

Fair Trade or Free Trade? Understanding AFTA

The Andean Free Trade Agreement and Labor Rights

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USTR OBSTACLE TO PROGRESS ON LABOR RIGHTS IN ANDEAN REGION

On December 7, 2005, the United States and Peru concluded negotiations for a bilateral free trade agreement, finishing well ahead of its neighbors Colombia and Ecuador, which are continuing to negotiate. The US-Peru FTA follows closely on the heels of the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA), which narrowly passed in the House of Representatives (217-215) over objections on labor rights concerns, among others. In an effort to mend fences, or at least to give the appearance of doing so, the US Trade Representative (USTR) promised to consult with Congress and to take into account its concerns in future trade deals. A review of the US-Peru Labor Chapter (Chapter 17) demonstrates that any such promises were empty.

Like CAFTA, the U.S.-Peru FTA:

- does not require that Peru's domestic labor laws comply with the international standards established by the International Labor Organization (ILO). Instead, Peru has commitment only to "strive to ensure" compliance with the ILO core labor standards, set forth in the ILO Declaration on the Fundamental Principles and Rights at Work, and a separate list of internationally recognized worker rights, as defined in the agreement. This commitment is *not* subject to the enforcement mechanisms of the agreement

It is important to recall that President Alejandro Toledo of Peru made several public statements last year *in support* of a trade agreement that would include an enforceable commitment to adopt and comply with ILO core labor standards. The absence of such a commitment is attributable entirely to the USTR

- does not prevent Peru from "weakening or reducing the protections afforded in domestic labor laws" to "encourage trade or investment." Under the agreement, Peru could roll back its labor laws without threat of sanction.
- requires only that Peru effectively enforce its own laws as to: the right of association; the right to organize and bargain collectively; the prohibition on the use of any form of forced or compulsory labor; labor protections for children and

minors; and acceptable conditions of work with respect to minimum wages, hours of work and occupation safety and health. Once again, the agreement excludes non-discrimination from the list, *despite a request by the Andean nations to include it.*

- the agreement excuses the action or inaction of a member state if it is deemed “a reasonable exercise of discretion” or a “bona fide decision regarding the allocation of resources.” Thus, the “failure to enforce” standard may be denied any force of law if a member state can satisfy the ambiguous test of “reasonableness” or show that their under-funded Ministries of Labor allocated resources toward some other objective.
- the procedures and remedies for addressing violations are inadequate. Once again, a labor dispute is subject to a more onerous dispute resolution procedure than commercial disputes arising under the agreement. The labor enforcement procedures also cap the maximum amount of fines at \$15 million and allow Peru to pay those fines to itself with little oversight.

Although USTR has yet to conclude trade negotiations with Colombia and Ecuador (the next round with Colombia set for January 25 and with Ecuador on February 6), the labor chapter in those agreements will no doubt be identical to the US-Peru agreement.

National labor laws in the Andean region fall short of international labor standards. In the coming weeks, WOLA will release a series of fact sheets on the labor laws and practices of the countries party to the Andean FTA negotiations. They will be available at our website - www.wola.org.