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U.S.-Bolivia Trade and Investment Relations

Opportunities for Exploring Equitable and Sustainable Alternatives

by Sarah Anderson

As South America's poorest country, Bolivia does not represent a major U.S. export market. However, the current Bolivian government's interest in exploring alternative approaches to trade and investment presents an opportunity for dialogue towards re-crafting U.S. trade policies to benefit the poor and the environment. This dialogue is particularly critical at a time of a growing backlash against the dominant free trade model—in the United States and South America.

Current U.S.-Bolivia Trade and Investment Relations

Under the 2002 Andean Trade Promotion and Drug Eradication Act (ATPDEA), 30 to 40 percent of Bolivia's exports to the United States have qualified for preferential tariff treatment. However, since 2006, ATPDEA has been somewhat of a political football in Washington. Most Democrats have favored long-term extension, arguing that the loss of preferences would hurt export industries and unemployed workers would turn to coca production. But key Republicans opposed the inclusion of Bolivia and Ecuador, the only Andean countries that have not negotiated U.S. free trade agreements, and some raised concerns about Bolivia's withdrawal from an international investment arbitration court, described in more detail below.

As a result of these disagreements, Congress renewed ATPDEA for only short periods (6 to 10 months) beginning in December 2006, causing prolonged uncertainty that undermined the intent of the law. Then in September 2008, the Bush Administration announced plans to suspend ATPDEA benefits for Bolivia, claiming that the Morales government was not cooperating with counter-narcotics efforts. The action came shortly after Bolivia expelled the U.S. ambassador on charges of encouraging violent protests by the political opposition.

While tens of thousands of Bolivian workers face imminent job loss as a result of the suspension, the Obama administration could restore these preferences in 2009. On Capitol Hill, some key members on both sides of the aisle support Bolivia's inclusion in the program. Sen. Richard Lugar (R-IN), for example, issued a statement expressing the view that "Lifting the suspension on the ATPDEA with Bolivia will strengthen the growing political and economic relationship between our nations and help bring new jobs and good will to the region."

Bolivian Alternative Trade and Cooperation Proposals

Bolivian officials have argued that ATPDEA renewal was necessary as a bridge while the two countries worked towards negotiating a trade agreement. However, they made it clear that they were not interested in a trade pact like those signed by Peru and Colombia. Bolivia had already adopted sweeping "free market" reforms to privatize government enterprises and liberalize trade and investment. After 20 years, the majority of the Bolivian population felt these policies had primarily benefited large corporations and the rich, to the detriment of the poor and the environment. Morales was elected by a strong majority on a pledge to challenge these policies.

Bolivia's Alternative Trade and Cooperation Guidelines

The Bolivian government, at the Bush Administration's request, proposed guidelines for a "fair trade and cooperation treaty" with United States (http://www.art-us.org/bolivia_guidelines). The next administration should take this document under serious consideration. The following chart highlights some of the key differences between the Bolivian approach outlined in this document and existing U.S. trade pacts.

Bolivian Alternative	Existing U.S. Free Trade Agreements
INVESTMENT	
• Would allow governments to require that foreign investors guarantee "appropriate technology transfer; utilization of local raw materials and inputs; hiring of national labor and respect for domestic environmental and labor policy." • Investor disputes would be resolved "in the framework of the jurisdictions established by the Bolivian Constitution and national laws."	• Although virtually all successful economies have used such mechanisms in the course of their development, existing U.S. trade deals ban such "performance requirements." • With the exception of the U.S.-Australia FTA, U.S. trade pacts signed since 1993 allow foreign investors to bypass domestic courts and sue governments in international tribunals. Investors can even sue over public interest regulations that diminish the value of an investment.
AGRICULTURE	
• Would not subject indigenous community and family farmers to free trade rules. This type of farming is valued "for its contribution to the protection of the environment, healthy food systems and cultural diversity."	• The inclusion of products to be liberalized is based purely on competitive criteria, without considering implications for small farmers, the environment or food security.
INTELLECTUAL PROPERTY RIGHTS	
• Would "guarantee access to affordable generic medicines and access to medical treatments." • Would ban patents on plants, animals and living materials to help protect the country's "wealth of traditional knowledge and rich biodiversity."	• Increase monopoly rights of pharmaceutical firms and limit access to affordable generic medicines. • Require governments to make best efforts to provide patent protection for plants and maintain patents granted for plants and animals.
NATIONAL TREATMENT	
• Would allow Bolivia to maintain "Buy Bolivian" programs and other mechanisms to strengthen domestic capacity.	• Require national treatment and most-favored nation treatment, undercutting the authority of governments to promote domestic development.
REDUCING INEQUALITY	
• Like the approach to integration within the EU, the Bolivian proposal includes proactive measures to reduce inequality. It calls for a "funding mechanism for concessional credits and/or grants to strengthen Bolivia's productive base and market systems so that Bolivian producers could be able to take practical advantage of new U.S. market access."	• Existing agreements assume that trade and investment liberalization alone will lift all boats. To the contrary, inequality has been on the rise in virtually all countries that have pursued these policies, including the United States.

Key Differences on Labor and the Environment

The Bolivian proposal does not reflect the demands of President-elect Barack Obama, many Congressional Democrats, and civil society groups to require respect for core international labor standards and multilateral environmental accords. The emphasis of the Bolivian proposal is very much on national sovereignty. For example, it proposes that governments be allowed to require that foreign investors comply with *domestic* labor and environmental policy. Concerns for national sovereignty are understandable in a region long dominated by the U.S. superpower. However, this would be an important area for discussion in a much-needed open dialogue between U.S. and Bolivian policymakers.

Bolivia's Challenge to International Investment Rules

The Bolivian government has emerged as a leading challenger of the excessive rights granted to foreign investors under free trade agreements and bilateral investment treaties, echoing the concerns of many U.S. elected officials and civil society groups.

These rules give corporations the power to bypass domestic courts and sue governments in unaccountable international tribunals. Most controversial is their power to demand compensation for any government actions, including public interest regulations, which diminish their profits. For example, a Canadian company is currently using the North American Free Trade Agreement (NAFTA) to sue the United States over California laws aimed at reducing the environmental damage of gold mining projects.

Potential U.S. Allies

U.S. local and national legislators, as well as environmental, labor, and other activists, have attacked these investor protections for years. Even Nobel economist Joseph Stiglitz, who promoted NAFTA while working in the Clinton White House, is now critical. Last year he admitted that "It was only after it passed that the potential consequences of [the investment provisions] became clear."

As a candidate, Obama committed to curtailing these anti-democratic investor rights in response to a survey by the Iowa Fair Trade Coalition. While he did not agree to the activists' demand to eliminate private foreign investors' right to sue governments, he did promise to ensure that this right was "strictly limited" and to "fully exempt any law or regulation written to protect public safety or promote the public interest."

Bolivia's opposition to these rules stems from a case in which Bechtel Corp. used a bilateral investment treaty with investment rules similar to NAFTA to sue Bolivia over a failed water privatization project. The company had come in to the city of Cochabamba and almost immediately jacked up water rates to sky-high levels. When local residents responded with massive protests, Bechtel abandoned the project, only to turn around and sue for some $50 million. An international activist campaign pushed Bechtel to settle for a token sum shortly before Morales took office, but by that time the cash-strapped Bolivian government had spent more than $1 million in legal fees.

As President Morales follows through on promises to renegotiate contracts with foreign oil and gas companies and regain public control over certain key economic sectors, the issue of excessive international investor rights has become even more pressing. Morales has complained that treaties signed by previous governments have made him feel like a "prisoner" in the Presidential palace.

Many other developing countries have been hit hard by these investment rules. Argentina has faced more than 30 investor claims, most of them over actions to lessen the pain of the country's 2000 financial crisis. Ecuador is facing a $1 billion suit from just one company -- Occidental Petroleum. These and other governments are beginning to speak out, but it is Bolivia that has been most bold in challenging the investor-state dispute system.

In May 2007, the Morales government became the first in the world to withdraw from the International Center for the Settlement of Investment Disputes (ICSID), a court associated with the World Bank that adjudicates investor-state cases. This decision did not affect the 2001 U.S.-Bolivia bilateral investment treaty, which offers investors an alternative venue for bringing disputes. Nevertheless, the ICSID withdrawal was tremendously significant on a political level because it may empower other countries to challenge these excessive investor protections and, most importantly, put forth proposals for more just trade and investment regimes.

World Bank Court Refuses to Respect Bolivian Sovereignty

Facing unprecedented questions regarding its legitimacy, ICSID decided in October 2007 to ignore the Bolivian government's decision to withdraw and register a new case brought by a European telecommunications company. More than 800 civil society organizations from 59 countries sent a petition calling for the World Bank president (who chairs ICSID's Administrative Council) to respect Bolivian sovereignty and terminate the case. They also recommended that the World Bank create an independent panel to review the impact of the investor-state dispute system on human rights, democracy and global poverty. As of this publication, that case was still pending.

The Bolivian government is also promoting the development of an alternative international investment agreement within the Union of South American Nations (UNASUR). Twelve South American countries launched this regional integration initiative in May 2008, with long-term goals including the formation of a common currency, central bank and parliament, modeled to some extent on the European Union. The development of an alternative investment model, however, is one of the first priorities.

The growing opposition to current trade and investment agreements in Bolivia and the United States presents an important opportunity for building alliances and sharing ideas around positive alternatives. The new administration should view Bolivia's challenges to the status quo not as a threat but as a welcome development in the evolving debate over globalization. Bolivia could become an important partner in a new approach that puts people and the environment first.

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