

DORIS O. MATSUI  
5TH DISTRICT, CALIFORNIA

COMMITTEE ON RULES

COMMITTEE ON  
TRANSPORTATION AND INFRASTRUCTURE

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-0505

WASHINGTON OFFICE:  
222 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-0505  
(202) 225-7163

DISTRICT OFFICE:  
ROBERT T. MATSUI U.S. COURTHOUSE  
501 I STREET, SUITE 12-600  
SACRAMENTO, CA 95814  
(916) 498-5600  
<http://matsui.house.gov>

October 29, 2007

**PERU RETAINS FULL FLEXIBILITY  
TO CHANGE ITS SOCIAL SECURITY SYSTEM**

Dear Colleague:

In 1992, Peru privatized aspects of its social security system. Some critics have claimed that the Peru FTA will “lock in” privatization or, alternatively, that fear of investor-state arbitration under the FTA will prevent Peru from returning to a fully government-managed social security system, should it decide it wants to do so. This is incorrect.

**In fact, the Peru FTA fully protects Peru’s right to modify its social security system, including to return to a completely government-managed social security system.**

**The Peru FTA does not require Peru to have a privatized social security system.** No provision of the agreement imposes such a requirement.

To the contrary, the Peru FTA explicitly **excuses a Party from all obligations under the financial services chapter** to the extent it allows only government entities to compete to provide services relating to “a public retirement plan or statutory system of social security.” In those circumstances, the Party has broad flexibility, including to:

- designate a monopoly to supply some or all of the social security services, or
- preclude participants from choosing activities or services provided by any entity other than a government entity.

Similarly, the investment chapter of the Peru FTA **preserves the right of Parties to take measures “designed and applied to protect legitimate public welfare objectives.”** This includes measures relating to social security. If Peru were to reverse its privatization of social security for public welfare reasons, its actions would be presumed **not** to constitute expropriations under the investment chapter and, thus, are unlikely to expose Peru to liability in investor-state arbitration.

Even absent the presumption, **an investor would face difficult hurdles in proving the elements necessary for a successful claim.** For example, a key factor in an expropriation

analysis is whether government actions interfere with reasonable expectations of the investor. Given the broad discretion the parties have under the Financial Services chapter to operate a government-managed social security system, investors have **clear notice that Peru may revert to such a system in the future and no “reasonable expectation” to the contrary.**

**Peru is free to provide even further notice to private investors** at the time it issues licenses, including by noting that the licenses may be revoked should the government decide to implement a fully government-managed social security system.

In short, absent egregious action by Peru, **there is little risk of liability in investor-state arbitration** if Peru were to decide to revert to a fully government-managed social security system in the future.

I believe it is important to have these **facts** before us as our caucus begins its consideration of the Peru FTA.

Sincerely,



Doris O. Matsui  
Member of Congress