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FTA Provisions Not Altered in May 10 “Deal” Undermine Access to Essential Services in Peru and Panama

Many in Congress have prioritized policies that ensure universal access to affordable, quality healthcare and education, and other essential services. Many Democrats fought against the partial privatization of the U.S. social security system. California members of Congress especially have lived the consequences of extreme deregulation of utility sectors, such as electricity.

But the Peru- and Panama-U.S. “free trade” agreements (FTAs) service sector and investment rules encourage policies that Democrats oppose at home, including privatization and deregulation of key essential services. The Peru and Panama FTAs contain what are called “top-down” service sector agreements. This means that unless an specific exception was taken to carve out a specific listed service sector, limits on government regulation contained in the FTAs’ service sector chapters *automatically apply* to policies now in place or those adopted in the future at all levels of government. The FTAs’ service sector agreements even impose constraints on policies implemented by non-governmental bodies in the exercise of delegated authority, such as public university boards (Peru and Panama FTAs Article 11.1).

The FTAs’ service sector rules also require that services provided by the government or as regulated monopolies be opened to foreign for-profit competition unless “market access” exceptions are listed in the FTAs’ Annexes. These FTA “market access” rules not only require for-profit competition in all sectors not listed as exceptions, but also forbid limits on the size of, number of, needs tests for, or non-profit status of such services.

With a few exceptions, the United States took exceptions so that only those service sectors already bound to comply with WTO service sector rules are covered. (This includes many problematic sectors, but not new sectors relative to WTO.) In contrast, Peru and Panama were pressed to make a vast array of commitments that go far beyond the countries’ WTO commitments. The May 10 “deal” announced by some Democratic leaders and the Bush administration does not address these critical service issues, with the exception of removing one of the U.S.’ WTO-plus commitments – landside port activities – from the list of services which foreign investors have rights to own and operate within the United States.

- **Peru and Panama have no WTO obligations to allow foreign firms wholesale or retail distribution rights for tobacco, alcohol or firearms, meaning the governments are free to strictly regulate in these areas – but the Peru FTA constrains those existing rights regarding both wholesale and retail distribution, and the Panama agreement sets limits on government regulation of wholesale distribution by foreign firms.** Given the FTAs have a top-down services agreement and Peru did not take any exception for retail or wholesale distribution of tobacco, firearms or alcohol, Peru could not ban U.S. companies from selling such items, even if the country forbids distribution of such items by private sector Peruvian firms. Panama took an exception allowing only Panamanian nationals to own and operate in the

retail sector, but took no exception for wholesale – meaning U.S. firms would have new rights to distribute such goods to Panamanian retailers.

- **The disastrous record of social service privatization suggests the need to eliminate FTA threats to social services, not make them worse.** Peru does not include an exception for the right the FTA provides for-profit foreign providers to compete against government education and health services – among other essential social services. This is a flaw that would strictly limit the Peruvian government’s ability to implement many policies vital to needed pension, education and health reforms (Annex II-Peru-10). Panama did take market access exceptions in these areas, protecting its right to maintain government monopolies in these sectors (Annex II-Panama-1).
- **Common public policies to keep services affordable are prohibited.** The FTAs’ rules forbid common policies, such as rate cross-subsidization, in all sectors not listed as exceptions. Yet, such policies are necessary to provide affordable services to people in rural areas, which includes much of Peru and Panama’s territories.
- **Electric utility regulations (that U.S. experience shows are needed) are prohibited.** Given the unfortunate experience in the United States of deregulating the wholesale electricity market, why would a U.S. FTA forbid countries from establishing limits on the number or size of such operations or to forbid provision of such services through a regulated monopoly or a not-for-profit? Peru took no exceptions for the electricity sector, while Panama preserved its government monopoly over electric power transmission, but left electric power distribution services open to future market access challenges (Panama FTA I-PA-11).
- **Both countries listed market access exceptions for potable water, meaning for-profit foreign firms have no new rights to acquire or operate public drinking water systems. However, only Peru listed such exceptions for sewage treatment.**
- **Neither country listed an exception for wholesale or retail distribution or sale of pharmaceuticals, meaning certain regulations in this area aimed at reducing the cost of medicines would be forbidden.**