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LEGISLATIVE ALERT!

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January 17, 2007

Honorable Charles Rangel, Chairman
House Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Rangel:

On behalf of the AFL-CIO and its millions of members nationwide, we extend our sincere congratulations on your becoming Chairman of the Committee on Ways and Means. The AFL-CIO looks forward to working with you to advance issues important to America's working families.

While we are optimistic that the new Democratic majorities in both the House and the Senate will share many of our views on key issues, we note with concern that the Bush Administration has made little, if any, serious change in its rhetoric and policies regarding trade.

The AFL-CIO continues to join you in insisting that all trade agreements negotiated by our government include enforceable international labor and environmental standards in the core text, with effective enforcement mechanisms that provide remedies and penalties that are the same as those available for violations of the commercial provisions.

We are also concerned about other sections of the Free Trade Agreements (FTAs) negotiated by this administration, as detailed below.

Investment: In Trade Promotion Authority (TPA), Congress directed the office of the United States Trade Representative (USTR) to ensure "that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States." Yet the investment provisions of virtually all recent FTAs contain large loopholes that allow foreign investors to claim rights above and beyond those that our domestic investors enjoy. The agreements' rules on expropriation, their extremely broad definition of what constitutes property, and their definition of "fair and equitable treatment" are not based directly on U.S. law, and annexes to the agreement clarifying these provisions also fail to provide adequate guidance to dispute panels. As a result, arbitrators could interpret the agreements' rules to grant foreign investors greater rights than they would enjoy under our domestic law. In addition, the deeply flawed investor-to-state dispute resolution mechanism included in recent FTAs contains none of the controls (such as a standing appellate mechanism, exhaustion requirements, or a diplomatic screen) that could limit abuse of this private right of action. Finally, the marked difference between the dispute resolution procedures and remedies available to individual investors and the enforcement provisions available for the violation of workers' rights and environmental standards flouts TPA's

requirement that all negotiating objectives be treated equally, with recourse to equivalent dispute settlement procedures and remedies.

Intellectual Property Rights: In TPA, Congress instructed our trade negotiators to ensure that future trade agreements respect the declaration on the Trade Related Aspects on Intellectual Property Rights (TRIPs) agreement and public health, adopted by the WTO at its Fourth Ministerial Conference at Doha, Qatar. Recent FTAs contain a number of "TRIPs-plus" provisions on pharmaceutical patents, including on test data and marketing approval, which could be used to constrain the ability of a government to issue compulsory licenses as permitted under TRIPs and the Doha Declaration.

Government Procurement: The rules on procurement restrict the public policy aims that may be met through procurement policies. These rules could be used to challenge a variety of important procurement provisions, including domestic sourcing preferences, prevailing wage laws, project-labor agreements, and responsible contractor requirements. We believe that governments must retain their ability to invest tax dollars in domestic job creation and to pursue other legitimate social objectives, and that procurement rules which restrict this authority are inappropriate.

Safeguards: Workers have extensive experience with large international transfers of production in the wake of the negotiation of free trade agreements and thus are acutely aware of the need for effective safeguards. The safeguard provisions in recent trade agreements, which offer no more protection than the limited safeguard mechanism in NAFTA, are not acceptable. U.S. negotiators should have recognized that much faster, stronger safeguard remedies are needed.

Services: NAFTA and WTO rules restrict the ability of governments to regulate services – even public services. Increased pressure to deregulate and privatize could raise the cost and reduce the quality of basic services. Yet recent FTAs do not contain a broad, explicit carve-out for important public services. Public services provided on a commercial basis or in competition with private providers are generally subject to the rules on trade in services in FTAs, unless specifically exempted.

Port Security: The landside port activities exception to the U.S. maritime services carve-out in Annex II must be eliminated. The United States must remove the right for foreign port service providers to demand compensation if they are denied the right to acquire U.S. port operations.

As you begin ongoing discussions with USTR, we hope you will keep these significant concerns in mind. Congratulations again on your Chairmanship. We look forward to working with you and your fellow committee members as you craft a more equitable and successful trade agenda for the American people.

Sincerely,

William Samuel, Director
DEPARTMENT OF LEGISLATION