The Andean Free Trade Agreement (AFTA) and labor conditions in Colombia

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On November 22, 2006, the government of Colombia signed the CTPA (Colombian Trade Promotion Agreement) with the United States, in the midst of strong controversy and opposition from various sectors, including social and political organizations, trade unions and scholars. This agreement came out as a materialization of the AFTA (Andean Free Trade Agreement) a process of negotiation initiated in May 2004 between the US and three Andean countries, Colombia, Peru and Ecuador. On its turn, the Andean trade negotiation was the result of the failure of the FTAA (Free Trade Agreement of the Americas) in October 2003, when Brazil and other countries opposed the American project. The AFTA negotiations finally concluded with Peru in 2005 and Colombia, a few months later, whereas Ecuador abandoned the negotiation in 2005 and later on, after the presidential election, the new government of Rafael Correa decided not to negotiate such trade agreement with the US.

Although labor conditions were not expressly discussed in the CTPA negotiations, several provisions, especially those related to conditions of trade and investment, as well as those concerning the agricultural sector, affect directly the conditions of workers in Colombia.

This paper is aimed at examining the perceived impact of AFTA in labor conditions in Colombia, in the context of the deepening of market-oriented policies in the country and in the region. The paper is broken up into two parts. In the first, an analysis of the neoliberal principles regarding labor conditions and of the international and regional contexts resulting from the generalization of the policies stemming from those principles, will be undertaken. In the second part, the possible impact of AFTA on labor conditions in Colombia will be examined. The main sources of this paper are scholarly works, official documents, from the US and Colombia, as well as pieces of analysis from NGOs and independent organizations.

I. The neoliberal principles and the international and regional context

A. The theoretical discussion

The New World Order, emerged from the end of the Cold War, has been determined by the generalization of market-oriented policies and the financial globalization throughout the world. During the past three decades, governments from diverse political orientation adopted neoliberal policies, which in the countries of the South have centered on a curb on public expenditure, the elimination of social subsidies and the withdrawal of social safety nets, the privatization of state-owned companies, and the setting of appropriate conditions for foreign investment. The most powerful economies of the world and the global economic institutions, namely the World Trade Organization, the International Monetary Fund and the World Bank, have concentrated their policies toward under-

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developed countries on the fulfillment of such priorities.

These policies have had an enormous impact on the social and working conditions of labor throughout the world, but especially in the case of the countries of the South. The generalization of so-called free-market policies and the privatization of state-owned companies have been accompanied by a process of de-industrialization in many countries, as well as the “flexibilization” and deterioration of working conditions. Policies stemming from the WTO and from the trade agreements implemented by the United States are aimed at the deepening of neoliberal policies, in order to increase the income of the multinationals and to benefit the national economies of the most powerful countries.

The flexibilization of working conditions has been explained by analysts from various stances. The movement of manufacturing operations by the big corporations from advanced to less-developed countries and the process of global economic restructuring that started taking place during the sixties were accounted for within the Marxist tradition. The theory of the "new international division of labor," first coined by Froebel, Heinrichs and Kreye[1], emerged to explain this transformation in the world economy. According to this theory, such a movement was motivated by the search for better conditions of investment and cheaper labor costs on the part of those corporations, at a time when profits were declining and labor costs increasing. The profit squeeze, which in Marxist analysis is known as the falling rate of profit, was caused by the emergence of strong international economic competition throughout the world. This, in turn, was a result of the recovery of Western Europe and Japan after the devastation of World War II and of an increasing technological advance in production.

According to the theory of the new international division of labor, the traditional division of the world into a few industrialized countries, on one hand, and a great majority of developing countries integrated into the world economy solely as raw material producers, on the other, has been undermined by the tendency to relocate manufacturing operations from the advanced industrialized countries to developing nations[2]. There were three preconditions to this process: (1) the existence of an almost inexhaustible reservoir of cheap labor in the developing countries; (2) the division and subdivision of the production process, which is now so advanced that most of these fragmented operations can be carried out with minimal levels of skill; and (3), the development of techniques of transport and communication which has created the possibility, in many cases, of the complete or partial production of goods at any site in the world. These facts account for the generalization of export-oriented zones and maquiladora-type industries throughout the developing world. Besides being extremely cheap, this labor-force has other advantages. It can be easily mobilized for production during practically the whole year, and in many cases it can reach levels of productivity comparable with those of similar processes in the advanced industrialized countries. The huge size of this reserve army allows for an "optimal" selection of the most suitable labor-force (for example, young women) for the specific work required[3].

The process of conglomerate mergers has been another key strategy followed by big

[1] Froeber, Folker, Jürgen Heinrich and Otto Kreye, *The New International Division of Labor*, Cambridge: Cambridge University Press, 1980, p.33.
[2] Ibid., p.45.
[3] Ibid., p.34.

corporations throughout the world, in order to increase their economic power. This strategy has allowed such firms to control the market in its different stages, diversify into more dynamic sectors, reduce their tax burden and purchase existing plants and equipment for less than the cost and risk demanded by new investments. Such process of economic concentration and oligopolization has been apparent in every economic sector. It is also worth noting that, despite the dispersal of manufacturing operations to less-developed countries, the key decision-making processes affecting production continue to be carried out in the advanced industrialized countries. Most importantly, the process of capital accumulation -the realization of profits- remains centralized in the industrialized countries.

Thus, acute economic competition manifested in continuous trade disputes, the recession and increasing unemployment that have struck the advanced industrialized countries during the past three decades, and the increasing drive against immigration in these countries, not to mention the afflictions of the less-developed nations, are evidence that economic matters are still at the center of world disputes. The confrontation for the control of resources and markets all over the world is currently at its peak. A key feature of the economic dispute among world powers has been their long-lasting practice of protectionism. Forced to compete against each other, they refuse to dismantle trade barriers. The main contradiction exhibited by this global economic competition is that advanced-industrialized countries compelled the rest of the nations to open up their economies to foreign trade and to adopt export-led policies, while they themselves are greatly restricting the access of products from those countries to their domestic markets. The stalemate of negotiations and the permanent dispute in the Doha Round of the WTO reflect this situation.

Some authors have insisted that political demobilization and exclusion of the population are not accidental but a key element of "export-oriented industrialization" (EOI). This is due to the fact that the EOI model of development relies basically on the existence of disciplined low-cost labor[4]. This argument, drawn from the experience of East Asian countries, holds true for the restructuring of the world economy under the so-called free market principles. Despite the fact that it accounts for the political and economic development of another region, this explanation is quite relevant to the conceptualization of the neoliberal authoritarian trend. The neoliberal model can only be implemented through the "flexibilization" and disciplining of the labor force, which, in its turn, implies the deterioration of the living and working conditions for the workers and the deprivation of many of their political rights.

B. The international and regional context

For Latin America, in particular, the above-mentioned changes in the global situation have meant an intensification of the economic domination and political control traditionally exercised by the United States. The push for a greater liberalization of the economies of these countries and the call for the conformation of a free-trade zone in the whole continent, under American auspices and parameters, have been important steps in its strategy of re-colonizing the region.

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[4] See, for example, Deyo, Frederic C. 1990. “Economic Policy and the Popular Sector”, en Gary Gereffi and Donald L. Wyman (comp), 1990. *The Manufacturing Miracles: Paths of Industrialization in Latin America and East* Asia, Princeton, NJ. Princeton University Press.

No doubt, the external debt crisis strengthened the leverage and control exercised by international financial institutions in the political and economic decision-making processes in the entire region. In addition to benefiting the tycoons of the international finances, the renegotiation of the external debt during the eighties and nineties became a decisive factor for the implementation of neoliberal policies, and marked the loss of any vestige of autonomy on the part of these countries regarding the formulation of development policies.

During the nineties, even though inflation was basically under control, the economic and social situation became harder as a consequence of the bankrupcy of the industrial and agrarian national production, experienced by most of the countries, due to the complete opening of their economies and other market-oriented reforms. It is clear then that the adoption of such policies, presented as the solution for the crisis, has turned it worse.

The “Enterprise for the Americas Iniciative” (EAI), unveiled by the administration of the first Bush in June 1990, was based precisely on the proposition that trade is the key to hemispheric prosperity. This project was aimed at constituting a unified free trade zone from Alaska to Patagonia, a project that in December 1994 was presented as the Free Trade Area of the Americas (FTAA), during the hemispherical summit of Miami. The North American Free Trade Agreement (NAFTA), put in force in January 1, 1994, represented the first step toward the economic integration of the whole continent in the FTAA, a process that was supposed to be completed by year 2005. However, as it was explained above, this project collapsed late 2003, due to the opposition of several countries of the South. To compensate for this situation, the US decided to negotiate similar agreements with other Latin American countries and subregional groups, such as Chile, Central America and Dominican Republic (CAFTA) and the Andean countries.

As it could be expected, the United States has benefited substantially from the economic reforms that have been undertaken throughout the region. These reforms have resulted in the reestablishment of vital export markets for American products. By the same token, these policies have benefited international and domestic financial capital, which has increased considerably its profits, at the expense of the productive sectors of these countries.

From the reforms imposed by the Washington Consensus[5], those who had caused a greater social impact and considerably affected the conditions of labor, have been the reduction of the economic and social role of the state in order to benefit the private sector, and the cut on public expenditure. The first one is deeply rooted in the classical liberal notion of a minimal “night-watchman” state, whose only function was the protection of individuals and their property, leaving them free to pursue their individual projects. According to this idea, progress is only achieved when private initiative and freedom are promoted. The argument in favor of the reduction of the state is based on the alleged efficiency of the private sector, against the also alleged inefficiency of the public sector “per se”. The putting in practice of this neoliberal strategy has represented the elimination and/or privatization of key state enterprises, with the consequent loss of jobs, throughout the two past decades in Colombia and elsewhere in Latin America.

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[5] For Washington it should be understood, not only the American government, but also the financial international institutions and the think-tanks committed with the neoliberal thought and reforms.

With regard to the curb on public expenditure, it is clear that this policy is strongly connected with the monetarist priority of preserving the fiscal balance at any cost, in order to meet the goal of paying the external debt service and other financial commitments on the part of the states. This policy constitutes the central point of the agreements signed by most of the Latin American countries with the IMF and has manifested in an important reduction of social investment, which has a direct impact on the deterioration of the living conditions of most of the Latin American people**.**

From 1994 on, when the World Trade Organization (WTO) was created, the two most controversial issues discussed within this organization that took the place of the GATT, have been the following: a) the preservation and strengthening of agricultural subsidies, on the part of advanced industrialized countries, and, b) the TRIPS Agreement (Trade-Related Intellectual Property Rights), and its implementation in the pharmaceutical sector. Both have a significant impact on economic and social conditions, especially in the poorest countries.

Another key feature of the global situation is the consolidation of the American hegemony throughout the world. The implementation of the neoliberal agenda in Latin America was instrumental in the strengthening of the political and military power and in the economic recovery of the US, as well as in its good performance during the nineties. However, starting the year 2001, at the beginning of the Bush administration, the economy of the country was confronted again with signs of recession. The terrorist attacks of September 11 took place against this context. A year later, Bush presented and got approval by the Congress to the National Security Strategy of the United States. The announcement of this strategy, best known as the Bush Doctrine, was considered by various academic and political sectors as an open declaration of hegemony on the part of the United States.

This paper argues that in the consolidation of its global economic domination, the United States requires the subscription of trade agreements with countries all over the world, in order to confront the increasing competition from the main industrialized countries. In such agreements, the US has been able to impose tougher conditions than those resulting from the WTO, as a means of facilitating foreign investment for its multinationals.

II. The Colombian Trade Promotion Agreement (CTPA)

A. The importance of free-trade agreement for the US

The Doctrine of National Security of the US, conceived of as a key component in the government struggle against terrorism, is also very clear regarding the priority of free-market policies, announces a comprehensive strategy to achieve free-trade agreements with all the countries of the world, and mentions specifically the creation of the Free Trade Area of the Americas (FTAA). By the same vein, the document reaffirms Washington´s commitment to working with the IMF, in order to “streamline the policy conditions for its lending and to focus its lending strategy on achieving economic growth through sound fiscal and monetary policy, exchange rate policy, and financial sector policy” [6].

[6] “The National Security Strategy of the United States”, September 2002, p 3-7.

According to the Office of the United States Trade Representative (USTR), trade has been critical for America´s prosperity by "fueling economic growth, supporting good jobs at home, raising living standards and helping Americans provide for their families with affordable goods and services". During the last decade, trade has helped raise the Gross Domestic Product by nearly 40 percent. In the same document, it is stated that the two major trade agreements of the nineties, NAFTA and the Uruguay Round, have generated annual benefits between $1300 and $2000 for the average American family. By the same token, if remaining global trade barriers were eliminated, states the USTR, the annual income of the US could improve by an additional $500 billion[7].

Thus, regional and bilateral free-trade agreements (FTAs) are crucial for the United States. From 2001 on, the Bush administration has signed and put in practice FTAs with Australia, Chile, Jordan, Morocco and Singapore. The US has also concluded negotiations in this regard with Bahrain, Central America and Dominican Republic (CAFTA-DR), Oman, Peru and Colombia. Negotiations have started or are about to begin with the Republic of Korea, Panama, the five countries of the Southern African Customs Union (SACU), Thailand, and the United Arab Emirates[8].

According to Carsten Fink and Patrick Reichenmiller[9], the increasing number of bilateral and regional FTAs, pursued by the United States in various regions of the world, represents a considerable shift in the international diplomacy of the United States. In the past, the country relied mainly on multinational trade institutions to advance its economic and commercial interests. According to these authors, the strong pressure on investment conditions and on intellectual property rights protection (IPRs), put in these agreements, has to do with the importance of the exports of intangible assets, a field in which the US plays a leading role.

B. The myth of foreign investment

In the neoliberal thought, foreign investment is conceived of as the only path to generate economic and social development and, thus, to create jobs. Therefore, reforms in order to make more attractive the countries for foreign investors, especially those related to labor conditions, must be undertaken. Such argument is very well expressed in these trade agreements. Nevertheless, recent experiences of Latin American countries in this regard put in evidence that this idea do not correspond to reality. From various perspectives, reports from international organizations, such as the International Development Bank (IDB), the World Bank, and ECLAC, have agreed in the acknowledgement of the increasing concentration of wealth, the increment of poverty and the deterioration of job quality and working conditions, from the nineties on in

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http://www.usemb.gov.do/IRC/politica/seguridad_nacional_1.htm

[7] *Trade Delivers*, Office of the United States Trade Representative, Benefits of Trade, July 2006, figures taken from the Institute for International Economics, www.ustr.gov

[8] USTR press release: US and Colombia Conclude FTA in www.ustr.gov/Document Library/Press Releases/2006/February/United STtes_Colombia_Conclude_Free_Trade_Agreement.html, consulted February 27, 2006.

[9] Carsten Fink and Patrick Recichenmiller, "Tightening TRIPS: The Intellectual Property Provisions of Recent US Free Trade Agreements", International Trade Department, Trade Note 20, February 7, 2006, The World Bank Group, www.worldbank.org/trade

Latin America, precisely when the amounts of foreign investment increased[10]. On the contrary, the historical experience of the most industrialized countries show that the path followed by them to achieve development conditions was the adoption of precise state politics, in order to consolidate national sovereignty and the domestic market.

Foreign Direct Investment (FDI) by multinationals increased notoriously in Latin America, in the context of generalized privatization policies during the nineties. This type of investment was fundamental in the recovering of the US economy during the past decade[11]. As a matter of fact, in only one year, 1997, the operations of the American companies in the region generated 20,000 billion dollars in net utilities, a figure that accounted for 19.9 percent of total net utilities obtained by overseas subsidiaries of the US companies, according to figures provided by the United States Trade Representative office[12].

Nevertheless, given that the privatization process is almost concluded in Colombia and elsewhere in Latin America, perspectives of foreign investment in the region are uncertain, to say the least. According to a report by OCDE (Organization for Cooperation and Economic Development), in 2003 there was a considerable increase in FDI of multinationals in the developing economies of faster development in the world, whereas it dropped for the second consecutive year in Latin America. Another report by ECLAC states that foreign investment in the region dropped 19 percent in 2003. The case of Colombia was more dramatic, with a drop of 34 percent and only 4 percent of the total amount of investment for the region. Thus, in Latin America as a whole FDI shifted from 44,979 million dollars in 2002 to 36,500 in 2003. As it was stated above, the explanation given to this drop is the end of the boom of privatizations[13].

In the year 2005 there was again an increase of FDI in Latin America, reaching 68,000 million dollars, a figure 11 percent higher than the immediately previous year. However, according to ECLAC, it is clear that the region is steadily loosing participation in the world influxes and international competitiveness[14]. What is more important, during the past two decades, a trend to invest in non productive sectors or to acquire state companies, has been apparent. This strategy on the part of foreign multinationals does not generate new jobs. On the contrary, the liquidation and privatization of state companies has been accompanied by the elimination of thousands of jobs, especially in the industrial sector. In the case of Colombia, official figures registered an increase of FDI of 227 percent for the year 2005. However, as the report states it, this increase corresponds to the selling of the country´s main brewery, Bavaria,

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[10]According to the United Nations Commission for Social Development, gathered in February 2006, Latin America and the Subsaharian Africa have registered significant increments of poverty. Therefore, the meeting approved a proposal to review the strategies to fulfill the Objectives of Development of the Milenium in 2015. www.un.org/esa/socdev/csd/csocd2006/PressReleases/Pobreza_AmericaLatina_Africa.pdf, consulted the 17th September, 2006.

[11] The DFI represents mainly the buying of fixed actives and includes fusions and acquisitions, joint enterprises, investment in equipment, buying of real estate, and transferences of capital to foreign-owned companies.

[12] USTR, www.ustr.gov. July 8, 1999, consulted March 5, 2003.

[13] "Cae por segundo año la inversión extranjera en las grandes economías latinoamericanas", Michael R.Sesit, The WSJA, *El Tiempo*, June 28th, 2004, p.1-17.

[14] See: ECLAC-CEPAL, "Foreign investment in Latin America and Caribbean 2005". in www.eclac.cl/cgi-bin). Consulted September 17th, 2006.

to SABMiller, and other important companies that were sold to international capital[15].

Finally, in a recent report by UNCTAD, it is stated that global flows of FDI reached $1.2 trillion in 2006, directed mainly to developed countries, such as the US, the United Kingdom and France. "The US recovered its position as the largest single host country for FDI in the world", and the European Union accounted for about 45 percent of the total FDI inflows in the same year. At the same time, inflows to Latin America and the Caribbean slowed down in 2006. Flows to Colombia fell by 52 percent[16]. According to a report by the United States International Trade Commission, the US is the largest destination of FDI in the world, with $1.5 trillion in 2004[17].

C. The results of the CTPA

A report of the Advisory Committee for Trade Policy and Negotiations (ACTPN) of the US, states that the Colombian Trade Promotion Agreement

> Fully meets the negotiating principles and objectives laid out in the Trade Act of 2002, and is strongly in the interest of the United States. It will level the playing field for America´s farmers and ranchers, manufacturer, and service establishments. It will provide increased market access for American goods and services[18].

The report also recognizes that "the Colombian agreement meets or exceeds the negotiating achievements of other recent agreements, including the Peru agreement and the Central America-Dominican Republic agreement[19].

Advocates of the free-trade agreement with the US have insisted in the idea that the Andean countries economies are of very little importance for the country of the North. Therefore, the AFTA has to be considered as a kind of "benign concession", on the part of Washington, to these countries. However, this is not true by any means. The trade relationship among the US and the Andean countries is significant. Total trade with Colombia, Peru and Ecuador was approximately $24 billion in 2004. Exports from the US to these countries accounted for $8.3 billion the same year and included machinery, organic chemicals, plastic, and cereals. Exports of agricultural products accounted for $1 billion. At the same time, goods imported from the three Andean countries totaled $15.3 billion in 2004. These countries represent a market of over $8 billion for US exports, and receive almost $8 billion in US foreign direct investment[20].

Colombia, the third most populous country in the region after Brazil and Mexico, is also the second largest agricultural market for the United States in Latin America. According to Robert Portman, the United States Trade Representative, US goods exports to

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[15] Proexport Colombia, , February 28, 2007, pa.2, www.proexport.com.co

[16] "Foreign Direct Investment surged again in 2006", UNCTAD Investment Brief, Number 1, 2007,

[17] United States International Trade Commission, *US-Colombia Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects,* Investigation No. TA-2104-023, USITIC Publication 3896, December 2006, p.6-7.

[18] The Advisory Committee for Trade Policy and Negotiations (ACTPN), Report to the President, the Congress, and the United States Trade Representative on US-Colombia Trade Promotion Agreement, September 20, 2007, Executive Summary. The ACTPN is the senior trade advisory panel of the US government.

[19] Ibid.

[20] Ibid.

Colombia in 2005 were $5.4 billion. Top products exported by the US to Colombia in 2005 were: machinery, organic chemicals, electrical machinery, and plastic. American exports of agricultural products to Colombia represented $667 million in 2005. The main products include: coarse grains, wheat, cotton and soybeans[21].

In an official report from the US government about the CTPA, it is stated the following:

> The primary impact of the US-Colombia TPA will be increased US exports to Colombia, as a result of enhanced US access to the Colombian market. US imports from Colombia are not expected to grow significantly as a result of trade liberalization under the TPA because most Colombian products already enter the US market free of duty[22].

According to other figures, US merchandise imports from Colombia accounted to approximately $8.8 billion in 2005, ranking the country in the 31 place among US import suppliers. Colombia accounts for less that 1 percent of the $1.6 trillion in US imports in 2005. Imports were concentrated in petroleum and related products, coal, coffee, gold, fresh flowers and bananas[23]. It is clear, then, that the trade agreement with Colombia will be very profitable for the US, as far as bilateral trade is concerned.

1. Labor provisions[24]

During the two years of negotiation of the trade agreement, labor issues were not discussed. However, Chapter 17 of the trade agreement is dedicated to labor provisions. At this point, the text reaffirms the obligations of the two signing countries as members of the International Labor Organization (ILO) and its commitment to the *Declaration of Fundamental Principles and Rights at Work.* The document also calls for the respect to the Constitution in both countries and recognizes "the right of each Party to adopt or modify its labor laws or standards"[25]. It is clear that labor provisions focus on the enforcement of existing regulations. In fact, these provisions correspond to what the Colombian government has been implementing under pressure from IMF and other international institutions, throughout the neoliberal period.

The Report of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC)[26] makes the following observations regarding the Colombian trade agreement:

- It does not include enforceable provisions requiring that the government fulfill its obligations under the ILO core labor standards.

- Does not prevent Colombia from "weakening or reducing the protections afforded in domestic labor laws to encourage trade or investment. Colombia has passed several reforms to "flexibilize" the labor market in 2002, including extending the causes of dismissal, cutting the notice period for employment termination and drastically

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[21] Ibid.

[22] United States International Trade Commission, Executive Summary, p.XV.

[23] Ibid., p.1-7.

[24] This part is based on USTA, US-Colombia TPA Final text. Chapter 17, www.usta.gov

[25] Ibid.

[26] The US-Colombia Free Trade Agreement, Report of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), October 4, 2006, p.7.

reducing severance benefits. In 2005, the government of Uribe Vélez introduced a pension reform that prohibits the negotiation of pension benefits in collective bargaining.

- It does not require that Colombia effectively enforce its own laws regarding employment discrimination, which is a key labor right contemplated by ILO.

Other concerns of the LAC report have to do with current political situation in Colombia, characterized by significant restrictions to the rule of law and to basic democratic guaranties, on the part of the government of Álvaro Uribe Vélez. In fact, the strong links of the president himself and of his government with paramilitary organizations has been a source of concern for trade unions and social and political organizations in the national and international sphere. Popular and trade union leaders have been executed by these groups, with the support of key members of the government, and, despite international pressure against the Colombian government in this regard, no international sanction has been imposed to the government.

In addition to the above-mentioned situation, there is a strategic consideration, on the part of the American government. Currently, the Colombian government is the best ally of the United States in Latin America and the Andean region. In fact, the Bush administration is relying on this alliance, given the fact that other Andean countries, such as Venezuela, Bolivia and Ecuador, have elected governments which share a very critical stance about American policies in the region and the world. This situation explains why the trade agreement with Colombia is perceived also as an important political issue, as stated in a press release from the USTR:

> The U.S.-Colombia Trade Promotion Agreement will contribute to our collaborative efforts to promote peace and enhance stability and security across the Andean region. The Agreement will also provide a strong framework to address labor issues, with targeted remedies for labor violations. We look forward to working with members of Congress to ensure bipartisan support for the agreement[27].

According to the LAC Report, the labor provisions of the FTA with Colombia will not protect the fundamental human rights of workers:

> Rather, the provisions represent a big step backwards…The complete lack of effective measures is particularly troubling given the well-documented violations of trade unionists rights in Colombia, up to and including the torture and murder of trade unionists by state actors or paramilitary groups that enjoy, ant the very least, the tacit support of the military[28].

As the same document puts it, the combination of unregulated trade and increased capital mobility not only puts jobs at risk, but also places workers from both countries in direct competition over the terms and conditions of their employment. The report refers to extreme labor conditions in Colombia, where industrial conflicts are at times "resolved" by torture of murder[29].

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[27] USTR, "United States and Colombia Sign Trade Promotion Agreement", Press Release, February 22, 2006, www.ustr.gov

[28] Report of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), The US-Colombia Free Trade Agreement, October 4, 2006, p.3-4. The LAC includes representatives from unions at the local and national level.

[29] Ibid.

2. Rules of investment

The rules of investment are likely to have impact on labor conditions, given the fact that such rules are modified in order to facilitate foreign investment and a key component of this strategy is lowering labor costs. The agreement includes several investment provisions in order to establish a stable legal framework for US investors in Colombia. It was conceived of as a way to protect all forms of investment, including enterprises, debt, concessions, as well as intellectual property rights. Through the "Most favored nation" provision, the agreement gives the investors the right to establish, acquire and operate investments in Colombia, on equal footing with local investors.

As the official document of the CTPA puts it, the investment rules that were approved are more generous with foreign investors than the provisions of the WTO[30]. Clearly, this goes against national sovereignty and against the possibility of the state to intervene in favor or national development. No doubt, some of the most harmful provisions in this regard are those concerned with international dispute settlement. According to the Colombian government, the objective of such a mechanism is that a group of specialists solve in an "impartial and transparent" the differences resulting from a trade relation[31]. However, what is true is that the US was able to impose private international tribunals, controlled by its multinationals, as a mechanism to solve investors- state disputes. This mechanism includes submission of claims to arbitration, selection of arbitrators, conduct of the arbitration and transparency of the arbitral proceedings. As the text puts it:

> The investor protections in the Investment Chapter are backed by a transparent, binding international arbitration mechanism, under which investors may, at their own initiative, bring claims against a government for an alleged breach of the chapter[32].

With this provision, the power of the state is subordinated to the interests of transnational companies, which means that these ones could sue the state for approving a law that these companies consider detrimental to their expected profits. Thus, the approval of a minimum wage increase or a law of environmental protection by the Colombian government could lead a foreign company to sue the government in international tribunals. By the same token, if the company decides that its activity or its image have been affected by state policies, the company could denounce the state to the international tribunal and, in both cases, claim multimillionaire compensations. Thus, through the CTPA and other free-trade agreements imposed by the US, American multinationals acquire an international legal status equivalent to that of the states, whereas the authority of such companies becomes higher than domestic legislations.

Clearly, the norms of investment, contemplated in the agreement are very favorable for US big producers. In a report by the ACTPN, the senior producers advisory committee

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[30] USTR, "Free Trade with Colombia: Summary of the Agreement", *Trade Facts*, February 27, 2006, p.6. www.ustr.gov

[31] "Las cien preguntas del TLC", p.32, en www.mincomercio.gov.co, acceso julio 23 de 2004.

[32] USTR, "Free Trade with Colombia, Op.cit., p.6. www.ustr.gov

to the US government[33], it is stated that the committee "applauds the comprehensive nature of the investment provisions. (…) stresses the importance of covering both existing and prospective investments, and has urged consistently that such investment provisions be part of all future agreements. It also said that

> The ACTPN is very pleased that the Colombia agreement enables binding third party arbitration for investor-state disputes not only for investments concluded after the agreement goes into effect, but also for many types of investments that pre-date the agreement[34].

3. Intellectual Property Rights (IPRs)

A very sensitive issue that affects the living conditions of people has to do with the rights of investors and the access to medicaments. Regarding intellectual property rights (IPRs) protection, the agreement makes a number of significant improvements, as an official document from the US government acknowledges. The agreement stipulates the restoration of patent terms, in order to compensate for delays in the granting of the original patent, limits the ground for revoking patents, clarifies that test data and trade secrets submitted to the government office for a product approval will be provided with protection against unfair commercial use for a period of five years for pharmaceuticals and 10 years for agricultural chemical products; and, requires a system to prevent the marketing of pharmaceutical products that infringe patents[35]. In Oxfam´s view, the provisions agreed upon in AFTA regarding intellectual property rights protection, are even more restrictive than those contained in CAFTA, "despite the fact that Andean negotiators from each country´s health ministry went to considerable lengths to oppose them"[36].

4. Other key provisions of the CTPA

The Colombian government made several concessions to the US that are likely to deteriorate employment and thus, to affect directly living and working conditions for labor. Some of these concessions, included in the bilateral agreement, are the following:

Regarding market access, the agreement will eliminate duties on 80 percent exports of consumer and industrial products to Colombia. Additionally, 7 percent of US exports would enter duty-free within five years of the implementation, and the remaining tariffs will be eliminated in ten years after the beginning of the agreement[37]. Colombia´s average applied duty on overall imports of manufactured goods is 11.3 percent, and the

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33 The Advisory Committee for Trade Policy and Negotiations (ACTPN), Report to the President, the Congress, and the United Status Trade Representative on US-Colombia Trade Promotion Agreement, September 20, 2007, Executive Summary.

34 Ibid.

35 "Free Trade with Colombia", Summary of the Agreement, *Trade Facts*, Office of the United States Trade Representative, www.ustr.gov, February 27, 2006, p.3-4.

36 OXFAM International, *Song of Sirens. Why the US-Andean FTAs undermine sustainable development and regional integration*, Briefing Paper, Wednesday 14 June, 2006, Summary.

37 The Advisory Committee for Trade Policy and Negotiations (ACTPN), Report to the President, the Congress, and the United Status Trade Representative on US-Colombia Trade Promotion Agreement, September 20, 2007, Executive Summary.

elimination of these duties will be very positive for the US producers. Colombia also agreed to allow the trade of remanufactured goods such as machinery and computers, under the provisions of the agreement. The agreement includes several provisions that contemplate rules of origin. As a case in point, in textiles and apparel, products that meet the agreement´s rules of origin requirements will enter immediately without tariff. As the LAC report puts, it, rules of origin and safeguard provisions “invite producers to circumvent the intended beneficiaries of the trade agreement and fail to protect workers from the import surges that may result”[38].

Colombia will also give market access to American firms in most service sectors unless a specific exception is stated. But these exceptions are quite limited in the agreement. The country agreed to go further its commitments made in the WTO and to dismantle services and investment barriers, including measures such as the requirement for US firms to purchase local goods or to hire national rather than US professionals. Colombia also agreed to eliminate the requirement for US companies to establish a branch in order to provide a service. These provisions include sectors such as telecommunications, financial services, construction, all professional services, and energy. The country also agreed to join the Information Technology Agreement (ITA) of the WTO, which will eliminate Colombia´s trade barriers to information technology products[39].

Regarding government procurement contracts (Chapter 8), American companies will be granted non discriminatory rights to participate in contracts from Colombian government ministries, agencies, public enterprises, and regional governments. According to the report by the United States International Trade Commission, US industry estimates that nondiscriminatory access to Colombian government procurement could increase US exports between $100 million to $500 million annually”[40].

5. The agrarian sector

With respect to agricultural products, the Colombian government accepted to do away with tariffs well before that what was agreed upon before. The agreement will grant duty-free treatment immediately to products like high quality beef, cotton, wheat, soybean meal, fruits and vegetables, including apples, pears, peaches, and cherries, many processed food products, including frozen French fries. To sum up, over 80 percent of imports from the US will enter the country without tariff, once the agreement is implemented, 7 percent will do it in 5 years and the remaining in 10 years. In this point, the Colombian negotiators went further the CAFTA-DR agreement.

According to a report by the United States International Trade Commission, US grain exports to Colombia could increase by an estimated of 55 to 77 percent over the $339 million in US grain exported to Colombia in 2005, as a result of better market access resulting from the CTPA[41]. As stated above, Colombia is the third largest agricultural market for the US in the hemisphere, after Mexico and Canada.

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[38] Report of the Labor Advisory Committee, op.cit., p.4.
[39] M. Angeles Villarreal, “US-Colombia Trade Promotion Agreement”, CRS Report for Congress , September 21, 2006.
[40] United States International Trade Commission, Op. cit., p. 6-3.
[41] United Status International Trade Comisión, op.cit., p.3-22.

Finally, a recent study by Luis Jorge Garay, Fernando Barberi and Ivan Cardona presents a detailed analysis of the CTPA and its impact on the agrarian sector. After assessing the interests of the two countries in the negotiation, and of the perspective for both agrarian sector once the agreement is put into practice, the study concludes that Colombia didn´t get any significant concession on the part of the US. The authors argue that this result will become an additional obstacle to solve the violent conflict of the country, especially if it is taken into account that key agricultural products, which correspond to peasant economy, are bound to disappear with the implementation of the agreement[42].

All these provisions contemplated in the CAFTA will affect considerably living and working conditions in Colombia, in the cities and in the country side. The ruin of industrial and agricultural producers due to the elimination of trade barriers and tariffs will be detrimental for the productive sector. It is clear that the Colombian producers, with very few exceptions, cannot compete with the producers of the first economy of the world.

Conclusion

With the generalization of neoliberal policies during the eighties and the struggle against terrorism after September 11, 2001, the US has been able to consolidate its political and military hegemony throughout the world. However, it maintains an increasing confrontation, in economic and commercial terms, with the other economic powers of the world. In this dispute, the US has taken advantage of its power in international organizations, especially WTO and IMF, in order to impose better conditions for its multinationals everywhere.

Against this context, from the year 2001 on the US has developed an aggressive economic strategy, in order to negotiate trade agreements with countries throughout the world. In fact, this policy was considered as a strategic one within the Doctrine of National Security of the Bush administration. Through these agreements, the US has been able to obtain very favorable or "plus" conditions of investment for its multinationals, regarding various issues.

Finally, the CTPA will deeply affect negatively the Colombian productive sector and thus, the working and living conditions throughout the country.

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