

The throes of the third round of negotiations of the FTA of Colombia & Peru with the EU

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July 8, 2009

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The third round of negotiations for “multiparty” free trade between the European Union block and the individual countries of Peru, Ecuador and Colombia took place in Brussels as scheduled between the 4th and the 8th of May. According to those who participated in the talks, the meeting brought about significant progress. However, it also showed that the EU is not very open to negotiation on problematic issues such as copyright and access to markets. What were even more evident from this round of talks were the difficulties expected to arise in negotiations with Ecuador. This became apparent at the same time their illusions of a quick negotiation, the most naive analysts thought could be concluded around the middle of this year, are fading.

The “sensitive” issues

In fact the difficulties did not take long to arise in the areas previously alluded to and which are considered “sensitive” on some levels. Strangely enough, the areas to which the EU is not ready to give in and those in which it is not in a position to compete (and besides it is not ready to deregulate) are those which cause the most problems. **Agriculture** is one area to which the EU has always been reluctant to give too many concessions, particularly with regard to agricultural subsidies and products such as sugar and bananas. According to the chief European negotiator, Rupert Schlegelmilch, *“The question of agricultural products is a very sensitive issue on both sides of the Atlantic and the current objective is to achieve a balance of interests.”*¹

The EU is not prepared to change its proposal as regards bananas, and this will lead to a gradual reduction in tariffs on bananas (with the endorsement of the WTO) up until 2019. However the Andeans consider this to be unsatisfactory. On the other hand it is possible that those particular Andeans are of the opinion that it will not be easy to agree on this issue because of the intrinsic differences between the banana industries in Ecuador and Colombia, since in Colombia most of the banana production is controlled by Multinational companies². Ecuador, which managed to get the tariff reduced from 176 euro to 114 euro up to 2016 (when the situation should be better), is already in dispute with the EU with regard to bananas in the WTO. This could eventually lead to the EU granting some concessions in this area³. If we take the current state these particular negotiations are in, however, it is likely it will continue to be a controversial subject in future talks.

The EU also brought up its intention to eliminate the benefit of the **drawback** (tax rebate on imports) in the case of Peruvian exporters⁴. The Peruvians showed their opposition to this suggestion rubbing in the not less problematic issue of European agricultural subsidies. This preoccupation is not a minor one, even if Peruvian exporters *“are reimbursed part of their tariffs which comes to 8% of the total value of their exports.”*⁵

The issue of agricultural subsidies raised by Peruvian exporters is not only a problem for them but for all Andean exporters. Since Peruvian and Colombian negotiators brought up the fact that 98% of their exports have entered onto the European market tax free as a major achievement,

¹ www.dw-world.de

² www.elcomercio.com

³ www.elcomercio.com www.adn.es

⁴ The drawback consists in the total or partial devolution of the import tariffs on the supplies (or any goods) used in the productive process of export commodities. This benefit those exporters that require imported supplies to finish their products, what in the Peruvian case, represents the whole universe of exporters.

⁵ www.larepublica.pe

there is no doubt that the main barrier as regards Andean exports has no relation with tariffs. According to one study, *“Colombian products [and also Peruvian products, ed] will have to face up to the enormous subsidies granted to them under the Common European Agricultural Policy, which total more than 51,000 million euro. As regards sugar, for example, the subsidies come to a total of 7,000 million euro, whereas production has a value of only 6,472 euro. We can conclude from this that internal aid is greater than production. Taking these subsidies and European aspirations for sanitary and phytosanitary measures [for the admission of products, and principally agricultural products into the European market, ed] into consideration, it will be impossible to sell a kilo of any Colombian product to the European block.”*⁶

On the other, as regards the issue of **intellectual property**, the EU is upholding its rigid positions in relation to an increase in protection measures, the duration of patents, and the period of exclusivity for details of proof⁷. Impact studies⁸ show that in order to implement European demands by 2030, 5 million Colombians and 6,2 million Peruvians could remain without access to medicine, unless health spending is increased by 280 and 250 US dollars respectively.⁹

It is for these reasons that, although there are declarations of joy as a result of the “fluidity” of the negotiations, there is cause to believe that in the **next round of talks, which will take place in Bogotá between the 15th and the 19th of June**, more difficulties will arise relation to the endorsement of this agreement. This will occur unless the debate goes beyond the scope of recent talks.¹⁰

Ecuador abandons negotiations for a FTA and presses for the return to negotiations as a block

Ecuador’s position on the matter, which has not always been very clear¹¹, has started to become clearer since the last round of negotiations. As was established by President Correa himself, the Ecuadorian government is interested in setting up a commercial agreement for development and not for a FTA¹². This agreement would include product and export diversification, respect for the sensitive sectors (agriculture, copyright, competition, public purchases, etc.) and the consideration of imbalances¹³. Ecuador, not unlike Bolivia, has realised that it is not interested in a FTA¹⁴, but it felt obliged to join in the negotiations because of the value trade with the EU

⁶ www.bilaterals.org Our emphasis.

⁷ We have already dealt with these measures in the article “El Acuerdo de Asociación se convierte en Tratados de Libre Comercio bilaterales” www.anarkismo.net chapter “Propiedad Intelectual e Industria Farmacéutica” (in Spanish only).

⁸ For more details check the following Impact Assessment Study www.redge.org.pe

⁹ www.bilaterals.org

¹⁰ It is worth mentioning that quite the contrary to the difficulty found in this area, progress in other areas of strategic important to the EU has been remarkably easy –these are those areas where they know they will have no problem in terms of competition. According to Schlegelmilch :”When it comes to services, this is a very important subject to Europe and we say it openly. There are many European companies that are waiting to offer their services in the Latin American market and in this sense we have made good progress: we could say we are on the right track” www.dw-world.de

¹¹ Due to differences that exist in the very government institutions.

¹² The Ecuadorian government has decided to work on an “alternative” economic strategy to free trade. www.telesurtv.net

¹³ www.adn.es

¹⁴ www.lostiempos.com

has for its economy, particularly with regard to the export of bananas. Correa referred in harsh terms to the neoliberal orthodoxy of the other Peruvian and Colombian parties by saying: *“If the silly neoliberals want a free trade agreement, good luck to them.”*¹⁵ This led to the Ecuadorian stance finally being reconciled with what the Bolivian stance had been from the outset¹⁶, which was a return to negotiations as a block.¹⁷

The Peruvian government is obviously concerned about Ecuador’s reconciliation with Bolivia. It hopes that Ecuador will not back out of the bilateral negotiations¹⁸ as this would damage the little legitimacy Peru has and would leave the way open to greater internal criticism of the process from Peruvian and Colombian villages. We can assume that this would not be to the European Commission’s liking either, as they do not want to return to block negotiations (where Ecuador and Bolivia could hinder the level of liberalization required by the other parties in Peru, Colombia and Europe), but want instead to further negotiations without Bolivia. The problem is that Bolivia’s results prevail over the whole region. This idea was insinuated by Schlegelmilch in an interview, in which he said: *“Our objective continues to be the establishment of contractual relations with the whole region, and not in the short but in the medium and long term. Since 2003 we have had political agreement and cooperation which will soon be ratified by the whole block, and we hope that at any moment the economic treaties will be added to this.”*¹⁹

It is difficult for Ecuador to continue in the negotiations considering the issues raised by them and because of the manifest problems that confronts it in five areas of work: copyright, public purchases, services, competitiveness and agriculture. Ecuador has considered holding a position of observer²⁰, a position which has been criticised by Ecuadorian businessmen and with which even sectors of the same Ecuadorian government would not be in agreement²¹. In addition, Ecuador has not hidden its annoyance at Europe’s disinclination to take up political dialogue and cooperation again in the negotiations, which have centred on that which was always very important for the EU, and that is free trade.²²

Human rights in Colombia, a thorn in the side for the legitimacy of the negotiations

The EU’s position on human rights in Colombia is both ambivalent and improvised. On the one hand, according to Shlegelmilch, the best way to guarantee progress in human rights in Colombia is through the intermediary of a FTA, as it will implement mechanisms to enforce the improvement of the humanitarian situation in Colombia²³. At the same time, the commissioner for European trade, Catherine Ashton, recognises that trade by itself is not a guarantee for improvement

¹⁵ www.larepublica.pe

¹⁶ www.eluniverso.com The Bolivian position it has always been not to negotiate a FTA, particularly in the areas of privatisation of natural resources and Basic services, but also on the issue of intellectual property.

¹⁷ www.americaeconomica.com

¹⁸ www.univision.com

¹⁹ www.dw-world.de

²⁰ www.telegrafo.com.ec www.eltelegrafo.com.ec

²¹ www.elcomercio.com

²² www.expreso.ec

²³ euobserver.com

of human rights²⁴. On the other hand, Catherine Ashton insists that Colombian human rights need not be a part of the commercial agreement, because there are already dialogue procedures in place for this subject with the EU.²⁵

The real issue is of a practical nature and that is with regard to what these mechanisms have served. The EU has not seemed capable of exerting its influence in order to improve the human rights situation. Would it be a good idea, therefore, to “reward” the Colombian reign by ignoring this problem in the negotiations as if nothing had happened? Is the extrajudicial execution of at least 1,600 young people and the assassination of more than 500 trade unionists under Uribe’s government something that can be easily ignored? The supposed willingness of Europe to follow the humanitarian situation of Colombia closely seems to be nothing more than a rhetorical exercise, if we take into account the non-existent willingness to move forward an investigative commission surrounding the issue, which Euro parliamentarians are also pushing for²⁶. If this is the present situation, what is there to make you believe that with a signed FTA there will be somewhat more interest in the affair?

We believe that the position of the chief negotiator of the European Commission in Colombia, Cardesa, to be more honest. He directly denies that the humanitarian issue is an affair to be dealt with in the framework of the FTA²⁷. This, in reality, would also seem to be the EU’s position on this matter. This position, however, creates a legitimacy problem for the negotiations, spreading a layer of doubt over the sincerity of their supposed cooperative and democratic spirit. This seems like more of a problem when other negotiation processes have been ensnared by systematic violations to human rights in Colombia as a result of force linked to the government. Such is the case of the negotiations of the FTAs with the EEUU and Norway, and the Canadian Parliament is also beginning to question the implementation of the FTA it has already agreed on.²⁸

The illusion of a finalized FTA by the middle of the year is vanishing

One of the aspects of these agreements we have questioned most is the “supposed” urgency to finalise them in the shortest time possible, without leaving time for a profound study into their repercussions, much less for political debate²⁹. Of course, it already seems unrealistic to think that the negotiations could be concluded in the timeframes originally stipulated, which were hopefully going to be in June or July.³⁰

Schlegelmilch himself talks about timeframes with caution: *“You have to be careful with dates. We are going to try to bring the negotiations to a close this year and there appears to be sufficient*

²⁴ www.eltiempo.com

²⁵ To this purpose, some disposition of the current Generalised System of Preferences (GSP+) are raised, which is the system that the Andean Countries enjoy on their exports to European markets, or as Schlegelmilch himself mentions, the Cooperation and Political Dialogue Agreement signed up between the EU and CAN in 2003 www.dw-world.de

²⁶ www.bilaterals.org

²⁷ www.semana.com

²⁸ www.elespectador.com www.soitu.es

²⁹ Check our previous article www.anarkismo.net, chapter “Un Acuerdo de hondas repercusiones negociado con inusitada urgencia”.

³⁰ www.elcomercio.com

*political willingness for this among the Andean countries: some of our Latin American colleagues are also talking about their finalization before the summer. However, there are still concessions to be made and we are not in a position to foresee when we will have finished.”*³¹

Peru is the country where the negotiations appear to be going faster, and in the best case scenario they hope to finish them in September³² or August³³, dates which seem too optimistic to everybody. Ecuador has caused them to get into debt and Colombia is beginning to create difficulties. As long as difficulties arise in certain areas of negotiation and as long as new social sectors join in the criticisms, the possibilities of bringing these negotiations to a close within a too short timeframe have disappeared. As well as criticisms of sectors like the indigenous people³⁴ or the trade unionists³⁵, there are also criticisms of business sectors which are linked to the “sensitive” issue of copyright, such as the Latin American Association of Pharmaceutical Industries.³⁶

From what is going on at present and according to the most realistic calculations, the hopes of finalizing this TLC seem hopeless, at least with Peru and Colombia. Apart from this, the attempt to conquer the whole Andean region is happening at a time when the presidency of the EU lies in the hands of Spain and this for the first half of 2010. As Spain is the European partner which is most interested in promoting the FTAs with Central America and the Andean countries, as a result of its economic weight in the Latin American region, it is expected that it will apply the most pressure possible in order to bring these agreements to an end. In fact, those who are of this opinion have made themselves known in the Iberian parliament.³⁷

The last word has not yet been said

In this type of scenario, with stagnation in some “sensitive” areas for the EU, with Ecuador’s unwillingness to move free trade forward, with the human rights situation like a spectre threatening the legitimacy of these negotiations and with a deepening internal crisis in the Andean community which is due as much to the changes made to accommodate to the pretensions of the Peruvian and Colombian governments to advance at all costs in these negotiations³⁸ as to the notable commercial and economic differences of its members³⁹, it would be arrogant to reinforce the questioning of this absolutely neo-colonial conquest of the Andean markets and their resources.

³¹ www.dw-world.de

³² www.elperuano.com.pe

³³ www.elcomercio.com.pe

³⁴ www.bilaterals.org

³⁵ www.bilaterals.org www.bilaterals.org

³⁶ ictsd.net

³⁷ www.adn.es www.el-nacional.com

³⁸ Bolivia has rejected to take part in the CAN meetings as long as the block do not step back from having changed consensus based decision making mechanisms (which they turned into simple majority vote), which allowed among other things that the bilateral coordinated negotiations could go ahead, under the “multiparty” negotiation guise.

www.eldeber.com.bo www.erbol.com.bo

³⁹ Peru has stated than once assuming presidency of CAN in June, they Hill put the emphasis on the topics of integration above those of trade and economic ones. Peru assures that this is to be so because there is no agreement on that area. Ecuador supports this idea www.elcomercio.com.pe www.24horaslibre.com

This is an overview of what came up in the negotiations but we believe that the last word has not been said and there is still an important opportunity for the Andean people to do so, like when they put a stop to the FTAA⁴⁰ suggested by the EEUU. We hope that during the talks in Bogotá in June, a strong voice will make itself heard rejecting a project which is, whatever way you look at it, contrary to the interests of the Andean people and made according to the limited interests of European multinationals and their Latin American partners.

⁴⁰ Free Trade Area of the Americas.

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Retrieved on 22nd December 2021 from www.anarkismo.net
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and the Andean countries (Ecuador, Peru and Colombia).

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