

OFFICE OF THE
UNITED STATES TRADE REPRESENTATIVE

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TRADE POLICY STAFF COMMITTEE

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ANDEAN FTA
PUBLIC HEARING

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THURSDAY,
MARCH 18, 2004

The Public Hearing convened in Conference Rooms 1 & 2 in the USTR Annex at 1724 F Street, N.W., Washington, D.C., at 9:15 a.m., Don Eiss, Chair, presiding.

Office of the U.S. Trade Representative:

DON EISS, Chair
WILLIAM CLATANOFF
BENNETT HARMAN
MARY LATTIMER
CARMEN SURO-BREDIE
GLORIA BLUE, Executive Secretary

U.S. Department of Agriculture:

ROGER MIRELES

U.S. Department of Commerce:

MATT GAISFORD

U.S. Department of Labor:

CARLOS ROMERO

U.S. Department of State:

AMY HOLMAN

U.S. Department of Treasury:

GORDANA EARP

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P-R-O-C-E-E-D-I-N-G-S

(9:41:06 a.m.)

MR. EISSLER: The hearing will come to order.

Before entering into the presentations and the formal statements on behalf of the Chief ESE and the Inter-Agency process, personally I wish to apologize. As some of the witnesses may know, there's been a fire, and there was a fire in the subway this morning, and as traffic in Washington goes, for those of you that are from out-of-town, the domino effect of that has been to create a gridlock throughout a large portion of Northwest Washington, which has affected the ability of people from the agencies to get here. That's obviously our issue. We appreciate your timeliness in arriving, and we will try to move expeditiously through this so that we do not inconvenience you excessively.

The Trade Policy Staff Committee, an interagency body chaired by the Office of the U.S. Trade Representative is conducting this hearing. In addition to USTR, there are representatives from the Departments of Agriculture, Commerce, Labor, State and

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1 Treasury. Members of the USTR Staff working on this
2 negotiation will be present. In case anyone needs to
3 be reminded, the subject of this hearing is the
4 proposed negotiation of a free trade area with four
5 Andean countries, Bolivia, Colombia, Ecuador and Peru.
6 The TBSC is seeking public comment to assist USTR in
7 amplifying and clarifying negotiating objectives for
8 the proposed agreement.

9 In addition to the testimony we will hear
10 today, interested persons, including persons who
11 participate in the hearing may send written comments
12 until noon, March 30, 2004. Written comments may
13 include rebuttal points demonstrating errors in fact
14 or analysis not pointed out in the hearing. The first
15 page of written comments must specify the subject
16 matter, including as applicable the products with
17 Tariff Classification Numbers for service sectors.

18 We have organized the hearing this morning
19 with each witness being allocated approximately a
20 total of 15 minutes to permit for your oral statement,
21 as well as questions from the TPSC member agencies.
22 In light of our late start, without in any way

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1 circumscribing your ability to make all the key
2 points, I would ask your understanding and try to be
3 as succinct as possible and we, for our part, will try
4 to be equally so with our questions.

5 With that, we will move immediately to our
6 first witness, Mr. Carlos Rodriguez. Okay. Mr. Jaime
7 Arciniega. I hope that was correct. The President of
8 the Ecuadorian Confederation of Free Trade Unions.

9 MR. ARCINIEGA: (In Spanish.)

10 TRANSLATOR: Good morning and thank you on
11 behalf of Ecuadorian workers. My name is Jaime
12 Arciniega. I will start my presentation by mentioning
13 that Ecuador is a member of the ILO, and as a
14 consequence, the International Conventions that were
15 ratified by Ecuador have the status of law in my
16 country.

17 I would like to make references to the ILO
18 Conventions, '87 and '98 regarding freedom of
19 association and collective bargaining, and also our
20 labor code in Article 458, which states:

21 "The labor authorities will facilitate and
22 encourage the organization of workers. In spite of

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1 what is contained in the law, there is clear evidence
2 of contrary practice which undermines rights, which
3 deepens corruptions, and which provokes the dismissal
4 of workers."

5 We have denounced on numerous occasions to
6 the three labor ministers in their respective
7 positions the violations of labor rights that have
8 occurred, especially those that occurred at Los Alamos
9 Plantations of the Noboa Corporation.

10 It is worrisome to us that the present
11 labor minister has said in the press that the topic of
12 Los Alamos is a politicized issue, and a closed case,
13 as if we Ecuadorians were able to forget that 12
14 workers were shot, three were gravely injured, and one
15 was forced to have his leg amputated because of the
16 lack of medical attention in a short amount of time,
17 because the attackers would not allow first aide
18 operators to get close to the worker and give him the
19 attention needed at the time.

20 Up to this date, none has been brought to
21 justice. No less worrisome is the dramatic situation
22 that workers in the flower industry face, not just

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1 because of the child labor and the poor and precarious
2 labor conditions, but also because of the conditions
3 that are provoked by the use of pesticides during
4 working hours, which puts workers at risk in their
5 health conditions; the result of which has been such
6 issues as chromosome alterations, neurological and
7 neuromuscular damage, nausea and infections, premature
8 labor, miscarriages, and congenital defects.

9 The lack of unionization in the flower
10 industry leaves flower workers completely unprotected.
11 Only .3 percent of the flower industry workers have
12 unions, and 99.7 percent is unprotected and working in
13 phantom companies or third-party contractors that are
14 linked to the owners or the executives of the
15 principal companies. These third party contractors
16 are created in order to avoid workers' rights, and to
17 avoid the unionization of the workers in the industry.

18 Through institutional efforts, we were
19 able to reach an agreement on regulations in health
20 and safety in the third party contractors, with the
21 purpose of protecting workers through ministerial
22 agreement, which was signed on the 14th of November of

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1 2003. And just recently last month, on February 13th,
2 2004, this agreement was unilaterally and without
3 consultation revoked by the Ecuadorian government.

4 Regarding the third-party contractors,
5 this has become a common practice in our employers'
6 sector. And it has become a practice, a mechanism to
7 avoid a permanent labor relationship to lower salaries
8 and to leave workers unprotected by Social Security.
9 It has also been used to increase the hours of the
10 work day.

11 These types of labor violations damage
12 human dignity and they also eliminate the possibility
13 of industry-level organization. We presented to the
14 Labor Ministry a bill or a legal proposal to be
15 presented to the President to regulate the third-party
16 contractors, but up until this moment it has not been
17 considered or approved.

18 Regarding the Free Trade Agreement, there
19 are clear evidence and it's been demonstrated in the
20 press that the general public in Ecuador is not aware,
21 and there has been no participation or consultation on
22 the discussions of the Free Trade Agreement. It is

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1 very important that we make public and that there be
2 a public consultation with Ecuadorian Society prior to
3 the approval of the Free Trade Agreement.

4 MR. EISS: Thank you very much. For our
5 first question I'd like to turn to --

6 COURT REPORTER: For the record, would you
7 introduce yourself.

8 TRANSLATOR: Oh, I'm sorry. My name is
9 Teresa Casertano. I'm the Regional Program Director
10 of the AFL/CIO Solidarity Center at the Office for the
11 Americas.

12 MR. EISS: Do you have -- I know we had a
13 brief outline of the comments that Mr. Arciniega made.
14 Do we have or will we have for the record a complete
15 translation? We do not have the capability ourselves
16 to translate, and so while we will have it on the oral
17 version, it would be useful for our records and
18 whatever to have a translation that he is comfortable
19 with as his statement.

20 TRANSLATOR: Yes, there will be a complete
21 translation.

22 MR. EISS: Thank you. For the first

1 question, I'd turn to our representative from the
2 Department of Labor.

3 MR. ROMERO: Thank you for your testimony,
4 Mr. Arciniega. I'll go ahead and read the question in
5 English, and then I'll go ahead and translate it for
6 you in Spanish.

7 In your testimony you mentioned lack of
8 respect for basic labor rights in Ecuador. Which of
9 these rights do you think are most important for the
10 Government of Ecuador to address in the short term?

11 MR. ARCINIEGA: (In Spanish.)

12 TRANSLATOR: As I mentioned before in my
13 statement, there has been negativity around the issue
14 of freedom of association and the third-party
15 contractors, and our law does establish regulation for
16 freedom of association, but there have been problems
17 with the application. Probably the issue of most
18 concern is organization, to be able to organize by
19 industrial sector in order to address the issue of
20 third-party contractors.

21 MR. EISS: Mr. Clatanoff from USTR.

22 MR. CLATANOFF: I'm just looking for a

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1 little clarity. Is it truly a question of the text of
2 the labor law, the ministry's interpretation of that
3 labor law, or the enforcement of that labor law that
4 needs to change to address the problem of these third
5 party contractors or shell companies?

6 MR. ARCINIEGA: (In Spanish.)

7 TRANSLATOR: Okay. The problem rests in
8 the labor authorities. The law does establish freedom
9 of organization or freedom of association, but through
10 corruption and inability to apply the law there have
11 been massive dismissals that have been tolerated and
12 that haven't been regulated.

13 MR. CLATANOFF: The document that you
14 showed during your answer, that's part of what you
15 gave me Tuesday morning?

16 MR. ARCINIEGA: (In Spanish.)

17 TRANSLATOR: Yes, those were in the folder
18 that they presented to you, and there are others that
19 they can give you.

20 MR. CLATANOFF: Thank you.

21 MR. EISS: Thank you very much. Our next
22 witness will be Mr. Carlos Rodriguez, and he is the

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1 representative of the Confederation of Colombian
2 Workers.

3 MR. RODRIGUEZ: (In Spanish.)

4 TRANSLATOR: Good morning and thank you
5 on behalf of Colombian Workers. I'll begin by saying
6 that the United Nations presented a negative report
7 about the human rights situation in Colombia. In
8 addition, the lack of clarity and consensus on the
9 Colombian position with regard to the free trade
10 agreement have been adverse factors during the last
11 week in my country that have affected the confidence
12 of investors in my country.

13 In addition, the degree of polarization
14 that the policy, the Alvaro Uribe policy on democratic
15 security and the expressions of rejection by the
16 Colombian Congress with regard to the way that the
17 free trade agreement has been discussed in recent
18 weeks have also contributed to lack of confidence in
19 the investors in my country.

20 We consider that this free trade agreement
21 should not be negotiated in a rushed manner. We
22 should remember that the Chile agreement took 12 years

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1 in order to be completed with the United States. We
2 encourage true processes of economic integration which
3 increased our internal market, and encourage
4 industrialization. For this reason we opposed a free
5 trade agreement that would damage our economy or which
6 would erode any of our labor rights.

7 The violation of human and labor rights in
8 Colombia is still a critical issue, and this is
9 demonstrated in one of our social indicators on
10 confidence in Colombia which shows that only 59
11 percent of Colombians have confidence in the Colombian
12 security situation, and this generates a poor
13 environment for business.

14 In 2003, 2003 was one of the worst years
15 for labor rights because there was a labor code reform
16 which diminished labor benefits, and there was also a
17 pension reform which made it more difficult to access
18 a pension, and it also eliminated some of our union
19 liberties.

20 In 2003, there was a dramatic lowering in
21 the number of collective bargaining agreements, and
22 also in the coverage of the existing bargaining

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1 agreements. There were only 173 agreements which were
2 signed, and they covered only 49,396 workers of a
3 total of 6,936,000 formal employees. This is a
4 serious concern, and it implies practically the
5 disappearance of collective bargaining in Colombia.

6 We don't only have the physical
7 elimination of trade union and union members, but in
8 the year 2003, 11 union leaders and 59 union members
9 were assassinated. And in what has past of the year
10 2004, four union leaders and five union members have
11 been assassinated.

12 We are confronted with the extermination
13 of union leaders and union members, but we are also
14 confronted with the elimination of our collective
15 bargaining, thanks to the high level of impunity in my
16 country.

17 One of the other concerns affecting
18 collective bargaining has to do with the power of the
19 arbitration courts to revise collective bargaining
20 agreements. This is allowed for employers to request
21 the erosion or the elimination of already established
22 rights and benefits in existing agreements. And the

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1 majority of the 96 arbitration courts in the year 2003
2 eliminated important already existing rights and
3 benefits.

4 In addition to the above, the anti-union
5 culture which has been implemented by our government
6 has to do with the recognition of illegality of our
7 actions of protest, or the declaration of illegality
8 of our protest actions. Of 30 protest actions that
9 took place in 2003, employers requested that all of
10 them be declared illegal or criminal acts, and our
11 government approved 26 of those requests to declare
12 illegal our protest actions.

13 In addition, our government disrespects
14 our union autonomy because it demands that unions
15 present in order to function, that they present their
16 statutes for approval before the Ministry of Social
17 Protection when our law number 584 guarantees full
18 union autonomy.

19 In addition, our government has stated
20 that it will not comply with ILO Convention on
21 inspection and mediation of conflicts. It has stated
22 to us that employers and workers should handle their

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1 own -- should mediate their own conflicts and, thus,
2 has eliminated its own role as a mediator, it's
3 governmental role as a mediator.

4 Finally, Colombian workers demand of the
5 government that it obey the constitution and national
6 law, and also that it apply the ILO Conventions and
7 the 27 recommendations by the United Nations. This
8 will require a real willingness, a political
9 willingness on the part of the government, and it will
10 require that it re-establish the existence of the
11 Labor Ministry, which was eliminated by the
12 government. Due to this, we are beginning to feel the
13 disappearance of any rule of law, and the beginnings
14 or the continuation of an authoritarian government.

15 MR. EISS: Thank you, Mr. Rodriguez.
16 First, just two things. One, I would make the same
17 request, just to confirm that we will get an official
18 English translation of the statement. And second, I
19 just want to -- I only did a partial introduction and
20 the formal official statement of the opening which
21 includes additional information with regard to the
22 topics to be covered and things like that are on the

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1 table over there, so I would encourage all the
2 witnesses to make sure you pick up the TPSC
3 Chairperson's opening statement so that you have all
4 the information relevant to next steps, et cetera. I
5 would then turn to Labor Department for the first
6 question.

7 MR. ROMERO: Thank you for your testimony,
8 Mr. Rodriguez. I will go ahead and translate this
9 one, as well.

10 In your testimony you observed a high
11 number of murders of trade unionists, last year, and
12 also the fact that this appears to be less than half
13 in the previous year. Although we all agree that even
14 one death is too many, this would appear to be a
15 reduction in the threat to trade unions. What steps
16 specifically would you like to see the government of
17 Colombia take to protect trade union leaders?

18 MR. RODRIGUEZ: (In Spanish.)

19 TRANSLATOR: In comparing the year 2002
20 with the year 2003, you could see that there was a
21 lowering in the number of assassinations but there was
22 an increase in the number of threatened and displaced

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1 trade unionists. And in terms of demonstrating
2 political will or an advance in lowering the cases of
3 assassinations, we would propose key prosecutions,
4 prosecution of key cases, two or three that would
5 demonstrate the capacity.

6 MR. CLATANOFF: I'm aware that there is an
7 ILO Program to OET to help, first of all, in the
8 assassinations, and secondly, to hopefully start
9 tripartite dialogue. I would like your frank
10 assessment of the OET technical cooperation activities
11 in your country.

12 MR. RODRIGUEZ: (In Spanish.)

13 TRANSLATOR: Yes, it's true that at the
14 ILO Conference there was the agreement to create a
15 program to encourage social dialogue and to work on
16 protection for trade unionists, and we began a process
17 in which we were able to agree on a text amongst
18 ourselves about the defense of collective bargaining,
19 and just recently the Vice Ministry of Social
20 Protection reported to us that she was not in
21 agreement with this text, and that she would not
22 support it. And this just indicates the level of

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1 unwillingness on the part of our government to work
2 with us on these issues.

3 MR. EISSLER: Okay. Thank you very much, Mr.
4 Rodriguez. Our next witness is Mr. Jack Roney,
5 accompanied by Mr. Donald Phillips of the American
6 Sugar Alliance.

7 MR. RONEY: Thank you, Mr. Chairman. I'm
8 Jack Roney, Director of Economics and Policy Analysis
9 for the American Sugar Alliance. Accompanying me is
10 Don Phillips, Advisor to the ASA.

11 The U.S. sugar industry has long endorsed
12 the goal of global free trade in sugar. The U.S.
13 sugar producers are efficient by world standards, and
14 will welcome the opportunity to compete on a genuine
15 level playing field. Two-thirds of the world's more
16 than 100 sugar producing countries produce at a higher
17 cost per pound than U.S. producers.

18 Having just heard the powerful testimony
19 of the gentlemen from Ecuador and Colombia about labor
20 rights abuses in those countries, I'd like to add that
21 American sugar producers are proud that they're
22 efficient by world standards, while adhering to

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1 arguably the world's highest standards for worker
2 protections in the environment. All our workers in
3 farm and factory are unionized. They enjoy health
4 insurance, pension benefits, and can put their
5 children through college.

6 The alternative or the fear in trade
7 agreements is that unless they're carefully
8 structured, we reward the countries that abuse their
9 workers in their environment, and penalize the
10 countries that adhere to the highest standards for
11 those protections.

12 The world sugar market is badly distorted.
13 A vast array of policies encourage over-production and
14 dumping of surpluses onto the world market. The world
15 sugar market is really a dump market where prices have
16 averaged really half the world average cost of
17 producing sugar over the past two decades. Until we
18 address this pervasive dumping and eliminate the
19 policies that promote it, we must not further open our
20 market and expose our farmers to subsidized foreign
21 sugar. Bilateral and regional FTAs will not correct
22 the global sugar dumping problem.

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1 The U.S. is in the process of negotiating
2 FTAs with 43 countries, 28 of these country are sugar
3 exporters. Their combined exports are 27 million tons
4 per year, triple U.S. sugar consumption. Virtually
5 all the FTAs completed around the world thus far
6 exclude sugar. The recently completely U.S.-Australia
7 FTA is the latest example of a comprehensive FTA that
8 excludes sugar. Other examples include the U.S.-
9 Canada FTA, the EU's FTAs with South Africa and with
10 Mexico, Mexico FTAs with a number of other Latin
11 American countries, and the MERCOSUR agreement among
12 Brazil, Argentina. Paraguay and Uruguay. It's worth
13 noting that the Andean Pact countries are excluding
14 sugar from their negotiations to merge with the
15 MERCOSUR.

16 The U.S.-Australia FTA should be the
17 template for the remaining U.S. FTAs with sugar
18 exporting countries. If the CAFTA which more than
19 doubles U.S. sugar import requirements from those
20 countries were the template, the U.S. market would be
21 over-supplied and the U.S. sugar policy would become
22 unmanageable.

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1 The Andean countries are substantial
2 producers and exporters of sugar. Their annual
3 exports are nearly one and a half million tons, more
4 than the current total U.S. imports from 40 countries.
5 The U.S. is about the world's fourth largest sugar
6 importer, and these countries already have a
7 significant portion of the U.S. tariff rate quota for
8 sugar duty-free.

9 Colombia is the region's biggest sugar
10 producer and exporter. Like all other countries, its
11 producers benefit from a variety of government
12 programs. Colombia's programs protect domestic market
13 prices at more than double the world market price for
14 sugar. Their prices are about 22 cents per pound for
15 refined sugar, which is about the same level as in the
16 United States, and more than double the world price.

17 Our written testimony includes details on
18 Colombia's intervention in its sugar market. It terms
19 of its impact on the U.S., the proposed Andean FTA
20 could not be looked at in isolation. It must be
21 examined in the context of the numerous FTAs with
22 sugar producing and exporting countries now being

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1 pursued by the U.S.

2 Though sugar was excluded from the
3 Australia FTA, we don't know how sugar will be treated
4 in many FTAs yet to be negotiated. These include
5 major exports, such as South Africa, Thailand, and the
6 free trade area of the Americas, which includes
7 Brazil, by far the world's largest exporter of
8 subsidized sugar.

9 If the CAFTA template for sugar access
10 were applied to other proposed FTAs, the U.S. sugar
11 import quota would nearly double, and the U.S. sugar
12 policy would quickly become unmanageable. Over-
13 supplies would depress market prices, cause loan
14 forfeitures, significant government cost, and sugar
15 producer bankruptcies.

16 CAFTA or Andean provisions that would
17 render U.S. sugar policy inoperable would be
18 inconsistent with the administration's commitment not
19 to negotiate support programs in FTAs, but rather in
20 the WTO.

21 Absent an effective U.S. sugar policy, the
22 U.S. market would be swamped with subsidized foreign

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1 sugar, domestic prices would drop to the world market
2 levels, and the U.S. sugar industry would collapse.
3 The U.S. corn sweetener industry too would be at risk
4 from dump market sugar. Combined the U.S. sugar and
5 corn sweetener industries account for 372,000 jobs in
6 42 states, and over \$21 billion in annual economic
7 activity.

8 American consumers are unlikely to benefit
9 from the lower producer prices for sugar. History has
10 shown that food manufacturers and retailers
11 consistently absorb lower ingredient prices for
12 increased profits rather than passing any savings
13 along to consumers.

14 I know that yesterday you heard from two
15 consumer groups on the subject, and I hope you will
16 keep this lack of pass-through fact in mind when they
17 argue that lower producer prices for sugar in this
18 country would benefit consumers. The benefit would be
19 absorbed instead by the grocers and food
20 manufacturers, as history has shown.

21 In conclusion, the sugar industry believes
22 that these linked issues of trade distorting

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1 government policies and pervasive dumping can only be
2 effectively addressed in multilateral WTO
3 negotiations. The sugar industry has urged the
4 administration to focus its efforts on comprehensive
5 center-specific negotiations within the forum.
6 Attempts to eliminate tariffs on sugar within the
7 various FTA negotiations would jeopardize the survival
8 of the U.S. sugar industry and would jeopardize our
9 ability to reduce foreign subsidies in the WTO
10 context.

11 The U.S. sugar industry advocates a much
12 sounder course of action in which FTA partners join
13 together with the U.S. and center-specific WTO
14 negotiations that aggressively attack and eliminate
15 the government policies that so grossly distort world
16 trade in sugar. Thank you.

17 MR. EISS: Thank you, Mr. Roney. We'll
18 turn for our first question to Mary Lattimer from
19 USTR.

20 MS. LATTIMER: Thanks for your testimony
21 and for the submissions, including the excerpt from
22 the LMC document. I thought that was extremely

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1 helpful, the details on Colombian's policies.

2 I wanted to ask a follow-up question on
3 that. You talked both in your written testimony, you
4 referenced in your oral testimony, and this LMC
5 document talks a lot about Colombia's policies that
6 result in sugar prices that are elevated. And I
7 wonder if you could treat that topic a little bit more
8 for us. And also, talk if you can today about the
9 sorts of policies that the other Andean nations have
10 that accomplish the same goal.

11 I noted -- you don't have to say too much
12 more about the price bans because I think we
13 understand those fully, but I noted the section, for
14 example, on this sugar price tablization fund, which
15 seems to be funded from their domestic producers, but
16 administered by their Department of Agriculture, if I
17 read the submission correctly.

18 And I also noted the reference to export
19 subsidies, and the fact that Colombia has found the
20 right to use them in the WTO but isn't using them.
21 There was no reference to whether or not the other
22 Andeans have bound the right to use them. And I was

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1 interested in hearing a little bit more about that, if
2 you've got that information today.

3 MR. RONEY: I'd like Don Phillips to take
4 that.

5 MR. PHILLIPS: Yes. Mary, first of all,
6 in the other Andean countries we don't have the kind
7 of specific information there. You know, the study is
8 focused on Colombia as being a major exporter. Most
9 of the others are much less important, but we do have
10 -- or let's put it this way, our understanding is that
11 they all have price ban systems. I think probably
12 they don't need to have as elaborate a system as
13 Colombia because they don't export as much.

14 I think in terms of Colombia, and again,
15 I'm not aware that they have a bound export subsidy
16 provision. But again, they don't export nearly as
17 much as Colombia, but that's something we could check
18 into.

19 In terms of Colombia, again as we
20 understand it, their program operates basically in a
21 way to force the domestic industry to export or to
22 limit the amount that they will sell in the domestic

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1 market because the domestic market is much more
2 profitable. This is not an uncommon arrangement, I
3 think, amongst sugar exporting countries. Many of
4 them have some sort of mechanism that ensures that a
5 certain percentage is exported, and a certain amount
6 is limited to the domestic market. That's been the
7 case with Mexico. I think there are probably informal
8 arrangements in countries like Guatemala. But again,
9 we're not being particularly critical of Colombia on
10 this regard. The fact is that just about nobody sells
11 -- can make money on the world market at the prices
12 that they have right now, so they have to have some
13 sort of way of sort of factoring it out through high
14 domestic price, through direct export subsidies, such
15 as the EU does, or through other mechanisms. And
16 again, our view is we need to try to deal with this in
17 the WTO where we can deal with all these programs, and
18 hopefully restore some sanity to the world sugar
19 market, and some rationality to it.

20 MR. RONEY: If I could just emphasize the
21 world dump market price for sugar for the last year or
22 two has been only about six or seven cents per pound.

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1 That's barely a third of the world average cost of
2 producing sugar, so every country in the world must
3 intervene in its sugar market if it's to maintain any
4 production whatsoever. And whole sale sugar prices,
5 and domestically in these countries virtually without
6 exception are at least double the world dump market
7 price. Otherwise, those industries could not survive.
8 So that's why we emphasize that there are so many
9 programs, so many distortions around the world that if
10 we're to get genuine reform of the world's sugar
11 market, it's gone to be globally. It's a global
12 problem, address it globally in the WTO in a
13 comprehensive sector-specific manner that would get at
14 not just the three traditional pillars of WTO
15 intervention, but indirect subsidies, as well.

16 MS. LATTIMER: I just wanted to ask one
17 follow-up question. Would you say, sir, the
18 combination of measures that are described in this LMC
19 document about Colombia function as an export subsidy?
20 I mean, a system that forces people to export a
21 certain amount in order to keep the domestic price
22 high?

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1 MR. PHILLIPS: I don't know. I think that
2 would be a legal judgment which I don't think I want
3 to make on the spot. Well, I'll say it is, but then
4 I won't press a case right now.

5 MS. LATTIMER: Okay.

6 MR. RONEY: If I could offer a variation
7 on that answer; I think that what the WTO fails to
8 take into account are what we would call indirect
9 export subsidies. There are strict rules on what
10 constitutes an export subsidy, and I think Mr.
11 Phillips is right, that it would be hard to fit what
12 Colombia does under that strict rule. And that's the
13 problem because Mexico is another example of a country
14 that demands of its producers that they export X
15 amount each year onto the world market to maintain a
16 high domestic price for most of what they sell, so
17 that's not a direct export subsidy. It doesn't
18 qualify under strict WTO rules as an export subsidy,
19 but it certainly functions as one. And that again
20 reinforces the need to get at indirect or non-
21 transparent subsidies through WTO context, as well as
22 the more direct ones. And FTAs, such as the Andean

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1 Pact, U.S.-Andean FTA would not go anywhere near those
2 kinds of programs.

3 MR. PHILLIPS: Mary, just to make an
4 additional comment on that. As you know, there was
5 this finding against Canadian Dairy Program, and I
6 think some people feel that there was very broad
7 interpretation made there, and some people feel that
8 could result in a lot of programs being classified
9 basically as export subsidy programs, but I think it's
10 really unclear how broadly that can be applied in WTO.

11 MS. LATTIMER: Okay. Thank you.

12 MR. EISS: Mr. Mireles.

13 MR. MIRELES: Yes, good morning. IN your
14 written submission, you assert that a large portion of
15 the export availability of U.S. imports applying
16 countries would be shifted to the United States as a
17 result of any traffic rate quota expansion or tariff
18 elimination, but are there other constraints to the
19 ability of the Andean countries to expand exports to
20 the U.S. market?

21 MR. RONEY: The total amount of exports at
22 1.3 million tons is a sufficient amount to cause us

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1 enormous concern, even without expanding production,
2 expanding exports at all. In a situation where we
3 would have tariff elimination, which is what the U.S.
4 position going into these FTAs has been, we can't find
5 any reason that the Andean countries would direct the
6 1.3 million tons of available exports now anywhere but
7 to the U.S. market given the premium that exists
8 between the world dump market price and the U.S.
9 price. One point three million tons of additional
10 sugar would swamp our market, and to be concerned
11 about whether the Andeans might further expand their
12 exports is really less important than addressing just
13 the effect of the amount that they already have
14 available to export to us. But I wouldn't see any
15 constraint on their expanding production or exports if
16 the opportunity was there.

17 MR. MIRELES: So production limitations
18 would not be an issue, supplier relationships with
19 other countries would not --

20 MR. RONEY: Mr. Mireles, there is a view
21 that some critics of the U.S. sugar policy raise, that
22 given long-term commitments to supply sugar to other

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1 countries, the countries would be inclined not to
2 supply to the U.S. But given that all their other
3 markets presumably are at the world dump market price
4 of six or seven cents per pound, I should think that
5 that would be a powerful inducement to give up those
6 long-term relationships, or perhaps fill them with
7 their country sugar, and export all of their available
8 exports to the U.S. market. A price premium that
9 large, I think is a powerful inducement.

10 MR. EISS: Okay. Mr. Roney, Mr. Phillips,
11 thank you very much. Our next witnesses will be Susan
12 Brauner and Julian Heron, representing Blue Diamond
13 Growers.

14 MR. HERON: Good morning, Mr. Chairman and
15 Members of the Committee. My name is Julian Heron.
16 Ms. Brauner was not able to travel from California to
17 be here.

18 Before testifying on this particular FTA,
19 let me just thank you on behalf of Blue Diamond for
20 the interagency committee's support for Blue Diamond
21 in resolving the Indian problem that sprung up a
22 couple of weeks ago. We appreciate Ambassador

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1 Zoellick's raising it when he was in New Delhi, and
2 Secretary Powell, and Under Secretary Larson, and FAS,
3 and APHIS dispatching the team there immediately.
4 Just shows how industry and government cooperating
5 together can solve problems rapidly, and so I wanted
6 to publicly thank everybody involved with that.

7 MR. EISS: We will be sure that's passed
8 along.

9 MR. HERON: Thank you. Blue Diamond
10 Growers, as this committee knows from the numerous
11 times we've testified before you as a non-profit
12 farmer-owned marketing cooperative, it markets almonds
13 for its members. The almonds are grown exclusively in
14 California, and is the largest tree crop in the state.
15 Almonds are the number one agricultural export from
16 California, and rank in the top three consumer food
17 items exported from the United States.

18 The majority of the almonds grown in
19 California are exported. Normally, it's about 70
20 percent of the crop which continues to expand in order
21 to meet world demand. Blue Diamond is the largest
22 processor and marketer of almonds in the world. It

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1 started its operations in 1910, and is headquartered
2 in Sacramento, California.

3 The supply of almonds that are exported by
4 Blue Diamond comes exclusively from its farmer members
5 that own the cooperative. Our testimony is set forth
6 in the prepared statement, covers in-shell, shelled,
7 and prepared, and preserved almonds. It's our hope
8 and our request that the tariff on all of these almond
9 categories be immediately removed as you negotiate the
10 free trade agreement with the Andean countries, and
11 that will bring it in line with the great success that
12 you've had in North America, Central America, and
13 South America so far. And it's certainly consistent
14 with our goal of obtaining duty-free access worldwide
15 for almonds. With that, I'll be happy to answer any
16 questions anybody has.

17 MR. EISS: Thank you, Mr. Heron. Ms.
18 Lattimer.

19 MS. LATTIMER: Yes. Thank you for your
20 testimony. I wanted to just ask a question about some
21 of the numbers. In your written testimony, you give
22 us numbers to show what's happening to the trade in

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1 recent years, '98 through 2002 for the various
2 products. And it looks to me as though for the Andean
3 countries as group, I'm looking at page 4 now, in
4 value terms and volume terms, our exports have gone
5 down over this period. Same is true for these
6 shelled-almonds in the case of Colombia, and for
7 Ecuador it looks like in-shell almonds have gone down
8 for the most part, pretty precipitously I would say.
9 And I wondered can you give us an explanation as to
10 what's going on there?

11 And secondly, the tariffs obviously you've
12 addressed are an issue here. But are there non-
13 tariffed areas like the kinds of things that we faced
14 in India, that might --

15 MR. HERON: No one even comes up to
16 India's standard. They're in a class all by their
17 own. But we really don't have any problem. Part of
18 it is the demand worldwide has increased so fast that
19 we've had to supply everybody, or try to. And partly,
20 with the possible exception of Colombia, our belief is
21 that a lot of the almonds going to the other three
22 countries are transshipped so they don't really show

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1 up as coming from the U.S.

2 We think there's some of that in Colombia,
3 as well, but Colombia is a little bigger market, and
4 the figures for 2003, of course, show a large increase
5 for the shelled almonds. And we think these markets
6 are going to continue to grow.

7 MS. LATTIMER: Okay.

8 MR. MIRELES: You mentioned that you
9 believe the markets will continue to grow. Just two
10 questions. One, is the industry currently facing any
11 competition from other sources? And two, what do you
12 believe is the potential of the market as a whole, the
13 entire region?

14 MR. HERON: When you say "the region", you
15 mean the Andean countries?

16 MR. MIRELES: Right.

17 MR. HERON: Okay. Well, there's always
18 competition. There are a few almonds grown in Chile,
19 but basically, the only two significant almond
20 producers is California and Spain, and Spain is
21 currently the second biggest customer of California,
22 because their production is going down. The Spanish

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1 have found its more profitable to buy California
2 almonds, put a Spanish label on them and sell them
3 that way. And that's fine with us, because we're
4 increased in exports.

5 So we think the markets that are going to
6 continue to grow, and as the income there rises, our
7 estimate is that within the next five years, assuming
8 duty-free access on all products, it should be up in
9 the neighborhood of at least two to three million
10 dollars. Sometimes markets take off faster, but
11 that's a conservative estimate.

12 MR. MIRELES: Okay. Thank you.

13 MR. EISS: Okay. Mr. Heron, thank you
14 very much for your time. The next witness is Shawana
15 Morris, Trade Policy Coordinator of the National Milk
16 Producers Federation.

17 MS. MORRIS: Good morning. My name is
18 Shawana Morris, and I'm with the National Milk
19 Producers Federation. NMPF is the national farm
20 commodity organization that represents dairy farmers
21 and the dairy cooperative market associations they own
22 and operate throughout the United States. The U.S. is

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1 one of the world's largest and most attractive markets
2 for the sale of milk and dairy products. We import
3 approximately 4 percent of our domestic consumption of
4 these products when measured on a milk-equivalent
5 basis, the majority of which are subject to tariff
6 rate quotas.

7 While the value of dairy imports is far
8 greater than the value of dairy exports, use exports
9 were measured on a milk-equivalent basis, actually
10 slightly exceed the quantity of imports, and total
11 approximately 5 percent of U.S. production.

12 The U.S. dairy industry stands poised to
13 benefit notably from an FTA that provides preferential
14 access to the Andean countries. Peru, Bolivia and
15 Ecuador are not importers of dairy products, as has
16 been Colombia for much of its past. Their trade
17 deficits reflect not only the weakness of the Andean
18 countries' exporting sector, but also fundamental
19 shortfall in their ability for domestic production to
20 satisfy consumption demand.

21 Although Colombian exports have increased
22 in 2001 and 2002, its market suffers from

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1 inefficiency. Its current increases in exports are
2 due largely to its greatest increased ability since
3 2001 to export significant amounts of product to
4 Venezuela, coupled with its protective price bans.
5 Given additional market access and favorable tariff
6 levels, the U.S. dairy industry would expect to be
7 able to increase its sales to Colombia given the
8 demand for dairy product in that market, and the
9 relative capabilities of the U.S. dairy industry as
10 compared to Colombia.

11 Since consumption of protein rich foods,
12 such as dairy products, is on the rise in the Andean
13 countries, the U.S. would do well to position itself
14 to become a primary source of quality dairy products
15 to these countries. While tariffs on many products
16 are currently too high to encourage this, the FTA
17 would allow the U.S. to become a lower cost supplier,
18 which would benefit U.S. producers and processors, as
19 well as consumers in these countries.

20 Tariffs on dairy products in the Andean
21 countries are typically 15 to 25 percent, but have
22 ranged as high as 76 percent in January of 2003, in

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1 the case of Colombia's variable tariff regulations.
2 These tariffs, particularly those that are variable,
3 serve as strong impediments to accessing these
4 markets.

5 If market access conditions improve, U.S.
6 exporters would see opportunities for additional skim
7 milk powder sales, particularly considering Peru's
8 position as one of the world's leading milk powder
9 importers. Promising prospects also exist for U.S.
10 exports of butter and cheese, particularly to Peru,
11 and of whey, particularly to Colombia.

12 Increases in U.S. exports would likely not
13 be a windfall for the U.S. dairy industry, but an FTA
14 would open up key avenues for new growth.

15 On the domestic front, the Andean
16 countries total exports of many dairy products are
17 small when compared with U.S. imports of the same
18 products. In fact, total dairy exports from the
19 Andean countries to the U.S. totaled less than
20 \$200,000 in 2001. The vast majority of their exports
21 go to other South American countries.

22 The most significant export product of

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1 three of the countries is a product which is not
2 widely produced in the United States, whole milk
3 powder. In the other instance, Peru's case, the
4 largest export product is evaporated and condensed
5 milk, but less than 1 percent of either products'
6 export sales from the Andean countries were made to
7 the U.S. in 2001.

8 Even with the benefits of an FTA, these
9 countries are unlikely to begin exporting large
10 quantities of dairy products to the U.S., since this
11 would mean diverting limited product from their
12 primary markets in South and Central America.
13 Therefore, an FTA with the Andean countries is not
14 likely to have a significant economic impact on the
15 U.S., especially not on the economy as a whole, as
16 long as liberalized access to the U.S. dairy market
17 provided by the FTA is restricted to dairy products
18 produced from milk and dairy ingredients that truly
19 originate in those countries.

20 The U.S. dairy industry sees an FTA with
21 this net dairy importing region as offering the
22 possibility of many positive prospects for our

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1 products. We look forward to working with the
2 administration to ensure that the terms of the
3 agreement contain the necessary provisions to make
4 this hope a reality. Thank you for the opportunity to
5 comment.

6 MR. HARMAN: Thank you very much. I think
7 our first question will be posed by Mary Lattimer.

8 MS. LATTIMER: Thanks for your testimony.
9 Noted sort of your priority list, if you will, skim
10 milk, butter, cheese and whey, products in which we
11 see the most export opportunity, and the list of what
12 they produce, the big things they produce, whole milk
13 powder and evaporated and condensed milk. So my
14 question is this, they're a net importing region.
15 Where are they likely to be the most sensitive on the
16 things on our list?

17 MS. MORRIS: In terms of what we like to
18 export to them, you mean?

19 MS. LATTIMER: Yes.

20 MS. MORRIS: Colombia would be sensitive
21 because they seem to be trying to position themselves
22 to export more products, so even on the milk powder it

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1 would tend to be more sensitive. In general though,
2 it would be more of the processed products, like
3 finalized cheeses.

4 MS. LATTIMER: And is Colombia our biggest
5 competition in the region country-wise?

6 MS. MORRIS: Yes. They have the strongest
7 dairy market.

8 MR. HARMAN: Thank you very much. Our
9 next witness will be Matthew DeCarlo from the Peruvian
10 Asparagus Importers Association.

11 MR. DeCARLO: Thank you Committee Members
12 for the opportunity to speak here this morning. I am
13 the President of Altare Produce. We're the largest
14 producer of asparagus in Mexico. We farm over 3,000
15 acres, employing over 3,500 people in Mexico.

16 We're exporting at this time approximately
17 18 million pounds a year of asparagus to the North
18 American market. Presently, in addition to that,
19 we're importing asparagus from Peru in an effort to
20 compliment our Mexican production. We are, at this
21 point, in the process of considering a significant
22 investment in Peru in production of Peruvian

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1 asparagus.

2 For that reason, I'm here serving as the
3 Chairman of the Peruvian Asparagus Importers
4 Association in an effort to convey the importance of
5 Peruvian asparagus to the U.S. economy and to the U.S.
6 consumers. It is our hope that Peruvian asparagus
7 will be included in an FTA and continue as duty-free
8 status from this point forward.

9 The importation of Peruvian asparagus
10 provides crucial economic support and opportunity to
11 U.S. companies. It benefits a diverse group of
12 companies, including importers, transportation
13 companies, longshoremen, custom brokers, specialized
14 storage facilities, airlines, wholesalers, retailers,
15 and generates a substantial income for the Miami
16 Airport.

17 There are more than 35 U.S.-based
18 companies who are direct importers of this product, 27
19 which are members of our association, and employing
20 over 420 people directly in the U.S.

21 In 2003, more than 10.3 million 11-pound
22 cases were imported into the United States with an

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1 average sale price of \$16.50 per carton. Peruvian
2 asparagus represents nearly \$170 million in sales
3 annually to U.S. importers.

4 Furthermore, it is worthy of noting that
5 no less than 45 percent of this money stays within the
6 U.S. in the form of airfreights, ground
7 transportations, handling, and importation costs, not
8 to mention government agencies.

9 Additionally, the availability of Peruvian
10 asparagus during the time of year when U.S. production
11 is not available has resulted in a benefit to the
12 overall consumption of asparagus and to the U.S.
13 consumer. According to the last report to Congress by
14 the General Accounting Office, the extent of product
15 availability through most of the year due to Peruvian
16 exports has been responsible for a rise in the per
17 capita consumption of fresh asparagus in the U.S.
18 This has benefitted the entire asparagus industry,
19 domestic as well as imported, resulting in lower
20 prices for consumers and increased demand for
21 domestic, as well as imported asparagus.

22 It was concluded in the GAO report of

1 March, 2001 impacts of the Andean Trade Preference Act
2 on asparagus producers and consumers that American
3 consumers benefitted from the increased availability
4 of fresh asparagus on a year-round basis.
5 Furthermore, and I quote from this report:

6 "Consumers would likely face decreased
7 availability and pay higher prices in context of the
8 possibility of duties being applied to Peruvian
9 asparagus."

10 The U.S. has had a long history of
11 supporting and encouraging business that leads to
12 social and political stability and a decreased risk of
13 drug activity in key Latin American countries. The
14 success of asparagus in Peru has contributed not only
15 to war against drugs, but also provides stability in
16 a countryside which may now be linked to our even more
17 pressing war on terror.

18 Asparagus is the most important
19 agricultural export in Peru. It is a value-added and
20 labor-intensive crop. In recent years, asparagus
21 production has increased its demand for labor in Peru.

22 Annually, the industry employs over 50,000

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1 workers in the different production areas. From this
2 number, an estimated 30,000 jobs are for women which
3 contribute with an extra salary for low income
4 families in the area, and most significantly, around
5 40 percent of all workers in the asparagus industry
6 come from the mountain areas of Peru that are close to
7 where coco leaves originate. Therefore, these workers
8 from the mountain areas have found alternative and
9 legal employment in the asparagus industry.

10 The social impact of the jobs generated by
11 the asparagus industry is very important. Non-skilled
12 unemployed workers in the Peruvian mountains are
13 basically the population used to seek employment in
14 illegal coco production areas. The asparagus industry
15 offers again a legal alternative to those workers.

16 The free trade agreement will contribute
17 to a goal of promoting broad-based economic
18 development in Andean countries, and be essential in
19 the war against drugs and battle against terrorism.
20 The asparagus industry in Peru is an example of how
21 successful this policy can be.

22 Peru as a country is committed to winning

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1 the war on drugs. The Peruvian government has
2 demonstrated significant success in this effort,
3 reducing illicit coca crops from 115,000 hectares in
4 1995, to approximately 28,000 hectares in 2003. The
5 only way Peru will be able to continue the move in the
6 right direction is by offering alternative forms of
7 development and employment.

8 Peruvian's fresh asparagus exports
9 compliment the U.S. market, and do not compete against
10 U.S. domestic producers. Fresh asparagus exports to
11 the U.S. are principally in the second half of the
12 year, 82 percent of Peru's fresh asparagus exports
13 were between the months of July and December, 10
14 percent between January and March, and only 8 percent
15 between April and June, the U.S. domestic production
16 season.

17 While Peru does have a lower cost of labor
18 in comparison to U.S. growers, Peruvian products must
19 be transported to the U.S. and pay very high freight
20 costs in doing so. The airfreight cost for an 11
21 pound box of asparagus represents between 40 and 45
22 percent of the overall cost of production.

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1 Conclusion - we feel these are strong
2 reasons for supporting the inclusion of Peruvian
3 asparagus in an FTA and continuing to build on the
4 successes of American companies that have invested in
5 Peru, and in the U.S. Support of an FTA with Peru and
6 inclusion of asparagus in the FTA will further
7 strengthen U.S. business, U.S. economy, and our goals
8 in the wars on drugs and terrorism. Thank you.

9 MR. MIRELES: Thank you for your
10 testimony. Note that you mentioned that imported
11 Peruvian asparagus compliments the U.S. production
12 rather than competes directly with it, but you also
13 note that there is an expansion of domestic
14 consumption. So if we assume that domestic
15 consumption continues to increase and perhaps there
16 would be no increase in domestic supply, then can we
17 expect that imported Peruvian asparagus will compete
18 more directly with the domestically produced product?

19 MR. DeCARLO: At this point there is, like
20 I said, a small overlap, approximately 8 percent
21 during the domestic season. The pricing --
22 ironically, American producers can deliver asparagus

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1 to the U.S. market far cheaper than Peruvians can, and
2 the prices at which they sell during their domestic
3 season are not economically viable for the importation
4 of Peruvian asparagus. The small amount that does
5 come during those time periods is usually sold and
6 distributed within the southeastern market, which is
7 in close proximity to the entry point.

8 MS. HOLMAN: The State Department would
9 like to ask a question. Good morning. Could you
10 comment briefly on what kind of labor conditions are
11 present in the industry? I understand from your
12 testimony that it employs over 50,000 people, of which
13 a large portion of them are women.

14 MR. DeCARLO: That's correct. The labor
15 conditions are probably clearly not as good as they
16 are here in the U.S., but there are a number of
17 different requirements that are industry-induced
18 requirements. Eurogap is one which I'm not sure how
19 familiar you are with those, but also here U.S.-based
20 retailers, the major retailers, Safeway, Albertson's,
21 Kroger, et cetera, are putting social requirements on
22 producers. And as such, there are certain conditions

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1 or minimal conditions which must be met to comply with
2 their requirements. If we do not comply with those
3 requirements, then we would be unable to sell either
4 the European community or many of those major
5 retailers, so I feel very comfortable.

6 Although like we heard in testimony from
7 the gentleman from KaBloom yesterday, we do have close
8 proximity to population centers, so we don't
9 necessarily build schools or do those kind of things
10 in the industry, but we do provide the employment.

11 MR. HOLMAN: Thank you.

12 MS. LATTIMER: A quick one. On all of
13 Peruvian asparagus that we're getting, is it intended
14 only for fresh market sales, or is some of the stuff
15 getting processed?

16 MR. DeCARLO: No. There is a small
17 percentage, and I don't believe that the volume of
18 import of frozen and processed exceeds even \$4 million
19 annually. The vast majority of asparagus intended for
20 the North American market is fresh, well over 90
21 percent.

22 MS. LATTIMER: Okay. And also you

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1 mentioned in your written testimony here, the
2 Bioterrorism Act and the extra cost that the Peruvians
3 accrue as a result. Is that in effect now? Are they
4 paying this extra --

5 MR. DeCARLO: That's in effect currently.

6 MS. LATTIMER: Has the price of the
7 imported product changed since the implementation of
8 the act?

9 MR. DeCARLO: In all actuality, the price
10 of asparagus to the consumer is a function of supply
11 and demand. At this point, it's kind of held even.
12 There has actually been in the GAO report slight
13 increases in price over the course of the last five
14 years, and that's nothing more than a fact of as more
15 asparagus has been available on a year-round basis,
16 consumer preferences are leaning towards that and
17 actually increase demand in excess of what the
18 increase in supply has been, resulting in slightly
19 higher prices. Which again, would benefit American
20 producers.

21 MS. LATTIMER: Okay. Thanks.

22 MR. EISS: Thank you very much.

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1 MS. SURO-BREDIE: Our next witness, Mr.
2 Peter Mangione, President Footwear Distributors and
3 Retailers of America. Good morning.

4 MR. MANGIONE: Good morning. I appear
5 this morning on behalf of the members of the Footwear
6 Distributors and Retailers of America, which accounts
7 for about three-quarters of all footwear sold at
8 retail in the United States. Our members include the
9 major footwear chain retailers, such as Wal-Mart,
10 Payless Shoe Source, Foot Locker, et cetera, as well
11 as leading brands, such as Nike, Stride-Rite, Nine
12 West, and many others.

13 We advocate the elimination of all duties
14 on all footwear without phaseout on the first day of
15 the implementation of a U.S.-Andean Countries free
16 trade agreement. Eliminating duties on footwear
17 imports into the U.S. will not harm the tiny U.S. shoe
18 manufacturing industry and will help consumers.

19 Imported footwear today is so much lower
20 priced and comparable to domestically produced
21 footwear that it is impossible for locally made
22 product to compete with imports on price.

1 Accordingly, elimination of the tariffs will have no
2 impact on current competitive relationships.

3 We note that the previous elimination of
4 most tariffs under NAFTA, CBI and AGOA has resulted in
5 modest or no increase in shoe imports from those
6 entities. For 2002, import penetration for all
7 footwear was 98 percent. What little remaining U.S.
8 shoe production there is does not compete with imports
9 on price, but rather differentiates its products on
10 the basis of specialized types of footwear, such as
11 size and width and so forth for quality or exclusive
12 channels of distribution, of course, especially
13 brands.

14 Notwithstanding the absence of U.S. shoe
15 manufacturing, consumers pay a huge price for the
16 protection in place. During 2002, some \$1.6 billion
17 was collected in duties on shoes, a total surpassed
18 only by textiles, electronics and autos. Applying the
19 usual Keystone retail markup, consumers paid something
20 like \$3.2 billion as tariff cost.

21 In the case of high duty rubber footwear,
22 which includes the RPMFA's 17 items, and where there

1 are some 1,600 workers in the U.S., consumer cost of
2 retail was more than \$600,000 per job.

3 The four nations proposed for inclusion in
4 the U.S.-Andean Countries free trade agreement,
5 Colombia, Peru, Ecuador and Bolivia, have in the
6 aggregate small local footwear manufacturing
7 industries which lack the capacity to impact the U.S.
8 footwear market in any meaningful way.

9 Moreover, these four countries have
10 enjoyed duty-free access to the U.S. market for many
11 years under the Andean Trade Preference Act and its
12 most recent incarnation, the Andean Trade Promotion
13 and Drug Interdiction Act enacted in August, 2002.

14 Notwithstanding the zero duty access to
15 the U.S. market for many years, the countries have de
16 minimus sales in the U.S. Prior to the enactment of
17 the ATPDEA, the four countries were subject to NAFTA
18 Rules of Origin in order to qualify for the
19 preference. Under these rules, 55 percent of the
20 value of the product must be added in the preference
21 country and imported uppers were excluded.

22 Under the ATPDEA, the footwear rule of

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1 origin is liberalized except for the RPMFA 17 items,
2 and now follows the GSP rule under which only 35
3 percent of the value need be added in the preference.
4 They're in the beneficiary country and there is no
5 exclusion of imported uppers.

6 Notwithstanding this liberalization, trade
7 from the four countries barely increased in 2003, and
8 there was virtually no imports whatsoever from the
9 countries in the RPMFA 17 items. Thus, the experience
10 to date strongly suggests that imports from the four
11 countries will not increase with an FTA preference,
12 but we believe the FTA should include footwear so as
13 to afford these countries the permanent opportunity to
14 participate in the U.S. market.

15 To make an FTA with the Andean countries
16 effective in the footwear sector, a liberal rule of
17 origin is essential. We support a simple tariffed
18 shift. The NAFTA rule for shoes as noted, the 55
19 local content and the requirement that the upper be
20 stitched in the territory is unworkable, shutting out
21 access to essentially globally traded inputs,
22 particularly uppers at competitive prices. The NAFTA

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1 rules have greatly retarded shoe production under
2 NAFTA, and in the NAFTA parody jurisdictions like the
3 Andean Countries. We urge the abandonment of the
4 NAFTA rules for all FTAs.

5 In sum, we urge that all footwear be
6 included in the negotiation with the Andean countries
7 and that the duties on all footwear under the
8 agreement be eliminated entirely on the first day of
9 implementation. Thank you.

10 MS. SURO-BREDIE: Thank you. First
11 question by USTR.

12 MR. HARMAN: Good morning. Thank you for
13 your testimony, Peter. Could you give us a sense that
14 -- you indicated that there's not significant imports
15 from the region, but does your association,
16 nevertheless, see the opportunities coming from the
17 agreement? How would you see trade patterns affected
18 by an FTA with this region? Thank you.

19 MR. MANGIONE: Well, as I noted, we
20 already enjoy zero duties under the statutory
21 programs. And the most recent incarnation has GSP
22 rules, so the main issue really is the rules of

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1 origin, because we've had the zero duties essentially
2 for a long time.

3 The GSP rules were added in the last go-
4 around with the hope that there would be some imported
5 uppers involved with the industry there. It's taken
6 hold somewhat. I know of one program that's using it,
7 but the problem you have, of course, and if you're
8 familiar with the shoe industry, 84 percent of all
9 footwear sold to the United States is made in China,
10 so that when you're talking about Andean countries or
11 virtually any of the other free trade countries we're
12 dealing with, the competition isn't U.S. producers,
13 it's China where the costs are much lower. And not
14 only the costs are much lower, but the economies of
15 scale are radically different.

16 In China, you have something on the
17 magnitude of two to three hundred factories that can
18 produce 20,000 pair of shoes a day - 20,000 pair a
19 day. In all of the Andean countries, there is no
20 factory that can make 20,000 pair of shoes a day.
21 There's not one. In fact, in all of South America, I
22 think there's only four or five, so the economies of

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1 scale are extremely important for penetrating the U.S.
2 market, and we really don't have it there in the
3 Andean countries. So if they're going to participate
4 in the U.S. market it will be niche products where
5 they have some opportunities in some niche products.
6 There are a couple of programs I'm familiar with, a
7 couple of longstanding programs which have been helped
8 by the GSP rule. And a tariff shift would help even
9 more.

10 Well, a tariff shift, of course - and the
11 main advantage of a tariff shift, of course, would be
12 the administrative problems would be largely
13 eliminated. We wouldn't have to deal with all of the
14 documentation and so forth. So yes, I think there's
15 a chance that the Andean countries could play some
16 role, particularly Colombia, which is the one country
17 that has a sizeable shoe -- it's the largest country
18 in the group by far, and they have somewhat of a shoe
19 industry, an infrastructure, one company that does
20 have a decent infrastructure. But without this, you
21 know, without permanent zero duties and without a very
22 liberal rule of origin, it's going to be extremely

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1 difficult for them to participate.

2 MS. SURO-BREDIE: Can I just ask a
3 clarifying question?

4 MR. MANGIONE: Sure.

5 Ms. SURO-BREDIE: Was the fact that you
6 stated 84 percent of all footwear, it's not just
7 rubber footwear. All footwear?

8 MR. MANGIONE: All footwear, yes.

9 MS. SURO-BREDIE: Thank you.

10 MR. MANGIONE: You're welcome.

11 MS. SURO-BREDIE: Commerce Department I
12 think wants --

13 MR. GAISFORD: Yes. Let me just add one
14 more question. Looking at the domestic rubber
15 footwear industry here in the U.S., what do you think
16 the impact would be if we were to have tariffs reduced
17 to zero, and you would have a more liberal import
18 regime?

19 MR. MANGIONE: Well, my comments are
20 identical, frankly. The rubber footwear industry is
21 no different than any other part of the shoe industry.
22 The duties are higher, of course, but otherwise it's

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1 the same. The import penetration is extremely high.
2 It's almost all China.

3 It's crystal clear, if you look at our
4 brief, that goods from China even after application of
5 these astronomical duties, some up to 67 percent at
6 the LARM equivalent. Even after application of these
7 duties, rubber footwear made in China enters the U.S.
8 at something on the magnitude of 50 to 60 percent
9 lower priced than the domestic item after application
10 of the duties. So I think if you eliminated the
11 duties you wouldn't change the price competitive
12 relationships. They're already so incredibly
13 favorable on the import side.

14 As for the Andeans, they don't really have
15 any particular infrastructure in the rubber footwear
16 industry. And making rubber footwear is not much
17 different than making non-rubber footwear. It's all
18 pretty much so the same, so I mean their impact would
19 be negligible, frankly. So it's much ado about
20 nothing over the 17 items here in this particular free
21 trade agreement. When we come back in a few weeks and
22 talk about Thailand it might be a little different.

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1 MS. SURO-BREDIE: I have one question.

2 MR. MANGIONE: Yes, ma'am.

3 MS. SURO-BREDIE: What is the total market
4 for footwear in the United States? Do you have that
5 figure?

6 MR. MANGIONE: Yes, I do. In units in
7 2002, and the last data we have is 2002 because that's
8 the last data we have for U.S. production. It's done
9 by a survey and it's not done for 2003 yet, so U.S.
10 total market was 1.9 billion pair, and at wholesale it
11 was \$16.3 billion. And retail was probably around
12 \$45 billion. And on a units basis China, as I said,
13 has about 82, 83, 84 percent, something like that.

14 MS. SURO-BREDIE: Thank you.

15 MR. MANGIONE: You're welcome.

16 MS. SURO-BREDIE: Do we have more
17 questions? Thank you very much.

18 MR. MANGIONE: You're welcome.

19 MS. SURO-BREDIE: our next witness is
20 Richard Kaplan, President, and Charles Dusseau,
21 Director of Telinfor. Welcome.

22 MR. DUSSEAU: Good morning, Madam Chair,

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1 Members of the Committee. Thank you for this
2 opportunity to be with you. I'm Charles Dusseau and
3 with me, as I stated, are Richard Kaplan, my partner
4 and President of Telinfor. I will try to be very
5 brief.

6 I know some of you are very familiar with
7 the situation of Telinfor. Others of you perhaps are
8 not. Let me first state that our issue here is not
9 the dispute between Telinfor and Telefonica. There
10 should be some place where that dispute should be
11 resolved. Our issue is with the Dispute Resolution
12 System in Peru and how it just doesn't work, and how
13 over the last four years we've been subject to a
14 travesty of justice in a system that we were told that
15 under the rules of the game is supposed to take 90
16 days.

17 Second, let me also state that we're very
18 hopeful of an expanded economic relationship between
19 the U.S. and Peru that is most sustainable and that
20 benefits both the U.S. and all Peruvians. However,
21 sustainable economic development can only occur in a
22 market environment where there are clear rules and

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1 regulations, and there is, as U.S. Trade Represent
2 Robert Zoellick stated, "Transparency in how those
3 rules and regulations are enforced."

4 Our lamentable experience in Peru with the
5 arbitration system, which was noted in the most recent
6 commercial service country report for Peru is a
7 deterrent to economic development that cannot be
8 overcome by any number of trade or investment
9 agreements.

10 The documented abuses that the government
11 created and sanctioned, arbitration system, operated
12 as the Lima Chamber of Commerce, cries out for reform
13 for the benefit of all Peruvians, as well as any
14 investors from outside.

15 As President Bush stated in his March 22nd
16 address in Monterrey, Mexico, "We must tie greater aid
17 to political, legal and economic reforms." Now while
18 the actual details of the dispute between Telefonica
19 and Telinfor are not really central to this testimony,
20 I want to give a little background for those of you
21 who are not very familiar with this.

22 Back in 1997, Telinfor was founded with

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1 the objective of creating an interactive link with
2 television game show viewers utilizing a 900 pay for
3 call kind of technology. A similar plan had been
4 implemented in Argentina, and had generated some 25
5 million calls a year, and obviously millions of
6 dollars in revenue.

7 A critical requirement in this whole
8 process is to have adequate high capacity telephone
9 service able to handle the volume that would be
10 created with peak kind of business that it is.

11 Telefonica, the local telephone service
12 monopoly assured us at Telinfor that the telephone
13 equipment and service capabilities that they were
14 providing at significant expense to us, would meet the
15 business high volume requirements. In fact, nothing
16 could have been further from the truth.

17 Our business was inaugurated and the
18 volume was a mere fraction of the projected numbers.
19 In fact, the concept had not failed at all. We were
20 subsequently informed that the problem had been caused
21 by inadequate telephone service capabilities. And
22 several service audits that were conducted by

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1 independent parties highly respected, technical
2 consultants verified that Telefonica had provided
3 inadequate telephone service capabilities despite
4 their assurances to the contrary.

5 It's at that point that the Lima Chamber
6 of Commerce's arbitration center becomes involved.
7 Telefonica, even though we confronted them with these
8 facts, refused to redress the situation in any
9 fashion, and so under the contract we had with them,
10 we were forced to go to the Lima Chamber of Commerce.

11 In January of 2000, a three-member
12 arbitration panel was officially installed to hear the
13 case. The actual proven incidents of collusion and
14 conflicts of interest between and amongst the Lima
15 Chamber, the center, the arbitration center and
16 Telefonica are too extensive a detail here, but let me
17 give you a couple of highlights.

18 First, the center's rules require that a
19 determination of cases brought before it within 90
20 days. We've been at this now for over four years.
21 Second, the President of the Arbitration Center, Dr.
22 Avendano Valdez, who is one of the individuals, the

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1 President is one of the individuals responsible for
2 choosing arbitration judges and making other rulings
3 was actually in the employ of Telefonica and never
4 disclosed this conflict of interest. Dr. Avandano
5 Valdez remained as President in the employ of
6 Telefonica for two years, specifically handling our
7 case and submitting all of the documents on behalf of
8 Telefonica to the center.

9 Third, we filed a formal protest to this
10 instance, and the center ruled that it was not a
11 conflict. Third, we found out that Telefonica's
12 arbitrator was serving in four concurrent cases for
13 Telefonica, which is also contrary to the rules
14 without any declaration of this fact.

15 Fourth, this conflict of interest by
16 Telefonica and the recognition by Telefonica in
17 another arbitration case that the system they had sold
18 to Telinfor which failed with the projected call
19 volumes resulted in criminal indictment of several of
20 the top managers of Telefonica, which is still in
21 process today.

22 Fifth, since the original arbitration

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1 panel stepped down over two years ago, it has been
2 nearly impossible to put new arbitration judges in
3 place because no one seemed to want to get involved
4 with the case for apparent and less apparent reasons.

5 Finally, a second panel was seated. There
6 were again proven improprieties, and after we filed a
7 complaint asking that those improprieties be
8 rectified, all three members of the second panel again
9 resigned. A third panel has finally be named, and the
10 center is now demanding that Telinfor pay all of the
11 fees that the original panel were paid. They should
12 been repaid by the original panel and were not, and
13 they refused to do so. So we have to pay not only our
14 own fees, but we have to pay Telefonica's fees, as
15 well, because it's in their best interest that a
16 decision never be made, and if the fees aren't paid,
17 the case will never be heard.

18 At the same time, there's no guarantee if
19 we do pay the fees that the existing judges won't
20 resign again, and we'll have to pay new fees to a new
21 panel.

22 While all these actual facts are

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1 sufficient to demonstrate how Telefonica manipulated
2 the dispute resolution system at the expense of
3 Telinfor, the most troubling aspect is actually the
4 fact that the center and the Lima Chamber have
5 actually reinterpreted their rules to justify and
6 legalize previously inappropriate actions on their
7 part.

8 As a result of all this, U.S. Commercial
9 Services placed the following comment in the current
10 proving country court. "Several private
11 organizations, including the American Chamber of
12 Commerce and the Lima Chamber of Commerce, operate
13 private arbitration centers. The quality of these
14 centers varies, however, and thus, should choose a
15 venue for arbitration carefully. In one still ongoing
16 case dating from 2001 involving the Lima Chamber of
17 Commerce Arbitration Center, a U.S. investor
18 discovered irregularities in the way the case has been
19 handled at the center."

20 Hopefully, the Telinfor experience, if
21 people will read the country report, will cause other
22 foreign investors to avoid local arbitration courts

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1 and write in an international arbitration clause in
2 future contracts.

3 While the Toledo Administration has turned
4 a blind eye to the need for reform in the arbitration
5 system, it cannot claim that it's doing so for the
6 lack of information. In February of 2002, the
7 Chairman of the Telephone, Television, and Cable
8 Investigative Subcommittee of the Peruvian Congress,
9 Congressman Jacques Rodich, held a news conference in
10 which he publicized the subcommittee's findings.

11 The subcommittee made various findings
12 concerning Telefonica's use of its monopoly power to
13 defraud Telinfor and drive it from the market. But
14 most importantly, the report states that through its
15 lawyers, Telefonica de Peru exercised undue influence
16 within the arbitration court of the National-
17 International Conciliation and Arbitration Center of
18 the Chamber of Commerce de Lima.

19 The most important issue before this
20 committee is that the Peruvian government is denying
21 its responsibility to take the one policy measure that
22 would be most effective to promote sustainable

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1 economic development in that country. And that is,
2 the creation of a transparent and accountable dispute
3 resolution system.

4 As U.S. Trade Representative Robert
5 Zoellick put it in his March 14th, 2002 address in
6 Santa Marta, Colombia:

7 "While states need markets to function,
8 markets cannot function without effective, legitimate,
9 and law abiding states. Governments must set and
10 enforce fair and clear rules of commerce whether this
11 relates to private property trade or accounting
12 standards. And there must be transparency in how
13 these rules and regulations are enforced."

14 In the case of Peru, the government is just not
15 setting and enforcing these fair and clear rules.

16 To conclude, I would just say that it's
17 clear that the U.S. government, although having some
18 very laudable goals with the new proposed trade
19 agreements, should not ignore major systemic
20 weaknesses that diminish international economic
21 development in an effort to achieve other laudable
22 policy objectives.

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1 Sustainable economic development and
2 significant decrease in the trade of illegal drugs
3 cannot be achieved on the back of institutionalized
4 corruption and a dysfunctional legal system. As the
5 above demonstrates, it is clear that certain
6 commercial interests in Peru are able to arbitrarily
7 subvert the justice system in their country to their
8 own ends, through their market power and through less
9 obvious means. It is time for the U.S. government to
10 send a clear signal to the Peruvian government that
11 they have a responsibility to assure fair and equal
12 treatment under the law for all of their own citizens,
13 as well as investors from other countries.

14 Accordingly, we would like to ask that the
15 U.S. government actually promote a complete overhaul
16 of the dispute resolution system in Peru for the
17 benefit of all Peruvians and outside investors. Steps
18 must be taken to assure that no other investor or
19 Peruvian must endure a travesty of justice similar to
20 the one we have in our dispute with Telefonica.

21 I would like to just point out that
22 currently, Telefonica has asked that its dispute with

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1 Ocitel, the telephone regulatory agency there, be
2 moved into arbitration at the Lima Chamber of
3 Commerce. And there was recently another case where
4 our lawyer pleaded a case there where his client won
5 a decision against a major company, and that company
6 immediately filed an appeal even though on the issue
7 of facts cases are not appealable at the Chamber, but
8 they are appealable in issue of form. In other words,
9 if there's a mistake in the way things have been
10 processed, you can appeal it, it goes to Superior
11 Court.

12 We have found numerous instances like that
13 has been the cause of all the problems. We don't know
14 how many we missed, so even if we were to win a
15 decision at the center, we're sure that if there's
16 something we missed, that they would appeal it again.
17 It would go to Superior Court, and they have in other
18 instances with us been able to manipulate the
19 situation there. I thank you for your time.

20 MS. SURO-BREDIE: Thank you very much.
21 The first question is by USTR.

22 MR. HARMAN: Could you elaborate a little

1 bit on this given the fact that you're involved in a
2 private-to-private dispute, contract dispute. Just
3 amplify a little bit on how this is the responsibility
4 of the government of Peru, in your view, to resolve.

5 MR. DUSSEAU: It's an important question.
6 As I started out saying, I don't expect USTR or any
7 U.S. agency to talk to Telefonica and say look, you
8 need to resolve this issue. The real issue is that
9 part of the reason for expanding trade with whether
10 it's Peru or any of the countries, there are other
11 policy objectives involved. Clearly, we want to see
12 economic development at the highest level in these
13 countries. It is good for us. It is good for the
14 U.S., good for the entire hemisphere, but there cannot
15 be. And I can tell you from personal experience
16 having lived in Latin America with Chase Manhattan
17 Bank all over Latin America, those countries that do
18 well are those that have the most clear, transparent
19 and open legal systems. Investors invest not where
20 they get the highest return, but where they feel they
21 have greatest control and the most certain return.
22 And in this kind of environment where you can invest

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1 everything and supposedly go to a system that has been
2 sanctioned, created and regulated by the Peruvian
3 government and be treated in this fashion, is not an
4 environment that promotes economic development.

5 It actually sends a signal to everybody
6 that if you're big enough and powerful enough, you can
7 get away with anything. And I don't think that's what
8 the U.S. government wants to promote or try to
9 overcome that through trade agreements when the
10 Peruvian government itself takes some very effective
11 self-help measures, clean their own house, and then
12 the trade agreements would have a much broader and
13 more important impact for everyone. That's why it's
14 government-to-government because the government
15 controls the dispute regulation system. We don't.

16 MS. SURO-BREDIE: Next question by the
17 Department of Treasury.

18 MS. EARP: Thank you. You described the
19 problems that you encountered with the Lima Chamber of
20 Commerce Arbitration Center. Are you aware of other
21 companies that have run into problems with the same
22 center? Can we establish that there's a pattern of

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1 behavior by that particular body?

2 MR. DUSSEAU: We have and certainly
3 Ricardo has spoken to other companies who have
4 experienced difficulties. The most recent one that I
5 mentioned is where our own lawyer had a case there
6 against a major oil company. And immediately after
7 winning the case, suddenly this problem of form comes
8 up, and that's really the center's responsibility to
9 manage. They're supposed to make sure that there are
10 not problems like that. And in our case, we've seen
11 numerous examples where the secretary of the center
12 has actually been part of the problem as opposed to
13 trying to fix the problem. So I would suggest that
14 there is a pattern here.

15 MS. EARP: Thank you.

16 MS. SURO-BREDIE: Thank you very much.

17 MR. DUSSEAU: Thank you.

18 MS. SURO-BREDIE: Our next witness is Stan
19 Gracek. I hope I'm pronouncing that right. Assistant
20 Director of International Affairs, Department of AFL-
21 CIO. Mr. Gracek.

22 MR. GRACEK: I have trouble myself. Stan

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1 Gracek, AFL-CIO, and good morning. And I truly
2 appreciate the opportunity to offer comments on a
3 proposed free trade agreement or agreements with the
4 Andean region on behalf of the 13 million working
5 women and men of the AFL-CIO.

6 The U.S. labor movement welcomes balanced
7 and inclusive economic integration with the Andean
8 region, but we're very concerned that a proposed U.S.-
9 Andean FTA, particularly one that follows in the
10 prescription of the negotiated Central American
11 proposal, CAFTA, could prove very harmful to the
12 welfare of workers in both Andean countries and the
13 United States.

14 Internationally recognized worker rights,
15 and that will be the core of ILO Conventions, do and
16 should have everything to do with trade regimes. No
17 government should obtain an unjust comparative
18 advantage by being able to rig and manipulate its
19 labor market based on violations of core labor norms,
20 either by acts of commission or omission. But there
21 is a very clear and present danger in the four Andean
22 countries that would be involved in the proposed FTA

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1 that that would be so. And simply expanding market
2 access and freeing capital will not directly address
3 this danger, nor really stimulate real development for
4 the vast majority in the Andean countries.

5 An alternative proposal for viable and
6 sustainable trade is based in great part, but not
7 exclusively, on authentic improvements in worker
8 rights. However, addressing the problems of the debt
9 burden, ensuring that investor versus state provisions
10 do not destroy vital social and environmental
11 protections, protection of fundamental public
12 services, maintenance and important social policies,
13 and government procurement, and democratic inclusion
14 in the negotiation process are all fundamental
15 conditions for effective and sustainable trade.

16 I don't have time to go into detail on
17 those based on the time constraints, but they're very
18 fully elaborated in my written testimony submitted on
19 March 10th. I should also say that a full elaboration
20 of our arguments are contained in our comments on the
21 eligibility criteria for the ATPDEA beneficiaries, and
22 that was submitted on September 16th, 2002.

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1 The most abhorrent method of exploiting
2 labor in order to compete in the race to the bottom in
3 a trade system without effective worker rights
4 protections is to permit the direct assault on the
5 physical integrity of trade unionists. This is the
6 most fundamental infraction of freedom of association,
7 and if one factors in Colombia, the Andean region is
8 unparalleled in the world today as a violator.

9 Since 1991, the number of assassinations
10 of union activists has reached nearly 2,000 in
11 Colombia. The National Trade Union schools reported
12 that over 90 unionists were murdered in 2003.
13 Moreover, there's been an increase in 2003 of
14 kidnappings, disappearances, death threats,
15 notwithstanding a slight decrease in comparison of
16 2003 to 2002 of the number of assassinations. And as
17 Carlos Rodriguez testified today, there have already
18 been nine assassinations for 2004. That's slight
19 decrease from 2003, as related to 2002, we certainly
20 do not see as an improvement. And one could argue
21 that this maybe has more to do with certain cease fire
22 initiatives being taken by the paramilitaries.

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1 I want to really refute the assertion
2 because it's not based in fact, that assassination of
3 trade unionists in Colombia is a byproduct of
4 generalized violence. The National Trade Union School
5 has shown it's very systematic. It's very methodical.
6 It's based on sector, and it almost -- in the vast
7 majority of cases, it follows directly when a trade
8 unionist has been involved in trade union activity,
9 such as being a bargainer at the bargaining table in
10 collective negotiations.

11 We can remember the infamous remarks of
12 Carlos Costano of the paramilitaries when he said, "We
13 kill trade unionists because they are trade unionists.
14 They directly interfere with people working." But
15 aside from Colombia, there's also the violations of
16 physical integrity in Ecuador. We have the case of
17 Los Alamos in May of 2002. I'm not going to go into
18 detail on that in the interest of time.

19 Before awarding the ATPDEA benefits in
20 2002, the United States government demanded and
21 received from the Andean countries, and Ecuador as a
22 case in point, commitments to take effective steps to

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1 improve worker rights. And 17 months later, the
2 beneficiaries essentially failed to make good on their
3 promises, as my written testimony puts forth.

4 And I want to make it clear too, there are
5 de jure violations. There's problems with the law, as
6 well as the enforcement of law and compliance. And I
7 think there's really a -- it's quite a fallacy to say
8 there's no problems with the law on its face. For us
9 and for our counterparts in the Andean region, the
10 trade union movement, we believe, that the region must
11 oblige the signatories to reform their labor laws in
12 order to deal with these de jure problems before
13 entering into a trade agreement. And that there must
14 be then effective implementation of the reformed legal
15 systems complying with international labor standards
16 after the ratification of those agreements.

17 This is the working principle of the GSP
18 system in terms of denying benefits, or the
19 possibility of denying benefits if there are not good
20 faith remedies of the violations. Although it's not
21 perfect, we think that it's actually contributed some
22 improvements, and that's our concern with the CAFTA

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1 model, is that (a) there would be mere compliance with
2 labor law regime as it is, even if it's downgraded.
3 Fines would be paid to the government itself, with no
4 guarantee that the funding actually goes to remedy the
5 violations, and there's no public petition procedure
6 for private parties, such as trade unionists.

7 In the interest of time, let me mention
8 very, very quickly on the face de jure violations.
9 All countries, by the way, the four countries for
10 proposed FTA have ratified `87 and `98 of the ILO.
11 Bolivia Principles of ILO Conventions `87 and `98 are
12 directly violated by the explicit denial of rights
13 organized for agricultural workers and by excluding
14 public employee bargaining rights to about 350,000
15 workers who have effectively been denied those rights
16 in the public sector in Bolivia.

17 IN Colombia, the ILO Freedom of
18 Association Committee has continually concluded that
19 Convention `87 is violated by prohibiting legitimate
20 strikes by federations and confederations, prohibiting
21 strikes in non-essential public services.

22 In Ecuador, there is a 30-member minimum

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1 to even form a union. Denial of organizational rights
2 for civilian workers in the maritime transport sector,
3 denial of collective bargaining rights to public
4 employees, denial of right to strike in confederations
5 and federations. There's nationality requirements for
6 trade union office which directly discriminates
7 against immigrant workers. And very, very
8 importantly, there is no power of reinstatement for
9 anti-union discharge which is a direct violation of
10 Convention `98.

11 Very quickly in Peru, continued violation
12 of rights of public employees by the failure of the
13 labor ministry to issue implementing regulations
14 pursuant to Congressional action, denial of organizing
15 and union membership rights of probationary employees,
16 prohibition of public service, confederations,
17 federations being part of labor and other
18 organizations that represent categories of workers.

19 And another change that was made in the
20 law in 2000 was to actually lower the minimum age for
21 children to work with so-called parental permission
22 down to 12 years, which by the way, has been

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1 criticized by the ILO.

2 Very, very quickly - what are the
3 violations on the basis of omission? In other words,
4 de facto and failure of enforcement violations. In
5 Peru, the labor ministry has still failed to implement
6 the law specifying procedures for reviewing the cases
7 of workers illegally fired under the Fujimori
8 government. There continue to be violations of
9 collective bargaining obligations due to privatization
10 and subcontracting, failure to take effective steps to
11 eliminate cases of forced labor, including the
12 infamous en ganche system, in which -- and
13 particularly in the gold mining sector, workers are
14 required to work. They've given housing and other
15 benefits, and they're basically told you're going to
16 work for 90-days without any kind of compensation.

17 In Bolivia, there's been failure to crack
18 down on subcontracting arrangements that unlawfully
19 destroy collective organization bargaining rights.
20 There's no effective action against child labor.
21 Ecuador, you heard from Jaime Arciniega of CEOSL
22 today, and this probably will be elaborated by Carol

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1 Pier of Human Rights Watch, that Ecuador has failed to
2 send a labor law reform package to its Congress to
3 address the de jure freedom of association violations.

4 In the case of the 16 convictions in the
5 Los Alamos case, those were overturned. This was in
6 effect complete impunity for those who were
7 responsible for the attacks on trade unionists. And
8 the recommendations of the high level commission that
9 followed the Los Alamos case to try to prevent a
10 criminalized use of third-party contractors to violate
11 freedom of association rights hasn't been followed.
12 And there's no compliance with the legal requirement
13 in Ecuador of one child labor inspector for each of
14 the country's 22 provinces.

15 And finally, and I'm going to be wrapping
16 up right now. In Colombia, there is no prevention of
17 subcontracting. There's direct bargaining and
18 cooperatives being used to violate '87 and '98 rights.
19 And very, very grimly, there's no more than very
20 minimal prosecution and conviction of those
21 responsible for the thousands of assassinations and
22 assaults on trade unionists. And there's also in

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1 effect a failure to protect the necessary hundreds of
2 workers that need protection under the Interior
3 Ministry's plan of protection for trade unionists.

4 A lot of the steps that could be taken to
5 remedy all these things that I've just mentioned are
6 included in my written testimony. I'm not able to go
7 into those in the interest of time. But let me just
8 say that since the approval ATPDEA benefits in October
9 of 2002, the governments of the Andean region have
10 failed to take steps to remedy what I have just
11 mentioned. And when we consider assassinated trade
12 unionists, that is very tragic. And I'm going to
13 conclude by recalling a famous dictum of Gladstone,
14 "Justice delayed is justice denied." And regarding
15 labor rights and survival of trade unionists in the
16 Andean region, justice and compliance delayed is
17 actually fatal.

18 MS. SURO-BREDIE: Thank you very much.
19 The first question by USTR.

20 MR. CLATANOFF: Stan, according to your
21 testimony, the threat of suspending GSP or ATPDEA
22 trade benefits created some pressures on the Andean

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1 governments to improve worker rights. You don't think
2 there will be any pressures under an FTA?

3 MR. GRACEK: Well, as I just pointed out,
4 Mr. Clatanoff, our concern is that by actually having
5 a standard which does not require actually upward
6 improvement to comply with international labor
7 standards as defined by the core ILO Conventions,
8 which is basically in the content of GSP, and is not
9 in the proposed FTA, if it were to follow the model of
10 the CAFTA mechanism on labor rights compliance. And
11 based -- so there is a downgrade. In that sense,
12 there is a downgraded standard for review.

13 The other problems which I had also
14 mentioned in comparing, if the route followed were to
15 be the CAFTA model with regard to the labor rights
16 mechanism, in addition to that problem, there's the
17 problem of the fining mechanism which could say that
18 based on a country not following its own labor law
19 standards even though they could be, both in theory
20 and practice downgraded, and you could still have
21 compliance after an amendment downgrading the labor
22 law. The problem is that the fining mechanism,

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1 basically the country can pay the fine. But basically
2 the fine is to go itself in order ostensibly to bring
3 about a remedy and improvement in compliance with
4 labor rights. The problem is that there's no system
5 to guarantee that. In fact, a country could pay the
6 fine to itself, and actually could basically divert
7 that funding to other purposes. And then there's the
8 other problem too, of essentially no private right of
9 action.

10 MR. CLATANOFF: For the record, I've heard
11 this pay the fine to itself. You're the fifth
12 different AFL-CIO official who has used that term. It
13 is a lie. You know it's a lie. Look at the text.
14 The fine is not paid to itself.

15 MR. GRACEK: The fines are paid, as I
16 understand, in order to help compliance with the issue
17 of labor enforcement. And if there's no monitoring of
18 how that money is used, then there is a problem. I
19 don't think that's a lie.

20 MS. SURO-BREDIE: Next question by the
21 Department of Labor, please.

22 MR. ROMERO: Thank you, Mr. Gracek, for

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1 your testimony. Albeit hurried, we did get all of the
2 information so now you could take a breath.

3 MR. GRACEK: Thank you. I had a lot to
4 say.

5 MR. ROMERO: Yes, definitely. You mention
6 in your testimony the issue in Colombia regarding the
7 constitutional courts' ability to intervene in
8 specific cases. It's called TUTELA. And that there's
9 a proposal on the part of the Colombian government to
10 curtail this in some way. Could you elaborate a
11 little bit on this point and what the potential
12 implications of this possible action on the part of
13 Colombia are?

14 MR. GRACEK: We have concerns with regard
15 to the TUTELA in terms of actually labor rights
16 enforcement in general. I mean, I think you stated it
17 quite well, Carlos. The other problem is actually the
18 question of autonomy for the Attorney General's
19 office, and particularly investigators and Assistant
20 Attorney Generals in the pursuit of cases. I don't
21 really want to cast aspersions on particular
22 individuals within the Fiscalia in Colombia, but there

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1 have been cases, a very notorious case where an
2 investigator was pursuing very, very important leads
3 and assisting the Attorney General with regard to the
4 assassination attempts against Wilson Borge, the
5 President of one of the most important public sector
6 worker federations in Colombia, and that person was
7 removed from the case. The case is actually a firing
8 of Assistant Attorney Generals and investigators that
9 have tried jealously to pursue investigations.

10 MR. ROMERO: Thank you.

11 MS. SURO-BREDIE: Next question by the
12 State Department.

13 MS. HOLMAN: Good morning. I'm Amy Holman
14 from the State Department. Thank you for your
15 testimony and for the level of detail.

16 In your testimony, you refer to what you
17 term as the continuing failure by the Colombian
18 government to promote worker rights, or to provide
19 adequate funding for protection programs. Are you
20 aware that the government's protection program was
21 funded at \$12 million in 2003, that it provided
22 protection to 1,424 trade unionists, and that 85

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1 percent of the funds come from the government of
2 Colombia.

3 In your view, what would constitute
4 adequate funding for protection and how would you like
5 to see that implemented?

6 MR. GRACEK: There's a lot -- I mean, to
7 say that there -- much depends on the source that you
8 look to. And actually, the National Trade Union
9 School has noted that several hundred trade unionists
10 have been provided effective protection. I've heard
11 obviously, the higher statistics which you've just
12 cited, and probably come from the Colombia government
13 and other sources.

14 I can't comment on the exact amount that's
15 been spent, but one has to look at the efficacy of the
16 expenditures and the fact that there continues to be
17 continued violence against trade unionists. And I
18 would also submit that the slight decrease in the
19 absolute number of assassinations from 2002 to 2003 is
20 not really attributable to effective combating of
21 impunity by perpetrators of the violence, and of prior
22 assassinations, nor due to really effective protection

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1 plans.

2 Basically, there continues to be
3 absolutely intolerable murders of trade unionists.
4 And we see that these continue to be systematic, so we
5 could have a lot of arguments about the amount of
6 resources, but I think it's quite clear that more
7 resources and more commitment have to be made.

8 Where this is particularly, I think
9 particularly critical is in the question of impunity,
10 and the lack of really a very, very minimal number of
11 prosecutions and convictions for those who have been
12 responsible for the assassination of the thousands of
13 trade unionists since 1991.

14 MS. SURO-BREDIE: Thank you very much.
15 Any other questions?

16 MR. ROMERO: For the record, just to
17 clarify, Mr. Gracek. The numbers, unless we have
18 wrong information, but the numbers of assassinations
19 between the change between 2002 to 2003 is a drop from
20 184 assassinations to 70. And while it's still
21 egregious and it's still unacceptable, our numbers
22 would show that that's a significant decline. And

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1 putting the aside of how or what that's happened,
2 there is a protection program. I just wanted to make
3 sure we have the right numbers, if those are the
4 numbers that you have.

5 MR. GRACEK: Those are estimates. The
6 National Trade Union School has found that number to
7 be a bit higher for 2003, although certainly there is
8 an acknowledgement of a slight decrease. Again, the
9 argument has been made that may be due to certain
10 cease fire position taken by the paramilitaries.
11 Although this is not to say that the garrias in
12 Colombia are not responsible for trade unionists
13 assassinations. Of course, they are, but on the best
14 statistics that we've been able to see, the majority
15 of assassinations are attributed to paramilitaries.
16 And that raises, of course, the whole question of the
17 connection between the armed forced and the
18 paramilitaries, which is of great concern to us.

19 I don't think a reduction, let's say a
20 reduction from 2002 to 2003 is a totally acceptable
21 improvement, and I really do not want to engage in a
22 really bad taste or gallus humor, but 2004 is not

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1 over.

2 MS. SURO-BREDIE: Thank you very much,
3 sir. Our next witness is Carol Pier, Labor Rights and
4 Trade Researcher for Human Rights Watch.

5 MS. PIER: Good morning. Thank you. I
6 welcome the opportunity to come before today as Human
7 Rights Watch's Labor Rights and Trade Researcher to
8 address what we see as the very serious workers human
9 rights concerns that this administration should
10 consider as it develops its negotiating objectives for
11 a proposed free trade agreement with Ecuador. Many of
12 the points that I'm going to make in my very short
13 presentation are going to elaborate on what you just
14 heard previously, very articulately from Stan.

15 In April, 2002 Human Rights Watch released
16 a report documenting obstacles to organizing and the
17 widespread use of child labor in Ecuador's banana
18 sector. One month later, anti-union violence erupted
19 on the Los Alamos banana plantations where roughly
20 1,400 workers were employed.

21 During the subsequent months, Los Alamos
22 workers allegedly faced anti-union dismissals, anti-

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1 union violence, employer interference in the
2 functioning and operation of their workers'
3 organizations, and the unlawful use of strike
4 breakers.

5 The administration considered the evidence
6 of workers' human rights abuses presented in Human
7 Rights Watch's report, as well as the anti-union
8 activities on the Los Alamos plantation in its Fall,
9 2002 assessment of whether or not to designate Ecuador
10 an Andean Trade Promotion and Drug Eradication Act
11 beneficiary.

12 Specifically, of course, the United States
13 assessed "the extent to which the country provided
14 internationally recognized worker rights as required
15 by the ATPDEA." And before granting Ecuador full
16 ATPDEA benefits, the United States demanded and
17 received commitments from Ecuador to improve respect
18 for workers' human rights. Roughly, 17 months later,
19 however, Ecuador has largely failed to uphold these
20 commitments, and also continues to violate the ATPDEA
21 workers' rights criteria.

22 In the Fall of 2002, Ecuador promised to

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1 assess whether its laws comport with international
2 norms, particularly on freedom of association. And to
3 consider submitting legislation to improve protections
4 for workers' right to organize.

5 Human Rights Watch has documented the
6 serious deficiencies in Ecuador's laws governing
7 freedom of association, including failure to require
8 reinstatement for workers fired for union organizing,
9 and the legal loopholes that permit the prolific use
10 of temporary and subcontracted, and third-party
11 contracted workers to circumvent existing labor
12 protections.

13 Nonetheless, no reform proposals have been
14 sent to Ecuador's Congress to address these kinds of
15 shortcomings. Ecuador also pledged to create a high
16 level commission to investigate the 2002 anti-union
17 activities on the Los Alamos banana plantations, and
18 to implement the final recommendation of this high
19 level commission's report.

20 Although Ecuador did form the commission,
21 it has not abided by its recommendations.
22 Specifically, Ecuador has failed to follow the

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1 recommendation to issue a regulation to prevent third-
2 party contractors from being used to violate workers'
3 rights, specifically to organize and bargain
4 collectively, and to propose a law criminalizing the
5 use of third-party contractors for this purpose.
6 Although an executive decree addressing these issues
7 was drafted in May, 2003, it was never issued.

8 Ecuador further agreed to investigate
9 fully and prosecute those responsible for the 2002
10 anti-union violence on the Los Alamos banana
11 plantations. The prosecution undertaken, however, was
12 based on a flawed investigation that among myriad
13 deficiencies, focused on only 16 of the allegedly
14 roughly 200 assailants, and none of the intellectual
15 authors of the incident.

16 In late 2003, the convictions of those 16
17 were overturned. All perpetrators now enjoy full
18 impunity, and there is no evidence whatsoever that the
19 government intends to open a new meaningful, thorough
20 investigation.

21 Ecuador also promised in the Fall of 2002
22 to uphold its obligations under International Labor

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1 Organization Convention 182 concerning the prohibition
2 and immediate action for the elimination of the worst
3 forms of child labor. Nevertheless, Ecuador still
4 violates its law requiring one child labor inspector
5 for each of its 22 provinces. Although three child
6 labor inspectors were finally hired in 2003, one has
7 already been fired, and another faces imminent
8 dismissal, leaving only one functioning inspector.

9 In 2003, the child labor inspectors
10 inspected only 98 of the approximately 6,000 banana
11 plantations in the sector, and they inspected no other
12 sectors at all.

13 Furthermore, children's rights advocates
14 report that Ecuador also fails to allocate sufficient
15 resources to ensure the effective rehabilitation of
16 these children who are removed from hazardous work
17 situations, thereby violating its duty under ILO
18 Convention 182 to, "provide the necessary and
19 appropriate direct assistance for the removal of
20 children from the worst forms of child labor, and for
21 their rehabilitation and social integration."

22 In the November, 2003 letter to the House

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1 of Representatives announcing its intent to enter into
2 free trade agreement negotiation with the Andean
3 countries, this administration stated, "Ecuador needs
4 to take significant further steps to address concerns
5 we have raised regarding inadequate protection of
6 workers' rights", before that country is ready for
7 free trade accord with the United States.

8 We urge this administration to stand by
9 the statement, and to require that Ecuador take
10 meaningful steps to fulfill each of its Fall, 2002
11 commitments to improve respect for workers' human
12 rights before free trade agreement negotiations even
13 begin, and to uphold these commitments fully and
14 completely before such an accord is ever completed and
15 signed. Thank you.

16 MR. ROMERO: Thank you, Ms. Pier, for your
17 testimony. It's very thorough, as was your written
18 submission, and we appreciate all of the reporting the
19 Human Rights Watch has done on Ecuador in the past few
20 years. It's provided very useful information.

21 Your testimony indicates problems in the
22 area of child labor, and you mention ILO Convention

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1 182 on the worst forms. How at the present time do
2 some of Ecuador's problems in this area directly
3 affect the worst forms of child labor, and do the
4 provisions and trade promotion authority covering the
5 worst forms of child labor address some of these
6 issues you're talking about?

7 MS. PIER: Well, this is a two-part
8 question. First of all, the conditions that you find
9 in my expertise as the banana sector, so this is what
10 I'll refer to. And what we found in the banana sector
11 is that, in fact, you do have children working in the
12 worst forms of child labor. You have children working
13 while pesticide spraying airplanes are flying
14 overhead. You have children working with machetes.
15 You have some children applying pesticides themselves,
16 post harvest pesticides without using proper
17 protective equipment. There are reports, although
18 Human Rights Watch has not looked into this issue of
19 child labor in the flower industry, where as we heard
20 in the testimony earlier from Jaime Arciniega, there
21 are serious problems with health and safety concerns.
22 And, of course, if you have children working in those

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1 situations then they are, by definition, working in
2 the worst forms of child labor if they are working
3 while pesticides are being applied, sprayed, et
4 cetera, so that was one part of your question.

5 The other part of your question goes to
6 whether or not the condition -- the negotiating
7 objective and trade promotion authority with respect
8 to the worst forms of child labor could be helpful in
9 this regard.

10 I mean, our concern is two-fold,
11 obviously. In this case, unlike the case of freedom
12 of association, the laws on the books in Ecuador, if
13 effectively enforced, could go a long way to prevent
14 this human rights abuse.

15 Stan I think spoke earlier to some of the
16 concerns with respect to the enforcement mechanism
17 that would exist if a free trade agreement with
18 Ecuador were to follow the model of CAFTA and U.S.-
19 Chile in requiring as the only enforceable labor
20 rights provision that countries effectively enforce
21 the law. I understand that the fee that would be
22 imposed would be paid to a free trade commission. The

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1 free trade commission would be composed of high level
2 representatives from ministries of labor, or otherwise
3 that would then decide how the fund is used. The fund
4 would be redirected back to the offending country.

5 I mean, our concerns in that case are that
6 there aren't sufficient safeguards to ensure that the
7 fund would, in fact, be used to remedy the problem.
8 And in the case of a country that had a Ministry of
9 Labor budget that was far in excess of the \$15 million
10 cap of the fine, in the case of CAFTA that would be
11 Costa Rica, which has a budget of over \$80 million.
12 But in these specific situations, what could happen is
13 that a country could subtract that \$15 million from
14 its Ministry of Labor, shift that to other areas of
15 priority, apply the fine funds to the Ministry of
16 Labor activities, and then essentially continue its
17 practices that would be in violation of accord simply
18 by rebudgeting annually. Obviously, the fine would
19 have to be paid again the following year if it was in
20 violation, but we could have a situation in which the
21 country continued to enjoy trade benefits, and
22 continued to pay the fine, and continued in violation

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1 of the provision. So yes, obviously it's a very good
2 thing that there would be a requirement that countries
3 effectively enforce their laws governing harmful child
4 labor. If Ecuador did, it would go a long way to help
5 the problem, but we still have concerns with the
6 mechanism to implement that.

7 MR. ROMERO: Thank you.

8 MR. CLATANOFF: Good morning, Carol.
9 Before I ask you a question, let me try to do a little
10 better at the microphone than I did the last time I
11 had it. Stan, I'm sorry about our exchange. I didn't
12 mean to say that you lied. I know we have a
13 difference of opinion on this, both the method and the
14 efficacy of our trade agreements, but I really do --
15 and Carol just went through it, but I do regret
16 snapping at you. I'm sorry. Also, for the record
17 I've known Stan for -- this is not our first meeting.
18 And generally, they're a lot more pleasant.

19 Carol, I just want to echo what Carlos
20 said when it comes to worker rights in Ecuador, you
21 literally wrote the book. And it's been a big help to
22 us in dealing with them.

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1 One thing I want to - this is not the end
2 of it, but the Los Alamos situation, you mentioned the
3 2002 event. There was another one in 2003. Is it
4 just Los Alamos and Noboa, is violence against trade
5 unionists a serious problem? How prevalent, is it
6 just the bananas? You know the country better than I
7 do.

8 MS. PIER: Right. What I would say is
9 that I don't think I could say that violence is
10 prevalent. I think that would be overstating the
11 situation. What is prevalent is the systemic
12 violation of workers' right to form trade unions,
13 their right to organize, their right to freedom of
14 association. That is systemic. You find that in, and
15 my expertise is the banana sector, so I should
16 probably focus my comments on that sector, but we've
17 heard testimony earlier this morning from Jaime, as
18 well as from Stan, and we know the problem extends
19 throughout the country, largely because the problem is
20 not solely one of ineffective enforcement, but
21 problems with weak legislation. So I think the
22 incident of anti-union violence back in May of 2002,

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1 where you had allegedly over 200 assailants on the Los
2 Alamos plantations. And we haven't seen anything to
3 that extent since. I do think that is probably an
4 anomaly, but the very serious problem of workers not
5 being able to organize. And one of the main reasons
6 of many reason, but one of them being this prolific
7 use of subcontractors as a way to take advantage of
8 loopholes in the law to impede workers from exercising
9 their right to organize.

10 MR. CLATANOFF: Okay. Thank you.

11 MS. SURO-BREDIE: Thank you very much.

12 Our next witness is Jeff Vogt, Assistant General
13 Counsel, International Labor Rights Fund. Welcome.

14 MR. VOGT: Well, thank you all for
15 affording me this opportunity to speak to you today
16 about the proposed U.S.-Andean region free trade
17 agreement.

18 The International Labor Rights Fund has
19 appeared before the USTR and other executive agencies
20 several times over the past 20 years to raise its
21 concerns with regard to the systematic violations of
22 internationally recognized workers rights in Asia,

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1 Africa, and Latin America. Indeed, the ILRF has
2 submitted several complaints under the GSP, the NAALC
3 additionally has testified advocating for the
4 inclusion of strong labor rights language in bilateral
5 or multilateral free trade agreements.

6 It is in this context that I come before
7 you to express my great concern that the U.S. is
8 considering the negotiation of a trade agreement with
9 Colombia, where trade unionists are routinely
10 murdered, tortured and threatened with death. In the
11 period of 1991 to 2002, 1,925 union leaders were
12 murdered in Colombia. And more troubling is that the
13 Colombian government has failed to investigate all but
14 a handful of these cases, and has failed to bring
15 perpetrators of violence against trade unionists to
16 justice.

17 The failure to adequately investigate
18 these crimes is not surprising, given the fact that
19 the perpetrators in many of these crimes, the
20 paramilitaries act with at times open support of the
21 Colombian government. Until the Colombian government
22 severs ties with the legal armed groups and prosecutes

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1 those responsible for the thousands of murders of
2 trade unionists, the U.S. government should not enter
3 into negotiations with Colombia for the purpose of
4 concluding a free trade agreement.

5 In 2003, the reputable Escuela Nacional
6 Sindical issued a report that presents a grim reality
7 of life in Colombia. Last year, 90 trade unionists
8 were murdered, 295 were victims of threats of death,
9 20 suffered attacks against their physical integrity,
10 and six were kidnapped. In addition to those
11 harrowing statistics, we go down to 42 detained union
12 leaders in the same period, 12 house break-ins, and 55
13 cases of harassment on the part of public forces
14 against unionists and their families.

15 Although the total number of murders is
16 down from 184 in 2002 as was pointed out by the
17 Department of Labor, the report points out that in
18 2003 there was a marked increase in the number of
19 death threats against unionists and their relatives,
20 an increase in deprivations of freedom, detentions and
21 house break-ins, and an increase in the violations on
22 the part of the public forces, including the police

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1 and the army.

2 The report notes that the decrease in the
3 homicides is related both to changes in the strategies
4 of war and the areas of conflict between the armed
5 actors and not as a consequence of a deliberate
6 government policy to crack down on violence.

7 As a final point, I wish to explain to
8 this panel that persons aiding and abetting this
9 bloodshed, including financial support are the very
10 U.S. multinationals that stand to benefit from a free
11 trade agreement with Colombia. I give you two cases
12 in point, both of which have been filed in U.S.
13 Federal Courts by the International Labor Rights Fund.

14 Number one, the Drummond case. In March
15 2001, Valmore Locarno Rodriguez and Victor Orcasita,
16 President and Vice President of the mining union,
17 SINTRAMIENERGETICA, were riding from work at the La
18 Loma Coal Mine in northern Colombia. The La Loma Mine
19 is owned by Drummond Company, a multinational
20 corporation based in Birmingham, Alabama.

21 As a company bus neared Valledupar, 30
22 miles from the mine, it was pulled over by gunmen,

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1 some wearing military uniforms. They began checking
2 the identification of the workers, and when they found
3 the two union leaders, pulled them off the bus.
4 Locarno was shot in the face and died immediately.
5 Orcasita was taken off to the woods at the side of the
6 road. When they found his body the following day
7 there was clear evidence of torture, shot multiple
8 times.

9 Gustavo Soler who assumed the position of
10 President was himself murdered shortly thereafter.
11 Locarno and Orcasita had repeatedly pleaded with the
12 companies for protection. In a meeting a week before
13 the assassinations, the union demanded that Drummond
14 provide security for its workers, and that the company
15 abide by a previous agreement allowing them to sleep
16 overnight at the mine.

17 The company ignored the agreement and
18 refused to allow the men to stay. Colombia's
19 paramilitary army, the AUC, has been accused of the
20 murders of Locarno, Orcasita and Soler. This
21 accusation is supported by substantial evidence that
22 links the paramilitary gunmen with Drummond management

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1 and at least one of its contractors.

2 Indeed, Amnesty International explained in
3 a recent report that "the systemic violation of human
4 rights of members of popular organizations and the
5 Department of Caesar where the Lo Loma Mine is located
6 corresponds to a national strategy of undermining
7 organizations which state security forces deem to be
8 subversive."

9 Amnesty International commented further
10 that many violations of human rights in the region
11 are committed in order to advance and protect the
12 interests of economically powerful sectors. Drummond
13 is one of the most economically powerful players in
14 the region, and in Colombia.

15 Number two, the case of Coca-Cola. The
16 Colombian union, Ce Naturnale, together with the
17 United Steel Workers of America and the International
18 Labor Rights Fund filed a case in the U.S. District
19 Court for the Southern District of Florida against
20 Coca-Cola, Pan American Beverages and Bebedezee
21 Alimentos. Plaintiffs charge these companies with
22 complicity in the unlawful detention, kidnapping and

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1 assassination of Colombian union leaders. Although
2 the case involves several egregious human rights
3 violations to trade unionists, I wish to discuss with
4 you one case in particular.

5 On December 5th, 1996, the AOC showed up
6 at the gates of the bottling plant owned by Bebedezee
7 Alimentos who bottles exclusively for Coca-Cola.
8 Ecederiso Nojele, a member of the union's executive
9 board, was shot in the forehead and killed. That
10 evening, paramilitaries broke into the union's office
11 and burned it down.

12 The next day, heavily armed men went
13 inside the bottling plant and called the workers
14 together, explaining that if they did not resign by
15 the end of the day, they too would be killed.
16 Automatically, worded resignation letters were signed
17 under the threat of death, and the union was no more.
18 However, the evidence points to close collaboration
19 between Bebedezee Alimentos and the AOC
20 paramilitaries.

21 Plant Manager Mosquera had a history of
22 associating with the paramilitaries, and gave them the

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1 instruction to destroy the union. Even more troubling
2 was the fact that at the time of Ecedijeros' death,
3 the union was involved in contract negotiations with
4 the company.

5 During a subsequent investigation by the
6 Colombian Justice Ministry, the plant's production
7 manager was retained along with local paramilitary
8 leader. All three were later released without
9 charges. To date, no one has been prosecuted in
10 Colombia for the murders of trade unionists at
11 Drummond and Bebedezee Alimentos.

12 In conclusion, I ask this panel to
13 seriously consider what it's about to embark on. If
14 the United States is to continue to hold itself out as
15 a defender of human rights in the region, it cannot
16 now reward one of the most violent countries in the
17 hemisphere, administrated by a hostile government that
18 openly threatens trade unionists, human rights
19 organizations, defense lawyers and others who
20 criticize government policy. For all of the thousands
21 who have been murdered, displaced or otherwise victims
22 of the long and bloody civil war, I urge you not to

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1 commence negotiations with the government of Colombia
2 until it has (1) investigated and prosecuted those
3 responsible for acts of violence against trade
4 unionists. (2) Taken adequate measures to ensure that
5 no more trade unionists are murdered, tortured or
6 threatened; and (3), have demonstrated substantial
7 compliance with the ILO core labor standards. Thank
8 you.

9 MS. SURO-BREDIE: Thank you very much.
10 First question by USTR.

11 MR. CLATANOFF: Thank you, Jeff. That was
12 very eloquent testimony.

13 Just briefly, in the Drummond and the
14 Coca-Cola cases, the International Labor Rights Fund
15 has actually filed cases against them. Is that
16 correct? Can you sort of give me an update of where
17 those are, and where you think they're going?

18 MR. VOGT: Well, the Drummond case, the
19 plaintiffs have survived all the motions to dismiss at
20 this point, so we have been able to pursue discovery
21 in that case. And we will begin deposing Drummond
22 management probably within the next month or two. We

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1 have both exchanged requests for documents and
2 interrogatories, and have begun a document review of
3 documents supplied to us by Drummond, so that case is
4 actually very well on track. And although the
5 schedule has not been set forth by the court, we hope
6 to be going to trial with that case within a year.

7 MR. CLATANOFF: Will you get a chance to
8 actually take statements or subpoena the Drummond
9 management from Colombia?

10 MR. VOGT: Yes. We plan to depose all
11 senior management, including Gary Drummond himself.

12 With the Coke case, the district courts in
13 a decision last year allowed the case to go forward
14 against all of the bottlers. Coca-Cola of Atlanta,
15 the headquarters, was severed from the case, but that
16 decision is being reviewed, so at this moment, the
17 case is still awaiting the judge to reconsider his
18 decision to sever Coke headquarters from this case.

19 MR. CLATANOFF: But do you still have a
20 case without the headquarters?

21 MR. VOGT: Oh, yes. We still have -- we
22 have jurisdiction over all the bottlers.

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1 MS. SURO-BREDIE: Department of Labor.

2 MR. ROMERO: Thank you for your testimony,
3 Mr. Vogt. You mentioned that the government of
4 Colombia has failed to bring a single perpetrator of
5 violence against trade unionists to justice. The
6 information that we have included in the State
7 Department's Human Rights Report, and also from other
8 sources including U.S. LEAP and the government of
9 Colombia itself that has given us some statistics on
10 cases and prosecutions, there have been between five
11 and six convictions of those responsible of trade
12 union murders since 1986. Do you have any information
13 on these specific cases?

14 MR. VOGT: I amended the testimony, but
15 five or six out of over 2,000 is almost a laughable
16 number to say that you're actually prosecuting and
17 bringing people to justice. But yes, that has been
18 amended.

19 MR. ROMERO: Thank you.

20 MR. CLATANOFF: Do you think, however, if
21 -- I mean, the question of violence and impunity is
22 deeply troubling to us. If the government took a

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1 dozen or so high profile cases, do you think it would
2 do anything?

3 MR. VOGT: Simply prosecuting a few cases
4 I don't think is really the issue. You have an
5 institutional linkage between those that are
6 committing massacres and the government itself. And
7 I think until you address that fundamental situation,
8 a few show trials is not going to demonstrate any
9 commitment on behalf of the government to seriously
10 address the situation.

11 MR. CLATANOFF: I ask this question sort
12 of -- let me put this on the record. The ICFTU has
13 developed a list of I think it's 18 names that they've
14 asked the government, in my own mind I wondered about
15 the efficacy of going down that track as a means.

16 MR. VOGT: Yes. I mean, I can't speak for
17 the ICFTU. I mean, it would be great to see
18 prosecutions, and if they've developed a list of cases
19 they think are the most relevant then yes, I would
20 absolutely support those people being prosecuted. But
21 again, I think until you address the root causes of
22 the violence against trade unionists, having a few

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1 trials is not going to be the answer. And I think it
2 certainly wouldn't indicate to the U.S. government a
3 serious effort on behalf of the Colombian government
4 to make sure that in 2004, 2005, 2006 we're still
5 seeing a hundred or more trade unionists killed.

6 MR. CLATANOFF: Thank you.

7 MS. SURO-BREDIE: Thank you very much.

8 This hearing is now adjourned.

9 (Whereupon, the proceedings in the above-
10 entitled matter went off the record at 12:10 p.m.)

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