

May 27, 2005

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
1724 F Street, NW
Washington, DC 20508

Dear Ms. Blue:

On behalf of The Humane Society of the United States (HSUS) and Humane Society International (HSI), please accept the following comments on the Interim Environmental Review of the United States – Andean Free Trade Agreement (Andean FTA). Pursuant to the notice in the *Federal Register*¹, we offer these comments on the Interim Environmental Review (Andean IER) and provide additional information learned from HSUS/HSI experiences in the region. Although these comments are submitted after the published deadline, we believe they nevertheless provide important information that should be considered.

HSUS/HSI is the largest and most influential animal protection organization in the United States with more than 9 million members and constituents and a significant global presence. HSUS/HSI is a mainstream voice for animals, with active programs in trade capacity building, companion animals and equine protection, wildlife and habitat protection, animals in research, farm animals and sustainable agriculture. HSUS/HSI serves as a member of the Trade and Environment Policy Advisory Committee (TEPAC), advising both the United States Trade Representative (USTR) and the Environmental Protection Agency (EPA) on international trade and economic policy.

These comments address the preliminary findings of the interim environmental review and other issues that should be considered as the Andean FTA is finalized in preparation for Congressional notification and consideration.

¹ *Trade Policy Staff Committee: Notice of Availability and Request for Public Comment on Interim Environmental Review of United States-Andean Free Trade Agreement*, 70 Fed. Reg. 10463-10464 (March 03, 2005).

Introduction

As set forth in the Andean IER, the Trade Act of 2002 sets forth certain environmental negotiating objectives: (1) ensuring that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources;² and (2) seeking provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade.³ The question for the negotiations in the context of the Andean FTA is how can the parties ensure that trade and environmental policies are mutually supportive?

The Andean countries have enormous potential in a number of areas. The three Andean countries are linked geographically, politically and economically. If difficulties arise in one of the countries, the repercussions are often felt in neighboring countries. As such, any environmental, economic or capacity building/cooperation program should focus on regional as well as national solutions if success is to be sustainable.

Scope of the Environmental Review

As set forth in the Interim Environmental Review, the scope of the review discusses the possible direct impacts of the Andean FTA on the U.S. environment resulting from prospective changes in the U.S. economy and environmental issues associated with possible transboundary effects of the Andean FTA.⁴ In addition, the environmental review takes into account global and transboundary impacts (where appropriate and prudent), possible effects on the U.S. environment resulting from economic effects in the Andean countries and the extent to which the Andean FTA might affect U.S. environmental laws, regulations, policies or international commitments.⁵

Although the primary focus of the environmental review is the direct impact on the United States as a result of the Andean FTA, strong consideration must be given to the overall impact the Andean FTA may have on global and transboundary resources, including air, water, and migratory species. The transboundary effects of certain environmental issues are well documented – activities that threaten migratory species or increase water and air pollution, and the spread of invasive species and animal illnesses or other diseases are common problems in the Andean region with a direct and immediate impact on the United States.

Migratory Birds

HSUS/HSI agrees with the assessment of the potential impacts of an FTA on migratory birds within the region. HSUS/HSI supports efforts by the national

² Trade Act of 2002 §2102(a)(5).

³ Id. at §2102(a)(7).

⁴ Interim Environmental Review U.S.-Andean Free Trade Agreement (February 2005) at 19.

⁵ Id.

governments and local and international private and non-profit organizations in the region to mitigate the impacts of habitat destruction that occur from deforestation and expansion of agriculture. For example, some countries have developed programs that promote “bird-friendly” production methods for coffee and cacao, and promote bird watching as a form of sustainable tourism that provides economic incentives to protect birds and their habitat. HSUS/HSI has been successful in implementing a similar type of program in Central America, and believes these activities have the potential to help lower the economic incentives that destroy bird habitats. HSUS/HSI encourages U.S. Government agencies to continue to pursue cooperative activities in this area, and to dedicate funding to support these activities.

Wildlife Trade and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

HSUS/HSI is especially concerned about the problem of illegal trade in wildlife. Over the past year, representatives from HSUS/HSI have visited the region many times and have spoken with environmental NGOs, government officials from the trade, agriculture and environment ministries, as well as national police officials responsible for enforcing environmental laws. All of these agencies agree that the illegal trafficking of wildlife is a large problem domestically in each country as well as across borders within the region and with the larger international community. HSUS/HSI personnel also visited a pet market in Lima and confirmed the widespread availability of various species of wild monkeys, parrots and turtles, among others. Worse yet, several dealers offered 24-48 hour delivery of larger specimens of endangered species, including macaws and ocelots.

The authorities in these countries are not able to effectively combat this illegal trade for a variety of reasons, including the lack of training and resources, institutional shortcomings, unceasing public demand for exotic pets, and the persistent poverty that motivates people to enter into this trade. To give an example of the resource problem, in Peru the ecological police still use hand-written entries in their registers to process people arrested for illegal wildlife trafficking. Because the police lack an electronic database to cross check arrest records, they are unable to determine how often a person is arrested for this activity, or if he has previous arrest records in other parts of the country. The police told us that often serial traffickers have been released because the police are unaware of their persistent and recurring engagement in this activity.

During their travels to the region, HSUS/HSI personnel also spoke with representatives from the CITES Management and Scientific Authorities in each country about challenges facing them with respect to implementation and compliance with this treaty. In general terms their responses reflected the same problems that many enforcement agencies face in fighting illegal wildlife trade. In addition, there are issues related to bureaucratic obstacles, inter-agency rivalries and lack of coordination that impede effective implementation of the agreement. Finally, there is the problem of what to do with the live animals that are confiscated from traffickers. None of these countries

has a unified and integrated system for providing these animals with adequate care; consequently many die after they are confiscated.

In order to begin to address this issue, a comprehensive solution is needed to provide resources for better training for the CITES Management and Scientific Authorities in each country as well as customs and enforcement officials; to improve cooperation between public, private and non-profit entities engaged in combating this trade; to change public perceptions about the desirability of wild pets; and to provide alternative sources of income for people who are engaged in this trade. HSUS/HSI notes that a cooperative approach between governments, civil society and the private sector has been used by U.S. Government agencies in addressing the illegal trade in mahogany, and believes that such cooperation should be encouraged in other projects related to strengthening CITES implementation and compliance.

Capacity building and environmental cooperation activities for the CITES implementing and enforcement agencies will not by itself stop the illegal trafficking of wildlife. HSUS/HSI believes that to be credible, a comprehensive solution must be developed to change the social conditions that drive people to supply the animals that fuel the illegal trade. While improved enforcement will strengthen local governance and increase the disincentives for participating in this practice, it is critical that positive incentives be created to encourage wildlife traffickers to move away from their trade. This result can be brought about by the proper conditions and opportunities that support alternative sources of income that lessen the attractiveness of the illegal wildlife trade. To this end, HSUS/HSI supports the use of sustainable tourism as a means not only to create an alternative source of income, but also to provide incentives to protect wild animals in their native habitat. HSUS/HSI has worked successfully with partners in Central America to build and strengthen this model in order to protect sea turtles and their nesting sites. Other models exist beyond sustainable tourism. Ecolombia, a Colombian NGO, runs an alternative income program based on hand-crafted puppets and plush toys in the shape of local wildlife. HSUS/HSI would like to see these types of programs promoted and expanded under a future environmental cooperation agreement with the Andean countries, and encourages the U.S. Government to dedicate resources to supporting this type of activity.

The fourth component of this comprehensive solution is to change public acceptance of keeping wild animals as pets, in order to reduce the demand for illegal wildlife. HSUS/HSI believes it is crucial to develop programs to raise public awareness on the importance of protecting animals in their wild habitat through environmental education programs in schools and through media campaigns.

In sum, HSUS/HSI agrees with the draft environmental review that cooperative efforts between governments—particularly on the exchange of information about patterns of and potential or actual problems with illicit trade—will be an effective tool for improving environmental governance with respect to CITES. However, this effort will require dedicated resources that are greater than those presently allocated to this effort by the U.S. Government. Furthermore, there is an important role for non-governmental and

private sector entities in these capacity building efforts. HSUS/HSI believes that given the high public profile commanded by endangered species of fauna, capacity building directed towards improved CITES compliance is highly visible and can be a successful way to demonstrate the environmental benefits from this trade agreement.

Invasive Species

HSUS/HSI agrees with the preliminary assessment on invasive species that there is a risk of transmission of species between the United States and its Andean trading partners, but that it is inconclusive at this point whether a Free Trade Agreement will increase or decrease that risk. Given the potentially serious environmental consequences of such a transmission, and given the fact that the FTA will not require alteration to any country's framework for managing the introduction of invasive species, HSUS/HSI encourages the governments to continue and even expand careful monitoring of this issue. As stated in the Andean IER, invasive species is a topic suitable for close cooperation between all parties, especially in research, monitoring, and assessment of the risks. This is an important issue to which all relevant government agencies should dedicate resources within the region.

Tuna/Dolphin

HSUS/HSI has a long history with tuna/dolphin issues, and its position regarding the protection of dolphins vis-à-vis tuna fishing vessels is well known. HSUS/HSI continues to take an active interest in this topic. With respect to problems raised in the Andean IER, HSUS/HSI shares the concern expressed by the Inter-American Tropical Tuna Commission (IATTC) and Agreement on the International Dolphin Conservation Program (AIDCP) Joint Working Group on Fishing by Non-Parties about Colombia's refusal to cooperate with the IATTC's 2004 fishery closure for purse-seine vessels. If the Andean FTA were to allow an open market for this product, it would dramatically undercut regional efforts for dolphin conservation and fisheries management. Despite this potentially damaging situation, HSUS/HSI believes, similar to what was stated in the Andean IER, that the Andean FTA has the potential to complement and reinforce existing fisheries management and dolphin conservation activities. Not only is the Andean FTA unlikely to limit the sanctions and prohibitions of the IATTC or the AIDCP, but through the associated cooperative agreement there may be opportunities to strengthen conservation efforts in this area.

Shrimp/Turtle

HSUS/HSI is well aware of the dangers posed to sea turtles by the numerous threats highlighted in this section of the Interim Environmental Review.⁶ HSUS/HSI agrees that shrimp trawlers are a significant cause of turtle mortality, and that turtle-

⁶ The manner in which the IER singles out the danger to sea turtles posed by shrimp trawlers seems to unnecessarily discount the threat posed by other human activities such as settlements, poaching, pollution and long-line fishing.

excluder devices (TEDs) are an effective tool to decrease the number of turtle deaths from this cause.

The Andean IER states that the provisions of the proposed Andean FTA will not affect the trade restriction in Section 609 of Public Law 101-162, or the manner in which the Department of State assesses and makes decisions on the effectiveness of foreign governments in their implementation and enforcement of their domestic laws related to the protection of sea turtles.⁷ Moreover, the Andean IER goes on to say that the Andean FTA is expected to provide opportunities to reinforce efforts to protect turtles through proposed obligations to effectively enforce environmental laws and through environmental cooperation activities. Because shrimp is exported to the United States, the U.S. Government must remain vigilant in monitoring commercial shrimp trawling activities and enforcing Section 609 in the Andean countries even after the entry into force of a U.S.-Andean FTA. Since inspections by the Department of State are biannual, and in order to improve compliance and make enforcement in the region more credible, there may be a greater role for NGOs in monitoring the day-to-day use of the devices. Such a role could be encouraged through the enhanced cooperation activities envisioned by the FTA and its associated Environmental Cooperation Agreement (ECA). Regardless of whether interim enforcement of TEDs use is done primarily by local law government officials or if NGOs assume a greater role in this task, additional resources will be needed and should be allocated for cooperative efforts to improve compliance in this area.

Camisea Natural Gas Pipeline

HSUS/HSI believes that the Camisea natural gas pipeline created numerous problems for biodiversity and wildlife across several ecosystems, including in the Urubamba River and in Paracas Bay. However, we are encouraged by current U.S. Government efforts to persuade the various parties involved to strengthen the environmental and social aspects of the project. Efforts such as ensuring broad community participation, transparent monitoring procedures and regular environmental performance reports are consistent with good environmental governance. These policies not only benefit the communities involved, but enhance environmental protection and biodiversity conservation. Good environmental governance is also consistent with the FTA obligation of effective enforcement of environmental laws, and will ultimately help in efforts to protect wildlife and other animals. HSUS/HSI supports U.S. Government efforts to further cooperation activities that not only mitigate the negative environmental aspects of this project, but that further development of good domestic environmental governance.

Coastal Habitats and Migratory Marine Species

In addition to the danger to sea turtles posed by shrimp trawlers, HSUS/HSI is concerned about the threat posed by other human activities such as poaching for the

⁷ Section 609 requires the Department of State to make annual certifications to the U.S. Congress for countries that meet the requirements of Section 609 in terms of sea turtle protection for commercial shrimp trawl fisheries.

turtles' shells, meat and eggs, marine pollution, long-line fishing, or the encroachment of human habitation on sensitive turtle nesting beaches. Our experience working on sea turtle conservation in Central America indicates these threats are severe and in many places greater than those posed by shrimp trawling. The problem of illegally traded turtle products from poachers will continue to be addressed through mechanisms such as CITES, and as such the FTA, by itself, should not cause an increase in trade of turtle products. As stated earlier, enhanced cooperation between the United States and the Andean countries can be a useful means to improve the effectiveness of CITES. Success in limiting and reducing the trade will depend on cooperative efforts between the governments and with the collaboration of the private sector and NGOs.

Beyond the trade in goods, however, the FTA has the expressed goal of increasing trade in services and increasing opportunities for investment. Greater tourism and human settlement in or near sensitive turtle nesting sites, increased fishing activity that relies on methods such as long lines that drown turtles as by-catch, or greater agricultural activities that increase coastal marine pollution are all possible outcomes of increased economic activity. In Central America, HSUS/HSI has been working with several partner organizations to address these kinds of threats to sea turtles through sustainable tourism. For example, in Costa Rica HSUS/HSI has been working with the Caribbean Conservation Corporation (CCC) in Tortuguero National Park to improve their turtle research and monitoring facilities, to educate local communities and tourists about the importance of protecting sea turtle nesting sites, and, through a sterilization program, to reduce the number of stray dogs in the community that prey upon the turtle eggs and the baby turtles when they emerge. These programs exemplify the type of cooperation that could be pursued in the Andean region to address the many threats to sea turtles. HSUS/HSI notes current U.S. Government assistance in the Andean region addresses some of the abovementioned threats, and believes the U.S. Government should continue their efforts through future cooperative activities, with appropriate resources allocated for sea turtle conservation.

Transboundary Air and Water Pollution

Given the deleterious effects of air and water pollution on human and animal welfare, HSUS/HSI supports efforts to reduce toxic emissions in both media. HSUS/HSI is concerned that agricultural and other investment could result in greater pollution in coastal ecosystems, with a resulting negative impact on all wildlife, but in particular on many migratory species, including those that are threatened or endangered. This is a highly visible issue that will undoubtedly receive attention from various public sources, including many critics of this FTA. Capacity building to reduce local and transboundary pollution should be a top priority within the cooperative environmental activities associated with the Andean FTA. HSUS/HSI encourages the U.S. Government to allocate substantial resources to this effort, and to support significant participation by the private and non-governmental sectors.

Environmental Cooperation

As stated throughout these comments, HSUS/HSI enthusiastically supports the concept of environmental cooperation projects associated with the Andean FTA. The U.S. Government has consistently emphasized the importance of environmental cooperation and its crucial role to ensuring that trade and environment policies in its FTAs are mutually supportive. In order for this goal to be realized, it is important that adequate and consistent resources be allocated to support these activities. HSUS/HSI is concerned that the U.S. Government has yet to establish a credible and robust method for funding work programs under their Environmental Cooperation Agreements. If this situation does not change, then a future work program in a U.S.-Andean ECA will also be threatened by a lack of resources, which could negatively impact U.S. credibility in the remaining U.S.-Andean FTA negotiations.

Conclusion

Overall, HSUS/HSI believes the Andean IER touches upon the major important topics of concern related to the Andean FTA and the environment. The possible role of cooperative activities is highlighted throughout the IER as a means to address environmental issues affiliated with increased trade between the Andean countries and the United States. In our conversations with each of the national governments and with civil society in the region, the desire among the Andean countries for improving environmental protection and the opportunities under this FTA are clear and strong. The biggest threat to these ambitions, however, would be a lack of sufficient resources on the part of the U.S. Government to implement meaningful programs. HSUS/HSI believes there should be more emphasis given within the Andean IER to the importance of adequate resources being allocated by the U.S. Government to ensure effective capacity building and technical assistance for each of these potentially problematic issues.