



July 11, 2006

Senate Committee on Finance
Attn. Editorial and Document Section
Room SD-203
Dirksen Senate Office Building
Washington, DC 20510-6200

Dear Chairman Grassley,

On June 29, 2006, the Senate Committee on Finance held a hearing to discuss the U.S.-Peru Trade Promotion Agreement. Pursuant to the Committee guidelines regarding the submission of written testimony by interested parties, please accept the following comments discussing the environmental and public participation provisions of the U.S.-Peru Trade Promotion Agreement. These comments are timely as they have been submitted within two weeks of the hearing.

Humane Society International (HSI) operates as the international arm of The Humane Society of the United States (HSUS). Founded in 1954, The HSUS is the largest animal protection organization in the United States with a constituency of over 9.5 million. As the international arm of The HSUS, HSI works to promote the protection of all animals around the world by participating in programmatic activities in developing countries, advocating for the effective enforcement of international environmental treaties, and furthering humane and sustainable international trade policy. HSI actively participates in discussions of international trade policy at the World Trade Organization addressing such issues as equitable development, humane and sustainable agriculture, environmental conservation, and wildlife and habitat protection. Furthermore, as a member of the Trade and Environment Policy Advisory Committee in the United States, HSI advises the United States Trade Representative and the U.S. Environmental Protection Agency on international trade policy.

The following comments are intended to address the provisions of the U.S.-Peru Trade Promotion Agreement affecting the environment, including wildlife and their habitat and biodiversity, as well as public participation, including that of Non-Governmental Organizations such as HSI. Please feel free to contact me with any questions regarding these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patricia A. Forkan".

Patricia A. Forkan
President, Humane Society International

Promoting the protection of all animals worldwide

2100 L Street, NW, Washington, DC 20037 USA ■ 1-301-258-3010 ■ Fax: 1-301-258-3082

E-mail: hsi@hsihsus.org ■ www.hsihsus.org

I. Introduction

In the Trade Act of 2002, Congress directed the United States Trade Representative (USTR) to achieve several trade negotiating objectives with respect to the environment. These objectives include: requiring that parties to a trade agreement with the United States effectively enforce their environmental laws; strengthening environmental protection through the promotion of sustainable development and efforts to build the capacity of trading partners of the United States; and ensuring trade and environment policies are mutually supportive and seek to protect and preserve the environment and enhance the international means of doing so, while at the same time optimizing the world's resources.

About fifteen months ago, HSI testified before the Senate Finance Committee on the free trade agreement with Central America and the Dominican Republic (CAFTA – DR) and discussed HSI and HSUS's support of the environmental provisions of that Agreement. It is the view of HSI and HSUS that each free trade agreement signed by the United States should be judged on its individual provisions and through an objective lens.

In providing these written comments to the Committee, we do not propose that each and every aspect of the U.S.-Peru Trade Promotion Agreement (PTPA) will further the aims most important to HSI and HSUS -- protecting the environment and promoting the protection and humane treatment of all animals. However, we do view the environmental provisions of this Agreement as providing needed opportunities and incentives to enhance environmental protection in Peru and the United States.

II. PTPA Chapter on Environment

Protecting the environment, habitat, and animals (wildlife, farm, and companion) and promoting sustainable development requires education, resources, and a commitment from the governments of both Parties to the PTPA to follow through on programs and projects once they have started. In particular, the Government of the United States needs to ensure that its trade, economic, environment, and development policies are well coordinated and that various U.S. government agencies involved in these areas communicate effectively and work together to make sure such initiatives are mutually supportive.

It is incumbent upon the U.S. government, therefore, to devote appropriate levels of funding over the long-term for environmental and sustainable development programs and projects. In addition, the U.S. should take this opportunity to encourage partnerships with local Non-Governmental Organizations (NGOs) in Peru in order to better address important environmental issues.

With respect to the PTPA, HSI and HSUS believe that the chapter on the environment continues to build upon those included in previous free trade agreements. While HSI and HSUS do not support the use of "boilerplate" language for the environment chapter of all free trade agreements, the text of the PTPA does provide for the creation of further opportunities to enhance environmental protection in Peru. Most importantly, the PTPA environment chapter

includes important provisions that HSI and HSUS believe will help to promote improved governance and stewardship in Peru, and permit citizens and NGOs to have their voices heard on important environmental issues.

A. Effective Enforcement and Environmental Consultations

The most important obligation agreed upon by the Parties in the PTPA environment chapter is the obligation to effectively enforce domestic environmental laws, while at the same time striving to improve upon current environmental laws and policies. With respect to Party to Party disputes, the PTPA environment chapter provides each Party with the right to request consultations regarding any matter arising under the chapter. Where the matter concerns whether a Party is failing to effectively enforce its own environmental laws in sustained or recurring course of action or inaction in a manner that affects trade, the complaining Party may request the formation of a panel to settle the dispute. A finding by the panel in favor of the complaining Party may result in a monetary assessment of \$15 million, not an insignificant amount for the country of Peru.

In addition to the requirement to effectively enforce environmental laws, the Parties have also agreed to establish an Environmental Affairs Council (“the Council”) made up of senior level officials with expertise in the environment. Pursuant to the Agreement, the Council is required to attempt to resolve disputes referred to it when one Party requests consultations alleging a failure to effectively enforce environmental laws.

Included in domestic environmental laws covered by the effective enforcement provision are Multilateral Environmental Agreements ratified by both Parties because those agreements become part of domestic law when ratified or implemented through legislation. For example, the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES), which has been ratified by Peru and the United States, must be effectively enforced by both countries. Failure to effectively enforce CITES, therefore, could lead to consultations under Article 18.11 and possibly dispute settlement. Although seeking resolution through dispute settlement should be used only as a last resort, the decision of both Parties to voluntarily submit to formal dispute settlement procedures provides the PTPA with a more robust and effective means of enforcing this obligation.

B. Public Participation

HSI and HSUS strongly believe that public participation provisions in free trade agreements are integral to the implementation and formation of ongoing operations of the environmental provisions of these agreements. For this reason, we strongly support the inclusion of several provisions in the PTPA chapter on environment which permit the public and NGOs to participate in bringing environmental issues to the attention of the competent authorities in each of the Parties.

For example, under the PTPA each Party is directed to establish a national consultative or advisory committee, comprised of persons with knowledge of environmental issues, to provide views on the implementation of the chapter as well as on issues raised by interested persons in

submissions to a Party. Furthermore, Article 18.5.2(c) requires the Environmental Affairs Council to establish mechanisms to exchange information with the public, consider public submissions at Council meetings, and request public input on matters relevant to the Council's work. Finally, under Article 18.3.1 interested persons are guaranteed access to the competent authorities of each party to investigate alleged violations of domestic environmental laws.

Most importantly, HSI and HSUS support the PTPA's creation of an independent secretariat designed to receive submissions on enforcement matters, and in cases where such a failure is demonstrated, to develop a factual record. Pursuant to Article 18.7.1, any person (including NGOs) of a Party may file a submission asserting that one of the Parties has failed to effectively enforce its environmental laws. Where warranted, the Environmental Affairs Council may require that the secretariat develop a factual record on the issue including information provided by the public or NGOs.

Once completed, the factual record must be made available to the public by the secretariat within 60 days if requested to do so by the Council. In addition, following compilation of the factual record, the Council may provide recommendations to the Environmental Cooperation Commission (created pursuant to the Environmental Cooperation Agreement signed by the Parties), including suggestions for further development of a Party's mechanisms for monitoring domestic environmental enforcement. Taken together, these provisions empower civil society, NGOs, and the private sector to have a voice in their country's environmental policies, programs, and enforcement regimes.

As a member of USTR's Trade and Environment Policy Advisory Committee here in the United States, HSI recognizes the importance of public participation in the development of trade and environmental policy. HSI, therefore, believes that it is crucial for both Parties, civil society, NGOs, and the private sector to remain engaged in environmental and economic development issues. While HSI and HSUS support the public participation provisions included in the environment chapter of the PTPA, it should not escape the Committee's attention that both USTR and the Congress share responsibility for closely monitoring the implementation of these provisions.

C. Biodiversity

Peru is one of the most biologically diverse countries in the world. It is home to unique species such as alpacas, vicuñas and Andean river dolphins as well as a number of endangered species including the yellow-tailed woolly monkey, yellow-eared parrot, Andean mountain cat, and the Andean tapir.

For the first time in a trade agreement, the United States and a trading partner included a commitment to protect and conserve biodiversity. Under Article 18.10 of the PTPA environment chapter, both Parties declare their commitment to the promotion and encouragement of biodiversity, including animals, habitat and plants. In addition, both Parties explicitly acknowledge their commitment under the Agreement to strive to continue the improvement of their individual levels of environmental protection. Finally, the Parties agree to enhance their

cooperative efforts on issues affecting biodiversity through the Environmental Cooperation Agreement.

The recognition of the important role biodiversity plays in the diverse ecosystems found in Peru and the United States is a substantial achievement in the environment chapter of a trade agreement. Both Parties should be commended on this accomplishment. Should the PTPA enter into force, however, it is incumbent on the governments of both the United States and Peru to ensure that the Agreement does more than just put words on paper for the first time. Provisions such as the biodiversity Article need long-term financial backing and support in order to achieve their desired result. Through innovative programs and efforts, including the Environmental Cooperation Agreement, such protections may be increased and enhanced.

III. Funding for Environmental Cooperation

Concurrently with the PTPA negotiations, the Parties negotiated an Environmental Cooperation Agreement (ECA). Recognizing the importance of strengthening the capacity in each Party to protect the environment and promote sustainable development, the ECA provides a foundation for long-term cooperation and assistance on environmental issues, programs, and policies. Pursuant to the ECA, each Party is required to take into account the public comments and recommendations regarding cooperative environmental activities.

Although HSI and HSUS support the efforts of the United States to promote enhanced environmental cooperation in Peru, we are concerned about the level of financial commitment to these efforts. For example, ensuring that the public submission mechanism works as intended – including building the capacity of local organizations to participate effectively in the public submission process, strengthening the ability of Ministries to enforce environmental laws (including CITES), training of government officials on how to set up a national advisory committee system, and ensuring transparency and openness by communicating issues to civil society – will all require a great deal of funding and technical assistance.

As with all previous free trade agreements that include ECAs, the PTPA does not set forth a dedicated funding source to achieve intended results of the capacity building provisions. Due to budget constraints, these agreements will all be competing against each other for a limited and diminishing amount of funding. In addition, it is too often the case that environmental projects are placed at the bottom of the priority list for funding.

HSI and HSUS are hopeful that the ECA will provide a strong basis for ongoing environmental cooperation, and urge Congress to ensure that the ECA is adequately funded. While we are aware of the need to be fiscally responsible, environmental cooperation is an area where we can achieve a great deal of good and improve the life and health of people and animals in addition to increasing economic opportunities. HSI and HSUS, therefore, recommend that Congress set aside a specific amount of funding for environmental cooperation with Peru as it did in the case of CAFTA-DR.

IV. Conclusion

HSI and HSUS support the efforts of the United States and Peru in including the effective enforcement, public participation, and biodiversity provisions in the environment chapter of the PTPA. In addition, the Environmental Cooperation Agreement illustrates the strong commitment by both Parties to work together to protect the environment and conserve precious natural resources including biodiversity. For all of these reasons, HSI and HSUS are strongly encouraged that the PTPA will support increased environmental protection in both countries.

Thank you very much for the opportunity to present written comments to the Committee. We would be happy to answer any questions the Committee may have with regard to our comments.

Respectfully submitted,



Patricia A. Forkan
President, Humane Society International