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International Pressure on the Peruvian Government to Repeal
Decree 22342: Corporate Social Responsibility and Labor Reform in Peru

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International Pressure on the Peruvian Government to Repeal Decree 22342: Corporate Social Responsibility and Labor Reform in Peru

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Andrea D. Solorzano†

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I. Introduction

While labor law reform in Latin America is “widespread and contentious,” it remains largely understudied as a matter of political process.1 One thing is certain: local governments’ resolve to see reform through in Latin American countries “is shaped by the pressure for reform that it faces from international actors or domestic constituencies.”2 A case example is the current political and economic debate over the repeal of Decree 223423 in Peru, a

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2 Id.

3 GOBIERNO DICTA LA LEY DE PROMOCION DE EXPORTACIONES NO
law on the Promotion of Non-Traditional Exports, which allows for the increased flexibility of labor contracts in selected areas of the Peruvian economy, including the textile and agro-industry sectors. The law essentially allows for successive, short-term contracting of workers and undermines workers' full access to employee rights for collective bargaining and unionizing, as well as other benefits afforded only to employees hired on a permanent basis. While global apparel companies are vying for the repeal of the law on the basis that it violates international norms, the Peruvian government and export companies vehemently defend its usefulness in maintaining Peru's economic competitiveness.

Although this comment focuses upon a specific law in Peru, it is meant to be further indicative of the country's overall need for labor reform and compliance with international labor standards. Part II first provides a historical overview of labor policy and trade liberalization in Peru and its trading relationship with the U.S.

Part III delves into the political and economic context in which the Decree at issue was first developed and explains the current state

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4 See Banco Central de Reserva Del Perú, Correlacionador Exportaciones No Tradicionales Por Sector Económico, http://www.bcrp.gob.pe/estadisticas/correlacionador-exportaciones-no-tradicionales-por-sector-economico.html (referencing Supreme Decree 076-92-EF, which defined the traditional export sectors and in effect left all other sectors under the category of "non-traditional").

5 Notice that in the United States, short-term labor contracts, also referred to as "contingent employment relationships," are also permissible employment relationships. Absent a formal contractual relationship, however, the employment-at-will doctrine applies. Charles J. Muhl, The Employment-At-Will Doctrine: Three Major Exceptions, U.S. Dept. of Labor, Monthly Labor Review (Jan. 2001), available at http://www.bls.gov/opub/mlr/2001/01/art1full.pdf (explaining that under the employment-at-will doctrine, an employer can terminate the employee for "good cause, bad cause, or no cause at all").

6 U.S. Dept. of Labor, Contingent Workers, http://www.dol.gov/_sec/media/reports/dunlop/section5.htm (explaining that in the U.S., contingent relationships have been recognized as an attempt to evade legal obligations, while noting the need for public policy to eliminate incentives to use these employment relationships for illegitimate purposes). Under current U.S. tax, labor and employment law, contingent relationships allow an employer to not have to make contributions to Social Security, unemployment insurance, workers' compensation, and health insurance. Id.

of workers' rights in Peru. Next, in Part IV, an act of corporate social responsibility is exemplified through an analysis of the March 4th letter written by the top executives of international apparel companies to Peru's President. Further, the response to the letter within the business community in Peru is explored to provide an understanding of the domestic resistance to any legislative changes to this law. Part V exposes the effects of Decree 22342 through a discussion of a complaint filed with the International Labor Organization and three specific case examples of Peruvian businesses' misuse and exploitation of the short-term contract scheme. Part VI provides an overview of international labor standards through the specific application of the Fair Labor Organization's Workplace Code of Conduct in Peru. Lastly, the possibility of a more comprehensive labor reform system in Peru is explored. While international organizations' support for workers' rights in Peru is critical, labor reform in compliance with international standards requires internalization of the meaning of corporate social responsibility by both the Peruvian government and Peruvian businesses in the export industry.

II. Historical Overview of the Rise in the Textile Export Industry and Trade Liberalization in Peru

Global factors, including the needs of U.S. multi-national corporations in expanding production and reducing labor costs, stimulated the emergence of export-led industrialization in developing countries. According to the American Apparel and

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8 See Stephanie Clifford, U.S. Textile Plants Return, With Floors Largely Empty of People, THE N.Y. TIMES (Sept. 19, 2013), http://www.nytimes.com/2013/09/20/business/us-textile-factories-return.html?pagewanted=all&amp;_r=0 (noting, for example, that while the labor costs of making a hoodie abroad in Asia is $5.50, the labor costs of making that same hoodie in the U.S. is $17.00, but also noting that when factoring in other costs such as fabric, trim and hardware, duties, and shipping, it is only $7.30 cheaper to make that hoodie abroad than it would be to make it in the U.S.); see also Rebecca Budde, Mexican and Central American L.A. Garment Workers: Globalized Industries and their Economic Constraints 8, 23-34 (containing a historical outline of the U.S.-American Apparel industry from 1900 to 2000 as well as a useful section on the prevailing legal conditions in the globalization of the textile and apparel industry).

9 Mine A. Doyran & Juan J. DeLaCruz, Lessons for Latin America from the Asian Textile Industry Experience, 5 GLOBAL J. OF BUS. RES. 115, 116 (2011); see also Clifford, supra note 8 (noting the impact of two decades of overseas production on the decimation of factories in the US: "Between 2000 and 2011, on average, 17
Footwear Association, whereas in 1991, American-made apparel accounted for 56.2% of all clothing bought domestically, by 2012 it accounted for only 2.5%. 10 Between 1990 and 2012, Bureau of Labor Statistics data show an overall loss of 5.8 million jobs in the American manufacturing sector, with the textile and apparel subsectors as the hardest hit with a loss of 1.2 million or 76.5% of jobs. 11 Although there appears to be a wave of sentiment that textile manufacturing may be returning to the U.S., 12 especially given new technology to replace human labor in some areas of production, 13 the process is most likely to be slow.

The textile industry mostly left the U.S. beginning in the 1990s, 14 especially after the North American Free Trade Agreement in 1994, 15 which eliminated import duties on much of the apparel produced in Canada and Mexico. 16 Then, in the late

10 Clifford, supra note 8.

11 Id.

12 Id. (pointing to the 2012 joint survey conducted by the M.I.T. Forum for Supply Chain Innovation and the publication Supply Chain Digest of 340 of their members, which found that one-third of American companies with manufacturing overseas were considering moving some production to the U.S., and about 15 percent of respondents claimed that they had already decided to do so); see also THE NEW YORK TIMES POLL (Jan. 11-15, 2013), http://graphics8.nytimes.com/packages/pdf/business/20textiles-poll.pdf (finding that 68% of respondents preferred products made in the US, despite higher costs, as compared to those made overseas, and that 63% believed that such American products were of higher quality).

13 Clifford, supra note 8 (noting that while the Parkdale Mill now produces 2.5 million pounds of yarn a week with about 140 workers, the same production level in 1980 would have required more than 2,000 people, thereby emphasizing that the investment in new manufacturing technology has made it so that the cost of labor is not as big of an issue as it once was).

14 But see REBECCA BUDDE, MEXICAN AND CENTRAL AMERICAN L.A. GARMENT WORKERS: GLOBALIZED INDUSTRIES AND THEIR ECONOMIC CONSTRAINTS 34 (Transaction Publishers, 2005) (noting that employment numbers in the U.S. textile and apparel industry have dropped continually since the 1970s).


16 Clifford, supra note 8.
1990s, the Asian financial crisis caused the collapse of currencies abroad and contributed to a "30 to 40 percent discount to already cheaper overseas products," according to textile executives.\textsuperscript{17} China then joined the World Trade Organization in 2001, quickly became an "apparel powerhouse," and currently enjoys its place as the world's largest producer of textiles and apparel.\textsuperscript{18}

Another international policy that spurred the growth in the textile industry abroad was the World Trade Organization's elimination of a textile quota system, which was first announced as a ten year transitional program in January 1995 and sought to be fully integrated into the General Agreement on Tariffs and Trade (GATT) by January 2005.\textsuperscript{19} Before then, from 1974 to 1994, the Multi-Fiber Arrangement (MFA) governed the international regulation of textile goods, meaning that a worldwide quota system existed through bilateral agreements that delineated import quotas for countries damaged by surging imports from developing countries.\textsuperscript{20} The MFA was replaced by the Agreement on Textiles and Clothing (ATC) in January 1995, which established the World Trade Organization (WTO) and planned to eliminate the quota system in three stages over a ten-year period.\textsuperscript{21} The removal of the quota system, however, did not eliminate a country's ability to impose tariffs on clothing and textiles to protect domestic manufacturers from foreign competition.\textsuperscript{22}

Despite East Asia's comparative advantage in garment production in the past, the phasing out of the worldwide quota system has contributed to the shifting patterns of garment

\textsuperscript{17} Id.

\textsuperscript{18} ASHISH K. VAIDYA, GLOBALIZATION: ENCYCLOPEDIA OF TRADE, LABOR, AND POLITICS 413, 425 (ABC-CLIO 2006).


\textsuperscript{20} Lauren A. Murray, Unraveling Employment Trends in Textiles and Apparel, Monthly Labor Review (Aug. 1995) at 68 available at http://www.bls.gov/mlr/1995/08/art6full.pdf (noting that while the quota system under MFA in the U.S. "undoubtedly protected some domestic jobs," there was much criticism from consumer groups; one study found that 214,000 jobs were saved in the apparel industry at a cost to consumers of $46,000 annually per job; another study found that the MFA saved 460,000 jobs in the apparel industry at a consumer cost of $39,000 per job).

\textsuperscript{21} Doryan & Delacruz, supra note 9, at 118.

\textsuperscript{22} Id.
production from Asia to Latin America and the Caribbean.\(^{23}\) Two factors that have led to this shifting pattern are lower wages and the need for market proximity.\(^{24}\) Each of the core regions of the world economy, North America, the European Union, and Southeast Asia, is constantly looking for lower cost and specialized production within its respective region.\(^{25}\) This trend is known as regionalization, whereby each new country entering the market reduces wages to make itself more competitive and "increase its share of world exports at the expense of its rivals."\(^{26}\) Consequently, Latin American countries with capacity in the textile industry have been eager to compete. In 2005, Latin America accounted for 20.274 billion of U.S. bought merchandise in textile and apparel and is thus recognized as the second largest producer after Asia.\(^{27}\)

That Peru does not make the list of top ten garment suppliers to the U.S. market\(^{28}\) highlights the country's increasing desire to become more economically competitive in the global market. To Peru, the textile and apparel industry is an important part of its economy and the U.S. plays a large role as its biggest consumer.\(^{29}\) The country's continued policy of gradual economic liberalization has been consistent since Alberto Fujimori's administration last entered the neoliberal experiment in the 1990s.\(^{30}\) Neoliberal policies continue, even under the current administration of the

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23 Id. at 124.
24 Id. (helping policy makers design long-term policies needed for Latin America to compete successfully in the U.S. market and explaining how to promote the restructuring of clothing and textile production at the country level).
25 Id.
26 Id.
27 Doryan & Delacruz, supra note 9, at 125.
28 Id. at 121 (recognizing data of top ten garment suppliers to the U.S. from 1995 to 2003).
29 Angulo Luna & Miguel Angel, Análisis del Cluster Textil en el Perú 48 (student thesis) (containing a chart of foreign markets showing the U.S. as the largest market at 68.50% and the next highest as Chile at 4.24%). Moreover, 78% of all Peruvian businesses in the textile and apparel export industry are located in Lima and Callao. Id. at 34.
30 See generally Oscar Dancourt, Neoliberal Reforms and Macroeconomic Policy in Peru, 87 CEPAL REV. 51, 54 (Apr. 1999) [hereinafter Neoliberal Reforms] (providing a useful historical overview of Peruvian economic policy, analyzed in three main stages of Peru's "long-term evolution of the per capita GDP").
leftist, progressive nationalist President Ollanta Humala. The U.S. and Peru first signed the United States-Peru Trade Promotion Agreement (PTPA) on April 12, 2006, which facilitated access to goods and services and generally sought to expand trade and foster private investment in and between the two countries. The Peruvian Congress ratified the PTPA in June 2006, and on December 14, 2007, the PTPA became law, thereby entering into force finally on February 1, 2009. In the preamble of the PTPA, the U.S. Government and the Government of the Republic of Peru specifically resolve to, among other things, “protect, enhance, and enforce basic workers’ rights, strengthen their cooperation on labor matters, and build on their respective international commitments on labor matters.”

In July 2007, the Office of the U.S. Trade Representative issued a report detailing “Facts about FTA Labor Protections and Peru’s Labor Laws.” The report paints labor conditions in Peru in a highly favorable light: mentioning specifically how “Peru’s laws provide for fundamental labor rights and more,” and highlighting Peru’s laws in the freedom of association, workers’ rights to organize and bargain collectively, forced labor

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31 Deborah Poole & Gerardo Renique, The Ollanta Humala Victory in Peru: Moving Beyond Neoliberalism?, N. Am. Cong. on Latin Am. Blog (June 24, 2011), https://nacla.org/blog/ollanta-humala-victory-peru-moving-beyond-neoliberalism (explaining how President “Humala’s nationalism and military background uncomfortably reminded Peru’s economic elites of former military president General Velasco Alvarado” and his national program and agrarian reform in the 1970’s, which initially posed the concern that upon his election there would be major changes in Peru’s neoliberal economy).


33 See Peru Trade Promotion Agreement, supra note 60, pmbl.

34 Id.

35 Id.

prohibitions and labor protections for child labor, non-discrimination in employment, and acceptable conditions of the work environment. While the report also lists sixteen specific steps that Peru has taken to improve labor law and enforcement as evidence of ILO's characterization of Peru as a "case of Progress," none of those steps relate to any action taken to safeguard labor conditions in the export industries of Peru specifically.

On paper, Peru's labor laws apparently leave little room for criticism. Despite this seemingly positive picture of the country's protection of labor rights, labor rights in Peru have actually seen little reform, even after its bilateral trade agreement with the U.S. and increasing integration into the global market.

In CSR International's country profile for Peru, while "supplier relations... showed improvements" in corporate social responsibility, generally speaking, there were only two pieces of CSR related legislation in the labor rights category, and they date back to March 1997. Although Peru has undoubtedly made progress in some areas—including the recent statutory increase in the monthly minimum wage from 675 Nuevos Soles (approximately U.S. $255) to 750 Nuevos Soles (approximately U.S. $284), there remain many issues in the actual enforcement of laws.

37 Id. at 1-3.
38 Id.
39 See generally Jeffrey Hirsch, Comparative Wrongful Dismissal Law: Reassessing American Exceptionalism, 92 N.C. L. REV. 343 (2014) (noting the need to study the difference between law as written and law as it operates in practice in the context of different countries).
40 See generally BUREAU OF ECONOMIC AND BUSINESS AFFAIRS, U.S. DEPT. OF STATE, 2013 INVESTMENT CLIMATE STATEMENT—PERU (Feb. 2013) [hereinafter INVESTMENT CLIMATE 2013] available at http://www.state.gov/e/eb/rls/othr/ics/2013/204714.htm (noting that Peru also has free trade agreements with Canada, Chile, China, the European Free Trade Association, Japan, Mexico, Panama, Singapore, South Korea, and Thailand, Framework Agreements with MERCOSUR countries, including Argentina, Brazil, Paraguay, Uruguay, and Venezuela, a partial preferential agreement with Cuba, and more agreements that have been signed but are awaiting implementation, including ones with Costa Rica, Guatemala and the European Union).
41 THE WORLD GUIDE TO CSR: A COUNTRY-BY-COUNTRY ANALYSIS OF CORPORATE SUSTAINABILITY AND RESPONSIBILITY 300 (Wayne Visser & Nick Tolhurst eds., 2010).
42 INVESTMENT CLIMATE 2013, supra note 68, at Labor.
III. Short-Term Labor Contracts in the Non-Traditional Export Sector of the Peruvian Economy: Decree Law No. 22343- History and Its Current Impact

In November 1978, Decree 22343, denominated as the Law for the Promotion of Non-Traditional Exports, allowed employers in businesses exporting non-traditional goods to contract with workers for labor contracts without requiring a definite term for employment, and without limitation on the number of workers that can be hired under these contracts. In effect, Article 32, which allows for such indefinite, temporary, short-term employment contracts, has created a class of workers with no comparable rights to those rights generally enjoyed by permanent employees in other sectors and industries.

Decree 22432 was enacted during the military dictatorship of President Francisco Morales Bermudez. This time period comes within the second stage in an analysis of Peru’s long-term evolution of its GDP, the stage in Peru’s economic development from 1976-1990, characterized as a “long-lasting crisis with violent cycles of booms and recessions.” The country had just undergone a period (1968-1975) through which the primary export model was being replaced by import substitution industrialization. Given the persistent stagnation and high inflation rates, there was a visible need to protect public enterprises and the manufacturing sector in Peru. As part of the

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43 Id.
44 Decree 22342, supra note 3, at art. 32.
45 See id. at art. 3.
47 Neoliberal Reforms, supra note 30, at 53.
48 Id. at 54.
49 Id. (explaining that President Bermudez continued the structural reforms of former President Velasco Alvarado, although there were two attempts to change the development model of import substitution industrialization: (1) introduction of a program for the promotion of exports from 1977-1980 and (2) embarking on trade openness from 1972-1982).
government's inability to completely do away with the primary export model in the past, the Bermudez government implemented a program in connection with the promotion of exports.\textsuperscript{50} One such law enacted as part of this overall policy was Decree 22343, which directly fed into the overall objective of primarily promoting the exportation of non-traditional products and increasing the investment opportunities in Peru for the country's increased economic growth.\textsuperscript{51} Decree 22342 aimed to do this by allowing for indefinite, short-term contracts in the limited context of the exportation sector of non-traditional products.\textsuperscript{52} Generally, this form of contract labor has been termed "precarious work" and has in many instances been recognized as a global business strategy in the wake of increased outsourcing of jobs in all sectors.\textsuperscript{53} Thus, while in the short-term the strategy serves to reduce labor costs and defeat workers' drive to unionize, in the long-term this form of employment ultimately eliminates an employer's overall obligations to the worker.\textsuperscript{54}

Under Peru's constitution, workers generally have the right to freedom of association as well as the right to join and form trade unions, and engage in collective bargaining and strikes.\textsuperscript{55} However, there are legal barriers to this right. A minimum of twenty employees is needed for a workplace-level union, while a minimum of fifty employees is needed for a sector-wide union.\textsuperscript{56} While workers are at liberty to form unions on the basis of their occupation, employer affiliation, and/or geographic territory without any prior authorization, the number requirement is considered prohibitively high—especially in light of this labor

\textsuperscript{50} Id. at 54.
\textsuperscript{51} Decree 22342, supra note 3, at pmbl.
\textsuperscript{52} Id.
\textsuperscript{54} See generally id. (explaining the difference between the ramifications of long-term versus short-term labor contracts in Peru).
\textsuperscript{55} Constitucion Politica del Peru 1993 [CONSTITUTION], art. 2, 28.
\textsuperscript{57} BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEPT. OF STATE,
regime within the non-traditional export industry where the use of short-term contracts prevent workers from being labeled as formal, official employees of the business.\textsuperscript{58} According to a report by Freedom House in 2013, "less than 10 percent of the formal-sector workforce is unionized."\textsuperscript{59} A 2012 ILO report suggested that the fall in unionization in Peru during the 1990s was possibly due to the rise of short-term contracts during the same period.\textsuperscript{60}

Specifically, in 2013 the International Commission of Jurists (ICJ) pointed out that the special legislation laid out in Decree 22342 for the use of short-term contracts has reportedly damaged workers' ability to unionize because workers are afraid of being fired arbitrarily and are especially vulnerable because they face the real possibility of not having their employment contracts renewed.\textsuperscript{61}

Although Decree 22342 was designed to promote non-traditional exports and allows for successive, temporary, short-term contracts for workers in the fishing, wood and paper, jewelry, and non-metallic mineral sectors generally,\textsuperscript{62} the Decree has had its greatest impact in the agriculture and garment/textile industries in Peru.\textsuperscript{63} According to statistics collected by the Peruvian Department of Labor and Promotion of Employment, as of June 2011, 75 percent of all labor contracts in the promotion of non-traditional products for export are concentrated in the capital city of Lima.\textsuperscript{64} The majority of these contracts are within the

\textsuperscript{58} Id. at 28.

\textsuperscript{59} Freedom in the World 2013: Peru, FREEDOM HOUSE, http://www.freedomhouse.org/report/freedom-world/2013/peru#.UwnrEEJdWfM (notice also that this percentage is more than in the U.S. private-sector).


\textsuperscript{62} Decree 22342, supra note 3, at tit. I.

\textsuperscript{63} SOLIDARITY POLICY BRIEF, supra note 17, at 7.

\textsuperscript{64} Report, Ministerio de Trabajo y Promoción del Empleo [Department of Labor and Promotion of Employment], http://www.mintra.gob.pe/mostrarContenido.php?id=734&tip=9 (noting that the remaining percentage of contracts for labor in the
textile/garment industry, and the rest are within the agricultural arena. "The average wages of workers in the largest and most profitable textile companies in the garment sector are among the lowest in Peru." Wages are so low that workers and their families are often forced to live with relatives and often have to take on double shifts—when double shifts are not available they are forced “to supplement their income by working as street vendors” in the informal sector of the Peruvian economy. "To be fair, the law is limited in its applicability. Under Article 7 of Decree 22342, the law applies only to non-traditional exporters, which are defined as those businesses that export directly, or indirectly, at least 40% of its annual production value. Also outside Decree 22342’s ambit are those workers for contractors and subcontractors that make clothing that is not used for exportation.

Even when companies are able to justify their use of short-term labor contracts, however, the resulting failure to impose limits on the continuous renewal of these precarious contracts have proven to be inherently unfair to workers. For example, one notable problem with the law enabling short-term contracts in the export industry businesses is that it has prejudicial consequences for workers’ trade union rights. There has been by and large abuse

export industry are distributed amongst other cities, including Ica, Trujillo, Arequipa, and Piura).

65 Id.
67 Id.
68 Decree 22342, supra note 3, at ch. 2 art. 7.
69 Ministerio de Trabajo y Promoción del Empleo [Ministry of Labor and Promotion of Employment], Consulta sobre la posibilidad de que empresas contratistas y subcontratistas contraten personal bajo el amparo del regimen laboral establecido por el Decreto Ley N 22342 para la exportacion no tradicional de confecciones textiles (Nov. 11, 2011), http://www.mintra.gob.pe/archivos/file/DGT/opinion/INFORME_021_2011_DGT.pdf [hereinafter Labor Ministry Report 2011] (additionally noting that as examples, the following employers would be excluded from the Decree’s applicability: businesses which offer clothes-making services, businesses which commercialize clothes-making on a national level, and those business which import the raw materials necessary for the making of clothing).
70 Informe en el que el Comite Pide Que se Le Mantenga Informado de la Evolucion de la Situacion, INT’L LABOR ORG., Rep. No. 357, Case No. 2675- Peru (June
of such short-term contracting because it not only "restricts worker rights but also [serves to] discourage[] workers from reporting ... violations [in the workplace] and exercis[e] their rights" due to the fear that "their contracts will not be renewed." 71 The largest export companies are the "worst offenders, in some cases; employing 100% of the workforce on short-term contracts even though those workers perform permanent functions ... some workers have worked for the same employer for nearly twenty years on a succession of one- to six-month contracts." 72 Such "abuse of the legal framework for workers" employed by these companies keeps these long-time workers indefinitely in a position of mere casual workers. 73

While short-term contracts are not wholly barred outside the non-traditional exporting sector of the economy, "Peruvian legislation usually limits the renewal of [such short-term,] fixed[] contracts to a total duration of 5 years." 74 Decree 22342, by contrast, places no time limitation on the use of short-term contracts to employ workers for non-traditional product exports. In effect, garment company manufacturers, for example, are allowed to hire precarious workers on short-term contracts to fill specific orders. 75 This means that while a worker may be "employed this month to fill a production order for a multinational garment brand," the same worker "has no guarantee of working the next month to fill a similar order for the same buyer." 76 In fact, textiles and dressmaking factories are among those that are most notorious for using fixed-term contracts, which average three

71 Peru: Textile Workers Demand Factory Obey Labor Ruling, SOLIDARITY CTR. (Nov. 6, 2013), http://www.solidaritycenter.org/content.asp?contentid=1740 (stated by ITGWLF General Secretary Klaus Priegnitz).

72 Georgian Trade Union, supra note 94; see also ILO CASE 2010, supra note 98, para. 839 (verifying that "[s]ome workers have been employed in the same company on these contracts for 25 years").

73 ILO CASE 2010, supra note 98, para. 840. Notice, arguably, the case with U.S. workers employed under the "at will" norm.


75 See Decree 22342, supra note 3.

76 Georgian Trade Union, supra note 94.
months (the shortest being 15 days).\textsuperscript{77} Even still, short-term labor contracts with workers can be terminated whenever necessary, which only feeds the instability felt by workers.

There is increased support for the repeal of Decree 22342—support ranging from the international labor and human rights organizations to the workers employed under this law.\textsuperscript{78} The primary rationale underlying support for the law’s repeal is that the law’s protection is no longer necessary in fostering the export business in the textile industry (and other non-traditional product sectors).\textsuperscript{79} Decree 22342 was applicable and viable thirty years ago when export orders were irregular and exporting companies were just beginning to “find[] their feet.”\textsuperscript{80} At that time, the word “non-traditional” was an “apt description for the emerging garment export” industry in Peru.\textsuperscript{81} At the law’s inception, the export industry in textiles and agriculture was just emerging, and there were the combined conditions of limited access to markets in developed countries and a relatively small external and unstable demand for Peruvian products.\textsuperscript{82} The law made sense then. Today, however, the political and economic context in Peru is substantially different. There is an increased external demand for Peruvian textiles and agriculture on a global level due to the country’s political openness to trade liberalization, as evidenced in the Free Trade Agreement between Peru and the U.S.\textsuperscript{83} In fact, the garment export sector has grown exponentially as a result of free trade agreements, thereby making textiles and clothing “one of the most dynamic sectors of the [Peruvian] economy.”\textsuperscript{84}

The law, however, is vehemently supported by Peruvian business interest organizations in the export industry and by the

\textsuperscript{77} Id.
\textsuperscript{78} Id.
\textsuperscript{79} Id.
\textsuperscript{80} Id.
\textsuperscript{81} Id.
\textsuperscript{82} See Georgian Trade Union, supra note 66.
\textsuperscript{83} Peru Trade Promotion Agreement, supra note 60; see also Travis McArthur & Todd Tucker, A Year After Implementation of Peru Free Trade Agreement, U.S. and Peru Left With Broken Promises and No New Trade Model, PUB. CITIZEN (Feb. 1, 2010), http://www.citizen.org/documents/PeruFTA-OneYear.pdf (summarizing the ways in which the “hopes and predictions of proponents of the trade deal” have “failed to materialize” in the areas of labor conditions and in the environment).
\textsuperscript{84} Id.
Peruvian government itself. General Director of the labor division in Peru’s Ministry of Labor, Christian Sanchez Reyes, defended the law’s continued applicability in an informative report to the Vice-President of the Ministry in November 2011. While Mr. Reyes conceded the persistence of workers’ rights violations that have resulted from the continuous renewal of short-term contracts, he advised that the solution to these problems is not in the law’s repeal, but rather in ensuring stricter enforcement of the law’s provisions and eliminating any loopholes through which companies claim to be eligible for the law’s benefit in allowing for the use of short-term contracts. Moreover, one specific modification to the law, as Mr. Reyes proposes, is limiting the use of short-term contracts for any given worker to five years—as is the current law for workers under short-term contracts in other areas of Peru’s economy. Although there have been specific parliamentary proposals to amend Decree 22342, such efforts...

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87 Id.

88 Id.

89 See Proyecto de Ley Que Modifica El Regimen Laboral Del Decreto Ley 22342, FEDERACION NACIONAL DE TRABAJADORES TEXTILES DEL PERU [NATIONAL FEDERATION OF TEXTILE WORKERS OF PERU], http://www.iesiperu.org.pe/documentos/publicaciones/60-PropuestaModificacionLey.pdf (providing the proposal along with the textual changes to Decree 22342, as proposed by Congressman Yonny Ancieta).
have been largely unsuccessful—especially after May 2013 when the Constitutional Tribunal ruled that the law was not in violation of the Peruvian Constitution. Nonetheless, international support for the repeal of Decree 22342 has gained momentum and has raised issues surrounding corporate social responsibility for international apparel companies that engage in business relationships with textile manufacturers in Peru.

IV. Letter from International Apparel Companies to Peru
Advocating for the Repeal of Decree 22342: An Act of Corporate Social Responsibility

The implementation of corporate social responsibility (CSR) ethics in international trade with Latin America may be ultimately undermined by domestic labor laws in Latin American countries that are facially unfavorable to workers' rights and in violation of international codes of conduct. From a Latin American perspective, however, their domestic policies are often a function of the global market and are reflective of a country's desire to maintain policies that will increase access to the U.S. market and adjust to rising competition from other developing countries. Of particular research interest is the textile/apparel industry, due to its characterization as among the fastest growing sectors of exports in developing countries.

Corporate social responsibility emerged as a concept in the U.S. during the late nineteenth century, where it "was viewed largely in terms of a firm's productivity and marketing of goods and services." While the meaning of corporate social responsibility has varied over the years, the importance of corporate responsibilities beyond that of the corporation's "direct

90 Gibbons, supra note 102, at 1.
92 Megha Gupta & Nancy Hodges, Corporate Social Responsibility in the Apparel Industry: An Exploration of Indian Consumers' Perceptions and Expectations, 16 J. FASHION MARKETING & MGMT. 216, 218 (2012) (exploring perceptions of CSR from the consumers' point of view in India, a country considered as a major sourcing destination for apparel). Past research has often categorized social responsibility into four categories: (1) economic, (2) legal, (3) ethical and (4) philanthropic, whereby economic responsibility is at the forefront, followed by legal, ethical, and then philanthropic responsibilities. Id. at 219.
economic or technical interests" have moved to the forefront to include legal responsibilities in compliance with law and broad ethical responsibilities regarding what is fair and just. The World Business Council for Sustainable Development defines corporate social responsibility as a "continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large." Although the meaning of corporate social responsibility means different things to different people depending upon a range of local factors as well as government and other legal framework conditions, the adherence to CSR as a guiding principle for companies operating in other countries allows for companies to think of themselves as "global citizens and local neighbors" and adopt positions to serve as "engine[s] for social progress.

Corporate responsibility stems from the recognition that corporations are not only legal entities required to operate within the legal frameworks of a society, but also are social institutions with duties and obligations for the overall well-being and progress of society as a whole. While early corporate responsibility theory was mainly focused on normative behavior for companies, there has been an increasing concern for corporate responsibility as management practice for companies. Corporations are in a unique position to influence structural change and policies, considering their pervasive presence and control in directing their business relationships. Thus, the question is not centered on the theoretical ideas of what companies should do, but rather what

93 Id. at 218.

94 Corporate Social Responsibility, WORLD BUS. COUNCIL FOR SUSTAINABLE DEV., http://www.wbcsd.org/work-program/business-role/previous-work/corporate-social-responsibility.aspx (last visited Feb. 24, 2014) (providing a report that serves as a practical guide for companies so that they can handle societal expectations in the country they are operating in and maintain their business relationships according to corporate social responsibility principles).

95 Id.


97 Id. at 19.

98 See id. at 11.
companies *can* do.\(^9\)

There are two interrelated prongs to corporate social responsibility: accountability and enforcement.\(^{100}\) While the global community has imposed a set of human rights expectations with respect to business organizations—mainly, large, multinational corporations—\(^{101}\) the enforcement and implementation of CSR ideals has been and will probably always be a work in progress. Currently, there are three sets of guidelines for large multinational corporations operating in varying countries: (1) The Office of Economic and Cultural Development (OECD) Guidelines for Multinational Enterprises (MNE), (2) the United Nations Global Compact, and (3) the Global Reporting Initiatives—each addressing a different level of specificity.\(^{102}\) The OECD provides general guidelines in facilitating constructive and sustainable relationships between the host governments and the multi-national corporations.\(^{103}\) The U.N. Global Compact broadly asserts two principles: "[B]usiness should support and respect human rights and that business should not be complicit in human rights abuses."\(^{104}\) Among the human rights issues relating to workers,

\(^{9}\) *Id.* at 19-20 (emphasis included).

\(^{100}\) *See generally* John M. Kline, *Business Codes and Conduct in a Global Political Economy in Global Codes of Conduct: An Idea Whose Time Has Come* (Oliver F. Williams ed., 2000) 39, 41 (explaining that "global codes" are considered a type of "soft law" because they generally lack legal enforcement and are rather dependent on the "force of moral suasion or mobilized public opinion to spur compliance"). International "soft law" is viewed as the next best alternative to regulation of international business whenever there is insufficient political support to achieve the passage of a new law domestically. *Id.*


\(^{102}\) *Id.*

\(^{103}\) *Id.* at 205 (providing that the guidelines articulate elements to emphasize the responsibility of the host state in creating a just social and political infrastructure). Host governments are responsible for creating a framework of accountability for multi-national corporations by providing domestic policy that promotes "stable macroeconomic policy, non-discriminatory treatment of enterprises, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement, and efficient and honest public administration." *Id.* Apart from host state responsibilities, the OECD general guidelines also called on MNEs to abstain from involvement or interference with a nation's internal political affairs. Kline, *supra* note 128, at 44.

\(^{104}\) *Id.* at 207.
businesses are required to support workers' freedom of association and their right to collective bargaining.\textsuperscript{105} Lastly, the Global Reporting Initiative provides specific measures and reporting procedures for the implementation of the guidelines and the efficacy of the guidelines as carried out in practice.\textsuperscript{106} Although multinational companies are ideally held to these internationally established guidelines for the protection of human rights, there is arguably little accountability in terms of enforcement, because they are purely voluntary. Nevertheless, the act of establishing guidelines has undoubtedly raised social awareness not only on the business management side of the equation, but perhaps more importantly, among consumers as well.

CSR in the context of textile industry labor practices is of particular interest given the labor-intensive and increasingly globalized nature of the industry. The apparel industry is a "labor-intensive industry," in that it is characterized by rapid style changes and non-stop competition to produce clothing on tight deadlines and at competitive prices.\textsuperscript{107} Thus, factories are often pressured into increasing their demands on workers at the expense of their workers' well being.\textsuperscript{108} Add the economic instability and poor conditions already faced by many of these workers in countries abroad to the business pressures experienced by factories abroad, and the resulting system ends in inherent unfairness to workers' rights. Consumers, however, have purchasing power, and thus significant leverage in holding multi-national apparel companies accountable.\textsuperscript{109} In turn, international companies have more reason to become invested in the decision to voice concerns and take a public stance against unfavorable domestic labor policies affecting workers.

While apparel purchasing decisions have traditionally centered on the price, quality, style, reputation of the brand, and fabric,

\textsuperscript{105} \textit{Id.}

\textsuperscript{106} Dillard, \textit{supra} note 101, at 202.

\textsuperscript{107} Gupta & Hodges, \textit{supra} note 92, at 217.

\textsuperscript{108} \textit{Id.}

Consumers in the last ten to fifteen years have become more aware and concerned with purchasing products that are ethically produced.\textsuperscript{110} Consumers are critical to CSR because in choosing what to buy, they are essentially the “ultimate arbiters of human decency in the marketplace” and can ultimately force companies to adhere to regulations, add to stimulate better codes, inspections, and labeling-- thereby forcing companies into becoming socially responsible entities.\textsuperscript{111} Although the term “ethical” has varying definitions to different people and organizations, the term in the apparel industry generally means that workers’ rights are respected throughout the supply chain.\textsuperscript{112} The concern is over “excessive hours, forced overtime, lack of job security, poverty wages, and denial of trade union rights, poor health . . . and mental stress.”\textsuperscript{113} Groups such as “Clean Clothes Campaign” and “Sweatshop Watch,” for example, are regularly known to flag companies of concern with respect to unfair labor practices,\textsuperscript{114} which causes consumers to consciously reject certain brands due to their “unethical reputation.”\textsuperscript{115} Multinational apparel brands are thus very much cognizant of the need to choose suppliers that perform under ethical international standards.\textsuperscript{116} Apparel companies oftentimes adopt and implement ethical trading principles by introducing their own voluntary codes of conduct in an effort to improve the labor conditions of their suppliers in developing countries.\textsuperscript{117} These voluntary codes of conduct are largely based on ILO standards and usually found in a company’s supply chain policy statement.\textsuperscript{118} Although the ILO standards have been adopted with increasing frequency, the biggest area of discontent remains in the ILO’s lack of power to enforce its standards, protect

\textsuperscript{110} Joyce Tsoi, \textit{Apparel, in Green Consumerism: An A to Z Guide} 12, 12 (Juliana Mansvelt & Paul Robbins eds., 2011).

\textsuperscript{111} Gupta & Hodges, \textit{supra} note 120, at 218.

\textsuperscript{112} Tsoi, \textit{supra} note 110, at 12.

\textsuperscript{113} \textit{Id.}

\textsuperscript{114} \textit{Id.}

\textsuperscript{115} \textit{Id.} at 13 (noting the case of U.K. companies in the apparel industry, which have lost about 2.8 billion euros as a result of media publicity over unfair working conditions).

\textsuperscript{116} \textit{Id.} at 13. (noting that multinational apparel brands are aware of the potential threat of a boycott that may result from extensive media coverage on unfair labor conditions abroad).

\textsuperscript{117} Tsoi, \textit{supra} note 110, at 13.

\textsuperscript{118} \textit{Id.} at 13.
basic worker and trade union rights, and therefore actually prevent violations.\footnote{Id.} This feeds into the even greater need for consumer pressure on international apparel companies to take a stand for workers’ rights in the countries that they are involved with in export contracts.

Global apparel brands should be responsible for ensuring that workers’ rights are respected in the countries that are manufacturing and supplying their orders—especially when they are often held to the promise that their clothes are being made in other countries under safe working environments.\footnote{See Steven Greenhouse, $40 Million in Aid Set for Bangladesh Garment Workers, N.Y. TIMES, (Dec. 23, 2013), http://www.nytimes.com/2013/12/24/business/international/40-million-in-aid-set-for-bangladesh-garment-workers.html (reporting that four prominent retailers, labor groups, and the Bangladesh government have created a compensation fund, the first of its kind, to aid victims’ families of the Rana Plaza factory collapse—note: No U.S. retailers have joined these efforts); see also Jim Yardley, Garment Makers Stumble on Call for Accountability, N.Y. TIMES, (Dec. 30, 2013), http://www.nytimes.com/2013/12/31/world/europe/garment-makers-stumble-on-call-for-accountability.html?src=recg (reporting that global fashion brand Mango has refused to contribute to the fund for victims of the Rana Plaza building collapse because it had not formalized a commercial relationship with the factory and had not completed its quality inspections and factory audits, and because the factory had not yet started producing samples for its order).} The responsibility of these global apparel brands have recently come into the limelight with the tragedies in the garment factories of Bangladesh, which is considered the second largest exporter of apparel to the U.S. after China.\footnote{Id.} The fire at the Tazreen Fashions factory in November 2012\footnote{Julfikar A. Manik & Jim Yardley, Bangladesh Finds Gross Negligence in Factory Fire, N.Y. TIMES, (Dec. 17, 2012), http://www.nytimes.com/2012/12/18/world/asia/bangladesh-factory-fire-caused-by-gross-negligence.html.} and a later building collapse claiming the lives of more than 1,100 garment workers in Bangladesh in April 2013\footnote{Jim Yardley, Report on Deadly Factory Collapse in Bangladesh Finds Widespread Blame, N.Y. TIMES, (May 22, 2013), http://www.nytimes.com/2013/05/23/world/asia/report-on-bangladesh-building-collapse-finds-widespread-blame.html.} have raised questions of the responsibility and accountability of multinational apparel companies that contract with factories overseas. Both incidents “revealed the poor controls that retailers had throughout their supply chain”—retailers like Wal-Mart and Sears stated that they were unaware that their
apparel was being made in such factories. Such incidents point to failing labor inspections regarding the maintenance and inspection of building codes relating to factories in Bangladesh. Endangering the very health and livelihood of workers, it may be analogized to the situation in Peru under Decree 22342's labor regime controlling the textile export industry, insofar as questioning the responsibility of international apparel companies for workers' rights abroad.

Unlike the incidents in Bangladesh that have directly endangered the lives of workers laboring in these factories, the situation in Peru, with specific regard to Decree 22342, is perhaps less overt and has garnered little attention in the general, public news media. One likely reason is the nature of the workers' right at issue. The right to job security, collective bargaining, and unionization pose no direct physical threat to the lives of workers and therefore are comparatively less pressing than the right to safe working environments. Another reason, arguably, is the specific applicability of the law in that its scope is limited to the non-traditional export sector of Peru's economy. Regardless of the reason for the lack of news coverage, an act of corporate social responsibility taken by six international clothing companies in March 2013 is worthy to highlight. It is the first of its kind and will hopefully set a precedent in exemplifying a simple step in the right direction whenever multinational companies are dissatisfied with domestic policies in host countries.

124 Manik & Yardley, supra note 122, at 1.
125 See generally Jeffrey Hirsch, Making Globalism Work for Employees, 54 St. Louis U. L.J. 427 (2009-2010); see also A Global Approach to the Study of Workplace Law: Looking Across (Real) National Borders to Move Beyond (Artificial) Substantive Ones, Vol. 25, No. 1 INT'L J. OF COMP. LAB. LAW AND INDUS. RELATIONS, 3, 8 (2009) (discussing the need to hold corporations responsible for labor actions of subcontractors, which could be relevant to the issue of multinational corporations and their responsibility for the standards and employment contracts used by domestic sourcing companies in places like Peru).
126 See, e.g., Cambodia could be a headache for apparel companies in 2014, MARKET WATCH, WALL ST. J. (Jan. 7, 2014, 1:12 PM), http://blogs.marketwatch.com/behindthestorefront/2014/01/07/cambodia-could-be-a-headache-for-apparel-companies-in-2014/ (reporting that apparel retailers and manufacturers, for example Gap Inc. and H&M, have sent an open letter to the Cambodian government to call on all sides to resolve the dispute over the minimum wage in a peaceful manner). Garment workers have rejected the government's offer of a $15 monthly wage increase to $95 on December 23, 2013 and a subsequent offer to increase wages to $100 a month. Workers are calling for a wage increase of $160 a month and have continuously rejected the
On March 4, 2013, six world renowned international clothing companies, including Nike, New Balance, 47 Brand, The Life is Good Company, PVH Corporation, and VF Corporation, signed a letter to Peruvian President Ollanta Humala, urging the President to support the repeal of labor provisions in Decree 22342. While polite and respectful in tone, the letter did not shy from outright directing the government to own up to its responsibility in “support[ing] and enforce[ing] the rule of law to ensure that business and workers can operate in a fair and safe environment.” The letter noted the urgent need to repeal the Decree’s unfavorable provisions on the basis that allowing for such short-term, fixed contracts in the export industry of Peru encourages and condones violations of labor rights, which “pose[] an obstacle to the proper application of our codes of conduct.”

The international companies signing the letter made known their “stake in the economic and political stability as well as the business climate of the countries in which [they] invest,” thereby implying their dissatisfaction with the current law covering the contracts of workers laboring for the businesses that supply them with their orders. While the companies admittedly acknowledged their own continuing need to monitor their suppliers in Peru to ensure compliance with labor standards, they called on Peru’s president to more directly address the workers’ rights violation caused by Decree 22342. The six international companies expressed their need to enlist the support of Peru’s

government’s proposed increase. Cambodia’s apparel industry has suffered an estimated loss of more than $250 million in sales and investment during the two-week period of nationwide strikes, according to the Women’s Wear Daily. Id.


130 Id.

131 Id.
government for greater compliance with international standards in practice.\textsuperscript{132}

On the same day, there was a letter written to President Humala on behalf of the Fair Labor Association (FLA),\textsuperscript{133} signed by the Executive Director, Jorge Perez-Lopez, likewise expressing the organization's overall discontent with Peru's labor law that allows for the employment of workers through the use of repeated short-term employment contracts.\textsuperscript{134} The letter's objective was merely to echo the concerns raised by the FLA-affiliated companies that source from Peruvian factories—all of which had signed onto the earlier, independent letter.\textsuperscript{135} As part of their affiliation with FLA, such companies are dedicated to promoting and protecting workers' rights and improving working conditions globally.\textsuperscript{136} The letter strongly called on the help of the Peruvian government in bringing "legislation into conformity with international labor standards and the principle of freedom of association."\textsuperscript{137}

Both the letter from the international companies and the letter from FLA to Peruvian President Humala adopted standard language in the beginning, praising the advancements in the "economic and social development of Peru."\textsuperscript{138} Despite such congratulatory language, more than likely done purposefully to soften the tone on an issue that has been ongoing but has never

\textsuperscript{132} Id.

\textsuperscript{133} See FAIR LABOR ORG., http://www.fairlabor.org/ (last visited Feb. 22, 2014) (noting that FLA is a collaborative effort of socially responsible companies, colleges and universities, and civil society organizations that create solutions to abusive labor practices by "offering tools and resources to companies, delivering training to factory workers and management, conducting due diligence through independent, factories and others involved in global supply chains").


\textsuperscript{135} Id.

\textsuperscript{136} Id.

\textsuperscript{137} Id.

\textsuperscript{138} See id. See also generally Leading Apparel Brands Urge Peru to Repeal Harmful Law, INDUSTRIALL (March 5, 2013), http://www.industriall-union.org/leading-apparel-brands-urge-peru-to-repeal-harmful-law (quoting the General Secretary of IndustriALL Global Union in her reaction to the letter, which in her opinion, served as a "clear message that in today's global garment industry[,] decent work is an element of competitiveness alongside quality, price and delivery on time").
changed, the response from Peruvian business leaders was a highly negative one.

An arguably scathing, yet timely response by Peruvian business organization officials came by way of a reply letter four days later on March 18, 2013. The letter was signed by six men, among them the President/Executive Directors of the Association of Exporters, Chamber of Commerce of Lima, National Society of Industries, American Chamber of Commerce of Peru (AMCHAM Peru), National Confederation of Private Businesses (CONFIEP), and the Society of Exterior Commerce of Peru (COMEX Peru).

The letter strongly rejected all “accusations” expressed in the March 4th letter, claiming that everything advanced by those international apparel companies are based on “inaccurate arguments.”

Through this response letter, business leaders sought to address the apparent falsity of those accusations. First, business leaders state that Decree Law No. 22342 and its regulation of labor contracts in the non-traditional export industry, including textiles, was fully known by all the countries with which Peru has signed free trade agreements, including its agreement with the U.S. and all other member countries of the International Labor Association (ILO). Therefore, Peru is in complete liberty to maintain the regime under Decree 22342. Moreover, from this Peruvian business leader perspective, the law plays an important role in maintaining foreign trade levels and contributes to the country’s development by creating jobs that Peruvians would otherwise not have. The labor regime established by the Decree does “not transgress any Peruvian constitutional provision” and is thus “viable, valid, and not harmful to the workers engaged in this system.”

140 Id.
141 Id.
142 Id. at para. 1.
143 Id.
144 Id.
Second, the letter adopts a stance of transparency, going as far as inviting the six international companies to visit Peru’s manufacturing companies and see for themselves that the law is in fact being followed.\footnote{Id. at para. 3.} This open invitation to “verify [] compliance with our laws, as well as the quality and work of our people” implies that these manufacturing companies have nothing to hide.\footnote{Id.} Peruvian business leaders assert in the letter that it was “discourteous that through [a] letter showing no grounds” and no previous discussion of its “contents with our representatives,” these international business company officials would choose to intervene in such an unacceptable manner with decisions that are solely within the exclusive responsibility of Peru’s “highest executive and legislative authorities.”\footnote{Id.} In other words, the letter was perceived as nothing short of outright insulting. These international companies have in effect sought to substitute their own policy judgment in an area of labor law that should be respected as being within the discretion of national, domestic Peruvian politics.

The letter further served to publicly reaffirm Peru’s acceptance and commitment to international labor standards. Business officials defended the country by pointing out that Peru has adopted ILO’s Declaration on Fundamental Principles and Rights at Work.\footnote{Id. at para. 2; see also ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK, http://www.ilo.org/declaration/lang--en/index.htm, (last visited Oct. 9, 2014) (“Declaration commits all ILO member States to respect the principles in four areas, whether or not they have ratified the specific Conventions. Those four areas are: freedom of association and collective bargaining; the elimination of forced labour, the elimination of child labour; and the elimination of discrimination in respect of employment and occupation.”).} Accordingly, the principles established in this ILO declaration are principles that are apparently recognized and reflected in the Constitution and laws of Peru.\footnote{Letter from Juan Virilias et al., Association of Exporters President, to Robert T. De Martini, New Balance CEO/President, supra note 139, at para. 2.} Thus, as business officials claimed in the letter, the allegations concerning Decree 22342 are not consistent with the “Peruvian reality, whether in relation to domestic labor practices nor with or to the international
Moreover, the letter maintains that the application of Decree 22342 “strictly requires Peruvian exporters” to adhere to labor rights principles and “pay all employee benefits.” Violations of these provisions are punishable by high fines, and these business leaders fully support these high penalties.

The letter took an extra step by reassuring the international companies that Peruvian export companies are themselves concerned with compliance of international standards to the extent that business relationships between textile factories and international companies require certain certification processes. Business officials point to the fact that “foreign[] customers, especially from the U.S. . . . are the first to certify the employment practices of their Peruvian suppliers prior to closing an export contract, and exercise strict supervision even to the point of interviewing employees in private.” The credibility and force of the accusations made by the international apparel companies in their letter to President Humala are further undermined when business leaders notably point out that the March 14th letter was ironically not signed by any of Peru’s biggest customers. Business leaders discuss the fact that the “biggest proportion of [their] exports” go to companies that are actually not represented or have signed onto the March 4th letter urging the repeal of Decree 22342. Moreover, the letter adopted the tone of a victim towards the end of its text, where the authors expressed perhaps greater concern over the negative image that the March 4th letter had caused. The letter’s accusations, regardless of its unfounded claims, as these Peruvian officials allege, have cast a severely negative image of Peru, Peruvian workers and families, and of local businesses. The business official reply letter to the international apparel companies’ March 14th letter received wide

151 Id.
152 Id. at para. 1.
153 Id.
154 Id. at para. 4.
155 Id.
156 Letter from Juan Virilias et al., Association of Exporters President, to Robert T. De Martini, New Balance CEO/President, supra note 139, at para. 2.
157 Id.
158 Id.
attention in Peruvian news sources. An editorial in El Comercio, a leading pro-business newspaper in Peru, supported the statement made by the Peruvian Department of Exterior Commerce and Tourism in rejecting the letter as a blatantly false accusation.\textsuperscript{159} The editorial suggested that the current labor regiment under Decree 22342 is rightfully more flexible than the general labor laws because of the need to adapt to changing circumstances that govern demand in the global market.\textsuperscript{160} Moreover, the editorial credited the flexible contract scheme for the growth of export apparel businesses\textsuperscript{161} and for the growth in job availability.\textsuperscript{162}

Interestingly, the editorial posited that if the international apparel companies were genuinely concerned about guaranteeing greater work stability for workers, the companies would start by sending a similar letter to President Obama instead of one to President Humala.\textsuperscript{163} After all, the U.S. has yet to ratify the ILO’s Freedom of Association and Protection of the Right to Organize Convention of 1948 (No. 87)\textsuperscript{164} and the Right to Organize and Collective Bargaining Convention of 1949 (No. 98).\textsuperscript{165} From the Peruvian, pro-business perspective, perhaps most repugnant was the idea that such foreign, international companies were trying to undermine Peru’s recent competitiveness in the global market.\textsuperscript{166}

The Peruvian response, although initially convincing, loses its appeal once the labor reality in Peru is further scrutinized. For the


\textsuperscript{160} \textit{Id.}

\textsuperscript{161} \textit{Id.} (noting that in the period from 1993 to 2011, the number of export businesses grew from 4,389 to 7,665).

\textsuperscript{162} \textit{Id.} (describing that at the end of 2011, there were 173,382 workers employed in this sector of the economy).


\textsuperscript{164} Freedom of Association and Protection of the Right to Organize Convention, July 9, 1948, 68 U.N.T.S. 17.

\textsuperscript{165} Right to Organize and Collective Bargaining Convention, July 1, 1949, 96 U.N.T.S. 257.

\textsuperscript{166} \textit{Id.}
reader that is relatively uninvolved with labor issues in Peru on the
ground, it is easy to credit the reply letter from Peruvian business
leaders and dismiss the allegations contained in the March 14th
letter. The Peruvian business official reply letter leaves the public
with the impression that the international apparel companies went
overboard by voicing their allegations through a letter instead of
engaging in a less insulting approach through discussions with the
Peruvian government or with these business companies
themselves. The allegations in the March 14th letter, however, are
hardly novel. The letter itself was merely the culmination of an
already brewing opposition to the Decree’s effect by workers’
unions and other non-governmental organizations supporting
workers’ rights in Peru. These groups would ultimately gain
enough international support to make their discontent known and
garner support from the very international apparel companies who
contract with the Peruvian businesses that have exploited the use
of short-term contracts under Decree 22342.

V. Past Abuses of the Short-Term Labor Contract Regime
Under Decree 22342

The first visible signs of widespread discontent with Decree
22342 started as early as October 2008, when the General
Confederation of Workers of Peru (CGTP) filed a complaint with
the ILO. The complaint cited abuses by textile and clothing
companies, which have been notoriously known for maintaining
workers on fixed-term contracts for an average of three months
and renewing such contracts at the three month’s conclusion so
that a number of workers have been basically employed by the
same company for about twenty-five years. Because of the
nature of the employment relationship created by these short,
fixed-term contracts, employees under this labor scheme were
practically restricted from organizing, bargaining collectively, or
engaging in strikes, precisely because the companies reserve the

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167 See Letter from Juan Virilias et al., Association of Exporters President, to Robert
T. De Martini, New Balance CEO/President, supra note 139.
168 See id.
169 Informe En El Que El Comite Pide Que Se Le Mantenga Informado De La
Evolucion De La Situacion- Informe No. 357, ILO, (June 2010),
http://www.ilo.org/dyn/normlex/es/P?p=1000:50002:0::NO::P50002_COMPLAINT_TE
XT_ID,P50002_LANG_CODE:2911664,en:NO [hereinafter ILO Disposition].
170 Id. at para. 839.
right to not renew their contracts. The ILO Committee's ultimate recommendation was for the Peruvian government to collaborate with representatives of the workers and employers' organizations to ensure that the systematic use of short-term temporary contracts in the non-traditional export sector does not, in effect, impede workers' exercise of their trade union rights. The Committee did nothing more than to further request the Peruvian government to keep it informed.

The March 2013 letter was not the first letter written to Mr. Humala advocating for the repeal of Decree 22342. In April 2012, the International Textile, Garment and Leather Workers' Federation (ITGWLF) and two other organizations wrote to President Humala in protest of the Decree allowing for non-traditional industrial producers to hire workers under such short-term contracts in order to fill specific export orders. The letter called for the repeal of Articles 32, 33, and 34 of the Decree, articles that were still being considered by the Congressional Labour Commission at that time. The letter proposed that as the legislation was being considered, the Peruvian government continue to monitor the application of the law closely in cases where the law was being used inappropriately to convert fixed-term employment contracts to open-ended ones.

The overall build-up to the action taken by the international apparel companies in writing the letter involves three leading cases in Peru, all of which exemplify the misuse of short-term labor contracts to the detriment of workers. The first case concerns Universal Textil, a leading Peruvian garment company, which

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171 Id.
172 Id.
173 Id.
174 Georgian Trade Union, supra note 94, at 1.
175 Decree 22342, supra note 3, at art. 32-34.
176 Georgian Trade Union, supra note 94, at 1.
177 Id. (describing the tortured death of a trade union activist in Bangladesh, Aminul Islam, who was arrested with 20 other demonstrators after violating a ban on protests when the government raised the minimum wage for garment/textile workers only by a token amount. Islam had been most recently leading a campaign for "liveable wages and fair treatment" against the Shanta Group, a garment supplier to Nike, Ralph Lauren, and PVH (maker of garments for Tommy Hilfiger)).
178 Universal Textil Exporto 38% mas que el ano pasado a pesar de la crisis [Universal Textile exported 38% more than last year despite the crisis], FOREIGN
in June 2007 employed approximately 1,257 workers through temporary contracts, although it had failed to meet the required export levels needed to hire workers on such basis. Peruvian labor authorities ordered Universal Textil to move all of its workers to permanent contracts, but the company continuously ignored the order. After "twenty months and three unsuccessful appeals . . . Universal Textil continues to ignore the order." As of recent, Universal has refused to renew the contracts of workers who had joined a union.

The second case concerns garment and textile manufacturer ICADIE, which announced without warning on November 30, 2007, that it would not renew the contracts of 1,200 of its workers on the basis that the company had not received sufficient export orders to maintain its labor base. The company’s failure to meet the quantity of past export contracts, however, was never proved or discussed with the trade union before such action was taken. However, there is an argument that the failure to meet export orders was a mere pretext, and that ICADIE had fired workers for their recent participation in a union. Those who remained employed with the company were only offered a renewal of their contracts for another two-week period. In response to growing discontent from trade unions and the workers who had been laid off, ICADIE succumbed to signing an agreement with the trade
union on January 24, in the Ministry of Labor. The agreement stated that the 1,200 contracts that had not been renewed would have priority of employment whenever new vacancies arose. The agreement was, however, later invalidated by ICADIE in a letter to the trade union. ICADIE explained that because the union members had opted not to renew their contracts, they were technically no longer employees and thus belonged to no trade union. Thus, the trade union had no authority to enter into an agreement with the company for the benefit of these non-employees. This invalidation followed a report from the Labor Ministry that indicated that ICADIE was not on the national register of non-traditional exporters and was thus not permitted to use short-term contracts in their hiring of workers. The Ministry of Labor nonetheless issued a report and ordered for ICADIE to inform its workers that they had been employed on permanent contracts as of their start date with the company. The Ministry of Labor report further identified a number of other violations and imposed a fine, but ICADIE refused to comply. Thus, while the Labor Ministry recognized the abuse that had been taking place and therefore ordered ICADIE to give all workers permanent contracts, it failed to follow through with the actual enforcement of its order for ICADIE. The only apparent repercussion was that at least one multinational buyer has ended its relationship with ICADIE.

The third case in 2007 involved the textile companies under the Topy Top SA group of businesses. Topy Top sent the union

188 Id. at para. 843.
189 Id.
190 Id. at para. 844.
191 Id.
192 Id.
193 ILO Disposition, supra note 169, at para. 845.
194 Id.
195 Id.
196 SOLIDARITY POLICY BRIEF, supra note 17, at 17.
197 Id.
198 ILO Disposition, supra note 169, at para. 846. One of Topy Top SA’s companies, Star Print SA, similarly dismissed 55 workers in January 2008, all of whom were trade union members who were later found to be replaced by new workers. Id. Another one of its companies, Sur Color Star SA, dismissed twenty of its workers, coincidentally after the trade union they were members of gained legal recognition by the
a letter in early January indicating that the company had lost one of its main customers and had to downsize. In June of that year, ITGLWF helped facilitate an agreement that provided for the return of 93 workers whose short-term contracts had been terminated by Topy Top because of the participation in union activities and because of the new industrial relations management systems that came along with recognizing the existence of a trade union. All three cases highlight the abuses that have occurred under Decree 22342's short-term contract labor regime, the weak enforcement practices of Peru's Ministry of Labor, and the resulting disrespect that businesses appear to have for the laws in Peru.

In response to complaints about anti-trade union and collective bargaining practices, the Peruvian government carried out various inspections at the different company sites and found serious infringements of trade union and labor rights, infringements for which these companies were thereafter fined. Nonetheless, violations continue to occur to this day; the most recent case is that of Hilanderia Hialpesa, a garment company that refused to renew the contracts of 150 union members. Among those workers dismissed were those who had been employed for eighteen years on a continuous basis through the renewal of their short-term contracts. Although these workers worked year-round, they were considered on paper to be only temporary workers hired to fulfill specific export orders and thus employable as needed only on three-month contracts.

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199 Id.

200 Id. See also Ana Briceno, Explotacion Obrera al Tope en Empresa Textil Topy Top, JORNAL DE AREQUIPA (Mar. 22, 2013), http://www.joraldearequipa.com/Tip-top.htm (revealing the personal story of a 31 year old worker for Topy Top who after five years of working without a day off—whether on Sunday or on other holidays—was suddenly laid off after finding that he was associating with the trade union).

201 Id. at para. 848.


204 SOLIDARITY POLICY BRIEF, supra note 17, at 17.

205 Id.
Despite Hialpesa’s stronghold attempt to make its case for rightful termination of these 150 workers, labor authorities finally issued what was considered a landmark ruling in September 2013. The ruling invalidated 1,008 current short-term labor contracts, which had the legal effect of changing these contracts into permanent ones. Anticipating a negative response by Hialpesa, IndustriAll Global Union immediately sent a letter to the Secretary of Labor, Nancy Laos. The letter requested the Secretary of Labor’s urgent intervention to ensure that the workers would be able to return to work under their new, permanent contracts as directed by the Ministry itself.

Workers whose contracts expired on October 31, 2013, returned to work at Hialpesa on November 2, 2013, ready to sign their permanent contracts, pursuant to the Ministry’s order to Hialpesa. Hialpesa instead offered only a renewal of their short-term contracts. In a blunt act contrary to the Ministry’s ruling, Hialpesa simply told the workers: “If you do not sign, you cannot work.” Workers refused to sign the renewal and Hialpesa denied these workers entry into their usual place of work. Instead of giving in to worker demands to comply with the Ministry’s ruling, Hialpesa called the police to halt the protestor’s efforts. The case at Hialpesa serves to illustrate the weakness of ministry rulings and their lack of enforceability in practice.

The role of international trade union organizations has inevitably affected the visibility of Decree 22342’s negative effects on workers’ rights in Peru. For example, the ITGLWF played a critical role in bringing forth the issue of short-term contract abuse in the export textile industry to the Peruvian
government.\textsuperscript{215} ITGLWF immediately urged the government to start an investigation of the illegal use of short-term contracts in the garment industry.\textsuperscript{216} Moreover, in the past, ITGWF had asked previous President Alan Garcia to intervene in the cases of Hialpesa and Universal Textil to ensure that the workers fired for joining a union were reinstated with back pay and that the same workers were given permanent contracts as of the date of original entry.\textsuperscript{217} ITGLWF has also further urged the government to repeal Decree No. 22342.\textsuperscript{218}

In response to the growing discontent to Decree 22342, the Ministry of Labor first issued a directive in September 2007, which established a “National Program of Regularization and Verification of Short Term Contracts and the Exercise of Freedom of Association and Collective Bargaining.”\textsuperscript{219} Under this program, an inspector is to be given a list of items to examine to ensure the legality of the contract, including verifying the registration of the employer, the duration of the contract, and the justification for a short-term contract.\textsuperscript{220} The program also requires the publication of periodic reports on the results of this program.\textsuperscript{221} However, the Ministry of Labor has failed to publish regular reports on the results of the program\textsuperscript{222} and labor abuses continue “unabated.”\textsuperscript{223}

VI. Continuous Renewal of Short-Term Labor Contracts as a Violation of International Labor Rights Standards

The International Labor Organization (ILO) has been recognized since 1946 as a specialized United Nations agency for the promotion of workers’ rights, decent employment opportunities, and greater social protection by strengthening varied dialogue on work-related issues.\textsuperscript{224} Thus, the ILO establishes

\textsuperscript{215} SOLIDARITY POLICY BRIEF, supra note 17, at 18.
\textsuperscript{216} Id.
\textsuperscript{217} Id.
\textsuperscript{218} Id.
\textsuperscript{219} Id.
\textsuperscript{220} SOLIDARITY POLICY BRIEF, supra note 17, at 18.
\textsuperscript{221} Id.
\textsuperscript{222} Id.
\textsuperscript{223} Id.
international labor standards in response to growing international concern when action needs to be taken on a particular issue.\textsuperscript{225} Generally, these ILO international labor standards provide guidance for developing and revising national and local policies.\textsuperscript{226} It is important to recognize that international labor standards, however, are themselves a response to the pressures of globalization.\textsuperscript{227} Despite increased clarity in defining international standards, the real issue lies in the actual implementation and enforcement of international standards on the domestic level, especially in the context of labor law.\textsuperscript{228}

The ILO defines “decent work” as “opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security, and human dignity.”\textsuperscript{229} Stability and

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\textsuperscript{226} HOW INTERNATIONAL LABOUR STANDARDS ARE USED, http://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-use/lang--en/index.htm#P18_6371 (last visited Oct. 4, 2014). International labor standards merely serve as primary tools for governments seeking to draft and implement labor law and social policy in conformity with internationally accepted standards. \textit{Id.} Countries generally first consider whether to ratify an ILO convention, and then take steps to harmonize their national law and practice with that of the established international standards. \textit{Id.} After a country adopts a convention, employers and workers can encourage a government to ratify it. \textit{Id.} Once a convention is ratified, the government is required to report to the ILO periodically with information as to how they are applying the convention in practice (note, however, that some states may choose not to ratify a convention and nonetheless choose to align their legislation with the international standard). \textit{Id.} An additional requirement for the state to hold national tripartite consultations is imposed whenever an ILO member state ratifies the Tripartite Consultation Convention, 1976 (no. 144). INTERNATIONAL LABOUR ORGANIZATION, INTERNATIONAL LABOUR STANDARDS ON TRIPARTITE CONSULTATION, http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/tripartite-consultation/lang--en/index.htm (last visited Oct. 4, 2014) (explaining that the principle of tripartism is based on the position that dialogue and cooperation between governments, employers, and workers in the formulation of international standards and policies ensure broad support from all ILO constituents).

\textsuperscript{227} MARIA L. COOK, THE POLITICS OF LABOR REFORM IN LATIN AMERICA: BETWEEN FLEXIBILITY AND RIGHTS 1 (Penn. State Univ. Press 2007) (exploring the role of Latin American labor organizations in shaping the design and implementation of labor law reforms in Latin American countries at the end of the 20th century).

\textsuperscript{228} See HOW INTERNATIONAL LABOUR STANDARDS ARE USED, supra note 226.

security of work is an important characteristic of decent work. With an increasingly global economy, there has been a rise in precarious employment, which is characterized by uncertainty, and unpredictability.²³⁰ Precarious employment refers to “forms of work characterized by atypical employment contracts, limited or no social benefits . . . high degrees of job insecurity, low job tenure, low wages and high risks of occupational injury and disease.”²³¹ Losing one’s job is a serious event for most people—it not only introduces economic costs beyond the loss of pay, but it also disrupts the process of human capital accumulation, disrupts access to benefits, and often contributes to stress levels and thus the emotional well-being of workers and their families.²³² Naturally, temporary jobs are less stable and secure than permanent or indefinite jobs and are thus typically less beneficial to workers. At their core, labor agreements as contractual relationships can have the effect of depriving employees of protections they are otherwise due²³³—therein lies the potential for abuse under Peru’s current labor contract scheme in the non-traditional export industry under Decree 22343.²³⁴

Due to this rise in precarious type of employment, the FLA and its affiliates have attempted to more heavily promote regular (or indefinite employment contracts) as the preferred employment relationship.²³⁵ The FLA recognizes there may be circumstances where other forms of employment may be needed to meet short-term needs/gaps.²³⁶ Such circumstances, however, must be “limited and controlled” to “prevent their misuse to the detriment

²³⁰ Id.
²³¹ Id.
²³² Id.
²³⁴ But see Hirsch, supra note 39 (noting again that the norm for U.S. workers is comparatively just as bad with at-will employment).
²³⁵ Perez-Lopez, supra note 229, at 5.
²³⁶ Id.
of workers." Consequently, the FLA has implemented revisions of its Workplace Code of Conduct and Compliance Benchmarks by adding a new element titled "Employment Relationship" (ER) to strengthen protection of workers' rights. Employers are required to "adopt and adhere to rules and conditions of employment that respect workers and, at a minimum, safeguard their rights under national and international labor and social security laws and regulations." Under ER Section 8 governing the recruitment and hiring conditions of contract or temporary workers, employers may hire contract or temporary workers only when national law allows such employment relationship. Moreover, one of the following three conditions must be established: (1) the permanent workforce of the enterprise is not sufficient to meet unexpected or unusually large volume of orders; (2) exceptional circumstances may result in great financial loss to the supplier if delivery of goods cannot be met on time; or (3) work that needs to be done is outside the professional expertise of the permanent workforce.

In justifying the use of short-term labor contracts, supporters of Decree 22342 would likely point to the second condition. Given the nature in the uncertainty of export orders due to varying levels of supply and demand, manufacturers in Peru enjoy the sense of flexibility allowed by employing laborers on fixed term contracts. This flexibility allows manufacturers to contract only with the number of workers that they will find necessary to meet export orders, this way eliminating any unnecessary costs. Arguably, if short-term contracts are permissible in any sector of the economy, it would be in the export industry because of the need to protect

237 Id.


239 Id. at 5.

240 Id. at 4. The Workplace Code of Conduct sets out standards that are based on ILO standards and are internationally regarded as good labor practices. Id at 3. FLA affiliates are expected to comply with "all relevant and applicable laws and regulations of the country in which workers are employed" and are to "implement the Workplace Code in their applicable facilities." Id. Whenever differences in standards arise, affiliated companies are instructed and expected to "apply the highest standard." Id.

241 Id. at 7.

242 Id.
manufacturer’s economic interests against possible economic downturns in other countries.

These new FLA standards were first introduced in Peru two years ago by FLA Executive Director, Jorge Perez-Lopez, who presented a paper, Stability and Security in Employment and Decent Work at the conference, “Decent work in the Textile and Garment Sector in Peru: Opportunities and Challenges.” Apart from going over FLA standards with respect to when short-term labor contracts are deemed permissible, the conference also focused upon Section 9 of the Employment Relationship (ER), which laid out the prohibited uses by employers when hiring/recruiting workers under a “contingent or temporary” contract. Specifically, ER 9 prohibits (1) using contingent/temporary workers “on a regular basis for the long-term or multiple short-terms;” (2) hiring contingent/temporary workers “as a means to support normal business needs on a continuous basis or as a regular employment practice;” or (3) making “excessive use of fixed-term contracts or schemes where there is no real intent to impart skills or provide regular employment.”

While supporters of Decree 22342 are likely able to justify the short-term labor regime in the context of the export industry, such practice would fail under Section 9 because the short-term labor contract use is being used to exploit workers. Under the first prong, workers in Peru are being hired on a regular basis throughout multiple renewals of short-term contracts—some have gone as far as being employed by the same manufacturing company for over twenty-five years. Under the second prong, the textile export industry can hardly be characterized as new, and thus steady production values using past numbers is certainly available to manufacturers for planning ahead to meet their needs. If there is any uncertainty about there being “normal business needs” within the textile export industry, it might be wise to scrutinize the contracts between the international labor companies.

243 Perez-Lopez, supra note 229, at 1 n.1.
244 Id. at 4.
245 Id.
and Peruvian manufacturers. If orders are found to be sporadic and inconsistent, there may be reason to organize around more inherently fair contracts between them in a way that favors the steady employment of workers. Little attention, however, has been given to any inherently unfair business relations for these export contracts. It is unlikely, therefore, that Peruvian manufacturers can blame the unsteady relationships with these international business companies and thereby justify the use of the continuous renewal of short-term contracts. Lastly, under the third prong, there is a clear violation here when companies, such as Hialpesa and other previously discussed in this comment, have clearly made excessive use of these short-term contracts without intent to provide regular employment in the strictly legal sense.

Given Decree's violation of these international codes of conduct as established by the FLA, the March 4th letter by the international apparel companies came in due time. International companies submitting this letter to the Peruvian President not only had the backing of other international organizations, such as the FLA, but also joined in with the rising efforts of non-governmental organizations and labor union organizations supporting workers in Peru. Within the same month, trade union organizations such as the National Federation of Textile Workers of Peru (Federacion Nacional de Trabajadores Textiles del Peru) (FNTTP) and the Federation of Garment Workers of Peru (Federacion de Trabajadores en Tejidos del Peru) (FTTP) hosted an international forum on the meaning of decent work in Peru's textile and clothing industry. The central focus of the forum was to emphasize the position that Peru's participation in world trade must continue to take place only in a way that ensures job security for workers. In effect, this requires joining together and taking measures to eliminate both "in law and in practice the use of short-term 'non-traditional' employment contracts in Peru's textile and garment industry." Taking on a practical approach to resolving the inherent exploitation of workers under Decree


248 Id.

249 Id.
22342, the leaders at the forum specifically identified a series of suggested steps for the three main stakeholders in Peru: The executive/legislative branch, company suppliers, and international apparel companies.\textsuperscript{250}

From Peru’s government, forum leaders demanded its support in repealing or amending Decree 22342 to the extent that short-term contracts may be continued, specifically limiting the ability to renew such contracts for an indefinite period of time.\textsuperscript{251} This would bring the use of short-term labor contracts in line with the general permissible use of short-term contracts in the rest of the private sector. In general, employers in Peru may hire workers under a fixed-term/indefinite contract depending on the job being performed—for example, contracts in the legal or financial fields are permitted to be performed on an indefinite basis.\textsuperscript{252} Whenever fixed term contracts are allowed, however, they must be in writing and can only be used for a period of up to five years.\textsuperscript{253} To ensure compliance, employers are required to register these fixed-term contracts with the Labor Ministry.\textsuperscript{254} All of these requirements would still hold under Decree 22342, and amending the law to prohibit renewal of contracts for a similar period of five years would bring the law more in line with acceptable international standards concerning precarious work.

As far as practical steps that Peruvian manufacturers and suppliers in the textile industry can take, forum leaders demanded that they develop a clearly defined plan for themselves.\textsuperscript{255} Manufacturers and suppliers have the power to force their own business practices within compliance of the laws and must take calculated steps to ensure that compliance is a reality at all levels of their operations. Thus, for example, forum leaders suggested that the companies provide a system for their own internal justification whenever they make the conscious decision to

\begin{footnotesize}
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  \item \textsuperscript{250} Id. at 1-3.
  \item \textsuperscript{251} Id. at 1.
  \item \textsuperscript{253} Id.
  \item \textsuperscript{254} Id.
  \item \textsuperscript{255} International Forum, supra note 247, at 2.
\end{itemize}
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contract with workers for short-term, indefinite labor.\textsuperscript{256} Moreover, forum leaders suggested that greater transparency with regard to the actual composition of their workforce employed on a short-term basis was necessary.\textsuperscript{257} Although internal accountability is important to good business practices, this suggested step seems unrealistic because companies would have little incentive for added work, especially within the current framework of Decree 22342, which sanctions their current labor practices. Only if Congress is able to take the necessary steps in amending the law will internal controls within these companies become important and necessary. Another important request from suppliers was that they respect the right of freedom of association and workers' rights to bargain collectively by changing their corporate attitudes towards the activities of trade unions.\textsuperscript{258} This last suggestion was perhaps the most difficult because it gets at the heart of corporate culture. Corporate social responsibility is a slow-moving concept in Peru, and it is easier said than done. Nonetheless, outlining these steps for the companies was an important lesson from the forum because true labor reform to protect workers' rights inevitably requires the support of the employers themselves.

As far as steps recommended for international global brands, the most useful was perhaps the suggestion that they provide an incentive to suppliers who do take concrete action in adopting internal policies that comply with domestic and international standards.\textsuperscript{259} One way to do this is to ensure long-term contractual relationships for export orders from these suppliers.\textsuperscript{260} This would surely contribute to a decreased use of fixed-term contracts for fear of overestimating their workforce and reduce their net profits. Another concrete way to make these suppliers accountable to international companies concerned about workers' rights, is to require suppliers to provide details of their workforce to ensure compliance with international labor standards.\textsuperscript{261} In the end, suppliers depend on business from these international companies.
and are likely to agree to these extra, heightened informational demands for continued, profitable business relationships.

VII. Conclusion: The Need for Comprehensive Labor Reform in Peru

Since the signing of the United States-Peru Free Trade Promotion Agreement, there has been an even greater need to educate workers and organize labor movements as a means for greater inclusion in the economic benefits and democratic culture of the country. Upon recognizing this need, the Solidarity Center opened an office in Peru in 2010 to work with Peru’s four principal trade unions262 and implement activities to improve the union’s ability to mobilize workers.263 The ILO also has its regional office for Latin America and the Caribbean in Lima, Peru. With the physical presence and support of these international groups, there is hope for greater consistency and coordination among workers in support of their own rights in upcoming years. Although international support is definitely instrumental in labor reform, the practicality and reality of protecting workers’ rights in the textile and apparel export industry of Peru lies within the sole power of the Peruvian government and legislature. Fostering credibility by providing actual enforcement of laws with the teeth of tangible sanctions will lead to greater respect for the law by Peruvian businesses.

One of the principal legal challenges to compliance with fundamental labor rights in Peru is the confusion resulting from the lack of a “unified labor code in Peru”—there are about seventy-five laws with various amendments within the regulatory framework of private sector labor and public administration, as well as forty decrees and fifteen ministerial resolutions from the Ministry of Labor and Employment Promotion (Labor Ministry).264

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263 Id. (recognizing three goals, namely “(1) improving the unions’ ability to organize and educate vulnerable workers, (2) building unions’ capacity to perform core functions and promote internal democracy, and (3) enabling unions to participate in democratic policymaking and workers’ rights enforcement”).

264 SOLIDARITY POLICY BRIEF, supra note 17, at 6.
And yet another layer of regulations was added with the implementation of the Peru-U.S. Free Trade Agreement in 2009.\textsuperscript{265} Large-scale labor reform would require a general labor code so that the legal framework regulating workers' rights in Peru can be comprehensive and easily located.\textsuperscript{266} Labor reform, however, is a continuous, never-ending process. In the meantime, amending Decree 22342 to restrict the continuous renewal of short-term labor contracts in the non-traditional export industries of Peru is a concrete step for the Peruvian legislature—one step closer in aligning with international standards for greater protection of workers' rights.

\textsuperscript{265} \textit{Id.}

\textsuperscript{266} \textit{Id.} at 20 (noting that a General Labor Code was first introduced in Congress in 2002 but has yet to be passed).