The Peru FTA —
First Steps In a New Trade Policy for America

Democrats have succeeded in achieving important first steps in a fundamental shift in U.S. trade policy in the Peru FTA. The Peru FTA has been amended to incorporate key Democratic priorities – priorities that will expand and shape trade in ways that spread the benefits of globalization here and abroad by raising standards.

Key provisions include:

Core Labor Standards

- A fully enforceable commitment that FTA countries will adopt, maintain and enforce in their laws and practice the five basic international labor standards, as stated in the 1998 International Labor Organization *Declaration on Fundamental Principles and Rights at Work.*[1]
- A new, fully enforceable, binding commitment prohibiting FTA countries from lowering labor standards.
- New limitations on "prosecutorial" and "enforcement" discretion – FTA countries cannot defend the failure to enforce laws related to the five basic standards due to resource limitations or decisions to prioritize other enforcement issues.
- Same dispute settlement mechanisms/penalties as other FTA obligations.
- Clear actions by the Government of Peru to implement in Peru's labor laws the five basic ILO standards.

Environment

- A fully enforceable commitment that FTA countries adopt, implement and enforce in their laws and practice obligations under seven common major multilateral environmental agreements (MEAs), including CITES and the Montreal Protocol.[2] Provision to add additional, new common MEAs.
- A new, fully enforceable, binding commitment prohibiting FTA countries from lowering environmental standards.

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[1]These principles are: the freedom of association; the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor and a prohibition on the worst forms of child labor; and the elimination of discrimination in respect of employment and occupation.

[2]The MEAs are: the Convention on International Trade in Endangered Species; the Montreal Protocol on Ozone Depleting Substances; the Convention on Marine Pollution; the Inter-American Tropical Tuna Convention; the Ramsar Convention on the Wetlands; the International Convention for the Regulation of Whaling; and the Convention on Conservation of Antarctic Marine Living Resources.

- Same dispute settlement mechanisms/penalties as other FTA obligations.
- A groundbreaking "conflict of laws" provision – where a covered MEA obligation affects an obligation under an FTA, the FTA cannot be used to undermine the MEA obligation.
- For Peru, a groundbreaking, fully enforceable Annex requiring Peru to take major specific steps to crack down on all illegal logging, and additional action to stop illegal logging of mahogany. Unprecedented provision allowing the United States to investigate illegal logging of mahogany in-country, and stop questionable shipments at the border.

Generic Medicines

- Change the "data exclusivity" provision (period in which a generic manufacturer may not use clinical test data of an innovative drug manufacturer) to allow generics to enter the market more quickly than under the old provision (by having "concurrent period" of data exclusivity).
- Include exception in FTAs that the "data exclusivity" provision does not preclude FTA countries from taking measures to protect public health and from utilizing the WTO "health solution."
- Eliminate requirement that a drug regulatory agency withhold approval of a generic until it can certify that no patent would be violated if the generic were marketed; strengthen and expedite judicial processes in countries to ensure patent rights of innovative drug companies are respected.
- Eliminate requirement that an FTA country extend the term of a patent on a pharmaceutical product for delays in the patent and regulatory approval process. Instead, ensure expeditious patent and regulatory approval process.

Government Procurement

- Groundbreaking provision that allows U.S. Federal and State governments to condition government contracts on contractors adhering to the five basic labor standards and acceptable conditions of work and wages. (Existing provision allows conditioning of contracts on use of recycled materials.)

Port Security

- Clarify that the U.S. has full, non-challengeable authority to prevent foreign companies from operating U.S. ports, based on national security concerns.

Investment

- Explicitly state that foreign investors in the United States will not be accorded greater substantive rights with respect to investment protections than U.S. investors in the United States.