

**Congress of the United States**  
**Washington, DC 20515**

January 16, 2007

The Honorable Charles Rangel, Chairman  
Committee on Ways and Means  
United States House of Representatives  
Washington, DC 20515

The Honorable Sander Levin, Chairman  
Subcommittee on Trade  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Rangel and Subcommittee Chairman Levin,

Congratulations on your imminent chairmanships of the Ways and Means Committee and the Trade Subcommittee. Your leadership provides real hope for Democrats finally to be able to go on the offensive to remedy some of the policy and political problems being generated by the Bush Administration's retrograde trade policy.

It appears one of the first challenges your Democratic colleagues will be relying upon you and your committee colleagues to master relates to the Peru and Colombia Free Trade Agreements (FTAs). Given these FTAs as signed are not acceptable to the vast majority of Democrats, we appreciate your communications to the Administration regarding the need to 'fix' some aspects of these FTAs to make them even minimally acceptable. We are writing to request respectfully that when you approach the Administration about what needs to be changed in these FTAs that you request the removal of the Annex II commitments in both pacts regarding foreign operation of U.S. landside port activities.

During the debate over the Oman Free Trade Agreement we raised national security concerns about the Oman FTA provisions granting foreign firms new rights to operate U.S. landside port services. These were the very port activities Congress had just insisted Dubai Ports World (DPW) not control.

Unfortunately, the same language<sup>1</sup> is also contained in the Peru and Colombia FTAs. Worse, if the Peru FTA were passed what had been a hypothetical problem with the Oman FTA would become a reality: Dubai Ports World already is an enterprise of Peru. In June 2006, DPW acquired a 30-year concession to develop and operate a new container terminal at the Port of Callao, Peru just outside of Lima.<sup>2</sup> Thus, the Peru FTA would explicitly provide DPW a trade pact-granted right to do what Congress blocked it from doing in March 2006. Congressional intervention would subject the United States to challenge by DPW before a UN or World Bank

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<sup>1</sup>PERU FTA (Annex II-US-5): The following activities are not included in this reservation... (a) vessel construction and repair; and (b) landside aspects of port activities, including operation and maintenance of docks; loading and unloading of vessels directly to or from land; marine cargo handling; operation and maintenance of piers; ship cleaning; stevedoring; transfer of cargo between vessels and trucks, trains, pipelines, and wharves; waterfront terminal operations; boat cleaning; canal operation; dismantling of vessels; operation of marine railways for drydocking; marine surveyors, except cargo; marine wrecking of vessels for scrap. (*Emphasis added*)

<sup>2</sup> The Dubai-based company acquired the concession through the London-based Peninsular and Oriental Steam Navigation Company (P&O), a firm controlled by DPW as of early 2006. DPW/P&O has a 70 percent stake in the Peruvian concessionaire established to run the port operations, which is called *Consorcio Terminal Internacional de Contenedores del Callao* (translated as Callao Containers International Terminal Consortium.) The remainder of the capital comes from the Peru-based Uniport S.A. company.

tribunal to demand we compensate the firm with taxpayer dollars for the “future expected profits” lost because we undermined their Peru FTA right to operate here.

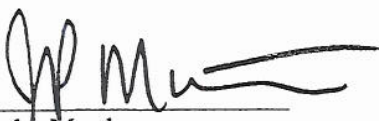
Currently, if we believe an acquisition of port services – or any other entity - within the United States is a national security problem, we can take actions to halt such an acquisition without facing any liability from the company in question against us for exercising our judgment. In contrast, the Oman, Peru and Colombia FTAs contain identical provisions that would allow any foreign firm incorporated and operating in these nations *to challenge* such U.S. government action to halt the acquisition of landside activities within U.S. ports by such a firm. This means while firms operating in these countries are not barred from acquiring such services now, we can halt such acquisitions with impunity, while under the FTAs U.S. government action to interfere with this right would violate the agreements and thus subject us to being sued at a UN or World Bank tribunal for damages – million of taxpayer dollars – to compensate for lost ‘expected future profits’ of foreign firms whose acquisition we halted.

The Democratic committee staff was extremely helpful in combating the various red herring legal arguments that the Office of the USTR threw out to counter our raising of this real problem, including to make clear to all that these FTAs Essential Security exceptions do not prevent or halt such challenges. In addition to removing the U.S. landside ports activities commitment, perhaps you could raise the possibility of the USTR actually inserting language into the Essential Security exception that specifies that the Parties agree that these provisions are self-defining and thus adding the Essential Security Clause to the list of provision explicitly not subject to review under the FTAs’ dispute resolution.

The Peru and Colombia FTAs contain provisions we know limit Congress’ authority to safeguard our nation’s security. Unless the landside port activities commitments are removed from the Peru and Colombia FTAs, Members of Congress again will be asked to support these agreements relying on the hope that a foreign tribunal deigns to permit us to justify our violation of the agreements by accepting our claim of an Essential Security Exception. It is unconscionable to *knowingly* agree to *any* trade agreement that contains obligations that limit our national security authority regarding sensitive infrastructure such as our ports. We can avoid this situation by fixing this problem by removing the Annex II commitment.

It is unclear if the Administration will prioritize trade expansion above partisan fighting in their approach to these agreements. However, we are asking that you make this reasonable request on our behalf with the hope that they will choose to work with us to build bipartisan support for a trade policy that more carefully balances our nation’s national security and commercial goals.

Sincerely,



John Murtha  
Member of Congress



Gene Taylor  
Member of Congress