

Business Interests before Human Rights

The EU Free Trade Agreement with Peru

From an Association to a Free Trade Agreement

The Free Trade Agreement (FTA) between the European Union (EU) and Colombia and Peru was signed in Madrid on 19 May 2010 during the EU-Latin America and Caribbean Summit. For the Agreement to enter into force, however, it must be endorsed by the European Parliament and the Peruvian and Colombian Congress. It seems very likely that additional ratification by the parliaments of the EU member states will also be required. The European Parliament is expected to hold its crucial debate on the ratification of the FTA in 2011.

The FTA, in its present form, is the outcome of several years of negotiations which initially aimed to produce an Association Agreement between the European Union and Bolivia, Peru, Ecuador and Colombia. Although its main focus was on free trade, it was also intended to promote political dialogue and development cooperation. However, views quickly diverged on the Agreement's content and objectives. The EU concluded that reaching an agreement with the four Andean countries was no longer possible, and excluded Bolivia from the negotiations. Talks continued with Colombia, Peru and Ecuador, but by then, the EU was only interested in concluding a trade agreement. The two other pillars envisaged for the Association Agreement were now dropped completely. As a result, Ecuador withdrew from the talks in July 2009.

Small farmers as "impediments to progress"? – The worrying human rights situation in Peru

Peru, together with Colombia and Mexico, is one of the Latin America countries with a particularly worrying human rights situation. Human rights violations have been occurring for many years, largely in the context of conflicts over the land rights of indigenous and farmer communities. In his article "The syndrome of the gardener's dog" (*El síndrome del perro del hortelano*), published in September 2007, President Alan García depicted farmer communities as "impediments to progress" and their land claims as illegitimate. García argued that these poor farmers lack expertise and resources for cultivating their land, and that their property rights are, as he puts it, only "ostensible". If their plots were sold to well-funded investors, they could be used productively to the benefit of all and thus become "genuine" property.

So it is hardly surprising that in order to implement the liberalisation commitments within the FTA with the United States, Peru issued almost 100 presidential decrees in 2008, aimed at facilitating access to land for investors in the mining, petroleum and agricultural sectors. As a result, state authorities can declare common lands as fallow, thus allowing their expropriation. At the same time, investors interested in resource extraction on these lands were exempted from the obligation to obtain the prior consent of the original owners. Some of the decrees also allowed the government to convert forest areas in the Peruvian Amazon to arable land, mainly for the large-scale production of agrofuel feedstock such as palm oil or sugarcane.

The liberalisation decrees and the resulting, often brutal, expulsion of people from their land led to massive protests by farmers' organisations, indigenous peoples and trade unions. Instead of negotiating, the government responded by criminalising the social movements and resorting to violence. In June 2009, for example, special forces of the National Police dispersed indigenous protesters in the northern province of Bagua with such force that the escalation of violence resulted in 33 deaths, including 23 police officers. This escalation was not exceptional: the government's security forces frequently use excessive force against Peru's social opposition movements. Dozens of protesters have been shot dead over the last two years alone.

The situation of workers in Peru is also critical. For instance, a minimum of 20 members is legally required to form a company union. Due to this legal requirement, there are no trade unions in most small and medium-sized enterprises. As a consequence, workers have no protection against unfair dismissals, for example. Furthermore, it is not the courts that decide the legality of a strike, but the officials of the Administrative Labour Authority, an entity subordinate to the government. This prepares the ground for routine violation of trade union rights. European corporations, among others, are exploiting this political environment more and more frequently to take anti-union measures such as the targeted dismissal of trade unionists.

The Free Trade Agreement and its impacts

Expanding trade with a country where business activities are so often associated with massive human rights violations is highly problematical. Indeed, Peru's human rights organisations and others fear that the implementation of the FTA will further worsen the human rights situation in their country.

In order to attract investors to Peru, especially for the agricultural and energy sectors and the extractive industries, the Agreement is intended to lower trade barriers and offer better legal stability for investors. However, a very significant proportion of the areas of interest to these three industries is located in the territories of the indigenous and farmer communities. Mega-projects are being carried out without the "free, prior and informed consent" of the affected communities which is a requirement of the United Nations Declaration on the Rights of Indigenous Peoples.

The FTA initially aimed for. It will also exacerbate conflicts within the Andean Community and undermine efforts to achieve deeper regional integration. Furthermore, the Agreement is likely to reinforce the traditional division of labour between European industrialised nations and Latin American commodity suppliers, as the following examples make clear.

Under the Agreement, the European Union seems to be opening its markets to agricultural imports from the Andean countries: it offers duty-free market access for crude palm oil and commits to continuously lower its tariffs on bananas until 2020. It also pledges to open up duty-free beef and sugar quotas and offers free market access for ethanol and biodiesel. However, these trade concessions are likely to do Peru's rural population more harm than good: agrofuels are already triggering social conflicts. In the northern Peruvian department of Piura, the regional government auctioned off land for the cultivation of sugarcane ethanol even though local communities traditionally used it for pasture and other purposes. If land grabbing for the purpose of developing agricultural monocultures for export is intensified, this is likely to result in an increase in violent conflicts in rural communities and in even greater pressure on small farmers.

The requirement to liberalise will apply not just to the EU but also to Peru. For example, Peru must fully open its markets for milk and milk products within 17 years of the Agreement's entry into force. This means that exporters from the EU can then sell their milk products on a duty- and quota-free basis in the Peruvian markets. This is likely to result in bankruptcy for numerous small dairy farmers in this Andean country, who will be unable to withstand the competition forced upon them by these milk imports; such outcomes have been experienced in many other developing countries before.

Services and investment

The Agreement envisages wide-ranging liberalisation for many service sectors, notably the movement of capital. Peru is to safeguard free movement of capital for European investors. This will not only facilitate the smooth repatriation of profits; it also impedes the use of capital controls aimed at preventing the abrupt withdrawal of capital in times of crisis.

Spanish companies, which already dominate key sectors of the economy in Peru, will benefit particularly from liberalisation in other sectors: examples are Telefónica (telecoms), Endesa (energy), Repsol (oil) and Agbar (water), as well as Banco Santander (banking).

Peru has also made major concessions to the EU on market access and national treatment of European investors setting up in the country's agriculture, forestry, mining and oil industries. As a result of the García government's liberalisation course, almost 12 per cent of Peru's national territory has already been granted in concessions to mining companies. Where small farmers once tilled their land, gold, for example, is now being extracted in open pit mining following the often brutal expulsion of the farmers. Land grabbing by the oil industry is particularly extensive: 49 million hectares of the Peruvian Amazon – an area larger than Germany – has been leased to multinational corporations for oil and gas exploration and extraction. About 58 of the more than 60 "blocks" overlap with lands titled to indigenous people. There are numerous European mineral oil companies among the investors, including Repsol YPF (Spain), CEPSA (Spain), Gold Oil (UK) and Eni (Italy).

Overall, the Agreement greatly strengthens the protection afforded to investors, with the result that the European Union could, in theory, bring forward numerous claims for alleged violations of the equal treatment principles under the Agreement's dispute settlement mechanism and could demand compensation or suspend the trade concessions granted under the Agreement. Companies are granted rights without accompanying obligations, such as a requirement to comply with labour and environmental standards. The Peruvian government thus forfeits considerable political scope, e.g. for the promotion of local investors, producers and products.

Intellectual property rights

The Free Trade Agreement extends the protection of intellectual property rights. This may appear, on the face of it, to be a positive move, but it soon emerges as a threat, for example as regards access to drugs and seeds.

The Agreement contains a five-year exclusivity period for the test data of transnational pharmaceutical companies. This constrains the production of cheaper generic versions of licensed drugs. If generic producers want to obtain an earlier approval for their equivalent drugs, they have to repeat the same trials already done by the producers of the original medicine – an expensive and redundant procedure only prolonging the monopoly of pharmaceutical corporations. The UN Committee on Economic, Social and Cultural Rights has warned that this may result in an increase of prices of medicines and negatively impact on the enjoyment of the right to health, in particular of those with low income.

More stringent protection of intellectual property rights also threatens farmers' access to seeds. At present, the development, exchange and selling of seeds not only safeguards the diversity of crops but also the livelihoods of farming communities. The proposals to strengthen the rights of commercial breeders put this traditional seed system at risk: the development and multiplication of seeds generated from protected varieties will then only be permitted by authorisation of the rights-holders, i.e. the commercial breeders, with farmers required to pay royalties to them. The main beneficiaries of the Agreement would be European transnational corporations operating in the seed industry, such as Germany's Bayer CropScience, which produces and sells seed and pesticides in Peru.

The Andes are one of the planet's biodiversity hotspots, harbouring around 10 per cent of the world's plant species. Indigenous and local communities in Andean countries have extensive traditional knowledge about medicinal plants. This is arousing the interest of the pharmaceutical and biotech industry. The FTA responds to these interests and requires Peru to simplify the patenting process for biological and biochemical material. The basis for this process is the 1977 Budapest Treaty, which allows companies to obtain patent protection for a wide range of plants and microorganisms much as if they were their own inventions. As a result, these companies can ensure that they have exclusive rights of use for e.g. medicinal plants by patenting these plants, without having to share the profits with local, mostly indigenous, communities.

Toothless social and environmental standards: no one benefits

A major flaw in the Free Trade Agreement is the weakening of sanction mechanisms, especially in relation to disputes over labour and environmental standards. Although respect for human rights, as laid down in the Universal Declaration of Human Rights, is stated to constitute an "essential element" of the Agreement, the same does not apply to labour and environmental standards, such as the ILO's core labour standards. Violations of these standards are therefore excluded from the FTA's dispute settlement mechanism, and sanctions such as temporary withdrawal of trade concessions or, indeed, the suspension of the entire Agreement cannot be applied here. Even complaints about human rights violations can only be referred to the Council on Trade and Sustainable Development – a body whose decisions have no binding force. Furthermore, non-governmental actors cannot turn to the Council at all – that right is reserved exclusively for the participating governments.

In reality, the FTA is a retrograde step, behind existing sanction options. Under the generalised system of preferences (GSP), the EU already has the opportunity to temporarily suspend trade concessions in the event of Peru's serious and systematic violations of the provisions of human rights and labour conventions or international environmental conventions. The effect of this is uncertain, given that the EU has never yet made use of this opportunity. However, with the entry into force of the FTA, the GSP and its – at least theoretical – sanction options against Peru would no longer be valid. The social and environmental standards proposed in the Agreement would be largely ineffective.

Stopping ratification

It is obvious that the FTA will primarily benefit big European and Peruvian corporations and Peruvian agro-industry. There is also a strong risk that the FTA will undermine regional integration among the Andean countries and accelerate the exploitation of their natural resources and the privatisation of public goods. Social divisions are likely to widen, and opportunities for self-determined sustainable development may be massively obstructed.

Summing up, the Agreement entails major social and ecological risks and lacks effective sanction mechanisms which could be applied in the event of violations of international norms. It ignores both the precarious human rights situation in Peru and the requirement for participation by civil society.

The Agreement is therefore overwhelmingly opposed by trade unions, social movements and non-governmental organisations. In November 2009, more than 200 organisations from the Andean countries and Europe issued a joint statement in which they called for negotiations to be suspended. The situation is not entirely hopeless, as examples from the US, Norway and Belgium show: in these countries, efforts to block similar agreements with regard to Colombia have been successful, primarily due to the precarious human rights situation in that country.



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e urge Members of Parliament not to ratify the EU-Peru Agreement as it stands for the reasons stated above.

The Agreement is to be regarded as a “mixed agreement” and early implementation should be rejected, in order to avoid creating a de facto situation which preempts parliamentary debate and decision-making in the individual EU Member States.

We call on Parliament to undertake a comprehensive assessment of the human rights impacts of the Agreement, focussing not only on political but also on economic, social and cultural human rights.

Recommendations

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