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**EU-Colombia Free Trade Agreement**  
**TUC analysis of the draft text**  
**(May 2010)**

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## **Analysis of the draft EU-Colombia FTA**

### 1. Summary

The TUC supports trade agreements that promote decent work, but opposes the current EU negotiations with Colombia for a Free Trade Agreement (FTA) on principle. More trade unionists get murdered in Colombia than the rest of the world combined and the Colombian Government is failing to prevent this. To conclude the trade deal currently on the table only risks endorsing this terrible record.

With the draft text of the EU-Andean FTA, covering Colombia and Peru, now available, this briefing note assesses its labour rights provisions against the European Commission's claims that such provisions can improve the labour rights situation in Colombia. It concludes that:

- On balance, the FTA language around labour rights is slightly weaker than the current text that binds Colombia under the EU's GSP+ scheme.
- The enforcement provisions are practically almost non-existent, significantly reducing the pressure on the Colombian Government to improve its terrible record on labour rights.
- While the draft FTA establishes a range of ways for civil society to input views into the monitoring and implementation of the Agreement, for trade unions, this adds very little to existing ILO supervisory processes.

For more information about the campaign to stop the EU-Colombia FTA and the situation facing workers in Colombia visit [Justice for Colombia](#).

### 2. Background

The position of the TUC on any EU trade agreement with Colombia is clear: while the Colombian government fails to fulfil its human rights obligations, any trade deal with Europe would only endorse and most likely exacerbate this failure.

A secondary concern is that, should a deal be concluded, Colombia will be a party

to an FTA with “non-binding” labour standards provisions - a weakening of the current “binding” labour standards under the EU’s GSP+ scheme. Colombia currently receives trade preferences under the GSP+ scheme in return for ensuring it “effectively implements” of 27 fundamental human rights treaties, including the ILO’s eight Core Labour Standards. Should Colombia fail to effectively implement a labour right – it can lose its trade preferences. But when signing an FTA with the EU, a country leaves the GSP scheme and its system of incentives and enforcement.

While the TUC argues that the EU has never properly used the enforcement provisions of GSP+, the very possibility of their use places significant pressure on the Colombian Government to improve its terrible record on labour rights. Without such pressure, it is far easier for the Government to backslide.

In response to such concerns raised by TUC General Secretary, Brendan Barber, the EU Trade Commissioner, Karel de Gucht stated of the draft FTA:

“...the commitments concerning labour rights and standards are broader than those undertaken by these countries under the GSP+. As regards the provisions on human rights, it appears that the process leading to a possible suspension of the new agreement on human rights grounds can be interpreted – under the Lisbon rules – as requiring a qualified majority rather than unanimity.”

(de Gucht to Barber, 26 March 2010)

This note examines the draft text of the FTA to test de Gucht’s claims. While the text is still in a draft stage, and may yet be amended, important conclusions can be still be drawn.

## 1. Draft FTA’s commitments on labour rights

On labour rights, the draft FTA contains a specific chapter on Trade and Sustainable Development, committing the parties to: promote and effectively implement the ILO’s core labour standards (Article 268(3.1) in their “whole territory”; and to recognise equality of treatment for migrant workers (Article 275).

Further, Article 1 of the draft FTA requires the parties to respect the fundamental principles in the Universal Declaration of Human Rights (“the UDHR”), (Article 1) which includes additional labour rights such as fair pay, reasonable hours of work and social protection (See UDHR Article 23)).

These rights are broadly in line with the rights under the GSP+ scheme. The reference to migrant workers represents a stronger commitment, along with the requirement for all core labour standards cover the “whole territory” of the parties – a welcome clarification to prevent governments from designating export processing zones to be trade union free areas.

However the FTA is weaker the GSP+ in other areas. The current commitments under the GSP+ scheme include a range of other conventions providing for additional labour rights e.g. the International Covenant on Economic Social and Cultural Rights provides for the right to safe and healthy working conditions (Article 7(b)), a right not contained in the draft FTA.

Puzzlingly, the draft FTA stops short of calling for ILO Core Labour Standards to be ratified and an undertaking to maintain ratification as required by the GSP+ scheme. Rather, it states ambiguously that parties, “will exchange information on their respective situation and advancements as regards the ratification of priority ILO conventions” (Article 268(3.2)). On balance, the labour rights in the FTA text are weaker than the existing GSP+ ones.

## 1. Enforcement provisions

Without an effective mechanism to enforce such rights, the debate over the “broadness” of such rights can be largely academic. After all, Colombia has already signed up to the core ILO conventions and committed to similar human rights obligations and monitoring mechanisms.<sup>1</sup> Unfortunately, labour rights in the FTA’s Sustainable Development chapter are not subject to the FTA’s dispute settlement mechanism (Article 284(5)) and therefore the sanctions provisions of the Agreement (see also section 6 below).

So under what circumstances can the Trade Commissioner claim that there can be, “suspension of the new agreement on human rights grounds”? If Colombia breaches an “essential element” of the draft FTA, then there could be grounds for the EU to retaliate or suspend parts of the Agreement. An “essential element” is defined as the key principles laid down in the UDHR and the “principle of the rule of law” as per Article 1 of the draft FTA.

There are three significant problems with this. Firstly, the UDHR does not include all of the critical labour rights included in the Sustainable Development chapter e.g. a prohibition on the worst forms of child labour, or the right to the effective recognition of collective bargaining. A party could therefore engage in systematic child labour and escape sanctions under the FTA.

Secondly, demonstrating a breach of a human rights principle (as an “essential element”) is a much harder test to satisfy than showing that a party is failing to “effectively implement” a convention. To breach an “essential element” would probably require, e.g. a government taking out the entire right to freedom of association from its statute books. While to demonstrate the failure to “effectively

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<sup>1</sup> See e.g. the ILO’s 2006 Tripartite Agreement on Freedom of Association and Democracy, or the Universal Periodic Review of the UN Human Rights Council.

implement” you might only need to show a “lesser” failure e.g. that the government is not adequately prosecuting those responsible for murdering trade unionists.

Thirdly, it is unclear what process within the EU is needed to come to the conclusion that a suspension or sanctions are required. Even the Trade Commissioner is uncertain of this in his letter quoted above, using phrases such as “it appears that” and “can be interpreted”. While using this avenue might be theoretically possible, it appears to be legally and practically impossible for trade unionists to use.

## 5. Monitoring and complaints processes under the draft FTA

What opportunities does the draft FTA present to Colombia workers to raise their concerns and have them addressed? Workers can have input in assessing the implementation and impact of the Agreement through:

- Existing “domestic and participative processes” (Article 278);
- Getting access to, and inputting into the work of the FTA’s Council on Trade and Sustainable Development (an inter-governmental body set up under the FTA to monitor the implementation of the chapter) (Article 279(6)).
- Being members of a “domestic labour committee” to submit recommendations on FTA implementation to its national government (Article 280).
- Being included in the annual national civil society dialogue on the implementation of the chapter (Article 281).

However, a trade union is unable to file a complaint under the FTA. Only a signatory government as a “party” to the agreement can initiate a complaint – or “request consultations” on matters of “mutual interest” in the FTA’s euphemistic language (Article 282(1)). Should consultations fail to resolve the matter a party can then request the Council on Trade and Sustainable Development to address it (Article 282(3)). Should the Council fail, then a party can request that a “Group of Experts” be convened to consider the matter and produce a report with recommendations to resolve the matter (Articles 283 and 284). Trade unions have no role in this process other than the Council and Group of Experts having the option of being able to consult them.

Once recommendations have been issued, a party in breach can choose to ignore them, because the sanctions provisions of the draft FTA do not apply to this part of the FTA (Article 284(5)). Perversely, a party to this FTA can put in place trade sanctions to stop e.g. a discriminatory import licensing procedure, but if the

Colombian government chose to abolish the right to collective bargaining, all this Agreement would do is put in place a series of meetings and reports that the Colombia Government could ultimately ignore.

For trade unions, these processes of consultation and complaints will add little to existing consultative mechanisms, particularly those established under the ILO's 2006 Tripartite Agreement on Freedom of Association and Democracy.

To take action to stop the EU-Colombia FTA, or to learn more about the situation facing workers in Colombia visit [Justice for Colombia](#).