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## Legislative Alert: US-Colombia Free Trade Agreement Labor Action Plan

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## Legislative Alert: US-Colombia Free Trade Agreement Labor Action Plan

### Abstract

[Excerpt] As the debate about the US-Colombia FTA comes to a head, advocates of the agreement have been making claims both about the "remarkable progress" in labor conditions in Colombia as well as the position of the AFL-CIO with respect to the adequacy of the Labor Action Plan (LAP).

### Keywords

AFL-CIO, Legislative Alert, US-Colombia Free Trade Agreement Labor Action Plan

### Comments

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## ***LEGISLATIVE ALERT!***

(202) 637-5057

October 11, 2011

Dear Representative:

As the debate about the US-Colombia FTA comes to a head, advocates of the agreement have been making claims both about the “remarkable progress” in labor conditions in Colombia as well as the position of the AFL-CIO with respect to the adequacy of the Labor Action Plan (LAP).

**To be clear -- the labor situation in Colombia remains deplorable. To date, the track record of Labor Action Plan on Colombia gives little comfort that there will be meaningful change on the ground in the near future. The AFL-CIO remains firmly opposed to the Colombia FTA.**

### **ACTION PLAN**

Contrary to some assertions, **the Labor Action Plan (LAP) is not being meaningfully implemented.**

- **Collective Pacts:** The situation with “collective pacts”—salary and benefit schemes that employers impose on non-unionized workers to undermine unions—is illustrative. The Action Plan did not require Colombia to implement the repeated International Labor Organization (ILO) recommendations to eliminate collective pacts in union workplaces. Instead, Colombia only promised to criminalize (with penal sanctions) the offering of better terms under collective pacts than under union-negotiated collective bargaining agreements. And even that requirement is being flouted. For example, Avianca, a major Colombian airline, has continued its practice of offering better pay and opportunities for advancement to non-union employees—using a “voluntary benefits plan” instead of a collective pact. The different designation does not at all mitigate the scheme to undermine the ability of workers to freely associate and collectively bargain.

While the Government of Colombia recently announced it is finally investigating Avianca, it seems clear that it is only addressing this and other similar complaints due to the FTA spotlight—repeated complaints by relevant unions have been unable to garner the attention that the Ways and Means mark-up did. One can only imagine what will happen with implementation of the Action Plan and other reforms once that spotlight is removed.

- **Cooperatives:** In the LAP, Colombia also promised to—finally—begin implementing its laws against cooperatives and other forms of labor intermediation (the practice of using sham subcontractors and other legal structures to avoid a direct employer-employee relationship that would give employees the right to freely associate and collectively bargain if they so choose).

Instead, Colombia issued a decree that its own Ministry of Social Protection admitted applied only to “cooperatives,” allowing other forms of sham labor intermediation to proliferate. Efforts to get the Colombian government to expand the scope of its decree failed for months until, once again, a public spotlight was put on the issue. On the eve of the markup of the Colombia FTA in the Ways and Means committee, Colombia issued a circular (an internal administrative instruction) that purported to clear up the issue. This circular does not have the force of a law, cannot override existing laws or decrees, can be retracted at any time, and is not likely to serve as a basis for prosecution of illegal labor intermediation. In other words, vast loopholes in Colombian labor law and practice remain, and even under the glare of the public spotlight, the Colombian government is apparently resisting rather than promoting reform.

### **“REMOVAL” FROM ILO LIST**

Contrary to some claims, **the removal of Colombia from the ILO Committee on Application of Standard’s list of “individually examined” cases did not reflect ILO acknowledgement of progress in Colombia.** As the Committee explained in 2010, “[a]fter a lengthy and difficult debate, **Colombia had finally been taken off the list so as to break a deadlock. The same had happened in 2008, when although Colombia had come up for examination, it was not listed as an individual case.**”<sup>1</sup> Specifically, the ILO employer group vetoed inclusion of Colombia in the group being examined, notwithstanding that serious concerns had been raised about conditions in Colombia by the ILO and despite strong resistance from the worker representatives. In short, **this is a further example of resistance to reform in Colombia; not evidence of reform.**

### **RATIFICATION OF CONVENTIONS**

Finally, the fact that Colombia has ratified all eight of the fundamental ILO convention says nothing about whether Colombia is actually implementing its obligations under the conventions and providing workers their basic rights. Many U.S. trading partners have ratified conventions but nonetheless fail to implement them. One such example is Guatemala. Like Colombia, Guatemala has ratified all eight fundamental conventions. However, the United States currently has a case pending against Guatemala under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) because of Guatemala’s failure to provide workers even the minimum labor protections recognized under Guatemalan law.

After peeling away the rhetoric, the facts show—unequivocally—that serious problems remain in Colombia: extensive violence against workers and their leaders continues, as does near universal impunity for such acts, over and above the failure to guarantee that workers can exercise even the most basic of fundamental labor rights.

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<sup>1</sup> Report of the Committee on Application of Standards, Geneva 2010 at Part I/5.

The minute that Congress votes to approve this agreement without holding Colombia accountable for the obligations it made in the LAP, the spotlight on Colombia is turned off. The Labor Action Plan is not a part of the FTA, which significantly limits its potential enforceability after the agreement has entered into force. The AFL-CIO remains strongly opposed to the US-Colombia FTA and urges you to vote against it.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Samuel', written in a cursive style.

William Samuel, Director  
Government Affairs Department