

WEAK ENVIRONMENTAL CHAPTER IN THE FTA DOES NOT IMPEDE ENVIRONMENTAL AND SOCIAL STANDARDS FROM BEING AFFECTED



Implementation of the US-Peru FTA demonstrates the extreme weakness of the environment chapter

- The Environmental Chapter only establishes concrete obligations for the implementation of a reduced number of international environmental accords.
- It places priority on the fulfillment of commercial agreements, regarding the environmental obligations of both countries, as demonstrated by the legal decrees for its implementation.
- With the exception of some aspects regarding forest use for timber, it does not provide instruments to improve environmental management in Peru.

Taking advantage of the implementation of the FTA, the Peruvian government is carrying out a profound political, legal and institutional environmental reform, which has facilitated the access and use of natural resources without considering - and could even violate - environmental and social standards. In this process, Legislative Decrees N° 1064, 1081, 1083, 1090 among others, related to the issue of land, water, forest and the rights of local and indigenous communities are of special concern.

The process of implementing the Environmental Chapter of the FTA in Peru constitutes the implementation of reforms that were promoted by Democratic representatives in the U.S. Congress in the renegotiation of the FTA. The aim was to improve environmental protection mechanisms in trade agreements, in line with the new vision that the administration of recently elected President Barack Obama will promote.

However, despite the major expectations generated by this new chapter, its implementation in Peru demonstrates its serious limitations regarding environmental protection. With the exception of illegal logging in Peru (which is addressed under a perspective of timber use and trade), this chapter prioritizes those environmental aspects that could affect investment and trade between both countries.

The weakness with which these issues have been regulated in the FTA should be a source of concern, given that this agreement could generate significant environmental and social impacts in a country as multi-cultural and bio-diverse as our own.

US-Peru FTA Environmental Chapter Does not Guarantee Fulfillment of Environmental Standards

This trade agreement seeks to promote high standards and levels of protection in the environmental policies and laws in both countries. However, it does not ensure effective compliance mechanisms.

There are other experiences where trade agreements have defined more strict obligations regarding fulfillment of the domestic legal environmental framework, such as the FTA signed between Chile and Canada. That agreement establishes the obligation of both parties to guarantee high standards in environmental legislation, under which each party must effectively apply their laws and environmental legislation, as well as all international agreements signed by each country on this matter, and finally defines mechanisms and procedures for effective fulfillment of

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See Complete Study in: <http://www.redge.org.pe/node/95>

these agreements without this implying a loss of sovereignty or foreign interference in the definition of their priorities. This model of an Environmental Chapter without a doubt constitutes a better model to guarantee environmental standards.

The Environmental Chapter of the FTA with the United States is focused on achieving the application of the environmental legislation in each country to the extent that it affects investment and trade between both. Along these same lines, article 18.3.2. of this FTA recognizes that "...it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective environmental laws..." and then establishes a commitment by both parties to not weaken or reduce the protection granted by said legislation, leaving it without effect or repealing it "...in such a manner that it affects trade or investment between the parties."

As a result, for the effect of this FTA, both parties assume concrete obligations to not weaken the legal environmental framework only to the extent that it does not affect the investment and trade commitments established in the agreement, leaving aside important environmental principles and obligations (climate change, biological diversity, etc) and social (indigenous peoples etc.), recognized and incorporated by both countries through international agreements and their own legal framework.

It recognizes some environmental agreements, leaving aside important instruments of environmental protection

The Environmental Chapter of the FTA between Peru and the United States proposes that both parties should adopt, maintain and implement regulations and measures to fulfill their obligations regarding only seven multilateral agreements, leaving aside important instruments such as the Kyoto Protocol, the Convention on Biological Diversity, the ILO Convention 169 on Indigenous Peoples, among others, of vital importance to guarantee the sustainability of the development strategies our country will adopt.

Despite efforts renegotiating the environmental addendum by Democratic representatives in the US Congress and the intense campaign insisting on improving environmental protection through the US FTA, in light of the violation of environmental and social standards brought about with the FTA implementation process in Peru, the immense weakness of this chapter becomes clear.

Legislative Decrees N° 1064, 1081, 1083 and 1090

- Contradicts obligations undertaken by Peru in international environmental agreements
- It goes against the spirit of the addendum of the Environmental Chapter, promoted by Democrats
- The restrictions included in the Environmental Chapter of the FTA mean its capacity to avoid this impact are limited.

² Article 3° of the Environmental Cooperation Agreement in the Chile - Canada FTA.

³ Article 5° of the Environmental Cooperation Agreement in the Chile - Canada FTA.

⁴ Article 4° of the Environmental Cooperation Agreement in the Chile - Canada FTA: "Nothing in this agreement shall be interpreted as affecting the rights and obligations of either party under other international environmental agreements, including conservation agreements, to which such party is a party".

⁵ Article 18.3.1 of the US - Peru FTA: "A Party shall not fail to effectively enforce its environmental laws, and its laws, regulations, and other measures to fulfill its obligations under the covered agreements, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement."

⁶ Multilateral environmental agreements listed in Annex 18.2 ("covered agreements"). "This list includes only the following international environmental agreements: Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Montreal Protocol on Substances that Deplete the Ozone Layer; 1978 Protocol Relating to the International Convention for Prevention of Pollution from Ships; Convention on Wetlands of International Importance Especially as Waterfowl Habitat for; Convention for the Conservation of Antarctic Marine Living Resources; International Convention for the Regulation of Whaling and the Convention for establishment of an Inter-American Tropical Tuna Commission (IATTC).

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