

Can Free Trade be Fair? Lessons from the Peru-U.S. Free Trade Agreement

By Mary Tharin, COHA Research Associate
Council on Hemispheric Affairs
October 9, 2008

- The U.S.-Peru Free Trade Agreement has provided President Alan García with an excuse to dismantle the nation's environmental and labor standards
- The President's approval ratings have sunk as popular support for his policies continues to vanish
- The United States has been complicit in Peru's legal and economic deterioration, a fact which must be taken into account before further FTAs are signed

The Peruvian government is beginning to unravel as corruption charges and scandals threaten to completely discredit the already unpopular leadership of President Alan García. García's minister of Mines and Energy as well as other top energy and state oil officials have been fired in response to allegations of favoring a foreign energy company, Discover Petroleum, in exchange for bribes. These scandals likely come as little shock to many Peruvians due to García's history of engaging in third-rail politics and putting economic growth before the welfare of the populace. For years the García administration has been manipulating Peruvian law in an attempt to draw foreign investment, meanwhile failing to alleviate domestic poverty and thus sacrificing the government's legitimacy in the eyes of the Peruvian public. The President now has no exit strategy, since the crushing weight of his political opportunism has left him with no class-base except for the open gringo wallet. However, the United States, instead of taking a stand against García's mishandling of the economy, has contributed to the problem by signing trade agreements with the unpopular government.

An Agreement is Born

In December of 2007, following considerable debate and significant compromise, the United States Senate approved a Free Trade Agreement with Peru designed to drastically reduce import and export tariffs, hypothetically putting an end to protectionism on both sides and bringing the economies of the two countries closer together. Approval of the FTA had been delayed in both the Senate and the House due to concerns, mostly on the part of Congressional Democrats, about how Peru's environmental and labor protections would be affected by the agreement. In order to break the impasse a number of key House Democrats, including House Speaker Nancy Pelosi, negotiated a congressional-executive branch agreement to address these concerns. The agreement, labeled "A New Trade Policy for America," prohibited Peru from lowering environmental and labor standards, and also addressed other concerns that had been voiced against the proposed FTA, including access to generic medicines and intellectual property issues.

The agreement was immediately lauded as a "fundamental shift in U.S. trade policy" which would "spread the benefits of globalization [in the U.S.] and abroad by raising

standards.” While some Democrats remained skeptical, questioning the likelihood that the provisions would actually be enforced, enough were swayed that the U.S.-Peru Free Trade Agreement easily passed. Today, the repercussions of this decision are being felt in Peru as the country’s leaders adjust national law to accommodate the conditions spelled out in the pact. As this process is carried out, some of the FTA’s most virulent critics in the Senate and the House are seeing their worst fears become a reality.

Peru’s existing environmental and labor protection standards have, in fact, been weakened in the process of opening its market to bilateral free trade. In the first six months of this year, President Alan García enacted a total of 102 Legislative Decrees designed to harmonize national laws with the conditions laid down by the FTA. In response, much of the Peruvian press as well as many politicians and activists have showered the government with accusations that these decrees are actually detrimental to labor, the environment, the agriculture industry, and indigenous rights. In addition, the Peruvian Congress’ Constitutional Commission recently declared about forty percent of the decrees to be unconstitutional.

The Environment

The most controversial of these decrees to date was the Declaración Legislativa 1015, passed by the executive branch in May. The decree was designed to facilitate the privatization and stripping away of communal lands held by indigenous and subsistence farming communities. Communal land, essential to indigenous Peruvians’ traditional way of life, had previously been protected by a law requiring a two-thirds majority in Congress to authorize any land sales. However, DL 1015 lowered this requirement to a simple majority in a clear attempt to encourage the sale and subsequent exploitation of the land by foreign and domestic entrepreneurs.

In early August, indigenous communities and human rights groups responded by taking to the streets, blocking major roads and bridges and occupying key energy plants in Peru’s southeastern and northern regions. The protests were led by the indigenous rights organization AIDSESEP (Asociación Interétnica de Desarrollo de la Selva Peruana), which began talks with the government soon after the protests began. Following two weeks of demonstrations, the Peruvian Congress was prompted to repeal Decree 1015 and with this action restored the two-thirds majority rule. While the repeal was certainly a substantial victory for Peru’s indigenous cause, it was sadly only one small step forward among many leaps backward.

García, who provocatively called the decision to revoke 1015 “a grave historical mistake,” has passed a number of other decrees that threaten to encroach upon Peru’s rich biodiversity and the livelihood of the people who depend on it. Most of the new laws are designed to facilitate exploitation of the country’s land and resources by international corporations. Legislative Decree 1064, for example, eliminates the ability of landowners to negotiate with oil and mining companies over the use of their land. Pre-existing law required that companies attempt to reach an agreement with property owners in order to buy or rent their land for commercial use. Only if negotiations failed could companies turn to the government, specifically the Ministry of Mines and Energy, to force owners to

sell their land. Decree 1064 cuts out land owners completely, leaving the entire negotiation process in the hands of the government.

With another decree, known as the “Forest and Wildlife Law,” García removed barriers that currently protect the country’s national forests. The decree (1090) redefines the “national forest patrimony,” and lifts protections against logging and other forms of exploitation. The Peruvian Congress has already met to discuss amending or repealing this decree, which dozens of national and local community and environmental organizations oppose. At a recent hearing, Congresswoman Hilaria Supa stated: “This decree does not only affect the forest and the indigenous people, but rather the entire country. [It] speaks about sustainable economics, but I see nothing in the decree about social or cultural sustainability.” Critics also point out that the decree reduces transparency and eliminates input from civil society regarding the use of national forest lands.

The results of these negative changes to national law are already being felt across Peru’s rural population. Over a year ago, residents of three northwestern highland districts - Ayabaca, Pacaipampa and El Carmen de la Frontera - voiced a resounding “no” vote against allowing a mining project to go forth in their area. This decision, which involved about 60% of the electorate (95% of whom voted “no”) is likely to be overturned by the newly-empowered central government. In May, President García assured members of a Chinese mining consortium that “there is no reason that this project shouldn’t go through.” It is this propensity on the part of García that has made him one of the most mistrusted figures in Peru today.

Labor

Despite the FTA’s condition that labor standards in Peru must not be lowered, a number of President García’s recent decrees have put the country’s Public Service workers in jeopardy. In May, the Inter-sectional Confederation of State Workers (CITE) organized a strike in protest of legislative decrees 1025, 1026, and 1057, which, according to the union, compromise the labor rights of public employees. The new laws are designed to “modernize” the public sector through “punitive evaluations” of current employees’ work performance, as well as through a reorganization of positions and salaries. The power to implement these changes is granted to the National Civil Service Authority, omitting any possibility of collective bargaining. This leaves labor organizations with little leverage to protect the jobs of their members.

While these concerns raised by organized labor in Peru are significant, much larger problems plague a majority of the country’s population. Because unionized sectors in fact make up only a small portion of the nation’s labor force, few have the ability to collectively protest when labor laws are changed. Worse still, even the limited labor standards that are presently on the books are largely unable to extend their reach to a majority of working Peruvians. According to a 2007 Human Rights Report, only 9 percent of Peru’s labor force is represented by unions, and more than 70 percent of it works in the informal sector. Thus, regulations affecting minimum wage and working conditions do not protect most Peruvians, making concern over labor laws almost a moot

point. While the national minimum wage was raised to \$176 per month in October of 2007, many workers in the informal sector earned merely between \$20 and \$30 per month, according to the U.S. Bureau of Democracy, Human Rights, and Labor. The Bureau also reported that the Peruvian government “often lacked the resources, capacity, or authority to enforce compliance with labor laws.” Hence, most Peruvian workers are not protected against the potentially damaging effects of the FTA, which could leave them even more vulnerable to the self-serving demands of foreign multinationals.

Reactions and Conclusions

The Peruvian government has indicated that it will pursue further free trade deals with the EU and the Asia-Pacific Economic Cooperation Forum (APEC). However, while the global food crisis continues to drive up prices of staples like eggs and bread, more consumers are questioning the rationale behind opening up fragile domestic markets to subsidized U.S. produce instead of producing food domestically. Further, the impending global economic slowdown could cause foreign investment in the country to dry up, destroying jobs and crippling Peru’s economic growth. Although these are legitimate concerns, the government has yet to address them in a constructive manner.

Despite Peru’s impressive recent economic development – 83 months of consecutive growth as of May 2008 – its civil society is becoming increasingly discontent with the leadership of Alan García. Reuters news service reported that while the country’s GDP growth rate hit 9.37 percent this year, the president’s personal approval ratings sunk to 19 percent. These ratings reflected a 16 point drop in the last four months alone, as protests and strikes over the FTA’s provisions have attracted a significant following. On October 7th labor groups across Peru organized a nationwide strike protesting the government’s economic policies, specifically accusing them of failing to alleviate poverty. According to the BBC, thousands of protesters marched in the nation’s capital and called for García’s entire cabinet to resign. As the President continues to lose legitimacy and popular unrest surges, fewer and fewer Peruvians are accepting the notion that the global free market will increase their odds of gaining prosperity.

It is essential that U.S. lawmakers study the actual effects of this Peruvian agreement before pursuing further FTAs, including those currently pending with Colombia and Panama. In his 2008 State of the Union address, President George W. Bush assured Americans that “all...pending free trade agreements include the same labor and environment provisions as the Peru free trade agreement.” However, it is clear to many that this assurance is meaningless since the provisions in Peru’s agreement have not been implemented, but rather left open to manipulation by García’s administration. In fact, the regulations established in “A New Trade Policy for America” appear to be mere band-aids covering real concerns brought up by critics of global free trade expansion. Achieving a truly responsible trade agreement would require a fundamental change in the United States’ outlook on global economics – one that takes into account the rights of all social groups, not only the privileged and powerful.

*This analysis was prepared by COHA Research Associate Mary Tharin
October 9th, 2008*