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Minimum “Fixes” Needed to Bush’s Hangover FTAs (Panama, Colombia, Korea)

The items below are minimum necessary changes to the texts of the Bush-signed “free trade” agreements (FTAs) with Panama, Colombia and Korea. These changes must be made so as to remove the pacts’ most extreme conflicts with Democrats’ domestic agenda. Because these agreements have already been signed, this list of changes does not describe a *good* trade pact, but rather what is necessary to neutralize the worst NAFTA/CAFTA terms that these Bush-negotiated FTAs replicate – often word-for-word. Only renegotiation can deliver these fixes.

Meanwhile, even a perfect FTA with Colombia is unacceptable until that nation demonstrates it can protect human and labor rights and until unionist assassinations halt over a sustained period. As well, an FTA with Panama must be conditioned on the country’s government eliminating excessive banking secrecy, re-regulating its financial sector, forcing banks and multinational subsidiaries to pay taxes, and signing international tax transparency treaties such as the U.S. Tax Information Exchange Agreement and the standard U.S. double taxation / fiscal evasion treaty – which Panama has thus far refused to do.

- **Extraordinary foreign-investor privileges and private enforcement system that promote offshoring:** These pacts’ investment chapters replicate the CAFTA language that provides foreign investors with special rights and privileges. The provisions allow private investors and corporations to directly enforce a new set of special FTA foreign investor rights and privileges by suing governments in foreign tribunals. The FTA investor rights terms create incentives for U.S. firms to offshore their U.S. production to foreign jurisdictions where they can operate under privileged FTA foreign investor status rather than be forced to deal with that country’s regulatory policy and courts. The FTAs’ investor rules also provide greater rights to foreign firms operating here than are available to U.S. firms.
- **Extrajudicial challenges of U.S. environmental, health and land-use policies by foreign investors:** The language defining the types of foreign investment subject to investor-state enforcement for expropriation and minimum standard of treatment must be limited to real property to meet the 2002 Fast Track rules (that foreign investors within the United States have no greater rights than the Constitution – as interpreted by the Supreme Court – offers). The language also must be altered to explicitly limit challenges only to government actions that terminate all value of an investment – permanently – to comply with the no-greater-rights standard. These changes are compatible with the terms of the 2002 “Kerry amendment” and demands by Reps. Doggett, Blumenauer, McDermott, and others.
- **Extreme monopoly drug patent extensions via data exclusivity:** The FTAs’ grant of monopoly control (“data exclusivity”) for drug-test data must be eliminated. The May 2007 deal made some progress in this area, but further changes are required to ensure the FTAs so not undermine nations’ ability to use the flexibilities guaranteed in 2001 WTO Doha Declaration on

Public Health regarding making affordable medicines accessible to consumers. As now written, the FTAs violate Congress' requirements in the 2002 Fast Track under which these pacts were negotiated to conform with the 2001 WTO Public Health Declaration. Rep. Waxman, Doctors without Borders, and others have demanded for years that FTAs not undermine nations' ability to ensure consumers access to affordable drugs.

- **Procurement:** The terms that limit the use of Buy American and Buy Local policies must be eliminated. Plus, language must be added explicitly stating that the technical specification rules and the supplier qualification rules in no way limit government actions regarding prevailing-wage, living-wage, renewable-source or recycled-content requirements, and that such measures do not violate either the FTAs' procurement or investment rules. The current language subjects many common pro-environmental and pro-labor procurement policies to challenge.
- **Imported food must meet U.S. safety standards:** The right to send agricultural products for human consumption into the United States must be conditioned on meeting U.S. safety and inspection standards. The current FTA texts limit both.
- **Mandatory service-sector privatization and deregulation:** Trade pacts must not limit domestic policy regarding health, energy, and other essential services. Bush's Peru FTA, for instance, locked in Peru's failed Social Security privatization.
- **Zeroing out of staple food tariffs in Colombia, Panama:** Provisions requiring FTA partners to zero out tariffs on their subsistence food crops must be removed to ensure food and also for U.S. national security given Colombia's own government concludes that displaced *campesinos* would have little option but to join paramilitaries and the drug trade. Exceptions must be added for rice, beans, etc., as well as a real safeguard mechanism against U.S. dumping of subsidized goods.
- **Completing the May 10, 2007 improvements to environmental and labor standards:** Improvements made to the Bush FTAs' labor and environmental terms in 2007 have unfortunately proved inadequate, as shown by the Peru FTA. That FTA (with the improved FTA labor/ environmental language) was implemented in 2009 without Peru improving its labor law to meet ILO standards as required, and after Peru rolled back environmental protections existing prior to the FTA's signing. Beefed up labor and environmental standards must be added to all FTAs' core texts. Signatories must enforce core ILO standards as set forth in the ILO Conventions and Multilateral Environmental Agreements (MEAs), with a requirement that the failure to do so or the weakening of such laws must be made an FTA violation and these terms must be enforced equally to commercial terms. This would bring human rights matters that directly affect production costs on parity with FTA treatment of patents and other rent-seeking protections unrelated to trade.

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