

COMMENTS
to the
U.S. TRADE REPRESENTATIVE
regarding
COUNTRY ELIGIBILITY
for
ECUADOR
for the
ANDEAN TRADE PROMOTION and DRUG ERADICATION ACT

Submitted by:

U.S./Labor Education in the Americas Project (US/LEAP)
March 10, 2005

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ATPDEA ELIGIBILITY
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In response to USTR's Federal Register notice of February 4, 2005, the U.S./Labor Education in the Americas Project (US/LEAP) is submitting this brief set of comments regarding Ecuador's eligibility as an Andean Trade Preference Act (ATPA) beneficiary country.

US/LEAP continues to believe that Ecuador fails the applicable worker rights eligibility criteria, defined under ATPA as to whether a country is "taking steps to afford internationally recognized workers' rights" to its workers and under the Andean Trade Promotion and Drug Eradication Act (ATPDEA) as "the extent to which the country provides internationally recognized worker rights."

US/LEAP is an independent non-profit organization that supports the basic rights of workers in Latin America. US/LEAP has had the opportunity previously to submit public comments with respect to Ecuador's eligibility for initial designation for ATPDEA benefits, in September 2002 and March 2003, and to submit ATPA worker rights petitions in September 2003 and again in September 2004. In addition, US/LEAP testified before the USTR TPSC in March 2004 regarding Ecuador's participation in negotiations for a free trade agreement (FTA).

ATPA worker rights petitions on Ecuador filed by US/LEAP, Human Rights Watch and the AFL-CIO have been accepted for review and remain pending. Given that it is difficult to identify progress since the last set of petitions were filed in September, 2004, these comments are submitted

primarily to confirm that US/LEAP's analysis and position has not changed.

US/LEAP notes once again that despite substantial engagement by the U.S. administration, significant interest from members of the U.S. Congress, and extensive public attention, Ecuador has made virtually no progress in addressing the key worker rights issues that have been the subject of petitions, public comments, and governmental consultations for over two-and-a-half years.

US/LEAP therefore strongly supports the position expressed in the February 1, 2005 letter to Ecuador's Foreign Trade Minister Ivonne Baki from Rep. Sander Levin and 37 other members of Congress calling on USTR to begin suspending ATPDEA benefits for Ecuador. By failing to improve labor law enforcement or to address labor law deficiencies identified in previous petitions and the Human Rights Watch 2002 report, *Tainted Harvest*, Ecuador has failed to take steps to afford its workers the right to organize. In the high-profile test case at the Alamos plantations, Ecuador has also failed to address impunity and labor law violations, and failed to act on recommendations made by a commission set up in direct response to U.S. engagement. Most problematically for this comment and review process, Ecuador has failed to follow-through on specific promises made to USTR as a condition for initial ATPDEA eligibility in 2002.

Labor law deficiencies, inadequate labor law enforcement, and the test case posed by Los Alamos have been covered in depth in previous submissions by US/LEAP and other petitioners over the past two years.¹ There is no need to repeat here what is already submitted and under review by

¹As previously noted, US/LEAP does not focus on the issue of child labor but does support the analysis and recommendations in this area made by Human Rights Watch which reports, among other things, that while the legal number of child labor inspectors have finally been hired, most are not being paid and have no budget to operate.

USTR so the brevity of these comments should not be misconstrued.

Besides the absence of progress, the only significant development to note since the last petitions were submitted in September 2004 is an executive decree issued by Ecuador in October.

Unfortunately, it falls woefully short in addressing its presumed objective, that of limiting employers use of subcontracting to block workers from exercising their freedom to associate and their right to organize. The decree, which is much weaker than earlier drafts, sets a limitation on the percentage of subcontracted workers that can be used in any workplace at 75%, a ludicrous level that prompted the Ecuadorian labor movement to challenge the decree in the courts. The decree also includes a huge loophole for the agricultural sector, the very sector whose extensive use of subcontractors prompted the initial call to address this issue.

There are certainly other worker rights issues that should be addressed, such as the law preventing the majority of public sector workers from joining a union or exercising collective bargaining rights, reports of systematic denial of new union registrations by the Labor Ministry, and obstacles that workers in the flower industry face in seeking to exercise their basic rights. But on issues that have already been raised repeatedly in petitions, comments, and public hearings, Ecuador's track record is distressingly clear.

Nearly three years after armed attacks against the Alamos banana union set in motion USTR's various official and unofficial review processes, it is quite evident that Ecuador does not take seriously the need for the government to improve respect for worker rights, particularly the need to reform its labor code to meet minimum standards to ensure respect for freedom of association and the right to organize.

It has been suggested that perhaps Ecuador does not take the U.S. position seriously because it has been welcomed at the negotiating table for a free trade agreement and because it has seen threats but no action with respect to current ATPA/ATPDEA benefits. US/LEAP therefore renews its call for USTR to suspend benefits until Ecuador makes significant progress on labor law reform and enforcement, implements the recommendations of the high-level commission with respect to Los Alamos, and initiates a new and complete investigation into the May 16, 2002 violence and the police response, followed by prosecution and appropriate sanctions. Pending progress on the above benchmarks, USTR should also suspend Ecuador's participation in FTA negotiations