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**Testimony of Public Citizen's Global Trade Watch  
House Ways and Means Committee Hearing on the  
Pending Free Trade Agreements with South Korea, Panama and Colombia  
January 25, 2011**

Public Citizen is a national, nonprofit public interest organization with 150,000 members and supporters that champions citizen interests before Congress, the executive branch agencies and the courts. We thank Ways & Means Committee Chairman Dave Camp (R-Mich.), Trade Subcommittee Chairman Kevin Brady (R-Texas), Committee Ranking Member Sander Levin (D-Mich.) and Trade Subcommittee Ranking Member Jim McDermott (D-Wash.) for the opportunity to testify for the record on the proposed trade agreements with South Korea, Panama and Colombia.

Government and independent estimates show that approval of any of these trade agreements, which replicate many terms of the North American Free Trade Agreement (NAFTA) and the Central America Free Trade Agreement (CAFTA), will be a net negative for U.S. jobs, our economy, reining in Wall Street abuses, and the environment. Moreover, they will open a wide range of routine public interest policies to attack outside of the U.S. court system, where multinational corporations will be empowered to make claims on taxpayer funds for measures that interfere with investors' expectations or future expected profits. At a time of high unemployment, it would be politically perilous for any member of Congress to vote for any NAFTA-style trade deal that is expected to kill jobs, much less the most economically significant one since NAFTA.

This testimony will focus primarily on the U.S.-Korea "free trade agreement" (FTA), which is projected to cost American jobs, and which the government's own estimates suggest will increase the U.S. global trade deficit. But the NAFTA-style deals with Colombia and Panama are virtually identical, and have their own special problems, which we address at the end of the testimony.

**Korea Trade Deal: An Increased U.S. Trade Deficit and More U.S. Job Loss**

The Korea FTA is projected to be a net negative for the U.S. economy and jobs. In fact, the pact's chief negotiator, Ambassador Karan Bhatia, offered a frank assessment while he served as President George W. Bush's deputy U.S. trade representative. In an October 2006 speech to a Korean audience, Bhatia said that it was a "myth" that "the U.S. will get the bulk of the benefits of the FTA." He went on to say, **"If history is any judge, it may well not turn out to be true that the U.S. will get the bulk of the benefits, if measured by increased exports." He added that, in the instance of Mexico and other countries, "the history of our FTAs is that bilateral trade surpluses of our trading partners go up," meaning that the U.S. trade deficit with those countries increased.**<sup>1</sup>

A study by the Economic Policy Institute examined the U.S. historical experience with major changes in bilateral trade policy – namely changes in trade flows with Mexico and China after NAFTA implementation and Chinese World Trade Organization (WTO) accession, respectively. It used this as a basis to determine the likely impact of the Korea FTA on trade flows and jobs.<sup>2</sup> **EPI found that implementation of the Korea FTA would boost the U.S. trade deficit with Korea by \$13.9 billion**

over the next seven years.<sup>3</sup> **This rise in the trade deficit, in turn, would cost the U.S. economy about 159,000 net jobs.**<sup>4</sup> This is equivalent to losing 90 percent of the manufacturing jobs in Detroit.<sup>5</sup>

Public Citizen conducted a similar exercise in our report “Lies, Damn Lies and Export Statistics: How Corporate Lobbyists Distort Record of Flawed Trade Deals,” available at: <http://bit.ly/bx3JJn>. Examining the relative export growth record to the broader set of America’s 17 FTA partners, we found that **American exports to FTA countries have on the whole grown at less than half the pace of U.S. exports to countries with which we do not have such pacts. If the difference between the FTA and non-FTA export growth rates for goods for each year were to be put in dollar terms, the total U.S. FTA export “penalty” would be \$72 billion over the past decade.**<sup>6</sup>

The U.S. International Trade Commission (USITC), an independent federal body that analyzes the likely effects of trade agreements for Congress and the executive branch, made projections of the effects of the Korea FTA based on a mathematical model of the global economy (a computable general equilibrium [CGE] model). **The USITC found that the Korea FTA would result in an increase in the total U.S. goods trade deficit of between \$308 million and \$416 million.**<sup>7</sup> Imports are projected to increase by \$5,100 million to \$5,692 million, and exports will increase by \$4,792 million to \$5,276 million.

The December 2010 supplemental deal – which extended the time period for but did not eliminate the tariff phase-out for certain autos and trucks – does not alter these findings. That is because the USITC model looks at the change in trade flows when the agreement is fully implemented and tariffs are fully phased out. Given that the supplemental agreement did not alter ultimate tariff elimination, but only altered timelines for cuts, it does not alter the USITC findings of an increased U.S. trade deficit.

In announcing his intentions to send the Korea FTA to Congress, Obama said, “I am very pleased that the United States and South Korea have reached agreement on a landmark trade deal that is expected to increase annual exports of American goods by up to \$11 billion and support at least 70,000 American jobs.”<sup>8</sup> A fact sheet that accompanied the release said, “With the U.S. International Trade Commission (ITC) estimating that the tariff cuts alone in the U.S.-Korea trade agreement will increase exports of American goods by \$10 billion to \$11 billion, advancing this agreement will secure the tens of thousands of American jobs supported by those exports.”<sup>9</sup>

*“If you want a trade policy that helps employment, it has to be a policy that induces other countries to run bigger deficits or smaller surpluses. A countervailing duty on Chinese exports would be job-creating; a deal with South Korea, not.”*

- Paul Krugman, “Trade Does Not Equal Jobs,”  
The New York Times, Dec. 6, 2010

President Obama’s use of the term “support” is critical, as noted in a *New York Times* story, “Few New Jobs Expected Soon from Free-Trade Agreement with South Korea.”<sup>10</sup> At issue is the net total job impact. However, the figure Obama cites likely only reflects the ITC’s projected gains of \$10 billion to \$11 billion in U.S. exports to Korea.<sup>11</sup> It is likely that Obama’s jobs number was then derived by multiplying the estimated gain in

bilateral exports by an exports-to-jobs ratio without including the estimated increase in imports. A recent International Trade Administration report estimated that every \$150,000 in U.S. exports supports one American job.<sup>12</sup> Applying this exports-to-jobs ratio to the ITC figure yields an estimate of 66,667-73,333 jobs. This notably does not include the other side of the calculation – U.S. jobs lost to imports.

It is misleading to discuss just exports when examining the potential economic and jobs impact of trade agreements. Just as greater exports tend to support more jobs, greater imports tend to eliminate jobs – all else being equal. **The 70,000 figure ignores the USITC’s import estimates entirely. If we were to account for the effects of imports, use this same method of jobs calculation and consider the**

**USITC’s estimate of the effect of the Korea FTA on the U.S. global trade balance (available on Table 2.3 on page 2-14 in the USITC report), we would find that the Korea FTA would cause a net loss of U.S. jobs, since the trade deficit will increase by \$308-416 million.** Even if only the USITC’s projections on the bilateral trade flows with Korea were to be considered, more than 60 percent of the job gains from exports would be wiped out from job losses due to increased imports from Korea.

Given that the fundamental question is what the Korea FTA would mean for America’s trade balance and thus jobs, it is worth understanding the seemingly conflicting data in the USITC report. At first glance the USITC study seems to suggest that the U.S. trade balance in goods (also known as merchandise) will improve by \$3.3-4.0 billion because this is the projected change in the bilateral trade balance with Korea. However, due to the way that bilateral trade pacts affect global trade flows, the Korea FTA’s results for overall U.S. trade balance in goods are dramatically different from the change in the bilateral balance with Korea. Chapter 2 of the USITC report explains: “The last row in table 2.3 reports the simulated changes in total U.S. trade in sectors analyzed in this simulation. Total U.S. exports of these commodities is expected to be higher by \$4.8–5.3 billion, and total imports of commodities in this analysis is expected to be higher by \$5.1–5.7 billion.”<sup>14</sup> **Subtracting the import figures from the exports figures reveal that the USITC study predicts the total U.S. trade deficit in goods will increase by between \$0.3 billion and \$0.5 billion under the FTA.** This finding in sum is that the effect of *trade diversion* on U.S. exports is greater than the effect on U.S. imports, so the U.S. trade balance with the world (including Korea) will worsen after the FTA goes into effect, but the balance with Korea alone improves. **The bottom-line USITC finding of an increased U.S. trade deficit contradicts Obama’s stated purpose for passing the FTA – to promote his goal of doubling exports to create two million jobs.**

**The USITC study of the Korea agreement indicates that jobs may be lost in many high-wage industries, including auto manufacturing and electronics manufacturing.** The average hourly earnings of workers in the electronic equipment manufacturing industry, projected to lose a significant number of jobs, were \$30.38 in 2008.<sup>15</sup> This was 40.5 percent greater than the average hourly earnings of all workers employed in the private sector.<sup>16</sup> Table 1 shows what is driving these declines in employment in these industries: large rises in the trade deficit in these sectors, totaling up to \$2.3 billion for motor vehicles and parts, other transportation equipment, electronic equipment, metal products, textiles, apparel and iron-containing metals.

**Table 1: USITC Estimates of Trade Balance Effects of Korea FTA, Selected Industries**

	Change in U.S. global trade balance (millions of dollars) <sup>13</sup>	
	Low	High
Motor vehicles and parts	(\$531)	(\$708)
Other transportation equipment	(\$340)	(\$293)
Electronic equipment	(\$790)	(\$762)
Metal products	(\$169)	(\$187)
Textiles	(\$169)	(\$190)
Apparel	(\$56)	(\$74)
Iron-containing metals	(\$65)	(\$75)
Total	(\$2,120)	(\$2,289)

Table 1, above, displays the USITC’s estimates of the trade balance impact upon a few sectors of the U.S. economy where it projects the FTA will cause deficits: motor vehicles, electronic equipment, “other transportation equipment,” iron, metal products, textiles and apparel. The USITC developed ranges for the statistically likely FTA effects, which are the “low” and “high” estimates in Table 1.

**The auto manufacturing industry may lose a significant number of workers due to the FTA. Indeed, the Korea Automobile Manufacturing Association (KAMA) celebrated the December 2010 supplemental deal in the following terms: “The deal wiped off uncertainties in the world’s largest automobile market and is forecast to drive up South Korean automakers’ market share in the U.S. ... Small and mid-size auto parts makers will also benefit from the elimination of**

**tariffs.”<sup>17</sup> The USITC study projected that once tariffs are phased out, the sizable bilateral trade deficit with Korea in autos and auto parts (Korean sent 500,000 autos here in 2010 while the U.S. exported less than 6,000 to Korea<sup>18</sup>) would increase by up to \$1.3 billion.<sup>19</sup>**

Koreans have not been purchasers of foreign cars. Given both strong “Buy Korean” social preferences and various non-tariff barriers, total import penetration is four percent. To try to expand U.S. exports to Korea, the supplemental negotiations concluded in December 2010 included a four-year waiver of Korean auto fuel efficiency and emission standards for U.S. imports as well as a waiver of Korean auto safety standards for up to 25,000 U.S. autos per U.S. Big Three maker – if there were demand for such cars. (That is to say that there is no guaranteed access for 75,000 additional U.S. cars.) Other Korean policies identified by the industry and the United Auto Workers as posing significant non-tariff barriers were not waived.

Further, the low 35 percent domestic content rule for vehicles to obtain duty-free treatment was not altered, meaning Korean assembled vehicles containing 65 percent Chinese and other inputs would gain duty-free entry into the U.S. market. (Korea’s FTA with the European Union requires 55 percent domestic content to obtain favorable tariff treatment and NAFTA requires 50 percent.) The elimination of U.S. auto and truck tariffs and the low rule of origin requirements raise the question of whether Korean auto firms now producing cars in the United States would continue their operations. The average hourly earnings of American workers in the auto industry was \$23.61 in 2008, 9.2 percent greater than the average hourly earnings of all workers employed in the private sector (\$21.62).<sup>20</sup> According to the U.S. Bureau of Labor Statistics (BLS), total hourly compensation per worker, which includes both wages and benefits, was \$36.35 for American workers in the auto sector and \$23.30 for Korean workers in the auto sector in 2007, so compensation for American auto workers is about 56 percent higher.<sup>21</sup>

Interestingly, the USITC predicted that, were the Korea FTA implemented, there would be an absolute decline in the total value of exports in some manufacturing sectors, including electronic equipment, other transportation equipment and iron-containing metals, not just a worsening of the balance. For example, total U.S. exports of electronic equipment are expected to decline by \$293 million to \$381 million.<sup>22</sup> This is a particularly troubling development, since high-tech jobs are often touted as being the “jobs of the future.”

The unfavorable U.S. employment effects of the Korea FTA projected by the USITC model can be thought of as the *minimum* level of employment displacement and trade deficit increase that the pact might bring about, given that past USITC projections have been overly optimistic. For example, a 1999 USITC study using roughly the same model estimated that China’s WTO accession tariff offer would increase the U.S. trade deficit with China by only \$1 billion dollars.<sup>23</sup> In reality, the trade deficit with China skyrocketed by \$167 billion between 2001 and 2008.<sup>24</sup> Although China’s WTO accession alone (and the favorable trade treatment that came with it) likely did not cause the entirety of the huge rise in the deficit with China, it almost certainly contributed more than the ITC’s projected \$1 billion dollars.

### **Lack of currency manipulation disciplines mean agriculture could also lose out**

Proponents of the Korea FTA are advocating for its congressional passage by highlighting prospective gains for the U.S. agricultural sector related to tariff cuts. However, especially given Korea’s past history of significant currency manipulation, it is worth noting that if Korea again devalued its currency, it could effectively cancel the benefits of the tariff cuts. Unfortunately, despite calls from various U.S. economic sectors to include safeguards against such devaluations,<sup>25</sup> the Korea FTA does not provide for penalties or adjustments if one party deliberately undervalues its currency. In other words, the new market access in Korea being promised by various government officials and agribusiness trade

associations aimed at persuading farm state legislators to support the FTA could well turn out to be completely hollow.

Historically, Korea has been a chronic currency manipulator. Korea is one of only three countries (China and Taiwan being the others) that have ever been placed on the Treasury Department's list of currency manipulators.<sup>26</sup> During the mid to late 1980s, the Korean won was undervalued against the dollar by about 60 percent, meaning that all U.S. goods exported to Korea faced a barrier equivalent to a tariff of about 60 percent.<sup>27</sup> Korea's deliberate effort to keep its currency undervalued during this time prompted the Treasury Department to place it on the 1988 currency manipulators list.<sup>28</sup> In the early 1990s the value of the Korean won shifted so it was no longer undervalued, but in the late 1990s Korea rapidly acquired foreign exchange reserves and the won again became severely undervalued against the dollar by about 50 percent.<sup>29</sup>

**If Korea again reverts to strategically undervaluing its currency to boost exports and reduce imports following implementation of the FTA tariffs cuts, for instance by again devaluing by 50 percent, then the FTA tariff cuts combined with the 50 percent devaluation of the Korean won would result in a net effective *increase* in Korean agricultural tariff equivalents of: 12 percent for beef; 25.2 percent for non-beef meat products; 46.7 percent for other animal products; 18.2 percent for vegetables, fruit, and nuts; 10.4 percent for dairy products; and 40 percent for miscellaneous food products.**

Such currency devaluation following FTA implementation has happened in the past. A year after NAFTA went into effect, Mexico suddenly devalued its currency by 50 percent.<sup>30</sup> The devaluation of the peso negated NAFTA's tariff cuts, as noted by a former World Bank Chief Economist who wrote, "Nonetheless, it must be recognised that the real depreciation of the peso [in 1994], given its magnitude, was a larger influence on trade than was the entry into NAFTA. This is because the total reduction in tariffs at the end of 15 years would average only 10 per cent, in contrast with the 50 per cent real depreciation."<sup>31</sup> Due to the peso devaluation, American products became much more expensive for Mexican consumers, and U.S. agricultural exports suffered. For example, U.S. exports of beef and pork to Mexico in the first three years of NAFTA were 13 and 20 percent lower, respectively, than beef and pork exports in the three years before NAFTA was enacted.<sup>32</sup> Members of Congress should consider the NAFTA experience before making optimistic claims about supposed benefits to the beef and pork industries under the Korea FTA.

### **FTA Investment Terms a Threat to the Public Interest and Reining in Wall Street**

The Korea trade deal's Investment Chapter 11 text includes private investor-state enforcement of extraordinary new substantive FTA-granted property rights with respect to a broadly defined array of investments, including in financial services. **Combining investor-state private enforcement with the Korea FTA's expansive substantive foreign investor and financial service terms would provide Korean firms operating in the United States greater rights than provided to domestic firms and investors under U.S. law** as interpreted by the U.S. Supreme Court. This would violate Congress' requirement that FTAs provide foreign firms "no greater rights."

Investor-state enforcement is not necessary or appropriate between two developed countries with well established rule of law and sound court systems. The ostensible purpose of the mechanism is to provide U.S. investors a stable investment environment, and the ability to adjudicate problems in countries without reliable domestic courts. This system is not even arguably necessary between two stable democracies with well-functioning court systems. The U.S.-Australia FTA did not include private investor-state enforcement.

The Korea FTA text would allow foreign investors to demand compensation from the U.S. government in foreign tribunals for “regulatory takings” and other claims that would not be allowed under U.S. law. The FTA definition of investment to which the new rights apply extends beyond U.S. law. It includes investment agreements between a government and a foreign firms with respect to natural resources, certain procurement construction activities and more; investment authorizations; enterprises; shares, stock, and other forms of equity participation in an enterprise; bonds, debentures, other debt instruments, and loans; futures, options, and other derivatives; turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts; intellectual property rights; licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges. Moreover, the FTA text’s “denial of benefits” language provides a loophole that could allow Korean subsidiaries of U.S. firms to use their status as “Korean entities” to challenge U.S. laws in foreign tribunals.

Past U.S. FTAs with investor-state enforcement have been with developing countries, except for Canada under NAFTA. This has reduced the prospects for challenges of U.S. laws somewhat, given relatively few investors from such countries operate within the United States. In contrast, the Korea FTA would be the first FTA since NAFTA with a major capital exporter that includes investor-state arbitration. This creates a much greater likelihood that U.S. state and federal laws would be challenged in foreign tribunals, exposing U.S. taxpayers to potential large new liabilities and threatening to undermine important public interest policies. According to Uniworld, the leading proprietary source on Foreign Direct Investment, there are roughly 80 Korean corporations with around 270 establishments now in the United States.<sup>33</sup> There are also hundreds of U.S. establishments in Korea that the FTA would newly empower to challenge Korean public interest laws in foreign tribunals.

To date, Canada under NAFTA is the only other developed, capital exporting country with which the United States has such an investment agreement. Canadian firms have used NAFTA’s investor-state system to attack an array of U.S. environmental, health and other policies in foreign tribunals. The United States has to date dodged the bullet on the six of these challenges in which final rulings have been issued, mainly thanks to an array of errors by the challengers. In some of these cases, substantial amounts of U.S. taxpayer dollars were wasted defending lengthy cases that would not have been allowed in U.S. courts. Many millions in outstanding cases remain. This includes a \$340 million challenges to the 1998 U.S. Tobacco Settlement and a Canadian drug firm disputing a patent issue already decided by the U.S. Supreme Court.<sup>34</sup>

Excluding investor-state from the Korea FTA was of special concern to the bipartisan National Conference of State Legislatures (NCSL), which wrote: *“Since South Korea is a sophisticated and developed trading partner, NCSL does not believe that an investor-state chapter should be negotiated into the U.S.-Korea FTA for fear that similar abuses may arise. Until we have further refined the FTA investor-state language to protect state sovereignty and federalism, we fear that it may be more dangerous to include revised yet still flawed investor-state language in the U.S.-Korea FTA than to forego the provision all together.”*<sup>35</sup>

**The FTA’s Financial Services chapter reflects the pro-deregulation mentality that helped foster the worst financial crisis since the Great Depression. More than other FTAs, it has been justified for its role in pushing financial liberalization and deregulation.** Bush administration fact sheets note: *“The Financial Services Chapter of the United States-South Korea Free Trade Agreement ... is a groundbreaking achievement, providing more extensive provisions related to financial services than ever before included in a U.S. FTA.”*<sup>36</sup> Citigroup’s Laura Lane, co-chair of the U.S.-Korea FTA Business

Coalition, stated that “it is the best financial services chapter negotiated in a free trade agreement to date.”<sup>37</sup> Does Congress want to support financial services policies celebrated by an administration and firm that wrecked the economy?

The FTA’s financial provisions are especially troubling in the U.S.-Korea context. The U.S. Congress and the Korean parliament have implemented new financial regulations that could conflict with the FTA. The FTA’s Financial Services chapter reads in the investor-state enforcement mechanism established in the Investment Chapter – thus empowering private investor attacks on domestic financial regulation and capital controls. There are at least 74 financial corporations cross-established in the United States and Korea that would be newly empowered to use the private investor-state enforcement rights in the FTA to attack U.S. and Korean financial policies, even if the U.S. and Korean government might refrain from using FTA government-government enforcement to challenge each other’s domestic laws that conflict with the FTA.

The financial services chapter conflates liberalization of the financial sector and deregulation, simply banning many forms of regulation even when rules are applied equally to domestic and foreign firms. Like the WTO, CAFTA and the Peru FTA, the Korea FTA commits its signatory countries to refrain from limiting the size of financial institutions, imposing firewalls between the sort of financial services one firm may offer, banning toxic derivatives, or controlling destabilizing capital flights and floods. At the time that the U.S. Congress has worked to reregulate the financial sector, implementing a trade agreement negotiated pre-crisis that imposes constraints on regulation with the world’s 15<sup>th</sup> largest economy (whose financial firms are operating here) is a breach of faith with the American public.

The FTA includes a “prudential measures” exception that unfortunately fails to protect financial stability measures. The Korea FTA prudential measures clause is much less deferential to regulators than that in NAFTA, but is identical to other FTAs negotiated by the Bush administration. It reads: “a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. *Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party’s commitments or obligations under such provisions.*” This self-cancelling language undermines the use of the defense to actually protect a financial regulation: a country would only need to use this defense if its policy did not conform with the FTA. In other words, a country would only be challenged because a foreign firm or government believed it violated an FTA obligation. To restate, this circular defense measure does not provide a reliable safeguard.

### **Investment terms in Panama agreement will make fighting tax havens more difficult**

For decades, Panamanian governments have pursued an intentional tax haven strategy offering foreign banks and firms a special offshore license to conduct business.<sup>38</sup> Not only are these businesses not taxed, but they are subject to little to no reporting requirements or regulations. According to the OECD, the Panamanian government has little to no legal authority to ascertain key information about these offshore corporations, such as their ownership.<sup>39</sup> Last year, to test how simple it is to set up a shell corporation in Panama, Public Citizen assigned a 20-year old intern with no legal or accounting experience whatsoever, to set up a corporation in Panama over the telephone from the U.S. She could do so in a matter of moments.<sup>40</sup>

Because of Panamanian secrecy policies, precise numbers regarding the amount of the taxes lost to Panama do not exist. However, according to the U.S. Office of Management and Budget (OMB),

eliminating tax evasion in tax havens overall could save U.S. taxpayers \$210 billion over the coming decade,<sup>41</sup> while the Senate Homeland Security Committee estimates a savings five times as great.<sup>42</sup> Since Panama is one of the world's leading tax havens, the country is likely to account for a significant share of those revenue losses, which could be used to meet other urgent policy priorities at home. The OECD reports that the secrecy protections for lawyers in Panama are so high that they could be sent to prison for revealing information about clients, even when that information *is not* protected by attorney-client privilege.

Panama's financial secrecy practices also make it a major site for money laundering from throughout the world. According to the U.S. State Department, "Panama is a major logistics control and trans-shipment country for illegal drugs... major Colombian and Mexican drug cartels as well as Colombian illegal armed groups use Panama for drug trafficking and money laundering purposes... the funds generated from illegal activity are susceptible to being laundered through" Panamanian banks, real estate projects, and more.<sup>43</sup>

In late November, the Obama administration signed a tax information exchange agreement (TIEA) with Panama that does not require Panama to automatically exchange information with U.S. authorities about tax dodgers, money launderers and drug traffickers. In the TIEA protocol, Panama gave itself until the end of 2011 to make domestic legal changes to facilitate the non-automatic information sharing envisioned by the TIEA – which will only cover responses to specific, case-by-case requests after U.S. authorities have already obtained and provided to Panama a great deal of information about potential wrongdoers. The OECD's tax watchdogs stated that they would not give Panama the peer review seal of approval until there was sufficient time to see how well Panama's recent flurry of new tax reform commitments worked in practice. And certainly – before voting on any FTA – those in the U.S. Congress who have long raised concerns about Panama's financial secrecy will want to be able to verify that newly announced changes in Panama's policy are resulting in real changes in practice.

Finally, the U.S.-Panama FTA contains virtually identical investment and financial services provisions to the Korea FTA. In addition to all the same problems we identified above with respect to the Korea agreement, the Panama FTA would constrain one of the most important tools policymakers have in fighting financial crimes and wrongdoing – restrictions on transfers to and from the countries that provide financial secrecy like Panama. Moreover, the FTA gives the tax haven government of Panama and the 400,000 corporations registered there the new rights to challenge U.S. anti-tax haven policies for cash compensation outside of the U.S. judicial system. These are not speculative threats. Panama has actually threatened WTO cases against other countries' anti-tax haven measures.<sup>44</sup>

### **Colombia trade deal will worsen human rights**

There will never be an acceptable U.S. FTA with Colombia until a Colombian government changes the on-the-ground-reality of the country's horrific labor and other human rights abuses. It is impossible to imagine Congress approving a trade pact with extreme human rights violators Burma or Sudan. Nearly 2,850 Colombian trade unionists have been killed since 1986 – more than the rest of the world combined. Only four percent of unionist murders have been prosecuted. Over 530 unionists have been murdered during the presidencies of Álvaro Uribe (with whom the FTA was negotiated by President Bush) and his successor Juan Manuel Santos (Uribe's former defense minister).<sup>45</sup> Human rights groups have documented collusion between Colombian governments and murderous paramilitary groups on these and other issues, including forced displacement and murders of Afro-Colombians.<sup>46</sup> The pact's corporate boosters argue that it is critical to U.S. national security because it will bolster Colombia against populist governments in the region. This is severely misguided: it is precisely the damage caused by NAFTA-style policies that turns people against the U.S. and leads to the economic instability on

which populism feeds. Moreover, once we allow brutal regimes permanent access to our market, we lose whatever leverage we might have had to improve human rights.

The Colombia FTA is a threat to regional and international security: the FTA's agricultural rules will devastate small Colombian farmers, just as NAFTA's did in Mexico.<sup>47</sup> Displaced *campesinos* would add to the over 4 million Colombians already uprooted by that country's half-century long civil war.<sup>48</sup> As the Colombian government's own agriculture ministry concluded, the FTA will eliminate 35 percent of the jobs in crucial agriculture sectors like corn, rice, beans and more. As the Colombian Government's Agriculture Ministry stated, under the FTA without agricultural protections, rural Colombians "would have no more than three options: migration to the cities or to other countries (especially the United States), working in drug cultivation zones, or affiliating with illegal armed groups."<sup>49</sup>

The Colombia FTA endangers the environment – targeting the Amazon, the lungs of the planet. The upper Amazon basin in Colombia is among the most bio-diverse areas on earth, but is also very much at risk. Deforestation, horrific pollution, and health disasters from oil production and mining are widespread already. The FTA's special foreign investor privileges empower corporations to pillage the area for timber, mineral and energy resources, and would chill direly needed efforts to protect the Amazon basin.

## Conclusion

The Obama administration had a chance to change course on the failed NAFTA-style trade policies of the past by renegotiating the trade deals with Korea, Panama and Colombia to better support jobs and the public interest. They did not take advantage of that opportunity, which now puts the onus on Congress to stand up for America and reject more-of-the-same flawed trade policy.

## ENDNOTES

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- <sup>1</sup> Remarks by Ambassador Karan Bhatia (Deputy U.S. Trade Representative) at Yonsei University, October 24, 2006, Available at: [http://ustraderep.gov/assets/Document\\_Library/Transcripts/2006/October/asset\\_upload\\_file496\\_9901.pdf](http://ustraderep.gov/assets/Document_Library/Transcripts/2006/October/asset_upload_file496_9901.pdf)
- <sup>2</sup> Robert E. Scott, "Trade Policy and Job Loss," Economic Policy Institute, Working Paper #289, Feb. 25, 2010a, Available at: [http://www.epi.org/publications/entry/trade\\_policy\\_and\\_job\\_loss/](http://www.epi.org/publications/entry/trade_policy_and_job_loss/)
- <sup>3</sup> Scott, 2010a, at 9, Table 4.
- <sup>4</sup> Scott, 2010a at 10, Table 5.
- <sup>5</sup> See page 10 of [http://www.bls.gov/sae/eetables/sae\\_annavg109.pdf](http://www.bls.gov/sae/eetables/sae_annavg109.pdf)
- <sup>6</sup> Travis McArthur and Todd Tucker, "Lies, Damn Lies and Export Statistics: How Corporate Lobbyists Distort the Record of Flawed Trade Deals," Public Citizen, September 2010, Table 5, at 26. Available at: <http://bit.ly/bx3JJn>
- <sup>7</sup> U.S. International Trade Commission. "U.S.-Korea Free Trade Agreement: Potential Economy-wide and Selected Sectoral Effects." USITC Publication 3949. September 2007, Corrected printing March 2010, at 2-14, Table 2.3, Available at: <http://www.usitc.gov/publications/332/pub3949.pdf>
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- <sup>21</sup> <ftp://ftp.bls.gov/pub/special.requests/ForeignLabor/aeind336naics.txt>
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- <sup>23</sup> U.S. International Trade Commission, "Assessment of the Economic Effects on the United States of China's Accession to the WTO," August 1999, at xi.
- <sup>24</sup> Trade flow data from the USITC DataWeb. Deficit calculated on a domestic exports minus imports for consumption basis. Figures inflation-adjusted to 2009 using the CPI-U-RS.
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- <sup>31</sup> Anne O. Krueger, "NAFTA's Effects: A Preliminary Assessment," *The World Economy*, Volume 23, Issue 6, at 764, June 2000.
- <sup>32</sup> Author's calculations based on data obtained from the United States Department of Agriculture Foreign Agricultural Service's Global Agricultural Trade System on January 21, 2011. Data was inflation-adjusted using the Consumer Price Index-U-RS as estimated by the Congressional Budget Office in the backup data for Table C-1 of their "The Budget and Economic Outlook: An Update", released August 2010. FAS aggregations used for beef were "Beef & Veal,Fr/Ch/Fz" and "Beef&Veal, Prep/Pres". FAS aggregations used for pork were "Pork, Fr/Ch/Fz", "Pork,Hams/Shldrs,Crd", "Pork, Bacon, Cured", "Hog Sausage Casings", "Pork,Prep/Pres,Nt/Cn", and "Pork,Prep/Pres,Cann'd"
- <sup>33</sup> For a full list, see <http://www.citizen.org/documents/KoreancompaniesintheUS.pdf>
- <sup>34</sup> See <http://www.citizen.org/documents/NAFTA%20Investor-State%20Cases%20May%202010-2.pdf>
- <sup>35</sup> [http://www.strtrade.com/advisories/wti/2007/march/29/nclsl\\_investor-state.pdf](http://www.strtrade.com/advisories/wti/2007/march/29/nclsl_investor-state.pdf)
- <sup>36</sup> See [http://www.ustr.gov/sites/default/files/uploads/factsheets/2008/asset\\_upload\\_file972\\_15191.pdf](http://www.ustr.gov/sites/default/files/uploads/factsheets/2008/asset_upload_file972_15191.pdf)
- <sup>37</sup> USITC, 2010, at 4-10.
- <sup>38</sup> Barney Warf, "Tailored for Panama: Offshore Banking at the Crossroads of the Americas," *Geografiska Annaler*, 84:1, 2002.
- <sup>39</sup> See OECD "Peer Review Report," at pages 6-7, paragraph 5. Available at: <http://www.oecd.org/dataoecd/0/48/46103294.pdf>
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- <sup>43</sup> U.S. State Department Bureau of International Narcotics and Law Enforcement, 2009 International Narcotics Strategy Report.
- <sup>44</sup> Panama made a recent announcement that a major plank in its effort to be removed from tax haven watch lists is to launch WTO cases against countries that put them on such lists. See "Panamá protegerá sus servicios internacionales y financieros," *Xinhua Spanish*, Aug. 6, 2009. Available at: <http://spanish.peopledaily.com.cn/31617/6720014.html>; "Panama to accuse Ecuador of discriminatory trade practices before WTO," *BBC*, Sept. 18, 2009. Panama has previously commented in WTO sessions that countries that place limits on the financial service transactions of countries deemed tax havens are violating WTO rules. See Council for Trade in Services, "Report of the Meeting Held on 9 July 2001," WTO S/C/M/54, Released Aug. 27, 2001. In this meeting, the Panamanian delegation's intervention focused on how GATS exceptions would not apply to OECD measures on harmful tax havens, because Panama did not have any double taxation treaties (which is one of the GATS exceptions). In regards to the other exception, on "the imposition or collection of direct taxes in respect to services or service supplier of other members," the Panamanian delegation said: "It was difficult to imagine how the Panamanian tax regime could have an impact on the ability of other jurisdictions to impose and collect taxes on Panamanian services or suppliers that required the application of discriminatory measures, measures distinct to those used in the cases of other suppliers other than nationality."
- <sup>45</sup> Personal communication for full 2010 number, and Escuela Nacional Sindical, "Que os duelan las sangres ignoradas: Informe sobre violaciones a los derechos humanos de los y las sindicalistas y la situación de impunidad, 2009-2010 y 2002-2010," October 2010, at 46. Available at: [http://www.ens.org.co/apc-aa-files/45bdec76fa6b8848acf029430d10bb5a/INFORME\\_DDHH\\_2010.pdf](http://www.ens.org.co/apc-aa-files/45bdec76fa6b8848acf029430d10bb5a/INFORME_DDHH_2010.pdf)
- <sup>46</sup> Marino Cordoba, "Why Afro-Colombians Oppose the Colombia FTA," *The Hill*, Feb. 7, 2008.
- <sup>47</sup> John B. Judis, "Trade Secrets," *The New Republic*, April 9, 2008.
- <sup>48</sup> Government estimates put the number of internally displaced people at 3.3 million, while independent estimates put it at over 4.9 million. See Internal Displacement Monitoring Center, at: <http://www.internal-displacement.org/idmc/website/countries.nsf/%28httpEnvelopes%29/A7E1B7BD7528B329C12575E500525165?OpenDocument#expand>
- <sup>49</sup> "El Agro Colombiano Frente al TLC con Estados Unidos," Ministerio de Agricultura y Desarrollo Rural, República de Colombia, July 2004, at 180. Available at: <http://www.minagricultura.gov.co/archivos/EI%20Agro%20Colombiano%20Frente%20al%20TLC.pdf>