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On the
U.S. – Peru Trade Promotion Agreement

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Chairman Baucus, Senator Grassley, Members of the Committee, thank you for the opportunity to participate in today's hearing, on behalf of the ten million working men and women of the AFL-CIO. We appreciate the opportunity to offer our views on the U.S.-Peru Trade Promotion Agreement (TPA), as the trade debate has been so important to our members over so many years.

We believe that international trade and investment can yield broad and substantial benefits, both to American working families, and to our brothers and sisters around the world -- if done right. However, the challenges facing American workers today are enormous, and the reforms needed in current trade and domestic policy go beyond what can be addressed in bilateral trade agreements.

We welcome the progress made by the new Democratic leadership in the House of Representatives in negotiating improved provisions in key sections of pending free trade agreements, including the U.S.-Peru TPA. However, more needs to be done.

The new provisions on workers' rights and the environment negotiated by Ways and Means Committee Chairman Charles Rangel and Trade Subcommittee Chairman Sander Levin represent significant progress in crucial areas that we have fought to achieve for many years. These issues have been central to the debate over globalization and its impact on working families, both here in the United States and around the world.

We hope that the new labor provisions will provide a starting point for future efforts to strengthen and effectively enforce protections for workers in the global economy. These provisions will certainly not solve all the problems workers face, but they provide one more important and useful tool to pressure both governments and corporations to respect workers' fundamental human rights. Congress will need to bring to bear strong pressure on the executive branch to ensure that these newly negotiated provisions are effectively implemented and enforced, as these provisions cannot serve their objective if the executive branch does not enforce them.

The Peru TPA includes new and improved language on procurement, clarifying that government procurement contracts may require that a supplier comply with minimum worker rights conditionality or meet environmental or conservation standards under the technical specifications of the contract.

We are also encouraged by the new direction outlined by the Democratic leadership to undertake broad trade policy reforms beyond existing FTAs. The "New Trade Policy for

America" lays out a strategy to strengthen enforcement of U.S. trade laws, open new markets for U.S. goods and services, and increase assistance and training to displaced workers. New legislation on imported product safety, currency misalignment and strengthening our trade laws, are all signs that needed reforms in trade policy are being taken seriously.

Beyond the labor and environment provisions, however, several other important issues of concern to working families were unfortunately not addressed adequately in the Peru TPA, particularly with respect to investment, other procurement issues, and services. I will outline our specific concerns below. These provisions have important ramifications for our members' jobs and communities, and we will continue to fight to strengthen and repair these provisions in future trade agreements.

Also, it is important to note that, while the May 10th template represents progress, it is by no means a complete fix appropriate for any country or any situation. Intractable and egregious human rights violations in Colombia and unequal market access issues in South Korea put these two agreements in a completely separate – and significantly more problematic – category. Likewise, the extension of fast track authority raises another, entirely different, set of issues about the relationship between Congress and the President with respect to trade negotiating authority. The AFL-CIO will vigorously oppose the FTAs with Colombia and Korea and any renewal of the current fast track authority.

Detailed analysis of the Peru TPA

Workers' Rights

The Peru TPA labor chapter requires that signatories to the agreement "adopt, maintain, and enforce in their own law and in practice" the International Labor Organization (ILO) core labor standards, subject to the same dispute settlement, enforcement mechanisms, and selection criteria as the commercial provisions in the agreement. This represents major progress over the Jordan FTA, which required only that countries "strive to ensure" that their laws recognize and protect the core labor standards. It is also an enormous improvement over the agreements previously negotiated by the Bush administration (Chile, Singapore, Morocco, Australia, Bahrain, DR-CAFTA, and Oman), which required only that countries enforce their own domestic labor laws. These previous trade agreements also contained significantly weaker enforcement mechanisms for labor and environment than other commercial provisions.

The Peru labor chapter makes several other improvements over previous FTAs negotiated by the Bush Administration:

- It closes an important loophole that allowed governments to avoid complying with their labor obligations by claiming that they were exercising prosecutorial discretion. The new proposal clarifies that any decisions with respect to allocation of enforcement resources must not undermine the commitment to enforce the core labor standards.

- It replaces the commitment to "strive to ensure" not to derogate from labor laws in order to increase trade with a stronger, straightforward prohibition against derogating from labor obligations in a manner affecting trade or investment.

- It expands the definition of domestic labor laws that a country must "effectively enforce" to include discrimination in employment and hiring, along with the other core ILO standards, and "acceptable conditions of work."

Despite these improvements, there are still areas where the labor provisions need to be improved:

- The agreement states that "the obligations of this agreement, as they relate to the ILO, refer *only* to the 1998 ILO Declaration on Fundamental Principles and Rights at Work" (emphasis added). This sentence is subject to competing interpretations and should be eliminated.

- The definition of labor laws should be modified to explicitly include all labor laws, both state and federal.

- Concerns have also been raised with respect to ambiguity and implementation of standards concerning recurring violations and the impact of violations on trade and investment. Certainly, with respect to the commitment to "adopt and maintain" the core labor rights in statutes and regulations, requiring that complainants demonstrate a connection to trade or investment between the parties could constitute a problematic hurdle.

Intellectual Property Rights

The Peru TPA also includes improved protection for intellectual property rights, particularly in the copyright/entertainment area, which is of great interest to our unions which represent performers, namely the American Federation of Television and Radio Artists (AFTRA), the American Federation of Musicians (AFM), and the Screen Actors' Guild (SAG). The United States remains extremely competitive in global entertainment commerce, and foreign earnings in this area are important to domestic employment opportunities. Piracy affects the economic fate of individual creators, from well known actors to unknown session musicians. We appreciate the enhanced protections achieved in this area on behalf of our members who rely on royalties for their livelihoods.

We also appreciate the IPR changes negotiated under the May 10th deal. These changes will improve access to affordable medicines by limiting the period of data exclusivity and ensuring that the IPR commitments for medicines do not go beyond those agreed to in the Doha Declaration.

Procurement

In general, the government procurement chapters of our bilateral trade agreements have included numerous provisions that restrict the ability of the federal government, and those states governments that agree to be bound, from enacting progressive, pro-labor and environment procurement policies, such as anti-sweatshop sourcing regulations and living wage laws. A government should be able to decide how to invest its tax dollars, and to use them, if it chooses, to pursue these and other legitimate social objectives. The new procurement language does include an improvement with respect to specifications regarding workers' rights. It provides that any government may require that a supplier comply with worker rights conditionality or meet

environmental or conservation standards.[1] This is an important improvement that addresses a problem we have seen in past FTAs. Under NAFTA, for example, if a government were to specify that it would not purchase goods made in violation of child labor or forced labor, that requirement could be subject to challenge. This new language creates an explicit presumption that specification of conservation, environmental, or minimal worker rights conditions is allowed.

However, a different and extremely important provision with respect to procurement was not addressed in the Peru TPA. Our long-held position has been that nothing in procurement rules should in any way prohibit a government from demanding of a domestic or foreign company that *domestic* workers provide services or produce goods. Current FTA procurement rules do not allow covered government entities to create *new* requirements that goods be produced or services be performed domestically or locally.[2] While existing "Buy America" provisions are generally protected from challenge ("grandfathered" into the FTAs), current procurement rules do limit the ability of the federal or covered state governments to implement *new* legislation limiting off-shoring of government contracts. This is particularly important with respect to government *services*, as these are generally not covered by existing Buy America laws, which generally cover only the procurement of *goods*. Some state legislatures have tried to implement rules prohibiting off-shoring of state government service contracts, but have been told that such laws would violate commitments under trade agreements. It is a top priority for us to rectify this provision in future trade deals.

A second concern with respect to procurement rules is uncertainty about whether living wage requirements for public contracts are protected, as this new language only covers minimum wage laws. Finally, we have sought additional assurance that prevailing wage laws (under the Davis-Bacon Act) are completely insulated from any possibility of challenge. The labor movement has asked that procurement rules include an explicit protection for prevailing wage rules. We will continue to press for inclusion of this provision in all future trade deals.

Investment

Chapter 11 of the North American Free Trade Agreement (NAFTA), which allows corporations to sue governments for violations of obligations under the investment chapter, gives foreign investors greater rights than U.S. investors have under the U.S. Constitution. The investment chapter of the Peru TPA contains essentially the same investor-to-state provisions found so problematic in NAFTA. Other than a non-binding statement added to the Preamble of

[1] This Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications:

(a) to promote the conservation of natural resources and the environment; or

(b) to require a supplier to comply with generally applicable laws regarding

(i) fundamental principles and rights at work; and

(ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health, in the territory in which the good is produced or the service is performed.

[2] The federal government is automatically a covered entity, and some states have also signed onto the procurement provisions in some bilateral FTAs.

the agreement,[3] our concerns were not addressed in the Peru TPA. In particular, we have argued that private investors should not be granted the right to sue governments over public health, environmental, or labor regulations that might be construed as direct or indirect expropriation, or an action equivalent to expropriation. This provision is both undemocratic and untransparent, and gives individual corporations undue rights with respect to overturning legitimate actions of elected national governments. These investment provisions are often used to undermine developing country governments as well. It is a top priority of ours – and our union brothers and sisters in our trading partners – to eliminate these unbalanced investment provisions from future trade agreements.

Services

For years, we have called for a broad and explicit carve-out in trade agreements that would preserve the ability of federal, state, and local governments to regulate services for the public benefit, allowing distinctions between domestic and foreign service-providers and setting appropriate qualifications or limitations on the provision of those services. This could be guaranteed by negotiating a general exception for such measures to the National Treatment commitments. Moreover, trade agreements should not restrict the ability of signatory governments, as they currently do, to establish appropriate technical standards, qualification requirements, and licensing requirements. These concerns were not addressed in the Peru TPA. We will continue to make reform of the services provisions in trade agreements a priority.

Enforcement Concerns

An overriding concern of the labor movement and many of our allies in Congress has been the enforceability of any labor language negotiated. This concern stems from decades of frustration with both Democratic and Republican administrations that failed to consistently and aggressively enforce worker rights conditions in unilateral or bilateral trade agreements (including the Generalized System of Preferences, the African Growth and Opportunity Act, the Caribbean Basin and Andean preference programs, as well as NAFTA and subsequent bilateral trade agreements). This refusal to enforce the worker rights provisions in U.S. trade law left serious abuses of workers' rights unchallenged, despite the mandate given by the Congress. At the end of the day, no matter how good the labor language in any given FTA, it will not be worth anything if the administration in power simply refuses to enforce it.

We propose the development of a Congressional oversight program that would strengthen the role of Congress in reviewing the enforcement record of the executive branch, particularly with respect to the labor and environment provisions in trade agreements. This could include a mandatory annual hearing, where administration officials would be required to present a factual record of cases initiated, investigations conducted, conclusions drawn, and actions taken. Subpoena powers should be explicitly allowed to ensure that Congress has access to detailed records pertaining to any investigations or alleged abuses. If Congress were to determine that the administration were not adequately enforcing the worker rights or environmental provisions, then further binding measures could be implemented – possibly including withdrawal of funds to

[3] The preambular language states: "The Parties agree that foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement."

government agencies found to be failing to enforce these provisions or temporary suspension of trade benefits.

Needed Labor Law Reforms in Peru

While the content of the labor provisions included in the trade agreement are of great importance, it is also essential that countries bring their labor laws into compliance with the provisions in the agreement prior to implementation. This has been standard practice of the U.S. Trade Representative with respect to needed changes in intellectual property rights commitments or non-compliant domestic taxes. We ought to require no less with respect to labor commitments.

House Democratic leaders have argued that Congress should not act on the pending trade agreement until Peru makes much-needed changes to its labor laws – changes that would be needed to bring the laws into compliance with the ILO core labor standards, as required by the trade agreement. In the past, vague promises to implement labor law reforms or to improve labor law enforcement have been largely ignored once an agreement has been ratified and implemented. Indeed, Central America has yet to reform the labor laws and practices identified in its mildly critical white paper. Bahrain has also taken steps to weaken its labor laws since Congress ratified the U.S.-Bahrain FTA. In light of this, the push to seek reforms to the labor code before ratification of the FTA, rather than accepting mere promises to do so later, was an important and necessary step.[4]

A congressional delegation traveled to Peru in July to discuss the government's plans to bring its labor code into compliance with the labor provisions of the Peru TPA. It is our understanding that the government of Peru has made some important commitments, but not sufficient to address some of the key concerns that were raised by organized labor in Peru – especially around temporary contracts and subcontracting. Discussions with the government are ongoing, and they appear to have been constructive.

As of this hearing, the government of Peru has not yet passed all of the laws and decrees necessary to bring its legislation into conformity with its commitments. Moreover, the changes that have been made were undertaken unilaterally by the government, not in consultation with labor or employers. Indeed, union leaders learned of recent changes by reading the newspaper. It is important that the Finance Committee urge the Peruvian government to both pass the legislation and regulations to fully implement the changes it has agreed to, and to consult with unions and employers before issuing new regulations by decree.

Possible Negative Consequences for Peruvian Agriculture

In 2006, 69.3% of Peru's rural population, most of which supports itself with small farming, lived either in poverty or extreme poverty.[5] Although the causes are many, contributing factors include inadequate infrastructure, limited access to basic services such as water and electricity and little access to credit. The lack of social spending on health and basic education is

[4] Note that the Administration has also previously required countries to revise laws and regulations, in some cases as a precondition to implementing an agreement. Dismantling the Andean Price Band System, requiring changes to the Dominican Republic's tax system or to Guatemala's drug patent laws are just a few examples.
[5] INEI Informe Tecnico: Medicion de la Pobreza 2004, 2005, 2006 (Julio 2007).

also a serious problem. Any long-term solution to rural poverty will depend upon the adoption of a comprehensive, coherent internal agenda that will modernize the sector, build capacity, increase efficiency and productivity, and in some cases assist farmers in the transition to more productive non-farm pursuits. However, theses programs often take many years to implement and to bear fruit. Therefore, the ratification and implementation of a trade agreement now, before any such measures are put in place (if ever) and take effect, will likely hurt the poorest farmers least capable to adapt. It is also unlikely that farmers would be able to easily migrate to new export crops. About 90% of the land under cultivation is used to produce for the domestic market, with about 3% of the land, largely concentrated on the more developed costal region, dedicated to non-traditional exports. The geography simply does not permit a major conversion to non-traditional export crops. Less likely still is the possibility that labor could be absorbed into those parts of the economy most likely to expand, such as textiles and apparel.

As with other trade agreements in the Americas, the United States demanded a maximum liberalization of agricultural markets, failing or refusing to take into account the vast differences in the level of agricultural development in the two countries. As a condition for even initiating talks on agriculture, the United States made important demands. One was the dismantling of the Andean price band system, which has been used for years to stabilize the import prices of specific, sensitive agricultural products. The United States also demanded that no agricultural products be excluded from the agreement, requiring tariffs for all products to be eventually eliminated. It is not surprising that the United States was able to obtain such painful concessions from Peru, given that they were told that the current trade preferences, which provide preferential market access for some key agricultural and non-agricultural exports, would not be renewed. Thus, negotiators had no real option other than to accept what was offered simply in order to maintain existing levels of market access.

In the end, Peruvian negotiators agreed to immediate tariff reductions for roughly two thirds of its products. Although long implementation periods were accepted for some products, such as rice (17 years) and corn (12 years), the periods are significantly shorter than what was granted under CAFTA (20 years).[6] Peru also yielded and accepted extremely high import quotas, the effect of which will be to eliminate potential benefit from the extended tariff reduction periods. The duty-free quota for maize, for example, is 500,000 tons, roughly 50 % of total trade in this product.[7] At the same time, the United States had refused to negotiate over its multi-billion dollar farm subsidies, which will allow its products to enter the Peruvian market more cheaply than locally produced goods. Thus, Peruvian farmers, especially those involved in the cultivation of grains, are rightly concerned about their livelihood. As the ITC has predicted:

> [e]xports could increase by an estimated 50 to 80 percent above the $107 million in U.S. grain exported to Peru in 2005. Approximately two-thirds of the expected additional U.S. grain exports will consist of U.S. rice, with the remainder divided equally between exports of U.S. corn and U.S. wheat.[8]

[6] Oxfam, Song of the Sirens (June 2006), p. 10.
[7] Id.
[8] USITC, US-Peru Trade Promotion Agreement: Potential Economy Wide and Selected Sectoral Effects (May 2006), p. 3-3.

And though cheaper food prices may be viewed as a silver lining, in many cases the majority of cost savings will be captured by the food processors, and these are not necessarily passed on to the ultimate consumer.

Conclusion

Undoubtedly, the Peru TPA, as amended, marks a substantial step forward toward a trade model that will benefit the working people of both countries. We applaud the substantial effort that brought about these changes. However, it is important to remember that the May 10th agreement represents the tip of the iceberg in addressing what is wrong in our trade policy. Improving this agreement alone will not solve America's problems. Further work needs to be done to improve the "template" for future trade agreements. We must work together to build a prosperous economy and workforce of the future, and act expeditiously to address the domestic and international policies that are putting U.S. workers, businesses, and farmers at risk, such as: currency manipulation, unfair and imbalanced asymmetries in the tax code, and lax and inconsistent enforcement of our trade laws.