

Andean Nations Clash with Washington on Patents

By Constanza Vieira*

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Free trade treaty negotiators from Colombia, Ecuador and Peru reject the U.S. proposal for patenting plant and animal species. The matter will be taken up during the sixth round of talks, slated to take place Nov. 29-Dec. 4 in the southwestern U.S. city of Tucson.

BOGOTA - Access to genetic resources in South America's Andean region, which holds a quarter of the planet's biodiversity, is a point of discord in the free trade agreement that the United States has been negotiating with Colombia, Ecuador and Peru since May.

The U.S. proposal would establish free access to patenting plant and animal species, designated as "inventions" in the chapter on intellectual property in the draft treaty. This position would violate existing legislation of the Andean Community of Nations (CAN).

CAN, comprising the three South American countries negotiating the treaty, plus Bolivia (an observer of the process) and Venezuela, has expressly prohibited patenting living species, except microorganisms, since 1998.

After five rounds of talks, intellectual property and agriculture are the two areas where the parties to the treaty remain divided.

Both will be dealt with in the sixth round, scheduled for Nov. 29-Dec. 4 in the southwestern U.S. city of Tucson, Colombia's chief negotiator, Hernando José Gómez, told Tierramérica.

The laws of the CAN countries -- with a combined area of 4.7 million square km -- establish that biodiversity is national and regional heritage, and recognize the traditional knowledge associated with the uses of local genetic resources.

The Andean countries also support the 1991 Convention of the International Union for the Protection of New Varieties of Plants, which establishes an intellectual property framework for plant varieties very similar to patents, and recognize the rights of plant scientists and farmers.

A source close to the Colombian negotiating team told Tierramérica that there are instructions "not to contradict the Andean law," and that the Colombian, Ecuadorian and Peruvian negotiators are working in harmony.

Negotiator Gómez stressed that the three South American delegations have the backing of the other two CAN members. "Ninety-nine percent of the Andean texts are already on the table," he added.

But the U.S. proposal for patenting plants and animals has generated concern throughout many different sectors of the Andean community.

The treaty "is really a patent deal. The United States wants to impose -- if one can put it that way -- that all countries must adopt treaties on patents. And this is one of the major problems of the biodiversity issue," Manuel Rodríguez, Colombia's former minister of environment, said in a Tierramérica interview.

"Many of the things associated with access to genetic resources are related to patents. For example, the United States has not recognized, and is not going to recognize traditional knowledge. This is not going to resolve the treaty, and one can guess that they are going to find a way to postpone the issue and to move the treaty forward," said Rodríguez.

Washington was able to convince the other parties to hold secret negotiations, so the U.S. proposal is not public, nor is the Andean proposal. However, at the Colombian Ministry of Trade, Industry and Tourism, parliamentarians and university researchers can read both texts on a computer, although they may not copy them and must sign a "confidentiality" agreement.

Ministry officials said journalists would not have access to the computer, but Tierramérica -- with the condition that notes could not be taken -- was allowed to read the Andean proposal on intellectual property. In general terms, the proposal restates the CAN law prohibiting patenting of plants and animals.

"It can't be any other way. The Andean law is broadly applied," Luis Angel Madrid, ministry official and negotiator spokesman for the panel on intellectual property, told Tierramérica.

But Margarita Flórez, environmental lawyer for the Bogotá-based Latin American Institute of Alternative Legal Services, disagrees with Madrid.

"The U.S. negotiators want to allow the patenting of plants and animals," and the bilateral treaty will prevail, and will be more specific and come after the Andean law, Flórez said. "Treaties are signed in order to be honored, and the United States has many, many ways to ensure that obligations are met," he added.

"What is defended in these treaties is not free trade. Products have been without tariffs for a thousand years. The problem is the rights of the investor, defended tooth and nail" in the U.S. proposal, said Flórez.

Edgar Isch, former environment minister of Ecuador, agreed, noting that international trade laws tend to undermine national and multilateral environmental standards.

The World Trade Organization considers itself "above" international agreements on the environment, Isch added.

In the United States, according to the minister, "the (George W.) Bush administration has reduced or eliminated around 200 environmental laws, in many cases as a means to favor free trade." However, he said the Andean treaty "is not inevitable, and with things as they are, it is not the best path for development."

The free trade agreement could be ready in February, and would enter into force in 2006 if congressional approval is achieved in the four countries involved. But the groups in the Andean countries that opposed the treaty have asked -- as a minimum -- that the negotiations be put on hold and the proposals be made public.

In Colombia, for example, the indigenous movement has proposed a referendum against the treaty.

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