

# CRS Report for Congress

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## Peru Trade Promotion Agreement: Labor Issues

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### Summary

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 provisions are among the most controversial of the agreement. The labor chapter of the PTPA is part of the core text of the agreement and includes specific obligations on domestic labor law enforcement and a labor cooperation and capacity building mechanism. Supporters 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 would like to see the PTPA include enforceable ILO labor standards, and they argue that Peru has failed to comply with U.S. internationally recognized worker rights and ILO standards. Implementing legislation has not yet been introduced in the U.S. Congress. 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 United States and Peru concluded the agreement on December 7, 2005. It is a comprehensive trade agreement that, if ratified, would eliminate tariffs and other barriers in goods and services trade between the United States and Peru.<sup>1</sup> The labor chapter of the PTPA is in the core text of the agreement and includes specific obligations on domestic labor law enforcement and a labor cooperation and capacity building mechanism.

### PTPA Labor Provisions

In the PTPA labor chapter, both parties reaffirm their obligations as members of the International Labour Organization (ILO) and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up*.<sup>2</sup> The

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<sup>1</sup> See CRS Report RS22391, *U.S. Peru Trade Promotion Agreement*, by M. Angeles Villarreal.

<sup>2</sup> The International Labour Organization (ILO), *Declaration on Fundamental Principles and Rights at Work and its Follow-Up*.<sup>2</sup> The  
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agreement's section on enforcement of labor laws states that both parties would be required to effectively enforce their own domestic labor laws. This is the only obligation that would be enforceable through the agreement's dispute settlement procedures, which have an enforcement mechanism that would include monetary penalties to enforce labor obligations.<sup>3</sup> Failure to pay a monetary assessment could result in the suspension of trade benefits. The agreement, however, states that emphasis would be placed on promoting compliance through consultation and trade-enhancing remedies.

The agreement states that the parties recognize the right of each party to adopt or modify its labor laws and standards, but that each would strive to provide for labor standards consistent with internationally recognized labor rights and to improve upon those standards. The parties agreed that they would strive to ensure that they would not weaken or reduce adherence to the internationally recognized labor rights as an encouragement for trade and investment with another party.

The agreement 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 available to the parties of the proceedings and to the public; 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 their country's labor laws; and 7) public awareness of domestic labor laws is promoted through public availability of information and encouraging public education regarding labor laws.

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 Labor Council would establish guidelines, prepare reports, provide public communication, and be responsible for cooperating with the parties' points of contact. The parties would be able to convene a new national labor advisory committee that comprises government, business, or public representatives to provide views on any labor-related issues.

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<sup>2</sup> (...continued)

*Rights at Work*, 86<sup>th</sup> Session, Geneva, June 1998. The ILO *Declaration* commits member countries to respect and promote certain principles and rights, whether or not they have ratified the relevant conventions. See [<http://www.ilo.org>].

<sup>3</sup> The domestic labor law enforcement provision is subject to the dispute settlement provisions of the agreement, which include provisions for openness and transparency by requiring at least one open public hearing and public release of legal submissions.

The two parties agreed that cooperation on labor issues plays an important role in advancing labor commitments, including those embodied in the ILO *Declaration* and a 1999 ILO convention on child labor. They would establish a Labor Cooperation and Capacity Building Mechanism to develop and pursue bilateral or regional cooperation activities on labor-related issues such as fundamental rights at work, worst forms of child labor, and occupational safety and health. Such initiatives would be aimed at establishing and strengthening alternative dispute resolution mechanisms for labor disputes.

## **Peru's Labor Situation: Labor Market and Worker Rights**

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 success, over half of Peruvians live in poverty and a large portion of the population is underemployed. Unemployment and underemployment levels total 64.5% nationwide.<sup>4</sup> Peru's labor market is relatively small when compared with 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 \$24.42.<sup>5</sup> 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 labor.<sup>6</sup> 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' powers to allow easier access to firms, improved inspectors' ability to impose sanctions, and increase the levels of fines.<sup>7</sup> Peru has ratified 71 ILO conventions, including all eight core conventions on workers' rights.

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

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

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

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

The ILO has noted 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 organize.<sup>8</sup> 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 bargaining.<sup>9</sup>

## 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)<sup>10</sup> as were seven other trade agreements approved by Congress. These seven agreements are the U.S.-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) plus agreements with Chile, Singapore, Australia, Morocco, Bahrain, and Oman. Accordingly, provisions of all eight free trade agreements (FTAs) are similar. Despite their similarities, however, each of the eight agreements also has some unique provisions stemming from evolutions in labor negotiations or special circumstances between the Parties. For the PTPA, unique provisions include some new reporting requirements and cooperative and trade-capacity building activities. Proponents and opponents typically note 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 requirement that each country enforce its own labor laws reinforces Peru's labor reforms in 2003, 2004, and 2005. These reforms have helped to rebuild labor protections dismantled by Fujimori. In addition, the PTPA pledge by each Party to uphold ILO commitments overlays 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.)

Supporters also point out that under the PTPA, the parties *reaffirm* their obligations and commitments under the ILO and *pledge to strive to ensure* that both ILO core labor standards and U.S. internationally recognized worker rights<sup>11</sup> are protected by law. The

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<sup>8</sup> 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.

<sup>9</sup> The Special Incentive Arrangement for Sustainable Development and Good Governance (GSP-Plus), Reports on Core Labour Standards in the Countries Applying for the GSP-Plus, October 2005.

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

<sup>11</sup> Internationally recognized worker rights are similar to ILO standards except that for (4) in the above paragraph, they substitute: acceptable working conditions relating to maximum hours, (continued...)

USTR argues that this alternative to *enforceable* ILO standards does two things: First, it promotes strong laws and thereby serves as a catalyst to raise Peruvians out of poverty and thus lessen pressure on children to work to make ends meet. Second, it assures that U.S. state and federal laws are not subject to vague challenges that might pre-empt them in cases where ILO standards differ from U.S. laws.

### **PTPA Provisions Would Go Beyond Labor Protections in U.S. Trade Preference Laws in Actually Requiring a Country to Enforce Its Labor Laws.**

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) require that to be eligible for trade preferences, developing countries must be providing or taking steps to provide their workers “internationally recognized worker rights.” The Peru TPA goes beyond this in mandating that a country actually enforce its labor laws. In addition, under PTPA countries pledge not to derogate from these laws in order to attract investment. PTPA also would set forth a system for processing enforcement disputes and cooperative programs to support continuing development of worker rights.

## **Weaknesses of the Peru TPA Labor Provisions**

**Despite Recent Progress, Both Peru’s Labor Laws and Their Enforcement Are Weak.** Critics argue that Peruvian labor reforms carried out in recent years have not reversed the damage done by Fujimori, and that both ILO reports and the 2005 State Department’s *Country Reports on Human Rights Practices* document the failure of Peru’s labor laws to comply 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 in that 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. As a result of these “failures,” critics argue, enforceable core labor standards need to be embedded in the agreement.

**Labor Protections in the Agreement are Also Weak.** Labor protections in the agreement are weak, critics claim, for several reasons. First they would not include enforceable core labor standards and, thus, are a step back from both the U.S.-Jordan FTA (implemented by P.L. 107-43) and U.S. trade promotion laws such as ATPDEA and GSP. Second, they would not fulfill negotiating objectives of the *Trade Act of 2002* which require the President to seek provisions in trade agreements that treat all U.S. principal negotiating objectives *equally* in terms of both the availability and equivalency of dispute settlement procedures and remedies. In contrast to this requirement, critics argue, labor protections in the PTPA are overshadowed by protections for commercial operations,

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<sup>11</sup> (...continued)  
minimum wages, and occupational safety and health.

since *only one* labor provision is formally enforceable (that each country enforce its own labor laws) in contrast to *all* provisions pertaining to commercial interests, which are enforceable through the formal dispute resolution procedure. Third, critics argue, enforceable labor provisions are relegated to a separate enforcement mechanism from commercial provisions, with lower maximum fines for noncompliance. Fourth, the PTPA includes no requirement that fines for noncompliance with one's own labor laws be used to strengthen worker rights protections. Fifth, critics argue, nothing in the agreement prevents a country from any degradation of its laws which results from a "bona fide decision regarding the allocation of resources."

## **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. However, it could impact jobs in specific industries because U.S. trade with Peru accounts for only 0.3% of total U.S. trade in goods (2005). According to a report by the U.S. International Trade Commission (USITC),<sup>12</sup> 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 20,000 to 700,000. 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**

On June 28, 2006, the Peruvian Congress voted 79-14 to approve the free trade agreement with the United States. In the United States, the PTPA would be considered by Congress on an expedited basis under the Bipartisan Trade Promotion Authority Act of 2002. Implementing legislation has not yet been introduced, but could be introduced during the planned lame duck session or in the 110<sup>th</sup> Congress. The Senate Finance Committee and House Ways and Means Committee have approved draft implementing language for the agreement. Peruvian President Alan Garcia visited Washington, DC, the week of October 9, 2006, to meet with President Bush, highlighting the importance of the PTPA to Peru. President Bush released a statement after the meeting reaffirming his commitment to securing congressional approval of the PTPA as soon as possible.

In considering the agreement, policymakers may look at the labor provisions but may also take into account Peru's commitments to labor reforms and alleviating poverty. During his visit to Washington, President Garcia emphasized that a free trade agreement would not be enough to alleviate poverty in Peru, and recognized that the government also had to implement internal reforms so that all segments of the population would benefit from trade liberalization, especially the poorer regions. President Garcia announced two internal reform programs that would strengthen legal mechanisms for entrepreneurs who do not have liability protection, expand credit to small enterprises, and provide technical assistance and financial support to connect rural regions to the rest of the country.

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<sup>12</sup> 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.