

CECILIA MALMSTRÖM
MEMBER OF THE EUROPEAN COMMISSION

30. 07. 2018

Brussels,
IM/is Ares(2018)

Dear Minister Valencia,

The comprehensive Trade Agreement between the European Union (EU) and Peru and Colombia has recently celebrated five years of application. This Agreement has had a beneficial impact on the economies of Peru and the EU. In Peru, it had notably a stabilising effect in the context of declining commodity prices and also contributed to the diversification of exports, in particular in favour of agricultural products and small and medium size enterprises.

However, the Peru-EU Trade Agreement aims for more than promoting trade and investment. It is our shared objective to ensure that the increased economic activity contributes to sustainable development, including its social and environmental dimensions. This is why we agreed to incorporate in this Agreement a dedicated Trade and Sustainable Development (TSD) Title with legally binding commitments. Delivering on these commitments is as important as delivering on other provisions of the Agreement.

In this context, you are certainly aware of the EU's concerns on whether Peru has made sufficient progress in implementing the TSD Title. This is framed by a broader political demand in the EU to be more effective and assertive in implementing the TSD commitments reflecting the spirit of our trade policy, which puts values such as high social and environmental standards at its core.

One of the issues on which we believe there is room for improvement is the consultation of domestic civil society on TSD matters. Peru has chosen to use existing domestic mechanisms for this purpose. However, we have no clear indication of the composition of these groups, the frequency of their meetings or indeed if they have discussed the implementation of this Title. My services signalled this issue to Peruvian authorities on many occasions, including during the last TSD Sub-committee and Trade Committee in November 2017 in Lima. This concern has also been raised in a report submitted to the European Commission in October 2017 by civil society organisations, many of them based in Peru. The EU civil society groups have no clear counterpart on the Peru side. This hinders an effective dialogue between both domestic groups on TSD matters, as foreseen in the TSD Title.

We also have serious concerns about the effective implementation of the TSD Title in Peru both with regard to the labour and the environmental provisions. We are particularly worried about the shortcomings in the effective implementation of the fundamental ILO

Rogers Valencia
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Conventions 87 and 98, on freedom of association and protection of the rights to organize and collective bargaining, which remain unaddressed despite ILO's Committee of Experts recommendations. Furthermore, Peru has one of the highest levels of informality in the labour market and the persistent high level of child labour remains a high concern. All these issues have been the focus of discussions in the TSD Sub-committee over the past five years and still more efforts are needed for substantial progress to be achieved.

On environmental protection, as discussed last November in Lima, the simplification of administrative procedures on environmental matters should not lead to a lowering of the level of environmental protection. The latter would not be in compliance with the TSD provisions.

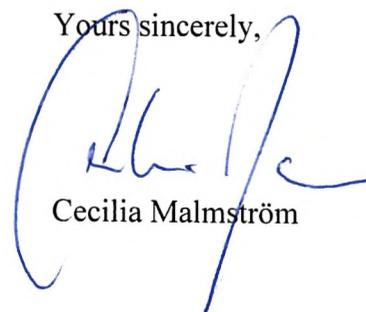
I remain optimistic that a constructive engagement will result in improvements in the above mentioned areas of concern and positive deliverables can be agreed at the upcoming Trade Committee meeting. However, in the absence of sufficient progress, we will consider using existing mechanisms, including the enforcement procedure, under the Trade Agreement to address the problems identified.

In preparation of the 5th round of meetings of the TSD Sub-committee and of the Trade Committee later this year in Quito, you will find in annex to this letter a list of issues that we expect to be addressed by Peru via a well-defined and time-bound *action plan*. If such *action plan* were shared with the European Commission ahead of the TSD Sub-committee, it would demonstrate political commitment on Peru's side and would enable the EU to assess how the substantive concerns have been addressed.

To this end I will also ask my services to organise a fact-finding mission to Lima in autumn to further discuss EU concerns with the authorities and with the civil society. I count on your support to facilitate this mission and the subsequent discussions.

I trust that you will agree with me on the importance of ensuring the effective implementation of the TSD commitments in our Trade Agreement. This is a process that requires continuous joint efforts, strong political commitment and decisive action. Having said this, I'm looking forward to your constructive response and to working with you on the concerns so important for our citizens.

Yours sincerely,



Cecilia Malmström

ANNEX

To improve the effective implementation of its commitments under the Trade and Sustainable Development Title of the Peru-EU Trade Agreement it is important that Peru:

- **Ensures that the consecutive use of fixed-term employment contracts does not constitute an obstacle for workers to join trade unions and does not contribute to discrimination of trade union activists**, notably by reviewing the Act on Promotion of Non-Traditional Exports. This would allow addressing the observation made in 2015 by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the application by Peru of the ILO Convention 98 on the right to organise and collective bargaining concerning workers with fixed-term contracts in the private sector. The ILO pointed out that in Peru workers with fixed-term contracts were especially vulnerable to discriminatory non-renewal of their contracts, and that the routine use of this contractual modality enabled employers to prevent their workers from joining a trade union. The CEACR also took note that this issue had been the subject of several cases before the ILO Committee on Freedom of Association and requested Peru to engage in dialogue with the social partners.
- **Takes effective steps to reduce informality in the labour market notably by strengthening further the labour inspection system** to ensure the effective implementation of the fundamental ILO Conventions throughout the country for all workers, by: (i) increasing its coverage and centralising its authority; and (ii) increasing the financial and human capital investment.
- **Combats forced labour and continues to strive to progressively eliminate child labour**, by establishing a robust legislative and institutional framework for combating trafficking in persons and taking all the necessary steps to effectively implement its national policy against trafficking in persons and related forms of exploitation, and ensuring that the Unit for Combating Forced and Child Labour (GEIT) has adequate human and material resources to be able to cover the whole of the national territory. This would address the 2017 observation by the CEACR of the ILO on the application of ILO Convention 29 on Forced Labour.
- **Strengthens efforts to improve social dialogue** in the country, including by: (i) improving the functioning of the National Labour Council (CNTPE) by resolving the circumstances which are obstructing its functioning, and ensuring that tripartite consultations are held effectively; and (ii) supporting the capacities of trade unions and employers engaged in social dialogue.
- **Engages further with the EU and the ILO** on the implementation of the international labour standards, including through regular follow-up on the progress made.

- **Ensures that relevant laws and implementing acts** in particular in the area of environmental impact assessment and regulating industrial activities in different sectors do not lead to an effective reduction of environmental protection. For this Peru must also ensure appropriate institutional capacity and legal transparency.
- **Strengthens its public consultation mechanisms** by reassessing the need to set up a domestic advisory group to discuss issues related to the TSD Title of the Trade Agreement with the EU. This would ensure that the impact of policies relevant to the functioning of the Trade Agreement on environment and labour standards would be discussed in a transparent manner.