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Peru and Colombia FTA Provisions Undermining Access to Essential Services in Peru and Colombia

▪ **Peru and Colombia would be required to open essential services to foreign, for-profit competition**

Many in Congress have prioritized policies that ensure universal access to affordable, quality healthcare, education and other essential services. Many Democrats fought against privatization of the U.S. Social Security system. California members of Congress especially have lived the consequences of extreme deregulation of utility sectors, such as electricity. The Peru- and Colombia-U.S. “free trade” agreements (PUFTA and CUFTA) service sector and investment rules encourage policies that Democrats oppose at home, including requiring private for-profit income security and insurance systems and deregulation of healthcare, education, pension, electricity, gas, and other essential services. (PUFTA/CUFTA Article 11.4 and Annex II Peru/Colombia page 9.) PUFTA/CUFTA does this with its inclusion of a “top-down” service sector agreement under which the FTAs’ services chapter automatically applies to policies now in place or those adopted in the future at all levels of government and even policies implemented by non-governmental bodies in the exercise of delegated authority, such as public university boards, and furthermore applies to all service sectors unless exceptions are listed. (PUFTA/CUFTA Article 11.1) PUFTA/CUFTA service sector rules require that services provided by the government or as regulated monopolies be opened to foreign for-profit competition unless “market access” exceptions are listed in the FTA Annexes I or II. The FTAs forbid limits on the size of, number of, needs tests for, or non-profit status of such services. PUFTA/CUFTA rules forbid common policies, such as rate cross-subsidization, that are necessary to provide affordable services to people in rural areas, which includes much of Peru and Colombia’s territories. While the United States only bound its existing WTO service sector commitments to these rules, Peru and Colombia were pressed to make a vast array of commitments that go far beyond the Andean countries’ WTO commitments. Peru and Colombia carved out water and sewage from the standard requirement that private for-profit foreign competitors must be allowed to establish and that monopolies or exclusive government suppliers may not be maintained by taking an exception to the FTA’s Market Access rules for these service sectors.

- **Given a majority in the United States rejected opening our Social Security system to private for-profit competition, why would the FTA require this of Peru?** There is an exception in Peru’s Annex II to its FTA covering listed social services, but this exception does not include an exemption from the FTAs’ Market Access rights. (Annex II-Peru-10; Colombia wisely took this exception, Annex II-Colombia-5.) That is to say that while Peru reserved certain rights about how it opens this sector to private competition, for instance giving special treatment to domestic firms, it cannot forbid for-profit competition by financial service firms incorporated in the United States in this sector.
- **Given the unfortunate experience in the United States of deregulating the wholesale electricity market, why would the FTAs forbid Peru and Colombia to establish limits on the number or size of such operations or to forbid provision of such services through a regulated monopoly or a not-for-profit?**
- **Peru and Colombia have no WTO obligations regarding deregulating the wholesale or retail distribution of tobacco, alcohol or firearms, yet the FTAs would require such deregulation.** Given PUFTA/CUFTA has a top-down services agreement and Peru and Colombia did not take any exception for retail or wholesale distribution of tobacco, firearms or alcohol, Peru and Colombia could not ban U.S. companies from selling such items, even if the country forbids distribution of such items by private sector Peruvian and Colombian firms.

(These are only some of the service sectors for which Peru and Colombia would have unlimited FTA commitments.)