

# Song of the Sirens

## Why the US–Andean FTAs undermine sustainable development and regional integration

US free trade agreements with Peru and Colombia, as well as the possible agreement with Ecuador, were negotiated under the promise of great opportunities in the world's richest market, but the truth is that these agreements will have a devastating impact on the livelihoods of small farmers, public health, and the regulation of investment to protect the public interest.

Furthermore, they will weaken existing regional processes of integration and co-operation. Trade rules with the Andean region need to be substantially modified in order for development to become a priority once again.

'First you will come to the Sirens who enchant all who come near them. If any one unwarily draws in too close and hears the singing of the Sirens, his wife and children will never welcome him home again, for they sit in a green field and warble him to death with the sweetness of their song. There is a great heap of dead men's bones lying all around, with the flesh still rotting off them. Therefore pass these Sirens by, and stop your men's ears with wax that none of them may hear.'

Homer, *The Odyssey*

## Summary

Deadlock in the Doha Development Round negotiations at the World Trade Organization (WTO) and stalled talks on the Free Trade Area of the Americas Agreement (FTAA) prompted the development of bilateral trade agreements with an agenda which seeks to progress quickly and unhindered towards the liberalisation of developing country markets, consolidating trade and investment rules which benefit rich countries and transnational companies (TNCs).

The US Free Trade Agreements (FTAs) with Peru, Colombia, and Ecuador are a step further in this direction. A key reason for these Andean countries to enter into such agreements was to maintain the trade benefits granted to them by the USA on a temporary basis since 1991, as part of its drug eradication policy.

In order to make such concessions permanent, these Andean countries have agreed to significant concessions which could affect the sustainability of their development policies and weaken the ongoing process of integration with neighbouring countries.

Having analysed the text of the Peru and Colombia FTAs, Oxfam believes that the agreements on agriculture, intellectual property, and investment would have serious consequences for small farmers, public health, and regulation of investment.

In agriculture, the FTAs dismantle mechanisms for the protection of agricultural products which are vital for food security and the livelihoods of small farmers. Without the price band system and the power to apply agricultural safeguards, the agricultural sector is left vulnerable to fluctuations in the international market and to unfair competition from subsidised US products.

Regarding intellectual property, the USA has succeeded in imposing new, harsh protection measures, such as extending the life of a patent and exclusive use of test data. These measures would increase the monopoly rights of transnational pharmaceutical companies and limit competition and access to affordable generic medicines in the Andean countries.

Likewise, the chapter on investment curtails the powers of Andean governments to regulate foreign investment through the inclusion of harmful provisions, such as the principle of non-discrimination, prohibitions on performance requirements, the recognition of indirect expropriation, and the acceptance of dispute settlement through international arbitration.

The Andean FTAs are thus not mere trade agreements with the United States: they set down trade rules that threaten long-term national development policies and undermine existing frameworks for co-operation within the region. Therefore there is an urgent need to counter their impact and to change

substantially the direction they seek to impose on trade rules within the region.

With regard to the effects on agriculture, the Andean countries must maintain the right to decide whether or not to impose tariffs on products which are of particular importance to food security, and when and how they do so. Furthermore, given the unfair competition generated by US subsidies, they must preserve their right to maintain and enforce mechanisms for protecting their most vulnerable domestic sectors.

Regarding the extension of intellectual property rights, the Andean countries must maintain their right to apply the flexibilities provided by the WTO (Trade-Related Aspects of Intellectual Property Rights, TRIPS). No FTA should limit the right to public health and access to affordable medicines for all.

On the treatment of investment, Andean governments must preserve the right to regulate and maintain oversight of foreign investment. This includes the right to enforce local content requirements on foreign investment, exclude the concept of indirect expropriation, and limit the possibility for investors to bypass the laws and regulations of the recipient country.

As for the process of regional integration, regional governments and civil society movements want to see fairer trade rules within more equitable integration frameworks to allow the Andean countries to counter existing asymmetries in their relations with developed countries and set development priorities without endangering their future.

# 1 Introduction

The launch by the United States of a Free Trade Agreement (FTA) with the Andean countries is closely linked to the stalled negotiations on the Free Trade Area of the Americas Agreement (FTAA), the most ambitious free trade project for the region. Following repeated failures to make progress on FTAA talks in Miami and Puebla, in May 2004 the USA began negotiating an FTA with Peru, Colombia, and Ecuador.<sup>1</sup> Venezuela was not included in the process, and Bolivia attended the talks as an observer.<sup>2</sup> To date, Peru and Colombia have concluded negotiations on the FTA, but not so Ecuador. In this context, the creation of FTAs with the Andean countries, added to the agreement with the countries of Central America (CAFTA),<sup>3</sup> marks a further step towards the FTAA.

Deadlock in the Doha Development Round negotiations at the World Trade Organization (WTO) and stalled talks on the FTAA prompted the development of bilateral trade agreements with an agenda which seeks to progress quickly and unhindered towards the liberalisation of developing country markets, consolidating trade and investment rules which benefit rich countries and transnational companies (TNCs), and disregarding the needs of developing countries.

Regional and bilateral agreements establish unequal trade rules whereby rich countries protect their domestic industries and the interests of their own companies while developing countries obtain limited access to rich country markets in exchange for radical liberalisation and concessions in areas of public interest, such as intellectual property and regulation of investment.

Thus, the Andean countries have negotiated bilateral agreements without the right to the favourable provisions contained in multilateral trade agreements, such as the 'special and differential treatment' provisions of the WTO, which allow developing countries exemption from tariff reductions and longer implementation periods for products which are essential to their development policies.

The implementation of these agreements would pose a serious threat to the national development policies of the Andean countries, as their focus and funds would in many cases be transferred to compensation programmes and alleviation projects for the sectors

most affected by such agreements.<sup>4</sup> This would have an impact on the sustainability of national policies.

A key reason for the Andean countries to enter into such agreements was to maintain the trade benefits granted to them by the USA, on a temporary basis since 1991, as part of its drug eradication policy.

Given that the ATPDEA (Andean Trade Promotion and Drug Eradication Act) will expire in December 2006, Peru, Ecuador, and Colombia – together producing almost 100 per cent of all coca leaf, the main ingredient in the production of cocaine hydrochlorate – bowed under pressure from the United States and began negotiations on an FTA from scratch. In other words, they did so with none of the benefits afforded to them under the ATPDEA.

And so they are preparing to fully open up their markets and offer major concessions to US companies in exchange for access to the US market, which they already had on a 'preferential' basis. The result is a disastrous deal for the Andean countries, as described by a representative of the Colombian pharmaceutical industry:

*'The fact is that the advantages Colombia will supposedly lose on expiry of the ATPDEA are much less than the public has been led to believe. And there is no justification in replacing them by rushing into an FTA which can ultimately destroy our agriculture, restrict access of the Colombian population to medicines, and impose on the State the obligation to pay hundreds of millions of dollars to foreigners pursuant to certain provisions in the chapter on Investment.'*<sup>5</sup>

The FTAs will affect one of the poorest and most marginalised regions in the Americas.<sup>6</sup> They will have negative impacts on all the current members of the Andean Community of Nations (CAN),<sup>7</sup> for they substantially modify commitments made previously between Andean states.

The US–Andean FTAs have been drawn up in a framework of grossly unequal economic relations between the countries. In terms of trade, the USA is an important market for the Andean countries, accounting for 42 per cent of exports and 26.6 per cent of imports. By contrast, the Andean states together account for less than 1 per cent of total US trade volume.<sup>8</sup>

This gross inequality in trade relations was one of the factors leading to a wholly inflexible US approach from the outset of negotiations with the Andean countries. Similarly, as the main investor in the region, where it controls 29 per cent of investment

flows,<sup>9</sup> it has imposed FTAs which guarantee protection for its investors and for the intellectual property rules demanded by the US pharmaceutical industry.

Oxfam is particularly concerned about the agreements on agriculture, intellectual property, and investment contained in the Peru and Colombia FTAs. These undermine multilateral trade agreements and the development of fairer trade rules. Moreover, they could have potentially devastating effects on the populations of these Andean countries.

## 2 Agriculture

The FTAs grant the United States extensive access to Andean agricultural markets. Negotiations took place under extremely unequal conditions, due not only to the size of the relevant economies, but also to the unfair competition generated by US subsidies.

This is a crucial issue, because agriculture is a key economic activity for Peru, Colombia and Ecuador. The livelihoods of a large percentage of the rural population in these countries, especially of the poorest, depend on agriculture.

Agriculture generates 31 per cent of all employment and 7.6 per cent of GDP in Peru. In Colombia it is the third most important sector in terms of employment, with 22.7 per cent (almost double the figures for employment in the industrial sector, which generates 13.5 per cent), and provides 11.4 per cent of GDP. In Ecuador, agriculture generates 30 per cent of total employment (including 82 per cent of economically active indigenous women in the highlands, one of the most marginalised population groups) and provides 7.4 per cent of GDP.<sup>10</sup> By contrast, agriculture in the United States generates less than 2 per cent of employment and under 1 per cent of GDP.

The United States sat down at the negotiating table demanding maximum liberalisation of Andean agricultural markets. As a condition for initiating talks, it demanded an end to the Andean price band system, a mechanism which has served to stabilise widely fluctuating import prices of specific agricultural products (such as rice, barley, maize, soybean, wheat, sugar and milk, amongst others); eventual elimination of tariffs for all products; and

a ban on fixed quotas and on preferential treatment for special products.

US programmes, however, provide over \$20 billion in trade-distorting agricultural subsidies per year,<sup>11</sup> giving rise to unfair trade practices, such as dumping. In other words, the USA exports its agricultural products at prices below their true cost of production (see example in Box 1). But the USA refused to address the issue of subsidies outside the WTO framework, where agreements on substantial reductions in subsidies by both the USA and the EU are continuously deferred.

**Box 1: Inequalities for cotton producers**

In the USA, 25,000 cotton producers receive approximately \$3.5 billion per year in subsidies. Of this amount, 80 per cent goes to 10 per cent of the farmers who receive subsidies. Production costs vary from \$0.68 to \$0.72 per pound.

The 28,000 cotton producers of Peru receive no subsidies, but they have a tariff of 12 per cent as protection against sudden drops in international prices. The FTA would eliminate this tariff immediately (zero tariff), causing devastation to production and the livelihoods of farmers.

The USA is currently the CAN's main cotton supplier. Under the trade preference system (currently the ATPDEA), it allowed imports of Peruvian textiles to US markets provided they were manufactured using mainly US cotton. This meant that cotton imports to Peru increased significantly: 45,000 tonnes of subsidised US cotton were imported into the country in 2005 alone.

This has led to a radical reduction in cotton production in Peru: 260,000 hectares of cotton were grown in Peru in 1960; in 2004 the figure was barely 89,000 hectares.

According to the agreements signed, Colombia and Peru '*shall not apply any price band system to agricultural goods imported from the United States*',<sup>12</sup> thereby leaving national producers unprotected and exposed to the mercy of duty-free US imports.

US insistence on the dismantling of the price band system leaves the Andean countries with no alternative means of protection to counteract the effects of US subsidies. It is also further evidence of double standards in US foreign trade policy. Oxfam believes that, insofar as the USA continues to provide extensive subsidies which lead to unfair trade practices, it should uphold the protection mechanisms used by developing countries to safeguard their most vulnerable domestic sectors.

Preferential access to US markets pursuant to the ATPDEA has promoted exports of non-traditional products by the Andean countries. Such products (vegetables, beef, and dairy products in Colombia; asparagus, mangos, artichokes, and oil seeds in Peru; and bananas, cocoa, palm hearts, coffee extracts, tropical fruits, flowers, and beans in Ecuador) would benefit from the US–Andean FTAs. However, non-traditional export products in Peru do not have the same weight as traditional agriculture, accounting for only 8 per cent of agricultural GDP, and barely 3 per cent of all cultivated land.<sup>13</sup> In Colombia, employment generated as a result of the ATPDEA in both rural and urban populations is estimated at only 14,000 jobs per year.<sup>14</sup>

Many of the new jobs created as a result of non-traditional exports are temporary and performed mainly by women (see box 2). A study on flower cultivation in Ecuador<sup>15</sup> shows, moreover, that most of these are young, single women, who are denied labour and reproductive rights and lose their jobs if they become pregnant.

Special products, on the other hand, would come under threat from US subsidised agricultural imports. Special products are those which are essential to guarantee the food security and livelihoods of the rural population, and most of them have been protected by the price band system.

For Peru, special products are rice, maize, wheat, oil seeds, sugar, meat, cotton, dairy products, and barley. These provide an income for millions of farmers in rural areas.

In Ecuador, the list of special products includes maize, rice, broad beans, potatoes, soybeans, beef, cheese, condensed milk, and citrus fruits. Rice is grown by some 76,000 farmers, mainly on a medium and small scale, and employs around 124,000 labourers. Maize (white and yellow) is grown by 329,019 farmers, almost exclusively on a medium and small scale. More than 900,000 people – around 8 per cent of the Ecuadorian population – rely on livestock farming and milk production, generally in farms of under 20 hectares.

In Colombia, wheat, soybeans, cotton, sorghum, and rice are considered to be special products and would potentially be the most affected by the FTA. Figures from the Colombian Ministry for Agriculture and Rural Affairs indicate that, if all protection were to be eliminated, production of nine products studied would drop in volume by 57 per cent, the area of land farmed would drop by around 20 per cent and employment generated by these products would drop by 35 per cent.<sup>16</sup>

**Box 2: Women in small-scale agriculture and rural employment**

Women play a key role in farming, both as producers (traditional products) and as labourers (non-traditional export products). A quarter of all production units in Ecuador are headed by women, totalling 213,730 farms, most of which grow products which would be under threat from the FTA: rice, beans, potatoes, soybeans, meat, cheese, and citrus fruits.

Women are also the majority of workers in the agro-export sector, comprising 50 per cent of that workforce in Peru<sup>17</sup> and 64.4 per cent in Colombia.<sup>18</sup> In the asparagus-growing sector of Peru, 72 per cent of workers are women, with 59 per cent on temporary contracts.<sup>19</sup> In Ecuador, women make up 52 per cent of the workforce in the flower industry.<sup>20</sup> The working conditions for women in these agro-industries are precarious. The most common complaints regarding the labour rights of women working in the agro-export sector (flowers, asparagus, artichokes) relate to long work days of up to 12 hours per day, temporary contracts of between five and six months, a ban on unions and violation of reproductive and labour rights.

Unlike in the United States, where farmers can diversify activities and income,<sup>21</sup> small farmers in the Andean countries have very limited resources and fewer options for preserving their income if the products they grow are displaced. The lack of alternative employment, limited access to markets and credit, and lack of basic services in adverse climatic conditions and geographic isolation further compound poverty levels. None of these issues are addressed by the FTAs.

There is a potential added danger that farmers will turn to the cultivation of coca. Bolivia, Colombia, and Peru currently have approximately 158,000 hectares of land under coca cultivation,<sup>22</sup> which provides more than 98 per cent of world supply of this product.<sup>23</sup>

The FTAs help to consolidate exports that are already concentrated in a small number of agricultural products grown specifically for export, leaving small-scale growing of products for local markets lagging even further behind.

This trend began with the structural adjustment programmes which dismantled policies and mechanisms designed to support the development of small-scale local agriculture. Such programmes have been one of the factors contributing to the perpetuation of poverty and inequalities in income distribution within the countries in the region.

## Outcome of negotiations: special and differential treatment for whom?

*'The published text (of the FTA) not only shows the threat posed to our food security and sovereignty by quotas and immediate liberalisation of the local market, but also that the total and immediate dismantling of the price band system will leave sensitive agricultural products devoid of all protection (...). Sensitive products such as cotton, maize, wheat, rice, barley, dairy products, oils, meat and others, which provide a livelihood for 1,700,000 families in Peru, will be left totally unprotected from the very first moment the FTA comes into force'.*

Luis Zúñiga, producer and president of CONVEAGRO, Peru

Within the framework of the WTO, and having regard to existing asymmetries, developing countries are afforded Special and Differential Treatment<sup>24</sup> at all times in the negotiations. In this way, they will have the flexibility to designate an appropriate number of products as special products, which would be exempt from drastic tariff reductions.<sup>25</sup>

But the outcome of negotiations on the Andean FTAs shows that the USA refused to exempt any product: Peru, for example, had requested exemption for eight special products, and implementation periods for tariff reductions of at least 20 years.

The USA, however, managed to secure 47 tariff exemptions on sugar, substitutes and products with high sugar content.<sup>26</sup> This was a first in agricultural trade negotiations: special treatment for the most powerful country.

Peru conceded immediate tariff reductions for two thirds of its products (wheat, barley, cotton, and oil seeds). The longest implementation periods accepted were for rice and dairy products (17 years) and for maize, beef, and poultry products (12 years). But even these are shorter than the periods granted under CAFTA (20 years).

In addition, the Andean countries have been forced to accept excessively high import quotas from year one, which will effectively neutralise any potential benefit from the extended implementation periods. The duty-free quota requested by the USA from Peru for maize is 500,000 tonnes – 50 per cent of total trade in this product.<sup>27</sup>

The USA further secured a duty-free import quota of 74,000 tonnes of rice to Peru in the first year (five times the rice imports for 2004).

And these duty-free quotas will increase steadily by 6 per cent per year.

As for Colombia, the USA secured a quota of 79,000 tons of rice (almost 4 times the largest quota historically of 22,700 tonnes). But the most significant concession granted by Colombia was for maize, with the USA securing imports of 2 million tonnes in the first year, the biggest 'plus' for the USA of the FTA with Colombia.

To top it all, the FTAs force the Andean countries to limit the use of WTO protection mechanisms, such as the special agricultural safeguards (SSGs), which aim to cushion temporary fluctuations in imports that could distort local production. The agreements restrict the use of such mechanisms to volume only (and not to price) on a temporary basis during the tariff elimination period for a very limited number of products. This restriction limits the capacity of a country to prevent price crashes on the domestic market, and, moreover, the SSGs can only be used until such a time as the relevant tariff has dropped to zero.

These concessions within the FTAs weaken the standing of the three Andean countries in the WTO, for they would effectively be giving up their right to such safeguards for good. Thus, the USA is forcing developing countries, through FTAs, to give up provisions afforded to them by the WTO which are still under negotiation and could allow for such safeguards to be used in a more flexible way.

The multilateral trade system has provided better negotiating conditions for developing countries. By contrast, bilateral trade agreements force poor countries to give up some of the beneficial provisions which are under negotiation at the WTO. Furthermore, pursuant to the provision of most favoured nation, the conditions granted to the USA will be claimed back in future negotiations with other countries. Oxfam believes that bilateral agreements increasingly limit the capacity of countries to decide when and how to liberalise their agricultural markets and protect their most vulnerable domestic sectors.

### **3 Intellectual property and access to medicines**

With the support of its brand-name pharmaceutical industry,<sup>28</sup> the USA has imposed new and stringent intellectual property protections in the Andean FTAs, as it has done in every FTA it has

concluded in recent years. If implemented, these new rules would unduly extend the monopoly rights of the international pharmaceutical industry, restricting generic competition and reducing access to affordable new medicines in the Andean countries.

The Andean countries are already fully compliant with the intellectual property rights standards set out in the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) within the WTO. But the FTAs include measures which go beyond the commitments in TRIPS and limit generic competition. In some ways these provisions are even more restrictive than those contained in CAFTA, despite the fact that Andean negotiators from each country's health ministry went to considerable lengths to oppose them.

Generic competition has proved effective in reducing the cost of medicines in a sustainable way. When a patent expires and generics become available, medicine prices fall between 30 and 70 per cent on average, depending on the number of generic medicines that enter the market.<sup>29</sup> In Colombia, where generics supply two thirds of the national market, the cost of generic medicines is, on average, a quarter the cost of their brand-name equivalents.

The price of medicines is a crucial factor in determining access to health (see box 3). Given the existing crisis in the public health and social security systems of the Andean countries, many patients must pay for their medicines out of pocket. This imposes a serious burden on poor households.

Women are disproportionately affected, since they tend to have lower incomes and fewer rights under the social security systems. Furthermore, due to the lack of medicines and the high cost of treatment, they are forced to spend a greater part of their time caring for sick relatives, women and girls being the traditional caregivers within the family.

**Box 3: Public health and poverty in the Andean countries**

Access to affordable medicines is extremely important for public health in the Andean region, where about half of the population lives in poverty. In Peru, around 20 per cent of the population lacks access to health care. Only half of all Peruvians have health insurance. People living in poverty are for the most part not insured and must either pay out of pocket or receive no treatment at all. Medicines account for one quarter of public health expenditure and 44 per cent of household spending on health.<sup>30</sup>

In Ecuador, 54 per cent of household expenditure on health is payment for medicines.<sup>31</sup> In Colombia, about 20 million people (45 per cent of the population) lack adequate access to medicines, either because they have no health insurance or because the coverage they have does not include the medicines they need.<sup>32</sup> Two thirds of Colombians over the age of 60 have no health insurance at all.<sup>33</sup>

Intellectual property (IP) protections, such as patents, are a public policy tool. They grant a monopoly licence designed to promote and reward innovation, whilst at the same time ensuring public disclosure of the invention for the benefit of society as a whole.

But when it comes to medicines, public health policy must ensure that the balance between innovation and access does not result in private property rights deriving from patents being placed above the rights of patients. Public health safeguards included in TRIPS and reaffirmed in the Doha Declaration must therefore be an integral part of intellectual property systems to ensure an adequate balance between IP protection and access to medicines (see Box 4).

#### **Box 4: TRIPS and the Doha Declaration**

The protection of Intellectual Property Rights (IPR) was first included in the multilateral trade system in the Uruguay Round which resulted in the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

When it entered into force, with the establishment of the WTO in 1995, the TRIPS agreement introduced global minimum standards for the protection and enforcement of IPR, including a 20-year protection term for patents. This imposed severe hardships on many poor countries.

However, the TRIPS Agreement does include limited exceptions to ensure public health safeguards that help countries to reduce the cost of medicines. It allows a government, for example, to grant compulsory licences to override a patent in order to allow generic competition and the freedom to determine the grounds on which to do so.

The WTO Doha Declaration of 2001 reaffirmed the right of governments to 'use, to the full, the provisions in the TRIPS Agreement which provide flexibility' in order to 'protect public health and promote access to medicines for all'. For its part, the US Congress mandated in its Trade Promotion Authority Act (TPA) that US negotiators 'respect the [Doha] Declaration on the TRIPS Agreement and Public Health'.

Despite all this, all US FTAs include 'TRIPS-plus' provisions on IPR which go beyond the standards set in the TRIPS Agreement. These rules prevent or delay the introduction of competition from low-cost generic medicines to the market by restricting or limiting the application of public health safeguards provided in the TRIPS Agreement. Furthermore, they go against the Doha Declaration and TPA, both of which affirm that public health should take precedence over private patents.

Contrary to the assertions of the US pharmaceutical industry that '*...Peru found it in its own interest to significantly increase its levels of IPR protection beyond that required by TRIPS...*',<sup>34</sup> negotiators from the Andean health ministries worked hard over more than 18 months of negotiations to oppose the imposition of new TRIPS-plus rules by the USA.

But the IP provisions contained in the US FTAs with Peru and Colombia show that none of the alternative proposals put forward by the Andean countries were considered. The USA never formally replied to any of the proposals that the Andean countries brought to the negotiating table, but rather paid heed to the US pharmaceutical industry which 'urges US negotiators to insist that the final language track the FTA language contained in the US model text.'<sup>35</sup>

Given the intransigence of US negotiators, the Colombian technical team resigned from negotiations in September 2005, alluding to US inflexibility and stating that the IP provisions being negotiated in the FTA were the result of a political rather than a technical decision. Shortly afterwards, the technical team from the Peruvian Health Ministry also withdrew from the negotiations.

Analysis of the chapter on IPR in the US–Peru FTA shows that these provisions include new and extensive protections for patent holders, but no corresponding measures to ensure access to generic medicines. The following provisions are 'TRIPS-plus' and of particular concern in this context:<sup>36</sup>

- **Extension of the patent term.** The FTAs require the government to extend patent protection beyond the 20 years established in the TRIPS agreement, to compensate for delays in granting the patent and in granting marketing approval. These measures

even exceed US law, which includes limitations to ensure that the product is a truly novel medicine and which put a ceiling on the extension period. Patent term extension will limit access to medicines by further delaying the introduction of affordable generic medicines.

- **Exclusive use of test data.** The FTAs create a new system of monopoly power, separate from patents, by blocking the registration and marketing approval of generic medicines for five or more years, even where no patent exists. They prevent the drug regulatory authorities from using the clinical trial data of brand-name pharmaceutical companies to approve the marketing of a generic drug which has already been shown to be equivalent to the branded one, thereby delaying or preventing generic competition. Furthermore, issuing a compulsory licence to temporarily override a patent in order to allow generic competition would not be a viable political tool, since no authorised generic product would be able to enter the market in a timely way.<sup>37</sup> This constitutes a 'TRIPS-plus' measure, as the TRIPS Agreement protects only 'undisclosed data' to prevent 'unfair commercial use'; it does not confer either exclusive rights or a period of marketing monopoly.
- **Linkage between marketing approval and patent status.** The FTAs prohibit the Andean drug regulatory authorities from registering generic versions of medicines until after the patent has expired, with no exceptions. Thus, these public agencies charged with verifying a drug's safety and efficacy would have to become a sort of 'patent police', with the burden of enforcing private property rights, instead of leaving the patent owner with the responsibility of using the judicial system to that end. Unlike US law, the FTAs do not include any measures to ensure timely resolution of patent disputes when generics producers challenge such patents, resulting in *de facto* patent extension.

This explicit extension of monopoly rights is not limited by the side letters to the main text, for they do not constitute legally binding exceptions to the very clear obligations set out in the agreements. The letters make no explicit reference to the ability of a country to use to the full the public health safeguards provided by TRIPS. They merely serve to create the impression that public health is given precedence, without affirming that such public health safeguards have the same legal standing as the IP protections contained in the agreements.

**Box 5: Statement of the UN Human Rights Commission Special Rapporteur on the FTA**

*'I am deeply concerned that the US–Peru Free Trade Agreement will water down internationally agreed health safeguards, leading to higher prices for essential drugs that millions of Peruvians will find unaffordable... (The FTA) must not restrict Peru's ability to use the public health safeguards enshrined in TRIPS and the Doha Declaration. The trade agreement must improve – not further impede – access to essential medicines, especially for those living in poverty.'*

Paul Hunt, UN Special Rapporteur (UN Press Release, 5 July 2004)

Independent studies on the potential impact of such IP protections on access to medicines carried out in the three Andean countries came up with similar findings, showing that prices would increase and access to medicines would be restricted.

In Colombia, the Pan American Health Organisation carried out a study<sup>38</sup> on the potential impact of several of the 'TRIPS-plus' provisions contained in the FTA. It concluded that by 2020 the Colombian health system would have to pay an additional \$940 million per year to cover the growing cost of medicines, and that approximately 6 million users would have no access to medicines. In the case of persons affected by HIV/AIDS, 4,400 patients would not be able to afford medicines and would therefore die within an average of five years. Similar conclusions were reached in a study commissioned by the Ecuadorian Health Ministry.<sup>39</sup>

A study commissioned by the Peruvian Health Ministry<sup>40</sup> concluded that protection and exclusive use of test data would limit competition from generic products. It estimated that, compared to Peru's current expenditure on medicines, prices could rise by an average of 9.6 per cent in the first year, by almost 100 per cent in 10 years, and by 162 per cent in 18 years. In the first year alone this would mean that Peruvians would have to spend an additional \$34.4 million to enjoy the same level of access to medicines and health care as they do today, of which \$29 million would be paid by individual households and the rest by the state. These additional costs would rise to \$199.3 million in 10 years, of which almost \$110 million would have to be met by Peruvian households. The study further calculated that between 700,000 and 900,000 people per year would be denied access to medicines, unless public funds were to increase and individual households were able to afford greater costs.

The system of IPR protection exists for the sake of society and not for the enrichment of a few.<sup>41</sup> The international pharmaceutical industry, however, seeks to impose ever more stringent protections in all countries, in blatant disregard of the rights of developing countries to determine when to safeguard their public health and development needs.

Oxfam believes that the WTO TRIPS Agreement affords more than adequate IPR protection in the Andean countries. The inclusion of measures extending protection for such rights would result in higher health costs and reduced access to affordable medicines, thus compounding even further the public health problems these countries already face.

## 4 Investment

Chapter 10 of the Peru and Colombia FTAs provides an agreement on investment which will afford benefits only to US investors. Whilst developing countries have, within the multilateral trade system, strenuously opposed the inclusion of an agreement on investment in WTO negotiations, the investment regulations contained in the Andean FTAs are a monumental achievement for the USA. The chapter on investment does away with the power of governments to regulate investment and with the principle of discrimination in favour of the national interest, which in the past allowed a balance to be struck between the interests of transnational companies (TNCs) and the public interest.

Around 40 per cent of accumulated foreign investment flows to the Andean countries since the 1990s was channelled into natural resources, mainly the mining and oil industries.

Although such industries had a positive impact on the balance of payments, they also affected peoples' rights, with local populations having to pick up the environmental costs of mining, such as river and air pollution, which threatened their health and their livelihoods. In Ecuador, large swathes of indigenous territories in the Amazon region are constantly affected by oil spills; the city of La Oroya in Peru has the country's highest concentrations of lead in the air as a result of the metal industry, making it one of the most polluted cities in the world.<sup>42</sup>

To recognise that quality foreign direct investment (FDI) can contribute to development by allowing transfer of capital,

technology, and skills, generating income through taxes and contributing to the generation of employment, does not mean ignoring the potential risks of such investment where no regulation exists. These economic, social, and environmental risks are not taken into account by the market and usually have a disproportionate impact on the poorest populations of recipient countries. This lack of accountability from TNCs is a threat to sustainable development.

Since the 1990s, the Andean countries have carried out reforms to create a more favourable investment environment. In some cases, these reforms included provisions in domestic law affording national treatment to FDI.<sup>43</sup> Furthermore, they have entered into 93 bilateral investment treaties with third countries. The central argument was that such reforms would lead to an increase in investment flows.

But, as the findings of several studies have shown,<sup>44</sup> there is no direct link between investment treaties and an increase in investment flows towards the signatory countries. The Andean countries still receive less FDI than their neighbours, and the region as a whole is currently a long way from achieving the investment levels of previous years.<sup>45</sup>

Crucially, however, these reforms have undermined national regulations designed to orient investment priorities and to protect the rights of indigenous peoples, labour rights, and the environment.

Liberalisation of foreign investment has had a questionable impact on the promotion of sustainable development and equity. The US FTAs nevertheless contain new provisions, in addition to the rules on National Treatment and Most Favoured Nation, which eliminate all forms of positive discrimination towards national investors over foreign investors, and further increase the benefits to US companies:

- **Ban on performance requirements.** Any rule which imposes a specified level of national content, fixes export quotas or requires foreign investors to purchase inputs locally is prohibited. This will render some development policies ineffective. An example of one such policy is the Law for the Promotion of the Agricultural Sector in Peru, which grants the farming industry certain tax benefits if at least 90 per cent of its raw materials or inputs are sourced nationally.

- **Broadened definition of investment.** The FTAs define investment to include stocks, debt and loan agreements, intellectual property rights, and licences. This has serious implications. Especially worrying is the treatment of foreign debt as an investment, since this could restrict any refinancing measures that national governments might need to make if such measures were to affect the profits of US bond holders. Using the provision on indirect expropriation, these ‘investors’ would be entitled to the same dispute settlement mechanisms as corporations.
- **‘Fair and equitable treatment’.** This clause is ambiguous and calls for legal procedures to be applied in instances of alleged unfair competition. TNCs, for example, could argue that the rights granted to indigenous peoples in relation to the use of and control over their territories and natural resources under Andean laws are discriminatory. They could likewise regard as unfair the safeguards and exclusive rights that such populations enjoy regarding the use of resources under Convention 169 of the ILO.
- **Indirect expropriation.** This covers any measure taken by national governments which could have an impact on the risks to or estimated profits of TNCs. In other words, any law passed, be it on the environment or to increase the basic minimum wage, could be construed as indirect expropriation if it affects the anticipated future profits of TNCs, and such companies would therefore be entitled to claim compensation.
- **International arbitration for dispute settlement.** TNCs have the right to sue national governments in international courts and claim financial compensation for any measures taken – including democratically enacted regulations and local government actions – which might affect their profits. These courts would supersede the authority of the national legal system, with secret hearings and no recourse to appeal. The negative experiences of the North American Free Trade Agreement (NAFTA) and the suits filed against the governments of Canada, the USA, and Mexico are evidence of the scope of these measures.

This highly biased agreement not only curtails the policy options of Andean governments, but could further encourage a lack of corporate responsibility by dismantling control, transparency, and accountability mechanisms.

In the case of the extractive industries, where conflicts have arisen between corporations and communities, several indigenous and grassroots organisations in the Andean countries are mobilising to promote changes in the rules and tax systems that governments use to regulate such industries. These initiatives will be undermined by the new benefits afforded to TNCs under the FTAs, which could also affect the capacity of governments to engage in democratic dialogue (see box 6).

**Box 6: Quilish Hill: listening to the people, regulating investment<sup>46</sup>**

Yanacocha is Peru's largest gold mine. In 1993 it was sold to the US company Newmont, associated with the Peruvian company Buenaventura.

Between August and September 2004 the already frequent conflicts between the mining company and the community intensified when exploration began on the Quilish Hill. The population complained that this activity threatened the city's supply of drinking water, as the rivers which supply water to Cajamarca have their source in the water tables under Quilish Hill.

Following massive mobilisations, the Ministry for Energy and Mining overturned the decision allowing exploration in the area, and the company was forced to halt operations. Shortly afterwards, the company admitted that its activities in Cajamarca had had a negative impact on the livelihoods and traditions of the population, and indicated that it was willing to look for solutions to protect the water supply through dialogue and negotiation with the communities.

Under the US FTA, this story would have had a very different outcome. Instead of a negotiated solution to ensure the continued productivity of Yanacocha without damaging livelihoods in the area, Peru would have been taken before an international court, or even forced to pay compensation, for overturning the decision allowing exploration on Quilish Hill.

Oxfam believes that development and poverty eradication policies must include the right to regulate foreign investment. The principles of non-discrimination and the ban on performance requirements contained in the Andean FTAs do not benefit policies aimed at promoting the local economy nor do they protect the livelihoods of local populations. Furthermore, the acceptance of indirect expropriation and the rules on investor-state dispute settlement leave little policy space for the Andean countries to determine their own national investment policies and resolve domestic conflicts.

## 5 Impact on Andean integration processes

The FTAs damage existing integration processes within the region, in particular the Andean Community of Nations (CAN), and affect South American integration initiatives currently on the regional agenda.

Regional integration processes in South America, such as the CAN and the Common Market of South America (MERCOSUR), have developed essentially as trade initiatives. But these processes also provide regional political and institutional forums for the development of common policies regarding production and co-operation between member countries. The various forums allow continual negotiations amongst members, aimed at adapting and improving areas of co-operation.

In the Andean FTAs, however, the agreement is an end in itself and is established as a long-term legal framework.<sup>47</sup>

In this sense, the advance of the Peru, Colombia, and Ecuador FTAs has significantly slowed the development of political and commercial integration within the region.

The FTAs have also cast doubts over the very project of Andean integration, as the commitments they contain undermine some of the basic principles of the CAN. This has led to internal debates, with Bolivia and Venezuela far removed from the position of the other three Andean associates. Venezuela has announced its withdrawal from the CAN.

The FTAs violate the regulatory framework of the CAN, specifically with regard to:

- **Agriculture:** One of the first conditions imposed by the USA in the negotiations was the elimination of the Andean Price Band System (SAFP), contained in the Andean Common Agricultural Policy (ACAP). The SAFP, which has been in force for 12 years, is one of the few remaining policies protecting farmers in the Andean community. It has served as a mechanism to stabilise prices when international prices drop below the levels established in the price band.
- **Intellectual property:** The protection and exclusive use of test data as agreed in the FTAs has led to the modification of the relevant article of Decision 486 which regulates the Common

Industrial Property Regime. This has caused controversy within the CAN, for it was a law intended to adopt a common approach on IP based on WTO commitments.

The FTAs further state that each party shall ratify or adopt the UPOV 91 Convention <sup>48</sup> by 1 January 2008 or upon entry into force of the agreement. This would extend IP rights to those 'discovering' plant varieties. Protection would thus be afforded to something which is not an innovation, such as a hitherto unknown variety, in breach of existing regional legislation.<sup>49</sup> Within the framework of the WTO, adoption of UPOV 91 is contrary to the strategy of the Group of Megabiodiverse Countries (of which Ecuador, Colombia, Peru, and Venezuela are members) which seeks to recognise and disclose the origin and legitimacy of genetic resources and traditional knowledge.

The FTAs also go against the CAN's common external policy, which provides that the benefits (whether from tariffs or otherwise) of negotiations with third parties<sup>50</sup> should automatically be extended to other Andean countries not a party to such negotiations. The United States insisted that benefits should not apply to other Andean countries.

Moreover, CAN member states must, pursuant to Andean legislation, take into account the trade sensitivities of other Andean countries when taking part in negotiations. Again, this was not done during negotiations for the US FTAs.

Yet the truth is that the FTAs would also have an impact on trade among the Andean countries. According to a study commissioned by the CAN,<sup>51</sup> the FTAs would threaten 56 per cent of all trade among these countries.

In the case of particularly sensitive products, the loss of regional markets as a result of preferential treatment granted to the USA by the Andean countries is of serious concern.

A clear example is the potential loss of the Colombian market for Bolivian soy, which would be displaced by heavily subsidised soybeans from the USA. Last year, Bolivia exported a total of \$370 million to the CAN, of which \$170 million was in unrefined food oils, soy products, sunflower oil, and refined food oils. The loss of the Colombian market for Bolivian soy would represent a loss of between \$40 million and \$70 million and would have devastating consequences for 40,000 families whose livelihoods depend on the production of soybeans.

Thus, the Andean FTAs are not simply an instrument for trade with the United States: they establish trade rules that will potentially damage national long-term development policies and weaken existing processes for regional integration.

Oxfam is part of the movement which is striving to achieve fairer trade rules within more equitable integration frameworks. In this context, the processes for regional integration among developing countries can contribute to strengthening the policy environment necessary for addressing the challenges of inequality and exclusion, and to ensuring the sustainability of their development policies.

## Conclusions

The US–Andean FTAs establish obligations that go beyond those in the multilateral trade system. 'WTO-plus' measures contravene developing country strategies within the multilateral framework, forcing them to give up previously achieved common benefits and goals.

Agreements relating to agriculture, intellectual property and investment within the FTAs undermine the development of fairer trade rules. Moreover, their impact on the poor in the Andean countries, already marginalised and living in extreme poverty, will be devastating. Like the song of the sirens, the promise of preserving access to the world's richest market and attracting more investment conceals the severe consequences that the FTAs will bring. These consequences must be addressed.

As regards agriculture, it is imperative that the Andean countries have the right to decide whether or not to impose tariffs on products which are of particular importance to food security, and when and how they do so, and to maintain and enforce mechanisms for protecting their most vulnerable domestic sectors. This is especially important if the USA continues with its extensive subsidies which generate unfair trade practices.

With regard to the provisions to extend intellectual property rights contained in the FTAs, the WTO TRIPS Agreement affords more than adequate IPR protection for developing countries. The Andean countries must exercise their right to use all possible flexibilities in order to guarantee public health and access to affordable medicines for all.

In the treatment of investment, Andean governments must preserve the right to regulate foreign investment by establishing local content requirements on foreign investment. FTAs must further exclude the concept of indirect expropriation and limit the possibility for investors to bypass the laws and regulations of the recipient country.

As for the processes of regional integration, the aim is to achieve fairer trade rules within more equitable integration frameworks which will allow the Andean countries to counter existing asymmetries in their relations with developed countries.

## Notes

<sup>1</sup> Negotiations were launched in May 2004 between the USA and these three Andean countries jointly. But after 18 months of negotiations, the Andean countries divided to follow separate strategies. Peru completed a bilateral FTA with the US in December 2005, followed by Colombia, which completed a nearly identical FTA in February 2006. Negotiations on the US–Ecuador FTA were suspended in May 2006 during their final stage because of US inconformity with measures taken in the country against the US company Occidental Petroleum (OXY).

<sup>2</sup> Venezuela is not a party in the counter-narcotic strategy, and, moreover, the government of Venezuela is opposed to the logic of these agreements. Bolivia attended as an observer by request of the USA, mainly due to its treatment of foreign investment in hydrocarbons.

<sup>3</sup> The agreement between the United States and the five countries of Central America: Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, which the Dominican Republic later joined.

<sup>4</sup> Statements by the Peruvian Minister for Agriculture indicated that compensation for the products most affected by the FTA (cotton, yellow corn, and wheat) would be resolved during planning of the domestic agenda for 2010. This means that funds for existing agricultural projects will be transferred and the projects exchanged for compensation policies.

<sup>5</sup> Emilio Sardi, Vice-President of Tecnoquímicas, the fourth largest pharmaceutical company in Colombia. *Seminario balance de las negociaciones del TLC Colombia con Estados Unidos*, February 2006.

<sup>6</sup> Ecuador, Colombia, and Peru have high indices of poverty: 49 per cent, 50.6 per cent and 54 per cent respectively. Bolivia is the poorest of the Andean countries, with 62 per cent of its population living in poverty, and 37 per cent in extreme poverty. Figures for Bolivia, Ecuador, and Colombia are for 2002, figures for Peru are for 2003 (CEPAL, *Panorama Social*, 2005).

<sup>7</sup> The Andean Community (CAN) was established in 1969 and its current members are Bolivia, Colombia, Ecuador, Peru, and Venezuela. Its aims are, amongst others, to promote the development of its member countries and ensure their participation in the process of regional integration.

<sup>8</sup> CAN statistics.

<sup>9</sup> *Ibid.*

<sup>10</sup> Labour Ministry of Peru (MINTRA 2000); National Institute for Statistics and Information of Peru (INEI 2004); Bank of the Republic of Colombia (2000); Department for National Statistics of Ecuador (DANE 2004); National Institute for Statistics and Census of Ecuador (INEC 2000); Ecuador Central Bank

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(2004); *Trabajadoras de la floricultura en el Ecuador. Estudio de caso* (Oxfam 2004).

<sup>11</sup> *Economic Report of the President. Transmitted to the Congress February 2006. Together with the Annual Report of the Council of the Economics Advisers*, page 173. US programmes also provide a total of over \$109 billion in support of agriculture, of which 43 per cent was support to farmers (OECD 2005). This contrasts with the scarcely substantive policies for the promotion of agriculture in the Andean countries.

<sup>12</sup> Official draft text of the US–Peru FTA. Point 2(a) of appendix 1. See: [www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Peru\\_TPA/Draft\\_Texts/asset\\_upload\\_file8\\_8858.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Peru_TPA/Draft_Texts/asset_upload_file8_8858.pdf)

<sup>13</sup> Conveagro. Technical team. *Impacto de la pérdida del ATPDEA sobre las agroexportaciones peruanas*. Lima: CEPES-CONVEAGRO, May 2005.

<sup>14</sup> Umaña Mendoza, Germán. *El mito del Atpdea*. 13 May 2004. In: [www.portafolio.com.co/proy\\_porta\\_online/tlc/opi\\_tlc/ARTICULO-WEB-NOTA\\_INTERIOR\\_PORTA-1709076.html](http://www.portafolio.com.co/proy_porta_online/tlc/opi_tlc/ARTICULO-WEB-NOTA_INTERIOR_PORTA-1709076.html)

<sup>15</sup> Oxfam. *Trabajadoras en la Floricultura en Ecuador. Estudio de caso*. Oxfam 2004.

<sup>16</sup> This is according to figures from the Colombian Ministry for Agriculture and Rural Development. The nine products studied were cotton, rice, grains, maize, soy, sorghum, wheat, poultry, and palm seed oil.

<sup>17</sup> Gomero Osorio, Luis. *La producción y comercialización de flores cortadas - caso Perú*. June 2000.

<sup>18</sup> Oxfam. *Frutas y flores de exportación: Las condiciones laborales de las trabajadoras en Chile y Colombia*. Santiago de Chile: Oxfam, March 2004.

<sup>19</sup> Peru. Ministry for Agriculture. Agricultural Information Office. *Primer Censo Nacional de Productores y Plantas Procesadoras de Espárragos*. Lima: Ministry for Agriculture, 1998.

<sup>20</sup> Araujo, Alejandro. *Análisis sobre el cultivo de flores*. In: [www.sica.gov.ec/censo/contenido/analisis\\_flores.pdf](http://www.sica.gov.ec/censo/contenido/analisis_flores.pdf)

<sup>21</sup> In 2002, 93 per cent of farmers obtained income from other activities. US Economic Research Service.

<sup>22</sup> United Nations. Office on Drugs and Crime. *World Drug Report 2005*. In: [www.unodc.org/unodc/en/world\\_drug\\_report.html](http://www.unodc.org/unodc/en/world_drug_report.html); [www.unodc.org/pdf/research/wdr\\_Volume1\\_sp.pdf](http://www.unodc.org/pdf/research/wdr_Volume1_sp.pdf); [www.unodc.org/pdf/WDR\\_2005/volume\\_2\\_web.pdf](http://www.unodc.org/pdf/WDR_2005/volume_2_web.pdf)

<sup>23</sup> Interamerican Drug Abuse Control Commission (CICAD).

<sup>24</sup> *Framework for Establishing Modalities in Agriculture, WTO Agreement on Agriculture*, paragraph 39. In: [www.wto.org/english/tratop\\_e/dda\\_e/draft\\_text\\_gc\\_dg\\_31july04\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm)

<sup>25</sup> *Ibid.*, paragraph 41.

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<sup>26</sup> Official text of the US–Peru FTA. See point 5(c) in appendix 1, duty-free quotas, in the Notes section of the US tariff schedule. In: [www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Peru\\_TPA/Draft\\_Texts/asset\\_upload\\_file8\\_8856.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Peru_TPA/Draft_Texts/asset_upload_file8_8856.pdf)

<sup>27</sup> In order to comply with previous commitments made within the CAN, these benefits must be extended to all MERCOSUR (Common Market of South America) countries.

<sup>28</sup> According to the global pharmaceutical industry: ‘FTA negotiations provide the most effective approach currently available to the United States for improving global intellectual property protection (...). Our goal in the negotiation of an FTA is to set a new baseline for all future FTAs, including the FTAA...’. *The US–Peru Trade Promotion Agreement: The Intellectual Property Provisions*. Report of the Industry Trade Advisory Committee on Intellectual Property Rights (ITAC-15), 1 February 2006. In: [www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Peru\\_TPA/Reports/asset\\_upload\\_file473\\_8978.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Peru_TPA/Reports/asset_upload_file473_8978.pdf)

<sup>29</sup> Frank, Richard.G. and Salkever, David S. (1997) ‘Generic Entry and the Pricing of Pharmaceuticals’, *Journal of Economics & Management Strategy*, pages 75–90. Also available at: <http://papers.nber.org/papers/w5306.v5.pdf>

<sup>30</sup> Valladares Alcalde, Gerardo (coordinator); Cruzado Ubillús, Raúl; Seclén Palacín, Juan; Pichihua Serna, Zózimo Juan. *Evaluación de los potenciales efectos sobre acceso a medicamentos del Tratado de Libre Comercio que se negocia con los Estados Unidos de América*. Lima: Health Ministry, April 2005. Also in: [www.aprodeh.org.pe/tlc/documentos.htm](http://www.aprodeh.org.pe/tlc/documentos.htm)

<sup>31</sup> Pan American Health Organisation. *Access to Medicines*. 2 August 2004. In: [www.paho.org/English/GOV/CD/cd45-10-e.pdf](http://www.paho.org/English/GOV/CD/cd45-10-e.pdf). Figures from 1995.

<sup>32</sup> Only 30 per cent of cancer treatments are covered by the public health system. National Cancer Institute. *El Tiempo*, 15 July 2004.

<sup>33</sup> United Nations Population Fund. ‘*Colombia se envejece*’. *El Tiempo*, 18 July 2004.

<sup>34</sup> *Report of the US Industry Trade Advisory Committee on Intellectual Property Rights*. The U.S.-Peru Trade Promotion Agreement: The Intellectual Property Provisions, ITAC-15, February 1, 2006, p. 5. In: [www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Peru\\_TPA/Reports/asset\\_upload\\_file473\\_8978.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Peru_TPA/Reports/asset_upload_file473_8978.pdf)

<sup>35</sup> *Ibid.*, p. 14.

<sup>36</sup> Health Action International. *US-Peru FTA: A Free Trade Agreement made to order for the pharmaceutical industry*. January 2006. In: [www.aislac.org/pdf/noticias/2006/AISLACanalysisUS-Peru-FTA.pdf](http://www.aislac.org/pdf/noticias/2006/AISLACanalysisUS-Peru-FTA.pdf)

<sup>37</sup> Civil society and members of US Congress have sought clarification on this issue from the USTR (United States Trade Representative) on several occasions. To date, the USTR has not included in the text of any US FTA a

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legally binding clause to ensure that the test data protection would be waived if a compulsory licence were granted. The Andean negotiators proposed such a text, but it was rejected by the USTR.

<sup>38</sup> Pan American Health Organisation. *Impacto de fortalecer las medidas de Propiedad Intelectual como consecuencia de la negociación de un Tratado de Libre Comercio con Estados Unidos: Aplicación del modelo a Colombia*. November 2005. In: [www.recalca.org.co/AAdoceducativos/2006.01.31%20Impacto%20de%20fortalecer%20las%20medidas%20en%20prop.%20intel.doc](http://www.recalca.org.co/AAdoceducativos/2006.01.31%20Impacto%20de%20fortalecer%20las%20medidas%20en%20prop.%20intel.doc)

<sup>39</sup> Corporación de Estudios para el Desarrollo (CORDES). *Impacto económico sobre el Sector Farmacéutico y Agroquímico Ecuatoriano de la adopción de un Capítulo sobre Protección de Derechos de Propiedad Intelectual en el marco del Tratado de Libre Comercio (TLC)*. 22 September 2005. In: [http://parlamentoandino.gov.ec/archivos/TLC%20USA-ANDINOS%20AL%20ALCANCE%20DE%20TODOS/archivos/usa-tlc%20y%20andinos.htm#\\_Toc125366656](http://parlamentoandino.gov.ec/archivos/TLC%20USA-ANDINOS%20AL%20ALCANCE%20DE%20TODOS/archivos/usa-tlc%20y%20andinos.htm#_Toc125366656)

<sup>40</sup> Valladares Alcalde, Gerardo (coordinator); Cruzado Ubillús, Raúl; Seclén Palacín, Juan; Pichihua Serna, Zózimo Juan. *Evaluación de los potenciales efectos sobre acceso a medicamentos del Tratado de Libre Comercio que se negocia con los Estados Unidos de América*. Lima: Health Ministry, April 2005. Also in: [www.aprodeh.org.pe/tlc/documentos.htm](http://www.aprodeh.org.pe/tlc/documentos.htm)

<sup>41</sup> Even in the United States, where the Constitution allows patent protection 'for limited times' only and 'to promote the progress of science and the useful arts', the patent system is being called into question and its reform is under debate. See: 'Patently Ridiculous', *New York Times*, editorial, March 22, 2006; and 'The Problem with Patents', *Wall Street Journal*, editorial, March 29, 2006.

<sup>42</sup> FILOMENA TOMAIRA et al. *Estudio sobre Contaminación Ambiental en los Hogares de La Oroya y Concepción para evaluar su impacto en la salud de la comunidad*. August 2005.

<sup>43</sup> Constitution of Peru, 1993.

<sup>44</sup> *Global Economic Prospects*. World Bank, 2003.

<sup>45</sup> *Notas de la Cepal*, N°39 (March 2005)

<sup>46</sup> TORRES, Víctor and DE ECHAVE, José. *La desregulación de la inversión extranjera en los TLCs*. Lima: CooperAcción, December 2005. Study commissioned by Oxfam.

<sup>47</sup> GUDYNAS, Eduardo. *Dos caminos distintos: Tratados de Libre Comercio y procesos de integración*. In: ACOSTA, A. and FALCONÍ, F. (comps.). *TLC: Más que un tratado de libre comercio*. Quito: ILDIS; FLACSO, April 2005.

<sup>48</sup> International Union for the Protection of New Varieties of Plants.

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<sup>49</sup> a) Common Industrial Property Regime; b) Common Regime for Protection of New Plant Varieties; and c) Common Andean Regime on Access to Genetic Resources.

<sup>50</sup> Article 5 of Decision 598.

<sup>51</sup> Andean Community. Office of the General Secretary. *Análisis de la sensibilidad del comercio subregional andino en el marco del TLC con EE.UU.* October 2004. In: [www.comunidadandina.org/panc/doc/SensibilidadComercioSubregionalAndino.pdf](http://www.comunidadandina.org/panc/doc/SensibilidadComercioSubregionalAndino.pdf)

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- **Umaña Mendoza, G. (2004)** *El juego asimétrico del comercio: El Tratado de Libre Comercio Colombia – Estados Unidos*, Bogotá: Centre for Development Research (CID) of the National University of Colombia; Corporación Viva la Ciudadanía.

## Relevant websites:

- Colombian Action Network against Free Trade and the FTAA (RECALCA) – [www.recalca.org.co](http://www.recalca.org.co)
- Alianza Social Continental – [www.asc-hsa.org/](http://www.asc-hsa.org/)
- Integración Sur – [www.integracionsur.com](http://www.integracionsur.com)
- Peruvian Campaign against the FTA (TLC Así No) – [www.perufrentealtlc.com](http://www.perufrentealtlc.com)
- Convención Nacional del Agro Peruano (CONVEAGRO) – [www.conveagro.org.pe](http://www.conveagro.org.pe)
- CEPES Rural Perú – [www.cepes.org.pe](http://www.cepes.org.pe)
- Civil Society Health Forum (Foro Salud) – [www.forsalud.org.pe](http://www.forsalud.org.pe)
- Acción Internacional por la Salud (AIS) – [www.aislac.org](http://www.aislac.org) (Health Action International)
- CooperAcción – [www.cooperaccion.org.pe](http://www.cooperaccion.org.pe)
- Latin American Network of Women Transforming the Economy (REMTE) – [www.remte.org](http://www.remte.org)
- Ecuador Decides Campaign – <http://ecuadordecide.blogspot.com/>
- Misión Salud – [www.misionsalud.org](http://www.misionsalud.org)

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