

THE UNITED STATES NEEDS A NEW PRO-ENVIRONMENT TRADE POLICY, NOT MORE NAFTA-STYLE AGREEMENTS FACILITATED BY THE RECENT TRADE “DEAL”

October 5, 2007

Dear Senators and Representatives:

As organizations working to protect the environment, encourage good stewardship of forests and other natural resources, reduce our dependence on oil, and avert the global disaster of climate change, we are deeply concerned about the trade deal announced May 10 by some Democrats and the Bush administration that would facilitate passage of pending “Free Trade Agreements” (FTAs).

Final texts of four pending FTAs with Peru, Panama, Colombia and South Korea, as modified by the May 10 deal, were released at the end of June. Review of these texts shows that these agreements still contain the very NAFTA provisions that have proved to pose the worst threats to sound environmental policy. For this reason, we urge you to reject these four NAFTA expansion agreements, including those with Peru and Panama for which votes are pending this fall.

The deal to modify the four trade agreements did not address the NAFTA-style foreign investor privileges or the limits on domestic procurement policy contained in these pacts that environmental, consumer and labor groups said months ago had to be removed to avoid their opposition to these agreements.

The modified pacts still contain the NAFTA-CAFTA foreign investor rights and investor-state enforcement that allows challenge of environmental laws in foreign tribunals. The recent “deal” did not alter these provisions that allow foreign investors to demand taxpayer-funded compensation for any governmental action – including a virtually limitless range of common policies used to protect the environment – which could affect an investor’s expected future profits. Similar NAFTA provisions have resulted in nearly 50 challenges to federal and state law leading to over \$36 million in taxpayer funds from NAFTA nations paid to corporations. The United States has spent millions in legal costs to defend against such attacks on toxic bans, mining rules and more. It is appalling that this severe NAFTA problem, which environmental groups have drawn attention to for over a decade, was not fixed. The U.S.-Australia FTA excluded investor-state enforcement, proving that making this vital fix was not only possible, but was previously accomplished.

Furthermore, by expanding the definition of “investment” to specifically include contracts for natural resource extraction, the modified FTAs extend foreign investor rights beyond what was even contained in NAFTA to establish new rights for foreign logging, mining and oil companies to skirt domestic courts and laws. Such private enforcement rights for the most predatory multinational corporations tilt the balance badly against the environment, and will chill reforms desperately needed to protect the Amazon Basin.

Anti-environment procurement provisions are not fixed in the modified agreements. The pending FTAs expose to challenge a wide range of common procurement policies that federal, state and local governments use to encourage companies to adopt more sustainable environmental practices. These include recycled content, forest stewardship certifications, renewable energy and other requirements. Such policies rank among the most effective strategies to encourage better corporate – and governmental – behavior.

The deal did add improved language to the FTAs' environmental chapter that should be included in future trade agreements. This includes language obliging countries to comply with environmental treaties they have signed and reaffirming the right for the United States to reject imports of timber from Peru that come from trees listed in the Convention on International Trade in Endangered Species. The modified text also requires Peru to improve its monitoring of timber trade.

However, we have serious concerns that these papers improvements will not result in real improvements, because enforcement relies on President Bush to initiate action under the FTA. Moreover, the failure to remove the environmentally-threatening investor rights exposes government actions – even ones initiated to implement the new environmental standards – to challenge by foreign investors if such improvements affect a foreign investor's bottom line.

While President Bush has control over whether these changes in the environmental chapter have any real-life effect, the foreign investor rights to attack existing environmental policies are self-executing. Unfortunately, opportunities to insert self-executing pro-environment provisions were missed. For instance, eleven key members of the Ways and Means committee in the House of Representatives wrote to the U.S. Trade Representative requesting that a prohibition on trade in endangered timber species be inserted into the agreement. Instead, the agreement simply reaffirms the right for the United States to halt such imports, an authority that already exists under existing U.S. law.

In addition, harmful agricultural provisions that will promote deforestation were not modified. Under NAFTA's agriculture rules, which eliminate commodity tariffs but do not address subsidies on such crops, 1.3 million small farmers lost their livelihoods - leading to an upsurge in tree clearing for sale and fuel. Subsequent to NAFTA's implementation, the annual rate of deforestation in Mexico rose to 1.1 million hectares, practically doubling the pre-NAFTA rate of 600 thousand hectares per year. Government and academic sources predict comparable threats to rural livelihoods – and thus to forests – from the Peru, Colombia and Panama FTAs, which contain agriculture rules similar to NAFTA.

The revisions to the pending trade deals also failed to address FTA provisions on energy services that threaten the Amazon's biological and cultural diversity while undermining efforts to end America's addiction to oil. For instance, the Peru FTA grants new rights for foreign energy companies to drill for oil and gas throughout Peru. In an historic victory in late 2006, indigenous communities peacefully shut down half of the country's drilling activity in Peruvian Amazon region and have since met with top government officials to change the terms of how, or perhaps even if, energy companies will enter their territories. The FTA would create new rights for foreign energy companies to establish, purchase and operate exploration, extraction and processing facilities with the only caveat being such firms must incorporate in Peru and have a local presence. Some of these rights are enforceable via the FTAs' investor-state provisions. The threat of demands for cash compensation for any environmental protection or community development measures that reduce foreign investors' planned profits could freeze enactment of any new meaningful protections in Peru.

Despite widespread concern of environmental and animal advocates, the Panama and Peru FTAs contain provisions that would make it harder for countries to ban the trade in wild-caught live dolphins and whales. One of the first environmental laws to be attacked using trade rules was the Marine Mammal Protection Act, whose dolphin protection provisions were challenged using the General Agreement Tariffs and Trade. Perversely, if the Panama FTA is approved, it will become even more difficult to protect those live dolphins that have escaped fishing fleets' deadly tuna-fishing

operations, as dolphin capture operations will be empowered to challenge any effort to restrict the capture and export of live dolphins and whales. This issue, especially regarding the plans of Ocean Embassy, a U.S. corporation, to capture wild dolphins in Panama to open a dolphin park, has become a high-profile controversy in Panama.

In conclusion, the mandate of voters coming out of the 2006 midterm elections was for a change of course on the Bush administration's disastrous policies, including away from environment-threatening, NAFTA-style FTAs. While the revised texts show improvements in the FTAs' environmental chapters' texts, the reality is that if these FTAs were to go into effect, they will cause more environmental damage and increase the threat to existing environmental policies. Given the challenges that the world faces to stem global warming, we simply cannot afford to advance trade agreements that we are certain will result in the deforestation of critical tropical rainforests.

We urge you to vote against any and all trade agreements that contain provisions such as those listed in this letter, including any proposal that would provide Fast Track trade negotiating authority.

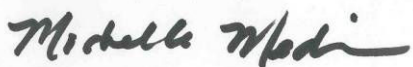
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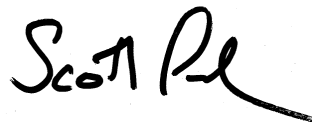
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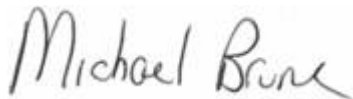
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