

March 2, 2015

Ambassador Michael Froman
United States Trade Representative
Office of the U.S. Trade Representative
600 17th Street N.W.
Washington, D.C. 20508

Dear Ambassador Froman,

We are writing to express our deep concern over Peruvian Law 30230 (PL 30230), “Tax Law Establishing Measures, Simplified Procedures and Permits for the Promotion and Dynamization of Investment in the Country,” signed by President Humala last year. Based on consultations with Peruvian civil society and an analysis of relevant environmental provisions in Peruvian law and of Peru’s trade obligations with the United States, we believe that PL 30230 violates the U.S.-Peru Trade Promotion Agreement (TPA). Therefore, we call on the office of the United States Trade Representative (USTR) to utilize the tools available in Article 18.12 (Environmental Consultations and Panel Procedures) of the trade agreement and begin the formal consultation process established.

Growing congressional and public concern about the need for U.S. trade agreements to include environmental standards with the same enforcement as commercial provisions led to the May 10th, 2007 agreement. At the core of the May 2007 agreement are the obligations in Article 18.3.2 of the U.S.-Peru TPA, which forbids countries from waiving environmental laws in order to attract trade and investment and subjects those commitments to the formal dispute settlement mechanism. This obligation is critical not only to ensure there is recourse if a country weakens environmental policies in order to attract trade and investment, but also to *deter* countries from weakening environmental policies in order to attract trade and investment in the first place. The U.S. must hold Peru accountable to its obligations in the TPA. Enforcement is *essential* to make the May 2007 provisions meaningful in current free trade agreements and future trade agreements, such as the proposed Trans-Pacific Partnership. PL 30230 will enable companies from the U.S., Peru, and elsewhere to proceed with activities that have a high likelihood of negative environmental impacts under newly reduced oversight and enforcement by relevant environmental authorities. Among the many concerning provisions in the law that will affect trade and investment between the United States and Peru are:

- Article 19, which modifies the national environmental sanctioning regime, limiting the Office of Environmental Evaluation and Supervision’s (OEFA) ability to fully sanction companies that violate environmental laws. Article 19 establishes a three-year period during which the applicable fine for infractions is reduced by 50%, with some exceptions allowed. During this period companies breaking environmental laws will benefit from reduced fines.
- Article 20, which strips the Ministry of Environment of its autonomy to establish Reserve Zones, shifting this decision to a vote by the Council of Ministers. This change in process limits the

scope of action of the Ministry of Environment and makes the designation of Reserve Zones and achieving the environmental protections these can ultimately afford more difficult.

- Article 21, which alters time-frames and protocols for Environmental Impact Assessments (EIAs), forcing officials to issue technical opinions within a narrow timeframe and establishing sanctions for those unable to do so, while failing to address the underlying issue of resource constraints and the realities of what it sometimes takes to conduct a thorough EIA. The primary purpose of the EIA is to reduce risks to the environment; changes to the EIA process found in Article 21, however, are solely designed to create predictability for investors and will weaken environmental protections.
- Article 23, which weakens the Ministry of Environment's authority to set Environmental Quality Standards and Maximum Permissible Limits, and makes it more difficult to use the Environmental Quality Standards and Maximum Permissible Limits by mandating an analysis of the regulatory and economic impacts on the industriesj involved.

Article 18.3.2 of the U.S.-Peru TPA Environment Chapter states that: "The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective environmental laws. Accordingly, a Party *shall not* waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws in a manner affecting trade or investment between the Parties (emphasis added)." The new Peruvian law is a violation of this obligation. Indeed, the stated purpose of the new law is to promote and encourage investment, and it does so in part by waiving existing environmental requirements and reducing the authority of environmental regulators, especially with respect to investors in extractive industries—one of Peru's primary export sectors.

We strongly urge you to take immediate action to use the enforcement provisions available in the trade agreement in order to remedy Peru's violation of its existing TPA environmental obligations, beginning by requesting formal consultations with Peru under Article 18.12.

Sincerely,

Interamerican Association for Environmental Defense
Center for International Environmental Law
Earthjustice
The Environmental Investigation Agency
Natural Resources Defense Council
Oxfam America
Rainforest Foundation US
Sierra Club
World Wildlife Fund US