



Labor Standards and Levels of Implementation and Compliance by Peru: Analysis of Chapter 17 of the United States – Peru Free Trade Agreement

Executive Summary¹

Introduction

Negotiations for the US-Peru FTA began in May of 2004, midway through Alejandro Toledo’s administration (2001 – 2006). The FTA was signed in April of 2006 and passed by the Congress of Peru two months later. In May 2007, the US Congress reached an agreement with the new government of Alan Garcia on an Amendment to modify the FTA’s original text. The amended agreement is now pending ratification by US Congress.

This paper summarizes a longer report addressing Peru’s enforcement and compliance levels with ILO fundamental labor rights that must be guaranteed in the framework of the amended US-Peru FTA.

1. What do Chapter 17 modifications imply for Peru?

FTA chapter 17 lays out labor policy provisions that will be used as the framework for trade relations between both countries. The modifications significantly expanded these provisions as a result of concern from US labor unions and Democratic Party members who want to set comprehensive levels of labor and environmental standards in trade agreements. These modifications set the stage for a series of important changes to be introduced into Peruvian law and for improvements in the State’s capacity to comply with these standards.

Primary changes to the original US-Peru FTA text and their implications

Modified articles	Implications
Article 17.1 Statement of Shared Commitments	Eliminates State’s right to adopt or modify labor laws and standards.
Article 17.2 Fundamental Labor Rights	Incorporates a new article that defines what fundamental labor rights are to be included in the law (includes new rights). This obligation did not exist in the original text.
Article 17.3 Enforcement of Labor Laws	The original text just obligated the Parties to effectively enforce national law. The modified text has broadened this to include fundamental labor rights. It has also eliminated a Party’s right to its own discretion when enforcing the law.
Article 17.7 Cooperative Labor Consultations	It has included more grounds for opening the dispute settlement process.

¹ This summary was written by the Red Peruana por una Globalización con Equidad – RedGE (Peruvian Network for Equitable Globalization - <http://www.cepes.org.pe/Red-GE/index.html>) for the Alianza por los Derechos Laborales (Alliance for Labor Rights) – <http://alianzapdl.blogspot.com/>

Article 17.8 Definitions	It has added the elimination of discrimination and right to equality at work as a labor right.
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Source: Alan Farlie and Sandra Quejía. "Adendas del TLC: ¿benefician al Perú?" (FTA modifications: Do they benefit Peru?) July 2007.

These modifications require Peru to update its labor laws currently in force, as well as to build its institutional capacity for complying with those labor rights.

2. What levels of enforcement and compliance of fundamental labor rights are required by the FTA?

While Peru has ratified a number of international labor rights conventions, their enforcement and the guarantee of those rights in national legislation is a long way from meeting the minimum required international standards. This situation has prompted the ILO to issue various observations regarding Peru's enforcement.² Yet institutional capacity to enforce labor rights will depend on the extent to which national legislation is brought in line with ILO international standards and sectoral policies are put in place. Thus, compliance with labor standards in the FTA will be conditioned by the Peruvian State's obvious political weakness and institutional incapacity to guarantee those rights.

a. Freedom of Association: Even though Peru's 1993 Constitution guarantees this right, passage of and amendments to laws governing it, such as the Collective Labor Relations Law and its regulations, have not had a significant impact on the ability of unions to recover prior levels of affiliation. Union membership has been stymied in two distinct ways: one is an article in the Job Promotion Law that enables employers to fire workers arbitrarily and to contract workers on a temporary basis, and the second is the legal requirements for forming unions – a minimum of 20 workers are required in order to form a union at a company, while 50 workers are required to form industry-wide unions or federations.

Cases of violations of the right to association:

a) In the export sector: The company Sociedad Viru, Peru's principal asparagus exporter, ignored the demands of 4,000 workers, who reacted by going on strike in 2007 and bringing suit against the company for the precarious labor conditions there. The response: the strike was put down and several workers arrested. Another example in 2007 is the case of Topy Top, a leading apparel exporter, which fired 45 workers for having formed a union and having presented their list of demands. Workers went on strike as the company did not recognize the union.

b) In mining companies: In July 2007, approximately 1,700 workers went on strike at the Casapalca Mining Company to protest the firing of 300 workers when they tried to form a union and negotiate improved working conditions. Workers and their families set up a road block on the Central Highway; subsequent confrontations with the police caused the death of four individuals.

c) In telecommunications and public services: The company ITETE, a subcontractor of Telefonica of Peru, denied recognition of a union formed by employees in April 2005 and later fired union leaders. The company has attempted to stop the unionization process both through direct pressure and offering incentives to workers. The case is still unresolved.

State's response to recorded cases of fundamental labor rights violations:

Through its Labor Ministry (MTPE), the government has strengthened its labor inspection capacity, creating the National Inspection Office and hiring and training 100 new labor inspectors. New administrative and information technology tools will be instituted in an

² According to the 2004-2006 National Program for the Promotion of Decent Work in Peru, the Peruvian State has ratified all 8 of the fundamental conventions in force, half of the 4 priority conventions and 35.4% of the remaining 147 general ones.

attempt to modernize MTPE's role in oversight and promotion of labor rights. In some labor dispute cases, the government has responded by using force, arresting union representatives and leaders. The most recent example of such behavior was the Peruvian Teacher's Union (SUTEP) strike. The government has taken a confrontational attitude and a hard-line approach when it comes to certain cases of labor conflict (such as revoking teachers' licenses and detaining union leaders in the SUTEP case). In other cases, it has expressed its support for fairness in worker relations, but without providing concrete measures that really benefit workers ("achievements" being the reinstatement of jobs in the Topy Top case and adequate wages being paid to workers in the Casapalca case).

Impact of the State's actions to address fundamental labor rights violations:

This year the State has increased the number of labor inspections. However, the Labor Ministry's limited coercive capacity (the Casapalca mining company defied the government on more than 8 different occasions) and coverage (96,000 inspections in 2007 in a country containing more than 2 million companies) indicate its debility to guarantee compliance of labor standards. As expressed in a statement published by the Labor Ministry's Inspectors' Union, which accused the Ministry of refusing to receive the formally signed list of union demands, even the Labor Ministry would fail to stand up to scrutiny of compliance with labor standards.

Furthermore, failure to pass the General Labor Law (LGT) allows for the continued existence of different hiring modalities that set sub par labor standards and benefits for workers with the same skills and same job category.

b. Forced labor: Peruvian labor law contains no specific mention of forced or compulsory labor, but it does make the violation of the freedom at work a crime and furthermore regulates the different exceptions of "forced or compulsory labor" that are considered in international human rights declarations (i.e. military service, prison labor). Other remedies still pending have to do with complaints against illegal logging enterprises for forced labor.

Cases of labor rights violations:

Close to 33,000 people in the Peruvian Amazon are working under conditions of slavery because they owe debts or because they are otherwise forced to, with the majority of them being indigenous people who live in isolation or who have just experienced first contact.

State's response to recorded cases of fundamental labor rights violations:

On January 13th, 2007, the State formed the National Commission for the Fight against Forced Labor, and in a positive move later on, approved the National Plan for the Fight against Forced Labor. Governmental action in this matter is focused on intervening in the Ucayali Region, where there are reported complaints of forced labor.

Impact of the State's actions to address fundamental labor rights violations:

The MTPE, National Police Force, and the Ministry of Agriculture have garnered the support of local indigenous populations and leaders in performing inspections and are carrying them out in a coordinated fashion. To date, the government has issued no progress reports concerning the inspections.

c. Equal Treatment and Non-Discrimination in the Workplace: Though the ILO has made no observations on this matter, it has been pointed out on several occasions that a set of articles found in two laws, namely the Micro and Small Enterprise Development and Formalization Law and the Law for the Development of Agro-industrial Activity, contradict the spirit and principles set forth in conventions that prohibit employment and workplace discrimination. The law on Micro and Small Enterprise limits consensus building between economic stakeholders and union members in the National Council on Work (CNT) by strengthening the principle of gradual access to labor rights (as the employer's capacity expands) for a large part of the economically active population. This could serve as a pretext for converting this special labor regime into a general one for all private sector

activity. The law regulating labor in Agro-industry establishes different labor standards and benefits for workers in non-traditional export enterprises, making them more “flexible” for the employer.

Cases of labor rights violations:

The Casapalca and Shougang mining companies are two cases in which as recently as April – June 2007, companies are using an elevated numbers of subcontracted workers. In Casapalca, there are just 200 employees listed on the company payroll, and the rest, about 1700, are paid through intermediary sub-contracting companies.

State’s response to recorded cases of fundamental labor rights violations:

At the beginning of May, the State made an appeal to mining companies for “shared solidarity” and a willingness to improve the distribution of profits, as required by law, in order to meet the demands of the subcontracted or outsourced workers. Furthermore, the MTPE has drafted two bills that would establish labor guarantees in hiring and subcontracting for employment and services; one of these would modify Legislative Decree # 688, which regulates how profit sharing is required for workers of companies that fall within the third income tax category, and the other would consolidate the special labor regime for SME’s.

Impact of the State’s actions to address fundamental labor rights violations:

In response to several labor conflicts during May and June of this year in the mining sector, which uses the largest number of subcontracted workers, amendments were made to the regulations for the Law on Labor Intermediation to specify the concepts of “principal activity” and “complementary activity”. The number of companies formally qualifying for the special labor regimes rose to 13,000 out of a total of 2.5 million companies.

d. Child Labor: The fundamental right to the effective abolition of child labor is addressed in Peruvian law, specifically in the Child and Adolescent Code, which is in line with the ILO convention on the matter. Likewise, the National Action Plan for Children and Youth uses cross-sectoral approaches and strategies to encourage respect for and compliance with human rights for children and young people. Lastly, from an institutional perspective, the MTPE is responsible for supervising legal compliance with provisions concerning adolescent workers and has also formed the Steering Committee for the Prevention and Eradication of Child Labor.

3. Urgent Reforms: What is still needed to promote and guarantee labor rights

The Alliance for Labor Rights believes that adopting the following measures would provide a set of guarantees and a climate for freely and safely exercising fundamental labor rights at work in Peru:

- ⊕ **Passage of the General Labor Law (LGT):** The LGT is an unfinished task, begun several years ago, whose goal is to unify in one valid legal instrument the various labor regimes and provisions dispersed among a multitude of laws that are currently in force. It would ensure that those aspects of individual labor relations directly linked to the exercise of fundamental labor rights are in line with international standards related to human rights at work. Passage of this law is critical for workers and defenders of labor rights because it would be used as the legal benchmark for all trade negotiations (multilateral or bilateral) undertaken by Peru with any country or trading block. The principal and most relevant aspects of this legislation include the following:
 - Specific clarification of situations that allow for use of different forms of labor intermediation (subcontracting, outsourcing, “worker cooperatives”).
 - Greater protection of workers against unwarranted dismissal by including the legal right to job reinstatement in cases where no “just” and “objective” cause could be found for the dismissal.
 - In terms of collective labor relations, the LGT reestablishes the right to collective bargaining by sector or industry, which was suppressed by labor reforms during the 1990’s in favor of negotiation by individual company.

🔴 **Other important reforms:**

- Elimination of special labor regimes that grant lower labor rights standards than those in force for the general workforce.
- Reduction in the use of sub-contracting through labor intermediation to 10% of the total number of employees at the company.
- Formation of a tripartite commission to monitor effective compliance of commitments to provide decent work.
- Reestablishment of adequate conditions for collective bargaining and development of a public awareness campaign that encourages freedom of association and collective bargaining.
- Reduction in the number of workers needed to form a union from 20 to 9, in light of the significant amount of small and mid sized companies now in Peru.
- Hiring of no less than 1,000 labor inspectors to ensure compliance with labor standards.
- Prioritize implementation and enforcement of National Plans for the Promotion of Fundamental Labor Rights.



Source: Alliance for Labor Rights

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