Peru TPA Facts

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The United States-Peru TPA and Social Security

Critics of the United States-Peru Trade Promotion Agreement (PTPA) argue that a company could bring an investment claim under the PTPA's investor-state dispute settlement mechanism if Peru were to re-nationalize its social security system.

The PTPA provides substantial flexibility for Peru – if it chooses – to designate a monopoly to provide social security services or revert to a government-managed system without breaching its obligations under the PTPA.

- Specifically, the expropriation provisions of the PTPA provide that, except in rare circumstances, non-discriminatory actions that are designed and applied to protect legitimate public welfare objectives do not constitute indirect expropriations. A key factor in an expropriation analysis under these provisions is the extent to which a government action interferes with an investor's reasonable expectations.

- In addition, the PTPA's financial services provisions clarify that a government may designate a monopoly to provide social security services or revert to a government-managed system.

On the basis of these provisions of the PTPA, an investor in the management of social security funds would have a reasonable expectation that the Peruvian government may designate a monopoly to provide social security services or revert to a government-managed system.