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Peru- and Colombia-U.S. FTAs: Labor Rights Standards and Fines-Only Enforcement Replicate CAFTA's Pathetic Labor Rights Provisions

- **The Peru and Colombia FTAs' "Enforcement of Labor Laws" provisions are word-for-word identical to CAFTA's unacceptable labor provisions:** Electronic comparisons of the CAFTA versus the Peru- and Colombia-U.S. "free trade" agreements' (PUFTA and CUFTA) labor chapter provisions on Enforcement of Labor Law show that the PUFTA/CUFTA texts are word-for-word identical to CAFTA. A wide range of Democrats publicly denounced this standard in the context of CAFTA. Consider New Democrat Coalition co-Chair Rep. Ellen Tauscher's (D-Calif.) 7/27/05 floor statement on the CAFTA labor terms now repeated exactly in PUFTA/CUFTA: "We need to do all in our power to ensure that this agreement helps these countries raise their working standards. Unfortunately, the labor chapter simply requires that each country enforce its existing laws. It does nothing to require that DR-CAFTA countries improve their laws to reflect fairness to working people. There are also no safeguards in the agreement to prevent countries from explicitly weakening their labor laws. This 'enforce your own laws' standard is a giant step backwards. Under our current trade policy, the Caribbean Basin Initiative allows us to withdraw trade benefits from countries that violate the labor standards of the agreements they have signed. If CAFTA goes into effect, those remedies are wiped out and simply replaced with the 'enforce your own laws' standard. This labor agreement is simply unacceptable."
- **PUFTA/CUFTA have weaker labor enforcement than now applying to Peru and Colombia under GSP/ATPDEA:** During the CAFTA debate, many raised the problem of CAFTA rolling back *existing* labor rights standards provided in GSP and CBI and removing Congress' ability to work with unions in developing countries under GSP and CBI to withdraw trade benefits when governments fail to ensure core labor standards for their workers. To obtain U.S. GSP trade treatment, nations must be "taking steps to afford internationally recognized worker rights." In the instances of Peru and Colombia, the same problem would occur if the FTAs' "enforce your own law" standard replaced the existing U.S. laws and their stronger labor rights terms now governing trade with the Andean countries. As the leaders of the New Democrats argued to President Bush in stating their opposition to CAFTA, "...we must understand that workers' rights are crucial to ensuring that developing nations fully and effectively participate in the global economy. Trade agreements must be a tool for helping lift workers abroad out of poverty, provide them the opportunity they so desperately need and eventually move them into a larger global middle class. We must use trade to prevent the creation of a permanent underclass of workers who have no hope of a better life and who simply provide a pool of inexpensive labor."
- **Despite President Toledo's efforts to improve labor law, U.S. investigations reveal big problems. Plus, without labor standards in the FTA, what happens now that Toledo has left office?** Many in Congress were angered by U.S. trade officials' summary rejection of Peru's former president Alejandro Toledo's demand that the Peru FTA include stronger labor rights. Over just the past two decades, the unionization rate in Peru's private sector plummeted by over 80 percent and child labor is rampant. Consider Rep. Artur Davis' (D-Ala.) words in the New Democrat Coalition's CAFTA statement: "Our trade policies should elevate standards of living around the world and affirm our commitment to core American values, such as the right to organize and the protection of women and children. CAFTA fails to meet this standard and will only ratify the low-wage, anti-union environment in Central America. CAFTA

would only encourage American producers and manufacturers to engage in another race to the bottom at the expense of American and Central American workers.” In a September 2005 D.C. speech, Toledo also stated that besides being good policy, including real labor standards was good politics. He noted he did not want an FTA that passed with a one-vote margin relying almost exclusively on Republicans. Yet, despite the Peruvian president’s request to include the meaningful labor rights terms Democrats have long requested, U.S. trade officials refused to integrate such terms in the FTAs with either Peru or Colombia, the latter having one of the worst labor records of any country in the world.

- **Renegotiating the labor provisions in the Peru trade pact is simple, legally speaking...**
Ensuring that PUFTA and CUFTA include real labor rights rules is simple, legally speaking. By consensus of the signatories, any trade agreement’s text can be renegotiated. The trade pact can be “fixed” so that countries are obliged to ensure ILO core standards are met, with failure subject to the same enforcement sanction available for commercial trade provisions, such as those on intellectual property rights. Changes were made to the Singapore FTA to remove the Integrated Sourcing Initiative opposed by some in Congress days before the vote on that pact.

- **PUFTA/CUFTA have weaker labor enforcement relative to its commercial provisions:** The only sanctions for violation of PUFTA/CUFTA’s “enforce your own laws” labor provisions are fines capped at \$15 million annually. In contrast, the FTAs provide unlimited trade sanctions for commercial provision violations. PUFTA/CUFTA’s IPR provisions *require* signatory nations to alter *domestic* civil and criminal laws to ensure strong enforcement of robust IPR rights explicitly listed in the FTA text. Article 16.1 sets substantive standards that *must* be met: signatories must ratify and implement 10 international IPR treaties (WIPO treaties, etc.). In addition, Peru and Colombia must implement specific IPR rules in domestic law, including strong enforcement measures: goods produced in violation of listed IPR rules must be seized and destroyed; jail sentences must be required in signatory nations’ domestic law for some IPR violations; and IPR violators must compensate IPR holders. (See PUFTA/CUFTA pgs.16-18 to 16-28.) Failure to provide these standards or enforcement is punishable by unlimited trade sanctions until a country complies. Intellectual property is also subject to investor-state enforcement in addition. The FTAs’ IPR chapters state: “The Parties understand that a decision that a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter.” (Article 16.11) In contrast, the FTAs’ labor rights provisions only require countries to “not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of (entry into force of) this Agreement.” (PUFTA Article 17.1(a); CUFTA Article 17.2.1(a)) There is no requirement that countries adopt any specific laws, much less ratify or implement international labor rights treaties. The FTAs’ labor provisions permit weakening of domestic labor laws. Violators of the “enforce your own law” standard faces only fines capped at \$15 million annually – not paid by the violator to the victims, but paid by the government that failed to enforce into a fund through which money is re-funneled back to the violator for labor rights projects. (Article 21-17) In stark contrast to the IPR terms, the FTAs’ labor chapters state: “[T]he Parties understand that a Party is in compliance with subparagraph (a) [quoted above] where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decisions regarding the allocation of resources.” (Article 17.2(b); 17.2.1(b))