



Peru TPA Facts

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U.S.-Peru TPA Protects U.S. Ports

The United States-Peru Trade Promotion Agreement (PTPA) explicitly clarifies the right of the United States to take any measure it considers necessary to protect national security in relation to U.S. ports or other sectors.

Standard Provisions Regarding Port Services

The PTPA commits each party (subject to specified exceptions) to treat service suppliers and investors of the other party no less favorably than it treats its own service suppliers and investors.

With respect to “landside aspects of port activities,” the United States is obligated to provide Peruvian service suppliers and investors such treatment only to the extent that Peru provides “comparable market access” to U.S. service suppliers and investors.

Limited U.S. Commitment to Peru

Since Peru does not presently provide such “comparable market access” to U.S. service suppliers and investors, the United States is not currently obligated to permit Peruvian companies to provide landside services in U.S. ports.

If, in the future, Peru provides U.S. service suppliers and investors access to landside aspects of port activities comparable to that which the United States provides, the United States will become obligated to provide such treatment to Peruvian service suppliers and investors.

Full and Explicit Discretion to Protect U.S. National Security

The United States would, however, still maintain full discretion under the PTPA to take actions to protect the national security. In particular, under the PTPA’s “essential security” exception (which all our agreements contain), no provision of the PTPA prevents the United States from applying measures that we consider necessary to protect our essential security.

This exception is self-judging. The applicability of the exception turns on what the United States considers necessary to protect our essential security, not on a tribunal’s assessment of our essential security. Neither an investor/state arbitration tribunal nor a state/state dispute settlement panel has any authority to second-guess the United States’ assessment of its essential security needs.

The PTPA further clarifies the self-judging nature of the essential security exception and its application to ports. Specifically, the PTPA includes language clarifying that “measures relating to the landside aspects of port activities are subject to the application of [the essential security exception].” In addition, we have added a footnote to the essential security exception stipulating that if a party invokes the exception in dispute settlement, “the tribunal or panel hearing the matter shall find that the exception applies.”