NAFTA EXPANSION FTA WITH PERU REPLICATES WTO AND NAFTA *LIMITS* ON U.S. FOOD SAFETY POLICIES

USTR's September 2007 bulletin entitled "U.S. Food Safety and Trade: Myth vs. Fact" is short and repetitive for a reason. Most of the assertions contained in it do not bear close scrutiny.

USTR CLAIM	TRADE FACT
MYTH: USTR asserts that no provisions in the proposed NAFTA expansions to Peru, Columbia, Panama and South Korea limit the ability of the United States to protect our food supply. "No provision in any of our FTAs limits the ability of the United States to protect our food supply."	**FACT: THE PERU FTA INCORPORATES PROVISIONS THAT HAVE *ALREADY* LIMITED FOOD SAFETY.** The NAFTA expansions to Peru and other countries incorporate the WTO's Sanitary and Phytosanitary (SPS) Agreement, which contains a series of rules limiting countries' levels of food safety and animal and plant health protections, and requiring that imported foods be treated the same as domestic foods. Many U.S. foods safety regulations have already been altered and weakened to meet these requirements. For instance, in 2004, the Food Safety and Inspection Service (FSIS) changed its requirement that supervisory visits by inspectors take place every month at foreign plants eligible to export to the United States. Supervisory visits are needed, because without them, plant inspectors can be bullied, bribed and otherwise compromised. FSIS itself has documented many instances involving many countries, when foreign meat inspectors have been placed on the company payroll. Thus, the requirement for monthly supervisory visits was a reasonable protection against such practices. Yet in 2004, FSIS weakened the regulation to require undefined "periodic visits." FSIS clearly stated that it was rolling back its inspections to comply with WTO requirements, citing WTO SPS Agreement Article 2.3. "The effect of Article 2.3 is that FSIS, acting as a regulatory agency of the United States, may not impose import requirements on inspection systems or establishments in an exporting country that are more stringent than those applied domestically."[1] More recently, the Animal Plant Health Inspection Service (APHIS) weakened its rules for ensuring that imported fruits and vegetables don't contain extremely costly invasive species and diseases for the sole reason of speeding imports and pacifying trading partners who considered our deliberative administrative rulemaking process itself a trade barrier.[2] In 2007, the high cost of imported animal disease was illustrated by the collapse of honey bee colonies which has been linked to a virus carried by imported Australian bees.

[1] 69 Federal Register 51194, (Aug. 18, 2004.)

[2] In its final rule on the matter APHIS stated its inappropriately trade-related reasoning "To the extent that our trading partners consider the length of time it takes to conduct the rulemaking process a trade barrier, these changes may facilitate the export of U.S. agricultural commodities by reducing that time for fruits and vegetables that meet this rule's criteria." 72 Federal Register 39481 (Jul. 18, 2007)

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MYTH: USTR says three times in its bulletin that all imported food products must meet the same safety standards as domestically produced food. "All imported food products, including meat and poultry products, seafood, dairy products and fresh and processed fruits and vegetables must meet the same safety standards applied to foods produced in the United States." "All food in the United States, whether imported or domestically produced, must meet all U.S. food safety requirements." "All foods in U.S. commerce must meet the same standards, whether the foods are domestically produced or imported."	**FACT: THE IMPLEMENTING STATUTES OF WTO AND NAFTA EXPLICITLY CHANGED U.S. LAW THAT REQUIRED IMPORTS TO MEET STANDARDS "EQUAL" TO U.S. LAW TO ALLOW IMPORTS THAT MEET "EQUIVALENT" STANDARDS.** The rollback of U.S. law allowing meat imports only from countries that complied with U.S. safety standards to the inferior standard requiring import of meat from countries with "equivalent" safety systems was part of the Uruguay Round Agreements Act passed Congress in 1994. This change was made to conform the stronger U.S. law to WTO SPS requirements. The system of "equivalence" means that imports are allowed if they meet the standards of the exporting country, but not necessarily the importing country. USTR's claims are just wrong. Who says? The USDA's Office of the Inspector General (OIG) makes the clearest case in its Audit Report entitled "Food Safety and Inspection Service Assessment of the Equivalence of the Canadian Inspection System." In this highly critical report, the Inspector General documents that USDA has consistently looked the other way when its inspectors discovered that meat imports from Canada were not meeting U.S. safety standards. For instance: 1) Canada allows for less than daily inspection in meat processing plants; 2) Canada permits environmental rather than final product testing for *listeria;* 3) Canadian plants have failed to meet U.S. requirements for sanitation controls and other HACCP requirements; 4) Canadian officials have failed to enforce these requirements for plants shipping to the United States. Even thought these problems were identified in 2003 and 2005 by FSIS inspectors, in the name of equivalence, no enforcement action was taken by USDA, and millions of pounds of meat processed in facilities with these identified violations of U.S. law were imported into the United States. Regarding non-meat imports, in theory, imports under FDA authority must meet all the requirements of the Food, Drug and Cosmetic Act. In reality, FDA lacks any ability to enforce this law over the flood of imports rolling in under various FTAs. Currently, FDA conducts border inspection of 6/10th's of one percent of such imports. Such limits on inspection effectively force U.S. consumers to rely on other countries' regulatory structures and safety inspectors to ensure that vegetable, seafood, dairy and other food imports are safe. Unfortunately, data show that Peru's regulatory system is simply not up to the task.

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USTR CLAIM	TRADE FACT
MYTH: USTR laughably asserts that imported food is required to be inspected at the border. "U.S. food imports are required to undergo inspection."	**FACT: HARDLY ANY U.S. FOOD IMPORTS ARE INSPECTED.** USTR fails to note that the inspection rate for FDA food products is 0.6 percent and 11 percent for USDA regulated foods. In the case of the FDA this is a steep drop from pre-NAFTA/WTO levels of eight percent. Former FDA commissioner Lester Crawford admitted in Congressional testimony that FDA was simply unable to keep up with flood of imports due to trade agreements.[4]
MYTH: USTR asserts that no exporting country can make the United States accept unsafe products or lower our food safety standards. "All of our Free Trade Agreements allow the United States to unilaterally determine the appropriate level of protection for food products. No exporting country can make the United States accept unsafe products or lower our food safety standards."	**FACT: FOREIGN COUNTRIES AND COMPANIES CAN AND HAVE CHALLENGED AND CHILLED PUBLIC INTEREST POLICIES IN NAFTA/WTO TRIBUNALS.** USTR fails to mention that trade agreements empower other nations to attack our food safety standards and inspection rates in binding trade and investment tribunals. Laws ruled against in government-government trade tribunals must be changed or indefinite trade sanctions are applied. The United States has had more WTO challenges than any other nation and we have lost 86 percent of these cases. The Peru FTA replicates the investor-state enforcement system found in NAFTA and the Central America Free Trade Agreement (CAFTA) that additionally empowers corporations operating in our trade partner countries to directly attack our laws. This system allows such firms to sue the U.S. government for compensation in World Bank and UN foreign investment arbitral tribunals if our safety policies undermine such firms' expected future profits. While currently the four prospective FTA countries' governments have the ability to challenge U.S. food standards in government-to-government WTO disputes, the proposed FTAs would newly empower the over 10,000 food exporters currently registered from Peru, Panama, Colombia and South Korea to pursue challenges directly against U.S. food safety laws if they believe such laws undermine their FTA-granted foreign investor rights. Already under NAFTA, Canadian cattle producers are using these foreign investor rights to demand $235 million in compensation from the U.S. treasury over the U.S. temporary ban on Canadian beef imports mad cow disease was discovered in that nation. **This case is being heard now.**

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USTR CLAIM	TRADE FACT
MYTH: USTR asserts that FTAs do not create an uneven playing field for domestic producers vis á vis foreign producers. "FTAs do not create an uneven playing field. All foods in U.S. commerce must meet the same standards, whether the foods are domestically produced or imported."	**FACT: THE NAFTA EXPANSION TO PERU FURTHERS A RACE TO THE BOTTOM IN CONSUMER AND SAFETY STANDARDS.** U.S. farmers will tell you that U.S. requirements for minimum wage, clean and humane working conditions, and environmental protections are expensive. When put in direct competition with farmers that do not have to meet those standards, U.S. farmers will lose. Thus, U.S. asparagus growers were decimated when tariff levels for Peruvian asparagus dropped under Andean Trade Preferences Act. The Act encouraged Peruvian farmers to grow asparagus and ship it duty free, but the asparagus provisions failed to have much impact on cocoa production because asparagus is grown in a different part of the country. Meanwhile acreage in Washington state, for example, has shrunk by as much as 70 percent. While U.S. producers must meet the pesticide and sanitation standards required by U.S. law and enforced by federal and state authorities, asparagus producers in Peru can easily evade these requirements and no one would notice. Not only has FDA's ability to inspect imports for food safety completely collapsed, but country-of-origin labeling for produce will not come into effect until 2008.