

Issues and Requests Relating to Foreign Trade and Investment - Peru

	Category	No	Issue	Issue Details	Requests	References
6	Reduction and Elimination of Preferential Policies for Foreign Capital	(1)	Insufficiency of Tax Incentive Measures in Mining Exploration	- <u>Taxation Authority's incentive measures are unavailable for expenditure into activating exploration for mines.</u>	- <u>It is requested that the taxation authority will provide incentive measures for mining exploration.</u>	
12	Exchange Controls	(1)	<u>Abrupt Radical Exchange Fluctuations</u>	- <u>Radical exchange fluctuations prevail. As it stands, member firm's subsidiary (MFS) benefits from exchange gain on a direct export transaction in yen. Nevertheless, negotiation for raise in price is difficult. In a transaction with its parent company, the prevailing Yen depreciation enables MFS to offer special prices to its customers. However, MFS runs on a thin margin, so that if the exchange rate swings toward appreciation of Yen, it will instantly show operational loss: such is the severity of the fluctuation band.</u>	- <u>It is requested that GOP takes step to:</u> -- <u>stabilise foreign exchange fluctuations, and</u> -- <u>holds the fluctuation band within a few percents in 6-months.</u>	
14	Taxation Systems	(1)	Heavier Taxes on Mining	- <u>Investors' desire to develop new mine is debilitated by introduction of the mine royalty, mine special tax, and mine fees.</u>  <b>(Actions)</b> - Effective June 2004, GOP imposes the mining royalty at three levels in accordance with the total annual concentrate value, less than 60 million dollars at 1%, 60 million to 120 million at 2% and over 120 million at 3%, under the Mining Royalty Act (Ley de Regalia Minera). - On 25 August 2011, Prime Minister Lerner in his Policy Speech under the Humala Administration announced: "The Administration has agreed with the mining enterprises payment of the Surplus Profit Tax of 3 billion Soles per annum, while tax revenue of 15 billion Soles is expected in the forthcoming 5-years. The 2012 Government Budget is USD95.5 billion." - <u>In September, 2011, GOP got the law on mining royalty amended, introducing mining special tax and mining special levy. The increased taxes will be deployed for development of the local community, it is said.</u>  <b>(Improvement)</b> - Small-scale mining producers (SSMPs) are excluded from the scope of royalty tax, with the exception of the SSMPs that are affiliates of larger enterprises. Mining right holders calculate every month the purified, refined, or smelted ores and pay royalty within the prescribed period. GOP will then distribute royalty on the state, county, town and national university where the mine is located. The use of royalty must be limited only to the local development. GOP has taken measures to avoid double taxation of royalty by applying the levy rate expressly stated in the Agreement concluded with GOP, where GOP concludes the Agreement for reasons of its privatization. As to the case where privatization program is already under way, the levy rate as determined by the Investment Promotion Bureau and expressly stated in the terms of tender will be applied. Governing Law: Act 28258 "Mining Royalty Act" (promulgated on 24 June 2004) and its Amendment Law No. 28323 (of 6 August 2004), and its implementing regulation, Supreme Decree No. 157-2004-EF (promulgated on 15 November 2004), Supreme Decree No.	- <u>It is requested that GOP repeals the mining royalty and other new taxes or maintain the minimum tax rates.</u>	- Mining Royalty Act

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			018-2005-EF (promulgated on 29 January 2005), Ministry of Economy and Finance No. 063-2005-EF/15 (promulgated on 8 February 2005), and National Superintendency of Tax Administration Decision No. 035-2005/SUNAT (promulgated on 15 February 2005).		
	(2)	Nebulous Implementation of Taxation System	<ul style="list-style-type: none"> <li>- We ask the GOP to ensure more transparency in tax system and practice <u>by identifying the frequency of tax investigation and the fiscal year subject to investigation.</u></li> <li>- MFS is under tax scrutiny by SUNAT (Superintendencia Nacional de Administración Tributaria=National Superintendency of Tax Administration; Peru) that envisages increase in tax levy in the circumstances where legislative changes frequently occur, under the <u>nebulous tax scheme. Despite filing of the revised tax return under the exercise of positive, preventive due diligence, GOP levies additional taxes in the end.</u></li> </ul>	<ul style="list-style-type: none"> <li>- It is requested that Ministries and Agencies speed up their <u>Administrative Service.</u></li> <li>- It is requested that GOP: <ul style="list-style-type: none"> <li>-- clearly identifies the frequency of <u>tax investigation,</u></li> <li>-- expressly identifies the accounting <u>year covered under the tax investigation.</u></li> </ul> </li> </ul>	Peru Tax Systems
	(3)	Vexatiously Complex Detraccion Tax Payment System	<ul style="list-style-type: none"> <li>- The balancing taxation system called "Sistema de Detracciones" has <u>increased the clerical burden, making it more complex.</u></li> <li>- The Withholding Tax System "Detraccion" (whereby a part of IGV tax is paid on behalf of Seller), or "Retencion" (whereby certain enterprises designated by the National Taxation Bureau pay a part of IGV on behalf of Seller on transactions with 700 soles or more) complicates the clerical <u>works of taxpayers.</u></li> </ul>	<ul style="list-style-type: none"> <li>- It is requested that GOP expedites <u>the administrative service.</u></li> <li>- It is requested that GOP repeals <u>these Withholding Tax measures related to IGV in order to speed up clerical works.</u></li> </ul>	
	(4)	Excessively Heavy Tax Burden	<p>The substantive tax rate has exceeded easily 40% in aggregate, including corporate income tax / dividend tax (32.87% in total). In addition to mining royalty (about 6% on sales), worker dividend (8% before tax), and since 2013, the levy of contribution scheme of 0.36% has begun to OSINERGMIN (State Energy And Mines Investment Regulator=Organismo Supervisor de la Inversión en Energía y Minería) and to OEFA (The Agency for Environmental Assessment and Enforcement=Organismo de Evaluación y Fiscalización Ambiental). These high taxes and contributions curb new investments into Peru.</p> <p>(Improvement)</p> <ul style="list-style-type: none"> <li>- Effective 1 January 2015, Amended Tax Law, concerning reduction in personal / corporate income tax rate, and increase in dividend tax rate has come into force, so that the going corporate income tax of 30% will be reduced to 28% January 2015-2016, 27% 2017-2018, and 26% after 2019. The going dividend tax rate of 4.1% will be raised to: 6.8% 2015-2016, 8%, and 9.3% after 2019.</li> </ul>	It is requested that GOP avoids these excessive tax burdens in light of retaining competitive strength against other countries.	

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	(5)	Excessively Denied Deductions	<ul style="list-style-type: none"> <li>- <u>The Tax Collector of Superintendencia Nacional de Administracion Tributaria (SUNAT) has inflated the tax amount by numerous denials of deductions from the taxable income. For example, the denied deductions include loss from hedge in foreign exchange, regional assistance fees to the local area surrounding the mines, ocean-marine transportation cost of refined minerals, and the cost of filing complaint. The appellate court proceedings are being prolonged, some stretching over the 9-year period, accompanied by the inflated interest for account on arrears. In Peru, over 20,000 court cases are pending on tax disputes alone.</u></li> <li>- <u>GOP denies deductions of expenses incurred outside the accounting term, inconveniencing enterprises.</u></li> <li>- <u>Taxation Authority (TA) denies Tax Deductions for Ocean Freight and Ocean Marine Insurance incurred on export of Mineral Concentrate.</u></li> <li>- <u>TA would not allow deduction from taxable amount of the loss accrued from forward hedging of goods based on genuine demand. TA has approved its deductions by amendment of tax laws since 2007, excluding, however, the past loss incurred prior to 2007.</u></li> </ul>	<ul style="list-style-type: none"> <li>- <u>It is requested that GOP:</u>  <ul style="list-style-type: none"> <li>-- <u>harmonises the rules for deductible account items customarily approved to avoid or minimise otherwise unnecessary court proceedings, and</u></li> <li>-- <u>expedites the procedure.</u></li> </ul> </li> <li>- <u>It is requested that GOP allows a grace period for expenses slightly behind the accounting term, as the denial of the same is too stringent.</u></li> <li>- <u>It is requested that GOP allows deductions for Ocean Freight and Ocean Marine Insurance on export.</u></li> <li>- <u>It is requested that GOP allows deductions of the loss accrued from forward hedging of goods based on genuine demand.</u></li> </ul>	- Corporate Income Tax Act (enforced in January 2007) Artículo 5-A.
	(6)	Delays in Tax Administration Procedures	<ul style="list-style-type: none"> <li>- <u>Occasionally we encounter the slow procedures of the Tax Administration.</u></li> <li>- <u>It takes a long time to get tax deductions on costs incurred by enterprises for construction of infrastructure for the local residents, whereas such cost should be for the account of GOP.</u></li> <li>- <u>The taxation procedures move but at a snail's pace. It takes inordinate time before GOP's notification of decision reaches the claimant against objection on taxation issues. Moreover, the claimant incurs vast amount of interest arrears (at the rate of 1.2% per month).</u></li> </ul>	<ul style="list-style-type: none"> <li>- <u>It is requested that GOP expedites its administrative services.</u></li> <li>- <u>It is requested that GOP streamlines and expedites the procedures on tax deduction for costs for the local residents.</u></li> <li>- <u>It is requested that GOP streamlines and expedites the procedures.</u></li> </ul>	
	(7)	Inappropriate Implementation of the Tax Scheme Amendment	- <u>"Reduction in corporate income tax" and "raise in withholding tax on dividend" have been implemented in Peru. However, in the case of MFS, bound by the existing "Tax Stability Agreement", Peruvian taxation authority has raised dividend tax, while refusing to reduce corporate income tax, so that MFS profitability on investment has aggravated.</u>	- <u>It is requested that GOP implements its tax scheme in such a way that does not impair the benefits under the existing agreement Peruvian taxation scheme</u>	<ul style="list-style-type: none"> <li>- <u>Peruvian Taxation Scheme</u></li> <li>- <u>Promotion of Foreign Investment Law</u></li> </ul>

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		(8)	<u>Unratified Tax Treaty</u>	<p>- <u>Ratification of tax treaty between Peru and Japan will not only enable avoidance of double taxation but also bilateral negotiation between the taxation authorities.</u></p> <p><b>(Actions)</b></p> <p>- <u>On 18 September 2014, at Second Meeting of the Sub-Committee on Improvement of the Business Environment Agreement between Japan-Peru for an Economic Partnership, in response to the Japanese enterprises request for conclusion of Japan-Peru tax treaty, GOP side responded by stating it wished to consider positively toward opening the tax treaty negotiation. (JETRO World Business News, dated 3 October 2014)</u></p> <p>- <u>GOP has ratified and enforced tax treaty with Chile, Canada, Andean Community (Comunidad Andina), Brazil, Mexico, ROK, Switzerland, and Portugal.</u></p>	<p>- <u>It is requested that GOJ/GOP ratify the tax treaty.</u></p>	<p>- <u>Peruvian Taxation Scheme</u></p> <p>- <u>OECD Guideline</u></p>
16	Employment	(1)	<b>Excessive Dividend Payment Scheme to Workers</b>	<p>- The Workers Dividend Distribution System requires an employer to pay a certain amount of pre-tax profit to its employees, narrowing the free discretion of enterprises for profit distribution. In general, GOP overly protects workers' interest, therefore, it tends to drive employers into curtailment of employment.</p> <p>- <u>The Workers Dividend Distribution Portion is too high, and increases the cost burden to enterprises.</u></p> <p><b>(Actions)</b></p> <p>- On 12 April 2010, the 1st Investment Environment Overhaul Committee under the Japan-Peru Investment Treaty, where Japan side brought up the issue concerning improvement of human affairs/labour questions.</p>	<p>It is requested that GOP takes account of the situation in other countries and revises the Labour Act to allow employers to exercise their free discretion on employment.</p>	<p>- <u>Decree No.893 "Regulation concerning Distribution to Workers of Corporate Income" (promulgated on 5 November 1996), and its Implementing Regulation.</u></p> <p>- <u>Presidential Decree 009-98-TR promulgated on 22 July 2001</u></p>
		(2)	<b>Restricted Number of (Professional) Foreign Workers</b>	<p>- Alien workers must not exceed 20% of the total number of employment and their wages must not exceed 30% of the total wages paid by law. In some cases, to fulfill the condition enterprises are compelled to employ unnecessary Peruvian workers so that it may recruit requisite alien workers.</p>	<p>- It is requested that GOP repeals the cap on alien workers.</p>	<p>- <u>Decree No.689 "Foreign Workers Act" (promulgated on 5 November 1991), and its Implementing Regulation</u></p> <p>- <u>Presidential Decree No. 014-92-TR (promulgated on 23 December 1992), and its Amendment</u></p>

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					- <u>Presidential Decree No. 023-2001-TR</u> (promulgated on 18 July 2001)
	(3)	<b>Delayed and Vexatiously Complex Procedures on Foreign Registration and Acquisition of Work Visa</b>	<p>- Time consuming procedures for acquisition of work visa and foreign registration certificate (Carné de Extranjería) (1-3 Months).  <u>In regard to acquisition of work visa/foreign registration certificate for Japanese expatriates/spouses, authentication of family register at Peru Embassy in Japan, translation into Spanish, foreign registration on the expatriate and family members are necessary. The procedure is so complex that external assistance is necessary. It takes much time and cost, as authentication is also necessary on the translated documents.</u></p> <p>- <u>Upon each annual renewal of Carné de Extranjería (foreign registration certificate for expatriate's family members), applicants must obtain copy of family register, attaching translation and authentication. It requires a lot of work-time and heavy expenses.</u></p>	<p>- It is requested that GOP:  <u>-- simplifies the procedures.</u>  <u>-- prolongs the validity period of registration certificate.</u></p> <p>- It is requested that GOP:  <u>-- streamlines the application procedures, and</u>  <u>-- extends the validity period for the registration certificate.</u></p>	
<p><b>(Actions)</b></p> <p>- On 12 April 2010, the 1st Investment Environment Overhaul Committee under the Japan-Peru Investment Treaty, where Japan side brought up the issue concerning improvement of immigration control.</p> <p>- On 26 November 2012, the 1st Subcommittee for the Preparation of Business Environment was held under Japan-Peru EPA. Among others, there was exchange of views about the practical aspects of facilitating visa complications for businesspersons entering each country.</p> <p>In December 2012, there was a development, resulting from the exchange of views at the immigration control technical meeting on streamlining immigration control: Expediting acquisition of work visa and foreign registration, grant of the maximum stay of (183-days) made available upon entry, allowing Japanese enterprises' prior filing of request as complementary measures. JETRO World Business News of 3 October 2014).</p> <p><b>(Improvement)</b></p> <p>- <u>Since January 2016, GOP has repealed the submission requirement for economic status guarantee upon change of the stay qualifications of foreign workers under work visa and upon filing stay visa application for the applicant's spouse. In addition, GOP has repealed the submission requirement for marriage certificate and birth certificate upon annual application for visa-extension.</u></p> <p>- <u>Since January 2016, Peruvian national immigrant supervisory board has started on-line service system operation for confirmation of foreigners' tax (TAE) payment upon foreign residents.</u></p>					

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		(4)	<b>Complex Entry/Exit Procedures of Foreign Residents</b>	- <u>Entry/exit procedures for foreign residents in Peru are extremely complex, for example, compulsory submission of employers' corporate guarantee, each time stating the taxes paid (CSECG).</u>	- <u>For the sake of improving the environment for the entering enterprises into Peru, it is requested that GOP slims down the requirements, by dispensing with the CSECG requirement upon exit/entry of foreign residents in Peru, for example.</u>	
		(5)	<b>Rigid Employment Terms</b>	- <u>The law neither permits reduction of the local Peruvian workers' wage nor does it readily allow their dismissal. It hinders a flexible business operation.</u> - <u>Enterprises' promotion of employment is hindered by the legislation that sets forth no reduction of wage, no dismissal of workers in principle, no setting of retirement age, etc.</u>	- <u>It is requested that GOP deregulates the terms of employment for local Peruvian workers.</u>	
		(6)	<b>Downside Effect of TW_RE Policy</b>	- <u>Under the GOP Policy for Conversion of Temporary Workers into Regular Employees (TW_RE Policy), Labour Supervisor at his/her discretion may convert Temporary Workers into Regular workers. However, from the employers' perspective, the need for liquidity is imperative, commensurate with the work contents, the project period, and economic changes.</u>	- <u>It is requested that GOP:</u> -- <u>takes into account the period and the terms of employment for temporary workers and</u> -- <u>delineates a more transparent and flexible measures.</u>	
		(7)	<b>Frequent Strikes</b>	- <u>Labour Unions and their upper Trade Unions maintain rigid stance against Employers by frequently resorting to strikes.</u>	- <u>It is requested that GOP turns the terms of employment more flexible.</u>	
17	<b>Implementation of Intellectual Property Rights ("IPRs")</b>	(1)	<b>Inflow of Counterfeits and Illegal Goods</b>	- <u>It is necessary that Ministries and Agencies will store and expand corresponding know-hows on the measures to deal with counterfeit products.</u> - <u>Inflow in large volume of counterfeits into the market forms a great barrier to sales. Moreover, should quality problems arise due to the counterfeits, Member Firm's reputation is at stake, inflicting damage upon issues besides the product sales. It is difficult to take outright charge against Distributors handling counterfeits as they may be connected to crime organisations such as mafia and narcotic dealers.</u> <b>(Actions)</b> - <u>In December 2005, agreement was reached between the U.S. and Peru on FTA negotiations, inclusive of intellectual property rights.</u> - <u>The U.S. continues to include Peru on "the Watch List" in USTR Special 301 Report.</u>	- <u>It is requested that GOP takes steps to:</u> -- <u>tighten border control measures,</u> -- <u>develop rational scheme and campaign for driving out counterfeits.</u>	

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			<p>- "Law to combat Pirate Editions" was promulgated in 2004 to protect intellectual property rights such as copyright. However, pirate editions of music CD's and PC software are rampant in the market. National Institute for the Defense of Competition and Protection of Intellectual Property (Indecopi) acknowledges the shortfall of its countermeasure. It cites insufficient know-how and shortage of human resources.</p> <p><b>(Improvement)</b></p> <p>- Preparation of legislation on intellectual property rights is being well under way in the manner compatible with WTO/TRIPS and WIPO.</p> <p>- On 12 April 2010, the 1st Investment Environment Overhaul Committee under the Japan-Peru Investment Treaty, where Japan side brought up the 6 issues concerning improvement of taxation system, human affairs/labour questions, protection of intellectual property right, foreign trade procedure, technical standards and specifications and immigration control.</p>		
	(2)	Levy Scheme for Private Copying	<p><b>Private Copying Compensation Scheme (PCCS) PCCS is an outdated scheme for lack of rationality in collection and transparency in distribution at this time when digitalised networking has far advanced. Incidentally, in Japan, private sound recording scheme has de facto frozen, while private video recording is found by intellectual property high court to be no longer eligible for compensation, with the background where the copyright protection technology is woven into the digital broadcasting. This finding is affirmed by the supreme court Decision of November 2012.</b></p>	<p><b>It is requested that countries incorporating PCCS, including GOP, review the scheme to make it compatible with the time when the legitimate digitalisation and networking have far advanced.</b></p> <p><b>While member firms would seek countries without PCCS to refrain from its introduction, should it decide for its introduction, it is requested that such countries pay due consideration to the extent comparable to the foregoing review (for example, PCCS commensurate with or reflecting the actual mode of use, not across the board levy on general purpose goods, a levy commensurate with the actual status of use) written into legislation.</b></p>	<p>Scheme is in place (for Recording Media). Since introduction of the Compensation Scheme in 2003, Private Copying Levy is included in Recording Media such as CD-R, DVD and Cassette Tape.</p>
	(3)	Temporary Saving/Storage in the Use of Equipment and for Provision of Service using Information	<p><b>The minimum amount of copying should be made possible in the process of communication, viewing, listening and executing copyrighted materials, provision of service using information communication technology, to the extent of facilitating the process smoothly with high efficiency. Further, in Japan, copyright act restricts copying in Article 47-8 (Reproduction in conjunction with the exploitation of works on a computer), and Article 47-5 (Transfer of copies made pursuant to</b></p>	<p>It is requested that GOP takes step to introduce restrictions of copyright concerning temporary saving/storage in the use of equipment and in the communication process, as well as the restrictions in copyright use for the purpose of provision of service</p>	<p><b>[USA] GOU has signed the EPAs with countries that claim temporary storage applies to copying case. However, US Court denied copying right</b></p>

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			Communication Technology	restrictions on the right of reproduction). Furthermore, law reform bill 2014 on Article 49-9 (Transfer of copies made pursuant to restrictions on the right of reproduction, i.e., data processing necessary to prepare for providing information using telecommunication technology) is about to provide more restrictions on copyright.	that employs the information communication technology.	infringement by a cached memory within equipment, unless it is affixed for a period exceeding the transient period. - The EU-Colombia and Peru Trade Agreement (Article 251, 252)
		(4)	Copying for Analysis and Research of Information	- Copying of copyrighted materials should be allowed to the extent information analysis using computer, etc. is considered necessary. Further, Article 47-7 of copyright Act restricts copyright.	- It is requested that GOP takes steps to introduce the limitation upon copyright as related to information analysis and research.	
		(5)	Copying for Providing Internet Information Search Service	- Copying of copyrighted materials should be allowed to the extent that information search services are considered as necessary. Further, Japanese Copyright Act in Article 47-6 provides: "the person must not transmit a work via automatic public transmission ... After coming to know that making such a recording available for transmission in Japan would constitute a copyright infringement."	- It is requested that GOP takes steps to introduce the limitation upon copyright as related to providing internet information search service.	
		(6)	Copying relative to Testing for Development or Practical Application of Technology	- Copying of copyrighted materials should be allowed to the extent that development or practical application of technology related to audio/visual recording are considered as necessary. Further, in Japan under Article 30-4, copyright is about to be restricted.	- It is requested that GOP takes steps to introduce the limitation upon copyright as related to testing for development or practical application of technology.	
		(7)	<u>Turning Copyright Infringement into a Crime prosecutable without a Formal Complaint From the Victim</u>	- <u>Copyright infringement being addressed to private right infringement, there can be no necessity for its recovery in the absence of the injured party's wish for the damage recovery. From the perspective of its deterrent effect, it is barely necessary, either. On the contrary, only its negative impact remains.</u> <u>In light of the fact that most creation, expression, etc. begin from copying, tightening of the deterrent measures with criminal fines will only leave the negative atrophic effect upon future expressive works and conducts.</u> <u>Concerning copyright, the vicinity of right is ambiguous, such as restricted right, indirect infringement, etc. Due consideration or deliberation is necessary (from the perspective of atrophic effect) in cases with difficult predictability.)</u>	- <u>It is requested that GOP refrains from turning copyright infringement into a crime prosecutable without a formal complaint from the victim.</u>	- <u>TPP Agreement Chapter 18 (Intellectual Property): The U.S. seeks Turning Copyright Infringement into a Crime prosecutable without a Formal Complaint From the Victim</u> - <u>The U.S. /Peru FTA 2016.11.27</u>



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				<p><b>(Actions)</b></p> <p>- On 5 October 2015, TPP Agreement agreed, in principle, by 13-countries including Peru, "Criminal Procedures and Penalties" provides: <u>Its competent authorities may act upon their own initiative to initiate legal action without the need for a formal complaint by a third person or right holder, provided, however, that, "With regard to copyright and related rights piracy provided for under paragraph 1, a Party may limit application of this subparagraph to the cases in which there is an impact on the right holder's ability to exploit the work, performance or phonogram in the market."</u> (Chapter 18 Intellectual Property, Article 18.77.6g.).</p>		
		(8)	Ambiguous Governing Laws	- In filing request for invalidation trial on trademark, legislative provisions applied by trademark offices and courts includes Andean community agreement, pan American agreement, and Paris convention for the protection of industrial property, each with a different judgement. Which claims the priority differs by local attorneys, disabling estimation of litigation risk, including the litigation cost. (Establishment of statutes of limitations on filing complaint against malicious trademark registration)	- It is requested that GOP overhauls and implements laws on protection of IPRs based on internationally recognised Paris convention.	- Andean Community Decision No. 486. Establishing the Common Industrial Property Regime. Chapter VII Invalidity of Registration, Article 172
21	Restrictions on Land Ownership	(1)	Compulsion of Land Expropriation	<p>- In 2010, Firm's Subsidiary (FS) in manufacturing business received request from Road Development Agency of Lima City that FS vacate a portion of its land property for free to enable DALC to convert a portion of the arterial road into raised road. The Decree which forms the basis of this request is not made public as yet, the legal basis of the request is incomplete. Should Firm's Subsidiary accept all request of the Municipal Government, it must change its factory layout, that severely affects its manufacturing activities. While refusing to yield to the municipal request, they were compelled to discuss with the municipal authority if a limited transfer of the property would work for both parties. The neighbour commercial facilities already agreed to transfer for free a portion of their property currently used for general commercial facilities without prospect of receiving the rightful compensation for its transfer. Japanese Embassy in Peru suggested a solution under the Investment Agreement. However, Firm's Subsidiary did not choose a diplomatic approach for solution of the matter, in light of maintaining a good relationship with the municipal authority.</p> <p><b>(Actions)</b></p> <p>- In December 2009, Agreement Between Japan and the Republic of Peru for the Promotion, Protection and Liberalisation of Investment (Japan-Peru Investment Agreement) entered into force. "Article 8 Reservations and Exceptions" of the Agreement seeks to exclude local governments in respect of prohibitions in national treatment, most-favored-nation treatment, demand for performance of special measures, and nationality requirement for key managerial positions.</p>	- It is requested that GOP protects the legally owned private property.	

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		(2)	Nebulous Registration of Land Owners	- <u>The Registered Landowner's Approval is required for Exploration and Development. However, in the local area, there are cases where the Landowner is not necessarily registered clearly, or residents' communal strife continues over metes and bounds, delaying by large margin the start of exploration.</u>	- <u>It is requested that GOP compels Land Ownership Registration in a full and complete manner to identify the landowner beyond question.</u>	
22	Environmental Pollution and Waste Disposal	(1)	Public Movement on Environmental Issues	<p>- <u>The local residents (LRs)' movement has become active against exploration and development of mines based of their concern over the environment. In general the public knowledge is extremely limited about legislation on the mining development. Under the current legislation, owner of the mining right is solely responsible for obtaining the LRs' agreement on mining activities. There being public guidance on compensation, it takes much time for reaching agreement on the terms. LRs demand considerable compensation from the exploration stage, including the overhaul of infrastructure (construction of road, schools, hospitals, etc.). Generally, their demand is excessive. The situation is aggravated by willful NGO groups, local governmental concerns, and lawyers. Public security is seldom restored promptly by police, when the movement turns into violence.</u></p> <p><b>(Actions)</b></p> <p>- The Mining Royalty Act was introduced in June 2004 with the purpose to secure the revenue increase and to promote the local community in which mines are located.</p> <p>- Since October 2011, Ministry of Energy and Mines has started Pasantia, an internship or an educational activity to enhance the local residents' appreciation of the modern mining industry.</p> <p>- In November 2011, due to the residents' movements protesting against a large mining project in various Regions such as Apurimac, Cajamarca, Junin, Ancash, and Madre de Dios, etc. President Lerner resigned in December.</p> <p>- In December 2011, GOP promulgated Law of Prior Consultation with Indigenous Peoples was promulgated. In April 2012, GOP promulgated implementing regulations for law of prior consultation with indigenous peoples.</p> <p>- On 5 January 2012, new Prime Minister Oscar Valdes in his policy speech stated he would newly put up an office for prevention and resolution of social confrontation in the Cabinet to respond to the residents' protests around the mines.</p>	<p>- It is requested that Peruvian Public Institutions will develop and strengthen educational campaign for LRs (as regards legislative system, etc.) by:</p> <p>-- <u>public declaration condemning willful NGO groups, local governmental concerns, and lawyers.</u></p> <p>-- <u>positive government involvement in prevention or resolution of disputes.</u></p> <p>-- <u>employ Canon Tax as special purpose tax into preservation and overhaul of the local environment to get the understanding of the concerned parties and</u></p> <p>-- <u>especially overhauls infrastructure on transport and communication.</u></p>	

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				<p>- On 20 April 2012, President Humala, in response to the anti-mines movement surrounding the Conga Mines triggered by the water contamination problems, etc., stated that the government would proceed with the Conga Mines Development, while assuring that the company adheres to strict social, environmental and labour goals, by following the Independent International Environmental Auditors (IIEA) recommendation, namely, to build larger reservoirs, to preserve the two lakes, etc. and to adhere to the environmental and social recommendations made by IIEA.</p> <p>- On 19 May 2012 at Xstrata's Tintaya copper mine in Espinar Province of the Cusco Region, the local residents protested against Xstrata, a Swiss firm, developer of the copper mine, demanding expanded scope of the royalty payment, and protesting that the rivers in the vicinity of the copper mine were contaminated. On 28 May, protests escalated, leading to the death of two protesters, while plural numbers of protesters were injured during clash with police. Government declared state of emergency for 30-days beginning from 29 May. In June, the protests demanding the raise in royalty at the copper mine turned into riots in Espinar Province of the Cusco Region. Minister Pulgar of Ministry of Environment representing the Government, reached agreement with the protesters after exchange of dialogues.</p> <p>- On 20 August, Prime Minister Jimenez of the New Cabinet formed at the end of July touched upon:</p> <p>(1) national security and defence,</p> <p>(2) measures to calm protests through development of nationwide dialogues,</p> <p>(3) review of the relationship with the mining industry, and</p> <p>(4) renovating the citizens service and public policy in his inaugural policy speech.</p> <p>- <u>In December 2012, GOP promulgated law on establishment of Servicio Nacional de Certificación Ambiental para las Inversiones Sostenibles (National Environmental Certification Examination Body (SENACE)), an independent organ.</u></p>		
		(2)	Rigid Environmental Inspections and Hefty Fines	<p>- <u>In regard to the Mines Effluent Standard, the inspector in certain cases charges heavy fines by a rigorous application of the Effluent Standard, regardless of whether the mining activities do not take place now, excessive effluent value is due to the natural accumulation of heavy metals, or to accidental failures of equipment.</u></p>	<p>- It is requested that GOP:</p> <p>-- <u>applies more flexibly the effluent standard inspection, and</u></p> <p>-- <u>clarifies the exact disposal of fines collected.</u></p>	<p>- DS-010-2010-MINAM</p> <p>- DS-002-2008-MINAM</p> <p>- DS-010-2011-MINAM</p>
23	Inefficient Administrative Procedures, Regimes and Practices	(1)	Inefficiency in the Administrative Procedures	<p>- <u>From time to time delays in Administrative Procedures on Licences and Approvals originate from government employees' insufficient appreciation of the applicable laws and regulations at Ministries and Agencies.</u></p>	<p>- It is requested that the employees at Ministries and Agencies uniformly applies the legislative provisions.</p>	<p>- Peruvian Aliens Act</p>
		(2)	Delays in Administrative Procedures, Deficiencies in Legal System	<p>- <u>In regard to use of water necessary for drilling, material delays have occurred in the procedures for licencing and approvals. After obtaining DIA (Declaración de Impacto Ambiental=Declaration of Environmental Impact) approval of Ministry of Energy and Mines, licenses are necessary from ALA (Administrador Local de Agua) and AAA (Autoridad Administrativa del Agua) under The Ministry of Agriculture and Irrigation (MINAGRI).</u></p> <p><u>The rule stipulates completion of examinations within 30 days at both ALA and AAA. Nevertheless, it takes a few months each, due to the</u></p>	<p>- It is requested that GOP:</p> <p>-- <u>improves its administrative capacity, and</u></p> <p>-- <u>unifies ALA and AAA under MINAGRI.</u></p>	<p>- <u>Texto Único de Procedimientos Administrativos – ANA</u></p> <p>- <u>Ley No. 29338</u></p> <p>- <u>Ley No. 27444</u></p>

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				<u>paucity of disposal ability of persons in charge, on leave, business trip, unnecessary instructions for additional information due to misunderstanding, to inability of comprehension, etc., it takes a few months for each. Some mining entities seem to be drilling without waiting for grant of the drilling licence.</u>		
24	Indigested Legislation, Abrupt Changes	(1)	Undefined details of Law of Prior Consultation	- While Indigenous People's "Law of Prior Consultation" was promulgated on 6 September 2011, its detailed implementing regulation remains undefined. While the Law is addressed exclusively to the registered indigenous people, it is interpreted by some as if the Law applies to unregistered indigenous people as well. As a result, the disputes have spread nationwide.	- It is requested that GOP: -- <u>expedites promulgation of detailed implementing regulation,</u> -- <u>explanation of the system to general public, and</u> -- <u>enlighten general public about the Law of Prior Consultation.</u>	- Ley de Consulta Previa (Law of Prior Consultation)
		(2)	Legalisation Policy on Informal Mining Enterprises	- Due to the existence of Informal Mining Enterprises (Informal Mes) within the Firm's Mining Territory and GOP's legalisation effort of such Informal Mes, the legitimate mining activity gets stranded. Supreme Decree DS006-2012-EM promulgated in March 2012 defines those operating in the "prohibited area for mining" as "Illegally Mining Enterprises" (Illegal Mes) (mineria ilegal) and those operating in the authorised area but without requisite legislative procedures as "Informal Mes" (mineria informal). Legislative Decree No.1105 promulgated in April 2012 defines the procedures for formalisation (formalizacion), and further provides that the local government or Ministry of Energy and Mining will intercede between the Informal and Formal Mining Enterprises. Nevertheless, in light of the following problems, a Firm wishes to submit that legalisation of Informal Mes, far from turning the mining industries into modern business, on the contrary, will retard their development into the modern industries. The legalisation of Informal Mes is unprecedented elsewhere in the world: (1) <u>These illegal or informal mining enterprises have been causing most of the environmental pollution by their mining business.</u> (2) <u>Informal Mes interfere with the authorised activity alleging their "Vested Interest". For example, unless the formal enterprises accept legalisation of informal mining enterprises, which are landowners, it is obvious that they would refuse signing on the Land Registration required under Supreme Decree 020-2012-EM.</u> (3) <u>Informal enterprises are unwilling to accept tax payment obligation by legalisation of their informal operation.</u>	- In legislative amendments, it is requested that GOP: -- <u>provides opportunities for exchange of information with enterprises including FFEs, then</u> -- <u>let the details of the legislative amendments widely known,</u> -- <u>provides the period for public hearings, and then</u> -- <u>promulgates and enforce such amendments.</u> - It is requested that GOP tightens its <u>clampdown on Informal Mes and Sale and Purchase of their Products.</u>	- Supreme Decree DS006-2012-EM - Decreto Legislativo No 1105, etc.

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				<u>(4)At the back of Informal Mes there remains existence of illegal enterprises that purchase minerals from Informal Mes. It is incumbent upon GOP to tighten the control as they do in the leading countries in mining industries in exclusion of Informal Mes and Illegal Mes that purchase products from informal Mes. This is the way it should always be.</u>		
		(3)	Irrational Penalty System	<u>- A Mining Enterprise is entitled to own without penalty the mine lot for 10-years after the filing date of application, provided, however, that penalty accrues for failure to expend into a mine exploration after the lapse of 10-years. Agreement of the local residents, which is prerequisite for mine exploration, however, is difficult to obtain, while the time lapses until the penalty alone accrues, while the Mining Enterprise is unable to expend into the mine exploration.</u>	<u>- It is requested that GOP reviews the penalty system concerning the exploration of mines in the mine lot.</u>	
26	Others	(1)	Residents' Protest against Developments	<p><u>- The regional residents are against the mining development and it is quite possible that exploration in the promising mine lot is restricted.</u></p> <p><u>- Without the true appreciation of the economic importance of and the environmental measures provided by the local mining activity, the local opposition against mining frequently develops.</u></p> <p><b>(Actions)</b></p> <p><u>- On 5 January 2012, new Prime Minister Oscar Valdes in his policy speech stated he would newly put up an office for prevention and resolution of social confrontation in the Cabinet responding to The residents' protests around the mines. However, in May, at Tintaya copper mine in the Cusco Region, fatal casualties and injuries of protestors occurred. Government declared state of emergency. In June, the protests demanding the raise in royalty at the copper mine turned into riots in Espinar Province of the Cusco Region.</u></p> <p><u>- On 3 April 2012, GOP promulgated the Detailed Implementing Rules for Free Prior and Informed Consent (FPIC) with indigenous peoples, based on the Law of the Right to Prior Consultation with Indigenous or Tribal Peoples (Law 29785), Recognized in Convention 169 of the International Labor Organization. The principle of FPIC requires that indigenous community be informed before the government's grant of approvals and licences for exploration and/or development of these projects, in a culturally appropriate manner, about natural resources development, etc. that have direct impact upon their collective rights, such as mines and hydrocarbon operations.</u></p>	<p><u>- It is requested that GOP redoubles its effort to maintain order and public security. Otherwise, it could impact the investment decision.</u></p> <p><u>- It is requested that GOP takes the leadership in providing the local residents with a social education on the importance of the mining activity.</u></p>	
		(2)	Delayed Infrastructure Overhauls / at the cost of Enterprises	<u>- Demurrage frequently occurs due to the shortage of cargo handling capacity at Callao Port, which heavily costs enterprises.</u>	<u>- It is requested that GOP expands and amplifies the local infrastructure.</u>	

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			<ul style="list-style-type: none"> <li>- <u>Overhauls of infrastructure in the local area have a long way to go. In the vicinity of the mines, mining enterprises are compelled to engage themselves in construction of infrastructure such as schools and hospitals, upon demands of local residents instead of the primary responsible parties, namely, the central and local governments.</u></li> <li>- <u>A Member Firm faces a serious problem for transportation of the manufactured goods, due to the dillydallying in repair of the public roads.</u></li> <li>- <u>Both public road and transportation remain under-developed, while the population and the number of cars have grown. The traffic congestion in the Metropolitan Lima area has gotten chronic and more serious year after year.</u></li> </ul>	<ul style="list-style-type: none"> <li>- <u>It is requested that GOP expands and amplifies the local infrastructure.</u></li> <li>- <u>It is requested that GOP expands and amplifies the local infrastructure.</u></li> <li>- <u>It is requested that GOP executes investment necessary for development of the Metropolitan transportation (public transportation, and road network).</u></li> </ul>	
	(3)	Resort to the Intimidating Violence against Mining Activity	<ul style="list-style-type: none"> <li>- <u>From time to time, some local residents resort to the intimidating violence such as barricades blocking the traffic or setting facilities afire.</u></li> <li>- <u>The local residents in the mines vicinity demand hand back or review of the prices of the land properties previously sold, alleging they were sold at unduly low prices. This demand has aggravated the relationship between the mining enterprises and the local residents so that the mining enterprises experience difficulties, for example, in conducting the area survey.</u></li> <li>- <u>The Chief Magistrate himself instigated the local residents into strikes on the ground of the demand against the mining enterprises (for taking environmental measures, and increasing the amount of contribution), resulting in outbreak of violence. The reporting Member Firm temporarily evacuated its employees at the cost of its operational hiatus. This fiasco amounts to the investment risk.</u></li> </ul>	<ul style="list-style-type: none"> <li>- <u>It is requested that GOP deals with a firm attitude against antisocial offenders based on laws.</u></li> <li>- <u>It is requested that GOP protects the land ownership based on law.</u></li> <li>- <u>It is requested that the local government takes the initiative in maintenance of security, with an adequate support of the police force.</u></li> </ul>	
	(4)	Aggravated Public Security	<ul style="list-style-type: none"> <li>- <u>The number of crime cases has kept climbing, aggravating the public security.</u></li> </ul>	<ul style="list-style-type: none"> <li>- <u>It is requested that GOP thoroughly implements its crime control measures.</u></li> </ul>	