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Peru Trade Promotion Agreement: Labor Issues

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CRS Report for Congress

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Summary

On April 12, 2006, the United States and Peru signed the proposed U.S.-Peru Trade Promotion Agreement (PTPA). On June 25, 2007, the Administration released a revised text with new labor, environment, and other provisions. This “final text” language reflected a Congress-Administration “New Trade Policy for America” announced on May 10 that incorporated key Democratic priorities. Supporters of the agreement argue that Peru has ratified all eight International Labor Organization (ILO) core labor standards and that the PTPA would reinforce Peru’s labor reform measures of recent years. Critics are concerned about the potential for enforcement of the standards. Peru PTA implementing legislation (H.R. 3688) passed the House on November 8, 2007, by a vote of 285 to 132; the Senate on December 4 by a vote of 77 to 18; and was signed by President Bush on December 14, (P.L. 110-138). See also CRS Report RL34108, *U.S.-Peru Economic Relations and the U.S.-Peru Trade Promotion Agreement*, by M. Angeles Villarreal, and CRS Report RL33864, *Trade Promotion Authority (TPA) Renewal: Core Labor Standards Issues*, by Mary Jane Bolle. This report will be updated as events warrant.

On April 12, 2006, U.S. Trade Representative Rob Portman and Peruvian Minister of Foreign Trade and Tourism Alfredo Ferrero Diez Canseco signed the proposed U.S.-Peru Trade Promotion Agreement (PTPA). The labor chapter of the PTPA includes enforceable International Labor Organization (ILO) core labor standards in addition to specific obligations on domestic labor law enforcement and a labor cooperation and capacity building mechanism. Despite the June 30, 2007 expiration of presidential “fast track” or “trade promotion authority” (provided by the *Trade Act of 2002*, P.L. 107-210) to negotiate agreements that Congress then considers on an expedited basis — without amendment and under limited debate — Congress passed PTPA implementing legislation, the President signed it, and it became law as P.L. 110-138 on December 14, 2007.

Incorporation of New Trade Policy for America into PTPA Labor Provisions

On May 10, 2007, after much negotiation, Congress and the Administration announced a “New Trade Policy for America.” Pending U.S. trade agreements would be amended to incorporate “key Democratic priorities” relating to such issues as labor, the

environment, access to medicine, port security, and government procurement that would “spread the benefits of globalization here and abroad by raising standards.” The release also announced that “this policy clears the way for broad, bipartisan congressional support” for pending FTAs¹.

Key concepts in the new trade-labor policy include for FTAs, fully enforceable provisions: (1) incorporating ILO core labor standards as stated in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work* (henceforth referred to as the *ILO Declaration*);² and (2) prohibiting FTA countries from weakening laws relating to ILO core labor standards in order to attract trade or investment. They also include (3) new limitations on “prosecutorial” and “enforcement” discretion, so that FTA countries cannot defend failure to enforce laws related to the ILO core labor standards on the basis of resource limitations or decisions to prioritize other enforcement issues; and (4) the same mechanisms/penalties for settling labor, environment, and all other FTA obligations³. The Administration released the “final text” of the Peru FTA incorporating these concepts on June 25, 2007. On June 27, 2007, Peru’s congress approved the FTA-related amendments. Other FTA language previously agreed to by both countries also includes procedural guarantees to help ensure that workers and employers would have fair, equitable, and transparent access to labor tribunals. Both parties would ensure that (1) workers have appropriate access to tribunals for the enforcement of each party’s labor laws; (2) the proceedings before such tribunals are fair, equitable, and transparent; (3) the tribunals’ final decisions are in writing and made publicly available; (4) parties to the proceedings have the right to seek review and possible correction of final decisions; (5) tribunals conducting or reviewing the proceedings are impartial and independent; (6) parties to the proceedings could seek remedies such as penalties or temporary workplace closures to ensure the enforcement of their rights under labor laws; and (7) public awareness of domestic labor laws is promoted through public availability of information and encouraging public education regarding labor laws.

In addition, the agreement would require that the United States and Peru establish a Labor Affairs Council (Labor Council) comprised of cabinet-level or equivalent representatives to oversee implementation of the labor obligations, including the activities of the Labor Cooperation and Capacity Building Mechanism. The Labor Council would meet within the first year after the date of entry into force of the agreement and as often as necessary thereafter. Government representatives of the two countries would work together to establish priorities in specific cooperative and capacity-building activities. The

¹ Source: Text: Congress, Administration Trade Deal. *Inside U.S. Trade*, May 11, 2007.

² These are: “(a) the freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) the effective abolition of child labor; and (d) the elimination of discrimination in respect of employment and occupation.” The *ILO Declaration* does not include in (c) the “worst forms of child labor,” but the new text of the PTPA adds them to this list “for purposes of this agreement.”

³ Under previous — originally agreed upon — language: (1) there was only one enforceable labor standard: that each country enforce whatever labor laws and standards it had on its books; although (2) Parties “recognized” that it is inappropriate to weaken or reduce protections to encourage trade or investment; (3) Parties retained the right to exercise prosecutorial and enforcement discretion; and (4) there were separate dispute resolution procedures for the one enforceable labor standard, along with a limit on penalties that could be assessed.

Labor Council would establish guidelines, prepare reports, provide public communication, and be responsible for cooperating with the parties' points of contact.

Finally, the two parties agreed that cooperation on labor issues plays an important role in advancing labor commitments, including those embodied in the 1998 ILO *Declaration* and a 1999 ILO convention on the worst forms of child labor (including child trafficking, or the use of children in armed conflict, drug trafficking or pornography). They would establish a Labor Cooperation and Capacity Building Mechanism to develop and pursue bilateral or regional cooperation activities on labor-related issues. Such initiatives would be aimed at establishing and strengthening alternative dispute resolution mechanisms for labor disputes.

Labor Market and Worker Rights in Peru

Peruvian President Alan Garcia took office for a five-year term at the end of July 2006, replacing outgoing president, Alejandro Toledo. President Toledo presided over a period in which Peru was one of the fastest growing economies in Latin America, largely due to growth in the mining and export sectors. In spite of the recent economic growth, over half of Peruvians live in poverty and a large portion of the population is underemployed. Unemployment and underemployment levels total 64.5% nationwide.⁴ Peru's labor market is relatively small compared with that of the United States. In 2005, the labor force of Peru comprised nine million workers, compared to 151 million workers in the United States. Recorded unemployment in Peru was 7.2% and labor cost per hour was \$1.48 in 2005. In comparison, the United States had a recorded unemployment rate of 4.7% and an hourly labor cost of \$24.42⁵. The economic sector in Peru with the highest employment is wholesale/retail trade and repair services, followed by manufacturing.

During the regime of former President Alberto Fujimori (1990 to 2000), the government implemented a radical economic reform program to control hyperinflation and bring economic stability to the country. Part of the program included a wide-ranging privatization plan and a relaxation of foreign investment restrictions to help increase foreign investment. Existing labor laws were relaxed significantly during this time. In recent years, however, Peru has made much progress in strengthening labor protections by implementing labor law reform and protecting workers' rights. In 2002, Peru ratified the two ILO conventions on the abolition of child labor⁶. In 2003, the government reduced the number of workers needed to establish a union, eliminated prohibitions on workers that kept them from joining unions during their probationary period, and limited the power of the labor authority to cancel a union's registration. In July 2004, the government published regulations to strengthen labor inspections and broaden labor inspectors'

⁴ U.S. Department of State, Bureau of Western Hemisphere Affairs, *Background Note: Peru*, June 2006, p. 5.

⁵ The Economist Intelligence Unit (EIU), *Country Report*, Peru, July 2006; and EIU, *Country Report*, United States of America, June 2006.

⁶ ILO, Database of International Labour Standards, *Ratifications of the Fundamental Human Rights Conventions by Country in the Americas*.

powers to allow easier access to firms, improved inspectors' ability to impose sanctions, and increase the levels of fines⁷.

Peru has ratified 71 ILO conventions, including all eight core conventions on workers' rights. The ILO has stated that Peru has satisfactorily amended its laws to improve labor standards in certain areas related to freedom of association and protection of the right to organize⁸. However, some critics argue that Peru has had some problems in the observance of the ILO core labor standards and that improvements must be made in Peru's legislation on collective bargaining⁹.

Labor Provisions: Proposed PTPA vs. Other FTAs

The proposed PTPA was negotiated under the trade promotion authority in the *Trade Act of 2002* (P.L. 107-210)¹⁰ as were seven other trade agreements approved by Congress: the U.S.-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), plus agreements with Chile, Singapore, Australia, Morocco, Bahrain, and Oman; and several agreements that are still pending (Colombia, Panama, and South Korea.) While many provisions of the free trade agreements (FTAs) are similar, the Peru TPA was the first to incorporate provisions reflecting the new congressional-administration trade policy. In addition, each of the eight agreements has some unique provisions. For the PTPA, unique labor provisions include some new reporting requirements and cooperative and trade-capacity building activities. Proponents and opponents typically cite the following strengths and weaknesses of the labor provisions of the PTPA.

Strengths of the PTPA Labor Provisions

PTPA Reinforces Peruvian Labor Reforms and ILO Commitments.

Supporters argue that the PTPA reinforces Peru's labor reforms in 2003, 2004, and 2005. In addition, enforceable ILO core labor standards in the body of the agreement overlay and reinforce Peru's long-term ratification of 71 ILO labor conventions including all eight ILO core labor standards — two in each of the following categories: (1) *the right to organize and bargain collectively* (ILO Convention (C) 87 in 1960 and C98 in 1964); (2) *freedom from forced or compulsory labor* (C29 and C105, both in 1960); (3) *prohibitions against child labor* (C138 and C182, both in 2002); and (4) *prohibitions against employment discrimination* (C100 in 1960 and C111 in 1970.)

⁷ United States Trade Representative (USTR), *Peru TPA Facts: Real Results on Labor Rights, Facts About Peru's Labor Law Protection and Enforcement*, December 2005.

⁸ ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Individual Observation Concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Peru (ratification: 1960)*, 2005.

⁹ International Confederation of Free Trade Unions, World Confederation of Labour, and European Trade Union Configuration; *Report on Core Labour Standards in Peru*, October 2005.

¹⁰ TPA is the authority granted the President by Congress to negotiate trade agreements that Congress then considers without amendment and with limited debate.

PTPA Would Go Beyond Labor Protections in U.S. Trade Preference Laws. Proponents point out that “key Democratic priorities” include fully enforceable ILO core labor standards and the same dispute resolution procedures that were available for commercial disputes. The PTPA would go beyond protections afforded Peru under the *Andean Trade Preference Drug Enforcement Act* (ATPDEA, P.L. 107-210) and the *Generalized System of Preferences* (GSP, P.L. 98-573, as amended), which set, for benefits eligibility, the lower standard of “*providing or taking steps to provide*” workers “internationally recognized worker rights.”¹¹

Weaknesses of the Peru TPA Labor Provisions

Despite Recent Progress, Peru’s Labor Laws and Enforcement Have Been Weak. Critics argue that, with enforceable ILO core labor standards in the language of the agreement, the main issues at this point are Peru’s adoption of new labor laws and enforceability. They argue that recent Peruvian labor reforms have not reversed the weakening of labor laws during the Fujimori administration, and that both ILO reports and the 2005 State Department’s *Country Reports on Human Rights Practices* document the failure of Peru’s compliance with U.S. internationally recognized worker rights and ILO core labor standards. Such “failures” include (1) the lack of basic protection of the *right to organize* for: (a) large numbers of workers “casually” employed as temporary or contract workers (and therefore not permitted to join labor unions of permanent workers); and (b) the 60% of all Peruvian workers in the largely unregulated informal sector; (2) reports of *forced or compulsory labor* practices, particularly involving indigenous families in remote areas, in violation of Peru’s laws; (3) violations of *child labor* laws — an estimated one-fourth of all children between 6 and 17 years of age are employed, mostly in the informal sector including some in prostitution and narcotics production; and (4) non-compliance with *minimum wage guidelines*, in that roughly half the workforce earned the minimum wage or below, many of them in the informal sector.

ILO Core Labor Standard Language and U.S. Laws

Before the new PTPA language was released, some observers noted that the United States has ratified only two ILO conventions, while Peru has ratified all eight. In addition, the U.S. has some laws that may not totally conform with language of ILO conventions. A possible example is some state laws which permit employment-without-pay for prisoners. Consequently, they express concern that including enforceable ILO core labor standards into trade agreements could subject the entire U.S. labor code to challenges by trading partners. This issue is addressed by language in the PTPA that (a) restricts the application of the PTPA provisions to trade-related matters; and (b) incorporates only the *principles* of the four basic ILO rights listed in the *ILO Declaration* and quoted on p. 4, footnote 2, rather than the detailed language of the specific eight conventions.

¹¹ *Internationally recognized worker rights* refers to the U.S. list of rights contained in Sec. 502(a)(4) of the *Trade Act of 1974* (P.L. 93-618 as amended) — a list that is similar to rights included in ILO core labor standards, but which substitutes for *prohibitions against employment discrimination* (item 4 in the ILO listing of core labor standards on p. 4): *acceptable working conditions relating to maximum hours, minimum wages, and occupational safety and health.*

Projected Effect of PTPA on U.S. and Peruvian Workers

The proposed PTPA is unlikely to impact the aggregate employment level in the United States: U.S.-Peru trade accounts for only 0.3% of total U.S. merchandise trade (2005). However, it could impact jobs in specific industries. According to a report by the U.S. International Trade Commission (USITC),¹² the largest U.S. employment gain (1%) is projected in wheat production. Declines are projected in metals (gold, copper, and aluminum), rice production, and miscellaneous crops (cut flowers, live plants and seeds) which could “lose” up to 0.2% of their employment, displaced by imports. For Peru, various estimates of job “gains” range from less than 20,000 to 700,000.¹³ On the other hand, some labor groups argue that U.S. exports of basic grains could adversely affect the livelihoods of subsistence farmers in Peru, where agriculture is the main source of jobs.

Prospects

The Peruvian Congress voted 79-14 to approve the PTPA in June 2006 and it approved a set of amendments tied to the FTA on June 27, 2007. Gaining passage of a PTPA was a high priority for the government of Peru. Peruvian President Alan García Pérez met with President Bush on October 10, 2006, and again on April 23, 2007, to discuss the free trade agreement. After the April 2007 meeting, President García said about the agreement, “It is vital for our country. It is fundamental to continue this path of growth and social redistribution that we have started in my country.”¹⁴ House Democratic leaders had indicated they would not take up implementing legislation until after Peru changed its laws to comply with new labor (and other) provisions added to the PTPA. Peru is implementing its new labor obligations under the agreement through a series of “supreme decrees” issued by President Garcia. Peru had agreed to issue supreme decrees covering five areas: time-limited contracts, subcontracting, the right to strike, anti-union discrimination, and safeguarding the right to strike.

The House passed the Peru TPA implementing legislation, H.R. 3688, on November 8, 2007 by a vote of 285 to 132; the Senate passed it on December 4, by a vote of 77 to 18; and President Bush signed it into law as P.L. 110-138 on December 14, 2007. Issues included how a PTPA might affect workers in both countries, and Peru’s commitments to reforms, alleviating poverty, and enforcement. Some Peruvian policymakers believe that maintaining confidence in the bilateral trade environment with the United States is the key to the long-term stability of the region. While the Chamber of Commerce and the Business Roundtable strongly supported the Peru TPA, the AFL-CIO neither supported nor opposed it because the AFL-CIO has labor unions on both sides of the issue. Change To Win labor coalition, comprised of labor unions that formerly belonged to the AFL, urged Congress to oppose the PTPA.

¹² U.S. International Trade Commission. *U.S.-Peru Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects*, USITC Publication 3855, June 2006, pp. 2-19.

¹³ The less than 20,000 estimate was made by the Latin American labor group Plades, and the estimate of 700,000 was made Peru’s foreign trade ministry. Both were reported in *Trade Union World Briefing*, March 2006, No. 17, p. 3.

¹⁴ International Trade Reporter, “Peru’s President García Meets with Bush, Promotes Value of FTA with the United States,” April 26, 2007.