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**Congress of the United States**  
**House of Representatives**

**COMMITTEE ON WAYS AND MEANS**

WASHINGTON, DC 20515

SUBCOMMITTEE ON TRADE

October 29, 2007

**LABOR REPORT SHOWS IMPORTANCE OF  
STRONG LABOR PROVISIONS OF THE PERU FTA**

Dear Democratic Colleague:

The U.S.–Peru Free Trade Agreement (“FTA”) is a milestone in U.S. trade policy. It is the first FTA to include what House Democrats have long sought – **fully enforceable** commitments by the U.S. trading partner to **adopt and maintain fundamental labor rights**.

In recent days, a “Dear Colleague” letter was circulated attaching a 2007 International Trade Union Conference (ITUC) report and asserting that, according to this report, “the labor requirements included in the pending Peru Free Trade Agreement will do nothing to improve that [labor] situation [in Peru]...and labor laws in Peru cannot be improved or enforced under the construct of a trade agreement.”

The ITUC Report does not make either of these conclusions. Further, the Dear Colleague makes no reference to the only paragraph in the ITUC report that **does** address the FTA, which notes the “strong support in the U.S. for the inclusion of both core labour and environmental standards.” The report notes further that, as a result, the FTA now includes “legally-binding amendments concerning labour and environment issues.”

Here is what having these “legally-binding amendments” means:

- Peru brings its labor regime into compliance with its obligations under the FTA – including to implement and enforce basic international labor standards – and **cannot derogate** from those standards.

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- The United States can challenge any breach in Peru's commitments on labor in the same way that it can enforce any commercial violation.

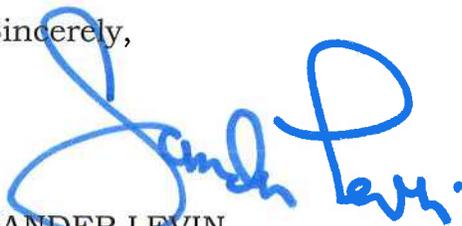
With these groundbreaking provisions, Democrats can be proud that we have achieved what we have been fighting for more than a decade – for which all but 15 Democrats voted “no” on CAFTA.

Far from undermining the Peru FTA, the ITUC's review of Peru's labor policies are similar to the findings in the International Labor Organization (ILO) reports on Peru's shortfalls from the ILO Declaration and are precisely why the legally-binding labor provisions of the Peru FTA are critically important. Indeed, it is these types of reports that Democrats have long used to argue for the new policy of including enforceable core labor standards in trade agreements. These are also the types of reports that we used when working with Peru to identify the extent to which Peruvian laws were out of compliance.

Chairman Rangel and I insisted that the Government of Peru makes changes to its labor laws to come into compliance with the Agreement prior to Congressional consideration of the FTA. These changes, which track the very ILO recommendations that the ITUC report discusses, and steps taken by prior President Alejandro Toledo and President Garcia over the last year in preparation for the FTA, are outlined in the enclosed fact sheet.

I urge you to give careful consideration to these achievements as our caucus begins its consideration of the Peru FTA. **Given the fundamental importance of respecting worker rights and the long, difficult battle House Democrats have waged to incorporate these rights in U.S. trade agreements, the Peru FTA deserves nothing less than consideration on the facts.**

Sincerely,



SANDER LEVIN  
Member of Congress

## Peru's Labor Reforms

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1. **Use of Temporary Employment Contracts to Undermine Union Activity.** The 2007 State Dept. Human Rights report states that many businesses use workers hired under short term employment contracts (“temporary contracts”). In reality, vast majority of these temporary workers are doing permanent jobs – the workers are kept under temporary contracts to thwart union organizing and to create economic insecurity.
- ✓ In September 2007, Peru issued a Supreme Decree tightening use of temporary contracts. The Supreme Decree:
  - ▶ Prohibits the use of temporary contracts where the intent or effect is to harm or limit the exercise of the rights of association or collective bargaining, or to substitute for striking workers.
  - ▶ Reaffirms that workers hired under temporary contracts, including those hired through a subcontractor, have the right to organize, collectively bargain and strike.
  - ▶ Provides workers hired under temporary contracts with administrative and judicial causes of action for an employer’s failure to renew a contract because of anti-union discrimination, and provides for remedies including reinstatement, award of costs, attorneys fees, and compensatory and punitive damages. (Workers under temporary contracts already have the right to challenge *dismissals* for union activity.)
- ✓ In August 2007, Peru issued a Supreme Decree significantly expanding the mandate and authority of Labor Inspectors to prevent abuse of temporary contracts. The Supreme Decree:
  - ▶ Requires Labor Inspectors to review temporary contracts to ensure they are not being used to harm or limit the exercise of the rights of association or collective bargaining.
  - ▶ Gives Labor Inspectors the authority and requires them to make workers employed under temporary contracts permanent hires when a temporary employment contract is used for fraudulent purposes, including for the purpose of harming or limiting the

rights of association or collective bargaining. Remedy is in addition to fines.

- ▶ Gives Labor Inspectors the authority to require renewal of temporary contracts where employers do not renew a contract because of anti-union discrimination.
- ✓ In September 2007, Peru's Ministry of Labor issued a Directive creating a national program to monitor use of temporary employment contracts in sectors where abuse has been most widespread. Under the program, the Peruvian Labor Department will review annually all temporary contracts in the following specified sectors to ensure compliance with the law: mining, textiles and apparel, agriculture, telecommunications, transportation, and construction. Reports will be made public.

**2. Use of Subcontracting ("Outsourcing") to Undermine Union Activity.**

The 2007 State Department Human Rights report states that there is frequent use of sub-contracted labor in Peru (known in Peru as "outsourcing"). Subcontracting/outsourcing is subject to few regulations or requirements, and many subcontracting/outsourcing entities are shells set up by the main employer to avoid a direct employment relationship with workers.<sup>1</sup>

- ✓ In September 2007, Peru issued a Supreme Decree to tighten regulation of subcontracting/outsourcing. The Supreme Decree:
- ▶ Includes requirements to ensure that subcontracting/outsourcing entities are legitimate, independent entities. The requirements are that subcontracting/outsourcing entities must: (a) assume responsibility for the work provided; (b) have and provide their own financial, technical and material resources; and (c) maintain control over the workers they provide to the main company (i.e., the user company). If a subcontracting/outsourcing entity does not meet these three requirements, and is providing workers to a main company, the workers become direct hires of the main company.
  - ▶ Prohibits a subcontracting/outsourcing entity from merely

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<sup>1</sup>Peru has another form of subcontracting, known as "labor intermediation" that is not covered by the September 2007 Supreme Decree. Labor intermediation is subject to strict terms and conditions and does not appear to be abused. Therefore, additional requirements were not sought.

providing workers to a main company. If the subcontracting/outsourcing entity merely provides workers, the workers become direct hires of the main company.

- ▶ Prohibits the use of subcontracting/outsourcing where the intent or effect is to harm or limit the rights of association or collective bargaining or to substitute for striking workers.
- ▶ Reaffirms that workers provided through a subcontracting/outsourcing entity have the right to organize, collectively bargain and strike.
- ▶ Provides workers hired under subcontracting/outsourcing arrangements with administrative and judicial causes of action where subcontracting/outsourcing is used to harm or limit the rights of association or collective bargaining, and provides for remedies including becoming direct hires of the main company, and award of costs, attorneys fees, and compensatory and punitive damages.

[Note: The regulations described above apply to all subcontracting/outsourcing, regardless of whether the subcontracting/outsourcing entity sends workers physically to the main company.]

- ✓ The September 2007 Supreme Decree also includes additional requirements that must be met where a subcontracting/outsourcing arrangement involves provision of workers “on-site” at a main company. The Supreme Decree:
  - ▶ Requires such subcontract/outsourcing arrangements to be in writing, and subject to verification by the Ministry of Labor.
  - ▶ Requires the outsourcing/subcontracting entity to have sufficient financial resources to guarantee compliance with wage and social security obligations for all workers covered by a subcontracting/outsourcing arrangement.<sup>2</sup>
- ✓ In September 2007, the Ministry of Labor issued a Directive creating a

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<sup>2</sup>The August 2007 Supreme Decree gives Labor Inspectors the authority to require the main company to guarantee the sub-contracted/outsourced workers’ wages and social security payments if the subcontracting/outsourcing entity does not have the requisite financial resources.

national program to monitor subcontracting/outsourcing entities, including creating a registry of the companies, the contracts, and verifying whether the companies meet the requirements of law, including having sufficient resources to meet wage and social security obligations.

- ✓ In August 2007, Peru issued a Supreme Decree significantly expanding the mandate and authority of Labor Inspectors to prevent abuse of subcontracting/outsourcing.<sup>3</sup> The Supreme Decree:
  - ▶ Provides Labor Inspectors with the authority to review subcontracting/outsourcing arrangements to ensure that they meet the requirements of law, including that they are not being used to harm or limit the exercise of the rights of association or collective bargaining.
  - ▶ Gives Labor Inspectors the authority to make subcontracted/outsourced workers direct hires of the main company where the subcontracting/outsourcing arrangement does not meet the requirements of law, including where it is used to violate the rights of association or collective bargaining. This remedy is in addition to fines.

**3. Onerous Strike Requirements.** Peru's labor law requires that a majority of the workers in a workplace vote in favor of a strike before a strike can be held. The ILO recommends that if a vote is required for a union-called strike, that the support of a simple majority of votes cast should suffice. (ILO CEACR Report, C. 87, 2005)

- ✓ In July 2006, Peru issued a Supreme Decree changing the strike requirement to require a simple majority of votes cast.
- ✓ In October 2007, Peru issued a Supreme Decree to eliminate a 2/3rds quorum requirement. Now, only a majority of union workers is needed to hold a strike vote.

**4. Determination of Legality of a Strike Made By the Government.** Peru's Ministry of Labor determines the legality of a strike. The ILO recommends that an independent entity other than a government determine legality of a strike (e.g., the courts). (ILO CEACR Report, C.87,

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<sup>3</sup>The August 2007 Supreme Decree also gives Labor Inspectors additional authority to regulate labor intermediation. Those provisions are not discussed here for the reasons identified in footnote 1.

2007)

- ✓ In August 2007, Peru requested its National Labor Council (a tripartite advisory body that includes Peru's major unions) to provide a recommendation on what body should determine the legality of a strike within the next six months. Peru has committed to act on that recommendation immediately.

**5. Effective Remedies to Remedy Anti-Union Discrimination.** The ILO has criticized judicial procedures established by Peru's law for dealing with complaints of anti-union discrimination or interference as too slow to be effective. (ILO CEACR Report, C. 98, 2005)

- ✓ In July 2006, Peru passed a new law providing for expedited administrative action to sanction anti-union discrimination. That law was supplemented by Supreme Decrees issued in October 2006 and August 2007. Inspectors now have authority to:
  - ▶ Impose fines against employers for anti-union conduct.
  - ▶ Reinstate workers that have been fired or whose employment contracts were not renewed because of anti-union discrimination.
  - ▶ Require companies to directly hire any worker employed through a subcontracting/outsourcing relationship that does not meet the requirements of law.

- ✓ In September 2007, the Peru's Supreme Court issued a mandatory Directive to all Peruvian judges to give expedited consideration to all pending and future judicial cases involving dismissals or non-renewal of employment contracts due to anti-union discrimination. Peru's Ministry of Justice will issue periodic reports on compliance with the directive.

**6. Inadequate Penalties to Deter Employer Interference in Union Activity.** The ILO has criticized Peru's labor law for not providing adequate sanctions against acts of interference by employers in trade unions. (ILO CEACR Report, C. 98, 2005)

- ✓ In July 2006, Peru passed a new law defining prohibited acts of employer interference in union activity.
- ✓ In October 2006, Peru issued a Supreme Decree establishing significant fines for acts of employer interference in union activity.
- ✓ In August 2007, Peru issued a Supreme Decree expanding the prohibited

acts of employer interference, including prohibiting use of temporary contracts and subcontracting/outsourcing to undermine union activity (i.e., exercise of the rights of association and collective bargaining).

**7. Employers Unilaterally Changing Collective Bargaining Agreements.**

The ILO has criticized a provision in Peru's labor law that had been interpreted to allow employers to “introduce changes unilaterally in the content of previously concluded collective agreements or require them to be renegotiated.” (ILO CEACR Report, C. 98, 2005)

- ✓ In July 2006, Peru issued a Supreme Decree clarifying that the ambiguous provision does not allow employers to change unilaterally collective bargaining agreements or require renegotiation of such agreements.

**8. High Arbitration Costs.** According to the 2005 U.S. Department of State Country Report on Human Rights Practices in Peru, “union officials complained that their proportionate share of the costs of arbitration often exceeded their resources.”

- ✓ In July 2006, Peru issued a Supreme Decree significantly reducing arbitration costs.
- ✓ Arbitration is not mandatory.