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“Flat-Out, Completely, Horizontally Opposed to CAFTA,” Rep. Robin Hayes Flip-flops His Initial “No” Vote to “Yes” at Last Minute for Empty Promises on Textiles ... Again

Public Citizen Launches CAFTA Damage Report to Track Outcome of Hayes’ Misguided Vote

WASHINGTON, D.C. – Turning his back on the textile and apparel workers in North Carolina’s 8th District, Rep. Robin Hayes (R-N.C.) dramatically reversed his previous opposition to the Central America Free Trade Agreement (CAFTA) expansion of NAFTA to again become a deciding last vote that delivered CAFTA’s 217-215 passage, after being made vague promises by Republican leaders to help the U.S. textile and apparel industry.

In response to the unprincipled deal-making by Hayes, Public Citizen announced today a new initiative – the CAFTA Damage Report – to track the fallout from Hayes’ flip-flop in terms of the negative impact of CAFTA on working families in the United States, the foreseeable failure of his “deal” to materialize in real change and the political repercussions that Hayes is likely to suffer at the hands of angry constituents.

A week before the vote, Hayes stated that he was “flat-out, completely, horizontally opposed to CAFTA,”¹ arguing that CAFTA is an extension of NAFTA that was “not in the best interest of a core constituency I represent. Every time I drive through Kannapolis and I see those empty plants, I know there is no way I could vote for CAFTA.”² Hayes initially cast a “no” vote but then was persuaded by Republican House leaders to change his vote to a “yes” after the House Republican leadership kept the voting open 45 minutes past the time limit.

Unbelievably, this is the second time Hayes has switched his vote on a major piece of trade legislation. As constituents of North Carolina’s 8th District know, in 2001, Hayes switched from initially casting a “no” vote to “yes,” making him the deciding vote that gave President Bush Fast Track trade authority, a measure he had previously (and vehemently) opposed, which was the authority under which the CAFTA NAFTA expansion was negotiated.

“Even in cynical Washington political circles, no one can understand how Hayes would elect to irreversibly destroy his voters’ trust in him by again betraying the clear will of his constituents, and the obvious threat CAFTA poses to them, by doing what the Republican leadership asks of him again after all of the apologies made to constituents for his Fast Track retreat, his 2004 campaign promise to oppose CAFTA, and his vehement public opposition to CAFTA last week,” said Lori Wallach, director of Public Citizen’s Global Trade Watch. “No one can imagine that he is so weak as to have been brow beaten into betraying his constituents again, so many assume he is retiring.”

Hayes claims that he obtained a Bush administration promise to support a new Hong Kong Customs Enforcement pact, ostensibly to “toughen textile transshipment measures.”³ However, as Hayes himself admitted in a letter to an industry representative after the CAFTA vote, the terms of this promise have not been determined or identified.⁴ In a press release, Hayes indicated that his previous concerns about textile rules in CAFTA “were addressed” sometime in the wee hours of the morning before his vote switch,⁵ even though the CAFTA agreement had not been changed at all.

Three years ago, Hayes offered the tie-breaking vote on Fast Track in exchange for a Bush administration promise to secure funds to hire 72 customs officers to fight textile transshipment. While Hayes fought for, and eventually secured appropriations for the agents, the Bush administration, to this day, has still not hired these agents.

“After being left politically exposed once – when he never got the 2001 promise to obtain more customs inspection for transshipped goods made in exchange for Hayes’ deciding Fast Track vote – he did it again. But this time, the fig leaf is totally see-through, and everyone expects his voters will throw him out for indecent exposure,” said Wallach.

Hayes’ failed Fast Track deal is among nearly 100 deals-for-trade-votes that Public Citizen has tracked over a decade, of which nearly 80 percent have been dramatically broken or reversed. The newly announced CAFTA Damage Report will systematically track deals made for CAFTA votes, as well as CAFTA’s economic damage.

“North Carolina’s textile and apparel industry is losing hundreds of jobs a month,” said Todd Tucker, research director at Public Citizen’s Global Trade Watch. “Rep. Hayes was expected to express his dissatisfaction with the Bush administration’s past broken trade promises to him and his constituents by opposing CAFTA, as he had promised he would. His unprincipled, last-minute flip-flop on CAFTA for yet another unenforceable administration promise seems to indicate that he enjoys being made a fool of, and indeed, is eager to repeat the experience over again.”

In switching his vote again, Hayes’ also is relying on a Bush administration promise to seek a *post hoc* amendment in CAFTA’s textile rule of origin provisions. Under a current trade law called the Caribbean Basin Initiative (CBI), in order for garments made in Central America to obtain duty-free entry into the United States, they must contain inputs – including pockets and linings – made in the United States or a Central American country. CAFTA allows garments containing such inputs from China and other third countries to enter the United States duty-free, destroying existing demand for North Carolina textiles now used in Central American garment production.⁸ The Bush administration has promised to seek amendments to CAFTA if it goes into effect to put back into place the current rules on U.S. pockets and linings. Related deals include a promise to postpone CAFTA’s so-called “cumulation” rules which allow Mexico and Canada to benefit from CAFTA preferences, and a promise by Nicaragua’s government not to use a CAFTA loophole it obtained in a way that undercuts current sales of U.S. textile and apparel inputs there.¹⁰

But Hayes is taking a huge political risk by accepting at face value these commitments, or his Hong Kong transshipment inspection promise, for the following reasons:

- **The pockets and lining deal is not in the CAFTA text or congressional implementing legislation and requires the unanimous consent of all CAFTA signatory countries, and then any change so agreed would require congressional approval.** The pocket lining deal is designed to be evaded. The only commitment is *to try to use CAFTA’s amendment procedures if CAFTA is passed and implemented so as to try to seek agreement post-facto for six other countries to give new concessions to the United States.*¹² First, the only commitment that the Bush administration was able to obtain on this issue from the other CAFTA countries is a recent letter – signed by trade officials, not the countries’ presidents. The side letter is not legally binding as part of CAFTA. If even one CAFTA nation refuses, the “deal” is undone, as consensus is required for amendments. There is no legal recourse because the deal is not part of CAFTA. With elections upcoming in several of the countries, it is unclear if the officials who signed or the same political parties will still be in office when talks start. Second, the CAFTA nations will not easily agree to new rules of origin that they view as against their interest. Further, it remains unclear what new concessions will be demanded from the United States in exchange for pocketing and lining rules of origin changes, and whether such new concessions will be acceptable to other U.S. interests.¹³ Third, if the United States attempted to unilaterally impose the pockets and lining “change,” the other CAFTA countries can take the United States to a CAFTA trade tribunal for violating CAFTA’s rules. Nicaragua’s commitment to not use Chinese inputs in a way that would hurt U.S. business is even more unenforceable, given it also requires the voluntary compliance by that country’s private sector garment companies. Meanwhile, Mexico would have to agree to new customs inspections – that it has to date refused – in order to implement the “cumulation” fix. Press reports indicate the Bush administration has still not started formal talks on the matter, nor have Central American or Mexican industry or government representatives formally agreed to the changes.¹⁴ Finally, any changes to the trade agreement’s rules of origin must be approved by Congress. However, several key members of Congress controlling the committees that must OK such a bill do not support the deal. The amendments would not be subject to Fast Track trade authority.
- **The promised deal, even if kept, will not solve the long-term problems of the U.S. textile and apparel industry, a large portion of which opposed CAFTA.** Even if the near *miracle* amendments to CAFTA were implemented, they would not solve the broader loss in U.S. textile and apparel market share caused by CAFTA’s rules of origin, which

erode existing CBI incentives to use U.S. textile inputs – a primary reason that the majority of U.S. textile manufacturers opposed CAFTA. Moreover, CAFTA does nothing to stop the trend of production relocation from Central America to China after the phasing-out of the global textile and apparel quota system, because U.S. tariffs on Central American imports are *already* at zero and even though Chinese goods face tariffs and greater transport costs, they are still cheaper than the competing Central American goods due to China’s lower input and wage costs.¹⁵ Indeed, candid industry spokespeople admit as much. CAFTA “may not give enough financial incentives to stop the production erosion in Central America. If I can get something five to six days quicker out of Central America versus Asia, but the cost benefit analysis is not there, why would I go [to Central America]? There is no difference then,”¹⁶ said Peter McGrath, chairman of J.C. Penney Purchasing Corporation, a leading U.S. importer of textile and apparel products. Elimination of the global textile and apparel quotas once required under the WTO means that U.S. retailers no longer have to pay the premium on Central American goods because they can source unlimited amounts from China – a reality unaffected by CAFTA. Yet by loosening existing rules of origin requiring U.S. inputs, CAFTA would reduce the demand for U.S. textile exports to Central America for what limited share of the garment market those countries will retain.¹⁸

- The Bush administration’s poor track record on textile and apparel enforcement undermines faith in its ability to come through on pocket lining or new enforcement promises.** The Bush administration has indicated that it will take at least two years to resolve the “cumulation” issue with Mexico and Canada¹⁹ – a delay tactic familiar to those who have accepted promises from the administration in the past. During the Fast Track 2002 debate, for example, the Bush administration won over support from Hayes, then Rep. Richard Burr (R-N.C.), and Rep. Sue Myrick (R-N.C.), by pledging to spend \$9.5 million on up to 72 new enforcement agents to implement textile trade rules of origin and other laws. Funds were authorized in the implementing legislation, and eventually appropriated, although only after considerable additional effort by the industry and increasingly exposed members of Congress. Notwithstanding the promise to hire these agents in fiscal years 2004 and 2005, three years later there is no evidence that these agents, who were meant to focus on textile transshipment, and who were even funded over the last few years, were ever hired.²⁰ This broken deal points out a dangerous reality: Even if a member is able to overcome an administration’s intention to break the funding part of a deal and obtain the needed appropriation through different routes, in the end, an administration can prevent the fulfillment of a promise by simply not taking action. Just weeks before the CAFTA vote, Hayes told reporters, “the fact that we can’t get a straight answer on this issue will only make it more difficult for CAFTA or any other future agreement to pass Congress.”²¹ After receiving a new promise that the positions would be filled, but not until the end of 2006, Hayes reiterated his dissatisfaction with the ongoing delay – a dissatisfaction he has apparently forgotten in taking this latest deal and supporting CAFTA.²² Meanwhile, despite talking tough on textile and apparel import surges from China, the Bush administration is still formally declining U.S. textile and apparel industry petitions and congressional demands to initiate a case concerning currency manipulation – a reluctance which bodes ill for U.S. textile and apparel industry hopes to solve its problems with current WTO arrangements related to trade with China.²³

¹ Jim Morrill and Tim Funk, “Democrats Attack Hayes over CAFTA: Hayes voted no, then cast decisive vote for trade pact,” *Charlotte Observer*, July 28, 2005.

² Tim Whitmire, “CAFTA Vote Switch an Issue for Democrats,” Associated Press, July 29, 2005.

³ Rep. Robin Hayes (R-N.C.), “Congressman Robin Hayes Announces Hong Kong Customs Enforcement Agreement: Hayes Asks Textile Industry to Identify Initiative on China,” Congressional Press Release, July 28, 2005.

⁴ Letter from Rep. Robin Hayes (R-N.C.) to Cass Johnson, President of National Council of Textile Organizations, July 28, 2005.

⁵ Rep. Robin Hayes (R-N.C.), “Congressman Robin Hayes Supports 8th District Jobs with a Vote on CAFTA,” Congressional Press Release, July 28, 2005.

⁶ “USTR Will Try To Amend CAFTA Provisions On Certain Linings, Pockets,” *Inside US Trade*, May 6, 2005.

⁷ Sen. Richard Burr (R-N.C.), “Burr Votes in Support of CAFTA; cites new side agreements for textile and apparel benefits for agriculture; calls for increased enforcement of trade agreements,” Congressional Press Release, June 30, 2005.

⁸ Letter from U.S. Trade Representative Rob Portman to Sen. Elizabeth Dole (R-N.C.), May 4, 2005.

⁹ “Textile Group Support For CAFTA Shows No Immediate Vote Surge,” *Inside U.S. Trade*, May 13, 2005.

¹⁰ “Central American Textile Industry Has Yet to Accept Key Textile Change,” *Inside U.S. Trade*, June 17, 2005.

¹¹ Frederick H. Abernathy, Anthony Volpe, and David Weil, “The Apparel and Textile Industries after 2005: Prospects and Choices,” Harvard Center for Textile and Apparel Research Briefing Paper, Oct. 2004.

¹² Kristi Ellis, “Change in the Wind at AAFA’s Meeting,” *Women’s Wear Daily*, March 1, 2005.

¹³ “White House Submits CAFTA Implementing Bill, June Floor Vote Possible,” *Inside U.S. Trade*, June 24, 2005.

¹⁴ “NCTO CAFTA Endorsement Based on Three Promises to Help U.S. Industry,” *Inside U.S. Trade*, May 13, 2005.

¹⁵ “Members Threaten CAFTA Opposition over lack of textile agents at CBP,” *Inside U.S. Trade’s Inside China Trade*, March 18, 2005; Letter from Secretary of Homeland Security Michael Chertoff to Rep. Robin Hayes (R-N.C.), May 3, 2005.

¹⁶ Rep. Robin Hayes (R-N.C.), “Congressman Robin Hayes Questions U.S. Customs On Enforcement of Illegal Textile Transshipments,” Congressional Press Release, March 8, 2005.

¹⁷ Statement by Rep. Robin Hayes (R-N.C.), May 2005, posted on *Inside U.S. Trade*.

¹⁸ Edmund L. Andrews, “Beijing Brushes Off U.S. Warning on Currency,” *New York Times*, May 18, 2005.