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Proposed Colombia Free Trade Agreement: Labor Issues

Mary Jane Bolle

Congressional Research Service; Foreign Affairs, Defense, and Trade Division

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Proposed Colombia Free Trade Agreement: Labor Issues

Abstract

[Excerpt] This report examines three labor issues and arguments related to the pending U.S.-Colombia free trade agreement (CFTA): violence against trade unionists; impunity (accountability for or punishment of the perpetrators); and worker rights protections for Colombians. For general issues relating to the CFTA, see CRS Report RL34470, *U.S.-Colombia Free Trade Agreement: Economic and Political Implications*, by M. Angeles Villarreal. For background on Colombia and its political situation and context for the agreement, see CRS Report RL32250, *Colombia: Issues for Congress*, by Colleen W. Cook and Clare Ribando Seelke.

Opponents of the pending U.S.-Colombia free trade agreement (CFTA) argue against it on three points: (1) the high rate of violence against trade unionists in Colombia; (2) the lack of adequate punishment for the perpetrators of that violence; and (3) weak Colombian enforcement of International Labor Organization (ILO) core labor standards and labor laws.

Proponents of the agreement argue primarily for the proposed Colombia FTA on the basis of economic and national security benefits. Accordingly, they argue, the CFTA would: support increased exports, expand economic growth, create jobs, and open up investment opportunities for the United States. They also argue that it would reinforce the rule of law and spread values of capitalism in Colombia, and anchor hemispheric stability.

Proponents specifically respond to labor complaints of the opponents, that (1) violence against trade unionists has declined dramatically since President Álvaro Uribe took office in 2002; (2) substantial progress is being made on the impunity issue as the government has undertaken great efforts to find perpetrators and bring them to justice; and (3) the Colombian government is taking steps to improve conditions for workers.

If Congress were to approve the Colombia FTA, it would be the second FTA (after Peru) to have some labor enforcement “teeth.” Labor provisions including the four basic ILO core labor standards would be enforceable through the same dispute settlement procedures as for all other provisions (i.e., primarily those for commercial interests.) Opponents argue that under CFTA, only the concepts of core labor standards, and not the details of the ILO conventions behind them, would be enforceable.

Proponents point to recent Colombian progress in protecting workers on many fronts. They argue that approval of the FTA and the economic growth in Colombia that would result is the best way to protect Colombia’s trade unionists. They also argue that not passing the agreement would not resolve Colombia’s labor issues.

Opponents argue that delaying approval of the proposed CFTA further would give Colombia more time to keep improving protections for its workers. This report will be updated as events warrant.

Keywords

Colombia, free trade, labor market, public policy

Comments

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CRS Report for Congress

Proposed Colombia Free Trade Agreement: Labor Issues

November 24, 2008

Mary Jane Bolle
Specialist in International Trade and Finance
Foreign Affairs, Defense, and Trade Division



Prepared for Members and
Committees of Congress

Proposed Colombia Free Trade Agreement: Labor Issues

Summary

This report examines three labor issues and arguments related to the pending U.S.-Colombia free trade agreement (CFTA): violence against trade unionists; impunity (accountability for or punishment of the perpetrators); and worker rights protections for Colombians. For *general* issues relating to the CFTA, see CRS Report RL34470, *U.S.-Colombia Free Trade Agreement: Economic and Political Implications*, by M. Angeles Villarreal. For background on Colombia and its political situation and context for the agreement, see CRS Report RL32250, *Colombia: Issues for Congress*, by Colleen W. Cook and Clare Ribando Seelke.

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Proposed Colombia Free Trade Agreement: Labor Issues

The purpose of this report is to examine three labor issues and arguments related to the pending U.S.-Colombia free trade agreement (CFTA): violence against trade unionists; impunity (accountability for or punishment of the perpetrators); and worker rights protections for Colombians.¹ For *general* issues relating to the CFTA, see CRS Report RL34470, *U.S.-Colombia Free Trade Agreement: Economic and Political Implications*, by M. Angeles Villarreal. For background on Colombia and its political situation and context for the agreement, see CRS Report RL32250, *Colombia: Issues for Congress*, by Colleen W. Cook and Clare Ribando Seelke.

Opponents of the pending U.S.-Colombia free trade agreement (CFTA) argue against it on three points: (1) the high rate of violence (murders, arbitrary detentions/kidnappings, and death threats) against trade unionists in Colombia; (2) the lack of adequate punishment for the perpetrators of that violence; and (3) weak Colombian enforcement of International Labor Organization (ILO) core labor standards and labor laws.

Proponents of the agreement argue primarily for the proposed Colombia FTA on the basis of economic and national security benefits. Trade typically benefits all parties to a trade agreement, as each country tends to specialize in exporting those goods which it can produce relatively more efficiently, and to import those which it produces relatively less efficiently. Accordingly, proponents argue, the CFTA would: support increased exports, expand economic growth, create jobs, offer consumers a greater variety of goods and services at lower prices, and encourage economic development by attracting foreign investment and expanding output. They also argue that it would reinforce the rule of law, spread values of capitalism in Colombia, and anchor hemispheric stability.

Proponents specifically respond to the above labor complaints that (1) murders and kidnappings against trade unionists have declined dramatically since President Álvaro Uribe took office in 2002; (2) substantial progress is being made on the

¹ The proposed *U.S.-Colombia Free Trade Agreement* (FTA) was signed on November 22, 2006. Implementing legislation was introduced on April 8, 2008 as H.R. 5724 and S. 2830. On April 9, 2008, through H.Res. 1092 (Report 110-575) the House made certain provisions under “trade promotion authority” (otherwise known as the “fast-track”) inapplicable to the CFTA, so that it is no longer obligated to vote within 60 days of a session and may schedule a vote at any time. This stopped the fast-track clock. For more information on the fast-track or trade promotion process, see CRS Report RL33743, *Trade Promotion Authority (TPA): Issues, Options, and Prospects for Renewal*, by J. F. Hornbeck and William H. Cooper; and CRS Report RL33864, *Trade Promotion Authority (TPA) Renewal: Core Labor Standards Issues*, by Mary Jane Bolle.

impunity issue as the government has undertaken great efforts to find perpetrators and bring them to justice; and (3) the Colombian government is taking steps to improve conditions for workers.

Background

Political Context²

Colombia is one of the oldest democracies in Latin America, and has a bicameral legislature. Yet it has been plagued by an ongoing armed conflict for over 40 years. This violence has its roots in a lack of state control over much of Colombian territory—rugged terrain that has been hard to govern. In addition, a long history of poverty and inequality has left Colombia open to other influences, among them drug trafficking. Leftist guerrilla groups inspired by the Cuban Revolution formed in the 1960s as a response to state neglect and poverty. Right-wing paramilitaries formed in the 1980s to defend landowners, many of them drug traffickers, against guerrillas. The shift of coca production from Peru and Bolivia to Colombia in the 1980s increased drug violence and provided a new source of revenue for both guerrillas and paramilitaries. In 2002 Colombians elected an independent, Álvaro Uribe, as President, largely because of his aggressive plan to reduce violence in Colombia.

Trade/Economic Context

Colombia is the United States' fourth largest trading partner in Latin America, and its 33rd largest import source and 26th largest export destination world-wide. Machinery, organic chemicals, and cereals constitute half of total exports to Colombia, and petroleum accounts for 41% of all imports from Colombia. Given the relatively small level of trade between the United States and Colombia, the CFTA would, according to a U.S. International Trade Commission report, likely have minimal to no effect on output or employment for most sectors of the U.S. economy.³

U.S. proponents argue that the proposed CFTA would provide a number of economic benefits, including market access for U.S. consumer and industrial products; cooperation in the production of textiles and apparel; and new opportunities for U.S. farmers and ranchers.⁴ However, the trade effect overall is expected to be very small. The largest changes in U.S. output are projected for the cereal grains production sector (0.3%) and the sugar sector (-0.3%); the largest changes in U.S. employment are projected to be in cereal grains (0.3%), sugar cane (-0.3%), and

² This section was taken from CRS Report RL32250, *Colombia: Issues for Congress*, by Colleen W. Cook and Clare Ribando Seelke.

³ U.S. International Trade Commission. *U.S.-Colombia Trade Promotion Agreement: Potential Economy-Wide and Selected Sectoral Effects*, December, 2006. P. 2-13.

⁴ Office of the U.S. Trade Representative. *Colombia FTA Facts*, October 2008.

textiles (-0.3%.)⁵ Colombia's exports to the United States already enter the United States mostly duty-free under the Andean Trade Preference Act (ATPA). However, new U.S. investment in Colombia as a result of the agreement could support increased economic growth and employment and additional exports to the United States.

Colombian proponents argue that the only Western Hemisphere "Pacific Rim" countries with which the United States does not have a free trade agreement are Colombia, Ecuador, and Panama. The United States has FTAs with all others: Canada, Mexico, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Peru, and Chile. The investment that goes into these other countries from the United States as a result, the Colombian Embassy argues, means that new exports from Latin America to the United States are increasingly coming from non-Colombian countries, putting Colombia at an economic disadvantage relative to its neighbors.⁶

Labor Context

Colombia's official labor force is about 18.2 million, as compared with 138 million for the United States. Roughly 23% of Colombia's labor force is involved in the agricultural sector, 19% is involved in the manufacturing/industry sector, and 58% is employed in the service sector. Almost 60% of the workforce in Colombia is employed in the (largely unregulated, undocumented) informal sector. The unemployment rate in Colombia is roughly 11.8% in 2008. During most of the more than 40 years that Colombia has experienced internal armed conflict, membership and participation in labor unions has waned. Between 1959 and 1965, the unionization rate grew from 5.5% to 13.5%. Since 1966, the unionization rate has declined to 4% or 742,000 of the 18.2 million workforce. Of these, fewer than 150,000, or 0.8% of the labor force are working under a labor contract.⁷

Violence Against Trade Unionists

Long-Term Trends in Murders of Trade Unionists

A key issue in the debate on the CFTA is the long-term trend in murders of Colombia's trade unionists as they try to express rights that are in concept protected in Colombia's laws.

Three organizations track data on the number of trade unionists murdered each year: the Colombian government; the International Trade Union Confederation (ITUC), successor to the International Confederation of Free Trade Unions (ICFTU);

⁵ USITC *U.S.-Colombia Trade Promotion Agreement: Potential Economy-Wide and Selected Sectoral Effects*, op. cit.

⁶ Colombian embassy, in an interview, November 20, 2008.

⁷ Data in this paragraph are from Economist Intelligence Unit. *Country Report Colombia*, October 2008, p. 16; U.S. Bureau of Labor Statistics; and U.S. State Department. *Country Reports on Human Rights Practices*, 2007, published March 2008.

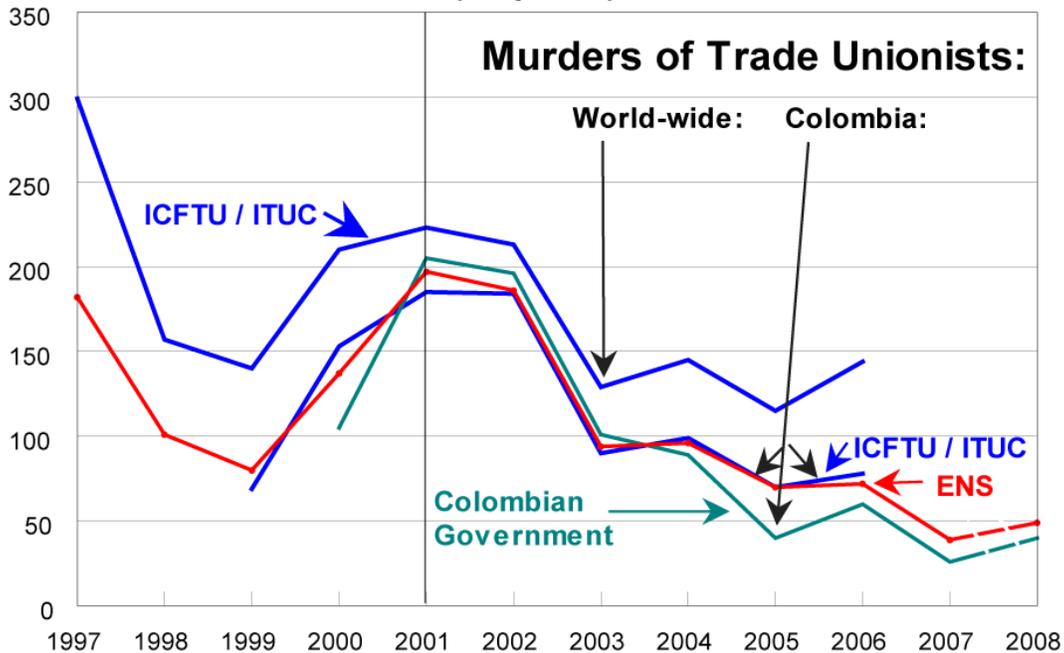
and the Escuela Nacional Sindical (ENS) or National Labor School, a non-governmental organization founded in 1982 in Colombia to provide “non-partisan and independent” information on human rights, labor, and the dynamics of association and collective bargaining. **Figure 1** below tracks each of their data on the number of murders of trade unionists in Colombia and world-wide between 1997 and 2008 (projected). It shows a wide year-to-year variation in the number of trade unionists murdered, but a distinct downward trend since 2001.

Inconsistency among the three trend lines for Colombia reflects the fact that the three data sources do not always agree on which murders should be counted as “trade unionist.” Those murders that may not be counted by all sources include non-affiliated advisors to unions, retired and inactive union members, rural and community organization members, and teachers.⁸ The large bump in the murder trend line from 1999-2003 coincides with a large bulge in the cultivation of coca produced in Colombia and a simultaneous decline in coca production in Bolivia and Peru, according to Department of State data. The fact that the three lines for Colombia’s murders of trade unionists closely track and crowd the line depicting such murders world-wide shows the extent to which Colombia accounts for most such world-wide murders. Colombia’s share ranges from a low of 49% in 1999 to a high of 86% in 2002, and then declines to 54% in 2006.

Proponents argue that other countries may not document the murders of their trade unionists as carefully as Colombia does.

⁸ Until recently, murders of teachers were not counted in Colombian government statistics. Yet teachers constitute the group that has suffered the most casualties. Out of 1,994 murders in which the victim is identified by occupation between 1986 and 2006, 825 or 41% have been teachers. Source: *2,515 or that sinister case to forget*, by Guillermo Correa Montoya, researcher for the ENS. Two researchers note that most teachers who are victims are typically singled out for what they do outside of their classrooms as labor activists. Source: “Targeted Teachers,” by Seth Stern and Rachel Van Dongen, *Christian Science Monitor*, June 17, 2003.

Figure 1. Historic Data on Murders of Trade Unionists, 1997-2008 (Projected)



Source: ICFTU/ITUC, ENS, and Colombian Government

Opponents of the proposed Colombia FTA tend to focus on the entire 10 year trend in murders and the close relationship between Colombia's murders and world-wide murders of trade unionists. Proponents, including the Bush Administration and the Colombian government, focus on the steady decline in such murders since Uribe became president in 2002, and on actions taken recently by the Colombian government to reduce these fatalities. Such actions include bringing to Colombia a permanent ILO representative, passing new labor laws, stepping up enforcement of labor laws, implementing a new judicial system, and setting up a trade unionist protection program. Under this program, as of March 7, 2008, roughly 1,983 trade unionists were receiving protection – 21% of all persons receiving protection, but 30% of the total protection budget of \$13.1 million.⁹ Opponents of the Colombia FTA also point out other reasons for the decline in murders, including the decline in targets: Unions in Colombia have dwindled from 13% of the formal labor force in 1965 to 4% currently. They and their efforts have been eroded primarily through such means as violence and employer-mandated union-substitution devices such as government-sanctioned collective pacts and recently outlawed cooperative associations.¹⁰

Proponents of the proposed CFTA point out that the number of trade unionists murdered as a share of all trade unionists is considerably smaller than the total

⁹ State Department. *Charting Colombia's Progress* (3/08). Colombian Embassy. *Colombia: An Update on Actions to Strengthen the Rights and Protections for Trade Unions*, May, 28, 2008.

¹⁰ *Country Reports on Human Rights Practices, 2007*.

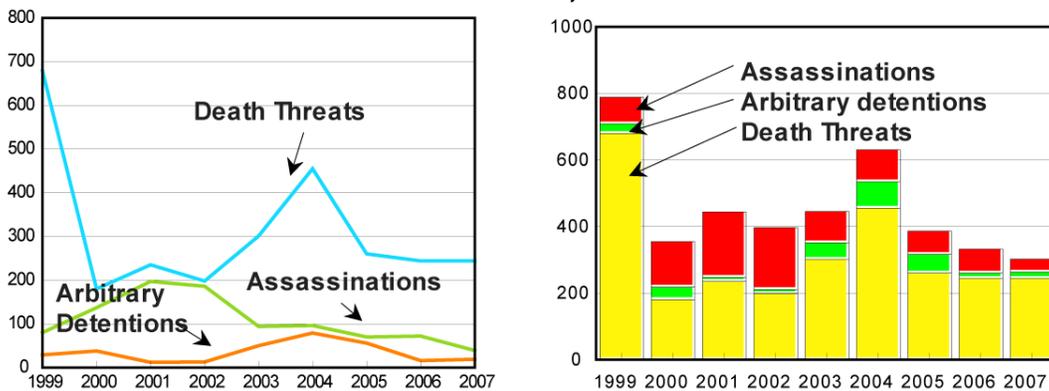
number of murders as a share of the general population. The AFL- CIO counters that “It is simply not meaningful to compare random crime statistics to targeted assassinations.”¹¹

Long-Term Trends in Three Measures of Violence Against Trade Unionists

A companion issue to trade unionist murders is long-term trends in three separate measures of trade union violence: murders/assassinations, kidnappings/arbitrary detentions, and death threats.

Proponents of the CFTA note reductions in assassinations and arbitrary detentions since 2004. Opponents, examining the data longer term, focus on a third means of intimidation: death threats. They argue that in recent years perpetrators have switched their focus from murders to death threats, because this more subtle form of intimidation can achieve the same results of discouraging union activity with less public notice.¹² These three methods of intimidation are tracked individually in the left graph in **Figure 2** and cumulatively in the right graph. The right graph shows that assassinations were about equal to death threats in 2001-2002 when murders were at their peak, but averaged less than one-quarter the number of death threats between 2003 and 2007, when murders were lower.

Figure 2. Assassinations, Death Threats and Arbitrary Detentions of Trade Unionists, 1999-2007



Source: Escuela Nacional Sindical (ENS, 2008)

Impunity

The second main issue of opponents in debating CFTA is impunity – accountability for and punishment by the perpetrators of assassinations, arbitrary detentions, and death threats.

¹¹ AFL-CIO. *Colombia: Continued Violence, Impunity and Non-Enforcement of Labor Law Overshadow the Government’s Minor Accomplishments*, September 2008 Update.

¹² Speech by Luciano Vasquez, Director General of the ENS, sponsored by the Global Policy Network, February 27, 2008.

Perpetrators of the violence typically fall into three main groups: paramilitaries, guerrillas, and the Colombian military.¹³ The human rights advocates group Amnesty International USA reports on the difficulty in identifying the perpetrators in cases of trade union violence. However, it reports that, among “cases in which clear evidence of responsibility is available” in 2005, of all human rights abuses against trade unionists: paramilitaries committed 49%; security forces committed 43%; guerrilla forces committed 2%; and criminals committed 4%.¹⁴

Proponents of the agreement cite data showing progress in bringing perpetrators of the violence to justice: As the result of a tripartite agreement with the ILO (among the government, trade confederations, and business groups), the Office of the Colombian Prosecutor General, in October 2006, created a special sub-unit to investigate and prosecute 1,262 criminal cases of violence against trade union members. These included 187 priority cases as determined by the unions. As of April 2008, there have been a total of 105 convictions of violence against trade union members between 2001 and 2008, with 55 of them handed down in 2007-2008.¹⁵ Luciano Vasquez, Director General of the ENS views convictions over a longer period of time and points out that since 1986, in about 97% of the cases of murders of trade unionists, the perpetrators have never been identified and brought to justice. He argues further that while in some cases the perpetrators of labor killings are found guilty, in zero cases has the mastermind behind the crime been convicted.¹⁶

Labor Laws, Protections, and Enforcement

A third main issue in the CFTA is adequacy of enforcement of Colombia’s labor laws, and Colombia’s ability to protect workers.

Proponents point to Colombia’s system of labor laws and protections, which include ratification of all four ILO core labor standards, which have mostly (but not totally) been incorporated into Colombian law. These standards (1) protect the right of workers to organize and bargain collectively, (2) prohibit forced labor, (3) prohibit child labor, and (4) provide for non-discrimination in employment.

After long-standing criticisms by the ILO that Colombia was not adhering to its labor code, in January 2007, a “permanent” ILO representative opened an office in Colombia pursuant to a June 2006 tripartite agreement. In October, 2007, it received \$4.0 million in funding from the Colombian government. Subsequently, the ILO removed Colombia from discussion in its Committee for the Application of Standards (which examines significant problems in specific countries) for the first

¹³ U.S. State Department. *Charting Colombia’s Progress*.

¹⁴ Amnesty International USA. *Colombia Killings, Arbitrary Detentions, and Death Threats – the Reality of Trade Unionism in Colombia*, Introduction. 2007. ENS data.

¹⁵ Embassy of Colombia. *Colombia: An Update on Actions to Strengthen the Rights and Protections for Trade Unions*, May 2008, p. 14, and *Recent Progress in Labor in Colombia*, June 2008.

¹⁶ Speech by Luciano Vasquez, op. cit.

time in 21 years.¹⁷ The ILO has no enforcement authority. Its main tools are technical assistance and moral suasion. However, the government and the ILO are working to improve cooperation among national, regional and municipal governments to eradicate child labor and protect working youth – issues addressed in the paragraph below.

Opponents point to the fact that enforcement of labor laws and standards is an issue for Colombia as well as throughout Latin America and other developing countries. They quote the State Department's *Country Reports on Human Rights Practices*, 2007 on the following issues: The right to organize and bargain collectively in Colombia is limited because of a large informal economic sector, traditional anti-union attitudes, and violence against trade union leaders. Forced labor is a problem in prostitution and in new illegal guerrilla groups which practice forced conscription, including the conscription of children. Child labor remains a significant problem, as well, in the sex industry, in mining, and in coca picking. Colombia's 276 labor inspectors for enforcing child labor laws in the formal sector (covering about 20% of the child labor force) are seen as inadequate for effective enforcement.

Finally, the State Department's *Country Reports*, 2007 also points to the inadequacy of some of Colombia's labor laws. For example, the monthly minimum wage in Colombia, about \$205, does not provide sufficient income to purchase a basic market basket of goods for a family of four. In addition, it is difficult to enforce the minimum wage in the informal sector.

Possible Implications

If Congress were to approve the proposed Colombia FTA, it would be the second FTA (after Peru) to have some labor enforcement "teeth." Labor provisions including the four basic ILO core labor standards (enumerated in the previous section) would be enforceable through the same dispute settlement procedures as for all other provisions, such as those for commercial interests. Opponents argue that under CFTA, only the concepts of core labor standards, and not the details of the ILO conventions behind them, would be enforceable.

Proponents point to recent Colombian progress in protecting workers on many fronts. First the personal protection program for union members has been a success in that since 2002, not a single trade union member enrolled in the program has been killed, according to the Colombian Embassy. Second, funding for investigating and prosecuting perpetrators of crimes against trade unionists has increased. Third the government has engaged in greater social dialogue with the ILO and other international union organizations, which are having an impact on national labor

¹⁷ *Country Reports on Human Rights Practices*, 2007.

policy. Fourth, there are a number of new legislative proposals pending to further protect basic core labor rights.¹⁸

On national security issues, proponents acknowledge the continuing violence in Colombia as well as recent corruption and wiretapping scandals. They assert that the level of reported violence has steadily and significantly declined under President Uribe. They argue further that rather than hiding the scandals or minimizing them, Colombia is taking steps to root them out and cleanse the political system, recognizing that more must be done, including bringing to justice those who have committed crimes against unionists. However, they argue, walking away from the proposed CFTA or postponing it until conditions are perfect would send an unambiguous signal to friends and opponents alike that the United States is an unreliable partner without a vision for cooperation in the Western Hemisphere. They argue that this would make Colombia, Panama, Peru and others who are making political decisions to enhance relations with the United States despite strong domestic and external political pressure, re-evaluate their relationship with the United States.¹⁹

Opponents argue that delaying the vote on the proposed CFTA further would give Colombia more time to keep improving protections for its workers. They assert that Colombia is still the most dangerous place in the world to be a trade unionist, since it still accounts for the majority of murders of trade unionists world-wide. They also argue that only 55% of those convicted for murders of trade unionists are in custody, according the Colombian Attorney General's office; the rest are at large. They also argue that members of the Uribe government continue to inaccurately denounce union members as guerrillas. Finally they argue that passing the CFTA could very well halt the "meager" progress by the Colombian government on worker rights protections achieved to date.²⁰

Proponents argue that approval of the proposed FTA and the economic growth in Colombia that would result is the best way to protect Colombia's trade unionists. They also argue that not passing the agreement would not resolve Colombia's labor issues.

¹⁸ An Open Letter to Congressional Democrats on Hemispheric Trade Expansion. Signed by seven former Members of Congress and the Senate and at least 30 former cabinet officials, ambassadors, and foreign and trade policy advisors. Available at [http://www.chamberpost.com/files/Colombia_Letter_from_Former_Democratic_Officials.pdf].

¹⁹ Ibid.

²⁰ Various sources already identified plus USLEAP. *Violence Against Colombia Trade Unionists and Impunity: How Much Progress Has There Been Under Uribe?* April 2008.