



The Center for International
Environmental Law



EARTHJUSTICE

March 10, 2006

Re: Oppose the United States – Peru Free Trade Agreement

Dear Member of Congress:

On behalf of our more than one million members, we urge you to oppose the U.S. - Peru Free Trade Agreement. Trade agreements should serve as an important tool to promote sustainable economic growth in the U.S. and abroad, but the Peru FTA fails to meet this test. Unfortunately, the U.S. - Peru FTA—to which the administration is expected to add Columbia and Ecuador—follows the same flawed model that the recent Central America Free Trade Agreement (CAFTA) represented.

The tropical Andes is the richest and most diverse region on Earth. Many of the tens of thousands of plant and animal species in the Andes are endemic and irreplaceable. Far too many are also threatened with extinction by deforestation, mining, dams, road building and expanding agriculture. In addition, oil exploration is a relatively new and serious threat on the eastern slopes of the Andes and the adjacent Amazonian lowlands of Colombia, Ecuador, Peru and Bolivia. Notably, as biodiversity in Peru faces increased threats, Peru has failed to adopt legislation implementing its obligations under international agreements to protect endangered species.

Inadequate and Unenforceable Environmental Safeguards: The Environmental Chapter (Chapter Eighteen) of the U.S. - Peru FTA contains the same weak and unenforceable environmental provisions that plagued CAFTA. Like CAFTA, the agreement fails to clearly require either country to maintain and effectively enforce a set of basic environmental laws and regulations. The agreement also fails to subject its requirement on improving environmental standards to enforceable dispute resolution, and it lacks parity between the dispute settlement provisions of the Environmental Chapter and those of its commercial chapters. As in CAFTA, the agreement falls short of providing an adequate institutional structure and funds to oversee implementation of the environmental provisions.

The FTA should also require the U.S. and Peruvian governments to fully implement the central provisions of key international environmental agreements, including biodiversity and species protection agreements. Peru's failure to effectively implement the Convention on International Trade in Endangered Species (CITES) is of special concern. CITES requires member countries to ensure that listed species are legally harvested and that any harvest is not detrimental to the species' survival. The CITES Secretariat concluded that Peru has not enacted appropriate legislation to implement all of CITES' requirements. In particular, CITES has criticized Peru for failing to ensure that its mahogany harvest, of which the U.S. is the largest importer, is legal and sustainable. The U.S. - Peru FTA must address any gaps in legislation that would allow the inappropriate harvesting or use of endangered species for trade.

Harmful Anti-Environmental Lawsuits: The FTA's Investment Chapter (Chapter 10) contains provisions like those in CAFTA and NAFTA that would allow foreign investors to challenge health and environmental regulations for compensation before international tribunals, bypassing domestic courts. The United States currently faces 12 active NAFTA investor-state cases.

Worse, the agreement provides foreign investors even greater rights to challenge environmental laws than CAFTA does. CAFTA gave investors the right to file suit against alleged breaches of natural resources contracts. The U.S. - Peru FTA expands these rights by broadly defining natural resources contracts to include every aspect of the extractive, productive and marketing processes. These new rights would enable multinational corporations to attack legitimate attempts by communities to protect their health and environment even if their activities are only tangentially related to natural resource extraction. For example, communities suffering from water pollution and chemical exposure due to Peru's large mining industry are pushing to strengthen laws that regulate mining and oil exploration. The U.S. - Peru FTA's investor rights provisions threaten these efforts, and could chill future attempts to improve environmental conditions. In addition, the agreement gives corporations the right to challenge U.S. government decisions over oil and gas royalties and other domestic regulations.

Threat to Biodiversity: The Intellectual Property chapter (Chapter Sixteen) would undermine the right of indigenous and local communities to share in the benefits derived from the vast biodiversity of the region and their own traditional knowledge of that biodiversity. In particular, the agreement's provisions do not comport with the requirements of the Convention on Biological Diversity (CBD) protecting the rights of indigenous communities to their traditional knowledge in areas such as medicines and seeds. Consistent with the CBD, indigenous communities should have the right to know if their traditional knowledge is being used by outside parties and to share in any benefits derived from that traditional knowledge. The U.S. - Peru FTA's "Understanding Regarding Biodiversity and Traditional Knowledge" does not adequately address these concerns.

While each trade agreement should be judged on its own merits, the U.S. - Peru FTA follows an alarming and increasingly prevalent model in recent trade agreements which offers weak provisions on labor and the environment while dramatically expanding the rights of corporations to attack legitimate public health and environmental protections in secret trade tribunals.

Trade agreements should support, not undermine, environmental protection, human rights and labor standards. The U.S. - Peru FTA fails to meet this test. We urge you to oppose this agreement and any other trade agreement presented to Congress based on this same flawed model.

Sincerely,

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