CHANGE to WIN

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Vote No on Peru Free Trade Agreement NAFTA Expansion

September 17, 2007

Dear Senator:

On behalf of the six million members of the Change to Win Unions, we are writing to express our opposition to the Peru Free Trade Agreement (FTA). We urge Members of Congress to vote No on the Peru FTA when the Congress considers it, perhaps as soon as early October.

When Democratic trade leaders announced their intentions to engage the Bush Administration to seek changes to the four pending Bush Administration FTAs, some of our unions as well as other allied groups provided a list of minimal changes necessary for us not to oppose these agreements. Most of our concerns were not addressed in any way.

We did not present our notion of what would comprise a "good" trade agreement, but rather limited our demands to a short list of vital changes needed to ensure these agreements minimally would do no harm to working Americans. Thus, we listed as requiring elimination or modification several key aspects of the Peru FTA that literally replicated provisions of the North American Free Trade Agreement (NAFTA) and Central American Free Trade Agreement (CAFTA) that have most directly promoted job loss and downward pressure on wages – such as extreme foreign investor privileges and the ban on domestic anti-offshoring policy for outsourced government work. We also demanded that binding labor and environmental standards be added once the Bush-negotiated pact had been minimally "deNAFTAized."

The Change to Win Unions are pleased to see that improvements were made to the labor and environmental chapters of the FTA. For the first time the FTAs will contain binding obligations to adopt, maintain,

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and enforce the terms of the ILO Declaration on Fundamental Principles and Rights at Work.

However, it is important to note that the modification added was not an obligation to enforce the terms of the actual International Labor Organization (ILO) core *Conventions*, but rather the two-page Declaration which is a more general statement of ILO-sanctioned principles and practices. Given this, we are especially concerned that limiting language was added to the FTA's modified labor chapter that states: "The obligations … as they relate to the ILO, refer only to the ILO Declaration." This new limiting language may limit the effectiveness of the FTA's labor chapter because it provides latitude for FTA dispute settlement panels to interpret and apply the terms of the ILO Declaration differently than the Declaration has been interpreted and applied by the ILO itself.

The ILO interprets the Declaration's core labor standards by referring to eight fundamental ILO conventions and the decades of jurisprudence that the ILO has developed in applying those conventions. However, certain business interests declared they would oppose the FTAs if they incorporated binding ILO Convention obligations. Thus, the limiting language was added. The explicit instruction that limits the obligation "only" to the Declaration could be interpreted to foreclose FTA panels from following the ILO's practice and instead lead FTA panels to define the core labor standards based on general principles that are vague and elastic. Thus, this new language could provide a new tool to those who wish to dilute the core labor standards by de-linking them from the ILO Conventions.

We are also concerned that while the labor chapter of the FTA was improved upon, unfortunately, other chapters of the Bush-negotiated

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FTA that literally replicate job-killing aspects of the core NAFTA-CAFTA model have not been addressed.

The Peru FTA replicates and even extends the extreme NAFTA-CAFTA foreign investor privileges and investor-state enforcement system. Not one word was changed from the Bush-negotiated text. Thus, like NAFTA and CAFTA, the Peru FTA allows foreign investors to skirt U.S. courts and law with new rights to privately enforce FTA privileges by suing the U.S. government in foreign tribunals for cash compensation for violations of their FTA-granted rights. Thus, the Peru FTA's investment chapter affords foreign investors greater substantive and procedural rights than those enjoyed by U.S. investors. By providing greater privileges to investors who move overseas, these investment rules actually promote off-shoring. They also subject our domestic environmental, zoning, health, and other public interest policies to challenge directly by foreign firms in foreign tribunals. Under NAFTA's similar rules, some $35 million has been paid out to foreign investors over challenges to toxics bans and zoning rules. The Peru FTA's investment rules even extend beyond those in NAFTA and CAFTA allowing foreign investors to challenge in foreign tribunals the terms of contracts regarding mining, timber and other concession contracts with the U.S. federal government.

The Peru FTA replicates the NAFTA-CAFTA procurement chapters' ban on Buy America and anti-offshoring policies. The FTA's "National Treatment" rules forbid us from giving preference to domestic goods and firms. Thus, federal and state anti-offshoring rules requiring hiring of U.S. workers for outsourced government work and Buy-America and similar state policies are forbidden. The FTA instead explicitly requires that all firms established in FTA countries, even foreign firms, must be treated the same as U.S. firms when seeking government contracts. This means that the procurement chapter of the FTAs prohibits state and federal governments from spending our tax dollars to purchase goods and services in which we should have a right to demand that those tax dollars be invested in creating good U.S. jobs.

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The Peru FTA also replicates the NAFTA-CAFTA limits on imported food safety and inspection. Change to Win represents more than one million workers in food industries. The FTAs could have been an opportunity to create a new model for enhanced food safety in trade. Instead, the FTA replicates food trade rules that set limits on safety standards and inspection and require the United States to accept imported food that does not meet our safety standards. As you may know, Peru has a major export fishing sector. The Food and Drug Administration's database has documented discovery of poisonous swordfish, Salmonella in shrimp, dangerous histamines in Mahi Mahi, and filthy shipments of dried, canned, frozen, and fresh fish products from Peru. Also, in 2006, FTA inspectors found illegal pesticide residues in dried paprika, tangelos, clementines, sugar snap peas, and ancho-chiles. This is not only a concern to us as consumers, and competitors, but also as a matter of rights and safety for Peruvian workers exposed to such illegal pesticides.

The Change to Win Unions are calling on Congress to stop the NAFTA expansion to Peru not only because we believe it is not a good deal for our workers, but also because we stand in solidarity with our union brothers and sisters in Peru who also oppose the FTA. Our brothers and sisters in Peru have been working passionately to restore their basic labor rights which were gutted during the Fujimori dictatorship. For the past six years, they have been fighting to get their Congress to pass a General Labor Law. When some Democratic trade leaders insisted that Peru bring its labor law into compliance with the FTA's labor chapter standards prior to a U.S. vote on the pact, our brothers' and sisters' long efforts to pass the General Labor Law seemed poised for success.

Unfortunately, the multi-year effort to implement basic labor law improvement in Peru has now been derailed by the August announcement of an agreement between Peru's President Garcia and some Democratic trade leaders that issuance of Presidential Decrees on labor policy will be sufficient. Such decrees are time limited and do not change Peruvian labor law. Furthermore,

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while discussions about putative improvements to Peru's labor laws have been taking place, the Peruvian government has simultaneously been actively working to diminish worker rights in other areas. For instance, there is a proposed new law that would expand the number of businesses that would qualify as small business enterprises with exclusion from various labor rights obligations and the right to offer workers lower minimum wages. Instead of improving labor rights in Peru, the FTA process is undermining improvements for which Peruvian workers and unions have long fought.

We strongly believe that now is not the time to rush ahead with more of the same damaging NAFTA-CAFTA style trade policies that have proven to hurt U.S. workers and the livelihoods of many in our developing country trade partner countries. We have seen the impact NAFTA, and even now CAFTA, have had on all workers, and it's not good. The Change to Win Unions are eager to work with you to create a trade policy – and trade agreements – that we can support because it puts social well-being, human rights, and job creation at the center. Unfortunately, the modified Peru FTA does not meet that test – or even the most conservative do-no-further-harm test.

Once again, we urge Members of Congress to oppose the Peru FTA when the Congress considers it in October. Please feel free to contact Yvette Pena Lopes, who heads our legislative working group on trade, at 202-624-6805 if you have any questions or concerns.

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Sincerely,

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