May 10 "Deal" Fails to Remedy
Peru and Panama FTAs Ban Buy America, Anti-offshoring Policies; Threaten Prevailing Wage and Other Policies

Trade Deals Threaten Jobs that Can't Be Moved Offshore

This past November, Americans voted for a change of course on trade policy by replacing 37 congressional NAFTA supporters with energetic fair traders. Despite this overwhelming and historic election mandate, some Democratic leaders and the White House announced a May 10 "deal" that would facilitate passage of Bush NAFTA expansion pacts with Peru and Panama. Despite longstanding demands from senior Democrats, labor unions and other fair trade groups, the May 10 "deal" does nothing to address the many ways the procurement-related rules in the Bush-negotiated "free trade agreements" (FTAs) with Peru and Panama threaten jobs that cannot be moved offshore.

Many Americans know that the United States lost 3 million manufacturing jobs since deals like NAFTA and WTO went into effect. And, now even high-tech and service jobs are being offshored in the same race to the bottom. The incentives these agreements give firms to move production to low-wage nations and send products or services back tax-free are pushing down wages for most American workers.

But what many Americans do not realize is that today's "trade" agreements pose additional threats to jobs that *cannot* be moved out of the United States. For decades, before NAFTA and WTO, trade deals only covered border taxes (tariffs) and quotas on goods. Government procurement and service sector work, like construction, were not covered. Thus, hard-won wage guarantees provided by Davis-Bacon and similar state laws seemed immune to the trade deal damage to other jobs.

No longer! Today's "trade" deals contain numerous non-trade rules, including limits on our domestic procurement policies. If a country – or state – does not conform its laws to these rules, other nations in the agreement can challenge our laws in international tribunals and stick us with trade sanctions if we do not change our laws. Worse, recent deals allow corporations themselves to use secret international tribunals to challenge federal government contracts for highway, energy plant construction and more. ***If Congress passes the pending Peru or Panama NAFTA expansion deals, these common procurement policies are threatened:***

- **Anti-offshoring policies. Even if all of the changes proposed in the May 10 "deal" were implemented, the resulting agreement would ban anti-offshoring and Buy America policies.** Laws requiring that outsourced government work be done by U.S. workers or firms, and other local development policies designed to keep our tax dollars recycling in our domestic economy (paying U.S. workers' wages), directly violate the Peru and Panama agreements' procurement rules. These agreements require domestic and foreign companies seeking government contracts to be treated the same. That means that the many federal and state procurement policies that give preference to locally-produced goods and services (so-called "Buy America" policies) are forbidden.

- **Prevailing and living wage laws and project-labor agreements.** Even if the May 10 "deal" was fully implemented, the Bush "trade" agreements would set limits on what terms our governments can require for a company to be qualified to bid on a contract. The permitted conditions are limited to requiring that a prospective bidder must be financially and technically able to fulfill a contract. Additional conditions, such as requiring companies to agree to pay prevailing or living wages, could be challenged by a company that is excluded from a government contract because of such requirements. If signing a Project Labor Agreement that requires fair treatment of workers and their unions in order to avoid labor disputes in public works projects is a condition for getting a government contract, that also could be challenged by a foreign company seeking the contract.

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- **Policies targeting companies' human rights, environmental, labor conduct.** These trade deals limit governments from disqualifying companies from government contracts because of labor, safety or environmental records or practices. If a foreign firm was "disbarred" from bidding on state contracts for repeated environmental violations, that policy can also be challenged.

- **Policies targeting countries' human rights, labor rights, other conduct.** Even after the May 10 "deal," the Peru and Panama trade agreements would forbid U.S. federal and state governments from treating foreign firms operating in these countries – including European or other third-country firms – differently because of the human rights or labor rights records of the countries in which they are based or operate. This removes tools used in the past to demand corporate responsibility for human rights abuses, such as the successful Apartheid-era bans on doing business with companies operating in South Africa.

- **"Green" procurement policies.** Requirements for recycled content in goods or energy from renewable sources are exposed to challenge if the Peru and Panama FTAs are implemented, as are preferences for certain environmental or consumer safety labels and eco-friendly packaging requirements.

Many states opted out of CAFTA procurement limits, but the Bush administration signed up federal procurement to CAFTA and now seeks to expand this threat to more countries! The majority of U.S. states agree that exposing our decisions about how we want to spend our taxpayer dollars to second-guessing by foreign trade tribunals is unacceptable. Before CAFTA passed by a one-vote margin in 2005, a bipartisan group of eight governors withdrew consent to meet CAFTA's procurement limits. Many other governors had said no in the first place. Only 19 U.S. states consented to CAFTA's restrictive procurement rules. ***But the Bush administration signed up U.S. federal procurement to meet CAFTA limits – and put the same threatening limits on many of our vital procurement policies into the proposed Peru, Panama and other FTAs now pending! The May 10 "deal" does not remove these core NAFTA-CAFTA provisions.***

If we act now, we can avoid these risks being expanded: Despite the terrible record of damage to American workers and our economy – and growing poverty in the poor countries living under these trade deals – the Bush administration wants to add more countries to NAFTA! The Peru and Panama FTAs contains the outrageous limits on our domestic procurement policies described above. Congress must stop this!

The Peru and Panama pacts expose many U.S. procurement policies to challenge in foreign tribunals

- Other signatory nations are empowered to challenge our state and federal laws in tribunals set up in the agreement.
- In the Peru agreement, foreign corporations can avoid U.S. courts and law and directly attack federal construction contracts too.
- Foreign trade officials, not U.S. courts or judges, decide if our laws "violate" the rules.
- The tribunals are authorized to order us to change our laws or face sanctions or pay millions in compensation. So far, one procurement law was so challenged – Massachusetts' ban on contracts with firms operating in Burma. That WTO challenge by Japan and Europe was pre-empted by a U.S. court ruling which held that U.S. federal law pre-empted the state policy, so no ruling was ever issued by the WTO.

For more information on how you can get involved, see www.tradewatch.org or contact Public Citizen's Global Trade Watch: David Edeli at 202.454.5111 or dedeli@citizen.org