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Analysis of the Trade “Deal” Announced May 10, 2007

On May 10, 2007, in a press conference announced and held late in the day, Bush administration officials and several Democratic and Republican congresspeople unveiled an outline of a “deal” to try to amend some provisions of pending trade agreements (FTAs) negotiated by the administration.¹

The legal texts of proposed amendments to the FTAs are not public, and key congresspeople have said there is agreement only at the conceptual (rather than the legal) level.² However, a description of the contents of the “deal” has been made available to some. Unfortunately, a review of that outline document shows that whatever technical problems may be revealed in the final legal texts, the basic failing of the “deal” as outlined is that it simply fails to even address the removal of the many damaging elements of the NAFTA model that have contributed to wage stagnation for U.S. workers, promoted off-shoring of millions of U.S. jobs,³ and exposed core domestic policies to challenge as “illegal trade barriers.”⁴

Flawed content, limited progress

Among the minimal essential “fixes” labor, consumer and other organizations listed months ago as necessary for not opposing the “deal”, which are not addressed or fixed in the “deal”, are:

- The ban on anti-off-shoring policy and Buy America policy contained in the procurement chapters of the agreements.
- The NAFTA Chapter 11-style foreign investor rights which both create incentives for U.S. companies to move off-shore and expose our most basic environmental, health, zoning and other laws to attack in foreign trade tribunals. Under NAFTA, there have been nearly 50 corporate-led challenges of federal, state and local laws, leading to over \$36 million in taxpayer funds paid to corporations, and millions of dollars in taxpayer-funded legal defense costs.⁵
- The threat to prevailing wage laws, recycled content and renewable energy policy posed by the FTAs’ rules.
- The Peru FTA provisions that would allow Citigroup or other U.S. investors providing “private retirement accounts” to sue Peruvian taxpayers if Peru tries to reverse its failed Social Security privatization. This problem in the FTA is deemed by Peru’s labor federations to be a major impediment to reversing the failed partial privatization which is similar to what Democrats and most Americans opposed when it was proposed by President Bush for the United States.
- The agriculture rules that will foreseeably result in the displacement of millions of peasant farmers – increasing hunger, social unrest, desperate migration and, according to Peruvian and Colombian government reports, an increase in drug cultivation, trade and violence.⁶
- The food safety limits that require us to import meat not meeting our safety standards.

Included in the “deal” outline, although unclear if delivered given the final legal texts are unavailable, is:

- Real progress on labor and environmental standards.
- Removal of provision that would have allowed Dubai Ports World and other foreign ports operators the right to challenge any restriction on their ability to operate U.S. ports.
- Removal of some of the worst FTA pharmaceutical provisions, some of which allow pharmaceutical companies to game and delay the generic drug approval process for as long as 10 years or more.

Trade Subcommittee Chair Sander Levin (D-Mich.) deserves special credit for helping obtain the labor and environmental changes. But that the labor and environmental standards many sought were included in the deal does not compensate for the reality that the majority of what needed to be excised from the Bush-negotiated NAFTA expansion deals remains.

Flawed process, uncertain implications

To date, there have been no assurances that the Bush administration's offensive concept of a U.S. FTA for Colombia, the country with the world's highest rate of labor unionist assassinations,⁷ will be forestalled by the Democrats. To the contrary, at the news conference announcing the deal yesterday, key players stated that work was underway to be able to build on the deal so as to facilitate consideration of even the Colombia deal. According to a statement in a press release from Rangel's office, Trade Subcommittee Ranking Member Wally Herger (R-Calif.) said the deal paved "a way forward on Panama, Peru, Colombia, South Korea and even reauthorization of TPA"⁸ (Fast Track). In a nearly identical vein, President Bush said the deal provided "a clear path for advancing our proposed free trade agreements with Peru, Colombia, Panama, and South Korea."⁹ Finally, even House Ways and Means Chairman Charles Rangel (D-N.Y.) himself said of the challenges to Colombia FTA passage that, "We're working to find out what language and what actions we can take to remove that impediment."¹⁰

According to *The New York Times*, Rangel said that "he could imagine" a new grant of Fast Track.¹¹ And as statements by Herger and others indicated,¹² the May 10 "deal" was described as opening the door for a new grant of Fast Track authority for President Bush, something that labor, environmental and consumer groups unalterably oppose.

Also striking was the unrestrained glee of corporate groups that have been long opposed to fair trade policies. Tom Donohue, president of the U.S. Chamber of Commerce, for instance said "we are encouraged by assurances that the labor provisions cannot be read to require compliance with ILO Conventions."¹³

Fair trade groups have been extremely discouraged by the process by which this "deal" was negotiated. Neither unions nor most Democratic House members have had opportunities for meaningful input during the process, nor have seen the various proposals or the resulting texts developed during the negotiations with the administration. According to *Inside U.S. Trade*,

Both Pelosi and Rangel acknowledged that they had gotten no feedback from labor groups on the agreement and Rangel said he understood that the AFL-CIO was still seeking the reaction from its union president. But Pelosi emphasized that she and Rangel had consulted with labor at the beginning of the process and insisted that the agreement announced at 6 pm had literally been reached that afternoon. But an opponent of the deal expressed doubts that the press conference involving Schwab and Treasury Secretary Henry Paulson along with the senior members of the House leadership, as well as the leadership of the New Democrat Coalition, could have been brought together within an hour's notice. This source speculated that the announcement might have been made on May 10 to head off an expected announcement by the Teamsters that they will oppose the deal.¹⁴

The Los Angeles Times reports that,

Rep. Betty Sutton of Ohio, one of 71 freshman Democrats¹⁵ to sign a letter earlier this year urging Rangel not to compromise 'fair trade' principles, was 'frustrated' that she and other new legislators were not consulted about the compromise, her staff said. Six House Democrats, including Linda T. Sanchez of Lakewood, sent a letter late Thursday to the chairman of the party caucus, Rep. Rahm Emanuel of Illinois, asking him and other caucus leaders not to endorse the new policy until they reviewed the fine print.¹⁶

And *The Associated Press* reports that,

A half-dozen House Democrats with strong labor ties, watching the news conference from the back of the room, later expressed strong dissatisfaction with the process. "The strongest voices for workers and the environment were not included" in the negotiations and were not informed of the deal, said Rep. Marcy Kaptur, D-Ohio. "I'm very disappointed that Speaker Pelosi held a press conference before meeting with the caucus," said Rep. Michael Michaud, D-Maine. "In a democratic process Democrats ought to know."¹⁷

This approach created a needlessly dangerous situation wherein most Democratic House members and outside groups' first review occurred *after* it is too late to make the language acceptable to them, forcing opposition.

Finally, there still does not appear to be an agreement on what final shape the changes would take. According to today's *Inside U.S. Trade*,

The agreement is to have "legally binding" labor and environmental standards in FTAs, but there is no consensus on whether that means reopening those FTAs already signed. House Ways and Means Trade Subcommittee Chairman Sander Levin (D-MI) said he does not see how there can be a legally binding obligation without reopening already signed agreements. But Schwab said for Peru and Colombia, the U.S. could insert the obligations into the implementing language... Similarly, Ranking Ways and Means Committee Member Jim McCrery (R-LA) said the threshold of legally binding could be met by either having Peru reopen its agreement or finding another way.¹⁸

Conclusion

Fair traders have worked passionately for many years to create the conditions for the creation of a new U.S. trade policy, following the disappointment of Democrats' 1993 support of NAFTA, which blurred the line on fair trade between the parties and led to the party's 1994 loss of control of Congress.

The 2006 election sent a strong message that Americans oppose staying the course on our failed trade policy. In the midterm elections, from Florida to Hawaii and parts in between, pro-fair trade challengers beat anti-fair trade incumbents. Incumbents who had voted for the U.S. trade status quo of NAFTA, WTO and Fast Track were replaced by fair traders rejecting these failed policies and advocating improvement in 37 congressional seats (7 Senate and 30 House). Trade and off-shoring were wedge issues actively used in 115 congressional campaigns nationwide with more than 25 paid campaign ads run on trade and offshoring. Election exit polls revealed that Americans' anxiety about the economy and job security trumped even Iraq war concerns.¹⁹

Following the election, fair trade groups and members of the Democratic Caucus were very clear on the minimum fixes needed for them to *not oppose* further Bush trade agreements, and were also clear that they wanted to work with Democratic leadership to craft a trade policy they could actually *support*.

After their “drubbing” in the midterm elections, the Bush administration and its corporate allies are the primary beneficiaries of today’s “deal.” The Democratic Party is unlikely to see any benefit: as today’s press reports indicate, Rangel is well aware that the “deal” will probably split the Democratic Caucus, and that only a “minority of the majority” are likely to support any trade agreement that follows.²⁰ And working families too are unlikely to benefit: despite Speaker Nancy Pelosi’s (D-Calif.) claim that America’s “economic future rests upon our ability to open new markets,”²¹ it is very clear that even a perfect trade pact with Peru and Panama – two very poor countries – would do virtually nothing to reverse the ballooning trade deficit, wage stagnation and job displacement brought on by status quo trade policy. Indeed, given that the Employee Free Choice Act faces a presidential veto, the Iraq War drags on, and the minimum wage bill continues to be bogged down, the Democrats may have missed their one chance (i.e. by blocking unfair trade deals) to actually deliver on a campaign promise.

Rather than a change of course, the “deal” announced today represents a decision to stay the course on trade. In summary, both the contents and process are extremely disappointing for the fair trade movement. The “deal” will be opposed, along with any resulting trade agreements, by fair trade groups that are fighting *for* a new U.S. trade policy that America’s working families deserve.

Date: May 11, 2007

ENDNOTES

¹ Among the officials present were: the Bush administration’s Treasury Secretary Hank Paulson and U.S. Trade Representative Susan Schwab, House Speaker Nancy Pelosi (D-Calif.), Senate Finance Committee Chairman Max Baucus (D-Mont.) and Ranking Member Charles Grassley (R-Iowa), Ways and Means Committee Chairman Charles Rangel (D-N.Y.) and Jim McCrery (R-La.), and a few members of the New Democrat Coalition, a relatively small congressional caucus that includes several congresspeople who voted in favor of the Central America Free Trade Agreement (CAFTA), some of the less than 10 percent of Democrats who did so.

² According to *Inside U.S. Trade*, “McCrery emphasized that House and Senate Democrats and Republicans have reached a conceptual agreement with the administration, and still have to work on putting this agreement on paper. “Conceptually, we are there, we know what we want to say,” McCrery said. “It is a matter of writing it down” and making sure that the final language reflects the conceptual agreement, he said.” See “Schwab, Congress Announce Labor, Environment FTA Deal,” *Inside U.S. Trade*, May 11, 2007.

³ Lawrence Mishel, Jared Bernstein, and Sylvia Allegretto, *State of Working America 2006-2007*, (Washington, D.C.: Economic Policy Institute, 2006),

⁴ Mary Bottari and Lori Wallach, “NAFTA Chapter 11 Investor-State Cases: Lessons for the Central America Free Trade Agreement,” Public Citizen’s Global Trade Watch, February 2005.

⁵ *Ibid.*

⁶ “Colombian Agriculture Before the Free Trade Agreement with the U.S,” Min. of Agriculture and Rural Development, July 2004; see also Hugh Bronstein, “Colombia must be firm in U.S. trade talks – Stiglitz,” *Reuters*, October 21, 2004; and “U.S., Peru trade accord receives mixed feelings,” *The Miami Herald*, April 13, 2006.

⁷ Patrick Markey, “Colombia labor killings under U.S Democrat scrutiny,” *Reuters*, May 1, 2007.

⁸ Reps. Charles Rangel (D-N.Y.) and Jim McCrery (R-La.), Congressional Press Release, May 10, 2007.

⁹ “President Bush Pleased by Bipartisan Free Trade Agreement,” White House Press Release, May 10, 2007.

¹⁰ Pablo Bachelet, “Bipartisan deal puts trade back on track,” *Miami Herald*, May 11, 2007; see also “Rangel, Levin Say Conceptual Agreement Not Enough For Colombia FTA,” *Inside U.S. Trade*, May 11, 2007.

¹¹ Steven R. Weisman, “Bush and Democrats in Accord on Trade Deals,” *New York Times*, May 11, 2007.

¹² Donald Evans, CEO of the Financial Services Forum, put out a press release claiming that, “This agreement will help to move forward pending free trade accords with Colombia, Panama, Peru, and South Korea and we hope it will also lay the groundwork for the renewal of Trade Promotion Authority.” See Financial Services Forum Press Release, May 10, 2007.

¹³ “U.S. Congress, government in trade standards deal,” *Agence France Presse*, May 11, 2007.

¹⁴ “Schwab, Congress Announce Labor, Environment FTA Deal,” *Inside U.S. Trade*, May 11, 2007.

¹⁵ *Editors note:* Instead of “71 freshmen Democrats,” this should read “71 freshmen and senior Democrats,” in reference to an April letter. A January letter by just freshmen garnered 39 member signatures – over 95 percent of the class.

¹⁶ Molly Hennessy-Fiske, "Pelosi announces bipartisan trade policy," *Los Angeles Times*, May 11, 2007.

¹⁷ Jim Abrams, "Agreements Reached on Trade Deals," *Associated Press*, May 10, 2007.

¹⁸ "Schwab, Congress Announce Labor, Environment FTA Deal," *Inside U.S. Trade*, May 11, 2007.

¹⁹ http://www.citizen.org/hot_issues/issue.cfm?ID=1471

²⁰ "Schwab, Congress Announce Labor, Environment FTA Deal," *Inside U.S. Trade*, May 11, 2007.

²¹ Speaker Nancy Pelosi, Press Release, May 10, 2007.