

The U.S.-Panama Free Trade Agreement

**Report of the
Labor Advisory Committee for Trade Negotiations and Trade Policy
(LAC)**

April 25, 2007

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**Labor Advisory Committee for Trade Negotiations and Trade Policy
Report to the President, the Congress and the United States Trade Representative
on the U.S.-Panama Free Trade Agreement**

April 25, 2007

I. Purpose of the Committee Report

Section 2104(e) of the Trade Act of 2002 (TPA) requires that advisory committees provide the President, the U.S. Trade Representative (USTR), and Congress with reports required under Section 135(e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement. Under Section 135(e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002. The committee report must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the relevant sectoral or functional area of the committee. Pursuant to these requirements, the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) hereby submits the following report.

The LAC would like to lodge a formal protest over the procedures followed by USTR in this instance, namely, its failure to provide sufficient time to participate meaningfully in the consultation process. Advisory committee reports are meant to present Congress with an informed and meaningful opinion on the substantive provisions of a trade agreement. Under § 2104(e), advisors are to be given thirty days to produce these reports. However, the LAC was only notified of the president's intent to sign the agreement late Friday, March 30 and was thereafter given only until April 25 to submit the report.

Most important, the U.S.-Panama FTA may be subject to potentially substantial changes. USTR negotiators have indicated to the press that there may be changes made to several chapters in pending trade agreements. In failing to resolve these critical issues prior to March 31, 2007, the Bush Administration has divested civil society of its ability to review a *final* agreement and give its fully informed opinion.

II. Executive Summary of the Committee Report

This report reviews the mandate and priorities of the LAC, and presents the advisory opinion of the Committee regarding the U.S.-Panama Free Trade Agreement (FTA). It is the opinion of the LAC that the Panama FTA fails to meet the negotiating objectives laid out by Congress in TPA and will not promote the economic interest of the United States. The labor provisions of the Panama FTA, as with all of the other FTAs negotiated by the Bush Administration, will not protect the fundamental human rights of workers in either country. Rather, the provisions continue to represent a step backwards from the Jordan FTA and our unilateral trade preference programs, including the Generalized System of

Preferences (GSP) and the U.S.-Caribbean Basin Trade Partnership Act (CBTPA), which currently apply to Panama. The Panama FTA's labor chapter explicitly excludes any enforceable obligation for the government to meet international standards on workers' rights. The Panama FTA also contains no enforceable provisions preventing countries from waiving or weakening existing labor laws in order to increase trade.

The agreement's provisions on investment, procurement, and services constrain both governments' ability to regulate in the public interest, pursue legitimate social objectives through procurement policies, and provide affordable and high quality public services. Rules of origin and safeguards provisions invite producers to circumvent the intended beneficiaries of the trade agreement and fail to adequately protect workers from the import surges that may result.

III. Brief Description of the Mandate of the Labor Advisory Committee

The LAC charter lays out broad objectives and scope for the committee's activity. It states that the mandate of the LAC is:

To provide information and advice with respect to negotiating objectives and bargaining positions before the U.S. enters into a trade agreement with a foreign country or countries, with respect to the operation of any trade agreement once entered into, and with respect to other matters arising in connection with the development, implementation, and administration of the trade policy of the United States.

The LAC is the most broadly representative committee established by Congress to advise the administration on U.S. trade policy. The LAC is the only trade advisory committee that includes labor representatives from the manufacturing and high-tech sectors, in addition to the service, transportation, and government sectors. The LAC includes representatives from unions at the local and national level, together representing more than 16 million American working men and women.

IV. Negotiating Objectives and Priorities of the Labor Advisory Committee

As workers' representatives, the members of the LAC judge U.S. trade policy based on its real-life outcomes for working people in America. Our trade policy must be formulated to improve economic growth, create good jobs, raise wages and benefits, and allow all workers to exercise their rights in the workplace. Too many trade agreements have had exactly the opposite result.

Since NAFTA went into effect, for example, our combined trade deficit with Canada and Mexico grew from \$9 billion to more than \$137 billion, leading to the loss of more than one million job opportunities in the United States. Under NAFTA, U.S. employers took advantage of their new mobility and the lack of protections for workers' rights in the agreement to shift production, hold down domestic wages and benefits, and successfully intimidate workers trying to organize unions in the U.S. with threats to move to Mexico.

Furthermore, the North American Agreement on Labor Cooperation (NAALC) has proved to be an ineffective tool to improve labor conditions in the U.S., Mexico or Canada, given the lack of political will to see it work.

In order to create rather than destroy good jobs, trade agreements must be designed to reduce our unsustainable trade deficit by providing fair and transparent market access, preserving our ability to use domestic trade laws, and addressing the negative impacts of currency manipulation, non-tariff trade barriers, financial instability, and high debt burdens on our trade relationships. In order to protect workers' rights, trade agreements must include enforceable obligations to respect the core labor standards of the International Labor Organization (ILO) – freedom of association, the right to organize and bargain collectively, and prohibitions on child labor, forced labor, and discrimination – in their core text and on parity with other provisions in the agreement.

The LAC is also concerned with the impact that U.S. trade policy has on other matters of interest to our members. Trade policy must protect our government's ability to regulate in the public interest; to use procurement dollars to create good jobs, promote economic development and achieve other legitimate social goals; and to provide high-quality public services. Finally, we believe that American workers must be able to participate meaningfully in the decisions our government makes on trade, based on a process that is open, democratic, and fair.

V. Advisory Committee Opinion on the Agreement

The LAC is not opposed in principle to expanding trade with Panama, if a trade agreement could be crafted that would promote the interests of working people and benefit the economies of both countries. Unfortunately, the U.S. Trade Representative failed to reach such an agreement with Panama. The labor provisions of the Panama FTA are a move backwards from the labor provisions of our unilateral trade preference programs and the Jordan FTA. Meanwhile, the commercial provisions of the agreement do more to protect the interests of U.S. multinational corporations than they do to promote balanced trade and equitable development. House Democrats have demanded that certain of these chapters be renegotiated, including labor, environment, procurement, investment and intellectual property. If the FTA is in fact renegotiated, the LAC must have another opportunity to review the agreement and present its opinion.

A. Trade Impacts of the Panama FTA

The trade relationship with Panama is quite small relative to the economy of the United States. Moreover, the U.S. currently has a sizeable trade surplus in goods with Panama -- roughly \$2.3 billion. In 2006, Panama exported only \$378 million worth of goods, with fish, returned goods/reimports and sugar being the top three exports to the U.S. However, that figure obscures actual trade with Panama, as the economy is highly concentrated in service sector -- accounting for roughly 80 percent of its economic activity. Leading services include the Panama Canal, banking, the Colon Free Zone, insurance, container ports, and flagship registry, medical and health, and tourism. Thus,

while the market access provisions of the agreement themselves may not have much of a negative impact on our trade relationship, these provisions, when combined with rules on investment, procurement, and services could further facilitate the shift of U.S. investment and production overseas, harming American workers.

B. Labor Provisions of the Panama FTA

The Panama FTA's combination of unregulated trade and increased capital mobility not only puts jobs at risk, it places workers in both countries in more direct competition over the terms and conditions of their employment. High-road competition based on skills and productivity can benefit workers, but low-road competition based on weak protections for workers' rights drags all workers down into a race to the bottom. Congress recognized this danger in TPA, and directed USTR to ensure that workers' rights would be protected in new trade agreements. One of the overall negotiating objectives in TPA is "to promote respect for worker rights ... consistent with core labor standards of the ILO" in new trade agreements. TPA also includes negotiating objectives on non-derogation from labor laws and effective enforcement of labor laws.

The labor provisions of this agreement fall far short of these objectives. In the Panama FTA, only one labor rights obligation – the obligation for a government to enforce its own labor laws – is actually enforceable through dispute settlement. All of the other obligations contained in the labor chapter, many of which are drawn from congressional negotiating objectives, are explicitly not covered by the dispute settlement system and thus completely unenforceable.

Like DR-CAFTA and the Peru and Colombia FTAs, the Panama FTA:

- Does not contain enforceable provisions requiring that the government meet its obligations under the ILO core labor standards.
- Does not prevent Panama from "weakening or reducing the protections afforded in domestic labor laws" to "encourage trade or investment." Under the agreement, Panama could roll back its labor laws without threat of fines or sanctions.
- Does not require that Panama effectively enforce its own laws with respect to employment discrimination, a core ILO labor right.

Contrary to TPA, the dispute settlement mechanisms in the Panama FTA are wholly inadequate and much weaker than those available to settle commercial disputes arising under the agreement.

- The labor enforcement procedures cap the maximum fine at \$15 million and allow Panama to pay those fines to itself with little oversight. This directly violates TPA, which instructs our negotiators to seek provisions in trade agreements that treat all negotiating objectives equally and provide equivalent dispute settlement procedures and equivalent remedies for all disputes.

- Not only are the fines for labor disputes capped, but the level of the cap is so low that the fines will have little deterrence effect. The cap in the Panama agreement is \$15 million – about one-tenth of one percent of our total two-way trade in goods with Panama last year.
- Finally, the fines are robbed of much of their effect by the manner of their payment. While the LAC supports providing financial and technical assistance to help countries improve labor rights, such assistance is not a substitute for the availability of sanctions in cases where governments refuse to respect workers' rights in order to gain economic or political advantage. In commercial disputes under the Panama FTA, the deterrent effect of punitive remedies is clearly recognized – it is presumed that any monetary assessment will be paid out by the violating party to the complaining party, unless a panel decides otherwise. Yet for labor disputes, the violating country pays the fine to a joint commission to improve labor rights enforcement, and the fine ends up back in its own territory. No rules prevent a government from simply transferring an equal amount of money out of its labor budget at the same time it pays the fine. And there is no guarantee that the fine will actually be used to ensure effective labor law enforcement, since trade benefits can only be withdrawn if a fine is not paid. If the commission pays the fine back to the offending government, but the government uses the money on unrelated or ineffective programs so that enforcement problems continue un-addressed, no trade action can be taken.

The labor provisions in the Panama FTA are woefully inadequate, and clearly fall short of the TPA negotiating objectives. They will be extremely difficult to enforce with any efficacy, and monetary assessments that are imposed may be inadequate to actually remedy violations.

I. OVERVIEW OF LABOR RIGHTS IN PANAMA

As a member of the International Labor Organization (ILO) and through ratification of all eight ILO core conventions of the 1998 *Declaration on Fundamental Principles and Rights at Work*, the government of Panama has accepted international obligations to respect fundamental labor rights.¹ Panama has also ratified the American Convention on Human Rights, and accepted jurisdiction of the Inter-American Court of Human Rights. Article 16 of the American Convention guarantees freedom of association, with specific reference to trade unions. Additionally, Panama ratified the Protocol of San Salvador. Article 8 of this protocol affirms freedom of association and the right to strike. Yet,

¹ The eight ILO core conventions are: Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Right to Organize and Collective Bargaining Convention, 1949 (No. 98), Forced Labor Convention, 1930 (No. 29), Abolition of Forced Labor Convention, 1957 (No. 105), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Equal Remuneration Convention, 1951 (No. 100), Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labor Convention, 1999 (No. 182).

Panama's labor laws fail to comply with international standards, and the government of Panama systematically violates fundamental workers' rights.

A. Panama's Government Fails to Enforce Labor Laws Effectively

In addition to refusing to follow ILO recommendations to reform its labor laws to meet international standards, the government of Panama fails to enforce its laws effectively. Employers exploit weaknesses in the law and lax enforcement to violate workers' rights freely. Additionally, employers in Panama are able to escape many of their legal obligations by hiring workers as temporary rather than full-time employees. The U.S. State Department reports:

Employers in the retail industry commonly hired temporary workers to circumvent labor code requirements for permanent workers. In lower-skilled service jobs, employers often hired employees under three-month contracts for several years, sometimes sending such employees home for a month, and later rehired them. Employers also circumvented the law requiring a two-week notice for discharges by dismissing some workers one week before a holiday. Due to labor laws that made it difficult to fire employees who had worked two years or more, it was not uncommon to hire workers for one year and 11 months and subsequently lay them off.²

The situation in Panama with respect to core labor standards, as defined by Section 2113(6) of the Trade Act of 2002, demonstrates the deficiency of Panama's labor laws and the government's inability to enforce their own labor laws effectively.

1. Denial of Freedom of Association

Though private sector workers have the right to form and join unions, Panamanian law denies the freedom of association by placing limitations on this right.

Restrictions on Union Leadership. Article 64 of Panama's Constitution violates ILO Convention No. 87 by requiring Panamanian nationality to serve on the executive board of a trade union.³

Limitations on the Number of Unions. Panamanian law, Sections 174 and 178 in the final paragraph of Act No. 9 of 1994 limits one association per institution. Associations may have provincial or regional chapters, but not more than one chapter per province. This provision has the effect of mandating trade union monopolies in contravention of ILO Convention No. 87.⁴

² U.S. Department of State, *Country Report on Human Rights Practices 2006 – Panama*, Mar. 6, 2007 (*hereinafter* "State Dept., Country Report 2006").

³ CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organize, Panama – 2007 (*hereinafter* "ILO Individual Observation - Convention No. 87").

⁴ *Id.*

Burdensome Requirements for Union Recognition. The Labor Code establishes the minimum size of unions at 40 workers. Employees of small companies may organize under a larger umbrella group of employees with similar skills and form a union as long as they number at least 40.⁵

2. Denial of the Right to Organize and Bargain Collectively

The following aspects of Panama's labor law deny workers the right to organize and bargain collectively:

Direct Bargaining with Non-Union Workers: Section 431 of the Labor Code permits collective bargaining with groups of non-unionized workers in the private sector, even where a union exists.⁶ According to CONATO (National Council of Organized Workers), groups of non-unionized workers in the private sector are being allowed to exclude unions from exercising collective bargaining by means of "agreements" prepared by the enterprise. As a consequence of these agreements, legitimate trade unions are unable to seek to engage in collective bargaining or to submit claims.⁷ According to the State Department's 2006 Report, "Employers increasingly negotiated directly with unorganized workers before unions formed or had a majority presence in the workplace. According to data from the Ministry of Labor, since 1990 approximately 645 of 998 collective agreements were negotiated directly between employers and workers."⁸

Denial of the Right to Bargain Collectively in Enterprises in Existence for Less Than Two Years: Under Section 12 of Act No. 8 of 1981, no employer shall be compelled to conclude collective agreements during the first two years of an enterprise's operation.⁹

3. Improper Limitations on Right to Strike

Federations and Confederations: Federations and confederations of unions are prohibited from calling strikes.¹⁰

Limitation on Purpose of Strike: Generally, strikes are only permitted in pursuance of collective bargaining. Thus, strikes related to economic and social policy are prohibited, a provisions that is contrary to the principle of freedom of association.

Majority of Workers in Enterprise Needed to Call Strike: Under Section 476(2), the support of the majority of the workers in the enterprise, shop or establishment is needed

⁵ Id.

⁶ CEACR: Individual Observation concerning Right to Organize and Collective Bargaining Convention (No. 98) Panama – 2007 (hereinafter "ILO Individual Observation - Convention No. 98").

⁷ Id.

⁸ State Dept., *Country Report 2006*.

⁹ "ILO Individual Observation - Convention No. 98.

¹⁰ ILO Individual Observation - Convention No. 87.

to call a strike. This requirement is excessive and should be reduced, in accordance with ILO jurisprudence.¹¹

Strikes in EPZs: According to the State Department's 2006 Report, the government has not yet provided information to the ILO Committee of Experts to confirm whether workers in EPZs have the right to strike. However, the State Department has indicated that a strike in an EPZ "is considered legal only after 35 workdays of conciliation are exhausted."¹² Those who strike before this period is exhausted can be fined or fired. The ILO Committee of Experts has previously requested that Panama take steps to reduce the length of this procedure.¹³

Denial of the Right to Strike in Enterprises in Existence for Less Than Two Years: Under Section 12 of Act No. 8 of 1981, no employer shall be compelled to conclude collective agreements during the first two years of an enterprise's operation. Since the general legislation permits strikes only in pursuance of collective bargaining or in other limited cases, strikes are effectively prohibited in such enterprises.¹⁴

Lockouts and Compulsory Arbitration: Sections 452(2), 493(1) and 497 of the Labor Code allow for interference in the activities of employers' and workers' organizations, such as the closure of the enterprise in the event of a strike and compulsory arbitration at the request of one of the parties.¹⁵

4. Denial of Workers' Rights in the Canal Zone

Non-application of Panamanian Labor Law. The Panamanian Labor Code does not govern Panama Canal Zone workers. These employees are regulated through a special labor relations system that includes a Labor Relations Board and an Arbitration Panel for resolution of disputes. In practice, however, this system has not been applied, the Labor Relations Board has excused itself from reviewing and making determinations on cases, and the Arbitration Panel has emitted resolutions that violate the Panama Canal Organic Laws.¹⁶

Violation of Collective Bargaining Rights. As Section 75 of Legislative Decree No. 8 of 1998, in contrast with the Labor Code, does not establish the obligation to conclude collective agreements, but provides that enterprises may conclude them.¹⁷

Prohibition of the Right to Strike. The law governing the Panama Canal Authority prohibits the right to strike for its 9,000 employees, although the constitutionality of the provision is under review by the Supreme Court of Justice.¹⁸

¹¹ Id.

¹² State Dept., *Country Report 2006*.

¹³ ILO Individual Observation - Convention No. 98 (2002).

¹⁴ ILO Individual Observation - Convention No. 87.

¹⁵ Id.

¹⁶ AFL-CIO, Panama: Labor Rights And Child Labor Reports, filed with Dept. of Labor on Aug. 9, 2004, p. 8.

¹⁷ ILO Individual Observation - Convention No. 98.

Use of Internal Regulations in the Panama Canal Authority to Sanction Workers: The Panama Canal Authority has several collective bargaining agreements with unions representing workers in the Canal Zone. The collective bargaining agreements in place provide for grievance and disciplinary measures, using mechanisms that have been agreed upon by labor and management. In violation of the collective bargaining agreements, the Panama Canal Authority has used the unilaterally adopted internal regulations on ethical behavior to discipline workers and suspend them without salary for up to 30 days.¹⁹

In 2006, the Panamanian Trade Union of Maritime Tugging, Barges and Related Services (SITRASERMAP), brought a case before the Committee on Freedom of Association of the ILO related to violations of its trade union rights in the Canal Zone.²⁰ Specifically, the union alleged that “workers employed at sea and on waterways are not allowed to present lists of demands with a view to a collective agreement or any other industrial agreement and that the conciliation procedure prior to striking may therefore not be initiated. This prevents a large sector of the workers from exercising the right to strike.” The Committee noted that the government did not deny the allegation that the law obstructs the right to collective bargaining and to strike. The Committee requested that the government “take the necessary measures to amend section 75 of Decree No. 8 of 1998 and to encourage and promote the full development and use of machinery for voluntary negotiation between employers or employers' and workers' organizations within the sector, with a view to the regulation of terms and conditions of employment by means of collective agreements.”

5. *Public Sector Employees Rights Limited*

In Panama, public sector employees are covered under the Administrative Careers Act, not the Labor Code. The Act substantially limits the basic trade union rights of public employees, as the vast majority of which are not eligible to form a labor organization because they are not career employees. As the State Department explained in its 2006 Human Rights Report,

“Public workers had an association consisting of 21 public worker associations, but this association did not strike or negotiate collective bargaining agreements because only approximately 14.5 percent of government workers were protected from arbitrary dismissal as certified career employees. During the year the ombudsman's office reported that it had received 214 complaints of alleged unjustified dismissal from public employees. The law grants some public employees a limited right to strike, except for those in areas vital to public welfare and security such as police and health workers. At least 25 percent of the workforce must continue to work to provide minimum service in the case of administrative workers, and

¹⁸ Id.

¹⁹ AFL-CIO, Panama: Labor Rights And Child Labor Reports, Aug. 9, 2004, p. 8.

²⁰ ILO Committee on Freedom of Association, Report No. 342, Case No. 2372.

50 percent of workers providing "essential public services," such as transportation, firefighting, telecommunications, and mail, must continue to provide those services. There was no information regarding whether the government had responded to the ILO Committee of Experts 2005 comments that inclusion of transport workers under the law regarding limitation on strikes in essential services sectors went beyond essential services in the strict sense of the term."²¹

In the public sector, a minimum of 50 workers is required to establish an organization – a minimum that is far too high under ILO jurisprudence. Other impermissible restrictions in law include the authority of the Regional or General Labor Directorate to refer labor disputes to compulsory arbitration in order to stop a strike in a public service enterprise, including when the service cannot be considered essential in the strict sense of the term, such as transportation.²²

6. *Forced and Compulsory Labor*

The Labor Code prohibits forced or compulsory labor by adults and children, but according to the U.S. State Department, trafficking in women for forced labor and sexual exploitation is a problem.²³ In its 2006 report on trafficking in persons the U.S. State Department ranked Panama a tier two country. This ranking means that Panama does not fully comply with the United States' minimum standards for combating the problem of human trafficking, but that Panama is making significant efforts to bring themselves into compliance with these standards.²⁴

Panama's 2004 anti-trafficking law focuses on commercial sexual exploitation and assigns penalties of five to 10 years in prison. However, no one yet has been convicted under this law. Further, the police anti-trafficking unit in the capital has a staff of only three officers and inadequate resources. Police officers in other parts of the country had insufficient training to conduct trafficking investigations.²⁵ The *Trafficking in Person's Report* recommends that, "The government should allocate additional resources for law enforcement to receive training and more vigorously conduct trafficking investigations and prosecutions in the capital and other parts of the country. It should also ensure that foreign workers are informed of their rights and the services available to assist and protect trafficking victims."²⁶

7. *Unenforced Minimum Age for the Employment of Children*

²¹ State Dept., *Country Report 2006*.

²² ILO Individual Observation - Convention No. 87

²³ State Dept., *Country Report 2006*.

²⁴ U.S. Department of State, *Trafficking in Persons Report*, 2006.

²⁵ State Dept., *Country Report 2006*.

²⁶ U.S. Department of State, *Trafficking in Persons Report*, 2006.

According to the State Department Human Rights Report for 2006, Panama's child labor laws are generally in compliance with ILO norms.²⁷ However, those laws are not adequately enforced.

Rural Child Labor

"Child labor violations occurred most frequently in rural areas, in both subsistence and commercial agriculture, especially during the harvest of sugar cane, coffee, palm, melons, and tomatoes. Farm owners often paid according to the amount harvested, leading many laborers to bring their young children to the fields to help with the work. Unlike last year, there were no credible reports that child labor continued in the commercial banana sector."

Domestic Child Labor

"Child domestic labor was a problem. According to the 2000 census, more than 6,000 children between the ages of 10 and 17 worked as domestic servants. Government enforcement of domestic labor violations was traditionally weak because the place of work was a private residence."

Informal Sector

"Many children continued to work in the informal sector of the economy as street vendors, shoe shiners, car window washers, grocery baggers in supermarkets, trash pickers, or beggars. A 2005 ILO survey, the most recent available, estimated that 52,000 children between the ages of five and 17 worked in the informal sector. The government estimated that there were 15,000 children employed or working on their own informally in urban areas. Approximately 45 percent of these children did not attend school."

8. Unacceptable Conditions of Work

i. Minimum Wage

The estimated annual poverty income level was \$953 balboas, which was below the minimum wage level. According to the U.S. State Department's 2006 Report, the law establishes minimum wage rates for specific regions and for most categories of labor, excluding public sector workers. Currently, the minimum wage ranged from \$0.89 balboas to \$1.68 balboas per hour, depending on the region and sector. This wage is insufficient to provide a decent standard of living for a worker and family.²⁸

ii. Hours of Work

The law establishes a standard workweek of 48 hours, provides for at least one 24-hour

²⁷ State Dept., *Country Report 2006*.

²⁸ *Id.*

rest period weekly, limits the number of hours worked per week, provides for premium pay for overtime, and prohibits excessive or compulsory overtime.²⁹

iii. Occupational Safety and Health

According to the State Department's 2006 Report, the government failed to enforce adequately health and safety standards. The report specifically noted that adherence to basic safety measures in the construction industry was poor. Moreover, although workers have the right to remove themselves from situations that present an immediate health or safety hazard without jeopardizing their employment, they generally were not allowed to do so if the threat was not immediate.³⁰

C. Other Issues in the Panama FTA

In addition to the very serious problems with the labor provisions of the Panama agreement outlined above, commercial provisions of the agreement also raise serious concerns for the LAC. These issues have been discussed in detail in previous LAC reports. Unfortunately, the Panama FTA contains many of the same provisions as these previous agreements, and raises many of the same concerns, summarized in brief below.

Investment: In TPA, Congress directed USTR to ensure “that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States.” Yet the investment provisions of the Panama FTA contain large loopholes that allow foreign investors to claim rights above and beyond those that our domestic investors enjoy. The agreement's rules on expropriation, its extremely broad definition of what constitutes property, and its definition of “fair and equitable treatment” are not based directly on U.S. law, and annexes to the agreement clarifying these provisions also fail to provide adequate guidance to dispute panels. As a result, arbitrators could interpret the agreement's rules to grant foreign investors greater rights than they would enjoy under our domestic law. In addition, the agreement's deeply flawed investor-to-state dispute resolution mechanism contains none of the controls (such as a standing appellate mechanism, exhaustion requirements, or a diplomatic screen) that could limit abuse of this private right of action. Finally, the marked difference between the dispute resolution procedures and remedies available to individual investors and the enforcement provisions available for the violation of workers' rights and environmental standards flouts TPA's requirement that all negotiating objectives be treated equally, with recourse to equivalent dispute settlement procedures and remedies.

Intellectual Property Rights: In TPA, Congress instructed our trade negotiators to ensure that future trade agreements respect the declaration on the Trade Related Aspects on Intellectual Property Rights (TRIPs) agreement and public health, adopted by the WTO at its Fourth Ministerial Conference at Doha, Qatar. The Panama FTA contains a

²⁹ Id.

³⁰ Id.

number of “TRIPs-plus” provisions on pharmaceutical patents, including on test data and marketing approval, which could be used to constrain the ability of a government to issue compulsory licenses as permitted under TRIPs and the Doha Declaration.

Government Procurement: The FTA’s rules on procurement restrict the public policy aims that may be met through procurement policies at the federal level. These rules could be used to challenge a variety of important procurement provisions including domestic sourcing preferences, prevailing wage laws, project-labor agreements, and responsible contractor requirements. Growing concern among state governors and legislators has led many states to refuse to be bound by the FTA. The LAC believes that governments must retain their ability to invest tax dollars in domestic job creation and to pursue other legitimate social objectives, and that procurement rules which restrict this authority are inappropriate.

Safeguards: Workers have extensive experience with large international transfers of production in the wake of the negotiation of free trade agreements and thus are acutely aware of the need for effective safeguards. The safeguard provisions in the Panama agreement, which offer no more protection than the limited safeguard mechanism in NAFTA, are not acceptable. A surge of imports from large multinational corporations can overwhelm domestic producers very quickly, causing job losses and economic dislocation that can be devastating to workers and their communities. For many American workers losing their jobs to imports, it may be their own employer that is responsible for the surge of imports. In such a case, and similar situations in which an international sourcing decision has been made on the basis of a free trade agreement, the usual remedy of restoration of the previous tariff on the imports will not be enough to reverse the company’s decision to move production abroad. The Panama FTA has failed to provide the necessary import surge protections for American workers.

Services: NAFTA and WTO rules restrict the ability of governments to regulate services – even public services. Increased pressure to deregulate and privatize could raise the cost and reduce the quality of basic services. Yet the Panama agreement does not contain a broad, explicit carve-out for important public services. Public services provided on a commercial basis or in competition with private providers are generally subject to the rules on trade in services in the Panama FTA, unless specifically exempted. The specific exemptions for services in the Panama agreement fall short of what is needed to protect important sectors. There are, for example, no U.S. exceptions for energy services (except atomic), water services, sanitation services, public transportation, education or health care. Even for those services the U.S. did make exceptions for, the exemption only applies to some of the core rules of the FTA, not all. These partial exceptions are particularly worrisome given the tendency of trade dispute panels to interpret liberalization commitments expansively, and to interpret exceptions to those commitments narrowly. One manifestation of this problem is the recent WTO decision against the U.S. on gambling services – the U.S. argued unsuccessfully that gambling was not covered by the WTO’s General Agreement on Trade in Services, and now potentially faces the prospect of facing challenges to our state and federal gambling regulations.

VI. Conclusion

The LAC recommends that the President not sign the Panama agreement. U.S. workers are willing to support increased trade if the rules that govern it stimulate growth, create good jobs, and protect fundamental rights. The LAC is committed to fighting for better trade policies that benefit U.S. workers and the U.S. economy as a whole. We will oppose trade agreements, including the U.S.-Panama Free Trade Agreement, which does not meet these basic standards.

VII. Membership of the Labor Advisory Committee

Tim Brown, President, International Organization of Masters, Mates & Pilots (MMP)
Thomas Buffenbarger, International President, International Association of Machinists and Aerospace Workers (IAM)
Chuck Canterbury, National President, Fraternal Order of Police (FOP)
John Connolly, former President, American Federation of Television and Radio Artists (AFTRA)
Ron Davis, President, Marine Engineers' Beneficial Association (MEBA)
Leo Gerard, International President, United Steelworkers of America (USW)
Ron Gettelfinger, President, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW)
Cheryl Johnson, President, United American Nurses (UAN)
Gregory Junemann, International President, International Federation of Professional and Technical Engineers (IFPTE)
Thomas Lee, President, American Federation of Musicians (AFM)
Bruce Raynor, General President, Union of Needletrades, Industrial & Textile Employees-Hotel Employees and Restaurant Employees International Union (UNITE HERE)
Michael Sacco, President, Seafarers International Union (SIU)
John Sweeney, President, American Federation of Labor & Congress of Industrial Organizations (AFL-CIO)
Duane Woerth, former President, Air Line Pilots Association (ALPA)

USTR List as of February 2007