



Calling the EU's bluff

who are the *real* champions of biodiversity and traditional knowledge in the EU-Central American and EU-Community of Andean Nations Association Agreements?

REPORT | FRIENDS OF THE EARTH EUROPE AND FRIENDS OF THE EARTH LATIN AMERICA AND CARIBBEAN



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“We cannot consider agriculture, environmental services, biodiversity and knowledge as simple commodities in a trade agreement.”

Letter from Evo Morales to EU Heads of State, 2007 (Morales, 2007)

“Extractive activities, cash crops and unsustainable consumer patterns have generated climate change, widespread pollution and environmental degradation. These phenomena have had a particularly serious impact on indigenous people, whose way of life is closely linked to their traditional relationship with their lands and natural resources, and has become a new form of forced eviction of indigenous peoples from their ancestral territories, while increasing the levels of poverty and disease.”

UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, 2007 (UNHRC, 2007)



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Author: Ronnie Hall

Publishers: Friends of the Earth Europe and Friends of the Earth Latin America and Caribbean

Editors: Charly Poppe (FoEE); Sarah-Jayne Clifton (FoE EWNl); Sebastian Valdomir (REDES/FoE Uruguay); Grace García Muñoz (COECOCEIBA/FoE Costa Rica)

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Note: Intergovernmental trade negotiations resemble the card game, poker, in which each player endeavours to convince the other that he or she holds the winning hand, regardless of the cards they actually hold. Challenging a person to prove their claim is referred to as ‘calling their bluff’.

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Friends of the Earth Europe

Mundo-b building, Rue d-Edimbourg 26,
1050 Brussels, Belgium

tel: +32 2 893 1000 fax: +32 2 893 1035

e: info@foeeurope.org www.foeeurope.org

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Executive Summary

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Global Europe and the EU's Raw Materials Initiative are designed to bolster the EU's economic position – whatever the cost – in the face of fierce global competition for both markets and resources, especially from emerging economies such as China and India. The EU also fears losing trade to the US, which has already secured trade and investment concessions from countries in the Western hemisphere, through the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA) and other bilateral trade agreements.

EU investors in Central and Latin America and the Andes are particularly keen to invest in energy and water services; mineral resources including oil; and natural resources, including fisheries and biodiversity. The EU is also anxious to address any restrictions on exports of raw materials, including non-energy raw materials, from these countries. Central and Latin American countries' main priorities are, variously, to maintain their 'GSP+' trade preferences in relation to trade with the EU¹; increase market access for products including bananas, sugar, ethanol and shrimps; protect the domestic production of key subsistence crops; increase investment in their economies; and reduce their reliance on trade with the US.

In order to achieve its negotiating objectives, the EU aims to persuade countries in Central American and the Community of Andean Nations (CAN) to liberalise their investment regimes, strengthen intellectual property rights rules and eliminate export restrictions. However, there is mounting evidence that liberalisation in all these areas could have disastrous impacts on domestic economies and the environment in Central America and the Andes. Critically, it could also result in a denial of access to those key biodiversity and forest resources needed and traditionally used by smallholders, forest-dwellers, and Indigenous Peoples, as well as undermining their land rights.

For example, the EU's own interim Sustainability Impact Assessment (SIA) of the EU-CAN negotiations observes that increasing foreign direct investment is likely to have adverse environmental impacts, and confirms that it could result in a significant expansion in the large-scale formal mining sector, especially as a direct result of increased investment in capital stock. This could generate conflicts related to competition over the resources involved, as well as enclave economies, social problems and environmental damage. The SIA also predicts a wide range of potential impacts on local communities and Indigenous Peoples.

This confirms the view held by the UN's Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People who reported, in 2007, that extractive activities, cash crops and unsustainable consumer patterns have generated climate change, widespread pollution and environmental degradation, all of which have had a particularly serious impact on Indigenous People, whose way of life is closely linked to their traditional relationship with their lands and natural resources. He also pointed out that the extraction of natural resources from the subsoil has had a highly discriminatory impact on Indigenous populations in particular.

High overall levels of tariff liberalisation combined with increased investment in the agricultural sector could also have major impacts on both food security and deforestation, if it resulted in cheap food products flooding the local market, putting small farmers out of business, and intensified production for export. This would force communities off their land to make way for foreign companies, pushing them towards urban centres or the forest margins, as well as intensifying damage to the environment. In Central America and the Andean region this concern is especially pronounced in relation to an increase in the export of various fruits, and soaring demand for agrofuels (also referred to as biofuels).

In addition, the intellectual property rights rules championed by the EU also pose significant threats to crop diversity, biodiversity and traditional knowledge in Central and Latin American countries, as well as conflicting with the Convention on Biological Diversity (CBD) (to which the EU is a signatory).

However, an increasing number of governments in Central and Latin America are becoming concerned about the potential impacts of neoliberal economics and trade liberalisation. Bolivia and Ecuador in particular are reforming national legislation and even their constitutions, in order to increase state control over natural resources, strengthen people's rights (especially Indigenous People's rights), promote and support the 'good life' (*'buen vivir'*), and even grant rights to ecosystems. These two Andean countries, with inputs from Peru and Colombia, have now moved on to the offensive: they are taking their own ideas, which are based on a new vision of social welfare and equity rather than neoliberal economics, to the negotiating table.

¹ GSP generally offers tariff preferences to developing countries. GSP+ is an additional incentive intended to promote sustainable development and good governance, which offers additional tariff reductions to support vulnerable developing countries in their ratification and implementation of international conventions.

The Andean countries have made a range of negotiating proposals including in relation to intellectual property rights (IPRs), biodiversity and traditional knowledge; the right to apply precautionary measures in relation to species extinction, ecosystems destruction or the permanent alteration of natural cycles; the establishment and design of mechanisms to control and prevent ecological catastrophes; the traditional knowledge of Indigenous and local communities; bio-prospecting; protected areas; and avoided deforestation. They are also reiterating their sovereign rights over their genetic resources as set out by the Convention on Biological Diversity (to which the EU is a signatory); and they are also proposing that they be paid for the environmental services they provide to the rest of the world.

The Andean governments are also calling on the EU, as a region of the world that is responsible for impending climate change, to commit to collaborating with the Andean countries to improve adaptation and reduce vulnerability to climate change; and to assist in improving energy efficiency; developing new and renewable energies; implementing measures for evaluating vulnerability to climate change; capacity building; and transferring technologies (all in accordance with the principle of common but differentiated responsibility).

Ecuador has also announced a willingness to return to the negotiating table, but only on the condition that the 'GSP+' trade concessions already accorded to the Latin American countries remain as the starting position for any agreement, and that intellectual property rights should be based on the WTO's Trade Related aspects of Intellectual Property Rights (TRIPs) agreement. The Most Favoured Nation principle must also apply (meaning that Andean countries would receive the same benefits accorded to other countries that the EU has signed similar accords with). Ecuador also argues that any new agreement must include labour rights and the social security concerns of migrant workers legally employed in the EU, a key offensive concern for both Bolivia and Ecuador.

Ecuador is also seeking the right to prioritise the purchase of national products and services, especially from the 'popular and solidarity economy' and small and medium enterprises. It is demanding a complete reorientation on services and establishment, and proposes a new model of investment agreement, that conforms to Ecuador's new constitution, supports the development of small and medium enterprises, and avoids economic damage being visited upon participating countries.

These countries may finally be calling the EU's bluff, since the EU has consistently portrayed itself as the initiator or '*demandeur*' when it comes to negotiations on sustainable development and the environment. But is this really the case? A failure to agree to some of the most progressive and far-reaching suggestions that have been put forward by its trading partners – especially those in-line with multilateral environmental agreements that the EU is already committed to – could indicate that the EU is actually using the environment as little more than a sweetener or 'greenwash' to garner public support for the underlying trade deals it really wants.

For example, if developed in line with the EU's objectives, the proposed Association Agreements in Central America and the Andean region would both conflict with the Convention on Biological Diversity (CBD)², which is intended to conserve biological diversity and ensure the fair and equitable sharing of the benefits derived from its use.

They would also clash sharply with the UN Declaration on the Rights of Indigenous Peoples, that states that, "*Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess*" (Article 26) and that, "*Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora (...)* They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions" (Article 31)³.

Yet the EU is a signatory to both the Biodiversity Convention and the UN Declaration on the Rights of Indigenous Peoples. It should thus take immediate note of the warnings contained within the Sustainability Impact Assessments that it has itself commissioned. Similarly, the EU is a signatory to the United Nations Framework Convention on Climate Change (UNFCCC, Article 4), which clearly establishes that industrialized countries are responsible for climate change and for assisting developing countries in their efforts to mitigate and adapt to climate change.⁴ Thus the EU should also be willing to accept the Andean countries' proposals in this area, and commit to collaborating with them and providing finance to support their efforts.

This all requires a radically different approach to intergovernmental relationships on the part of the EU. The EU's neo-colonialist approach to free trade, as embodied in its Global Europe policy and Raw Materials Initiative, is unacceptable. These policies prop up a narrow and damaging economic focus that benefits commercial interests, but has serious negative impacts, including for people and the environment in Central and Latin America. An alternative approach needs to be developed, one that recognises the fact that concerns about environmental sustainability, climate change, and people's rights are not 'add-ons' but absolutely integral to any successful and equitable form of economic management. Bolivia's proposal for a Peoples' Trade Agreement is one such progressive approach. Ecuador's proposal for a new model investment agreement is another.

The Association Agreements should be suspended, until and unless they can be re-crafted into a blueprint for environmentally-sustainable and equitable collaboration between the EU and countries in Central American and the Andes, that benefits all peoples in the countries involved, works to protect rather than destroy ecosystems, and promotes efforts to mitigate and adapt to climate change.

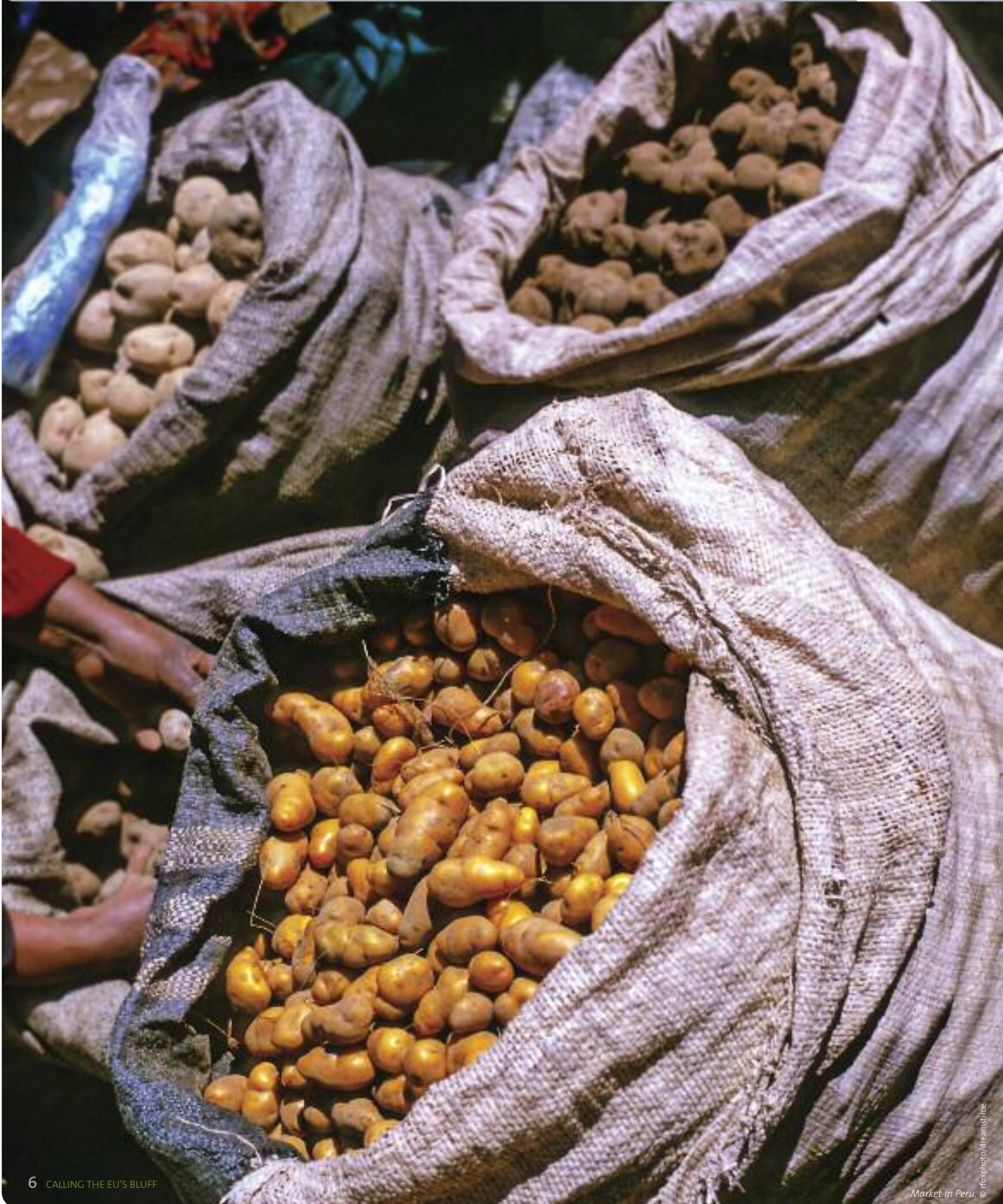
² The text of the Convention on Biological Diversity is here: <http://www.cbd.int/convention/about.shtml>

³ The text of the UN Declaration on the Rights of Indigenous Peoples is here: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁴ The text of the UN Framework Convention on Climate Change can be found here: http://unfccc.int/essential_background/convention/background/items/1362.php

Introduction

1



Although the EU has been negotiating with the Central American and Andean countries since as long ago as 1993, it recently stepped up the pressure to conclude bilateral 'Association Agreements' with each region⁵, in-line with its relatively new and aggressive Global Europe trade policy and the related 'Raw Materials Initiative'. These Association Agreements include significant and potentially damaging trade and investment liberalisation components.

1.1. Implementing Global Europe and the Raw Materials Initiative

Global Europe and the Raw Materials Initiative are explicitly based on the EU's overwhelming preoccupation at present: the defence of its economic position in the face of fierce global competition, especially from emerging economies such as India and China (EC, 2007) (EC, 2008). The European Commission is particularly seeking to increase market opportunities for the EU's investors, including by ensuring the free circulation of European goods within the different regions. It also believes there is a pressing need to secure access to a sufficient quantity and quality of natural resources to enable the EU's companies to continue to compete on global markets on what it considers to be a "fair basis".⁶

However, this apparent belief in the EU's right to access natural resources in other countries flies in the face of the United Nations International Covenant on Economic, Social and Cultural Rights, which states that "*All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*"⁷ (UN, 1976) Similarly, the second principle of the Rio Declaration on Environment and Development, says that states have "*the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies*" (UNCED, 1992).⁸

Nevertheless, the EU has set its sights firmly on securing natural resources inputs and to that end EU trade negotiations increasingly focus on the effective enforcement and tackling of trade and investment restrictions, including export duties, export restrictions, dual pricing and subsidies, and competition and/or investment liberalisation.

The EU is also intent on strengthening the enforcement of measures in existing bilateral trade negotiations. The EU is especially anxious to address any restrictions on flows of raw materials, including non-energy raw materials. In particular, there has been a significant increase in demand for metals and minerals, especially from emerging economies such as India and China, and supply is struggling to meet demand. As a result there is increasingly intense competition between countries to secure access to these resources.

This priority quite clearly outranks concerns about the potential social and environmental impacts of trade agreements. Even though Association Agreements are allegedly intended to include a wide variety of concerns including political dialogue and cooperation in a range of areas, the trade components proposed by the EU have the potential to trigger a cascade of negative social and environmental impacts (as set out in part in the interim EU's Sustainability Impact Assessment on the Association Agreement with the Community of Andean Nations (CAN) (EC, 2009)), affecting poor and Indigenous Peoples' access to land and the resources they need for their livelihoods, and leading to the further decimation of forests and biodiversity in the region.

1.2. Securing parity with the US

In Central and Latin America, the EU is also concerned that it will be sidelined by the US's energetic attempts to hone its competitive edge throughout the hemisphere, through bilateral and regional trade agreements with countries in Central and Latin America (such as the US-Peru Trade Promotion Agreement (TPA)⁹ and the US-Dominican Republic-Central America Free Trade Agreement (DR-CAFTA).¹⁰

For example, the EU is disadvantaged by the fact that the US-Peru TPA confers competitive advantages on the US through, for example, allowing US companies to bid for government contracts on the same basis as Peruvian firms (who usually enjoy a 20% price preference), and because Peru agreed not to apply most of its nationality-based hiring requirements to US professionals and specialty personnel (USTR, 2008).

Ensuring parity with (or even better treatment than that meted to) the US is thus a key offensive interest for the EU. It could be secured by reaching agreement on what is known as a Most Favoured Nation clause in each of the two Association Agreements (so that concessions granted to the US are also granted to the EU). It could also be brought about by the inclusion of the 'Singapore issues' in the agreements, which is shorthand for the liberalisation of trading partners' investment, competition and government procurement regimes.

5 The Association Agreement with Central America is being negotiated with Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. Panama participates solely as an observer, because it is not (yet) a signatory to the Secretariat for Economic Integration in Central America (SIECA). www.noticias.sieca.org.gt/Noticia.aspx?ID+18031 The Association Agreement with the Community of Andean Nations was originally being negotiated with Bolivia, Colombia, Ecuador and Peru, although Bolivia has since withdrawn and Ecuador is not currently participating.

6 Although it says its contents "don't necessarily represent" the views of the European Commission, the editorial of the December 2008 edition of DG Enterprise and Industry's magazine No 3, 'Securing Raw Materials for European Industry' is entitled 'Fair supplies mean fair competition'. http://ec.europa.eu/enterprise/e_i/pdf/magazine_ei_03_en.pdf

7 The United Nations International Covenant on Economic, Social and Cultural Rights can be found here: <http://www.hrweb.org/legal/escr.html>

8 The 1992 Rio Declaration on Environment and Development, UN Conference on Environment and Development can be found here: <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163>

9 The PTPA entered into force on 1 February 2009. More details about it are available here: www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa

10 DR-CAFTA entered into force for El Salvador on 1 March 2006, for Honduras and Nicaragua on 1 April 2006, for Guatemala on 1 July 2006, for the Dominican Republic on 1 March 2007, and for Costa Rica on 1 January 2009. www.buyusa.gov/newhampshire/caftadrfta.html

Introduction

1.3. The EU's negotiating objectives in Central America and the Andes

The EU's specific negotiating mandates for the two separate agreements are almost identical (except for a few small process issues).¹¹ An analysis of the mandate for the EU-CAN Association Agreement can thus be used to illustrate the EU's ambitions for both. This mandate aims to bring about greater political cooperation, enhanced cooperation in "all matters of common interest", and progressive and reciprocal trade liberalisation. In relation to trade it seeks:

- > the liberalisation of trade in "substantially all" goods;
- > the free circulation of EU goods within the Andean countries;
- > the liberalisation of trade in services covering market access and national treatment;
- > the progressive and reciprocal liberalisation of conditions for establishment and the liberalisation of current payments and capital movements (within the services negotiations);
- > a Most Favoured Nation clause;
- > rules on competition;
- > mutual access to public procurement markets;
- > a ban on export restrictions;
- > a proposal for a flexible Non-Tariff Barrier (NTB) mediation mechanism;¹²
- > strong rules on intellectual property rights (IPRs) and Geographical Indications (GI);
- > strong Sanitary and Phytosanitary (SPS) rules; and
- > an agreement on trade and sustainable development.

The EU's negotiating mandate also refers to the maintenance of the Andean countries' General System of Preferences (GSP) concessions as part of the Association Agreement. However, it should be noted that this promise is also contained in the EU-Central America Association Agreement, yet the EU still saw fit to make an offer that would have exempted 30 products from this zero tariff concession, including ethanol and frozen shrimp, which are key exports from the region (CEPAL, 2007:135).

Specifically in relation to the proposed Association Agreements with Central American and Andean countries, it has also been observed that both sets of EU negotiations are extremely broad in scope, and – most importantly – commit participants to further undefined levels of liberalisation. Investors – especially from Spain – are seeking to invest in services (including energy, water, banks), mineral resources (including oil) and natural resources (including fisheries and biodiversity) (Grain, 2008).

1.4. Central American and Andean negotiating objectives

Some countries in Central America and the Andean region are keen to proceed on the basis of current negotiations. Maintaining their current 'GSP+' trade concessions¹³, which grant them preferential access to EU markets for most of their exports, is a broad shared objective amongst most of the governments in the two regions: indeed this is probably their main reason for participating in the negotiations. There is also a desire to emulate the market opening benefits that the African Caribbean and Pacific (ACP) countries hope to achieve through the Economic Partnership Agreements (EPAs) currently being negotiated.

In addition, some of the Central and Latin American countries in question are already committed to similar agreements with the US: as a result they may already have made regulatory changes in response to US pressure, meaning that they may feel there is now less domestic regulation to defend. These same governments also tend to be keen to increase trade with Europe in general, either so that they are not solely reliant on trade with the US and/or to increase foreign direct investment flows into their economies.

At present, Central America's trade is predominantly with the USA and Latin America, but the EU reports that the region is actively seeking to widen its export markets in Europe and elsewhere. Key exports to the EU include agricultural products, especially coffee, bananas and other fruits, which together accounted for 36% of exports to the EU in 2007 (EC, 2009b).

Central American governments are particularly concerned to increase market access to European markets for products including bananas, sugar, ethanol (biofuel) and shrimps (CEPAL, 2007:135).

For the Andean Community, the EU is the second largest trading partner after the US, and key exports to the EU include raw materials, notably mining, agriculture and agro-industry. Bananas are also a key sector in the region (EC, 2009c).

11 The EU-Central America Association Agreement negotiating directive can be found here: http://www.bilaterals.org/article.php3?id_article=8336 The EU-Community of Andean Nations Association Agreement negotiating directive can be found here: http://www.bilaterals.org/article.php3?id_article=8336&var_recherche=eu+andean+negotiating+mandate

12 The EC has also attempted to establish an alternative mechanism through the WTO's Non-Agricultural Market Access negotiations, because it considers the WTO's formal Dispute Resolution Mechanism to be too lengthy and cumbersome.

13 Bolivia, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Peru, and El Salvador make up nine of the 16 countries to have been granted GSP+ status by the EU between 1.1.2009 and 31.12.2011. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:334:0090:0091:EN:PDF>

1.5. Bolivia and Ecuador: a rising tide of opposition

However, opposition to the Association Agreements is increasing rapidly, as much of civil society strenuously oppose free trade agreements with both the US and the EU because of their likely impacts on domestic economies, peoples' rights, and the environment. This opposition is now being reflected at the intergovernmental level, as new governments in some of these countries bring a much more critical approach to free trade agreements to the table. With respect to negotiations with the EU, the governments of Bolivia and Ecuador are at the forefront of this trend.

Bolivia has certainly been one of the most outspoken of the four Andean nations to-date, addressing its concerns directly to the European Union, as well as at the negotiating table; and actively promoting an alternative approach, including through its participation in the Bolivarian Alternative to the Americas (ALBA),¹⁴ which promotes regional integration that is not based primarily on trade liberalization but on a new vision of social welfare and equity. Bolivia has also chosen to withdraw from the Association Agreement negotiations because of its concerns about their potential impacts.

As part of the sweeping changes being implemented domestically in Bolivia, the government has nationalised the country's hydrocarbon industry, and in relation to this, Evo Morales writes tellingly of Bolivia's concerns with free trade, especially in relation to natural resources, in a 2007 letter to EU heads of state:

"Bolivia for the first time in three decades has achieved both a fiscal and trade surplus thanks to its recovery of the control and property of its hydrocarbon resources...This economic strengthening of the State is allowing us to carry out a process of redistributing wealth, which is reducing the enormous gulf of inequality and injustice inside our own country...For this reason, in the process of joint assessment in the CAN-EU Association Agreement, Bolivia reiterated several times that it rejected the possibility of including in the negotiations issues that would lead to the reduction in the role of the State and of public services, or that restricted public policies in economic, social, environmental and cultural areas...Thirdly, we hope that the issue of the environment will be treated in a true and integrated way. In general the concern for the future of our planet is reduced to an adornment in trade agreements. Conscious of the gravity of environmental issues and its related problems, we want the Association Agreement with the European Union to give a priority to the protection of our conditions of life. These considerations are fundamental for "living well," as indigenous communities propose for all living beings, and to which the logic of productivity and profit must be subordinated. As a result we cannot consider agriculture, environmental services, biodiversity and knowledge as simple commodities in a trade agreement" (Morales, 2007).

The new Bolivian constitution mandates the state's involvement in natural resource companies. It also calls for limitations on foreign companies' access to international arbitration in the case of conflicts with the government, and states that all bilateral investment treaties must be renegotiated to adjust to the new provisions (USTR, 2008). In October 2007, Bolivia also became the first country ever to withdraw from the International Centre for the Settlement of Investment Disputes (ICSID).

In addition, Bolivia changed its government procurement and services contracting rules, as of July 2007. In an effort to encourage local production, government procurements under US \$1 million in value must be awarded to Bolivian producers, unless locally manufactured products and service providers are unavailable. Such changes are clearly diametrically opposed to the constraints that would be imposed by trade liberalisation. (Although, as the Interim EU-CAN SIA also points out: "Social and political conflicts related to access and control of key resources such as land, forests, water and gas are likely to continue as government reforms faces fierce opposition by powerful groups." (EC, 2009)

Ecuador also suspended its participation in the Association Agreement negotiations, requesting more time to compare the EU's negotiating requests with its own new constitution, especially in relation to market access for agriculture (on grounds of food sovereignty), services and establishment, competition, government procurement and intellectual property. Notably, Ecuador's new constitution is believed to be the first in the world to include ecosystem rights. It also includes provisions that could limit the availability of international arbitration in new Ecuadorian investment treaties (USTR, 2008). In August 2008, Ecuador's Constituent Assembly also passed a new government procurement law, which gives priority to locally-produced products and services, although foreign suppliers can compete for the contracts (USTR, 2008).

However, Ecuador has now announced its willingness to return to the negotiating table, but only on the basis of a newly formulated and clearly expressed position. In addition to this, Ecuador, Peru and Colombia, have made a range of negotiating proposals intended to ensure peoples' rights, protect their domestic economies and conserve their wealth of biodiversity. These countries may be calling the EU's bluff, since the EU has consistently portrayed itself as a 'demandeur' in relation to developmental and environmental issues. But there is a significant and growing question as to whether the EU is sincere in this respect, when it seemingly refuses to accede to requests on precisely those issues from its negotiating partners (see 'Calling the EU's Bluff?').

14 A summary of ALBA can be found here: http://www.bilaterals.org/article.php3?id_article=1298.

The association agreements: key trade components

2



2.1. Strengthening IPRs: transferring land and resource rights to industry

Negotiations over intellectual property rights (IPRs) are central to trade negotiations between the EU and its trading partners, and are an increasingly contentious area. The EU wants to increase the scope and enforcement of all its negotiating partners' IPR rules, so that they are more in-line with the requirements of European industry.

In bilateral and regional trade negotiations, the EU, like the US, generally aims to push developing countries to agree to far more than they have committed to in the World Trade Organization's Trade Related aspects of Intellectual Property Rights (TRIPS) agreement (these additional commitments that the EU wants are generally referred to as 'TRIPS plus'). The EU has also stated that it wants to secure "the maximum possible protection for intellectual property rights and tough penal sanctions for infringement of the new laws" (Grain, 2008:11). Importantly, the EU also wants countries to commit to progressive (and therefore undefined) future progress on IPRs and to harmonising IPR standards.

In particular, the EU wants its trading partners to sign up to the 1991 version of the International Convention for the Protection of New Varieties of Plants (UPOV 1991), which contains provisions that are very similar to the patenting of plant varieties. It backs this up with a separate call for countries to make every effort to introduce plant variety patents (in Article 15.9.2 of the FTA as described by COECOCEIBA/FoE Costa Rica (2008)). A further key objective for the EU is establishing a list of 'geographical indications', which confers the exclusive right to use a geographical name, such as 'Champagne' for example, on certain products produced in that area.

However, the US has already forced the hand of numerous Central and Latin American countries in this respect, by also insisting that – before actually finalising DR-CAFTA or bilateral agreements – countries must amend domestic legislation so that they can sign up to UPOV 1991. Thus Peru, for example, had to change several legislative decrees relating to its internal intellectual property rights rules, to satisfy the USA, before the US-Peru Trade Promotion Agreement (TPA) (IP Watch, 2009).

Similarly, the US text on DR-CAFTA, states that, "Each Party shall ratify or accede to the International Convention for the Protection of New Varieties of Plants (1991) (UPOV Convention 1991). Nicaragua shall do so by January 1, 2010. Costa Rica shall do so by June 1, 2007. All other Parties shall do so by January 1, 2006."¹⁵ On this basis, all the Central American countries except Nicaragua should have 'ratified or acceded to' UPOV 1991 by now. However, a check against the current UPOV membership list indicates that, of the five Central American countries in question, it seems that only Costa Rica has actually signed up to UPOV 1991 (so far).^{16, 17, 18} If this is really the case, and even if countries are still in the process of applying, it may still be in the best interests of both the US and the EU, if the EU continues to exert pressure on this particular issue.

Yet the IPRs rules championed by the EU pose significant threats to crop diversity, biodiversity and traditional knowledge in Central and Latin American countries. UPOV 1991 denies farmers' rights both in particular and in the broadest sense: it curtails the right to save seed for sowing, and does not recognize the inherent rights of local communities and their relationship to their own biodiversity, as does, for example, Costa Rica's Biodiversity Act. (COECOCEIBA/FoE Costa Rica, 2008). Criteria for the protection of new varieties in UPOV also exacerbate the erosion of crop diversity: they promote the uniformity of species leading to lost harvests, food insecurity and genetic erosion.

UPOV also lengthens the time that rights-holders have possession and weakens the rights of farmers and the public interest. UPOV does not even observe those provisions of the WTO's TRIPS provisions that are associated with granting privileges among members (COECOCEIBA/FoE Costa Rica, 2008). UPOV 1991 also comes into conflict with the Convention on Biological Diversity (CBD) (to which the EU is a signatory). Large companies are able to acquire ownership of biodiversity without any obligation to share the benefits. Unlike the CBD, UPOV says nothing about the fair and equitable sharing of benefits reaped from the exploitation of biodiversity, and farmers may have to pay royalties to use their own germplasm (COECOCEIBA/FoE Costa Rica, 2008).

Overall, UPOV facilitates the engagement of foreign firms in plant breeding. Studies carried out in several Latin American countries, for example, indicate that a large percentage of requests for UPOV protection have come from foreign firms operating in Latin America (Ecuador 97%, Colombia 84%, Chile 79%, Mexico 67% and Argentina 57%) (COECOCEIBA/FoE Costa Rica, 2008).

¹⁵ The CAFTA text on IPRs can be found here:

http://www.ustr.gov/assets/Trade_Agreements/Bilateral/CAFTA/CAFTA-DR_Final_Texts/asset_upload_file934_3935.pdf

¹⁶ UPOV's 'membership list' provides the following information in relation to the countries that have signed DR-CAFTA:

Only Costa Rica is listed as a party to UPOV 1991 (as of January 2009)

Nicaragua and Panama are only listed as being parties to UPOV 1978

Guatemala, El Salvador and Honduras are not listed at all.

<http://www.upov.int/export/sites/upov/en/about/members/pdf/pub423.pdf>

¹⁷ According to USTR, for example, Guatemala is not a member of UPOV 1991. In September 2008, Guatemala's "Law on the Protection of New Varieties of Plants" was still awaiting approval by the Congress of the Republic. In Guatemala, products, processes and methods that do not constitute inventions or that are excluded from patentability include biological processes and materials as they appear in nature (with the exception of microbiological processes); and all inventions whose commercial exploitation would be contrary to public health, human, animal or plant life and the environment.

¹⁸ However, the CAFTA text argues that there is "no conflict between the UPOV Convention 1991 and a Party's ability to protect and conserve its genetic resources."

The association agreements: key trade components

Costa Rica: Bio-prospecting can have significant impacts on indigenous communities and systems of sharing traditional knowledge

Costa Rica is a world leader in bio-prospecting, and widely seen as a country dedicated to conservation, yet questions are now being asked about whether bio-prospecting has in fact brought the country the benefits that were promised, and there are growing concerns that it assists the appropriation of genetic assets as well as local, traditional knowledge.

Bio-prospecting is also having a negative impact on community governance in Costa Rica. The private appropriation of traditional knowledge or plants via intellectual property mechanisms is extremely complex, making any sort of informed community engagement and decision-making very difficult, especially for women, who often have less access to education and lower levels of literacy.

In addition, the fact that resource 'ownership' is a concept alien to Indigenous cultures has also created great confusion: how can – and indeed why should – something that has been part of a People's culture, which they have always shared amongst themselves and with others, be appropriated by outsiders? For the Ngobe Bugle people, biodiversity is an essential element in everyday life. From it, villagers get medicines, food, materials to develop their crafts, their legends and much of their history. Their traditional knowledge has always been shared with everyone in the community and with some outside of it. Today, however, because of the threat that their knowledge is being appropriated by others outside their village, the very act of sharing within the community and externally is being eroded.

Conflicts have also flared up in some Indigenous villages because some people within the community have chosen to sell medicinal plants or share their knowledge in exchange for financial gain, when this is frowned upon by the rest of the community. It is important to bear in mind that these conflicts are driven by people's need to generate income – and that there are non-indigenous people who are aware of and ready to exploit this situation to acquire the knowledge they seek.

Much traditional knowledge is shared by various Indigenous Peoples, and anyone who carries out a transaction with one group can also instigate a conflict between different Indigenous Peoples. These internal decision-making difficulties can be even more pronounced amongst Costa Rican peasants and fishing communities who while not indigenous, share many of the values of the Indigenous People. Bio-prospecting can also have a particularly negative impact on women, who are closely engaged in using and maintaining and exchanging knowledge about biodiversity as it relates to food.

Text adapted from: Life as Commerce: Bioprospecting in Costa Rica, summary, by FoE Costa Rica. (COECOCEIBA/FoE Costa Rica, 2008).

Because of growing concerns about the impacts of stringent intellectual property rights rules, the IPR component of the EU-CAN Association Agreement is now one of the most contentious issues on the table, including in relation to traditional knowledge, biodiversity, enforcement, technology transfer and geographical indications, and all negotiating countries are taking strong positions in defence of their own interests (see 'Andean countries act to protect biodiversity and traditional knowledge' below).

2.2. Forcing the 'Singapore Issues' through

Global Europe mandates European Union trade negotiators to push for key economic goals that the EU has been trying, without success so far, to drive through multilateral institutions such as the Organisation for Economic Cooperation and Development (OECD) and the World Trade Organisation (WTO). These include the controversial 'Singapore issues' – including investment, competition, and government procurement – and a push to ban all export restrictions in place in trading partners.

Plans to conclude a Multilateral Agreement on Investment (MAI) in the OECD – which would have been open to others to sign and would effectively have set the parameters for acceptable investment and competition regulations in non-OECD countries as well – were abandoned in 1998, following objections from France, as well as widespread public protest. The Singapore issues were roundly rejected by developing countries at the WTO's 5th Cancun Ministerial in 2003, but are much harder to resist in aggressive bilateral trade negotiations. The EU thus continues – seemingly more successfully – to push this through its FTAs, as outlined in its negotiating mandates for the EU-CA and EU-CAN association agreements (see footnote 10).

In relation to the establishment of investors, the EU aims to prohibit: limitations on the number of establishments; limitations on the total value of transactions; limitations on the total number of operations or on the total quantity of output; limitations on the participation of foreign capital; and measures which restrict or require specific types of establishment (subsidiary, branch, representative office) or joint ventures.

The EU's goal is to use the Association Agreements to open up markets even further for its investors through trade liberalisation agreements.¹⁹ The EU is already the leading investor in the Andean countries: EU foreign direct investment (FDI) is found in the financial services, mining, oil extraction and manufacturing sectors (EC, 2009c). This means that the benefits that investment components of any Association Agreement would bring might be relatively subtle, but they would still be likely to lead to increased European and non-European investment (EC, 2009:72). Investment liberalisation is also being pursued through the Central America Treaty on Investment and Services (TCSI), and the EU has been actively engaged in this process as well.²⁰

The inclusion of the Singapore issues, if agreed, would:

- > maximise foreign enterprises' access to developing country product and investment markets, including in the forest and agricultural sectors;
- > minimise the rights of those governments to regulate foreign investors; and
- > prohibit governmental measures, including public procurement policies which support or encourage local enterprises, such as small-scale mining and local food production.

Specifically, investment liberalisation in a range of sectors, especially agro-industry, mining and hydrocarbons, is likely to have significant impacts on forests and biodiversity, including in terms of peoples' rights to access and manage those forests and their biodiversity (see 'Asset stripping: furthering the destruction of forests and biodiversity').

The interim EU-CAN Sustainability Impact Assessment (EU-CAN SIA) also comments on transnationals' efforts to invest in and access natural resources and the fact that this may be contentious: "The inclusion of investment provisions in trade agreements can be contentious, as it may limit domestic policy autonomy if it includes legally binding protection for foreign investment. Latin America received record levels of foreign direct investment in 2007, exceeding the previous record set in 1999 (in the context of one-off privatisations). This surge in FDI was mainly fuelled by transnational corporations seeking to take advantage of the growth in local market demand and gain access to natural resources, in light of buoyant world demand." (EC, 2009:72)

Resistance to European proposals on investment is steadily gathering pace in some of the Andean countries, especially as a consequence of the above mentioned changes to the Bolivian and Ecuadorean constitutions, many of which relate specifically to restrictions on foreign investment (see 'Calling the EU's Bluff?' below for more detail).

2.3. Dismantling export restrictions

Mining, oil exploration and extraction, industrial agriculture, logging (both legal and illegal) and the spread of vast tree plantations to produce pulp and paper, are all key causes of the escalating loss of climate-regulating forests and irreplaceable biodiversity around the world; and this in turn has serious implications for forest-dwelling communities and Indigenous Peoples.

With respect to logging, tariff liberalisation in the forest and forest products sector – in relation to unprocessed timber especially – is not predicted to have much of an impact on trade in that sector (because tariffs are already low (FAO, 2005)). However, investment liberalisation could still make a significant difference to deforestation rates. It could close down Central and Andean governments' policy space, preventing them from regulating the activities of foreign corporations and preventing corporate abuses in the forest sector.

In general, the kind of policies that would be targeted include restrictions on land ownership, performance requirements (such as local content rules), restrictions on non-residents establishing subsidiaries or branches in a country and/or requirements that any foreign investment be part of a joint venture also involving residents and/or the government. In practice, in the forestry sector, a wide range of measures, including licenses and permits, agricultural policies and planting and harvesting restrictions are considered restrictions on investment (IADB, 2006).

A ban on export restrictions, which the EU has been pushing for energetically in all its trade negotiations, would have a significant impact on forests and biodiversity. Export restrictions include total export bans, export quotas and selective bans based on species, export taxes or export levies, restrictions on quantity because of limits on harvest levels, and administrative controls such as permits and licences. FAO reports a general shift away from export taxes towards such quantitative restrictions and points out that,

"Although sometimes criticized, such restrictions can contribute to industrial development and prevent the destruction of forests, albeit at a substantial cost. They can also enhance people's well-being, provided that the restrictions are adapted to local situations and used in combination with other policy instruments aimed at rural or industrial development." (FAO, 2005:111)

The EU, however, views these export restrictions as an unfair impediment to its manufacturing industries and is determined to remove them in order to secure supplies of raw materials. This objective has been clearly identified as a top priority in its Global Europe strategy; and it has "identified at least 450 restrictions on more than 400 tariff lines consisting of various raw materials (metals including ores and scrap, wood, hides and skins, oil and gas, ceramics, chemicals, textiles)." (EC, 2008b)

¹⁹ In terms of investment, the EU's negotiating mandate is restricted by the member states. It is only mandated to negotiate market access for EU investors. Thus it aims to incorporate what are known as 'pre-establishment' measures into potential trade treaties. But the right to negotiate 'post-establishment' measures, which include investment protection measures such as investor-state dispute settlement, remains with the EU's member states. These would be included in Bilateral Investment Treaties (BITs).

²⁰ More information about the Central America Treaty on Investment and Services (TCSI) can be found here: http://trade.ec.europa.eu/doclib/docs/2007/march/tradoc_134022.pdf

The association agreements: key trade components

2

The EU also seems to be using the Association Agreements as an opportunity to develop a version of its desired alternative dispute resolution mechanism for resolving differences of opinion about non-tariff barriers (NTBs) swiftly and behind closed doors (a proposal currently mired in the WTO's Doha negotiations).

It seems that the EU's efforts to ban export restrictions may be succeeding; the idea of a general prohibition, at least on export taxes, does not seem to be a contested issue in either region, although some exceptions have been tabled.

Quality standards, especially in relation to food, are a contentious issue, and not just with respect to exports *from* Latin and Central America to the EU, as one might predict. There is clearly an issue, for example with the US using CAFTA to dismantle food safety standards in the Central American countries, and it seems that the EU may have similar objectives (Grain, 2008). For example, available data shows that Central and Latin American countries have restrictions on imports of beef, dairy products and eggs from the US and the EU, especially because of Bovine spongiform encephalopathy (BSE or mad cow disease) and salmonella USTR (2008).

There may also be implications in terms of trade in genetically modified organisms (GMOs), although Central American countries seem to be dismantling their GMO legislation, presumably in response to DR-CAFTA. El Salvador, for example, has just abolished a ban on GMO seed imports, and reportedly joins Honduras and Colombia in this respect. (SeedQuest, 2008)

Using the WTO to dismantle export restrictions

As part of a broader strategy to dismantle 'non-tariff barriers' (NTBs),²¹ the EU also has a long-held ambition to dismantle export restrictions, which it has been pursuing in the WTO. Whether or not it will succeed with this in the WTO is a moot point at present, since negotiations are currently stalled. However, as part of this negotiation, the EC has clearly identified export restrictions applying to wood and forest products as a key EU target (along with minerals, metals, textiles and hides) (WTO, 2005:2, EC, 2008b).

²¹ NTBs can include a wide range of regulations and standards, including in relation to environment and health, at national borders and 'behind the border', i.e. inside the country. They may be perceived or challenged as barriers to trade and are a key offensive interest for the EU in bilateral trade negotiations. Together with the Singapore Issues they constitute a new frontier that the EU would like to open up through trade liberalisation.



The association agreements: key impacts

3



The association agreements: key impacts

The trade rules and policies under negotiation in the EU-Central American and EU-Community of Andean Nations Association Agreements are highly likely to have significant impacts on both peoples' rights and forests and biodiversity in both regions. A key concern is that the trade components of the agreements will result in a denial of access to those key biodiversity and forest resources needed and traditionally used by smallholders, forest-dwellers, and Indigenous Peoples, as well as undermining their land rights.

3.1. Undermining Indigenous Peoples' rights

Extractive activities and the spread of industrial export-oriented agriculture are at the heart of the drive to liberalize markets, especially in the Central American and Andean regions, where mining, oil and fruit production, for example, are key economic sectors.

Whilst these sectors can appear to be profitable when considered at the aggregate country level, most benefits accrue to those companies and individuals engaged in international trade. At the same time, severe negative social and environmental impacts, including increased rural unemployment, widespread pollution and environmental degradation, and the impacts of climate change (also the result of both deforestation²² and increased industrial activity), are borne by local communities and Indigenous Peoples.

Indigenous Peoples in particular suffer the impacts of these changes disproportionately, according to a previous UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen who said, "these phenomena have had a particularly serious impact on indigenous people, whose way of life is closely linked to their traditional relationship with their lands and natural resources, and has become a new form of forced eviction of indigenous peoples from their ancestral territories, while increasing the levels of poverty and disease" (UNHRC, 2007). Decreasing access to water resources, including because of the "trend towards the privatization of water resources in many countries, especially in Latin America and Africa" is also a major concern (UNHRC, 2007).

The EU-CAN Sustainability Impact Assessment raises similar serious concerns about the impacts of these trade negotiations on local communities and Indigenous Peoples, because of competition between hydrocarbon and hunting/gathering activities; the territorial implications of changing biodiversity, land use and water availability; the impact of reduced biodiversity on small farmers and indigenous groups, whose food security and livelihoods depends on a diversified crop portfolio; and a wide range of social impacts generated by mining (EC, 2009).

Free trade agreements can also have a direct impact on Indigenous People's land rights, even where positive programs of land rights reform are underway. Stavenhagen's 2007 report to UNHRC also observed that he had "received information from different parts of the world concerning the slowness and difficulties in implementing those reforms and the frequent inconsistency

between legislation on indigenous people's rights and sectoral legislation. This contradiction arises above all in connection with the right to natural resources, generating a great deal of uncertainty and tension, which often finds expression in persistent social conflict." (UNHRC report) He also stated that, "various national and international private economic interests...are centred on land ownership and the exploitation of natural resources, especially forestry, water and subsoil resources. They often collude with the structures of political power to impede progress with regard to indigenous people's human rights" (UNHRC, 2007).

Stavenhagen's report also addresses impacts on small Indigenous communities living in isolation from modern society, such as those in the Colombian Amazon, who he says "are now on the brink of what some describe as genocide, owing to oil exploration, timber extraction, the introduction of vast commercial plantations, infrastructure works, missionary activity, drug trafficking and international tourism" (UNHRC, 2007). Again, these impacts can arise even in areas where positive land reform programmes are underway: in Ecuador, for example a law reserving territory for the Tagaeri-Taromenani people has failed to quell conflict and violent clashes between the Indigenous settlers and the isolated population, generally involving the timber and mining interests in the area (UNHRC, 2007).

Yet the EU is a signatory to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which states that, "Indigenous peoples have the rights to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired... Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess" (Articles 26 (1) and (2))²³.

3.2. Oil and mining: liquidating land rights

The hydrocarbon and mining sectors are central components of both sets of Association Agreement negotiations: the EU's Global Europe documents are quite explicit about the fact that European industries need to secure "better access to raw materials to compete on a fair basis." (EC, 2006) Commission documents focus on the fact that the EU imports more than 75% of its requirements for iron ore, bauxite, copper ores and lead ores; and that certain countries' restrictions on trade in scrap metal are also causing the EU's metal industries to seek new supplies of ores and concentrates in some cases (Colombia is one such country, for example, maintaining temporary export prohibitions on raw hides and skins and on ferrous waste and scrap to ensure domestic supply, according to the WTO's last Trade Policy Review (WTO, 2007).

²² See (FoEI, 2008) for more information.

²³ The UN Declaration on the Rights of Indigenous Peoples can be found here: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf. The Declaration is not legally binding, but it enshrines rights, and several countries like Bolivia have adopted it as binding national law.

In addition, the EU already imports half of its energy needs and this could increase to 70% in the next 30 years. Oil poses a particular problem since the European Commission estimates that “oil imports in 2030 will exceed 90% of the EU’s total needs” (EC, 2006) (although it has to be noted that during the current recession EU imports of minerals and oils from the region have slumped, although this is likely to be temporary).

Thus in relation to securing natural resource inputs, one of the EU’s main objectives is the elimination of export taxes and other export restrictions preventing access to natural resources. This desire has been pursued through thick and thin, both within the WTO’s Non-Agricultural Market Access (NAMA) negotiations (see below) and now in the bilateral and regional free trade agreements it is negotiating.

“More than ever, Europe needs to import to export. Tackling restrictions on access to resources such as energy, metals and scrap, primary raw materials... must be a high priority. Measures taken by some of our biggest trading partners to restrict access to their supplies of these inputs are causing some EU industries major problems. Unless justified for security or environmental reasons, restrictions on access to resources should be removed... Energy will be a particularly high priority.”

(EC, 2006b:7)

In addition to focusing on export restrictions, the EU’s Global Europe policy also homes in on the liberalisation of foreign direct investment (FDI). The EU regards securing investment opportunities for European business as an absolute priority, because of the ongoing globalisation of supply chains and the need to ensure a physical presence in foreign countries in order to “realise business opportunities” (EC, 2006b:8).

As the Interim EU-CAN SIA reflects, mining and hydrocarbons are already big business in the regions, especially in the Andean region; and the EU is a leading investor in the region, including in the mining and oil extraction sectors. However, the conclusion of any trade agreements could result in increased European and even non-European investment in those same sectors, because of greater investor confidence (EC 2009: 79/80).

According to the US Government’s 2006 Mineral Industry Yearbook, all countries engaged in these Association Agreement negotiations with the EU are rich in metals and minerals.

table 1. Key metal and hydrocarbon resources in Central American and Andean countries

Country	Metal and hydrocarbon outputs	Leading supplier	Negotiation
Bolivia	Copper, gold, lead, silver, tin, zinc, cement, salt, natural gas and petroleum		EU-CAN
Colombia	Copper, gold, iron ore and crude steel, nickel, silver, cement, gypsum, phosphate, salt, coal, natural gas and petroleum	Already leading supplier of nickel, cement, coal	EU-CAN
Ecuador	Gold, crude steel, cement, salt, natural gas and petroleum		EU-CAN
Peru	Copper, gold, iron ore, crude steel, lead, silver, tin, zinc, cement, gypsum, phosphate, salt, coal, natural gas, crude and refined petroleum	Already leading supplier of copper, gold, lead, silver (even more than Mexico), zinc,	EU-CAN
Costa Rica	Gold, cement, refined petroleum products		EU-CA
El Salvador	Crude steel, cement, gypsum, salt, refined petroleum products		EU-CA
Guatemala	Gold, crude steel, silver, cement, gypsum, salt, crude petroleum		EU-CA
Honduras	Gold, lead, silver, zinc, cement, gypsum, salt		EU-CA
Nicaragua	Gold, silver, cement, salt, refined petroleum products		EU-CA

(MIYB/LAC, 2006)

The association agreements: key impacts

These plentiful resources are good reason to conclude that there is considerable scope for expansion of the mining industry in Central and Latin America; and this conclusion is backed up by the fact that over the last decade, Latin America has been the top global destination for international exploration investment “*in part because of recent reforms that reduced both real and perceived risks to investment.*” Peru, especially, is one of the most favoured destinations for foreign investors (MIYB/LAC, 2006).

Yet any expansion of mining and oil exploration and extraction will accelerate already devastating levels of biodiversity destruction (see ‘Asset stripping: furthering the destruction of forests and biodiversity’ below) and exacerbate the already difficult situation that many local communities and Indigenous Peoples face. According to previous UN Special Rapporteur Stavenhagen, “The global economy is increasingly raising the value of the oil and mineral resources to be found in indigenous regions. The Special Rapporteur has received any number of reports and complaints from indigenous communities whose resources have been appropriated and are being utilized by powerful economic consortia, with neither their prior consent nor their participation, and without the communities securing any of the benefit of that activity. This is currently one of the most controversial issues involving indigenous people, the State, and private enterprises, and often also the international financial institutions” (UNHRC, 2007).

The same UN report points out that the extraction of natural resources from the subsoil has had a highly discriminatory impact on Indigenous populations in particular. One example it gives is of the Camisea gas pipeline project in the Peruvian Amazon, located in the Urubamba valley, in the southeast Peruvian Amazon. Awarding a concession for the project was a prerequisite for Peru to receive International Monetary Fund loans in the 1990s. Since the beginning of the project, Camisea has transformed the way the local population lives, upsetting the customs and traditions of the Indigenous communities, and preventing access to natural resources. At the same time, local people have failed to benefit from any of the resources generated by the Camisea project (Amazon Watch, 2009). Furthermore, nearly 75% percent of the gas extraction operations that were established under the original project (Camisea I), are located inside a state reserve for Indigenous Peoples living with little or no contact with the outside world, who were forcibly contacted by the Camisea consortia in violation of their internationally recognised rights, and who lacked immunity to common respiratory and gastrointestinal diseases. The pipeline also cuts through one of the world’s most pristine tropical rainforests, home to the Nahua, Kirineri, Nanti, Machiguenga and Yine Indigenous Peoples. Despite stringent criticisms of the project, the fact that both the US Export-Import Bank and the Overseas Private Investment Corporation refused to fund it, and even Citigroup withdrew as financial advisor, Camisea 2 is now under way, with many of the hallmarks of the original project, including intimidation of Indigenous people voicing their criticisms about the project (Amazon Watch, 2009b; FoEI, 2009).

The interim EU-CAN Sustainability Impact Assessment (SIA) confirms that an Association Agreement in the Andean region could result in a significant expansion in the large-scale formal mining sector, especially as a direct result of increased investment in capital stock. The SIA predicts that employment may increase as a result, but that restrictions on workers’ rights will restrain any significant increase in real wages or improvement in working conditions. It also comments that additional negative social impacts might arise because of tensions and conflicts related to competition over the resources involved (land and water), the negative effects of mineral development (enclave economies, social problems, environmental damage) and the increased awareness of desirable alternative development strategies, especially in rural and in particular Indigenous territories. It gives the example of the environmental impacts resulting from mining in the Pilcomayo river basin in Bolivia, where contamination has already led to severe consequences for agriculture, cattle-breeding and fisheries (EC, 2009).

The SIA clearly states that increasing FDI in the Andean region is likely to have adverse environmental consequences: “The impact of increased FDI on the environment has been widely discussed in the literature, particularly in the context of pollution havens and a ‘race to the bottom.’ It is evident an increase in FDI inflows which increases output will give rise to negative environmental impacts unless these are mitigated or prevented by an effective environmental regulatory capacity. As described in the baseline conditions section, environmental regulation enforcement is weak in the Andean countries. It can be predicted that any increase in FDI that is attributable to an investment agreement, will have adverse environmental consequences.” (EC, 2009:80)

In spite of the impacts predicted by the interim EU-CAN SIA, governments continue to look to trade and investment liberalisation agreements to help expand the oil and mining sectors, especially by increasing investment and removing export restrictions.

The International Council on Mining and Metals (ICMM)²⁴ explicitly states that the availability of sufficient quantities of raw materials imports is dependent upon opening markets and securing improved conditions for investors:

“Whether it is within Europe, or in third countries, a sound investment environment for producers, and open markets without trade distortions, are key requirement for the availability of raw materials in sufficient amounts and qualities at reasonable prices. Impediments to investment in mining in third countries need to be urgently addressed so that the industry can make the best possible contribution to responding to increasing demand. The principle reasons are often hostility to foreign investment, insufficient security for safe long-term investment and weak governance. Market distortions and unfair trade practices further aggravate the supply side. Observable measures in several countries include refunds of sales taxes on imports, licensing systems, high duties or

²⁴ ICMM is a CEO-led organisation representing many of the world’s leading mining and metals companies as well as regional, national and commodity associations. <http://www.icmm.com>

other restrictions on exports as well as government subsidies or discriminatory pricing of raw materials.” (ICCM, 2008)

The 2006 Minerals Industry Yearbook also laments the fact that in 2006 FDI flows into mining in Central America still remained lower than expected “owing to uncertainties concerning country-specific mining and hydrocarbons laws, a lack of sufficient infrastructure in the most promising mineral resource areas, and public protests against nascent mineral development projects. The FDI in exploration and development of mineral properties that did occur was concentrated in the countries with mining and investment laws that were less uncertain or more oriented toward developing more-extensive mineral industries, including Belize, El Salvador, Guatemala, Nicaragua, and Panama” (MIYB/LAC, 2006). The US and the EU may thus have a joint and continuing interest in using free trade agreements to press other countries in both Central American and the Andean region as hard as possible in relation to their mining and hydrocarbon laws.

A number of Central and Latin American governments are equally keen to promote their exports in the oil and mining sectors, and have already introduced numerous trade-friendly reforms, often at the expense of their local communities and Indigenous Peoples. Colombia, for example, has already introduced ‘investor-friendly reforms’ in the hydrocarbons sector (CIA, 2009) and in the non-hydrocarbons mining sector (WTO, 2007b). It also permitted Canada, through the Canadian International Development Agency, to help fund and draft a new 2001 Mining Code for Colombia, which relaxed environmental and labour regulations and reduced the royalties paid by foreign firms (including Canadian mining companies) from 5-10% to just 0.4% (IPS, 2007).

Colombia’s President Uribe is also encouraging hydrocarbons exporters to diversify their ‘customer base’ away from their main markets, the US and Venezuela (CIA, 2009). However, according to the WTO’s 2007 Trade Policy Review, Colombia still maintains export taxes on certain products including coffee, emeralds and some fuels, to finance development funds (WTO, 2007), and export taxes such as these are likely to be targeted by the EU through its Association Agreements, since the removal of all export restrictions is an EU negotiating objective.

Similarly in Peru, it seems that the García government has granted concessions for oil and gas exploration, mining, agrofuel crops and logging, often without informing local communities, and sometimes even without agreement from local government (The Economist, 2009).

García also moved to change a communal land rights law put in place in 1995 that is supposed to ensure that Indigenous communities in Peru’s highlands and Amazon jungle can withhold consent for mining and oil extraction and other business activities on their lands. This change was in response to the US-Peru Free Trade Agreement and was supposed to be in place before that Agreement entered into force on 1 January 2009; García introduced a legislative decree changing the majority required for consent for a project, from two thirds of all the members of the community, to just a simple majority of those present at a community assembly (Peruvian Times, 2008).

This triggered intense opposition from Indigenous People from the Peruvian Amazon, which was in turn met with violent oppression by the government, with at least 65 people (and many suspect more) being killed. However, this campaign was successful in persuading the Peruvian Congress to revoke certain aspects of the proposed changes, namely Decrees 1015 and 1073 (which changed the voting procedures) (Bilaterals.org, 2008).

However, an increasing number of countries in Central and Latin America are now beginning to work with civil society, taking on board many concerns about neoliberal economics and trade liberalisation, including in the oil and mining sectors. These countries are increasingly reforming national legislation, and some have balked at continuing trade negotiations with the EU: some, such as Bolivia and Ecuador, have withdrawn from the negotiating table as a result (see Introduction).

Ecuador for example, insists that all foreign investment in petroleum exploration and development must be carried out under contract with the state oil company, and has amended its hydrocarbon law to increase the share of oil revenues accruing to the government (USTR, 2008) (as a result a number of companies are pursuing international arbitration through the International Centre for the Settlement of Investment Disputes).²⁵

The new Bolivian Constitution also stipulates that all hydrocarbon deposits belong to the government of Bolivia, and the Bolivian government exercises its right to explore and exploit hydrocarbon reserves and trade-related products through the state-owned firm Yacimientos Petrolíferos Fiscales Bolivianos (YPFB). Also, in May 2008, President Evo Morales announced that the government would obtain a 51% ownership of three companies, and outright ownership of the German/Peruvian controlled Bolivian Logistical Hydrocarbon Company (CLHB). There is also a possibility that the mining code could be changed to require all companies to operate through joint ventures with the state mining company, COMIBOL (USTR, 2008).

²⁵ To view ICSID cases go to:
<http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=ListCases>

The association agreements: key impacts

3.3. Plantation agriculture, subsistence farming and land rights

Agricultural liberalization is also a key component of the Association Agreements, and is especially important since agriculture plays such a vital role in all the Central American and Andean economies: as well as producing food for local consumption, key exports from the two regions include coffee, sugar, bananas, pineapples and other fruits. Relevant aspects of the negotiations include tariff reductions, investment liberalisation, and sanitary and phytosanitary (SPS) restrictions (including in relation to agrofuels and trade in genetically-modified organisms).

In most Central American and Andean countries the primary concern is to maintain existing market access for these agricultural exports to the EU; and to protect domestic production in key subsistence crops such as potatoes, onions, corn and rice (Alianza Social Continental *et al*, 2007).

All countries in the region currently have GSP+ status, but the EU has already endeavoured to backtrack on its existing commitments by attempting to use the trade negotiations to remove 30 or so products from this 'zero tariff' option, including ethanol and frozen shrimp.

Certain countries, including in the Andean region, are also hoping to use the non-tariff barriers aspect of the negotiations to put pressure on the EU to meet its commitment to remove agricultural export subsidies: this would help lift food crop prices, and make domestic small-scale agriculture more viable. However this seems an unlikely outcome given that movement on agricultural subsidies is also at the heart of WTO negotiations and likely to be dealt with there rather than anywhere else (WDM, 2008).

In addition, in both these two regions, investment in agrofuels is likely to be at the forefront of negotiators' minds. Spurred on by the development of Brazil's agrofuels industry, numerous other countries are working to develop their own agrofuels markets. Colombia, for example already has five ethanol distilleries in operation; and Guatemala has been noted as a potential producer of large quantities of ethanol since it is already the largest sugar producer in Central America. El Salvador and Honduras also seeming to be gearing up for production of agrofuels (Grist.org, 2006; IADB, 2007).

Critically, Costa Rica already benefits from tariff free access to the US ethanol market through DR-CAFTA; and other DR-CAFTA countries are developing their own production capacity to enable them to exploit this same opportunity. Colombia and Peru could also secure similar benefits through their bilateral trade agreements with the US. It thus seems likely that trade negotiators from the two regions will be pushing for similar concessions to be granted by the EU (IADB, 2007b). However, this could lead to a significant expansion of land devoted to export agriculture, at the expense of forests and food security.

The burgeoning debate about the liberalisation of agrofuels is further complicated by the fact that this is also a point of contention within the WTO negotiations. All countries will probably aim to use bilateral and regional negotiations to further their interests within the WTO as well (some may hope to set precedents, others may focus on avoiding doing so). It has been suggested, for example, that the EU is most unlikely to make significant concessions in relation to agrofuels in these negotiations, for fear of setting a precedent when it comes to continuing negotiations with Mercosur, a Latin American trading block that includes Brazil, the world's main ethanol exporter (CIFCA, 2007).

The EU, for its part, is likely to be interested in reducing tariffs across a range of agricultural sectors (WDM, 2008), improving the 'investment environment', and removing export restrictions, including on agricultural goods. Both the US and the EU also seem to have particular concerns about import restrictions relating to sanitary and phytosanitary (SPS) measures, including in relation to trade in genetically modified organisms. The EU, for example, has questioned why Costa Rica operates an authorization system for genetically modified organisms that is "difficult, quite slow and expensive" and "poses problems" for exporters (WTO, 2007c). Similarly, the US has expressed its discontent with Ecuador's sanitary and phytosanitary (SPS)²⁶ provisions and the fact that Ecuador's new constitution declares Ecuador free of transgenic seeds and cultivation, as well as prohibiting the development, production, commercialization, and importation of genetically modified organisms that are harmful to human health or that are against food sovereignty or ecosystems (USTR, 2008).

The eventual outcome of these negotiations is uncertain, since so much is at stake, and negotiations are proving tough. Two experts on the Central American Association Agreement predict that the negotiations will result in Central America opening its dairy and pork markets to the EU (because of CAFTA parity); continued GSP+ treatment for most products; some preferential access for agrofuels, competitive quotas for bananas; a slight increase in sugar quotas; improvements in market access for cassava; quotas as safeguards for beefs; and rice potatoes and onions designated as sensitive, excluded products (again on the basis of parity with CAFTA) (Alianza Social Continental *et al*, 2007).

But past experience indicates that extensive liberalization in the agricultural sector could have extremely damaging social and environmental repercussions. Even though countries can negotiate to exempt at least some of their most critical agricultural tariff lines from market liberalisation, high overall levels of tariff liberalisation combined with increased investment in the agricultural sector could have major impacts on both food security and deforestation, if it resulted in cheap food products flooding the local market, or increased and/or intensified production for export. It has been predicted, for example, that rural communities in Peru will be devastated by the US-Peru Trade Promotion Agreement, because it will permit the free entry of wheat, cotton, soy, and other agricultural products, including oils and beef (Morales, 2006).

²⁶ SPS refers to food safety, and animal and plant health and safety measures.

This would force communities off their land to make way for foreign companies, pushing them towards urban centres or the forest margins. This concern is especially pronounced in relation to agrofuels. Demand for agrofuels has soared in recent years, in part because of government-imposed targets designed to increase the use of agrofuels in a number of countries (including in the EU). Competition for land to grow those agrofuels on, combined with intensive production practices, is contributing to rather than preventing climate change in some cases, leading to an increase in the use of damaging nitrogen fertilizers, and furthering the destruction of ecosystems including vital climate-regulating forests (GFC, 2007).

Another research report that looks specifically at the impacts of agricultural trade liberalisation in Mexico, and the rapid growth of the Latin American soy sector, finds that, “while there is great potential to expand agricultural exports, the development impacts of such export growth can be vastly overstated....Employment growth is limited and wages often fall. The extractive agricultural model exhausts the land and destroys important natural assets.” The report concludes that “sustained rural development and poverty reduction in Latin American societies with strong agricultural sectors cannot be achieved under a framework of indiscriminate liberalization....the most important policy reform needed for Latin America now is a much more selective and careful management of international trade, particularly in agriculture.” (Pérez *et al*, 2008)



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Agricultural liberalisation in Mexico

The impacts of trade liberalisation have been studied particularly closely in Mexico, following the start of the North American Free Trade Agreement (NAFTA) in 1994. The import of heavily subsidized US agricultural products into Mexico caused prices to plummet, with severe knock-on effects for Mexican farmers. Maize imports to Mexico increased six-fold between 1991 and 2001; and Mexican meat imports from the US tripled between 1996 and 2005 (WDM, 2008:34-36). The smallest and poorest farmers, for whom maize production was the most important form of income, were hardest hit; around 2 million agricultural jobs have been lost in Mexico since NAFTA began. However, these poor farmers cannot simply switch to other income sources – other alternatives are to grow yet more corn (which further depresses corn prices), or to migrate to urban centres (which has functioned to keep wages in general depressed).²⁷

A further study finds that the exposure of Mexico's farm sector to competition with subsidised imports has led larger, more competitive farmers to intensify production, with associated environmental impacts. At the same time it has also forced more traditional, less intensive, producers to seek to maintain their income by increasing production through extensification – farming increasing areas of land – with resulting biodiversity impacts. Many poor people are simply unable to stop farming when it becomes ‘uneconomic’, because they have very limited options (Nadal, 2000).

The fact that Mexican farmers attempted to address collapsing commodity prices by extending production into marginal lands also resulted in “an average deforestation rate of more than 630,000 hectares per year since 1993 in the biologically rich regions of southern Mexico.” This changing land use has been the main reason underlying habitat degradation in southern Mexico (Audley *et al*, 2004).

In contrast, the EU-Mexico Free Trade Agreement (FTA), which came into force in 2000, and which includes the liberalisation of agricultural tariffs on a phased basis until 2010, does not itself seem to have had such drastic impacts on agricultural imports (although it also fails to impact EU agricultural subsidies).

However, a new factor has come into play, as agrofuels trade increases demand for land in exporting countries.

Mexican farmers and consumers now find themselves vulnerable to sharp rises and falls in food prices, in the absence of local food security measures being put in place (WDM, 2008).

²⁷ As recommended in WDM (2008): For a good summary of the impacts, see pp. 6-9 of Pérez *et al* (2008); and Henriques *et al* (2004).

The association agreements: key impacts

The impacts of pineapple production and trade in Costa Rica

“Between 1995 and 2000, neo-liberal policies instigated by the so-called Structural Adjustment Plans shaped economic and political realities [in Costa Rica] (...) and have kept constant pressure on forest resources. These policies are aimed at assisting the expansion of large exporting industries at the expense of small farmers and agro-ecological farms. In fact, the production of basic grains declined drastically during this period. Major institutions (...) created to ensure food sovereignty have also been weakened or have disappeared and there has been a considerable increase in monocultures belonging to large companies (oranges, bananas, trees for pulp, palms and, more recently, pineapples). Huge agro-exporter companies have been changing the landscape in vast areas of warm tropical plains. The rural agro-ecological landscape that existed in the seventies in which crop farms were interspersed with small grazing areas, abundant trees in agro-forest systems and small forests, have been transformed into vast tracts of monoculture.

The example of the pineapple is, perhaps, the most dramatic and recent. The area under cultivation increased by 300% over the past six years and, in terms of pesticide use, this crop ranks second after the banana with 24.55 kg/ha of active ingredient required per year. The expansion coincides with the most significant deforestation frontiers in the country and, along with bananas and oranges, has been associated with progressive changes in soil usage, and the destruction of remaining forests and biodiversity.

It has been pointed out that thanks to the high international demand for pineapples as well as easy access to credit for this activity, *“large amounts of derelict land and land undergoing secondary regeneration have been brutally cleansed during recent decades ...”* even priority conservation areas in the interior, including the Maquenque Wildlife Refuge and the San Juan-La Selva biological corridor – two key areas in terms of the establishment of the Great Mesoamerican Biological Corridor. Its impact on biodiversity has also been documented, *“which is illustrated by a drop in the population of monkeys in the northern area of the*

country, problems of erosion and soil erosion, pollution of rivers and excessive logging in forests.” Other studies, concentrating on zones of pineapple plantation expansion, have also recorded drops in populations of birds and other wildlife and links the phenomena to a number of factors including the presence of pesticides.

The situation has been aggravated by the tightening up of phytosanitary measures that are required for the export of pineapple to the United States and Europe. These measures include thoroughly cleansing pineapples of all seeds from wild plants that get mixed in with them resulting in large quantities of trees (potential producers of small seeds that ‘contaminate’ pineapple) being cut down even many kilometres away from pineapple plantations. This impact on the environment is combined with a disproportionate social impact, where health problems for pineapple plantation workers are added to the contamination of groundwater and surface water by pesticides and this problem already affects many communities living near the plantations.

In addition to its direct impact on the environment, this level of development has resulted in an increase in the use of forest resources and has become a further underlying cause of deforestation and degradation of forests in other areas, which have fewer tourists. The domestic consumption of wood rose dramatically, by almost 100%, within the last two years, reaching figures above or at least close to a million cubic meters. This increase is in direct proportion to increases in two major areas: principally to satisfy the demand for softwood pallets for the export of fruit and other agricultural products, and because of the boom in the construction of tourist infrastructure. Four million pallets were manufactured in 2006, consuming just above 400,000 cubic meters of wood, mainly from plantations financed by the State of Costa Rica and using monies from environmental services [Costa Rica’s Payment for Environmental Services system]. This means that the mere export of tropical fruit (pineapple and banana primarily) has increased the demand for softwood by almost 100% in the last few years.”

Source: COECOCEIBA/FoE Costa Rica, 2008

3.4. Asset stripping: furthering the destruction of forests and biodiversity

The interim EU-CAN Sustainability Impact Assessment (SIA) considers the impacts that the proposed Andean Association Agreement might have on forests and biodiversity in some detail. The Andean region is one of the most ecologically diverse regions in the world, and is thought to contain more than 20% of the world's biodiversity. The SIA identifies a number of key ecosystems including Amazon forests, the montane forests of the Andes, and the Chocó forest, which stretches along the Pacific coasts of Colombia, Ecuador and north-west Peru (EC, 2009). The tropical Andean biodiversity hotspot is thought to contain one sixth of the entire world's plant life in just 1% of its land area. It is also home to the largest variety of amphibians in the world, although 450 of its 664 species are already on the 2004 IUCN Red List. Other threatened species include the yellow-eared parrot, the yellow-tailed woolly monkey and the spectacled bear (CI, 2009).

The SIA points out that the key ecosystems listed are under threat from deforestation to clear land for agricultural use and livestock grazing, reflecting national and international market demands; and it outlines the environmental consequences of that deforestation. Illegal logging is also listed as a major contributor. It also observes that increased market access for processed timber products can be expected to add to existing deforestation trends. With respect to commercial agriculture the SIA also points out that the potential use of genetically modified organisms (GMOs), and the intensified use of scarce natural resources including land and water, are likely to have negative impacts on the Andean countries' rich biodiversity (EC, 2009).

The SIA also focuses in on the impacts of increased resource extraction, especially increasing oil exploration and development, which is economically important in the region but has significant environmental impacts; and the fact that pollution and the overuse of water resources also threaten the region's freshwater and coastal wetlands. Additionally, the mangroves of Colombia and Ecuador, which play an important role in coast stabilization, are threatened by deforestation and aquaculture; grassland ecosystems between Colombia, Peru and Bolivia are under threat from overgrazing by cattle; and there is a risk of increasing desertification in dry ecosystems extending from the south of Ecuador, and along the Peruvian coast, in the inter-Andean valleys, and on the Caribbean coast of Venezuela (EC, 2009).

The EU's interim SIA on the EU-Central America Association Agreement also points out that deforestation is a priority concern in Central America too, although it fails to draw coherent conclusions about the specific impact that trade liberalization might have on the region's forests. This SIA states that, "In the Central American region, high rates of deforestation (and related loss in biodiversity) is the main environmental concern." (EC, 2009d:vi) It also says that, "Deforestation is one of the main environmental concerns throughout the Isthmus. A combination of population pressure, secularly [sic] high timber prices in the construction sector, low agricultural productivity, land demanded for cattle raising, together with highway construction projects to the Atlantic Coast had serious impacts" (EC, 2009d). However, while it predicts growth in forestry exports, it does not analyse the potential environmental impacts that this growth could have (FoEE, 2009).

This is a critical failing. Central America is also home to forests housing a vast wealth of biodiversity. The Mesoamerica 'biodiversity hotspot' incorporates a range of tropical and subtropical ecosystems including all of El Salvador, Guatemala, Honduras, Nicaragua, and Costa Rica. It includes high montane forest and cloud forest and is ecologically important as a bridge between North and South America. Species include the Central American spider monkey (*Ateles geoffroyi*), the Mexican black howler monkey (*Alouatta pigra*), and the quetzal (*Pharomachrus mocinno*). But Mesoamerica also exhibits some of the highest deforestation rates in the world and its rich resources are seriously threatened by encroaching economic activity (CEPF, 2009).



Sugar cane being burned in Brazil

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table 2. World ranking by country in terms of biodiversity and area of tropical forest

Country	Worldwide biodiversity ranking by no. of species (top 60 only)*	Worldwide ranking in terms of area of tropical forest**	Country information, biodiversity and deforestation drivers***28
Colombia	2	7	Colombia is the second most biologically diverse country on Earth, and home to about 10% of the world's species. This biodiversity results from Colombia's varied ecosystems—from the rich tropical rainforest to the coastal cloud forests to the open savannas. More than 1,821 species of birds, 623 species of amphibians, 467 species of mammals, 518 species of reptiles, and 3,200 species of fish. Small-scale agricultural activities, logging, mining, energy development, infrastructure construction, large-scale agriculture, and the cocaine trade.
Ecuador	8	29	Ecuador is the eighth most biodiverse country on Earth. Ecuador has almost 20,000 species of plants, over 1,500 species of birds, more than 840 species of reptiles and amphibians, and 341 species of mammals. Oil exploration, logging, and road building.
Peru	11	4	Peru is home to one of the largest areas of tropical rainforests in the world, after Brazil and the Democratic Republic of Congo. These forests are some of the richest in the world, both in terms of biological diversity and natural resources (timber, energy, mineral resources). Subsistence agriculture, development activities, especially logging, commercial agriculture, mining, gas and oil operations, and road construction.
Bolivia	12	9	Bolivia is the twelfth most biodiverse country on Earth with 2,194 known species of amphibians, birds, mammals, and reptiles, and more than 17,000 species of plants. Timber concessions, soybean and coca cultivation, oil and gas development, commercial and subsistence agriculture, fuelwood collection, cattle, fires.
Costa Rica	15	47	Costa Rica, despite its small size, has high levels of biological diversity with some 12,000 species of plants, 1,239 species of butterflies, 838 species of birds, 440 species of reptiles and amphibians, and 232 species of mammals. Costa Rica has an ambitious conservation program. Despite its environmental rhetoric and conservation legislation, Costa Rica has a poor track record when it comes to deforestation. Coffee, bananas, cattle pasture, illegal logging.
Guatemala	26	41	One of the most extensive and diverse forest systems in Central America. The country is home to 1,246 known species of amphibians, birds, mammals, and reptiles, and 8,681 species of plants, of which 13.5% are endemic. Extensive illegal logging in Mayan Biosphere Reserve and Laguna del Tigre national park. Fires for land clearing nearby, gold mining, road construction, clearing land for cattle pasture.
Nicaragua	33	38	Nicaragua has some of the most extensive rainforests in Central America. Agriculture, cattle, commercial and illegal logging, fires, mining especially open-pit mines in San Juan rivershed.
Honduras	41	39	Varied ecosystems – from montane forests to rainforests to mangrove swamps. Honduras's high rate of deforestation stems from its poverty. Despite its natural wealth, both mineral and biological, Honduras is one of the poorest countries in Central America. Has already lost 37.1% of forests between 1990 and 2005. Subsistence farming, cattle pasture, mining, timber harvesting, fires, illegal logging.
El Salvador	-	59	Deforestation in El Salvador has had serious environmental, social, and economic impacts. Today over 50% of El Salvador is not even suitable for food cultivation, and much of the country is plagued with severe soil erosion. Denuded hillsides leave the country vulnerable to devastating mudslides. Fuelwood collection, subsistence agriculture. Forest protection laws not enforced.

* http://rainforests.mongabay.com/03highest_biodiversity.htm (biodiversity data) mongabay.com Source: World Conservation Monitoring Centre of the United Nations Environment Programme (UNEP-WCMC), 2004. Species Data (unpublished, September 2004).

** http://rainforests.mongabay.com/deforestation_forest.html (forest data) mongabay.com, figures are derived from data provided in "Forest Resources Assessment 2005" by the Food and Agriculture Organization of the United Nations.

*** <http://rainforests.mongabay.com/countries.htm> (country profiles).

28 These are immediate drivers, as opposed to underlying causes. For more information see (FoEI, 2008).

NAFTA and Mexico's forests

The North American Free Trade Agreement (NAFTA), signed by Mexico, the US and Canada, led to a reduction on Mexican export tariffs and US import tariffs, for Mexican forest products, with severe impacts on Mexico's forests. Critically, like DR-CAFTA, NAFTA excludes resource extraction and management laws – related to fishing, mining and forestry – from its environmental complaints process:

“Trade liberalization under NAFTA may pose similar limitations on countries' efforts to strengthen their environmental laws. On January 1, 1994, NAFTA officially went into effect. When it went into effect, NAFTA reduced tariffs on forest product exports from Mexico to the U.S. and Canada, while import tariffs on most forest products from the U.S. and Canada were lowered by 10 to 20 percent. By 1999, many of these import tariffs had been eliminated, leaving Mexico's domestic producers to compete directly with the largest timber and paper manufacturers in the world. Not surprisingly, Mexican producers now face significant disadvantages because their products bring much lower prices than those of the U.S. and Canada. This may go a long way to explain the recent logging fever unleashed on the pines of the Sierra Tarahumara: low prices demand high volumes. Under Article 14 of the environmental side agreement to NAFTA, a citizen or private organization can submit a complaint to the North American Commission on Environmental Cooperation against a government for failure to effectively enforce its environmental laws. Nonetheless, the agreement specifically excludes resource extraction and management laws – related to fishing, mining and forestry – from this complaint process. Under Article 14, any complaint concerning failure to enforce laws related to forestry would have to be limited to environmental regulations, such as the protection of unique endangered habitats or protection of water quality. Both the GATT and NAFTA specifically do allow government participation in the forestry sector for infrastructure, investigation, training, assistance and studies, and ecological programs, as well as direct subsidies to producers.”

Source: de los Derechos Humanos A.C. & Texas Center for Policy Studies, 2000

Impacts on Indigenous Peoples are also likely to be particularly severe, because of their disproportionate reliance on forest resources and biodiversity to fulfil their physical, cultural and social needs. Previous UN Special Rapporteur Stavenhagen gets right to the point: “The reduction of the indigenous people's territorial base is only a small part of a broader phenomenon: the progressive and accelerated loss of control over their natural resources, in which the forest resources situation is particularly dire. In recent years the forests of the indigenous people have been systematically affected by the activities of large forestry corporations and of legal and illegal logging, leading to the progressive destruction of their traditional means of subsistence. This process not only leads to the deforestation and desertification of large tracts of the planet, but also accelerates the gradual destruction of the indigenous people's lifestyle and culture (...) Some 60 million indigenous people in the world depend almost entirely on the forests for their survival. Hiding behind forest legislation, the authorities tend to sacrifice the rights of local communities to the interests of commercial firms, and resources are often utilised for illegal activities protected by corrupt officials and entrepreneurs. In many countries, eviction of indigenous people from their traditional forests as a result of such activities is one of the essential causes of their impoverishment.”²⁹ (UNHRC, 2007:25-26)

Critically, if the EU is seeking parity with CAFTA, it might also seek to replicate CAFTA's approach to natural resources. Qualifying CAFTA's text on environmental legislation, for example, Article 17.13.1 says “For greater certainty, ‘environmental law’ does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.” (USTR, 2009)

Thus CAFTA formally treats forests and forest resources as a commercial sector, stripping out any environmental aspect and changing citizens' rights and benefits in countries such as Costa Rica, where laws about biodiversity and regulating access to genetic resources, the Mining Codes, the Hydrocarbon Law and the Forestry Law are all threatened (COECOCEIBA/FoE Costa Rica, 2008).

²⁹ For an extensive mapping of the Indigenous communities in each of the Central American and Andean countries in question go to: http://www.nativeplanet.org/indigenous/ethnicdiversity/indigenous_data_latinafrica.shtml

Calling the EU's bluff

4



A comparative assessment of the content and progress of trade negotiations taking place between the EU and the Community of Andean Nations shows an important dynamic taking place, which differentiates this particular set of trade negotiations from many others.

Two of the four Andean countries – Bolivia and Ecuador – have elected new governments that are much more critical of trade liberalisation: they are concerned about the potential social and environmental negative impacts their countries will face if they agree to some of the EU's proposals. As a result, Bolivia has withdrawn from the negotiations, and Ecuador has suspended its participation. However, the EU's insistence on continuing negotiations with the remaining two countries, Peru and Colombia, means that rather than promoting regional integration – one of the EU's stated objectives – the negotiations are leading to a marked process of regional disintegration amongst the pre-existing Community of Andean Nations. Indeed, Bolivia's Evo Morales expressed his anger at the EU's decision to proceed with bilateral negotiations with Peru and Colombia, saying: "I want to publicly demand that the European Union respect the internal agreements for bloc-to-bloc negotiations." (AFP, 2008)

4.1. Bolivia and Ecuador take a stand on Association Agreements

Bolivia and Ecuador are now focused on developing a new and progressive environmental agenda, both domestically, and in terms of what they want to see included in any kind of international integration agreement. Ecuador for example, has drafted a new constitution that establishes explicit rights for Indigenous Peoples and sets a world precedent by including rights for ecosystems.

Bolivia has also enacted a bold new constitution that enshrines Indigenous groups' rights and promotes agrarian reform (Georgetown University, 2009b). Bolivia has also proposed a new People's Trade Agreement, primarily in response to the free trade agreements being promoted by the US (Morales, 2006): this treaty proposal focuses on achieving "complementarity rather than competition, living in harmony with nature rather than irrational resource exploitation; defence of social property versus extreme privatization; the promotion of cultural diversity rather than monoculture and uniformity of markets and consumption patterns." (Morales, 2006)

Ten Principles of the Bolivian People's Trade Agreement

Bolivia's People's Trade Agreement (PTA) proposal contrasts sharply with the free trade negotiations being promoted by the US, including by promoting an Indigenous vision of development; actively preserving and prioritizing governments' policy space; regulating the rights of foreign investors and transnational companies; protecting domestic food production and people's right to ensure food security and food sovereignty; recognizing that vital services are public goods that should remain in public ownership and be regulated by the state; opposing patents on seeds and medicines that the poor cannot afford to purchase; and promoting living in harmony with the environment."

1. The Peoples Trade Agreement – proposed by president Evo Morales – is a response to the non-viability of the neo-liberal model, founded on deregulation, privatization and the indiscriminate opening of markets.
2. The PTA understands commerce and investment not merely as ends in themselves, but rather as means of development. For this reason, the principal objective is not the absolute liberalization of markets and a "shrinking" of the State, but rather development for the benefit of the people.
3. The PTA promotes a model for commercial integration among peoples, and regulates the rights of foreign investors and transnational corporations, so that they promote national development and production.
4. The PTA does not prohibit the use of mechanisms which foment industrialization, nor does it impede the protection of internal markets necessary to protect the most vulnerable sectors.

5. The PTA recognizes the right of the people to define their own agriculture and food security policies; to protect and regulate national agricultural production, assuring that the internal market is not inundated by surpluses from other countries.
6. The PTA considers that vital services must be owned exclusively by public companies, and regulated by the State. The negotiation of any integration agreement must support the notion that the majority of basic services are public goods and cannot be turned over to the market.
7. The PTA promotes complementary relationships rather than competitive ones; living in harmony with the environment instead of irrational resource exploitation; defending social property against extreme privatization.
8. The PTA guides the participating countries toward a process of integration based on solidarity which gives priority to national companies as exclusive providers to public entities.
9. With this Peoples Trade Agreement (PTA), Bolivia proposes to achieve a true integration which transcends commercial and economic spheres – whose philosophy is 'to achieve a development which is based on communitarian principals and is profoundly just – taking into account national differences.'
10. The PTA proposes a different logic for relationship between human beings, a different model of life together, not based on competition and a zeal for consumption, which does not take advantage of or exploit to the maximum labour and natural resources."

Source: Morales, 2006

Calling the EU's bluff

4.2. Andean countries act to protect biodiversity and traditional knowledge

Furthermore, the various Andean countries still engaged in the negotiations have made specific, significant, and progressive proposals within the Association Agreement negotiations.

The negotiation on intellectual property rights, for example, is one of the most contentious issues within the EU-CAN Association Agreement, including in relation to biodiversity, enforcement, technology transfer and geographical indications. There also seems to be a sharp difference of opinion about the protection of biodiversity and traditional knowledge.

Key disagreements include whether the final Agreement should:

- > Balance the rights of IPR holders with the larger public interest, particularly in relation to education, culture, research, access to medicines, public health, food security, environment, access to information and technology transfer;
- > Formally recognise the past, present and future contributions of Indigenous Peoples and other peoples and communities, and the importance of the principle of the prior informed consent of the 'knowledge holders';
- > Recognize and reaffirm the rights and obligations relating to genetic resources and traditional knowledge laid down under the Convention on Biological Diversity (CBD) (a multilateral environmental agreement which all the Andean countries and the European Communities are already signatories to); and
- > Ensure that the Association Agreement does not impair the provisions on intellectual property contained in the CBD.

Or, as the EU wishes:

- > Include plant varieties in the definition of IPRs, with countries agreeing to sign up to the International Convention for the Protection of New Varieties of Plants (UPOV) as revised in 1991 (none of the four Andean countries are yet listed as a party to UPOV 1991³⁰).

4.3. Sustainability chapters move centre stage

Negotiations around the sustainability chapters also suggest a growing chasm between what the EU is prepared to support when it comes to the environment and sustainability, and what is actually being requested by its negotiating partners in the Andean region. This is particularly notable since the EU prides itself on leading the way on such issues, and is usually considered to be the 'demandeur'. But is this really the case? A failure to agree some of the most progressive and far-reaching suggestions that have been put forward by its trading partners could indicate that the EU is actually using the environment as a sweetener or 'greenwash' to garner public support for the underlying trade deals it really wants.

The EU's wish-list for the sustainability chapters covers the inclusion of the right to regulate and uphold levels of environmental protection; accordance with and the implementation of a range of multilateral social and environmental standards and agreements; the promotion of trade and trade liberalization in environmental goods and services that it argues would favour sustainable development; reviewing sustainability impacts; the involvement of civil society; and transparency and monitoring. The European Commission has also proposed 'mainstreaming' 'sustainable development aspects' into all parts of an agreement, in addition to sustainability chapters, although this is certainly qualified by the Commission's examples, which include the liberalisation of environmental goods and services within the market access text. There is, unsurprisingly, no suggestion of really assessing and dealing with the systemic social and environmental impacts that can be generated by the trade liberalisation process overall, as described in this paper.

There is also a yawning gap between the specific issues the EU is prepared to address and the issues the Andean countries want to include.

For example, in relation to the conservation of biodiversity, specific EU interests are concentrated on logging and the sustainable use of forest products, including through the implementation of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and Forest Law Enforcement, Governance and Trade (FLEGT) agreements with the EU; and the conservation of fish stocks.

In contrast, the Andean countries suggest a wide ranging article on biodiversity, which includes the right to apply precautionary measures in relation to species extinction, ecosystems destruction or the permanent alteration of natural cycles; the establishment and design of mechanisms to control and prevent ecological catastrophes; the traditional knowledge of indigenous and local communities; bio-prospecting; protected areas; and avoided deforestation. They also press home the fact that their sovereign

³⁰ To see UPOV's membership list go to:
<http://www.upov.int/export/sites/upov/en/about/members/pdf/pub423.pdf>
 Members of UPOV 1991 are listed as having signed up to the 1991 Act.

rights over their genetic resources are set out under the Convention on Biological Diversity (to which the EU is a signatory); and make the case that they should be paid for environmental services they provide to the rest of the world.

Another article on climate change has also been suggested, with the Andean countries hoping to use negotiations on this issue to reinforce their demands within the UN Framework Convention on Climate Change (UNFCCC). Presumably they hope to create a trade off between those demands and trade concessions being sought from them by the EU. The Andean countries want the EU, as a region of the world that is responsible for impending climate change, to commit to collaborating with the Andean countries to improve adaptation and reduce vulnerability to climate change. They also propose reaching agreement on ways of improving energy efficiency; developing new and renewable energies; implementing measures for evaluating vulnerability to climate change; capacity building; and technology transfer (all in accordance with the principle of common but differentiated responsibility).

However, it seems that the Andean countries also seem to be reluctant to sign up to and/or implement a number of multilateral commitments within the Association Agreement, possibly because they are wary of reducing their scope for making unilateral decisions. It seems they may also be reluctant to increase civil society involvement in monitoring the process.

All in all, the sustainability chapter is proving to be a critical component of the ongoing trade negotiation, and the EU's response will indicate whether or not it is truly committed to stopping biodiversity loss and mitigating and adapting to climate change. Under the UNFCCC, for example, the EU is already committed to providing new and additional financial resources, including for technology transfer, to meet the costs and needs of developing countries in relation to measures to address climate change. (Article 4.3) It is also committed to assisting developing countries that are particularly vulnerable to the adverse effects of climate change (Article 4.4). It seems then, that there is no reason for the EU to reject the Andean countries' proposals.

4.4. Ecuador's new position on investment, IPRs and labour rights

Ecuador has proposed exempting a number of strategic sectors – including energy, non-renewable resources, transport, hydrocarbon refining, biodiversity and genetic heritage, and water – from any form of privatisation of public undertakings.

Ecuador has also announced its willingness to return to the negotiating table, if certain criteria are met, and has published a new position that clearly emphasises its key concerns. Ecuador insists, for example, that the GSP+ concessions must remain as the starting position for negotiations; that the WTO's TRIPS agreement stands as it is; and that the Most Favoured Nation principle must apply (so that Andean countries receive the same benefits accorded to other countries that the EU has signed similar accords with). Ecuador also argues that any new agreement must include labour rights and the social security concerns of migrant workers legally employed in the EU (a key offensive concern for both Bolivia and Ecuador).³¹

There is also marked disagreement on how any such agreement should address market access for foreign investors, a key negotiating objective for the EU. Ecuador is seeking the right to prioritise the purchase of national products and services, especially from the 'popular and solidarity economy' and small and medium enterprises. It also demands a reorientation on services and establishment: it proposes a new model of investment agreement, that conforms to Ecuador's new constitution, supports the development of small and medium enterprises, and avoids economic damage being visited upon participating countries.

31 Ecuador's position paper, 'Documento de síntesis sobre la posición de Ecuador ante el presente estado de las Negociaciones con la Unión Europea de un Acuerdo Multipartes' (junio de 2009), can be found here: www.mmree.gov.ec/acd/docs/posicion_ecuador.pdf. It was shared with European Union Trade Commissioner Catherine Ashton on 10 June. The accompanying letter sent to Ashton is here: www.presidencia.gov.ec/pdf/carta_ashton.pdf

Calling the EU's bluff

Case study: Intellectual Property Rights in the EU-Colombia and Peru negotiations

The pressures of the European Commission to obtain significant levels of protection for Intellectual Property Rights in its negotiations with the Andean countries are a constant feature in the process to reach an Association Agreement.

Early in July 2008, the European Commission had already decided “to put off” the negotiations with the Community of Andean Nations (CAN) arguing that the Andean block “lacks Joint positions, specifically in the subgroups concerning Trade and Sustainable Development and Intellectual Property Rights”. In January 2009 the Council of Ministers of the EU authorized bilateral negotiations on the trade aspects with the governments of Peru, Ecuador and Colombia, thus resuming negotiations and excluding Bolivia, putting therefore an end to the region-to-region negotiations.

In the chapter on Intellectual Property Rights (IPRs), Bolivia had made significant observations to the EU proposal, arguing that this proposal was beyond the boundaries established by the Andean Community rules on this matter, and that it may enable the patenting of plants and life forms.

After resuming the negotiations without Bolivia, the EU insisted on its offensive interests on Intellectual Property Rights, which focus on:

- › Balance the rights of IPR holders with the larger public interest, particularly in relation to education, culture, research, access to medicines, public health, food security, environment, access to information and technology transfer;
- › Formally recognise the past, present and future contributions of Indigenous Peoples and other peoples and communities, and the importance of the principle of the prior informed consent of the ‘knowledge holders’.
- › Recognize and reaffirm the rights and obligations relating to genetic resources and traditional knowledge laid down under the Convention on Biological Diversity (CBD) (a multilateral environmental agreement which all the Andean countries and the European Communities are already signatories to); and
- › Ensure that the Association Agreement does not impair the provisions on intellectual property contained in the CBD.

All this goes far beyond the standards agreed by Peru and Colombia under their FTA with the United States. In the case of Test Data protection, their FTA with the USA provides for a 5-year term. In the case of patents, the EU proposal tightens protection from 20 to 25 years of nominal protection (with an intended effective protection of up to 14 years).

Even the negotiating teams of ultra-liberal governments such as those of Peru and Colombia consider the demands of the EU as “very ambitious”. During the third Round of Negotiations held in May 2009, both Colombia and Peru requested a relaxation of the EU proposal and to discard the term extensions both for patents and test data protection, as well as the elimination of compensations for unjustified delays in patenting process.

Besides the above, the European Commission has also insisted on the inclusion of enhanced powers for judges and customs officers, in order to secure immediate application of precautionary measures (including seizure and destruction of goods), including for cases in where there is a mere suspicion of “violation” of intellectual property rights.

Some civil society organizations that work on health related issues argue that a patent extension from 20 to 25 years only in Peru will imply that “as of 2025 health expenses of Peruvians will increase in approximately US\$ 386 million per year,” and that an extension in the test data term will result in an increased cost of US\$ 136 million³².

In the case of Colombia, a report issued in June 2009 by IFARMA with the title “Impact of the European proposal for the CAN-EU trade agreement on access to medicines and public health” shows that “the acceptance of the European proposal on medicines will cost Colombians around US\$ 750 million per year”. And that it will lead to a “high increase in the number of medicines sold at monopolistic prices, skyrocketing from 8 percent of the products in the market to 21 percent. Also there will be a 16 percent increase in the medicines price index within a term of 15 years, and an increase of US\$ 750 million per year in health expenditures. If this sum of money were not available, more than 4 million Colombians could lose their access to essential medicines (around 4,150,000 persons)”.

³² “Temer que el TLC con UE incremente las medicinas” (There are fears that the FTA with the EU will increase medicine prices), Press article, El Comercio Perú, March 2009.

Furthermore, all the costs resulting from carrying out the administrative and policy reforms required to fulfil these EU demands, as well as the costs arising from legal disputes, will be translated into the final prices of the medicines and will further hinder the most impoverished sectors of the population from access to medicines.

Besides, in the case of border measures, the provisions proposed by the EC imply that the international movement of unpatented medicines through all European ports will require regulation – something similar to ‘transit visas’. Thus, these medicines would risk being retained and seized if they are not accompanied by these documents, and therefore never reach their destination country.

In the fifth round of negotiations in July 2009, Peru’s chief negotiator Eduardo Brandes informed that the proposal of the European Commission had been “made more flexible” but that “negotiations strategy prevents us from revealing the nature of the progress made on the issue of medicines; we have been able to introduce a more suitable perspective for the Andean countries, for the benefit of our population”³³.

According to Francisco Acosta, a political adviser to the EC delegation in Lima, “in terms of intellectual property rights, in particular on the issue of pharmaceuticals, Europe has changed its position so that an agreement can be reached”³⁴. However, the supposedly “more flexible” terms of the proposal have not yet been made public by the EC.

All these provisions are aimed at strengthening the pharmaceuticals TNCs, through the creation of “de facto” monopolies by the patenting of medicines. But they also imply the risk of further commodification of nature, as all these new free trade agreements pushed by the EU include the possibility of patenting the traditional knowledge of rural communities and indigenous peoples, as well as biodiversity and plant species and other life forms.



Crushing herbs with a traditional stone to make natural household products in the Andes, Peru.

³³ See http://www.bilaterals.org/article.php3?id_article=15587

³⁴ See http://www.bilaterals.org/article.php3?id_article=15517

Conclusions and recommendations

5

Negotiations between the EU and Central American countries seem to be following a fairly predictable course (in which the EU looks set to secure significant trade concessions, whilst its negotiating partners try to defend their GSP+ concessions, protect their economies, and gain a degree of additional market access). However, recent proposals put forward by the various countries in the Community of Andean Nations – especially Bolivia and Ecuador – could take the EU-CAN Association Agreement negotiations in quite a different direction. In terms of the environment, and with respect to the rights of local communities, peasants and Indigenous Peoples, these negotiations have now reached a point where the European Union is most definitely in the spotlight. Is the EU actually using the environment as little more than a sweetener or ‘greenwash’ to garner public support for the underlying trade deals it really wants?

The EU traditionally considers itself to be the initiator or ‘demandeur’ pushing for the inclusion of environment and sustainable development in trade treaties, with developing countries portrayed as opponents focused solely on development issues, with little concern for the environment. Yet the Andean countries have come to the negotiating table with various demands that go much further than those of the EU, indicating that some of the participating governments have an overwhelming concern about the plight of the environment, the rights of their Indigenous Peoples and the fate of their domestic economies. The question is, will the EU agree with the proposals being made? The answer to this will reveal a great deal about the EU’s real motivation for pursuing these two trade-oriented Association Agreements.

If the EU is genuinely concerned about equity and the environment it must also heed the concerns raised by its own interim Sustainability Impact Assessment of the EU-CAN Association Agreement and other research. For example, available evidence points to the fact that free trade agreement in these two regions could have a devastating impact on the rich biodiversity still found across Central America and the Andes. It could also have stark consequences for people’s rights – especially Indigenous Peoples’ rights.

Key to this will be a predicted increase in investment in agriculture, mining and oil extraction, which would lead to increased deforestation and an exodus of rural people to the cities, as land is cleared to cater for these economic activities. The interim EU-CAN Sustainability Impact Assessment also observes that trade negotiations could have serious impacts on local communities and Indigenous Peoples, because of competition between hydrocarbon and hunting/gathering activities; the territorial implications of changing biodiversity, land use and water availability; the impact of reduced biodiversity on small farmers and Indigenous groups, whose food security and livelihoods depends on a diversified crop portfolio; and a wide range of social impacts generated by mining. In addition, forcing countries to sign the International Convention for the Protection of New Varieties of Plants (UPOV 1991) would deny farmers’ rights, including by curtailing the right to save seed for sowing, and because it fails to recognize the inherent rights of local communities and their relationship to their own biodiversity.

Importantly, activities which generate impacts such as these are already meant to be curtailed by numerous multilateral environmental and human rights agreements. For example, if developed in line with the EU’s objectives, the proposed Association Agreements in Central America and the Andean region would both conflict with the Convention on Biological Diversity (CBD), which is intended to conserve biological diversity and ensure the fair and equitable sharing of the benefits derived from its use.

They would also clash sharply with the UN Declaration on the Rights of Indigenous Peoples, that states that, “*Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess*” (Article 26) and that, “*Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora (...)* They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions” (Article 31).

Yet the EU is a signatory to both the Biodiversity Convention and the UN Declaration on the Rights of Indigenous Peoples. It should thus take immediate note of the warnings contained within the Sustainability Impact Assessments that it has itself commissioned. It should also pay heed to the concerns of Andean countries, who propose that any form of integration agreement should include a wide ranging article on biodiversity, which covers the right to apply precautionary measures in relation to species extinction, ecosystems destruction or the permanent alteration of natural cycles; the establishment and design of mechanisms to control and prevent ecological catastrophes; the traditional knowledge of indigenous and local communities; bio-prospecting; protected areas; and avoided deforestation (as well as recognising the sovereign rights that the CBD accords to countries in relation to their genetic resources).

Similarly, the EU is a signatory to the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol, which clearly establish, in international law, that industrialized countries are responsible for climate change and for assisting developing countries in their efforts to mitigate and adapt to climate change. Thus the EU should also be willing to accept the Andean countries' proposals in this area, and commit to collaborating with them (and other developing countries) and providing finance to improve adaptation and reduce vulnerability to climate change; improve energy efficiency; develop new and renewable energies; implement measures for evaluating vulnerability to climate change; ensure capacity building; and transfer technology (all in accordance with the principle of common but differentiated responsibility).

This all requires a radically different approach to intergovernmental relationships on the part of the EU. The EU's Global Europe policy and Raw Materials Initiative have a narrow and damaging market access focus that will have negative impacts not only for people and the environment in Central and Latin America but for all of us. An alternative approach needs to be developed, one that recognises the fact that concerns about environmental sustainability, climate change, and people's rights are not 'add-ons' but absolutely integral to any successful and equitable form of economic management. Bolivia's proposal for a Peoples Trade Agreement is one such progressive approaches. Ecuador's proposal for a new model investment agreement is another.

The Association Agreements should be suspended, until and unless they can be completely re-crafted into a blueprint for environmentally-sustainable and equitable collaboration between the EU and countries in Central American and the Andes, that benefits all peoples in the countries involved, works to protect rather than destroy ecosystems, and promotes efforts to mitigate and adapt to climate change.



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Native man from Northern Andes, Peru.

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Friends of the Earth Europe

Mundo-b building, Rue d-Edimbourg 26,
1050 Brussels, Belgium
tel: +32 2 542 0180 fax: +32 2 537 5596
e: info@foeeurope.org www.foeeurope.org