efficiency to utilize U.S. coarse grains products. Several of the numerous Council programs include: Capacity-building to the poultry and dairy sectors in disease management and training in feed formulation; training in nutritional and price benefits associated with using distiller's dried grains and an introduction of U.S. sorghum into the Colombian livestock sector; and U.S. grain trade promotion through grain marketing and risk management training for major Colombian grain importers. The resulting productivity gains have greatly enhanced Colombia's ability to meet the needs of their growing middle class and supply high-quality protein products at low cost to their consumers.

Separately, the Council and the United Soybean Board participated in a technical cooperation agreement with the Inter-American Institute for Cooperation on Agriculture on a 2004 study on the impact of the elimination of Colombian trade protection on corn, sorghum and soybeans. That study revealed that with the elimination of Colombia's tariff barriers, prices of corn and sorghum would fall by 33 percent. Imports of corn and sorghum would increase by 92 percent with a value of \$192 million. The lower feed prices would increase the demand for feed and the Colombian livestock and poultry sector would benefit through projected increases in the value of production of poultry (17 percent); pork (14 percent); and eggs (11 percent).

As a result of these ongoing efforts, the Council has established a strong partnership with Colombia's livestock and poultry sectors. U.S. producers gained their trust as a long-term, reliable supplier that provides consistent, quality products. As valued customers, the Council consistently provides technical support and outreach to meet their needs.

The Colombian feed, livestock and poultry industries want to retain and build on that relationship. Representatives of the Colombian feed milling, swine and wheat industries traveled to Washington, D.C., earlier this year and provided Congressional briefings to this Committee as well as the House Ways and Means Committee and House and Senate Agriculture Committees. They explained that Colombia must import agricultural commodities at competitive prices to meet their growing demand for protein products. While the United States has been a reliable supplier, they stressed that duty preferences afforded to Argentina and Brazil has eroded the competitiveness of U.S. commodities and they have no choice but to import corn and other commodities from those markets. They stated that the U.S.-Colombia FTA would allow them the opportunity to acquire more U.S. commodities. However, price is paramount and if the United States cannot compete they will continue to source products from our competitors.

#### **US-Colombia FTA Removes Tariff Constraints—Levels Playing Field**

The benefits provided under the U.S.-Colombia FTA will eliminate the tariff constraints that are eroding the competitiveness of U.S. agricultural exports. Upon implementation of the FTA, the applied tariffs are eliminated, providing immediate duty-free access to coarse grains and more than 80 percent of current U.S. agricultural exports to Colombia. Colombia will immediately eliminate its price band system, which in addition to corn, affects more than 150 agricultural products.

For yellow corn, Colombia will provide immediate duty-free access through a 2.1 million tariff rate quota (TRQ) with 5 percent annual growth. Colombia will phase out its out-of-quota tariff of 25 percent over 12 years. For white corn, a staple product for Colombia's consumers, the agreement will provide immediate duty-free access through a 136,500 ton TRQ with 5 percent annual growth. Colombia will phase out the out-of-quota tariff on 20 percent over 12 years.

The Council has worked aggressively to promote the use of grain sorghum in feed rations in Colombia. Under the agreement, Colombia will provide immediate-duty free access through a 21,000 ton TRQ with 5 percent annual growth. Colombia will phase out the out-of-quota tariff of 25 percent over 12 years.

Tariffs on barley and barley products, with the exception of feed barley, will be eliminated immediately. Important co-products – distiller's dried grains, corn gluten feed and corn gluten meal – will also be provided immediate duty-free access.

#### **Concluding Remarks**

In summary Mr. Chairman, Colombia is a key strategic market with exceptional growth potential right in our own hemisphere. The United States is already losing hundreds of millions of dollars in annual exports and this is compounded by the loss or non-creation of thousands of U.S. jobs. If U.S. agriculture is to remain competitive and capitalize on this significant opportunity it must also maintain its leadership role. Without removal of these trade constraints, the U.S. coarse grains producer will lose this market.

If we are to collectively meet the critical objectives of the National Export Initiative, we see great opportunity and progress if there is ratification of the Colombia, Panama and South Korea FTAs. Equally important, should Congress ratify these FTAs it will enhance the credibility of the United States with its global trading partners on the overall trade agenda and increase its ability as the world's largest trading partner to marshal completion of the Doha Development Round and the Trans-Pacific Partnership agreement.

Again, Mr. Chairman, ranking member Hatch, and members of the Committee, I appreciate the opportunity to present the views of the U.S. Grains Council. Thank you.

